



THE DAVID PROJECT

EDUCATING VOICES
FOR ISRAEL

Understanding the Palestinian Unilateral Declaration of Independence

August 2011

Overview

At the opening session of the UN General Assembly in September 2011, the Palestinian Authority plans to circumvent the peace process with Israel by formally requesting full admission as a state into the UN based on the pre-1967 armistice lines. This plan has become known as the Palestinian Unilateral Declaration of Independence (UDI).

Background

This unilateral effort grew out of the view among some leaders in the Palestinian national movement that direct negotiations with Israel would not meet their aspirations for a fully sovereign state with the desired borders.

Under the Oslo Accords, which were signed by Israel and the Palestinians in 1993, a Palestinian self-governing authority (Palestinian Authority) was established with the goal of reaching a final settlement of the conflict within five years. The details of this settlement, including borders, would be determined through negotiations between the two parties – Israel and the Palestinian Authority (PA). The newly-formed PA was expected to eventually become the future Palestinian government.

Due to an increase in Palestinian terrorist attacks against Israel, ensuing military confrontations and other political factors, the process failed to produce the previously envisioned results. In the following years, attempts were made to restart bilateral and multilateral negotiations, often with American involvement, but they failed to yield significant results. Over the past two years, the PA has refused opportunities to restart talks with the Israeli government.

The Palestinians contend that the continued Israeli military occupation and settlement building in the West Bank and the military blockade of Gaza, remain the main impediments to a two-state solution. Based on this case, some Palestinian leaders have decided to unilaterally pursue statehood based on the 1949 armistice lines. This effort began in 2009, when PA Prime Minister Salam Fayyad indicated that he would set a goal of establishing a Palestinian state in the West Bank and Gaza within two years. Fayyad developed a dual track system in order to achieve this goal – economic and political. The economic component was to create the necessary infrastructure and institutions that would be expected of a functional, sovereign state. The political component was to convince states to recognize an independent Palestine, a move that has generated some success in recent months (see Appendix).

The next step in this process, per the PA, would be to request international recognition of statehood at the United Nations (UN). PA President Mahmoud Abbas has repeatedly indicated that he plans to pursue this goal at the upcoming UN General Assembly meeting, creating significant controversy and raising numerous questions.

The United Nations

In order to better understand this process and potential implications a closer look at the structure of the UN and its involvement in the Arab-Israeli conflict over the last few decades is warranted.

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The UN was established in the wake of World War II to facilitate dialogue and peace between states. Since the late 1940s, when the UN General Assembly (GA) first recommended partition of the Palestine Mandate into separate Jewish and Arab states, it has played a role in mediating various aspects of the Arab-Israeli conflict. Today, UN Security Council Resolution 242, approved after the Six Day War of 1967, forms the basis of negotiations in the ongoing conflict, including the aforementioned Oslo Process between the Israelis and Palestinians. Given this pivotal role, the UN has often become a political battleground between Israel (and its few allies) and the Arab bloc.

Due to the unique arrangement of the UN, specifically in the General Assembly, Israel frequently has been singled-out for criticism over its policies, especially related to its control over the disputed West Bank and Gaza Strip. Based on this unfavorable environment for Israel, on which the Palestinian leadership hopes to capitalize and circumvent the peace process, the PA seeks its official recognition of statehood.

Structure of the UN

The UN has six principal organs: the General Assembly, the Security Council, the Secretariat, United Nations Trusteeship Council, Economic and Social Council and the International Court of Justice. The Security Council is the UN's most powerful body, which consists of five veto-wielding states - the United States, Great Britain, France, Russia and China. The other prominent body, the General Assembly, consists of all 193 member states and three permanent observers: the Vatican, Palestine and Malta.

Admission of New UN Member States

Although the UN is an international organization that represents the entire world-community, it does not recognize states. Recognition of statehood is defined as an entrance into bilateral relations of one state with another state; only individual states do that on a case-by-case basis. While UN membership is generally considered to be confirmation of statehood, UN member states are not required to recognize each other by international law.

Obtaining UN membership requires two major steps - approval by the Security Council, then by the General Assembly. The state, or entity seeking recognition, must first apply for membership to the Security Council, which can recommend holding a vote on the floor of the General Assembly. The GA must then pass by a two-thirds vote (128 out of 193 members) for the state to be admitted as a UN member state. Though every state can then choose to officially recognize the state on a bilateral basis, UN approval grants additional legitimacy on this process.

The United Nations and the Palestinians

In 1974, the UN General Assembly passed Resolution 3237, giving the Palestinians observer status, similar to Vatican City and the European Union. In 1988, their designation was changed from "Palestine Liberation Organization" (PLO) to "Palestine." This status grants them the right to speak at General Assembly meetings, participate in procedural votes, and to sponsor and sign resolutions. However, it does not grant them the ability to vote on resolutions and other substantive matters.

UN Membership Benefits for the Palestinians

Should Palestine gain member-state status at the UN, it would have the formal protections afforded to all states under the UN Charter and under international law. This would also end the perceived indignity of being stateless. If Israel continues its presence in the West Bank or maintains the blockade on Gaza after an "independent Palestinian state" becomes a UN member, Israel could be seen as violating the territorial integrity and sovereignty of a recognized UN member state. Sovereign states have the right to use reasonable force to

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defend their territory and citizens, and other UN members can assist them in such efforts. As President Abbas noted, “Palestine’s admission to the United Nations would pave the way for the internationalization of the conflict as a legal matter, not only a political one. It would also pave the way for us to pursue claims against Israel at the United Nations, human rights treaty bodies and the International Court of Justice.”

The potential for legal action and the imposition of sanctions raises serious concerns for Israel, especially with the strong anti-Israel positions of the Arab bloc and those aligned with it.

Current Palestinian Status and Goals

One hundred and twenty UN member states have already recognized a Palestinian state, leading observers to believe that achieving a two-thirds majority in the General Assembly would not be difficult. However, as one of the Security Council’s permanent members, the United States could use its veto power to prevent it from reaching that stage. As noted, a state can only be admitted to the UN if the Security Council agrees to send the issue to the General Assembly. If the US approves (which is unlikely based on statements from administration officials) or decides to abstain from a Security Council vote, it is possible that the move will pass. Some sources, however, have indicated that Russia and China, two other permanent members of the Security Council, are debating whether to support the Palestinian bid for UN membership. Both countries have separatist groups of their own, and Palestinian ascendency could pose possible dilemmas to these countries dealing with similar situations.

If the US does veto the move, some Arab diplomats have suggested that the Palestinians will resort to GA Resolution 377. This resolution, also known as United for Peace, allows the GA to circumvent the Security Council in the scenario that the Security Council fails to act in order to maintain international peace and security due to disagreement among the permanent members. This suggests that the GA could pass a vote allowing “Palestine” to become an official UN member state, despite the Security Council not supporting the move. Some UN officials and Western diplomats have indicated, however, that this resolution does not extend to admit new member states; it only deals with international peace and security. The UN Charter states that, “The admission of any... state to membership in the United Nations will be affected by a decision of the General Assembly upon the recommendation of the Security Council.”

In the event that all these attempts fail, the Palestinians will most likely declare statehood and request international recognition at the General Assembly, where a non-binding resolution can be passed supporting a Palestinian state. This resolution would be merely a symbolic gesture, although it may encourage other states to offer recognition to Palestine.

Glossary

General Assembly (GA)—Currently comprised of 193 members, this is the UN body in which all member nations have equal representation. Its powers are to oversee the budget of the United Nations, appoint the non-permanent members to the Security Council, receive reports from other parts of the United Nations and make recommendations in the form of General Assembly Resolutions.

Recognition of Statehood—A political, not legal, decision made by an individual state to view another political entity as a legitimate state, thereby entering into bilateral relations. UN membership, though it does not mandate recognition by fellow members, is a form of collective recognition and evidence of statehood, which puts non-recognizing members at risk if they ignore the basic rights of another state. (For example, Israel is considered protected by the principles of the UN Charter on the use of force from Arab neighbors, despite them not recognizing the Jewish state.)

Security Council—One of the principal organs of the United Nations, it consists of 15 members, five of

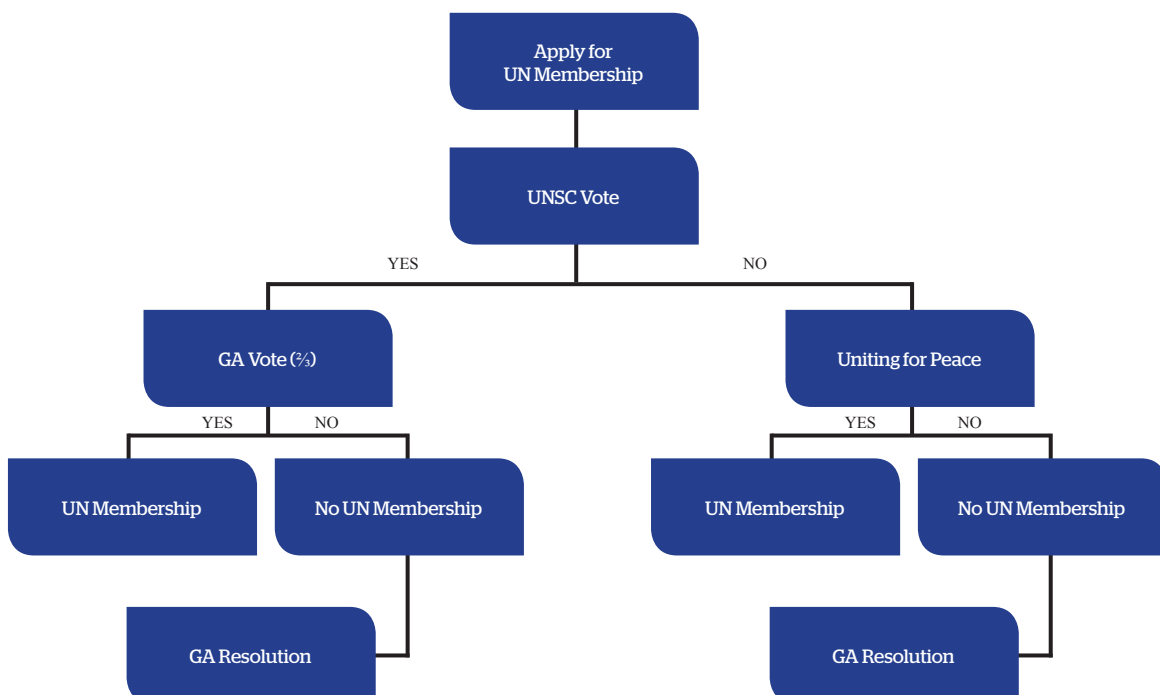
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whom are permanent veto-wielding members (United States, Great Britain, China, France, and Russia) and ten elected, non-permanent members with two-year terms. It is charged with the maintenance of international peace and security, and its powers include the establishment of peacekeeping operations, the establishment of international sanctions, and the authorization of military action. Its powers are exercised through United Nations Security Council resolutions.

Statehood—The essence of statehood is the existence of an effective and independent government. According to the Constitutive theory of international law, all that is necessary to create a state is formal recognition of a state as such by a majority of other sovereign states. The more widely accepted Declarative theory does not formally require recognition but does require four qualifications. Article I of the Montevideo Convention on Rights and Duties of States provides: “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 other States.” It should be noted that a defined territory does not require permanent and agreed upon borders. Also, though formal recognition is not required, the capacity to enter into relations with other states implies recognition of sort. Only if independence is declared, assuming these four conditions are met, does a polity become a sovereign state. It is important to note that having statehood as an international legal issue may not necessarily coincide with international recognition of such statehood. Admission of membership to international organizations, such as the UN, usually assumes statehood, and in exceptional circumstances, a people may be recognized by the international community as having an entitlement to statehood, which usually leads to independence under UN auspices.

“Uniting For Peace” (also, United Nations General Assembly Resolution 377) (V)—The resolution states that, in cases where the United Nations Security Council fails to act in order to maintain international peace and security, owing to disagreement between its five permanent members, the matter shall be addressed immediately by the General Assembly, using the mechanism of the emergency special session. This method was established by the United States in October 1950, as a way to bypass a veto by the Soviet Union during the Korean War.

How to become a UN Member State



Tough Questions

1. Why does it matter whether the Palestinians receive UN membership?

In the words of PA President, Mahmoud Abbas, “Palestine’s admission to the United Nations would pave the way for the internationalization of the conflict as a legal matter, not only a political one. It would also pave the way for us to pursue claims against Israel at the United Nations, human rights treaty bodies and the International Court of Justice.”

There is a two-pronged problem: a legal and a political one. Palestinian statehood in the UN would make it easier to file cases against Israel and label the Israeli presence in the West Bank as illegal. These are dangerous steps that could see the strengthening of the Boycott-Divestment-Sanctions movement. This would also effectively end the peace process, which seeks a two-state solution through negotiations. Politically, having an internationally recognized Palestinian state in which Fatah and Hamas are both ruling can lead to legitimizing Hamas as a valid ruling party. That “Palestine” would be officially recognized while it doesn’t recognize Israel’s existence as a Jewish State is a negative step towards peace in the region, as it rewards Arab rejectionism of Israel as a Jewish State.

UN recognition would imply international recognition of a Palestinian state. Such recognition would cause many legal and political problems for Israel, as it could put pressure on more states to recognize a Palestinian state. It could give more credence to the allegation that Israel’s presence in the West Bank is an illegal occupation, which the Palestinians are likely to bring up at the International Court of Justice. It strengthens extremists and makes a peace deal less likely.

2. What teeth does the GA resolution have? If Israel was established through a UN vote in 1947, why can’t a Palestinian state be established through a UN vote as well?

A General Assembly Resolution, unlike a Security Council Resolution, is not legally binding. “They are mere recommendations. The GA does not and cannot establish states,” says Dr. Emmanuel Navon, a professor of Diplomacy Studies at Tel Aviv University. If one of the five permanent members of the Security Council decides to veto the proposal, the “State of Palestine” will not be admitted to the UN. A General Assembly Resolution, however, may be accompanied by other states’ official recognition.

After World War II, the UN General Assembly passed Resolution 181 recommending the partition of Mandate Palestine into a Jewish state and an Arab state. This 1947 Partition Plan was accepted by the Jewish settlement and rejected by Arab leadership. Upon British evacuation, the Jewish leadership exercised its right to self-determination and declared the establishment of the State of Israel on May 14, 1948, after which multiple Arab countries declared war upon the nascent Jewish state seeking its destruction.

According to some observers, the Palestinians are trying to appropriate the Zionist narrative, hoping to duplicate the GA vote on November 29, 1947, which has often been viewed as Israel’s basic title to independence and statehood. However, Resolution 181 did not establish Israel but merely approved the recommendation of the UN Special Committee on Palestine to partition Palestine. This approval was a non-binding opinion. In addition to the resolution, what helped establish the Jewish state was decades of cultivating and developing Jewish institutions and infrastructure, plus a successful defense of the community during the 1948 War of Independence.

The international community recognized that diplomacy and negotiation should be the basis of a lasting peace in the region, principles enshrined in Security Council Resolution 242. Attempting to falsely duplicate the establishment of Israel on a unilateral basis could lead to increased tensions and further upheaval in the region.

3. If the Israeli government supports a two-state solution, should it support this Palestinian move?

Analysts have been generally divided on the implications of this issue. While some do not view a Palestinian declaration of statehood as a meaningful threat to Israel, others perceive it as a diplomatic and legal disaster. Therefore, most figures in the Israeli government have been generally apprehensive of the move, and Israel has heavily lobbied other governments to veto or abstain from a General Assembly vote. Some Israeli officials fear that international acceptance of a Palestinian state may lead to sanctions against Israel, advancing the delegitimization campaign against it.

This situation is riddled with complexities and has generated strong debate inside Israel and in forums around the world. For a look at contrasting viewpoints on this issue, please see the following pieces:

Support: Prominent Israelis support Palestinian state
<http://tinyurl.com/42o2h8a>

Oppose: Israel's UN Ambassador: Declaration of Palestinian state will mean violence
<http://tinyurl.com/44she2k>

Alternative Israeli view: Gidi Grinstein, Obama's mistaken approach to peace
<http://tinyurl.com/3zpc5tp>

Links

David Horovitz

UNGA Palestine resolution may have real impact

Jerusalem Post - March 25, 2011

<http://tinyurl.com/4rey653>

Steven J. Rosen

The Palestinians' Imaginary State

Foreign Policy - August 3, 2011

<http://tinyurl.com/43clz6l>

Mahmoud Abbas

The Long Overdue Palestinian State

New York Times - May 16, 2011

<http://tinyurl.com/66hwnpp>

Pinhas Inbari

What Are the Palestinians Planning after September?

Jerusalem Center for Public Affairs - July 2011

<http://tinyurl.com/69gc47r>

Q+A Can Palestine become a United Nations member state?

Reuters - May 20, 2011

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<http://tinyurl.com/4yd4yzg>

Ethan Bronner

Before a Diplomatic Showdown, a Budget Crisis Saps Palestinians' Confidence

New York Times - July 27, 2011

<http://tinyurl.com/3zh5ouk>

Palestinian statehood: Individual nations, not the U.N., will have the final say [Blowback]

The Los Angeles Times - July 17, 2011

<http://tinyurl.com/3wajs4p>

Nathan J. Brown

No Savior

Foreign Policy - June 17, 2011

<http://tinyurl.com/3zo2ney>

Washington's former ambassador to UN says Palestinian campaign for recognition means little

The Washington Post - July 15, 2011

<http://tinyurl.com/3wpm4k>

Appendix

Countries that recognize Palestine and Date of Recognition

Country:	Recognition Date:
1 Algeria	11/15/88
2 Bahrain	11/15/88
3 Iraq	11/15/88
4 Kuwait	11/15/88
5 Libya	11/15/88
6 Malaysia	11/15/88
7 Mauritania	11/15/88
8 Morocco	11/15/88
9 Somalia	11/15/88
10 Tunisia	11/15/88
11 Turkey	11/15/88
12 Yemen	11/15/88
13 Afghanistan	11/16/88
14 Bangladesh	11/16/88
15 Cuba	11/16/88
16 Indonesia	11/16/88
17 Jordan	11/16/88
18 Madagascar	11/16/88
19 Malta	11/16/88
20 Nicaragua	11/16/88
21 Pakistan	11/16/88
22 Qatar	11/16/88
23 Saudi Arabia	11/16/88
24 United Arab Emirates	11/16/88
25 Serbia	11/16/88
26 Zambia	11/16/88
27 Albania	11/17/88
28 Brunei	11/17/88
29 Djibouti	11/17/88
30 Mauritius	11/17/88
31 Sudan	11/17/88
32 Cyprus	11/18/88
33 Republic	11/18/88
34 Slovakia	11/18/88
35 Egypt	11/18/88
36 India	11/18/88
37 Nigeria	11/18/88
38 Seychelles	11/18/88
39 Sri Lanka	11/18/88
40 Belarus	11/19/88
41 Guinea	11/19/88
42 Namibia	11/19/88
43 Ukraine	11/19/88
44 Russia	11/19/88
45 Vietnam	11/19/88
46 China, People's Rep. of	11/20/88
47 Burkina Faso	11/21/88
48 Comoros	11/21/88
49 Bissau	11/21/88
50 Mali	11/21/88
51 Cambodia	11/21/88
52 Mongolia	11/22/88
53 Senegal	11/22/88
54 Hungary	11/23/88
55 Cape Verde	11/24/88
56 Korea, North	11/24/88
57 Niger	11/24/88
58 Romania	11/24/88
59 Tanzania	11/24/88
60 Bulgaria	11/25/88
61 Maldives	11/28/88
62 Ghana	11/29/88
63 Togo	11/29/88
64 Zimbabwe	11/29/88
65 Chad	12/01/88
66 Laos	12/02/88
67 Sierra Leone	12/03/88
68 Uganda	12/03/88
69 Congo, Rep. of the	2/05/88
70 Angola	12/06/88
71 Mozambique	12/08/88
72 Tome and Principe	2/10/88
73 Congo, Dem. Rep. of the	2/10/88
74 Gabon	12/12/88
75 Oman	12/13/88
76 Poland	12/14/88
77 Botswana	12/19/88
78 Nepal	12/19/88
79 Burundi	12/22/88
80 Central African Republic	12/23/88
81 Bhutan	12/25/88
82 Rwanda	01/02/89
83 Ethiopia	02/04/89
84 Iran	02/04/89
85 Vanuatu	08/21/89
86 Benin	1989 or before
87 Equatorial Guinea	1989 or before
88 Gambia	1989 or before

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89	Kenya	1989 or before	105	Tajikistan	2009 or before
90	Lebanon	1989 or before	106	Venezuela	04/27/09
91	Philippines	1989	107	Dominican Republic	07/14/09
92	Kazakhstan	1992 or before	108	Cameroon	2010 or before
93	Azerbaijan	1992 or before	109	Brazil	12/01/10
94	Georgia	1992 or before	110	Argentina	12/04/10
95	Bosnia & Herzegovina	5/27/92	111	Bolivia	12/22/10
96	Papua New Guinea	10/04/04	112	Ecuador	12/24/10
97	Uzbekistan	1994 or before	113	Chile	01/07/11
98	South Africa	1995 or before	114	Guyana	01/13/11
99	Kyrgyzstan	1995 or before	115	Peru	01/24/11
100	East Timor	03/01/04	116	Suriname	02/01/11
101	Paraguay	03/25/05	117	Uruguay	03/15/11
102	Montenegro	07/24/06	118	Malawi	04/11 or before
103	Costa Rica	02/05/08	119	Lesotho	06/06/11
104	Côte d'Ivoire	2008 or before	120	Syria	07/18/11