

CHAPTER II

HISTORY OF PALESTINIAN STATEHOOD

Questions arise when one talks about Palestinian statehood, especially in the midst of Arab-Israeli conflict prior to the creation of Palestine Liberation Organization. As seen on the four major wars occurred in the Palestine region in the mid 20th century, the designation of the conflict is “Arab-Israeli”, instead of, say “Palestine-Israeli” or “Islam/Muslim-Israel/Jewish”. Such statement is also supported by the four major wars of Arab-Israeli Conflict.

In the 1948 war, the belligerents were Israel versus the Arab League - composed of Egypt, Jordan, Iraq, Syria, Lebanon, and Saudi Arabia. The Suez War was between Israel, United Kingdom, and France versus Egypt. The Six-Day War was fought by Israel versus coalition of Egypt, Syria, Jordan, Iraq, and Lebanon. Yom Kippur or Ramadhan War was fought mainly by Israel versus Egypt and Syria. All four of the major Arab-Israeli wars were met with Israel military victory.

Where are the Palestinians during the major Arab-Israeli conflict? Prior to the creation of Palestine Liberation Organization in 1964, the Palestinians had no representatives during the Arab-Israeli wars, except the local Palestinian militias. Instead of being the major player in their land, Palestinians become the underdog. It failed to create their own state when Britain relinquished its mandate in Palestine, and the Arab states have their own considerations when they tried to

speak on behalf of the Palestinians.⁵¹ Palestinians were left stateless, some stayed in the West Bank and Gaza and some fled to Arab countries.

The question of Palestinian statehood will be discussed further at the end of this chapter. The discussion about the Palestine Liberation Organization (PLO) and the Palestinian National Authority and the agreements that created PA — the Oslo Accords — will come first.

A. Palestine Liberation Organization

After 1948, the hopes of the Palestinian were burdened to the Arab states. The reason for that was the dominance of Pan-Arabism at the time made the struggle for liberation of the Palestinians was thought to be depended on Arab power through Arab unity. The lack of ideological spectrum outside of Arab nationalism and Baathism made independent movement for Palestinians to be held in suspicion.⁵²

However, as a representation for the Palestinians was clearly needed, in 1963 Arab summit in Cairo called for the establishment of an organization representing the Palestinian people. The first session of Palestinian National Council convened on 28 May 1964 by 422 members. The session was concluded on 1 June 1964 by several key resolutions: appointing an Executive Committee, adopting the 1964

⁵¹ Rashid Khalidi, *The Iron Cage the Story of the Palestinian Struggle for Statehood*, (Oxford: Oneword Publications, 2007), 125.

⁵² Palestinian Academic Society for the Study of International Affairs, *PLO vs. PA*, (Jerusalem: PASSIA, 2014), 2, <http://www.passia.org/images/meetings/2014/oct/28/PA-PLO2.pdf>, <http://www.passia.org/images/meetings/2014/oct/28/PA-PLO2.pdf>.

Palestinian National Charter and Fundamental Law, setting up a Palestine National Fund, and creating Palestine Liberation Army.⁵³

As an organization that represents Palestinians worldwide, PLO became an umbrella organization for most of Palestinian factions especially since Yasser Arafat's election as the Chairman of PLO Executive Committee. The 1974 Arab Summit recognized PLO as the sole legitimate representation of Palestinian people, and other organizations such as the United Nations General Assembly when it invited PLO as an observer on 22 November 1974.⁵⁴

PLO's tenure as an organization that represented Palestinians is not a smooth one, especially that it was not based on the Palestinian territories. In 1970, war between PLO's military forces and Jordanian armed forces broke out — subbed as “Black September.” During the conflict, Jordanian artillery shelled Palestinians refugee camps and hunted down the guerilla forces, ending with defeat on the Palestinians (PLO) side. Yasser Arafat then had to surrender and moved PLO's forces and structures into Lebanon. PLO's presence in Beirut, Lebanon, was ended in 1982 when Israel invaded Lebanon with the objective of destroying PLO. Again, PLO must admit defeat and flee, at the time moved to Tunis.⁵⁵ PLO, which formerly remained in Tunisia, was later returned to Palestine once PA was created as the result of the Oslo Process.

⁵³ Ibid.

⁵⁴ Salem Barahmeh, *The Palestinians, the PLO, and Political Representation: the Search for Palestinian Self-Determination*, (London: The International Centre for the Study of Radicalisation and Political Violence, 2014), 10, http://icsr.info/wp-content/uploads/2014/07/ICSR_Atkin-Series_Salem-Barahmeh.pdf.

⁵⁵ Dror Ze'evi, *The Decline of the PLO and the Rise of the PNA*, (Waltham, MA: Brandeis University, 2006), 2, <http://www.brandeis.edu/crown/publications/meb/MEB8.pdf>.

PLO, though with its noble objective to represent Palestinians has some limitations and failure. The first one that to be pointing out is that PLO is not a state, hence it lacked a lot of privileges that states have as a subject in international arena. Out of the four criteria of statehood according to Montevideo Convention, the only criteria that PLO might have is the fourth one; which is the capacity to enter into relations with other state, although at a very limited capacity. Israel did not recognize PLO's legitimacy as a representative of Palestinians until the start of the Oslo Process in 1993.

Rashid Khalidi argued that the first of the many failures of PLO is failure to develop the organs of PLO into a full-fledged Palestinian state. The condition was worsened by the fact that PLO was some kind of government in exile which had to rely on other Arab states such as Jordan, Lebanon, Tunis, and others to host its activities, PLO was also undemocratic in its nature.⁵⁶ PLO's liberation strategy that involved military resistance also cost PLO dearly, as it created the impression that PLO used terrorism as its political tool; and use of violence did not brought about the creation of Palestinian state.⁵⁷ Khalidi also argued that the Oslo Process highlighted the major failure of PLO: its abandonment of Palestinians outside the occupied territories.⁵⁸

⁵⁶ Khalidi, *The Iron Cage*, 175.

⁵⁷ Sarah Gilmour, "Terrorism and the PLO: The Effectiveness of Terrorism as a Political Tool," *E-IR*, last modified December 5, 2016, <http://www.e-ir.info/2016/12/05/terrorism-and-the-plo-the-effectiveness-of-terrorism-as-a-political-tool/>.

⁵⁸ Khalidi, *The Iron Cage*, 180.

B. Oslo Process and the Creation of Arab State in Palestine

Before focusing on the Oslo process that created the Palestinian Authority, two events will be discussed briefly; the First Intifada and the Palestinian declaration of independence in 1988. These two events are important, as they marked the history of Palestinian struggle for their statehood, which then was shifting the focus of statehood from diasporas into the Palestinian territories.

The First Intifada was ignited by the accident hit an Israeli army tank transport carrying Palestinian workers back into Gaza Strip, killing four and injuring seven. A spontaneous demonstration erupted in the Jabalya refugee camp in Gaza, fueled by rumors that the Israeli tank ran over the Palestinian workers' truck in purpose.⁵⁹ The main tactic of the First Intifada was mass civil disobedience; boycotting Israeli goods, refusal to pay taxes, establishing Palestinian run medical services and social services, organizing strikes and demonstrations and unarmed confrontations.⁶⁰ When the First Intifada was finished, Palestinian independence was not achieved yet. Some even say embitter the relations between Israel and Palestinians.⁶¹ However, it still monumental as it shifted the focus of Palestinians struggle from the diasporas, in the form of PLO, to the Palestinians living in exile.

While the First Intifada raged on in the territories, Yasser Arafat pulled a diplomatic pull by proclaiming the establishment of the Palestinian state on 15 November 1988. Arafat declared that "The Palestine National Council announces

⁵⁹ Ian J. Bickerton, *The Arab Israeli Conflict A History*, (London: Reaktion Books, 2009), 158.

⁶⁰ Sonja Karkar, "The first Intifada 20 years later," *Electronic Intifada*, last modified December 10, 2007, <https://electronicintifada.net/content/first-intifada-20-years-later/7251>.

⁶¹ Bickerton, *The Arab Israeli Conflict*, 158.

in the name of God, in the name of the people, of the Arab Palestinian people, the establishment of the state of Palestine in our Palestinian nation, with holy Jerusalem as its capital,”⁶² in a speech made in front of the members of the Palestinian National Council in Algiers. The declaration of independence implicitly recognized Israel, through its commitment on pursuing a peaceful resolution with Israel on the basis of Resolutions 242 and 338.⁶³

The First Intifada brought the scales into the direction of the Oslo Process, and other reasons. On the PLO’s side, the First Intifada that was initiated by the Palestinians on the territories — not by the PLO or the diasporas — signaled that politics of Palestine was decided more by the local Palestinians and PLO’s influence weakened; especially when it lose support of the local Palestinians when PLO entered negotiations with US in 1988. PLO’s diplomatic and financial position also weakened when Yasser Arafat supported Saddam Hussein in the Gulf War of 1991. The end of Cold War also contributed, as with the collapse of USSR, PLO’s lost the alternative support from the global left. On Israel’s side, the first intifada was a major public relations disaster that made key Israeli politicians at the time concluded that Israelis were fatigued by the conflict, hence a peace process.⁶⁴

The Oslo Accords is not one single treaty between Israel and PLO, rather it is a series of interim agreements until there is a final conclusive agreement between

⁶² Youssef M. Ibrahim, “P.L.O. Proclaims Palestine To Be An Independent State; Hints At Recognizing Israel,” *The New York Times*, last modified November 15, 2014, <http://www.nytimes.com/1988/11/15/world/plo-proclaims-palestine-to-be-an-independent-state-hints-at-recognizing-israel.html?pagewanted=all>.

⁶³ Ibid.

⁶⁴ Shamir Hassan, “Oslo Accords: The Genesis and Consequences for Palestine,” *Social Scientist*, vol. 39(7/8) (2011): 66-67.

Israel and PLO. The formal Oslo Process was preceded by series of private discussions between Israelis and Palestinians through backchannels. The Oslo Process started as a discussion monitored by Norwegian Institute for Applied Sciences (FAFO).

There are up to nine agreements that made up the Oslo Accords, they are: Letters of Mutual Recognition between Israel and PLO – 9 and 10 September 1993, Declaration of Principles on Interim Self-Government Arrangements (“Oslo-I”) – 13 September 1993, Paris Protocol on Economic Relations – 29 April 1994, Agreement on Gaza Strip and the Jericho Area (“Cairo Agreement”) – 4 may 1994, Agreement on Preparatory Transfer of Power and Responsibilities – 29 August 1994, Israeli-Palestinian Interim Agreement on West Bank and the Gaza Strip (“Oslo-II”) – 28 September 1995, Protocol Concerning the Redeployment in Hebron – 15 January 1996, Wye River Memorandum – 23 October 1998, and Sharm el-Sheikh Memorandum – 4 September 1999.⁶⁵

The Oslo Process started with the Letters of Mutual Recognition between Israel and PLO because the letters showed the beginning of direct negotiations between Israel and PLO. Previously, direct talks between the two parties were impossible. There were three letters in total; two were written by Yasser Arafat as the Chairman of PLO, addressed to Yitzhak Rabin Prime Minister of Israel and Johan Jorgen Holst Foreign Minister of Norway, respectively. While one letter was written by Yitzhak Rabin addressed to Yasser Arafat. Arafat’s first letter, dated 9 September 1993 and addressed to Rabin, contained several PLO’s

⁶⁵ Ibid., 68.

commitments: recognizing Israel's right to exist, accepting UN Security Council Resolution 242 and 338, committing to peaceful conflict resolution between Israel and Palestinians, renouncing violence, and deeming the articles of the Palestinian Covenant that deny Israel's right to exist as inoperative and invalid. Meanwhile, Rabin's letter was a short one. It contained Israel government's acknowledgement of PLO as the sole representative of the Palestinian people and commencement of negotiations directly with the PLO.

The Declaration of Principles on Interim Self-Government Arrangement dubbed as "Oslo-I" was signed by Israeli foreign minister Shimon Peres and PLO's representative Mahmoud Abbas at a ceremony on the White House Lawn on 13 September 1993. The article I of the DOP aims the agreement for the establishment of the Palestinian Interim Self-Government Authority and the elected "Council" for a transitional period of no more than five years. This Authority later on evolved into the Palestinian Authority that is based on the territories, unlike the PLO. Article IV states that the "Council" has jurisdiction over Gaza Strip and West Bank and constituted both as a single territorial unit, however the article does not specify the borders. The rest of the DOP details further arrangements that later on will be specified on the annex of Oslo-I and succeeding treaties and arrangement.

The "Oslo-II" or The Israeli-Palestinian Interim Agreement was concluded in Washington DC on 28 September 1995, the day of the signing as well as its entry into force, according to the agreement itself. The agreement is mainly the elaboration of the Oslo-I clarifying some definitions and technical issues such as

elaboration of “The Council” (Chapter 1), redeployment and security agreements (Chapter 2), legal affairs (Chapter 3), cooperation (chapter 4), and miscellaneous provisions (chapter 5). The significance of this agreement is the arrangement of the West Bank and Gaza Strip. Like the Oslo-I, the agreement stipulated that it constituted a single territorial unit; however, the areas are divided into area A, B, and C. Area A and B are transferred into PA’s civil authority while area C, according to the agreement, will be “gradually transferred to Palestinian jurisdiction.”⁶⁶ For the security arrangement, area A will be under PA full responsibility, area B will be joint responsibility of Israel military forces and Palestinian police, meanwhile area C are fully left to Israel’s control.

Despite being a hallmark of the middle east peace process, the Oslo process was being undone as quickly as it was signed. A month after the peace process, Yitzhak Rabin was assassinated by a religious-nationalist Jew with the objective of derailing the peace process. Shimon Peres tried to continue the peace process left by Rabin, but cut short by Israeli Labor electoral defeat to Likud, led by Benjamin Netanyahu.⁶⁷

Likud has always opposed the land-for-peace deal with the PLO, which the Oslo accords embodied. On his campaign, Netanyahu promised to destroy the implementation of the Oslo agreement; and he did just that. During his tenure, he presided over the demolition of Arab houses, curfews, confiscation of Arab lands, new Jewish settlements. These were done in an elaborate attempt to block

⁶⁶ “The Israeli-Palestinian Interim Agreement,” *Israel Ministry of Foreign Affairs*, accessed on March 18, 2017, <http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/the%20israeli-palestinian%20interim%20agreement.aspx>.

⁶⁷ Avi Shlaim, “The Rise and Fall of the Oslo Process,” in *International Relations of the Middle East*, ed. Louise Fawcett, (Oxford: Oxford University Press, 2005), 254.

progress of the peace process, making the five-year time-table for the final status agreement unviable anymore.⁶⁸

Two additional agreements were done under Likud government with the PLO. First is the Hebron Protocol signed on 15 January 1997 that divided Hebron into Palestinian and Jewish Zone. The second is the Wye River Memorandum signed on 23 October where Israel agreed to withdraw further 13 percent from the West Bank in the period of three months.⁶⁹

In 1999, the winning of Labour party in Israeli elections created the possibility of continuing the peace process. However, despite the Labour party victory and the two additional agreements made by the Likud Israeli government, the prospect of the peace process remained bleak. The Likud government failed to implement the Wye River Memorandum. Ehud Barak signed the Sharm el-Sheikh agreement with the PLO on 4 September 1999 putting a new timetable for the final status agreement. However, the February deadline to make a “framework agreement” came and went without any agreements, fueling the frustrations of the Palestinian side. Camp David Summit in 2000 tried to make a new agreement between Israel and the Palestinians. However, the negotiations that started on 11 July 2000 and lasted fourteen days ended in failure, without an agreement reached.⁷⁰

Among the Palestinians themselves, the Oslo accords were received with mixed reactions, if not outright rejection. Fatah accepted that the Oslo agreements were unfortunate but necessary for the Palestinians. Rival groups took an outright

⁶⁸ Ibid.

⁶⁹ Ibid., 254-255.

⁷⁰ Ibid., 256.

hostile position, Hamas, Islamic Jihad, and the Popular Front for the Liberation of Palestine refused to recognize Israel, thus saw that the Oslo accords were null and void.⁷¹

Edward Said, a Palestinian American intellectual, vehemently opposed the Oslo accords laying down his argument on his 1993 article titled “The Morning After”. Said called the agreement as the “Palestinian Versailles”, aimed for the suspension for the rights of the Palestinian people. From the Letters of recognition between Israel and PLO, it has been an unfair condition for the agreements between the two. Israel was only obligated to recognize PLO as the representation of the Palestinian people, meanwhile PLO has to pledge a series of renouncements: renouncing parts of PLO Charter, renouncing violence and terrorism, relevant UN resolutions except 242 and 338.⁷² Postponing the questions land and sovereignty, as the Oslo accords have done, effectively discounted Palestinian legitimate claim on Gaza and West Bank,⁷³ and will further weaken Palestinian position against Israel. In terms of the economic arrangements, the Palestinian state is irrelevant for Israel as long as Israel incorporated the territories economically; thus increasing their dependence to Israel.⁷⁴ The agreement did not address issues that are of importance to Palestinian self-determination and statehood, such as Israeli settlements on Gaza and the West Bank, Palestinians refugees and diasporas dating back from 1948, and importantly the arrangement

⁷¹ “Oslo Explained,” *Aljazeera America*, last modified September 13, 2013, <http://america.aljazeera.com/articles/2013/9/13/oslo-accords-explained.html>.

⁷² Edward Said, “The Morning After,” *Perspectives*, Issue 5 December 2013, 16-17.

⁷³ *Ibid.*, 18.

⁷⁴ *Ibid.*, 19.

of final status talks, and reparations for the Palestinians that are the victims of the conflict since 1948.⁷⁵

In the eye of international law, the Oslo accords are oddities. Question is raised on whether they are legally binding for several considerations. From the Letters of Recognition until the Wye River Memorandum, they are not treaties by two states, rather, they are agreements between Israel — which is a state — and PLO — which is an organization representing the Palestinian people. Under international humanitarian law, the occupying power must not conclude agreements that aim at depriving the other party from the benefits of the fourth Geneva convention, nor allowing annexation of the territories by the occupying power.⁷⁶ Under Palestinian law, the binding nature of the accords is questioned as they never ratified by the PNC or the PLO's Central Committee. None of the Oslo accords has been registered to the UN Secretariat.⁷⁷ Changes of the circumstances that were previously not foreseen by any party happen, namely Israel's unilateral disengagement from Gaza in 2004 and Hamas electoral victory in 2006. The Oslo-II does not contain any termination clause, thus allowing Israel to apply it one-sidedly. Accusations of Israel implementing apartheid policy on Palestinians raised the question on whether the accords are null and void, since apartheid is illegal under international law. Palestine admission as the Non-Member Observer state to the UN in 2012 raised the question, whether the Oslo accords can or cannot bind in the circumstances when the observer states is a separated entity

⁷⁵ Ibid., 22.

⁷⁶ Victor Kattan, "Are The Oslo Accords Still Legally Binding? Ten Points to Consider," *Perspectives*, Issue 5 December 2013, 38.

⁷⁷ Ibid., 39.

from PLO.⁷⁸ Israel keeps several reservations on the accords, thus they do not bind Israel entirely. And finally, the final status talk was supposed to be concluded on 4 May 1999. However, there has not been any signal of the final status talks until recently. Thus, without final status talk, the *raison d'être* of the Oslo process are void.⁷⁹

C. Palestinian Authority

Palestinian Authority (PA) is a political entity created through the Oslo Accords as an interim government over the period of five years, in during the supposed period Israel gradually transferred power to the PA. Initially the jurisdiction was limited into the Gaza and Jericho area, pursuant of the Gaza-Jericho Agreement, then its jurisdiction was broadened into several more areas pursuant of Oslo-II.

The seat of PA is the city of Ramallah in the West Bank, although Palestinians regard Jerusalem as their capital,⁸⁰ in pursuant of Palestine's declaration of independence by the PLO on 1988. PA has the executive, legislative, and judicial organs of governance. The executive branch has the cabinet comprises of a prime minister and 24 ministers,⁸¹ and president as the head of state. The Palestinian Legislative Council acts as the legislature with 132 representatives⁸² tasked with drafting laws and overseeing the executive branch.

⁷⁸ Ibid., 40.

⁷⁹ Ibid., 41.

⁸⁰ Jim Zanotti, *The Palestinians: Background and U.S. Relations*, (Washington DC: Congressional Research Service, 2010), 19, <http://fpc.state.gov/documents/organization/137185.pdf>.

⁸¹ "Political system (Palestinian)," *Jerusalem Media & Communication Centre*, last modified January 18, 2009, <http://www.jmcc.org/fastfactspag.aspx?tname=12>.

⁸² "Palestinian Government," *Mission of Palestine*, accessed December 27, 2016, <http://palestine.dk/palestine/government/>.

Its members are chosen by the electorate in West Bank, Jerusalem, and Gaza Strip. The judicial branch boasts up to 37 courts of law that are divided into magistrate courts, courts of first instance, and three courts of appeal in Jerusalem, Ramallah, and Gaza. The high court of justice and the court of appeal and cessation can be appealed to for the cases of the previous courts. There are also The Supreme Court of justice tasked to examine administrative disputes, and the Higher Judicial Council.⁸³

Despite being the local government of Palestine, PA is subordinate to PLO. PLO is the representative of Palestinians both in the territories and the diaspora, and it is PLO that carried the agreements of the Oslo Accords that led to the creation of PA. PLO is also the one tasked with conducting foreign relations of Palestine through running foreign offices and signing agreements on the behalf of the Palestinians. Even the Palestinian Army is subordinate to PLO, not to PA.

On 29 November 2012, United Nations General Assembly Resolution 67/19 was passed, by majority of 138 in favour and 9 against the solution, with 41 abstentions.⁸⁴ According to the resolution, Palestine was granted non-member observer state status in the United Nations, without “prejudice to the acquired rights, privileges and role of the Palestine Liberation Organization in the United Nations as the representative of the Palestinian people,”⁸⁵ The significance of this move by Palestine is the change of status will contribute to Palestine’s

⁸³ “Political system (Palestinian),” *Jerusalem Media & Communication Centre*.

⁸⁴ “General Assembly Votes Overwhelmingly to Accord Palestine ‘Non-Member Observer State’ Status in United Nations,” *United Nations*, last modified November 29, 2012, <https://www.un.org/press/en/2012/ga11317.doc.htm>.

⁸⁵ General Assembly resolution 67/19, *Status of Palestine in the United Nations*, A/RES/67/19 (4 December 2012), available from <http://palestineun.org/wp-content/uploads/2013/08/67-19-Status-of-Palestine.pdf>.

participation in the UN, although full membership is needed. The designation “state” in the resolution can be interpreted as recognizing the statehood of Palestine.⁸⁶

Following the UN admission of Palestine as non-member observer state, Mahmoud Abbas signed a decree on 4 January 2013 to officially change the name of Palestinian Authority to the “State of Palestine”. Palestinian stamps, signs, and official letterheads henceforth use the name “State of Palestine”.⁸⁷ Saeb Erekat, Chief Palestinian Negotiator, explained that the name change of PA to the “State of Palestine” is a manifestation of the state itself and to better the Palestinian position in future negotiations.⁸⁸

The Palestinian flag flew for the first time on 30 September 2015 at the United Nations headquarter.⁸⁹ The act followed the decision of the UN General Assembly by Resolution 69/320 that decided the flags of non-member observer states at the UN to be raised at UN Headquarters and offices. The resolution was passed by a vote of 119 in favour to 8 against with 45 abstentions. The resolution

⁸⁶ “Palestinian UN ‘observer state’ status: what it really means,” *United Nations Associations – UK*, last modified January 31, 2013, <https://www.una.org.uk/sites/default/files/Revised%20UNA-UK%20briefing%20-%20Palestinian%20UN%20'observer%20state'%20status%20-%20January%202013.pdf>.

⁸⁷ The Associated Press, “Palestinian Authority Officially Changes Name to ‘State of Palestine’,” *Haaretz*, last modified January 5, 2014, <http://www.haaretz.com/middle-east-news/palestinian-authority-officially-changes-name-to-state-of-palestine-premium-1.492065>.

⁸⁸ “Inside Story – Palestine: What is in a name (change)?,” YouTube Video, 25:00, posted by “Al Jazeera English,” January 8, 2013, <https://www.youtube.com/watch?v=HpYS9VHBupI>.

⁸⁹ Justin Worland, “Watch as Palestinian Flag Is Raised at U.N. for First Time,” *Time*, last modified September 30, 2015, <http://time.com/4055907/watch-palestinian-flag-united-nations/>.

took Palestine closer to achieving statehood, argued Turkish delegate and Iraqi speaker to the UN General Assembly.⁹⁰

On 23 December 2016, a resolution on the UN Security Council reaffirmed that Israeli settlements in Occupied Palestinian Territories has no legal validity and that the settlements constitute a violation of international law as well as major obstacle to the two states solution. The Resolution 2334 (2016) was adopted by 14 votes with the United States abstaining.⁹¹ The resolution was the first resolution taken by the UN Security Council on Israel-Palestine issue since 2009.

D. Reviewing Palestinian Statehood

To briefly revisit the concept of “state” is necessary in order to understand the trappings needed by an entity to be considered as a “state.” And recognizing whether government that reside in Ramallah today can be categorized as a state or not

An Italian jurist, Pasquale Fiore, defines the state as an association of people who live within a definite territory as a political society and subject to a sovereign who is able to maintain the organization of the association with the help of law, and able to conduct relations with other state as well as assuming responsibility for its actions.⁹² Fiore’s definitions of the state has some elements that oft-cited by other scholars as the characteristics of the state; such as political organization,

⁹⁰ “State of Palestine Flag to Fly at United Nations Headquarters, Offices as General Assembly Adopts Resolution on Non-Member Observer States,” *United Nations*, last modified September 10, 2015, <https://www.un.org/press/en/2015/ga11676.doc.htm>.

⁹¹ “Israel’s Settlements Have No Legal Validity, Constitute Flagrant Violation of International Law, Security Council Reaffirms,” *United Nations*, last modified December 23, 2016, <https://www.un.org/press/en/2016/sc12657.doc.htm>.

⁹² Thomas D. Grant, “Defining Statehood: The Montevideo Convention and Its Discontents,” *Columbia Journal of International Law*, vol. 37(2) (1999): 409.

population, sovereignty, rule of law, ability to conduct relations with other states, and responsibility assumption for its own actions.

In customary international law, the Montevideo Convention on Rights and Duties of State is often cited as the definite text for the definition of statehood. The convention was adopted on 26 December 1933 and entered into force on 26 December 1934 by 19 American states with three reservations made by Brazil, Peru, and the United States.⁹³

According to Article 1 of the Montevideo Convention, the qualifications of a state as a person in international law are permanent population, a defined territory, government, and the capacity to enter relations with other states. Note that capacity, not recognition is more important to an entity to be recognized as a state, as further elaborated in Article 3 that asserted the political existence of the state is independent of recognition by other states, and prior to recognition it is the state's rights to defend its independence and govern itself. Recognition of the state by other state merely means that they recognize each other's rights and duties as the state, as explained in Article 6.

Further, going over the four criteria of statehood and how they correspond with the Palestine's situation are necessary. Palestine indeed has a permanent population, specifically those who lived in the West Bank and Gaza Strip, numbering of total 2.967.687⁹⁴ and 1.753.327⁹⁵ respectively — estimated on July

⁹³ "A-40: Convention on Rights and Duties of States," *Organization of American States*, accessed December 6, 2016, <http://www.oas.org/juridico/english/sigs/a-40.html>.

⁹⁴ "The World Factbook Middle East: West Bank," *Central Intelligence Agency*, accessed December 30, 2016, <https://www.cia.gov/library/publications/the-world-factbook/geos/we.html>.

⁹⁵ "The World Factbook Middle East: Gaza Strip," *Central Intelligence Agency*, accessed December 30, 2016, <https://www.cia.gov/library/publications/the-world-factbook/geos/gz.html>.

2016. The territory of the state of Palestine has been established since Oslo-II that Palestinian territories would constitute West Bank and Gaza Strip. It may be argued that West Bank and Gaza Strip are fragmented territories and has undefined borders, but exclaves are common to national borders, such as Alaska, Gibraltar, and Kaliningrad, meanwhile undefined border is not just Palestine problem, but Israel's as well.⁹⁶ In terms of government, Palestine has the Palestinian Authority that serves as the administrative institutions for the people living in the Palestinian territories, and since 2013 the designation "Palestinian Authority" has been replaced by "State of Palestine." On the capacity to enter relations, PLO already established relationship with states as the representative of Palestinian people both in territories and in the diasporas,⁹⁷ while currently Palestine has bilateral recognition with 137 states.⁹⁸

Experts opinion varies on Palestinian statehood. John Quigley argued that Palestine can be regarded as a state by how the United Nations treats Palestine as a state. Tracing back from 1988 when Palestinian declared its independence, Quigley cited that shortly after Yasser Arafat was invited to speak at the United Nations General Assembly, the resolution to recognize Palestine's 1988 declaration of independence was made in the General Assembly and passed with 104 states voted for the resolution.⁹⁹ Quigley further argued that "Palestine's solid

⁹⁶ Ilona-Margarita Stettner, "Palestinian Statehood According to International Law," *Konrad-Adenaur-Stiftung*, accessed May 2, 2016, <http://www.kas.de/palaestinensische-gebiete/en/pages/11510/>.

⁹⁷ "Palestine Liberation Organization (PLO)," *Konrad-Adenaur-Stiftung*, last modified August 2010, http://www.kas.de/wf/doc/kas_2041-1442-1-30.pdf?101018163243.

⁹⁸ "Diplomatic Relations," *Permanent Observer Mission of the State of Palestine to the United Nations*, accessed December 30, 2016, <http://palestineun.org/about-palestine/diplomatic-relations/>.

⁹⁹ John Quigley, "The Palestine Declaration to the international Criminal Court: The Statehood Issue," *Rutgers Law Record*, vol. 34 (2009): 4.

self-determination claim provides a further reason why the international community accepted Palestine as a state...”¹⁰⁰

Meanwhile, Sanford R. Silverburg argued straight from his article’s abstract that Palestine cannot be considered as a state. Silverburg argued that because territoriality is essential for statehood, geographical divide between West Bank and Gaza Strip weaken the claim that Palestine is a state¹⁰¹ and exacerbated when Hamas gained control of Gaza on 14 January 2007. Silverburg also argued “An international political actor need not necessarily be a ‘state,’ although it may appear to be one for purposes of political participation,”¹⁰² and doubt that Palestine has a legal personality needed to accept international legal obligations and responsibilities.¹⁰³

The struggle for Palestinian statehood is a continuous one, and currently full independence, beside statehood, is still in the future and something that Palestine is currently fighting for.¹⁰⁴ Nevertheless, the fact that ICC accepted Palestine declaration to accept jurisdiction of ICC in pursuant with Article 12(3) of the Rome Statute on 2014 means that ICC has already regarded Palestine as a state since 2015.

¹⁰⁰ Ibid., 6.

¹⁰¹ Sanford R. Silverford, “Is a State Divided by Xa “State”? Palestine as an Example,” *International Journal of Humanities and Social Science*, vol. 3(11) (2013): 44.

¹⁰² Ibid., 48.

¹⁰³ Ibid., 48.

¹⁰⁴ Taher Hamad, interview with the Author, December 16, 2016.