

Marcin Szydzisz

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Marcin Szydzisz

University of Wrocław, Poland

THE PALESTINIAN INTERNATIONAL IDENTITY AFTER THE UN RESOLUTION

ABSTRACT

Hundreds of press articles on the issue of Palestinian identity have been written in the last two years. It happened due to granting Palestine on November 29, 2012 a non-member observer state status by the General Assembly of the United Nations.

Resolution 67/19 of the UN assembly, contrary to appearances, does not answer explicitly the question concerning the Palestinian identity. In my paper I will try to display the whole spectrum of legal nuances referring to this issue.

Key words

Palestine, United Nations, identity, General Assembly of the UN

1. The history of Palestinian identity

After the collapse of the Ottoman Empire, the British started to carry out their mandate in the territory of Palestine. Their task was to lead to its formal and real independence. This aim was not attained. After the war, the United Nations (UN) tackled the problem of Palestine on November 29, 1947. General Assembly of the United Nations decided that two states should come into being in the territory of the Mandatory Palestine: the Jewish and the Palestinian states. Indeed, in 1948 the history of the Jewish statehood started, however, the Palestinian state did not come into being. As a result of the Arab-Israeli war, some of the terrains which belonged to Palestine were taken over by Israel, the West Bank became a part of Transjordan, and Egyptian administration appeared in the Gaza Strip. The conflict also resulted in many Palestinians seeking refuge (ca. 750 000 people).

In 1967, a subsequent war broke out. Consequently, Israel took over all of the remaining Palestinian terrain: the West Bank, including East Jerusalem, and the Gaza Strip.

Arab citizens of the Mandatory Palestine had issues with Jewish settlements from the very beginning. During the British mandate, there were many clashes between the feuding sides. An open conflict broke out in 1947. However, we cannot speak about the Palestinian side at the time. Arab people in Palestine were at the stage of shaping their identity, in principle, their interests were represented by the neighbouring Arab states. However, at the time we could speak of the beginnings of the Arab people's right to terrains they inhabited. In advisory opinion of the International Court of Justice concerning the Western Wall (2004) it was written, that "The Mandate was created. in the interest of the inhabitants of the territory, and of humanity in general, as an international institution with an international object – a sacred trust of civilization"¹. According to Daniel Benoliel and Ronen Perry, all the facts "stating that Palestinians are entitled to self determination because self determination has been a central part of aspirations within international law since the demise of the Ottoman Empire in the wake of World War I. As the Ottoman Empire lost sovereignty, a Palestinian state presumably emerged"².

However, the period of intensified endeavours of Palestinians themselves to become an independent power on the international arena did not start until the sixties. In 1964, the Palestine Liberation Organization (PLO)³ was created, which has become notably independent from the Egyptian auspices since 1968.

The next decade brings a change in the attitude towards the Palestinians. It can be seen especially on the UN forum. Before, the UN, when referring to the problems of that region, concentrated on reacting to armed conflicts, promoting peace solutions, or asserted Palestinian refugees' rights. In the seventies, however, the question of Palestine began to be understood in a broader political context. At the time, we can speak about Palestinian identity being acknowledged internationally. In 1974, on the forum of the General Assembly of the UN, Jaser Arafat, the PLO leader, gave a speech. The result of this speech was a confirmation by the General Assembly of the right to exercise by the Palestinian people their

¹ It was a quote from the Advisory Opinion on the International Status of the South West Africa (1950). *Legal Consequences of the Construction of a Wall in The Occupied Palestinian Territory. Advisory Opinion of July 9, 2004*, p. 165; The International Court of Justice, <http://www.icj-cij.org/docket/files/131/1671.pdf> [access: 17.07.2013].

² D. Benoliel, R. Perry, *Israel, Palestine and the ICC*, "Journal of International Law" 2010, Vol. 32, p. 73.

³ Palestinian national-liberation organizations had come into existence before (e.g. Fatah).

inalienable rights in Palestine, including the right to self-determination without external interference, the right to national independence and sovereignty, and the right to return to their homes and property⁴. At the time, the PLO was granted the right “to participate in the sessions and the work of the General Assembly in the capacity of observer” and “to participate in the sessions and the work of all international conferences convened under the auspices of the General Assembly”⁵.

One year later, the General Assembly established the Committee on the Exercise of the Inalienable Rights of the Palestinian People, whose main task was to indicate recommendation allowing to accomplish Palestinians’ rights.⁶

Establishing the International Day of Solidarity with the Palestinian People in December 1977, which is celebrated annually on November 29⁷ was the last – important and mostly symbolic – move of the General Assembly.

The PLO conducted diplomatic offensive as well as classical diplomacy on forum of the UN. Jaser Arafat strove to promote Palestinian issue during numerous meetings with representatives of different states. However, it is obvious that due to certain respects, the PLO could count on the support of the states belonging to the Eastern Bloc, of uninvolved states, and of Arab states.

Positive approach of the UN to the Palestinian issue was also connected with the domination of the Soviet Union and its allies in the General Assembly.

Basically, the status of Palestine did not change until the eighties. In 1982, Israeli intervention in Lebanon took place. As a result, military and political forces had to flee from Lebanon. During this conflict, a massacre in camps for Palestinians – Sabra and Shatila⁸ – took place. All of these events arose global interest in the Palestinian problem. In September 1983 the International Conference on the Question of Palestine convened. As a result, the Geneva Declaration was accepted, which included i.a.: the postulate: “the attainment

⁴ Information Centre of the UN in Warsaw, <http://www.unic.un.org/pl/palestyna/tlo.php> [access: 16.07.2013].

⁵ *Resolution GA 3237*, UNISPAL Documents Collection, <http://unispal.un.org/UNISPAL.NSF/0/512BAA69B5A32794852560DE0054B9B2> [access: 16.07.2013].

⁶ *Resolution GA 3376*, UNISPAL Documents Collection, <http://unispal.un.org/UNISPAL.NSF/0/B5B4720B8192FDE3852560DE004F3C47> [access: 16.07.2013].

⁷ *Resolution GA 32/40(A+B)*, UNISPAL Documents Collection, <http://unispal.un.org/UNISPAL.NSF/0/2DA3D547118BFD25852560DD006BF4BB> [access: 16.07.2013].

⁸ Christian Phalang were perpetrators. However Israeli army was able to stop bloody massacre.

by the Palestinian people of its legitimate inalienable rights, including the right to return, the right to self-determination and the right to establish its own independent state in Palestine”⁹.

At the end of the eighties, Palestinians one more became interesting to the world. In December 1987, the Intifada broke out. It was a spontaneous revolt of the Palestinian people against the Israeli presence in the West Bank and the Gaza Strip. The authorities of the PLO, residing at the time in Tunis, tried to use natural compassion of the global public opinion to the Palestinian question and took up diplomatic action. In November 1988, the Declaration of Independence was proclaimed. It included the following statement: “The Palestine National Council hereby declares, in the Name of God and on behalf of the Palestinian Arab people, the establishment of the State of Palestine in the land of Palestine with its capital at Jerusalem”¹⁰.

Some states decided to answer this declaration, thereby recognising the state that was created. In May 1989, there were more than ninety states that had done so¹¹. The General Assembly of the UN also formed an opinion on these actions. In December 1988, Resolution No. 43/177 was adopted. It said that it “acknowledges the proclamation of the State of Palestine by the Palestine National Council on 15 November 1988” and “affirms the need to enable the Palestinian people to exercise their sovereignty over their territory occupied since 1967”. A regulation saying that within the scope of the UN system, the name Palestine Liberation

⁹ Apart from this demand, another one also appeared: to counter the establishment of Jewish settlements in the occupied territories, as well as the actions taken up by Israel to alter the character and the status of the Holy City of Jerusalem. They also demanded to guarantee “the right of all States in the region to existence within secure and internationally recognized boundaries, with justice and security for all the people”. *Report of The International Conference on the Question of Palestine*, UNISPAL Documents Collection, <http://unispal.un.org/UNISPAL.NSF/0/6F71BD16D6273ABC052565C9005730E6#sthash.ITXaIw0U.dpuf> [access: 16.07.2013].

¹⁰ *Letter Dated 18 November 1988 from the Permanent Representative of Jordan to the United Nations addressed to the Secretary-General*, UNISPAL Documents Collection, <http://unispal.un.org/UNISPAL.NSF/0/6EB54A389E2DA6C6852560DE0070E392> [access: 17.07.2013].

¹¹ In the request for acceptance of as its member, addressed to the UNESCO we can find information about 98 states, although in the Appendix there is a list of 92 states. *Request For The Admission of the State of Palestine to Unesco as a Member State*, UNISPAL Documents Collection, <http://unispal.un.org/UNISPAL.NSF/0/94D9C3C3DC87698D85257919005223A3#sthash.6amyZR68.dpuf> [access: 17.07.2013].

Organization is replaced with Palestine¹² was of practical value. At the time, the Palestinians took up decisive action, the goal of which was the membership in the UNESCO and the WHO. Both of those initiatives failed¹³.

The next decade again aroused hopes of the Palestinian nation. The collapse of the bipolar world was connected with the loss of a powerful ally – the Soviet Union. On the other hand, however, a chance to peacefully solve the Arab-Israeli conflict arose. The peace process, initiated in Madrid in 1991, did not result in expected decisions, but it nevertheless it induced the peacefully-disposed Israeli and Palestinian leaders to conduct bilateral talks. It resulted in signing the Declaration of Principles on Interim Self-Government Arrangements in Washington in September 1993. Due to subsequent agreements, the Palestinian National Authority was created. It played a role of an autonomous body in the areas inhabited by Palestinians. A part of the West Bank and the Gaza Strip were transferred to the Palestinian administration. In the light of the settlements with Israel, in the so called A-Zone (the Gaza Strip and eight big cities in the area of the West Bank) the Palestinians took full civil and security control, and in the B-Zone, the Palestinians held civil control and security was jointly controlled with the Israeli services. Palestinian National Authority (most often called the Palestinian Autonomy) was thus established; however, it did not formally change anything in the legal position of the Palestinians. They were still represented on international arena by the PLO.

The next change took place in 1998, when the General Assembly in Resolution 52/250 decided to confer “additional rights and privileges of participation in the sessions and work of the General Assembly and the international conferences convened under the auspices of the Assembly or other organs of the United Nations, as well as in United Nations conferences”¹⁴.

Privileges given to Palestine were limited to i.a.: “the right to participate in the general debate of the General Assembly or the right of reply, and also the right to raise points of order related to the proceedings on Palestinian and Middle East

¹² *Resolution GA 43/177*, UNISPAL Documents Collection, <http://unispal.un.org/UNISPAL.NSF/0/146E6838D505833F852560D600471E25> [access: 17.07.2013].

¹³ J. Crawford, *The Creation of the State of Palestine: Too Much Too Soon?*, “European Journal of Internal Law” 1990, No. 1, p. 311, <http://ejil.org/pdfs/1/1/1137.pdf> [access: 17.07.2013].

¹⁴ *Resolution of General Assembly 52/250*, UNISPAL Documents Collection, <http://unispal.un.org/UNISPAL.NSF/0/162094FCBE8245D30525665E00536281> [access: 17.07.2013].

issues and the right to co-sponsor draft resolutions and decisions on Palestinian and Middle East issues”¹⁵.

These decisions brought about an increase of importance of Palestine on international arena and, as commentators report, “In 1998, the General Assembly extended Palestine privileges that had previously been exclusive to member states, including the right to participate in the general debate at the beginning of each General Assembly, and the right to cosponsor resolutions. According to the UN, the decision »upgraded Palestine’s representation at the UN to a unique and unprecedented level, somewhere in between the other observers, on the one hand, and Member States on the other«”¹⁶.

In 2000 the final Israeli-Palestinian agreement was to take place. However, this did not occur as the talks in Camp David failed¹⁷. Moreover, in this period a subsequent Intifada broke out, which additionally complicated the difficult situation in the region.

The 21st century marks an extremely hot period, full of various initiatives and actions taken up by both sides of the conflict. For the needs of our analysis, we will take into consideration only those, which have a direct or indirect impact on the legal situation of Palestine. Parliamentary election in Palestine (January 2006) belongs to such events. Hamas¹⁸, regarded by the majority of the world as a terrorist organization, won the democratic elections. In no time clashes started, and later on – fights between the supporters of Fattah and president Abbas on one side, and Hamas on the other. They resulted in the division of the Palestinian territory. Hamas took control over the Gaza Strip, and the West Bank remained under control of the Fatah and president Abbas, whom the majority of the states regarded as the representative of the Palestinians. Since 2007, there have been two administrations on the Palestinian territory, and both have functioned to some extent also in the international dimension. Although there were some attempts to start talks between them (and even some agreements were signed), a government of national unity was not eventually created.

¹⁵ Ibidem.

¹⁶ R. McMahon, *Palestinian Statehood at the UN*, Council on Foreign Relations, <http://www.cfr.org/palestine/palestinian-statehood-un/p25954#p8> [access: 17.07.2013].

¹⁷ Palestinians emphasized that lack of the possibility of the final agreement with Israel was decided i.a. by the actions in the UN.

¹⁸ The truth is that the difference between Fatah and Hamas result was equal to 3 percentage points. The elections statute adopted by the PA (half of mandates were filled by a simple majority vote) caused that Hamas gained 74 seats in 132-seat parliament.

The next important event was the elevation of the Palestinian status on the forum of the UN. The initiative was personally endorsed by the President of the Palestinian National Authority Mahmud Abbas. In this way, he tried to bring the global interest back to the Palestinian issue, since the focus of the world had changed due to events related to the so called Arab Spring. A rise of the public opinion interest, caused by the aforementioned initiative, also led to diminishing the importance of the Hamas authorities in the Gaza Strip.

Maximalist version of the project assumed acceptance of Palestine as a rightful member of the UN. However, as the Americans had announced their veto in the Security Council, it was clear, that it will not be accepted. This is why the Palestinians decided to demand granting Palestine a non-member observer state status. This procedure assumed the consent of the General Assembly expressed by a simple majority vote. The initiative of the Palestinian Autonomy authorities succeeded. The resolution on the status of Palestine in the UN was adopted by a vote: 138 were in favour and 9 against with 41 abstentions in the 193-member Assembly. The states which voted against the resolution were i.a. the United States, Canada, Israel and the Czech Republic. The most significant achievement of the Palestinian diplomacy was convincing the democratic European states, which either abstained from voting (Poland, Great Britain, Germany) or which supported their demand (Spain, France).

This resolution “reaffirms the right of the Palestinian people to self-determination and to independence in their State of Palestine on the Palestinian territory occupied since 1967” and “decides to accord to Palestine non-member observer State status in the United Nations, without prejudice to the acquired rights, privileges and role of the Palestine Liberation Organization in the United Nations as the representative of the Palestinian people, in accordance with the relevant resolutions and practice”¹⁹.

2. Is Palestine a State?

At the beginning, we should take into consideration a definition of a state in the light of the international law. In the doctrine there are two categories of essential elements. The first one belongs to objective group, the other one is a part of

¹⁹ *Resolution GA 67/L.28*, UNISPAL Documents Collection, <http://unispal.un.org/UNISPAL.nsf/47D4E277B48D9D3685256DDC00612265/181C72112F4D0E0685257AC500515C6C> [access: 24.07.2013].

the subjective category. Objective criteria, were laid down in article 1 of the Montevideo Convention on the Rights and Duties of States (1933).

“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”²⁰.

Subjective category is connected with international recognition (constitutive theory). Some lawyers claim that an entity is a state (in addition to the objective conditions), when it is recognized as such by the international community.

Population is the first element which allows us to talk about a state. Of course, in the area recognized by the General Assembly as Palestine, we have a permanent population, but also in this context there are some problems. We have to ask a question, whether all Palestinians should be recognized as population of Palestine. Ca. 5 million of Palestinians are refugees, who inhabit neighbouring states. The PLO have always emphasized that they also represent Palestinian refugees. However, formally today they are by no means subject to the Palestinian administration, and some of them will never come back to the land inhabited by their ancestors.

The other, more problematic issue, is the territory of Palestine. Crawford lists two criteria, which should be fulfilled simultaneously: “the existence of an organized community on a particular territory, exclusively or substantially exercising self-governing power, and secondly, the absence of the exercise of another state, and of the right of another state to exercise, self-governing powers over the whole of that territory”²¹. International society acknowledged Palestine within the borders dated as of 1967, including East Jerusalem. It does not mean, however, that the real power of the Palestinian administration is exerted over the entire area indicated. In the light of agreements with Israel, Palestinian Autonomy has administration over a part of the West Bank and in the Gaza Strip. The Israelis rule in ca. 40% of the West Bank. In this area Jewish settlements were established. Some inhabitants of this area claim that these terrains should be joined to the Jewish state. Some people justify this move

²⁰ *Convention on Rights and Duties of States (26 December 1933)*, The Avalon Project, http://avalon.law.yale.edu/20th_century/intam03.asp [access: 24.07.2013].

²¹ J. Crawford, *op.cit.*, s. 309.

with religious arguments. They believe that in controlling the whole biblical land occupied by the Israelis, they make the coming of the Messiah nearer.

Irrespective of the sources that justify the Jewish settlers' presence in the land of biblical Judea and Samaria (these are the official names of these terrains in Israel), this is a group of more than 300,000 people. By no means can the Israeli government disregard the opinion of such a considerable group of voters.

The situation connected with Jerusalem is even more complex. The East part of this city was officially joined to Israel in 1980. Palestinian authorities did not have any control over this city. What is more, districts inhabited by the Jewish people are being established around the Arab part of the city. Today, a number of the Israelis in the East Jerusalem is estimated at more than 190,000 people.

Some commentators also emphasize that there are people, who claim that Israel is not a legitimate state, and that the entire territory should belong to Palestine²².

Summing up, the land which is controlled by the Palestinian authorities, does not coincide with the land in which Palestinian state would come into existence or, as some people claim, in which Palestinian state already exists.

The third criterion connected with authority that really controls the territory, which is going to be acknowledged as a state, is much more controversial in this case. This is because we cannot speak about one Palestinian administration.

When the Palestinian National Authority came into existence, its competences defined by the agreements with Israel were limited to administering the governed land. The National Authority could neither conduct foreign policy nor represent the country abroad. Theoretically, such actions could be conducted exclusively by the PLO. However, actual changes did take place. It is a common belief that the President and the government of the Palestinian Autonomy became representatives of the Palestinian nation. This conviction is legitimate, since the President, as well as the Parliament, were democratically elected by the Palestinians themselves²³. Besides, authorities of the Autonomy essentially started to conduct foreign policy. First, as it is set out in the Permanent

²² Stadnik, *Palestinian Statehood under International Law*, <http://www.lexisnexis.com/legalnewsroom/international-law/b/international-law-blog/archive/2013/01/03/palestinian-statehood-under-international-law.aspx> [access: 24.07.2013].

²³ Palestinian democracy is still faulty. Presidential term of office expired in 2010, and as a result of Hamas election victory, democratically elected parliament basically has never exerted a real impact.

Constitution Draft (a *quasi* constitution of Palestine), the President “shall appoint the ambassadors of the state and representatives of the state of Palestine to states and international and regional organizations and relieve them of their duties” and “shall accept the credentials of representatives of foreign states and international and regional organizations”²⁴. Second, in 2003 the office of the Minister of Foreign Affairs was established in the government of the Autonomy.

The actions taken up by the Palestinian authorities were very practical. They, for example, made negotiating the rules of international aid easier. In addition, they gained international acceptance. The President and the Minister of Foreign Affairs paid international visits, they were received by heads of states and by prime ministers. Nevertheless, it must be mentioned that the Presidents of Autonomy (Jasir Arafat and Mahmud Abbas) were (and Abbas still is) at the same time leaders of the PLO. Thereby, President Abbas performs a double role.

If the government of Autonomy residing in the West Bank does not arouse controversy, the same cannot be said about the authorities in the Gaza Strip. Hamas have ruled there since 2007. Election victory of Hamas confused the international society. The organization questions all agreements concluded with Israel, it claims that the peace process should not be conducted any longer, and its members deny the Israeli state the right to exist and they want to destroy it. The majority of states, in turn, conduct a policy of isolation towards Hamas, which is commonly considered to be a terrorist organization, and do not recognize its authorities. However, in practice Hamas conducts foreign policy. They accept international aid, and Hamas activists meet the representatives of various friendly regimes (e.g. Iran or even Russia). We can even observe an increase of international recognition of the Hamas authorities. During the Israeli Operation Pillar of Defense conducted in November 2012, representatives of authorities of various states were in contact with Palestinians inhabiting the Gaza Strip. At the time, a delegation of ministers of foreign affairs of five Arab states (Egypt, Lebanon, Algeria, Sudan, and Iraq) took place. Prime Minister of Egypt also visited the Gaza Strip, and even Qatar Emir met with the Hamas leaders²⁵. All

²⁴ Art. 125 of the *Permanent Constitution Draft* (May 4, 2003), Palestitian Center for Policy and Survey Research, <http://www.pcpsr.org/domestic/2003/nbrowne.pdf> [access: 24.07.2013].

²⁵ Qatar was regarded as one of Fatah’s declared allies, N. Al-Mughrabi, *Qatar’s Emir Embraces Hamas Leadership in Gaza Visit*, The Globe and Mail, <http://www.theglobeandmail.com/news/world/qatars-emir-embraces-hamas-leadership-in-gaza-visit/article4630750/> [access: 25.07.2013].

these events definitely indicate that Hamas isolation policy has not been so consistent.

Of course, from the point of view of the majority of entities that create the international society, the only representative of Palestine is the Abbas administration, but it must be emphasized that Hamas is not absolutely isolated any more.

If a government of national unity came into being, it would be just a superficial solution. Furthermore, such attempts have already been made. Egyptian diplomacy was actively involved in these actions. In May 2011, an appropriate agreement was signed in Cairo. It assumed, apart from creating a common government, conducting presidential and parliamentary election.

Such initiatives, however, are criticized by Israel, and the rest of the international community may call into question such a new government, as they refuse to acknowledge the Hamas authorities.

In this context, doubts, which result from the Weberian definition of the state adopted by some people, are justified. This definition explains the notion of the state in the following way: this is institution, which has an exclusive right to use force within its territory. Apart from the fact, that authorities of Autonomy do not have such rights in B and C Zones, they cannot do it either in the Gaza Strip.

Some lawyers emphasize, that the state should be characterized by the following features: “protection from the use of force by other states, the right of self-defense and collective self-defense in the event of an armed attack against it, plenary jurisdiction over its territory, the prohibition of intervention in matters essentially within its domestic jurisdiction”²⁶. According to the aforementioned definition, it is justifiable to question whether Palestine possesses these attributes of a typical state.

The last element, which is mentioned in the Montevideo Convention, refers to the capacity to enter into relations with other states. Some people question even this element. David Rivkin jr and Lee Casey wrote “This pivotal requirement involves the ability to enter and keep international accords, which in turn posits that the ‘government’ actually controls – exclusive of other sovereigns – at least some part of its population and territory. The PA does not control any part of the

²⁶ J. Cerone, *Legal Implications of the UN General Assembly Vote to Accord Palestine the Status of Observer State*, “The American Society of International Law Insights” 2012, No. 37, <http://www.asil.org/insights121208.cfm> [access: 25.07.2013].

West Bank to the exclusion of Israeli authority, and it exercises no control at all in the Gaza Strip”²⁷.

Constitutive theory assumes that an entity is a state when it is recognized as such by the international community. Voting in the General Assembly showed that 138 states perceived it in such a way. However, even in this case there are people who dispute with this argument. Thomas Stadnik writes: “the theory is weakened by the problem that may arise when some but not all States recognize an entity as a State. What is to come of the nine nations that voted against Palestinian statehood and the forty one abstentions, constituting a total of twenty seven percent of the General Assembly members that were present during the vote?”²⁸

The last question which raises lawyers’ doubts refers to the entity that decides whether to acknowledge a state or not. In the light of Charter of the UN, the General Assembly is not entitled to decide about the membership of a state. Such a decision is made by the General Assembly upon the recommendation of the Security Council²⁹. In 2011, Palestinians tried to gain full membership in the UN. The USA, who were a decisive opponent, declared readiness to veto such a resolution in the Security Council. It resulted in Palestinian authorities’ withdrawal from this project.

They managed to obtain a status of non-member state one year later; however, it did not significantly change their legal situation in the UN. Non-member States are entitled to participate as observers in the sessions and the work of the General Assembly and maintain permanent observer missions at Headquarters. Palestine had obtained these rights before.

It can be assumed that this voting was an attempt to confirm the acknowledgment of the Palestinian statehood. It was perceived in this way by President Mahmud Abbas, who just before the voting said: “The General

²⁷ D. Rivkin jr, L. Casey, *The Legal Case against Palestinian Statehood*, “The Wall Street Journal” September 20, 2011, <http://online.wsj.com/article/SB10001424053111904106704576578423114178378.html> [access: 25.07.2013].

²⁸ T. Stadnik, *op.cit.*

²⁹ Art. 4 sec. 2 of the *Charter of United Nations*: “The admission of any such state to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council”, United Nations Treaty Collection, <http://treaties.un.org/doc/Publication/CTC/uncharter.pdf> [access: 28.07.2013].

Assembly is called upon today to issue a birth certificate of the reality of the State of Palestine”³⁰.

However, even in this case some doubts emerge. The following information can be found in the website of the UN: “The recognition of a new State or Government is an act that only other States and Governments may grant or withhold (...). The United Nations is neither a State nor a Government, and therefore does not possess any authority to recognize either a State or a Government. As an organization of independent States, it may admit a new State to its membership or accept the credentials of the representatives of a new Government”. This opinion is also confirmed by lawyers. David Rivkin Junior and Lee Casey claimed that “The U.N. – General Assembly or Security Council – has no power to create states or to grant all-important formal ‘recognition’ to state aspirants. The right to recognize statehood is a fundamental attribute of sovereignty and the United Nations is not a sovereign”³¹.

The other aspect of the resolution of the General Assembly raised John Cerone’s doubts: “Weighing against these considerations is the significant number of abstentions, constituting just over 20% of the membership. In addition, several of the states that voted in favor of the resolution underscored that statehood could only be achieved through dialogue between the parties, implying that Palestine had not yet achieved statehood”³².

Some commentators emphasized the significance of the decision of the General Assembly indicating that exactly 65 years before, the same assembly decided to accept a resolution dividing the area of Mandatory Palestine into two states: the Arab and the Jewish. The Arab state did not come into being. Resolution to grant Palestine a non-member observer state status was going to be a symbolic finish of this process.

³⁰ *Abbas’ Speech to the UN General Assembly (November 2012)*, Council on Foreign Relations, <http://www.cfr.org/palestine/abbas-speech-un-general-assembly-november-2012/p29579> [access: 28.07.2013].

³¹ D. Rivkin jr, L. Casey, op.cit.

³² J. Cerone, op.cit. Such reservations were submitted by e.g. New Zealand. Its representative said: “Noting that the resolution just adopted conferred non-Member Observer State status, he said that the question of recognition of a Palestinian State was a separate issue”. *General Assembly Votes Overwhelmingly to Accord Palestine’ Non-Member Observer State’ Status in United Nations*, United Nations Meeting Coverage & Press Releases, <http://www.un.org/News/Press/docs/2012/ga11317.doc.htm> [access: 28.07.2013].

However, the conviction that both actions of the General Assembly have the same legal character, is wrong. In the first case, the General Assembly acted as an organ which was tasked with issuing a final decision on the status of mandatory areas; in the second case, it just regulated legal position of an entity within the scope of its own structures.

3. Conclusion

It is hard to escape the impression that the legal consequences of granting Palestine a non-member observer state status are evaluated differently by various parties, which are interested in this issue. This is why the author claims that the resolution adopted on November 29, 2012 was much more a political act than a confirmation of the existing present situation.

It seems that the majority of the international community supported the Palestinian proposal, because it claimed that the Jewish settlements in occupied territories and practical freezing of negotiations is not acceptable, and not because they believe that the Palestinian state really exists.

It seems that gaining a full Palestinian statehood is possible through bilateral (Israeli-Palestinian) talks. Only the United States (apart from the interested parties) have a real impact on their success. Israeli and American diplomats emphasize that declarations of international organizations are not able to change anything.

Regardless of what we think about the adopted resolution, we hope that peace in the Middle East and the establishment of Palestinian state is only a matter of time.