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**The Palestinian Petition to the United Nations  
for Recognition of a Palestinian State**

*A Legal/Political Analysis*

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# **The Palestinian Petition to the United Nations for Recognition of a Palestinian State**

## ***A Legal/Political Analysis***

### **Key Findings and Conclusions**

The Palestinian petition to the United Nations (UN) is part of a broader Palestinian process aimed at advancing Palestinian interests not by means of negotiations with Israel, but through the use of multi-national political and legal frameworks. The Palestinian process comprises two interrelated elements: the request for recognition of statehood and the demarcation of this state's borders as the 1949 ceasefire lines (and in this context the recognition of Jerusalem as the capital of the Palestinian state). These two elements have important political and legal implications, which this policy paper analyzes with attention to both long-term and short-term consequences.

An examination of the conditions for statehood under international law reveals that the Palestinian Authority (PA) as an entity is close to fulfilling these conditions, and it may be described as “a quasi-state” or “a state in the making.” When there is doubt about whether a political entity is a state, widespread international recognition could tip the balance in favor of a conclusion that the entity is indeed a state. Widespread support among UN member states for recognition of a Palestinian state could therefore lead to the conclusion that a Palestinian state does in practice exist.

Moreover, various factors support the conclusion that the international community would adopt a lenient interpretation of the conditions for statehood in the Palestinian context. These factors include: extensive international sympathy for the Palestinian right of statehood, including international support for the measures aimed at improving the Palestinian Authority governance mechanisms, and the continuing stalemate within the peace process, resulting in a non-state entity that had been established for “interim arrangement” purposes continuing to operate as such for many years.

This policy paper analyzes the possible measures that Palestinians might adopt in the UN framework, as well as the potential implications of these measures. The Palestinians decided to petition the UN Security Council as the first stage in the process towards acceptance of a Palestinian state as a full member of the UN. This initiative is apparently not expected to receive the necessary majority support within the Security Council. However, it seems that the act of placing the issue on the Security Council agenda is expected to yield political advantages for the Palestinians. In itself, discussion of the PA's fitness for statehood is likely to advance Palestinian interests, for example by advancing efforts to define a timetable for the establishment of temporary borders – a proposal that could be offered as a compromise in exchange for Palestinian agreement to suspend a Security Council vote. Under an extreme scenario of very long-term stalemate in the peace process, proceedings within the Security Council could pave the way for forcible international intervention, including the deployment of international armed forces to the territories beyond the Green Line in order to establish a Palestinian state even without Israeli acquiescence.

The success of an initiative to have Palestine accepted as an “observer state” (currently Palestine has observer status through the Palestine Liberation Organization (PLO) representative) by means of a petition to the General Assembly (GA) would most likely be successful in light of the automatic majority support for such an initiative within the GA. Palestine could establish its status as a state in this way, or by way of a GA vote that recognizes it as a state even without upgrading the observer status. Although opposition by a group of influential states could pose a challenge to the decision regarding statehood, in practice the GA granting of observer state status would confer on Palestine many of the privileges of a state: joining important international treaties that do not require UN membership (such as human rights treaties), membership in special UN agencies, and the ability to appear before international courts, including the power to confer jurisdiction to the International Criminal Court. During the course of the drafting of this policy paper, Palestinian efforts aimed at United Nations Educational, Scientific, and Cultural Organization (UNESCO) acceptance of Palestine as a member achieved their objective. In the immediate term, the PA is paying a price for these efforts because they led to a suspension of financial transfers from Israel to the PA and to a US announcement that it was suspending its funding for UNESCO (entailing

approximately a quarter of UNESCO's budget). In the long run, however, the upgrading of Palestine's UN status and its acceptance to additional international organizations is likely to lead to forcible political changes and even to changes in the legal status of the territories beyond the Green Line.

This policy paper analyzes the consequences that would follow from recognition of Palestinian statehood, both in terms of the situation "on the ground" and in terms of the future political process and reactions of the international community to Israeli presence in territories beyond the Green Line. Regarding the situation on the ground, both Israel and the Palestinians could legally declare the termination of the Oslo Accords, which are centered on a 1995 interim agreement that was only intended to apply for an intermediate period. Some of the arrangements do not apply to a state in any event, and its unilateral establishment would constitute a violation of the Accords. Termination of the Accords, however, would not serve the interests of either party. Although it would require a legal assessment of the applicability of certain provisions to a situation in which the PA is recognized by the international community as a state, both sides have an interest in continuing to act in accordance with the current arrangements in practice in the territories beyond the Green Line. From Israel's perspective, the Accords relieve it of many civilian responsibilities with respect to a large segment of the Palestinian population. The Palestinians, for their part, need the stability and continued existence of current governance mechanisms for the purpose of constructing the civilian underpinnings of a state. Similarly, it may be assumed that, at least in the short term, the Palestinians would try to maximize the benefits to be derived from statehood, while minimizing the obligations that are usually imposed on states, by drawing attention to Israel's responsibility given that Israel still occupies a significant proportion of the Palestinian state, from a Palestinian viewpoint.

For example, the interim agreement places military and security limitations on the Palestinians and limits the size of the armed force that they are entitled to establish, as well as its armament and functions (internal security only). A state has the sovereign right to defend its borders and to establish a military force towards this end (if it is not a demilitarized state), although at least in the short term the mutual interest of both sides is to fulfill the provisions of the existing accords and to continue the coordination of security measures. From a Palestinian

perspective, maintaining the current situation serves their interests of not being perceived as a security threat, of continuing to lay the foundation for a state in civilian matters, and of not being perceived as such a strong entity that it should be overly responsible for developments within the territories beyond the Green Line. In the long term, continued stalemate in the peace process could result in the Palestinians taking measures to introduce multi-national forces into these territories, thereby limiting the scope of Israel's military options.

The policy paper explores some of the principal competences granted to states and examines the uses that a Palestinian state could make of these as well as the resulting challenges and opportunities from Israel's perspective. Regarding the ability to accede to international treaties, it cannot be determined whether this ability would necessarily worsen conditions for Israel. Certain obligations on Palestine's part in the international arena would reflect positive developments from Israel's perspective. For example, if the Palestinian state were to accede to human rights treaties and the Geneva Conventions, this would mean that it was taking international responsibility for human rights within the territories under its actual control and committing itself to act in accordance with international humanitarian law applicable to armed conflict. Human rights treaties and the Geneva Conventions would undoubtedly also continue serving the Palestinians as a tool in the legal struggle against Israel, but that is no different from the current situation. Israel is already party to these treaties in any case, and acceptance by the Palestinian side would only contribute to a "division" or "distribution" of responsibility.

The most troubling step from Israel's point of view would be the jurisdiction provided by a Palestinian state for the International Criminal Court (ICC) to address the war crime of transferring the population of an occupying state to occupied territory (a "crime" that was introduced to the ICC Statute on the basis of an Arab proposal). The inclusion of this "crime" in the Statute of the ICC was the main reason for Israel's reluctance to ratify the ICC Statute. The jurisdiction of the ICC applies to all the territory of a state that consents to the Court's jurisdiction, including occupied territories, and thus Israeli policy in the territories beyond the Green Line and in East Jerusalem could become subject to scrutiny under international criminal law. Israeli officials and others who were

involved in settlement projects or in construction in East Jerusalem throughout the years could be charged under international criminal law, and the question of settlements – which was supposed to be resolved through negotiations between the parties – would in practice be addressed by the ICC, which would not require Israeli acceptance in order to assert its jurisdiction.

In light of the rule requiring the acquiescence of both states to international litigation, Palestinian acceptance of other international frameworks, including international courts, does not constitute a direct “threat” from Israel’s perspective. The access that any state has to a variety of international fora, however, including special UN agencies (membership in which does not require full UN membership), would enable the Palestinian state to more easily place on the international agenda a wide variety of issues related to Israeli policy in the territories beyond the Green Line and in East Jerusalem (such as healthcare, employment, environmental protection, and the like).

How the Palestinian state conducts its foreign relations could become a source of tension and complex legal problems. Because Israel has almost complete control over entry to and exit from the territories beyond the Green Line (excluding the Rafah crossing), it would be required to formulate a policy for diplomatic access and the movement of diplomatic material to and from the Palestinian state. Israel would presumably seek to prevent the entry of diplomatic representatives or material from hostile states with which a Palestinian state would likely seek diplomatic ties. Diplomats and documents enjoy immunity even when passing through a “third state.” Although a state is not obligated to permit such passage, given Israel’s control over the peripheral surroundings of a Palestinian state, any intervention in diplomatic access to the Palestinian state would likely serve as a means for lambasting Israel in international fora.

Any Palestinian state that came into being would in fact exercise effective control only over a portion of the territories beyond the Green Line (territories ‘A’ in the West Bank and, pending implementation of a reconciliation agreement with Hamas, possibly the Gaza Strip as well). International recognition, however, would presumably entail all territories beyond the Green Line, and perhaps would even include recognition of East Jerusalem as the state capital. Even if the situation on

the ground remains at first as it is, the international community will regard Israeli military and civilian presence (the settlements and Jewish neighborhoods in East Jerusalem) as occupation of the legitimate territory of a Palestinian state.

A special chapter of the document is devoted to East Jerusalem. The uniqueness of East Jerusalem derives both from its annexation to the State of Israel and from the fact that the issue of Jerusalem incorporates other international interests, beyond Israeli and Palestinian, such as religious interests linked to the sanctity of Jerusalem and its importance to the three monotheistic religions. The policy paper points out that, **on the one hand**, the Palestinians might conduct an intensive diplomatic and legal struggle against various measures adopted by Israel in implementing its sovereignty over East Jerusalem, a struggle that would be based on the universal rejection of the Israeli annexation of East Jerusalem as illegal. For example, the Israeli policy of construction in East Jerusalem could become a focus of international legal proceedings, including the “crime of settlement” as part of proceedings before the ICC. The Palestinian state might try to implement governance and diplomatic activities in East Jerusalem, which would challenge the authorities responsible for enforcing Israeli law. **On the other hand**, the very fact that the issue of Jerusalem incorporates widespread international interests could limit the ability of Palestine to adopt far-reaching unilateral measures in Jerusalem. Israel, for its part, cannot accept a situation in which the complex and sensitive issue of Jerusalem is determined by coercion.

In terms of the implications of the Palestinian petition for a future political settlement of the Israeli-Palestinian conflict, the policy paper points to signs of convergence between the “international” position (as expressed primarily through declarations and documents of the Quartet) and the Arab position (as expressed through the 2002 Saudi peace plan). This is primarily the case with respect to the issue of borders, whereby the Green Line is presented as the legitimate border of the Palestinian state and is not subject to negotiation. Although the dominant international position does not recognize the Green Line as a mandatory border and does in fact call for negotiations on the question of borders, nevertheless, the principles established for negotiations on this matter within the Roadmap and in later declarations by the Quartet lead to the conclusion that the final borders would be quite close to the Green Line, with certain variations (apparently on

the basis of land swap). Unofficial documents exchanged by the parties during negotiations that were conducted in recent years further reinforce this conclusion. Therefore, even though the official Israeli position views the matter of borders as an issue for negotiation (with the Green Line as a ceasefire line rather than a mandatory border), in practice negotiations between the parties in accordance with the Quartet's principles would, it seems, lead to a conclusion very much along these lines.

Following a detailed analysis of the various political positions and their corresponding legal basis, the policy paper explores a number of alternatives that Israel could adopt in response to the Palestinian process. One alternative, which has actually been adopted in practice, is to work through diplomatic channels in order to frustrate Palestinian actions in the international arena. This approach could indeed frustrate certain Palestinian actions (for example, by preventing a supportive majority within the Security Council). A long-term perspective, however, suggests that in light of the changes in the attitude of the international community in recent years and the growing perception of Israel as responsible for the failure of the peace process, diplomatic measures alone are unlikely to prevent international recognition of a Palestinian state in the medium term. Similarly, placing economic and political pressure on the PA is at most likely to delay certain Palestinian measures in the short term but is unlikely to stop the Palestinian process for long. Likewise, a Palestinian return to bilateral negotiations in the context of economic and political sanctions reduces the likelihood of success of the negotiations while probably galvanizing extremists within Palestinian society and undermining the legitimacy of Palestinian leadership in reaching an agreement with Israel.

Another approach examined in this document is that of unilateral measures on Israel's part, for example termination of existing agreements or unilateral annexation of blocs of settlements by Israel. It seems that such actions would primarily serve internal political interests of the Israeli government but are not expected to yield any political advantage. On the contrary, as explained above, categorical termination of agreements would not benefit either side. Annexation of blocs of settlements would have almost no effect on the ground, yet from an international law perspective such a step would be perceived as illegal, exactly

like the annexation of East Jerusalem. Unilateral annexation can be expected to increase support for the Palestinian side within the international struggle that it is conducting against the policy of settlements and to improve the likelihood of success of international measures that the Palestinian side might adopt against Israel, including in the ICC. The severe consequences of such a step would be felt on the day that territorial compromise is demanded of Israel because Israel's constitutional requirements necessitate a special parliamentary majority or a national referendum to authorize withdrawal from these territories.

The policy paper indicates that there would be advantages in an approach whose main thrust is Israeli adoption in principle of the Palestinian initiative, subject to certain reservations and in coordination with the Palestinian side through negotiations. Israeli adoption in principle of the Palestinian petition for recognition as a state – subject to the principles established in the Roadmap for a consensual agreement and for the conduct of negotiations on the issues identified for a final status agreement, including the matter of borders and the future of the settlements – could include willingness to recognize a Palestinian state for all practical purposes in the near term and along temporary borders. This position would be adopted in the spirit of the second stage of the Roadmap and in the context of speedy negotiations aimed at formulating appropriate arrangements on the ground. Setting time-bound limitations on the negotiations and conducting them under the auspices of the Quartet are factors that are likely to build trust in the Israeli proposal (and trust-building is especially necessary in light of the continuing stalemate in the peace process, which many states attribute to Israel). Israeli adoption in principle of Palestinian state recognition, subject to the requirement that recognition be accepted in accordance with and following an Israeli-Palestinian agreement, would significantly dull the sting inherent in the Palestinian initiative. Many states (including most members of the European Union) that support Israel's right to exist within secure and recognized borders, alongside the Palestinian right to a viable state, are likely to support such a process. This process does not demand an “exorbitant” price from Israel because the Roadmap already includes establishment of Palestinian state within temporary borders and in coordination with Israel. The price demanded of Israel would presumably be a commitment to freeze settlements for an additional period of time (and apparently an unofficial and undeclared freeze on construction plans

in East Jerusalem as well), and perhaps also evacuation of a few settlements located outside of the large settlement blocs. Israel for its part could demand the implementation of an effective Palestinian rule that would be bound by agreements with Israel regarding the Gaza Strip. Continued Hamas rule in Gaza could pose an obstacle and a pretext for failed negotiations, whereas an agreement that reestablishes PA rule in the Gaza Strip and ensures security for Israel in this region (presumably based on an internal Palestinian agreement with international backing) could be regarded as an Israeli achievement, which would increase support for this process within the Israeli public.

Following the Palestinian petition to the UN, the Quartet published a declaration whose main thrust is a call to both sides to resume time-bound negotiations (reaching a permanent agreement by the end of 2012), which creates an opening for implementation of the approach proposed here. The Quartet's declaration was accepted in principle by the Israeli government, and it does not call upon the Palestinians to abandon their petition to the UN. If the parties do indeed return to the negotiating table on the basis of the Quartet's declaration, then an Israeli statement of principles indicating willingness to support recognition of a Palestinian state in the UN in accordance with a to-be-achieved agreement could divert international attention from the unilateral Palestinian process and refocus it on the bilateral negotiating framework.

A reasonable scenario exists (based on past experience) in which the two sides cannot reach a permanent agreement that would end the conflict, primarily because of the difficulty in agreeing on the matters of Jerusalem and of the refugees. Under such circumstances, it would be appropriate to examine the advantages and disadvantages of an agreed-upon process for an interim agreement by which a demilitarized Palestinian state would be established with temporary borders. On the one hand, it may be assumed that an agreement to establish a Palestinian state within temporary borders would require Israel to evacuate settlements located outside of the major settlement blocs, yet without compensation in the form of a permanent agreement resolving the conflict. Israel would be facing a Palestinian state that has territorial and other demands (primarily the return of refugees), as well as the leverage to apply international pressure in pursuit of its goals. On the other hand, the establishment of a Palestinian state within temporary borders

has an advantage from Israel's perspective in that, at least with respect to some of the territories beyond the Green Line, Israel would no longer be considered an occupying power, and the international responsibility for what transpires within these territories would be attributed to the Palestinian state. As long as both the process of creating and stabilizing Palestinian governance institutions and the process of economic improvement continue, then we can assume that the Palestinian and the Israeli interest will be to maintain a high level of coordination and cooperation even without reaching a permanent agreement, as the experience of recent years has demonstrated.

In light of the apparent convergence between the international position and the Palestinian position described in this document, the space for maneuverability and the range of realistic options for resolution of the issues of borders and settlements in the context of a permanent agreement are limited. A successful unilateral Palestinian move in the UN (from a Palestinian perspective) could present Israel with the 1967 borders as a starting point for future negotiations with a Palestinian state that has come into existence despite Israeli opposition and without any agreement on the complex and sensitive issues of Jerusalem and the refugees. The Israeli approach should give appropriate attention to these considerations and to the dangers inherent in unilateral recognition of a Palestinian state in terms of the capacity for such a state to take action against Israel in various international fora including, in particular, the arena of international criminal law.