

The September Process: The Bid for UN Recognition of a Palestinian State

Shlomo Brom and Oded Eran

On September 23, 2011, the Palestinian leadership based in Ramallah appealed to the United Nations to recognize a Palestinian state. The application was made to the Security Council, since in order for Palestine to be accepted as a UN member state, a Security Council recommendation must first be received by the General Assembly, followed by a vote in the latter forum. Even if the recommendation gains the required nine-vote majority, it appears that US opposition will lead to an American veto in the Security Council. In either case – should the recommendation fail to gain a majority in the Security Council or if it meets with an American veto – the Palestinians intend to apply directly to the General Assembly. At that point, the likely scenario is that the General Assembly will grant the Palestinians upgraded status as a non-member state, i.e., as an observer.

In the meantime, there are continuing efforts on the part of the Quartet, comprising the US, the European Union, Russia, and the UN, to renew negotiations between Israel and the Palestinians. The understanding is that renewed negotiations would enable either the halt of the UN process or its continuation, based on a mutual Palestinian-Israeli understanding as to its format. At the time of this writing, the Palestinians have expressed reservations over the formulation of the Quartet's September 23 proposal: renewed negotiations between the parties within four weeks

Brig. Gen. (ret.) Shlomo Brom is a senior research associate and director of the Program on Israeli-Palestinian Relations at INSS. Dr. Oded Eran, Director of INSS, was head of Israel's negotiations team with the Palestinians, 1999-2000.

and according to a timetable committing them to arrive at an agreement by the end of 2012. The accord would be based on President Obama's speech of May 19, 2011 and the relevant UN resolutions. Israel accepted the Quartet proposal; the Palestinians have conditioned their acceptance on an Israeli freeze on construction in the settlements and an explicit reference in the proposal that the border between the two states will be based on the 1967 lines. Therefore, chances are that the Palestinians will continue with their move at the UN.

The aim of this article is to examine the implications for Israel of a General Assembly upgrade of the status of the Palestinian Authority to a non-member state. Although the Palestinian leadership ultimately decided to apply first to the Security Council, the primary goal of this first stage is to isolate Israel and the US and not necessarily attain a Security Council resolution. In any event the next stage will be application to the General Assembly.

Palestinian Considerations

An analysis of what underlies the Palestinian decision can help clarify the potential significance of the UN move. Presumably those within the Palestinian leadership who advanced the move realize their decision lacks much practical significance. It will not change the political situation or the situation on the ground. Therefore one of the important questions is what the Palestinians expect from the move and its implications for the continued struggle with Israel.

If an accord between Israel and the Palestinians is achieved, it will be despite the resolutions of the UN General Assembly and not because of them.

To a large extent the decision to turn to the international arena reflects the Palestinians' sense that they have encountered a dead end. Direct political negotiations with Israel have reached an impasse, which in the Palestinians' view is not their fault. This is understandably a limited view, since the Fatah leadership too had little interest in continued direct negotiations with Israel given its lack of faith in the possibility of conducting effective negotiations over a permanent settlement with the current Netanyahu-led Israeli government. Added to this is Israel's rejection of a total construction freeze on settlements as well as the Palestinian leadership's disappointment with the performance of the

American mediator. Internal considerations have come into play as well. Shifting the political struggle to the UN arena seemed to be a solution, even if temporary, that was comfortable and lacked a political price. Two years ago the Palestinian Authority announced a plan devised by Prime Minister Salam Fayyad to build the infrastructure for a Palestinian state within two years. The UN discussion and resolution serves as a culmination of sorts of a project that in the view of the international community has progressed admirably, since the process has indeed produced a significant, positive change in the Palestinian Authority's performance in internal security and other areas.

Some say that a reconciliation agreement between Fatah and Hamas (at this stage on paper only) and the adoption of a UN resolution are part of Abu Mazen's political finale. This view maintains that he will announce his retirement from political life with these two achievements recorded in the history books and thereby bequeath a favorable view of his political legacy.

The appeal to the international arena, therefore, has two main objectives, with the first oriented to the outside world. With all other paths blocked, the Palestinian leadership has turned to the only arena in which it can score any significant achievements. The goal is to enhance the status of the Palestinians vis-à-vis Israel and the US through the demonstration of international support for a Palestinian state, while spearheading a process that leads to renewed negotiations – from an improved position – over a permanent arrangement. At the same time, this step serves the Palestinian leadership in the internal arena. It cannot confess to the bankruptcy of its central agenda of the past two decades, namely, the realization of Palestinian national objectives through negotiations. Such an admission would play into the hands of Hamas, which represents the competing agenda of armed resistance. The application to the UN demonstrates to the Palestinian public that the current leadership has more political cards up its sleeve and has not been left without an agenda.

The Palestinian leadership did not reach a consensus as to the wisdom of applying for UN recognition, and there are those who opposed this measure, most prominently Abu Alaa. Opponents of the move fear that following the UN vote the move's limited benefit will be exposed, and it will simultaneously demand a high price from the Palestinians. First, it is

liable to generate exaggerated expectations for change. Second, it could create a situation that is more convenient for Israel, which can argue that the majority of Palestinians are not under occupation and that the conflict with Israel is just a territorial one over borders – with many such conflicts in the world. Third, the Palestinian side is liable to alienate the US and other important Western states opposed to the move.

There is also a debate among the Palestinians as to the next steps for translating the UN vote into a strategic process that paves the way to renewed negotiations from an improved position. Beyond using the vote to broaden international recognition of a Palestinian state, other ways of increasing the pressure on Israel are under consideration. These include exploiting recognition of their status as a state in efforts to join international organizations and conventions and integrating their efforts with peaceful national protests. In this regard too there is a debate within the Palestinian camp. Some see popular protests as a most effective means of pressure, based on the experience of the so-called Arab spring, while others fear a loss of control over the protests and their easy descent into violence.

Israeli and American Responses

Israel and the US have focused on intensive diplomatic activity aimed mainly at preventing a majority for a Security Council recommendation to accept Palestine as a UN member state. Additionally, there have been political elements from both countries threatening to punish the Palestinians for their moves at the UN. In Israel, some ministers and certain right wing elements have threatened that Israel would stop transferring customs revenues that Israel collects for the Palestinians; would consider the Oslo Accords null and void; or would annex settlement blocs to Israel. The US finds itself in conflict with the Palestinian leadership, which has placed the US in a highly uncomfortable political situation, particularly if it is forced to use its veto power in the Security Council. In the US too there are threats from Congress to cut off financial aid to the Palestinians totaling half a billion dollars per year, and a bill to this effect has already been drafted. So far all these efforts succeeded in slowing down the process of recognition in the UN.

Nevertheless, to a large extent these potential measures appear to be hollow threats. The Palestinian Authority is already in difficult financial

straits, because pledges of financial assistance from various sources have either not materialized or materialized only partially. Stopping the transfer of customs revenues and of American assistance would cause a severe crisis, which could lead to the collapse of the Palestinian Authority. It is not in the interest of either of the sides to see this happen, and therefore this scenario will likely be prevented. In addition, annulling the Oslo Accords would cause Israel no less damage than it would the Palestinians since those accords regulate the daily relationship between the parties. Furthermore the annexation of settlement blocs would be a demonstrative step only. Annexation might be received well in the Israeli public but it would be generally condemned in the international arena, which would not recognize the annexation.

Legal and Political Implications

Once the dust settles following the UN deliberations and vote over Palestinian statehood, what remains is an unresolved Israeli-Palestinian conflict: that will perhaps be the primary significant outcome of the political struggle prior to and during deliberations. Knowledge and experience from decades of political and armed struggle between the parties indicate that relevant UN resolutions bear only limited importance. Progress towards a solution to the conflict, or lack thereof, is not necessarily directly connected to resolutions passed by various international institutions.

The political movements that were formed within the three territorial sectors of Palestinian society (the West Bank, Gaza, and the diaspora) did not originate from political resolutions passed at those institutions. Furthermore, the political process that took shape in the early 1990s was at best only loosely connected with those resolutions.

When direct negotiations between Israel and the Palestinians are renewed, the significance of any UN resolution will be marginal. The three core issues – borders, Jerusalem, and refugees – will continue to dominate the debate, and the formulation of any UN resolution, certainly from the standpoint of Israel, will change nothing. The fact that Palestinian negotiators will be armed with a UN resolution (purely within the bounds of a recommendation) ostensibly recognizing

The danger is not the organized outbreak of a violent third intifada, but a situation in which both sides have begun a process over which they might easily lose control.

the June 4, 1967 border and East Jerusalem as the Palestinian capital will not help them, first, because their claim to these points was already raised at the start of negotiations nearly twenty years ago; and second, because Israel refuses to accept any attempt to base an agreement on UN resolutions. If an accord between Israel and the Palestinians is achieved, it will be despite the resolutions of the UN General Assembly and not because of them.

What will the “day after” look like politically? On the surface a resolution would be of little practical significance. At the same time, a changed official status of the Palestinian entity would allow it to join international organizations and conventions, granting it explicit legal standing in which its rights and obligations in multiple areas are clarified. Furthermore, the validity of the interim agreement between the PLO and Israel may be undermined because the Palestinian state would be formally able to expand its enforcement powers over areas under its control, beyond those currently held by the Palestinian Authority.

Full membership in agencies and organizations affiliated with the UN would enable the Palestinians to realize, even indirectly, certain elements of sovereignty. For example, membership in the International Civil Aviation Organization (ICAO) would be an attempt to express Palestinian sovereignty over its airspace. Similar would be the attempt to achieve membership in the International Marine Organization (IMO),

the organization dealing with numerous aspects of marine traffic. One of the most difficult disputes in negotiations between Israel and the Palestinians revolves around the division of electromagnetic frequencies. The Palestinians will likely attempt to enter the International Telecommunication Union (ITU) as full members in order to strengthen their claims in this regard. Today any Arab country can already present Palestinian claims in any international forum, but a full time Palestinian representative in those organizations would likely feel obligated to continually raise the Palestinian

Israel will have to focus on the day after and consider whether in order to prevent potential crises, it makes sense to view the new situation as an opportunity for renewed negotiations.

agenda at different international institutions. This would be a headache for Israeli representatives at those organizations who would be forced to cope with a relentless Palestinian political campaign. Such a Palestinian

move would create friction between Israel and the Palestinian Authority and between Israel and other members of those organizations.

An example of the repercussions of joining an international convention and institution is the Palestinians' possible joining of the International Court of Justice (ICJ). Following such a move, actions taken in Judea, Samaria, and the Gaza Strip would fall into the legal jurisdiction of the ICJ, and it would be possible to file complaints against Israeli military and political figures over actions in those territories and demand personal accountability. An arrest warrant from the court would oblige member countries of the court's charter to arrest and hand over Israelis in question upon entering those countries. Similarly, an example of the implications of expanded Palestinian authority would be the arrest and trial of Israelis who enter Palestinian-controlled territory. Or, attempts might be made to broaden Palestinian authority in Areas B and C, and even in East Jerusalem.

The voting pattern of various countries and international organizations such as the EU would influence their subsequent conduct vis-à-vis Israel. For close to 120 countries, the manner of their voting is quite predictable and in effect already known. Questions remain, however, pertaining to the bloc of countries that includes most European states and other countries that vote in international organizations and on various issues similar to the European bloc, including Japan, Canada, Australia, and New Zealand. Although in the General Assembly all votes carry identical weight, how the European bloc votes is nonetheless of special importance. The EU and Israel have for decades conducted a painful dialogue, replete with historical residue and mutual suspicion, but it comes amid the understanding that mutual interests dictate their political and economic cooperation. The desire of the EU to play a role in Middle East processes obliges it to maintain the appearance of neutrality. Therefore, although the European vote cannot decide the final outcome of the UN deliberation, the European voting pattern is highly important. Also, the fact that the Palestinians were unsuccessful in obtaining sweeping support for their demand from the leading world economic powers, i.e., the G-8, is of more than symbolic importance.

Further political complications could develop as a result of attempts by the Palestinian government, whether planned or spontaneous, to establish facts on the ground in East Jerusalem and the territories

subsequent to the UN decision. Such attempts would almost certainly meet with an Israeli response, which in turn would provoke Palestinian reactions and appeals to various UN institutions and result in exhausting, pointless deliberations.

Other political questions springing from the UN decision could relate to the validity of agreements between Israel and the Palestinians achieved since 1993 and the decision's impact on continued negotiations. It is in Israel's interest to underscore that a General Assembly decision has no binding authority and lacks the power to change the existing situation. The conclusion, therefore, is that Israel is not interested in the unilateral cancellation of existing agreements. One must assume that Israel would gain the support of countries that contribute to the Palestinian economy and wish to see the continued transfer of tax revenues collected by Israel for the Palestinians. Israel and the Palestinian Authority would do well to avoid harming existing agreements that regulate the system of relations between them, despite the fact that the temptation to do so exists.

Sooner or later negotiations between Israel and the Palestinians will be renewed and both sides will come to the table with their own interpretation of the UN decision. The Palestinians will likely attempt to convert it into a basis for negotiations, while Israel's stance can also be anticipated. Perhaps it is at this point that one of the damaging consequences of the UN deliberation and decision will be felt. It will require a significant diplomatic effort to circumvent the argumentation and arrive at "genuine" negotiations – where both sides seek a practical solution and are not satisfied merely with the claim to historical rights (authentic and fictitious) and assorted UN resolutions.

Security Implications

While a Palestinian effort to exercise sovereignty in places under Israeli control could bring about a direct clash between Israel and the Palestinian security forces, there are still no signs of such an intention. Apparently the Palestinian leadership has no wish to arrive at direct conflict of this sort with Israel. Their intention is limited to symbolic steps, such as the PA-launched demonstrations that began on September 20 under the supervision of Palestinian security forces and in controlled locations, i.e., city centers, so as to avoid their descent into violent clashes.

However, the assumption that all will remain under control is problematic. One cannot ignore the complex interplay of the influence of the Arab spring, frustrations arising from the frozen political process, and the current September process. The historic changes underway in Arab countries are exerting their influence on most Arab populations, and in this regard, on the Palestinian public as well. In all Arab societies, young people, who comprise a large percentage of the population, have understood their power to change reality. They are able to organize through online social networking and attain political achievements through non-violent protests. This potential power has not bypassed Palestinian society, and this new type of discourse and organization is gaining momentum among Palestinian young people. Moreover, they can already note an initial achievement, namely, the reconciliation accord between Fatah and Hamas (even if it has yet to be realized and is running into difficulties). It appears that frustrations over the deadlock in the political process are prodding the examination of other means of fulfilling the vision of a Palestinian state. Moreover, the failure of the violent intifada and the high price it exacted of the Palestinian population has turned non-violent protest into an attractive option. Recognition of a Palestinian state at the UN would create pressure to continue the momentum and take additional steps to advance the achievement of the goal. It would be very difficult for the Palestinian leadership in Ramallah to defy public pressure in such a situation.

In this type of a scenario, it is doubtful whether the Palestinian Authority would succeed in maintaining control over the mass protest; furthermore, the potential for violent friction would rise. Palestinian security forces would, for example, try to prevent direct contact between the demonstrators and Israeli forces and individuals through checkpoints and barriers to settlements. However, if a demonstration is sufficiently large and organized from the ground up rather than by the PA, the Palestinian security forces would find it hard to do so. Israeli security forces too would make a special effort to prevent the opening of fire through the use of non-lethal means. Yet when demonstrations are sufficiently large and their participants determined, situations could arise in which Israeli forces or civilians feel their lives are in danger and open fire. Loss of life among the Palestinians would generate the desire

for revenge, and from there the path is short to a serious cycle of violence that would be difficult to arrest.

Today, there are good relations and ongoing coordination between the security apparatuses of both sides. In the above-described scenarios, mutual relations and coordination become even more important and the political and security leadership on both sides would presumably seek to preserve these relations. But in a situation where the political process is completely frozen and the Palestinian leadership chooses the approach of confrontation with Israel and application to the international arena, the dynamic could change. There is a danger that those serving in the Palestinian security forces would not be sufficiently motivated to engage in what is perceived by the Palestinian street as cooperation with Israel and the serving of Israeli interests.

The Palestinian street has little appetite for being dragged into a situation of chaos and violence or a third intifada. Neither is there any real problem regarding the buildup of expectations for a drastic change of reality on the ground following the UN vote; nor is a severe reaction caused by disappointment from unfulfilled hopes anticipated. Today the Palestinian public is extremely pessimistic. The danger, then, is not the organized outbreak of a violent third intifada, but a situation in which both sides have begun a process over which they might easily lose control.

Economic Implications

The vulnerability of the Israeli economy to unilateral Palestinian moves is limited, and far less vulnerable than the Palestinian economy is to possible Israeli responses. Therefore it is reasonable to suppose that the Palestinian Authority/state will try to preserve the economic addendum to the interim agreement with Israel (the Paris Protocol). In the absence of an independent customs arrangement, the Palestinian government would find it hard to finance its actions without a mechanism for tax refunds, which are part of the arrangement.

A Palestinian attempt to limit imports from Israel into Palestinian controlled territory would be possible, even without breach of the Paris Protocol, through non-tariff barriers (NTB) such as quality standardization and domestic product campaigns. Since exports into the territories contribute less than one percent to the GDP of the Israeli business sector, economic damage would be scant; however firms for whom the territories

constitute a large market segment would be hurt. Conversely, Palestinian exports to Israel make up only about one percent of Israeli imports of goods. For particular goods, such as quarried materials, substitutes can be found in other construction materials and in imports from Jordan; on the other hand, the Palestinians have no satisfactory alternative markets to compensate for exports to Israel.

Other issues are of similar limited impact. Restricting the supply of Palestinian workers would be meaningless due to their present small numbers; and it is possible to replace them almost immediately by raising the ceiling on foreign workers. The issuing of Palestinian currency, itself a sign of sovereignty, would not affect the Israeli market. Nullifying the status of the Israeli shekel as legal tender in the Palestinian state would have a similar effect to that of imposing a 1.5 percent customs duty on Israel imports. A further effect on commerce could be uncertainty as to the exchange rate of the reserve currency/currencies against which the Palestinian currency would be issued.

Should violence on a large scale between the Palestinians and Israel develop, it would naturally have a far reaching economic impact on both sides. The second intifada caused a heavy blow to the Palestinian economy and the cessation of growth in the Israeli economy.

Conclusion

From the standpoint of Israel, which has accepted the two-state solution, the best way to deal with the Palestinian move might be to join in recognizing the Palestinian state, if the Palestinians and their supporters would not insist on the General Assembly resolution indicating “a Palestinian state based on the 1967 borders with Jerusalem as its capital.” The current Israeli government could not support a resolution formulated in this way.

Not much should be expected from the Israeli Foreign Ministry’s massive effort to persuade countries to abstain or vote against the resolution. In any case, chances are good that the Palestinian motion will reach the General Assembly. Even if a number of important European countries vote against the resolution together with the US and Israel, it would not prevent recognition of a Palestinian state and the practical consequences thereof. In the main, this is a symbolic achievement. The current process would stop only if negotiations between the two sides

are renewed. The Quartet's proposal could serve as a good basis for renewed negotiations as far as Israel is concerned, but it is doubtful that the Palestinians will accept it prior to the UN move or that the proposal would prevent continuation of the process.

Israeli ideas how to deter or punish the Palestinians for their statehood bid range from delaying the transfer of tax revenues to canceling the Oslo Accords and annexing Palestinian territory to Israel. It is better that the architects of such ideas recall Bismarck's saying "Anger is no substitute for policy." The damage caused to Israel by such acts would outweigh the benefits and only intensify the reaction by the international community against Israel. Israel has no choice but to respond in moderation and deal judiciously with the practical ramifications of the Palestinian move. This could include the need to confront judicially attempts to legally pursue Israeli military and political figures, or to deal with security and political challenges – all the while emphasizing the message that the future of Israeli-Palestinian relations is ultimately decided in negotiations rather than in a unilateral policy that bypasses negotiations.

Following certain declarations by political leaders, such as a speech by the Minister of Defense about the "political tsunami" that will follow the Palestinian bid to the UN, there was a feeling in the Israeli public that something dramatic was poised to occur immediately after the Palestinian appeal to the UN. When nothing happened, there was a general sigh of relief and a sense that nothing will happen. That reflects a misunderstanding. Processes in the UN take time, and this process is only at its beginning. Even the serious debate in the Security Council has not started yet. The implication is that there is still time to assess the situation and prepare for a possible crisis, as the reality to date is not the end of the story.

Israel will have to focus on the day after and consider whether in order to prevent potential crises, it makes sense to view the new situation as an opportunity for renewed negotiations. The Palestinians will be satisfied to receive international recognition for their state, but nothing will have changed on the ground. Therefore, as Abbas reiterates, now it makes sense to return to the negotiating table. In such a situation, it becomes increasingly possible that a formulation similar to the current Quartet's proposal could serve as a good basis for the sides to talk.