



What are the Palestinians seeking at the UN?

On September 23, 2011 Palestinian Authority President Mahmoud Abbas, in his capacity as chairman of the PLO, formally submitted an application for Palestine's full membership in the UN. During 2011, Abbas and Palestinian diplomats had been approaching European leaders to line up support for such a move. The PA and the Quartet had repeatedly identified September 2011 as a target date for the PA to be ready to govern.<sup>1</sup>

How does a people obtain recognition by UN members for their "state"?

The UN has no authority to *recognize* either a state or a government. Recognition is the prerogative of individual states and governments. However, the UN may *admit* a new state to its membership or accept the credentials of a new government's representatives. Under the UN Charter, membership "is open to all peace-loving States which accept the obligations contained in the [United Nations Charter] and, in the judgment of the Organization, are able to carry out these obligations."<sup>2</sup> The usual procedure is as follows:

1. The incipient state submits to the Secretary-General an application for membership and a letter formally stating that it accepts its obligations under the Charter.
2. The UN Security Council (UNSC) considers the application. Any recommendation for admission must receive the affirmative votes of 9 of the 15 members of the Council. There is legal debate as to whether the Council can recommend admission if any of its five permanent members — China, France, the Russian Federation, the UK and the US — vote against the application. (See discussion of this point below.)
3. If the Security Council recommends admission, the recommendation is presented to the UN General Assembly (UNGA) for consideration. If two-thirds of the UNGA members vote for admission of the new state, the latter's membership becomes effective the date that the resolution is adopted.

Article 4 (2) of the UN Charter stipulates that the admission of any state to UN membership is by decision of the UNGA. A negative vote by the US at the Security Council does not necessarily make it impossible for a new

member to be admitted to the UN. Some legal analysts consider that the General Assembly may admit new members even without a positive SC recommendation. As well, some consider that even if a positive UNSC recommendation *is* indeed required, a veto cannot be applied by a permanent member of the UNSC to recommendations *concerning membership*. They also consider that even if UN members deem that a positive SC recommendation is required and that a veto can be applied, the UNGA may disregard a veto cast for reasons not involving the criteria for membership specified in the Charter, and that in this situation the UNGA could consider that it has before it a positive UNSC recommendation. Or the UNGA may request an explanation from the UNSC member for the veto.

It should be noted that the US told the UNGA in 1947 that it would be willing to accept the elimination of the "unanimity" requirement with respect to such matters as applications for membership.<sup>3</sup> The US followed through on this by making a commitment in 1949—a *commitment never withdrawn*—that it would not exercise the veto to keep an applicant from membership. This is recorded in the minutes of the Ad Hoc Political Committee of the General Assembly.<sup>4</sup> The UNGA will be reluctant to allow the admission of new members to be subject to the vote of one member. Therefore, UN members may consider themselves free to ignore a negative vote by the US at the UNSC on a membership admission. *Thus, the Security Council decision is a recommendation, not a condition, for UN membership. The General Assembly is the ultimate arbiter of UN membership.*

How might Palestinians benefit from UN membership?

Palestinians would be able to request the formal protections afforded to a country under the UN and under international law. They would no longer suffer the indignity of being stateless. If Israel persists in occupying Palestinian land or blockading Gaza after an "independent Palestinian state" becomes a UN member, Israel will be violating the territorial integrity and sovereignty of a recognized UN member state. Sovereign states have the right to use reasonable force to defend their territorial integrity and citizens, and other UN members can assist them in such efforts. The UN can impose sanctions and

take other actions if one member violates another's rights.

That said, Palestinians critical of the PA's UN bid fear that, faced with US and Israeli opposition, the PA may settle for a smaller or less autonomous Palestinian state at the UN than might be achieved by grassroots struggle by Palestinians. Moreover, establishing such a state, critics say, provides no solution for the majority of Palestinians—refugees in neighbouring countries or second-class citizens within Israel. Critics also believe the PA lacks a clear strategy for dealing with the forceful Israeli backlash to this Palestinian initiative.<sup>5</sup>

What impact will such a bid have?

A Palestinian bid for UN membership or recognition may trigger any of these contradictory results:

a) Israel may argue — in fact is already arguing — that a Palestinian “unilateral” bid for UN membership violates the Oslo Accords and therefore Israel itself no longer has to fulfill its obligations under the Oslo Accords.<sup>6</sup>

b) The Palestinian bid for UN membership may lead some countries to cease formally supporting Palestinian refugees' right to return to their communities of origin, including to those within what is now Israel. However, such a shift would only formalize the diplomatic status quo: minimal pressure on Israel to accept the return of the hundreds of thousands of Palestinians (and their descendants) who lost their homes there.

c) The Palestinian bid for UN membership may become the pretext for intensified discrimination against Palestinian citizens of Israel or pressure for them to “go home” to an emerging Palestinian state, even though they and their ancestors were born in what is now Israel.

How might UN members vote?

French foreign minister Alain Juppe indicated April 12 that although France would not move alone to recognize Palestine, the EU might do so as group. France voted in favour of Palestine's bid for UNESCO membership on October 31, 2011,<sup>7</sup> and thus may be inclined to abstain from a UNSC vote on Palestinian admission, or to vote in favour. In November UK Foreign Secretary William Hague said that the UK would abstain from the UNSC vote, but British Conservatives are strongly urging the government to support the Palestinian bid. Also, British PM David Cameron reportedly warned Israeli PM Benjamin Netanyahu May 4 that Britain may endorse a declaration of independence by Palestinians at the UN if Israel declines to participate in substantive peace negotiations for a two-state solution.<sup>8</sup> If Israel refuses to halt colony expansion — and thus prevents resumption of

negotiations — the UK and other wavering UN members may decide that admission of Palestine to the UN is the best course to afford Palestinians some measure of justice and/or to promote a resumption of negotiations. The US, Canada, Germany and Israel are opposed to the Palestinian bid at the UN.<sup>9 10</sup> In late 2010 Brazil and Argentina recognized the “independent state of Palestine,” and there is a broad consensus among other Latin American countries in favour of recognition.<sup>11</sup>

On April 13, after a detailed study, the UN Office of the Special Coordinator for the Middle East Peace Process (UNSCO) concluded that the PA is largely ready to govern, as did the IMF and World Bank.<sup>12</sup> The “Palestinian divide” identified by UNSCO as a weakness has been mitigated by the May 2011 Fatah-Hamas unity accord.

If previous voting patterns on UN resolutions concerning Israel and Palestinians hold, the Palestinian bid for UN membership could well obtain the support of two-thirds (129) of the Assembly members. According to the PLO, 122 already recognize Palestine. Palestine's admission to UNESCO October 31 is also significant in this regard.<sup>13</sup>

<sup>1</sup> Haaretz. "Abbas seeks 'advice' from France on declaring Palestinian statehood," April 20, 2011.

<sup>2</sup> United Nations. "Member States. About UN Membership" (<http://www.un.org/en/members/about.shtml>)

<sup>3</sup> Plenary Meetings of the General Assembly Verbatim Record 16 September – 29 November 1947, 82nd plenary meeting, UN Doc. A/PV. 82, 17 September 1947.

<sup>4</sup> UN General Assembly Official Records, Ad Hoc Political Committee, Summary Records of Meetings 27 September – 7 December 1949, 26th meeting, 1 November 1949, UN Doc. A/AC.31/SR.26, para. 71.

<sup>5</sup> Haaretz. "Bracing for a boomerang," May 16, 2011.

<sup>6</sup> Given that Israel currently violates many key provisions of the Oslo Accords (e.g. cessation of colony/settlement construction) this would not constitute a major deterioration in the negotiations process.

<sup>7</sup> For a full list of countries voting in favour, against or abstaining from the vote on Palestine's admission to the UN, see The Guardian. "How Unesco countries voted on Palestinian membership," November 1, 2011.

<sup>8</sup> Guardian. "David Cameron to Israel: join talks or I may support independence declaration," May 4, 2011

<sup>9</sup> Guardian. "Barack Obama's speech on Middle East – full transcript," May 19, 2011

<sup>10</sup> Jerusalem Post. "Merkel: We will oppose 'unilateral' Palestinian statehood," April 7, 2011.

<sup>11</sup> CJPME. "Latin American heavyweights recognize independent Palestine," December 10, 2010.

<sup>12</sup> Office of the United Nations Special Coordinator for the Middle East Peace Process. "Palestinian State-Building: A Decisive Period," Ad Hoc Liaison Committee Meeting, Brussels, April 13, 2011. UNSCO assessed the PA's performance of its functions in the following areas: governance, rule of law and human rights; livelihoods and productive sectors; education and culture; health; social protection; and infrastructure and water.

<sup>13</sup> For a more detailed analysis of this development, see CJPME Factsheet "Palestine's membership in UNESCO," November 2011.