



# SECURITY COUNCIL REPORT UPDATE REPORT



19 April 2011

## ISRAEL/PALESTINE

### EXPECTED COUNCIL ACTION

B. Lynn Pascoe, Under Secretary-General for Political Affairs, will brief the Council on 21 April. The Council will then hold an open debate on the Middle East. (There is a monthly briefing on the Middle East and quarterly there is an open debate—for background on the history to that arrangement please see Security Council Report's Special Research Report *The Middle East 1947-2007: Sixty Years of Security Council Engagement on the Israel/Palestine Question* of December 2007.)

The stalemated peace process is expected to be the focus of discussion but the significance of the backdrop of upheavals that are playing out across the region is also likely to receive attention.

The final report of the Panel of Inquiry into the 31 May 2010 Gaza flotilla incident, originally expected in February, now seems unlikely to be completed before late May.

### KEY RECENT DEVELOPMENTS

The 15 April meeting of the Quartet (the EU, Russia, the UN, and the US) scheduled to be held in Berlin was postponed. Media reports indicate that there was a strong interest by all Quartet members except the US for the meeting to take up a new initiative by France, Germany and the UK to restart Israeli/Palestinian negotiations. In particular there seemed to be interest in the Quartet endorsing parameters

for negotiations based on the principle that the 1967 borders should be a starting point, together with clearer language on other final status issues such as refugees, Jerusalem, security arrangements and settlements than the Quartet has used before. Unlike the postponement of its March meeting, there was no forward date set for another meeting.

On 14 April Israeli Prime Minister Benjamin Netanyahu said that he would outline a peace plan in front of a joint session of US Congress in May. (Palestinian President Mahmoud Abbas previously rejected Netanyahu's "economic peace" package suggested in February and the March peace initiative based on long-term interim borders.)

On 12 April, US Secretary of State Hillary Clinton said there would be a renewed push for comprehensive peace as part of an American policy towards the fast changing region. US President Barack Obama is expected to announce this new policy in the coming weeks.

On 13 April the Ad-Hoc Liaison Committee—a group of major donors to the Palestinian Authority (PA)—met in Brussels and welcomed the assessment by the UN, World Bank and IMF that the PA is "well-positioned for the establishment of a state...in the near future." This endorsement comes as Palestinians continue to push forward their diplomatic and institution-building

initiatives for statehood and UN membership in September 2011 (this timetable is driven by Palestinian Prime Minister Salam Fayyad's state-building project launched in August 2009, Obama's General Assembly address in 2010 and anticipation of more than two-thirds of UN member states having recognized Palestine by this summer).

As of March 2011, 112 countries had recognised the state of Palestine. Several European countries, including most recently the UK, have upgraded Palestinian diplomatic status.

In November 1988 there was a declaration of the independent state of Palestine. The declaration and accompanying political communiqué addressed the territorial dimension of Palestine indirectly. It inferred recognition of Israel and limited Palestinian territorial scope by affirming the terms of Security Council resolutions 242 of 1967 and 338 of 1973. Palestinian recognition of the state of Israel was formalised in an exchange of letters between Yasser Arafat and Israeli Prime Minister Yitzhak Rabin in the lead-up to the signing of the Oslo Accords in September 1993, thereby giving more specificity to the territorial scope in the context of a peace process which was designed to agree exact boundaries.

On 8 April, in informal consultations, Lebanon proposed that the Council approve elements to the press on the

escalation of violence in Gaza and southern Israel. The Council was not able to agree on the matter. (In recent months a much increased level of mortar and rocket attacks against Israel has occurred along with Israeli air strikes in Gaza.) Media reports indicate an increase in Israeli targeting of Hamas military capabilities citing the 15 March seizure of the *Victoria*—a ship allegedly carrying arms bound for Gaza. An air strike in Port Sudan on 7 April killing two passengers in a car, reportedly Hamas members, has been blamed on Israel by Sudan. Israel has not commented on the accusation. Analysts note that Israel suspects there is weapons smuggling to Gaza via Sudan.

During informal consultations on 22 March it seems there was discussion of Russia's 8 February proposal for a Council visiting mission to the Middle East. On 28 March Egypt, Jordan, Lebanon, Palestine and Syria in a letter to the Security Council endorsed Russia's proposal of a visiting mission to their countries and encouraging a revitalised Security Council role in achieving a comprehensive solution on the Israeli-Palestinian and Israeli-Arab tracks.

On 24 February, UN Special Coordinator Robert Serry briefed the Council and called for credible and effective international intervention in the peace process.

On 18 February, a draft resolution condemning Israeli settlement activity was vetoed by the US. The other 14 members of the Council voted in favour. In the days leading up to the vote, the US proposed a three-pronged package to the Palestinians in lieu of the resolution: a presidential statement broadly along the lines of the draft resolution, taking up the 8 February Russian proposal for a visiting mission to the region and stronger language on 1967 borders coming out of the next ministerial-level Quartet meeting. The incentives were not sufficient for the Palestinians to withdraw the draft resolution originally tabled on 18 January with 122 co-sponsors. At

the time of the vote, a month later, the draft had a very different and much smaller set of 79 co-sponsors (18 countries, mainly European joined the list, while some 61 others, mainly from the Non-Aligned Movement, dropped out). Some states formally withdrew sponsorship. However, it seems that much of the reduced number was due to the fact that the US raised a procedural objection to the co-sponsorship list claiming that many states had not followed the correct procedure in attaching their names to the draft.

At press time, the Secretary-General's Panel of Inquiry into the 31 May 2010 Gaza flotilla incident was expected to meet 26-28 April to continue examining the national reports of Turkey and Israel. (The Panel previously met 14-16 March.) Its draft report and recommendations are expected to be submitted to the parties with a final report submitted to the Secretary-General in late May. In the event that a consensus report acceptable to both Israel and Turkey is impossible then the co-chairs of the Panel may exercise their role under the Panel's terms of reference to submit their own conclusions. On 1 April Netanyahu expressed concern to Secretary-General Ban Ki-moon regarding reports of a new international flotilla being organised for May to break the Gaza blockade. (For further background on the Gaza flotilla incident and subsequent developments, please see Security Council Report's July, August and September 2010 and February 2011 Monthly Forecasts.)

### **HUMAN RIGHTS-RELATED DEVELOPMENTS**

In a 1 April op-ed for the *Washington Post* Richard Goldstone wrote that had Israel cooperated with the fact-finding mission he headed for the Human Rights Council then the conclusions of the mission's report regarding the targeting of civilians as a matter of Israeli policy might have been different. The status of the original report remains unaffected by this turn of events. The Human Rights Council's Committee of Independent Experts—tasked with following up the

Goldstone Report—said that Israel had investigated over 400 allegations of operational misconduct in Gaza but the mechanisms were inadequate to genuinely ascertain the facts and any ensuing legal responsibility. The Committee also said that Hamas had not carried out any investigations. On 25 March the Geneva-based body adopted a resolution urging the General Assembly to reconsider the Goldstone Report and submit it to the Security Council with the recommendation of referring the situation in the Occupied Palestinian Territory to the ICC.

Also on 25 March the Human Rights Council adopted a resolution following-up the report of the independent international fact-finding mission on the Gaza flotilla incident. The resolution welcomed the establishment of the UN Panel of Inquiry, expressed concern at Israel's lack of cooperation and requested a follow-up report at the Human Rights Council's next session in June 2011. The US opposed the resolution as it regarded the Panel of Inquiry as the primary mechanism for addressing the issue

On 21 March, the High Commissioner for Human Rights gave a presentation on the situation in Palestine and other Occupied Arab Territories. In the general debate that followed a number of speakers noted that the Middle East and the world were witnessing an important transformation with potentially historic consequences and wondered if this transformation would have a positive impact leading to a just and comprehensive peace.

### **KEY ISSUES**

There is no proposal before the Council for a decision at its April open debate.

The key underlying issue of whether the Council can play any role in the Israel/Palestine conflict remains. (It is an historically interesting fact that the last two times the Security Council played an important role in the Israel/Palestine conflict was in resolutions 1850 and 1860, both of which were adopted during the administration

of former US President George W. Bush.)

### ISSUE OF ADMISSION TO THE UN

The issue of a possible application by Palestine for admission to the UN is beginning to emerge. In that context, the following background is relevant.

Applications to be admitted to the UN are submitted to the Secretary-General. The application must include a formal instrument as a declaration accepting the obligations in the Charter. The Secretary-General is required to “immediately place the application” before the Security Council (rule 59 of the Provisional Rules of Procedure of the Security Council) and to send a copy of the application to the General Assembly “for information” (rule 135 of the Rules of Procedure of the General Assembly).

Article 4 of the UN Charter provides that only “states” may apply to be admitted to the UN. An application for admission therefore has to be from an entity which meets the criteria for statehood, including a defined territory and a recognised government. Past precedents confirm, however, that this does not rule out applicants in situations where there remain significant disputes about the territorial boundaries. Past precedents also confirm that applicants do not have to achieve universal recognition before they can be admitted.

Article 4 also requires that applicants be “peace-loving”, that they accept the obligations contained in the Charter and that, in the judgement of the organisation, they are “able and willing” to carry out the obligations. The decision on admission to the UN is for the General Assembly to make. But article 4(2) requires that this be “upon the recommendation of the Security Council.” Past practice has shown numerous cases where applicants have not been able to achieve admission because of division between permanent members of the Security Council.

The application for admission is considered first in the Security Council.

Under rule 59 of the Provisional Rules of Procedure of the Security Council there is a standing committee (comprising all members) on Admission of New Members which reports its conclusions to the Council. The Council then, by resolution, takes a decision to make a recommendation to the General Assembly. This decision is subject to the veto. Under rule 60, if there is no recommendation for admission, the Council must submit a “special report” to the General Assembly.

In the General Assembly, under rule 83 of its Rules of Procedure, the admission of a new member is an “important question” which requires a two-thirds majority. Rule 137 allows the General Assembly, if the Security Council fails to recommend admission or postpones consideration, to refer the application back to the Council “for further consideration and recommendation or report”.

### UNDERLYING PROBLEMS

Continued Israeli settlement activity remains the key blockage in the resumption of direct negotiations.

The lack of an Israeli-Turkish rapprochement over the Gaza flotilla incident and the organisation of anniversary flotillas may make it very difficult to neatly close this chapter in a positive way.

The issue of Israeli soldier Gilad Shalit, held captive in Gaza since June 2006, is still unresolved.

To date, there is no political reconciliation between Fatah in the West Bank and Hamas in Gaza.

The Israeli blockade of Gaza continues to have substantial effects on the population which has a very high unemployment rate. Import and export levels are still significantly below pre-2007 levels.

### OPTIONS

Council options seem limited. The Israeli rejection of US mediation proposals on settlements in December 2010, the US veto of the draft

resolution in February and the postponement of both the March and April Quartet meetings give Council members little optimism. All these events were anticipated to be possible circuit breakers allowing the Palestinians the political cover required to return to the negotiating table in time to make real progress during 2011, but all failed. Regarding the Secretary-General's Panel of Inquiry into the Gaza flotilla incident, one possibility is that the Council could be briefed on the Panel's progress.

### COUNCIL DYNAMICS

Most Council members still retain a clear preference for a directly negotiated solution but there is widespread anxiety about the implications of the continued stalemate. September 2011 has a particular significance in the timeline for the reasons mentioned above and because Palestinians have said that if the situation remains unchanged they will proceed with their plans to achieve independence and appropriate recognition by seeking UN membership as a key objective.

The US seems to be continuing to argue that the Council is not the appropriate body taking decisions regarding the Israel/Palestine issue, preferring that all issues be resolved only through direct negotiations.

Other Council members share the view that any agreement must be reached through direct talks. But there is wide agreement among them that this does not rule out a Council role and some Council leadership would be helpful. Most do not envision that the Council will be able to remain side-lined much longer in the absence of effective American leadership on the issue.

Marginalisation of other international mechanisms such as the Quartet, also seems to underline the anxiety among Council members. Many, in particular the European members, seem to believe that if the Quartet is going to continue to play any role, then it would need to give clearer signals on parameters for peace negotiations. Efforts

to achieve this failed in the context of the proposed March and April meetings. Now there seems as a result to be hesitancy about continued Quartet meetings which only yield tepid statements which most stakeholders find disappointing.

Regarding the proposed visiting mission to the Middle East, a number of Council members support the idea. There is a general sense that before such a visit there should be a unified Council position on a number of key issues.

Regarding the flotilla incident, there was some concern in late 2010 that the Panel's interim report was not public nor was it shared with the Council. It seems that there is currently an expectation by many members that the spirit of the June 2010 presidential statement requires the final report to be transmitted to the Council.

## UN DOCUMENTS

### SECURITY COUNCIL RESOLUTIONS

- S/RES/1860 (8 January 2009) called for an immediate, durable and fully respected ceasefire, leading to the full withdrawal of Israeli forces from Gaza and unimpeded humanitarian assistance.
- S/RES/1850 (16 December 2008) declared Council support for the

Annapolis peace process and its commitment to the irreversibility of bilateral negotiations.

- S/RES/338 (22 October 1973) called for a ceasefire and the comprehensive implementation of resolution 242.
- S/RES/242 (22 November 1967) was a British sponsored compromise calling on all parties to end territorial claims, respect sovereignty, and for Israel to withdraw from occupied territories.

### SECURITY COUNCIL PRESIDENTIAL STATEMENT

- S/PRST/2010/9 (1 June 2010) called for an impartial investigation into the Gaza flotilla incident and stressed that the situation in Gaza was not sustainable.

### SECURITY COUNCIL PRESS STATEMENT

- SC/10001 (3 August 2010) welcomed the establishment by the Secretary-General of his Panel of Inquiry into the Gaza flotilla incident.

### SECURITY COUNCIL LETTERS

- S/2011/148 (18 March 2011) was from Israel regarding the seizure of the Victoria—a ship allegedly carrying arms bound for Gaza.
- S/2011/24 (18 February 2011) was the draft resolution on settlements

vetoed by the US. The other 14 Council members voted in favour.

- S/2010/414 (2 August 2010) was on the establishment of the Secretary-General's Panel of Inquiry into the Gaza flotilla incident.

### SECURITY COUNCIL MEETING RECORDS

- S/PV.6501 (22 March 2011) was the briefing by DPA's Oscar Fernandez-Taranco on the Middle East.
- S/PV.6488 (24 February 2011) was UN Special Coordinator Robert Serry's briefing.
- S/PV.6484 (18 February 2011) was the meeting record of the US veto of the draft settlement resolution.
- S/PV.6325 (31 May 2010) and S/PV.6326 (1 June 2010) was on the Gaza flotilla incident.

### HUMAN RIGHTS COUNCIL

- A/HRC/RES/16/32 (25 March 2011) urged the General Assembly to reconsider the Goldstone Report and submit it to the Security Council with a recommendation to refer the situation in the Occupied Palestinian Territory to the ICC.
- A/HRC/RES/16/20 (25 March 2011) regretted non-cooperation by Israel with the fact-finding mission into the Gaza flotilla incident and decided to follow-up at its 17th session in June 2011.

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