

SECURITY COUNCIL REPORT UPDATE REPORT



25 July 2011 No.1

ISRAEL/PALESTINE

EXPECTED COUNCIL ACTION

On Tuesday, 26 July the Special Coordinator for the Middle East Peace Process, Robert Serry, will brief the Council. The Council will then hold its regular quarterly open debate on the Middle East.

The stalemated Israel/Palestine peace process is expected to be the focus of discussion against the backdrop of the failure of the Quartet, again, at its 11 July meeting in Washington DC to reach an agreement and heightened expectations of developments in the General Assembly in September.

At press time, it seemed likely that Serry would report that negotiations were still to materialise and that no other credible initiatives were on the horizon.

The report of the Panel of Inquiry into the 31 May 2010 Gaza flotilla incident, originally expected in February is now completed, but formal transmission to the Secretary-General has been delayed to permit a short period of bilateral negotiations.

KEY RECENT DEVELOPMENTS

Members of the Middle East Quartet (the EU, Russia, the UN and US) met in Washington DC on 11 July in an effort to deliver results which might restart the peace process. However, the Quartet was unable to agree to a statement despite some expectations during the lead-up to the meeting that progress may be at hand.

There seemed to be strong interest by all Quartet members for the meeting to reach some agreement that built on US President Barak Obama's 19 May speech as a way forward to restart Israeli/Palestinian negotiations. (On 20 May the Quartet had issued a statement voicing strong support for Obama's speech.) In particular there seemed to be interest in the Quartet endorsing some wider 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. (Previous Quartet meetings in April and March had also hoped to address such parameters but the meetings were cancelled when it became clear that the members would be unable to reach consensus.)

On 11 July an American draft was presented to other Quartet members. However, it seems that the draft did not reflect the 19 May speech as closely as the other Quartet members had hoped. It included elements such as:

- a call on both parties to resume direct negotiations without preconditions;
- the two state solution formally identifying Israel as a Jewish state;
- recognition that peace cannot be achieved through decisions by the UN or through permanent occupation;
- no country can negotiate with a

terrorist organisation sworn to its destruction (this appears to be a reference to Hamas with which the Palestinian Authority had in principle reached a reconciliation agreement in May but a unity government still seems far away);

- territorial negotiations should be based on the 1967 lines but take into account new demographic realities which have taken place over the last 44 years (this appears to be a reference to settlements);
- robust security arrangements and a phased withdrawal of Israeli forces (this appears to be a reference to a presence of Israeli forces in the Jordan Valley); and
- deferral of the issues of refugees and the status of Jerusalem to a later stage.

It seems that other Quartet members found the American draft would not provide sufficient impetus to restart negotiations. Referring to 1967 borders as the basis for negotiations was weakened by omitting the notion of agreed land swaps and by the very broad reference to new demographic realities, i.e. settlements. This seems to have been a major issue but other aspects also seem to have been contentious as well.

On 14 July an Arab League committee met in Doha and was briefed by Palestinian President Mahmoud Abbas. It was agreed that efforts should now focus on recognition of a Palestinian state in the General

Assembly and the Security Council. The wording of this statement appears to be broad enough to cover both a formal application for full UN membership—which would require a Security Council resolution—or an alternate strategy in the General Assembly—perhaps a General Assembly resolution to elevate Palestine’s observer status which is currently *sui generis* to that of a non-member observer state—or conceivably even both, i.e. apply for formal membership first in the Security Council and if that fails pursue the General Assembly strategy.

The Doha statement by the Arab League committee also addressed continued Palestinian diplomatic and institution-building initiatives for recognition of a Palestinian state by September 2011. (This timetable has its origins in Palestinian Prime Minister Salam Fayyad’s state-building project launched in August 2009 and was encouraged by President Obama’s General Assembly address in 2010.) It seems that close to two-thirds of UN member states have now recognised Palestine. (As of July 2011, 122 states recognised Palestine. With the admission of South Sudan as a UN member on 14 July, a two-thirds majority in the General Assembly is now 129.)

The organisation of new flotillas this summer seems to have ended with Greek authorities banning ships from leaving its ports on 2 July and the interception of a ship on 19 July by the Israeli navy without incident.

The situation in Gaza remains serious. On 2 July the Quartet noted that considerably more needs to be done to increase the flow of goods and people to and from Gaza. Early July has also seen an increase in exchange of rocket fire from Gaza and Israeli airstrikes. Further, the 8 June opening of Gaza’s border with Egypt via Rafah has not resulted in any discernable alleviation of the blockade as crossing is only open to limited numbers of people and does not seem to include the flow of goods into the territory.

Regarding Gaza, the Secretary-General’s Panel of Inquiry into the 31 May 2010 Gaza flotilla incident concluded its work, including the examination of the national reports of Turkey and Israel in early July. It seems Turkey and Israel did not agree to a consensus document. However, before exercising the powers under the Panel’s terms of reference to finalise conclusions and recommendations without the consent of Israel and Turkey, a final period of bilateral negotiations was allowed for. It seemed that the bilateral efforts had again failed to produce any results at press time. It was unclear how much more time will be allowed before the report is transmitted by the co-chairs to the Secretary-General. (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

On 23 June, UN Special Rapporteur on the occupied Palestinian territories Richard Falk called the Israeli blockade a “deliberate policy of collective punishment”.

On 17 June the Human Rights Council called for the immediate implementation of the conclusions contained in the report of the independent international fact-finding mission into the Gaza flotilla incident and requested the High Commissioner to bring these conclusions to the attention of the Secretary-General. The decision was adopted by 36 to one (US) with eight abstentions (Cameroon, Hungary, Poland, Republic of Korea, Moldova, Slovakia, Ukraine and Zambia).

KEY ISSUES

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

The key underlying issue of whether the Council can play any role in the Israel/Palestine conflict, including the establishment of parameters,

remains. (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.)

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.

Declaration of a State of Palestine

In November 1988 there was a declaration of an 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 PLO head Yasser Arafat and Israeli Prime Minister Yitzhak Rabin in the lead-up to the signing of the Oslo Accords in September 1993, thereby giving greater specificity to the territorial scope of Palestine, with the Oslo peace process meant to agree on exact boundaries.

ADMISSION TO THE UN AS A MEMBER STATE

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 is clear 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 and the veto of draft resolutions recommending admission.

As indicated above, the application for admission must first be considered by the Security Council. Under rule 59 of the Provisional Rules of Procedure of the Security Council there is a standing committee of the Council (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 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”.

CURRENT STATUS OF PALESTINE IN THE UN

In 1974 the General Assembly in resolution 3237(XXIX) approved the PLO (then seen as a national liberation movement) as an observer.

In December 1988, shortly after the proclamation of the state of Palestine, the General Assembly in resolution 43/177 acknowledged “the proclamation of the State of Palestine” and decided “that the designation ‘Palestine’ should be used in place of the PLO without prejudice to the observer status and functions of the PLO “in conformity with relevant UN resolutions and practice”. The resolution came close to an acknowledgement that Palestine was a state, but stopped short of that and in effect maintained Palestine in the non-state observer category.

In July 1998 the General Assembly, in resolution 52/250, enhanced the participation privileges of Palestine in the UN system by defining better treatment for Palestine in terms of making proposals and seating. But again this resolution contained language which made it clear that Palestine was still being accorded a lesser status than a state. In effect the resolution elevated Palestine to a new sui generis observer status, still less than a state but higher than all other observers.

The General Assembly could change the status of Palestine at the UN from its current sui generis observer status to that of a non-member state observer.

UNDERLYING PROBLEMS

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

The issue of Israeli soldier Gilad Shalit, held captive in Gaza since June 2006, is also a key underlying issue.

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 for the July debate seem limited. The Israeli rejection of US mediation proposals on settlements in December 2010, the US veto of a draft Security Council resolution in February, the postponement of both the March and April Quartet meetings and the inability at the July meeting to agree on parameters for direct negotiations give Council members little optimism. All these events had at various times been hoped to be possible circuit breakers allowing the Palestinians sufficient political cover for a decision to return to the negotiating table in time to make real progress during 2011. But all failed.

One option for the Council is to craft a resolution on parameters for peace negotiations providing enough comfort to both sides and in particular to be a sufficient circuit breaker for the Palestinians to pursue credible negotiations and defer the bid for UN membership. Elements for such an approach were laid out by the UK, on behalf of France, Germany and the UK, on 18 February in its explanation of vote on the draft settlements resolution which was vetoed by the US, including:

- negotiations based on 1967 borders with equivalent and agreed land swaps;
- security arrangements which respect Palestinian sovereignty and Israeli security concerns;
- a just solution to the refugee question; and
- fulfilment of both Israeli and Palestinian aspirations for Jerusalem.

It is worth noting that over the last 60 years the Council has already taken decisions which if collated could already be seen to be parameters covering many of the key issues. The following compilation was originally published in SCR's 2007 *Special Research Report: The Middle East 1947-2007: Sixty Years of Security Council Engagement on the Israel/Palestine Question*. The list groups together like decisions.

PARAMETERS ALREADY ESTABLISHED BY PAST SECURITY COUNCIL DECISIONS

Overall obligations on all parties

The parties have a binding obligation under Article 25 of the Charter to negotiate a just and durable peace in the Middle East (resolution 338 of 1973).

Commitment of the Security Council

The Security Council will support an active negotiating process (20 December 1990 presidential statement S/22027 and S/PV.2970).

Participation

- All relevant parties should participate (20 December 1990 presidential statement S/22027 and S/PV.2970).
- The process should be comprehensive and take into account the security interests of all states in the region (20 December 1990 presidential statement S/22027 and S/PV.2970) and a comprehensive peace must involve the Israel/Syria and Israel/Lebanon tracks (resolution 1515 of 2003).

Outcome should involve two independent states

- The vision should include two states—Israel and Palestine (resolution 1397 of 2002 and resolution 1515 of 2003).
- The Council called on the parties to achieve this vision (resolution 1515 of 2003).

Multilateral recognition of every state in the region

The sovereignty, territorial integrity and political independence of every state in the region should be acknowledged (resolution 242 of 1967).

Military security

- All belligerency should cease (resolution 242 of 1967).
- The right of every state in the region to live in peace within secure and recognised borders and free from threats or acts of force should be recognised (resolution 242 of 1967 and resolution 1397 of 2002).
- All terrorist acts against any civilians are condemned (resolution

1435 of 2002).

- Infrastructure responsible for terrorism should be dismantled (resolution 1544 of 2004, this is also a feature of resolution 1515 in 2003).
- Those responsible for terrorist acts should be brought to justice (resolution 1435 of 2002).

Normalisation of adjacent coastal areas

Freedom of navigation in international waterways in the area should be recognised (resolution 242 of 1967).

Refugees and Displaced Persons

- The refugee situation should be addressed in a just settlement (resolution 242 of 1967).
- Displaced persons return should be facilitated (resolution 237 of 1967).

Cessation of Occupation

- Unilateral incorporation of occupied territory is inadmissible (resolution 242 of 1967 and many subsequent resolutions).
- Military forces should be withdrawn from occupied territories (resolution 242 of 1967).

Security Guarantees

Guarantees should be put in place for the territorial inviolability and political independence of every state in the area (resolution 242 of 1967).

Settlements

Settlements in occupied territories have no legal validity (resolution 446 of 1979 and many subsequent resolutions in the 1980s).

Status of Jerusalem

The legal status, geography and demography of Jerusalem cannot unilaterally be validly altered (resolution 446 of 1979).

COUNCIL DYNAMICS

Most Council members still retain a clear preference for Israel and Palestine to directly negotiate a solution. But there is widespread anxiety about the implications of the continued

stalemate. September 2011 has a particular significance for the reasons mentioned above. The Palestinians have said that if the situation remains unchanged they will proceed with their plans to achieve appropriate recognition by seeking UN membership as a key objective.

It is widely thought among Council members that the US would block any application for full UN membership in the Security Council. President Obama in his 19 May speech discouraged any such move. The US may not be the only Council member which would find a Palestine application for UN membership premature. By contrast, there may be options with sufficient creative ambiguity for a General Assembly resolution to allow very wide support for Palestine to be granted non-member state observer status.

On the peace process, the US seems to be continuing to argue that the Council is not the appropriate body for establishing parameters regarding the Israel/Palestine issue, preferring that such issues be addressed only in the Quartet or through direct negotiations.

Few, if any, Council members would disagree that the fundamentals of any agreement must be reached through direct talks. But most consider that that is not inconsistent with the Council playing a role on general parameters. Most believe that some Council leadership would be helpful.

The equal level of stalemate in other international mechanisms such as the Quartet, also seems to underline the anxiety among Council members. Regarding the flotilla incident, there was some concern in the Council 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. However, there is no apparent enthusiasm for taking up the report in any formal way.

UN DOCUMENTS

SECURITY COUNCIL RESOLUTION

- 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/2011/430 (14 July 2011) was from Israel regarding rocket fire and mortars from Gaza.
- S/2011/414 (6 July 2011) was from Palestine regarding the Israeli blockade and airstrikes in Gaza.
- 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 RECORD

- S/PV.6484 (18 February 2011) was the meeting record of the US veto of the draft resolution on settlements.
- S/PV.6325 (31 May 2010) and S/PV.6326 (1 June 2010) were the Security Council meetings on the Gaza flotilla incident.

HUMAN RIGHTS COUNCIL

- A/HRC/17/L.1 (17 June 2011) called for the implementation of the independent international fact-finding mission's conclusions regarding the

31 May 2010 Gaza flotilla incident.

OTHER

- S/2011/24 (18 February 2011) was the draft resolution on settlements vetoed by the US. The other 14 Council members voted in favour.

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