

## **The Enterprise of Declaring a Palestinian State: Expression of Crisis or a Strategic Step?**

### **Introduction: why this paper, why these questions?**

This paper posits a number of political and legal questions related to the “enterprise” of gaining recognition of a Palestinian state with the 1967 borders. These questions do not come to merely raise issues for an intellectual or philosophical discussion; rather, we wish to investigate the legal and political consequences of this expected recognition and its correlation with inalienable Palestinian national rights, especially the rights of return and self-determination. Furthermore, we wish to discuss the relation between this recognition and the political achievements of the modern Palestinian revolution, which resulted in recognition of the Palestine Liberation Organization (PLO) as the sole legitimate representative of the Palestine people, together with the Palestinian right to resistance.

The Palestinians’ struggle within international institutions does not start today but extends over decades, and whatever occurs in September 2011 will not be the last word but will undoubtedly be followed by new rounds of struggle. The United Nations and its organs were and remain an arena of conflict and struggle for the Palestinian people to reach their inalienable rights. Any discussions or positions must accordingly be based on this understanding, and the primary aim of this paper is thus to emphasise the constants in this struggle and the Palestinian national priorities.

This paper also acts:

- To reach clarity about whether going to the United Nations is consistent with the requirements and demands of the current national liberation period. Does this move serve the national Palestinian rights and qualitatively add to the Palestinian struggle?
- To generate understanding and awareness of the positive effects, together with the potential risks and dangers, of such plans.
- To ensure that any and all such plans are consistent with the requirements of mobilising public resistance against the Israeli occupation.
- To promote understanding that orientation toward the United Nations is part of an overall strategy. The Palestinian plan to address the UN is designed to obtain membership for Palestine in international institutions and not to recognise a Palestinian state. There is a substantial difference between joining the UN as a full member and recognising a Palestinian state, the latter being a bilateral decision of nations and not a collective UN decision. Indeed, since 1988 dozens of states have recognised the Palestinian state.

We, the organizations signed below, consider the Palestinian decision to address the United Nations to become members in the international institution - and not to ask for recognition – to be a serious step that will bring legal, political, and realistic/practical consequences.

In this context, diplomatic action on all levels is a tool and means of promoting Palestinian national rights consistent with the requirements of this current period of national liberation

What concerns us as institutions and Palestinian civil society organisations is that addressing the UN and its agencies without a clear political position and strategy consistent with requirements of the national struggle and national rights and without actual widespread popular support could mean:

1. Plans to address the UN are a reaction to the failure of negotiations, or an attempt to revive these sterile negotiations, or simply a pro-active step to justify saying that “there is no alternative to negotiations except negotiations”;
2. These plans are not part of a comprehensive strategic vision that takes into account the implications of such a move and particularly for the development of the PLO and promotion of the inalienable rights of the Palestinian people;
3. An end to Palestinian reconciliation efforts and the pushing of reality back into a state of division, thus negatively impacting Palestinian unity and the unity and legitimacy of representation;
4. The limiting of the Palestinian issue to that of gaining recognition, as if this is a conflict between two sovereign states arising for a border dispute. The project of national liberation is thus transformed into a project of state declaration, as occurred during the Oslo process and its attendant shift that led to endless and fruitless negotiations.

Accordingly, we, we need to review the following axes and their related questions

### **The First Dimension: Meaning of the Required Recognition**

Recognition in and of itself does not ensure the commensurate facts on the ground. For example, there exists international recognition of the "province of Palestine" and the right of its people to independence in their own state (see: League of Nations, an instrument of the British Mandate), and the right of the Palestinian people to establish their independent, sovereign state over the equivalent of 43% of historical Palestine (see: United Nations Resolution 181), and the inalienable Palestinian rights to self-determination and to establish an independent, sovereign state with the right of return (see, eg, General Assembly Resolution 3236 of 1974, and the 1975 Resolution number 3376), in addition the totality of a long line of other decisions and declarations In light of this, the following basic question arises:

What would such recognition add to the numerous international resolutions that have already affirmed the Palestinian people's inalienable right to self-determination and to establish their independent, sovereign state with the right to return? In this light, our approach to the issue of the United Nations must be based on the goal of strengthening the Palestinian national struggle on the road to full freedom and independence, and to consider the existing resolutions of international legitimacy as a reference to any solution or political process.

## **The Second Dimension: PLO and Representation of the Palestinian People**

### **Political and legal facts:**

- Each people\ nation is represented by a recognized state or liberation movement. There are no two representatives of the same people\ nation. One of the greatest achievements of the modern Palestinian revolution, if not the greatest one, is the recognition of the PLO as the sole and legitimate representative of the Palestinian people. Accordingly, the following major issue arises:

The plans to go to the United Nations would mean improving representation by the PLO of the Palestinian people, or would they result in the transfer of legitimacy to the Palestinian Authority (the nucleus of the state, as above). In other words, what is the acceptable Palestinian political national framework for gaining the legal status of official representative of the Palestinian people?

### **The Third Dimension: Refugees' Rights**

Palestinian refugees comprise 70% of the Palestinian people whilst refugees from 1948 comprise 81% of the total number of refugees, the majority of whom live in exile. The refugees' right to return to their original homes, regain their dispossessed property and compensation is well-established in international law and international resolutions. The refugees continue demanding their rights, especially their right to return to their original homes.

Accordingly, the following question arises:

Will recognition of the state include confirmation, if only symbolic, of the Palestinian refugees' rights, and especially of their right to return? This is a particularly important question since phrases such as "relevant resolutions", "on the basis of Resolution 194," or a "just, mutually agreed-upon solution" are often employed when discussing the inalienable Palestinian right of return.

### **The Fourth Dimension: The Concept of Palestinian Unity and the Right to Self-Determination**

The Palestinian people, whether living in historical Palestine or in exile, comprise a single unity according to the Palestinian National Covenant. The PLO is the sole legitimate representative of the Palestinian people. Putting the principle of self-determination into practice goes beyond discussion of a state, and touches the enabling of the Palestinian people, or a part of them, from exercising this right.

Thus, unity of the Palestinian people necessarily involves self-determination for all of the Palestinian people, regardless of their geographic and legal position. Accordingly, the following questions arise:

Plans to address the United Nations in September 2011 are the embodiment of the Palestinian people's right to self-determination. How does this impact Palestinian self-determination for those in land occupied in 1967, in 1948 and for Palestinians residing in the Diaspora?

### **The Fifth Dimension: Resistance and its Forms**

According to international law and UN resolutions, there exists general recognition of the right of peoples in resistance to achieve freedom and independence (see, for example, General Assembly Resolution 3101 of 1972 concerning the right of peoples under occupation for freedom, Resolution 3103 of 1973 concerning freedom fighters, and Resolution 3236 of 1974, which recognises (in paragraph five) the right of the Palestinian people to resistance in all its forms to obtain their legitimate rights. In contrast, international law and United Nations resolutions frame the conduct of relations between and amongst states very differently.

Given that the state is not the liberation movement, the question that arises here:

If the stage of national liberation has not yet completed its tasks, will gaining recognition of a Palestinian state contribute to the concept of resistance or will it add more restrictions on the possibilities and means of the Palestinian liberation movement? In this context, we emphasize the following

1. The continued occupation is the primary obstacle to peace and the Palestinian people's ability to exercise their right to self-determination;
2. A right is inalienable and application of this is the basis for any possible lasting peace. The Palestinian right of return, therefore, is not subject to alterations or prescriptions.
3. Direct and bilateral negotiations, based on reference to the negotiations themselves and which exclude international law and United Nations resolutions, are what brought us to the current situation, and cannot lead to a just or stable peace.
4. Approaching the United Nations as a way to emphasise Palestinian rights and exercise them later should be a strategic step and not one intended to bring about a return to the aforementioned negotiations.
5. There should be no retreat from the safeguards available in international law, including and based on UN Resolution 181. The proposed land swaps are contrary to the rules of international humanitarian law, specifically Article 47 of the Fourth Geneva Convention, and the text of any decision to recognize a state must include a clear and legally binding statement concerning the need to evacuate all of the settlements, illegal communities and neighbourhoods built on Palestinian territories occupied in 1967.

6. Unilateral, colonial facts imposed by Israel should be rejected and not recognised, including those in the territories occupied in 1967, including East Jerusalem, settlements, bypass roads, military checkpoints and the Apartheid Wall.
7. The Palestinian issue is not a dispute over land in that land is one of the axes and addresses of the conflict. Land will bring about the freedom and independence of the Palestinian people and an end to Israel's colonial occupation.
8. The Palestinian people include all Palestinians, wherever they are, whether in the areas occupied in 1948 or in refugee camps in Palestine and its surroundings, or in the Diaspora.
9. Immediate tasks of Palestinian national institutions are to stress the importance of reconciliation and to promote united Palestinian national structures through unity and reconciliation, the rebuilding of the PLO, election of a Palestinian National Council which is clearly committed to defending and struggling to achieve national rights.

The continuation of the conflict for over 63 years, the ongoing suffering of our people in all positions, the continued Israeli illegal and aggressive practices and policies, the failure of negotiations over the last twenty years, and other aspects of the continued denial of the rights of the Palestinian people represent a blatant inability and failure of the international community.

Accordingly, in order to go to the United Nations in line with national rights and with meaningful political and practical clarity, and in order to add qualitatively to the achievements of the past whilst not hindering possibilities to move forward, it is necessary to come with a clear strategy for putting these rights into practice, and not merely to express the crisis arising from the failure of negotiations and the internal inability to reconsider the choices of resistance. This necessarily requires that any international action on this scale combined with the acts and results of popular and official resistance on the ground, to request that the international community grant the executive force to be applied; to ensure the promotion of Palestinian inalienable rights and to end the illusion of twenty years of Oslo in a new guise.