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**THE MONTEVIDEO CRITERIA OF STATEHOOD AND RECOGNITION
UNDER PUBLIC INTERNATIONAL LAW: THE CASE OF PALESTINE**- Ihsanullah Butro¹**Abstract**

The study analyses the applicability of the Montevideo Criteria for Statehood to Palestine, a controversial issue in both legal and political terms. The Montevideo Criteria, which were established in the Montevideo Convention of Rights and Duties of States adopted in 1933, are four key elements that a political entity must possess to be considered a state: a permanent population, an allocated territory, a government, and the capacity to enter into relations with other states. This study aims to examine whether Palestine fulfils these criteria and to analyse the implications of its quest for recognition as a sovereign state.

The study is a meticulous examination of the status of Palestine and each Montevideo criterion, addressing the challenges and controversies surrounding its statehood and evaluating the broader impacts on international law and recognition. A comprehensive review of legal documents, international agreements, United Nations resolutions, and scholarly articles was undertaken, leaving no stone unturned. The data was sourced from primary sources such as the Montevideo Convention and various UN resolutions, as well as secondary sources, including academic journals and expert analyses, ensuring a comprehensive and balanced analysis.

The study's findings are a beacon of hope, indicating that Palestine largely meets the Montevideo Criteria. It boasts a permanent population of approximately 5.43 million people. It exercises control over a defined territory that encompasses the West Bank (including East Jerusalem) and

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the Gaza Strip, despite ongoing border disputes. The Palestinian Authority and Hamas function as governing bodies, despite political divisions. Moreover, Palestine maintains diplomatic relations with numerous countries and holds membership in various international organizations, such as UNESCO and the International Criminal Court, underscoring its international recognition.

However, significant obstacles hinder Palestine's complete recognition and functionality as an independent state. These challenges include the ongoing Israeli occupation, internal political divisions between the Palestinian Authority and Hamas, and the lack of universal recognition, notably from important states like the United States and Israel.

In conclusion, although Palestine essentially meets the Montevideo Criteria, it faces political, territorial, and diplomatic hurdles that highlight the complexities surrounding statehood and recognition in international law. Understanding these dynamics is crucial for comprehensively understanding the broader implications involved.

Keywords: MONTEVIDEO, PALESTINE, RECOGNITION, STATEHOOD, STATE

1. Introduction

In the 21st century, the notion of "state" remains significant in Public International Law and International relations. Given its crucial role, it is pertinent to establish a clear and standardised definition of a state within international law. However, despite numerous attempts since 1945 to reach a consensus on this matter, none of these endeavours have been successful. Therefore, the Montevideo Convention remains the most widely recognised formulation of the fundamental statehood criteria, as Crawford suggested.² According to Article 1 of the convention, a state in international law should possess the following qualifications: a) a permanent population, b) a defined territory, c) a functioning government, and d) the capacity to engage in diplomatic relations with other states.³

² James Crawford, *The Creation of States in International Law*, 2nd ed. (Oxford: Oxford University Press, 2006), 4.

³ Convention on the Rights and Duties of States, Article 1.

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On November 29, 1947, the United Nations General Assembly adopted Resolution 181, also known as The Partition Plan, which recommended creating an independent Arab and Jewish state. Soon after the passing of this resolution, Israel declared its sovereign independence.⁴ However, the creation of an independent Arab state never materialised. Decades have passed since the adoption of that resolution, and so have countless battles and conflicts over territory and sovereignty between Israel and the Palestinian people. Today, the conflict between Palestine and Israel continues, and it seems there is no end in sight as Palestine and Israel have not been able to sustain peace amongst themselves. Recognised and known in the international community as a sovereign state, Israel proclaimed itself as the state on 14 May 1948⁵ and though initially the surrounding Arab nations objected to its recognition, the majority of the international community recognised Israel's right to exist and its claim as a sovereign state. The United Nations voted to allow Israel to be an active voting member of its organisation. Over time, several Arab nations, such as Egypt and Jordan, formally recognised Israel as a state. Israel is an active member of the United Nations and fully engages in international diplomatic exchanges with many nations. However, Palestine has not been as prosperous as Israel; the right for self-determination was asserted in the Palestinian Declaration of Independence of 15 November 1988 by the Palestinian Liberation Organization (PLO) in Algiers, and this declaration led to recognition by the Arab nations, but not by other nations such as the United States and the majority of the Western nations. On November 29, 2012, Palestine was granted non-member observer State status in the General Assembly of the United Nations, which is equal to that of the Vatican's status at the United Nations, but not admitted to the organisation as a voting member. The Palestine Liberation Organization has diplomatic relations with many nations but is still broadly not recognised as a sovereign state in the international community. In light of these circumstances, this study explores the question: What are the criteria of Statehood under the Montevideo Convention, explicitly focusing on Palestine?

2. Research Questions:

⁴ Falk, Richard, Saeb Erikat, Guy S. Goodwin Gill, Winston P. Nagan, Aitza M. Haddad, Basheer AlZoughbi, Floriana Fabbri, et al. 2013. Palestine Membership in the United Nations: Legal and Practical Implications. Edited by Mutaz Qafisheh. Newcastle upon Tyne: Cambridge Scholars Publishing, 15-16.

⁵ Tessler, Mark. 1994. A History of the Israeli-Palestinian Conflict. Bloomington, Indiana: Indiana University Press, 269.

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- How does Palestine fulfil the criteria of a "State" according to the Montevideo Convention?
- What are the specific legal definitions and requirements for a "defined territory" under the Montevideo Convention?
- How do the actions of the Israeli occupation and settlement expansion in the West Bank, as well as the blockade of Gaza, impact Palestine's ability to establish a defined territory?
- In what manner do international resolutions and agreements define the borders of Palestine?
- What are the necessary ingredients of a government under the Montevideo Convention?
- How does the political division between the Palestinian Authority and Hamas impact Palestine's capacity to fulfil the requirements of the government?
- What roles and efficiency do the Palestinian Authority and Hamas have in governing their respective territories?
- What does the term "capacity to enter into relation with other states" refer to within the framework of Public International law?
- To what extent does the recognition of Palestine by 146 UN member states influence its ability to enter international diplomatic relations?

These research questions aim to guide a comprehensive analysis of Palestine's status regarding the Montevideo Criteria of statehood and explore the broader implications for international law and politics.

3. Methodology:

The study employs a doctrinal research design, analysing existing legal material, including statutes, case laws, international agreements and legal doctrines.

3.1 Literature review: A comprehensive review of existing literature on the Montevideo criteria of statehood and the case of Palestine will be conducted. This will involve

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examining academic articles, books, reports, and legal documents to understand the relevant legal principles and debates thoroughly.

3.2 **Legal analysis:** A detailed legal analysis will assess whether Palestine meets the Montevideo criteria of statehood. This will involve examining the evidence related to Palestine's permanent population, defined territory, government, and capacity to enter into relations with other states. The analysis will also consider the views of relevant international bodies and legal experts on the issue.

3.3 **Case study:** A case study approach will be used to examine specific examples and instances that illustrate Palestine's compliance with the Montevideo criteria of statehood. This will involve analysing key events, declarations, and actions taken by Palestinian authorities that may demonstrate their ability to fulfil the requirements for statehood.

3.4 **Policy implications:** The study will also consider the policy implications of recognising Palestine as a state under international law. This will examine the potential benefits and challenges of such recognition for the Palestinian people, the region, and the global community.

Overall, this methodology will provide a comprehensive analysis of the Montevideo criteria of statehood in the context of Palestine and contribute to the ongoing discourse on the legal status of the Palestinian territories.

4. Hypothesis:

The Montevideo Criteria of Statehood, introduced in 1933, sets out the key elements that define a state in the international community: a permanent population, a defined territory, a government, and the capacity to enter into relations with other states. This criterion has been widely recognised as a tool for establishing statehood. In the case of Palestine, it is essential to apply the Montevideo Criteria to determine whether it meets the requirements to be considered a state. Palestine has a permanent population consisting of Palestinian Arabs, as well as a defined territory that includes the Gaza Strip, East Jerusalem and West Bank. The Palestinian Authority

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acts as the governing body for the Palestinian people, administering various aspects of daily life in the territories under its control. However, Palestine's capacity to enter into relations with other states is contentious. While Palestine has been recognised as a non-member observer state by the United Nations, it does not have complete diplomatic ties with all states. Furthermore, the ongoing Israeli-Palestinian conflict and the absence of a comprehensive peace agreement have hindered Palestine's capacity to exercise its sovereignty and engage in international relations fully.

Therefore, the hypothesis proposes that applying the Montevideo Criteria of Statehood to the case of Palestine can determine whether Palestine fulfils the essential ingredients to be considered a state in the international community. This analysis will provide insights into the intricacies of the Palestinian statehood issue and shed light on the challenges facing Palestine in its pursuit of recognition.

5. Significance of the Study:

The significance of studying the Montevideo Criteria of Statehood in the context of Palestine lies in its implications for international law, diplomacy, and the Israeli-Palestinian conflict. Understanding how the criteria apply to Palestine can provide valuable insights into the intricacies of statehood. Firstly, the study can contribute to the ongoing debate on the legal status of Palestine. By examining whether Palestine fulfils the criteria of statehood stated in the Montevideo Convention, researchers can draw a comprehensive analysis of the legal framework governing state recognition. This will help policymakers and legal experts working on Palestine's statehood issue to clarify its rights and obligations and guide them in their work. Secondly, the study can shed light on the diplomatic efforts surrounding recognising Palestine as a state. In the context of the international community, it is possible to gain a perspective on how Montevideo Criteria are applied in practice. This will give rise to discussions on the role of International Organizations, like the United Nations, in mediating conflicts and promoting regional peace and security.

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In addition, the study could identify the challenges Palestine faced in its pursuit of statehood. Researchers will be able to identify obstacles that Palestine must overcome to achieve full statehood recognition by examining the criteria of a permanent population, defined territory, government and capacity for entering into relations with other states. This can serve as a basis for efforts to resolve critical issues, e.g. border disputes, administrative structures and diplomatic ties in the Israel-Palestine conflict.

6. Literature Review:

To ensure a thorough overview of literature relevant to this research, two key areas will be summarised for context: literature on the definitions and critical theories framing the question of statehood, declaratory and constitutive theories, and literature on Palestinian Statehood.

6.1 Declaratory and Constitutive Theories: A Brief Overview:

The debate among scholars regarding the reasons for the current status of statehood recognition can be organised into two groups: declaratory theory and constitutive theory. In recent literature regarding statehood and international legitimacy, the declaratory theory has argued that recognition merely acknowledges the existing statehood status and that statehood is acquired when the entity satisfies the criteria outlined in The Montevideo Convention. The International Court of Justice is the principal judicial organ of the United Nations that identifies the articles in the Montevideo Convention as customary law.⁶ When dealing with legal disputes over territory or sovereignty between states, the ICJ often refers to previous court cases and interpretations/decisions of the Montevideo Articles. The early expressions of declaratory understandings are found in the Montevideo Convention Article III, which describes the existence of a state without recognition, and Article VI, which states that recognition signifies a state accepting the personality of the other state.⁷ The declaratory theory argues that a state's political existence is independent of other states' recognition. Declaratory theory is built on the objective criteria outlined under the articles, and when all the conditions are met, statehood is

⁶ International Court of Justice. (n.d.). <http://www.icjci.org/documents/?p1=4&p2=2>

⁷ The Avalon Project: Convention on Rights and Duties of States (inter-American). (1933, December 26)

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recognised regardless of the international community's approval or disapproval. Recognition is almost irrelevant because the status of statehood is based on facts and not individual state discretion; if statehood is a fact, then recognition should be automatic.⁸ Crawford writes, "The formation of a new state is a matter of fact, and not of law where a State exists, the legality of its creation or existence must be an abstract issue: the law must take account of the new situation, despite its illegality."⁹ There are general criticisms of this theory. Two examples of criticisms are that states "existence is not a simple fact but rather a legal status that states acquire and that states do not acquire international rights automatically. International rights come with recognition by other states and international organisations. Simply put, a state cannot exercise rights over another state unless the other state has recognised it. Hence, recognition is a key.

In other literature, the constitutive theory challenges the declarative school's argument on recognition. Constitutive theory argues that only by recognition of other sovereign states can an entity become a state and gain international legitimacy. This theory challenges the Montevideo Convention in that an entity does not need to meet the factual requirements. Still, the entity automatically gains membership into the international community through recognition by other states, ultimately allowing an entity to become a state and gain international legitimacy. Constitutive theory challenges the concept that recognition is automatic and argues that recognition is based on the discretion of other states. Fewer modern scholars have focused on constitutive theory and have a growing interest in evaluating this approach.¹⁰ According to Constitutive theory, the act of recognition by other states creates a new state that results in an international legal personality. Theorists like Hersh Lauterpacht and Hans Kelsen argue that statehood cannot be a purely factual question and that treating statehood as a factual question is inappropriate. Constitutive theory emphasises the importance of the consent of sovereign states. "Creating a new state creates such new obligations for existing sovereign states. Therefore, their

⁸ Brownlie, Ian. 2008. *Principles of Public International Law*. 7th. Oxford: Oxford University Press.

⁹ Crawford, J. (2006). *The Creation of States in International Law* (2nd ed.). New York, NY, USA: Oxford University Press, 4.

¹⁰ Peterson, Martha J. 1997. *Recognition of Governments: Legal Doctrine and State Practice, 1815-1995*. New York: St. Martin's Press.

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consent, expressed through their recognition of the new states, must be obtained.”¹¹ This theory also comes with criticism because states are not obligated to recognise other states; aspiring states could be denied their international rights to become a state despite requirements for statehood being met, such as in the case of Palestine. Under the constitutive theory, aspiring states are left vulnerable to being perceived in a way best described as the legal term “terra nullius,” meaning unclaimed territory and, therefore, could fall under the control of an established state that has the desire to acquire new territory.¹² It is also important to note that when a state chooses not to recognise a state by refraining from entering into diplomatic relations, it does not mean it loses its existence or sovereignty. For example, during the Six-Day War in 1967, Egypt severed its diplomatic ties with the U.S., which was not restored until 1974. The United States severed its diplomatic relations with Cuba in 1961, and in both situations, those actions did not result in the loss of recognition or existence for either state. These two schools of thought focus on the four criteria for attaining statehood set out by the Montevideo Convention and debate how Palestine either meets or does not meet the set of criteria. Some politicians and scholars argue that the government of Palestine does not exercise effective control over its territory, thus demonstrating a lack of political control. As described by Hans Morgenthau, political control is having effective control among the government authority over its general public and territory. He writes, “Political power is a psychological relationship between those who exercise it and those over whom it is exercised. It gives the former control over certain actions through the influence which the former exerts over the latter’s minds.”¹³ Both Daniel Benoliel and Roen Perry, for example, make the argument that even though the territory of the Gaza Strip is under Palestine’s government control, it is Israel that continues to control most of the essential government functions in that territory, functions that have daily effects on the citizens residing within the borders. They write that Israel has retained control over the Strip’s airspace and territorial waters, most border crossings, population registry, and tax

¹¹ Eckert, A. E. (2002). Constructing States: The Role of the International Community in the Creation of New States. *Journal of Public and International Affairs*, 24.

¹² Grant, T. D. (1998-1999). Defining Statehood: The Montevideo Convention and its discontents. *Columbia Journal of Transnational Law*, 422.

¹³ Morgenthau, Hans. 2006. *Politics Among Nations: The Struggle for Power and Peace*. 7th. Edited by K. W. Thompson and W. D. Clinton. New York, NY: McGraw Hill/Irwin.

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system.¹⁴ On the other hand, scholars like Francis Boyle argue that Palestine effectively controls its territory. He argues that Palestine, through the Chairman of the Executive Committee of the Palestine Liberation Organization, Yasser Arafat, and the provisional government exercised control over and were able to provide essential administrative functions and social services to its citizens.¹⁵

6.2 Palestinian Statehood:

When you look at Palestinian Statehood specifically, there are two main arguments towards the status of Palestine and its statehood. Some scholars argue that Palestine meets the requirements and is a state, and others say that Palestine does not meet the criteria and is not a state. Theorists like John Quigley argue that a Palestinian identity and statehood have long been established and that the ambiguity of recognition by the international community is unacceptable. In his book “The Statehood of Palestine: International Law in the Middle East Conflict”, Quigley argues that the 1924 League of Nations Mandate for Palestine suggests that Palestine was constituted as a state at the time and maintained its existence even after the war in 1948 and that the present time.¹⁶ Quigley also argues that through the lens of the statehood criteria, Palestine meets those requirements and that Palestine became and remains a state. Francis A. Boyle agrees with Quigley, and in his position paper titled “Create the State of Palestine”, he addresses each of the four elements that constitute a state in the Montevideo Convention and argues that the proclaimed independent state of Palestine satisfied those requirements.¹⁷

The opposing argument is that Palestine does not meet the requirements and is not a state. Under this argument, scholars such as Tal Becker, an international lawyer, and Jerome Segal, a research scholar at the University of Maryland, agree that Palestine’s flimsy government alone demonstrates that Palestine does not meet the primary criterion for statehood.¹⁸ Jerome Segal

¹⁴ Benoliel, D., & Perry, R. (2010). Israel, Palestine, and the ICC. *Michigan Journal of International Law*, 32(1), 73-127.

¹⁵ Boyle, F. A. (1988, November 15). *The Creation of the State of Palestine*. 301-306. Algiers, 302.

¹⁶ Quigley, John. 2010. *The Statehood of Palestine: International Law in the Middle East Conflict*. New York, NY: Cambridge University Press.

¹⁷ Boyle, F. A. (1988, June 30). *CREATE THE STATE OF PALESTINE!* *American-Arab Affairs*(25), 86.

¹⁸ Becker, T. (n.d.). *International Recognition of a Unilaterally Declared Palestinian State: Legal and Policy Dilemmas*

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explains that although Palestine has made steps towards statehood, it still lacks a functioning government and does not meet the requirements needed for statehood. He argues, "The State of Palestine is not yet a state primarily because it has not sufficiently begun acting as one. The primary reason is that it has not established a government and is not issuing rules to which a population could respond with generalised obedience."¹⁹ Another scholar, Kavitha Giridhar, argues similarly to Jerome Segal but further argues that prematurely recognising Palestine as a state would destabilise the region.²⁰ Premature recognition could inspire Israel to pull back from the negotiations table and possibly even result in Israel ramping up its military presence to protect borders and other security interests, putting Palestine in a position to continue to be perceived as a threat. Both competing theories continue to be debated to date, and in political practice, the question of Palestine's statehood remains unresolved.

7. Results/Analysis and Discussion

Before examining the fulfilment of these criteria, the first requirement must be met is the presence of a determination to become a state. Without this determination to be recognised as a state, fulfilling the Montevideo criteria becomes merely a symbolic gesture. In the case of Palestine, this determination exists. The 1988 Declaration of Independence by the PLO stated, "The Palestinian National Council proclaims the establishment of the state of Palestine on Palestinian territory with its capital Jerusalem."²¹

The initial criterion to consider is the existence of a defined territory, and there is little debate regarding Palestine's fulfilment of this requirement. Although many areas are disputed with Israel, Palestine has established its borders. The international community, including the UN and the EU, overwhelmingly recognises the "Green Lines" as the legitimate division between Palestinian and Israeli territory. This includes the West Bank, the Gaza Strip, and East Jerusalem as part of Palestinian territory. From the Oslo Accords up until now, there has been a consensus

¹⁹ Segal, J. (1989). Does the State of Palestine Exist? *Journal of Palestine Studies*, 19(1), 14-31.

²⁰ Giridhar, K. (2006). *Legal Status of Palestine*. Drake University. College of Arts and Sciences. Departments of Social Sciences.

²¹ Palestinian Declaration of Independence (Alger: Palestine Liberation Organization, 15 November 1988). <http://www.mideastweb.org/plc1988.htm>.

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among the international community that Palestine and Israel should begin their discussions on the border issue with the pre-1967 borders as a basis. This agreement has been upheld as a starting point for any further deliberations. Furthermore, the Security Council (SC) has acknowledged and affirmed the territorial integrity of Palestine. This recognition can be seen in Resolution 242, which was passed by the SC and called for the withdrawal of Israeli forces from territories that were occupied during the Six-Day War. Additionally, the International Court of Justice (ICJ) provided its Advisory Opinion on the Legal Consequences of the Construction of a Wall in the OPT,²² It further solidified the recognition of Palestine's territorial integrity.

However, critics of this recognition present arguments claiming that Palestinian territory is fragmented, lacking precise delimitation, and subject to dispute with Israel. While it is undeniable that the territory of Palestine is fragmented, it is essential to note that continuity is not a prerequisite for statehood under international law, as emphasised by Crawford. Furthermore, a state is not required to have officially defined borders. The example of Israel demonstrates that a lack of fixed and determined borders does not hinder a state from being recognised as a state²³. The Palestinian Declaration of Independence clearly outlines the territory envisioned for the Palestinian state, which includes the Gaza Strip and the West Bank, with East Jerusalem serving as its capital. This indicates that the PLO clearly understood the territory they sought to establish. Similarly, other states have territorial disputes without impacting their status as independent states.²⁴ Therefore, despite Israel's presence at the borders and the construction of settlements that impede Palestinian control over territories, Palestine still possesses a defined territory by the Montevideo Convention.

When considering the second requirement, it is crucial to differentiate between nation and permanent population. It cannot be denied that Palestinians constitute a nation. Since ancient times, they have inhabited the region and possess a collective culture, identity, and traditional

²² Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion (The Hague, International Court of Justice, 9 July 2004). <http://www.icjij.org/docket/files/131/1671.pdf>.

²³ Francis A. Boyle, "The Creation of the State of Palestine", *European Journal of International Law* 1, no. 1 (January 1990): 301

²⁴ For instance, India and Pakistan dispute for the Kashmir region, the East China Sea claimed by China and Japan, or the Western Sahara in Northwest Africa, where Morocco pushed the indigenous population of Sahrawis out of the area.

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customs. These aspects are evident in their shared language, similar behaviours, and customs, all of which signify a sense of shared identity. Furthermore, the international community has never questioned the existence of the Palestinian people. The mandate acknowledged the presence of a Palestinian population and was driven by the objective of safeguarding their right to self-determination. Even after the establishment of the state of Israel, the international community has consistently acknowledged the presence of a Palestinian community. When referring to the population of Gaza and the West Bank, as well as Palestinian refugees around the world, the United Nations and other states use terms like "Palestinians" or "Palestinian refugees". This recognition by the international community affirms the existence of a community with shared origins. At first, Israel opposed the idea that Palestinians constituted a distinct people, arguing that their national identity lacked continuity over the years. Israel supports the notion that Palestinians are essentially Arabs and, therefore, not a particular group separate from the surrounding Arab states. Nevertheless, when examining certain governmental records, it becomes apparent that Israel indirectly acknowledges Palestinians as a nation. However, the crucial aspect here is not whether Palestinians qualify as distinct people but rather if the Palestinian authorities exercise control over a permanent population, regardless of whether it consists solely of Palestinians or not. In this particular scenario, these two concepts align since the population in the Occupied Palestinian Territories is predominantly composed of Palestinians. According to the Central Bureau of Statistics, the current population of Palestine is approximately five million people. Over three million individuals reside in the West Bank, while nearly two million live in the Gaza Strip.²⁵ However, decades of conflict have resulted in a significant refugee crisis, with more than five million Palestinians displaced from their homeland. Most of these refugees are concentrated in Jordan, Lebanon, and Syria.²⁶ In conclusion, the Palestinian authorities maintain control over a settled population in the OPT (Occupied Palestinian Territories).

²⁵Palestinian Central Bureau of Statistics, "Population Indicators 2024".
<http://pcbs.gov.ps/site/langen/881/default.aspx#Population>.

²⁶ According to the UNRWA in 2017 there were 5,340,443 registered Palestinian refugees. The countries which received most of them are Jordan (2,175,491), Lebanon (463,664) and Syria (543,014).

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The third factor identified in Montevideo is the presence of an effective government, which poses a more intricate challenge when it comes to Palestinian authorities. To accurately assess the degree to which Palestine meets this requirement, it is beneficial to outline the governmental framework and the various entities governing the OPT. The PLO was established in 1964 to represent the Palestinian people. Initially, it was viewed as an extension of Arab regimes, particularly Egypt under Nasser, and did not possess full autonomy in decision-making.²⁷ However, following their defeat in the Six-Day War of 1967, the PLO gained increased recognition on the international stage. A decade after its establishment, it was acknowledged as the sole legitimate representative of the Palestinian people by both the Arab League and the UNGA through Resolution 67/19, which elevated Palestine to non-member observer status. In 1988, the Palestinian National Council (referred to as the PNC), the legislative body of the PLO, adopted the Palestinian Declaration of Independence. This declaration was proclaimed by Yasser Arafat, who served as both Chairman of the PLO and the first President of Palestine. Arafat and the PLO assumed the role of diplomatic representatives for the Palestinians, particularly in their negotiations with Israel for the Oslo Accords in 1993. The establishment of the PA marked the beginning of a five-year interim body tasked with overseeing Palestinian affairs in the OPT. However, its mandate extended beyond the initial timeframe, leading to the emergence of a complex political landscape. It is important to note that negotiations with Israel and the operation of embassies and diplomatic missions around the world fall under the jurisdiction of the PLO, not the PA. The PLO encompasses multiple political parties, although Fatah has historically held significant influence. Over time, Fatah shifted its position from opposing the existence of Israel to advocating for a military solution to the conflict. In contrast, Hamas emerged in the 1990s as a rival to Fatah and employed suicide attacks against Israel in an attempt to undermine the peace process. Following the death of Arafat, Mahmoud Abbas was elected President of the PA in March 2005. It was during this period that Hamas and Fatah reached an agreement in Cairo, with Hamas committing to cease acts of terrorism against Israel.²⁸ The legislative elections held in 2006 resulted in a surprising victory for Hamas, as they secured the majority of seats in the

²⁷ Salem Barahmeh, "The Palestinians, the PLO, and Political Representation: the Search for Palestinian Self-Determination", International Centre for the Study of Radicalisation and Political Violence (June 2014): 7.

²⁸ Yaghi Mohammad, "Hamas Challenge to the PLO: Opportunities and Prospects", The Washington Institute, 9 February 2009. <http://www.washingtoninstitute.org/policy-analysis/view/hamas-challenge-to-the-plo-opportunities-and-prospects>.

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Palestinian Legislative Council. However, due to differences in the political system, Fatah and other factions chose not to participate in the new government. In early 2007, clashes between the two factions intensified, leading to the signing of an agreement in Mecca. This agreement paved the way for the formation of a government of national unity. Unfortunately, this unity government was short-lived as another wave of violence erupted, resulting in Hamas taking control of the Gaza Strip. Meanwhile, Fatah solidified its hold over the West Bank, establishing two separate Palestinian governments. Despite the political conflicts that emerged inside the PA, we can say that under Abbas, it has established governmental functions close to those of a state government and that significant progress has been made in democratic processes.²⁹ The extent of the Palestinian government's control over its territories is still debatable. While it has full authority over certain parts, such as the Gaza Strip, its control over the West Bank is limited, with Israel possessing nearly 60% of the land. Critics argue that crucial areas of governmental authority, like external and border security, have never been transferred to the Palestinian Authority and remain under Israeli control. However, it is essential to note that the requirement for an effective government does not necessarily hinge on having complete control over all aspects, as international law does not oblige an entity to possess all competencies and powers to meet the criteria for governance. Transferring competencies to the PA through the Interim Agreement proves Palestine's governmental existence. The PA has assumed responsibility for crucial governmental services, including the judiciary, police force, legislative and executive authority, education, tourism, culture, social welfare, and taxation. These competencies serve as a testament to the PA's governance and demonstrate its ability to fulfil the essential functions of a government.

Regarding the last criterion, the accepted idea is that an entity that cannot enter into relations with other states cannot be defined as a state. Those who argue that Palestine does not meet this criterion point to the Declaration of Principles (DOP), which states that the Palestinian Authority (PA) will not possess authority or responsibilities in the realm of foreign affairs. This means that the PA does not have the power to establish diplomatic missions abroad or host international diplomatic missions in the West Bank and Gaza Strip. However, in practice, the Palestine

²⁹ Michael Emerson, "The Political and Legal Logic for Palestinian Statehood", Centre for European Policy Studies (October 2011): 2.

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Liberation Organization (PLO) has been permitted to enter into international agreements with states or international organisations on behalf of the PA's interests. The ability of the Palestinian Authority (PA) to join in relationships with other nations and international organisations is evident, although it is usually done through the Palestinian Liberation Organization (PLO). It is important to note that no clear-cut separation between the PLO and the PA exists. When dealing with the Palestinian government, some states and international organisations refer to the PA, while others refer to the PLO. In practice, both entities maintain an operational network of diplomatic relations and participate in various international organisations, each with a status ranging from observer to associate or affiliate. Palestine has successfully gained bilateral recognition from 146 states, and in recent times, certain European governments have taken steps to recognise it officially.³⁰ Furthermore, Palestine has set up embassies, missions, and general delegations in numerous countries, which serve as a testament to its capacity to enter into diplomatic relations with other states.

Overall, Palestine satisfies the fundamental prerequisites for statehood outlined in the Montevideo criteria. While it could be argued that some of these requirements are only partially met due to issues like incomplete control over borders and internal political problems, ample evidence supports the recognition of Palestine as a state according to the Montevideo criteria. However, it is important to note that recognition is now essential to enjoy all the rights and responsibilities associated with being a fully recognised state. The Palestinian authorities are well aware of this and have made significant efforts to obtain complete recognition from the international community on a bilateral and multilateral level.

8. Conclusion

In this research, I have gone through the issue of Palestinian statehood and recognition to determine if Palestine is a state as required under the Montevideo Convention.

As discussed above, there are two significant theories concerning statehood and recognition. According to the declaratory theory, an entity shall be deemed a state if it fulfils the four

³⁰ <https://www.aljazeera.com/news/2024/5/22/mapping-which-countries-recognise-palestine-in-2024>

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elements stipulated in Article 1 of the Montevideo Convention: a permanent population, a defined territory, government, and capacity to enter into relations with the other states. The criterion of a permanent population presents no problems and is almost unchallenged. Palestinian authorities control a population of 5.43 million people approximately in the West Bank and in the Gaza Strip. Moreover, the OPT population and nation coincide, reinforcing the claim that Palestine has a permanent population and fulfils the first Montevideo criteria. Completing the second criterion, a defined territory has been challenged by those considering the fragmentation, imprecise delimitation, and disputes with Israel upon it would make it difficult to identify a territory as “defined”. However, I found many reasons to support Palestine's accomplishment of this condition. Firstly, continuity is not an essential characteristic of the territory of a state. Secondly, the PLO repeatedly declared that the territory of the Palestinian state consists of the Gaza Strip, the West Bank and East Jerusalem as its capital, along the pre-1967 borders. The majority of the international community, including the UN and the EU, supports this solution. Thirdly, the fact that border disputes with Israel do not affect the existence of Palestine as a state, as happens in many other cases. The government criterion is the most problematic because of the complexity of the Palestinian scenario. However, despite the political conflicts that emerged between the PA and Hamas, which somehow limited the Palestinian capacity to carry out practical governmental functions, Palestinian authorities are responsible for the majority of the most important them, such as the judiciary, legislative and executive, in areas of education, social welfare, taxation, etc. This is enough to say that Palestine satisfies the government criteria defined in the Montevideo Convention. Regarding the last condition, the capacity to enter into relations with other states, this function is carried out by the PLO or the PA. Though the PA, according to the DOP, has no powers in the sphere of foreign relations, it is the PLO which was accepted to conclude international agreements and open diplomatic relations with other states. Therefore, Palestine accomplishes this criterion either through the PA or the PLO.

According to this analysis, Palestine is a state according to the declaratory theory because it fulfils all the Montevideo criteria.

Even if it is hugely accepted that recognition by other states does not determine if an entity is a state under international law, those who backed the constitutive theory hold that the very legal

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existence of a state as part of the international system is constituted by the recognition by the other members of the system. To determine if Palestine is a state according to the constitutive theory, I analysed how successful the Palestinian strategy for recognition has been from all points of view. In bilateral terms, Palestinian authorities have been partially effective in obtaining recognition from the most significant number of states. From the 1988 Declaration of Independence to the present time, the state of Palestine is officially recognised by 148 states, representing more than 70%. Only a small number of European and Western countries indeed did it. Still, here, the problem lies in geopolitical interests related to the conflict with Israel more than in an unacceptance by these states to recognise the legitimacy of Palestine. In multilateral terms, Palestinian efforts produced even better results. Palestine is a member of many important regional organisations, such as the Arab League and the Organization of Islamic Cooperation. Many steps were also taken regarding the UN system. In October 2011, Palestine gained full membership in UNESCO, and one year and a few months later, its status within the UN was upgraded to a non-member observer state. This meant the official recognition by the UN of the existence of the state of Palestine and the confirmation that the only obstacle against Palestinian full UN membership is the presence of the US as a permanent member with veto power in the SC. Finally, the Palestinian approach to international courts, such as the ICJ and, above all, the ICC, further validates what has been defended in this work. The Palestinian membership of the ICC in 2015 is a historic milestone in Palestinian history because it could bring Israel before international justice. The conclusion is that, even if we take as a reference the constitutive theory, Palestine is a state because it obtained a considerable level of bilateral and multilateral recognition, especially within the UN, and because it was successful in many senses in its attempts to act as a state within the international system. Considering all these issues, I concluded that Palestine is a state under the declaratory and constitutive theory. Those who linked Palestinian statehood with the resolution of the Israeli-Palestinian conflict are wrong because these are two separate issues which cannot be treated as a whole. Palestine is already a state because it is acting as such in the national and international sphere, and there is no reason to deny that.

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It is important to note that Palestine meets all the criteria laid out in the Montevideo Convention for a state to be recognised. These criteria include having a permanent population, a functioning government, and the capacity to negotiate with other states. The recognition of Palestine as a state by various countries worldwide further reinforces its claim to statehood. Many nations have formally recognised Palestine as a sovereign state, demonstrating their acceptance of its defined territory. This recognition adds weight to the argument that Palestine meets the requirements outlined in the Montevideo Convention.

Table A illustrates a concise summary of each Montevideo requirement and the description indicating Palestine has successfully met the outlined criteria. The table's final row represents the current statehood status within the UN, in which you can see that despite meeting the Montevideo requirements, Palestine has not received full recognition of statehood by the UN.

Table: A

Montevideo Convention	Palestine
1. Permanent Population	Approximately 5.43 million permanent citizens between the Gaza Strip and the West Bank.
2. Defined Territory	The land has a total area of 6,020 km ² (2,324 mi ²) and a total coastline of 40 km (24.9 mi).
3. Government	The 2014 Fatah-Hamas provided for elections and the formation of a compromise unity government.
4. Capacity to enter into relations with other states	Bilateral recognition of Palestine by 146 States. Palestine is represented within various international organisations as either a member or observer status; within the UN, the Educational, Scientific and Cultural Organization and the International Court of

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	Justice have extended full membership. Outside the UN, it is recognised as a member of the Arab League, the Organization of Islamic Cooperation, the Union for the Mediterranean, and the Euro-Mediterranean Parliamentary Assembly. The European Union also recently extended its recognition of Palestine as a State.
Recognition of Statehood by the UN?	No, but Palestine has been a non-member observer state of the United Nations General Assembly since November 2012.

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