



## **Al-Haq's Questions & Answers on Palestine's September Initiatives at the United Nations**

This paper seeks to answer some of the common questions that have arisen recently in the context of the upcoming initiatives of Palestinian representatives at the United Nations (UN). The questions concern four main issues: (i) Palestine's September initiatives; (ii) Palestine's statehood status in international law; (iii) the procedure for admission as a Member State of the UN; and (iv) the potential implications of these initiatives. In providing answers to these questions, Al-Haq has adhered to a strict application of international law and contemporary legal practice, including the relevant rules of international humanitarian law.

### **I. Palestine's September initiatives**

#### ***1. What are the Palestinian leadership's plans for September?***

The Palestinian representatives had initially expressed the intention to issue a (unilateral) declaration of independence in September 2011 along the 1967 borders. This would have amended the Declaration of Independence issued by the Palestine Liberation Organisation (PLO) in 1988,<sup>1</sup> which remains the most recent basis for Palestine's statehood. The 1988 declaration is based on the UN General Assembly Resolution 181, also known as the UN Partition Plan of 1947, which is considered the most authoritative instrument for Palestine's international legitimacy.<sup>2</sup>

The plan to issue a declaration was changed to a series of initiatives that consist of applications for membership in international organisations, including but not limited to the UN, and the ratification of different international conventions and treaties, including the Geneva Conventions and different human rights instruments. In parallel, Palestine is looking to obtain further recognitions of its statehood from individual States.<sup>3</sup>

#### ***2. What can be expected from the September UN initiatives?***

The September initiatives are an important way to enhance Palestine's prospects for acceding to international treaties, especially human rights instruments such as the two International Covenants on Civil and Political Rights (ICCPR) and on Economic Social and Cultural Rights (ICESCR). Palestine could also prospectively become a member of some international organisations, both within and outside the system of the UN.

<sup>1</sup> The Declaration of Independence was made by the Palestine National Council (PNC) of the Palestine Liberation Organization (PLO) on 15 November 1988, during its 19<sup>th</sup> session in Algiers <<http://unispal.un.org/UNISPAL.NSF/0/6EB54A389E2DA6C6852560DE0070E392>> accessed 16 July 2011.

<sup>2</sup> See for instance, J. Crawford, *The Creation of States in International Law* (2<sup>nd</sup> ed.) (Oxford University Press, Oxford, 2006).

<sup>3</sup> Information obtained from consultations with Palestinian Authority's Ministry of Foreign Affairs, legal advisers, 28 June 2011 (minutes of the meetings are on-file with Al-Haq).

Practically, the most Palestine could achieve through the UN admission procedure, in light of the likely US veto at the Security Council, is a General Assembly resolution recommending the recognition of Palestine's statehood, and/or granting it the status of 'observer State' at the UN, as discussed below.

## **II. Palestine's statehood status in international law**

### **1. Is Palestine a State under international law? What is the international community's position with regards to Palestine's statehood?**

Palestine has been treated as a State by the majority of States and international organisations over the years.<sup>4</sup> In its capacity as observer at the UN, Palestine has been accorded rights reserved for States by the Security Council and the General Assembly, amongst other UN bodies.<sup>5</sup> For instance, the UN Secretariat has also indirectly acknowledged Palestine's statehood by accepting its instruments of adherence on road, maritime, and rail transport concluded under the auspices of the Economic and Social Commission for Western Asia, of which Palestine is a member country.<sup>6</sup> Palestine has also been conducting international relations, economic and diplomatic, with individual and groups of States for many years.

However, as a whole, the existence of a State is not a legal, but a purely factual and political matter. The difficulties with the questions concerning Palestine's statehood result from the fact that statehood is an indeterminate status under international law. It cannot be ascertained by using an objective test with a clear set of legal criteria; neither the Montevideo Convention, nor the varying theories on recognition are helpful in determining statehood status. Moreover, questions concerning the exact parameters of a State, including its borders, are unrelated to the question of whether it is or is not a State, and their impeding resolution is not a bar to statehood.<sup>7</sup>

Statehood can be understood mainly in terms of State practice vis-à-vis the entity concerned, including its admission as a member of international organisations or accession as a party to international treaties and conventions. Each country decides for itself whether to recognise the entity as a State, either explicitly or implicitly by entering into relations therewith. This does not, however, have an effect on the determination of the entity's status in international law.

---

<sup>4</sup> The European Union for example deals with Palestine on the basis that it is a State, having concluded the 1997 Euro-Mediterranean Interim Association Agreement with Palestine and acknowledging Palestine's statehood at the European Court of Justice in 2010, where it used the word "state" in reference to Palestine. *Brita GmgH v Hauptzollamt Hamburg-Hafen*, European Court of Justice, Case C-386/08 (25 February 2010) para. 58. See further J. Quigley, *The Statehood of Palestine: International Law in the Middle East Conflict* (Cambridge University Press, New York, 2010) 180-181.

<sup>5</sup> *Ibid.*

<sup>6</sup> See the official website of the UN Economic and Social Commission for Western Asia <<http://www.escwa.un.org/members/map.asp>>.

<sup>7</sup> See generally, I. Brownlie, *Principles of Public International Law* (7<sup>th</sup> ed.) (Oxford University Press, New York, 2008) 69-95.

General Assembly resolution 181 of 1947 has already provided for the creation of two States, one Arab, one Jewish, at the end of the British mandate in Palestine.<sup>8</sup> This, amongst other pertinent past and contemporary facts, should be seen as supportive evidence of the international community's perception and practice in relation to Palestine's statehood. It is equally important, in this regard, to understand the obligations owed by the international community to the Palestinian people with regards to ensuring the exercise of their independence.

Palestine's statehood has recently been discussed at length in the context of the submission of the Palestinian declaration under Article 12(3) of the Statute of the International Criminal Court (ICC), as a State that is not a party to the Statute, transferring jurisdiction to the Court over international crimes committed in Palestine. The issuance of the declaration produced a debate over Palestine's statehood amongst scholars, States' legal services and different groups, which examined whether Palestine is, for the purpose of the Statute or otherwise, a State under international law.<sup>9</sup> Adopting a functional approach to the objectives of its work, the ICC should accept Palestine's declaration on the grounds that Palestine is indeed a State for the purpose of the Rome Statute.<sup>10</sup>

## **2. Does the fact that Palestine is under occupation affect its statehood status?**

Statehood is not affected by belligerent occupation, neither does occupation negate or offset statehood in legal terms. Statehood is not dependent on occupation, which only has the effect of limiting the ability of a State to exercise its sovereignty and independence. During occupation, the sovereignty over the territory remains at all times with the local population. The sovereignty and independence of the Palestinian people, as well as their cardinal right to self-determination, have been affirmed by numerous UN resolutions as well as by official statements made on behalf of individual States.

## **3. What effects can recognition have on the status of an entity under international law?**

The prominent position in international law is that the number of recognitions an entity has obtained does not have legal bearing on the determination of statehood. Recognition is a declaratory act and implies only the acknowledgement of the legal fact that an entity is a State.<sup>11</sup> A refusal to recognise Palestine is a political act, which does

---

<sup>8</sup> See for a further discussion of the Partition Plan and international law see N. Elaraby, 'Some Legal Implications of the 1947 Partition Resolution and the 1949 Armistice Agreements', 33 *Law and Contemporary Problems* 1 (1968) 97-109.

<sup>9</sup> Summary of submissions on whether the declaration lodged by the Palestinian National Authority meets statutory requirements, ICC website <<http://www.icc-cpi.int/menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/comm%20and%20ref/palestine/summary%20of%20submissions%20on%20whether%20the%20declaration%20lodged%20by%20the%20palestinian%20national%20authority%20meets>> accessed 17 July 2011. See also, UCLA School of Law, Human Rights and International Criminal Law Online Forum, 'Gaza Jurisdiction Question: Does the Prosecutor of the ICC have the Authority to Open an Investigation into Alleged Crimes committed in the 2008-2009 Gaza Conflict?' <<http://uclalawforum.com/gaza>> accessed 17 July 2011.

<sup>10</sup> M. Kearney, 'Palestine and the International Criminal Court: Asking the Right Question', UCLA Human Rights & International Criminal Law Online Forum. J. Quigley, 'The Palestine Declaration to the International Criminal Court: The Statehood Issue', *Rutgers Law Record* (2009). Memo by J. Quigley submitted to the ICC on 20 May 2010 <<http://www.icc-cpi.int/NR/rdonlyres/D3C77FA6-9DEE-45B1-ACC0B41706BB41E5/281978/Quigleyadditionalsubmission1.pdf>> accessed 16 July 2011.

<sup>11</sup> J. Crawford (n 2) 17-28 and J. Quigley (n 4) 219-252.

not have any legal bearing on its statehood status. Similarly, a declaration of independence is only an invitation for States that is meant to trigger recognition.<sup>12</sup>

Most States, including Israel, have recognised Palestine and the sovereignty of the Palestinian people, either explicitly or implicitly through relations therewith. So far, about 117 States have explicitly recognised Palestine, and the Palestinian representatives predict they will have obtained over 130 recognitions by September 2011. Although recognition does not constitute statehood as such, it substantiates Palestine's statehood providing it with further means to gain more rights and obligations in the international legal order.<sup>13</sup>

#### ***4. Is the question of Palestine's statehood relevant to the September initiatives?***

Although on face value Palestine's UN options have given rise to certain questions concerning Palestine's statehood status, the "September options" do not, in purpose or in effect, draw on or pretend to bring about any determinations with regard to this question. In other words, the question of whether Palestine is or is not a State under international law is neither invoked nor answered through these processes.

As such, neither UN membership nor further recognition of Palestine as a State can legally determine whether it is a State – each State and international organisation will have the last say on whether they choose to treat Palestine as a State. This depends wholly on political will and the legitimacy that each one of them chooses to attribute to Palestine, and not on an objective determination on the basis of international legal standards.

The issue at stake in the context of the "September initiatives" is not statehood as such, but a strategy to strengthen Palestine's position in the international legal order to be unequivocally recognised rights and obligations under public international law and enhance its ability to exercise such rights by bringing international claims.<sup>14</sup>

### **III. UN admission procedure**

#### ***1. What is the procedure for admission as a Member State of the UN?***

The procedure for being accepted as a member of the UN is initiated when a State submits an application to the Secretary-General stating its adherence to the UN Charter. Thereafter, the 15-member Security Council must make a recommendation that requires nine yes votes and no veto by a permanent member, and only then can the General Assembly vote on membership. The General Assembly vote must be approved by a two-thirds majority.

---

<sup>12</sup> Al-Haq consultation with Dr. J. d'Aspremont, Associate Professor of International Law and Senior Research Fellow of the Amsterdam Center for International Law at the University of Amsterdam, on statehood and Palestine's status in international law, 18 May 2011 (notes on-file with Al-Haq).

<sup>13</sup> V. Kattan, 'A State of Palestine: The Case for UN Recognition and Membership', Al-Shabaka, Policy Brief, May 2011 <<http://al-shabaka.org/policy-brief/politics/state-palestine-case-un-recognition-and-membership>> accessed 16 July 2011.

<sup>14</sup> I. Brownlie (n 7) 69-95.

The Security Council is composed of five permanent members who have a veto power: China, France, Russian Federation, the United Kingdom and the United States, and ten non-permanent members (with year of term's end): Bosnia and Herzegovina (2011), Germany (2012), Portugal (2012), Brazil (2011), India (2012), South Africa (2012), Colombia (2012), Lebanon (2011), Gabon (2011), and Nigeria (2011).<sup>15</sup>

US President Obama has expressed the intention of the US to veto a Security Council recommendation on Palestine's admission as a Member State of the UN. In the likelihood of a veto at the Security Council, it is uncertain whether there is an alternative route for Palestine to achieve UN membership by bypassing the Security Council (see discussion below).

## **2. Will the UN admission procedure come to an end if the UN Security Council is deadlocked by a veto?**

The procedure for UN membership, under Article 4(2) of the UN Charter, requires a nine yes vote at the Security Council before the General Assembly can conduct a vote on the admission of a State as a member of the organisation. Therefore, a deadlock at the Security Council is expected to bring the 'classical' UN admission procedure to an eventual deadlock. Still, some attempts can be made by the General Assembly to act despite a negative recommendation by the Security Council, including exchanges between the two bodies, which can take place on the reasons for a negative recommendation by the Security Council.

In response, it has been suggested that the General Assembly's 'Uniting for Peace' powers under its Resolution 377 could be used to bypass a deadlock at the Security Council and bring the admission matter before the General Assembly.<sup>16</sup> Since it is highly improbable that the non-admission of Palestine to the UN can be defined as a 'threat to international peace and security', it is unlikely that these powers can be invoked. The International Court of Justice (ICJ) Advisory Opinion in the Admission case in 1950 examined the competence of the General Assembly in the context of the UN admission procedure, concluding that the Security Council's recommendation is indeed a condition precedent to the General Assembly vote on the matter, and therefore also to the admission of a State as a member of the organisation.<sup>17</sup>

As another option to overcome a veto at the Security Council, some discussions have proposed the possibility of arguing that the admission of a State as a member of the UN is a procedural, as opposed to a substantive, matter and that therefore the permanent five members of the Security Council should not be able to use their veto powers to prevent the achievement of a nine yes vote.

Notably, this is not a question that was directly examined in the ICJ 1950 Opinion and could therefore be brought before the Court by the General Assembly for further examination. Equally, the minority opinion in the 1950 Opinion added that the Court should have distinguished between two scenarios: the first being where the application failed to receive majority support in the Security Council, and the second being where

---

<sup>15</sup> For further information on the UN Security Council see its official webpage <<http://www.un.org/Docs/sc/index.html>>.

<sup>16</sup> Al-Haq consultation with Dr. J. d'Aspremont (n 12).

<sup>17</sup> *Competence of the General Assembly for the Admission of a State to the United Nations* (Advisory Opinion) ICJ Rep 1950 (3 March 1950) <<http://www.icj-cij.org/homepage/index.php>>.

the application received the majority approval, but was opposed by a permanent member. In this latter case, it would not have been permissible, according to the minority opinion of the Court, for a permanent member of the Security Council to obstruct the acceptance of a membership request that received majority approval by the Security Council, and then proceeded to obtain two-thirds majority support from the voting members of the General Assembly.<sup>18</sup> The grounds for this option continue to be debated and its prospects remain uncertain.

### ***3. What is the 'observer State' status option? What significance, legal or political, does it have?***

In light of the political pressures at the UN, the most that can realistically be expected to come out of Palestine's application for UN membership is a resolution from the General Assembly with the majority of States recommending the recognition of Palestine's statehood and granting it 'observer State' status.<sup>19</sup>

Such status is based purely on practice, and there are no provisions for it in the UN Charter. As gathered from the Swiss, Austrian, Finnish, Italian and Japanese precedents, the only requirement is that the non-Member State of the UN be a member of one or more specialised UN agencies.<sup>20</sup> A simple majority vote in the General Assembly then seems to suffice to grant the State observer status.

The upgrade to UN 'observer State' status for Palestine, from non-State observer<sup>21</sup>, is nevertheless an important adjustment that would provide Palestine with further political leverage, and confirm its rights as a State within the UN system. Although to a lesser extent than admission to the UN as a full Member State, the 'observer State' status would further Palestine's position vis-à-vis others States, including Israel, enhancing its influence to claim its rights from others.

### ***4. What could be the value of UN membership (or 'observer State' status) for Palestine?***

Despite the important symbolic political value of UN membership and recommendation for recognition by the General Assembly, they do not bear any legal implications as such. Recognition and UN membership are two different matters, one does not imply the other – neither is UN membership a requirement for statehood, nor does the General Assembly have the powers to constitute a State.

---

<sup>18</sup> For further discussion of these options see C. Mansour, 'Palestinian Options at the United Nations', Institute for Palestine Studies <<http://palestine-studies.org/columndetails.aspx?t=2&id=34>> accessed 19 July 2011.

<sup>19</sup> Like in the case of Switzerland, before it became a UN member State in 2002, and the present case of the Holy See.

<sup>20</sup> For further information on UN permanent observers and non-Member States at the UN <<http://www.un.org/en/members/aboutpermobservers.shtml>> accessed 17 July 2011.

<sup>21</sup> In its resolution 3237 (XXIX) of 22 November 1974, the General Assembly granted observer status to the Palestine Liberation Organization. In its resolution 43/177 of 15 December 1988, it decided that the designation "Palestine" should be used in place of the designation "Palestine Liberation Organization" in the United Nations system. See, respectively, UNGA Res 3237 (XXIX) (22 November 1974) Un Doc A/RES/3237 (XXIX) and UNGA Res 43/177 (15 December 1988) Un Doc A/RES/43/177.



By seeking UN admission, Palestinians do not claim a right to statehood, but rather the rights flowing from an existing statehood status. Neither are Palestinians claiming a right to sovereignty or independence; they are claiming the means to actually exercise them.

#### **IV. Implications of Palestine's September initiatives**

##### **1. What are the legal implications of the September initiatives?**

Certain indirect legal effects could flow from the eventual admission of Palestine to some international organisations and treaties, as well as the overall increase in political legitimacy and legal personality. A number of gains can be asserted from the upcoming strategy, both pertaining to access to accountability mechanisms for Israel's violations of international law, which have so far benefitted from a climate of impunity where justice has been held hostage by the politics of the 'negotiations table' and the misnamed 'peace process.'

The benefits of enhancing Palestine's international legal personality can be classified in a two-fold manner: (1) further possibilities to adjudicate claims of violations of international humanitarian and human rights law; and (2) the possibility to gain further influence over the international community's willingness to put an end to Israel's violations.

Firstly, the accession to international organisations and treaties will provide access to new international *fora* and justice avenues, including the UN human rights treaty bodies and special procedures, for Israel's violations of international law, which are widely acknowledged and have been condemned countless times by different UN bodies. Importantly, this will also facilitate access to the ICC, where a favorable impact of even a GA resolution (recommending the recognition of Palestine) could assist both the prospective acceptance of Palestine's declaration under Article 12(3) of the Statute of the ICC, and its potential ratification of the Statute of the ICC.

Another option that will become available is requesting an advisory opinion from the ICJ on the illegal character of Israel's occupation, due to its persistent violations of international law, including the law of occupation and the prohibitions of apartheid and colonialism.

Palestinians would also gain further political leverage to pressure the international community to comply with its responsibility (under the UN Charter, the international law of State responsibility and Common Article 1 to the Geneva Conventions) to bring Israel's violations of international law to an end, including by strengthening the possibility to get the UN to define the Israel-Palestine conflict as a 'threat to international peace and security' in order to allow for the use of UN collective measures against Israel.<sup>22</sup>

---

<sup>22</sup> Similar to the cases of Kuwait and Namibia. See also *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (Advisory Opinion)* ICJ Rep 1970 (21 June 1971) (hereafter: *Namibia Advisory Opinion*). See also O. Ben-Naftali, 'PathoLAWgical Occupation: Normalizing the Exceptional Case of the Occupied Palestinian Territory (OPT) and Other Legal Pathologies' in O Ben-Naftali (ed.), *International Humanitarian Law and International Human Rights Law International Human Rights and Humanitarian Law* (Oxford University Press, Oxford/New York, 2011).

Concurrently, the Palestinian governmental institutions in the Occupied Palestinian Territory (OPT) could also be affected by Palestine's accession to international humanitarian and human rights law treaties by being subject to a comprehensive audit for their protection of the rights of the people under their jurisdiction.

## **2. What are the political implications of the September initiatives?**

The political implications that may flow from these initiatives are manifold, and have often been conflated with the legal ones. The indirect legal implications, discussed above, also respectively bear different political implications on Palestine's position in the international legal system, bringing it onto a footing of 'equal formality' with other States. By accruing such legitimacy in the international legal order, Palestine would be better situated to claim its rights from the international community, in particular the means to exercise the right to self-determination.

Resultantly, this is expected to reconfigure the conflict and effectuate a political paradigm shift from a binary and 'zero-sum' situation between Israel and the Palestinians into a multilateral conflict, where actors are not changed but diversified.

## **3. What are the potential benefits of the September initiatives?**

A prominent backdrop to the discussion of Palestine's statehood is the ongoing, already over four-decade-long, occupation of Palestinian territory by Israel, which amounts to a continuous denial of the right of the Palestinian people to self-determination. The international community possesses a wealth of information on Israel's ongoing grave and systematic violations of international law, including violations of the international law prohibitions of colonialism and apartheid, which establish the inherent illegality of Israel's occupation.<sup>23</sup> Consequently, States are already under an unequivocal obligation not to recognise the situation as legal, not to render aid or assistance as well as to actively cooperate to bring an end to Israel's violations.<sup>24</sup>

The September initiatives are expected to enhance Palestine's position in the international legal order by allowing it to accumulate further legitimacy and gain a footing of 'equal formality' with other States on the international level. This would permit it to accelerate ongoing international legal processes as well as gain further access to international accountability mechanisms to redress Israel's violations of international law.

## **4. Could the September initiatives impact the protection of civilians in the OPT in terms of the application of international humanitarian and human rights law?**

The law applicable to the OPT is the law of international armed conflict, which applies by virtue of Israel's occupation of the Palestinian territory, namely the West Bank, including East Jerusalem, and the Gaza Strip. The September initiatives, regardless of their expected results, would not bring about any adjustment in the legal framework

---

<sup>23</sup> See generally 'Occupation, Apartheid, Colonialism? A re-assessment of Israel's Practices in the Occupied Palestinian Territories under International Law' (Human Sciences Resource Council, Cape Town, 2009) <[www.hsrc.ac.za/Document-3227.phtml](http://www.hsrc.ac.za/Document-3227.phtml)> accessed 17 July 2011.

<sup>24</sup> When a serious breach of a peremptory norm occurs, third party States are seen as being under an obligation towards the international community as a whole (obligations *erga omnes*) to bring the violations to an end; as per the international law on state responsibility, namely Articles 40 and 41 of the International Law Commission's Draft Articles on State Responsibility 2001. See also *Namibia* Advisory Opinion (n 22).



applicable to the OPT, since the Palestinian territory will remain under the effective control and administration of the Occupying Power, Israel, which is also ultimately responsible for ensuring the Palestinian population's enjoyment of their fundamental guarantees under the law of occupation.

The rights guaranteed to the Palestinian population in the OPT by the provisions of international humanitarian and human rights law are absolute and cannot be compromised by any change introduced to the territory or government of the occupied territory even by an agreement between the occupying power and occupied population.<sup>25</sup> As such, the admission of Palestine to international organisations and its accession to international treaties would not affect the rights guaranteed to protected persons under occupation.

**5. What are the risks involved in initiating the September options? Can they prejudice the future exercise of Palestinian national rights and/or the determination of questions related to borders and refugees?**

Since the path that the Palestinian representatives have chosen is very specific and largely procedural, none of the upcoming initiatives could bring about any legal change to the current rights of the Palestinian people, namely the right to self-determination and the right of return of refugees, which is part and parcel of the exercise of the right to self-determination. These are rights that are borne and exercised by the people, not by a State, and, therefore, do not stand to be compromised nor prejudiced by decisions on the admission of a State to an international organisation or its recognition by other States.

Moreover, once Palestine is able to fully exercise its sovereign rights and independence, namely when the occupation is brought to an end, the Palestinian State will need to define and establish the legal foundations of Palestinian nationality.<sup>26</sup> The Palestinian leadership will then need to carefully examine and define whom it represents diplomatically in negotiations in order to ensure that the rights of Palestinian refugees are not undermined.

Therefore, concerns with regards to the effects of the admission of Palestine to the UN along the 1967 borders on the future determination of Palestine's borders by the Palestinian people are of a political nature and should not be conflated with the legal effects of these processes. The September initiatives will not result in any erosion of rights, or the prejudice of their future exercise, because they do not as such consist of an exercise of any right, nor are they guaranteed to bring about any change in the situation of occupation. What they are meant to achieve is the furtherance of the claims to provide the Palestinian people with the means to exercise these rights.<sup>27</sup>

---

<sup>25</sup> Article 47 of the Fourth Geneva Convention ensures the inviolability of the rights of protected persons in time of occupation, stating that "Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory."

<sup>26</sup> See in this respect the seminal work of M. Qafisheh, *The International Law Foundations of Palestinian Nationality: A Legal Examination of Nationality in Palestine under Britain's Rule* (Martinus Nijhoff Publishers, The Netherlands, 2008). See also V. Kattan, *From Coexistence to Conquest: International Law and the Origins of the Arab-Israeli Conflict, 1891-1949* (Pluto Press, New York, 2009) 209-232.

<sup>27</sup> J. Quigley (n 4) 251-252.

**6. Are the September initiatives an exercise of the Palestinian people's right to self-determination?**

Statehood as such and the determination of the borders and government of an entity are two separate matters. The former, as discussed above, is not a legal matter as such, whilst the latter are matters that are determined by a people in the course of the exercise of their right to self-determination.

In practice, the exercise of the right to self-determination would require the popular participation of the Palestinian people as a whole – including the local population of the OPT, Palestinian refugees, the Palestinian Diaspora as well as Palestinian citizens of Israel. A referendum is the most common practical means for the exercise of the right to self-determination by a people, as was the case of Southern Sudan that has recently been admitted as a member State of the UN.<sup>28</sup> The conduct of a referendum would also provide further legitimacy and leverage to any initiative of the current Palestinian representatives, if these were intended to include matters that concern, for instance, the delineation of territorial borders.

**7. Can the September initiatives be seen as constituting a violation of agreements between Israel and the PLO, namely the Israel-PLO Interim Agreements 1995 (Oslo Accords)?**

The PLO-Israel Interim Agreements (Oslo Accords) are not a treaty under international law and do not stand to compromise or adjust any of the rights guaranteed to the occupied Palestinian population under the Geneva Conventions. As such, these agreements, concluded between the Occupying Power and the representative of the occupied population for the administration of the occupied territory, do not negate the rights and obligations under international humanitarian and human rights law. Neither does occupation, as discussed above, negate Palestine's statehood status under international law. As such, the right to self-determination and the sovereignty of the Palestinian people, which has been reiterated on countless occasions by the international community, cannot be modified or limited in any way by the Oslo Accords.

Since the September initiatives are a means to reassert Palestinian sovereignty and to strengthen Palestine's position in the international legal order, on the basis of its already existing and determined legal status and rights, they do not constitute a violation of the Oslo Accords, nor bring about any change in the status of the territory or rights of either party.

\* \* \* \*

---

<sup>28</sup> 'UN Welcomes Southern Sudan as 193<sup>rd</sup> Member State', *UN News Service*, 14 July 2011 <<http://www.un.org/apps/news/story.asp?NewsID=39034&Cr=South+Sudan&Cr1>> accessed 17 July 2011.

### **Further Reading:**

- Camille Mansour, 'Palestinian Options at the United Nations', *Al-Ayyam*, 10 July 2011 (in English at Institute of Palestine Studies) <<http://palestine-studies.org/columndetails.aspx?t=2&id=34>>.
- Victor Kattan, 'Palestinian Statehood: a Turning Point', *Open Democracy*, 6 July 2011 <<http://www.opendemocracy.net/victor-kattan/palestinian-statehood-turning-point>>.
- Hélène Michou, 'Towards Declaration of a Palestinian State?', *FRIDE (A European Think Tank for Global Action)*, Policy Brief, No 79, June 2011 <<http://www.fride.org/publication/920/towards-declaration-of-a-palestinian-state>>.
- Victor Kattan, 'A State of Palestine: The case for UN Recognition and Membership', *Al-Shabaka*, Policy Brief, May 2011 <<http://al-shabaka.org/policy-brief/politics/state-palestine-case-un-recognition-and-membership>>.
- 'FAQ on UN Membership for and Recognition of the State of Palestine', *US Campaign to End the Occupation*, 7 June 2011 <[www.endtheoccupation.org/downloads/unmembershipfaq.pdf](http://www.endtheoccupation.org/downloads/unmembershipfaq.pdf)>.
- Victor Kattan, 'The Case for UN Recognition of Palestine', *Electronic Intifada*, 14 June 2011 <<http://electronicintifada.net/content/case-un-recognition-palestine/10079>>.
- Rashid Khalidi, 'On the Possible Recognition of Palestine in the UN', *Jadaliyya*, 28 June 2011 <<http://www.jadaliyya.com/pages/index/2002/on-the-possible-recognition-of-a-palestinian-state>>.
- Victor Kattan, 'Palestinian Statehood: Individual Nations, not the U.N., will have the Final Say', *Los Angeles Times*, 17 June 2011 <[http://opinion.latimes.com/opinionla/2011/06/blowback-palestinian-statehood-united-nations.html?utm\\_source=Al-Shabaka+announcements&utm\\_campaign=b552cea33a-Media\\_Summary\\_6\\_28\\_11\\_GA&utm\\_medium=email](http://opinion.latimes.com/opinionla/2011/06/blowback-palestinian-statehood-united-nations.html?utm_source=Al-Shabaka+announcements&utm_campaign=b552cea33a-Media_Summary_6_28_11_GA&utm_medium=email)>.
- Omar Dajani, 'September Song', *Foreign Policy*, 24 May 2011 <[http://mideast.foreignpolicy.com/posts/2011/05/24/september\\_song?sms\\_ss=facebook&at\\_xt=4dddaa05187a1958%2C1](http://mideast.foreignpolicy.com/posts/2011/05/24/september_song?sms_ss=facebook&at_xt=4dddaa05187a1958%2C1)>.
- Valentina Azarov, 'A Comment on Palestine's Statehood, Recognition and UN Membership', *International Law Observer*, 22 June 2011 <<http://internationallawobserver.eu/2011/06/22/a-comment-on-palestine%E2%80%99s-statehood-recognition-and-un-membership/>>.