



Palestinian statehood

Standard Note: SN/IA/6051

Last updated: 11 August 2011

Author: Ben Smith and Arabella Thorp

Section International Affairs and Defence Section

Disillusioned with the US-led peace process, Palestinian leaders are seeking a UN resolution in September 2011 in favour of Palestinian statehood. The political implications of such a resolution are likely to be bigger than its legal ones. But despite the momentum gained by the Palestinian proposal, it is possible that external and internal opposition could delay the initiative.

The UK, along with the rest of the EU, has reserved its position on the question of recognition, considering that a truly viable Palestinian state requires negotiation with Israel. The US does not support the plan for the Palestinians to go to the UN, and Israel has called for it to be “forcefully opposed”.

The legal implications of a resolution would depend on whether it is from the General Assembly (recommendatory only) or from the Security Council (can be binding), and on the wording of the resolution.

A General Assembly resolution is likely to be passed, but would have little legal effect. If the resolution seeks full membership of the UN, it would need the US to vote in favour in the Security Council – highly unlikely at the moment. But even admission to the UN is formally an acknowledgement of statehood only for the purposes of the organisation (giving full speaking and voting rights in the UN and its subsidiary organisations and agencies), and does not constitute legal recognition as a state. Under international law, to be a state an entity must have a permanent population, a defined territory, effective government; and the capacity to enter into relations with other states. The last of these requirements effectively means that other states must recognise it as a state.

Either joining the UN or being recognised as a state would make some practical differences, but arguably the biggest impact of either would be symbolic.

This information is provided to Members of Parliament in support of their parliamentary duties and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as being up to date; the law or policies may have changed since it was last updated; and it should not be relied upon as legal or professional advice or as a substitute for it. A suitably qualified professional should be consulted if specific advice or information is required.

This information is provided subject to [our general terms and conditions](#) which are available online or may be provided on request in hard copy. Authors are available to discuss the content of this briefing with Members and their staff, but not with the general public.

Contents

- 1 Introduction 3**
- 2 UK policy 3**
- 3 US policy 5**
- 4 Israel’s reaction 6**
- 5 What kind of resolution? 7**
 - 5.1 General Assembly or Security Council? 7
 - 5.2 “Uniting for Peace” procedure 7
- 6 Membership of the UN 8**
 - 6.1 Current status 8
 - 6.2 Joining the UN 9
 - 6.3 Implications 10
- 7 Recognition of statehood 10**
 - 7.1 Current status 10
 - 7.2 Procedure 10
 - 7.3 Implications 11

1 Introduction

With the perceived lack of progress in 2010 on the peace process based on the “Road Map”,¹ the Palestinian negotiating team let it be known that it would seek a United Nations resolution in September 2011 recognising the existence of a Palestinian state. This was in clear conflict with US policy and, taken together with the moves towards reconciliation between Hamas and Fatah,² represented a rejection by Palestinians of the US-led peace process.

Although the Palestinian proposal has gained significant momentum and publicity, it is unlikely to have much legal effect and has not produced any change in approach from either the US or the EU. With no detail yet about exactly what is proposed, it is possible that external and internal opposition could delay the proposal.³

2 UK policy

Foreign Secretary William Hague set out the Government's policy in response to an Oral Question on 19 July, saying that he had agreed with other EU foreign ministers to reserve judgment, as that might be a more useful bargaining position:

Richard Burden: For more than half a century, Israel has rightly been recognised as a full member of the United Nations, with internationally recognised borders delineated by the green line. That has not been seen as an impediment to a negotiated settlement—in some cases, it has been seen as a prerequisite to it. In that case, what is the problem with recognising Palestine as a full member of the United Nations as requested by the Palestinian people, with borders delineated by that same green line?

Mr Hague: This is of course the issue that may come to the UN in September. Whatever happens then, we must remember that to have a truly viable Palestinian state in control of its own territory, it is necessary to arrive at that by negotiation. It can be obtained only through successful negotiation with Israel, whatever resolutions are passed wherever in the world, including at the United Nations. We have reserved our position on the question of recognition. I discussed it again with my European Union colleagues in Brussels yesterday, and we have all agreed that we will reserve our position, partly because it gives us some leverage over both Israelis and the Palestinians as we urge them back into talks in the coming weeks and months. That is our focus at the moment.⁴

Asked whether the Government intended to support a resolution or not, Lord Howell, on 28 June, declined to give a ‘yes or no’ answer:

Lord Patel of Blackburn: To ask Her Majesty's Government whether they intend to support a resolution on the recognition of the state of Palestine, which is planned to be put before the United Nations General Assembly in September.

The Minister of State, Foreign and Commonwealth Office (Lord Howell of Guildford): We want to see a Palestinian state living in peace and security with Israel, and as a member of the UN. The Arab spring gives further impetus to this goal.

¹ For more information about the stalling of the peace process, due to controversy over the expansion of Israeli settlements in the Occupied Territories, see the Library Standard Note [Middle East Peace Process: historical background and a detailed chronology from 1990 to the present](#), of 21 December 2010

² For more on Hamas and Fatah, see the Library Standard Note [Hamas, Fatah and the Middle East Quartet principles](#), 17 May 2011

³ “Senior Palestinian official calls for delay to statehood plans”, *Jane's Intelligence Weekly*, 20 July 2011

⁴ HC Deb 19 July 2011, [c782](#)

Palestinians deserve statehood and the freedom that entails and Israelis deserve long-term security. That is why we are pressing the parties to return to negotiations urgently on the basis set out by President Obama: 1967 borders with mutually agreed land swaps and security arrangements that protect Israel and respect Palestinian sovereignty.⁵

Back in May 2011, an exchange in the House of Lords showed that the Government was broadly following the US administration's line in rejecting the move for a UN resolution because they believe that it will undermine the negotiations and might provoke instability:

Lord Sheikh: To ask Her Majesty's Government what is their assessment of the proposed Palestinian statehood declaration, which is planned to be placed before the United Nations General Assembly in September.

The Minister of State, Foreign and Commonwealth Office (Lord Howell of Guildford): My Lords, we see negotiations towards a two-state solution as the only way to meet the national aspirations of Israelis and Palestinians and lead to a sovereign, viable and contiguous Palestinian state living in peace and security alongside a safe and secure Israel and their other neighbours in the region.

The UK is fully committed to supporting the Fayyad plan and helping build the institutions of a future Palestinian state, but a negotiated solution remains the only result that will actually bring peace and justice to the Palestinian people. We call on the parties to return urgently to negotiations.

Lord Sheikh: My Lords, I thank the Minister for his response. Does he think that the agreement signed by Fatah and Hamas is a step in the right direction for the attainment of statehood? Does he also feel that the work done by the Prime Minister, Salam Fayyad, in building the Palestinian institutions and economy has created the apparatus of a state, and that these achievements need to be recognised?

Lord Howell of Guildford: Of course this step is not yet fully consummated, but we want to see the formation of a Government who reject violence. If Hamas is to be part of that Government, it must reject violence; that is our position. If that were to go forward on the basis of the rejection of violence, we would see that as a good basis for building further hopes and moves towards serious negotiation. The Fayyad plan, as I have said, is something that we support. It takes us in the right direction towards building Palestinian statehood and getting the negotiations going again, which is central and crucial. [...]

The Lord Bishop of Chester: My Lords, does the Minister agree that a premature declaration of a Palestinian state might destabilise the region rather than contribute to the emergence of a stable two-state solution?

Lord Howell of Guildford: The right reverend Prelate is right; it might do so. Of course one understands why there is a desire to move forward in this direction, but our position is that statehood must be built through the pattern of a negotiation that must be resumed, and that pressure should be put on both the Israeli side and on a peace-aiming, violence-rejecting Palestinian Government to move forward on that basis.⁶

The EU policy of a "reserved position", mentioned by William Hague in July, may in fact have more to do with an inability to agree a position than anything else. According to reports, the EU foreign ministers' meeting in Brussels on 18 July failed to resolve differences between

⁵ HL Deb 28 June [c412-3WA](#)

⁶ HL Deb 16 May, [cc1144-6](#)

member states on the questions of recognition and how to respond to a General Assembly move.⁷ The Czech Republic, Germany, Italy, the Netherlands and Romania are said to be opposed to any recognition, while France and Spain, among others, are more favourable. Britain is said to be "on the fence".⁸

For the EU to fail to present a united front in response to such an important event would be a major embarrassment to those who want the Union to coordinate member states' foreign policies in order to have more influence on world affairs.

One European plan to deal with the proposal for September is to try to persuade the Palestinians to table a watered-down resolution at the General Assembly, possibly based on a joint statement issued by Britain, France and Germany in February 2011. The statement called for a resumption of negotiations "as soon as possible," based on an acceptance by both sides of the following principles:

- borders based on the 1967 Green Line "with equivalent land swaps as may be agreed between the parties"
- "a just, fair and agreed solution to the refugee question."
- the acceptance of Jerusalem as the "future capital of both states"
- security arrangements that show the Palestinians that the occupation is finished and the Israelis that a resurgence of terrorism would be prevented.⁹

3 US policy

Hillary Clinton said recently at the Brookings Institution think tank that the US did not support the plan for the Palestinians to go the UN:

...to demonstrate their commitment to peace, [the parties] should avoid actions that prejudice the outcome of negotiations or undermine good faith efforts to resolve final status issues. Unilateral efforts at the United Nations are not helpful and undermine trust. Provocative announcements on East Jerusalem are counterproductive. And the United States will not shy away from saying so.¹⁰

While there has not been an explicit vow to veto a Security Council motion on the part of the Administration, it is reported that officials would prefer to avoid that if at all possible:

Palestinian officials said they were forging ahead with their own plans to pursue United Nations recognition of a Palestinian state when the General Assembly meets in September in New York -- a gambit that alarms American officials, who loathe being put in the position of having to vote against Palestinian statehood just as popular democratic movements are taking hold throughout the Middle East.¹¹

⁷ "EU remains divided over recognition of Palestine", *European Voice*, 14 July 2011

⁸ "As U.S. Steps Back, Europe Takes Bigger Role in Mideast Peace Push", *New York Times*, 21 July 2011

⁹ [Explanation of vote on the situation in the Middle East - Security Council Joint Statement of the United Kingdom, France and Germany](#), 18 February 2011

¹⁰ [Clinton's Remarks at the Brookings Institution's Saban Center for Middle East Policy Seventh Annual Forum, December 2010](#), 10 December 2010

¹¹ "As Uprisings Transform Mideast, Obama Aims to Reshape the Peace Debate", *New York Times*, 18 May 2011

If the Palestinians did seek a Security Council motion, one of its objectives would be to embarrass the US by forcing it to veto the motion, but is reported that the Administration is not as worried about being isolated in that position as it used to be.¹²

It is significant, however, that the US and the EU are no longer coordinating their policies so closely on the subject. This was demonstrated in February 2011, when the EU members of the Security Council voted in favour of a Security Council Resolution condemning Israeli building of settlements in the Occupied Territories while the US vetoed it. Germany, traditionally a strong supporter of Israel and temporarily sitting on the Security Council, voted with permanent members the UK and France in favour of the resolution.¹³

William Hague has pointed to disagreement between the Quartet members over the approach to take:

Mrs Anne McGuire (Stirling) (Lab): The Secretary of State will be aware that the UK ambassador to Israel, Matthew Gould, said that if there is “a UN resolution” about

“a Palestinian state, and nothing changes on the ground, this will create a dangerous situation.”

Given the Foreign Secretary’s ambition to have peace negotiations started as soon as possible, can he give us an insight into why, when the Quartet met on 11 July, it failed to agree a statement on President Obama’s framework for peace negotiations?

Mr Hague: The answer is that discussions continue within the Quartet. There was a difference of view between the United States on the one side and the European Union, the United Nations and Russia on the other about the details of a Quartet statement. I hope that those differences can be resolved. We welcome the fact that the United States has said, as we urged them, that a settlement should be based on 1967 borders. That has been a big step forward, but there are continuing disagreements over the definition of a Jewish state and over the precise way in which to phrase a commitment to 1967 borders, so we are working to overcome those differences. That is the current situation.¹⁴

4 Israel’s reaction

In April 2011, Israeli President Shimon Peres visited the United Nations in New York to “ward off” a resolution recognising Palestine.¹⁵ In May, Prime Minister Binyamin Netanyahu reiterated Israel’s opposition to the move, in his speech to the US Congress:

The Palestinian attempt to impose a settlement through the United Nations will not bring peace. It should be forcefully opposed by all those who want to see this conflict end.¹⁶

Others in Israel have made clear their support for early recognition of Palestine. A group of leading left-leaning intellectuals published a manifesto in April welcoming the declaration of independence. An activist said:

¹² *ibid*

¹³ United Nations, “[United States vetoes Security Council resolution on Israeli settlements](#)”, Press release, 18 February 2011

¹⁴ [HC Deb 19 July 2011 c787](#)

¹⁵ “Warning By Israeli On U.N. Nod To Palestinians”, *New York Times*, 8 April 2011

¹⁶ Israel Ministry of Foreign Affairs, [Speech by PM Netanyahu to a Joint Meeting of the U.S. Congress](#), 24 May 2011

If you support the notion of two states for two peoples you have to treat it as an opportunity rather than a threat as it makes no sense to try to work against it.¹⁷

5 What kind of resolution?

5.1 General Assembly or Security Council?

So far there are no reports of the wording of any proposed motions at either the General Assembly (GA) or the Security Council (SC). A GA resolution would be symbolic – recommendatory rather than binding – whereas an SC resolution could be binding on UN Member States if the SC chose to word it that way.

Most discussion in the media of the Palestinian Authority's plans talks about approaching the GA, where it is likely that any motion would get the votes needed to be passed.¹⁸ Palestine has already been acknowledged in a GA resolution. On 15 December 1988, the UN General Assembly (GA) passed a resolution in which it "acknowledges the proclamation of the State of Palestine".¹⁹ It may be that the motion to be presented in September will be along similar lines to that passed in 1988.

Some reports have also suggested that the Palestinian Authority may try to get an SC member to table a motion recommending the admission of Palestine as a member of the UN. This, however, seems less likely, as there is little doubt that the US would veto such a motion.

5.2 "Uniting for Peace" procedure

One possibility is that Palestine will seek to present the resolution to the GA under the "Uniting for Peace" procedure. This was introduced in 1950 as a way of circumventing the SC when the veto was preventing the SC from taking action against a threat to the peace, breach of the peace, or act of aggression. The procedure empowers the GA to intervene in cases of international conflict:

*Resolves that if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including in the case of a breach of the peace or act of aggression the use of armed force when necessary, to maintain or restore international peace and security.*²⁰

According to the Max Planck Encyclopedia, "Doctrine is divided whether UNGA Resolution 377 (V) has ever been used as a legal basis to recommend effective enforcement action".²¹ Because GA resolutions can only recommend, not require, action, the legal effects of a "Uniting for Peace" resolution are limited:

28 From a formal point of view, resolutions of the General Assembly are not binding. Accordingly, Art. 103 UN Charter, providing for a precedence of UN Charter obligations in case of contradiction with other international obligations, does not apply. Therefore,

¹⁷ "Israeli laureates back fight for Palestinian statehood", *Times*, 22 April 2011

¹⁸ See for example, "The blow-up with Israel", *Washington Post*, 22 May 2011

¹⁹ UN General Assembly, [Resolution 43/177: Question of Palestine](#), 20 December 1988

²⁰ UN General Assembly Resolution 377 A [V], 3 November 1950, UN Doc A/1775, part A

²¹ Christina Binder, "[Uniting for Peace Resolution \(1950\)](#)", *Max Planck Encyclopedia of Public International Law*, last updated August 2006

Member States acting on the basis of UNGA Resolution 377 A (V) may only do so within the limits of existing international obligations. This requirement greatly reduces the possible impact of the Uniting for Peace Resolution.

29 A more progressive position may however justify a contravention of international obligations pursuant to a General Assembly recommendation as a legitimate countermeasure in the collective interest ... provided it does not affect the prohibition of the use of force. Although—due to the scarcity of State practice—there appears to be no clearly recognized entitlement of States to take countermeasures in the general or collective interest, a General Assembly resolution recommending such measures might provide an essential additional basis of legitimacy. Accordingly, a derogation from existing treaty obligations might be permissible if it is taken pursuant to a General Assembly resolution recommending economic sanctions as was the case with respect to South Africa ...

30 A legitimate countermeasure must never violate the prohibition of the use of force. Hence, a recommendation of the General Assembly to take collective military measures seems to be in accordance with the UN Charter only in so far as specific military action taken on the basis of the resolution is justified by the right to collective self-defence under Art. 51 UN Charter ... The recommendation itself, however, is no justification for a breach of the prohibition of the use of force ...

6 Membership of the UN

The Palestinian leadership may use the resolution to seek full membership of the UN, which would require a Security Council vote in its favour.

6.1 Current status

Palestine has an unprecedented status in the UN, not just as an observer but also with some of the same rights and privileges of participation as member States, including the right to sponsor some draft resolutions.

Since October 1974 the GA has recognised the Palestine Liberation Organisation as the representative of the Palestinian people, and invited it to participate in debates on Palestine as if it were a UN member state.²² It gained UNGA observer status the following month,²³ along with observer status in other UN bodies including the UN Economic and Social Council (ECOSOC), the UN Development Programme (UNDP) and the World Health Organisation (WHO).

The SC has also recognised the PLO, giving it since 1975 the full rights of participation of a state in the SC's discussions of the situation in the Middle East, including the Palestine question.²⁴

In the 1988 GA resolution which acknowledged the proclamation of the State of Palestine, the GA decided that the designation "Palestine" should be used in place of the designation "Palestine Liberation Organisation" in the UN system.²⁵ Ten years later, in July 1998, another GA Resolution²⁶ gave Palestine additional rights and privileges of participation which

²² UNGA Resolution 3210 (XXIX)

²³ UNGA Resolution 3237 (XXIX)

²⁴ UNSC, SCOR 30th year 1859th meeting, 4 December 1975

²⁵ UNGA Resolution 43/177, 20 December 1988

²⁶ UNGA Resolution 52/250, 7 July 1998

are reserved for Member States, including the right to sponsor draft resolutions on the question of Palestine.²⁷

A 1998 note from the UN Secretary General gives more details about Palestine's participation in the UN.²⁸

6.2 Joining the UN

The procedure for joining the UN does not require candidates to meet an objective standard for nationhood: it is not a legal process but a political one, requiring votes amongst existing UN member states.²⁹ The [United Nations website](#) explains:

The recognition of a new State or Government is an act that only other States and Governments may grant or withhold. It generally implies readiness to assume diplomatic relations. The United Nations is neither a State nor a Government, and therefore does not possess any authority to recognize either a State or a Government. As an organization of independent States, it may admit a new State to its membership or accept the credentials of the representatives of a new Government.

Membership in the Organization, in accordance with the Charter of the United Nations, "is open to all peace-loving States which accept the obligations contained in the [United Nations Charter] and, in the judgment of the Organization, are able to carry out these obligations". States are admitted to membership in the United Nations by decision of the General Assembly upon the recommendation of the Security Council. The procedure is briefly as follows:

1. The State submits an application to the Secretary-General and a letter formally stating that it accepts the obligations under the Charter.
2. The Security Council considers the application. Any recommendation for admission must receive the affirmative votes of 9 of the 15 members of the Council, provided that none of its five permanent members — China, France, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America — have voted against the application.
3. If the Council recommends admission, the recommendation is presented to the General Assembly for consideration. A two-thirds majority vote is necessary in the Assembly for admission of a new State.
4. Membership becomes effective the date the resolution for admission is adopted.

At each session, the General Assembly considers the credentials of all representatives of Member States participating in that session. During such consideration, which routinely takes place first in the nine-member Credentials Committee but can also arise at other times, the issue can be raised whether a particular representative has been accredited by the Government actually in power. This issue is ultimately decided by a majority vote in the Assembly. It should be noted that the normal change of Governments, as through a democratic election, does not raise any issues concerning the credentials of the representative of the State concerned.

²⁷ Anis F Kassim, "[Palestine Liberation Organization \(PLO\)](#)", *Max Planck Encyclopedia of Public International Law*, last updated July 2009

²⁸ [Secretary-General Note on Palestine Participation](#), UN General Assembly A/52/1002, 4 August 1998

²⁹ Joshua Keating, "[Trying to beat Palestine on a technicality](#)", *Foreign Policy*, 4 August 2011

6.3 Implications

Admission to the UN is only an acknowledgement of statehood for the purposes of the organisation: “It does not constitute collective recognition by the international community, or recognition of the entity by individual Member States of the United Nations”.³⁰ However, given the need for a two-thirds majority in the General Assembly to support an application for membership, UN membership is an important indicator of substantial recognition.

Full membership of the UN would give Palestine full speaking and voting rights in the UN and its subsidiary organisations and agencies. States that are members of the UN can submit “contentious cases” to the International Court of Justice (ICJ) for judgment;³¹ but so can other states which have become parties to the ICJ Statute or which have accepted the ICJ’s jurisdiction under certain conditions.

Membership of the United Nations would also oblige the Palestinian leadership to comply with the UN charter’s obligation on all member states to “settle their international disputes by peaceful means” and “refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state...”.³²

7 Recognition of statehood

Even if Palestine were recognised as a UN Member State, it would not necessarily amount to legal recognition of its statehood under international law.

7.1 Current status

Following the Palestine National Council’s proclamation of the State of Palestine on 15 November 1988, Palestine is recognised as a state by around 100 states.³³ There are reports that France and other states are considering formal recognition of Palestine as a state in September 2011.³⁴

The Palestine Liberation Organisation is a widely recognised non-State entity, which “has established itself as an effective participant in coercive and ordinary situations” and “is a participant in the world social process at large”.³⁵

7.2 Procedure

It is generally accepted under the Montevideo Convention³⁶ that for an entity to be regarded as a state for the purposes of international law it should possess: a permanent population; a defined territory; effective government; and the capacity to enter into relations with other states.³⁷

There is no international legal obligation upon states to recognise an entity claiming statehood, and recognition itself is not a formal requirement of statehood. However, without

³⁰ Rebecca MM Wallace and Olga Martin-Ortega, *International Law*, 6th edition, 2009, p86

³¹ [Statute of the International Court of Justice](#), art 34(1). See also ICJ, [How the Court works](#) [undated; viewed 19 May 2011]. Previous ICJ cases concerning Palestine have been advisory opinions on the request of the UN General Assembly: for example [Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory](#)

³² [UN Charter, Art 2](#)

³³ [“EU to recognise Palestinian state 'when appropriate’](#), *BBC news online*, 13 December 2010

³⁴ See for example [“France 'positive' about recognising Palestinian state’](#), *EurActiv.com*, 21-22 April 2011

³⁵ Anis F Kassim, [“Palestine Liberation Organization \(PLO\)”](#), *Max Planck Encyclopedia of Public International Law*, last updated July 2009

³⁶ [1933 Montevideo Convention on Rights and Duties of States](#)

³⁷ See for example the 1933 Montevideo Convention on the Rights and Duties of States

recognition by other states, the entity would be unable to enter into relations with other states.³⁸ The extent of the legal effect of recognition is a matter for considerable debate, the main competing theories being (1) that recognition establishes an entity as a state and (2) that recognition is only acknowledgement of already existing circumstances. But it is fair to say that recognition can play a particularly important political role.³⁹

Recognition may be either express (a formal declaration of recognition) or implied (the establishment of diplomatic relations or the conclusion of a bipartite treaty on a general topic).⁴⁰

7.3 Implications

Much would depend on where the borders of a recognised Palestinian state would lie. As noted above, a “defined territory” is one of the requirements of statehood in international law, although this requirement may be satisfied even if the boundaries are not precisely defined or are to some extent in dispute.⁴¹

The Israeli army located on Palestinian land is already considered an occupying force by the Israeli Supreme Court, the UN, the US, the UK and others.⁴² In their eyes, recognising Palestine as a state would therefore make little legal difference to the status of Israeli forces in those parts of the Occupied Palestinian Territories that were included in the borders of a Palestinian state. It would however increase the options for Palestine to challenge the occupation, for example.

The status of settlements would depend on the borders of a recognised Palestinian state and whether any ‘land swap’ was agreed. International law on occupied territories forbids transferring civilian populations into an occupied territory.⁴³

The control of airspace, borders and resources are normal powers of sovereign states. At the moment Palestine does not have these powers. The 1995 [Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip](#) (‘Interim Agreement’) outlines the self-governing powers of the Palestinian Authority (now known as the Palestinian National Authority). The Authority does not have powers over external security or foreign relations (the PLO represents the Palestinian Authority abroad). It is allowed a police force but no other armed forces.

The Palestinian National Authority has already applied to recognise the jurisdiction of the International Criminal Court (ICC), under Article 12(3) of the ICC’s Rome Statute which allows States not party to the Statute to accept the Court’s jurisdiction. The ICC’s Office of the Prosecutor is considering “first whether the declaration accepting the exercise of jurisdiction by the Court meets statutory requirements; and second whether crimes within the Court’s jurisdiction have been committed”.⁴⁴ If Palestine were recognised as a state it would be able to accept the ICC’s jurisdiction or to become a member state of the ICC. However, that is not the only way for the ICC to hear cases that Palestine might want to bring: as well

³⁸ Rebecca MM Wallace and Olga Martin-Ortega, *International Law*, 6th edition, 2009, p67

³⁹ James Crawford, ‘The Creation of States in International Law’, (OUP: 2006) 384

⁴⁰ Rebecca MM Wallace and Olga Martin-Ortega, *International Law*, 6th edition, 2009, p86

⁴¹ See Rebecca MM Wallace and Olga Martin-Ortega, *International Law*, 6th edition, 2009, p65

⁴² Benjamin Rubin, “[Israel, Occupied Territories](#)”, *Max Planck Encyclopedia of Public International Law*, last updated October 2009

⁴³ [Fourth Geneva Convention](#), Art 49

⁴⁴ International Criminal Court, Office of the Prosecutor, [Palestine](#) [undated; viewed 19 May 2011]

as referrals by member states, the ICC can hear cases referred to it by the UN Security Council, or the ICC Prosecutor can decide to begin an investigation on his own initiative.