



## Policy Brief:

### Why Australia Should Recognise the State of Palestine

*The objective of this policy brief is to provide professional legal, political, and moral arguments for Australia to recognise the State of Palestine. It will further be utilised as a tool for engagement between the Palestinian Delegation and the current ALP government.*

### Executive Summary

At the Australian Labor Party (ALP) National Conference in 2018, Labor passed a resolution that was later formally adopted into Labor's 2021 National Platform. This resolution:

- supports the recognition and right of Israel and Palestine to exist as two states within secure and recognised borders;
- calls on the next Labor Government to recognise Palestine as a state; and
- expects that this issue will be an important priority for the next Labor Government.

Recognising the State of Palestine would be monumental investment in securing a just and durable peace in the Middle East. The so-called 'Middle East Peace Process' has failed for 30 years because negotiations have been characterised by a stark imbalance of power between Israel (the occupier) and Palestine (the occupied), and Israel's intransigent rejection of any reasonable solutions to key final status issues (Jerusalem, settlements, refugees, security, water, and borders). Meanwhile, Israeli leadership has actively and systematically undermined the peace process and the viability of the two-state solution through continuous expansion of illegal settlements and persistent illegal annexation efforts, both *de facto* and *de jure*, in the Occupied Palestinian Territories, including East Jerusalem. Until Israel and Palestine are on equal diplomatic footing, the unjust status quo of occupation and annexation will continue indefinitely, and the two-state solution will soon disappear entirely. Full recognition of statehood would empower Palestine's position at the negotiating table enough for genuine peace negotiations to be made fair and productive, and to save the two-state solution. In the absence of any genuine peace process, a new approach based on principles of international law and international legitimacy is urgently needed. This is particularly crucial at a time when Israel's extremist right-wing government is escalating its grave human rights violations and violent incitement against the Palestinian people to unprecedented levels.

In the foreword to the ALP's 2021 National Platform, Prime Minister Anthony Albanese writes that Labor's historic task has been "to advance an agenda of fairness, and the creation of a better society, a better nation and a better world." Recognising the State of Palestine aligns directly with this commitment, with international law and legitimacy, and Australian values of respect for human rights, dignity, justice, and equality. It is time for the ALP Government to abide by its legal and moral obligations, and deliver on its promise to recognise Palestinian statehood. This is an opportunity to demonstrate principled leadership, and to align Australia with international consensus, by joining the 139 countries that have already recognised the State of Palestine.



## **Summary of Arguments: Why Australia Should Recognise the State of Palestine**

### **1. To align with global consensus;**

By recognising the State of Palestine, Australia would be joining a growing global consensus of 139 countries which have already done so, including like-minded states such as Sweden and the Vatican, and key partners to Australia such as Indonesia, Papua New Guinea, India, and Türkiye.

### **2. To align with the Australian public;**

The Australian public and civil society have expressed clear, widespread support for recognising Palestinian statehood, with over half of Australians agreeing that Palestine should be recognised as an independent state and only 9% opposing the concept in a 2022 survey. Labor Party grassroots movements and state branches have also repeatedly endorsed and reaffirmed the ALP National Platform position calling to recognise Palestine as a state, most recently in motions passed at the respective Labor Party State Conferences in Queensland and Victoria.

### **3. To save the two-state solution;**

For 30 years since the Oslo Accords, bilateral negotiations between Israel and Palestine have failed to deliver any substantial outcomes due to Israel's blanket rejection of Palestinian self-determination and utter intransigence towards negotiating key final status issues (Jerusalem, settlements, refugees, security, water, and borders). Meanwhile, Israel continues to actively, systematically undermine the viability of the two-state solution through relentless annexation efforts, both *de facto* and *de jure*, that are detrimental to the territorial contiguity of the State of Palestine. The continuation of Israel's illegal colonial settlement program alone demonstrates that Israeli leadership is not interested in the prospect of a peaceful coexistence between two states. In the absence of a genuine peace process, the unjust status quo of annexation and settlements will continue until the two-state solution is rendered entirely unviable. The result will be a one-state reality; either that of an apartheid state, which is unacceptable to the Palestinian people and international community, or a non-Jewish democratic state with a majority Palestinian population, which is unacceptable to Israel. Other solutions are blatantly immoral, and would involve either the ethnic cleansing of Palestinians, or the continuation of Israel's *de facto* annexation of Palestinian land.

### **4. To secure a just and durable peace;**

Bilateral negotiations between Israel (the occupier) and Palestine (the occupied) are characterised by a stark power imbalance at the negotiating table. Negotiations conducted on such unequal terms cannot resolve the final status issues (Jerusalem, settlements, refugees, security, water, and borders), as Israel is able to maintain its position of total intransigence while systematically undermining the two-state solution, with no accountability. Australia recognising the State of Palestine would empower Palestine's position considerably, and would be a significant step towards balanced negotiations and a just and durable peace.

### **5. To align with international law and international legitimacy;**

The right of the Palestinian people to self-determination is a basic human right and a fundamental principle of international law, enshrined in the United Nations Charter and other legally-binding international treaties and covenants that Australia is party to. This right has also been affirmed by countless relevant United Nations resolutions. Palestine meets all



of the legal requirements for statehood, as outlined by the 1933 Montevideo Convention on the Rights and Duties of States; Palestine has (a) a permanent population, (b) a defined territory, (c) a government, and (d) a proven capacity to enter into relations with other states. Palestinian statehood is also supported by the constitutive theory that statehood is predicated upon recognition by other states, as the State of Palestine has received formal recognition from 139 countries since declaring independence in 1988.

#### **6. To fulfil Australia's moral responsibility;**

H.V Evatt, former Leader of the Australian Labor Party, was instrumental in the development and adoption of the UN Partition Plan as Chairman of the UN Ad Hoc Committee on the Palestinian Question in 1947. The Partition Plan was rejected by the majority of Palestinians for its blatant unfairness (55% of Palestine was allocated for the creation of a Jewish state, despite Jews only representing one-third of the total population) and civil unrest followed its adoption by the UNGA in 1947. The situation escalated into full-scale war in 1948. The Partition Plan explicitly forbids the expropriation of land owned by either state but, by the end of the war, Zionist armed forces had seized 78% of historic Palestine for the newly-established Israeli state, and forcefully displaced over 750,000 Palestinians from their homes.

Evatt has cited his belief in the “justice of the Jewish case” as his motivation for the role he played in spearheading the Partition Plan, however, as expressed by former ALP Foreign Minister Gareth Evans, “the righting of a grievous wrong done to Jewish people does not justify a grievous wrong done to Palestinian people”. Given Evatt’s legacy, Australia has a specific and direct moral responsibility to the Palestinian people. Recognising the State of Palestine is the least Australia can do to right this historical wrong, and to secure the statehood which was promised to the Palestinian people by the UN Partition Plan.

#### **7. To show principled leadership, as a good international citizen;**

Being a good international citizen requires compliance with international law, support for multilateralism, a willingness to pitch in to international tasks, and international good deeds. Australia has a further duty to assist burdened societies with not only short-term solutions, but long-term development and state-building efforts.

#### **8. To align with Australian values;**

Recognising the State of Palestine is a human rights issue. In June 2023, the UN Special Committee to Investigate Israeli Practices found, “the clearest evidence it has seen in its 55-year history of Israeli policies that systematically violate the human rights of the Palestinian people,” and UN experts report, “decades of record-high numbers of Palestinian deaths and injuries in the occupied territory.” Israel’s brutal 16-year blockade of the Gaza Strip is ongoing, and ultranationalist Israeli Ministers have been openly calling to wipe out Palestinian villages and assassinate “thousands” of Palestinians. Recognising the State of Palestine would send a powerful message that Australia does not condone Israel’s ongoing gross human rights violations, aligning with Australia’s long-held commitment to upholding international principles and values of human rights, justice, dignity, equality.



## **Why Australia Should Recognise the State of Palestine**

### **The Political Arguments:**

#### **1. To align with global consensus.**

The argument that recognition of the State of Palestine might be damaging to Australia's reputation or political interests is unsubstantiated; it is not foreseen that Australian recognition of Palestine will have any adverse impact on its diplomatic, defence, trade, or investment sectors, nor any other major national interests<sup>1</sup>. In fact, recognising the State of Palestine would place Australia among the global majority. 139 countries have formally recognised Palestinian statehood, including like-minded states such as Sweden and the Vatican, on the grounds that this is a necessary step to reviving the peace process. This provides a clear example for Australia that foreign policy can progress in-line with a nation's political interests and principles. Recognising the state of Palestine will put Australia in good company, in line with most United Nations member states, including most of its global partners in the MIKTA group—Mexico, Indonesia, Korea and Türkiye—and will, importantly, ensure that Australia is on equal ground with almost all of its South and Southeast Asian neighbours, including India, and key Pacific partners such as Papua New Guinea<sup>2</sup>.

#### **2. To align with the Australian public.**

A 2022 survey revealed that 54% of Australians agree that Palestine should be recognised as an independent state, while only 9% oppose the idea<sup>3</sup>. Such a position is also long held by numerous civil society groups and organisations, including a substantial number of unions, faith-based organisations, Muslim, Arab and Palestinian communities, and respected, high-calibre Australian academics, diplomats, and politicians including former Labor Foreign Ministers Bob Carr and Gareth Evans. Labor Party grassroots movements and state branches have also repeatedly endorsed and reaffirmed Labor's position calling to recognise Palestine as a state, most recently in motions passed at the respective Labor Party State Conferences in Queensland and Victoria<sup>4</sup>.

The 2022 Australian Federal elections and subsequent departure of the Coalition from leadership demonstrated that parties whose actions and policies do not align with that of public sentiment will ultimately lose support, accordingly it is in the political interest of the ALP to deliver on its 2018 and 2021 promise to recognise Palestinian statehood.

#### **3. To save the two-state solution.**

According to Foreign Minister Penny Wong, "The Albanese Government's approach is guided by the principle of advancing the cause of peace and progress toward a just and enduring two-state solution,"<sup>5</sup> furthermore, Australia "will not support an approach that

<sup>1</sup> Evans, G. (2023, June 15). *The case for recognizing Palestine. The Conversation.*

<sup>2</sup> *Ibid.*,

<sup>3</sup> Australian Palestinian Advocacy Network (APAN). (2022, April 14). *Poll: Government out of touch with Australia on Palestine.*

<sup>4</sup> Knott, M., & Massola, J. (2023, May 5). *Israel urges Labor not to recognize Palestine as party closes ranks.* The Sydney Morning Herald.

<sup>5</sup> Commonwealth of Australia, House of Representatives. (2023, May 22). *Petitions – Middle East (Official Hansard).*



undermines this prospect.”<sup>6</sup> Claims that recognition of Palestinian statehood may undermine negotiations are unfounded, and reflect the official Israeli position which has been to stall negotiations while actively, intentionally, and systematically undermining the viability of the two-state solution and prospects for peace. Most critically, through the expansion of its flagrantly illegal colonial settlement program, which is detrimental to the territorial contiguity of the occupied Palestinian territories. If allowed to continue, Israel’s settlements will completely destroy any prospects for a viable two-state solution long before a peace agreement will be reached<sup>7</sup>.

Israel’s illegal settlement program persists in flagrant disregard of constant condemnation and calls to cease by the international community, including Australia. The development of Jewish settlements has even been legally enshrined in Israel as a “national value” that the State shall act to encourage and promote<sup>8</sup>. In June of this year, the Israeli Government announced altered settlement planning procedures expected to expedite settlement expansion, and further declared plans to imminently advance construction of over 4,000 settlement units<sup>9</sup>. In this context, Israel’s ambassador to the United Nations addressed the Security Council, insisting that settlements, “are not an impediment to peace, and the building will not stop.”<sup>10</sup> Israel has clearly demonstrated that its leadership does not want a peaceful coexistence with Palestine as two independent states. Israel is blatantly, intentionally undermining this prospect by actively seeking complete control and domination over all of the Holy Land, with Israeli Prime Minister Benjamin Netanyahu himself recently calling for Palestinian aspirations for a state to be “crushed.”<sup>11</sup>

#### 4. To secure a just and durable peace.

Australia’s Foreign Policy White Paper, the guide for its foreign policy, states that, “Australia will continue to advocate a two-state solution as the only viable path to peace.” Foreign Minister Wong has further expressed that the Albanese Government believes, “the conflict is a matter that must be resolved through negotiations between the parties”<sup>12</sup>. Negotiations between Israel and Palestine, per the Oslo Accords, are intended to resolve final status issues of Jerusalem, settlements, refugees, security, water, and borders [the official Palestinian and Israeli positions on final status issues are outlined below]. Palestinian statehood is not negotiable, as self-determination is a human right enshrined in international law.

For 30 years since the signing of the Oslo Accords, the peace process has failed to deliver any substantial outcomes due to Israel’s blanket rejection of Palestinian self-determination and utter intransigence in negotiations, enabled by the starkly unequal balance of negotiating power between Israel, the occupier, and Palestine, the occupied. Palestine remains committed to negotiations but, for the peace process to be effective, Palestine must be on equal diplomatic footing with Israel. As noted by Labor Minister Dr Anne Aly MP, a

<sup>6</sup> Minister for Foreign Affairs, Senator the Hon Penny Wong. (2022, October 18). *Reversal of recognition of West Jerusalem*.

<sup>7</sup> Ministry of Foreign Affairs and Expatriates. (n.d.). *Settlements and Colonization*. State of Palestine.

<sup>8</sup> Knesset. (2018). Basic-Law: Israel - the Nation State of the Jewish People.

<sup>9</sup> UNSCO. (2023, June 19). *Statement by UN Special Coordinator for the Middle East Peace Process, Tor Wennesland, on Changes to Israeli Settlement Advancement Procedures*.

<sup>10</sup> The Jerusalem Chronicle. (2023, June 28). *Israel tells UN: 'We will not stop building in the West Bank'*.

<sup>11</sup> The Times of Israel. (2023, June 27). *Netanyahu said to tell MKs: Israel "needs the PA," must "crush" statehood aspirations*.

<sup>12</sup> Commonwealth of Australia, House of Representatives. (2023, May 22). *Petitions – Middle East (Official Hansard)*.





credible two-state solution cannot be achieved between a state and an ambiguous entity<sup>13</sup>. Negotiations conducted on such unequal terms cannot resolve the final status issues, as Israel continues to systematically violate and undermine each of them, with no accountability. As described by UN Special Rapporteur Francesca Albanese, “In reality, there are no equal parties nor a proper ‘conflict,’ but rather an oppressive regime that threatens the right of an entire people to exist.”<sup>14</sup> In the absence of a genuine, equal peace process, recognising the State of Palestine will provide much-needed bargaining power to Palestine and bring balance to negotiations. Palestine will be empowered to access tools of international law and international legitimacy to create a framework of enforceability for negotiations, ensuring there will be a genuine and effective peace process towards securing a just and durable solution.

### The Palestinian and Israeli positions on final status issues:

**Jerusalem:** The Palestinian position on the status of Jerusalem is consistent with international law and relevant UN Security Council resolutions including 242, 252 and 476, which maintain that East Jerusalem is an integral part of the Palestinian territories militarily occupied by Israel in 1967, therefore Israel has no valid claim to it. The Israeli annexation of East Jerusalem is null and void, having no legal validity, and all actions by Israel to change the legal status of Jerusalem are likewise illegitimate. Furthermore, there can be no Palestinian state without East Jerusalem as its capital<sup>15</sup>.

The Israeli position maintains that the complete and united Jerusalem is the eternal capital of Israel<sup>16</sup>. Citing Jerusalem’s historical importance to Judaism, Israeli Prime Minister Benjamin Netanyahu describes Israel’s 1967 military occupation of East Jerusalem not as an annexation, but as the day “when we liberated Jerusalem and reunited it.”<sup>17</sup> Israel continues to prohibit the Palestinian population of East Jerusalem from participating in local and national voting processes,<sup>18</sup> breaching fundamental democratic values that are integral to Australia. It is critical to note in this context that Palestinians make up the majority of East Jerusalem’s population with at least 350,000 residents, in comparison to some 209,000 Israeli settlers<sup>19</sup>.

**Settlements:** The Palestinian position maintains that all settlements are illegal under international law. This aligns with the consensus of the international community, including Australia<sup>20</sup>, and the UN Security Council<sup>21</sup>. In 2004, the International Court of Justice (ICJ) found the construction of settlements to be in flagrant violation of international law, especially of the Fourth Geneva Convention (GCIV)<sup>22</sup>. The ICJ also found that Israel, the occupying power, is in violation of GCIV Article 49 by actively facilitating transfers of its

<sup>13</sup> Sadler, M. (2018, April 13). *Phone interview with Anne Aly, Federal Member for Cowan*. The ALP and Palestine.

<sup>14</sup> UN Special Procedures. (2023, March 30). *Member states must abide by UN Charter and provide protection in the Occupied Palestinian territory: UN expert*.

<sup>15</sup> Ministry of Foreign Affairs and Expatriates. (n.d.). *Jerusalem*. State of Palestine.

<sup>16</sup> Knesset. (2018). *Basic-Law: Israel - the Nation State of the Jewish People*.

<sup>17</sup> Ministry of Foreign Affairs. (2023, May 17). *PM Netanyahu's Jerusalem Day greetings*.

<sup>18</sup> United Nations. (2021, July 26). *Palestinian election: Free, fair, democratic and credible vote must include East Jerusalem - UN experts*.

<sup>19</sup> B'TSELEM. (2019, January 27). *East Jerusalem*.

<sup>20</sup> Commonwealth of Australia, House of Representatives. (2023, May 22). *Petitions – Middle East (Official Hansard)*.

<sup>21</sup> BBC News. (2020, June 25). *Explainer: Israel, annexation and the West Bank*.

<sup>22</sup> International Court of Justice. (2004). *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*.



own population into the territory under its occupation, while asserting that the applicability of Article 49 indeed goes beyond the World War II context in which it was established. In addition to being illegal, settlements limit the territorial contiguity and economic viability of the Occupied Palestinian Territory and therefore pose the single greatest threat to the realisation of Palestinian statehood<sup>23</sup>.

The Israeli position claims that there is no basis for the illegality of settlements, contrary to international consensus<sup>24</sup>. Israel views settlement expansion as a “national value”<sup>25</sup> and maintains that settlements are a part of the State, subjecting Israeli settlers in the West Bank to Israeli civil law accordingly. Israel argues that its settlements do not breach GCIV Article 49 as the population transfers (of Israeli settlers into occupied territory) is voluntary, and rejects the applicability of the Convention on the grounds that it was drafted specifically in response to the events of World War II<sup>26</sup>.

**Refugees:** The Palestinian position calls for a just and acceptable solution to the Palestinian refugee issue based on UNGA resolution 194, which includes the right to return and/or compensation for Palestinian refugees. Palestinian refugees must be able to choose how to implement their right to return, with options including returning to what is now Israel, resettlement into a future Palestinian state, or resettlement into third-party states. The elements of compensation or reparations include recognition of Israel’s role in causing and exacerbating the Palestinian refugee issue, restitution, and compensation for property, material and non-material damages<sup>27</sup>.

The position of Israel is to deny the right of Palestinian refugees to return, claiming that Israel bears no responsibility for the situation of the Palestinian refugees. Israel maintains that the refugee crisis was caused by neighbouring Arab states calling for Palestinians to flee their homeland and, as such, these countries should be responsible for settling the Palestinian refugees<sup>28</sup>.

**Security:** Palestine’s major security concern is the perpetuation of violations by Israel, including any *de facto* continuation of the military occupation or Israeli military presence in Palestine<sup>29</sup>. To address Israeli security concerns, Palestinian leadership has proposed the establishment of a demilitarised Palestinian state,<sup>30</sup> with “unarmed police forces with batons, not guns”<sup>31</sup>. Palestine has also agreed to the deployment of UN peacekeeping or NATO forces at the Northern Jordan Valley border, among other mutual security agreements, but Israeli Prime Minister Netanyahu rejects this, stating that Israel will not subcontract its security<sup>32</sup>.

Israel’s major security concern is transborder terrorism from Palestine. For over 20 years, Israel has demanded for Palestine to be a demilitarised state, although a clear, working

<sup>23</sup> Ministry of Foreign Affairs and Expatriates. (n.d.). *Settlements and Colonization*. State of Palestine.

<sup>24</sup> Ministry of Foreign Affairs. (2021, November 10). *Israeli Settlements and International Law*. Israel.

<sup>25</sup> Knesset. (2018). Basic-Law: Israel - the Nation State of the Jewish People.

<sup>26</sup> Ministry of Foreign Affairs. (2021, November 10). *Israeli Settlements and International Law*. Israel.

<sup>27</sup> Ministry of Foreign Affairs and Expatriates. (n.d.). *Refugees, Summary*. State of Palestine.

<sup>28</sup> Ministry of Foreign Affairs. (1958, November 17). *11: Statement to the Special Political Committee of the United Nations General Assembly by Ambassador Eban*. Israel.

<sup>29</sup> The Palestine Papers. (n.d.). *PLO Presentation: Permanent Status Negotiations – Security*. Al Jazeera Investigations.

<sup>30</sup> Younes, Ali. (2020, June 9). *PA proposes demilitarised state as counterproposal to Trump plan*. Al Jazeera.

<sup>31</sup> The Times of Israel. (2018, August 29). *Abbas backs demilitarized Palestinian state, says funds better spent on schools*.

<sup>32</sup> The Washington Post. (2014, January 25). *Jordan Valley emerges as core issue in Mideast peace talks*.



definition of “demilitarised” has yet to be proposed<sup>33</sup>. Israeli negotiators have also suggested a list of permitted weapons, but this was unacceptable to Palestine on the basis that such restrictive modality is undignified<sup>34</sup>. Israel maintains control of the Northern Jordan Valley, periodically ordering local Palestinian communities to leave their homes, insisting their troops remain in the Jordan Valley after the establishment of any future Palestinian state as a means of *de facto* annexation<sup>35</sup>. Israel has also signed peace agreements with Arab countries such as Egypt, Jordan, and the UAE, meaning that the balance of power within the region is heavily in favour of Israel. The Israeli Iron Dome defence system, bomb shelters, and highly developed healthcare services provide a safety net and far greater sense of security that Palestinians simply do not have<sup>36</sup>.

**Water:** The Palestinian position on water is that Palestine must obtain control over and access to its own water resources, ultimately resulting in an equitable and reasonable allocation of shared freshwater resources between Israel and Palestine<sup>37</sup>. Israel controls 85% of water resources in the West Bank, and does not allow water to be transferred from there to Gaza. The only fresh water source in Gaza, the Coastal Aquifer, does not adequately supply the needs of the population, and is rapidly depleting due to over-extraction and sewerage and seawater contamination<sup>38</sup>. Consequently, 90-95% of Gaza’s drinking water is unfit for human consumption<sup>39</sup>.

The Israeli position aims to maintain its authority over Palestinian water resources as a form of subjugation and control, and to further deny Palestinians’ statehood. While Palestinians face severe water shortages as a result, Israeli settlers have open access to unlimited quantities of clean water to drink, swim in, and wash vehicles with<sup>40</sup>.

**Borders:** The Palestinian position on its borders was formally defined in 1988, alongside the Palestinian Declaration of Independence. In a historic compromise, Palestinian leadership accepted that the Palestinian State would exist on just 22% of historic Palestine, within the 1967 border<sup>41</sup>. In the interest of achieving peace, minor border modifications may also be accepted pursuant to discussion, as are one to one exchanges of land equal in size, volume, and value<sup>42</sup>.

The Israeli position rejects the 1967 borders outright, enabling its ongoing *de facto* and *de jure* annexation of sizable swathes of Palestinian territory across the occupied West Bank, including East Jerusalem, and the Jordan Valley<sup>43</sup>, actively and intentionally undermining the prospect of a viable and contiguous Palestinian state.

<sup>33</sup> The Palestine Papers. (2008, October). *NSU Report: Progress on Security Negotiations*. Al Jazeera Investigations.

<sup>34</sup> The Palestine Papers. (2008, December). *Talking points – Permanent Status Issues*. Al Jazeera Investigations.

<sup>35</sup> B'TSELEM. (2017, November 11). *The Jordan Valley*.

<sup>36</sup> Ahmed, K. (2021, June 14). *Trauma and mental health in Gaza*. Al Jazeera.

<sup>37</sup> Ministry of Foreign Affairs and Expatriates. (n.d.). *Water, Summary*. State of Palestine.

<sup>38</sup> Al Naeem, A., et al. (2019). p75-93.

<sup>39</sup> Ministry of Foreign Affairs and Expatriates. (n.d.). *Water, Summary*. State of Palestine.

<sup>40</sup> Najib, M. (2021, July 15). *Palestine runs dry: 'Our water they steal and sell to us'*. Al Jazeera.

<sup>41</sup> Ministry of Foreign Affairs and Expatriates. (n.d.). *Borders*. State of Palestine.

<sup>42</sup> Younes, Ali. (2020, June 9). *PA proposes demilitarised state as counterproposal to Trump plan*. Al Jazeera.

<sup>43</sup> NBC News. (2011, May 20). *'We can't go back': Israeli PM rejects 1967 border proposal*.





## The Legal Arguments:

### 5. To align with international law and international legitimacy.

In the foreword to Labor’s 2021 National Platform, Prime Minister Anthony Albanese clearly establishes, “We believe strongly in the rule of international law and remain strong supporters of the United Nations.”<sup>44</sup> The right of the Palestinian people to self-determination is a basic human right and fundamental principle of international law. Recognising the State of Palestine is a step towards the fulfilment of this right that is enshrined in multiple legally-binding international treaties that Australia is party to, including the United Nations Charter, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>45</sup>. Moreover, under ALP leadership, Australia voted in favour of the right of the Palestinian people to self-determination from 2009-2012 at the United Nations<sup>46</sup>. This right has been affirmed by countless UN resolutions including UN General Assembly resolution 2625 (XXV) which further proclaims that, “Every State has the duty to promote, through joint and separate action, realisation of the principle of equal rights and self-determination of peoples”<sup>47</sup>. UN General Assembly resolution 67/19 reaffirmed the right of the Palestinian people to self-determination, and in this context upgraded the status of Palestine to non-member observer State in the United Nations. The resolution passed with an overwhelming majority vote of 138 in favour to 9 against with 41 abstentions, including from the Australian Labor Government<sup>48</sup>. Still, Israeli leadership continues to unwaveringly deny the right of the Palestinian people to self-determination.

Recognition of statehood is typically guided by two international law frameworks: the constitutive and declaratory theories of state creation. Palestine qualifies for statehood according to both frameworks. The constitutive theory asserts that the legitimacy of a state is predicated upon recognition by other states; the fact that Palestine has already received international recognition from 139 countries is thus a compelling legal argument for other states to follow suit<sup>49</sup>.

In contrast, the declaratory framework outlines certain criteria that must be met in order to achieve statehood<sup>50</sup>. The typical benchmark is derived from the 1933 Montevideo Convention on the Rights and Duties of States, which asserts that a state should possess, at minimum, a permanent population, a defined territory, a government, and a capacity to enter into relations with other states<sup>51</sup>:

**Permanent population:** Palestine has a permanent population that enjoys full citizenship within a civil registry<sup>52</sup>.

<sup>44</sup> Australian Labor Party. (2021). *ALP National Platform*.

<sup>45</sup> Attorney General's Department. (n.d.). *Right to self-determination*.

<sup>46</sup> Parliament of Australia. (2015, June 9). *Australia and the Middle East conflict*.

<sup>47</sup> United Nations General Assembly. (1970, October 24). *A/RES/2625(XXV)*.

<sup>48</sup> Parliament of Australia. (2014, December 5). *'Diplomatic terrorism': Palestinian statehood, the United Nations and Australia's voting record*.

<sup>49</sup> Sabbel, R. (2022, April 21). *26- Is Palestine a State? International Law and the Arab-Israeli Conflict (pp. 390-399)*.

<sup>50</sup> Vidmar, J. (2012, April). *Explaining the legal effects of recognition*. p361-387.

<sup>51</sup> Faculty of Law. (1933, December 26). *Montevideo Convention on the Rights and Duties of States*.

<sup>52</sup> Palestinian Central Bureau of Statistics. (2022, July 11). *PCBS Presents the Conditions of Palestinian Populations on the Occasion of the International Population Day*.



**Defined territory:** Palestine's borders are delineated by international law and legitimacy to be the pre-June 4<sup>th</sup> 1967 borders<sup>53</sup>. The international community, including Australia, recognises these borders, and further recognises that Israel has no valid claim or sovereignty over any part of the territory it occupied in 1967<sup>54</sup>. This is in accordance with UNGA Resolution 2625 (XXV)<sup>55</sup> and UNSC Resolution 242, both of which declare the inadmissibility of acquisition of territory by war,<sup>56</sup> and Article 49 of the Fourth Geneva Convention<sup>57</sup>.

**Government:** The Palestinian government is recognised and efficiently functioning, it participates in international diplomatic relations and is responsible for law and order, service provision, handling financial issues, executing policies and decisions, among other governmental duties. The split between Gaza and West Bank is challenging, but Gaza is an integral part of the Occupied Palestinian Territories, per UNSC resolution 1860, and this internal division can be solved over time between the two parties. Moreover, the role of Israel's prolonged military blockade of Gaza in perpetuating this political fragmentation cannot be overstated. Despite the control of Hamas over Gaza and Israel over Area C, civil affairs in both Gaza and the West Bank are managed by the singular Palestinian government. This is well understood by the Australian government, which engages in bilateral relations with the Palestinian government, facilitated by the Australian Representative Office in Ramallah, and the General Delegation of Palestine in Canberra, respectively<sup>58</sup>.

**Capacity to enter relations with other states:** The State of Palestine has a proven capacity to forge bilateral and multilateral relationships with other states and international bodies. Australia is one of these states; Australia has a representative office in Ramallah, and Palestine has a General Delegation in Canberra<sup>59</sup>. Palestine is a party to over 50 treaties and agreements, including free trade agreements with the European Union, the United States, and Türkiye, and a Bilateral Investment Treaty with Egypt<sup>60</sup>. Palestine has also ratified international treaties including the Fourth Geneva Convention, the Rome Statute, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights<sup>61</sup>.

In addition to its status as non-member observer State at the UNGA and its membership in the UN Human Rights Council, Palestine is a member of numerous other international organisations, including Interpol, UNESCO, the Organisation of Islamic Cooperation, the International Trade Union Confederation, the Alliance for Financial Inclusion, and the League of Arab States<sup>62</sup>. Furthermore, Palestine was elected as chair of the Group of 77 at the United Nations in 2019 by a vote of 154 in favour and three against (Australia, the USA

<sup>53</sup> Ministry of Foreign Affairs and Expatriates. (2019, January 27). *International Law and Palestinian Position*.

<sup>54</sup> Institute for Middle East Understanding. (2020). *Quick Facts: Israeli Annexation of Occupied Land & International Law*.

<sup>55</sup> "United Nations General Assembly. (1970, October 24). *A/RES/2625(XXV)*.

<sup>56</sup> UNSC. (1967, November 22). *Resolution 242*.

<sup>57</sup> United Nations. (1949). *IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War*.

<sup>58</sup> Department of Foreign Affairs and Trade. (n.d.). *Palestinian Territories*.

<sup>59</sup> *Ibid.*,

<sup>60</sup> Palestinian Investment Promotion Agency. (n.d.). *Free Trade Agreements and International Cooperation Treaties*.

<sup>61</sup> United Nations Human Rights Treaty Bodies. *Ratification Status for State of Palestine*.

<sup>62</sup> Ministry of Foreign Affairs and Expatriates. (2019, June 25). *Membership of the State of Palestine in international organizations*.



and Israel)<sup>63</sup>. This enabled Palestine to take on the responsibilities of a full member state<sup>64</sup>, and demonstrated that Palestine not only has the capacity to enter relations with other states; it has the capacity to lead them.

Palestine meets all of the criteria for statehood outlined by the Montevideo Convention, but even states which arguably do not meet these minimum requirements have been formally recognised and achieved statehood. For example, Albania entered the League of Nations with only vaguely defined borders<sup>65</sup>. Israel itself was formally recognised by Australia and was admitted to the United Nations as a full member state in 1949 despite ongoing and unsettled territorial border disputes with neighbouring Arab States<sup>66</sup>. Australia also officially recognised the State of Kosovo just days after its unilateral declaration of independence in 2008<sup>67</sup>.

## The Moral Arguments:

### 6. To fulfil Australia's moral responsibility.

Australia, of all countries, has a strong moral justification for recognising Palestinian statehood. Former leader of the Australian Labor Party, the Right Honourable Dr H.V. Evatt, was instrumental to the development and adoption of the UN Partition Plan in his capacity as Chairman of the UN Ad Hoc Committee on the Palestinian Question in 1947<sup>68</sup>. The UN Partition Plan led to the creation of the State of Israel, and the subsequent dispossession and permanent displacement of more than half of the Palestinian population<sup>69</sup>. This was not the intended outcome of the Partition Plan, in fact the UN Partition Resolution (181) explicitly states that, "No expropriation of land owned by an Arab in the Jewish State shall be allowed except for public purposes". Nevertheless, the UN Partition Plan, spearheaded by Evatt, paved the way for the partition and dispossession of Palestine by war rather than by agreement.

Within the Ad Hoc Committee on the Palestinian Question, there were originally two competing proposals, either recommending partition or a federal solution. A staunch supporter of the Zionist movement, Evatt split the competing schools of thought into two separate Sub-Committees to enable the Partition Plan to be formulated without input or interference from dissenting voices. Evatt pushed for the Committee to recommend the Partition Plan, and on November 29 the UN General Assembly followed suit with the adoption of Resolution 181<sup>70</sup>. The UN Partition Plan was vehemently opposed by the majority of Palestinians, who argued that the Plan violated the UN Charter and unfairly favoured the interests of Jewish settlers over their own by allocating 55% of Palestine to a Jewish state, despite the fact that Jews represented only one-third of the total population at the time<sup>71</sup>. Furthermore, Palestinians insisted that the United Nations had no right to give away their homeland. Civil unrest erupted across Palestine, and Zionist militias began

<sup>63</sup> Mansour, N. (2018, October 28). *Australia and Palestine-Israel: The Threat of the Far Right*. Al-Shabaka.

<sup>64</sup> UN News. (2019, January 15). *Historic moment: Palestine takes reins of UN coalition of developing countries*.

<sup>65</sup> Kalaja, D. C. (2016). *The Admission of Albania in the League of Nations*. p55-68.

<sup>66</sup> Heian-Engdal, M., et al. (2013, June). *Finishing the Enterprise': Israel's Admission to the United Nations*.

<sup>67</sup> Department of Foreign Affairs and Trade. (n.d.). *Kosovo*.

<sup>68</sup> Mandel, D. (2003). *A Good International Citizen: H.V. Evatt, Britain, the United Nations and Israel*. p82-104.

<sup>69</sup> United Nations Information System on Palestine. (2023). *About the Nakba*.

<sup>70</sup> Mandel, D. (2003). p82-104.

<sup>71</sup> Ministry of Foreign Affairs and Expatriates. (n.d.). *Borders*. State of Palestine.



launching attacks against Palestinian villages, forcing thousands to flee. The State of Israel was unilaterally proclaimed, British forces departed, and the situation escalated into full-scale war between the newly-established Israeli state and neighbouring Arab armies in 1948<sup>72</sup>. By the end of the war, Israel had forcefully displaced over 750,000 Palestinians from their homes and seized 78% of Palestine<sup>73</sup>, leaving the Israeli state with control over significantly more land than the Partition Plan had allocated for it.

Some claim that the Partition Plan was inconsequential, arguing that the 1948 war was the inevitable consequence of over half a century of Arab-Jewish tensions in Palestine, beginning with the arrival of the first wave of Jewish immigrants from Eastern Europe in the early 1880s<sup>74</sup>. This is an ill-conceived claim at best, as it is entirely unclear whether the US<sup>75</sup> or the USSR<sup>76</sup>, the first countries to officially endorse the Partition Plan and the first to recognise the State of Israel after its creation in May 1948, would indeed have supported the proclamation of the Israeli state without the precedent commitment to partition. The Partition Plan, enabled by Evatt's tenacious rallying and suppression of any forces working to prevent the Plan's adoption, was undoubtedly a turning point in the creation of the State of Israel and its control over 78% of historic Palestine, at the expense of the Palestinian people. Given Evatt's legacy, Australia has a specific and direct moral responsibility to the Palestinian people; recognising the State of Palestine is the *least* Australia can do to right this historical wrong.

When lauded by leading Australian Zionists for his role, Evatt expressed that he was motivated by his belief in the "justice of the Jewish case"<sup>77</sup>. However, as expressed by former Labor Party member Gareth Evans, "the righting of a grievous wrong done to Jewish people does not justify a grievous wrong done to Palestinian people; the world's conscience should not be satisfied at the expense of a people who bear no responsibility for that suffering"<sup>78</sup>.

## 7. To show principled leadership, as a good international citizen.

Former-Australian Minister for Foreign Affairs, Gareth Evans of the ALP, introduced the term 'good international citizen' to Australian political discourse in 1988, and has frequently argued that "being, and being seen to be, a good international citizen" is of national interest to Australia and should be a main foreign policy priority<sup>79</sup>. Every administration since has adopted the term, and it continues to be widely employed in Australia's political lexicon<sup>80</sup>. This aligns with core Australian values include respect for the freedom and dignity of the individual, commitment to the rule of law, and a fair go. Within an attributes-based framework, states should demonstrate leadership traits that improve international standards, on top of at least one of the following qualities to qualify as a "good international citizen":

<sup>72</sup> United Nations Information System on Palestine. (2023). *About the Nakba*.

<sup>73</sup> Ministry of Foreign Affairs and Expatriates. (n.d.). *Borders*. State of Palestine.

<sup>74</sup> Morris, B. (2008). *1948: A History of the First Arab-Israeli War*.

<sup>75</sup> U.S. Embassy in Israel. (n.d.) *Policy & History*.

<sup>76</sup> Aharonson, M. (2018). *Relations between Israel and the USSR/Russia*. JISS.

<sup>77</sup> Freilich, M. (1967). *Zion in our time: Memoirs of an Australian Zionist*. p.198

<sup>78</sup> Evans, G. (2023, June 15). *The case for recognizing Palestine*. *The Conversation*.

<sup>79</sup> Evans, G. (2015, August 27). *Good International Citizenship: Values and Interests in Foreign Policymaking*.

<sup>80</sup> Price, D. (2015, October). *Australian Foreign Policy and the Israel-Palestine Conflict: The Case for 'Good International Citizenship'*.





compliance with international law, support for multilateralism, willingness to ‘pitch in’ to international tasks, and perform international ‘good deeds’<sup>81</sup>.

It is vital to understand that the language of rights alone is not sufficient to guarantee the functioning of all people as equals; it must be ensured that they have the ability to exercise these rights. Under such a capabilities framework, Australia should ensure that foreign aid to Palestine goes towards strengthening the capacity, infrastructure, and institutions of the Palestinian state rather than just contributing towards security which is a short-term solution - long-term development is crucial. Furthermore, the Rawlsian framework asserts that Australia, a ‘well-ordered society’, has a duty to aid people of a society that live in unfavourable conditions, otherwise called a ‘burdened society’; therein exists a duty to lessen harm, to the extent that the burdened society has the capacity to exercise given rights. Australia therefore, as a good international citizen, should assist with not only immediate security and wellbeing concerns, but state-building efforts. Recognising Palestinian statehood would be a monumental contribution to this end.

## 8. To align with Australian values.

Recognising the State of Palestine is also a human rights issue. UN Special Rapporteur Francesca Albanese has urged taking “firm and principled action to protect the human rights and dignity of Palestinians,” explaining, “the international community has witnessed decades of record-high numbers of Palestinian deaths and injuries in the occupied territory. Meanwhile, Palestinians have also endured confinement, land confiscation, home demolitions, fragmentation, discriminatory law enforcement, mass incarceration and other countless abuses, indignities and humiliations.”<sup>82</sup> The United Nations Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People reported in June 2023 that it has been presented with “the clearest evidence it has seen in its 55-year history of Israeli policies that systematically violate the human rights of the Palestinian people, in a manner many interlocutors see as akin to apartheid.”<sup>83</sup> This reality of violence and impunity is affirmed by the reports of credible, respected international human rights organisations including Amnesty International<sup>84</sup>, Human Rights Watch<sup>85</sup>, and Israel-based B’Tselem<sup>86</sup>. The severity of the man-made humanitarian crisis in Gaza particularly cannot be over-stated, and it is the direct result of official Israeli policy<sup>87</sup>. The most densely populated territory in the world, Gaza has been suffocating for 15 years under Israeli blockade by air, land and sea, with most of the two million inhabitants living in abject poverty. As UN Secretary-General Antonio Guterres noted in May 2021, “if there is a hell on earth, it is the lives of children in Gaza.”<sup>88</sup> Recognising the State of Palestine would send a powerful message that Australia does not condone these gross human rights violations,

<sup>81</sup> Pert, A. (2014). *Australia as a Good International Citizen*.

<sup>82</sup> UN Special Procedures. (2023, March 30). *Member states must abide by UN Charter and provide protection in the Occupied Palestinian territory: UN expert*.

<sup>83</sup> The Office of the High Commissioner for Human Rights. (2023, June 16). *End-of-Mission Statement of the UN Special Committee to Investigate Israeli Practices*.

<sup>84</sup> Amnesty International. (2021). *Israel's Apartheid against Palestinians: A Look into Decades of Oppression and Domination*.

<sup>85</sup> Human Rights Watch. (2021). *A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution*.

<sup>86</sup> B'TSELEM. (2021). *A regime of Jewish Supremacy from the Jordan River to the Mediterranean Sea: This is Apartheid*.

<sup>87</sup> B'TSELEM. (2023, February 26). *The Gaza Strip*.

<sup>88</sup> United Nations Press. (2021, May 20). *Gaza Children Living in 'Hell on Earth' Secretary-General Tells General Assembly, as Calls for End to Violence Crescendo, News of Israel-Hamas Ceasefire Breaks*.



aligning with Australia’s long-standing commitment to upholding international principles and values of human rights, justice, and equality. This is particularly crucial at a time when Israel’s extremist right-wing government is escalating its grave violations and violent incitement against the Palestinian people to unprecedented levels, and ultranationalist Israeli Ministers have been openly calling to wipe out Palestinian villages<sup>89</sup> and assassinate “thousands” of Palestinians<sup>90</sup>.

Ultimately, if Israel’s rejection of the two-state solution is allowed by the international community to continue, the result will be a one-state reality; either that of an apartheid state, which is unacceptable to the Palestinian people and international community, or a non-Jewish democratic state with a majority Palestinian population, which is unacceptable to Israel. Other solutions are blatantly immoral, and would involve either the ethnic cleansing of Palestinians, or the continuation of Israel’s *de facto* annexation of Palestinian land.

The best possible time for the Australian government to recognise the State of Palestine is now, while the moral option is still viable. Recognising the State of Palestine is a principled, tangible step that aligns with Australian interests and values as a good international citizen, reaffirming the importance of international law and legitimacy in support of the Palestinian people and their fundamental right to self-determination, and investing in a just and durable peace in the region.

<sup>89</sup> Haaretz. (2023, March 4). *Far-right Smotrich Says His Call to 'Wipe Out' Palestinian Town Was 'Slip of the Tongue'*.

<sup>90</sup> The Times of Israel. (2023, June 23). *Visiting Evyatar, Ben Gvir tells settlers to 'head for the hilltops,' expand outposts.*

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