



31 May 2024

H.E. José Manuel Albares Bueno
Minister for Foreign Affairs, European Union and Cooperation
Marqués de Salamanca Headquarters
Plaza del Marqués de Salamanca, 8
28006 Madrid
Spain

Re: Spain's Decision to Recognise a Palestinian State

Your Excellency:

By way of introduction, the European Centre for Law and Justice (ECLJ) is a non-profit, non-governmental organisation dedicated to protecting human rights around the world. We are deeply concerned by your government's decision to recognise a Palestinian state. To say that such a decision lacks any legal basis and "rewards" terrorist organisations, such as Hamas and the Palestinian Islamic Jihad (PIJ), would be to severely understate its gravity and repercussions. Spain's decision has already encouraged and empowered these terrorist groups to continue acting on their clearly stated¹ and demonstrated intent to destroy Israel and to continue their barbaric attacks on innocent Israeli men, women, children, and the elderly. The recognition by your government of a Palestinian state would also encourage the Palestinian Authority (PA) leaders to forego negotiations they have agreed to in their agreements with the Israeli leaders. The PA also lacks control over the Gaza Strip and Hamas's genocidal campaign against Israel and, thus, is not ready to govern a state.

While Spain's sentiment to support the "peace process" behind this decision is understandable given that Spain cares about human life, it will inevitably make the process worse, because, as should have been made clear to Spain on October 7, 2023, Hamas and the PA do not care about human life. It is surprising that Spain, with its moral and legal values, did not understand Hamas's clearly visible plan but has instead played into Hamas's hands. The scale and kind of brutalities Hamas and other terrorist groups from the Gaza Strip committed on October 7, including continuing to hold hostages, clearly show that their intention was to invite a largescale armed response from Israel. By actively hiding in civilian areas and conducting operations from civilian facilities, Hamas not only knew about the potential civilian casualties,

¹ See THE COVENANT OF THE ISLAMIC RESISTANCE MOVEMENT 18 Aug. 1988, art. 28, https://avalon.law.yale.edu/20th_century/hamas.asp; <https://irp.fas.org/world/para/docs/880818.htm>; https://www.investigativeproject.org/documents/case_docs/1894.pdf.

but wanted such casualties to occur. Their plan was to garner the kind of misguided support Spain has just given.

After your announcement regarding recognizing a Palestinian state, a senior member of the Hamas political bureau, Bassem Naim, stated: “These successive recognitions are the direct result of this brave resistance and the legendary steadfastness of the Palestinian people.”² Naim’s reference to “brave resistance” does not mean peacefully living side by side with the State of Israel within the West Bank and the Gaza Strip. Hamas’s “brave resistance” means the total destruction of the Jewish State. Hamas leadership continues to celebrate the “brave resistance” they displayed on October 7.³

Hamas further stated: “We consider this an important step towards affirming our right to our land.”⁴ In light of Hamas’s and PA’s own statements,⁵ Spain is doubtlessly aware that the reference to “our right to our land” does not just include the territory in which Spain announced to recognise a Palestinian state. “[O]ur right to our land” means a Palestinian state on the territory that not only includes the West Bank and the Gaza Strip, but also the State of Israel.⁶ Sadly and incomprehensibly, this is what Spain has just supported.

Regardless of the pure intentions behind your government’s decision, it will not only damage the peace process, but it will encourage more attacks like October 7, which will lead to greater civilian deaths on both sides. The world, including Spain, Norway, and Ireland, has seemingly already forgotten the brutal murders, rapes, mutilations, and horrific acts of torture Hamas committed on October 7. The world has also abandoned the Israeli hostages still under Hamas’s control. Each one of these acts constitutes a war crime, crime against humanity, and genocide. Instead, the world is focused on incidental civilian casualties—a sad result of Hamas’s unprovoked attack on Israeli civilians, not to mention that the civilians in Gaza are put in harm’s way by Hamas’s hiding in and conducting operations from civilian areas, a separate war crime.

If states like Spain were instead focused on pressuring Hamas to release the hostages, they would be on better ground to a call for a peaceful resolution of the overall Israeli-Palestinian conflict. One would expect that a sovereign state with a strong history of peaceful governance

² *War Against Hamas Will Last ‘At Least’ Until End of 2024, Says Israeli Security Chief*, THE JEWISH CHRON. (29 May 2024), <https://www.thejc.com/news/israel/war-against-hamas-will-last-at-least-until-end-of-2024-says-israeli-security-chief-qwt7y972>.

³ *Hamas Chief Celebrates Israeli ‘Isolation’ During Trip to Iran*, THE JEWISH CHRON. (26 Mar. 2024), <https://www.thejc.com/news/world/hamas-chief-celebrates-israeli-isolation-during-trip-to-iran-n52dfnkz>.

⁴ *Hamas Welcomes Palestinian Statehood Recognition From Ireland, Norway and Spain*, THE JEWISH CHRON. (22 May 2024), <https://www.thejc.com/news/israel/hamas-welcomes-palestinian-statehood-recognition-from-ireland-norway-and-spain-xxa6e6qu>.

⁵ “‘Palestine is ours from the [Jordan] river to the [Mediterranean] sea and from the south to the north,’” Khaled Mashaal, the group’s former leader, said that year in a speech in Gaza celebrating the 25th anniversary of the founding of Hamas. “There will be no concession on any inch of the land.” Laurie Kellman, *‘From The River To The Sea’: Why These 6 Words Spark Fury And Passion Over The Israel-Hamas War*, ASSOCIATED PRESS (10 Nov. 2023), <https://apnews.com/article/river-sea-israel-gaza-hamas-protests-d7abbd756f481fe50b6fa5c0b907cd49>; “‘Our position is: Palestine in its entirety, and not a grain of soil less,’ added Zahar, a former Hamas foreign minister. ‘Allah did not define the 1967 borders or the 1948 borders. We will fight them wherever we can’” Dov Lieber, *Senior Hamas Leader: Quran Tells us to Drive Jews Out of Palestine’s Entirety*, THE TIMES OF ISRAEL (16 Mar. 2017), <https://www.timesofisrael.com/senior-hamas-leader-quran-tells-us-to-drive-jews-out-of-palestines-entirety/>.

⁶ *Id.*

would be able to discern the right strategy for peaceful negotiations. It is not unfathomable that if Hamas releases the hostages, Israel would be forced to pause the hostilities, and states like Spain would be in a better position to talk about a peaceful resolution. To expect that recognizing a Palestinian state in response to brutal murders, mutilations, and rapes of civilians would bring about peace displays a lack of sound judgment.

While Spain might think that its recognition of a Palestinian state does not include supporting Hamas, the reality on the ground does not support such thinking.⁷ Until Hamas is eliminated, the terrorist organisation cannot be disassociated from the recognition of a Palestinian state. Reflecting the will of the Palestinian people, in 2006, Hamas won the Palestinian legislative elections.⁸ PA President Mehmood Abbas appointed Hamas leader, Ismail Haniyeh, as Prime Minister of Palestine.⁹ In 2007, due to its dissention with the PA, Hamas took control of the Gaza Strip.¹⁰ Since then, it has conducted thousands of attacks against Israel. October 7 showed the true face of Hamas's "brave resistance" to the world. Until Hamas is eliminated, the reality is that Hamas is the governing authority in a large portion of the territory¹¹ Spain naively recognised as a Palestinian state.

Even if Spain theoretically excludes Hamas from its idea of a Palestinian state and sees the PA as the sole legitimate government of such a state, such aspirations also ignore the facts on the ground. In light of the barbaric Hamas attacks of October 7 on innocent men, women, and children, the PA clearly cannot control a large portion of the so-called "Palestinian state" including the terrorist organisations operating there. Based on the widespread celebrations of Palestinians in Gaza, the West Bank, and elsewhere of Hamas's indiscriminate acts of murder, rape, torture, desecration of bodies, and kidnapping of innocent Israelis, it is clear that the Palestinians, including the PA, are neither willing nor able to work with Israel peacefully to resolve their outstanding issues and create a real, recognizable state. Abbas Zaki, a senior member of the Fatah Central Committee, stated that creating a Palestinian state in the 1967 borders would spell Israel's doom.¹² Furthermore, while President Abbas makes statements about peace and a two-state solution, Palestinian teachers and media are indoctrinating their children to believe that Israel does not even exist.¹³ In fact, the logo of the Palestinian Liberation Organisation (PLO) omits Israel completely from the territory of the former

⁷ *Hamas Welcomes Palestinian Statehood Recognition From Ireland, Norway and Spain*, *supra* note 4.

⁸ Simon Jeffery, *Hamas Celebrates Election Victory*, THE GUARDIAN (26 Jan. 2006), <https://www.theguardian.com/world/2006/jan/26/israel1>.

⁹ *Abbas Appoints Ismail Haniyeh as PM*, FOX NEWS (21 Feb. 2006), <https://www.foxnews.com/story/abbas-appoints-ismail-haniyeh-as-pm>.

¹⁰ Ian Black and Mark Tran, *Hamas Takes Control of Gaza*, THE GUARDIAN (15 June 2007), <https://www.theguardian.com/world/2007/jun/15/israel4>.

¹¹ John B. Quigley, *Karim Khan's Dubious Characterization of the Gaza Hostilities*, EJIL: TALK! (28 May 2024), <https://www.ejiltalk.org/karim-khans-dubious-characterization-of-the-gaza-hostilities/>.

¹² *Fatah Central Committee Member Abbas Zaki Calls Netanyahu and Obama "Scumbags" and Says: "The Greater Goal Cannot Be Accomplished in One Go"*, (interview on Al-Jazeera television broadcast 23 Sept. 2011), MEMRI TV (23 Sept. 2011) <https://www.memri.org/tv/fatah-central-committee-member-abbas-zaki-calls-netanyahu-and-obama-scumbags-and-says-greater>.

¹³ *Palestinian Authority TV Teaches Kids That Israeli Cities Are Occupied Palestine*, PALESTINIAN MEDIA WATCH (25 Aug. 2010), http://www.palwatch.org/site/modules/videos/pal/videos.aspx?fld_id=latest&doc_id=2963; *Palestinian Authority TV Kids' Program: Jaffa and Haifa Are in "State of Palestine"*, PALESTINIAN MEDIA WATCH, (16 May 2010), http://palwatch.org/main.aspx?fi=408&fld_id=408&doc_id=2252; *Palestinian Authority: Palestinian Maps Omitting Israel*, JEWISH VIRTUAL LIBRARY, <http://www.jewishvirtuallibrary.org/jsource/History/palmatoc1.html> (last visited 30 May 2024).

Palestine Mandate, signifying Palestinian refusal to recognise Israel's legitimate existence.¹⁴ This open stance against Israel by the PA, coupled with Hamas's recent unbelievable barbarism, makes it exceedingly obvious that Palestinians are currently incapable of assuming the burdens of responsible statehood, or coexisting peacefully with Israel.

Legally speaking, the 1949 *armistice lines* are often incorrectly referred to as the pre-1967 borders. They have never been regarded as international boundaries. From 1949 until 1967, the portions of territory of the Mandate for Palestine not under the control of the State of Israel remained under unlawful belligerent military occupation by Egyptian and Jordanian armed forces. For the eighteen years of the Egyptian and Jordanian unlawful occupation of the Gaza Strip and the West Bank, respectively, no Arab Palestinian state was formed. As a result of the 1967 Arab-Israeli war, Jordanian and Egyptian forces retreated from the West Bank and Gaza Strip, respectively, and Israel rightfully acquired control of those areas.

United Nations Security Council Resolution 242 adopted after 1967 required secure boundaries¹⁵—something that did not exist prior to 1967, as evidenced by the persistent attacks mounted against Israel from Arab-controlled areas, and would not exist today if the *status quo ante* were reinstated. The Resolution also called 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,”¹⁶ something that Hamas has consistently and flagrantly violated by launching indiscriminate attacks on Israeli civilian population centres.

Further, each of the principles set forth in Resolution 242 is predicated on negotiations between Israel and its neighbours. Recognition of a Palestinian state without such negotiations between the parties would encourage the Palestinians to forego any concessions negotiations require to determine what a future Arab Palestinian state would look like. Instead of supporting the terms of Resolution 242, your government's recognition of a Palestinian state undermines them, and puts both Palestinians and Israelis in danger.

It is only through direct negotiations between the parties that a just and lasting peace can be achieved. If states continue to recognise a Palestinian state without any consequences for the Palestinian leaders who committed horrific and brutal acts of murder, rape, mutilation, torture, and kidnapping, it sets back the Palestinian cause, encourages the terrorist groups to continue their genocidal attacks on Israel, and runs counter to the principles Spain has committed to under the UN Charter.

Until Palestinians negotiate in good faith, unequivocally denounce Hamas and other terrorist organisations that are bent on eliminating Jews and Israel, acknowledge Israel's right to exist, and the terrorist organisations stop targeting defenseless civilians and cease committing war crimes against both Israelis and their fellow Palestinians in Gaza, any recognition of a

¹⁴ The logo appears on the official webpage of the PLO. *Palestine Liberation Organization*, <http://www.plo.ps/en> (last visited 30 May 2024).



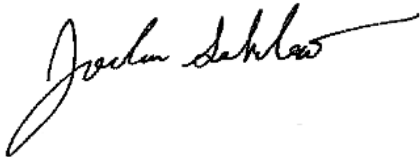
¹⁵ S.C. Res. 242, ¶ 1(ii) (22 Nov. 1967), <https://www.un.org/securitycouncil/content/resolutions-adopted-security-council-1967>.

¹⁶ *Id.*

Palestinian state will make states complicit in the serious crimes the terrorist organisations are committing.

We humbly request Spain's government to reconsider its decision and pursue a strategy that has a potential to actually bring about peace.

Respectfully submitted,



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