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PALESTINIAN STATEHOOD AT THE UN: WHY EUROPEANS SHOULD VOTE “YES”

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SUMMARY

A diplomatic tug-of-war between Israel and the Palestinians is underway as the latter bids for recognition as a state at the United Nations at the end of September. With the United States already having declared its opposition, Europe finds itself centre stage. But despite their unified and longstanding support for the two-state solution to the conflict, Europeans are divided about how to vote. This memo argues that Europeans should support the Palestinian bid, which should be seen not as a diversion from bilateral negotiations with Israel but rather as a response to the stalling of negotiations. A strong UN vote in support of their aspiration to statehood would reaffirm the determination of the international community to prevent the two-state solution from dying of neglect.

At the moment, Europe has significant leverage over the Palestinians. EU member states should give their foreign policy representative, Catherine Ashton, a mandate to engage energetically with the Palestinians and urge them to take into account legitimate Israeli concerns – in particular, about a precipitous approach to the International Criminal Court (ICC) – as the resolution is being drafted. She would then be able to offer them the incentive of securing solid European support for the right resolution while gaining assurances from the Palestinians that they do not intend to rush to the ICC once they are recognised as a “non-member state”.

Later this month, the Palestinians seem almost certain to turn to the United Nations to advance their statehood. The exact modalities remain unclear. But given the certainty of a US veto if they apply to the Security Council for full UN membership, the odds are that the Palestinians will ask the General Assembly to upgrade their UN status from “observer” to “non-member state” – in other words, like the Vatican.

If they do take this route, the Palestinians are likely to get the majority they need. But given historical voting patterns at the UN on the Israel–Palestine conflict, attention will be focused more on the “who” of the vote than on the “how many” – determining whether the Palestinians or the Israelis can declare victory in what has become a diplomatic tug-of-war. With the US already having declared its opposition, this leaves Europe in the unusual position of finding itself centre stage in this latest episode of the Middle East’s most neuralgic conflict. This is not just unusual but also deeply awkward, given Europeans’ frequently repeated aim to maintain unified positions on the conflict – and the fact that the EU member states approach the decision divided about how to vote.

This memo discusses the arguments for and against European support for the Palestinians’ bid – and concludes that, despite legitimate Israeli concerns, the arguments in favour of a solid and preferably unified European “yes” are, in principle, decisive. Ultimately, each EU member state will decide how to cast its vote on the basis of what exactly is being proposed – and what precise terms it is proposed in. But given their status as the key diplomatic prize still up for grabs, Europeans should have significant leverage to affect both. EU

member states should give their foreign policy representative, Catherine Ashton, a mandate to engage energetically with the Palestinians and urge them to take into account legitimate Israeli concerns – in particular, about a precipitous approach to the International Criminal Court (ICC). She would then be able to offer them the incentive of securing solid European support for the right resolution while gaining assurances from the Palestinians that they do not intend to rush to the ICC once they are recognised as a “non-member state”.

Other scenarios

The Quartet – the United States, the EU, Russia and the UN – is still attempting to piece together consensus language that will relate to guidelines for a two-state solution and will be intended to facilitate a resumption of negotiations between the parties. The last attempt, in July, failed when the US proposed language for a Quartet text that was decidedly different to the simple “borders and security” parameters set out by President Barack Obama in his 19 May speech¹ and that tilted markedly in Israel’s favour.

Success in producing a Quartet statement is still not inconceivable. The EU could accept language that is a slight improvement on the US July effort (while still falling far short of actual EU policy) with a view to then pressuring the Palestinians to accept the Quartet position and desist from appealing to the UN. For now, this is unlikely either to happen or to be helpful. And even if the Quartet does produce a statement, it is at this stage most unlikely to dissuade the Palestinians from having their UN moment.

A more real possibility is that the Palestinians will pursue their original idea of seeking full UN membership at the Security Council. The Palestinians are fully aware that the Security Council membership application road leads to a dead end. A US veto is guaranteed. But the whole question could also get stuck in the Security Council. The membership application has to be put to a technical committee of the whole and that can take time before it exits committee. Although technically the Palestinians could proceed to the General Assembly with another resolution in late September or October while the Security Council is still deliberating, such a move would be widely perceived as an affront to UN procedure. When the Security Council is still seized of a matter, it is not as a rule taken to the General Assembly. Many states, including Europeans, would vote based on breach of protocol rather than substance.

It is not unreasonable to speculate that if the Palestinians go to the Security Council with a membership application, it means that they are intentionally seeking to avoid the General Assembly and that they are choosing the path of a glorious defeat and of righteous indignation with the US for

its veto. It is possible that with all the pressure being applied to the Palestinian leadership, they have become increasingly uncomfortable with the predicament into which they have manoeuvred themselves and are looking for some kind of exit strategy. Getting stuck in the Security Council could avoid the dilemma of what to do next after a successful endorsement of statehood at the General Assembly, and sidestep questions such as the status of the Palestine Liberation Organization (PLO) if statehood is recognised, whether to pursue action at the ICC, how to translate progress at the UN on the ground, or even what happens if foreign and especially US aid is cut. However, this would be a highly risky move. Their domestic opponents would expose what had happened as largely transparent and premeditated, and it would be hard to present this as anything other than a stinging failure and a terribly deflating moment given the build-up of expectations. It is a course of action that would hardly ingratiate the Palestinians with the Americans nor mitigate the Congressional move towards de-funding. It would also not actually do anything to advance the Palestinian cause.

The arguments for a European “yes”

Assuming the Palestinians do end up with a resolution moving forward at the General Assembly, however, there are a number of obvious and powerful arguments for Europe to support an affirmation of Palestinian statehood.

Consistency

A two-state solution is one of the Europeans’ longest-standing collective international objectives: previous moments of European leadership include the Venice Declaration of 1980 and the Berlin statement of 1999 with its promise to “consider the recognition of a Palestinian state”. There are more and more details of European unity on what a solution should in practice mean than on perhaps any other international issue, and the expansive language of the 2009 European Council conclusions represented a new landmark consensus in this respect.

Europeans have backed up their declarations with a huge financial and political investment in the two-state solution. Aid to the Palestinians has in recent times from all European sources been running at more than one billion euros (US\$1.38 billion) a year. Europe has in particular invested in the Palestinian leadership that has committed itself to a two-state solution alongside Israel and to non-violence. Against that background it would seem perverse, when that leadership turns to the international community to reaffirm its right to statehood, for Europeans not to support them.

The logic of state-building

Of particular salience is that this September coincides with the culmination of the two-year programme to build the

¹ The White House, “Remarks by the President on the Middle East and North Africa”, State Department, Washington, DC, 19 May 2011, available at <http://www.whitehouse.gov/the-press-office/2011/05/19/remarks-president-middle-east-and-north-africa> (accessed 9 September 2011).

institutional infrastructure of a Palestinian state that was launched by Palestinian Prime Minister Salam Fayyad in 2009. Europe has been a leading supporter in that state-building effort and along with all the relevant international authorities (including the UN, the IMF and the World Bank) has recognised that Palestine, in effect, is state-ready. Continued European funding for Palestinian state-building would make little sense if it has no political context, or one which Europe rejects. And, as of now, the only arena that can provide the political context is the UN vote. “State-building under occupation” has been delivered by Fayyad; a response from the international community must now follow. Europeans cannot in fairness set the Palestinians the task of preparing themselves for statehood, accept that the job has been done, and then refuse formal acknowledgment of what they have achieved.

Values

In the context of the Arab Spring, both the EU and its member states have placed themselves firmly on the side of the people and their right to self-determination and freedom. The sincerity of that commitment will be keenly questioned if a different standard seems to be applied to the Palestinians. This conflict has always resonated in the Arab world but it could be largely insulated in the era of Western-backed autocracies. The Arab Spring has changed all that. Elsewhere in the Arab world, Europeans have advocated (and, in some cases, fought) for the same rights that the Palestinians are pursuing. It is not clear how Europeans could vote in ways which seem to deny the right of the Palestinians to their own freedom and maintain any claim to moral consistency.

Interests

In this matter, European interests align with European values. As the Middle East reshapes itself, Europe needs to seize the opportunity to reset its relationship in a constructive way. This has implications ranging from domestic security and nuclear proliferation issues to economic growth potential, energy supplies and immigration. The post-awakening Arab world will not be so tolerant of the West’s perceived hypocrisy on the Israeli–Palestinian conflict – and that goes not just for new post-revolutionary governments but also for autocratic regimes in the Gulf that have been discomfited by European support for people power, but will now expect that to play through into Europe’s approach to the conflict. As Muriel Asseburg of the German think-tank SWP recently commented in advocating European support for a Palestinian resolution at the UN: “Anything else would be a severe blow to EU credibility in the Arab world – and far beyond too.”² Beyond the immediate context of this issue, Europeans also

share a strong interest in seeking to make a reality of their “common foreign policy”. Failure at this critical juncture to meet the challenge and to take a clear and unified position threatens to banish Europe, as a collective global actor, to off-off-Broadway.

The arguments against a European “yes”

There are also of course a number of arguments, of varying strength, against any such European support for a “yes” vote.

Distraction

Israel, with US support, argues that Palestinian recourse to the UN is nothing but a distraction – an unproductive sideshow that will only embitter relations and do nothing to advance the realisation of an agreed two-state solution, which can come about only as a result of bilateral negotiations between the protagonists. They argue that the Palestinians need to realise that unilateral recourse to the UN is a dead-end and get back to the negotiating table.

However, Israeli charges of unilateralism sit oddly in light of a steady programme of settlement in the West Bank and Jerusalem, which have seen settler numbers grow to in excess of 500,000 in the years since the Oslo Accords. The Israeli government has approved settlement expansion in the West Bank, including in East Jerusalem, three times in the month of August alone. The Palestinian move is neither “unilateral” (rather, it is an action designed to garner overwhelming international support in a multilateral forum) nor a violation of previous signed agreements (which say nothing about Palestinian statehood).

The real issue here, though, is whether there currently exists a viable peace process, or framework for bilateral negotiations, in which the Palestinians would more responsibly be engaged. President Obama came to office with a clear conception of the need to “reset” America’s relations with the Muslim world, and of the importance in that context of finally resolving the Israeli–Palestinian conflict. In his efforts to get negotiations restarted, he attempted to manoeuvre Israeli Prime Minister Benjamin Netanyahu first to freeze settlement growth in the occupied territories, and more recently to accept a negotiation focused first on security and on borders “based on the 1967 lines with mutually agreed swaps”. However, those efforts failed. Facing Obama down, Netanyahu received a hero’s welcome in the US Congress while he rejected the 1967 lines as “indefensible”, affirmed that an undivided Jerusalem must remain the “united capital of Israel” and demanded a long-term Israeli military presence in the Jordan valley.³

² Muriel Asseburg, “Palestine at the United Nations: Options, Risks and Chances of an Application for Full Membership and Recognition”, Stiftung Wissenschaft und Politik, August 2011, available at http://www.swp-berlin.org/en/products/swp-commenten/swp-aktuelle-details/article/palestine_at_the_united_nations.html (accessed 9 September 2011).

³ “Transcript of Prime Minister Netanyahu’s address to U.S. Congress”, the *Globe and Mail*, 24 May 2011, available at <http://www.theglobeandmail.com/news/world/americas/transcript-of-prime-minister-netanyahus-address-to-us-congress/article2032842/> (accessed 9 September 2011).

Europeans are fond of saying that “everyone knows” the basis on which the conflict must ultimately be resolved – by which they mean a two-state solution close to what was proposed by President Bill Clinton in December 2000, discussed in the Olmert–Abbas negotiations of 2008 and embellished in the European Council conclusions of 2009. But they miss how far the mood in Israel has moved away from regarding such a settlement as desirable or necessary. President Obama may pronounce the status quo as “unsustainable”, but Netanyahu is content to describe the conflict as “insoluble”.⁴ With the rightwards shift in Israeli politics, and after successfully weathering two intifadas, Israelis are increasingly ready to think in terms of conflict management rather than conflict resolution. In short, the Israeli government is under no domestic pressure to take a more conciliatory line towards the Palestinians.

If Israelis see no reason to make difficult concessions, the Palestinians feel they have no scope to. President Mahmoud Abbas and Prime Minister Fayyad know how vulnerable they are to portrayal as Western-backed stooges by political opponents such as Hamas. In recent years they have focused on building the institutions and economy that a future state will require. But, as noted above, this process cannot be spun out indefinitely as a substitute for political progress. With a Palestinian population that believes Israel more capable of “delivering” the US than vice-versa,⁵ the PLO’s recourse to the UN is less considered strategy than absence of any better idea – a symptom of having nowhere else to turn. Going to the UN takes the Palestinian Authority (PA) out of its comfort zone, risking US economic sanctions, for instance. But propelled by their own domestic political weakness, Israeli rejectionism and the refusal of Netanyahu to offer them any ladder to climb down, and also propelled by the Arab Spring, there is an absence of any better idea/prospect for the Palestinians to pursue. Thus, the Palestinian move to the UN is not an irresponsible distraction so much as an alarm call over a peace process that they see as dying on its feet.

A transatlantic rift

The US does not want Europe to vote en masse with the Palestinians and against how the US and Israel will be voting. It will undoubtedly apply pressure, which will naturally worry Europeans who are conscious both of the US’s crucial role in efforts to solve the conflict and of the US’s importance to them in many other ways. But given the domestic political dynamics on this issue and his already over-flowing in-tray, President Obama wants this issue shut down for the election season. He will be politically blamed for any move at the UN and for any failure to “control” Europe, and, should this proceed, will face pressure to de-fund the PA and perhaps also to cut back financial commitments to the UN. At last year’s General Assembly gathering, President Obama looked

forward to coming “back here next year ... to a new member of the United Nations – an independent, sovereign state of Palestine”. This quote will be thrown in his face by domestic opponents as being the genesis of any UN debacle.

For the US, domestic politics rules. Avoiding any UN action would be ideal, but if it is to happen then the closest option to a marriage of political and national interests would be for the US to find safety in numbers in opposing Palestinian aspirations. Behind these immediate electoral concerns, however, Americans will also understand that there could be some advantage for them in a show of European independence on this issue. For domestic political reasons, the US cannot vote “yes” at the UN and, by extension, now has limited leverage on the governing coalition in Israel. Prime Minister Netanyahu has twice demonstrated – over the settlement freeze and over the latest Obama parameters for negotiations – that he can face down the US administration. If and when the US does return to the fray of serious peace efforts (probably not before the 2012 elections), it may help create some American leverage with Israel if Europe has done some “front-running” in the interim.

Indeed, in his 22 May speech to the American Israel Public Affairs Committee, President Obama noted: “There’s a reason why the Palestinians are pursuing their interests at the United Nations. They recognise that there is impatience with the peace process, or the absence of one ... in Europe. And that impatience is growing ... will continue to gain momentum in the absence of a credible peace process and alternative.”⁶ Israel failed to heed this warning and to offer a credible peace process and alternative. A European “yes” vote at the UN would prove the validity of the president’s words. Such considerations may explain why, when all EU members of the UN Security Council voted “yes” on a settlements resolution in February 2011 – which the US then vetoed, the transatlantic fall-out was very limited.

In any case, Europeans should not be afraid to disagree with the US on issues, such as this one, where transatlantic differences of view are substantial and well-known. In the words of the British Foreign Secretary, a healthy transatlantic alliance requires a relationship which is “solid, not slavish”.⁷

Incitement to violence

Some make the argument that if the Palestinians secure recognition of their statehood in New York but nothing changes on the ground, then the frustration of unmet expectations could spill over into violent clashes. Non-violent demonstrations are being planned and the potential

⁵ *Palestinian Public Opinion Poll No. 40*, Palestinian Center for Policy and Survey Research, 10 July 2011, available at <http://www.pcpsr.org/survey/polls/2011/p40efull.html#peaceprocess> (accessed 9 September 2011).

⁶ The White House, “Remarks by the President at the AIPAC Policy Conference 2011”, Washington, DC, 22 May 2011, <http://www.whitehouse.gov/the-press-office/2011/05/22/remarks-president-aipac-policy-conference-2011> (accessed 9 September 2011).

⁷ “Britain Vows ‘Solid, Not Slavish’ Ties With The U.S.”, CBS News, 12 May 2010, available at <http://www.cbsnews.com/stories/2010/05/12/world/main6476874.shtml> (accessed 9 September 2011).

for things to turn bloody is always there. Yet the PA clearly has the most to lose from the eruption of violence. In fact, a strong endorsement of Palestinian aspirations at the UN will more likely have a restraining influence, through having demonstrated to the Palestinian public that, even if there is no progress with Israel, at least all is not lost in the world and that their leadership can deliver a diplomatic success. A Palestinian failure at the UN would seem more fraught with escalatory potential.

Any serious discussion, though, around the likelihood of violence needs to factor in two additional elements. First, there has been relative quiet on the Palestinian front even during these long months of the Arab Spring. There are at least five reasons for this:

- the Palestinians have enjoyed, in relative terms, a donor-driven economic uptick. Their largest employer is the PA which relies heavily on foreign aid and they do not want to endanger that. The structures of the PA and its donor relationships are emphatically counter-revolutionary.
- there remains a significant degree of Palestinian exhaustion following two intifadas and Israel's response to them.
- Palestinian life is severely atomised by the system of closures and checkpoints, and by the division of the West Bank into areas A, B, and C. This trend towards division is further exacerbated by the political split.
- the PA in the West Bank remains committed to security co-operation with Israel and to avoiding points of friction between Palestinians and Israeli forces or settlers.
- the ongoing non-violent Palestinian struggle for freedom in several villages across the West Bank has been met with harsh Israeli counter-measures, which have received scant international attention but have discouraged others from pursuing this path.

None of these factors are dependent on a UN vote and none are likely to change after it.

Second, an Israeli (or even a US) attempt to “punish” the Palestinians for going to the UN could have an incendiary effect in undermining security. The factors described above which reduce the likelihood of violence could be upturned if Israel chooses to take punitive measures against the Palestinians in response to any UN move, such as withholding economically vital Palestinian tax revenues, annexing settlements, suspending security co-operation, or intensifying travel or closure restrictions. If the US were to also de-fund the PA, a trend towards economic malaise would be accelerated. It is this kind of unravelling that most increases the chances of entering an escalatory cycle. Self-evidently, however, the decision on these issues rests in Israeli and US hands.

“Delegitimation”

Israelis charge that the real Palestinian motive in going to the UN is to “delegitimise” their state. On the face of it, this is strange, given that a Palestinian state within the 1967 borders obviously implies acceptance of the existence of Israel on the other side of those borders. Opposing Israel's policies of occupation, treatment of Arab citizens, or opposition to rights claimed by Palestinian refugees are all legitimate areas of policy disagreement. Applying the term “delegitimation” in this case would appear to be an effort to shut down conversation rather than to illuminate and enlighten it. Neither would any pursuit of Palestinian redress at international institutions delegitimise Israel per se. Rather, as with any state's referral to these bodies, only specific policies and actions would be judged. Europe should unequivocally oppose groups that reject Israel per se, often based on anti-Semitic animus and irrespective of any policy issues. However, the Palestinian UN effort does not fall into this category.

The ICC

Nevertheless, Israelis have real concerns that the cause of peace would not be advanced if the UN vote opened the door to precipitous efforts by Palestinians or their sympathisers to bring the ICC into the conflict. This issue is discussed in more detail below.

Unreality

Finally, some Europeans ask themselves how they can vote in favour of Palestinian statehood at the UN when the Palestinian Authority is manifestly not in full control of the territories it claims for its state: the West Bank and East Jerusalem are occupied by Israel, and Gaza is controlled by Hamas (which is quietly sitting out the current diplomatic drama). Meanwhile, neither Fatah nor Hamas show much readiness to make substantive progress on reconciliation and the formation of a national unity government. However, a vote for upgrading Palestine to “non-member state” at the UN is not the same thing as an act of recognition – something that only individual states can bestow upon Palestine, not the world body. Many members of the EU will not want to take that step at this point because they do not feel it matches the reality on the ground or because they wish to retain that as future leverage over the Palestinians or Israel. Nothing in a “yes” vote prejudices any EU member state's right to continue to review the circumstances under which bilateral recognition could be accorded.

So what should Europeans do?

If the above analysis is right, then Europeans should aim to get into a position where they can all vote “yes” in favour of the projected Palestinian resolution. Anything else would be inconsistent with years of European efforts to assist the achievement of a two-state solution; run counter to their reactions to the wider Arab awakening; and damage their wider interests in the Middle East. Given the moribund state of the “peace process” – inevitably comatose at least until after the 2012 US presidential elections – they will not, in so doing, damage the prospects of peace. Rather, they will be contributing to an international reaffirmation that, despite the current trends, a two-state solution involving the creation of a viable Palestinian state on the basis of 1967 lines must be pursued.

However, as noted above, everything will ultimately depend upon the text that is finally put to the vote – and on how far an outcome can be secured which satisfies legitimate Israeli concerns. The US cannot play that role in negotiating the text – it has pre-emptively dealt itself off that table. Only Europe is in a position to play that role, but only if it can come to the table sufficiently unified. Indeed, only a unified European willingness to vote “yes” puts Europe in a position to have an impact on the text of a resolution or on the situation following the vote. In a policy briefing released by the Washington Institute for Near East Policy, former Israeli negotiator Tal Becker noted: “The scope and content of any future Palestinian resolution that is brought to the General Assembly for a vote largely depend on the outcome of European and Palestinian bargaining.”⁸ In other words, Europe will only have leverage if it can sing in chorus.

This, of course, will be very difficult for some Europeans, for whom there is a deep seated, understandable and laudable sense of historic responsibility towards Israel, and who feel uncomfortable doing anything that might be interpreted as questioning that commitment. But there are several important ways in which Europe could possibly mitigate this concern while also doing what is right by Israel. It is true that, were Europe to achieve certain “Israeli-friendly” deliverables, these are most unlikely to be acknowledged or appreciated publicly by the current government in Jerusalem. But they are likely to be noticed and welcomed by a large swathe of the Israeli public and elites, including the security establishment. Many will certainly speak out and convey that gratitude.

Such steps might include:

- a clear statement in the text of any resolution explicitly supporting Israel alongside a Palestinian state, thereby entrenching Israel’s legitimacy and its permanence. Thus, Palestinians and Arab states would vote to affirm Israel’s existence alongside Palestine and, in effect, recognise Israel.

- the addition in the text of other parameters that address certain Israeli concerns, for example a reiteration of previous UN resolutions such as UN General Assembly Resolution 181, which affirmed the Jewish character of the state.
- a separate clarification and reiteration by Europe of its commitment to Israel’s security or its opposition to blanket “boycott, divestment, and sanctions” efforts against Israel.

What to do about the ICC?

For Israelis, the real worry is that a UN resolution might mean its citizens could ultimately face prosecution by the ICC. In January 2009, the then Palestinian Minister of Justice, Ali Kashan, declared the PA’s recognition of the jurisdiction of the ICC over the “territory of Palestine”. This amounted to an official request that Palestine be considered a state for the purposes of ICC jurisdiction. The Chief Prosecutor at the ICC is yet to rule on the acceptance of this Palestinian declaration under Article 12(3) of the statute of the ICC. It is widely considered that strong endorsement of Palestinian statehood at the UN General Assembly could strengthen Palestine’s position in the international legal order and enhance its ability to exercise certain rights, including impacting the considerations of the Chief Prosecutor. This leaves many Israelis, including those otherwise supportive of the Palestinian UN move (or somewhat indifferent, including centrist members of the government and those in the security establishment) actively opposed to the move. This fear was strengthened by President Abbas’s declaration in an op-ed in May that “Palestine’s admission to the United Nations would pave the way for the internationalisation of the conflict as a legal matter ... to pursue claims against Israel at the United Nations, human rights treaty bodies and the International Court of Justice”.⁹

However, senior Palestinians emphasise in private that they have no interest in going down the route of legal action against individual Israelis. In fact, pursuing Israel at the ICC would be a Palestinian declaration of a clear shift in strategy away from the PA and everything that it entails in terms of co-operation with Israel, such as Israeli issuing of VIP permits, security co-operation, easing of movement for Palestinian officials, etc. The current Palestinian leadership is very clearly not there. Anyway, expert opinion is split as to whether the ICC Chief Prosecutor would be swayed by a UN vote or is ready to prioritise a file that has been collecting dust for almost three years. Moreover, were the Palestinians to actually pursue recourse at the ICC and be recognised for the purposes of ICC jurisdiction, it would be a double-edged sword: Palestinian rocket fire against Israeli civilians could also be scrutinised and dealt with by the ICC.

⁸ Tal Becker, “A Coming Storm? Prospects and Implications of UN Recognition of Palestinian Statehood”, The Washington Institute for Near East Policy, June 2011, available at <http://www.washingtoninstitute.org/templateCo4.php?CID=347> (accessed 9 September 2011).

⁹ Mahmoud Abbas, “The Long Overdue Palestinian State”, the *New York Times*, 16 May 2011, available at <http://www.nytimes.com/2011/05/17/opinion/17abbas.html> (accessed 9 September 2011).

Nevertheless, the ICC issue could be relevant for the future and therefore remains an understandable Israeli concern. The obvious solution is for the Palestinian leadership to formalise in public what they affirm in private about non-recourse to the ICC. But this is not as straightforward as it sounds. Given the nature of the crimes that the ICC is there to address, it would be particularly difficult and politically precarious for any Palestinian leadership to divest itself categorically of the option of pursuing that particular avenue of recourse. Europeans might also be loath to press for this given the suspicion in much of the global south, Africa and certainly the Arab world that the ICC is only ever used against them and never against the West. At a particularly sensitive time in the ICC's development, and given the role it might play in regard to developments in the Arab world, it would be ill-advised to further feed those suspicions by seeming to create an Israel "carve-out".

However, diplomacy should at least attempt to address this challenge. One possible rationale for the Palestinians to suspend their acceptance of the ICC's jurisdiction would be to recall that the January 2009 application was submitted after Israel's Operation Cast Lead against Gaza. At the time, the Palestinian polity was divided and the remit of the PA did not extend to Gaza. Given the circumstances (and the political pressures) surrounding Operation Cast Lead, the PA decided that it would nevertheless make its declaration in respect of "the territory of Palestine". But despite recent moves towards Palestinian reconciliation, Palestinian unity remains unachieved. This division remains one of the main arguments against the ICC conferring jurisdiction.

Against this background, the Palestinians could declare that their application to the ICC should be placed on hold and proceed only once reconciliation is advanced. This would guarantee that the PA has a relevance in both areas, strengthen its case for future recognition of jurisdiction, and also demonstrate its seriousness in pursuing and achieving reconciliation itself. It will of course be up to the Palestinians to decide whether this rationale, or some other, would best express their readiness to provide reassurance on this matter.

Ultimately, each EU member state will decide how to cast its vote on the basis of what exactly is being proposed – and what precise terms it is proposed in. But Europe should seize its moment of leverage to affect both. At their meeting on 12 September, the 27 European foreign ministers should encourage their foreign policy representative, Catherine Ashton, to engage energetically with the Palestinians and urge them to take into account legitimate Israeli worries in the precise drafting of the resolution. She would be able to offer them the incentive of securing solid European support for the right resolution while gaining assurances from the Palestinians that they do not intend to rush to the ICC once they are recognised as a "non-member state".

The aftermath

The Palestinian move to the UN should be seen as a product of the effective breakdown of the "peace process". But although it is understandable that the Palestinian leadership feels it has no alternative, this does not mean that it is travelling a new strategic path to peace or de-occupation. The situation is one of damage limitation. Thus, if Europe can converge on a unified "yes" and make use of the leverage that that should give them, one might hope that the outcome will strengthen the Palestinians' faith in the efficacy of diplomacy and non-violence and the international community's commitment to the two-state solution while also mitigating legitimate Israeli concerns.

But however the UN drama plays out, the aftermath will be full of risk – risk that could be gratuitously compounded if Israel seeks revenge by, for example, withholding the Palestinian tax revenues that it collects and passes on according to the Paris protocols, or the US Congress moves to cut aid to the Palestinian Authority. Whether or not these escalatory steps are taken, the chances of civil disturbance (particularly if the Palestinians "fail" at the UN) defaulting into violent confrontation are palpable. In these circumstances, with the US incapacitated by the election, Europe may need to engage.

If Europe does vote "yes", Israel is likely to suggest, as it often has in the past, that it has ruled itself out of having a place in the peace process. Disregarding for a moment how relevant that is given the moribund state of the peace process, the opposite may anyway be true. Europe might actually enhance its prestige and respect, not only in the Arab world but also in Israel, by taking a firm stance. Official Israel will not be happy, but it may be less dismissive of Europe. A consistent, assertive and unified European position is certainly better than the alternative – that is, being split, ineffectual and marginalised.

Both of the protagonists in the conflict will need dialogue with the nearest approximation that exists to a genuine friend to both. The Palestinians need someone to tell them that drifting into a showdown at the UN is no substitute for having a strategy for achieving real statehood; that donor-funded institution-building is not sustainable in the long term; and that there will ultimately be no real Palestine unless they can find a way to achieve national unity. Israelis, on the other hand, need to be challenged to think beyond iron-clad US support and the sense that they have the Palestinians where they want them; and to reflect both on developments in the region and on the implications for their own society if viable Palestinian statehood becomes a practical dead-letter. In short, there will be much to be done in the aftermath of the UN vote. But a Europe that has both voted "yes" and used that vote to mitigate the bitterness of the clash will be better placed to contribute.

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