

# Why the British Government should recognise the independent State of Palestine and its Territorial Integrity

A Caabu Briefing Paper  
by John McHugo



caabu

كابو

Advancing Arab-British Relations

## **1. Introduction**

**1.1** The Oslo Accords which were intended to lead to peace between Israelis and Palestinians were signed as long ago as 1993. Yet today what is still called the “peace process” is leading nowhere. Over the years Palestinian negotiators have offered many concessions, but were only asked to make more. The fundamental problem is that Israel, by far the stronger party, has always insisted that the Palestinians recognise its rights while refusing to concede the rights of the Palestinians themselves. How could negotiations ever succeed in such circumstances, when one party will not acknowledge the other’s lawful entitlements?

1.2 President Abbas has therefore embarked on a new initiative. He has called on the international community to recognise Palestine as a sovereign State based on the pre-1967 lines, and will take his country’s case to the UN in September and apply for membership. His intention is at long last to put the parties on a footing of equality. What this means in practical terms is that the Palestinians will be able to ensure that their legal rights, alongside those of Israel, will be taken as the starting point for peace negotiations.

1.3 This paper explains why President Abbas is entitled to take this initiative and calls on the British government to respond positively to it.

## **2. The Principle of Self-determination**

2.1 The Palestinian population of the West Bank (including East Jerusalem) and the Gaza Strip which were occupied by Israel in 1967 (“the Occupied Palestinian Territory”, or “OPT”) have the right of self-determination in international law. Israel is under an obligation to respect this right. It has also been endorsed unanimously by the International Court of Justice.

2.2 The International Court of Justice has declared that self-determination is “one of the essential principles of contemporary international law” and its promotion is one of the founding purposes of the United Nations. Where this principle applies to a duly qualified people in respect of identifiable territory (as it does in the case of the OPT and its indigenous Palestinian population), this right precludes any competing claim to that territory by any other State or entity. All member States of the UN have a duty to respect and promote the realisation of the right of self-determination. It entitles a people “to determine their political status and freely pursue their economic, social and cultural development”.

2.3 The establishment of an independent, sovereign State is one of the possible political outcomes of a process of self-determination. By seeking recognition of its Statehood, the indigenous Palestinian population of the West Bank (including East Jerusalem) and the Gaza Strip therefore seek no more than support for their legal right of self-determination, which all States have a duty to promote.

### **3. The Principle of the Inadmissibility of the Acquisition of Territory by War**

3.1 Another key rule of international law since the adoption of the UN Charter in 1945 is the prohibition of the use of force in international relations. One of the consequences of this is the inadmissibility of the acquisition of sovereignty over territory through armed conflict or belligerent occupation. Like self-determination, this is a rule from which States are not allowed to exempt themselves, as it is an obligation which all States owe to the international community as a whole. Any territorial acquisition which results from the threat or use of force is illegal. Therefore, an occupying power may not annex territory it has occupied, either in whole or in part. No State may use force or the threat of force to extract territorial concessions; any resulting treaty concluded in such circumstances would be void.

### **4. The Territory of Israel and Palestine**

4.1 The maximum possible extent of the sovereign territory of the State of Israel in international law is therefore those parts of the former Mandate of Palestine which were already in its possession before the 1967 war. The principle of the self-determination of the indigenous Palestinian population applies to the other areas of the territory of the former Mandate (i.e. the OPT), and prevents any annexation by Israel. A Palestinian State is entitled to sovereignty over all these areas. Although Israel has asserted that it has sovereignty over an arbitrarily defined district which includes the Old City of Jerusalem and much surrounding territory as part of its “eternal and indivisible capital”, there is no legal foundation to this claim. Throughout its 44 years of occupation, Israel has not attempted to annex any other parts of the OPT, even those areas where it has built its illegal settlements. This provides grounds to believe that, despite its habit of referring to the OPT as “the disputed territories”, Israel knows full well that it may not claim sovereignty over such territory.

### **5. Palestine already exists as a sovereign State and is entitled to Recognition and Membership of the United Nations**

5.1 Article 1 of the 1933 Montevideo Convention defines the requirements of statehood under international law:

*“The state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; (d) capacity to enter into relations with other states”.*

5.2 When Palestine first proclaimed its independence as a sovereign State in 1988 it did not fulfil these requirements, but it does so today. It has a defined territory, namely the OPT, over which the indigenous Palestinian people have the right to exercise self-determination by establishing their State. This cannot be contested by any other State.

5.3 The Palestine National Authority was established pursuant to the Oslo Accords in 1993, and has been the foundation stone for building the institutions of the government of the sovereign Palestinian State in the OPT.

5.4 Palestine already has relations with other States. It is currently recognised by at least 118 member States of the UN – many more than the 76 which recognise Kosovo. Britain has already recognised Kosovo, even though most UN members still consider its entire claimed territory to be Serbian sovereign territory. By contrast, not a single other State recognises any part of the OPT as Israeli sovereign territory. There is no reason why Britain cannot also recognise Palestine if it has the political will to do so.

5.5 Israel is a sovereign State and member of the United Nations. Its independence and admission to the UN came about as a result of it satisfying the requirements of Article 1 of the Montevideo Convention. This was in the teeth of Palestinian opposition and did not result from negotiations with representatives of the Palestinian people. Today, when Palestine also fulfils the requirements of Article 1, there is no reason why Israeli opposition should be allowed to delay British recognition of Palestine or Palestine's admission to the UN.

5.6 It is important to stress the necessity of coupling the recognition of the State of Palestine with recognition of its territorial integrity. To fail to recognise Palestine's territorial entitlement at the time of recognition would raise the spectre of the Bantustans during the Apartheid era in South Africa. The Apartheid regime attempted unsuccessfully to pass these Bantustans off as sovereign States and to persuade the international community to recognise them as such. Something similar must on no account be allowed to happen when recognising Palestine. Furthermore, if Palestine did not have its eastern frontier on the Jordan and enjoy the status of a riparian State, or have its sovereignty recognised over the territory of the West Bank under which lie important aquifers, it would be deprived of major elements of its water rights.

5.7 Recognition of the State of Palestine by the international community and the entry of Palestine to the UN are vital to establish "equality of esteem" between Israel and Palestine. If Palestine is accepted as a member of the UN, with sovereignty over the entire OPT, parity will at last be established between the parties. Having both parties subject to the obligations which arise from UN membership should facilitate negotiations which lead to a permanent peace and deal with other issues such as the status of Jerusalem and Holy Places, and the rights of refugees.

## **6. The Benefits for Israel in international Recognition of Palestine and its Admission to the UN.**

6.1 Israel will benefit from the international recognition of the State of Palestine based on the pre-1967 lines and its admission to the UN. Because Palestine only claims the OPT as its

sovereign territory, once Palestine is admitted to the UN on this basis it will be impossible for any future government of the Palestinian State – of whatever political hue- to extend its territory unilaterally by bringing claims to land on the Israeli side of these lines. It will have waived any right to do so. It will likewise be impossible for any future Palestinian government to refuse to accept the existence of Israel as a sovereign State within them.

6.2 This will balance Israel's inability to bring a claim against Palestine for territory on the other side of these lines. Israel will have undisputed title to all the territory on the Israeli side of them, including that territory which was not allocated to the Jewish State under the 1947 UN Partition Plan but which Israel conquered during the period 1948-9, at a time when conquest could no longer be the basis of legal title.

6.3 Entry of the State of Palestine to the UN will also enable the two States to agree whatever territorial swaps they freely choose in their negotiations for a permanent peace. They are both entitled to "secure and recognised boundaries". Although this does not necessarily presuppose territorial swaps – since all boundaries everywhere in the world between peaceful States are "secure and recognised" as a matter of course – the pre-1967 lines only reflected the cease-fire agreements of 1949. It may well suit the parties to modify them.

6.4 At the moment, Israel is using its military might and position as a belligerent occupant illegally to force concessions out of the Palestinians. This proves that, to date, Israel has not been in good faith in the negotiations it has conducted over territorial issues. Moreover, a settlement which is not freely negotiated and does not reflect the legal rights of both sides will not give Israel the peace and security which it desires and to which it is entitled. As President Obama has recently reiterated, the pre-1967 lines are the basis for all territorial negotiations.

6.5 Admission of the State of Palestine to the UN and the negotiation of a peace treaty between Israel and Palestine will also open the way for recognition of Israel by the member States of the Arab League in accordance with the Arab League Peace Plan – although that will also require Israel to make peace with Syria, for which it needs to renounce its unfounded claim to the Syrian Golan Heights and withdraw from them.

6.6 It will also defuse the vexed struggles over the legitimacy of Israel and the Zionist project which are slowly but surely turning Israel into a pariah State. Indeed, once Israel has made peace with the State of Palestine, other States may be willing for their embassies to Israel to be placed in the Israeli part of Jerusalem.

## **7. The Benefits for Britain in recognising the Palestinian State**

7.1 As the former Mandatory power, Britain has a historic responsibility to the Palestinian People. By taking the lead among EU nations in recognising the Palestinian State and its

territorial integrity, Britain will take a major step towards healing a wound and an injustice which has lasted for decades and been a major destabilising factor in the Middle East. Recognition will help reduce tensions in the region.

7.2 Recognition will give Britain much needed credibility in the fight against extremism, ultimately making our streets a safer place and reducing the threat to British citizens, to British troops in Afghanistan, and British interests overseas generally.

7.3 At the time of the “Arab Awakening”, it will also enable us look the Arab World in the eye and show that we do desire a relationship of equality and mutual respect. By demonstrating our commitment to the rule of international law, it will encourage Arab countries to do the same.

Further reading:

***The Israel-Palestine conflict in international law: territorial issues*** by Iain Scobbie with Sarah Hibbin and an introduction by Henry Siegman, U.S. Middle East Project and the Sir Joseph Hotung Programme for Law, Human Rights and Peace Building in the Middle East, School of Oriental and African Studies, University of London.

(<http://www.soas.ac.uk/lawpeacemideast/publications/file60534.pdf>)