

# ISSUE BRIEF

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## Palestinian Intent to Accede to 15 Treaties and U.S. Response

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President Mahmoud Abbas announced on April 1 that the Palestinian Authority (PA) will seek to join 15 international conventions and treaties. This is a new facet of the existing Palestinian policy of seeking international recognition by other governments and membership in international organizations to bolster claims of statehood absent a negotiated peace treaty with Israel.

Now that the April 23 Hamas–Fatah reconciliation agreement has provoked Israel to suspend negotiations with the Palestinians, Washington should reiterate to Palestinian leaders that they cannot gain statehood by doing an end run around Israel. Such a unilateral strategy would kill any chances for a genuine Israeli–Palestinian peace agreement. The United States has, correctly, opposed this effort and should take additional steps to dissuade the PA from further pursuing this strategy and discourage United Nations organizations from abetting it.

**Palestinian Treaty Announcement.** On April 1, PA President Abbas signed letters of accession to 15 multilateral treaties and conventions.<sup>1</sup> (See table.) The U.N. confirmed on April 2 that PA officials had presented the letters to U.N. officials and, reportedly, both the Swiss government and the U.N. Secretary-General have accepted the Palestinian applications

for accession.<sup>2</sup> The Palestinian action violates the terms agreed to last summer in which the Palestinians agreed to suspend a campaign to seek full membership in U.N. specialized agencies and to join multilateral treaties and conventions. It also contravenes U.N. Security Council Resolution 242 and the U.N.-sponsored Road Map for Peace, as well as other U.N. statements that call for a Palestinian state and delineation of borders through a negotiated agreement with Israel. The PA's treaty action, combined with the recent agreement between the PA and Hamas to form a unity government, have seriously undermined peace negotiations.

According to the Palestinian statement, “These treaties and conventions will help to protect and promote basic rights of the Palestinian people and will enable the State of Palestine to be a responsible actor on the international stage.” Neither part of that statement is accurate. In isolation, acceding to the treaties would do nothing to protect and promote basic rights. While accession could lead to a change in law, it would not compel any real change in policy or deed, as the treaties lack any enforcement aside from domestic enforcement, complaint procedures, or censure by treaty bodies when applicable. Indeed, implementing the terms of the treaties through changes in domestic law can be done without accession. The failure to do so previously is due solely to a lack of political desire by the PA.

History indicates that this is a continuation of Palestinian efforts to bolster their claims of statehood absent a negotiated peace with Israel. The Palestine Liberation Organization sought membership in the U.N. Educational, Scientific and Cultural Organization (UNESCO) and the World Health

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TABLE 1

## Palestinian Authority's Planned Accession to 15 Conventions and Treaties

UNSG=U.N. Secretary General

TREATY	U.S. A PARTY?	DEPOSITORY	TREATY BODY	FUNDING
1 The Four Geneva Conventions of 12 August 1949 and Additional Protocol I	Party to the 1949 Geneva Conventions and Additional Protocol III, signatory to Additional Protocols I and II	Switzerland	International Committee of the Red Cross (ICRC)	Voluntary contributions
2 Vienna Convention on Diplomatic Relations	Yes	UNSG	No	n/a
3 Vienna Convention on Consular Relations	Yes	UNSG	No	n/a
4 Convention on the Rights of the Child and the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict	Signatory to CRC, party of Optional Protocol	UNSG	Committee on the Rights of the Child	U.N. Regular Budget, voluntary contributions
5 Convention on the Elimination of All Forms of Discrimination Against Women	Signatory	UNSG	Committee on the Elimination of Discrimination Against Women	U.N. Regular Budget, voluntary contributions
6 Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land	Yes	Netherlands	International Committee of the Red Cross (ICRC)	Voluntary contributions
7 Convention on the Rights of Persons with Disabilities	Signatory	UNSG	Committee on the Rights of Persons with Disabilities	U.N. Regular Budget, voluntary contributions
8 Vienna Convention on the Law of Treaties	Signatory	UNSG	No	
9 International Convention on the Elimination of All Forms of Racial Discrimination	Yes	UNSG	Committee on the Elimination of Racial Discrimination	U.N. Regular Budget, voluntary contributions
10 Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment	Yes	UNSG	Committee Against Torture	U.N. Regular Budget, voluntary contributions
11 United Nations Convention Against Corruption	Yes	UNSG	Mechanism for the Review of Implementation of the United Nations Convention against Corruption	U.N. Regular Budget, voluntary contributions
12 Convention on the Prevention and Punishment of the Crime of Genocide	Yes	UNSG	No	n/a
13 International Convention on the Suppression and Punishment of the Crime of Apartheid	No	UNSG	No	n/a
14 International Covenant on Civil and Political Rights	Yes	UNSG	Human Rights Committee	U.N. Regular Budget, voluntary contributions
15 International Covenant on Economic, Social, and Cultural Rights	Signatory	UNSG	Committee on Economic, Social and Cultural Rights	U.N. Regular Budget, voluntary contributions

Source: Heritage Foundation research.

Organization in the 1980s only to be refused after the U.S. threatened to cut off funding for the organizations. The Palestinians renewed this effort in 2011 with a bid for U.N. membership, which the Obama Administration threatened to veto, but failed to garner support in the Security Council. Shortly thereafter, UNESCO granted full membership to the Palestinians. In November the following year, the U.N. General Assembly (UNGA) elevated “Palestine” to non-member observer state status.

Ambassador Susan Rice condemned the UNGA’s “provocative act”:

We will continue to oppose firmly any and all unilateral actions in international bodies or treaties that circumvent or prejudge the very outcomes that can only be negotiated, including Palestinian statehood. And, we will continue to stand up to every effort that seeks to delegitimize Israel or undermine its security.... [T]oday’s vote should not be misconstrued by any as constituting eligibility for U.N. membership. It does not. This resolution does not establish that Palestine is a state.<sup>3</sup>

The Obama Administration understands that the Palestinian effort to join U.N. organizations and treaties is intended to demonstrate through repeated votes Israel’s unpopularity, use those bodies to con-

demn and harass Israel and its polices, and avoid negotiating a peace in which the Palestinians would have to recognize Israel’s right to exist as a Jewish state.

**Key Questions.** Aside from undermining the prospects for peace, the Palestinian announcement raises several policy questions.

**Would Prohibitions on U.S. Funding Be Triggered?** Current U.S. law contains two restrictions that prohibit U.S. funding of any U.N. organization that “accords the Palestine Liberation Organization the same standing as member states” or “grants full membership as a state to any organization or group that does not have the internationally recognized attributes of statehood.”<sup>4</sup> These prohibitions have no waiver provision and the U.S. suspended all funding to UNESCO in 2011.<sup>5</sup>

It is indisputable that Palestinian accession to the various treaties grants them standing identical to that provided to U.N. member states that are also treaty parties. Funding prohibitions would not affect U.S. contributions to the International Committee of the Red Cross, which is not a U.N. entity, or treaties without associated bodies. However, eight of the treaties have bodies that are funded through the U.N. regular budget. Funding prohibitions should apply in these instances. Based on the 2012–2013 U.N. regular biennial budget, this could result in annual withholding of as much as \$6 million in assessed contributions.<sup>6</sup>

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1. Palestinian News and Information Agency, “Ministry of Foreign Affairs Files Applications to Join International Treaties,” April 2, 2014, <http://www.wafa.ps/english/index.php?action=detail&id=24782> (accessed April 29, 2014).
  2. U.N. News Center, “UN Confirms Receipt of Palestinian Applications to Join Global Conventions, Treaties,” April 2, 2014, [http://www.un.org/apps/news/story.asp?NewsID=47490#.UOLIsF\\_D\\_cs](http://www.un.org/apps/news/story.asp?NewsID=47490#.UOLIsF_D_cs) (accessed April 29, 2014), and Associated Press, “Swiss, UN Accept Palestinian Requests to Join International Treaties,” April 11, 2014, <http://www.ynetnews.com/articles/0,7340,L-4509339,00.html> (accessed April 29, 2014).
  3. U.S. Mission to the United Nations, “Explanation of Vote by Ambassador Susan E. Rice, U.S. Permanent Representative to the United Nations, Following UN General Assembly Vote on Palestinian Observer State Status Resolution,” November 29, 2012, <http://usun.state.gov/briefing/statements/201226.htm> (accessed April 29, 2014).
  4. U.S. Code Title 22, Section 287e.
  5. See Brett D. Schaefer, “The U.S. Should Withdraw from UNESCO,” Heritage Foundation *Issue Brief* No. 3760, October 19, 2012, <http://www.heritage.org/research/reports/2012/10/the-us-should-withdraw-from-unesco>.
  6. This is the annualized estimate of U.S. assessments (22 percent) for the resources provided to the eight treaty bodies funded through the U.N. regular biennial budget for 2012–2013 (Committee on the Rights of the Child, Committee on the Elimination of Discrimination Against Women, Committee on the Rights of Persons with Disabilities, Committee on the Elimination of Racial Discrimination, Committee Against Torture, Mechanism for the Review of Implementation of the United Nations Convention Against Corruption, Human Rights Committee, and the Committee on Economic, Social, and Cultural Rights), specifically the resource requirements of policymaking organs, executive management and direction, and support. This is an upper estimate as some of these resources, especially those for executive management and direction, apply to treaty bodies not targeted by the Palestinians or support expenses and staff compensation with responsibilities beyond supporting these treaties and bodies. Additional reductions could apply if the U.S. provides voluntary contributions in support of the treaty bodies. U.N. General Assembly, “Proposed Program Budget for the Biennium 2014–2015: Part VI Human Rights and Humanitarian Affairs,” pp. 24–25, 31, and 50, and U.N. General Assembly, “Proposed Program Budget for the Biennium 2014–2015: Part IV International Cooperation for Development,” pp. 22, 27, and 47, <http://www.un.org/en/ga/fifth/68/ppb1415sg.shtml> (accessed April 29, 2014).
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**Is Palestine a State?** Although “Palestine” is recognized by well over 100 governments and was granted non-member-state observer status by the UNGA, there are fundamental questions about whether it is a state. The traditional measures of statehood are concisely stated in Article I of the 1933 Montevideo Convention on the Rights and Duties of States: “The state as a person of international law should possess the following qualifications: a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with the other states.”

Palestine certainly falls short on the defined-territory criterion, which is at the heart of the decades-long dispute with Israel. Moreover, it is a ward of the international community, nearly entirely dependent on it for revenue, services, and sustenance. The government is of questionable legitimacy—Abbas remains in office despite the fact that his term has expired and the Palestinian Legislative Council has not met since 2007. Finally, the PA is either unable or unwilling to police and govern its territory—terrorists and other extremists routinely commit violent acts against Israeli civilians from Palestinian territory.

**Can the Palestinians Accede to These Treaties?** Most if not all of the treaties targeted by the PA for accession are open only to “states.” U.N. resolutions, U.N. membership, and other actions by the U.N. do not confer statehood or legitimacy upon a government.<sup>7</sup> Ultimately, it is up to the treaty depository to determine if accession documents and procedures are valid. A depository has a number of administrative functions, but also has a responsibility for “ensuring the proper execution of all treaty actions relating to that treaty.”<sup>8</sup> Despite the fact that the Palestinians are currently in manifest violation of several of the treaties, such as the Geneva Convention prohibition on targeting civilians, and lack key

attributes of statehood, legitimacy, and sovereignty—the U.N. Secretary-General and the Swiss government have accepted the Palestinian instruments of accession. This establishes a precedent that could lead to substantial diplomatic angst if other entities whose statehood is unclear (such as Taiwan, Kosovo, or Western Sahara) seek to emulate the PA.

**What the U.S. Should Do.** The U.S. should:

- **Apply U.S. funding prohibitions to treaty bodies affiliated with and/or funded through U.N. budgets.** Eight of the treaties targeted by the Palestinians for accession have treaty bodies funded through the U.N. regular budget. The U.S. should withhold its proportional share of this funding and for any other treaty body funded through the U.N. or U.N.-affiliated organizations to which “Palestine” is permitted to ratify or accede prior to a negotiated peace with Israel.
- **Maintain the prohibition of funding U.N. organizations that grant full membership to the Palestinians.** The Administration has been seeking authority to waive this restriction and reiterated its request in its fiscal year 2015 budget. Waiving the restriction would encourage the Palestinians to seek membership in other U.N. specialized agencies and remove the most significant incentive for those organizations not to grant membership to the Palestinians.
- **Challenge the treaty depositories on the validity of Palestinian instruments of accession.** The status of Palestinian statehood and the authority of Abbas to sign such instruments are highly dubious. The U.S. should oppose any decision by a treaty depository (such as the U.N. Secretary-General) to treat Palestine as a state prior to a negotiated peace with Israel.

7. 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, which became a member of the U.N. in 1960 but has had no meaningful legitimate government since its central government collapsed in 1991. Alternatively, 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 and due to opposition by China in the case of Taiwan. Kosovo is also independent and is governed as well as the average U.N. member state but is not a member of the U.N. due to opposition from Russia. Other territories lack many of the characteristics of a sovereign nation yet are widely recognized, such as Western Sahara, which is recognized by several dozen countries, mostly in Africa and the Middle East.

8. United Nations, *Treaty Handbook* (New York: United Nations, 2012), p. 3, <https://treaties.un.org/doc/source/publications/THB/English.pdf> (accessed April 29, 2014).

- **Link Palestinian efforts to join treaties and U.N. organizations to bilateral economic aid and funding for UNRWA.** The U.S. should immediately cut its economic assistance to the PA by half. If the PA proceeds further down this road, the U.S. should adopt additional cuts, including cutting all funding for the U.N. Relief and Works Agency for Palestine Refugees in the Near East (UNRWA).
- **End U.S. aid to the Palestinian government if Hamas joins it without renouncing terrorism.** Current law requires that the U.S. cut off aid unless all factions of the Palestinian government renounce terrorism, recognize Israel, and comply with all previous Israeli–Palestinian agreements. If Hamas and Fatah implement their “agreement in principle” to form a government of national unity, but fail to abide by these requirements, the U.S. should immediately suspend U.S. assistance.

**Stop the PA Now.** The PA made clear that it will not stop at 15 multilateral treaties and conventions.<sup>9</sup> This unilateral effort to bolster claims of statehood absent a negotiated peace with Israel contravenes all internationally accepted frameworks for peace and must elicit a strong response.

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9. Al-Arabiya, “Palestinians Plan to Join 60 U.N. Bodies, Treaties,” April 28, 2014, <http://english.alarabiya.net/en/News/middle-east/2014/04/28/Palestinians-plan-to-join-60-U-N-bodies-treaties-.html> (accessed April 29, 2014).