

## The Statehood of Palestine Based on the Right to Self-Determination: Approaches of the 2024 Advisory Opinion of the International Court of Justice (Original Research)

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### Extended Abstract

The issue of Palestine has consistently been a complex subject within international law, frequently evoking debate on multiple fronts. Among the most contentious topics surrounding Palestine is the question of whether it qualifies as a State. In a significant development in 2024, the International Court of Justice (ICJ) issued an Advisory Opinion addressing “The Legal Consequences of Israel’s Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem.” In its Opinion, the ICJ made clear that the occupation of Palestinian territory does not—despite its prolonged duration—constitute a transfer of sovereignty to Israel. The Court asserted that Israel, as the occupying power, must promptly bring an end to the illegal occupation. Furthermore, the ICJ reaffirmed the Palestinian people's right to self-determination and imposed obligations on other States and the United Nations, specifically advising them not to recognize Israel’s unlawful occupation of Palestinian territories. This Advisory Opinion has revived the question of whether, by emphasizing Palestinian's right to self-determination, the ICJ implicitly acknowledges Palestine as possessing the qualifications necessary for statehood in the eyes of international law.

Given this background, the primary question this research addresses is as follows: What factors prevent the full exercise of Palestinian sovereignty and the enjoyment of statehood rights, despite the recognition of the right to self-determination from the perspective of international law?

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The main hypothesis of this study is that, although the gap between the right to self-determination and the establishment of a state appears to have been bridged through the fulfillment of the traditional criteria of statehood under international law, the prolonged situation of occupation has prevented Palestine from fully enjoying the rights and privileges of statehood.

To examine this hypothesis comprehensively, this article scrutinizes both the recent ICJ Advisory Opinion and pertinent international legal principles concerning the formation of States. It employs a descriptive and analytical approach, drawing on various library sources and structuring the study into four main sections. The first section addresses the dimensions of the right to self-determination for the Palestinian people, as outlined in the ICJ's 2024 Advisory Opinion. The second section evaluates the specific criteria for statehood in the context of Palestine's current status. The third section discusses the recognition of Palestine as a State by individual States and international organizations, examining their actions and legal positions. Finally, the fourth section addresses the gap that sometimes exists between achieving the elements of statehood and gaining full recognition as a State, comparing Palestine's situation with that of East Timor, that gained international acceptance as a State.

The ICJ's identification of various rights for the Palestinian people in its Advisory Opinion—such as the right to territorial integrity, the right to an independent and sovereign State, the importance of population unity and integrity, and the right to permanent sovereignty over natural resources—demonstrates a close alignment with the traditional criteria for statehood in international law. These criteria include territorial integrity, a permanent population, and effective governance. Additionally, the ICJ's affirmation of Palestinians' right to pursue development underscores the concept of a self-determined and autonomous political identity. Although the right to self-determination encompasses a broad spectrum of rights, the ICJ's interpretation clearly includes the right to statehood within this concept. However, the Advisory Opinion also highlights that, although Palestine possesses elements typically associated with statehood, the occupation hinders their full realization.

Further exploration of Palestine's compliance with the 1933 Montevideo Convention on the Rights and Duties of States—which is widely considered to reflect customary international law—indicates that Palestine meets all fundamental criteria for statehood. The Montevideo criteria include a defined territory, a permanent population, an effective government, and the capacity to enter into relations with other States. Nonetheless, the prolonged occupation has created obstacles to the complete exercise of these criteria. Despite these challenges, Palestine maintains a permanent population, defined territory, and a governing authority that, albeit limited, strives to function effectively. Furthermore, the Palestinian authorities have established diplomatic relations with many countries, and Palestine has observer status at the United

Nations, further indicating its capacity to engage internationally.

Yet, despite the fact that Palestine meets the conditions for statehood, international efforts to ensure the Palestinian People's right to self-determination have not been sufficient.

In instances where international intervention has been successful, such as with East Timor, the international community has undertaken "international State-building" efforts to assist in the realization of self-determination and State formation. East Timor, after decades of occupation, achieved full international acceptance as a state through substantial support from the United Nations and individual states. However, similar efforts have not yet been fully applied to Palestine. Thus, in its Advisory Opinion, the ICJ appropriately places progressive obligations on States and the United Nations, urging them to facilitate an end to the Israeli occupation of Palestine. Such a resolution would not only end the occupation but would also support the Palestinian peoples' right to self-determination and the formation of an independent Palestinian state.

In summary, the ICJ's Opinion represents a significant step forward, as it assigns responsibilities to the international community and underscores the importance of ending the occupation to fulfill Palestinian self-determination. Nevertheless, the international community must also recognize its decades old duty to support Palestinian statehood through more assertive measures. By taking steps similar to those implemented for East Timor, the international community can work towards integrating Palestine as a fully recognized State. A commitment to this course would represent not only a step towards justice but also a resolution to a longstanding international conflict. Such recognition and support are crucial if the international community is to fulfill its obligations under international law and contribute to a sustainable peace in the region.

### **Keywords**

Palestine, Right to Self-Determination, Statehood, International Court of Justice, International Community.

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