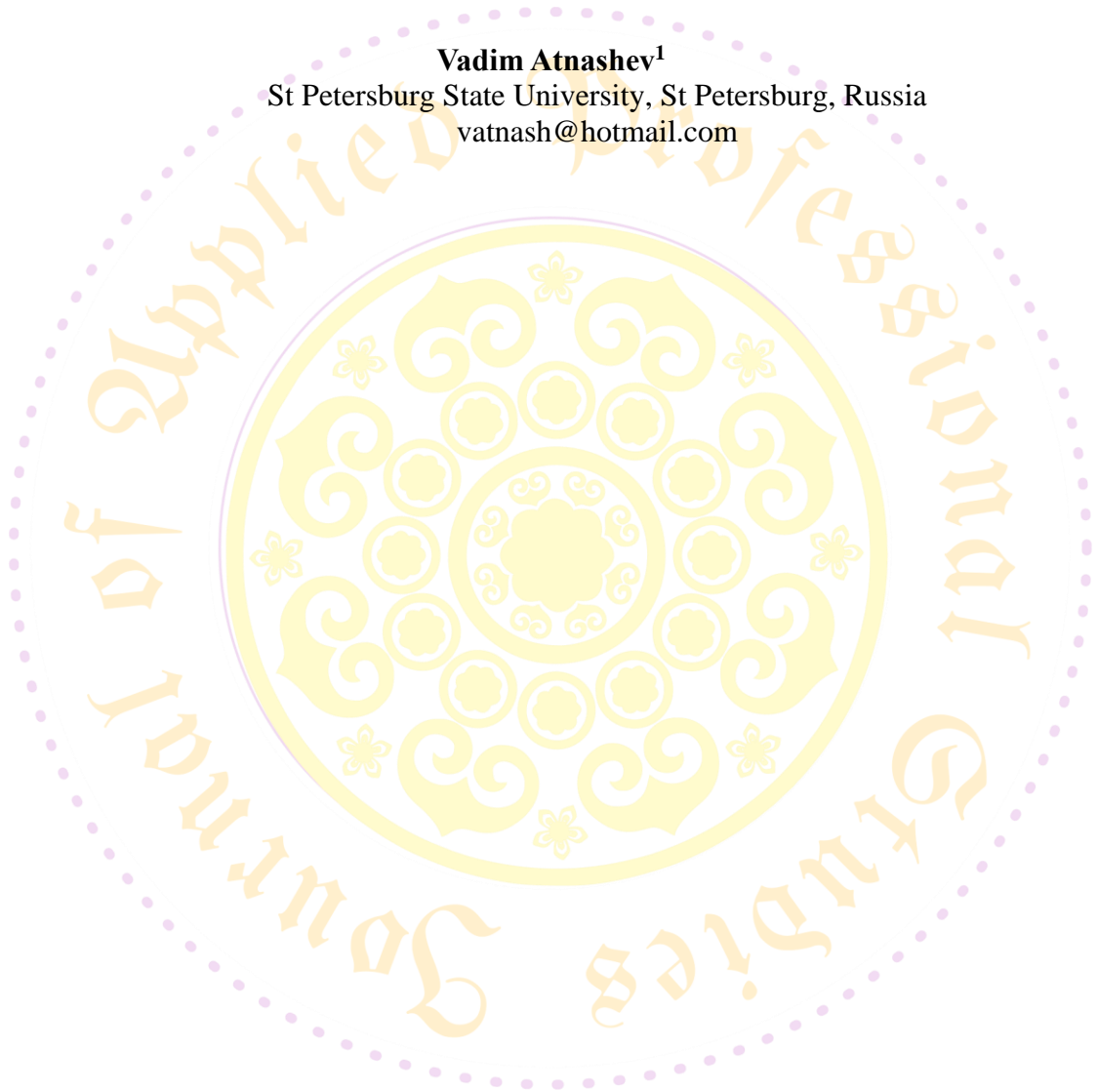


The Palestinian State

International Legal Context

Vadim Atnashev¹

St Petersburg State University, St Petersburg, Russia
vatnash@hotmail.com



¹ Vadim Atnashev, PhD. Associate Professor, Department of International & Humanitarian Law, North West Institute of Management, Russian Academy of National Economy and Public Administration, St. Petersburg, Russia; Associate Professor at the Faculty of International Relations, St. Petersburg State University. Currently – Fulbright Visiting Scholar at Clark University, MA, the USA. email: vatnash@hotmail.com

The Palestinian State

International Legal Context

Vadim Atnashev

Abstract

This paper considers some key issues concerning international recognition of the Palestine as an independent state and prospects of its gaining real sovereignty. The conclusion is that the Israeli-Palestinian conflict is an undulating process, so the task of minimizing conflict requires the ability to take advantage of a decline in the level of confrontation, when both sides are ready for mutual concessions.

Keywords: Palestine, independence, conflict, international law.

Introduction

The main hypothesis of the article is that the only way to obtain progress in the Palestinian problem resolution is creation of two states. International agreements do not only touch upon the very existence of the state and the status of the Palestinian government, but also provide legal safeguards for discharge of duties of the conflict parties. The problem is analysed in the context of international law and international policy, with application of comparative political and legal methods. The recent changes in the external policy of the USA and corresponding consequences are also taken into consideration. The author gives a warning of escalation in violence, especially worsening of the human rights situation on the occupied territories.

The Palestinian people has always been a subject of international law - a nation that is fighting for independence, has a legitimate right to resist, to fight for freedom and the full realization of its rights. The conflict between the local Arab people of Palestine and Israeli immigrants became the Arab-Israel conflict. It has had impact on the international relations and policy both in the Middle East and all over the world.

The adoption of UN General Assembly Resolution 181 (II) in 1947 created a real basis for the solution of the Palestinian problem.[1] However, the modified Partition Plan and legal framework of the resolution largely ignored the legitimate and fair interests of the Arab people of Palestine. International agreements do not only touch upon the very existence of the state and the status of the Palestinian government, but also provide legal safeguards for discharge of duties of the conflict parties. Changes in the balance of forces in the world in the late 1980s - early 1990s, as well as the "Intifada" led to reassess of the ways, methods and means of solving the Palestinian-Israeli conflict.

In general, multilateral negotiations and agreements on the Palestinian problem have played a positive role in the recognition of the status of the Palestine Liberation Organization (PLO) as the sole representative of the Palestinian people, and subsequently to the recognition of Palestine as an independent state under occupation. The State of Palestine is currently recognized by many member states of the United Nations (136). International agreements do not only touch upon the very existence of the state and the status of the Palestinian government, but also provide legal safeguards for discharge of duties of the conflict parties.

Changes in the balance of forces in the world in the late 1980s - early 1990s, as well as the "Intifada" led to reassess of the ways, methods and means of solving the Palestinian-Israeli conflict. The Declaration of Principles created the preconditions for the peaceful realization by the Palestinian people of its legitimate right to have an independent and sovereign state. It was one of the main steps towards peaceful solution of the problem, because both sides had come to the realization of impossibility of resolving the conflict by military means. It confirmed that the conflict parties were able to address their most complex problems through negotiation and compromise.

Despite the actions of extremist forces in Israel and some Arab countries aimed at disrupting the peace process, the international community and progressive forces in Israel should provide political and economic support for the practical implementation of activities under "Declaration of Principles".

Unfortunately, considering contemporary geopolitical conditions, it can be argued that there are still big doubts about the fulfilment of the Principles and early creation of the independent Arab Palestinian state. The history of the Palestinian problem clearly shows that legitimate intentions of the parties, though having signed and meeting rules and principles of international law, were often but "documents for history," when one of the parties lacked the good will and responsibility to its people for implementation of the obligations assumed.

Main Problems and Tasks

The paper considers some key issues concerning international recognition of the Palestine as an independent state and prospects of its gaining real sovereignty. The main hypothesis of the article is that the only way to obtain progress in the Palestinian problem resolution is creation of two states. International agreements do not only touch upon the very existence of the state and the status of the Palestinian government, but also provide legal safeguards for discharge of duties of the conflict parties. The problem is analysed in the context of international law and international policy, with application of comparative political and legal methods. The recent changes in the external policy of the USA and corresponding consequences are also taken into consideration.

By results of this research the author proposes some original resolution of problems dealing with the analysed questions. There is a range of problems to solve or tasks to cope with.

1. Firstly, Israel has often violated principles of international law and humanitarian law in the occupied territories. It is worthy to note that, unlike the Israeli government, the Israeli Supreme Court considers the West Bank and Gaza as territories under belligerent occupation. According to the international consensus the West Bank (including East Jerusalem) and Gaza Strip is occupied territory to which IHL applies. Hence, Israel is abiding by the humanitarian provisions of the Forth Geneva Conventions. It is important to note that, unlike the Israeli government, the Israeli Supreme Court considers the West Bank and Gaza as territories under belligerent occupation. [2], [3] Nowadays, three main issues in the Palestinian-Israeli conflict still are East Jerusalem, settlements, and the Annexation Wall. Each of these issues constitute a multiplicity of violations.
2. Secondly, like the change of Israeli government in May 1996, the radicalism of the far-right Israeli cabinet members demonstrates the instability of Israel's position. Regarding external factors, the expected changes in the US foreign policy in the Middle East can undermine the project of two states for two peoples and make impossible plans to establish a Palestinian state on the 1967 borders.

In September 2016, during his meeting with B. Netanyahu, D. Trump promised to recognise Jerusalem as Israel's capital and even to move the US embassy there. [4] Everybody knows that the status of Jerusalem is one of the thorniest issues in the Israeli-Palestinian conflict. Also, during his campaign D. Trump promised to take a different approach to Israel's settlement-building in the occupied territories. President-elect Trump, unlike his predecessors, is reportedly prepared to turn a blind eye to the issue of Israeli settlements built on the occupied lands. Despite illegality of the Israeli settlements under international law, Trump believes they do not present an impassable obstacle to peace talks. [5]

However, D. Trump is seeking to negotiate an "ultimate deal" between the Palestinians and the Israelis. In any case, if the "true friend of Israel" (according to B. Netanyahu) and the new administration will be far more favourable to the Jewish state, especially in such radical way, it will naturally provoke further escalation of the conflict, rising anti-Americanism in the Middle East and throw back the slow peace process.

The dangerous and illegitimate construction of the "Wall of Shame" in the face of the condemnation of the international community was not a security measure, as claimed by the Government of Israel, but it has caused grave damage to Palestinian agriculture, water resources and villages.

As the occupying power, Israel must comply strictly with its legal obligations under international law. For example, it was mentioned in the advisory opinion rendered on 9 July 2004 by the International Court of Justice and demanded in General Assembly resolutions ES-10/13 and ES-10/15 of 21 October 2003. [6]

The General Assembly of the UN required Israel to cease all unilateral actions in the Occupied Palestinian Territory, including East Jerusalem, that are aimed at altering the character, status, and demographic composition of the Territory, including the confiscation and de facto annexation of land, and thus at prejudging the final outcome of peace negotiations.[7]

Other human rights violations committed by the Government of Israel included the disproportionate use of force against civilians and the policy of "targeted assassination" of Palestinian leaders.

In July 2014, the United Nations Human Rights Council established a commission of Inquiry with a mandate: "...to investigate all violations of international humanitarian law and international human rights law in the occupied Palestinian territory, including East Jerusalem, particularly in the occupied Gaza Strip, in the context of the military operations conducted since 13 June 2014, whether before, during or after".[8]

The commissioners' mandate was mainly to investigate the Israeli military operation in the Gaza Strip and Israeli actions in the West Bank, including East Jerusalem. Though the commission repeatedly asked Israel for its cooperation but Israel was not going to cooperate at all. In any case, Israel should address the structural issues that fuel the conflict and impede respect for human rights. It should lift the blockade on Gaza and cease all settlement-related activity.

According to the Report of the commission: 2,251 Palestinians were killed; 11,231 Palestinians – Injured. As for Israelis, killed were 67, of which only 6 were civilians. The Commission calls upon the international community to

- develop legal and policy standards that would limit the use of explosive weapons with wide area effects in populated areas;
- actively support the work of the ICC with relation to the Occupied Palestinian Territory and
- exercise universal jurisdiction to try international crimes in national courts and comply with extradition requests where suspects would face a fair trial.

Finally, heavy social and economic problems in the Palestinian territories destabilize the situation and impede necessary reforms there. According to the UNCTAD Division on Globalization and Development Strategies, in 2015 the occupied Palestinian territories had seen no serious recovery from the 2014 recession. The Palestinian economy remained a "captive market" for Israel, creating a forced dependency. The leakage of Palestinian public funds into the Israeli treasury continued with \$600 million to \$700 million having leaked in 2015 alone. The list of prohibited "dual use" materials — including construction materials and machinery — continued to grow, negatively impacting several Palestinian industries. Unemployment stood at 28 per cent in the occupied territories and was even higher among youth. Two thirds of Palestinians there were affected by food insecurity and millions needed humanitarian assistance. Infant mortality in Gaza was alarmingly high, with about 50 deaths for every 1,000 infants. [9]

Finally, significant downside risks could dramatically worsen the economic outlook.

- a) The pace of reconstruction and recovery in Gaza has been slower than anticipated.
- b) The outcome in the West Bank may be worse than expected.
- c) The failure to form a unified government for West Bank and Gaza has created two parallel regulatory frameworks: one in the West Bank and another one in Gaza. All this could potentially have a negative impact on the economic activity and business climate.

Conclusion

Any occupying state has no right to refer to a threat from the population on the occupied territories in order to justify violence, human rights violations, killings and the occupation itself. Discrimination, hatredness and injustice always cause resistance; violence comes from violence; oppression results in revenge.

Only abidance by the international law, human rights standards, as well as socio-economic development of the occupied territories can ensure to Israel a decrease in extremism and a safer situation. Otherwise, Israel will never exist in peace and never be respected by neighbour states and the entire international community.

A further support of the State of Palestine at the international level is supposed to facilitate the peace process and more efficient protection of the human rights in both states.

Notes:

[1] UN General Assembly Resolution 181 (II), available at: <http://www.un.org/ru/ga/documents/index.shtml> (accessed 20 October 2017).

[2] Document of Israeli High Court of Justice (HCJ) 2056/04, Beit Sourik Village Council v. The Government of Israel et al., 48(5) PD, 2004. P. 807.

[3] Document of Israeli High Court of Justice (HCJ) 393/82, Jami'at Ascan et al. v. IDF Commander in Judea and Samaria et al., 37(4) PD, 1983. P.785.

[4] Trump has ‘every intention’ of recognizing Jerusalem as Israel’s capital, available at: <https://www.theguardian.com/world/2016/nov/09/israel-donald-trump-netanyahujerusalem> (accessed 20 October 2017).

[5] Trump wants an ‘ultimate’ solution to Israeli-Palestinian conflict, available at: <https://www.rt.com/usa/366699-trump-ultimate-deal-israel-palestine> (accessed 20 October 2017).

[6] UN General Assembly resolutions ES-10/13 and ES-10/15, available at: <http://www.un.org/ru/ga/documents/index.shtml> (accessed 20 October 2017).

[7] UN General Assembly resolution A/RES/70/15, available at: <http://www.un.org/en/ga/70/resolutions.shtml> (accessed 20 October 2017).

[8] Human Rights Council establishes Independent, International Commission of Inquiry for the Occupied Palestinian Territory, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14897> (accessed 20 October 2017).

[9] Situation in Occupied Territories Moving ‘From Bad to Worse’ (GA/ PAL/1376), available at: <https://www.un.org/press/en/2016/gapal1376.doc.htm> (accessed 20 October 2017).