



Canadian Institute for Jewish Research
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ISRANET DAILY BRIEFING

Yom Chamishi 15 Kislev 5773 Volume XI, No. 2,951 Thursday November 29, 2012

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THROUGH THE LOOKING GLASS: ABBAS, IN 95TH MONTH OF 4-YEAR TERM, GOES TO UN FOR NON-STATE "STATE"

Contents:

Netanyahu: UN Can't Force Israel To Compromise On Security: Herb Keinon, *Jerusalem Post*, Nov. 29, 2012— "...there is no force in the world able to sever the thousands-year connection between the people of Israel and the Land of Israel."

UN: Palestine is Now a Non-Member State; Reality: Palestine Will Continue to be a Non-Existent State: Barry Rubin, *PJMedia*, Nov. 29, 2012—The Palestinians' leaders have long believed that an intransigent strategy coupled with some outside force—Nazi Germany, the USSR, weaning the West away from Israel—will miraculously grant them total victory. They aren't going to change course now but that route leads not forward but in circles.

Analysis: Round 2 of 'Israel, Palestine at the ICC': Yonah Jeremy Bob, *Jerusalem Post*, Nov. 15, 2012— Israel is not a party to the Rome Statute, so it could be difficult or impossible to actually conduct a case against Israel's citizens without its government's cooperation...It is far from clear that the ICC would make a final decision to indict any Israelis, in light of the fact that Israel has completed a process of investigations of its soldiers' actions in Operation Cast Lead.

"Palestine" Does Not Qualify as a "State": Rick Richman, *Commentary*, Nov. 13, 2012— Under the Montevideo Convention (1933), a state "should possess the following qualifications": (1) a defined territory; (2) a government; (3) capacity to enter into relations with the other states; and (4) a permanent population.

Two Palestinian Goals At UN: Itamar Marcus and Nan Jacques Zilberdik, *Palestinian Media Watch*, Nov. 29, 2012— First, all lands that are disputed and whose future must be negotiated according to the Oslo Accords, the PA wants declared Palestinian "occupied territory." Second, they claim that UN recognition would change the status of Palestinian terrorists in Israeli prisons to legitimate freedom fighters and prisoners of war.

On Topic Links

Misguided UN Bid: Jpost Editorial, *Jerusalem Post*, Nov. 27, 2012

Accomplices in a Campaign to Annihilate A UN Member: Shlomo Slonim, *Jerusalem Post*, Nov. 28, 2012

European Votes on PA Statehood Bid Fall Into Place: *Jerusalem Post*, Reuters, Nov. 28, 2012

Palestine's Muddled Statehood Strategy: Robert M. Danin, *Council on Foreign Relations*, Nov. 28, 2012

The UN Vote, the ICC and the Riddle of Palestinian Intentions: Haviv Rettig Gur, *Times of Israel*, Nov. 29, 2012

Who Wants a Palestinian State?: Moshe Dann, *Jerusalem Post*, Nov. 26, 2012

PM: UN CAN'T FORCE ISRAEL TO COMPROMISE ON SECURITY

Herb Keinon

[Jerusalem Post](#), Nov. 29, 2012

Prime Minister Benjamin Netanyahu: "Israel's hand is always extended in peace, but a Palestinian state will not be established without recognition of the state of Israel as the state of the Jewish people, without an end-of-conflict declaration, and without true security arrangements that will protect Israel and its citizens.

"I remember the international community's applause that the government of Israel received when it decided to unilaterally withdraw from Gaza. We got applause and then rocket fire. We left Gaza, and Iran entered, exactly like what happened in Lebanon.

"It does not matter how many will vote against us, there is no force in the world that will cause me to compromise on Israeli security and there is no force in the world able to sever the thousands-year connection between the people of Israel and the Land of Israel,"

UN: PALESTINE NOW NON-MEMBER STATE; REALITY: PALESTINE STILL A NON-EXISTENT STATE

Barry Rubin

[PJMedia](#), November 29, 2012

Twenty-four years ago, almost to the day, in 1988, I stood in a large hall in Algeria and saw Yasir Arafat declare the independence of a Palestinian state. It was forty-one years, almost to the day in 1947, when the UN offered a Palestinian state. Twelve years ago Israel and the United States officially offered a Palestinian state as part of a compromise deal in the Camp David summit of 2000....

Now the UN will probably give Palestine the status of a non-member state.... There are two ways to respond to the General Assembly's likely vote to so designate a state of Palestine. One of them is outrage at the absurdity of how the international system behaves. The other would be to dismiss the gesture as meaningless, even more than that, as something that will even further delay the day that a real, functioning state comes into existence....

In 1993, the PLO made an agreement whose very basis was that a Palestinian state would only come into existence as a result of a deal made with Israel. Instead, the Palestinian side refused to make such a compromise and broke its commitments repeatedly. The ultimate result was Yasir Arafat's refusal to accept a Palestinian state with its capital in the eastern part of Jerusalem both at the 2000 Camp David meeting and a few months later when President Bill Clinton made a better, and final, offer....

So despite Israel taking risks and making concessions, the Palestinian Authority rejected peace. Today the same group is going to be recognized by the UN as a regime governing a state. Moreover, this is a body that is relentlessly begging Hamas, a group that openly calls for genocide against both Israel and Jews, to join it....

The second issue is whether it will really matter. Yes it entails symbolism, yes it will convince the Palestinians they are getting something when the course they have followed ensures they get pretty close to nothing.... To the extent that "President" Mahmoud Abbas convinced West Bank Palestinians that they have achieved some great victory it takes off the pressure for violent action or support for Hamas there. Of course, there is no popular pressure for a negotiated solution. Indeed, I'm not aware of a single Palestinian Authority official who has even claimed for cosmetic purposes that the reason

for this move at the UN is to press Israel to compromise or a deal. Its purpose is to make Abbas's regime look good and be a step forward toward total victory, a Palestinian state unbound by commitments that could be used as a base for wiping out Israel.

But that doesn't mean it will work. The next morning, the residents of the Palestinian Authority will still be exactly where they are now.... You should also understand that in Israel there are no illusions about this whole charade. Few think that a real deal is possible with either of the current Palestinian leaderships...and the UN action will make the public even more opposed to concessions....

At any rate, the UN General Assembly's action neither contributes to peace nor is it a just decision. Nevertheless, once again we have a case of symbolism over substance. This is the same General Assembly that received Yasir Arafat as a man of peace in 1974 at the very moment he was masterminding terrorist attacks on Israeli civilians and the following year voted for a resolution that Zionism was racism. Can one really say things have gotten worse?

During the period since then, Israel has survived and prospered. Its enemies in the Middle East have undergone constant instability and economic stagnation (except for those small in population and large in oilfields). The supposed springtime of democracy has quickly turned into just another authoritarian era of repression and disastrous policies that ultimately weaken those countries and make their people poor and miserable. What else is new?

Ignoring that history and the contemporary reality, some Western countries are voting for this resolution or abstaining for a variety of reasons: cheap public relations' gain among Arabs and Muslims; a belief that this will shore up the Palestinian "moderates" against the radicals, or that it will encourage the non-existent peace process.

What it will do, however, is to sink the Palestinian leadership even deeper into an obsession with intransigence in practice and paper victories that mean nothing in the real world. And, yes, that's what the result of this UN vote will be. And of course no matter what is said publicly about unity between the Fatah-ruled Palestinian Authority and the Hamas-ruled Gaza Strip there will be no change on that front either.

In 1939, the British offered the Arab states and Palestinian leadership a deal in which they would be handed all of the Palestine mandate as an Arab state if they accepted a few simple conditions, including a ten year transition period. Despite the pleas of some Arab rulers, the Palestinians said no, believing a German victory would give them everything soon. Almost precisely 65 years ago the UN endorsed the creation of a Palestinian Arab state. The Palestinians said, no believing that the military efforts of themselves and their allies would give them everything soon.

The Palestinians' leaders have long believed that an intransigent strategy coupled with some outside force—Nazi Germany, the USSR, weaning the West away from Israel—will miraculously grant them total victory. They aren't going to change course now but that route leads not forward but in circles.

[Top of Page](#)

ROUND 2 OF 'ISRAEL, PALESTINE AT THE ICC'

Yonah Jeremy Bob

[Jerusalem Post](#), November 15, 2012

On April 3, 2012, Israel won round one of a crucial legal battle with the Palestinians, slamming the door shut on their attempt to bring Israeli soldiers and leaders before the International Criminal Court on war crimes charges. The Palestinian Authority first filed a declaration attempting to accept the

ICC's jurisdiction, after which it intended to file war crimes cases against Israeli soldiers and leaders relating to Operation Cast Lead, on January 22, 2009. Israel's win was on a technicality, though not a small one.

According to the Rome Statute governing the ICC, cases can only be filed with the court by referral from the UN Security Council or by a "state."...The technical problem the Palestinians had...is that Israel argued the Palestinians were not a "state." Therefore, Israel argued the Palestinians did not have standing or authority to file a case with the ICC. In other words, the ICC could not even start looking into the merits of individual cases.

After more than three years debating the issue, including soliciting around a dozen legal opinions from governments, academics and interested parties across the spectrum, the ICC prosecutor, Luis Moreno-Ocampo, took Israel's side and said that the PA could not file cases with him because, at the time, there was no state called "Palestine."...The Rome Statute gives jurisdiction to hear cases from states who join the ICC, even ad hoc and retroactively, as long as the cases arose after July 1, 2002, when the statute took effect.

In the media, the decision was reported as an unequivocal win for Israel, and the Palestinians were openly disappointed, having thought from the three-year process, their success in gaining membership in UNESCO and the solicitations of legal briefs on the issue, that they had a solid chance of winning...

Israel's Foreign Ministry's reaction was unexpectedly muted, merely "noting" (as opposed to at least "noting with satisfaction") Moreno-Ocampo's decision, and expressed, in diplomatic-speak, disagreement with part of it, saying Israel had "reservations regarding some of the legal pronouncements and assumptions."

Why would Israel have reservations about a decision closing the door to PA war crimes cases? It turns out that Moreno-Ocampo closed the door, but left it ajar for a "Round 2." First, in most of his decision, he focused on the UN General Assembly as the decisive organization for defining who is a "state" for the purposes of filing a case with the ICC. This is crucial, because he could have focused on the Security Council, the body that must approve any country to become a member of the UN.

The US has pledged to veto any vote in the UN Security Council declaring Palestine a member state, making that a dead end. Thus, Moreno-Ocampo's focus on the General Assembly gave the PA a future opening for an end-run on being able to file war crimes cases with the ICC by getting recognized as a non-member state, without Security Council recognition, but with General Assembly recognition.

Moreno-Ocampo even almost told the Palestinians what road to go down to beat the jurisdictional problem, remarking that Palestine's status was only as an "observer," and not a "non-member state," as if to suggest to the PA that if they had been a non-member state already, his decision might have been different.

Finally, Moreno-Ocampo said that his office could reconsider the "allegations of crimes" in Palestine in the future should competent organs of the UN give him direction that the statehood problem was resolved....In essence, Moreno-Ocampo said that if the PA gets voted as a non-member state by the UN General Assembly in two weeks, it can try again to re-file the war crimes cases.

Some commentators have said that Moreno-Ocampo's "advice" to the Palestinians was non-binding, that the only relevant part of his decision was his ruling that the PA was not a state and that without UN Security Council approval, a "political" vote alone from the UN General Assembly will leave the PA at the same dead end of still not being seen as a state by the ICC.

Besides statehood, there are still plenty of question marks and other obstacles. In June 2012, Moreno-Ocampo finished his term as the first ICC prosecutor, replaced by Fatou Bensouda of Gambia, who was elected to a nine-year term. While some felt that Moreno-Ocampo would have liked to have filed cases against Israel if his hands had not been tied, there is less known about Bensouda, and whether she would take the same stance as her predecessor in a relatively new office with little precedent for how to operate....

[I]n theory, if the Palestinians risk filing with the ICC, Israel (though currently not a party to the ICC) and others might also file against them for human rights violations. Also, as a new institution, diplomatic pressure from the US (though not a party to the Rome Statute) and from some European states could delay or stop a case from moving forward, even if the initial jurisdictional problem was cured.

Further, Israel is not a party to the Rome Statute, so it could be difficult or impossible to actually conduct a case against Israel's citizens without its government's cooperation. Finally, it is far from clear that the ICC would make a final decision to indict any Israelis, in light of the fact that Israel has completed a process of investigations – including some prosecutions – of its soldiers' actions in Operation Cast Lead.

Generally speaking, the ICC is only supposed to make a final decision to file indictments if the state of the accused citizens has done nothing to investigate the allegations. Many argue that only credible investigations are required, not convictions. Despite all of these question marks, there is no question that a vote recognizing Palestine as a non-member state would start a "Round 2" on the war crimes allegations relating to Operation Cast Lead.

[Top of Page](#)

PALESTINE" DOES NOT QUALIFY AS A "STATE

Rick Richman

[Commentary](#), November 13, 2012

Back in 2005, after Israel removed every soldier and settler from Gaza, Palestinian President Mahmoud Abbas announced that "from this day forward, there will be no security turmoil and weapons chaos and abductions, which are not characteristic of our culture." He proved a poor prognosticator regarding Palestinian culture: given the chance to live "side by side in peace and security" with Israel, the Palestinians demonstrated they could not do so even with themselves.

Abbas was expelled from Gaza in 2007; there have been no parliamentary or presidential elections since 2006; no functioning Palestinian legislature exists; Abbas is entering the 95th month of his 48-month term; he cannot set foot in half of his purported state (in the words of Israel's UN ambassador, he cannot even see it with binoculars); he has refused to negotiate with Israel for more than four years; he demands recognition of a Palestinian state while refusing to recognize a Jewish one; and he now seeks admission to the UN as a non-member state even though "Palestine" meets none of the four requirements under international law for a state.

Under the Montevideo Convention (1933), a state "should possess the following qualifications": (1) a defined territory; (2) a government; (3) capacity to enter into relations with the other states; and (4) a permanent population. "Palestine" lacks a "defined territory." A "defined territory" cannot include an area whose status and borders can only be defined, under longstanding international agreements, by negotiations....

“Palestine” lacks a “government.” It is ruled half by a terrorist group and half by an unelected administrative entity. Its last election occurred nearly seven years ago, and it has no capacity (much less inclination) to hold a new one. The government of each half considers the government of the other half illegitimate, and both are correct: one regime took power by a coup, and the other remains in power four years after its term expired....

“Palestine” lacks the “capacity to enter into relations with the other states.” Abbas has no capacity to bind the rulers of Gaza, nor even to implement his own commitments in the area in which he can at least set foot. While in office, he failed to implement his prior obligations, including Phase I of the Roadmap (which mandated the dismantling of Hamas and other terrorist groups), and he is currently an unelected official, unrecognized by half his putative state, with no capacity to bind “Palestine” to anything.

“Palestine” lacks a “permanent population.” Most of the population considers themselves not putative citizens of a new state but perennial “refugees”...who reject any suggestion they should form the permanent population of a new state. They consider themselves instead to be temporary residents (and UNRWA, the UN agency devoted to caring for them, is legally a “temporary” UN body) who seek to “return” to a different state, not to be permanent residents where they currently live.

When you refuse to negotiate a defined territory;... when you lack a government that controls your purported territory;... when you lack the capacity to enter into relations with other states;... when you have residents who reject permanent residence and assert instead a “right” to “return” to another state, you meet none of the requirements for a state.

The irony is that between 2000 and 2008, the Palestinians received three formal offers of a state, and rejected them all.... Now one group of Palestinians seeks UN recognition as a “non-member state,” when they fail to qualify as a state at all, and they ignore the fact they could already have been a member-state three times over (or more), had they simply said yes....

Once again, “Palestine” is all set to be a failed state, no more ready for statehood than it was a year ago. Article 10 of the Montevideo Convention provides that the “primary interests of states is the conservation of peace.” The Palestinian gambit at the UN is not intended to produce peace, but to provide a platform for law-fare. It will do nothing to bring the Palestinians closer to the state they could have had long ago, if a state were really what they wanted, and it will in fact put peace further away.

[Top of Page](#)

TWO PALESTINIAN GOALS AT UN
Itamar Marcus and Nan Jacques Zilberdik
[Palestinian Media Watch](#), Nov. 29, 2012

The Palestinian Authority wishes to achieve a number of political gains by having the UN vote today [Nov. 29], recognizing "Palestine" as a non-member observer state. First, all lands that are disputed and whose future must be negotiated according to the Oslo Accords, the PA wants declared Palestinian "occupied territory." Second, they claim that UN recognition would change the status of Palestinian terrorists in Israeli prisons to legitimate freedom fighters and prisoners of war.

1- Changing the status of land under Israeli administration since 1967 to "occupied territory"

PA Foreign Minister Riad Al-Maliki: "If Palestine receives status of a non-member state in the General Assembly, there will be positive effects on all levels in the future... Israel will no longer be

able to define the occupied territories as disputed lands. They will become lands of a separate, occupied state."

[*Al-Hayat Al-Jadida*, July 24, 2012]

PA Chairman Mahmoud Abbas: "During a speech at a meeting of the Arab League Ministerial Council, President Abbas said: ... 'We will hand in the application and request that it be voted on this November 29... We want to establish that the Palestinian territories that were [taken] in 1967 including Jerusalem [are occupied], since Israel has a different approach. It says that the territories occupied in 1967 are disputed territories. In other words, up for negotiations'" [*Al-Hayat Al-Jadida*, Nov. 13, 2012]

2- Changing the status of Palestinian terrorists who have targeted civilians into legitimate fighters and prisoners of war

"Minister of Prisoners, Issa Karake said that the [PA] leadership's application to the UN to wrest [from it] international recognition of a Palestinian state, which is not a member of the UN, will raise the legal status of the prisoners and will offer international protection of their rights and their honor... the prisoners will become captives of a state (i.e., Palestine), hostages and detainees in another state (i.e., Israel). The state's (Palestine's) legal status will turn them into prisoners of war who are detained illegally in the prisons inside Israel." [*Al-Hayat Al-Jadida*, Nov. 13, 2012]...

[Top of Page](#)

ON TOPIC

Misguided UN Bid: [JPost Editorial, Jerusalem Post, November 27, 2012](#)—The PLO's UN bid is misguided and wrongheaded and will do nothing but add to the long list of historic mistakes made by Palestinian leadership which date back at least to November 29, 1947 when Palestinians failed to grab their chance for nationhood and self-determination.

Accomplices in a Campaign to Annihilate A UN Member: [Shlomo Slonim, Jerusalem Post, Nov. 28, 2012](#)—Israelis are frequently asked: Why is Israel opposed to recognizing a Palestinian state? Detach yourselves from the Palestinians like the French detached themselves from Algeria and the two states will live in peace with each other as was originally envisaged under the 1947 Partition Resolution....

European Votes on PA Statehood Bid Fall Into Place: [Jerusalem Post, Reuters, Nov. 28, 2012](#)—Lines were drawn in Europe...as the Union failed to agree on a unified approach to a Palestinian bid for a diplomatic upgrade at the United Nations. Germany declared that it would not back the PA's unilateral bid, while Switzerland and Denmark joined a growing list of European countries that do support it.

Palestine's Muddled Statehood Strategy: [Robert M. Danin, Council on Foreign Relations, Nov. 28, 2012](#)—If all goes according to plan, the UN General Assembly will vote on Thursday or soon after to accord Palestine "non-member observer state status" in the United Nations.

The UN Vote, The International Criminal Court and the Riddle Of Palestinian Intentions: [Haviv Rettig Gur, Times of Israel, Nov. 29, 2012](#)— The Palestinian Authority will seek, and likely win, recognition as a nonmember observer state on Thursday from the 193-member United Nations General Assembly. The move will have little effect on the ground, changing neither Israel's security calculus nor the internal divisions of Palestinian politics.

Who Wants a Palestinian State?: [Moshe Dann, Jerusalem Post, November 26, 2012](#)—Accepting Israel means ending the Palestinian revolution, a national betrayal and an Islamic heresy. In this context, for Palestinians and their supporters, the "peace process" is a metaphor for defeat.

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