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A UN finding of genocide in Gaza adds pressure on NZ to recognise a Palestinian state

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Political and diplomatic manoeuvring over Israel and Palestine has been moving fast recently. The question is whether it is fast enough, given the [accelerating onslaught](#) in Gaza.

In New Zealand, [large pro-Palestine protests have taken place](#), and the Labour Party has said it [favours sanctions against Israel](#) due to what it now calls the “[unfolding genocide](#)” in Gaza.

Internationally, a [United Nations commission of inquiry](#) has said [Israel has committed genocide](#) as defined under international law.

As a party to the 1948 Genocide Convention, New Zealand has “third state obligations” to prevent and punish genocide. Joining South Africa’s case against Israel in the International Court of Justice is one action countries should take immediately, according to the UN commission.

But the coalition government has so far been intensely circumspect about any planned action on the crisis.

This will soon come to a head when world leaders gather in New York at the UN General Assembly’s 80th session, where [Australia, Canada, Belgium and France](#) have indicated they will join the 147 other member states that already recognise a Palestinian state.

Will New Zealand follow suit? It seems likely Cabinet has already made a call. Unusually, however, any announcement will wait until Foreign Minister Winston Peters speaks in the UN general debate next week.

That means New Zealanders – 42% of whom think the government should recognise a Palestinian state, according to a recent poll – will only learn of the decision along with the rest of the world.

Labour leader Chris Hipkins has criticised the delay: “If the government has decided to recognise Palestine, they should tell the New Zealand public that that’s what they are going to do.”

What makes a state

The actual business of qualifying as a state is simple in theory, more complicated in practice.

International law starts with Article 1 of the the Montevideo Convention of 1933, which lists the four criteria for statehood:

- a permanent population
- a defined territory
- a government
- and the capacity to enter into relations with other states.

Palestine makes a strong case on three of the four criteria: it has a permanent population, recognised territory (Gaza and the West Bank, including East Jerusalem), and diplomatic relations with other states.

The sticking point is government. Some argue the Palestinian Authority lacks effective control over its territory and population. Others argue it meets the criterion. And some say the UN itself has hampered the Palestinian quest for statehood from the start.

Either way, effective government is difficult when one’s territory is illegally occupied, as the International Court of Justice has found is the case with Palestine.

Two legal theories explain how statehood is recognised. The “declarative” theory says that once the Montevideo criteria are met, a state exists. The “constitutive” theory says recognition by other states is what truly creates statehood.

Palestine is already a state by either measure. It declared independence in 1988, it’s a member of the Organisation of Islamic Cooperation (1969), UNESCO (2011), the Arab League (1976), Interpol (2017), the Olympic Council of Asia, and the International Olympic Committee.

The UN General Assembly granted Palestine “non-member observer state status” in 2012. The International Criminal Court accepted Palestine as a “state party” in 2015.

Implied versus express recognition

If Palestine is already a state, why isn't it a member of the UN? The answer is in [Article 4\(1\) of the UN Charter](#).

Membership is open to all "peace-loving states" willing and able to carry out UN obligations. But [Palestine failed to gain admission](#) in 2011 when the United States indicated it would use its veto in the Security Council to block the bid.

A 2025 bid is unlikely to fare any better for the same reason: [Article 4\(2\)](#) of the UN Charter gives the Security Council the power to determine who joins. A veto by one of the permanent five (the US in this case) will be fatal.

None of this means Palestine is not a state, however, which only brings the question back to what New Zealand should do.

According to the Ministry of Foreign Affairs, New Zealand has a "[long-standing policy](#) of not making formal acts of recognition or non-recognition of states". Rather, recognition is "implied" [through action and policy](#).

If New Zealand does expressly recognise Palestine at the UN next week, it will be a significant departure from that long-standing policy.

A small step in the right direction

Recognition will not end the occupation, of course. It won't end the blockade of food and medical supplies, or a genocide.

But it would affirm that Palestine satisfies the legal criteria for statehood, and it would align New Zealand with most (at least 76%) of the UN's member states. In the [words of one Israeli commentator](#), it

re-establishes the existence and the rights of Palestinians as individuals and as a collective [and] strengthens the Palestinian case in international institutions and further justifies the demand for sanctions that could end the war.

Were New Zealand to do what Labour is now advocating and apply sanctions, the [Russia Sanctions Act 2022](#) (introduced after the Ukraine invasion) offers a [blueprint that would apply equally](#) (if not more so) to Israel.

The worsening situation in Gaza, the West Bank and for the Palestinian people in general is a catastrophe as old as the UN General Assembly itself. Many steps will be needed to effect meaningful change – recognising Palestine would be a small but significant one for New Zealand.