



Note: This letter was personally addressed and overnighted to each Ambassador of every UN Member State.

Your Excellency:

By way of introduction, the European Centre for Law & Justice (“ECLJ”) is an international not-for-profit law firm located in Strasbourg, France, dedicated to protecting human rights and religious freedom in Europe. The ECLJ is also committed to the rule of law in international affairs. In that light, the ECLJ holds Special Consultative Status as an NGO before the United Nations¹.

As you know, officials from the Palestinian Authority (PA) have indicated that they are coming to the United Nations in September to seek UN recognition of an Arab Palestinian State in the West Bank and the Gaza Strip, bounded by the 1949 armistice lines drawn between the then-nascent State of Israel and its Arab neighbors. As such, it behooves each Member State to review how the current situation developed over time to determine where the equities lie in this matter and whether the PA is acting properly on the world stage.

A short historical review will help explain the situation. One must recall that, following the defeat of the Ottoman Empire in the First World War, some of the Arab territories previously ruled by the Ottoman Turks were placed under the tutelage of states called Mandatories. Syria and The Lebanon were placed under the tutelage of France, and Palestine and Mesopotamia (Iraq) under the tutelage of Great Britain².

Palestine was a special case from the beginning. In 1917, British Foreign Secretary Arthur Balfour sent a letter to Baron Rothschild containing a declaration of the British government’s intention to facilitate the establishment of a national home in Palestine for the Jewish people. The Balfour Declaration (Declaration) was made a component part of the Mandate for Palestine³ adopted by the League of Nations, thereby enshrining its principles in international law⁴. As such, the right of Jews to create a homeland in Palestine was a principle adopted pursuant to, and established by, international law. Furthermore, the right to create a Jewish homeland in Palestine enjoyed international sanction in the post-World War I period, and it continues to do so today.

The Mandate of Palestine originally conferred upon Great Britain consisted of the following territories: the present-day State of Israel, the Gaza Strip, the West Bank, a slice

¹Consultative Status for the European Centre for Law and Justice, United Nations Department of Economic and Social Affairs, <http://esango.un.org/civilsociety/consultativeStatusSummary.do?profileCode=3010> (last visited July 25, 2011).

²S.D. Myres, Jr., *Constitutional Aspects of the Mandate for Palestine*, ANNALS AM. ACAD. POL. & SOC. SCI., 1932, at 1.

³*The Palestine Mandate*, Yale Law School: The Avalon Project, http://avalon.law.yale.edu/20th_century/palmanda.asp (last visited Jul. 29, 2011).

⁴*Id.*; see also, e.g., Convention Between the United Kingdom and the United States of America Respecting the Rights of the Governments of the Two Countries and Their Respective Nationals in Palestine, U.K.-U.S., Dec. 3, 1924, available at <http://www.fco.gov.uk/resources/en/pdf/treaties/TS1/1925/54>.

of the Golan Heights, and the present-day Hashemite Kingdom of Jordan⁵. Soon after it assumed its role as Mandatory, Great Britain ceded a portion of the Golan Heights to the French Mandate of Syria, and, more importantly, it severed the Palestinian territories east of the Jordan River from the territories between the Jordan River and the Mediterranean Sea⁶. Britain designated the eastern portion of the Palestine Mandate (which comprised approximately 78% of the entire Palestinian Mandate) “Transjordan”. The remaining 22% of the Mandate in the west retained the name “Palestine”. Britain’s severing of Transjordan from the rest of Palestine led to two important results: first, Britain disallowed all Jewish settlement in Transjordan (thereby limiting Jewish settlement to the remaining 22% of the territory), and second, Transjordan ultimately became an independent Arab state carved out of territory from the Mandate of Palestine. Hence, when PA officials complain about there being no Arab state in Palestine, they simply disregard the existing Hashemite Kingdom of Jordan, which is an Arab state existing on 78% of the territory taken from the Mandate of Palestine.

Once the Mandate was split and Transjordan severed from the territory in which the Jewish homeland could be established, the Arabs remaining in the western portion of the Mandate (which retained the name Palestine) had multiple opportunities to establish an Arab state in the 22% of the Mandate still open to Jewish settlement. In each instance, the Arabs rejected the opportunity to do so because they wanted it all. In 1938, for example, the Peel Commission proposed a partition plan that would have given the Jews of Palestine approximately 40% of the smaller, western portion of the original Mandate⁷ (that computes to about 9% of the total territory—40% of the 22% of the total Mandate territory = 8.8%). Had the Arabs accepted that plan, Arabs would have been in control of over 90% of the entire territory of the Palestinian Mandate (i.e., 60% of the 22% of the total Mandate territory = 13.2% PLUS the 78% called Transjordan = 91.2%). During that same timeframe, two other partition plans were proposed and rejected by the Arabs⁸.

In 1947, after the end of the Second World War, Great Britain notified the UN (the successor organisation to the League of Nations) that it was going to remove its forces from Palestine in 1948⁹. UN officials created the UN Special Committee on Palestine (UNSCOP) to determine what should be done to resolve the Palestine question¹⁰. Ultimately, UNSCOP proposed partitioning Palestine into three parts: an Arab state, a Jewish state, and a portion under international control¹¹. Even though the plan did not meet many of their desires, Jewish Palestinians accepted the plan. Arab Palestinians rejected it. The UN General Assembly adopted the plan on November 29, 1947¹² and, as such, Jewish Palestinians moved forward with plans to create the new State of Israel. Arab

⁵Martin Gilbert, *The Routledge Atlas of the Arab-Israeli Conflict* 8 (9th ed. 2008).

⁶*The British Mandate for Palestine*, <http://www.icsresources.org/content/factsheets/BritishMandateForPalestine.pdf>.

⁷*The Peel Commission Report, The Question of Palestine*, <http://domino.un.org/unispal.nsf/0/08e38a718201458b052565700072b358?OpenDocument> (last visited Jul. 29, 2011).

⁸See *The Woodhead Commission & The 1939 White Paper*, Yale Law School: The Avalon Project, http://avalon.law.yale.edu/20th_century/angap04.asp (last visited Jul. 7, 2011).

⁹*Last British Troops Will Leave Palestine at End of Month; U.N. is Notified*, JEWISH TELEGRAPHIC AGENCY, June 25, 1948.

¹⁰See *Final Meeting of the Special Committee on Palestine*, UN Dept. of Pub. Info. and Publ’ns Bureau, <http://unispal.un.org/UNISPAL.NSF/0/12E4593CCD1EDDF185256A76006E1BD8> (last visited Jul. 29, 2011).

¹¹G.A. Report, U.N. Special Comm. on Palestine, 2d Sess., Supp. No. 11, U.N. Doc. A/364 (Sept. 3, 1947).

¹²G.A. Res. 181 (II) A, U.N. Doc. A/516 (Nov. 29, 1947).

Palestinians, instead of planning to establish an Arab Palestinian state in accordance with the UNSCOP plan, plotted with neighboring Arab countries to destroy the newborn State of Israel. On May 14, 1948, the State of Israel declared its independence¹³. The very next day, the newly declared State of Israel was attacked by six Arab armies¹⁴. Fighting continued into 1949, when a series of armistice agreements was signed between Israel and its Arab enemies.

It is important to note that the 1949 armistice lines (commonly referred to as the pre-'67 lines) have never been regarded as international boundaries. In fact, it was at *Arab* insistence that the 1949 lines be designated as mere armistice lines, not international boundaries, because Arab States did not want to confer any form of international legitimacy on the newly proclaimed Jewish State of Israel. This is significant, because the PA is now trying to have the UN recognise as international boundaries the very armistice lines that the Palestinians and their Arab allies intentionally refused to recognise as such when they were established. At a minimum, the Palestinians and their allies should not now be able to benefit at Israel's expense from their prior insistence that those lines could not constitute international boundaries.

Further, from 1949 until 1967, the portions of Palestine not under the control of the State of Israel remained under belligerent occupation by Egyptian and Jordanian armed forces. As such, land for an Arab Palestinian state in the smaller (i.e., 22%) portion of the original Palestinian Mandate was available to create such a state as early as 1949. Yet, no Arab Palestinian state was ever created in these territories. Also, it was not the Israelis who denied Arab Palestinians the right to create a state on that territory following cessation of hostilities in 1949. It was neighboring Arab States that kept an Arab Palestinian state from being formed. Even once the PLO was created in 1964, its focus was not on creating a Palestinian state in the Arab-controlled territories of the West Bank and the Gaza Strip. Rather, the PLO's focus was on driving the Jews out of Israel¹⁵.

Moreover, when Israel captured the West Bank and the Gaza Strip during the 1967 Arab-Israeli war, there had never been one day since the end of the First World War where any Arab *Palestinian* entity had exercised sovereign authority over a single square centimeter of any territory in the western portion of the original Mandate of Palestine. As such, there was no foreign sovereign to whom Israel was responsible for the Palestinian territory it captured in 1967 (recall, too, that Jewish inhabitants of Palestine were also "Palestinians"—there were no people called "Israelis" until the State of Israel was proclaimed). Jewish Palestinians have as much claim to territory in Palestine as Arab Palestinians. One must also keep in mind that, under the terms of the Mandate for Palestine, Jews were authorised to settle *throughout* Palestine—that includes, at a minimum, both the West Bank and the Gaza Strip. Hence, Israelis have had the right to settle in those territories, and for them to do so today is in accord with international law.

As a result of the 1967 Arab-Israeli war, Jordanian and Egyptian forces retreated from the West Bank and the Gaza Strip, respectively, and Israel acquired control of those

¹³*The Declaration of the Establishment of State of Israel*, Israel Ministry of Foreign Affairs, <http://www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/Declaration+of+Establishment+of+State+of+Israel.htm>.

¹⁴Peter M. Friedman, *The Arab-Israeli Conflict*, http://islamthreat.com/word/The_Arab-Israeli_conflict.pdf, at 1.

¹⁵See e.g. The Palestinian National Charter: Resolutions of the Palestinian National Council arts. 7-9 available at http://avalon.law.yale.edu/20th_century/plocov.asp.

territories. Following the 1967 war, the UN Security Council adopted Resolution 242¹⁶. Note first that the language in that Resolution requires that Israel withdraw “from territories”¹⁷ it captured—not from “all” territories or “the” territories it captured. We know from historical record that these were *intentional omissions from the language of the Resolution*¹⁸. Second, the Resolution requires “secure . . . boundaries”¹⁹—something that did not exist prior to 1967 as evidenced by the persistent attacks mounted against Israel from Arab-controlled territory and would not exist today if the status quo ante were reinstated. Third, the Resolution calls for the termination of all “states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the area . . .”²⁰, something else that did not exist at the time (and *still does not exist* except with Egypt and Jordan). Furthermore, following the 1973 Arab-Israeli war, the UN Security Council adopted Resolution 338²¹ which reiterates the call to implement the terms of Resolution 242. Subsequent resolutions as well as agreements made under the auspices of the international community have cited Resolution 242 as the basis for resolving the Arab-Israeli conflict.

Each of the principles set forth in Resolution 242 is predicated on negotiations between Israel and its neighbors. What the Palestinians are attempting to do by approaching the UN is to forego having to make the concessions that negotiations require to determine what a future Arab Palestinian state will look like. In so doing, they are seeking to undermine the terms of Resolution 242. A Palestinian attempt to unilaterally effect change in the status of the territory and adopt the 1949 armistice lines as internationally recognised boundaries explicitly runs counter to Resolutions 242 and 338.

Another interesting fact about Resolution 242 is that it makes no mention whatsoever of Palestinians or Palestine²². This is doubtless because the territories captured by Israel in 1967 had never been controlled by *Palestinian* Arabs. Instead, they had been controlled by Egypt (Gaza Strip (by belligerent occupation) and Sinai Desert), Jordan (West Bank (by belligerent occupation)), and Syria (Golan Heights), all non-Palestinian Arab countries.

More recently, in the 1990s, the PLO consented to negotiate with the State of Israel with the aim of resolving the disagreements between them. The various agreements between the State of Israel and the PLO / PA were negotiated and concluded under the auspices of the international community²³. Specifically, in the Interim Agreements, the PLO agreed to

¹⁶S.C. Res. 242, U.N. Doc. S/RES/242 (Nov. 22, 1967) *available at* <http://www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/UN+Security+Council+Resolution+242.htm>.

¹⁷*Id.* at 1(i).

¹⁸Lord Caradon, Permanent Representative of the United Kingdom to the United Nations from 1964-1970 and chief drafter of Resolution 242, aptly noted the following:

Much play has been made of the fact that we didn't say “the” territories or “all the” territories. *But that was deliberate.* I myself knew very well the 1967 boundaries and if we had put in the “the” or “all the” that could only have meant that we wished to see the 1967 boundaries perpetuated in the form of a permanent frontier. This I was certainly not prepared to recommend.

Yoram Meital, *Egypt's Struggle for Peace: Continuity and Change, 1967-1977* 49 (1997) (emphasis added).

¹⁹S.C. Res. 242, *supra* note 16, at 1(ii).

²⁰*Id.*

²¹S.C. Res. 338, S/RES/338 (1973) *available at* <http://www.mfa.gov.il/MFA/Peace%20Process/Guide%20to%20the%20Peace%20Process/UN%20Security%20Council%20Resolution%20338>.

²²See S.C. Res. 242, *supra* note 16.

²³The “Oslo Accords” and “Interim Agreement” (collectively, the “Interim Agreements”). Israeli Palestinian Interim Agreement on the West Bank and the Gaza Strip, 28 Sept. 1995, 36 I.L.M. 551 (1997) [hereinafter “Interim Agreement”] *available at* <http://www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+>

refrain from acts intended to change the status of the territories outside of peace talks²⁴. The Palestinians' attempt to forego such negotiations by appealing directly to the UN would constitute a material breach of prior Israeli-Palestinian agreements and subvert the international rule of law.

While it is agreed that there needs to be an Arab Palestinian state, using the UN as an avenue to achieve that result is inappropriate, as even strong supporters of Palestinian statehood recognise. By appealing to the UN, the PA not only undermines the Interim Agreements, but furthermore, goes beyond the scope of its own authority. On 10 August 2011, Prof. Guy S. Goodwin-Gill²⁵ released his legal opinion on this issue²⁶. In his opinion, Prof. Goodwin-Gill acknowledged that, “[f]ollowing the Oslo Accords of 1993, the PLO, with the subsequent endorsement of the Palestinian National Council, established the Palestinian Authority as a short-term, *administrative entity* charged with the *limited governance* of those areas of the West Bank and Gaza which were placed under Palestinian responsibility”²⁷. Under the constitutional structure of the PLO, the PA is a *subsidiary* body, only capable of exercising the authority given to it by the Palestinian National Council²⁸. By establishing itself outside of the PLO and the Palestinian National Council, the PA exceeds its own authority.

Prof. Goodwin-Gill further explains why the Palestinian attempt to gain recognition as a state through a unilateral declaration runs contrary to the internationally agreed upon criteria for attaining statehood. Article 1 of the Montevideo Convention established four prerequisites to statehood:

- (a) a permanent population;
- (b) a defined territory;
- (c) a government; and
- (d) a capacity to enter relations with other states²⁹.

In light of these prerequisites, Prof. Goodwin-Gill notes that, “[u]ntil such [] time as a final settlement is agreed, the putative State of Palestine will have no territory over which it exercises effective sovereignty, its borders will be indeterminate or disputed . . .”³⁰; that “its population, actual and potential, [is] undetermined”³¹; that “the Palestinian Authority [] has limited legislative and executive competence” and “limited territorial

Peace+Process/THE+ISRAELI-PALESTINIAN+INTERIM+AGREEMENT.htm; Oslo Accords, Declaration of Principles on Interim Self-Government, 13 Sept. 1993, 32 I.L.M. 1525 (1993) [hereinafter “Oslo Accords”] available at <http://www.jewishvirtuallibrary.org/jsource/Peace/dop.html>.

²⁴See Interim Agreement, *supra* note 23 at art. XXXI(7).

²⁵Professor Guy S. Goodwin Gill is a Barrister from Blackstone Chambers, London, and has written extensively on refugees, migration, international organizations, elections, democratization, and child soldiers. He is also a Professor of International Refugee Law, was formerly Professor of Asylum Law at the University of Amsterdam, and served as a Legal Adviser in the Office of United Nations High Commissioner for Refugees (UNHCR) from 1976-1988. .

²⁶Guy S. Goodwin-Gill, *The Palestine Liberation Organization, the Future State of Palestine, and the Question of Popular Representation* (August 30, 2011) [hereinafter “Goodwin-Gill”], <http://www.documentcloud.org/documents/238962-final-pdf-plo-statehood-opinionr-arb.html>. SEE TAB A

²⁷*Id.* at 2 (second emphasis added).

²⁸See *id.*

²⁹Convention on the Rights and Duties of States, art. 1, 26 Dec. 1933, 49 Stat. 3097 [hereinafter “Montevideo Convention”], available at http://avalon.law.yale.edu/20th_century/intam03.asp.

³⁰Goodwin-Gill, *supra* note 26 at 3.

³¹Goodwin-Gill, *supra* note 26 at 3.

jurisdiction”³²; and that “the Palestinian Authority does not in fact exercise effective government even in some of the areas assigned to it”³³. As such, any “state” of Palestine recognised by any UN organ “will fall short of meeting the internationally agreed criteria of statehood, with serious implications for Palestinians at large . . .”³⁴.

In short, it is only through direct negotiations between the parties that a just and lasting peace can be achieved. If the Palestinians continue to insist on pursuing the UN option, it will only set back the Palestinian cause by demonstrating to Israel and the world community that the Palestinian leaders are not trustworthy negotiation partners. The Palestinians’ approach to the UN in lieu of negotiations will rightly be viewed by Israel as a total repudiation of the various Israeli-Palestinian agreements.

Should the Palestinians approach the UN to seek membership, it should be remembered that *the UN does not officially recognise states or declare statehood*; such actions are the responsibility of individual governments:

The recognition of a new State or Government is an act that *only other States and Governments may grant or withhold*. It generally implies readiness to assume diplomatic relations. The United Nations is neither a State nor a Government, and therefore does not possess any authority to recognize either a State or a Government³⁵.

Under Article 4 of the UN Charter, “[m]embership in the United Nations is open to all other peace-loving *States* which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able to carry out these obligations”³⁶. Since Palestine is not currently a state, and a unilateral declaration of independence does not serve to meet the agreed upon criteria of statehood, any such approach to the UN must be rejected out of hand.

Moreover, UN consideration of the Palestinians’ attempt to bypass negotiations with Israel would make the UN complicit in breaching the solemn agreements entered into by Israel and the Palestinians. This scenario could have far-reaching, adverse, consequences for the PA, because the Interim Agreements form the legal basis for the PA’s very existence³⁷. Israel would no longer be bound by these same agreements if this breach occurs. As such, Israel would be justified in reneging on all of its commitments to the PA, which could even entail a return to the status quo ante, that is, the situation before the Interim Agreements, where Israel exercised sole control over the West Bank and the Gaza Strip. At a minimum, it could include stopping the transfer of tax revenues—upward of \$1 billion per year—as well as terminating all diplomatic and security assistance currently provided by Israel. Such actions in themselves could jeopardise the very existence of the PA, and result in increased hardship for the Palestinian people.

³²Goodwin-Gill, *supra* note 26 at 2.

³³Goodwin-Gill, *supra* note 26 at 2 n.1.

³⁴Goodwin-Gill, *supra* note 26 at 3.

³⁵About UN Membership: *How does a new State or Government obtain recognition by the United Nations?*, <http://www.un.org/en/members/about.shtml> (emphasis added).

³⁶U.N. Charter art. 4, para. 1 (emphasis added) *available at* <http://www.un.org/en/documents/charter/chapter2.shtml>.

³⁷*See* Interim Agreement, *supra* note 23 at art. I.

Finally, the PA's recent attempts to reconcile with Hamas³⁸, the internationally-declared terrorist organisation³⁹ that refuses to even recognise the right of UN Member State Israel to exist⁴⁰, reflect poorly on Palestinian leaders and their commitment to the principles upon which the UN was founded. This is especially true since the PA has not demanded that Hamas modify its Charter which includes, among numerous objectionable and racist provisions, a call for the outright destruction of Israel. This strongly suggests that the PA is not serious about resolving its disagreements with Israel. The PA must not be rewarded for disregarding principles underlying the UN Charter and allying itself with the unrelenting terrorist organisation, Hamas.

In sum, by deciding to take their case to the UN, the Palestinians are attempting to bypass peaceful negotiations with Israel and accomplish at the UN what the PLO has been unable to accomplish through direct negotiations, largely due to its own unwillingness to make the compromises necessary to achieve peace.

In the interests of peace and justice for both Israel and the Palestinians as well as of the rule of law in the international arena, the Palestinians' attempt to renege on their international obligations and collapse the Peace Process with Israel must be rejected by the international community.

Sincerely,

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Chief Counsel

³⁸*Fatah and Hamas; Reconciliation or Escape Forward*, Intifada: Voice of Palestine, <http://www.intifada-palestine.com/2011/05/fatah-and-hamas-reconciliation-or-escape-forward/>.

³⁹*See, e.g.*, Office of the Coordinator for Counterterrorism, U.S. Dep't of State, Country Reports on Terrorism 2008 (2009), available at <http://www.state.gov/documents/organization/122599.pdf> (detailing the United States' categorisation of Hamas as a terror organisation); Council Common Position (EU) 2009/67/CFSP of 26 January 2009, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:023:0037:0042:EN:PDF> (detailing the EU's recognition of Hamas as a terrorist organisation).

⁴⁰*See Hamas Charter (1988): Article 28*, available at http://www.standwithus.com/pdfs/flyers/Hamas_covenant.pdf.