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## The case for Palestinian statehood is stronger than ever

*For India, early recognition of Palestine has aligned with its non-aligned foreign policy and support for self-determination*



157 UN member states (81 per cent of the body) plus the Holy See now formally recognise the State of Palestine



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September 25, 2025 02:21 PM IST ✓

First published on: Sep 25, 2025 at 02:21 PM IST

In a notable development at the 80th session of the United Nations General Assembly, several countries, including France, Luxembourg, Malta, Monaco, Andorra, and Belgium, have formally recognised the [State of Palestine](#). This follows announcements from Canada, Australia, Portugal, and the United Kingdom, bringing the total to 157 UN member states, 81 per cent of the body, plus the Holy See. These steps, as reported, reflect a growing international consensus on Palestinian statehood. Drawing on established theories of state recognition in international law, alongside insights from the International Court of Justice (ICJ) and other tribunals, this recognition underscores Palestine's status as a state under legal frameworks.

The debate on state recognition revolves around two primary theories: Declaratory and constitutive. The former holds that statehood arises from objective criteria, independent of external acknowledgement. Codified in the 1933 Montevideo Convention, these include a permanent population, defined territory, government, and capacity to enter into relations with other states. Article 3 of the Convention states that a state's "political existence is independent of recognition by the other states," emphasising that rights such as defending integrity exist before formal recognition.

This theory has been affirmed in arbitral decisions, such as the 1929 *Deutsche Continental Gas-Gesellschaft v Polish State*, dealing with the issue of re-created Poland amidst World War I, where the tribunal described recognition as "not constitutive but merely declaratory." The State exists by itself, with recognition serving as an acknowledgement. Similarly, the Badinter Commission, advising on Yugoslavia's dissolution in 1991-1992, viewed statehood as "a question of fact," with recognition having "purely declaratory" effects. Under this lens, Palestine aligns with the criteria: It has a population of over five million, territories defined by historical boundaries and UN resolutions, a functioning Palestinian Authority for governance, and demonstrated international engagement through treaties and observer status at the UN since 2012 (Resolution 67/19).

The constitutive theory, advanced by Lassa Oppenheim in 1905, posits that statehood is conferred through recognition: “A State is and becomes an International Person through recognition only and exclusively.” Here, criteria like territory are discretionary, with recognising states determining requirements. James Lorimer echoed this in the 1880s, noting that each state decides what constitutes international existence. While this theory has faced criticism for potential subjectivity, it accommodates anomalies like the Vatican City, which defies strict criteria yet, as mentioned under the Declaratory theory, is widely recognised.

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Even under constitutivism, Palestine’s case is robust, with 157 recognitions creating a web of legal relations. Dionisio Anzilotti, in 1929, framed recognition as a “pact” under *pacta sunt servanda*, establishing mutual obligations. Hybrid approaches, blending both theories, treat recognition as evidence of customary international law. Per Article 38(1)(b) of the ICJ Statute, custom emerges from state practice and *opinio juris*. Patterns of recognition, as in Palestine’s case, reinforce the Montevideo criteria and their application.

International tribunals provide further support. The ICJ’s 1971 advisory opinion on Namibia emphasised that statehood persists despite challenges, prioritising principles like self-determination over mere effectiveness. In the 2004 Wall advisory opinion, the Court addressed territorial issues in the region, affirming the illegality of the wall built by Israel on the territory of Palestine and the recognition of self-determination rights of Palestinians. The 2010 Kosovo opinion clarified that declarations of independence are not inherently unlawful, lending weight to Palestine’s 1988 declaration by Yasser Arafat. These rulings highlight that recognition must align with general international law, as the Badinter Commission noted, making it a discretionary yet norm-guided act.

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Collective recognition also carries practical implications. It enables full diplomatic relations, trade agreements, and participation in forums like the Permanent Court of Arbitration and International Criminal Court, which Palestine joined in 2015. While the US has vetoed full UN membership, the 2012 observer upgrade allows debate and attendance, enhancing legal standing. It even participated in the ICJ in Legal Consequences of Construction of a Wall in the Occupied Palestinian Territory (2004) and Relocation of the US Embassy to Jerusalem (2018). Scholars like James Crawford argue that even partial independence suffices if asserted consistently, as seen in historical cases like Somalia, which retained recognition even after the government collapsed in the 1990s, a ground for recognition of Statehood.

For India, early recognition of Palestine aligned with its non-aligned foreign policy and support for self-determination. Today, as a BRICS member and UNSC aspirant, India can advocate for the consistent application of recognition theories, promoting dialogue and legal resolution.

In conclusion, both State recognition theories reaffirm Palestine's statehood in factual criteria, as well as through widespread acknowledgement, in furtherance of tribunals like the ICJ providing more support. The focus now shifts to leveraging this framework for constructive outcomes, ensuring that legal principles guide future developments in the region.

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# Palestine Statehood