

Background

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How the U.S. Should Respond to the U.N. Vote for Palestinian Statehood

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Abstract: *In September 2011, the U.N. General Assembly is expected to vote on a resolution recognizing Palestinian statehood. This resolution is linked to Palestinian efforts to obtain U.N. membership as a state and to delegitimize Israel. These efforts will have no legal significance because the General Assembly has no standing to recognize statehood—that is the right of sovereign states—or to grant U.N. membership without the Security Council’s prior recommendation, which the U.S. has indicated it will veto. But they will undermine U.S. interests by escalating tensions and harming efforts to resolve the international peace and security issues in the Israeli–Palestinian conflict. The U.S. should take steps to oppose the Palestinian effort to gain international recognition at the expense of Israel, rather than through negotiations with it.*

The U.N. General Assembly is expected to vote in September 2011 on a resolution recognizing Palestinian statehood.¹ The effort is clearly an attempt by the Palestinians to isolate and pressure Israel into concessions on peace negotiations. As Palestinian President Mahmoud Abbas stated, the Palestinian Authority is determined to seek U.N. recognition unless Israel begins negotiations on a “substantial basis.”² Because a large majority of the 192 U.N. members will probably support the resolution,³ the Palestinians hope that the vote will give legitimacy to their claims to statehood and, possibly, U.N. membership, while simultaneously boosting Arab and Muslim efforts to delegitimize Israel.

Talking Points

- The Palestinian effort to gain U.N. membership and state recognition through a General Assembly vote is based on false assumptions.
- The General Assembly has no authority to admit a new member state without a Security Council recommendation or to compel U.N. member states to recognize Palestine as a state.
- Diplomatically and rhetorically, Palestine will portray the vote as support for its unilateral declaration of statehood, attempt to use it to impose unacceptable conditions on Israel by circumventing negotiation, and refer to it as evidence in its ongoing assault on the legitimacy of Israel.
- The U.S. should veto any recommendation on granting U.N. membership to Palestine, declare that the U.S. will not recognize a Palestinian state unless it renounces terrorism and recognizes Israel’s right to exist, and announce that the U.S. will withhold contributions to any U.N. organization that admits Palestine as a state or grants it non-member state observer status.

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However, such a vote would further complicate the situation and erode peace prospects by deluding the Palestinians into believing that they need not negotiate with Israel. President Barack Obama has also expressed this sentiment:

For the Palestinians, efforts to delegitimize Israel will end in failure. Symbolic actions to isolate Israel at the United Nations in September won't create an independent state. Palestinian leaders will not achieve peace or prosperity if Hamas insists on a path of terror and rejection. And Palestinians will never realize their independence by denying the right of Israel to exist.⁴

Regardless of the General Assembly vote, the Palestinian tactics appear to have hardened Israel's determination. It has also galvanized U.S. support for Israel, judging by the two-dozen standing ovations that Israeli Prime Minister Binyamin Netanyahu received during his robust defense of Israel before a joint session of Congress in May.⁵

Lost in the debate over the political implications of the vote is the practical question of what effect the General Assembly vote would have on Palestinian aspirations for statehood and U.N. membership. There seems to be an assumption that the vote would have some significant legal effect on Palestinian statehood or its aspirations for U.N. membership, but there is no basis for this assumption.

Palestine at the United Nations

The history between the United Nations and Palestine dates back to one of the U.N.'s earliest and most controversial decisions: the General Assem-

No other ethnic or national group receives as much dedicated attention within the U.N. system as the Palestinians receive.

bly's 1947 approval of Resolution 181, which supported the creation of Israel through the partition of the British Mandate for Palestine, which had been carved out of the defeated Ottoman Empire after World War I. The U.N. has been intensely involved in the region and the consequences of this decision ever since, including serving as a forum for countless discussions, resolutions, and other deliberations. The highly politicized nature of this issue has led the United Nations to dedicate a disproportionate amount of time, resources, and attention to numerous efforts by Arab and Muslim nations to criticize Israel and question its legitimacy and its actions.

The U.N. has also taken unique steps to support and discuss issues related to Palestinians. In 1949, the U.N. established the United Nations Relief and Works Agency for Palestine Refugees in the Near East, a separate international body focused solely on supporting Palestinian refugees and their descendants. By contrast, U.N. efforts to assist refugees in every other situation in the world are handled through the Office of the U.N. High Commissioner for Refugees. The U.N. also has established several specific bodies dedicated to the Palestinian issue, including the Committee on the Exercise of the Inalienable Rights of the Palestinian People in 1975 and the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People in 1968. It has also established an

1. JTA, "Palestinians Announce Official Decision to Ask U.N. for Statehood," June 27, 2011, at <http://www.jta.org/news/article/2011/06/27/3088318/palestinians-announce-official-decision-to-ask-un-for-statehood> (June 29, 2011).
2. Al Jazeera, "Arab League Seeks UN Recognition of Palestine," May 28, 2011, at <http://english.aljazeera.net/news/middleeast/2011/05/2011528202911144389.html> (June 27, 2011).
3. It is estimated that more than 150 governments have some form of diplomatic relations with the Palestine Liberation Organization and/or the Palestinian National Authority. Of these, 117 governments have publicly stated their recognition of the State of Palestine. Wikipedia, "Foreign Relations of the Palestinian National Authority," at http://en.wikipedia.org/wiki/Foreign_relations_of_Palestine (June 27, 2011).
4. Barack Obama, "Remarks by the President on the Middle East and North Africa," The White House, May 19, 2011, at <http://www.whitehouse.gov/the-press-office/2011/05/19/remarks-president-middle-east-and-north-africa> (June 28, 2011).
5. Binyamin Netanyahu, "Transcript: Israeli Prime Minister Binyamin Netanyahu's Address to Congress," *The Washington Post*, May 24, 2011, at http://www.washingtonpost.com/world/israeli-prime-minister-binyamin-netanyahus-address-to-congress/2011/05/24/AFWY5bAH_story.html (June 27, 2011).

International Day of Solidarity with the Palestinian People in 1977. No other ethnic or national group receives as much dedicated attention within the U.N. system as the Palestinians receive.

In 1974, the General Assembly passed Resolution 3237, granting the Palestinian Liberation Organization (PLO) observer status in the U.N. as the representative of the Palestinian people, despite its origins as a militant organization and central role in a number of terrorist actions against Israel. The U.N. Charter makes no provision for observer status, but the General Assembly has granted such status to a number of non-member countries, many of which have subsequently applied for and been granted U.N. membership. Observer status has also been granted to international organizations, albeit with a lower stature than non-member governments.

Because it is not included in the Charter, observer status is entirely a construct of General Assembly practice and is granted through a General Assembly resolution. In general, U.N. observers have a seat in the General Assembly and may speak at General Assembly meetings, but they cannot vote. The General Assembly has granted additional privileges to certain observers, including Palestine. In 1988, the PLO was granted the privilege of having its communications issued and circulated as official U.N. documents and was formally designated “Palestine” rather than the “Palestine Liberation Organization.” In 1998, Palestine was granted further privileges, including the right to participate in the general debate of the General Assembly, the right of reply, and the right to offer draft resolutions and decisions on Palestinian and Middle East issues for vote as long as they are co-sponsored by a U.N. member state.⁶ In addition, Palestine exerts its influence through membership in the Group of Asian States, the Economic and Social Commission for Western Asia, the League of Arab States, the Movement of Non-Aligned Countries, the Organization of the Islamic Conference, and the Group of 77.

Because of its enhanced observer status, Palestine already enjoys considerable stature and privileges in the U.N. In fact, as a symbol of its enhanced status, Palestine is seated in the General Assembly Hall immediately after non-member states with observer status, such as the Holy See, but before all other international and intergovernmental organizations with observer status. The only meaningful stature and privileges that Palestine lacks are recognition as a non-member government, the power to vote in the General Assembly, and eligibility to be elected to positions reserved for U.N. member states, such as a seat on the Security Council.

However, the Palestinians appear poised to press further, including seeking formal General Assembly recognition of Palestine as a state, elevated status as a non-member state observer, and, possibly, U.N. membership.

How a State Becomes a Member of the U.N.

The procedures and steps for a state to become a member of the U.N. are set forth in Chapter II of the U.N. Charter: “The admission of any such state to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council.”

The General Assembly rules of procedure on admitting new member states (See Text Box, next page) and the 1947 resolution adopting them confirm that a U.N. member state cannot be admitted without a recommendation from the U.N. Security Council.⁷

President of the General Assembly Joseph Diess confirmed this procedure in an interview. When asked if the Palestinians could achieve U.N. membership if a Security Council resolution is vetoed, Diess replied, “No. No.” “The General Assembly cannot take the initiative, but we are ready to do our work as soon as a recommendation of the Security Council will be addressed.”⁸

6. U.N. General Assembly Resolution, “Participation of Palestine in the Work of the United Nations,” A/RES/52/250, July 13, 1998, at <http://www.un.org/depts/dhl/resguide/r52.htm> (June 27, 2011).

7. In its second regular session, the General Assembly adopted Resolution 116 (II), which added rules 113, 114, 116, and 117 (rules 134, 135, 137, and 138 of the present rules of procedure), relating to the admission of new members. U.N. General Assembly, “Rules Governing the Admission of New Members,” Resolution 116 (II), November 21, 1947, at [http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/116\(II\)&Lang=E&Area=RESOLUTION](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/116(II)&Lang=E&Area=RESOLUTION) (June 27, 2011).

General Assembly Rules on the Admission of New Members

- **Rule 134:** Any State which desires to become a Member of the United Nations shall submit an application to the Secretary-General. Such application shall contain a declaration, made in a formal instrument, that the State in question accepts the obligations contained in the Charter.
- **Rule 135:** The Secretary-General shall, for information, send a copy of the application to the General Assembly, or to the Members of the United Nations if the Assembly is not in session.
- **Rule 136:** If the Security Council recommends the applicant State for membership, the General Assembly shall consider whether the applicant is a peace-loving State and is able and willing to carry out the obligations contained in the Charter and shall decide, by a two-thirds majority of the members present and voting, upon its application for membership.
- **Rule 137:** If the Security Council does not recommend the applicant State for membership or postpones the consideration of the application, the General Assembly may, after full consideration of the special report of the Security Council, send the application back to the Council, together with a full record of the discussion in the Assembly, for further consideration and recommendation or report.
- **Rule 138:** The Secretary-General shall inform the applicant State of the decision of the General Assembly. If the application is approved, membership shall become effective on the date on which the General Assembly takes its decision on the application.¹

1. U.N. General Assembly, "Rules of Procedure," Chap. XIV, at <http://www.un.org/en/ga/about/ropga/adms.shtml> (June 27, 2011).

Furthermore, the International Court of Justice issued an advisory opinion on this very issue in 1950 after the General Assembly formally requested an answer to the following question:

Can the admission of a State to membership in the United Nations, pursuant to Article 4, paragraph 2, of the Charter, be effected by a decision of the General Assembly when the Security Council has made no recommendation for admission by reason of the candidate failing to obtain the requisite majority or of the negative vote of a permanent Member upon a resolution so to recommend?⁹

In its advisory opinion, the ICJ stated that it "has no doubt as to the meaning" of Article 4, paragraph 2, which established a Security Council recommen-

dation as "the condition precedent" to the General Assembly decision that effects admission.¹⁰ The court dismissed arguments that the General Assembly had the power to admit a member without a Security Council recommendation because it "would almost nullify the role of the Security Council in the exercise of one of the essential functions of the Organization." It similarly rejected the argument that the absence of a recommendation could be treated as the equivalent of an unfavorable recommendation, thereby permitting a General Assembly vote. In conclusion, the Court ruled 12 to 2 that:

[T]he admission of a State to membership in the United Nations, pursuant to paragraph 2 of Article 4 of the Charter, cannot be effected

8. Edith Lederer, "Palestinian State Requires UN Council Support," Yahoo News, May 27, 2011, at http://news.yahoo.com/s/ap/20110527/ap_on_re_us/un_un_palestinians_general_assembly (June 27, 2011).

9. "Competence of Assembly Regarding Admission to the United Nations," 1950 *I.C.J. Reports* 4, p. 5 (March 3), at <http://www.icj-cij.org/docket/files/9/1883.pdf> (June 27, 2011).

10. *Ibid.*, pp. 8–9.

by a decision of the General Assembly when the Security Council has made no recommendation for admission, by reason of the candidate failing to obtain the requisite majority or of the negative vote of a permanent Member upon a resolution so to recommend.¹¹

In short, the procedures for granting U.N. membership require a recommendation from the U.N. Security Council before the General Assembly can take action. Without a Security Council recommendation, a General Assembly resolution calling for the U.N. membership for Palestine or its recognition as a state has no relevance beyond that of the annual U.N. General Assembly resolutions on “the right of the Palestinian people to self-determination.” The most recent version passed the U.N. General Assembly with a vote of 177 in favor to 6 opposed, including the U.S., on December 21, 2010, and stated that the General Assembly:

Reaffirms the right of the Palestinian people to self-determination, including the right to their independent State of Palestine;

Urges all States and the specialized agencies and organizations of the United Nations system to continue to support and assist the Palestinian people in the early realization of their right to self-determination.¹²

These resolutions have been offered annually in the General Assembly since the 49th session of the General Assembly in 1994 and have never received less than 140 votes in favor. In recent years, more than 170 member states have supported the resolutions. Yet, without a Security Council recommendation, they have never been deemed sufficient to justify Palestine’s membership in the U.N., despite receiving more than the two-thirds vote of the General Assembly required to admit a new member.

The “Uniting for Peace” Option

Under the U.N. Charter and General Assembly rules, a Security Council recommendation is clearly necessary before the General Assembly can vote to admit a member. Any permanent member of the Security Council can veto the recommendation, and President Obama expressed earlier this year that the U.S. would veto such a recommendation:

No vote at the United Nations will ever create an independent Palestinian state. And the United States will stand up against efforts to single Israel out at the UN or in any international forum. Because Israel’s legitimacy is not a matter for debate.¹³

Recognizing that a Security Council recommendation is impossible, Palestinian Foreign Affairs Minister Riyad al-Malki floated the notion that the Palestinian Authority could avoid the Security Council and seek recognition of the Palestinian state by the United Nations through a special session of the General Assembly. The basis for this strategy is the “Uniting for Peace” precedent.¹⁴

In 1950, the General Assembly adopted the Uniting for Peace resolution at the urging of the United States because of repeated Soviet vetoes of efforts to address the situation in Korea.¹⁵ In the resolution, the member states resolved:

[I]f the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including

11. *Ibid.*, p. 10.

12. U.N. General Assembly, “The Right of the Palestinian People to Self-Determination,” A/RES/65/202, March 11, 2011, at <http://www.un.org/en/ga/65/resolutions.shtml> (June 27, 2011).

13. Barack Obama, “Obama’s Speech to AIPAC—Prepared Text,” *Washington Examiner*, May 22, 2011, at <http://washingtonexaminer.com/blogs/beltway-confidential/2011/05/obamas-speech-aipac-prepared-text> (June 27, 2011).

14. Pamela Falk, “Supporters of Palestinian State Could Circumvent U.S. Veto at U.N.,” CBS News, May 20, 2011, at http://www.cbsnews.com/8301-503544_162-20064778-503544.html (June 27, 2011).

15. Christian Tomuschat, “Uniting for Peace: General Assembly Resolution 377 (V),” U.N. Audiovisual Library of International Law, at <http://untreaty.un.org/cod/avl/ha/ufp/ufp.html> (June 27, 2011).

in the case of a breach of the peace or act of aggression the use of armed force when necessary, to maintain or restore international peace and security.¹⁶

To facilitate General Assembly action, the resolution provides for the possibility of an “emergency special session” to consider urgent matters of international peace and security. The General Assembly has convened 10 emergency special sessions over the years. The first was in 1956 to address the Suez Crisis. The 10th and most recent emergency special session was convened in 1997 on “Illegal Israeli Actions in Occupied East Jerusalem and the Rest of the Occupied Palestinian Territory.” Since 1997, this session has been adjourned and resumed repeatedly.¹⁶

Presumably, the effort to circumvent the Security Council by using the United for Peace resolution would be pursued within the framework of the ongoing 10th session. The grounds for using the 10th emergency special session or, more broadly, the Uniting for Peace resolution to overrule the requirement for a Security Council recommendation for membership or to recognize a Palestinian state are dubious for several reasons.

Reason #1: The Uniting for Peace resolution has nothing to do with U.N. membership.

The Charter is very explicit in the procedures for membership, and attempting to circumvent the Security Council would violate those strictures. No General Assembly resolution, even one adopted under the auspices of the Uniting for Peace resolution, can obviate the Charter. Overriding the Charter-defined role of the Security Council in admitting a new member requires a Charter amendment.

Even the issue that spurred the Uniting for Peace resolution, the conflict in Korea, did not create a path for North Korea or South Korea to join the U.N.

as members. Both were admitted to U.N. membership in 1991 using the procedures established in the Charter and under long-standing General Assembly rules.¹⁸ Attempting to use the Uniting for Peace precedent to circumvent the strictures of the Charter on membership would go far beyond previous practice and clearly violate the terms of the Charter.

Reason #2: All General Assembly resolutions are nonbinding, including the Uniting for Peace resolution.

General Assembly resolutions are often portrayed as reflecting the “will of the international community,” but in terms of substance and effect, they are nonbinding and meaningless except those that apply to the General Assembly itself, the funds disbursed by the body, or those bodies beholden to the General Assembly. The Security Council is, at the very least, co-equal to the General Assembly and is not subject to its resolutions when they intrude on its Charter-designated authority. In fact, the Security Council is generally regarded as the most powerful body in the U.N. because all U.N. member states and the General Assembly are subject to its resolutions if adopted under Chapter VII of the U.N. Charter.

General Assembly resolutions adopted during emergency special sessions are fundamentally no different than other General Assembly resolutions. The emergency special sessions are merely the construct through which the General Assembly claims authority to involve itself in issues of international peace and security that would normally be the province of the Security Council. In fact, the language of the United for Peace resolution clearly limits itself to the traditional authority of the General Assembly in stating that the body had the authority to make “appropriate recommendations to Members” on issues of international peace and security. In no manner does the Uniting for Peace resolution argue that the General Assembly has the authority to direct,

16. U.N. General Assembly, “Uniting for Peace,” Resolution 377 (V), November 3, 1950, at <http://www.un.org/Depts/dhl/landmark/pdf/ares377e.pdf> (June 27, 2011).

17. U.N. General Assembly, “Illegal Israeli Actions in Occupied East Jerusalem and the Rest of the Occupied Palestinian Territory,” 10th Emergency Special Session, at <http://www.un.org/en/ga/sessions/emergency10th.shtml> (June 27, 2011).

18. See U.N. General Assembly, “Admission of the Democratic People’s Republic of Korea and the Republic of Korea to Membership in the United Nations,” A/RES/46/1, September 17, 1991, at <http://www.un.org/documents/ga/res/46/a46r001.htm> (June 30, 2011).

instruct, or otherwise require or compel member states to act. It did not do so for the very good reason that the member states are not treaty bound to observe or obey General Assembly decisions. Although the Uniting for Peace resolution arguably stretched the General Assembly's role beyond the letter of the Charter by considering a matter upon which the Security Council was seized,¹⁹ it at least held consistent with the powers otherwise granted to the General Assembly under the Charter.

Under no circumstances could a General Assembly resolution compel U.N. member states to recognize the state of Palestine. On the contrary, member states may completely ignore or disregard any General Assembly vote on recognition of Palestinian statehood as they often do other resolutions. For proof, one need look no further than the 22 U.N. member states that do not recognize Israel as a state, including founding U.N. members Saudi Arabia, Cuba, Iran, Iraq, and Lebanon, despite the fact that Israel was established through U.N. actions supported by the Security Council and the General Assembly and was admitted as a member of the organization in 1949 by the General Assembly upon recommendation of the Security Council.²⁰

Reason #3: U.N. recognition of Palestinian statehood would not improve the prospects of peace and security.

The justification for establishing an emergency special session of the General Assembly is to take up an issue of international peace and security because the Security Council has lapsed in its responsibility, due to opposition of a permanent member. However, there is little reason to believe that U.N. membership or recognition of a Palestinian state by the

General Assembly would help to resolve the international peace and security issues in the Israeli–Palestinian conflict.

The resolution, authored by the Palestinian Authority and preferred by its allies in the General Assembly, would inevitably be biased toward the Palestinian position. If that position becomes the baseline for Palestinian negotiations, it could irredeemably make a lasting peace, which requires acceptance and recognition by both parties, unattainable. For instance, the resolution would reportedly call for what most Israelis and the Israeli government consider to be a non-starter: “recognition of a Palestinian state based on the pre-1967 armistice lines, which would put all of Judea and Samaria and the eastern half of Jerusalem in Arab hands.”²¹ This position would ignore a number of complicating geographic, demographic, security, and political issues related to Israeli settlements, land swaps, and control of Jerusalem that have forestalled previous negotiations. Moreover, Prime Minister Netanyahu has made clear that the 1967 borders are indefensible and pose a serious security threat to Israel and, therefore, a strict recognition of those borders is unacceptable. Thus, the resolution would set conditions for peace that Israel could not and would not accept.

Moreover, should Palestine gain U.N. membership prior to a permanent peace agreement with Israel, it would also deal a major setback to Israeli–Palestinian peace prospects. Even elevating Palestine's status in the General Assembly to a non-member state observer would be harmful by granting unwarranted credence to Palestine's unilateral claims of statehood. Such a unilateral move by the Palestinian Authority would violate previous Israeli–

19. Interestingly, in 1951, the Security Council agreed in Resolution 90 to “[r]emove the item ‘Complaint of aggression upon the Republic of Korea’ from the list of matters of which the Council is seized.” This followed shortly after the adoption of the Uniting for Peace resolution and resolved the possible conflict between the Uniting for Peace resolution and the Security Council's prerogatives under the U.N. Charter. Seven of the ten emergency special sessions have actually been convened by the Security Council. The ICJ has ruled subsequently that the General Assembly may convene an emergency special session on an issue upon which the Council is seized, but this has no bearing on the Charter-designated powers of the General Assembly

20. See U.N. General Assembly, “Admission of Israel to Membership in the United Nations,” A/RES/273 (III), May 11, 1949, at <http://unispal.un.org/UNISPAL.NSF/0/83E8C29DB812A4E9852560E50067A5AC> (June 30, 2011).

21. Ryan Jones, “Palestinians Officially Decide to Seek UN Recognition,” *Israel Today*, June 27, 2011, at <http://www.israeltoday.co.il/NachrichtenHeute/tabid/178/mid/22843/language/en-US/Default.aspx> (June 30, 2011).

Palestinian peace accords, amplify Israeli concerns about Palestinian abandonment of diplomatic commitments, and discourage Palestinians from making the hard compromises necessary to negotiate a genuine and lasting peace. A unilateral declaration of statehood would also undermine all internationally accepted frameworks for peace, including past U.N. peace efforts. It would violate U.N. Security Council Resolution 242 and the Road Map for Peace, which call for the creation of a Palestinian state and delineation of borders through a negotiated mutual agreement, not through unilateral declarations.

Reason #4: This is not an imminent problem, but a long-standing one ill suited to the Uniting for Peace resolution.

Proponents argue further that General Assembly involvement through the Uniting for Peace resolution is justified because these matters are so urgent or immediate that Security Council inaction could have grave consequences. While the Israeli-Palestinian conflict is clearly a threat to international peace and security, the case for urgency is glaringly weak. The U.N. and individual nations have been trying to resolve this issue since the United Nations was created. The General Assembly has maintained the 10th emergency special session on the “Illegal Israeli Actions in Occupied East Jerusalem and the Rest of the Occupied Palestinian Territory” for 14 years and has little progress to show for this attention and engagement. Using the Uniting for Peace resolution to address a long-standing, intractable problem is an inappropriate distortion of the original intent of the resolution.

In sum, the practical effect of the Uniting for Peace resolution has been to provide U.N. member states not represented on the Security Council with an opportunity to publicly express their view on an issue of international peace and security and to urge the Security Council to act more quickly or decisively to resolve it. It is not an end run around the U.N. Charter or the limitations on the authority of the General Assembly either within the U.N. or toward member states.

U.N. Membership or Recognition Does Not Convey Statehood or Legitimacy

Regardless of the U.N. vote on the resolution on Palestinian statehood or membership, the entire notion is based on a false premise. U.N. resolutions, U.N. membership, and other actions by the U.N. do not confer statehood or legitimacy upon a government. The traditional measure of statehood is based on a government’s actions and authority over the territory that it claims and the respect that the government receives from other states, usually measured in the extent of official recognition by other states. Sovereign states are members of an exclusive club, and they, not the United Nations, are the judges of the merits of aspiring candidates and indicate their determinations through their actions.

For example, Switzerland has existed since 1848 as a federation of autonomous cantons. It has enjoyed universal recognition as a sovereign state for most of its modern history, yet it did not join the U.N. until 2002. The lack of U.N. membership did not undermine Switzerland’s statehood in any way, nor did its ascendancy to U.N. membership provide any added legitimacy to its claims.

An example to the contrary is Somalia. Somalia became a member of the U.N. in 1960, but has had no meaningful legitimate government since its central government collapsed in 1991. Despite various U.N. resolutions asserting that various political constructs are the official government of Somalia and ongoing U.N. membership since the dissolution of the Somali government in 1991, virtually no one considers Somalia to be a legitimate state, and the number of active foreign embassies in Somalia can be counted on one hand. In fact, autonomous regions within Somalia are better governed and have sounder, albeit flawed, claims to statehood than the Transitional Federal Government backed by the United Nations.²²

There are numerous other examples. The Holy See and Taiwan are self-governed and fulfill the responsibilities of statehood, yet are not members of the U.N., by choice in the case of the Holy See

22. J. Peter Pham, “Somalia: Where a State Isn’t a State,” *The Fletcher Forum of World Affairs*, Vol. 35, No. 2 (Summer 2011), at http://fletcher.tufts.edu/forum/archives/pdfs/35-2pdfs/Pham_FA.pdf (June 30, 2011).

and due to opposition by China, a permanent member of the Security Council, in the case of Taiwan. Kosovo is also independent and governed as well as the average U.N. member state, but is not a member of the U.N. due to opposition from Russia. Afghanistan, the Democratic Republic of the Congo, and Haiti are U.N. member states even though they are fundamentally unable to govern their territories or fulfill many other basic requirements of a modern government. Other territories lack many of the characteristics of a sovereign nation, yet are widely recognized, such as Western Sahara (as the Sahrawi Arab Democratic Republic), which is recognized by several dozen countries, mostly in Africa and the Middle East. South Sudan is seemingly poised to be admitted as a new U.N. member, but its ability to govern is a work in progress.

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The strengths and deficiencies of these states are well known, and their U.N. membership or lack thereof has virtually no bearing on their governance capabilities or the decisions of other states to recognize them or not. To the extent that U.N. membership or votes on membership have any bearing on recognition of states, they simply reflect the decisions already made by various governments. Indeed, Saeb Erekat, former chief PLO negotiator, made this very point:

We are not going there for a unilateral declaration of the Palestinian state. We declared our state in 1988 and we have embassies in more than 130 countries and more countries are recognizing our state on the 1967 borders. The recognition of the Palestinian state is a sovereignty decision by the countries and it doesn't need to happen through the UN.²³

With this in mind, the Palestinian Authority's decision to seek recognition of statehood through the General Assembly could be interpreted as a tacit admission by the Palestinian Authority that it doubts its own legitimacy and desires affirmation by the U.N. In the end, such a vote will be mostly an empty gesture adding little or nothing of substance on the fundamental issue of whether Palestine is a legitimate state deserving of recognition and respect by other nations.

It could, however, have implications on how Palestine is treated within the General Assembly and, thereby, have political ramifications for Israel and the United States. The General Assembly could decide to elevate Palestine's status in the General Assembly to a non-member state observer, equivalent to the Holy See. Because it is not included in the Charter, the rules guiding the "observer status" are entirely up to the General Assembly, and the U.S. cannot block it with its veto in the Security Council.

This tactic would echo the effort in the late 1980s, which saw the PLO seek membership in U.N. organizations, such as the World Health Organization, to bolster its claims of statehood under the belief that "since U.N. agency charters allow only states as members, the admission of 'Palestine' would prove that it, too, was a state."²⁴ The U.S. blocked this effort by making a credible threat to withhold contributions to any U.N. organization that made "any changes in the PLO's status as an observer organization," such as admitting the PLO as a member state or elevating its status to a non-member state observer. Much like the earlier effort, granting Palestine non-member state observer status would give unwarranted rhetorical support to the Palestinian Authority's goal of unilateral declaration of statehood, which would undermine ongoing peace efforts and should be opposed by the U.S.

The U.S. also has an interest in maintaining standards and expectations of statehood, and the Palestinian vote would undermine this inter-

23. Xinhua, "Palestinians Seek UN Membership, Not Recognition of Statehood: Official," *People's Daily* (China), May 25, 2011, at <http://english.peopledaily.com.cn/90001/90777/90854/7390926.html> (June 27, 2011).

24. John Bolton, "How to Block the Palestine Statehood Ploy: Congress Can Take a Cue from Jim Baker in 1989 and Threaten to Cut U.S. Money for the U.N.," *The Wall Street Journal*, June 3, 2011, at <http://online.wsj.com/article/SB10001424052702303657404576357721571060778.html> (June 27, 2011).

est. Historically, a state's judgment on recognizing another state was based on the prospective government fulfilling the basic responsibilities of government, including exercising internal and external sovereignty over a defined territory and providing basic services, protection, and the rule of law to its populace without being subject to or depending on another state or power to fulfill those responsibilities. In other words, the privileges of state recog-

The U.S. has an interest in maintaining standards and expectations of statehood, and the Palestinian vote would undermine this interest.

nition must be accompanied by evidence that the state can fulfill these responsibilities.²⁵ This standard has been degraded in recent decades, as evidenced in the number of U.N. member states that fall short, to the detriment of other governments that are often expected and sometimes forced by circumstance to assume vacated responsibilities and the governed themselves who are left bereft of a government capable of protecting them or responding to their needs.

Palestine lacks nearly all of the characteristics of a modern, functioning state. It is a ward of the international community, nearly entirely dependent on it for revenue, services, and sustenance. The Palestinian Authority is either unable or unwilling to police and govern its territory, which terrorists and other extremists use to incite and commit violent acts against Israeli civilians. The Palestinian authorities have historically refused to abide by the U.N. goal dating back to the late 1940s of a Palestinian state peacefully coexisting with the Jewish state of Israel.

Because Palestine does not meet these standards and expectations and, in some instances, willfully rejects the responsibilities of statehood, other states should reject as illegitimate its efforts to be given equal status.

The Proper U.S. Response

Palestine's effort to seek U.N. membership and recognition through the U.N. is without foundation. A U.N. General Assembly vote on a resolution involving recognition of the state of Palestine is legally nonbinding. Furthermore, it cannot be admitted as a U.N. member state without a Security Council recommendation.

Diplomatically and rhetorically, however, Palestine will portray the vote as support for its unilateral declaration of statehood, attempt to use it to impose unacceptable conditions on Israel by circumventing bilateral negotiations, and refer to it as evidence in its ongoing assault on the legitimacy of a U.N. member state. This is a serious misuse of the U.N. By treating this effort seriously, the U.N. would further undermine the degraded standards of statehood, beyond the damage it has already done by accepting failed states among its membership. Such an action would reflect badly on those member states willing to misuse the U.N. in this fashion and, more broadly, damage the credibility of the U.N. in a manner reminiscent of the "Zionism is racism" in the 1970s. Finally, this would further discredit the U.N. in the eyes of many Americans.

To minimize the negative effects of the resolution and to obviate the political concerns, the U.S. should:

- **Argue and provide evidence that the General Assembly cannot vote to admit a member without a Security Council recommendation.**

25. As George Mason law professor Jeremy Rabkin has noted, "the claim to sovereignty involves responsibilities as well as rights. The political thinkers who first emphasized the concept of sovereignty, such as Jean Bodin in the 16th Century and Hugo Grotius in the early 17th Century, also embraced doctrines of natural law, constraining what sovereigns could rightfully do.... Certainly, that is how early American statesmen saw the matter. At the time of the American Founding, the leading text on international law was *The Law of Nations*, by the Swiss diplomat Emmerich de Vattel, which had first appeared in 1758. Thomas Jefferson, when serving as George Washington's Secretary of State, regularly cited Vattel's authority, as his successors in that office (including James Madison) would do throughout the 19th century." Jeremy Rabkin, "Did the Raid Against Bin Laden Violate Our Own Principles?" *The Foundry*, June 16, 2011, at <http://blog.heritage.org/2011/06/16/guest-blog-did-the-raid-against-bin-laden-violate-our-own-principles/> (June 27, 2011). Vattel identifies the characteristics of a sovereign state and the expectations of states in relations with other states in Book I and Book II of Emmerich de Vattel, *The Law of Nations or the Principles of Natural Law*, trans. Joseph Chitty (1758; Philadelphia: T. & J. W. Johnson, 1853), at <http://www.lonang.com/exlibris/vattel/> (June 27, 2011).

A vote by the General Assembly, even operating under an emergency special session established under the Uniting for Peace resolution, is not sufficient to override the procedures laid out in the Charter for admitting new members. This position is supported by the treaty text, affirmed by an advisory opinion of the International Court of Justice, and bolstered by more than 65 years of practice and precedent.

- **Veto any recommendation, positive or negative, on admitting Palestine as a member state of the U.N.** The President has strongly implied that the U.S. would veto a recommendation on Palestinian statehood and that does seem to be the U.S. position. However, President Obama should remove any doubt by clearly stating that the U.S. will veto any recommendation for Palestinian membership in the U.N. before a permanent peace agreement, including Palestine's official recognition of Israel's right to exist, is negotiated. Moreover, the U.S. should clearly state that it will also veto any negative recommendation on Palestinian statehood lest the General Assembly disingenuously cite it as a "recommendation" sufficient to justify a vote on membership.
- **Declare that the U.S. will not recognize Palestine, regardless of the vote in the General Assembly, until the Palestinian Authority upholds its end of peace negotiations with Israel.** For the U.S. to recognize Palestine, the Palestinian Authority must begin to act as a government should act, including exercising a government's legitimate domestic and international responsibilities to protect and provide basic services to its people as opposed to relying on the international community. It must renounce its governing partnership with Hamas, act decisively to end acts of terrorism originating in Palestinian territory and punish those responsible, and agree to a permanent peace agreement, including official recognition of Israel's right to exist.
- **Announce that the U.S. will withhold voluntary or assessed funds to any U.N. organiza-**

tion that admits Palestine as a state or grants it non-member state observer status. In the late 1980s, the Palestinians sought to gain membership in U.N. organizations, such as the World Health Organization, to bolster their claims of statehood. The U.S. blocked this effort by making a credible threat to withhold contributions to any U.N. organization that admitted Palestine as a member state. The U.S. should issue a similar statement before the U.N. General Assembly vote this September stating clearly that the U.S. will withhold contributions to any U.N. organization that admits Palestine as a member state or grants it non-member state observer status.

Conclusion

The Palestinian effort to gain U.N. membership and recognition through a General Assembly vote is based on false assumptions. The General Assembly has no authority to override the U.N. Charter, which specifically requires a Security Council recommendation before admitting a new member state. The Uniting for Peace precedent has no bearing on this matter and is similarly unable to override the U.N. Charter. Moreover, the U.N. role in state recognition is nonexistent beyond being a reflection of the sovereign decisions of the member states. If the Palestinians push forward with their unilateral statehood scheme, they will escalate tensions with Israel and the United States, while hurting the prospects for negotiating a comprehensive peace agreement, the only realistic path to Palestinian statehood.

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