

## Comments

### STANDING BEFORE THE INTERNATIONAL COURT OF JUSTICE: THE QUESTION OF PALESTINIAN STATEHOOD EXEMPLIFIES THE INCONSISTENCIES OF THE REQUIREMENT OF STATEHOOD

On November 13, 1974, Yassir Arafat, wearing a freedom fighter's gun, delivered a peace address to the General Assembly of the United Nations.<sup>1</sup> His speech was part of a movement which encouraged the subsequent vote by the Security Council which granted to the Palestine Liberation Organization all the rights accorded a United Nations member state.<sup>2</sup> This recognition consummated the first of three goals of the Palestine Liberation Organization: legitimacy as the representative of the Palestinian People.<sup>3</sup> The creation of a Palestinian

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1. [1975] AM. PEOPLES ENCYCLOPEDIA Y.B. 45 [hereinafter cited as [1975] AM. PEOPLES Y.B.]. Yassir (Yasser, Yassar) Arafat is the moderate leader of the Palestine Liberation Organization (P.L.O.), which gained recognition as the legitimate representative of the Palestinian people at the Conference of Arab Leaders in Rabat, Morocco, Oct. 26-29, 1974. At the same time the United Nations invited the P.L.O. to present its case before the General Assembly. Yassir Arafat delivered an address to the General Assembly on Nov. 13, 1974, declaring that he came "bearing an olive branch and freedom fighter's gun." Since that address, the P.L.O. and the Palestinians have gained considerable support in the United Nations [1975] AM. PEOPLES Y.B., *supra*, at 47. G.A. Res. 3210, 29 U.N. GAOR, Supp. (No.31) 3, U.N. Doc. A/9631(1974) (U.N. invitation). 29 U.N. GAOR, U.N. A/PV.2282 (1964) (text of Mr. Arafat's address).

2. UNITED NATIONS, N.Y., Jan. 12-The Security Council opened its debate on the Middle East today by voting overwhelming [*sic*] [11-1] to allow the Palestine Liberation Organization to participate with the rights of a United Nations member nation despite a vehement objection by the United States.

N.Y. Times, Jan. 13, 1976, § 1, at 1, col. 8.

3. The Security Council vote executed a General Assembly resolution recognizing the P.L.O. as the legitimate representative of the Palestinian people with a right to participate in debates and conferences on the creation of a Palestinian state. *See* note 34, *infra*, and accompanying text.

There are three million Palestinian Arabs who are regarded as the cultural and intellectual elite of the Arab states of the Middle East, primarily Egypt, Syria, Jordan, Lebanon, Saudi Arabia, Iraq, United Arab Emirates, Bahrain, North Yemen, South Yemen, Oman, Qatar and Kuwait. The Palestinians have the highest per capita number of university graduates of any Arab population and a culture which predates written history. They supply well trained personnel for the executive and professional positions in their host countries. Unfortunately, an estimated 1.5 million Palestinians barely survive at subsistence levels in refugee camps located primarily in Syria, Jordan, and Lebanon. [1975] AM. PEOPLES Y.B., *supra* note 1, at 45-47.

state<sup>4</sup> and peace with Israel<sup>5</sup> remain as objectives yet to be achieved.

There are important legal controversies involved in creating a Palestinian state, which should be adjudicated by the principal judicial organ of the United Nations, the International Court of Justice. This forum, however, is not available for the resolution of issues involving Palestine as a party<sup>6</sup> because article 34 of the Court's Statute estab-

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United Nations action pertaining to the Palestinian people can be divided into three periods: 1947-1957, 1968-1972, and 1974-1976. The first period gave rise to the problems of the Palestinian refugees. During the second period the Palestinian refugees were recognized as a people. See generally Comment, *The Palestinian People and Their Political, Military and Legal Status in the World Community*, 5 N.C. CEN. L.J. 326 (1974). In the final period, the P.L.O. was established as the representative of the Palestinian people, but the United States vetoed the Security Council resolution which would have created a Palestinian state.

4. The Conference of Arab Leaders at Rabat, Morocco, Oct. 26-29, 1974, called for an independent Palestinian state on territory "liberated" from Israel, presumably, the West Bank, Gaza Strip, and the El Hamma area of the Golan Heights. [1975] AM. PEOPLES Y.B., *supra* note 1, at 47.

The Security Council resolution, vetoed by the United States, recognized the Palestinians' right to a state, although no defined territory or boundaries were mentioned. The text of that resolution provided in part:

HAVING HEARD the representatives of parties concerned, including the Palestine Liberation Organization, representatives of the Palestine People,

CONVINCED that the question of Palestine is the core of the conflict in the Middle East,

1. AFFIRMS:

(a) That the Palestine People should be enabled to exercise its inalienable national right of self-determination, including the right to establish an independent state in Palestine in accordance with the Charter of the United Nations; . . .

(c) That Israel should withdraw from all territories occupied since June 1967; . . .

2. Decides that the provisions contained in Paragraph 1 should be taken fully into account in all international efforts and conferences organized . . . for the establishment of a just and lasting peace in the Middle East.

N.Y. Times, Jan. 27, 1976, § 1, at 4, cols. 4-6. Farouk Khaddoumi, the chief P.L.O. representative to the United Nations, stated before the Security Council that the P.L.O.'s objective was the creation of an "independent Palestinian entity." L.A. Times, Jan. 14, 1976, § 1, col. 4 (morn. ed). His statement reiterated the objectives of the Palestine National Covenant which created the P.L.O. in 1964. *Reproduced in Harkabi, The Palestine Aspect of the Middle East Crisis*, N.Y.U.J. INT'L L. & POLITICS 199 (1970) [hereinafter cited as Palestine Covenant]. During July, 1968, various leaders of different factions which claimed representation of the Palestinian people adopted the Covenant.

5. Mr. Farouk stated that the P.L.O. wanted "Peace for us and for the Jews in Palestine." San Diego Evening Tribune, Jan. 13, 1976, § 1, at 2, col. 3.

6. The Court could render an advisory opinion upon request from either the General Assembly or Security Council. I.C.J. STAT. art. 65, para. 1. U.N. CHARTER art. 96, para.1. However, an advisory opinion is not an adversary proceeding, nor is it binding upon the parties. Any judicial determination of the legal controversies should be presented with Israel and the P.L.O. as parties. For a discussion of advisory opinions as nonadversary proceedings, having no binding effect upon the parties, see Advisory Opinion on the Interpretation of Peace Treaties with Bulgaria, Hungary and Romania (First Phase), [1950] I.C.J. 65, 67, 71-72, 77; LEECH, OLIVER & SWEENEY, THE INTERNATIONAL LEGAL SYSTEM 60-62 (1973) [hereinafter cited as LEECH].

lishes the standing requirement that “*only states* may be parties in cases before the Court.”<sup>7</sup> The Palestinian people are excluded by the Court’s traditional interpretation of this standing rule, an interpretation which regards control over a “fixed territory” as one of the criteria of statehood.<sup>8</sup>

The Security Council vote which granted the Palestine Liberation Organization equal membership status,<sup>9</sup> created a “quasi-state”.<sup>10</sup> The basis of this recognition is the ability of the quasi-state to enter into international relations<sup>11</sup> giving rise to international rights and duties.<sup>12</sup>

7. I.C.J. STAT. art. 34, para. 1 (emphasis added). Article 34 codifies the principle that “international Justice in the strict sense is the administration of justice between States.” 12 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 1245 (1963) [hereinafter cited as WHITEMAN].

“Standing” refers to the capacity to bring a cause of action before the International Court of Justice. For further discussion on *ius standi*, see *Belgium v. Spain*, The Barcelona Traction, Light and Power Co. Case, [1970] I.C.J. 3. *Reproduced in 9 INT’L LEGAL MATERIALS* 227, 251-75 (1970).

The Statute of the International Court of Justice recognizes an exception to the standing requirement of statehood by extending standing to certain international organizations. Article 36, para. 1 of the Court’s Statute provides:

1. The Jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.

See generally 1 WHITEMAN, *supra* at 49-50; 12 *id.* at 1271-78; LEECH, *supra* note 6, at 60-64.

It should be noted that Israel accepted the compulsory jurisdiction of the International Court of Justice conditionally upon its membership in the United Nations. If a dispute were to arise with a state not recognizing Israel, or from events which occurred during the period of May 15, 1948, through July 20, 1949, the Court would lack jurisdiction over such matters without Israel’s consent. [1971] I.C.J.Y.B. 71-72.

8. 1 WHITEMAN, *supra*, note 7, at 52, 223. See *infra*, note 11; note 48 and accompanying text. The Palestinians allege that the territory which is rightfully theirs is illegally occupied by Israel and, therefore, must be liberated. “The establishment of Israel is fundamentally null and void, whatever time has elapsed.” Palestine Covenant, *supra* note 4, art. 19.

The Israelis claim that any territory which they occupy is rightfully theirs because it was captured in self-defense, thus the Palestinians have lost any territorial rights which they might once have had. Comment, *Israel: Conqueror, Liberator, or Occupier within the Context of International Law*, 7 SW. L. REV. 206 (1975).

9. See *supra* note 3.

10. This term is used to describe an entity which, through the establishment of international relations, has acquired international rights and duties but is defective in one or more of the five criteria of statehood.

11. This is distinct from “the accepted principle of international law that only the States acquire rights and obligations from the acts of its organs.” *In re Garbe*, [1947] 15 Ann. Dig. 419-20 (No. 125) (*Oberlandesgericht* of Kiel, Germany).

Practice has abandoned the doctrine that States are the exclusive subjects of international rights and duties. Although the Statutes of the International Court of Justice adheres [*sic*] to the traditional view that only States can be parties to international proceedings . . .

This Comment will focus upon the inconsistency between the two positions on "statehood" taken by different branches of the United Nations. The General Assembly and the Security Council recognize certain Palestinian rights of statehood, while the Court's standing rule closes the door to the only forum able to adjudicate the legality of these rights.

The Palestinian situation is not unique. There have been other quasi-states which have not satisfied the criteria of statehood.<sup>13</sup> In the absence of available judicial process, their international legal controversies have been decided by violent political upheavals, economic coercion, or military power plays.<sup>14</sup> The appropriate domain of an international court would seem to be the adjudication of all controversies concerning international rights and duties. However, adherence to the traditional principle that only states can possess international rights and duties has limited the use of the International Court of Justice to parties which fulfill all the criteria of statehood. Nevertheless, the contemporary international community is inhabited with a number of entities failing to fulfill those criteria, yet enjoying rights and duties not fairly litigable in any domestic court. The standing requirement of statehood consequently must be reevaluated. The proposed solution of this Comment is expansion of the class of entities recognized as having standing before the Court so as to include quasi-states which possess internationally recognized<sup>15</sup> rights and duties but do not totally fulfill the traditional criteria of statehood.

A less restrictive standing requirement would permit a quasi-state's legal rights to be challenged and litigated in a neutral forum.<sup>16</sup>

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1. WHITEMAN, *supra* note 7, at 52. See generally *id.* at 51-52, 56-58; 12 *id.* at 1244-45; 2 L. OPPENHEIM, INTERNATIONAL LAW § 25 a-c (7th ed. 1952).

12. For a discussion of international rights and duties, see the Draft Declaration on Rights and Duties of States, G.A. Res. 178 (II), U.N. Doc. A/925 at 7 (1949).

13. They are: North Korea, South Korea, Zimbabwe (Rhodesia), Namibia (Southwest Africa), Angola, Mozambique, and Bissau (Guinea). Each of these countries for various reasons are now currently recognized as satisfying the criteria of statehood and, therefore, are generally recognized as states. See LEECH, *supra* note 6, at 735; G.A. Res. 2787, 26 U.N. GAOR, Supp. (No. 29)82-83, Doc. A/8429 at (1971) (*reproduced in part in* note 33, *infra*, [hereinafter cited as G.A. Res. 2787]).

14. U.N. CHARTER art. 33, para. 1 requires peaceful solution to international disputes through judicial settlement.

15. Whenever a state enters into relationships with other states or quasi-states, rights and duties are created. The mere fact that two parties enter a relationship creates the inference that each recognized the rights and duties of the other. Bilateral treaties give express recognition to these rights and duties. See generally Articles of Vienna Convention on the Law of Treaties, *open for signature* May 23, 1969 by the U.N. Conference on the Law of Treaties, U.N. Doc. A/CONF/39/27 at 289 (1971).

16. If the rights conferred by General Assembly Resolution 2787, *supra* note 13, cannot be exercised by judicial means, it would appear that more violent alternatives are

More importantly, such an adjustment would render the Court's standing requirement far more consistent with the practice of contemporary international relations. This change would contribute to the acceptance of the developing view that the true subjects of international law are those entities which possess international rights and duties.

## I. THE PALESTINIAN PEOPLE

In 1948, the United Nations implemented a "Partition Plan" in the region known as Palestine.<sup>17</sup> Two territories were defined, one of which was expected to become a predominantly Jewish state, and the other a non-Jewish state. Elections were held in the "Jewish" territory, creating a new state called Israel.<sup>18</sup> The non-Jews of Palestine,

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available to the Palestinians, under the Charter. The Palestinians are authorized to "fight" for their right of self-determination by liberating territory from "foreign domination" on which to exercise the right. The Security Council through Resolution 242 stated that Israel acquired territory illegally during the Six Day War of 1967. S.C. Res. 242, 22 U.N. SCOR, 1382d meeting, at 1, Doc. S/RES/242 (1967) [hereinafter cited as S.C. Res. 242]. Consequently, the territory is considered occupied by a foreign state. The General Assembly authorized the Palestinians to use "all available means consistent with the Charter of the United Nations" to liberate this occupied territory. Since the territory is illegally occupied, the use of force to liberate the territory would be considered in self-defense. Acquisition of territory by self-defense is not inconsistent with the United Nations Charter. U.N. CHARTER art. 51, para. 1. Therefore, Palestinian use of force against Israel in order to liberate territory on which to exercise the right of self-determination might very well be sanctioned by the United Nations.

There has been no adjudication of whether Israel acquired territory legally or illegally during 1967. At present there is no method through which Israel can contest the Security Council's, Resolution 242, nor the General Assembly's authorization to use force against Israel to liberate this allegedly illegally acquired territory. Extending standing to the Palestinians would allow Israel to maintain an action challenging the legality of the Security Council Resolution 242 and General Assembly Resolution 2787. G.A. Res. 2799, 26 U.N. GAOR, Supp. (No. 29) 3-4, U.N. Doc. A/8429 (1971) (Counterpart to S.C. Res. 242); see also discussion of the Six Day War and self-defense in LEECH, *supra* note 6, at 1255-66.

17. Partition Plan with Economic Union, G.A. Res. 181, U.N. Doc. A/516, at 1 (1947).

The area known as Palestine is bordered on the north by the southern border of Lebanon from the Mediterranean Sea to the southern slopes of Mt. Hermon. On the east, the border follows the Jordan River from the Golan Heights through the Sea of Galilee and the Dead Sea then southwest to the Gulf of Aqaba. A line from the Gulf of Aqaba to the Gaza Strip forms the southwestern border and from the Gaza Strip northward to Lebanon, Palestine borders the Mediterranean Sea. The Palestinians and the Jews are both religious descendants of Abraham and racial descendants of the Semites, and have occupied the area since time immemorial.

18. Accordingly We, Members of the People's Council, Representatives of the Jewish Community of Eretz-Israel and of the Zionist Movement, are here Assembled on the Day of the Termination of the British Mandate over Eretz-Israel and, by Virtue of our Natural and Historical Right on the Strength of the Resolution of the United Nations General Assembly, Hereby Declare the Establishment of the Jewish State in Eretz-Israel, to be Known as the State of Israel.

known as the Palestinians, resisted Partition in general, and the creation of Israel in particular.<sup>19</sup> This animosity was based largely on the claim that thousands of World War II European Jewish refugees were permitted to vote with the territory's indigenous population even though most of those refugees were illegal aliens<sup>20</sup> at the time, and that without the alien vote, the Jewish minority in the territory could not have prevailed. Open warfare ensued, during which most of the territory set aside for the non-Jewish state was absorbed by Israel and neighboring Jordan. These events marked the beginning of the vast population of Palestinian refugees<sup>21</sup> which the Palestine Liberation Organization seeks to represent.

The Partition Plan intended that the two distinct groups of inhabitants should have the right to determine their futures within their respective territories.<sup>22</sup> This right of self-determination is defined as the

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Declaration of the Establishment of the State of Isrel, May 14, 1948. *Reproduced in 5 ENCYCLOPAEDIA JUDAICA 1454 (1971).*

19. In 1945, an Arab League was formed to resist the creation of Jewish state in Palestine. This Arab League, consisting of Egypt, Syria, Lebanon, Transjordan, Iraq, Saudi Arabia, and Yemen, combined with the Palestinians in a full scale war with the Israelis immediately following their declaration of statehood, May 15, 1948. 2 M. MANSOOR, *POLITICAL AND DIPLOMATIC HISTORY OF THE ARAB WORLD*, Oct. 20, 1945, May 15, 1948 (1972) [hereinafter cited as MANSOOR]. The Arab League understood itself to be engaged in a struggle against Zionist occupiers of Palestine and against an immoral and illegal act of the United Nations. 12 WHITEMAN, *supra* note 7, at 900. Palestine Covenant, *supra* note 4, at 230. See also Bassiouni, *The Middle East: The Misunderstood Conflict*, 19 U. KAN. L. REV. 374, 379 (1971) [Hereinafter cited as Bassiouni]. This paper was delivered by the author before the American Society of International Law in 1970. Bassiouni is a leading authority on the Arab perceptions of the Arab-Israeli conflict.

20. Palestine Covenant, *supra* note 4, at 230; Bassiouni, *supra* note 19, at 383-85. The prevailing principle of international law is that the right of self-determination is extended only to the legal inhabitants of a region. 5 WHITEMAN, *supra* note 7, at 38-86.

The British in the November, 1917 Balfour Declaration, pledged "the establishment in Palestine of a national home for the Jewish people." C. FISHER & F. KRINSKY, *THE MIDDLE EAST IN CRISIS: A HISTORICAL AND DOCUMENTARY REVIEW* 83 (1959). After World War I, the British obtained a League of Nations mandate over Palestine. Jewish immigration after World War I increased the number of Jews from thirteen to thirty percent of the total population. The British in 1939, severely curtailed Jewish immigration to Palestine, but Jewish immigrants found illegal means to enter the area. H. ELLIS, *ISRAEL AND THE MIDDLE EAST* 102 (1957).

21. "The problem of Arab refugees was a direct consequence of the war launched by the Arab States. . . ." Israeli representative speaking before the General Assembly, Palestinian question, [1948-49] Y.B.U.N. 399. The U.N. recognized that the Palestinians were exiled from their homeland, G.A. Res. 194, U.N. Doc. A/810, at 21 (1948); G.A. Res. 2452, 23 U.N. GAOR, Supp. (No. 18) 21-22, U.N. Doc. A/RES/2452 (1968).

22. The terms of the November 1947 resolution must be carried out, and this implementation corresponded with the interest of both the Arabs and Jews in Palestine, since it recognized their right to self-determination and independence.

[1948-49] Y.B.U.N. 170-71. See 5 WHITEMAN, *supra* note 7, at 38-86.

free and genuine expression of the will of the people to determine their own political, economic, and cultural status, together with whatever form of government shall attain permanent sovereignty over their territory, natural wealth, and resources.<sup>23</sup>

Unlike the Jewish People, the Palestinians were never able to exercise this right. By 1967, all of the territory designated for the non-Jewish state was under Israeli control,<sup>24</sup> the result of Israel's successes over periodic Palestinian and Arab resistance.<sup>25</sup>

From these circumstances there emerges the legal issue of whether Palestinians have permanently waived this right by their failure to exercise territorial sovereignty in 1948.<sup>26</sup> The Palestinians maintain that "the right has not been extinguished because [they] have been displaced from their territory."<sup>27</sup> Conversely, the Israelis insist that the Palestinians ceased to be identifiable in 1948 and therefore have lost the right.<sup>28</sup> The United Nations supported the Israeli viewpoint as long as the General Assembly majority consisted of pro-Israeli states.<sup>29</sup> The majority in the General Assembly now favors the Palestinian viewpoint, a reflection of the growing impact of the third world states.<sup>30</sup> Accordingly, the General Assembly recently passed a series of resolutions supporting the Palestinian movement.

The General Assembly, during 1969 and 1970, reaffirmed the "inalienable rights of the Palestinians"<sup>31</sup> with specific reference to the

23. Bassiouni, *supra* note 19, at 380. See 5 WHITEMAN, *supra* note 7, at 38-86. The right is incorporated into the United Nations Charter. U.N. CHARTER art. 1, para.2.

24. The United Nations Mediator for Palestine recommended that the territory for the Arab state in Palestine, not occupied by Israel, be ceded to Transjordan because there was no central authority for the Palestinian Arabs. [1947-48] Y.B.U.N. 305.

25. S.C. Res. 242, *supra* note 16.

26. See Bassiouni, *supra* note 19, at 380-88.

27. *Id.* at 386-88.

28. This viewpoint can be inferred from Prime Minister Golda Meir's statement: "There was no such thing as Palestinians. . . They did not exist." The London Times, June 15, 1969, § 1, at 1, col. 3.

29. Security Council Resolution 242 (see discussion of its impact in note 16, *supra*) signaled the end of the United Nations support of the Israeli viewpoint.

It also reflected the low-water mark of Arab postwar efforts to bring about the adoption of unequivocally one-sided, anti-Israel resolutions at the U.N. From that point on, the tide of resolutions . . . challenge Israeli's right to self-defense and self-preservation. . . .  
15 Encyclopaedia Judaica 1558 (1971).

30. For a discussion of the political significance of these states, see B. KIERNAN, THE UNITED STATES, COMMUNISM, AND THE EMERGENT WORLD (1972). See also Ambassador Moynihan's cablegram to Secretary of State Kissinger describing the Third World's impact on United States foreign policy objectives in the United Nations N.Y. Times, Jan. 28, 1976, § 1, at 8, cols. 1-8 (city ed.).

31. Recognizing that the problems of the Palestinian Arab refugees has arisen from the denial of their inalienable rights under the Charter of the United Nations and the Universal Declaration of Human Rights, . . .

1. Reaffirms the inalienable rights of the people of Palestine.

right of self-determination.<sup>32</sup> Realizing the inability of a displaced population to exercise that right while the territory in question was under foreign domination, the General Assembly authorized the Palestinians to "fight" for their right to self-determination.<sup>33</sup> Subsequent resolutions in 1974 and 1976 have established the Palestinians' right to independence and sovereignty,<sup>34</sup> and afforded to the Palestine Libera-

G.A. Res. 2535 (B), 24 U.N. GAOR, Supp. (No. 30) 25-26, U.N. Doc. A/RES/2535 (B) (1969).

32. Bearing in mind 'the principle of equal rights and self-determination of peoples' enshrined in Article 1 and 55 of the Charter of the United Nations and more recently reaffirmed in the Declaration Principles of International Law concerning Friendly Relations and cooperation among States in accordance with the Charter of the United Nations,

1. Recognize that the people of Palestine are entitled to 'equal rights and self-determination', in accordance with the Charter of the United Nations;

2. Declares that full respect for the inalienable rights of the people of Palestine is an indispensable element in the establishment of a just and lasting peace in the Middle East.

G.A. Res. 2672, 25 U.N. GAOR, Supp. (No. 28) 36, U.N. Doc. A/RES/2672 (C) (1970).

33. 1. *Confirms* the legality of the peoples' struggle for self-determination and liberation from colonial and foreign domination and alien subjugation, notably in southern Africa and in particular that of the peoples of Zimbabwe, Namibia, Angola, Mozambique, and Guinea (Bissau), as well as of the Palestinian people, by all available means consistent with the Charter of the United Nations.

2. *Affirms* man's basic human right to fight for self-determination of his people under colonial and foreign domination.

G.A. Res. 2787, *supra* note 13, at 83. This resolution conflicts with Israeli sovereignty in that it grants to the Palestinians the right to exercise their self-determination by liberating territory from Israel. See note 16, *supra*. This resolution also conflicts with the Kellogg-Briand Pact of 1928, which made the offensive use of force to settle international controversies illegal. 1 FOREIGN REL. U.S. 153-57 (1928). This concept was adopted by the U.N. and therefore the resolution conflicts with the fundamental goal of the U.N. to seek peaceful solutions to international problems. The principles of the Pact are incorporated in the Preamble to the United Nations Charter. U.N. CHARTER art. 1, para. 1, 2.

34. *The General Assembly,*

*Having considered* the question of Palestine,

*Having heard* the statement of the Palestine Liberation Organization, the representative of the Palestinian people,

*Having also heard* other statements made during the debate,

*Deeply concerned* that no just solution to the problem of Palestine has yet been achieved and recognizing that the problem of Palestine continues to endanger international peace and security,

*Recognizing* that the Palestinian people is entitled to self-determination in accordance with the Charter of the United Nations,

*Expressing its grave concern* that the Palestinian people has been prevented from enjoying its inalienable rights, in particular its right to self-determination,

*Guided* by the purposes and principles of the Charter,

*Recalling* its relevant resolutions which affirm the right of the Palestinian people to self-determination.

1. *Reaffirms* the inalienable rights of the Palestinian people in Palestine, including:

(a) The right to self-determination without external interference;

(b) The right to national independence and sovereignty;

2. *Reaffirms also* the inalienable right of the Palestinians to return to their homes and property from which they have been displaced and uprooted, and calls for their return;

3. *Emphasizes* that full respect for and the realization of these inalienable rights of the Palestinian people are indispensable for the solution of the question of Palestine;



tion Organization a status equivalent to that of a member state.<sup>35</sup>

These resolutions, coupled with the alleged illegal implementation of the Partition Plan, have created several legal issues.<sup>36</sup> The primary question is whether the Palestinians have lost their right to self-determination by the creation of the State of Israel. A prerequisite to answering that question is the resolution of the legality of the implementation of the Partition Plan.<sup>37</sup> If it were determined that the right was extinguished in 1948, the next step would be to determine whether or not the General Assembly and Security Council have created new rights for the Palestinians. The answer to this issue would require a decision on the binding legal effect of General Assembly and Security Council resolutions.<sup>38</sup> If the result of the foregoing chain of

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4. *Recognizes* that the Palestinian people is a principal party in the establishment of a just and durable peace in the Middle East;

5. *Further recognizes* the right of the Palestinian people to regain its rights by all means in accordance with the purposes and principles of the Charter of the United Nations;

6. *Appeals* to all States and international organizations to extend their support to the Palestinian people in its struggle to restore its rights, in accordance with the Charter;

7. *Requests* the Secretary-General to establish contacts with the Palestine Liberation Organization on all matters concerning the question of Palestine;

8. *Requests* the Secretary-General to report to the General Assembly at its thirtieth session on the implementation of the present resolution;

9. *Decides* to include the item entitled "Question of Palestine" in the provisional agenda of its thirtieth session.

G.A. Res. 3236, 29 U.N. GAOR, Supp. (No. 31) 4, U.N. Doc. A/9631 (1974) [hereinafter cited as G.A. Res. 3236].

35. *See supra* note 2.

36. For discussion of legal aspects of the Palestinian situation other than the question of standing before the International Court of Justice, see Bassiouni, *Some Legal Aspects of the Arab-Israeli Conflict*, 14 ARAB WORLD 41 (1967) (special issue on the Arab-Israeli confrontation of June, 1967); Wright, *Legal Aspects of the Middle East Situation*, 33 LAW & CONTEMP. PROB. 5 (1968); Comment, *Panel: U.N. Legal Aspects of the Middle East Crisis*, 64 AM. J. INT'L L. 64 (1970); Comment, *Israel, Conqueror, Liberator, or Occupier within the Context of International Law*, 7 SW. L. REV. 206 (1975); R. JENNINGS, *THE ACQUISITION OF TERRITORY* (1963).

37. The percentage of legal Jewish inhabitants in Palestine in 1948, was approximately one-third of the total population. If the illegal aliens are included, the Jewish population accounted for nearly one-half of the total population. Israel has not released any population figures for this period. *See* GREAT BRITAIN FOREIGN OFFICE, 5 DOCUMENTS OF BRITISH FOREIGN POLICY 343, 1919-1939, (Woodward & Butler ed. 1946); Bassiouni & Fisher, *The Arab-Israeli Conflict—Real and Apparent Issues*, 44 ST. JOHN'S L. REV. 399, 448-52 (1970).

38. "Collective legitimization" is a phrase used to describe the legality of a General Assembly or Security Council resolution. It means that through a majority vote in either body and the power conferred upon that body by the Charter, the resolution has the appearance of legality. Whether such a resolution is binding in an international law sense is another matter. An illustration of the limited force of "collective legitimization" is General Assembly Resolution 2787, which conferred upon the Palestinians the right to "fight" for self-determination. As discussed in note 33, *supra*, the use of force violates Israeli sovereignty, the Kellogg-Briand Pact, the Preamble to the United Nations Char-

decisions were the determination that the Palestinians did enjoy a present, effective right of self-determination, the final issue would be to identify the territory upon which the right of self-determination might be exercised.

Since the United Nations was involved in the 1948 Partition Plan and subsequent resolutions, the International Court of Justice would seem to be the appropriate forum to adjudicate these issues.<sup>39</sup> However, since the issue for litigation is statehood, the Palestinians cannot satisfy the criteria of statehood and therefore cannot achieve standing before the Court. In light of this ironic result, it is important to analyze why the International Court of Justice requires formal statehood for standing.

## II. THE STANDING REQUIREMENT: STATEHOOD

The standing requirement of statehood is not unique to the International Court of Justice. The Hague Court of Permanent Arbitration and the Permanent Court of International Justice required statehood of parties to litigate an international controversy.<sup>40</sup> The rationale for this requirement was twofold. First, it was believed that only states could have the capacity to possess international rights and duties which could be governed by international law.<sup>41</sup> Secondly, inhabitants of a region who were not sufficiently civilized to govern themselves were represented by a protective state.<sup>42</sup> Consequently, there was no reason to grant standing to a party unless it was a state.

The same reasoning prevailed during the San Francisco Conference in 1945,<sup>43</sup> where a charter was formed for the new postwar

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ter, and the Charter itself. Thus, the "legality" of this resolution is highly questionable. See I. CLAUDE, *THE CHANGING UNITED NATIONS* 73-103 (1967); Claude, *States and the World Court: The Politics of Neglect*, 11 VA. J. INT'L L. 353-54 (1960).

39. The Partition Plan and the resolutions of 1968-1976 are all a result of United Nations action, which suggests that the United Nations' judicial organ should resolve any legal controversies resulting from such action.

40. H.C.P.A. STAT. art. 24, para. 1; P.C.I.J. STAT. art 34, para. 1, *identical to* I.C.J. STAT. art. 34, para. 1.

41. Since the Law of Nations is based on the common consent of individual States, States are the principal subjects of International Law. . . . As a rule, the subjects of the rights and duties arising from the Law of Nations are States solely and exclusively.

Survey of International Law in Relations to the Work of Codification of the International Law Commission, U.N. Doc. A/CN.4/1 at 24 (1950).

42. Britain is an example of such a state since it represented the inhabitants of Palestine in world affairs and to the League of Nations during its mandate in Palestine. See, e.g., *Case of the Maurommatis Palestine Concessions* [1934] P.C.I.J., ser. A, No. 2. For discussion of representation of non self-governing territories, see *Advisory Opinion on the International Status of South-West Africa*, [1950] I.C.J. 128, 132, 142-43; 1 WHITEMAN, *supra* note 7, at 700-03; 13 *id.* at 630-37.

43. U.S. DEP'T OF STATE, PUB. NO. 2349, 71 CONFERENCE SERIES 146 (1945).

league, the United Nations.<sup>44</sup> When the delegates discussed the standing requirements for the new international court, attention focused upon the criterion of statehood. Unable to justify liberalization of the requirement<sup>45</sup> and desiring to maintain continuity between the old Permanent Court of International Justice and the new International Court of Justice, the delegates adopted intact the standing requirement expressed in article 34 of the Statute of the Permanent Court of International Justice.

Article 34 states that "only states may be parties in cases before the Court."<sup>46</sup> There are five accepted criteria of statehood; as expressed by Professor Charles Hyde<sup>47</sup> these are: the inhabitants of a region must be *a people*, possessing common socio-economic bonds; a state must have *a fixed territory* with identifiable boundaries which do not conflict with other identifiable regions; *an organized government*, through laws, must maintain justice throughout the territory; the government must exhibit the *capacity to enter into international relationships* as judged by its associations with other members of international society; and the people and their government must be *sufficiently civilized to observe international law* in their relationships with other members of the international community. These last two criteria create the international rights and duties which are governed by international law.<sup>48</sup>

The Palestinians substantially fulfill four of these five criteria of statehood. They are an identifiable people<sup>49</sup> with a government in the form of the Palestine Liberation Organization.<sup>50</sup> The Palestine Liberation Organization has the capacity to enter into international relationships as manifested by its treaties with foreign governments.<sup>51</sup> Certain-

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44. The delegates represented the states of the international community who desired to participate in this new postwar league. *Id.*

45. The delegates did not favor modification of article 34 of the Permanent Court of International Justice to include "individuals" or "various international organizations". *Id.*

46. I.C.J. STAT. art. 34, para. 1. The same requirement of statehood is applicable to membership in the United Nations; U.N. CHARTER art. 4, para. 1.

47. 1 WHITEMAN, *supra* note 7, at 223.

48. De jure recognition is usually extended to the government of an entity claiming to be a state, upon satisfaction of these last two requirements. A de jure government, as defined by international law, is a "government with uncontested legality, fully and permanently accepted as a partner in international relations." *Id.* at 917.

49. G.A. Res. 3236, *supra* note 34. Comment, *The Palestinian People and Their Political, Military, and Legal Status in the World Community*, 5 N.C. CEN. L.J. 344-45 (1974).

50. G.A. Res. 3236, *supra* note 34. the P.L.O.'s "representatives are accepted as *de facto* 'ambassadors' by over 100 countries and international organizations." TIME Jan. 19, 1976, at 33.

51. TIME Nov. 24, 1975, at 46; TIME Jan. 19, 1976, at 33. The Arab world and the

ly, United Nations action granting the Palestinians independence, sovereignty, and membership in its international organization creates the strong inference that the Palestinians are sufficiently civilized to observe the laws of the international community.

The Palestinians fail to meet only one criterion: a fixed territory. While territory may be essential for statehood, its relevance to standing before the International Court of Justice is not immediately apparent. The criteria clearly define a state, but a dilemma arises from the circumstance that statehood no longer defines the class of entities needful of a forum for the adjudication of international rights and duties. Statehood is simply one example of the type of entity able to enjoy international relationships. It is the position of this Comment that the better criterion for standing before the Court would be a showing that the entity seeking standing is the holder of international rights and duties, rights and duties which arise as a normal consequence of any two entities establishing international relationships.

### III. THE PARADOX

The Palestinian movement is faced with a classical dilemma. One branch of the United Nations has acknowledged certain Palestinian rights, among them the right to self-determination which implies the right to the possession of territory. However, in order to enforce that right, another branch of the United Nations demands that the Palestinians demonstrate that they are in present control of territory. Permission to litigate will be granted as soon as the litigant can show that it has achieved the very goal which it meant to obtain through litigation. Being denied access to a forum of law, the Palestinians and the Israelis are resorting to force in an effort to defend their respective rights. Thus, it is important to ask how can the International Court of Justice resolve this inconsistency.

A possible answer lies in article 38 of the Court's Statute, which prescribes that cases must be decided in accordance with international law.<sup>52</sup> International law is derived, *inter alia*, from "international custom, as evidence of a general practice accepted as law."<sup>53</sup> From an

Peoples Republic of China, among others, recognize the P.L.O. as the de jure representative of the Palestinians.

52. 1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it shall apply: . . . .

b. international custom, as evidence of a general practice accepted as law;

c. the general principles of law recognized by civilized nations; . . .

I.C.J. STAT., art. 38, para. 1.

53. *Id.* (emphasis added).

examination of current international behavior it is evident that "practice has abandoned the doctrine that States are the exclusive subject of international rights and duties."<sup>54</sup>

The International Court of Justice has acknowledged the United Nations Organization as a subject of international law.<sup>55</sup> The Court stated that the United Nations was not a state, therefore, its legal personality and rights and duties were not the same as those of a state.<sup>56</sup> However, the Court recognized that the United Nations was capable of possessing international rights and duties and had the capacity to bring international claims.<sup>57</sup> In rendering this decision, the Court considered that international practice recognized certain rights and duties of the United Nations.<sup>58</sup>

The United States, Great Britain, France and Italy recognized the Czechoslovak's National Council as the de facto "government endowed with proper authority to direct the military and political affairs of the Czechoslovaks, although the territory of the new states was under the control of Austria-Hungary."<sup>59</sup> After World War I, the successor to the National Council took control of the territory which it had claimed during the War.<sup>60</sup> This is a clear example of international rights and duties being recognized in an entity not fulfilling all the criteria of statehood.<sup>61</sup>

Poland, which was recognized in successive stages during World War I, is another precedent for international rights and duties being recognized without statehood.<sup>62</sup> First, the Polish National Committee was recognized; followed by the formation of the Polish National Army, authorized by decree on June 4, 1917.<sup>63</sup> Poland was an "Allied and Associate Power and a party to *The Treaties of Versailles, St.*

54. 1 WHITEMAN, *supra* note 7, at 52. This passage, as set forth more fully in note 11, *supra*, was made with a specific reference to article 34 of the Court's Statute. Criticism was made of the principle that only states would be the subjects of the international legal system.

55. Reparations for Injuries Suffered in the Service of the United Nations Case, [1949] I.C.J. 170, 174, 178-79.

56. *Id.* at 174.

57. *Id.* at 178.

58. *Id.* at 179. By using article 38, and similar reasoning, the International Court of Justice could, in the same way, alter the standing requirements for quasi-states.

59. Oppenheimer, *Governments and Authorities in Exile*, 36 AM. J. INT'L L. 575 (1942) [hereinafter cited as Oppenheimer].

60. *Id.* For further discussion concerning the recognition of Czechoslovakia before it obtained territory, see 1 HACKWORTH, DIGEST OF INT'L L. 203-08 (1940) [hereinafter cited as HACKWORTH].

61. Oppenheimer, *supra* note 59, at 568.

62. Oppenheimer, *supra* note 59, at 575.

63. *Id.*

*Germain, Neuilly, Trianon, and Servres*, all before its Constitution was signed on March 17, 1921.<sup>64</sup> Although they did not exercise control over territory until the Allied victory of World War I, Poland and Czechoslovakia were recognized as quasi-states with international rights and duties as manifested by their capacity to wage war and sign treaties.

The Palestinians are in an analogous situation. The United Nations, the Arab World, and several world powers recognize the Palestine Liberation Organization and its right to undertake self-determination. This recognition is analogous to the Allied and Associated Powers' recognition of Poland and Czechoslovakia. The claimed territory of the Palestinian People is occupied by a foreign power, Israel, just as Poland and Czechoslovakia were occupied by Austria-Hungary, Germany and Russia. Like Palestine, neither Poland nor Czechoslovakia were states before their occupations.<sup>65</sup> This precedent supports the position that recognition of the Palestinian people as a state need not await the acquisition of territory.

The governments-in-exile during World War II are further examples of quasi-states which lacked territory, but possessed recognized international rights and duties.<sup>66</sup> The sovereignty of these governments, and their legitimacy as the *de jure* governments of their respective countries were unquestioned.<sup>67</sup> Two forms of *de jure* recognition exist with respect to governments.<sup>68</sup> The first "is the continuing recognition existing in the country immediately preceding the occupation. . . ."<sup>69</sup> This type of recognition was extended to the nine governments-in-exile of World War II.<sup>70</sup> The second is "recognition *ab origine* of a newly created government authority which lacks territory."<sup>71</sup> Poland and Czechoslovakia were examples of this form of recognition. Recognition as a *de jure* government does not require

64. *Id.* These treaties were signed during 1918, and 1919. For further discussion of Poland during World War I, see 1 HACKWORTH, *supra* note 60, at 214-17 (emphasis added).

65. Before World War I, Poland was split between the German and Russian Empires, while Czechoslovakia was part of Austria-Hungary. W. KIRCHNER, *WESTERN CIVILIZATION SINCE 1500*, 243, 257 (1968).

66. See 1 WHITEMAN, *supra* note 7, at 921-30.

67. 9 *id.* at 921-27; Lourie & Meyer, "Governments in Exile" and the Effect of Their Expropriatory Decrees, 11 U. CHI. L. REV. 26 (1943) [hereinafter cited as Lourie & Meyer].

68. 9 WHITEMAN, *supra* note 7, at 921.

69. *Id.*; Lourie & Meyer, *supra* note 67, at 26-27.

70. They were: Belgium, Czechoslovakia, Greece, Luxembourg, The Netherlands, Norway, Poland, Yugoslavia, and the Free French. 1 WHITEMAN, *supra* note 7, at 925.

71. *Id.* at 921.

control over territory, only a right to territory under the circumstances of enemy occupation.<sup>72</sup>

#### IV. PROPOSED SOLUTION

Each of these examples<sup>73</sup> are precedents for the position that the international community does not require complete fulfillment of the criteria of statehood before an entity can participate in international relationships. Apparently, the only necessary requirement is unilateral recognition; a quasi-state's claim of capacity to possess international rights and duties will not be effective until the international community recognizes that capacity. Once these international rights and duties are recognized, it is manifestly inconsistent that there should not, at the same time, arise the capacity to bring international claims. Continuation of a standing requirement of statehood by the International Court of Justice disregards the existence of quasi-states, such as the Palestinians, which participate in international relationships.

The United States has recognized the inadequacy of article 34 of the Statute of the International Court of Justice. On May 20, 1974, the United States Senate passed a resolution which "suggests the most radical change . . . as it departs from the traditional notion that only states have standing in the international legal system."<sup>74</sup> The motivation behind this resolution is the realization that "in an increasingly interdependent world a growing number of international entities other than nation-states influence the course of world events."<sup>75</sup> The Palestinian situation was one of the reasons for the proposed change.<sup>76</sup>

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72. *Id.*

73. Both the League of Nations and the United Nations, for political reasons, admitted certain non-states to their organizations whose membership afforded them standing before the Permanent Court of International Justice and International Court of Justice. For example, The British Self-Governing Dominions were admitted to the League, and the two "states" of the Soviet Union were admitted to the United Nations, the Byelorussian S.S.R. and Ukrainian S.S.R. 12 *id.* at 1245; LEECH, *supra* note 7, at 731.

74. 120 CONG. REC. 8429-8432 (1974). For a discussion of the resolution see Comment, *International Court of Justice-Jurisdiction-Resolutions to Expand the Jurisdiction of the ICJ to Improve the Court's Image as a Viable Alternative to Achieve Pacific Settlements of International Disputes*, 5 GEO. J. INT'L & COMP. L. 314 (1975).

75. 120 CONG. REC. 8432 (1974).

76. *Id.* However, the State Department promotes a different position concerning the Palestinians as reflected by their veto of the Security Council resolutions calling for an independent Palestinian state. The executive branch of the United States government will almost certainly continue to support Israel in the United Nations, even though this is contrary to the intent of the Senate resolution. See Memorandum of Agreement Between the Government of Israel and the United States, 121 CONG. REC. 17, 970 (1975). The position of the State Department concerning the Palestinian situation is ironic: "The P.L.O. is not a state, does not administer a defined territory, does not have the attributes of a state and does not claim to be a state." Ambassador Daniel P. Moynihan, chief United

The same rationale was expressed in 1952, in a dissenting opinion by Judge Alvarez of the International Court of Justice.<sup>77</sup> The Judge compared the traditional or "classical" basis for international law with the realistic basis of the "new international law".

"Classical international law" was "static", it scarcely altered at all, because the life of peoples was subject to few changes; moreover, it was based on the "individualistic regime". The "new international law" is "dynamic"; it is subject to constant and rapid transformation in accordance with the new conditions of international life which it must reflect. *This law . . . is constantly being created.* Moreover, *it is based upon the "regime of interdependence"* which has arisen and which has brought into being the "law of social interdependence", the outcome of the revitalized juridical conscience, which accords an important place to the general interest. This is "social justice". *The law . . . is reality;* it is in conformity with the spirit of the Charter as it appears from the Preamble and Chapter I thereof.<sup>78</sup>

The Palestinian situation exemplifies the need to adopt the rationale of the "new international law" and to implement the objectives expressed in the United States Senate resolution.

Resumption of the Geneva Peace Conference concerning the Middle East is unlikely, unless Palestinian interests can first be resolved.<sup>79</sup> All interested Middle East nations should be present at the Conference if a realistic peace settlement is to be achieved. However, because Syria refuses to attend unless the Palestinians are represented in the same status and with the same capacity as the other parties, and because Israel would regard such recognition as tantamount to the acknowledgement of Palestinian statehood, it seems virtually guaranteed that at least one of those parties will be absent from any future

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States delegate to the United Nations, on the date the United States vetoed the Security Council resolution calling for an independent Palestinian state. N.Y. Times, Jan. 13, 1976, § 1, at 1, col. 8, and at 6, col. 3.

Two recent events indicate a thawing in the State Department's position regarding the Palestinians and the P.L.O. First, the United States communicated with and utilized the P.L.O. to escort Ambassador Francis E. Meloy Jr. and his economic advisor Robert O. Waring who were killed during the fighting in Lebanon. N.Y. Times, June 21, 1976, § 1, at 13, col. 1. Secondly, the State Department acknowledged that daily exchanges were taking place with the P.L.O. in connection with the planned evacuation of a group of United States citizens from Lebanon under the protection of P.L.O. forces. N.Y. Times, July 28, 1976, § 1, at 3, col. 5.

77. Anglo-Iranian Oil Co. Case, [1952] I.C.J. 130-134.

78. *Id.* (emphasis added).

79. "Syrian opposition on behalf of the P.L.O. precludes any progress on [the Conference] thus far." L.A. Times, Jan. 14, 1976, § 1, at 10, cols. 1, 2.



talks.<sup>80</sup> The substance of this conflict is the Palestinians' status as a state. Retention of the anachronistic "classical" standing requirement of statehood effectively precludes any legal resolution of this deadlock.

However, the "new international law" would demand that the international legal system adopt a dynamic and pragmatic approach to the problem.<sup>81</sup> A less restrictive standing requirement, based on the international community's recognition of a quasi-state's international rights and duties, would be a realistic standard. This criterion would grant standing to the Palestine Liberation Organization. Accordingly, the Geneva Conference and the Security Council<sup>82</sup> could require the Palestinians and Israelis to litigate their disputes concerning Palestinian statehood.

Although adjudication before the International Court of Justice might not yield a peaceful settlement of this international dispute,<sup>83</sup> this possibility should not deter efforts to increase the *potential* for peaceful settlement by a relaxed standing requirement.<sup>84</sup> Professor

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80. "Israel has declared its refusal to sit with the P.L.O. representatives at Geneva, however, as long as they withhold recognition of Israel as a state." *Id.*

Chaim Herzog, Israel's chief delegate to the United Nations, charged yesterday that Syria and the Palestine Liberation Organization sought to wreck the Middle East negotiations [Geneva Conference] which he said were making progress, [they are adjourned, pending a decision on what capacity the P.L.O. will have at the Conference] and to set the stage for a new round of fighting.

N.Y. Times, Jan. 13, § 1, at 6, cols. 1, 2. For this reason Syria will boycott the Conference, unless the P.L.O. is represented with an equivalent status of the other states at the Conference. See note 79, *supra*.

81. See *supra* note 77, and accompanying text.

82. The Security Council plans to renew discussion on Palestinian statehood. Unless the Palestinians legally substantiate their right to territory, Israel will boycott the debates, and the United States most likely will veto any resolution conflicting with Israel's position. N.Y. Times, Jan. 27, 1976, at 4, col. 6.

83. See Borchard, *The Impracticability of "Enforcing" Peace*, 55 YALE L.J. 966 (1946).

84. Changing the standing requirement of statehood may not bring about a peaceful settlement of the Palestinian-Israeli dispute, but the impact of the International Court of Justice advisory opinion concerning Spanish Sahara exemplifies that judicial settlement can bring about a peaceful settlement of an international dispute.

Spain planned a referendum to decolonize Spanish Sahara and "backed the principle of self-determination for the 75,000 people living there." N.Y. Times, Oct. 17, 1975, § 1, at 8, col. 3. Morocco and Mauritania claimed Spanish Sahara, and Morocco planned a mass march into the territory to establish their claim. Spain delayed on the referendum until the International Court of Justice could render a decision on the claims and the right of the Spanish Sahara inhabitants to determine their own future. N.Y. Times, Oct. 15, 1975, § 1, at 14, col. 8. "The ICJ [declared] in The Hague that it could not 'establish any tie of territorial sovereignty' over Spanish Sahara for either Morocco or Mauritania." N.Y. Times, Oct. 17, 1975, § 1, at 1, col. 4. the decision had an immense impact on world attitudes concerning Morocco's planned march to acquire Spanish Sahara. Consequently,

Borchard suggests that adjudication does not always achieve its objective of peaceful settlement.

International law is a primitive system, not because it lacks the support of force, but because it deals with sovereign states who can not be coerced by other states without entailing war. *There must be a certain agreement on the law, at least among the majority. But the law gains strength through practice, invocation by foreign offices, and application by tribunals.*<sup>85</sup>

An adjudication of the legal controversies involved in Palestinian statehood would provide the Geneva Conference with judicial guidelines to settle the question of Palestinian interests in the Middle East.<sup>86</sup> More importantly, the international community would have a precedent for adjudicating the legal controversies of an international dispute before negotiations begin to settle an international conflict.

## V. CONCLUSION

There is ample precedent for relaxing the requirement for standing before the International Court of Justice. The Court has recognized that the United Nations is not a state, but nevertheless possesses international rights and duties and has the capacity to bring international claims. Article 38 of the Court's Statute provides that cases must be decided by international law which is derived largely from international custom accepted as law. The general practice of the international community recognizes that quasi-states possess international rights and duties. The rationale of the "new international law" and the objectives of the United States Senate resolution urge the international legal system to adapt to this reality of contemporary international relationships.

If the United Nations is to achieve the objective of becoming an active facility ready to assist in the peaceful settlement of international disputes, it must reflect by continuous adjustment of its policies, the ever changing conditions of international society, and it must eliminate

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King Hassan II called off the march and said "the problem would have to be resolved by other means," N.Y. Times, Nov. 10, 1975, § 1, at 1, col. 4.

An International Court of Justice decision which recognized the Palestinians right to territory could alter both Israel's and the United States position concerning the Palestinians and their desire for statehood.

85. *Id.* (emphasis added).

86. G.A. Res. 3236, *supra* note 34, refers to the realization of the Palestinians' rights as indispensable for a solution to the Middle East situation. However, which rights they legally possess is unclear in the absence of an adjudication of the legal controversies involved in creating a Palestinian state.

inconsistencies of policy among its various branches. This can be accomplished by the extension of standing to quasi-states which possess international rights and duties recognized by the international community. Quasi-states such as the Palestinians could then use the International Court of Justice to pursue legal objectives, instead of resorting to force.

International justice in this increasingly interdependent world cannot depend upon the detail of classical statehood. The administration of justice in the international community must be available to all parties who participate in international relationships. Liberalizing the standing requirement will result in a positive furtherance of this objective and provide a possible solution to the question of Palestinian statehood and the Middle East conflict.

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