

THE PALESTINE ISSUE: WHY THE UNITED NATIONS REFUSED TO ACCEPT AS A UNITED NATIONS MEMBER AND AS A NATION STATE?

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DOI: <https://doi.org/10.51200/kitab.v1i1.5200>

ABSTRACT

This paper explores the Palestine issue from the international law and international politics. Why the United Nations Organization refused to accept Palestine as a United Nations Member and recognized Palestine as a nation state in the international political structure? The Article 4(1) and Article 4(2) of the United Nations Charter would be applied in discussing of the Palestine issue. Article 4(1) stated that “ Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgement of the Organization, are able and willing to carry out these obligation,” Article 4(2) stated that, “The admission of any such state to membership in the United Nations will be affected by a decision of the General Assembly upon the recommendation of the Security Council.” The main problem that embroils Palestine to be recognized as a state and admitted as a member in the United Nations due to the recommendation from Security Council as stated in the Article 4(2) of the United Nations Charter. The United States always objects the Resolutions passed by the General Assembly. The United States uses the veto power to veto the Palestine admission. This study concludes that the failure of the Palestine to be admitted as a United Nations member and recognized as a state was due to the geo-political factors.

Keywords: Article 4 of United Nations Charter, Security Council, General Assembly, Permanent member, geo-politics, Palestine.

INTRODUCTION

This paper is divided into five parts; firstly, an introduction; secondly the basic principles of the United Nations Organization admission; thirdly, the issue of Palestine; fourth, some discussion and analysis and finally a conclusion. The list of references that related to these topics is provided in the last parts for those who are interested in doing further readings. The geo-political factors played a crucial role in the process of the membership admission to United Nations. The ‘veto power’ by the big five (The United States of America, Soviet Union, Great Britain, France, and China) crucial in the process of membership admission and decision. The decision made by Security Council was strongly related and influenced by the geo-political factors.

BASIC PRINCIPLE OF THE UNITED NATION ADMISSION/MEMBERSHIP

There are two types of admission/membership to the United Nations, namely the original members and new members:

Original Members.

Article 3 of the United Nations Charter stated that “The Original members of the United Nations shall be the states which, having participated in the United Nations Conference on International Organization at San Francisco, or having previously signed the Declaration by United nations of January 1, 1942, sign the present Charter and ratify it in accordance with Article 110.”

New Members Admission.

The procedure and regulation of the new members admission to the United Nations Organization is stated in Article 4 of the United Nations Charter.

Article 4(1) stated that “Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgement of the Organization, are able and willing to carry out these obligations.”

Article 4(2) provided that “The admission of any such states to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council.”

The recommendation of the Security Council is important criteria after getting a two-third majority and support from the General Assembly of the United Nations. A State cannot be admitted as a member of the United Nations without agreement and full recommendation from the Security Council. Recommendation and agreement from five permanent members of the Security Council are required.

The four criteria under article 4(1), namely: -

1. must be a state,
2. must be peace loving,
3. must accept the obligations contained in the Charter, and
4. must be able and willing to carry out these obligations.

An analysis of Article 4(1) points out the fact that admission to the United Nations is open only to States. State have meant a State which is subject of international law and thus possesses the criteria of state hood as required under Montevideo Convention defined territory, people, government, and capacity to enter into relations with other states (independence).

According to Article 4(2) admission is decided by the General Assembly upon the recommendation of the Security Council. As stated in Article 18(2)¹ of the United Nations Charter, a two-thirds majority is required for the Assembly’s decision. The Security Council

¹ Article 18(2) stated that “Decision of the General Assembly on important questions shall be made by a two-thirds majority of the members present and voting. These question shall include; recommendations with respect to the maintenance of international peace and security, the election of the non-permanent members of the Security Council, the election of the election of the members of the economic and Social Council, the election of members of the Trusteeship Council in accordance with paragraph 1(c) of Article 86, the admission of New Members to the United Nations, the suspension of the rights and privileges of membership, the expulsion of Members, question relating to the operation of the trusteeship system, and budgetary question.”

votes according to a qualified majority, with the possibility of the permanent members exercising the 'veto' as provided in Article 27(3).²

The most crucial factor for a State to be admitted to the United Nations, therefore, is the unanimous agreement of the "Big Five."³ Any of whom can exercise veto power to reject any admission application. The rejection of membership admission on political grounds is normal after the Cold War era began in the late 1940s. Throughout the history of the United Nations, there were numerous cases where the admission application was rejected mainly due to geo-political reasons. Why China Communist was no accepted from 1949 until 1971 due to the geo-political factors. The permanent members of the Security Council freely exercised veto power to reject countries from rival political camps. This situation led the General Assembly to request advisory opinion from the International Court of Justice (ICJ).

Two cases were decided by ICJ regarding the admission of a state to membership in the United Nations: -

1. Conditions of admission of State to Membership in the United Nations (Article 4 of Charter)-Advisory Opinion of 28 May 1948.

"In the interpretation of it gave of Article 4 of the Charter of the United Nations, in its advisory opinion of 28 May 1948, the Court declared that the conditions laid down for the admission of State were exhaustive and that if this conditions were fulfilled by a State which was a candidate, the Security Council ought to make the recommendation which would enable the General Assembly to decide upon the admission."⁴

2. Competence of the General Assembly for the Admission of a State to the United Nations-Advisory Opinion of 3 March 1950.

"The Court has no doubt as to the meaning of the relevant clause: paragraph 2 of Article 4 of the Charter. Two things were required to affect admission: a recommendation by the Council and a decision by the Assembly."

"The conclusions to which the court was led by its examination of paragraph 2 of Article 4 were confirmed by the structure of the Charter, and particularly by the relations established between the General Assembly and the Security Council. Both these bodies were principal organs of the United Nations, and the Council was not a subordinate position. Moreover, the organs to which Article 4 entrusted the judgement of the Organization in matters of admission had consistently recognized that submission could only be granted on the basis of a recommendation by the Council."⁵

Based on the two cases and Article 4 (2) two things were required to effect admission: a decision by the General Assembly and recommendation by the Security Council.

² Article 27(3) stated that "Decision of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members: provided that, in decision under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting."

³ The permanent member of the Security Council; The United States of America, Great Britain, France, Soviet Union and China,

⁴ See ICJ Report- Conditions of admission of State to Membership in the United Nations (Article 4 of Charter)-Advisory Opinion of 28 May 1948.

⁵ See Summaries of Judgement, Advisory Opinions and Orders of the International Court of Justice- Competence of the General Assembly for the Admission of a State to the United Nations-Advisory Opinion of 3 March 1950.

THE ISSUE OF PALESTINE

Most of Resolution of United Nations General Assembly (UNGA) support and recognized Palestine as state and should be admitted as a member of the United Nations. The admission of Palestine into the United Nations failed due to the objection by the United States. Article 4(2) stated that “admission is decided by the General Assembly upon the recommendation of the Security Council,” was applied in the Palestine case.

The General Assembly had passed many Resolutions in supporting and recognizing Palestine as a State and member of the United Nations Organizations. Below is the list of Resolution passed by the General Assembly since 1974: -

1. Resolution 3210 of 14 October 1974
2. Resolution 3236 of 22 November 1974
3. Resolution 43/177 of 15 December 1988
4. Resolution 52/250 of 7 July 1998
5. Resolution 66/146 of 19 December 2011 and,
6. Resolution 67/19 of 4 December 2012

Resolution 3236 (XXIX) of November 22, 1974 and Resolution 66/146 of December 19, 2011 reaffirming the right of the Palestinian people to self-determination, including the right to their independent State of Palestine was rejected by the United States. Resolution 3210 (XXIX) of 14 October 1974 and Resolution 3237 (XXIX) of 22 November 1974, by which Palestine Liberation Organization was invited to participate in the deliberations of the General Assembly as the representative of the Palestinian people and was granted observer status.

Resolution 43/177 of 15 December 1988, by which it acknowledged the proclamation of the State of Palestine by the Palestine National Council on 15 November 1988 and decided that the designation ‘Palestine’ should be used in place of the designation ‘Palestine Liberation Organization’ (PLO) in the United Nations system. The Executive Committee of the PLO, in accordance with a decision by the Palestine National Council, is entrusted with the powers and responsibilities of the Provisional Government of the State of Palestine.

Resolution 52/250 of July 1998, by which additional rights and privileges were accorded to Palestine in its capacity as observer. The Palestinian National Authority’s 2009 Plan for constructing the institutions of an independent Palestinian State within a two-year period, and the positive assessments about readiness for statehood by the World Bank, the United Nations and the IMF and conclusions which determined that the Palestinian Authority is above the threshold for a functioning State in key sector studied. Full membership is enjoyed by Palestine in UNESCO, the Economic and Social Commission for Western Asia and the Group of Asia Pacific States and that Palestine is also a full member of the League of Arab State, the Movement of Non-Aligned Countries, the OIC and the Group of 77 and China. To date, 132 States Members of the United Nations have accorded recognition to the State of Palestine.

Resolution 67/19 of 4 December 2012 reaffirm the right of the Palestinian people to self-determination and to independence in their State of Palestine on the Palestinian territory occupied since 1967. This resolution decides to accord to Palestine non-member observer state status in the United Nations, without prejudice to the acquired rights, privileges and role of the Palestine Liberation Organization in the United Nations as the representative of the Palestine people, in accordance with the relevant resolutions and practice.

Resolution 67/19 also expresses the hope that the Security Council will consider favourably the application submitted on 23 September 2011 by the State of Palestine for admission to full membership in the United Nations.

Report of the Security Council Committee on Palestine Admission Application.

On 28 September 2011, the Security Council had before it the application of Palestine for admission to membership in the United Nations. The President of the Council referred the application to the Committee on the Admission of New Members, i.e. Article (1) and Article 4(2) of the United Nations Charter.

The Committee carefully considered whether Palestine met the specific criteria for admission to membership contained in Article 4(1) and 4(2) of the United Nations Charter. Experts considered whether Palestine met the criteria for statehood; was a peace-loving State and was willing and able to carry out the obligations contained in the United Nations Charter. Differing views were expressed:

- i. The applicant (Palestine) fulfils all the criteria set out in the United Nations Charter;
- ii. Questions were raised as to whether the applicant meets all of the Charter membership requirements;
- iii. Deliberations should take into account the broader political context of the matter at hand.

It was stated that the criteria set out in Article 4 were the only factors that could be taken into consideration. In support of this position, reference was made to the Advisory Opinion of 28 May 1948 of the ICJ⁶ on the Conditions of Admission of a State to Membership in the United Nations (Article 4 of the United Nations Charter).

On the criterion of statehood, reference was made to the 1933 Montevideo Convention on the rights and Duties of States. With regard to the requirements of a permanent population and a defined territory, the view was expressed that Palestine fulfilled these criteria. It was stressed that the lack of precisely settled borders was not an obstacle to statehood. With regard to the requirement of a government, the view was expressed that Palestine fulfilled this criterion. However, it was stated that HAMAS was in control of forty percent of the population of Palestine. Therefore, the Palestine authority could not be considered to have effective government control over the claim territory. It was stressed that the PLO, and not HAMAS, was the legitimate representative of the Palestinian people.

With regard to the requirement that a State have the capacity to enter relations with other State, the view was expressed that Palestine fulfilled this criterion. It was recalled that Palestine had been accepted into membership in the NAM, the OIC, the Economic and Social Commission for Western Asia, the Group of 77 and the UNESCO. In addition, over 130 States had recognized Palestine as an independent sovereign state. Questions were raised, however regarding the authority of the Palestinian Authority to engage in relations with other States in light of the Oslo Accords.

⁶ See Summaries of Judgement: Conditions of a State to membership in the United Nations (Article 4 of Charter)-Advisory Opinion of 28 May 1948.

About the requirement that an applicant be “peace-loving,” the view was expressed that Palestine fulfilled this criterion in view of its commitment to the achievement of a just, lasting and comprehensive resolution of the Israel-Palestinian conflict. Question were raised as to whether Palestine was indeed a peace-loving State, since HAMAS refused to renounce terrorism and violence, and had the stated aim of destroying Israel. Reference was made, on the other hand, to the African Organizations of the International Courts of Justice (ICJ) on Namibia, of 1971, which stated that the only acts that could be attributable to a State were those of the State’s recognized authority.

About the requirement that an applicant accept the obligations contained in the United Nations Charter and be able and willing to carry out these obligations, the view was expressed that Palestine fulfilled these criteria, as was evident, inter alia, from the solemn declaration to this effect contained in its application. It was recalled that in 1948, when considering the application of Israel for membership, it had been argued that Israel’s solemn pledge to carry out its obligations under the Charter was sufficient to meet this criterion.⁷

The view was expressed that the Committee should recommend to the Council that Palestine be admitted to membership in the United Nations. A different view was expressed that the membership application could not be supported at this time. Further, it was suggested that, as an intermediate step, the General Assembly should adopt a resolution by which Palestine would be made an Observer State. In summing up the debate, the Chair stated that the Committee was unable to make a unanimous recommendation to the Security Council.

The admission of Palestine to United Nations failed to get recommendation from the Security Council as stated in the Article 4(2) of the Charter, as a requirement to be admitted as a member of the United Nations. The role and regulations of the Charter played significant role in the decision. Indirectly the political factors i.e., the United States policy towards Palestine and close relationship between the United States and Israel no doubt strongly influenced the decision.

DISCUSSION AND ANALYSIS

The are close relationship between the international law and the geo-politics in admission of Palestine in the United Nations membership.

The case of Palestine admission to United Nations is closely to the geo-political factors. The formation of Israel strongly supported by the United Kingdom and the United States. The United Kingdom strongly support the foundation of the country of Israel since Belfour Declaration in November 1917. The United States played a significant role in the period after the Second World War, 1945.⁸ Most of the Resolutions by General Assembly in recognizing Palestine as a State and admitted to the United Nations was object by the United States. The reason is not due to the Palestine fail to fulfill the requirement as stated in Article 4(1). The reason is failed to get recommendation from Security Council as stated in Article 4 (2).

⁷ See James Crawford, 1999, “Israel (1948-1949) and Palestine (1998-1999): Two Studies in the Creation of States,’ in Gilland, Guy, S. goodwin & Talmon, Stefan (eds), *The Reality of International Law*, Oxford: Clarendon Press, pp. 95-124.

⁸ See James Crawford, (1999), ‘Israel (1948-1949) and Palestine (1998-1999): Two Studies in the Creation of States,’ in Goodwin-Gill, Guy, S.and Talmon, Stefan. (eds). *The Reality of International Law: Essays in Honour of Ian Brownlie.*, Oxford, UK & New York; Clarendon Press, pp.95-124.

CONCLUSION

The Palestine admission applications was rejected mainly due to geo-political reason; the Palestine case is due to special role of the United States and Great Britain in protecting the position of Israel. The permanent members of the Security Council exercised their veto power to reject countries from rival political camp and different religious-political issue.

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