

Palestine's United Nations Membership and Overcoming the American Veto

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Abstract:

The issue of membership in the United Nations, which requires a recommendation from the Security Council followed by a decision from the General Assembly, continues to raise numerous legal and political questions due to the use of the veto to obstruct any enrollment, as evidenced by the Palestinian experience on two significant occasions in 2011 and 2024. This study aims to provide recommendations on the legal and procedural avenues through which Palestine can achieve full membership in the United Nations. To this end, our methodology relied on a review of the existing literature using the Systematic Literature Review (SLR) method, which addressed the matter of Palestine's participation in the United Nations, encompassing 51 research papers from the Google Scholar and Scopus databases.

After examining the existing literature, it became evident that these studies addressed the issue of Palestine's affiliation in the United Nations by focusing on the veto power in the Security Council, without expanding the research to explore other legal matters or procedures. This has led our research to concentrate on the ambiguity surrounding the legal basis on which the subject of enrollment is categorized as subject to the veto. The research recommends that the General Assembly should submit a request to the International Court of Justice to classify issues related to membership in the United Nations as procedural matters rather than substantive ones.

Keywords: *Palestine; procedural matters; veto power; United Nations; membership*

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Introduction:

After the military attack on Palestinian territories by the Israeli occupation in October 2023, the international community found itself in a state of heightened awareness and urgency regarding the Palestinian cause. Many countries mobilized to defend the rights of Palestinians in key worldwide bodies and organizations,¹ with the United Nations, the (ICJ), and the International Criminal Court (ICC) at the forefront. The military aggression prompted a wave of diplomatic initiatives aimed at addressing the humanitarian crisis and ensuring accountability for violations of worldwide law. Among these initiatives was a notable lawsuit filed by South Africa before the ICJ, alleging genocide against the Palestinian population in Gaza. In response to this situation, Algeria intensified its diplomatic efforts at the International Organizations, advocating not only for immediate humanitarian relief but also for the crucial issue of Palestinian Partnership in the UN.

The issue of Palestine's admission to the United Nations has recently garnered renewed attention on the global stage. This renewed interest can be attributed to various diplomatic efforts and negotiations aimed at achieving full recognition of Palestinian territories as a sovereign state. Many nations have increasingly expressed their support for the Palestinian cause, highlighting the growing acknowledgment of The Holy Land's right to self-determination and its status as a legitimate entity on the worldwide stage. However, despite this burgeoning support, the path to membership remains fraught with challenges. Key Partnership of the international community continues to oppose Gaza's bid for recognition, perpetuating a cycle of diplomatic stalemate and frustration.²

These diplomatic movements are part of a broader effort to address longstanding matters in the Middle East. The plight of the Palestinian people has been a central theme in discussions about regional peace and stability, with many nations recognizing that a just resolution to the Palestinian subject is integral to achieving lasting peace in the region.

¹ Erica C et al, Protests In The United States On Palestine And Israel, 2024, Social Movement Studies, <https://doi.org/10.1080/14742837.2024.2415674>

² Kampmark, Binoy, A Clubbable Admission: Palestine's Case for UN Membership, International Policy Digest, 2024

The call for Palestinian Acceptance is not merely about political acknowledgment; it is about restoring dignity and rights to a people who have endured decades of occupation, displacement, and systemic injustice. The international community's support for Palestinian statehood reflects a collective desire for justice and stability, acknowledging that the path forward must include the voices and rights of all stakeholders involved.¹

Despite the progress made in diplomatic efforts, the pursuit of Palestinian territories' membership in the United Nations has encountered significant obstacles, largely due to the repeated use of the veto power by the United States. This veto has effectively hindered Palestine's attempts to achieve recognition, as evidenced by the failed applications for UN membership in 2011 and 2024. The implications of the U.S. veto go beyond procedural delays; they perpetuate a perception of inequality in international relations and exacerbate feelings of marginalization among the Palestinian population. In light of this, numerous nations have increasingly emphasized the need to reevaluate the UN Security Council's role, advocating for direct admission through the General Assembly. This growing perspective highlights a widespread recognition that the current membership process is inherently flawed and necessitates reform to promote fairness and inclusivity in the international system.²

In light of these critical issues, this study aims to explore the legal pathways that could facilitate the full membership of Palestinian territories in the United Nations. To this end, the central question addressed is: What legal and procedural mechanisms can Palestine pursue to overcome the U.S. veto and achieve full membership in the United Nations? Addressing this complex issue requires a thorough analysis of international law, the intricacies of the UN membership process, and the specific legal challenges faced by Palestinian territories. The study will examine the foundational principles of UN membership as

¹ Saud, Mahesh Singh, Whether Palestine is a State or not? (August 05, 2024). Available at SSRN: <https://ssrn.com/abstract=4915988> or <http://dx.doi.org/10.2139/ssrn.4915988>

² Mohd. Noor Mat Yazid, Sharija Che Shaari, The Palestine Issue: Why The United Nations Refused To Accept As A United Nations Member And As A Nation State?, Vol. 1 No. 1 (2024): June, DOI: <https://doi.org/10.51200/kitab.v1i1.5200>

outlined in the UN Charter, assessing their applicability to the unique circumstances of Palestine.

Furthermore, our research will critically assess the improper practices of the United States in its use of veto power. We aim to elucidate how these actions have hindered occupied territories' quest for Validation and explore the legality of the block itself within the broader context of worldwide law. By analyzing the theoretical and lawful frameworks surrounding UN membership, we will illuminate the pathways available to Palestinian territories in its pursuit of Validation.

In the second part of our study, we will employ a systematic literature review (SLR) methodology, analyzing 51 scholarly papers that delve into various dimensions of occupied territories' pursuit of UN affiliation. This analytical approach will allow us to synthesize existing research, identify gaps in the literature, and provide a comprehensive overview of the lawful discourse surrounding this critical issue. Ultimately, our research aims to contribute valuable insights into the ongoing dialogue regarding occupied territories' rights and status within the Global Institution framework, advocating for a just and lawful resolution that recognizes the inherent dignity and sovereignty of the Palestinian people.

1. Literature Review

The admission of any state as a member of the United Nations is subject to specific conditions outlined in the UN Charter. However, the practices followed by the United States have repeatedly hindered Palestine's right to obtain membership.

1.1 United Nations Membership

In line with the UN Charter, membership in the organization is available to all peace-loving nations that accept the obligations contained in the Charter and, in the view of the organization, demonstrate the capacity to fulfill these duties. The admission of a state into the United

Nations is determined by a decision of the General Assembly, upon the recommendation of the Security Council.¹

According to Article 4 of the UN Charter, the admission of any state to organization participation is subject to both substantive conditions (the state must be peace-loving and meet global obligations) and formal conditions (a decision by the General Assembly following a recommendation from the Security Council).²

1.1.1 Substantive Conditions for the state's admission to the UN

The substantive conditions require that a state applying for membership in the United Nations must be peace-loving, accept the obligations outlined in the Charter of the Organization, and demonstrate both the willingness and capability to fulfill these obligations. As noted by Professor BOUSOLTAN Mohamed, some refer to these conditions as "admissibility," a term widely used in French legal doctrine.³

1.1.2 Procedural Conditions

The application for participation in any international organization requires the approval of the competent organ, and the World Org gives this task to two organs: the UN Council (recommendation) and the General Assembly (decision).⁴

As a historical context for the issue of UN membership, the East-West conflict emerged following the establishment of the United Nations, with each bloc striving to dominate the General Assembly by

¹ Article 4, United Nations Charter, available at: <https://www.un.org/en/about-us/un-charter/full-text>

² BOUSOLTAN Mohamed, *Principles of Public International Law*, 2, Fourth Edition, University Publications Office, 2008 (in Arabic)

³ Yuen-Li Liang, Conditions of Admission of a State to Membership in the United Nations *American Journal of International Law*, Volume 43, Issue 2, April 1949.

See, BOUSOLTAN Mohamed, Op.Cit

⁴ Leo Gross, Progress Towards Universality of Membership in the United Nations, *American Journal of International Law*, Volume 50, Issue 4, 2017

increasing the number of allied states, thereby securing the majority required for decision-making.¹

This situation effectively resulted in a stalemate in the membership process, and the International Court of Justice was unable to resolve the issue, despite issuing two advisory opinions in response to requests from the General Assembly. The first advisory opinion, issued in 1948, addressed the conditions for membership, while the second advisory opinion, delivered in 1950, responded negatively to the General Assembly's inquiry regarding its authority to approve membership without a prior recommendation from the Security Council.²

The only solution left was a political deal, which allowed a number of pro-Western countries to join in exchange for other pro-Eastern countries. As a result, 16 new countries joined simultaneously under a decision by the General Assembly on December 14, 1955.³

Following the independence of numerous countries, more than 60 new states joined the organization by the end of the 1960s, most of which were newly independent nations from the African continent. This was followed by a significant second wave between 1990 and 1993, during which 28 new countries were admitted to participation. The majority of these admissions resulted from the dissolution of the Soviet Union and the Eastern European states, including 17 European countries, 7 Asian countries, 2 African countries, and 2 countries from Oceania.⁴

1.2 United States' Veto Right against Palestine

Palestine failed twice in its efforts to obtain full membership in the United Nations, first in 2011 and again in 2024, due to the U.S. veto, despite being granted observer state status in 2012. The voting results were as follows:

¹ BOUSOLTAN Mohamed, Op.Cit

² Leo Gross, Op.Cit, Bousoltan M, Op.Cit

³ BOUSOLTAN M, OP.CIT

⁴ See UN, available at: <https://www.un.org/en/about-us/growth-in-un-membership>, visited in: 01-10-2024

Table 01: Voting results for Palestine's membership in 2011/2024

Year	UN Organs	Voting results		
		For	Abstained	Against
2011	General Assembly	138	41	09
	Security Council	08	05	02
2024	General Assembly	143	25	09
	Security Council	12	02	01

Source: By Authors, based on United Nations documents

2. Methodology

A systematic literature review (SLR) was used to collect scientific information related to the aim of the study.¹ Search terms were created to extract sources from peer-reviewed literature on the Web of Science: Google scholar, Scopus and Elsevier. The search terms were Admission AND United Nations OR UN, US veto AND Palestine, UN Council Recommendations OR Decisions.

The articles published between 2011 and 2024 were collected, while those published prior to 2011 were excluded. This selection period is based on the timeframe during which Palestine sought full membership in the United Nations, with the first request made in 2011, followed by a

¹ Ana M. Fernández-Sáez, Marcela Genero, Francisco P. Romero, SLR-Tool - A Tool for Performing Systematic Literature Reviews, Conference: ICSOFT 2010 - Proceedings of the Fifth International Conference on Software and Data Technologies, Volume 2, Athens, Greece, July 22-24, 2010

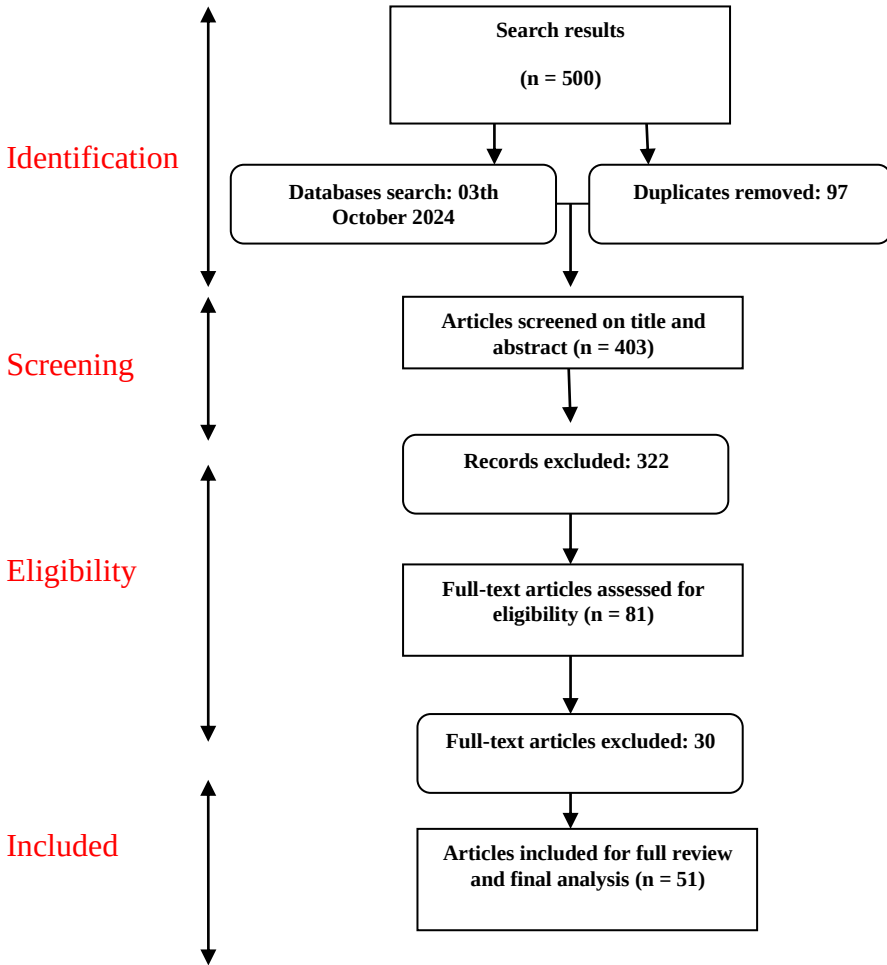
second request in 2024. The focus was placed on research papers addressing our research question, and repeated articles were also excluded. A total of 18 research papers were analyzed between 2011 and 2015, 16 research papers between 2016 and 2020, and 17 research papers between 2021 and 2024, as shown in the table below.

Table 02: The number of articles published each year (2011-2024)

year	N ⁰	year	N ⁰	year	N ⁰
2011	03	2016	02	2021	04
2012	05	2017	03	2022	03
2013	04	2018	04	2023	04
2014	03	2019	04	2024	06
2015	03	2020	03	total	51 articles

Source: by authors based on Google scholar, Scopus

The screening phase involved applying these criteria to the titles and abstracts, followed by a detailed evaluation of the full texts in the eligibility phase. Ultimately, 51 papers met the inclusion criteria and were incorporated into the systematic literature review. As depicted in Fig. 1, the initial keyword search yielded a total of 500 records. After eliminating 97 duplicates, 403 titles and abstracts were reviewed. Of these, 322 failed to meet the required criteria, leading to a full-text evaluation of 81 papers. Out of these, 30 studies were excluded, leaving 51 selected papers.

Figure 01: systematic literature review (SLR) flow chart*Source: by authors*

3. Results and discussion

Through our analysis and review of the literature as illustrated in the figure above, it is evident that 37% of these studies attempted to highlight the legal obstacles that generally prevent countries, and Palestine in particular, from obtaining full membership in the United

Nations. These studies focused on the use of the veto power in the Security Council.¹

Although some of these research papers suggested the need to reconsider the composition of the Security Council, voting procedures, and the use of veto power, they did not focus on an important topic: the law vacuum underlying the distinction between recommendations and decisions made by the UN Council. This distinction is, in fact, the core of our research. Among these studies, for example, are the of *Ardi Imseis*.²

The United States has successfully created a judicial illusion among nations regarding the subjection of the issue of United Nations membership to decisions requiring the use of the veto power, despite the absence of any explicit legal provision supporting this claim. Furthermore, as we provide a detailed explanation of the legal and procedural aspects below, it will become evident that an in-depth legal interpretation of the United Nations Charter will reveal that Palestine's accession has a clear and unambiguous legal pathway.³

Article 27 of the UN Charter states, Decisions of the Security Council on procedural matters shall be made by the affirmative votes of nine of its members.... Decisions of the UN Council on all other matters shall be made by the affirmative votes of nine of its members, including the concurring votes of the permanent members. However, the Charter does not provide any criteria for distinguishing between procedural matters and other matters, often referred to as substantive issues. Even the explanatory memorandum on the voting system, which was drafted at

¹ DE ZAYAS, ALFRED, US Vetos Palestine's Bid for UN membership, CounterPunch, ISSN, 1086-2323, 2024, see also: Ismi Aulia Aziza, Joko Setiyono, The Influence of the United States' Veto Right on the Failure of Palestine to Become a Member of the UN, *International Journal of Multicultural and Multireligious Understanding*, Vol 11, No 7 (2024)

² Ardi Imseis, On membership of the United Nations and the State of Palestine: A critical account, *Leiden Journal of International Law*, Volume 34, Issue 4, December 2021

³ Ayeabawaduanu D Benjamin, Nse B Etienam, The Politics of Non- Recognition in International Law: The Palestine Experience, *Journal of International Relations, Security and Economic Studies (JIRSES)*, Vol. 3, No 3, 2024.

the San Francisco Conference, did not include a clear statement on this delicate subject, merely categorizing matters in a general manner.¹

Various legal studies addressing the subject of accepting new member states into the UN have primarily focused on commenting on Articles 4 and 27 of the UN Charter. These studies have limited themselves to discussing the formal and substantive conditions for the acceptance of state membership, as well as the powers of the UN Council in procedural matters and all other substantive issues. Even though some studies are supported by practical practices or political considerations, they still fall short of providing a comprehensive analysis of the underlying lawful and procedural ambiguities.²

What prevents these studies from reaching a legal conclusion that could assist Palestine in obtaining full membership in the United Nations is their failure to address a hidden variable in the analysis: the duality of decisions and recommendations, which lies at the core of the Security Council's powers. The former (decisions) are binding, while the latter (recommendations) are non-binding. It appears that the authors and drafters of the UN Charter intended to convey the idea that decisions pertain to issues of paramount importance, whereas recommendations encompass all other matters.

It is important to note that recommendations, due to their lesser legal weight compared to decisions, require the approval of only nine members of the United Nations Council without the need for the consent of the permanent members. In contrast, resolutions require the approval of the permanent members, necessitating the use of the veto power. This argument is reinforced by the 1948 advisory opinion of The Hague Court regarding the conditions for the admission of any state to participation in the United Nations, which simply negated the need for the consent of the five permanent members through the use of the veto. A close

¹ Abdelkrim aolwan, *The Mediator in Public International Law*, Cultural Publishing, 2002 (In Arabic)

² Sanni Mufutau Olayiwola, *Interrogating the Role of the United Nations Security Council and the Use of Veto Power in the Israeli-Palestinian Crisis*, *Journal of Research in Education and Society*, Volume 15, Number 1, April 2024

examination of the advisory opinion reveals that the admission of states to the United Nations falls under recommendations, which do not require a veto.

Additionally, the second advisory opinion issued in March 1950 addressed the eligibility of the U.N General Assembly to accept a state into the UN after a request was referred by the General Assembly, which asked whether the acceptance of a state could be affected by a decision from the General Assembly if the Security Council did not recommend acceptance due to the candidate state's failure to achieve the required majority or a vote against acceptance by one of the permanent members. The Court responded in the negative.

It is noteworthy that numerous proposals have been put forward regarding the elimination of the Security Council's recommendation concerning the admission of new states to the United Nations, all of which have failed. Among the most prominent of these proposals was that submitted by Argentina, which suggested that new members be admitted to the United Nations by a resolution of the General Assembly without requiring a Security Council recommendation, without referencing the interpretation of the Security Council's recommendation for the admission of a new member as a procedural matter rather than a substantive one. However, the International Court of Justice rejected this notion in its 1950 advisory opinion.

The Court has previously considered issues that were initially rejected and subsequently reintroduced, receiving highly significant advisory opinions, such as the matter of the threat of the use of nuclear weapons. This flexibility demonstrated by the ICJ opens the possibility of revisiting the topic of UN membership. However, this should occur as previously indicated, by encouraging states to appeal to the General Assembly, which could then request an advisory opinion on the matter. It is important to note that states are not authorized to directly address the ICJ regarding matters related to advisory opinions, as stipulated in Article 96 of the Charter.

Conclusion:

Palestine's efforts to obtain full membership in the United Nations have consistently faced diplomatic obstacles, primarily due to the repeated use of the veto by the United States in the Security Council, as witnessed in 2011 and again in 2024. These persistent barriers highlight the limitations of the current global system, where the aspirations of an entire nation can be thwarted by the political interests of a single permanent member. The repeated vetoes reveal a profound imbalance in the decision-making process, preventing the international community from reaching a consensus on this issue.

In light of this, a potential legal and procedural solution lies in referring the matter to the International Court of Justice for an advisory opinion. Such a ruling could clarify the legal distinction between recommendations and resolutions issued by the Security Council. By determining that the admission of new members to the United Nations falls under the category of recommendations rather than resolutions, the International Court of Justice could provide the legal basis for bypassing the veto power, thereby offering a pathway for a more equitable consideration of Palestine's membership.

Ultimately, this approach highlights the need to reform the way global decisions are made, particularly when they concern fundamental issues such as state sovereignty and self-determination. Seeking an advisory opinion from the International Court of Justice could pave the way for future discussions that prioritize international law over political maneuvering, ensuring that Palestine's application for full membership is evaluated on legal grounds rather than being subjected to ongoing political deadlock.