

UN Security Council Resolution 2334: Content, context and critique

December 2016

What happened?

- On Wednesday evening 21st December, Egypt circulated a draft resolution in the UN Security Council which was heavily critical of Israeli settlements. Due to reported pressure by the government of Israel and the incoming Trump administration, the draft was withdrawn only for it to be reintroduced on Friday by representatives of New Zealand, Senegal, Malaysia and Venezuela. That evening, [UN Security Council Resolution 2334](#) passed with 14 delegates in favour, (Russia, China, United Kingdom, France, Japan, Malaysia, Venezuela, Ukraine, Angola, Egypt, Uruguay, Spain, Senegal and New Zealand) no votes against, and one abstention (the United States).
- Considered under Chapter 6 rather than Chapter 7 of the UN Charter – which falls under the category of recommendation rather than facilitating potential sanctions – the resolution declares that Israeli settlements in East Jerusalem and the West Bank have “no legal validity,” and constitute a “flagrant violation of international law” as well as a “major obstacle to the achievement of the two-state solution”. It further demands Israel immediately and completely ceases all settlement activities and calls upon States to distinguish in their dealings between the State of Israel and these territories. The resolution also calls on both sides to prevent violence against civilians, including acts of terror as well as refrain from provocative actions, incitement and inflammatory rhetoric. Lastly it requests the Secretary-General reports to the Council every three months on the implementation of the provisions of the present resolution.
- Significantly, the US chose not to veto the motion, thus allowing it to pass. In remarks to the Council, Ambassador Samantha Power explained that the US refused to vote in favour of the resolution because it was too narrowly focused on settlements rather than the many other factors which significantly contribute to the perpetuation of the conflict. At the same time, it did not vote against it because criticism of settlements is consistent with US policy across Republican and Democratic administrations.
- Israel’s Prime Minister Benjamin Netanyahu called the resolution “unbalanced,” expressing his deep dismay that the Obama administration decided against vetoing it, and subsequently charging the administration with orchestrating the resolution’s passage. Israeli analysts and politicians from across the political spectrum criticised the content of the resolution and the Obama administration for allowing its passage, even while many also apportioned blame on the Netanyahu government for policies they identify as leading Israel towards international isolation. Yesh Atid leader Yair Lapid called the resolution dangerous and unfair, but also stated that “what became clear was that no country in the world agrees with the Israeli government. We had zero supporters at the vote”. Former Prime Minister and Defence Minister Ehud Barak, a long-time critic of Netanyahu, commented that “a government that does not act and does not lead a [peace] process brings resolutions like this upon itself”.
- According to *Haaretz*, Western diplomats claimed that it was the UK which encouraged New Zealand to continue pushing for a vote after Egypt withdrew the resolution. Furthermore, it was British legal figures and diplomats who reportedly played a major role in formulating the resolution and revamping it with the Palestinians in order for it to be passed without an American veto. The UK’s representative, Matthew Rycroft, explained his support for the resolution text due to the two-

state solution being in the best interests of both sides, stating that the UK rejected all efforts to de-legitimise Israel and emphasising the need for an end to all terrorism and incitement as well as to the expansion of settlements.

- In the vote's aftermath, Netanyahu ordered officials to stop the transfer of NIS 30m (£6.8m) to five UN bodies and summoned the ambassadors from yes-voting countries with which Israel has diplomatic relations to the Foreign Ministry. Netanyahu also cancelled the scheduled visit of Ukrainian Prime Minister Volodymyr Groysman while a meeting reportedly due to take place with British Prime Minister Theresa May at the World Economic Forum in Davos was called off. Defence Minister, Avigdor Lieberman announced that Israel would cease all political and civil – but not security – ties with the Palestinian Authority (PA). Hamas and Islamic jihad both praised the resolution.

The context to the resolution - why now?

- *Palestinian strategy of internationalisation:* UNSCR 2334 should be seen within the framework of the Palestinian strategy to 'internationalise' its conflict with Israel. The Palestinian preference for advancing policies in the international arena – where Palestinian positions are often endorsed without them having to make any concessions – include the accession to 15 organisations such as UNESCO in 2011, the General Assembly vote to upgrade its status at the UN to 'non-member observer' in 2012, and joining the International Criminal Court in 2015. A Palestinian inspired draft UN Security Council resolution in December 2014 which sought a 12-month deadline for negotiations and for an end to Israel's presence in the West Bank within three years failed to secure nine votes needed for adoption (the UK abstained, while the US and Australia voted against). In addition a resolution criticising Israeli settlements was vetoed by the US in 2011 due to concerns that it could prevent peace negotiations.
- *Changes on the ground since 2011:* The American abstention for the resolution – in contrast to its veto of the 2011 Security Council resolution – should be viewed against the backdrop of changes on the ground in recent years. Deep distrust reportedly exists between Obama and Netanyahu and the negotiations

initiated and led by Secretary of State John Kerry have been in deep freeze since 2014. US administration officials have repeatedly warned that the status quo is untenable, and that continued settlement building puts the two-state solution in danger. Moreover the Netanyahu government – spurred by a more right-wing coalition than in 2011 – is considering legal measures to regulate and legalise the status of settlement homes and outposts built on private Palestinian land, against the advice of Israel's Attorney General. As Israeli journalist Ben Caspit explained, "anyone who passes the regulation bill over Obama's head during the last month of his term in office and hopes to get away with it without paying a price is lying to himself and is gambling with all of our security". The US decision also falls into a pattern of Presidents staking out positions on final status issues before they leave office.

Why is Israel critical of the resolution?

Israeli analysts and politicians from across the political spectrum criticised the content of the resolution and the Obama administration for allowing its passage, even while many also apportioned blame on the Netanyahu government for policies they identify as leading Israel towards international isolation.

Israel's main critiques of the resolution are:

- *The resolution indulges Palestinian intransigence:* Israelis believe that the only way for a peaceful resolution to the conflict is via direct, bilateral negotiations between the two sides and argues that the UN is not a conducive medium for these issues to be resolved. Indeed, diplomatic gestures to the Palestinians should be an incentive to the Palestinians for entering talks – which they have lately avoided – not a reward for avoiding them. Yet the Palestinian 'victory' at the UN will likely lend further legitimacy and encouragement to its internationalisation strategy and convince the Palestinian national movement that it can achieve its aims without having to compromise with Israel at the negotiation table.
- *The resolution will harden Palestinian negotiating positions, especially on territory:* A resolution that terms all Israeli construction over the former armistice 'Green line' as

lacking any legal validity erodes previous Israeli-Palestinian (and Israeli-American) understandings over territorial swaps that have evolved during previous negotiation rounds. These understandings had been aimed at allowing Israel to keep certain 'blocs' – where approximately 75-80 per cent settlers reside – in a final status agreement as part of 'land swaps'. However the resolution's lack of distinction between outlying isolated settlements and outposts on the one hand and areas such as the Old City of Jerusalem, Jewish neighbourhoods in East Jerusalem, and large settlements blocs near the 'Green line' on the other, weakens this principle. As Amos Yadlin of the Institute for National Security Studies commented, "the approach underlying Resolution 2334, whereby the Western Wall is tantamount to the Yitzhar settlement, or the Ramot neighborhood in Jerusalem is equivalent to the settlement of Elon Moreh, eliminates any chances of negotiations toward a two-state arrangement. In any event, in the aftermath of the resolution Palestinians are less likely to be forthcoming in facilitating such territorial exchanges in future negotiations".

- *The resolution is either silent or muted on Israeli concerns:* The resolution is explicit on issues important to the PA, namely the status of the West Bank, East Jerusalem and Israeli settlements. However regarding incitement and terrorism – Israel's main concerns against the PA – there is only a reference to "both parties" rather than an explicit call on the PA to work against these issues. Moreover, other issues Israel sees as important in a final status agreement, such as security needs, the recognition of Israel as the nation state of the Jewish people, and an end of conflict were absent.

What happens next?

- *A return to negotiations is highly unlikely; settlement building will continue:* The continued wide gap between the two sides on final status issues, coupled with the Palestinian victory at the UN which will likely harden its negotiation position, makes a return to bilateral negotiations highly unlikely in the short term. Concurrently, the government of Israel's intensely critical response to the resolution will likely lay the groundwork for increased building in the West Bank and

Jewish neighbourhoods in East Jerusalem. The Jerusalem Planning and Construction Committee was this week scheduled to approve the construction of approximately 5,000 new housing units in different Jewish neighbourhoods in the east of the city, although this has been postponed on instruction from the Prime Minister. Education Minister and leader of the Jewish Home party Naftali Bennett is pressurising the government to carry out large scale construction in the West Bank and annex Maaleh Adumim, a large settlement to the east of Jerusalem. However any move to annex West Bank territory would bring a fierce international backlash and in the immediate term remains unlikely.

- The resolution's lack of distinction between different settlements may also have killed off proposals from Israeli think tanks and most recently by Defence Minister Avigdor Lieberman for a partial settlement freeze. Under such a framework Israel would come to an understanding with the incoming Trump administration on a building freeze outside of the settlement blocs (on territory incorporating approximately 90 per cent of the West Bank) in exchange for continued building within the blocs and in East Jerusalem. Similar unofficial understandings were reached with the George W Bush administration.
- *International parameters may be raised:* Israel's security cabinet has been concerned for some time that the Obama administration would utilise the post-election, pre inauguration period to demarcate parameters for resuming negotiations and resolving the conflict. A speech by Kerry due to be given last week was postponed due to the UN Security Council meeting has been rescheduled for Wednesday 28th December. Moreover the French spearheaded peace conference due to take place on January 15, provides a further opportunity for such parameters to be presented. One scenario also being considered is an international proposal or speech on final status issues leading to a further UN Security Council Resolution. However, detailed parameters on all core issues – including Jerusalem, refugees, territory, security and mutual recognition – would likely be opposed by both sides. Israelis dispute international positions on territory and Jerusalem while Palestinians oppose parameters on Israeli security, Palestinian refugees and mutual recognition of two nation states.

- *Israel as a bipartisanship US issue; the Trump administration's relationship with the UN:* The Obama administration's support of the resolution coupled with the harsh criticism from the Netanyahu government in its aftermath may turn the issue of Israel into a partisan issue between American democrats and republicans. Furthermore, in the aftermath of the resolution, Congress is due to vote on legislation to stop American financial support for the UN and its institutions, a policy that is seemingly in line with the Trump administration's wishes. However the changing relationship between the US and the UN could ultimately hurt Israel. The current absence of the US from international organisations such as UNESCO has led to its inability to block anti-Israel resolutions.
- *Legal moves against Israel in international organisations:* In the longer term, the resolution's call to distinguish between the State of Israel and the territories occupied since 1967 may create a path for states as well as international organisations such as the EU to cut direct and indirect ties with Israeli settlements. The Israeli Foreign Ministry assesses that the EU would have to pass a similar resolution in its own institutions before being able to implement practical steps and legislation – which is unlikely in the short to medium term – but the resolution has created a platform for this to happen. Furthermore, determining that Israeli settlements have no legal validity may ultimately facilitate tribunals against Israeli officials (or even residents of settlements) at the International Criminal Court (ICC). The ICC is currently conducting a preliminary investigation concerning a suit filed by the Palestinians which touches on construction of settlements. Because international law takes form through different measures including Security Council resolutions, the resolution could influence the preliminary investigation and could provide cause for the ICC prosecutor to order a full investigation of Israel settlement construction.

issues. While neither the government of Israel nor the PA will fully support these parameters, they may subsequently form the basis of an additional UN resolution reflecting an international 'consensus' on a future solution. In any event, the UN resolution has made the renewal of bilateral negotiations between the sides less likely. The PA's positions will be hardened, and its victory may encourage it to further advance its strategy of internationalisation and 'lawfare' against Israel in international agencies.

Copyright © Britain Israel Communications and Research Centre 2016

For more information please contact:
Thais Portilho, Head of Communications
020 3745 3348
07879 644099
thaisp@bicom.org.uk

Conclusion

While the incoming Trump Administration strongly opposes the resolution, it will find it near impossible to supersede it. In the immediate term, all eyes will now turn to Kerry's speech, where he is likely to set out the US's positions on final status