



Statehood under Siege: How Geopolitics Overrides Legal Criteria in the Recognition of Palestine and Kosovo

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Abstract

The present article focuses on a contradiction between legal definitions of statehood and their political enforcement through recognition. Palestine's and Kosovo's paths to statehood after unilateral declarations of independence were analysed comparatively to assess how both entities fulfil the four conditions of the 1933 Montevideo Convention for statehood: permanent population, defined territory, government and capacity to enter into relations with other states. The research adopted a qualitative, doctrinal-comparative approach, drawing on primary materials like UNSC resolutions, ICJ Advisory Opinions, state declarations and secondary legal scholarship. The study indicates that Palestine and Kosovo meet the legal requirements for statehood, though recognition of both has been shaped by the political agendas of major powers. For Kosovo, a political alliance among Western countries emerged, framing it as *sui generis*, whereas the United States' repeated vetoes on the UNSC stalled Palestine's path to recognition. Findings demonstrate politicization of the statehood recognition process delegitimizes international law and creates inequality between applications of the self-determination principle. Recommendations include reinforcing collective international recognition regime through UN General Assembly voting procedures.

Keywords: Montevideo convention, declaratory theory, recognition, self-determination

Introduction

Statehood is the organising principle of international law and international relations. The rise of new aspiring entities has led to an ever-growing disconnect



between legal rules and political realities (Crawford, 2006; Orford, 2012; Visoka, 2022). Palestine and Kosovo are two crucial case studies to understand how legal requirements for statehood relate to political considerations when recognising countries worldwide. Palestine and Kosovo attempted to gain independence and become subjects of international law but reached very different results.

This article aims to resolve the persistent conflict between the legal standards for statehood and the political realities of its recognition. The 1933 Montevideo Convention laid down four straightforward legal benchmarks for statehood. These criteria included permanent population, a defined territory, effective government, and capacity to enter into relations with other states (Crawford, 2006). However, politics ultimately dictates state recognition today despite legal merits (Newman & Visoka, 2023; Visoka, 2022, 2025). Legal criteria are applied selectively in the interests of powerful states while being ignored in all the others.

Palestine and Kosovo, while both fulfilling the Montevideo benchmarks, have experienced uneven recognition on the global stage. Palestine is recognised by 157 UN member states and is an observer state at the United Nations. The United States' Security Council veto prevents Palestine from securing full UN membership. Approximately 110-120 UN member states acknowledge Kosovo, and it enjoys broad acceptance from Western nations. Kosovo will never be admitted to the UN as applications for membership will be vetoed by Russia and China (Hajdari, 2023; Reuters, 2025). How can two situations with such similar legal standing elicit such divergent responses from the international community? Do the established legal norms hold the same sway for every nation?

This article demonstrates that geopolitical considerations, rather than strict legality, dictate international recognition of statehood. By methodically evaluating Palestine and Kosovo in light of the Montevideo criteria, this article illustrates that they should not be treated differently from a legal standpoint. Selective application of legal norms benefits powerful states that enforce their political will internationally.

The objectives of this study are as below:

1. to provide an analysis on whether Palestine and Kosovo satisfy the requirements of statehood under the Montevideo Convention
2. to identify whether the declaratory or constitutive theory of recognition was implemented in each case
3. to figure out what political and strategic interests influence great powers' decision to recognize new states
4. to examine what arbitrary recognition implies for international law and right to self-determination

The main research question is: To what extent does the incomplete recognition of Palestine and Kosovo stem from political factors rather than their compliance with the Montevideo Convention criteria?

The article deepens the international legal discourse on statehood and self-determination. Highlighting inconsistencies in recognition practice, this article critiques some of the underlying principles of international relations and proposes a structure for legal change moving forward that will create fair and consistent recognition processes.

Literature Review

International law lays out four essential requirements for asserting statehood. These qualifications are set out by Article 1 of the Montevideo Convention (1933) and include: a permanent population, defined territory, government and capacity to enter into relations with other states. Palestine and Kosovo have used these four qualifications when declaring their independence as international law requirements (Crawford, 2006). There are two theories on recognition that describe how these requirements are implemented and politicized when deciding whether to recognize a state.

Declaratory theorists such as Crawford (2006) believe once an entity has achieved the qualifications of statehood set out in the Montevideo convention it becomes a state independent of recognition. In this sense, declaratory theorists view recognition simply as political act of confirming what a legal fact is already. Constitutive theorists such as Lauterpacht (1944) and Kelsen (1941) view recognition as a legal act that is required before a state comes into existence, therefore deciding which entities become subjects of international law. Worster (2009) provides a succinct summary of the difference between the two theories by saying “whether recognition of states is viewed as a legal obligation or a matter of political discretion” depends on which theory you ask. Finck (2016) argues that although states tend to publicly favour declaratory language regarding new states, in reality recognition is becoming a constitutive requirement that substitutes for effectiveness.

This article will proceed by adopting the declaratory model for its analysis. From a methodological standpoint, if an entity meets the criteria for statehood irrespective of external recognition yet remains unrecognized, it strongly suggests that political considerations are at play. It follows that comparing states that meet the requirements helps us determine if the denial stems from legal or political considerations.

The academic discourse surrounding Palestinian statehood is quite substantial. Quigley (2010) makes the most robust legal argument by arguing Palestine was sovereign both during the League of Nations Mandate and to the present day. Dajani (1997) analyses Palestine’s legal status under international law since the Oslo Accords were signed. He concludes that Palestine meets the necessary criteria, but that Israeli occupation has limited Palestine’s abilities. Sakran and Hayashi (2017) illustrate

how Palestine's strategic accession to twenty multilateral treaties bypasses the core statehood debate, thereby enabling its functioning as a state for specific, constrained objectives. Few scholars argue against Palestinian statehood. Kontorovich (2013) and Becker (2000) argue Palestine fails the effective government condition of statehood because politics are divided between the West Bank and Gaza. Quigley (2010) rebuts that argument by showing how those deficits are caused by belligerent occupation, which does not negate sovereignty under international law.

The academic discussion surrounding Kosovo's statehood hasn't reached the same volume. Newman and Visoka (2018) analyse the practice of recognition and argue Kosovo was recognized because of agency, strategy, and timing as well as conformity with great power interests. The ICJ's Kosovo Advisory Opinion (2010) found that Kosovo's declaration of independence did not breach international law. Christakis (2011) points out that in coming to that decision, the Court worded its questions about Kosovo very narrowly to avoid deciding on whether international law even encompasses a right to remedial secession. Vidmar (2024) analyses state practice on the issue of secession and concludes that it has never implied a general right to secession existed. Borgen (2009) compares rhetoric used by great powers when choosing to recognize Kosovo versus South Ossetia. His research indicated that principles of self-determination and territorial integrity were wielded to legitimize intervention or non-intervention depending on what best suited political aims.

Although many authors have drawn parallels between Palestine and Kosovo as cases where the political will of Western powers has affected their involvement in Bosnia-Herzegovina, discourse between scholars who write about Palestine and those who write about Kosovo remains scarce. Discussions surrounding Palestine take place almost exclusively in Middle Eastern studies journals while those concerning Kosovo appear in European studies publications. Though scholars in both fields may acknowledge the similarities, truly in-depth comparative research remains scarce. Authors such as Daku and Rudaku (2024) make direct comparisons between Kosovo and Palestine, but only within the narrow lens of Spain's position on recognition. At present, no analysis has been done comparing Palestine and Kosovo side-by-side using the same criteria laid out in the Montevideo Convention to clearly show when legal obligation becomes political manoeuvring. This article aims to bridge that gap by placing Palestine and Kosovo into the context of both declaratory and constitutive theory and demonstrating that both meet legal requirements but are treated differently for political reasons.

Methods and Procedures

This article has a qualitative doctrinal-comparative design. A doctrinal legal article reviews and analyses legal sources to determine what the law says and doesn't say about rules and principles. Comparative analysis determines the similarities and differences among two or more cases to produce a greater understanding than is

possible from examining only one case article” (Hutchinson & Duncan, 2012; Van Hoecke, 2011). The methodology works for this article because the research question contains two parts: a strictly legal question (do Palestine and Kosovo meet Montevideo criteria?) and an empirical political question (why do similar situations lead to different recognition results?).

The research employs a most-similar case selection logic, citing three interconnected rationales for choosing Palestine and Kosovo.

First, Palestine and Kosovo are unilateral declarations of independence (UDIs) and fulfilled the requirements for statehood under the Montevideo Convention upon proclamation (Geldenhuis, 2009).

Second, Palestine and Kosovo have experienced two extreme, opposite recognition paths since their unilateral declarations of independence. Kosovo received over 100 recognitions from UN member states, with most recognitions coming from Western states, while Palestine became a non-member observer state of the United Nations, indefinitely denied full membership by a Security Council veto.

Third, Great power actors have significant interests at stake in both Palestine and Kosovo, controlling for irrelevant variables that may affect the research outcomes (Ryngaert & Sobrie, 2011). This logic allows for comparison between two legally similar entities that have been treated differently based on their respective alliances.

Primary sources used in this article are; the 1933 Montevideo Convention on the Rights and Duties of States, UN Security Council and General Assembly resolutions relevant to Palestine/Kosovo, the ICJ’s Kosovo (2010) and Wall in Occupied Palestine Territory (2004) Advisory Opinions, Palestine’s and Kosovo’s declarations of independence, and statements of legality by states and international organisations concerning recognition of Palestine and Kosovo.

Secondary sources consist of scholarly articles, monographs, and policy reports that discuss theories of statehood/recognition and analyses of Palestine/Kosovo.

There are two questions with corresponding analyses. Palestine vs Kosovo: Can Law Explain the World?” In Part 1 of the analysis, Palestine and Kosovo were evaluated separately according to the four criteria. This determination is made using the declaratory theory framework: if an entity objectively meets the criteria, then it legally qualifies as a state” (Crawford, 2006). The Conclusion of each fact-based analysis is stated as such and does not delve into any subjective interpretations of what those findings mean for the defensibility of the current system of recognition. Once it has been established that Palestine and Kosovo are similarly situated from a legal perspective, the two entities are compared along four variables. How political recognition is granted in Palestine and Kosovo depends on; Power politics, Procedural gatekeeping at the UN Security Council, Contestation over legal narratives (self-determination vs remedial secession vs territorial integrity), and Material incentives

for differential treatment” (Worster, 2009).

Results

The analysis section applies each of the four criteria of the Montevideo Convention in turn to Palestine and Kosovo. Within each subsection, the information relevant to satisfying each criterion is presented and weighed separately. The sources consulted for this article include those detailing UN estimates of population, state constitutions, the ICJ Advisory Opinion, state records, and secondary academic sources. By analysing Palestine and Kosovo under each Montevideo criterion separately, this article concludes based solely on international law whether or not one of the entities fails to qualify as a state, allowing the Discussion section to explore if differing recognition can be justified by this failure or must instead be grounded in political motivations.

Legal Compliance with the Montevideo Criteria

Palestine and Kosovo fulfil all four criteria stipulated by the Montevideo Convention with some qualifications on particular criteria.

Permanent Population

Permanent population is defined as inhabitants who live continuously in the given territory. Palestine had a population of approximately 5.6 million in the West Bank and Gaza Strip in 2025, based on estimates from the UN Population Fund (Crawford, 2019; United Nations Population Fund, 2025). According to the World Bank (2024), Palestine had around 5.29 million people living in its region. Palestinians identify primarily as Arabs, with a significant portion of the population being refugees who hold official documents from UNRWA. Kosovo is home to approximately 1.59 million individuals, with around 91.76% identifying as ethnic Albanian. The remaining population consists of Serbian, Bosniak, Roma, and Turkish ethnic groups (Kosovo Agency of Statistics, 2024). International law does not specify a minimum population, provided there is a permanent population that constitutes the sociological aspect of a state (Crawford, 2006). Both Palestine and Kosovo qualify for this requirement.

Defined Territory

Palestine purports to encompass land spanning the West Bank (including East Jerusalem) and the Gaza Strip, its boundaries being those of the 1949 Armistice Lines (Green Line) (International Court of Justice, 2024). The International Court of Justice’s Wall Advisory Opinion (Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, 2004) established Palestine to hold title to the West Bank and Gaza Strip, together comprising one territorial unit for purposes of Palestine’s right to self-determination. Israeli-held territory currently disrupts Palestinian territorial contiguity between these regions. Furthermore, Israeli settlements’ continued growth on the West Bank has resulted in the claimed Palestinian territory becoming increasingly fragmented. Kosovo’s territory is that delineated by its Constitution of 2008 and the Comprehensive Proposal for the Kosovo Status Settlement (“Ahtisaari Plan”). The

territory comprises 10,887 square kilometres (Secretary- General of the United Nations, 2007; U.S. Department of State, 2008). Article 1 of Kosovo's Constitution of 2008 states: "The territory of the Republic of Kosovo is an integral whole and comprises its border areas". (Constitution of the Republic of Kosovo, 2008). The Serb-majority northern municipalities, with parallel institutions affiliated with Serbia, are within Kosovo's internationally recognized borders, but do not fall under the effective control of either Serbia or Kosovo. However, undisputed control of a territory is not required by international law; instead, a claimant needs merely to demonstrate a consistent territorial base (Crawford, 2006).

Effective Government

This arguably is the criterion where Palestine and Kosovo diverge the most, although for opposite reasons. Palestine's case is more nuanced. The PA provides governmental services with regard to civil issues and internal security in Palestinian populated areas defined as Areas A and B in the West Bank, according to the Oslo Accords. However, it does not have governance over Gaza, which has been ruled by Hamas de facto since 2007, nor can the PA fully operate in East Jerusalem, which Israel effectively claims as its own sovereign territory. Moreover, the PA's government is limited by the Israeli permit and closure regime that restricts the movement of people and goods in and out of the territories, as well as Israeli control over border crossings, the population registry, and tax collection (Iqtait, 2023). According to the World Bank, the PA's budget sustainability relies on Israel transferring tax clearance revenues to Palestine-Israel relations, which can at times suspend this transfer (World Bank, 2023).

Palestine's shortcomings in effective control were used by some academics to argue Palestine is not able to fully conduct the affairs of a state, pointing to Palestine's geographic and political split between the West Bank and Gaza as evidence that Palestine lacked effective control of its territory (Becker, 2000; Kontorovich, 2013). Proponents of Palestinian statehood argue that these shortcomings were precisely the result of belligerent occupation, and international law does not require an occupied territory to lose its sovereignty (Quigley, 2010).

Implicitly lending support to this claim was the ICJ Wall Opinion (2004), which recognized Palestine as a unit with the right to self-determination. Kosovo has effective control over its territory through its institutions. There is an elected parliament and government, police and judicial service, and tax administration. Police patrols cover Kosovo. State institutions deliver services to Kosovo citizens throughout the territory. This includes public schools, healthcare and social protection systems. There are parallel institutions funded directly by Serbia operating in Serb-majority municipalities located in northern Kosovo. Those are North Mitrovica, Zvecan, Zubin Potok, and Leposavic municipalities (Associated Press, 2024). Schools, hospitals, and municipal services are run by Serbian-appointed officials rather than Kosovar institutions (International

Crisis Group, 2020). While this impairs the exercise of governmental authority over all of Kosovo's territory, the ICJ Advisory Opinion implicitly found that Kosovo's institutions were effective when it found that Kosovo's declaration of independence did not violate international law (ICJ Advisory Opinion, 2010, para. 84).

Capacity to Enter into Foreign Relations

Palestine maintains diplomatic missions in over 90 states. It is a member of UNESCO (since 2011), the International Criminal Court (since 2015), the Arab League, and the Organisation of Islamic Cooperation. On 29 November 2012, Resolution 67/19 at the United Nations General Assembly upgraded Palestine to non-member observer State status by a vote of 138 in favour, 9 against and 41 abstentions. Following the vote, Palestine signed instruments of accession to various treaty regimes. On 1 April 2014, Palestine deposited instruments of accession to 21 international treaties and agreements. Palestine deposited 13 instruments of accession with the UN Secretary-General. Palestine deposited its accession to the four Geneva Conventions of 1949 and Protocol I Additional to the Geneva Conventions of 1949 with the Swiss Federal Council on 2 April 2014. (United Nations General Assembly, 2012; United Nations, 2014; Swiss Federal Council, 2014).

Palestine was only able to accede to treaties after the Secretary-General accepted Palestine as a state for the purpose of signing treaties when Palestine was upgraded by the General Assembly. Kosovo became a member of the International Monetary Fund and the World Bank Group in 2009. Kosovo is also a member of several regional organisations, including the Central European Free Trade Agreement, the Energy Community, and the Regional Cooperation Council. Kosovo applied for membership in the European Union in December 2022 and secured visa liberalisation for the Schengen Area that came into effect from 1 January 2024. (European Commission, 2024; European Commission, 2025) Kosovo is not a member of the United Nations, UNESCO, the International Criminal Court, the Council of Europe, or the World Trade Organization. Kosovo's capacity to sign treaties can sometimes be complicated by states that do not recognise Kosovo.

Recognition Trajectories

Bilateral Recognition

Despite fulfilling the Montevideo requirements to a similar degree, their mutual recognition of each other is unequal. As of 2025, Palestine is recognised by 157 out of 193 UN member states (Al Jazeera, 2025). Thus far, Palestine has been recognised by 81% of the international community. Recognition peaked during 2024-2025 when Palestine was recognised by several G7 states for the first time, including the United Kingdom, Canada and France, as well as Australia, Portugal, Belgium, Luxembourg, Malta, Ireland, Norway, Spain, and Slovenia (UN Meetings Coverage, 2025). 4 out of the 5 permanent members of the Security Council recognise Palestine (China,

France, Russia, and United Kingdom). The United States does not recognise Palestine. Kosovo is recognised by about 110-120 UN member states. An exact number is hard to establish because Serbia runs a dedicated campaign to make countries derecognise Kosovo (Hajdari, 2023; Reuters, 2025). Serbia claims about 28 states have withdrawn recognition of Kosovo since 2017, though Kosovo disputes these claims (Ryngaert & Sobrie, 2011). All states of the G7 recognise Kosovo, as do 22 out of the 27 EU member states. Spain, Greece, Romania, Slovakia, and Cyprus are the European Union member states that do not recognise Kosovo.

UN Membership Status

Palestine acceded to non- member observer state status in Resolution 67/19 in 2012. Palestine submitted an application for membership again in April 2024. The application was put to a vote at the Security Council and got the required nine votes in favour from the fifteen countries on the council, passing 12 votes in favour to 3 against. However, the United States vetoed the application. Both the United Kingdom and Switzerland voted to abstain from voting. The US claimed that “statehood will only come from direct negotiations between the parties”. (UN News, 2024) This was the fifth instance the US vetoed a Security Council resolution regarding the Israeli-Palestinian conflict since October of 2023. Kosovo has never had a Security Council vote on membership due to the expected vetoes of Russia and China.

Institutional Participation

Palestine is a member of UNESCO, ICC, Arab League and OIC. Palestine’s admission to UNESCO led to withdrawal of funding from the United States, plunging the organisation into massive budget deficit. Kosovo is a member of IMF, World Bank and International Olympic Committee. Palestine and Kosovo are not members of UNESCO, ICC, Council of Europe or UN. Neither Palestine nor Kosovo are allowed to vote on matters of membership at the General Assembly.

Material Consequences of Differential Recognition

The lack of consensus over their status has tangible impacts on their citizens. Kosovo citizens have visa-free or visa on arrival access to 81 countries and territories as of 2026, according to the Henley Passport Index. This ranks the Kosovo passport 56th in the world in terms of travel freedom. Since January 2024, Kosovars have been able to enter visa-free into the Schengen Area for up to 90 days (European Commission, 2024). Citizens of Kosovo need visas to visit the United States, Canada, Japan, Australia and most countries in Asia and Africa. Kosovo passports are also not recognised by a number of states including Russia and China. Holders of these countries do not accept them as valid travel documents. Citizens of Palestine can travel to about 38 countries. Palestine passport rank at the bottom among all passports in the world. Palestinian movement is restricted by Israeli control over border crossings with neighbouring countries, and Israeli control over who may pass between the West Bank

and Jordan, or through the Rafah crossing from Gaza.

The PA cannot issue biometric passports, has no control over its own border crossings, and most states do not recognise the Palestinian passport as proof of sole Palestinian sovereignty. The contested status of both regions means limitations on their economies. Palestine's economy is constrained by Israeli limitations on the movement of goods and people, limitations on natural resource access, and Palestinian Authority reliance on clearance taxes collected by Israel on its behalf, resulting in fundamental weaknesses in the PA's fiscal independence and sustainability (Iqtait, 2023). Kosovo's capacity to access foreign markets and investments is hindered by the five EU member states that do not recognise Kosovo, and Serbia, which bars Kosovo from joining regional economic communities and international financial organisations.

Discussion

Legal Compliance versus Recognition Practice

Regarding the Montevideo Convention, Palestine and Kosovo demonstrate compliance with all four stipulations. Incomplete recognition, therefore, cannot be due to lack of legal qualification. The inconsistency between law and state practice suggests that state practice does not adhere to the declaratory theory outlined previously, under which meeting legal conditions results in statehood. The modern system more closely resembles a neo-constitutive approach where powerful states decide which entities will garner recognition and membership in the UN regardless of legality.

This doesn't necessarily imply the system is failing or that norms have deteriorated. The idea that states would strictly follow the Montevideo qualifications has been a non-starter since 1933, as practical politics has always played a role (Crawford, 2006). Rather, these examples show how legal norms are applied selectively. Proponents of Kosovo's statehood assert that it meets the defining criteria and prevailing circumstances that establish it as a legitimate entity. Arguments against recognizing Palestinian statehood frequently emphasize its governance shortcomings and the demand for a negotiated two-state solution. The same legal principles underpin both arguments, yet they arrive at differing conclusions due to political factors (Worster, 2009).

Geopolitical Interests as the Determining Factor

The evidence indicates that geopolitical interest, rather than legal compliance, determines recognition outcomes. Kosovo receives support from the United States while Palestine faces a US veto. Palestine receives backing from Russia and China, while Kosovo faces their opposition. This pattern extends beyond the permanent five Security Council members. The five EU member states that do not recognise Kosovo do so not based on the Montevideo criteria or legal analysis, but due to domestic political concerns about separatist movements (Armakolas & Ker-Lindsay, 2019). Spain's position reflects anxieties about Catalonia and the Basque Country; Romania

and Slovakia cite minority protection; Cyprus references the TRNC; and Greece maintains traditional ties with Serbia.

Recognition functions as an instrument of foreign policy. If recognition were determined by legal compliance, one would observe consensus on the threshold for statehood. Instead, states grant recognition when it serves their interests and withhold it when doing so would damage relations with parent states or establish undesirable precedents for domestic separatists (Ryngaert & Sobrie, 2011).

The findings therefore confirm that recognition operates primarily as a political rather than legal mechanism. Though there are two rebuttal points to offer. First is the recent influx of Palestinian recognitions in 2024-2025 by several G7 countries, which shows that diplomatic consensus can change with time, even if nothing changes legally. Second is how Kosovo still remains recognized by over 100 countries in spite of constant de-recognition efforts from Serbia, which shows that there is some institutional momentum to recognition once it is achieved.

Institutional Gatekeeping: The Security Council Veto

The biggest institutional hurdle towards full UN membership for Palestine and Kosovo is the membership admission process outlined in Article 4(2) of the UN Charter. The procedure requires recommendation by the Security Council and approval by the General Assembly. Consequently, broad international backing proves inadequate when a permanent Security Council member exercises its veto power over the necessary recommendation.

This is clearly demonstrated by Palestine'24 application. The draft resolution recommending Palestine for membership received 12 votes in favour and one against with two abstentions. However, the draft resolution failed to pass due to the single dissenting vote from the United States (UN News, 2024). It might therefore be more precise to say that Palestine secured significant backing in the Council, but failed to obtain an actual recommendation due to a veto.

From a political perspective, Kosovo's circumstances are quite analogous. Russia and China remain opposed to Kosovo's independence and endorse Serbia's territorial integrity claim. Considering the present global political landscape, Kosovo's path to membership is exceedingly improbable, though not entirely out of the question.

The effect of this structure is that permanent members are able to exert significant control over who is granted access to full membership. This situation has effectively established a layered form of recognition, which can be understood as stratified sovereignty. Political entities can fulfil key criteria of statehood but find themselves at different tiers depending on political recognition and support by the great powers. The international system is therefore home to full UN members, non-member observer States like Palestine, partially recognised states like Kosovo, and entirely unrecognised de facto States.

Being a member of the UN doesn't legally confer statehood. Still, it represents a significant objective both politically, legally, and symbolically. Alternative strategies have been pursued by Palestine and Kosovo. Palestine ratified multilateral treaties as a non-member observer State, while Kosovo joined the IMF and World Bank. Although both examples highlight the international legal capacity of Palestine and Kosovo, they do not represent full substitutes for UN membership.

Selective Application of Legal Precedents

Arguments about recognition have been used inconsistently in the case of both Kosovo and Palestine. Recognizing Kosovo was commonly justified on the basis of two arguments: Kosovo was *sui generis* and remedial secession is permissible where a people have suffered serious and prolonged repression or denial of their right to internal self-determination.

As noted above, the ICJ did not affirm a right to remedial secession. It restricted its Advisory Opinion to the question of whether Kosovo's declaration of independence breached international law, and expressly declined to rule on the existence or applicability of a remedial right to secession (International Court of Justice, 2010, para 83).

Similar statements that Kosovo would set no precedent were undermined by later state practice. In the aftermath, Russia drew upon the Kosovo situation to legitimize its recognition of Abkhazia and South Ossetia, and subsequently mentioned it often in talks about Crimea. Its argument that "legal facts which have created new international entities cannot be undone" shows how legal justifications in one situation can be repurposed for future claims (Ministry of Foreign Affairs of the Russian Federation, n. d.). As Borgen points out, Kosovo has therefore become an argumentative precedent despite explicit statements to the contrary (Borgen, 2009).

Palestinian statehood, in contrast, has been frequently conditioned on the success of bilateral negotiations. The US reiterated its 2024 stance, stating that premature UN actions wouldn't lead to Palestinian statehood and that recognition ought to be deferred until a negotiated settlement is achieved.

This rationale implicitly contrasts with the narrative applied to Kosovo. In that instance, the breakdown of talks was deemed sufficient grounds for recognition. The absence of a negotiated settlement with Israel is presented here as grounds for denying recognition.

The situations are not parallel in strict sense. Palestine is occupied territory whose legal status is regulated by international humanitarian law. However, Kosovo's situation was governed by UNSCR 1244. It should be noted that Resolution 1244 did not remove Serbia's sovereign rights in Kosovo. While setting up a temporary administration, it also restated Yugoslavia's territorial integrity.

Still, there's no inherent justification why negotiations should fare better in one

scenario compared to another. International humanitarian law doesn't require Israel's agreement for Palestinian statehood, just as UNSCR 1244 didn't grant Kosovo a clear right to unilaterally declare independence. These comparisons thus show how concepts such as self-determination, territorial integrity, negotiated solutions, and responses to occupation are applied in a world where geopolitical considerations and institutional leverage are paramount.

Conclusion

Using Palestine and Kosovo as case studies, this Article proved that both entities fulfil all criteria for statehood defined by the Montevideo Convention on Rights and Duties of States. Although they both satisfy international law on statehood, Palestine and Kosovo have followed different recognition paths due to Great Power politics. While Kosovo was quickly recognized by Western states who sought to promote their interests in the region, Palestine has been denied full membership in the UN by a US veto in the Security Council. Through the power to veto, UNSC permanent members can create levels of sovereignty and decide which entities should be legitimized as states.

These findings call into question the legitimacy of international law. If international laws are not applied equally to all states, international law cannot claim to be objective. This may cause Global South states to lose faith in the system if they see self-determination movements being treated differently (Grovgui, 2001). It also has serious material effects: as highlighted by this article, stratification of international law harms the citizens of partially recognized states by limiting their right to travel and work.

The article concludes with two suggestions for reform. The first is procedural and suggests that the international community could recognize states collectively at the UN General Assembly rather than individually. The second is substantive and suggests that the international community returns to a declaratory model of recognition where it is objectively determined whether a state meets criteria for statehood.

This article had limited generalizability due to its two-case Article design, but its conclusions are supported by the body of knowledge on other de facto states (Caspersen, 2012; Geldenhuys, 2009). As this Article used exclusively diplomatic and legal sources, informal recognition was not considered. This Article only covered external recognition and said nothing about state's domestic legitimacy.

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