

AMNESTY INTERNATIONAL

Q&A

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Q&A: Human rights implications of the Palestinian bid for UN membership

Diplomatic efforts by the Palestinian Authority to upgrade its status at the UN have received much attention at the General Assembly in New York. The Palestinian Authority is requesting full membership of the United Nations, as part of its strategy to seek broader recognition of a Palestinian state.

Amnesty International does not take a position on the resolution of the Israeli-Palestinian conflict, or on issues of statehood, including the current Palestinian initiative. As a human rights organization, our concern is that any resolution, initiative or agreement fully respects the human rights of Palestinians and Israelis. However, whatever the UN decides will have important implications for human rights concerns in the Occupied Palestinian Territories (OPT).

What is Palestine's current status at the UN?

More than 120 governments have recognized Palestine as a state. However, it only has the status of an observer entity at the UN General Assembly, where it is represented by the Palestine Liberation Organization (PLO).

What is the Palestinian Authority requesting and what will happen next?

Palestinian President Mahmoud Abbas has submitted an application for full UN membership to UN Secretary-General Ban Ki-moon. The Secretary-General will then present the application to the UN Security Council. For the Council to approve the bid, at least nine of its 15 members would have to vote in favour, while the five permanent, veto-holding, members would either have to vote in favour or abstain.

If passed, the application would then be sent to the General Assembly, where it would need to be approved by two thirds of member states.

The US administration, one of the five permanent Council members, opposes any upgrade in Palestine's status at the UN and says it will veto it if necessary. However, a vote at the Council is likely to be delayed.

Are there any other options for upgrading Palestine's status at the UN?

Another option would be for the Palestinian Authority to bring a resolution to the General Assembly calling on member states to recognize Palestine bilaterally and support its application for membership of the UN and other international organizations. However, the Palestinian Authority has recently indicated that it will wait for the Security Council to consider the request for full membership before approaching the General Assembly.

The General Assembly cannot approve an application for full UN membership without a favourable recommendation from the Security Council. However, if and when the issue comes before it, the Assembly would have several options. It could recommend upgrading Palestine to a non-member observer state, the same status currently held by the Vatican. This would not require Security Council approval and would require only a simple majority in the Assembly. However, the rights and privileges of this status are not defined, so the practical implications of obtaining it are unclear. Since the PLO was granted UN observer status in 1974, the General Assembly has progressively increased its rights of participation, which are now almost identical to those of a non-member observer state.

Will the bid for recognition of Palestinian statehood affect the legal standards applicable in the OPT, or Israel's obligations as the occupying power?

Israel remains the occupying power in the West Bank, including East Jerusalem, and the Gaza Strip, as it continues to maintain "effective control" over both areas. Its actions in these territories are thus bound by relevant international humanitarian law (the law of occupation) and international human rights law. As an occupying power, Israel is responsible for the welfare of the Palestinian population and the protection of civilians. These responsibilities will remain the same, no matter what happens to the current Palestinian bid at the UN. Israel's actions in the OPT are also subject to its obligations under the many international human rights treaties it has signed and ratified, as well as customary international law.

Will the Palestinian Authority's statehood bid allow it to ratify international human rights conventions and treaties, including the Rome Statute of the International Criminal Court (ICC)?

That depends on the treaty concerned, as different treaties have different ratification requirements.

The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights are both open to states that have been invited to become a party by the General Assembly, as well as UN members. A General Assembly resolution could therefore allow Palestine to become a party to these treaties, even if it did not upgrade Palestine's UN status. This would formalize the Palestinian Authority's human rights obligations and subject it to monitoring and regular review by the relevant treaty bodies. The Palestinian Authority would also continue to be bound by customary international law.

All states are allowed to sign and ratify the Rome Statute of the International Criminal Court. Legal opinion varies on whether further recognition of Palestinian statehood, a General Assembly resolution, or an upgraded status at the UN would allow Palestine to ratify the Rome Statute. However, any of these would bolster Palestinian claims to statehood, enabling the Palestinian Authority to argue that it was eligible to become a party to the ICC.

However, the current political manoeuvring surrounding Palestine's statehood bid could also harm its ability to access the ICC. Media reports have suggested that the EU has proposed upgrading Palestine to a non-member observer state on condition that the Palestinians forgo recourse to the ICC. The EU High Representative, Catherine Ashton, has reportedly proposed creating a new status at the General Assembly which would not allow the PA to ratify the Rome Statute.

Amnesty International opposes any attempts to prevent the Palestinians from accessing the ICC. Such attempts contravene the fundamental principle that justice should be accessible to all. They also seem designed to offer impunity for crimes committed during the 2008-2009 conflict in Gaza and southern Israel, by preventing both Palestinian and Israeli victims from accessing justice through the ICC.

How would the statehood bid affect efforts to pursue accountability for crimes under international law committed during the 2008-2009 conflict in Gaza and southern Israel?

Amnesty International has [documented](#) evidence that war crimes were committed by both Israeli forces and Palestinian armed groups during the 2008-2009 conflict in Gaza and southern Israel. The [UN Fact-Finding Mission on the Gaza Conflict](#) concurred with this assessment. Amnesty International has [concluded](#) that both the Israeli government and the Hamas de facto administration have failed to conduct credible, independent investigations and failed to prosecute perpetrators of crimes under international law.

In January 2009, the Palestinian Authority submitted a declaration accepting the ICC's jurisdiction over crimes committed on its territory since July 2002. This declaration would potentially cover all crimes committed in Gaza and southern Israel during the 2008-2009 Gaza conflict.

The ICC Prosecutor has been considering the legal implications of this declaration since it was submitted, but no determination has yet been made on its validity. If this or any similar future declaration by the Palestinian Authority were considered valid, the ICC might be able to prosecute crimes committed during the 2008-2009 Gaza conflict.

Amnesty International has been calling on the UN General Assembly to urge the Security Council to refer the situation to the ICC. In addition, it has been appealing to all states to investigate and prosecute before their national courts crimes under international law allegedly committed during the conflict by exercising universal jurisdiction.

How would the statehood bid affect efforts to pursue accountability for human rights violations and crimes under international law by the Palestinian Authority and the Hamas de facto administration in Gaza?

If Palestine were to sign and ratify the main UN human rights treaties, this would strengthen efforts to pursue accountability for the serious ongoing human rights violations by the Palestinian Authority. These include arbitrary arrests, torturing and ill treating detainees, defying court orders to release detainees, and arbitrary restrictions on freedom of expression and association. As a signatory to international human rights treaties, the Palestinian Authority would be monitored by UN treaty bodies, and would have to take steps to prevent violations.

Since gaining control in Gaza in 2007, the Hamas de facto administration has committed similar serious abuses. It has also been responsible for executing people after unfair trials, failing to prevent Palestinian armed groups from launching indiscriminate rockets into southern Israel, which constitutes a war crime, and failing to ensure the humane treatment of captive Israeli soldier Gilad Shalit.

The impact of the Palestinian Authority's statehood bid on efforts to pursue accountability for abuses by Hamas is less straightforward. Even if the Palestinians were to accede to international treaties, they would not apply to Hamas, which would remain a non-state actor. Hamas, however, has obligations under customary international humanitarian law. If Palestine were to gain access to the ICC, that would strengthen efforts to hold both the Hamas authorities and Palestinian armed groups accountable, as the ICC can investigate and prosecute crimes under international law even if they are committed by non-state actors.

If Palestine's status at the United Nations is upgraded, Amnesty International will lobby for the Palestinian Authority to sign and ratify all relevant human rights treaties.