



Hon David Parker
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Wellington

Rt Hon Winston Peters
Minister of Foreign Affairs
Wellington

By email

12 April 2024

Dear Rt Hon Peters

Gaza next step – Proposal to Recognise Palestine

Can I begin by thanking you for the language you recently used addressing the United Nations on behalf of New Zealand, when you described the situation in Gaza as an utter catastrophe, highlighting that civilians have borne the brunt of hostilities - initially in Israel but for the last six months in Gaza.

Israel's continued attacks on Gaza have now killed 32,000 people, the vast majority of them civilians, and including 13,000 children. As you noted in your address, large areas are now a wasteland. Israel has waged war on a people for whom it is the occupying power, bombarding a small densely populated territory from which there is no escape. The denial of humanitarian assistance, the starvation of people, the denial of electricity and water, and of course the killing of civilians and aid workers are of the highest international concern.

Israel has ignored two resolutions of the United Nations General Assembly, backed by an overwhelming majority of the world's nations, calling for an immediate ceasefire. It has ignored the UN Security Council resolution of 25 March (which the US abstained from and did not use its right of veto to block).

Israel ignores the public entreaties of its closest ally, the United States, which has said repeatedly the loss of civilian life in Gaza is an unacceptable price to pay for Israel's pursuit of Hamas.

The international community, including New Zealand, should not stand by and watch Israel breach international law and ignore entreaties without taking meaningful action.

The rules-based order, which we all agree is important for New Zealand and the world, should be upheld. We believe it is important that New Zealand take active steps in support of this.

Labour's position since November has been to call for an immediate and permanent ceasefire. We have reiterated our call for a peace process that leads to the establishment of a free and independent Palestinian state. We have also called on the Government to intervene at the ICJ, and to observe its provisional measures. We have, respectfully, opposed the Red Sea deployment. We have supported the call for humanitarian visas for families of New Zealanders trapped in Gaza.

At the heart of the most likely solution lies progress towards the two-state solution.

Successive New Zealand governments have, and still, support a two-state solution.

We confirm we remain supportive of a two-state solution.

Recent statements by the government of Israel show a clear reluctance to progress this. There is no principled alternative offered – Israel does not support a larger secular state governing all peoples.

The absence of progress for many years, and the current war, make the status quo ever more untenable. The occupying Israeli government forces cannot legitimately continue to deprive Palestinians of basic rights to govern themselves.

We believe it is time now for New Zealand to reinforce our opposition to the war and our support for a lasting peace including Palestinian independence.

New Zealand could strengthen our advocacy for a new peace process and a negotiated settlement by explicitly giving diplomatic recognition to Palestine. This is not recognition of Hamas, which is one political party in the Palestinian territories.

There can be no lasting peace without Palestinian statehood. Recognition signals this. It doesn't matter that the state is yet to be fully established, with agreed borders. Many states and much of the western world recognised Israel well before it was established as a state. Similarly with Kosovo.

Already 139 of the 193 states of the United Nations recognise Palestine. Palestine is an observer state of the UN. Diplomatic recognition would convey New Zealand's view there must be a negotiated political settlement that establishes a Palestinian state in line with the two-state solution.

We accordingly propose that the New Zealand Government give diplomatic recognition to Palestine, and convey this by writing to the Palestinian Authority inviting them to send an ambassador to present his or her credentials to New Zealand.

The Palestinian Authority may do so via the Head of the General Delegation of Palestine based in Canberra presenting his credentials as ambassador to New Zealand, but that would be for it to decide.

The longer the Israel-Palestine issues remain unresolved, the more comparisons can be made with the South Africa apartheid issue. The denial of rights under apartheid in South Africa was an issue that New Zealand actively sought to remedy.

We believe taking this step would uphold the integrity and credibility of New Zealand, and the West, in support of the rules-based order.

I am aware of New Zealand's tradition of implied recognition. I attach a relevant article by Stefan Talmon in that regard. Rt Hon Peters is referenced in the article, and is likely aware of it.

There is no binding rule, or legal block, preventing the New Zealand government recognising Palestine as proposed, and we urge it to do so.

I attach recent commentaries on the issue, which include a map showing much of the world already recognises Palestine.

I accept that it is unlikely you will be in a position to give an immediate response to this letter, other than the negative.

You will have seen recent statements by Hon. Penny Wong in Australia contemplating a similar step. While that is coincidental – we had already decided on our proposal to you but were awaiting your return from the UN - we are consequently being asked questions about the issue by the New Zealand media for our position. I side-stepped replying yesterday, but envisage that will not be practical beyond about Tuesday next week.

When that happens, I will be asked for a copy of this letter which I propose to then release. I will emphasise that I have just recently sent it and that it is proper for your consideration to take a reasonable period.

I am of course available to meet should you wish to do so.

Yours sincerely

A handwritten signature in black ink, appearing to read "David Parker", with a stylized, cursive script.

Hon. David Parker

Appendix:

The Conversation 6 Feb 2024

The US and UK governments have indicated they are considering recognising Palestine as a state after the current conflict ends. On a visit to Lebanon on February 1, the UK foreign secretary, David Cameron, said this would be impossible while Hamas remained in control in Gaza, but that giving Palestinians the prospect of statehood would be “absolutely vital for the long-term peace and security of the region”.

US secretary of state, Antony Blinken, meanwhile told US media site Axios that he had commissioned the State Department to review potential options for US and international recognition of a Palestinian state. Previously, US policy towards Palestinian statehood had been that this was a matter for negotiations between Israel and the Palestinian Authority.

International recognition would usher in a new phase for the realisation of Palestinian statehood. The legal framework for addressing the situation would expand to include more international bodies dealing with international human rights and accountability.

The first thing to stress is that recognition and statehood are two separate issues. Under international law, states conduct foreign relations on the basis of bilateral and multilateral recognition of each other’s statehood as sovereign countries. This recognition also forms the basis for how states behave and imposes various legally binding obligations and duties under international conventions.

Palestine has been recognised as an independent state by 139 of 193 UN members. But, crucially, the US, UK and other G7 countries including Germany, Italy and France, have not.

Since 2012, Palestine has been a “non-member observer state” in the UN. It acceded to a number of human rights treaties in 2014. These include the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

Palestine’s membership of these treaties is a reflection of its status as a sovereign state in international law, with all the obligations and duties this entails.

Palestine is also a member of a range of other international organisations, including the Non-Aligned Movement, the Organisation of Islamic Cooperation and the International Criminal Court (ICC).

Getting recognised

There is a detailed and complex process by which new states are recognised under international law, established in 1933 by the Montevideo convention on the rights and duties of states. Article 1 contains the four criteria required as follows:

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.

The question remains whether Palestine actually possesses a “defined territory” and “effective government”.

The UK has maintained a firm position of non-recognition of Palestinian statehood. It abstained in the UN general assembly vote in 2012 that granted the non-member observer status at the UN. So recognition would be a significant move.

But recognition of Palestine as a sovereign state goes beyond a mere political gesture. It has the potential to unlock a broader range of legal avenues towards accountability for atrocities and human rights violations, grounded in the obligations of states under the laws governing international armed conflicts.

At present, the continuing hostilities in Gaza are perceived as a conflict between a state (Israel) and a non-state group (Hamas). Recognising Palestine as an independent state could significantly alter this dynamic. It would change the situation to an international armed conflict which involves one or more states taking up arms against another.

Establishing accountability

Palestine has been a member of the ICC since it acceded to the Rome statute in 2015. In 2021, the ICC prosecutor initiated investigations into the “situation in the state of Palestine”.

This followed a pre-trial chamber decision that the court could exercise criminal jurisdiction in the situation (the term “situation” is used by the ICC to mean the jurisdictional confines within which an investigation is done). In respect to the territorial scope of this jurisdiction and investigation, it extends to Gaza and the West Bank, including East Jerusalem.

Crowd of people wearing winter clothing carrying Palestinian flags.

Activists demonstrate in front of the International Court of Justice in the Hague prior to the ICC hearing an accusation of genocide brought by South Africa against Israel. ANP/Alamy Stock Photo
On 17 November 2023, the ICC chief prosecutor received a state party referral for Palestine from South Africa, Bangladesh, Bolivia, Comoros, and Djibouti, meaning they requested the ICC prosecutor investigate crimes in Palestine under the Rome statute.

Palestine’s obligations

Recognition as a state would involve certain obligations on the part of Palestine, both in terms of international law and human rights. States have concrete obligations and duties under international law in relation to how they deal with armed conflicts. They are also obliged to act according to international law in recognising and protecting human rights in the territory under their jurisdiction.

One example of this idea in action was the 2023 decision in the matter of Mangisto and al-Sayed v the State of Palestine, which involved the disappearance of two Israeli nationals in Gaza. The ruling was made by the UN’s Committee on the Rights of Persons with Disabilities, because the two Israelis who had disappeared were both ruled to have psychosocial disabilities which had influenced their decision to cross into Gaza – despite the dangers that involved – where they disappeared.

Even though there was no Palestinian government with effective control over Gaza and West Bank, the legal entity of the state of Palestine had a legal obligation to respect and protect the rights of the people as enshrined under the Convention on the Rights of Persons with Disabilities.

So, recognising Palestine as a state is more than just a political gesture. It has legal implications which will also be important when it comes to negotiating peace, the future of the Palestinian people and accountability for war crimes by both sides.

<https://theconversation.com/uk-and-us-may-recognise-state-of-palestine-after-gaza-war-what-this-important-step-would-mean-222538>

EU News 22 March

The leaders of Spain, Ireland, Slovenia and Malta have announced they stand ready to recognise the State of Palestine as the "only way to achieve peace and security" in the war-ridden region.

The four leaders gathered on the margins of a summit in Brussels on Friday to discuss their "readiness to recognise Palestine," adding they stand ready to do so "when it can make a positive contribution and the circumstances are right."

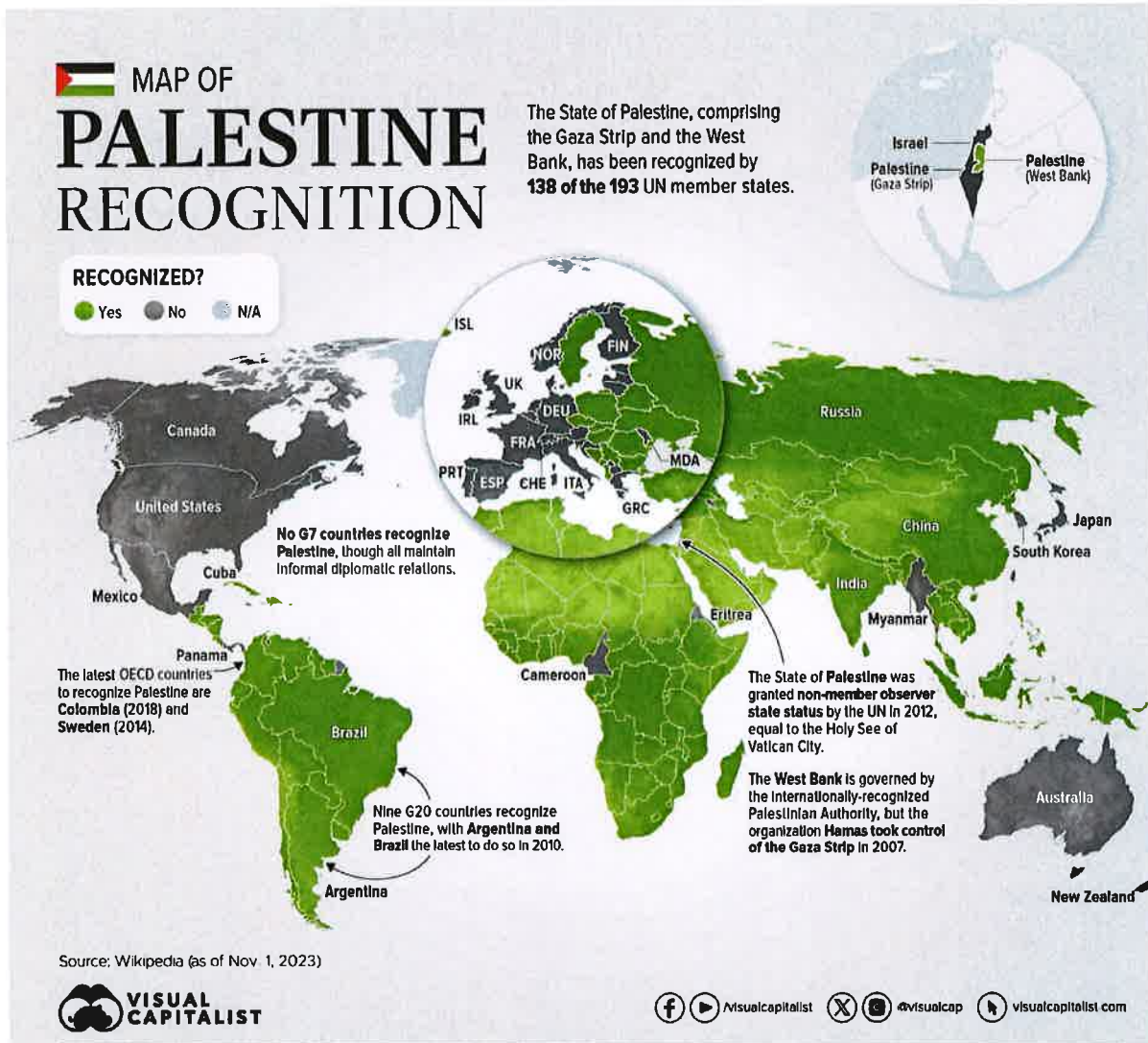
"We are agreed that the only way to achieve lasting peace and stability in the region is through implementation of a two-state solution, with Israeli and Palestinian States living side-by-side, in peace and security," a joint statement by the four heads of government reads.

Speaking after the summit, Slovenian Prime Minister Robert Golob said he believed a lot could be done "in the next week" to strengthen political backing for a Palestinian state in the United Nations. Golob added he was "sure" that the moment when conditions for establishing a new government in Palestine will be "ripe" could be "a few weeks, maybe a month" away.

Nine of the EU's 27 member states currently recognise Palestinians' right to a state according to the so-called 1967 borders, which includes the West Bank, the Gaza Strip and East Jerusalem.

Malta, along with eastern states such as Bulgaria, the Czech Republic, Romania and Slovakia, have recognised the Palestinians' right to statehood since 1988. In 2014, Sweden became the first member state to unilaterally recognise Palestinians' right to statehood while a member of the bloc.

<https://www.euronews.com/my-europe/2024/03/22/spain-ireland-and-slovenia-say-they-are-ready-to-recognise-the-state-of-palestine#:~:text=Malta%2C%20along%20with%20eastern%20states,a%20member%20of%20the%20bloc.>



Currently it is only the western club who don't recognise Palestine – except Sweden and Ireland who do recognise.

Almost the entire developing world, and the old Eastern Bloc, recognise Palestine.

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