



INSS Insight No. 387, November 25, 2012

The Status of "Palestine" at the United Nations

Oded Eran and Robbie Sabel

Two Palestinian documents recently made public deserve attention: the Palestinian request for non-member state status at the United Nations General Assembly,¹ and the speech made by President Abu Mazen on November 11, 2012 at the ceremony marking the death of Yassir Arafat eight years ago.²

The request submitted to the UN that apparently will be debated on November 29, 2012 is clearly an attempt by the Palestinians to bolster their negotiating position by garnering international support. Rather than having to negotiate the question of statehood with Israel, the Palestinians hope to acquire this status, supported widely by the international community, without the need to negotiate with Israel or concede anything to Israel. This is clearly in contradiction to Israel's desire, whereby the statehood status would be a result of negotiations. In the speech on November 11, Abu Mazen explained that the appeal to the UN is aimed in part to remove the basis for Israel's claim that the territory of the West Bank is contested, and to establish that it is occupied territory.

Some Palestinian officials close to Abu Mazen have explained in private conversation that the prestige resulting from such a General Assembly resolution will enable Abu Mazen to start negotiations with Israel without his previously stated precondition of a freeze of settlement activity. This explanation contrasts with the emphasis Abu Mazen gave to the settlement question in his speech and his repeated assertion that they are illegal.

The draft Palestinian request to the UN General Assembly for non-member status is a carefully drafted document. The preamble to the draft, while recalling a slew of anti-Israel General Assembly Resolutions, also touches all the right buttons in the attempt to gather

Dr. Oded Eran, Director of INSS, was Israel's Ambassador to Jordan and to the EU and Head of Israel's negotiations team with the Palestinians, 1999-2000.

Professor Robbie Sabel teaches international law at the Hebrew University of Jerusalem and was the Legal Advisor of the Israel Ministry of Foreign Affairs.

West European support. The draft reaffirms UN Security Council Resolution 242, and refers to the 1993 Oslo accords and to the 2002 Arab League peace initiative. The draft explicitly refers to "a State of Palestine living side by side with Israel in peace and security on the basis of the pre-1967 borders." This is a formula all West European states would endorse.

The Palestinian draft also includes, apparently intentionally, a number of ambiguous references. It refers to the 1947 General Assembly Resolution 181, which proposed partition. This could be interpreted as a reference to the call for two states in Western Palestine, one of them explicitly referred to by the UN Resolution as "a Jewish State." (Israel's Declaration of Independence also refers to Resolution 181) However, a more nefarious interpretation could be that the borders set out in the 1947 proposal are still on the negotiating table. The Palestinian draft refers to borders "on the basis of the pre-1967 borders," and in his speech, Abu Mazen referred to the state "within the 1967 borders." The terms on "the basis of" or "within" could mean that the Palestinians accept that a complete return to the 1967 border is not feasible; however, a less charitable interpretation could be that they might have demands for territories inside pre-1967 Israel.

The issue of Jerusalem receives three different references in these two documents. The preamble of the draft resolution mentions East Jerusalem as part of the 1967 occupied territory. It then refers to the 66/18 General Assembly Resolution of 2011, which emphasizes the need to resolve the status of Jerusalem as the capital of two states. The operative paragraph of the draft refers to the state of Palestine on the basis of the pre-1967 borders but has no reference to Jerusalem. In his November 11 speech, Abu Mazen mentioned Jerusalem several times as the capital without the distinction between West and East.

If Palestine is accepted as a State by the UN General Assembly, then UN agencies such as the ILO, WHO, FAO, and ICAO would also regard Palestine as a state, and no US veto power could prevent Palestine's acceptance as a full member of such organizations. However accepting Palestine would mean an automatic cutoff of US funding to the organization, as occurred with UNESCO, which lost some \$60 million in US contributions when it agreed to accept Palestine as a full member. Other organizations will presumably be very reluctant to commit financial suicide in order to satisfy Palestinian political aims.

One UN organization where the threat of cutting off US contributions is not valid is the International Criminal Court at The Hague. The US is not a member of the agreement establishing the Court and thus makes no financial contribution to the Court. However if Palestine were to accept the jurisdiction of the Court it would mean that all Palestinians, including presumably those of Gaza, who would commit a war crime in the future could

find themselves subject to the jurisdiction of the Court. The Palestinian leadership may well hesitate before undertaking such a "bold" step. It is noteworthy that no Arab states, other than Jordan and recently Tunisia, have accepted the jurisdiction of the Court.

An item that seems to have escaped public attention is that the Palestinian draft request is for "Palestine" to be accorded observer state "status." According the "status" of state is not necessarily identical with the UN General Assembly being requested to recognizing Palestine as a "state." When the UN General Assembly granted observer status to the Vatican, the phrase used was "acknowledges...the Holy See, in its capacity *as an Observer State*."³ Abu Mazen himself admitted that acquiring the observer state status would not produce an independent state *deus ex machina*.

If the Palestinians go ahead with their initiative at the UN General Assembly, it is a foregone conclusion that the resolution will be adopted by a substantial majority. Such a UN resolution may well give the Palestinians a feeling of satisfaction and be seen as a successful attempt to internationalize the dispute. However, it might also have the effect of changing the world's view of the Arab-Israeli dispute. Rather than be seen as a dispute between Israel and the homeless Palestinians seeking a homeland of their own, it might come to be seen as a relatively minor border dispute between two Middle East States, an issue that is unlikely to generate much international fervor.

Israel should consider how to react to the Palestinian move. The Israeli press has reported extensively that Israel might choose to abrogate the Oslo agreement and annex the settlements. In private conversations, however, senior Foreign Ministry officials have confirmed that no such decision has been made and the report was based on one of the background option papers presented to the Minister. The Palestinians have an interest in continuing to receive the economic benefits of the Oslo agreement, without which the Palestinian Authority would be hard pressed to pay salaries. Israel has its own interest in the continued function of the Palestinian security agencies and the continued significant cooperation in combating terror. These security agencies also depend on the Palestinian Authority for salaries. Thus, a measured response by Israel that does not harm Israel's interests or its international standing should be considered, rather than a reaction of anger.

¹ Permanent Observer Mission of Palestine to the United Nations, Document Ref. MI.274/12 of 8 November 2012.

² Palestinian Presidency website, <http://www.presidency.ps/>.

³ UN Doc. A/RES/58/314 of 16 July 2004, emphasis added.