

Legal Pathways to Palestinian Statehood: An Analysis under the United Nations Charter and Article 4

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Keywords: Palestine, statehood, United Nations Charter, Article 4, recognition, International Court of Justice

Article Information			
Received	9 th Jan 2026	Accepted	18 th Mar 2026
Published	30 th Mar 2026		

Abstract

This article explores the legal means of Palestinian statehood with reference to the United Nations Charter, with specific emphasis on Article 4 and the process of admission of new members to the United Nations. The article will analyze the changing status of Palestine, from its Declaration of Independence in 1988 to its status as a non-member observer state in 2012, and the recent applications for membership in 2024. This article will address the declaratory and constitutive theories of statehood, the Montevideo criteria, and the role of collective recognition in the context of the United Nations framework. The article will also analyze the role of the 2024 International Court of Justice Advisory Opinion on Palestinian Sovereignty and the legal hurdles created by the Oslo Accords, the role of the United States veto, and the Israeli occupation. This article will contend that, despite the objective criteria for statehood, the political hurdles in the Security Council hinder the Palestinian quest for United Nations membership, revealing the contradiction between the universalist ambitions of the United Nations Charter and the realpolitik of great power politics.

Introduction

The question of Palestinian statehood has been one of the most enduring and complex issues in the field of international law. For more than seven decades, the Palestinian people have been on a journey to obtain recognition of their right to self-determination and statehood. The United Nations has been at the center of the Palestinian journey, starting with the 1947 Partition Plan and the 2024 General Assembly resolution, which recognized Palestine's qualification for membership. However, the journey to full membership in the United Nations has been hindered and remains blocked by geopolitical interests, which seem to prioritize expediency over the rule of law.

This article will reconnoiter the legal paths to Palestinian statehood with reference to the United Nations Charter, particularly Article 4, which outlines the criteria for admission to the United Nations membership. It will also explore the procedural and substantive legal requirements for statehood and the interplay between the recognition of the Palestinian state by the United Nations and individual states. The article will also explore the recent developments, such as the 2024 International Court of Justice Advisory Opinion on the obligations of Israel towards the Occupied Palestinian Territory, and their implications for the Palestinian state.

The basic point is that Palestine is eligible to state status under international law and satisfies Article 4 of the United Nations Charter. The reasons why it is not a member are not legal but political, and they reflect the impact of the veto powers of the permanent members of the Security Council and the way in which strategic interests override Charter provisions. This is a fundamental contradiction in international law.

The United Nations Charter Framework for Admission

❖ Article 4: Criteria for Membership

Article 4 of the United Nations Charter outlines the conditions for admission to the United Nations. Paragraph 1 states:

"Membership in the United Nations is open to all other peace-loving states which accept the obligations in this Charter and, in the Organization's view, are able and willing to meet these obligations."

This indicates that there are five conditions for membership: (i) the applicant must be a state; (ii) it must be peace-loving; (iii) it must be willing to accept the obligations contained in the United Nations Charter; (iv) it must be able to perform these obligations; and (v) it must be willing to do so. These conditions are cumulative and must all be met (Goodrich, Hambro, & Simons, 1969, p. 87).

"Peace-loving states" is also significant because it indicates the historical context in which the United Nations Charter was drafted. The United Nations was established after the Second World War and distinguished itself from the League of Nations and the aggressor states. The ability to accept the obligations contained in the United Nations Charter is demonstrated through the formal declaration contained in the application for membership. The ability and willingness to perform these obligations has both objective and subjective components: the former is concerned with ability, and the latter with good faith (Simm, Khan, Nolte, & Paulus, 2012, p. 327).

❖ The Admission Procedure: Security Council Recommendation and General Assembly Decision

The process of admitting new members is outlined in Article 4(2), which establishes a two-step process for new members to be admitted. This process is consistent with the division of powers between the two principal organs of the UN, and the Security Council plays its gatekeeping role.

The process is outlined in the provisional rules of procedure for the Security Council and the General Assembly. According to rule 58 of the provisional rules of procedure for the Security Council, applications must be transmitted to the Secretary-General, accepting the obligations of the Charter. This is then transmitted to the Security Council, which refers it to the Committee on the Admission of New Members, comprising all 15 members of the Security Council, for report to the Council (United Nations, 1983, rule 59).

The report of the Committee is used to make a decision by the Council. For a positive recommendation, there should be at least nine members who vote yes, and there should be no veto from any of the permanent members. If the Council passes a resolution on admitting a new member, it is then sent to the General Assembly, which requires a two-thirds vote of members present and voting to admit a new member. This is because it is considered an "important question" as per Article 18 of the Charter (United Nations, 1945, Art. 18(2)).

If there is a negative recommendation or no recommendation at all, it prevents the General Assembly from making a decision on admitting a new member. The role of the Security Council is not only advisory but also decisive, as without a recommendation from it, the General Assembly cannot admit a new member. This is based on the drafting history of the Charter, which shows that the great powers wanted to maintain control over membership (Russell, 1958, p. 659).

❖ **The Veto in Membership Applications: Historical Practice**

Veto power has been a significant tool in UN membership decisions. In the Cold War, there were 59 vetoes of membership applications. The Soviet Union vetoed 51 applications, the United States six, and both China and China's communist government one each (Bailey & Daws, 1998, p. 239). The vetoes were a reflection of larger political battles between East and West, where both blocs vetoed applicants from the other side.

The case of Palestine is a reflection of the veto power in UN membership decisions. The United States in 2011 announced that it would veto a resolution admitting Palestine to the UN, and therefore, there was no vote (Mohammed, 2011). The United States vetoed a draft resolution for Palestine's admission to the UN in April 2024, with 12 Security Council members voting in favor, two abstentions by Switzerland and the United Kingdom, and a negative vote by the United States (United Nations Security Council, 2024a). This was the first veto of a UN application since 1976, when the United States vetoed Vietnam's application.

According to the 2022 veto rule adopted by the General Assembly resolution 76/262, the General Assembly is to convene ten days after a veto has occurred. Furthermore, the Security Council is to submit a special report to the General Assembly regarding each veto use. After the veto in April 2024, the Tenth Emergency Special Session on Illegal Israeli Actions resumed. On May 10, 2024, the General Assembly adopted a resolution stating that Palestine is eligible to be a member of the UN and asking the Security Council to consider this matter favorably again.

The Legal Status of Palestine in International Law

❖ **The Montevideo Criteria and Their Application to Palestine**

The requirements under which states are supposed to exist are provided under the Montevideo Convention of 1933. The requirements are as follows: there has to be a permanent population, territory, government, and ability to have relations with other states. Although this convention is regional, it has become part of customary international law (Crawford, 2006, p. 46).

Regarding the presence of a permanent population in Palestine, it is essential to note that the Palestinian population residing in the West Bank and Gaza Strip has historical links to the territory. The criterion of permanent population does not only require a sedentary population; it can also exist among nomadic groups as long as they have historical links to the territory (International Court of Justice, 1975, p. 39).

Regarding the question of "defined territory," the rules of international law do not insist on clear borders being drawn. Several countries are already members of the United Nations despite the fact that their borders are still disputed, such as the case of India and Pakistan over the territory of Kashmir, or the state of Israel as its borders were being drawn during its admission to the U.N. The territory of Palestine, the West Bank and Gaza, which has been occupied since 1967, is sufficiently defined, and the illegality of the occupation does not impact the title (Kattan, 2019). The Palestinian people, according to Victor Kattan (2019), are the legitimate sovereign owners of the territory, and such title has been recognized by most states and the International Court of Justice.

The "government" requirement poses more problems. The Palestinian Authority, which has been in place since the Oslo Accords of 1993, has the authority over the West Bank, both for internal and security matters. However, its authority has been limited because of the Israeli occupation, and the Gaza Strip has been controlled by Hamas since 2007, which has resulted in the division of the would-be state. However, one would point out the fact that even smaller states such as Liechtenstein and Monaco have external dependencies, and the division of the state does not negate its status if there is an authority that retains the ultimate

sovereign power (Vidmar, 2013, p. 28). The Fatah-Hamas reconciliation in 2012 has been an attempt to reunite the divided state.

Palestine exhibits a wide willingness and capability to participate in international affairs. It maintains diplomatic offices in numerous nations, provides passports that are valid for international travel, and has concluded treaties, such as a free-trade agreement with the European Union. In fact, 147 UN states had recognized Palestine by 2025 (Negotiations Affairs Department, 2025). Palestine is an observer state in the UN, a full member of UNESCO since 2011, and a member of regional groups such as the Arab League and the Organization of Islamic Cooperation.

❖ **The 1988 Declaration of Independence and Progressive Recognition**

The formation of modern Palestinian statehood was actualized in 1988 when the Palestine National Council made its declaration of independence on November 15. This was largely premised on General Assembly Resolution 181 (II), which was made in 1947 and recommended the partition of Mandatory Palestine into Arab and Jewish states. It was premised on the Palestinian people's inalienable right to self-determination (Palestine National Council, 1988).

This was followed by over 100 states recognizing the declaration of Palestinian independence. In December 1988, Resolution 43/177 was accepted by the General Assembly of the United Nations, recognizing the declaration of Palestinian independence and deciding that "Palestine" would replace "Palestine Liberation Organization" in all UN contexts (United Nations General Assembly, 1988).

Over the years, more states have come to recognize Palestinian independence. By 2012, 132 states had recognized Palestinian independence. Resolution 67/19 was accepted by the General Assembly of the United Nations in 2012, giving Palestine "non-member observer state" status. This was a major step forward for Palestinian statehood since it was elevated from "observer entity" status (United Nations General Assembly, 2012). This status is only accorded to two states: Palestine and the Holy See. Although it enabled Palestinian participation in General Assembly debates and proceedings, it did not come with voting rights.

❖ **United Nations General Assembly Resolution 67/19: Non-Member Observer State Status**

This is because resolution 67/19, which was adopted on 29 November 2012 with 138 votes in favor, 9 against, and 46 abstentions, represents a turning point in Palestinian involvement within the United Nations. The resolution reaffirms the Palestinian people's right to self-determination and independence in their own State of Palestine on the territory occupied since 1967 and expresses hope that the Security Council will positively consider Palestine's bid for full membership in the United Nations in 2011 (United Nations General Assembly, 2012).

The legal implications of resolution 67/19 have attracted considerable debate. The Palestinian Authority's President, Abbas, has termed it "a birth certificate to the reality of the State of Palestine." Different views have been expressed by legal scholars. Dapo Akande (2012) opines that it is a collective recognition of Palestine as a state and goes on to suggest that this is akin to saying that there is a waiver of defects in statehood claims. Kai Ambos (2013, p. 876), too, has termed it as a declaration of statehood.

Still, other authors have adopted more reserved approaches. Jure Vidmar (2013, p. 21), e.g., has noted that "some entities which had been granted observer status, such as Austria, Bangladesh, and both North and South Vietnam, had lacked certain characteristics of statehood at the time they were admitted as observers... Not all states voting for the Resolution attempted to recognize Palestine implicitly." Yael Ronen (2013, p. 230),

in turn, has argued that the resolution's wording was intentionally ambiguous and that it is only politically significant since it "supports subsequent actions but does not fill in the gaps in the requirements of statehood."

Nevertheless, despite these scholars' arguments, it is obvious that resolution 67/19 has had significant legal implications. The resolution has paved the way for Palestine to accede to the Rome Statute of the International Criminal Court and to participate in multilateral treaties. Resolution 67/19 has also strengthened Palestine's position in international litigation, including proceedings before the International Court of Justice (Ambos, 2013, p. 879).

Palestine's Applications for United Nations Membership

❖ The 2011 Application and Committee Deadlock

On September 23, 2011, Palestine's bid for membership in the United Nations was presented to Ban Ki Moon, the UN Secretary General, by Palestinian President Mahmoud Abbas. The bid was based on Palestine's commitment to abide by the principles and provisions of the UN Charter as stated in Article 4. The bid also emphasized Palestine's commitment to seeking a just, lasting, and comprehensive solution to the Israeli-Palestinian conflict and to being a peace-loving state (State of Palestine, 2011).

The bid was then referred to the Committee on Admission of New Members. The committee met on several occasions but was unable to reach a consensus. In its report to the Security Council on November 11, 2011, it stated that it had not reached a consensus on whether Palestine met the requirements under Article 4 of the Charter, whether it met the requirements under the Montevideo criteria, and whether it was appropriate within the context of the political circumstances (United Nations Security Council, 2011, p. 2).

Most importantly, it was stated that the United States intended to veto it if it were put to a vote. The bid was therefore stuck as none of the members were willing to put it to a vote (Mohammed, 2011).

❖ The 2024 Renewed Application and United States Veto

On 2 April 2024, close to thirteen years following the initial bid, the Permanent Observer of the State of Palestine requested renewed consideration of its 2011 bid. This occurred in the context of a critical crisis in Gaza, following the 7 October 2023 attacks and the subsequent military campaign by Israel, leading to the destruction of the region and a humanitarian disaster (State of Palestine, 2024).

The bid has again been transmitted to the Security Council by the Secretary-General, and the Committee on the Admission of New Members met on 8 and 11 April 2024. Once again, the Committee failed to come to a unanimous recommendation, but rather reported to the Security Council on 16 April 2024 that members had not been able to come to agreement regarding whether Palestine met the requirements for membership (United Nations Security Council, 2024b, p. 3).

A draft resolution for the admission of Palestine to the General Assembly, circulated by Algeria on 18 April 2024, resulted in a 12-0-2 vote, with 2 abstaining (Switzerland and the United Kingdom) and 1 opposing, the United States, exercising its veto power (United Nations Security Council, 2024a).

The representative of the U.S. stated, in explanation of the veto, "Palestinian statehood...will only come from direct negotiations between the parties. Today, admission to the U.N. does not advance the cause of peace" (United Nations Security Council, 2024a, p. 3).

❖ **The General Assembly's Response: Resolution ES-10/24**

The veto by the United States of America initiated the 2022 “veto initiative” process. On May 10, 2024, the Tenth Emergency Special Session of the General Assembly to deal with the activities of Israel resumed, and the General Assembly adopted resolution ES-10/24 with 143 votes in favor, 9 votes against, and 25 abstentions (United Nations General Assembly, 2024a).

The resolution asserts that “the State of Palestine is qualified for membership in the United Nations in accordance with Article 4 of the Charter of the United Nations and should therefore be admitted to membership in the United Nations.” It further urged the Security Council to view the matter favorably (United Nations General Assembly, 2024a, para. 2).

The resolution, however, does not have the effect of admitting Palestine to membership, but only the General Assembly can do this, and this can only be done upon the recommendation of the Security Council. Nevertheless, the resolution is of great political and legal weight. The General Assembly’s overwhelming view that Palestine qualifies for membership under the UN Charter strengthens the claim for statehood for Palestinians and further adds to the political pressure upon the Security Council to act (Security Council Report, 2024).

The Declaratory and Constitutive Theories of Recognition

❖ **Theoretical Framework**

The place of recognition in the process of the birth of the state has been one of the greatest debates among international lawyers. Two theories dominate the debate: the declaratory and the constitutive theories.

According to the declaratory theory, which the Montevideo Convention codified in Article 3, the existence of the state is not dependent on recognition by other state actors. This theory holds that recognition simply affirms the existence of the state, which comes into being when the objective criteria for statehood are fulfilled (Lauterpacht, 1947, p. 38).

The constitutive theory, on the other hand, asserts that recognition creates the state. This theory holds that an entity cannot be considered a state unless and until it has been recognized as such by the community of states, which is the social nature of international law (Kelsen, 1941, p. 609).

However, the current state of international law seems to favor the declaratory theory. This is because the practice and the jurisprudence on the issue seem to affirm the declaratory theory and reject the constitutive theory. For example, the International Court of Justice, in its *Reparation for Injuries* opinion of 1949, suggested that the personality of the state is based on objective criteria and not on recognition (International Court of Justice, 1949, p. 178).

❖ **Collective Recognition and the United Nations Framework**

Collective acknowledgment is established through the United Nations Charter. While becoming a member of the United Nations is not automatically equivalent to declaring statehood, the United Nations Charter indicates that only “states” are qualified for membership. This implies that the condition of statehood precedes membership. Nevertheless, becoming a member is an official decision by the worldwide community, indicating that the entity has met the conditions for becoming a state (Crawford, 2006, p. 544).

Dapo Akande (2012) states that “collective acknowledgment through admission to the United Nations is significant and has special legal significance: it ‘amounts to a waiver by the worldwide community of defects which may otherwise exist in claims of statehood.’” The worldwide community collectively acknowledges an entity’s condition as a state and admits it to the United Nations. In such cases, the decision is significant and helps clear ambiguity.

In the context of Palestine, even though it has not been granted United Nations membership, the decision on non-member observer status through United Nations Resolution 67/19 and the recognition by 147 states and the decision by the General Assembly in 2024 that Palestine is qualified for United Nations membership are significant instances of collective acknowledgment. Jure Vidmar (2013, p. 34) states that “collective acknowledgment is the best arbiter of statehood.”

❖ **The Palestinian Case: Between Declaratory and Constitutive Approaches**

The case of the Palestinians is at the crossroads of these two theories, declaratory and constitutive. Supporters of the establishment of the Palestinian state base their claims on the objective Montevideo principles, claiming that, therefore, Palestine is already a state, regardless of whether or not Israel or the U.S. recognizes it. They cite the ICJ’s continuous reaffirmation of the Palestinian right to self-determination, as well as the repeated acknowledgment of the Palestinians’ rights by the General Assembly (Kattan, 2019).

The opponents of the establishment of the Palestinian state effectively use the constitutive theory, claiming that recognition of the state can only come after negotiations with Israel. This is evident in the U.S. position, stating that “Palestinian statehood...will only come from direct negotiations between the parties” (United Nations Security Council, 2024a, p. 3).

This reverses the logical order of recognition and statehood. According to the declaratory theory, Palestine is already a state, regardless of whether or not it is recognized by Israel or the U.S. Negotiations can define the borders, solve any outstanding issues, and define the coexistence of the two states, but this does not define statehood. This, according to China, speaking in the Security Council, is like “putting the cart before the horse” (United Nations Security Council, 2024a, p. 5).

Legal Obstacles to Palestinian Statehood

❖ **The Oslo Accords and Article XXXI(7)**

The Oslo Accords, which were established in the early to mid-1990s between Israel and the Palestine Liberation Organization, established the framework for Palestinian self-rule and paved the way for permanent status negotiations. Article XXXI(7) of the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, which was signed in 1995, emphasizes the point that “nothing in this Agreement shall be construed as altering the status of the West Bank and the Gaza Strip pending the outcome of the permanent status negotiations.”

Palestinian statehood opponents argue that Palestinian membership in the United Nations would be a unilateral move changing the status of the territory and therefore violates Article XXXI(7) of the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip. This argument has been raised during key Security Council debates, such as those held in 2011 and 2024 (Security Council debates, United Nations Security Council, 2024a, p. 4).

A group of Palestinian and international lawyers propose the following clear lines of response. First, they contend that the Oslo Accords have been repeatedly violated by the Israeli government, particularly with its settlement expansion, the annexation of East Jerusalem, and the dismemberment of the West Bank and Gaza Strip. The Negotiations Affairs Department (2025) states the matter clearly: “The Israeli government’s actions,

which include the settlement expansion, the annexation of East Jerusalem, and the dismemberment of the West Bank and Gaza Strip, are not just violations of the bilateral agreements, but also constitute a gradual, yet unlawful, attempt to expand Israeli sovereignty over territory not owned by the occupying state.” When one party to an agreement violates the terms of the treaty, the other party cannot demand strict compliance with the terms of the treaty (Vienna Convention on the Law of Treaties, 1969, Article 60).

Second, the lawyers contend that the bid for United Nations membership does not alter the status of the territory as intended under the Oslo Accords. Becoming a member of the United Nations changes the personality of the Palestinian state, but it does not change the territorial status intended under the Oslo Accords, which clearly stated that the Palestinian state would be created through negotiations (Quigley, 2009, p. 58).

Third, the lawyers point to the fundamental principle of international law that no treaty or agreement can prevail over the peremptory norms of international law, particularly the right to self-determination. The Palestinian people’s right to self-determination cannot be waived (Cassese, 1995, p. 140).

❖ **The Occupation and Territorial Integrity**

The West Bank and East Jerusalem are under occupation by Israel, with Gaza under siege. These are obstacles to Palestinian statehood. An occupied land cannot exercise supreme power as long as it is under belligerent occupation. Nevertheless, it is clear under international law that occupation is not ownership. As Kattan wrote in 2019: “the law of occupation yields no title for the occupier or anyone else.”

This is reinforced by the International Court of Justice. In its 2004 Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, it was stated: “The occupied Palestinian territory remains under Palestinian sovereignty; the presence of Israel is a temporary phenomenon that does not in any way prejudice its sovereignty.” (ICJ, 2004: 78) Similarly, in its 2024 Advisory Opinion on the Obligations of Israel, it was stated: “The obligations of Israel as an occupying power correspond to its level of control; however, it is in no way inconsistent with the Palestinian title.” (ICJ, 2024: 45)

The question of territorial integrity arises in this context. The West Bank and Gaza are physically divided, and travel between them is subject to Israeli control. Since 2007, they have been under different administrations—the Palestinian Authority in the West Bank and Hamas in Gaza. Nevertheless, international law does not require that there be geographical contiguity or a unified government as a prerequisite to state status. Many states have had divided territories or divided governments without losing their status as states (Crawford, 2006, p. 52).

❖ **The United States Veto and Geopolitical Constraints**

The barrier to Palestine’s accession to the United Nations is largely a political one, namely Washington’s readiness to veto in the UN Security Council. The United States has always been opposed to Palestinian statehood, which is unilateral in nature, and insists that statehood can only be achieved by direct negotiations with Israel (United Nations Security Council, 2024a, p. 3).

This position has not gone without opposition from other Security Council members. Slovenia stated that UN membership is not a substitute for negotiations but a complement to negotiations (United Nations Security Council, 2024a, p. 7). Ecuador expressed hopes that soon all circumstances would be favorable for unanimous support from all Council members (United Nations Security Council, 2024a, p. 8). Sierra Leone

stated that in the name of justice, Palestine's UN membership cannot be denied (United Nations Security Council, 2024a, p. 9).

The US veto power is part of a broader geopolitical context in which the Palestinian question is being determined. As a permanent member of the UN Security Council with close historical and contemporary links to Israel, the US has been protecting Israel from international pressure and has been blocking all international efforts which it perceives to be against Israeli interests. Some analysts have suggested that the US has created a template for statehood and that US and Israeli approval is a sine qua non for Palestinian statehood (Quigley, 2009, p. 62).

The International Court of Justice and Palestinian Rights

❖ The 2004 Wall Advisory Opinion

Some of the key points of the International Court of Justice's 2004 Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory with respect to Palestinian statehood include that "the Palestinian people have a right to self-determination; and that Israel's construction of the wall and its settlements seriously infringe upon this right (ICJ, 2004, para. 118)."

The International Court of Justice stated that "the Israeli settlements in the occupied Palestinian territory have been created in violation of international law; and that all states have the obligation not to recognize the illegal situation resulting from the construction of the wall and not to render aid or assistance in maintaining it" (ICJ, 2004, para. 159).

❖ The 2024 Advisory Opinion on Obligations of Israel

In the 2024 Advisory Opinion, requested by the General Assembly following the Gaza crisis, the court's opinion addressed Israel's obligations regarding the presence and activities of the United Nations, other international organizations, and other states in the OPT (International Court of Justice, 2024).

Some of the court's findings relevant to Palestinian statehood are:

- Israel is still the occupying power over Gaza and must comply with the Fourth Geneva Convention and other international law.
- Israel has the duty to satisfy the basic needs of the population there, such as providing humanitarian aid, and cannot suspend these obligations for security reasons (International Court of Justice, 2024, para. 67).
- Israel's obligations regarding the activities of the United Nations and other international organizations and states:

In particular, the court addressed Israel's obligations regarding the activities of UNRWA. The court found that there is no alternative to the activities of UNRWA and that there must be a proper transition plan for replacing it. Moreover, Israel still has the duty to support the relief activities of United Nations organizations, such as UNRWA (International Court of Justice, 2024, para. 89).

❖ Implications for Palestinian Sovereignty

The International Court of Justice always affirms that the Palestinian people have the right to self-determination and that actions taken by Israel against this right are illegal. Advisory opinions differ from court rulings but retain considerable legal weight and significantly influence how the Palestinian issue is perceived (Thirlway, 2014, p. 175).

In relation to Palestinian statehood, the opinions of the International Court of Justice offer support for the legal basis of such claims. They affirm that the land under occupation belongs to the Palestinian people and that occupation is only temporary and cannot change sovereignty; in addition, it is the role of the international community to safeguard Palestinian rights (ICJ, 2004, para. 156; ICJ, 2024, para. 45). These opinions offer a counterbalance to political arguments that demand Israeli assent and to outcome-based agreements that place Palestinians in a subservient role.

Comparative Perspectives: Statehood in Contested Circumstances

❖ Precedents from Decolonization

The Palestinian case is similar to that of decolonization movements, in which many states came into existence despite border disputes, foreign domination, and poor governance in those areas.

Bangladesh came into existence in 1971 after it gained independence from Pakistan. Bangladesh received wide recognition and became a member of the United Nations in 1974 despite opposition from Pakistan (Crawford, 2006, p. 392).

Most of the African states that gained independence in the 1960s had borders that were imposed by colonial powers, poor infrastructure, and poor governance. Despite all these challenges, these states were accepted into the United Nations and became equal members, showing that the rest of the world supports the idea of decolonization (Shaw, 2017, p. 335).

The International Labor Organization also recognized Namibia as a state despite the fact that it was still under South African domination. The ILO recognized Namibia in 1978 despite the fact that it had not yet gained its independence, since it did not lose its right to statehood (Crawford, 2006, p. 389).

❖ Kosovo, Western Sahara, and Other Contested Cases

More recent examples of disputed statehood are not as clear-cut. Kosovo declared its independence from Serbia in 2008. It is recognized by over 100 states, including all important Western states, and is a member of many international organizations. Yet it is not a member of the United Nations, despite Russia and China voting against it due to principled and strategic reasons (Milanovic & Wood, 2015, p. 112).

Western Sahara, claimed as a state by the Polisario Front, is not recognized as a state despite a 1975 decision of the International Court of Justice that states that peoples have a right to self-determination (International Court of Justice, 1975). It is mostly under Moroccan control, and a United Nations peacekeeping mission is in place, but there is still no solution to the conflict (Crawford, 2006, p. 382).

These examples demonstrate that statehood is not only a matter of fulfilling criteria but also of international power politics and diplomacy and the effectiveness of strategies in achieving goals. Palestine is a state with a relatively high level of recognition (147 states) and is active in the United Nations, thus in a favorable position compared to many other disputed states. Yet it still does not meet the criteria to become a member of the United Nations due to the opposition of the United States, despite its efforts (Negotiations Affairs Department, 2025).

Pathways Forward

❖ Security Council Reform and the Veto Question

The case of Palestine has also pointed to weaknesses with the system of membership of the United Nations. The veto has been intended to facilitate cooperation among big powers. It is now allowing permanent members to block membership of other nations when there is strong support from all over the world. It is against the idea of universality set out in the UN Charter and is undermining its legitimacy (Bailey & Daws, 1998, p. 241).

There has been talk of reform of the Security Council for a very long time. There has been talk of eliminating or limiting the veto power of permanent members. There has also been talk of enlarging the Security Council or reforming its procedures on admissions. The resolution on Security Council reform adopted by the General Assembly in 2024 with 143-member states voting in support is an indication of support from all over the world for Palestinian membership. It is an indication of a questioning of the legitimacy of the veto power of permanent members of the Security Council in this case (United Nations General Assembly, 2024a).

However, it is unlikely that there would be any reform of the system of membership of the United Nations. It is not easy to change the Charter of the United Nations. It would require all permanent members to be on board. It would require each of them to ratify any change to its veto power. It is a Catch 22 situation that makes any major reform of the system of membership of the United Nations difficult or impossible at present (Simma et al., 2012, p. 345).

❖ **The Role of the General Assembly: Uniting for Peace and Beyond**

Since the Security Council is not acting, the General Assembly has been looking for other solutions. Uniting for Peace, adopted by resolution 377(V) in 1950, allows the General Assembly to propose collective measures in situations where the Security Council is unable to act due to a veto. It has been designed for peace and security issues, but it has been invoked for the Palestine case too, including the Tenth Emergency Special Session (United Nations General Assembly, 2024a).

The 2024 resolution regarding Palestine's membership is a new form of exercising the General Assembly's powers. Although the General Assembly cannot admit Palestine to membership in the absence of a recommendation from the Security Council, stating its opinion about the requirements under Article 4 of the Charter has significant political and legal value. It is a message to the Security Council that its refusal to act is against the common view of the international community (Security Council Report, 2024).

There are views that the General Assembly could do even more, such as granting Palestine greater participation rights close to membership or asking for an advisory opinion from the ICJ about the legal effect of the Security Council's deadlock. This would be a step beyond the General Assembly's powers, but it could push the necessary political change (Akande, 2012).

❖ **Bilateral Recognition and Its Cumulative Effect**

The recognition of Palestine is increasing. By 2025, 147 states had recognized Palestine, and other countries such as France, the United Kingdom, Canada, Australia, and Malta announced their intentions to do so too (Negotiations Affairs Department, 2025).

The recognition of Palestine has implications for its legal status. Under the declaratory theory, recognition of Palestine indicates that it is already a state, and its recognition by many states indicates that the world accepts it as such. This is reinforced by the 2024 General Assembly resolution, where 143 states voted to say that Palestine qualifies for membership (United Nations General Assembly, 2024a).

There are some arguments, such as those of some Israelis, that recognition of Palestine would undermine the Oslo process and would prejudice negotiations before they even begin (Bell, 2011, p. 45). However, this argument gets the relationship between recognition and negotiation backwards. Recognition would establish

the equal sovereignty of both sides and provide for meaningful negotiations between states, rather than between an occupier and the occupied, subordinate to the occupier (Quigley, 2009, p. 67).

Conclusion

The path to Palestinian statehood, if considered in the context of the United Nations Charter and Article 4, indicates the stark contradiction between the ideals embodied in the Charter and the hard politics of the big powers. Palestine satisfies the important legal criteria for statehood: permanent population, defined territory, government, and capacity to enter into international relations. It has been recognized by 147 countries, granted the status of non-member observer state by the General Assembly, and has been recognized as fit for full membership by the Assembly.

However, the path to full membership in the United Nations has been blocked, not on the basis of any defect in the Palestinian claim to statehood, but because of the veto wielded by the United States in the Security Council. The United States has insisted that Palestinian statehood can be achieved only as the result of direct negotiations with Israel, which means, in effect, that Israeli consent must be secured as a precursor to Palestinian statehood, moving the objective criteria for statehood aside and allowing the occupying power to veto the statehood of the occupied people.

The International Court of Justice always affirms that the Palestinian people have the right to self-determination and that actions against it are illegal. The 2024 Advisory Opinion reinforces Israel's responsibilities as an occupying force and implies support for Palestinian life in terms of politics and institutions. Nevertheless, without enforcement, it is not likely to have much effect.

To advance forward with Palestinian statehood, there is a need for more diplomatic efforts, more recognitions between countries, and smart use of the General Assembly. There is also a need for constant calls for reform of the Security Council. There is a need to understand that politics and law are intertwined. The Palestinian issue is a perfect example of what law can do and what it cannot do. Law can set guidelines, but it is limited by politics and power.

Palestinian statehood is not really about unclear law; it is really about politics. Law provides clear paths; it is really about whether or not the world is willing to follow it. As clearly stated in the General Assembly's 2024 resolution, "the State of Palestine is entitled to become a member of the United Nations."

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Declarations
Author's Contribution:
▪ Conceptualization, and intellectual revisions, Data collection, interpretation, and drafting of manuscript ▪ The author agrees to take responsibility for every facet of the work, making sure that any concerns about its integrity or veracity are thoroughly examined and addressed
Conflict of Interest: NIL
Funding Sources: NIL
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How to Cite: Legal Pathways to Palestinian Statehood: An Analysis under the United Nations Charter and Article 4. (2026). Wah Academia Journal of Global Religions, 2(1), 132-146. https://doi.org/10.63954/erfiqf85 Open Access: Publication is Open Access Licensing: Creative Commons Attribution License - CC BY- 4.0 Copyrights: The author retains unrestricted copyrights and publishing rights