

Palestinian Statehood:
A Study of Statehood through the Lens of the Montevideo Convention

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ABSTRACT

In general, this thesis sheds light on the complexities associated with formal recognition of statehood within the international community and investigates the application of the articles in the Montevideo Convention relative to obtaining sovereign status as well as Palestine's efforts to meet the requirements set in those articles, in comparison to similar efforts underway by other alleged states. This is most relevant to academia in that it addresses the theoretical application of international law requirements for obtaining statehood and to political/policy circles in providing a synthesized understanding of modern barriers to statehood. Palestine is unable to achieve sovereign status because it lacks international recognition by powerful states, such as the US. Key components of this argument are that the International Court of Justice identifies the articles in the Montevideo Convention as customary law, Palestine meets the Montevideo Convention criteria, even if arguably only in the most basic sense, Palestine currently has bilateral recognition from 135 States and The United States, with support from Israel, continues to threaten its veto powers on any attempt of a bid for full membership by Palestine until a deal can be made between Palestine and Israel at the negotiation tables. Key discoveries made through the comparative analysis are (1) Kosovo, Taiwan and Palestine all meet the criteria outlined in the Montevideo Convention but have yet to receive official membership extended to sovereign states with the United Nations, (2) even in the absence of formal political recognition, diplomatic relationships (whether official or unofficial) still exist; they are typically indicative of economic and business needs rather than political ones and (3) without either unilateral acceptance or abstention of an aspiring state's application for statehood by one of the members of the United Nations Security Council, achieving sovereign status with recognition by the United Nations (and not just some of the sub agencies) is almost impossible. Despite growing momentum in support of a bid for Palestinian statehood, without support from members of the UNSC, progress will be stalled. This thesis explores a topic that is heavily analyzed by taking a step back to look at the basics. Other analyses on the topic of Palestinian statehood are very focused on the complexities of the situation and the mere fact that sovereign status is not achieved; this focuses on the simplicity of the situation and identifying the primary factor that prevents sovereign status.

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Chapter 1: Introduction

On November 29, 1947 the United Nations General Assembly adopted Resolution 181, also known as The Partition Plan, which recommended the creation of both an independent Arab and Jewish state. Soon after the passing of this resolution Israel declared its sovereign independence.¹ However, the creation of an independent Arab state never materialized. 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. Recognized and known in the international community as a sovereign state, Israel proclaimed itself as the state on 14 May 1948² and though initially the surrounding Arab nations objected to its recognition, the majority of the international community recognized 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 organization and over time several Arab nations such as Egypt and Jordan formally recognized Israel as a state. Currently Israel is an active member of the United Nations and is fully engaged in international diplomatic exchanges with many nations. However, Palestine has not been as successful as Israel; the right for self-determination was asserted in the Palestinian Declaration of Independence of 15 November 1988 by the Palestinian

¹ Falk, Richard, Saeb Erikat, Guy S. Goodwin Gill, Winston P. Nagan, Aitza M. Haddad, Basheer Al-Zoughbi, 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.

² Tessler, Mark. 1994. *A History of the Israeli-Palestinian Conflict*. Bloomington, Indiana: Indiana University Press, 269.

Liberation Organization (PLO) in Algiers³ 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 Nations⁴, which is equal to that of the Vatican's status at the United Nations, but not admitted to the organization as a voting member. The Palestine Liberation Organization has diplomatic relations with many nations but is still largely not recognized as a sovereign state in the international community. In light of these circumstances this thesis explores the question: What factors seem to preclude Palestinian full sovereign status?

This introductory chapter will focus on providing background on how states have historically become states and gained formal recognition through (1) reviewing how international law defines a sovereign state, (2) whether international law requires states to recognize other states, and (3) how states have historically practiced recognition of statehood via the declaratory theory or constitutive theory approach recognizing states as *de facto* or *de jure* states. I expect to make a contribution to the field by investigating the application of the articles in the Montevideo Convention relative to obtaining sovereign status as well as Palestine's efforts to meet the requirements set in those articles, in comparison to similar efforts that have been underway by other alleged states, specifically The Republic of Kosovo and The Republic of China. Understanding state sovereignty and how it is achieved matters because it highlights a current debate in both

³ Falk, Richard, Saeb Erikat, Guy S. Goodwin Gill, Winston P. Nagan, Aitza M. Haddad, Basheer Al-Zoughbi, 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, 25.

⁴ Falk, Richard, Saeb Erikat, Guy S. Goodwin Gill, Winston P. Nagan, Aitza M. Haddad, Basheer Al-Zoughbi, 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, 252.

the academic and political circles with regards to international law and political recognition wherein a democratic society would expect determination by law; however political needs and obligations sometimes outweigh international law.

My argument is that meeting the Convention requirements alone does not mean automatic international legitimacy, but that in addition to meeting the requirements, individual state recognition by other established states, particularly powerful and influential ones, is also required for an entity to be considered a legitimate state at the international level. Despite the original intention for the creation of the Montevideo Convention, there still exists an international level of politics that plays a major part in an entity receiving recognition. In some situations recognition is all that is needed to be a state even when the qualifications of meeting the Montevideo criteria are in question. I aim to show that it is neither declaratory nor constitutive theory, but rather a hybrid of both theories that is needed for an entity to be formally recognized as a state. As this paper will show that even though Palestine, Kosovo and Taiwan meet the Montevideo criteria and when cases involving these countries are brought before the International Court of Justice it has been legally justified that they meet the requirements of whatever is being challenged. Yet, for political reasons several power states have prevented these countries from membership into the United Nations. These reasons can be because of political alliances with the other countries that are adamantly against recognition. Declaratory theory argues that when an aspiring entity meets the requirements it is a state with international rights and duties and that other established states must treat it as such upon meeting the requirements. However, this is not always the practice because recognition under this theory is voluntary; the act of recognition becomes political as

state sovereignty tends to place national interests above other states interests. The result of that could lead to preventing the aspiring entity from reaching its desired status and depriving the entity of some rights and duties under International Law. Recognition from established states brings weight and support to entities seeking statehood, and this helps boosts the existence and relevance of these entities in the international community. In fact, Constitutive theory argues that it is only by recognition of other sovereign states that an entity can become a state and gain international legitimacy.

Formal Recognition of Statehood and the Montevideo Convention

Palestine's drive for statehood requires more than Palestine solidly meeting the criteria outlined in the Montevideo article, but also requires recognition by other states, most notably powerful and influential states such as the US (which is not automatic) to establish international legitimacy. Although there is no formal process which an entity can follow to be formally recognized and gain international legitimacy as a state, it has been accepted as customary international law by the United Nations, and the International Court of Justices and its member states that there is a certain set of criteria established in the Montevideo Convention articles that an entity must meet in order for it to be able to claim self-determination and gain formal recognition by the international community.⁵ This set of criteria creates what is accepted as the standard definition of a state and can be found in the treaty signed in 1933 during the Seventh International Conference of American States, also known as The Montevideo Convention on the Rights and Duties of

⁵ Crawford, J. (2006). *The Creation of States in International Law* (2nd ed.). New York, NY, USA: Oxford University Press, 40.

States.⁶ The Montevideo Convention was the result of a political struggle in the Western Hemisphere between the United States and several Latin American states because the United States interfered in local issues when it had interests that could be affected if the local issues were not resolved to the United States' liking. In essence, several Latin American states wanted the United States to quit intervening in what the Latin American states viewed as the internal affairs of Latin America.

For historical context, prior to the Montevideo Convention and under President Theodore Roosevelt's administration the Roosevelt Corollary was declared as an addition to the Monroe Doctrine. The Monroe Doctrine, in summary, noted that the United States would not interfere with internal concerns of existing European colonies and countries. The Roosevelt Corollary, in summary, took more of an active role in intervening with internal concerns in the Western Hemisphere by increasing its use of military force to restore stability to nations in the Western Hemisphere that the U.S deemed it had interests in. The Roosevelt Corollary to the Monroe Doctrine was initially used as a justification for the United States to act as the 'international police' with regards to the relations between the Western Hemisphere and Europe, but over time this evolved. Ultimately the Roosevelt Corollary became less about policing those relations and more about a justification for U.S. intervention in Cuba, the Dominican Republic, Nicaragua and other Latin American countries to prevent European influence and establish a stronger U.S. influence in the hemisphere.⁷

⁶ *The Avalon Project: Convention on Rights and Duties of States (inter-American)*. (1933, December 26). Retrieved December 28, 2014, from Yale Law School: Lillian Goldman Library: http://avalon.law.yale.edu/20th_century/intam03.asp

⁷ Herring, G. C. (2008). *From Colony to Superpower: U.S. Foreign Relations since 1776*. Oxford: Oxford University Press, 369.

The Latin American states' wanted to put an end to the United States' meddling in the internal affairs of Latin America and for the United States to respect their established territorial integrity. Author John Quigley argues that the creation of The Montevideo Convention was largely brought about to establish a process that did not permit the United States to interfere in the internal affairs in a way that would prevent governments from gaining international recognition. He wrote "The fact that the Convention's main issue was the Latin states' concern about the United States' intervention is clear ...One article negated the significance of recognition, because the United States had sometimes withheld recognition as a way of keeping governmental authorities from gaining international legitimacy."⁸ During the late 19th and early 20th century, in an effort to protect its economic interest, the United States would interfere with threats or military action in Central and South America and in some situations invade nations seizing control and ruling that these nations were now a protectorate under the US until whatever crisis stabilized. It was during a new administration that President Franklin Roosevelt declared what is known as the "good neighbor" policy which promised that there would be no more interference in domestic affairs in Latin American by the United States.⁹ President Roosevelt sought to establish the end of the "big stick" intervention approach from his predecessor and establish a more friendly and stable trade relationship that would be unaffected by the political conditions in Latin American states.¹⁰ This policy would put a stop to further military intervention to protect U.S. interest and replace it

⁸ Quigley, John. 2010. *The Statehood of Palestine: International Law in the Middle East Conflict*. New York, NY: Cambridge University Press, 206.

⁹ Whitbeck, John V. (2011, Summer). "The State of Palestine Exists." *Middle East Policy Council* XVIII (2). Retrieved December 28, 2014. <http://www.mepc.org/journal/middle-east-policy-archives/state-palestine-exists?print>.

¹⁰ Herring, G. C. (2008). *From Colony to Superpower: U.S. Foreign Relations since 1776*. Oxford: Oxford University Press, 497.

with a more flexible approach of commercial and financial arrangements to help bring stability in Western Hemisphere. This policy hoped to create new economic opportunities for the United States as well as bring stability across the Latin American countries.

While the Montevideo Convention includes sixteen articles, for the purpose of this thesis, the focus will be on Articles I, III, and VI, because: the first article speaks to the requirements to be a state; the third article explains that the existence of statehood is separate from recognition; and the final article articulates that once a state extends its recognition of another state, it cannot revoke recognition of that state. The remaining articles generally deal with how states should interact with each other and how the Convention applies to states. For example, Article X essentially expresses that states should work together peacefully with any differences to be settled in a peaceful manner.¹¹

The purpose behind Article I was not to focus on defining what a state was or is but more about countering U.S. historic claims for its right to intervene in internal affairs of other states. The purpose of Article I in The Montevideo Convention was to establish that any territorial entity that had a permanent population, a defined territory and a government capable of governing, that also related to other states should be free from intervention. In this article, the convention specifically stipulated that “the state as a person of international law should possess the following qualifications (a) a permanent population; (b) a defined territory; (c) government; and (d) Capacity to enter into relations with the other states.”¹² Delving into details of the first three qualifications by

¹¹ *The Avalon Project: Convention on Rights and Duties of States (inter-American)*. (1933, December 26). Retrieved December 28, 2014, from Yale Law School: Lillian Goldman Library: http://avalon.law.yale.edu/20th_century/intam03.asp

¹² *The Avalon Project: Convention on Rights and Duties of States (inter-American)*. (1933, December 26). Retrieved December 28, 2014, from Yale Law School: Lillian Goldman Library: http://avalon.law.yale.edu/20th_century/intam03.asp

clarifying important components not specifically considered and expertise provided within the field of international law helps to provide the full context of what was intended.

With regards to the first criterion, a permanent population, it is important to understand that the Montevideo convention requires the existence of a permanent population. This is important as the “existence of a permanent population is naturally required as an initial evidence of the existence of a State. This requirement suggests a stable community. Evidentially it is important, since in the absence of the physical basis for an organized community, it will be difficult to establish the existence of a State.”¹³ The convention does not lay out requirements related to the ethnicity or culture of a population. Additionally, the convention does not set out a minimum population required to be considered a population but that the population that resides within the territory boundaries is ‘permanent’ and not transitory. As a result there have been several microstates that have been accepted as full participating members in the international community such as the Principality of Monaco, a member state of the United Nations with a population totaling of 30,508 citizens. Another example is the small state of The Republic of Nauru, which has a population of 9,488 citizens and is also a member of the United Nations, on par with states that have populations in the millions.

For the second criterion, once again the Montevideo Convention does not set forth a required minimum or maximum measurement of land to meet the requirement of statehood. What is required is that there exists a defined piece of land that is inhabited by

¹³ Abdulrahim, D. W. (n.d.). 5. *A State as a Subject of International Law*. Retrieved August 24, 2015, from Dr. Walid Abdulrahim, Professor of Law: Private Site for Legal Research and Studies: <https://sites.google.com/site/walidabdulrahim/home/my-studies-in-english/5-a-state-as-a-subject-of-international-law>

a permanent population. The other requirement is that “the right to be a State is dependent at least in the first instance upon the exercise of full governmental powers with respect to some area of territory.”¹⁴ Both the Principality of Monaco and The Republic of Nauru are considered to be some of the smallest states in the world. Monaco only governs over an estimated two square kilometers while the Republic of Nauru only governs over twenty-one square kilometers. Without a defined territory, the international community is left wondering where exactly one country’s rule ends and another begins. Having a defined territory is important because it brings clarity to where a political authority governs.

The third criterion is the existence of a government that can exercise state authority over its citizens within its claimed territory. Crawford describes this as “government is treated as the exercise of authority with respect to persons and property within the territory of the State.”¹⁵ Within the Convention, there is nothing specific that speaks to measuring the effectiveness of the established government, but only that a government must be established. Continuing with the same states for comparison’s sake, the Principality of Monaco is a constitutional monarchy, with a Sovereign Prince that is considered the head of state, and a Minister of State as the head of government over a five-member Council of Government. The Republic of Nauru has a parliamentary system of government, with a president who serves as both the head of state and head of government. The President is elected by the members of a unicameral parliament. These members in the unicameral parliament are elected every three years.

14 Crawford, J. (2006). *The Creation of States in International Law* (2nd ed.). New York, NY, USA: Oxford University Press, 46.

15 Crawford, J. (2006). *The Creation of States in International Law* (2nd ed.). New York, NY, USA: Oxford University Press, 55.

Although the convention was signed by nineteen states limited to the Americas, John Quigley asserts that these criteria are “...customarily cited” as the standards for statehood.¹⁶ The criterion are considered an aspect of international law that is derived from international custom and has become the proper source for defining statehood based from the primary judicial branch of the United Nations known as the International Court of Justice (ICJ) under Statute Article 38.1 (b).¹⁷ One interesting thing about the implementation of this set of criteria is that it seems to not be applied consistently in actual practice by the international community with any sort of systematic rigor. The third Article of the Montevideo Convention explains that statehood is not only separate from recognition, but recognition is also voluntary. Recognition demonstrates the existing State’s desire and willingness to enter into formal relations with a new State. Since entering into formal relations is political in nature, recognition can and often is used as a political tool to push an individual state’s interest forward.¹⁸ There are entities in the world that do satisfy the criteria of the Montevideo convention but do not receive or benefit from the rights that come with statehood because they are not granted recognition by states that have power. Likewise, there are also entities that are formally recognized as states by the same powerful states that do not comply with the Montevideo Convention’s criteria. China, as an example, has two claimant governments, The People’s Republic of China (PRC) and the Republic of China (ROC). Some countries conduct diplomatic relations with only one government and not the other while some countries attempt to

¹⁶ Quigley, John. 2010. *The Statehood of Palestine: International Law in the Middle East Conflict*. New York, NY: Cambridge University Press, 206.

¹⁷ *International Court of Justice*. (n.d.) Retrieved December 28, 2014. <http://www.icj-cij.org/documents/?p1=4&p2=2>

¹⁸ Kelsen, H. (1941). Recognition in International Law: Theoretical Observations. *The American Journal of International Law*, 35(4), 605.

establish relations with one while simultaneously recognizing the other. While the United Nations General Assembly passed a resolution that only recognizes the PRC as the only legitimate representative of China, the fact remains that China's two government conundrum does not comply with the Montevideo criteria of one government.¹⁹ Two more examples are the Republic of Abkhazia and the Republic of South Ossetia. The Republic of Abkhazia declared its independence in 1999 and the Republic of South Ossetia declared its independence in 1991. Both states were originally recognized by Tuvalu, a member state to the United Nations, but when Tuvalu established official relations with the country of Georgia, it withdrew its recognition of both Abkhazia and South Ossetia as part of its agreement in the protocol it signed with Georgia.²⁰ According to Article VI, once recognition is extended to a country by another country it cannot be revoked. This particular case suggests international recognition holds more weight than acting in accordance with international law, per Montevideo Convention.

In this thesis, I will address whether meeting the criteria of the Montevideo Convention is sufficient for Palestinian statehood, and whether international recognition primarily by powerful states such as the US appears to play a more decisive role in establishing a state of Palestine. The mere fact that the topics of debate for achieving sovereign status are typically related to territory, establishment of a governmental authority and ability to engage in diplomatic relationships, all of which are addressed in the Montevideo Convention's criteria, supports the idea that the criteria are important and

¹⁹ General Assembly Resolution 2758 Restoration of the Lawful Rights of the People's Republic of China in the United Nations. (1971, October 25). *United Nations General Assembly - 26th Session*. Retrieved from <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/327/74/IMG/NR032774.pdf?OpenElement>

²⁰ *Tuvalu takes back recognition of independence of Abkhazia and so-called South Ossetia*. (2014, March 31). Retrieved from Interpressnews: <http://www.interpressnews.ge/en/politicss/56198-tuvalu-takes-back-recognition-of-independence-of-abkhazia-and-so-called-south-ossetia.html?ar=A>

relevant. If debates about sovereign states were focused on other topics, it might be easier to argue that the criteria were not the right ones to aid in establishing sovereign status, but the examples explored in this thesis will illustrate that the criteria outlined in the Montevideo Convention are exactly the areas of contention with regards to statehood.

Literature Review

To ensure a thorough overview of literature relevant to this thesis, there are three key areas of literature that will be summarized for context; literature on international law and statehood, literature on the definitions and key theories that frame up the question of statehood, Declaratory and Constitutive Theories, and literature on Palestinian Statehood.

International Law and Statehood

The question of what statehood is has continued to evolve since the early seventeenth century, with the role that international law plays in statehood evolving since the early nineteenth century. The two main historical approaches to international law are Natural Law and Positivism. Starting in the early seventeenth century, natural law scholars like Hugo Grotius, Samuel Pufendorf and Francisco de Vitoria, believed that law should be found and not made -- in other words, natural law and the law of a nation are the same and men as well as nations should be governed by a universal principle of morality. The naturalist philosophical argument towards a state was that “the existence of States was taken for granted; the State, like the men who compose it, was automatically bound by the law of nations which was practically identical with the law of nature: ‘outside of the sphere of the law of nature, which is also nations.’ So the existence of

States as distinct subjects of that universal law posed no problem.”²¹ Natural law would argue that laws do not come from voice of authority, but that laws come from morality, religion or divine justice, and universal principle.

The contending theory, known as positivism theory, had scholars such as Emmerich de Vattel argue that authority is what makes laws, and that both the actual behavior of states and the authorities comprise the basis of law. Positivists remove the ideal of morality and focus more on legal and illegal. Positivists like Vattel would argue that with regards to state “Nations or States are political bodies, societies of men who have united together and combined their forces, in order to procure their mutual welfare and security...Every Nation which governs itself, under whatever form, and which does not depend on any other Nation, is a sovereign State.”²² Naturalist theory lost support over time and by the 19th century positivism theory became the fully accepted theory for international law. How does positivist theory apply to state recognition? According to this theory, it is up to the states’ own willingness to consent and obey international law. Consent is required either in the creation of a state or in subjecting a state to international law. According to international law scholar Crawford, “If a new State subject to international law came into existence, new legal obligations would be created for existing States.”²³ The new legal obligations were to be created between the new state and existing states through bilateral, trilateral or multilateral agreements among the international community. This could come in the format of treaties, policies or acceptance

21 Crawford, J. (2006). *The Creation of States in International Law* (2nd ed.). New York, NY, USA: Oxford University Press, 6.

22 Crawford, J. (2006). *The Creation of States in International Law* (2nd ed.). New York, NY, USA: Oxford University Press, 7.

23 Crawford, J. (2006). *The Creation of States in International Law* (2nd ed.). New York, NY, USA: Oxford University Press, 13.

to international organizations that have charters and agreements that must be complied with when becoming a member. As positivism theory evolved to address the changing needs of a growing and complex international community of sovereign states, Crawford writes “a summary of the position with regard to statehood and recognition in the late nineteenth century. There was of course no complete unanimity among text-writers: nevertheless, what we find is an interrelated series of doctrines, based on the premise of positivism, the effect of which was the formation of even the existence of States was a matter outside the accepted scope of international law.”²⁴ As a result, positivist theory places the emphasis of statehood on the question of recognition and its legal effects. Declaratory and Constitutive Theories take the question of recognition of statehood a step further by more formally defining how recognition happens.

Declaratory and Constitutive Theories: A Brief Overview

The debate among scholars regarding the reasons for the current status of statehood recognition can be organized into two groups: declaratory theory and constitutive theory. In recent literature regarding statehood and international legitimacy, declaratory theory has argued that recognition is merely an acknowledgment of the existing statehood status and that statehood is acquired the moment 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.²⁵ When dealing with legal disputes over

24 Crawford, J. (2006). *The Creation of States in International Law* (2nd ed.). New York, NY, USA: Oxford University Press, 14.

²⁵ *International Court of Justice*. (n.d.) Retrieved December 28, 2014. <http://www.icj-cij.org/documents/?p1=4&p2=2>

territory or sovereignty between states the ICJ often refers back 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 with the existence of a state without recognition and in Article VI that describes that recognition signifies a state accepting the personality of the other state.²⁶ The declaratory theory argues that the political existence of a state is independent of recognition by other states. Declaratory theory is built on the objective criteria outlined under the articles, and when all the conditions are met, statehood is recognized regardless of the international community's approval or disapproval. Recognition is almost irrelevant because the status of statehood is based on facts and not on individual state discretion, and if statehood is a fact, then recognition should be automatic.²⁷ Crawford writes "The formation of a new State is...a matter of fact, and not of law...where a State actually 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."²⁸ 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 organizations.

²⁶ *The Avalon Project: Convention on Rights and Duties of States (inter-American)*. (1933, December 26). Retrieved December 28, 2014, from Yale Law School: Lillian Goldman Library: http://avalon.law.yale.edu/20th_century/intam03.asp

²⁷ See generally Worster, William Thomas. 2009. "Law, Politics, and the Conception of the State in State Recognition Theory." *Boston University International Law Journal* 27 (1): 116-171.; Brierly, James Leslie. 1967. *The Law of Nations: An Introduction to the International Law of Peace*. 6th. Edited by Sir Humphrey Waldock. Oxford: Clarendon Press.; Chen, Ti-Chiang. 1951. *The International Law of Recognition: With Special Reference to Practice in Great Britain and the United States*. Edited by L.C. Green. New York: Frederick A. Praeger, Inc.; Brownlie, Ian. 2008. *Principles of Public International Law*. 7th. Oxford: Oxford University Press.

²⁸ Crawford, J. (2006). *The Creation of States in International Law* (2nd ed.). New York, NY, USA: Oxford University Press, 4.

Simply put, a state cannot exercise rights over another state unless it has been recognized by the other state.²⁹ Hence, recognition is key.

In other literature, the constitutive theory challenges the declarative school's argument on recognition. Constitutive theory argues that it is only by recognition of other sovereign states that an entity can 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, but rather the entity automatically gains membership into the international community through recognition by other states that ultimately allow for 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. There are fewer modern scholars focused on Constitutive theory with a growing interest in evaluation of this approach.³⁰ 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 not appropriate. Constitutive theory emphasizes the importance of the consent of sovereign states. "The creation of a new state creates such new obligations for existing sovereign states. Therefore, their consent, expressed through their recognition of the new states, must be obtained."³¹ This theory also comes with criticism because states are not obligated to recognize other states; aspiring states could be denied their international

²⁹ Chen, T.-C. (1951). *The International Law of Recognition: With Special Reference to Practice in Great Britain and the United States*. (L. Green, Ed.) New York: Frederick A. Praeger, Inc, 3.

³⁰ Peterson, Martha J. 1997. *Recognition of Governments: Legal Doctrine and State Practice, 1815-1995*. New York: St. Martin's Press.

³¹ 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.

rights to become a state despite requirements for statehood being met, such as is the case with Kosovo, Taiwan and Palestine. Under 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.³² It is also important to note that when a state chooses not to recognize a state by refraining from entering into diplomatic relations, this does not mean that the state loses its existence or sovereignty. For example during the Six-Day War in 1967 Egypt severed its diplomatic relations with the U.S. which were 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 as set out by the Montevideo Convention and debate how Palestine either meets or does not meet the set of criteria. There are politicians and scholars who argue that the government of Palestine does not exercise effective control over its territory, thus demonstrating lack of political control. Political control described by Hans Morgenthau 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 of the latter through the influence which the former exerts over the latter’s minds.”³³ Both Daniel Benoliel and Roen Perry, for example, make the argument that even though the territory

³² Grant, T. D. (1998-1999). Defining Statehood: The Montevideo Convention and its Discontents. *Columbia Journal of Transnational Law*, 422.

³³ 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.

of the Gaza Strip is under Palestine's government control, it is Israel that continues to control most of the important government functions in that territory, functions that have daily effects on the citizens residing within the borders. They write "First ... Israel has retained control over the Strip's airspace and territorial waters, most border crossings, population registry, and tax system."³⁴ Scholars like Francis Boyle, on the other hand, argue that Palestine does exercise effective control over 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 basic administrative functions and social services to its citizens.³⁵

Palestinian Statehood

When you take a look at Palestinian Statehood specifically, there are two main arguments towards the status of Palestine and its statehood. There are scholars who argue that Palestine meets the requirements and is a state and those who argue that Palestine does not meet the requirements and is not a state. Theorists like John Quigley argue that a Palestinian identity and statehood has 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

³⁴ Benoliel, D., & Perry, R. (2010). Israel, Palestine, and the ICC. *Michigan Journal of International Law*, 32(1), 73-127.

³⁵ Boyle, F. A. (1988, November 15). The Creation of the State of Palestine. 301-306. Algiers, 302.

international community continued to recognize Palestine up until the present time.³⁶ Quigley also argues that through the lens of the statehood criteria Palestine meets those requirements and that “Palestine became, and remains, a state.”³⁷ (Quigley ix). 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.³⁸ Another scholar, John Whitbeck, an American international lawyer who specializes in conflict resolution, argues that “Palestine, currently recognized by 112 other states, clearly qualifies as a state under the convention’s criteria.”³⁹

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 basic criterion for statehood.⁴⁰ Jerome Segal explains that although Palestine has made steps towards statehood, it still lacks a functioning government and as a result does not meet the requirements needed for statehood. He argues that “The State of Palestine is not yet a state primarily because it has not sufficiently begun to act as one...The primary

³⁶ Quigley, John. 2010. *The Statehood of Palestine: International Law in the Middle East Conflict*. New York, NY: Cambridge University Press.

³⁷ Quigley, John. 2010. *The Statehood of Palestine: International Law in the Middle East Conflict*. New York, NY: Cambridge University Press, ix.

³⁸ Boyle, F. A. (1988, June 30). CREATE THE STATE OF PALESTINE! *American-Arab Affairs*(25), 86.

³⁹ Whitbeck, John V. (2011, Summer). "The State of Palestine Exists." *Middle East Policy Council XVIII* (2). Retrieved December 28, 2014. <http://www.mepc.org/journal/middle-east-policy-archives/state-palestine-exists?print>.

⁴⁰ Becker, T. (n.d.). *International Recognition of a Unilaterally Declared Palestinian State: Legal and Policy Dilemmas*. Retrieved August 24, 2015, from Jerusalem Center for Public Affairs: <http://www.jcpa.org/art/becker1.htm>

reason...is that it has not established a government, and therefore is not issuing rules to which a population could respond with generalized obedience.”⁴¹ Another scholar, Kavitha Giridhar, has an argument similar to Jerome Segal but further argues that to recognize Palestine as a state prematurely would have a destabilizing political effect in the region.⁴² 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.

Methodology

To research the question “What factors seem to preclude Palestinian full sovereign status?” the proposed methodology is a comparative analysis into the process of Palestinian statehood. To do this I will conduct an analysis of two different entities, in addition to Palestine, that are also seeking formal recognition as sovereign states. The other two entities that will be used in this approach are The Republic of Kosovo and The Republic of China, which for the remainder of this thesis will be referred to as Kosovo and Taiwan, respectively. I will review how the four Montevideo Convention conditions are met in each of these three cases to identify key factors contributing to their inability to achieve sovereign status.

⁴¹ Segal, J. (1989). Does the State of Palestine Exist? *Journal of Palestine Studies*, 19(1), 14-31.

⁴² Giridhar, K. (2006). Legal Status of Palestine. Drake University. College of Arts and Sciences. Departments of Social Sciences. Retrieved from <http://www.drake.edu/media/departmentsoffices/dussj/2006-2003documents/PalestineGiridhar.pdf>

With each of these comparisons this thesis intends to (1) determine if each entity meets the requirements of statehood outlined in the articles of The Montevideo Convention. Then I will (2) identify the current status of recognition given to these entities via diplomatic relations through establishment of embassies, consulates, and missions and formal memberships to international or regional organizations to include determining the entities' current status within the United Nations and how many member states of the United Nations recognize the entities as states. Using the United Nations as the determination of reaching international recognition and legitimacy is done for two reasons. The first is that depending on the source, there are between 190 and over 200 countries in the world – using the United Nations as a proxy ensures a comparable representation based on countries recognized as states within the international community.⁴³ The second is that the United Nations is the largest international organization and currently has 193 member states.⁴⁴ The importance of these two reasons is that the majority of the sovereign states that exist in the world are members of the United Nations. The approval status of a bid for membership within the United Nations largely determines recognition status within the international community and has an influence on international relations with other states.

The comparative analysis will keep a narrow focus on how each entity does or does not meet the requirement for statehood as defined by the Convention, by identifying historical records and events that show the aspiring states meet the criteria to be recognized as a state. This thesis will not focus on the historical struggle of each entity

⁴³ *Central Intelligence Agency: The World Factbook*. Retrieved January 19, 2015. <https://www.cia.gov/library/publications/the-world-factbook/>.

⁴⁴ *About the General Assembly of the United Nations*. Retrieved January 19, 2015. <http://www.un.org/en/ga/about/background.shtml>.

nor will it focus on the conflicts and historical political challenges. This thesis will not attempt to answer or justify which entity has violated international law and how to resolve any internal or regional conflicts among neighboring states.

Specific to Palestine this thesis will keep a narrow focus on a limited timeline of significant events that took place in the Palestinian history starting from the date that former leader of the Palestinian Liberation Organization (PLO) Yasser Arafat declared Palestine as a state in 1988 until January of 2015 when the International Court of Justice announced it would extend membership to Palestine. The justification for narrowing the research and analysis between 1988 and 2015 instead of the dates from the start of state issue with UN Resolution 181 or any other time before 1988 is for three major reasons. The first and most significant reason is that 1988 is the first time when any leader of the Palestinian people publicly declared its sovereignty and gained recognition from 138 member states of the United Nations.⁴⁵ The second reason is that during this time frame the end of the Cold War occurred and with that, political leaders began to change their methods and tactics in handling international issues. States largely stopped using threats and brute force to achieve their interests, and started using diplomatic conferences and treaties to get conflicting nations to communicate and resolve issues of contention among them. With regards to Palestine and Israel, this signified a change in negotiation tactics between the two entities, which makes this a critical juncture in time. The third and final reason is that after 1988, the international community itself began recognizing Palestine's right to become a state and for the first time in history, Palestine represented itself at the

⁴⁵ *General Assembly Votes Overwhelmingly to Accord Palestine 'Non-Member Observer State' Status in United Nations.* (2012, November 29). Retrieved January 19, 2015 from United Nations: Meetings Coverage and Press Releases. <http://www.un.org/press/en/2012/ga11317.doc.htm>.

international table during peace negotiations and conferences instead of having a third party such as Jordan serve as the voice and representative of the Palestinian people. Although the events that took place before 1988 have had a serious impact on Palestine's attempts to become a state, like the UN Resolution 242 and Israel's development of settlements in what is considered occupied territory, the majority of the international community viewed the Palestine Israeli conflict as mostly an Arab Israeli conflict with neighboring countries and the status of Palestine was merely considered second in priority to the bigger picture of creating peace among the neighboring Arab countries and Israel.

This thesis will not explore the centuries-old debate between Palestine and Israel regarding who is the rightful owner of the disputed territories. This thesis will only focus on the borders identified in the 1949 Armistice Agreement known as the "Green Lines" between Israel and the neighboring states of Jordan, Syria, Lebanon and Egypt. The justification for this is twofold. First, the Armistice Agreement regarding borders is one to which Israel has agreed. Second, after the Six-Day War, the United Nations Security Council unanimously adopted Resolution 242 which called for Israel to withdrawal from the territories that it had occupied during the 1967 war. Although originally Resolution 242 was rejected by Palestinian Liberation Organization, the PLO would eventually accept Resolution 242 as the basis for its territorial boundaries and for negotiations with Israel when they signed the Declarations of Principles.

Limitations

The limitations or constraints in conducting this research would be using a comparative analysis of only three would-be states instead of conducting a full investigation of all current states, how they gained statehood, and how their situations compare with the Palestinian circumstances. Since there are arguably over 190 countries currently in the world, in order to give a fair analysis one should research the history of statehood for all 190 plus countries, however, that amount of research and investigation would be impracticable. Another constraint is that this thesis does not look at the legal status of the current conflict between Palestine and Israel or that of the other two aspiring states. This thesis is not to debate the legal arguments by Israel and Palestine, but rather to determine if these entities possess the basic characteristics required by the Convention for statehood and if so to identify what the key obstacle is to achieving sovereignty. Therefore the thesis and its supporting research do not provide a current legal opinion of the international community regarding any disputes over territory and rights to govern. This thesis will focus on how the Montevideo convention (legal factor) is used to argue for or against one's statehood, such as Palestine, and what other political factors contribute to the current status of Palestine

Roadmap

The second chapter will provide a historical overview of the three aspiring states, with primary focus on the historical elements related to Palestine since the thesis intends to analyze Palestine as it compares to similar efforts by Kosovo and Taiwan. For the historical review of Palestine, the key insights will be reviewed as they relate to the

Palestine Israeli conflict to give the reader a basic understanding of issues of statehood concerning Palestine and its continued conflict with Israel and explore how this has affected the international community's approach in working with both Palestine and Israel to find a peaceful resolution and recognition of Palestine. I will identify and analyze the (1) changing status of Palestine within the various agencies in the UN and with other international organizations like the International Criminal Court, and the European Union. I will also examine (2) how the representation and recognition of Palestine statehood has changed with other states that are members of the United Nations, like the United States and some of the European states. This historical background will also identify (3) attempts that Palestine has made towards achieving statehood within the context of the Convention, specifically addressing the current status of these attempts as compared to the criteria of the Convention. Once the historical context for Palestine is established, a brief historical overview for Kosovo and Taiwan will also be provided.

Chapters three and four will comprise of the two key lenses to be used for the comparative analysis across the three aspiring states – reviewed in the order of Kosovo, Taiwan and Palestine for each chapter. The third chapter will determine whether or not requirements of statehood have been met relative to the four criteria established in Article I of the Montevideo Convention: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states. This chapter will take an analytical look into historical documents, treaties, conventions, and international legal findings that support whether the aspiring states meet or do not meet the four requirements of statehood. The fourth chapter will focus on the current status of recognition via diplomatic relations through review of the establishment of embassies,

consulates and missions and formal memberships to international or regional organizations. This chapter will also identify which countries that are members of the United Nations have formally recognized these entities as states and which members do not recognize these entities as states.

The conclusion will then synthesize the results of my findings and the evidence of my research will show that the reason for Palestine not achieving formal statehood is because it lacks the recognition which is not automatically given as a result of Palestine meeting the four criteria for statehood as stipulated in The Montevideo Convention. The factor that seems to account for two of the cases to be considered states while a third, the Palestinian case, not to be considered a state lies outside the Montevideo Convention, namely international recognition by powerful states such as the US.

Stakes

In general, this thesis will shed light on the complexities associated with formal recognition of statehood within the international community. Specific to Palestine, this thesis should provide a clearer set of answers as to why in its current status the aspiring state of Palestine, which has continued to gain more and more international de jure recognition and has met the requirements outlined by The Montevideo Convention, is still not formally recognized as a sovereign state by many powerful states. There is no more significant theoretical matter in international relations and political science than understanding the historical means by which a state acquires statehood. With the understanding of each of these matters at stake, my thesis will make a valuable contribution in both the academic and policy circles. This matters because it highlights a

current debate in both the academic and political circles with regards to international law, political recognition and how politics can sometimes supersede international law.

Chapter 2: Historical Overview

This chapter will provide a historical overview of the three aspiring states, with primary focus on the historical elements related to Palestine since the thesis intends to analyze Palestine as it compares to sovereignty efforts by Kosovo and Taiwan. Only a brief historical overview will be provided for Kosovo and Taiwan.

Kosovo: Brief History

Kosovo, a region located in the Southeastern part of Europe, has been a contested region between Albania, Serbia and Kosovo for a long, long time. Kosovo, like Palestine, has a long history of simmering tensions and conflict between the Serbian and Albanian communities in Kosovo. The Kosovo region was under the rule of the Serbian Empire until the Battle of Kosovo in 1389 when the Ottoman Empire defeated the Serbian forces and gained control of the lands. Kosovo remained under the Ottoman Empire control until the 20th century when the Turks and the Albanians fought fiercely against the Serbian forces but lost control over the region in 1912 during a battle that would be known as the first Balkan War. After the end of this battle Kosovo came under the de facto authority of the Kingdom of Serbia. During World War I, Kosovo once again found itself no longer under Serbian control, but occupied and under the control of the Central Powers until 1918 when the Allied forces successfully pushed the Central Powers out of Kosovo. At the end of World War I the Kingdom of Serbia, which included Kosovo, would ultimately become integrated into the Kingdom of Yugoslavia.⁴⁶

⁴⁶ See generally Coleman, D. Y. (2013, July). History. *Kosovo Country Review*, 9-18.

At the end of World War II Yugoslavia consisted of the Republics of Slovenia, Serbia, Croatia, Bosnia-Herzegovina, Macedonia, and Montenegro, all of which were consolidated under communist rule led by Yugoslav Partisan leader Josip Tito. Under this new government known as the Socialist Federal Republic of Yugoslavia (SFRY) Kosovo would enjoy an increasing autonomy, and in 1974, the Constitution of Yugoslavia made Kosovo an autonomous province and an equal constitutional element of the Federation as one of the eight federal units. In May of 1980, Yugoslavian President Tito died and with his death came a period of political instability within the Social Federal Republic of Yugoslavia. A new wave of nationalism threatened the stability of the SFRY and the new Serbian Communist President Slobodan Milosevic began to strip away at the Constitution of Yugoslavia with regards to Kosovo's autonomous status within the Republic of Serbia. Milosevic used political bullying until he effectively abolished Kosovo's autonomy. He also set the tone for the cultural oppression of the ethnic Albanian population. Ultimately, this state of affairs would later lead to the start of the Kosovo War between the Federal Republic of Yugoslavia and the Kosovo Liberation Army in 1998.⁴⁷

The Kosovo Albanian rebels began a non-violent separatist movement as a result of the oppression and political actions by Milosevic with the ultimate goal to achieve an independent Kosovo. By the summer of 1990 the Kosovo Assembly passed a resolution declaring the Republic of Kosovo within the Yugoslav Federation. In 1991 the Kosovo Assembly declared the Republic a sovereign and independent state and in 1992 successfully elected the leader of the Democratic League of Kosovo, Ibrahim Rugoya, to be the first President of the Republic of Kosovo. At the time only Albania recognized this

⁴⁷ Benson, L. (2004). *Yugoslavia: A Concise History* (Revised and Updated ed.). New York, NY, USA: Palgrave MacMillan, 151.

declaration of independence. The dissolution of the Social Federal Republic of Yugoslavia strengthened the resolve of the secessionists who not only organized parallel political institutions, but also parallel structures in medical care, taxation, and education. However, the tension between these two parties was still going in full force by 1995. The remainder of the decade witnessed escalated violence due to an increase in Serbian violence including numerous human rights violations by the Serbian military operating in Kosovo.⁴⁸

By 1999 the North Atlantic Treaty Organization (NATO), claiming a humanitarian intervention, had begun its military campaign against the Serbian forces bringing an end to the conflict. Following the Kosovo War and the NATO bombings, the United Nations Security Council adopted Resolution 1244 making Kosovo a protectorate under the United Nations Interim Administration Mission in Kosovo (UNMIK) and reaffirmed previous resolutions for autonomy for Kosovo but left the final status of Kosovo open.⁴⁹ This resolution also discussed the territorial integrity of the Federal Republic of Yugoslavia as well as the other States located in that region.⁵⁰ In 2003 the United Nations Security Council endorsed a set of standards known as The Standards for Kosovo, which Kosovo must reach in full compliance with Resolution 1244. The standards outline key areas of development that promote a multi-ethnic society with ethnic tolerance, democracy, justice and protection of the non-Albanian ethnic

⁴⁸ Coleman, D. Y. (2013, July). History. *Kosovo Country Review*, 9-18.

⁴⁹ Elsie, R. (2015). *Kosovo in a Nutshell: A Brief History and Chronology of Events*. Middletown, Delaware, USA, 57.

⁵⁰ United Nations Security Council Resolution 1244. (1999, June 10). *United Nations Security Council - 4011th Session*. Retrieved from <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/172/89/PDF/N9917289.pdf?OpenElement>

communities.⁵¹ The Security Council made it clear that the Kosovo final status would not be addressed until the Standards had been met. In order to meet these goals Kosovo created the Provisional Institution of Self-Government which met regularly to ensure a speedy process on meeting the new goals. With progress being made towards the goals, in November of 2005 Mr. Martti Ahtisaari was appointed the first Special Envoy of the Secretary-General of the United Nations for the future status process for Kosovo.⁵² In April of 2007, UN Special Envoy Ahtisaari submitted a Comprehensive Proposal for the Kosovo Status Settlement known as the "Ahtisaari Plan" before the UN Security Council which was supported by the United States and the European Union. In this comprehensive document the UN Special Envoy Ahtisaari proposed that Kosovo become independent and subject to a period of international supervision.⁵³ The following year in February 2008, having already begun implementing new legislation and a constitution that encompassed and enshrined the Ahtisaari Plan, the Kosovo Assembly declared its independence, binding its commitment to fully implement the Ahtisaari Plan, welcoming a period of international supervision.⁵⁴ Kosovo's new independence was immediately recognized by the United Nations Security Council permanent members with veto powers France, United Kingdom, and the United States. Kosovo's declaration for its independence was quickly contested by Serbia, who in turn was supported by Russia who brought its case before the International Court of Justice. The ICJ finally determined that

⁵¹ Standards for Kosovo. (2003, December 10). *UNMIK*. Pristine, Kosovo.

⁵² *Special Envoy: Biography, Special Envoy for Kosovo - Mr Martti Ahtisaari*. (n.d.). Retrieved August 24, 2015, from UNOSEK: United Nations Office of the Special Envoy for Kosovo: <http://www.unosek.org/unosek/en/speenvoy.html>

⁵³ Letter dated 26 March 2007 from the Secretary-General addressed to the President of the Security Council. (2007, March 26). *United Nations Security Council: Letter*. Retrieved from <http://www.unosek.org/docref/report-english.pdf>

⁵⁴ Kosovo Declaration of Independence. (2008, February 17). Pristine, Kosovo. Retrieved from Republic of Kosovo: Assembly: <http://www.assembly-kosova.org/?cid=2,128,1635>

the declaration did not violate international law. However, United Nations Security Council permanent members with veto powers China and Russia did not recognize Kosovo's independence. Russia flat out rejected Kosovo's declaration and considered it to be illegal and a violation of the principles and norms of international law. While China expressed deep concerns that Kosovo's unilateral action would reignite turbulence and conflict in the region, China further expressed support for a continuation of previous negotiations between Serbia and Kosovo and suggested that a mutual resolution should come from those negotiations.⁵⁵ Finally, in 2013 both the governments of Serbia and Kosovo signed an agreement known as the Brussels Agreement to begin the normalization of their relations.⁵⁶

What is interesting about the 2008 Kosovo Declaration of Independence is that eventually both Serbia and Kosovo were able to come to the negotiating table and reach an agreement to normalize their relations. Kosovo's Independence did not start World War III nor did it fuel more endless fighting with no hope of a resolution. The Kosovo case is similar to the Palestine situation in that there is one argument that Palestine's statehood should be reached through mutual peace agreement with Israel, another argument claiming that Palestine's bid for statehood and its recent bid for an upgrade in membership are violations to previous resolutions and agreements, and yet strong support by the international community that wishes to see the establishment of a Palestinian state. However, in Palestine's situation there is no forward movement in negotiations with

⁵⁵ SECURITY COUNCIL MEETS IN EMERGENCY SESSION FOLLOWING KOSOVO'S DECLARATION OF INDEPENDENCE, WITH MEMBERS SHARPLY DIVIDED ON ISSUE. (2008, February 18). *United Nations Security Council: 5839th Session*. Retrieved from <http://www.un.org/press/en/2008/sc9252.doc.htm>

⁵⁶ Elsie, R. (2015). *Kosovo in a Nutshell: A Brief History and Chronology of Events*. Middletown, Delaware, USA, 74.

Israel as both parties have lost confidence and trust in each other's desire to make compromises. The similarities between Kosovo's case and that of Palestine is that the opposing states have key supporters in UN Security Council, for Serbia it was Russia, and for Israel it is the United States. One of the major differences between both cases was that the United Nations Special Envoy to Kosovo pushed forward a unilateral plan for Kosovo to reach independence, while the situation in Palestine depends on the progression of talks and mutual agreements made with Israel, before final status talks can be reached. In this case Kosovo did not invoke the Montevideo Convention when it declared its independence. Rather Kosovo went through international law and the ICJ and because the ICJ recognizes the Montevideo Convention as a legal document, Kosovo relied on the ICJ's interpretation and ruling to support Kosovo's bid for independence.

Taiwan: Brief History

Taiwan, formally known as the Republic of China, is an island just slightly smaller than the state of Maryland and the state of Delaware combined. Taiwan has a long history of conflict and changing government control as well as the struggle to assert its independence. The island was originally inhabited by Taiwanese Aborigines until the Portuguese and Dutch settlement arrived in the 15th century and eventually in the 17th century a heavy migration of Chinese found their way onto the island of Taiwan. By 1683 Qing dynasty forces from the mainland of China captured Taiwan and in 1855 made Taiwan a province of China. The Qing dynasty would enjoy its rule over Taiwan for the

next forty years as the majority of Taiwan's population was of Chinese descent at this point.⁵⁷

After the Sino-Japanese War in 1895, under the Treaty of Shimonoseki, the Qing dynasty would relinquish its control and Taiwan was ceded to Japan. Taiwan would experience five decades of political turmoil under the ruling of Japan until the end of World War II when the Empire of Japan formally surrendered in 1945 and the current ruling party of China known as the Republic of China (ROC) led by Chiang Kai-shek's Chinese Nationalist Party (KMT) assumed its control of Taiwan. However, China would experience its own civil war from 1945 till 1949. The result of this civil war led to the communist rule under the PRC taking control over mainland China and the Republic of China reestablished its government on the island of Taiwan. Its jurisdiction of governing rule would be limited to that of Taiwan. It can be argued that this began Taiwan's de facto political independence from mainland China, which continues today, without the Beijing government's recognition.⁵⁸

In 1949 the KMT political party made up the majority of the ROC government. Author Denny Roy describes the political situation in Taiwan as “[t]he interest of the state and the ruling party overlapped almost completely. There was little distinction between the KMT and the government, as most high-ranking ROC officials were KMT members, and the government policies privileged the KMT.”⁵⁹ In December of 1949 the ROC government officially made the city of Taipei its capital and Taiwan's new political system faced a new threat of falling under communism. It is important to note that during this time the United States began its mission to try and prevent the spread of Communism

⁵⁷ Roy, D. (2003). *Taiwan: A Political History*. Ithaca, NY, USA: Cornell University Press, xi.

⁵⁸ Roy, D. (2003). *Taiwan: A Political History*. Ithaca, NY, USA: Cornell University Press, 9.

⁵⁹ Roy, D. (2003). *Taiwan: A Political History*. Ithaca, NY, USA: Cornell University Press, 77.

in Asia. The result of this policy was a United States military intervention around the Taiwan Strait which prevented the now Communist China from invading Taiwan.

The United States also provided aid to the ROC government and with a successful land reform program helped the ROC government strengthen its control over the island. This marked the start of modernizing Taiwan's economy. However the threat of China to invade Taiwan led President Chiang Kai-shek and other political officials to take drastic security measures. The ROC officials declared Martial Law in Taiwan, whose government would remain under an authoritarian one party rule under the KMT. The argument and rationale behind Martial Law was to maintain the citizens' peace and security, and safe-guard democracy and freedom. Author Roy best summarized the ROC's intent when he wrote "the KMT was committed in principle to a fully democratic system on Taiwan, but this had to wait until the Communist threat passed because liberalization would create vulnerabilities the enemy could exploit. Freedom had been traded for security."⁶⁰ Taiwan would maintain an authoritarian single-party government for the remaining 1950s 1960s and 1970s. Under this rule Taiwan's economy would experience rapid industrialization and economic growth known as the Economic miracle.⁶¹ Taiwan would also remain under martial law for just under forty years; the martial law was not lifted until the summer of 1987. Also during this time, Taiwan's friendship with the United States was strengthened and the two entities signed a Mutual Defense Treaty which provided both military securities against any invasions by the PRC as well as maintained the ROC as the sole legitimate government of the whole mainland

⁶⁰ Roy, D. (2003). *Taiwan: A Political History*. Ithaca, NY, USA: Cornell University Press⁸⁹.

⁶¹ Roy, D. (2003). *Taiwan: A Political History*. Ithaca, NY, USA: Cornell University Press, 97

of China. This act allowed for the ROC to continue representing all of China in the United Nations.⁶²

This would soon change as in the 1970's Taiwan experienced several political downfalls. Chiang Kai-shek's continued determination to claim political control over mainland China and determination to once again physically reconquer the mainland would experience a fatal blow as the PRC post WWII began to gain diplomatic relationships with a growing number of countries. In October 1971 the ROC government lost its campaign to gain support and vote to keep the ROC government in China's membership seat and the United Nations General Assembly officially expelled Taiwan and replaced it with the PRC as the sole representative for China in the UN under UN Resolution 2758.⁶³ The result of Taiwan losing its seat in the UN meant that it had also lost its memberships in all of the UN-affiliated intergovernmental organizations. By 1975 the PRC had normalized relations with 112 states and the recognition of Taiwan as provided by other states went from 64 down to 26 states, with only these 26 states continuing to hold diplomatic relationships with Taiwan. The United States eventually switched its diplomatic recognition from Taiwan to the PRC in 1979 and as part of the normalization of relations between mainland China and the United States, the PRC would present three preconditions to restoring a normalized relationship between the two. The first would be the withdrawal of United States forces from Taiwan followed by ending its compensation to Taiwan and then finally ending its military alliance with Taiwan. This

⁶² Roy, D. (2003). *Taiwan: A Political History*. Ithaca, NY, USA: Cornell University Press, xii.

⁶³ General Assembly Resolution 2758 Restoration of the Lawful Rights of the People's Republic of China in the United Nations. (1971, October 25). *United Nations General Assembly - 26th Session*. Retrieved from <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/327/74/IMG/NR032774.pdf?OpenElement>

would officially end the Mutual Defense Treaty between the United States and Taiwan. In that same year, the US Congress passed the Taiwan Relations Act, which committed the United States to help Taiwan to be able to defend itself from any future attack by the PRC but fell short of providing direct military assistance. Meanwhile in mainland China the PRC eventually changed its policy toward Taiwan towards a peaceful unification under the one country two systems framework with no renouncement of the use of military force against Taiwan.⁶⁴

Much of the 1980s and 1990s the ROC would see a change in its political system towards a democratic system. After President Chiang Kai-shek's death in 1975, his son Chiang Ching-kou took over the Presidency. In the 1970's many Western states regarded the ROC as an undemocratic system because of the government's stubbornness to uphold its martial law. When Chiang Ching-kou became the new President, he began to liberalize the political system, starting with selecting Taiwanese born Lee Teng-hui as his vice president. Eventually lifting the martial law in Taiwan officially ended the suspension of the ROC constitution and allowed political liberalization to begin. In 1986 the first opposition party known as the Democratic Progressive Party was created to counter the KMT. Chiang Ching-kou would also allow Taiwan citizens to visit their relatives back in mainland China for the first time since the end of the Chinese Civil War. President Chiang Ching-kou died in 1988 and Lee Teng-hui succeeded him as president. Under the Presidency of Lee Teng-hui, Taiwan experienced a transition towards democracy and made several revisions to the ROC constitution which permitted free elections. President Teng-hui focused his intentions towards creating an established

⁶⁴ Roy, D. (2003). *Taiwan: A Political History*. Ithaca, NY, USA: Cornell University Press²⁴³.

Taiwanese identity that was distinct from China. The Democratic reforms continued into the 1990s and President Lee Teng-hui was re-elected in 1996 in what would be the first direct presidential election in the history of the ROC. In 2000, Democratic Progressive Party leader Chen Shui-bian was elected the new President and first non-Koumintang party and was recently re-elected into office in 2014.⁶⁵

The PRC has always maintained sovereign rights over Taiwan claiming Taiwan to be a part of mainland China, under the two systems unification concept. China also continued to make it clear that it would not rule out the use of military force and on occasion during military exercises has launched missiles off the coast of Taiwan. Taiwan never formally declared its independence due to the fact that such an act could lead to a military confrontation between China and Taiwan which could escalate to involve other countries such as the United States.

Palestine: Modern Historical Context leading up to 1988

Before this thesis can focus on the events that took place after 1988, certain historical events that took place before 1988, and which have played a significant role in subsequent peace talks are necessary to draw attention to first. The years 1948, 1964, and 1967 are three very critical years because in these years the outcomes of a war, a convention and another war, respectively, have framed out the historical understanding of the Israeli-Palestinian conflict today and how the peace process between Palestinian people and Israel developed. One additional event in 1974 related to the United Nations recognition of Palestine will also be included as a key event to understand during this

⁶⁵ Roy, D. (2003). *Taiwan: A Political History*. Ithaca, NY, USA: Cornell University Press, 152.

period of time. In many respects, these events characterize the failings of the peace process just as much as they illustrate the development of the peace process.

We will begin with the first critical event, the war that broke out in 1948. To provide historical context, as far back as the 1917 Balfour Declarations up through 1947 when the United Nations General Assembly adopted the Partition Plan for Palestine, there was ongoing tension and civil war between the Arab nations and Israel. In November 1947 the United Nations General Assembly adopted Resolution 181, which called for the creation of two states; an Arab and Jewish state. The following spring of May 1948 Israel declared its independence. Author Shlomo Ben-Ami describes Resolution 181 for the Jewish community as “a resounding victory for the Zionist undertaking and for the Jews’ millenarian longing for statehood.”⁶⁶ The Palestinians openly rejected the United Nations (UN) Resolution and the neighboring Arab countries were furious and soon war broke out as Egypt, Jordan, and Syria took control over mandated Palestine territory and began attacking Israel. The war of 1948 is referred to by the Palestinians as the Naqbah. Author Rashid Khalid describes the traumatic events that cost Palestine so much when he writes that Palestine lost “majority status in Palestine and their hope of controlling the country, and cost half of them their homes, land and property.”⁶⁷

The outcome of this war saw the establishment of the state of Israel and Israel had gained more territory as the borders following the war were larger than those that had been allocated through Resolution 181 and the Partition Plan. Egypt took control of the

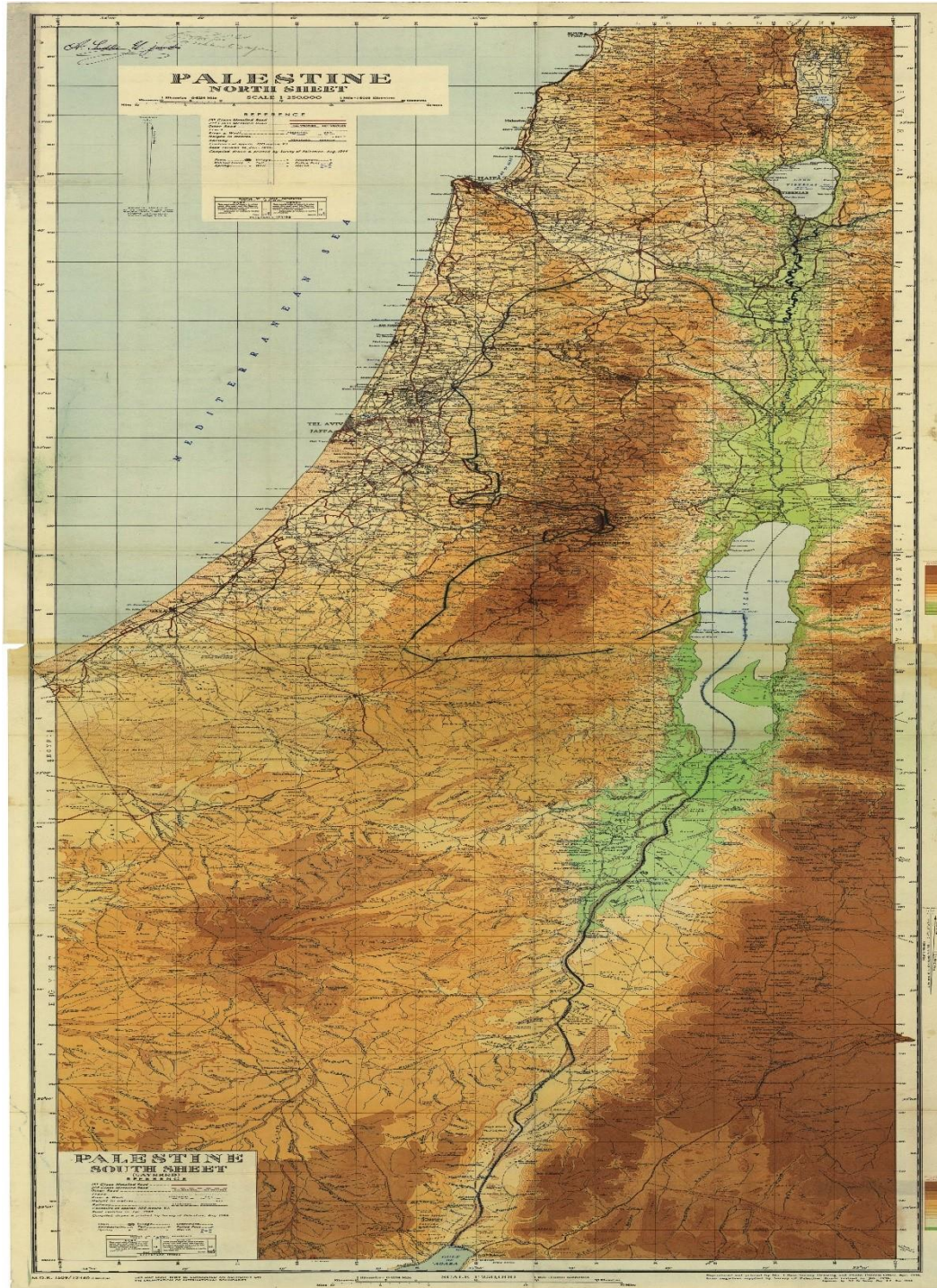
⁶⁶ Ben-Ami, Shlomo. 2006. *Scars of War, Wounds of Peace: The Israeli-Arab Tragedy*. New York, NY: Oxford University Press, 30.

⁶⁷ Khalidi, Rashid. 1997. *Palestinian Identity: The Construction of Modern National Consciousness*. New York: Columbia University Press, 178.

area of the mandated Palestine known as the Gaza Strip and Jordan annexed the area of land known as the West Bank. This war also ended without any peace agreements between Israel and the Arab nations. However there was a set of agreements that were signed during 1949 known as the Armistice Agreements between Israel and Egypt, Lebanon, Jordan, and Syria. These agreements drew up de facto territorial boundaries which are commonly referred to as the “Green Lines”, found in [Figure 1](#), but at no point did this conference create any peace agreements. The boundaries are critical today when discussing the borders regarding territorial configuration of a Palestinian state and even to the conflict in 1967 (to be addressed later) because almost all negotiations to date within the context of borders eventually suggest that they serve as a starting point for mutual agreements. Many international communities, to include the United States, view the “Green Lines” as an already agreed upon solution which just needs to be adopted. In a speech President Obama stated that “We believe the borders of Israel and Palestine should be based on the 1967 lines with mutually agreed swaps, so that secure and recognized borders are established for both states.”⁶⁸

⁶⁸ Cohen, T. (2011, May 19). *Obama calls for Israel's return to pre-1967 borders*. Retrieved from CNN: <http://www.cnn.com/2011/POLITICS/05/19/obama.israel.palestinians/>

Figure 1 – 1949 General Armistice Agreement - Maps Delineating Armistice Demarcation Lines⁶⁹



⁶⁹ 1949 General Armistice Agreement. (1949, April 3). *United Nations: Security Council*. Rhodes. Retrieved from <http://unispal.un.org/UNISPAL.NSF/0/F03D55E48F77AB698525643B00608D34>

Another significant outcome of this war was the status of Jerusalem. Under the Partition Plan, Jerusalem was designated as an international city and would not be under the control of Israel or any Arab state. The city of Jerusalem would come under international supervision. However, the result of the 1948 war was that Jerusalem would ultimately become a divided city with the West side under the control of Israel and the East side, including the old city, under the control of Jordan. Finally, the Palestinian refugees, who at the time were estimated to number about 914,000 thousand, fled their homes during the conflict to the north into Lebanon and to the East into Jordan.⁷⁰ During 1949, the United Nations created the UNRWA, a temporary organization that was to handle the Palestine refugee issue. Today, the UNRWA still exists and is working with a growing number, currently estimated 4.4 million refugees over 60 years later.⁷¹

1964 saw the second critical historical event prior to 1988 in that with the backing of the Arab League a conference was held in Jerusalem with prominent figure heads from various Palestinian communities who made up the Palestine National Council (PNC) a policy making body which represented the Palestinians. During this meeting the council members also created the Palestine Liberation Organization (PLO) which would act as the government for the Palestinian state.⁷² Between 1964 and 1967 the relations between Israel and its neighboring Arab states never fully normalized due to the steady tension of individual state security and potential threat Israel and the neighboring states perceived of

⁷⁰ *Who is a Palestine Refugee?* (2007, June 17). Retrieved February 21, 2015, from UNRWA Archives: <http://web.archive.org/web/20070617144207/http://www.un.org/unrwa/refugees/whois.html>

⁷¹ *Who is a Palestine Refugee?* (2007, June 17). Retrieved February 21, 2015, from UNRWA Archives: <http://web.archive.org/web/20070617144207/http://www.un.org/unrwa/refugees/whois.html>

⁷² Quigley, John. 2010. *The Statehood of Palestine: International Law in the Middle East Conflict*. New York, NY: Cambridge University Press, 133.

each other. Finally in the period leading up to the summer of 1967 the tensions became alarmingly heightened.

This became the catalyst for the third critical historical event prior to 1988, which resulted in Israel launching a series of preemptive airstrikes against Egyptian airfields followed by troop mobilization. This would later be known as the War of 1967, or the Six-day war. By the time the war was over, Israel had defeated Egypt and gained control over the Gaza Strip and the whole of the Sinai Peninsula up to the Suez Canal. Israel also defeated Jordan and gained control over the whole West Bank up to the Jordan River. Finally, Israel defeated Syria and gained control over the territorial land known as the Golan Heights and some of the inroads towards Damascus. Divided Jerusalem came under the control of Israel, to include the old city and all the holy sites. This victory continues to have significant impacts today when peace negotiations attempt to deal with the question of what to do about Jerusalem. Both Palestine and Israel seek to claim Jerusalem as their capital, and according to the “Green Lines” one of the territories that is outside the line is East Jerusalem, a territory that Palestine claims belongs to the Palestinians. In 2000 the Palestinian Authority passed a law proclaiming Jerusalem as its capital which would later be ratified in 2002 by the former chairman Yasser Arafat. However, Israel declared all of Jerusalem, both east and west sides, to be its undivided capital. Clearly this is a conflict of interest for both Palestine and Israel, which is further complicated by the conundrum in international law, as the United Nations finds Israel’s claim of all of Jerusalem as a violation of international law, yet the majority of the international community does not recognize either Israel’s or Palestinian sovereignty of Jerusalem. According to author Sharon Korman "Both states treated the respective

sectors of Jerusalem under their effective control as forming an integral part of their state territory between 1948 and 1967, and each recognized the other's de facto control in their respective sectors by the signature of the 1949 Jordan-Israel General Armistice Agreement." ⁷³

Following the War of 1967, there was a diplomatic vacuum and once again there were no peace talks and no efforts to bring Israel, Syria, Jordan and Egypt to the negotiation table. The one outcome that did occur several months after the end of the war was the passing of the United Nations Security Council Resolution 242. Resolution 242 is known as Land for Peace Resolution: Israel would return the territories captured in 1967 to Egypt, Jordan and Syria in exchange for peace, security and recognition. The relevance of this resolution in later years is that when the peace process began following The Madrid Conference of 1991 and the Oslo accords, it was predicated upon the idea of the exchanged territory for peace – that is land for peace. It is important to note that the Palestine Liberation Organization outright rejected Resolution 242 as it reduced the Palestinian fight for statehood and recognition to that of the humanitarian plight of refugees. Author Ben-Ami captures this period of time where Palestine Liberation Organization realized that it would need to detach itself from the other Arab nations' fight and stand alone. Ben-Ami writes "The Palestinians were about to disengage from the status of a tool in the hands of the Arab states to that of an independent subject in the history of the Middle East. As from the Palestinian debacle of ... the 1948 Naqbah, the Palestinians had lost their independence as a national movement...The 1967 war, the defeat of the Arab armies ... signaled the beginning of a new phase in the history of the

⁷³Korman, S. (1996). *The Right of Conquest: The Acquisition of Territory by Force in International Law and Practice*. Clarendon Press, 251.

Palestinian nationalism.”⁷⁴ The events that took place during the 1948 and 1967 wars significantly shaped the framework of peace talks today as it was during those wars that some of the core issues emerged; border security, Palestinian refugees, control of Jerusalem, and mutual recognition of statehood, all of which still dominate discussions in today’s landscape and remain largely stagnant in today’s peace negotiations. One of the key ingredients for state recognition is a state’s willingness to recognize another state. The history of the Arab Israeli conflict is a testament to how peace negotiations play a critical role in gaining recognition from states. It is important to remember that although peace may not be permanent between two nations, once the recognition of each other’s sovereignty has been established, recognition is permanent and cannot be reneged. Egypt and Israel are good examples of two nations that were once enemies but used peaceful negotiations on topics such as security, border, and trade issues, to normalize their relations, which eventually led to Egypt formally recognizing Israel’s statehood.

The fourth and final critical event to highlight prior to 1988 occurred in 1974 when the Palestine Liberation Organization gained observer status within the United Nations. This essentially means that the United Nations, a collection of states, recognized the Palestine Liberation Organization as the legitimate representatives of the Palestinian people. This is important because up until 1974, the United Nations saw Palestinians as refugees to be addressed and handled by the international community and not as an entity in its own right. The United Nations took a step forward by expressing that “the Palestinian people [have] been prevented from enjoying their inalienable rights, in

⁷⁴ Ben-Ami, Shlomo. 2006. *Scars of War, Wounds of Peace: The Israeli-Arab Tragedy*. New York, NY: Oxford University Press, 129-130.

particular their right to self-determination.”⁷⁵ Even though the United Nations did not extend full membership to PLO, the observer status opened doors to the Palestine Liberation Organization who could now participate in all of the international conferences in the General Assembly and was also “entitled to participate as an observer in the sessions and the work of all international conferences convened under the auspices of other organs of the United Nations.”⁷⁶ This big victory allowed for other states to confidently expand their relations with the Palestine Liberation Organization, such as the Arab League, who only in 1976 formally accepted the PLO as the sole representative of the Palestinians. The League is not a government but rather the representative of the Palestinians to the international community. In 1977 one of the principal organizations of the United Nations known as the United Nations Economic and Social Council adopted a resolution that admitted the PLO as a member for Western Asia. Later in 1994 the Palestinian Authority would be formed, pursuant to the Oslo Accords between the Palestine Liberation Organization (PLO) and the government of Israel, as a five-year interim body. Although the Palestinian Authority does not engage in negotiations with Israel regarding the peace treaty only in matters of implementation of agreements, it is important to note that the creation of the Palestinian Authority is a step towards Palestine as a whole becoming more independent in governing its own people and land and interests.

⁷⁵ General Assembly Resolution 3236 Question of Palestine. (1974, November 22). *United Nations General Assembly - 29th Session*. Retrieved from <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/738/39/IMG/NR073839.pdf?OpenElement>

⁷⁶ General Assembly Resolution 3236 Question of Palestine. (1974, November 22). *United Nations General Assembly - 29th Session*. Retrieved from <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/738/39/IMG/NR073839.pdf?OpenElement>

Palestine: Modern Historical Context from 1988 and beyond

In the years following the United Nations' move to grant the Palestine Liberation Organization observer status, the Palestine Liberation Organization, under the leadership of Chairman of PLO, Yasser Arafat, on 15 November 1988, during a Palestine National Council meeting held in Algiers, declared its independence and the motion was adopted by the Palestine National Council. At the conclusion of the council meeting, the State of Palestine was declared and Yasser Arafat assumed the new title as President of Palestine, a title that would be contested by Israel.⁷⁷ The Declaration was published around the world and in 1989, "approximately 100 states, which meant a majority of the world [states], had recognized the state of Palestine."⁷⁸ For Palestine, having observer status would mean that it was able to establish relations with individual states, but was still lacking the benefits and recognition from some of the larger international organizations like the United Nations.

As a result of this Declaration of Independence, many nations formally recognized and allowed Palestine to establish embassies in their countries. The USSR, for example, recognized the establishment of the Embassy of the state of Palestine in the Soviet Union. To date Palestine has successfully established Embassies, Missions and General Delegations throughout the world, to include countries that are full members of the United Nations. In France, for example, the PLO was able to establish a Mission with general delegations. To understand the significance of this requires understanding the

⁷⁷ Silverburg, Sanford R, ed. 2002. Palestine and International Law: Essays on Politics and Economics. Jefferson, NC: McFarland & Company, 198.

⁷⁸ Quigley, John. 2010. The Statehood of Palestine: International Law in the Middle East Conflict. New York, NY: Cambridge University Press, 158.

purpose of establishing embassies, consulates and missions. A diplomatic mission is essentially a way for a country to establish operations in a host country with the goal to ensure the safety and welfare of its citizens abroad and to maintain the state's personal interests with the host state. Article 3 of The Vienna Convention on Diplomatic Relations sums this up by stating "1. The functions of a diplomatic mission consist, inter alia, in: (a) Representing the sending State in the receiving State; (b) Protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law; (c) Negotiating with the Government of the receiving State; (d) Ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State; (e) Promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations."⁷⁹ The establishment of this form of relationship with another country can be done in various ways starting from the most important, an Embassy, usually established in the host country's capital, which represents its country or state abroad in diplomatic interests, as well as the interests of its citizens that may be living, working, or visiting the host country. Embassies are considered permanent diplomatic missions. Then there are consulates which are essentially small off site locations of the embassy (typically outside of capital cities) with limitations on the duties and functions performed relative to the embassies. The ability for Palestine to be able to establish a mission, create embassies and consulates meant that Palestine could extend beyond its borders and begin to set up shop in another country and be able to effectively represent its citizens and interests.

⁷⁹ Vienna Conventions on Diplomatic Relations. (1961, April 18). *United Nations*. Vienna, Austria. Retrieved from http://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf

The years between 1993 through the end of 2000 are often referred to as the Oslo Accords, Oslo years or the Oslo Process. Beginning in 1993, with the secret negotiations between the Palestinian Liberation Organization and Israel in Oslo, Norway, both Israel and the PLO came to terms with the existence of each other. The PLO recognized Israel's right to exist while Israel agreed to recognize Yasser Arafat as its partner in peace talks. As mentioned before following the idea of land for peace, Palestine also agreed to renounce its use of terrorism and its long-held desire for the destruction of Israel in exchange for Israel to recognize an interim authority in parts of West Bank and Gaza. These areas would be transferred to the Palestinian Authority in the West Bank and Gaza Strip beginning with the withdrawal of Israeli military from the cities of Gaza and Jericho prior to negotiations to determine the future status of said territories. The Oslo Accords were a set of agreements known as the Declaration of Principles (DOP) and in September 1993, they were officially signed during a very public and now quite infamous ceremony held on the White House lawn. An iconic photo was taken of President Yasser Arafat shaking hands with Israeli Prime Minister Yitzhak Rabin and United States President Bill Clinton. The Oslo Accords led to a series of subsequent agreements and outlined a two-phase timetable for the peace process, which included step-by-step measures to build trust and partnership between the two leaders. The first phase would consist of Palestine policing the territories under its control and working with Israel to fight against terrorism. Palestine would also amend the sections in the Palestine Liberation Organization charter which called for Israel's destruction. One of the most notable agreements made during this period is known as the Gaza-Jericho Accords, signed in May 2004, which mapped

out Israel's withdrawal from Gaza and Jericho relinquishing control to the new administrative body known as the Palestinian Authority.

The Gaza-Jericho Accords were followed by the Oslo II Accords in October 1995 which focused on leading further withdrawal of the Israeli military from major centers of population in the West Bank and the Gaza Strip and once again transferring authority over to the new administrative body of the Palestinian Authority for self-rule. The Oslo II Accords were significant because it was the first time in Palestine's history in which Palestine represented itself during negotiations with Israel and the international community. The second phase of the Oslo Process called for the negotiators to come back to the table to determine a final peace agreement which would tackle the core issues: final borders, security arrangements, Jerusalem, statehood, settlements, and refugees. In 2000 President Clinton hosted another attempt to reach a final agreement between Israeli Prime Minister Ehud Barak and President Yasser Arafat to end the Israeli-Palestinian conflict. The Camp David Summit took place in the summer of 2000 which led to the Taba negotiations at the end of the year, neither of which were successful and did not lead to an agreement. The Oslo years came to an end, a stalemate with no further success.

In September 2000 came the Second Intifada, conflict and violence continued to take place for arguably five years until Palestinian President Mahmoud Abbas and Israeli Prime Minister agreed to stop all acts of violence during the Sharm el-Sheikh Summit in February 2005. It was during the Second Intifada that an attempt was made by the United States, Russian, the European Union and the United Nations to resume negotiations that would hopefully lead to the end of the Israeli-Palestinian conflict. The Roadmap for Peace was first outlined during a speech given by United States President George W.

Bush in the summer of 2002, which proposed a phased timetable, for both Israelis and Palestinians with the ultimate end goal of a secure Israel and an independent Palestinian state by the year 2005. President George Bush would be the first United States President to call for a two-state solution. Prior to this, negotiations sought to end conflicts and bring peace and build trust between the two feuding governments. Leaders from around the world in the 1980s and 1990s would refer to the right of self-determination with regards to Palestine. It was not until recently that the phenomena of a two state solution seemed like a solution. President George Bush's roadmap would be the first time the United States brought an end solution of two-states as the final goal between Palestine and Israel as they worked through the items of contention. The phase put the establishment of security before a final settlement in hopes of creating confidence between the two leaders before reaching the final status talks. Just like its predecessors, attempts at final peace agreements and the peace process reached a deadlock in 2006 after the Palestinian parliamentary elections. The Palestinians elected Hamas as the majority into the Palestinian Authority's legislature over the PLO's Fatah party. Hamas, largely considered a terrorist organization by both Israel and the United States, established in its charter the call for the ultimate destruction of Israel.⁸⁰ The importance of this part of history in the context of recognizing statehood, is that even as Palestine continued to participate in peace talks with Israel and continued to establish and define its government and conduct government duties, it did so in a manner not liked by Israel and the United States which is one of the major players that had the power within the United Nations to veto any push to recognize Palestine. If Palestine governed in a manner that is not liked by the United

⁸⁰ *Foreign Terrorist Organizations*. (n.d.). Retrieved August 24, 2015, from US Department of State: Diplomacy in Action: <http://www.state.gov/j/ct/rls/other/des/123085.htm>

States this could prevent any progress Palestine tries to make in the United Nations. On several occasions the United States had expressed its concerns over Palestine's government and the US unwillingness to recognize government leaders.

Peace negotiations between Israel and Palestine did not begin again until Palestinian President Mahmoud Abbas dissolved the government controlled by Hamas in the summer of 2007 and the basic principles of the Roadmap were reaffirmed in 2007 during the Annapolis Conference. In winter of 2007, President George W. Bush hosted a conference between Israeli Prime Minister Ehud Olmert and Palestinian Authority President Mahmoud Abbas as well as many other Arab countries, most notably Saudi Arabia and Syria, two states that officially did not recognize Israel. This conference marked the reaffirmation of a two-state solution and the first time that Palestine and Israel would in a joint statement declare the end goal of peace negotiations would be a Palestinian state. However, peace talks between Palestine and Israel came to an abrupt halt as a result of an Israeli military offensive in Gaza in December 2008 at the end of Israeli Prime Minister Olmert's time in office and replacement by the new Prime Minister Benjamin Netanyahu.⁸¹

Shortly after President Barack Obama took office, his administration attempted to restart the peace process between Palestine and Israel. President Obama started the peace process again in the form of indirect "proximity talks" mediated by the United States' Middle East envoy George Mitchell. However, President Obama's attempts to revamp peace negotiations between Palestine and Israel have ultimately failed leading to no formal agreements ever made to resolve all final status issues. The stalemate between

⁸¹ Zanutti, J., Migdalovich, C., Sharp, J. M., Addis, L. C., Blanchard, C. M., & Margesson, R. (2009). *Israel and Hamas: Conflict in Gaza (2008-2009)*. Congressional Research Service. Retrieved from <https://www.fas.org/sgp/crs/mideast/R40101.pdf>

Palestine and Israel has continued to spark moments of intense fighting and loss of innocent lives in both states. In September 2011, during the 66th Session of the General Assembly, President Mahmoud Abbas submitted the application for full membership into the United Nations to the UN Secretary General Ban Ki-moon after years of stalled negotiations with Israel and the lapsing of the September 2011 deadline that was set by President Obama for there to be a successful negotiation for a two-state solution. The shift from participating in peace negotiations to submitting an application for full membership is significant because Palestine ultimately was adjusting its political strategy to counter the stalled negotiations in an attempt to keep forward momentum. This is important because it symbolically shows Palestine's desire to continue pushing for sovereign status. President Abbas initially intended to launch a bid for full membership within the United Nation. President Abbas' argument for this change of strategy is the result of Palestine's great strides toward meeting the criteria of a sovereign state, and its improvements in governance, security and physical infrastructure. Both the United States and Israel consider President Abbas' strategy as a unilateral move that would hinder the possibility of reaching a peaceful settlement to the Middle East conflict. The United States along with the Quartet argue that the only successful way of reaching a two-state solution is at the negotiation table. However, the attempts for Palestinian statehood were stalled when the United States publically announced that it would use its veto power in the United Nations Security Council if necessary. In the following year during the 67th Session of the General Assembly, the Palestinian Authority decided to suspend its application for full membership in favor of an upgrade status to "non-member observer state", which the General Assembly passed with an overwhelming majority of 138

members voting in favor and 9 members voting against, with the United States as the most notable member voting against the upgrade. This is a significant successful move for Palestine as this showed a progressive gain in support from the international community to the idea of statehood, yet once again highlighted the key players who continue to block any attempts for statehood with Palestine. Although there are several Security Council members who voted against this measure, the campaign to push this veto was largely driven by the United States with support of Israel.⁸² During this time it is important to note that many European Parliaments began to formally recognize Palestine as a state. Additionally, this is an important crossroads because even though the Montevideo criteria are still under debate between Palestine and Israel, politically there is more momentum by other states to recognize Palestine as a state, indicating that recognition has a heavier bearing on sovereign status than meeting the criteria outlined in international law.

The satisfaction of the new status within the United Nations did not last long when in 2014, with the support of the Arab League, Palestinian President Mahmoud Abbas once again sought international recognition of a Palestinian state by the United Nations Security Council in which the member state Jordan would present the draft resolution which would call for the ending of Israeli occupation within three years and the recognition of an independent Palestinian state despite continued threats from the United States to use its veto power. The draft resolution only received eight of the nine votes needed from the 15 members of the UN Security Council. The United Kingdom, Korea, Rwanda, Lithuania and Nigeria abstained from the vote while two member states

⁸² *General Assembly Votes Overwhelmingly to Accord Palestine 'Non-Member Observer State' Status in United Nations.* (2012, November 29). Retrieved January 19, 2015 from United Nations: Meetings Coverage and Press Releases. <http://www.un.org/press/en/2012/ga11317.doc.htm>.

voted against the draft resolution, Australia and the United States. The United States voted against the draft resolution, as the US argued for the solution to be done at the negotiation tables. The United Kingdom abstained from voting because the UK felt that a solution should have been met at the negotiation table, the UK Ambassador to the UN, Mark Lyall Grant stated “The United Kingdom supports much of the content of the draft resolution. It is therefore with deep regret that we abstained from it ...We are disappointed that the normal and necessary negotiation did not take place on this occasion.”⁸³

⁸³ Palestinian statehood bid fails at UN Security Council as US, Australia vote against. (2014, December 30). *RT Question More*. Retrieved from <http://www.rt.com/news/217975-UNSC-palestine-statehood-vote/>

Chapter 3: Montevideo Convention and Statehood Requirements (Article I)

This chapter will determine whether or not requirements of statehood have been met relative to the four criteria established in Article I of the Montevideo Convention: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states. This chapter will take an analytical look into historical documents, treaties, conventions, and international legal findings that support whether the aspiring states meet or do not meet the four requirements of statehood, with review of each aspiring state in order of Kosovo, Taiwan and then Palestine.

Kosovo and the Montevideo Convention

For the first requirement, Kosovo's population is estimated to be around 1,859,203 citizens permanently residing within the boundaries of the state thus meeting the requirement of a permanent population.⁸⁴ With regards to Kosovo's population, it is largely made up of Albanians with a minority cultural population of Serbs who also make up part of the demographics of Kosovo's permanent population. Once again the Montevideo convention does not require that an entire permanent population must be of the same cultural or ethnic background, only that a community of people exists.

For the second requirement, Kosovo governs just less than eleven-thousand square kilometers.⁸⁵ The current border territory of Kosovo was drawn under the Social Federal Republic of Yugoslavia Constitution in 1946 as part of an attempt at an administrative division from the Socialist Republic of Serbia. Kosovo is a landlocked

⁸⁴ *The World Fact Book: Kosovo*. (n.d.). Retrieved February 21, 2015, from Central Intelligence Agency: <https://www.cia.gov/library/publications/the-world-factbook/geos/kv.html>

⁸⁵ *The World Fact Book: Kosovo*. (n.d.). Retrieved February 21, 2015, from Central Intelligence Agency: <https://www.cia.gov/library/publications/the-world-factbook/geos/kv.html>

square-shaped country that on its west side borders the Republic of Albania, the north and east sides border the Republic of Serbia, on the northwest side borders the Republic of Montenegro, and on the south side borders the Republic of Macedonia. These borders are considered fixed and recognized borders by the international community.⁸⁶ Within the defined borders resides a permanent population who is governed by Kosovo authority. Under the Yugoslav Constitution, Kosovo was granted the status of autonomous and practically given the same rights as the other six Yugoslav Republics which included its own territory.

For the third requirement, Kosovo is defined under its constitution created and adopted in 2008 as a multi-party parliamentary representative democratic republic. Kosovo is governed by an executive, legislative and judicial institution with a President serving as the head of state and a Prime Minister who serves as the head of government which exercises the executive power. Kosovo's Legislative power is vested in the Assembly of Kosovo and its Judiciary powers are composed of a Supreme Court with subordinate courts. Thus this displays that the government of Kosovo has the ability to govern its citizens within its territorial boundaries.

For the fourth and final requirement, Kosovo fulfills this requirement as an estimated 108 UN member states recognize Kosovo's statehood. Additionally, Kosovo hosts an estimated twenty foreign embassies located in its capitol city Pristina. Kosovo also operates over twenty embassies abroad in countries such as the United States, France, Germany and the United Kingdom.⁸⁷

⁸⁶ Elsie, R. (2015). *Kosovo in a Nutshell: A Brief History and Chronology of Events*. Middletown, Delaware, USA, 7.

⁸⁷ *Kosovo - Embassies and Consulates*. (n.d.). Retrieved February 21, 2015, from Embassies and Consulates Around the World: <http://www.embassypages.com/kosovo>

Although, the Republic of Kosovo meets the basic requirements for statehood as described in The Montevideo Convention, an argument can be made that the effectiveness of its institutions is still low. The fact remains that it does meet them even in the most minimalist sense.

Taiwan and the Montevideo Convention

Regarding the first requirement, Taiwan's population is an estimated 23,359,298 which is ranked fifty-two out of two-hundred and forty countries according to a population comparison estimate based on statistics from population censuses by the US Bureau of Census.⁸⁸ Taiwan's population is made up of 84% Taiwanese (including Hakka), 14% mainland Chinese and 2% indigenous whose culture is a "blend of aboriginal cultures, Taiwanese folk cultures, Chinese classical culture, and Western-influenced modern culture."⁸⁹ To compare populations, Belgium is ranked eighty-fourth with a total population of estimated 10,449,361 citizens residing in Belgium. Switzerland's population is estimated at 8,061,516 citizens and ranked ninety-sixth in world population. Finally, the country of Moldova ranked one-hundred and thirty-second has a whopping 3,583,288 citizens residing within its borders.⁹⁰ Like Palestine and Kosovo, Taiwan's population is not made up of one ethnicity or cultural background.

⁸⁸ *The World Factbook: Country Comparison - Population*. (2014, July). Retrieved February 21, 2015, from Central Intelligence Agency: <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2119rank.html?countryname=Taiwan&countrycode=tw®ionCode=eas&rank=52#w>

⁸⁹ *Taiwan*. (2015, February 21). Retrieved from Countries and Their Cultures: <http://www.everyculture.com/Sa-Th/Taiwan.html>

⁹⁰ *The World Factbook: Country Comparison - Population*. (2014, July). Retrieved February 21, 2015, from Central Intelligence Agency: <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2119rank.html?countryname=Taiwan&countrycode=tw®ionCode=eas&rank=52#w>

Taiwan's population is very much a melting pot of several ethnicities that are permanently residing within the boundaries controlled by Taiwan's government.

For the second requirement, Taiwan is an island off the southeastern coast of China and lies in between Japan and the Philippines, and also borders the East China Sea, Philippine Sea and Taiwan Strait. The estimated total area of the island is about 35,980 square kilometers, when breaking that number down it looks more like 32,260 square kilometers of land and 3,720 square kilometers of water. For comparison's sake, Belgium territory is an estimated 30,528 square kilometers; Switzerland is estimated to be 41,227 square kilometers and Moldova governs an estimate 33,851 square kilometers.⁹¹ Although small, it is relative in size to other recognized states with an area that can be easily defined with the borders of the island.

For the third requirement, although the legal status of Taiwan is considered extremely contentious, Taiwan considers itself a multiparty democracy with a constitution, with its capital located in the city of Taipei. Taiwan's executive branch consists of a President and Vice President, a Legislative branch and a judicial branch with a civil law legal system. The current political parties within Taiwan are the Democratic Progressive Party (DPP), Kuomintang (KMT) Non-Partisan Solidarity Union (NPSU), People First Party (PFP), and the Taiwan Solidarity Union (TSU). Taiwan also possesses a military force predominately made up of an Army branch; Taiwan also established both a Navy and Air Force branch as well. The PRC claims that Taiwan belongs under its One-China policy. This policy claims there is only one state known as China, which encompasses Taiwan with two governments.

⁹¹ *The World Fact Book: Taiwan*. (n.d.). Retrieved February 21, 2015, from Central Intelligence Agency: <https://www.cia.gov/library/publications/the-world-factbook/geos/tw.html>

For the fourth and final requirement, prior to losing its seat in the United Nations as a result of the UN Resolution 2758, Taiwan enjoyed diplomatic relations with many countries to include the United States. According to Author Roy, “In 1968, the ROC had diplomatic relations with 64 countries, the PRC with 45. By mid-1975, however, the number of countries recognizing [Taiwan] had dropped to 26, while the PRC had normalized relations with 112 states.”⁹² However, today that number has dropped significantly due to the PRC’s refusal to have diplomatic relations with any nation that had formerly recognized the Taiwan and required that any state with which the PRC had diplomatic relations to recognize the PRC’s claim to Taiwan. Taiwan does continue to have unofficial relations with the majority of the major countries in the world such as the United States, Russia, Brazil, Australia, Canada, and most of the Western Europe countries. The United States continues, under the bi-lateral agreement known as Taiwan Relations Act passed in 1979, to sell arms and provide military training to the Taiwan’s Armed Forces. Despite the One-China policy, over twenty countries recognize and have official diplomatic relations with Taiwan.

Like Kosovo, Taiwan meets the basic requirements for statehood described in The Montevideo Convention. Even under the One-China policy it is important to call out the fact that Taiwan has its own constitution, independently elected officials such as the President and possesses its only military forces. It is also equally important to note that the PRC has never physically or governmentally controlled the territory island of Taiwan. Since Japan’s surrender in 1945, the ROC government assumed control of the island and during the Chinese Civil War it effectively relocated to Taiwan and maintained individual

⁹² Roy, D. (2003). *Taiwan: A Political History*. Ithaca, NY, USA: Cornell University Press¹³².

control over that territory. Even with the passing of the UN Resolution 2758 identifying the PRC as the sole legitimate representative of China to the UN, China's One-China rule indicates that there are two governing states and that the ROC governs Taiwan.

Palestine and the Montevideo Convention

For the first requirement, a permanent population, Palestine has a population of people that resides within Palestine's territory. According to the Palestine Liberation Organization, "The June 4, 1967 border, also known as green line, is the internationally recognized border between the occupied Palestinian territory (i.e. West Bank, including East Jerusalem, and Gaza Strip) and the State of Israel."⁹³ Palestine also has 4 million refugees residing outside of its borders in Israel, Jordan, Syria and Lebanon, according to the UN relief and works agency for Palestine refugees in the near east.⁹⁴ During the 1948 conflict, millions of Palestinians fled their homes to neighboring countries seeking refuge. According to Tessler, the West Bank alone "... in 1952 contained about 380,000 indigenous inhabitants, who had left their homes as a result of the 1947-48 War, and approximately 360,000 more who had fled from other parts of Palestine."⁹⁵ These refugees have not been able to return home due to the lack of agreement made between Israel and Palestine over allowing refugees to return home to lands currently occupied by Israel. Palestine without a doubt fulfills the first criterion of a permanent population that

⁹³ *Fact Sheets: The Green line is a Red Line: The 1967 Border and the Two-State*. (2015, August 24). Retrieved from Negotiation Affairs Department - Palestine Liberation Organization: <http://www.nad-plo.org/etemplate.php?id=295>

⁹⁴ *Palestine Refugees*. (n.d.). Retrieved August 24, 2015, from United Nations Relief and Works Agency: <http://www.unrwa.org/palestine-refugees>

⁹⁵ Tessler, Mark. 1994. *A History of the Israeli-Palestinian Conflict*. Bloomington, Indiana: Indiana University Press, 402.

resides in areas which are commonly described as Palestinian territories, West Bank and Gaza. Despite the extraordinarily large number of Palestinian refugees that reside in neighboring states. Additionally, this population shares a common history, culture and nationality that gives it the Palestinian identity. The criterion is silent regarding refugee populations in external areas and does not have a maximum or minimum number required the population criterion to be considered met. There still exists a large population of Palestinians that resides within the West Bank and Gaza. Author Khalidi would describe the continued existence of this population as the “revival in the salience of the Palestinians was mainly the result of the cohesiveness, persistence, and the perseverance of Palestinian stubborn refusal to cease to exist in the face of the extraordinary pressures on them to disappear.”⁹⁶ Additionally, the criterion does not require the population to be ethnically homogeneous. John Quigley argues that the “criterion does not demand that a population must be ethnically homogeneous, although Palestine’s largely is.”⁹⁷ The population in the West Bank is made up of 83% Palestinians and 17% Jewish estimate totaling 2,731,052 people residing in West Bank.⁹⁸ The population in Gaza can be considered ethnically homogeneous and estimated at 1,816,379 Palestinians.⁹⁹ Francis A. Boyle writes “There lives the population of the Palestinian people; they have lived there forever, since time immemorial. They are the

⁹⁶ Khalidi, R. (2006). *The Iron Cage: The Story of the Palestinian Struggle for Statehood*. Boston, MA, USA: Beacon Press, 165.

⁹⁷ Quigley, J. (2010). *The Statehood of Palestine: International Law in the Middle East Conflict*. New York, NY, United States of America: Cambridge University Press, 209.

⁹⁸ *The World Fact Book: West Bank*. (n.d.). Retrieved February 21, 2015, from Central Intelligence Agency: <https://www.cia.gov/library/publications/the-world-factbook/geos/we.html>

⁹⁹ *The World Fact Book: Gaza Strip*. (n.d.). Retrieved February 21, 2015, from Central Intelligence Agency: <https://www.cia.gov/library/publications/the-world-factbook/geos/gz.html>

original inhabitants and occupants of this territory. They are fixed and determinate, and so they definitely constitute a distinguishable population.”¹⁰⁰

For the second requirement, a defined territory, although arguably the most contested between Palestine and Israel, Palestine has established its borders and the overwhelming majority of the international community, to include the United Nations, recognize the “Green Lines” as the legitimate support for the borders that belong to Palestine. The Green Lines refers to the pre-1967 borders that separated Israel from its neighboring Arab countries. The territory beyond the Israeli border is the Sinai Peninsula, West Bank, Gaza Strip, East Jerusalem and Golan Heights. From the time of the Oslo Accords to the present, the international community involved in the peace negotiations between Israel and Palestine has agreed that with regards to the border issue, both Palestine and Israel should use the Green Lines as the basis for future discussions and agreements. One could ask the question, if agreed upon borders already exist then why is there still an argument and why does it still exist as one of the pillars for negotiation? Sovereignty means a state chooses to accept and abide by international law or in some situations when it works to their benefit, it chooses to ignore international law and accept the consequences that may follow. Although there have been legal decisions and claims by the international community that borders do exist and have been agreed upon, Israel continues to argue against those and has built settlements within the challenged. In the territory that Israel recognizes as belonging to Palestine, Israel continues to use its military to control the borders removing Palestine’s ability to effectively control its territory, which includes being able to accept international aid thru its borders land and

¹⁰⁰ Boyle, F. A. (2003). *Palestine, Palestinians and International Law*. (D. G. Collier, Ed.) Francis A. Boyle, 59.

water during times of conflict with Israel. Even President Barack Obama stated in his speech in 2011 regarding the Middle East and North Africa “We believe the borders of Israel and Palestine should be based on the 1967 lines with mutually agreed swaps, so that secure and recognized borders are established for both states. The Palestinian people must have the right to govern themselves, and reach their full potential, in a sovereign and contiguous state.”¹⁰¹ The territorial integrity of Palestine has been recognized and confirmed in UN Security Council Resolution 242 which called for the withdrawal of Israeli forces from territories it had occupied during the 1967 War. In 2004, the International Court of Justice delivered its Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory. The Court declared that “Israel is under an obligation to terminate its breaches of international law; it is under an obligation to cease forthwith the works of construction of the wall being built in the Occupied Palestinian Territory, including in and around East Jerusalem.”¹⁰² Israel strongly opposed this opinion as Israel views East Jerusalem as rightfully its own with all of Jerusalem as its capital and its argument towards its own security and the territorial disputes continue even today. The criterion requires that there be a defined territory, this does not mean that the territory has to be clarified or not in dispute. It means that even if a territory is being disputed by another entity, the state can still exist. Crawford explains that “even a substantial boundary or territorial dispute with a new State is not enough, of itself, to bring statehood into question. The only requirement is that the State must consist

¹⁰¹ Obama, B. (2011, May 19). Remarks by the President on the Middle East and North Africa. *The White House: Office of the Press Secretary*. Retrieved from <https://www.whitehouse.gov/the-press-office/2011/05/19/remarks-president-middle-east-and-north-africa>

¹⁰² Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion. (2004, July 9). *I.C.J. Reports*. Retrieved from <http://www.icj-cij.org/docket/files/131/1671.pdf>

of a certain coherent territory effectively governed.”¹⁰³ The International Court of Justice also stated that “no rule that the land frontiers of a State must be fully delimited and defined, and often in various places and for the long periods they are not.”¹⁰⁴ The Palestinian territory that had been occupied since 1967, which includes East Jerusalem, is considered by the ICJ as a defined territory.¹⁰⁵ Palestine’s territorial boundaries consist of the Gaza Strip, which borders the Mediterranean Sea, Egypt, and Israel. The total area of the Gaza Strip is estimated to be 360 square kilometers which is a little more than twice the size of the United States’ Capitol, Washington DC.¹⁰⁶ Palestine’s other territorial boundary is the West Bank which is estimated to be 5,860 square kilometers, which is about the size of the state of Delaware.¹⁰⁷ It is clear that Palestine has met the criterion for a defined territory. Although parts of Palestine’s territories are under the occupation of Israel, the Montevideo convention does not require that a territory be “fixed”. During President Abbas attempt to seek non-member state status in the United Nations, Abbas sought to gain recognition on the 1967 borders that includes West Bank, Gaza and East Jerusalem. During a speech in 2011, Abbas claimed that Israel’s settlement-building on disputed territories was illegal and he shared his desire for the Palestinian territories to be “represented in [their] natural borders.”¹⁰⁸

¹⁰³ Crawford, J. (2006). *The Creation of States in International Law* (2nd ed.). New York, NY, USA: Oxford University Press, 52.

¹⁰⁴ Quigley, J. (2010). *The Statehood of Palestine: International Law in the Middle East Conflict*. New York, NY, United States of America: Cambridge University Press, 298.

¹⁰⁵ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion. (2004, July 9). *I.C.J. Reports*. Retrieved from <http://www.icj-cij.org/docket/files/131/1671.pdf>

¹⁰⁶ *The World Fact Book: Gaza Strip*. (n.d.). Retrieved February 21, 2015, from Central Intelligence Agency: <https://www.cia.gov/library/publications/the-world-factbook/geos/gz.html>

¹⁰⁷ *The World Fact Book: West Bank*. (n.d.). Retrieved February 21, 2015, from Central Intelligence Agency: <https://www.cia.gov/library/publications/the-world-factbook/geos/we.html>

¹⁰⁸ McMahon, R. (2012, November 30). *Palestinian Statehood at the UN*. Retrieved from Council on Foreign Relations: <http://www.cfr.org/palestine/palestinian-statehood-un/p25954>

The third criterion for statehood is the existence of a government. The United Nations General Assembly recognized the Palestinian Liberation Organization as the sole representative of the Palestinian people in Resolution 3210 and Resolution 3236, and granted the PLO “observer status” in November 1974 in Resolution 3237.¹⁰⁹ In November 2012, the UN General Assembly resolution 67/19 passed, which effectively upgraded Palestine’s status from non-member observer, to non-member observer state.¹¹⁰ Palestinian Authority exercises authority of full control over parts of its territories while in some parts, specifically the West Bank, the Palestinian Authority only has partial control as Israel still controls most of West Bank. After the withdrawal in 2005, Palestine governed the territory with the exception of all external security around Gaza remaining under the control of Israel. Some scholars such as Tal Becker, an international lawyer and legal adviser to the Ministry of Foreign Affairs and a published lecturer on international law and the Middle East peace process, would argue that in these current conditions Palestine does not display effective control over its defined territory. He argues that the limited autonomy under the Declaration of Principles on Interim Self-Government Arrangements, signed between Israel and the PLO on September 13, 1993 “illustrate that the parties have established a Palestinian self-government authority which does not possess the independent, effective and sovereign governmental control that is required to satisfy the definition of statehood.”¹¹¹ He further argues that not only does a

¹⁰⁹ *Question of Palestine*. (n.d.). Retrieved February 21, 2015, from General Assembly of the United Nations: <http://www.un.org/en/ga/62/plenary/palestine/bkg.shtml>

¹¹⁰ General Assembly Resolution 67/19 Status of Palestine in the United Nations. (2012, December 4). *United Nations General Assembly - 67th Session*. Retrieved from <http://www.un.org/en/ga/62/plenary/palestine/bkg.shtml>

¹¹¹ Becker, T. (n.d.). *International Recognition of a Unilaterally Declared Palestinian State: Legal and Policy Dilemmas*. Retrieved August 24, 2015, from Jerusalem Center for Public Affairs: <http://www.jcpa.org/art/becker1.htm>

government have to have control it is also necessary to have effective control over its territory in order to meet the statehood requirements. The Palestinian Authority in accordance with the Israel-PLO agreements under his argument is an autonomous body with temporary and limited powers that is pending a permanent status based on negotiations between Palestine and Israel. The very nature of temporary and limited makes the government function lacking the effective and independent governing control. However, it can also be argued that the Montevideo does not further define what is meant by an established government and the words “effective government” are not found anywhere in the document. As a result, the effectiveness of a government is irrelevant to the argument of if a government body does or does not exist to meet the requirements of statehood. For example, the recent upgrade in status with the United Nations General Assembly enabled Palestinian President Abbas to officially change the name from the Palestinian Authority to the State of Palestine. Although still largely a symbolic move since statehood recognition is still being withheld, this is a huge victory for Palestine in that this symbolic change highlights the continued progressive change in relationship the Palestinian government has achieved within the international community.

During the signing of the Declarations of Principles in 1993, Israel recognized that the Palestinian Liberation Organization was the sole representative of the Palestinian population and a working participant in negotiations for peace. The international community, to include Israel, recognized the PLO as the official representative of the Palestinian people in exchange for the PLO acceptance of UN Resolutions 242 and 388, as well as its rejection of terrorism and violence against Israel. In 1994 during the Oslo Accords the PLO created the Palestinian National Authority to serve as the interim

government to oversee the Occupied Territories. In 2007 the Palestinian National Authority government was broken up into two ruling parties when Hamas had effectively ousted Fatah out of the Gaza Strip and took over government responsibilities for the Gaza Strip. For the next seven years there existed two separate governments. The West Bank was governed by Fatah and the Gaza Strip was under the administrative control of Hamas. However, this past June, in 2014, a new government was formed under the Presidency of Mahmoud Abbas, as an agreement between the Fatah and Hamas political parties was reached. This agreement is known as the Palestinian unity government of 2014.¹¹² The unity of this new government received recognition from the European Union, the United Nations, China, and the United States.¹¹³ Author Ian Brownlie argues that it is not enough to just have an established government, but that a government should have effective control over its citizens and territory. He states “The existence of effective government, with centralized administrative and legislative organs, is the best evidence of a stable political community.”¹¹⁴ Since the unification of both political parties, Hamas and Fatah, under one government took place, it can now be argued that the government of Palestine has effective control over its citizens even with territory currently being disputed with Israel. Jure Vidmar supports the argument that an effective government is not necessary to be considered meeting the Montevideo requirement by stating “[e]ven in non-colonial situation, effectiveness considerations were not applied strictly when new

¹¹² Booth, W., & Gearan, A. (2014, June 2). Palestinians form new unity government that includes Hamas. *The Washington Post*. Retrieved from http://www.washingtonpost.com/world/middle-east/palestinians-form-new-unity-government-including-hamas/2014/06/02/c681d5c6-ea46-11e3-9f5c-9075d5508f0a_story.html

¹¹³ International community welcomes Palestinian unity government. (2014, June 3). *The Jerusalem Post*. Retrieved from <http://www.jpost.com/Diplomacy-and-Politics/EU-says-open-to-working-with-Palestinian-unity-government-355252>

¹¹⁴ Crawford, J. (2012). *Brownlie's Principles of International Law* (Eighth ed.). Oxford, United Kingdom: Oxford University Press, 129.

states were created: Croatia and Bosnia-Herzegovina became states, although their governments did not exercise effective control over their respective territories.”¹¹⁵

Within the structure of this new government, Palestine is governed by a Parliamentary Democracy based on three separate branches of power; the executive, legislative and the judicial. The head of the Executive Branch is the President who is directly elected by popular vote of Palestinian citizens every four years. The President’s responsibilities includes being the Commander-in-Chief of the Palestinian armed forces and conducting diplomatic responsibilities such as sending and receiving of all foreign ambassadors, to name a few. The President is also responsible for appointing a Prime Minister, currently Rami Hamdallah, as the head of government. The Prime Minister manages the daily functions of the Palestinian Government and does not serve as a member of the Palestinian Legislative Council. The Palestinian Legislative Council is made up of an elected body of 132 representatives whose primary function is to serve as the legislative branch of the Palestinian National Authority.¹¹⁶ The Palestinian National Authority Judiciary Branch although has not been formally formalized, according to the Constitution of Palestine passed in 2003 under Article 97 will be independent and rulings of the courts will be in accordance with the law.¹¹⁷

For the fourth and final requirement, capacity to enter into relations with the other states, Palestine’s history of establishing Embassies, Missions and General Delegations, indicates the capability and precedence of entering into relations with other states.

¹¹⁵ Vidmar, J. (2013). *Democratic Statehood in International Law: The Emergence of New States in Post-Cold War Practice*. Oxford: Hart Publishing, 131.

¹¹⁶ *Palestinian Government*. (n.d.). Retrieved February 21, 2015, from Mission of Palestine: <http://palestine.dk/palestine/government/>

¹¹⁷ *The 2003 Amended Basic Law*. (2003, March 18). Retrieved February 21, 2015, from The Palestinian Basic Law: <http://www.palestinianbasiclaw.org/basic-law/2003-amended-basic-law>

Palestine currently has bilateral recognition from 135 States.¹¹⁸ However, it is only in the past few years that many of the European Parliaments and governments have begun to formally recognize Palestine as a state. Many European countries seek to restart the peace talks due to sentiments that Israel is not really interested in working towards a real solution. Hugh Lovatt, a member of the European Council on Foreign Relations, sums up what he and others feel towards the current events in the assertion that “For Netanyahu what is important is [he] is very happy to have a process just so long as it goes nowhere...If you look at the make-up of the Israeli cabinet, a majority of ministers are on record as opposing a two-state solution and saving the annexation of large parts of the West Bank.”¹¹⁹ As a result many of the European countries began taking steps to recognize Palestine and begin to normalize relations despite the lack of a final status agreement between Palestine and Israel.

Overall, Palestine meets the basic requirements for statehood as described in The Montevideo Convention. Although it could be argued whether or not Palestine does so effectively or strongly because of the lack of complete control of its borders and territory still under Israeli military occupation, the fact remains that it does meet the criteria even in the most basic sense. However, even with the majority of the United Nations member’s individual recognition of Palestine’s independence, Palestine still lacks the full backing and extended membership recognition as a member state from the United Nations. Since the UN Security Council permanent members are divided on extending full membership and recognition to Palestine. The United States, with veto power, stands out as the main

¹¹⁸ *Diplomatic Relations*. (n.d.). Retrieved February 21, 2015, from Permanent Observer Mission of The State of Palestine to the United Nations New York: <http://palestineun.org/about-palestine/diplomatic-relations/>

¹¹⁹ Karlidag, I. (2015, May 23). *Does Israel Believe in Two-State Solution?* Retrieved from Anadolu Agency: <http://www.aa.com.tr/en/politics/does-israel-believe-in-two-state-solution/44392>

reason for the lack of formal recognition of statehood. The US has been adamant that negotiations between Israel and Palestine are the only way to achieve a two-state solution and that allowing for Palestine to take a unilateral approach would only deteriorate the relationship and security between Israel and Palestine. The Security Council cannot push forward a resolution if one of its permanent members casts their veto which means that, regardless of Palestine's frustration with Israel and Palestine's claim of Israel's lack of efforts with restarting negotiations, the United States' ally relationship with Israel is one of the big barricades preventing Palestine's full membership.

Chapter 4: Recognition via Diplomatic Relations

This chapter will focus on the current status of recognition via diplomatic relations through review of (1) the establishment of embassies, consulates and missions and (2) formal memberships to international or regional organizations. This chapter will also identify which countries that are members of the United Nations have formally recognized these entities as states and which members do not recognize these entities as states.

Kosovo

Kosovo has as an estimated 108 UN member states that recognize its statehood. Additionally, Kosovo hosts an estimated twenty foreign embassies located in its capital city of Pristina. Kosovo also operates over twenty embassies abroad in countries such as the United States, France, Germany and the United Kingdom.¹²⁰ Kosovo has signed and ratified several bilateral agreements such as the Free Trade Agreement with Albania, and has gained membership to multiple international organizations such as the Central European Free Trade Agreement, International Monetary Fund, and the World Bank which demonstrates the ability to enter into relations with other states and international organizations.

However, even with the majority of the United Nations member's individual recognition of Kosovo independence, Kosovo still lacks the full backing and extended membership recognition as a member state from the United Nations. Serbia vowed never

¹²⁰ *Kosovo - Embassies and Consulates*. (n.d.). Retrieved February 21, 2015, from Embassies and Consulates Around the World: <http://www.embassypages.com/kosovo>

to recognize Kosovo's independence and appealed to the United Nations Security Council to find Kosovo's declaration null and void. Permanent members Britain, France and the United States recognized Kosovo as an independent state and the US supported Kosovo's bid for independence and adoption of the Ahtisaari plan. However, the remaining two permanent members, China and Russia, supported Serbia's argument for its continued sovereignty over Kosovo. Russia, an ally to Serbia, argues that Kosovo's claim for independence is illegal and China fears that the unilateral move would spark more turmoil and that a mutual agreement is needed. Russia has even threatened to veto Kosovo's bid to become a full member in the United Nations.¹²¹ The United Nations General Assembly also voted to send the question of Kosovo's 2008 declaration of independence to the International Court of Justice to determine its legality.¹²² The United Nations has maintained a position of strict neutrality on Kosovo's status. Recognition seems to be the one hurdle that keeps Kosovo from reaching full international status as an independent state and active player in the international community. Kosovo's situation is similar to that of Palestine in that both struggle with key members of the UN Security Council who possess veto powers and share alliances with the feuding state. In both situations, these members have threatened using veto powers to prevent further movement to pass a final resolution of full membership. In all three cases; Taiwan, Kosovo, and Palestine, statehood is largely recognized independent of the United Nations but not by the United Nations.

¹²¹ *Russia Threatens Veto Over Kosovo*. (2007, April 24). Retrieved February 21, 2015, from BBC News: <http://news.bbc.co.uk/2/hi/europe/6587497.stm>

¹²² United Nations General Assembly. (2008, October 8). Backing request by Serbia, General Assembly Decides to Seek International Court of Justice Ruling on Legality of Kosovo's Independence. *United Nations: Meetings Coverage and Press Releases*. Retrieved February 21, 2015, from United Nations: Meetings Coverage and Press Releases: <http://www.un.org/press/en/2008/ga10764.doc.htm>

Taiwan

In its capital city of Taipei, Taiwan hosts an estimated twenty embassies and even more unofficial offices and trade offices to include the United States American Institute in Taiwan which unofficially maintains the commercial and cultural relations with the citizens of Taiwan.¹²³ Taiwan also has embassies overseas and unofficial representative offices often referred to as Taipei Economic and Cultural Representative Office in countries with which Taiwan has only unofficial relationships. Such interactions demonstrate the Taiwan's ability to enter into relations with other states and international organizations.

With regards to recognition, Article VI of The Montevideo Convention states that "The recognition of a state merely signifies that the state which recognizes it accepts the personality of the other with all the rights and duties determined by international law. Recognition is unconditional and irrevocable."¹²⁴ So that being the case it could be argued that because the ROC government was the original ruling government over Taiwan after Japan's surrender and because the UN Resolution 2758 only expelled the ROC as the representative of China that the act did not constitute the expulsion of a member state protected under Article VI. UN Resolution 2758 also does not clarify the issue of Taiwan's representation in the UN in that all state recognition towards the ROC prior to the passing of the resolution with regards to Taiwan is irrevocable and that PRC's requirement of other states to revoke their recognition of the ROC goes against Article

¹²³ *Taiwan - Embassies and Consulates*. (n.d.). Retrieved February 21, 2015, from Embassies and Consulates Around the World: <http://www.embassypages.com/taiwan>

¹²⁴ *The Avalon Project: Convention on Rights and Duties of States (inter-American)*. (1933, December 26). Retrieved December 28, 2014, from Yale Law School: Lillian Goldman Library: http://avalon.law.yale.edu/20th_century/intam03.asp

VI's assertion that recognition is irrevocable and Article VIII which states that "No state has the right to intervene in the international or external affairs of another".¹²⁵

Regardless of the overt threat from the PRC for any attempt by the Taiwan to claim its independence would result in a high probability of military action by the PRC, Taiwan has the right to defend its integrity and independence which is identified in Article III of the Montevideo Convention. Since Taiwan lost its membership to the United Nations the PRC has continued to threaten to veto any attempts for it to join as a full member. However, this has not stopped Taiwan from repeated attempts to rejoin the UN between 1993 and 2007. Each attempt failed either for not gaining sufficient votes, or because its application was rejected by the UNSC primarily to the opposition of the PRC.

Palestine

To date Palestine has successfully established and maintains a large network of Embassies, Missions and General Delegations throughout the world. In Europe, Palestine established Embassies in Ireland, Russia, Sweden, Poland and the Czech Republic; Missions in France, the United Kingdom, Germany, Greece, and Italy; and General Delegations in Belgium, Denmark, Finland and Netherlands. Many of the aforementioned countries are also members of the European Union which has recently been "working with the Palestinian Authority to build up the institutions of future democratic, independent and viable Palestinian State" by creating an action plan with the Palestinian Authority to set "up the agenda of the economic and political cooperation with the

¹²⁵ *The Avalon Project: Convention on Rights and Duties of States (inter-American)*. (1933, December 26). Retrieved December 28, 2014, from Yale Law School: Lillian Goldman Library: http://avalon.law.yale.edu/20th_century/intam03.asp

EU”.¹²⁶ In Africa and the Middle East, Palestine’s network of Embassies are located in states such as Algeria, Egypt, Ghana, Senegal, South Africa, Nigeria, Bahrain, Jordan, Kuwait, Lebanon, Iraq, Saudi Arabia and Iran. Many of the Middle East states are members of the Arab League and many of the states in Africa are members of larger international organizations like the ICC and the UN. In Asia, Palestinian Embassies can be found in Pakistan, India, Kazakhstan, Vietnam, China, Indonesia, Japan (General Mission), and Bangladesh. Even during the long periods of stalled negotiations with Israel towards a peace resolution and final decisions on the contested issues such as the status of Jerusalem and the settlements, Palestine has continued with a government mentality to work to establish relations with other states and sought membership in international bodies. As an example that dates back to the 1980s, France claimed that the Palestinian Mission in Paris did not include French guarantee of diplomatic immunity. However, several years later, France changed their position and stated that the “Palestine representative be designated as ‘ambassador’ instead of general delegate” and would “enjoy diplomatic immunity in France.”¹²⁷

Despite the growing momentum of recognition towards Palestine it is still not enough to change the movement of the United Nations to extend recognition of full membership to Palestine where the United States, with support from Israel, continues to threaten its veto powers on any attempt of a bid for full membership until a deal can be made between Palestine and Israel at the negotiation tables. The United States is considered one of the special status permanent members of the United Nations Security

¹²⁶ *European Union External Action: Palestine*. (n.d.). Retrieved 21 February 2015, from http://eeas.europa.eu/palestine/index_en.htm

¹²⁷ Quigley, J. (2010). *The Statehood of Palestine: International Law in the Middle East Conflict*. New York, NY, United States of America: Cambridge University Press, 160.

Council and with that position it holds the ability to veto, also known as the right to veto. Any of the permanent five members has the ability to abstain in the event that they do not fully agree with a proposed resolution, which would allow for a resolution to be adopted if it gains the nine out of fifteen votes need in the UNSC. However, according to the United Nations Article 27 of the UN Charter, only the permanent five members, the United States, China, United Kingdom, France, and Russia, each have the right to veto any decision that is being voted on by the UNSC 15 members.¹²⁸ If one of the permanent five chooses to use its veto power, than the resolution or decision on the table would not be approved.¹²⁹ All said and done, when a permanent member of the Security Council, such as the United States, threatens to veto a resolution, it holds weight as that means a veto would prevent any resolution from being adopted period. This is the threat that prevents Palestine from pushing forward for full recognition and instead resulted in Palestine adopting the strategy to become non-member observer State in the General Assembly of the United Nations¹³⁰ (equal to that of the Vatican's status at the United Nations), but not admitted to the organization as a voting member. Although the United Kingdom also strongly believes that a peace agreement needs to be met at the negotiation tables between Palestine and Israel, the United Kingdom chose to abstain from voting as this action would still allow for a resolution to be adopted if it could gain the nine necessary votes needed from the remaining members of the UNSC.

¹²⁸ Chapter V: The Security Council. (n.d.). *Charter of the United Nations*. Retrieved August 24, 2015, from <http://www.un.org/en/documents/charter/chapter5.shtml>

¹²⁹ Voting Systems and Records. (n.d.). *United Nations Security Council*. Retrieved August 24, 2015, from <http://www.un.org/en/sc/meetings/voting.shtml>

¹³⁰ Falk, Richard, Saeb Erikat, Guy S. Goodwin Gill, Winston P. Nagan, Aitza M. Haddad, Basheer Al-Zoughbi, 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, 252.

While the United States may enjoy veto powers in the United Nations Security Council, it does not have those powers in other United Nations agencies. As an example of where lack of support from the United States has not hampered Palestine's efforts, in 2011 Palestine became a member of the U.N. Educational, Scientific and Cultural Organization (UNESCO) a membership that was submitted during the 131st session of the UNESCO's executive Board.¹³¹ Even more recently, The United Nations Secretary-General Ban Ki-moon confirmed that Palestine would become a full member of the International Criminal Court (ICC) as of April 1st 2015.¹³²

From its 1988 Declaration of Independence until today, Palestine has evolved from being an issue to be addressed and handled by the international community during the Arab-Israeli conflict to becoming a self-declared independent entity standing on its own two feet and representing itself at the negotiation tables and international conferences to resolve its conflicts and issues while growing in its network of memberships to international organizations.

Palestine is represented within various international organizations as either a member or in observer status. For example, within the United Nations Palestine was upgraded to observer state status following its recent adoption of Resolution 67/19. This demonstrates Palestine's ability to enter into foreign relations with other states. Two major organizations of the United Nations have also recently extended membership to Palestine. In 2012, The United Nations Educational, Scientific and Cultural Organization

¹³¹ Schaefer, B. D. (2011, December 13). *What Palestinian Membership Means for UNESCO and the Rest of the United Nations*. Retrieved 21 February, 2015, from The Heritage Foundation: <http://www.heritage.org/research/reports/2011/12/what-palestine-membership-means-for-unesco-and-the-rest-of-the-united-nations>

¹³² Nichols, M., Charbonneau, L., & Escritt, T. (2015, January 7). *U.N. confirms Palestinians will be ICC member on April 1*. (P. Simao, & S. Orlofsky, Eds.) Retrieved February 21, 2015, from Reuters: <http://www.reuters.com/article/2015/01/07/us-palestinians-israel-un-idUSKBN0KG1JV20150107>

extended full membership to Palestine. At the beginning of 2015, the International Court of Justice also announced it would extend membership to Palestine. Several specialized agencies within the United Nations under the United Nations Economic and Social Council have extended observer status to Palestine. These organizations are the International Telecommunications Union, the World Health Organization, the World Intellectual Property Organization, and the World Tourism Organization. Outside of the United Nations, Palestine is a member of the Arab League, the Organization of Islamic Cooperation, the Union for the Mediterranean, and the Euro-Mediterranean Parliamentary Assembly to name a few. The European Union also recently extended its recognition of Palestine as a State.¹³³

¹³³ Hagbard, C. (2014, December 18). *EU recognizes Palestinian state; removes Hamas from terror list*. Retrieved from International Middle East Media Center: <http://www.imemc.org/article/70037>

Chapter 5: Conclusion

The Montevideo Convention Requirements

With regards to The Montevideo requirements, all three countries do solidly possess a permanent population. Some have argued that the Taiwanese ethnicity is majority Han Chinese and that there is no difference from the permanent population in mainland China. However, as stated before in this thesis under the population section of Taiwan, the population of Taiwan is considered a blend of several ethnic backgrounds. The Montevideo Convention only requires a permanent population and does not require that population to be ethnically homogeneous within the territory or ethnically unique from other territories.

For the second requirement of having a defined territory, Kosovo's and Palestine's territory is defined by published agreements or public documents, whereas Taiwan is defined as the entirety of the island by merit of it not being divided or interfered with by the borders of other countries' land.

For the third requirement of having a government, Taiwan, Palestine and Kosovo each maintain a functioning government that establishes laws and rule over its territory. The return of territory to Palestine is dependent on peace negotiations with Israel that is supposed to end with a two-state solution. The simple act of a government representative of the Palestinian Authority conducting negotiations with Israel does in fact demonstrate a functioning government. In the past, Palestine did not represent itself at the international tables and negotiations with Israel, but required another state such as Jordan stepping in to represent Palestine. Since the surrendering of Japan, the Republic of

Taiwan has effectively governed the entire island, bringing it to economic success by the 1970's. Even if the international community refuses to recognize the ROC as the sole government of all of China to include Taiwan, the ROC had since changed its stance from claiming to be the sole legitimate ruler of all of China to ruling over Taiwan. To further argue the establishment of government for Taiwan, the People's Republic of China has never established its own government in Taiwan but only claims the island as part of its territory recognizing that it is governed by the ROC.

For the fourth and final requirement, Kosovo, Taiwan and Palestine each conduct various forms of diplomatic relations with other countries and governments, whether in official or unofficial capacity, thereby illustrating the capability of each to enter into relations with other countries and governments. It could be said that many of the diplomatic relationships are driven by economic or business needs, as these types of needs would likely inspire the need to develop new and strengthen existing diplomatic relationships. In the case of Taiwan, where there is a booming economy, the economy likely relies on a solid foundation of relationships, diplomatic and otherwise.

Table A illustrates a concise summary of each of the Montevideo requirements and the description indicating that Kosovo, Taiwan and Palestine have successfully met each of the outlined criteria. The final row of the table represents the current status of statehood within the UN, in which you can see despite meeting the Montevideo requirements none of these countries have received full recognition of statehood by the UN.

Table A

Montevideo Criteria	Kosovo	Taiwan	Palestine
1. A permanent Population	Approximately 1.8 million permanent citizens	Approximately 23 million permanent citizens	Approximately 4.5 million permanent citizens between the Gaza Strip and the West Bank
2. A Defined Territory	Approximately 11,000 square km, drawn up under the Social Federal Republic of Yugoslavia Constitution in 1946	Approximately 36,000 square km, territory defined as island and surrounding waters, leaving little to dispute in the way of boundaries	Approximately 6,000 square km, territory defined in the 1949 Armistice Agreement known as the “Green Lines” between Israel and the neighboring states of Jordan, Syria, Lebanon and Egypt
3. Government	Defined under Kosovo’s constitution, created and adopted in 2008, as a multi-party parliamentary representative democratic republic	Taiwan considers itself a multiparty democracy with a constitution, with its capitol located in the city of Taipei	Palestinian unity government of 2014, which outlined the unification of both political parties, Hamas and Fatah, under one government
4. Capacity to enter into relations with the other states	<ul style="list-style-type: none"> - 108 UN member states recognize Kosovo’s statehood - Kosovo hosts an estimated twenty foreign embassies located in its capital city of Pristina - Kosovo operates over twenty embassies abroad 	<ul style="list-style-type: none"> - Prior to losing its seat in the UN with UN Resolution 2758, Taiwan had diplomatic relations with many countries to include the United States. In 1968, Taiwan had diplomatic relations with 64 countries. - Today, Taiwan hosts an estimated twenty embassies and even more unofficial offices and trade offices 	<ul style="list-style-type: none"> - Bilateral recognition of Palestine by 135 States - Representation of Palestine within various international organizations as either a member or observer status, within the UN both the Educational, Scientific and Cultural Organization and the International Court of Justice have extended full membership - Outside of the UN, recognized 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 United Nations?	No	No	No

Formal Recognition of Statehood

Out of the three countries, Taiwan is the only one that once had recognition from the United Nations that has since been lost. The UN argues that it did not deny recognition of the state of China, which does not violate the Montevideo criteria of rescinding recognition, but that it only recognized the People’s Republic of China as the

sole representative of China. The Taiwanese government has applied for membership every year to the United Nations since 1993 but with no success.¹³⁴ The same can be said with regards to Palestine and Kosovo who have both applied for the United Nations with no success. All three entities' bids for full membership to the United Nations have been met with the threat of vetoes by a permanent member of the UN Security Council; for Kosovo Russia has threatened a veto, for Palestine the United States has threatened a veto and for Taiwan, China has threatened to veto.

Recognition of Statehood seems to be based on political motivations by other states, particularly powerful states, rather than purely based on whether or not an entity has met the requirements outlined in The Montevideo Convention. States seem to utilize their influence and power to withhold full recognition as a means to prevent states that have met the requirements from achieving the international status of recognition. Palestine meets the requirements outlined in the Montevideo Convention which satisfies the declarative theory of recognition. The same can be said about the constitutive theory because a significant number of states currently recognize Palestine as a state. Yet the United Nations holds its stance of not extending full membership to Palestine despite the UN requirement of the membership applicant being only that the state be a "peace-loving State and is able and willing to carry out the obligations contained in the Charter."¹³⁵ Palestine has demonstrated its willingness to abide by the UN requirements, President Mahmoud Abbas wrote an article published by the New York Times in 2011 "[t]he State of Palestine intends to be a peace-loving nation committed to human rights, democracy,

¹³⁴ Keating, J. (2008, February 26). How to Start Your Own Country in Four Easy Steps. *Foreign Policy*. Retrieved from http://foreignpolicy.com/2008/02/26/how-to-start-your-own-country-in-four-easy-steps/?wp_login_redirect=0

¹³⁵ *Rules of Procedure: XIV. Admission of New Members to the United Nations*. (n.d.). Retrieved February 21, 2015, from General Assembly of the United Nations: <http://www.un.org/en/ga/about/ropga/adms.shtml>

the rule of law and the principles of the United Nations Charter.”¹³⁶ The United States has even threatened to veto any bid for membership from Palestine. President Obama, in a speech to the United Nations, stated that the US fully intended to veto any bid for membership made by Palestine.¹³⁷ The United Nations Security Council has maintained a position rejecting Palestine’s bid for membership. Recognition seems to be the one hurdle that keeps Palestine from reaching full international status as an independent state and active player in the international community.

What seems to be a strong argument for why this is the case is the United States’ dedicated interests in seeing a final two-state solution agreement come out of the Palestine Israel peace process. This is a clear indication that the United States’ political alliance with Israel is given priority over that of Palestine’s interest to gain international recognition of sovereign status through the United Nations. In 2008, in a speech given by George W. Bush, the President stated that “the establishment of a state in Palestine is long overdue.”¹³⁸ President Obama, during an address to the United Nations, more specifically stated that “There is no short cut to end a conflict that has endured for decades... Ultimately, it is Israelis and Palestinians –not-us- who must reach agreement on the issues that divide them.”¹³⁹ Essentially the US foreign policy towards the Israeli-Palestinian peace process been a large obstacle for Palestine to gain membership to the United Nations as the US believes that Palestine statehood can only be accomplished

¹³⁶ Abbas, M. (2011, May 16). The Long Overdue Palestinian State. *The New York Times*. Retrieved from http://www.nytimes.com/2011/05/17/opinion/17abbas.html?%20r=1&ref=world&_r=0

¹³⁷ Barack Obama 'will veto' Palestinian UN bid. (2011, September 22). Retrieved from BBC News: <http://www.bbc.com/news/world-middle-east-15014037>

¹³⁸ Duss, M., & Cohen, M. A. (2015, March 27). The United States should recognize the state of Palestine. *The Washington Post*. Retrieved from http://www.washingtonpost.com/opinions/the-united-states-should-recognize-the-state-of-palestine/2015/03/27/1815e9b4-d366-11e4-ab77-9646eea6a4c7_story.html

¹³⁹ Barack Obama 'will veto' Palestinian UN bid. (2011, September 22). Retrieved from BBC News: <http://www.bbc.com/news/world-middle-east-15014037>

through peace negotiations with Israel and any chatter regarding Palestine attempting to seek membership to the UN had been put aside to focus on peace talks. Since Palestine and Israel, for various reasons and fault on both sides, are in a stalemate situation with regards to continued peace talks, the United States has not budged from its stance on extending recognition. The most recent attempt by Palestine to have a draft Palestinian statehood resolution passed at the United Nations Security Council that demanded the end of Israel's occupation by 2017 ultimately did not receive the needed votes to pass the UN Security Council. However, even if the majority of the Security Council voted in favor of the resolution, the US would exercise its power of veto and ultimately the resolution would not pass. The US State Department spokesman Jeff Rathke stated that "We don't think this resolution is constructive... We think it sets arbitrary deadlines for reaching a peace agreement and for Israel's withdrawal from the West Bank, and those are more likely to curtail useful negotiations than to bring them to successful conclusion."¹⁴⁰ More and more states have extended their recognition of the Statehood of Palestine since its declaration of independence in 1988 and more international organizations are granting membership to Palestine to include major organizations of the United Nations. Yet, Palestine's most recent bid for full membership did not pass and, as a result, Palestine accepted the upgrade from observer to observer state. It can be argued that the upgrade to observer state is a huge symbolic win for Palestine as it shows the growing number of states that recognize its statehood but because of the looming veto threat by the United States the United Nations General Assembly would not be successful in extending membership to Palestine.

¹⁴⁰ *State Dept: Palestinian U.N. statehood resolution is not constructive.* (2014, December 29). Retrieved from The Global Jewish News Source: <http://www.jta.org/2014/12/29/news-opinion/israel-middle-east/state-dept-palestinian-u-n-statehood-resolution-is-not-constructive>

Palestine is not formally recognized as a state by meeting the Montevideo Convention Article I criteria alone because within the Convention recognition is noted as voluntary per Article III, with recognition extended at a state's own discretion. However, once the recognition is given, according to Article VI, it cannot be rescinded. The International Criminal Court refers to and relies on the Montevideo Convention requirements for its justification in its court decisions in international law. This makes meeting the requirements of the Montevideo Convention a relevant requirement for statehood, but those requirements alone are not enough. An entity seeking to sit at the international table of statehood must also gain recognition from other state entities that is not automatically given. The Montevideo Convention states that recognition is not needed for an entity to become a state, but in the cases of Kosovo, Taiwan and Palestine, that is not necessarily true in practice. All three countries are unable to receive legitimate international recognition as a sovereign state due to the lack of their ability to gain recognition from key states. In the case of Palestine, it is not recognized as a sovereign state and cannot gain membership by the United Nations because it cannot gain the key support of the United States to be accepted as a member of the United Nations. Yet again, this highlights the continued struggle between legal status and political motivation for recognition or lack thereof, further illustrating that sovereign status can be determined through a hybrid approach of declarative and constitutive theory rather than solely based on one or the other. Declarative theory approach is important because it protects against any random organization or group of people from becoming a state, i.e. terrorist organizations, cartels or other criminal organizations; constitutive theory is relevant because the Montevideo Convention establishes that recognition is voluntary and not

mandatory. The hybrid approach is important because this is what happens in practice, likely because it is the most practical and flexible approach to achieving sovereign status within the international community.

Although in the past many European states have withheld recognition, there has since been a change and today, more and more European governments have shown intentions of recognizing Palestine as a state. For example, Sweden has already extended formal recognition, as has the Parliament of England, yet similar progress has not been made with the United States. The United States foreign policy continues to be focused on a two-state solution with no options for any unilateral attempts by Palestine to further progress its status during periods of stalemates with Israel. With regards to a future statehood for Palestine, it would seem that the US foreign policy is preventing a Palestinian state as the US argues the only way to a two-state is through negotiation.

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