

# **Palestine: UN statehood bid 'threatens Palestinian rights'**

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BETHLEHEM (Ma'an) — The Palestinian team responsible for preparing the United Nations initiative in September has been given an independent legal opinion that warns of risks involved with its plan to join the UN.

An initiative to transfer the Palestinians' representation from the PLO to a state will terminate the legal status held by the PLO in the UN since 1975 that it is the sole legitimate representative of the Palestinian people, according to the document.

Crucially, there will no longer be an institution that can represent the inalienable rights of the entire Palestinian people in the UN and related international institutions, according to the brief.

Representation for the right to self-determination will be gravely affected, as it is a right of all Palestinians, both inside and outside the homeland, the opinion says. A change in status would severely disenfranchise the right of refugees to return to their homes and properties from which they were displaced.

The seven-page opinion, obtained by Ma'an, was submitted to the Palestinian side by Guy Goodwin-Gill, a professor of public international law at Oxford University and a member of the team that won the 2004 non-binding judgement by the International Court of Justice that the route of Israel's wall was illegal.

The Palestinian team, headed by Saeb Erekat, has been preparing an initiative to replace the PLO at the UN, substituting it with the State of Palestine as the representative of the Palestinian people.

An actual state cannot be created in September, as Israel's occupation continues, so the debate is focused on whether membership should be requested from the Security Council or if the General Assembly should be asked to grant recognition of a state as an "observer," a status that conveys less than full UN membership.

Yet, almost no considerations have been made in terms of the dramatic legal implications for Palestinian rights which this legal brief says will occur should the PLO lose its status.

The brief is to "flag the matters requiring attention" so that a substantial amount of people who have interests in, for example, the right of return, are not "accidentally disenfranchised."

First of all, the prospect of substituting the PLO with the State of Palestine raises "constitutional" problems in that they engage the Palestinian National Charter and the organization and entities which make up the PLO, according to the brief. Second is "the question of the 'capacity' of the State of Palestine effectively to take on the role and responsibilities of the PLO in the UN; and thirdly, the question of popular representation," the opinion says.

The Palestinian Authority, which was established by the PLO as a short-term, administrative entity, "has limited legislative and executive competence, limited territorial jurisdiction, and limited

personal jurisdiction over Palestinians not present in the areas for which it has been accorded responsibility,” the brief points out.

It notes that the PA “is a subsidiary body, competent only to exercise those powers conferred on it by the Palestinian National Council. By definition, it does not have the capacity to assume greater powers.”

The PA cannot “dissolve” its parent body or establish itself independently of the PNC and the PLO, the report also says. Moreover, it is the PLO and the PNC which derive their legitimacy “from the fact that they represent all sectors of the displaced Palestinian people, no matter where they presently live or have refuge.”

Particularly crucial are the potential implications for Palestinians in the Diaspora. The majority of Palestinians are refugees, and all of them are represented by the PLO through the PNC.

“They constitute more than half of the people of Palestine, and if they are ‘disenfranchised’ and lose their representation in the UN, it will not only prejudice their entitlement to equal representation ... but also their ability to vocalise their views, to participate in matters of national governance, including the formation and political identity of the State, and to exercise the right of return,” the legal briefing says.

Karma Nabulsi, a former PLO representative and now a professor at Oxford University, says she is familiar with the document. Palestinian officials have also seen the legal opinion, she says.

“Without question, no Palestinian will accept losing such core rights for such a limited diplomatic initiative in September,” she says. “First, we will not have liberated territory upon which to establish a State. But in losing the PLO as the sole legitimate representative at the UN, our people immediately lose their claims as refugees to be part of our official representation, recognized by the world.” “This is an urgent and critical issue for our whole people. We must ensure our representatives advance our rights in international forum, not weaken or endanger them. Of course now that the legal dangers have been raised so fully, I am confident the initiative will protect the status of the PLO as sole legitimate representative in the UN in order to advance the rights” of the Palestinian people.

Nabulsi says Goodwin-Gill opinion has defined and clarified the “red lines” in legal terms.

“The PLO is the representative of the people, not just a part of the people; the PLO is the architect and creator of the Palestinian Authority; that any change in who represents the people or a part of the people requires an expression of the popular will and international recognition,” she explained.

“Neither the Palestinian Authority nor the PLO can alter the role and structure of the PLO without the agreement of the entire Palestinian people. In any case, the PLO and the Palestinian people were not aware that by losing the PLO as representative at the UN, it would create such legal dangers. Now they are.”

She concluded: “Obviously, we need clarity from the PLO on this critical issue, and it is important that the Palestinian public everywhere, especially the refugees in the [Diaspora], are given concrete reassurances that representation of their core rights — on both representation and right of return — will remain untouched in September.”

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