

US Policy Toward Establishment of Independent Palestinian State

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Abstract

The study had concluded that the Israeli occupation of the Palestinian lands is illegal pursuant to International law stipulations and rules, and it ,in no way, may result in the termination or denial of palatine international identity though it prevent the Palestinian people from practicing their presidency over their national region. There are some legal and political bases and foundations supporting the claims and ambitions of the Palestinians to establish their independent state. As for the legal orientation of Palestine establishment and international recognition, they are available and fulfilled by the Palestinian party as for the legal and political aspects. Besides, the study had concluded that there are high degree of coherence and agreement between the US and Israeli visions towards Palestine establishment and consequently, there is a gap between US and Palestinian attitudes towards the same; despite the positive development of the US attitude as for accepting (not recognizing) the Palestinian estate establishment, provided that it results from the Israeli -Palestinian negotiations. This is typical to the Israeli perspective and makes the negotiations pending according to power balance which is totally unbalanced in favor of Israel.

Key terms: US policy, Palestinian State, Madrid Peace Conference, OSLO Agreement, Road Map

1.1 Introduction:

In the first section hereof, the study tackled legal and political bases and backgrounds of Palestinian estate establishment since the end of Ottoman rule over the Arab world and the beginning of the British mandate instead, then the establishment of Israel in 1948 and the occupation of the remaining Palestinian lands in 1967. This is in addition to the previous and following international resolution to establish both Palestinian and Israeli states. The second section, however, tackled the legal orientation of Palestine establishment and recognition through verifying the provision of the basic aspects of state establishment, which are people, region and political rule. As for the third section, it studied and analyzed the US attitude concerning Palestinian state establishment within successive American administrations.

The study aims at recognizing the availability of political and legal rights and pillars for the Palestinians to be able to establish their independent state on their national region, pursuant to the basic corners of states recognition and subject to the International law rules and stipulations. Then, it aims at studying and analyzing the US policy toward Palestinian state establishment up to truth and bases of the US attitude concerning the same.

1.2 Study dilemma:

The main dilemma of the study is represented in the two following questions: Do the Palestinian party have the right and the political and legal aspects to establish independent Palestinian state? What is the truth and bases of the US attitude towards this issue?

1.3 Study hypothesis: It is based on two basic hypotheses: the first is that Palestinians have the right and the political and legal pillar to establish their independent sovereign state. The second is that the US policy had been more coherent and homogenous with Israeli policies which always hinder the establishment of independent Palestinian state.

2.1 Legal and political bases and backgrounds of Palestinian state establishment:

The British mandate is a very important era of Palestine political history and is anormal preface to the subsequent developments. In addition, this era had been

2.2 Palestine international identity

Arab League Charter had expressed the Palestine international identity as it emphasized that since the end of WWI, the Arab States that were under the Ottoman rule, including Palestine, had been free and independent (3).

Palestine international identity is historically ensured through concluding many international agreements and treaties during the British mandate (4). Besides, during the mandate era, Palestine had a special nationality different from that of the mandating country. This was stipulated in the seventh article of mandate instrument which states that: "... Nationality law must be legalized while administering Palestine, which must include stipulations that facilitate Palestinian nationality for the Jewish who shall stay permanently in Palestine...". The reference here for the Palestinian nationality indicates its legal importance and impact in international law stipulations and judgments. Moreover, the fifth article of the instrument had explored Palestine international identity and its unity as it stipulated that the mandating country shall be responsible for not assigning any part of Palestine territory to any foreign government, or lease the same to this government or giving hand over it in any other way (5). Hence, the British mandate over Palestine, which was in implementation of League of Nations covenant, has no legal impacts that may negate or terminate Palestine international identity and its people right for sovereign and independence. Besides, self-determination right and the developments which made the international tradition accept the recognition of national liberty movements which work in the name of people and fight for their freedom and establishment of their independent state had legalized the issue, though it does not dominate its national region (6).

2.3 Legal bases of establishing independent Palestine:

There are some bases and foundations under the international law which support the Palestinians right to establish their independent state. Since the demise of the Ottoman rule, the states that were under its sovereign including Palestine were entitled to retrieve their identity and establish their states on their lands subject to succession rules. Besides, the establishment of Palestinian state is based on the self-determination right and Palestine Partition Plan No. 181 issued on 29th November 1947 by UN. This is in addition to the rooting legal principle in all international charters which is occupation illegality (7). Though the referred Palestine Partition Plan No. 181 was contrary to all historical and human facts in Palestine and unfair for the Palestinian people, it provides the legal and lawful international background to announce Palestine sovereign on the lands which are internationally confessed as being Palestinian. The Plan had stipulated in clause (3/A) that: "two Arab and Jewish independent states shall be established in Palestine, and the International rule shall be on Jerusalem..., no later than 1st of October 1948..." besides, this resolution is of high legal importance in regard of the borders of Palestinian regional rights in two major sides; the first: Israel always alleges that it necessary to agree in such borders; and the second is that this resolution is important to understand and explain decision of International Security Council No. 242 issued in 22nd November 1967, in light of Arab Israeli war in the same year (8); which ended by Israeli full occupation of Palestine.

2.4 Palestinians' right to establish independent state:

Nevertheless, Palestinian people right to have rule over their territory is legally stable as referred in decision No. 181. Israel occupation of main parts of the Arab state in Palestine, as determined by Partition Plan declared by UN, was near recognized by the international community because Israel border were previously determined according to the partition plan. Besides, UN decision No. 273 dated on 11.05.1949 to accept Israel as member therein emphasizes the fact that the international organization recognizes only Israel's region as per the partition plan No. 181 (9). As for Security Council resolution No. 242, previously referred, had explicitly stated that every state in the region has the right to live inside safe borders recognized by all other states. Thus, it refers to such borders which were determined pursuant to partition plan No. 181 in 1947; especially that resolution No. 242 had explicitly stated the illegality of Israeli occupation of Arab lands including Palestine as a result of June 1967 war (10). Subsequently, war must be ended and Israeli occupation troops must withdraw; which are the main requirements to put an end to this conflict. This is in addition to common recognition, respecting sovereign right and borders of each state in the region, whether Arab countries or Israel. Though resolution No. 242 was agreed by US, the US attitude remained considering the resolution as only a base-plan for negotiation; which is not taken for granted. This American logic is to protect Israel and support its opinion regarding the necessity to conclude reconciliations between Israel and Arab countries, though this is not stipulated in the resolution (11). In this regard, there is a general agreement between international law experts on a main fact that is military and armed occupation of certain region does not form a valid reason for transferring sovereign over such region. Using armed power or threatening thereby in common international relations; in order to achieve regional expansions on others, is banned and illegal. The principle had been constant since end of WWII and the formation of UN. Based on the above, and proceeding from "State continuation" principle, as agreed in general international law, the occupied state shall remain keeping its rights and eligibility to proceed its sovereign concerns over its region and all rights and obligations subject to International law; without affecting or impacting any of its three elements: people, territory and political authority. Thus, the military occupation over the Palestinian land must

not affect sovereign rights of the Palestinians; who only can determine the same since the Ottoman state has assigned its rule subject to “Lozan Treaty” provisions on 24th November 1923 (12).

2.5 international recognition of Palestinians’ right to establish their independent state:

The international recognition of Palestinians’ right to have sovereign over its lands had been ensured through many UN resolutions since the issuance of Partition Plan in 1947. General Assembly had issued on 10.02.1969 resolution No. 2535, which confirmed Palestinians’ inalienable rights (13). Resolution followed to ensure self-determination right (14). Besides, General Assembly of the United Nations had, on 15th November 1975, established “Palestinians’ inalienable rights committee”. The committee had provided its program in 1976 concerning the same, including the right of Palestinian refugees’ return, self-determination right, national independence and sovereign. This is in addition to asking Security Council to prepare timetable for Israel withdraw from all Arab land occupied in 1967, ending settling and removing all existing settlements and establishing independent Palestinian state. When these recommendations were presented to Security Council, they were terminated by US VETO claiming that they are bias, unbalanced and shall hinder serious negotiations between the parties. Washington had been always following this way in Security Council to kill any attempt or any resolution draft to abide Israel by International legality in regard of Arab-Israel conflict, especially the Palestinian issue (15).

In summary, UN had confirmed the Palestinian sovereign and all main rights thereof as well as the resolutions which form valid lawful proof as they are issued from the international organization that represents International legality. All UN relevant resolutions were keen to keep Palestinians’ rights without violating security and peace of both states. It had explicitly referred that respecting such rights is a major and necessary condition to apply fair peace in the Middle East. To prove the lawful importance of UN attitude and resolutions, it is worth noting that Israel itself was established subject to the resolution of the General Assembly of the United Nations.

3.1 Legal orientation of Palestine establishment and international recognition thereof:

State establishment is objectively based on the availability of three major aspects, according to the international law: people, territory and political authority (16). In regard of Palestinian state issue, we shall discuss available of the three aspects as follows:

3.1.1 First: Nation: All facts and indicators confirm that Palestinians can be described as “Nation” subject to International law concept. They form group of people with common links. They are continuously and permanently reside in certain region (Palestine). This principle is not affected by the fact that whole or part of such territory was governed by another country due to war or occupation even if nationality of the occupying country was imposed on such people as long they had not assigned their land voluntarily. This typically applies to the Palestinians in their relation with Israel (17). This is consistent with international law provisions regarding national independence, which is known as “Self-determination Right”. It generally means that every nation has the right to be independent and determine its ruling system. UN Charter had adopted this concept and affected guardianship, and non-self-governing territories’ provisions as many General Assembly resolutions had shed light of the international recognition of self-determination right (18).

Besides, self-determination right had been important in the two international covenants of civil, political, economic, social and cultural rights; which were approved by the General Assembly of the United Nation by resolution No, 2200 issued on 16.12.1966. These two covenants are equal to collective treaties as they require signature and attestation. They are symbols of rules’ commitment. Thus, their content is to be duly respected as International legal rules (19).

Based on the fact that the military occupation does not form lawful right for the occupation country whether on the occupied territory or the people living thereon before the occupation, International law had legalized armed resistance acts and fight of the nations and national liberty movements which aim at gaining freedom, subject to self-determination right (20). Nations’ liberty idea gains its lawful legality from this right. Subsequently, liberty movements and their leading organizations enjoy international support as considered practically performing self-determination right.

3.1.2 Second: Territory: It is the fixed geographic spot where individuals stably live and where they perform their daily routine on continuous base. The territory is not limited to land only, yet it extends to regional sea and sky above them (21). Legal jurisprudence, all states and international courts and arbitrations had confirmed that

it is not a condition to have undisputed border to establish a state. Israel borders had not been determined up to date; yet UN had recognized it as independent self-governing state (22).

3.1.3 Third: Political authority: State is featured with political authority, unlike other groups. It has the power to keep rule and law governance within the region borders where it practices its powers (23). In this context, Palestinian National Council had decided to declare Palestinian state on 15.11.1988 in its 19th round held in Algeria. This had caused dramatic transformation in the Palestinian issue path as such declaration, and the declared Palestinian state, despite under occupation, gained the recognition of about 120 world countries (24). General Assembly of the United Nations had welcomed the declaration of Palestine by issuing resolution No. 43/176 on 15.12.1988. UN had confirmed that it is necessary to ensure security arrangement for all region countries including the states named in the resolution No. 181/1947 – above referred – inside safe and internationally recognized borders (25).

In addition, OSLO agreement formula in 1993 (mutual recognition between Palestinian Liberty Organization and Israel), despite all excuses of both supporters and opposers thereof, had factually made the Palestinian entity a physical reality based on the Middle East Political geography on part of historical Palestine. More than three million Palestinians live in West Bank, Jerusalem and Gaza Strip; most of whom are politically and administratively governed by Palestinian ruling authority. OSLO agreements had created new political facts difficult to be denied or overcome. Palestinian Liberty Organization had become the other party which Israel had recognized to be its partners in the settlement process. It had established its national authority on part of Palestinian lands and started to perform powers of legislative, executive and judiciary state; as well as duties of internal security through Palestinian security troops (26).

Hence and in light of the fact that the Palestinian authority performs legal and actual governance over the liberated Palestinian lands, the third aspect is provided (political governance) which is required to declare Palestinian state and sovereign thereof. As the other two aspects were previously mentioned; Nation and territory; especially that Palestine had not lost its international lawful identity and remained one of international law's figures. Based on the provisions of the aspects and conditions required by international law to establish a state, we can say that Palestine establishment, in regard of legal and political aspects, is permitted and realistic especially that since declaring the Palestinian state in 1988, it gained international legality and the recognition of tens world countries. Moreover, legally speaking, Palestine is already existing and internationally recognized in the same charter where Israel gained its legality to exist.

4.1 US attitude toward Palestine establishment:

US concern for Palestinian issue is an integral part of its concern of Arab-Israeli conflict and the Middle East, as well as the general international politics. However, successive US administrations had been dealing with the Palestinian issue during Cold War decades as being refugees issue only (27). Besides, US refused to consider Palestinian Resistance Movement as national liberty movement since its commencement in the last mid sixteenths. Yet, it considered Palestinian organization included in resistance movement as terrorist organizations and rejected to recognize Palestinian self-determination right and his title to establish independent state. Thus, Henry Kissinger had determined US attitude toward the Palestinian issue that: "US shall not recognize Palestinian Liberty Organization and shall not negotiate therewith as long as it does not recognize Israel's right to exist and that US does not accept International Security Council resolutions No. 242 and 388" (28). Regan administration added a third condition which is that Palestinian Liberty Organization must reject using "terrorism" before US speaks or negotiates with the organization authority (29). Hence, Washington had restricted its policy in dealing with Palestinian Liberty Organization unless the previous three conditions are publically, formally and decisively declared by the Palestinian Organization.

4.2 Regan Peace project:

In 1st September 1982, President Regan had provided his vision to settle Palestinian issue, which was later on called "Regan project". It tackled the legal rights of the Palestinians and their political ambitions and that the Palestinian issue is not just a refugees case. However, on the other hand, he asserted that Palestinians should be given self-governance that is connected to another self-governing state which is Jordan. Thus, this project had explicitly excluded Palestinian state establishment option. Israel had confirmed the claims to make amendments to 1967 borders to include Israel, and had previously determined the final status of West Bank and Gaza Strip with typical-like agreement with the Israeli vision (30).

Subject to the general Arab and International convictions that Palestinian issue solution is in the hands of the US, Palestinian leadership sought to be close to Israel-US conditions triangle; when Yasser Arafat, Head of Palestinian Liberty Organization, had on 14th December 1988, explicitly and clearly declared rejections of terrorism and acceptance of International Security Council resolutions No. 242 and 338 and emphasizing on Israel right of existence. Thus, he accepted US conditions to “Recognize” Palestinian Liberty Organization as a representative of the Palestinian people. However, Regan administration had only commenced “discussion” with the organization (not recognizing it) in December 1988 (31).

4.3 Madrid Peace conference:

G.W Bush administration, since beginning, had kept the historical attitude of the US policy toward the Palestinians including the rejection of self-determination right and title to establish independent state and choose their representative leaders (32). On 6th April 1989, while talking about the Palestinian issue, President Bush had asserted his support of the Israeli vision to solve the matter and his rejection to establish Palestinian independent state (33). In his speech before AIPAC on 22nd May 1989, Foreign Minister, James Baker, had re-asserted the same rejection to establish Palestinian state (34).

Upon the end of Gulf War II in 1991, US had launched its initiative to settle Arab-Israeli conflict. In this context, US had adopted the plan of Israeli Prime Minister, Yitzhak Shamir, in 1989. It had been the base of US settlement as it asserted rejection to establish a Palestinian independent state and refusal to recognize Palestinian Liberty Organization as a negotiating party. This was clearly significant through the great pressure of Foreign Minister, James Baker, on West Bank and Gaza inhabitant to find some Palestinians who are not members in Palestinian Liberty Organization to join Jordanian delegation to negotiate with Israel concerning a type of “self-governing”, which was the basic request of Israel (35).

While James Baker had rejected the Palestinian vision presented by West Bank and Gaza Palestinians in the settlement process, on the one part, which included the following: recognition of Palestinian Liberty Organization as the sole legal representative of Palestinian, the necessity to establish independent Palestinian state in West Bank, Gaza and East Jerusalem along with Israel and considering UN resolutions as bases for peace process; in addition to holding an international conference to be mechanism to push peace process forward (36). On the other part, Bush administration accepted Israeli settlement demands and conditions and considered them main base thereof; such as: No negotiations with PLO, the right to reject members of the Palestinian delegation, provided that it does not include, in anyway, Palestinians from East Jerusalem or refugees abroad, no Palestinian independent state, and no right for Palestinians to return homeland (37). Typically, Palestinians entered Madrid conference (30th October 1991) to negotiate with Israel as part of the Jordanian delegation without any promise or covenant that may fruit their national ambitions. However, when the Palestinian forwarded to the fourth round of the negotiations (24th February - 4th March 1992) with detailed plan of transformative phase arrangement that shall ultimately end with establishing independent Palestinian state, they were publically and cruelly rebuked by Bush administration. Besides, they were accused of crippling the peace process and violating negotiations rules and seeking propaganda. Thus, they were asked to abide strictly with the US line-based negotiations (38). Hence, when compared, the US-Israeli harmony is apparent against US-Palestinian huge gap.

4.4 OSLO agreement:

President Clinton had begun his first presidency period with rejecting the establishment of intendant Palestinian state, with little restriction as he prefers to let the matter subject to negotiations between both Palestinian and Israeli parties and the potential results that may reach (39). Hence, President Clinton was strong pro of OSLO agreements and he had formally sponsored signing OSLO agreements on 13th September 1993; which was later known as “Palestinian-Israeli principles Declaration Agreement”.

Hence, OSLO agreement had given life to legal, formal and internationally recognized Palestinian government in West Bank and Gaza Strip. This had enabled the Palestinian leadership gather state symbols such as national rhythm and flag upon Palestinian Authority institutions, airport, ports, receiving foreign countries presidents and the presence of diplomatic representatives of many world countries who are certified at the Palestinian authority. Above, civil Palestinian authority and internal security laws are applied on 98% of Palestinian inhabitants who are governed by Palestinian authority. This is in addition to agencies, syndicates, unions and the other civil community institutions which were established by the Palestinians domestically within previous phases (40). Based on that, and in coherence with Oslo agreement, which did not negate or set condition not to establish Palestinian state, General Assembly of the United Nations had, on 8th July 1998, resolved to raise Palestinian delegation degree from controlled member to partner member in discussions, recommendations and giving

opinions. 124 states had voted for this resolution, including EU countries, while it was opposed by four countries only including Israel and USA (41).

Within the last months of President Clinton last period in 2000, USA had intensively been involved in the negotiations to reach final solutions between Palestinians and Israelis. It had sponsored Camp David (12-25.07.2000) which failed. However, President Clinton tried eagerly to reach settlement. On 23.12.2000, he presented the first and most mature US projects concerning the Palestinian state; yet it remained closer to Israeli visions and conditions in this regard. President Clinton had suggested establishing Palestinian state on 94-96% of West Bank and Gaza Strip lands; while the lands which will be assigned by Israel (4-6%) must be compensated by exchanging 1-3% thereof. This is in addition to other arrangements concerning lands such as permanent safe passage and exchanging of leased lands to meet both parties' needs. He also suggested gathering 80% of the settlers in settlement blocs and ensuring geographical communications of the Palestinian state lands and reducing areas included to Israel to the minimum limit and reducing Palestinians who shall be affected by such inclusion to the minimum as well. In regard of security arrangements, President Clinton suggested that Palestine shall have sovereign over its air borders provided that both parties shall set special arrangement to meet Israel needs in training and air operations. As for Palestine arming, he said: "the Israeli opinion in this issue is that Palestine must be defined as "demilitarized state", while the Palestinian side suggests "limit-militarized state", and as compromise I suggest "non-militarized state", as this shall not violate the fact that in addition to Palestine having powerful security forces, there shall be international forces for borders' security and deterrence (42).

Reading the contents of these suggestions, revealing the US perception of the awaited Palestinian state, had reflected great negligence of Palestinian rights and basic needs which Palestine needs for survival. However, the suggestions are in harmony with the Israeli vision of the form and nature of the Palestinian entity. History of Palestinian-Israeli negotiations had proven that Israeli negotiating strategy is based on "conflict-management" not "conflict-settlement" principle. In each negotiating phase, Israeli demands and conditions increase more. In 2000, Israeli prime Minister, Ehud Barak, had provided his program to settle the conflict; which was known as "5 Nos": No return of East Jerusalem to Palestinians, Jerusalem is a permanent capital of Israel, No return to pre-1967 war borders, no return for Palestinian refugees, no removal of Israeli colonies in West Bank and Gaza Strip, No Palestinian army in West Bank and Gaza Strip (43). This literally means that the Palestinian state shall have no army and with incomplete sovereignty.

4.5 Road Map

The strongest US attitudes that had been explicitly talking about Palestinian state was the perspective provided by US President George W. Bush, whose presidency extended from 20.01.2001 to 20.01.2009. In his speech on 24.06.2002, he had provided his vision of final settlement as he suggested negotiations that shall lead to the establishment of democratic independent Palestinian state that can survive and live peacefully and securely with Israel. This project was adopted by the "International Quartet" which included USA, EU, Russia and UN. The project stipulated the necessity to reach final settlement subject to timeline that ends in 2005, to establish Palestinian state in accordance with Security Council resolutions No. 242, 338 and 1397. This shall be in consideration of the Saudi initiative which was adopted by Arab summit in Beirut on 28.03.2002 which had apparently talked about recognition and comprehensive Arab normalization with Israel, provided that Israel shall recognize and accept establishment of independent Palestinian state on West Bank and Gaza Strip as well as the return of the Palestinian refugees (44). However, the Road Map did not provide final perception of solving the conflict genuine issues (Jerusalem, refugees, settlement, borders, sovereignty ...etc.) besides, it had not provided real mechanism abiding Israel to fulfill its obligations. In addition, Israel had set 14 provisos which had practically destroyed the map; as each proviso can delay the road map for years. Besides, Israel had set condition to set off Security Council Resolution No. 1397 which calls for establishing Palestinian state, as well as Palestinians' declaring Israel right to exist as "Jewish State" and assign their right to 1948- occupied Palestine (45). Nevertheless, it was worth noting that President Bush administration declares "understanding" such Israeli provisos and conditions though the project is US made and USA had been always put Israeli interests and considerations on top priority. This encouraged Israel to disavow its required commitments. The timeline of the Road map ended by the end of 2005, then presidency period of G. W. Bush ended without Israel even fulfilling the first article concerning settlement-halting.

The situation remained the same during Barak Obama presidency, who held the rule at the same time the far-right politics returned to rule in Israel in 2009, headed by Benjamin Netanyahu who expressed great intransigence toward Obama administration. Thus, USA failed to even fulfill the simplest rights in Road Map which is Israel complete halting of settlement. However, Netanyahu had asserted the condition of Palestinians' recognizing "Israel Jewish" and assign Palestinian refugees' right to return (46). Instead of exerts efforts to

pressure Israel to fulfill its commitment, it pressured the Palestinians to return negotiations without pre-conditions or a reference to determine the final path of settlement process. Obama administration had been only repeating Palestinian state slogan as the final sough result, yet without performing any factual practices. The dream of establishing Palestinian state is already demolishing due to Israel settlement and Judaize of Palestinian occupied lands.

Conclusions:

1. Israeli occupation of Palestinian lands is illegal subject to International Law rules and it cannot, in anyway, result in the negation or termination of Palestinian international identity and it does not form lawful reason for transferring sovereignty on Palestinian territory.
2. Palestinians have the rights, political and legal foundations to establish independent state on their national territory.
3. There is great typical-like harmony and agreement between US and Israeli attitudes concerning the establishment of independent Palestinian state, contrary to the wide gap between US and Palestinian attitudes.

Recommendations:

1. It is necessary to enable Palestinians to perform their sovereign specializations on their national territory through ending the Israeli occupation due to its illegality according to International Law rules.
2. Palestinian independent state establishment is legal and realistic matter politically and lawfully based on the fact that it has the pillars and conditions required by international law to recognize states.
3. Being the most significant sponsor of settlement negotiations between Palestinians and Israel, USA must adopt approached that are more coherent with international legality resolutions in this regard and must not be bias.
4. International Security Council must take binding resolution to end Israelis occupation in the Palestinian lands. It must adopt the recognition of independent Palestinian state according to its previous resolutions since Security Council (binding) resolutions are the golden measure to recognize states.

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