



3 December 2014

**VIA FACSIMILE (212.702.3190) &
OVERNIGHT DELIVERY SERVICE**

H.E. François Delattre
Ambassador
Permanent Representative of France
to the United Nations
245 East 47th Street, 44th Floor
New York, NY 10017

Re: Arab League Supported Resolution for UN Recognition of a Palestinian State

Your Excellency:

By way of introduction, the European Centre for Law and Justice (ECLJ) is an international, Non-Governmental Organisation (NGO), dedicated, *inter alia*, to the furtherance of the rule of law in international affairs. The ECLJ has held Special Consultative Status before the United Nations/ECOSOC since 2007¹.

It has been widely reported that the Arab League will soon “present to the UN Security Council a draft resolution that will set a timeframe for the creation of a Palestinian state”². Such a resolution would be legally problematic for several reasons.

First, adopting such a resolution would directly undermine numerous prior resolutions dealing with the Arab-Israeli crisis which call for resolving outstanding disagreements in the region via negotiations between Israel and its neighbors. For example, following the 1967 Arab-Israeli war, the UN Security Council adopted Resolution 242³ which presupposes negotiations to resolve the Arab-Israeli Conflict. Following the 1973 Arab-Israeli war, the UN Security Council adopted Resolution 338⁴. Resolution 338 essentially reiterates the call to implement the terms of Resolution 242. Subsequent

¹Consultative Status for the European Centre for Law and Justice, UN DEP'T ECON. & SOC. AFF., <http://esango.un.org/civ/society/consultativeStatusSummary.do?profileCode=3010> (last visited 25 July 2014).

²See, e.g., *Arab League to Push UN on Palestinian State*, ALJAZEERA (29 Nov. 2014), <http://www.aljazeera.com/news/middleeast/2014/11/arab-league-push-un-palestinian-state-2014112915140279594.html>.

³S.C. Res. 242, U.N. Doc. S/RES/242 (22 Nov. 1967), available at <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/240/94/IMG/NR024094.pdf?OpenElement>.

⁴S.C. Res. 338, S/RES/338 (1973), available at <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/288/65/IMG/NR028865.pdf?OpenElement>.

resolutions as well as agreements made under the auspices of the international community have repeatedly cited *Resolution 242 as the basis for resolving the Arab-Israeli conflict*⁵.

Of vital significance is the fact that each of the principles set forth in Resolution 242 is predicated on negotiations between Israel and its Arab neighbors. What the Arab League is attempting to do by approaching the UN Security Council regarding Palestinian Statehood is to undermine the terms of Resolution 242, the internationally agreed-to basis for resolving the Arab-Israeli conflict.

Second, the State of Israel, the PLO / PA, and key players in the international community⁶, have all signed on to numerous agreements which call for *direct, bilateral negotiations between the State of Israel and the PLO / PA* to resolve their differences. In the 1990s, for example, the PLO solemnly agreed to negotiate with the State of Israel to resolve outstanding differences, and such agreements were concluded under the auspices of the international community⁷. In fact, in the Interim Agreements, the PLO specifically agreed to refrain from acts intended to change the status of the territories outside of peace talks⁸: “Neither side shall initiate or take any step that will change the status of the West Bank and the Gaza Strip pending the outcome of the permanent status negotiations”⁹. Thus, a unilateral move by the Palestinians, as facilitated by the Arab League, to seek UN recognition of a Palestinian state constitutes a material breach by Palestinian authorities of prior Israeli-Palestinian agreements, indicates that Palestinian officials are not yet ready to bear the heavy responsibilities of Statehood (to wit, responsibilities which require abiding by the terms of agreements into which they freely entered), and subverts the international rule of law. The European Union actively supported direct negotiations as a means to resolving the Palestinian-Israeli conflict. As the Representative of a Member State of the European Union, we respectfully urge you to stay the course most likely to result in a just resolution of the Palestinian-Israeli Conflict and to reject any resolution seeking to circumvent direct Palestinian-Israeli negotiations.

⁵See, e.g., The Camp David Accords, Isr.-U.S., Sept. 17 1979, available at <http://2001-2009.state.gov/p/nea/rls/22578.htm> (“Taking these factors into account, the parties are determined to reach a just, comprehensive, and durable settlement of the Middle East conflict through the conclusion of peace treaties based on Security Council Resolutions 242 and 338 in all their parts.”); Peace Treaty Between Israel and Egypt, Isr.-U.S., Mar. 26, 1979, available at <http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/israel-egypt%20peace%20treaty.aspx> (“Convinced of the urgent necessity of the establishment of a just, comprehensive and lasting peace in the Middle East in accordance with Security Council Resolutions 242 and 338.”). See generally A PERFORMANCE-BASED ROADMAP I, 7, available at <http://www.un.org/News/dh/mideast/roadmap122002.pdf> (noting that past agreements and resolutions, including UNSC Resolutions 242 and 338, provide the foundation to resolve all outstanding issues).

⁶Oslo Accords, Declaration of Principles on Interim Self-Government, 13 Sept. 1993, 32 I.L.M. 1525 (1993), available at <http://www.jewishvirtuallibrary.org/jsource/Peace/dop.html> (stating that Israel, the PLO, the United States, and the Russian Federation participated in Oslo I); 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+Peace+Process/THE+ISRAELI-PALESTINIAN+INTERIM+AGREEMENT.htm> (stating that Israel, the PLO, the United States, the Russian Federation, the Arab Republic of Egypt, the Hashemite Kingdom of Jordan, the Kingdom of Norway, and the European Union participated in Oslo II).

⁷The “Oslo Accords” and “Interim Agreement” (collectively, the “Interim Agreements”). Interim Agreement; Oslo Accords, Declaration of Principles on Interim Self-Government, 13 Sept. 1993, 32 I.L.M. 1525 (1993), available at <http://www.jewishvirtuallibrary.org/jsource/Peace/dop.html>.

⁸See Interim Agreement, *supra* note 6 at art. XXXI(7).

⁹*Id.*

Third, it should be noted that *the UN (including any of its component parts) 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 Government¹⁰.

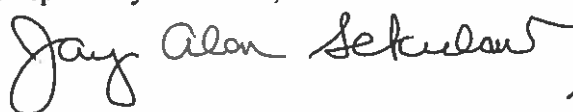
Nor does the UN Security Council possess any authority to determine the boundaries of any State or the identity of any State Capital. Therefore, the Arab League's draft resolution and any affirmative UN Security Council response would have no binding legal effect whatsoever and would, in fact, be *ultra vires*. Moreover, adopting such a resolution would make the UN complicit in the Palestinians' breach of the solemn agreements entered into by Israel and the Palestinians. This could have far-reaching consequences for the PA, because the Interim Agreements form the legal basis for the PA's very existence¹¹. Israel would no longer be bound by these same agreements if this breach occurs.

In sum, as has been called for all along, it is only through direct negotiations between the Parties that a just and lasting peace can be achieved. If the Palestinians, by way of the Arab League or other international organisation or State, continue to insist on pursuing the UN option, it will only set back the Palestinian cause by demonstrating to Israel and the world community at large that Palestinian leaders are not trustworthy negotiation partners. The Palestinians' approach to the UN in violation of their own commitment to direct, bilateral negotiations will rightly be viewed by Israel as a total repudiation of the various Israeli-Palestinian agreements.

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, this latest attempt to circumvent the agreed-to Peace Process with Israel must be rejected by the international community. The UN Security Council must reject any request to intervene in the Palestinian-Israeli situation until the Palestinians and Israelis have resolved the outstanding issues between them via direct negotiations without preconditions.

In light of the foregoing, we respectfully urge Your Excellency to vote No on any attempt to circumvent the already agreed-to process of resolving the Palestinian-Israeli Conflict. By voting No, you will encourage the Palestinians to return to the only course—direct negotiations—that will result in Palestinian Statehood.

Respectfully submitted,



Jay Alan Sekulow
Chief Counsel



Robert W. Ash
Senior Counsel

¹⁰ *Member States: About UN Membership*, U.N., <http://www.un.org/en/members/about.shtml> (last visited 2 Dec. 2014) (emphasis added).

¹¹ See Interim Agreement, *supra* note 6, at art. I.