

**CURB YOUR ENTHUSIASM:
ISRAEL AND PALESTINE AFTER THE UN**

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CURB YOUR ENTHUSIASM: ISRAEL AND PALESTINE AFTER THE UN EXECUTIVE SUMMARY AND RECOMMENDATIONS

In diplomatic lexicon, September 2011 is shorthand for a Palestinian statehood bid at the UN, ensuing Israeli and U.S. retaliation and, in fine, a train-wreck. There are legitimate fears about the fallout, but obsession with what will happen at the UN and the disproportionate energy invested in aborting it are getting in the way of clear thinking. This could well produce a cure more lethal than the ailment. Were Palestinian President Abbas to back down, he could decisively discredit his leadership, embolden his foes and trigger unrest among his people; quickly resuming peace talks as an alternative could lead to a breakdown with consequences far graver than anything that effort might induce. The focus should be on shaping a UN outcome that produces tangible gain for the Palestinians in their quest for statehood while providing some reassurance to Israelis, minimises risks of violence or the Palestinian Authority's collapse and enshrines core principles for a two-state solution. With little time remaining, the burden has shifted to the EU to craft this compromise. It has long sought that role. Now it must live up to it.

The path to the UN has been a tale of collective mismanagement. Palestinian leaders, in a mix of ignorance, internal divisions and brinkmanship, oversold what they could achieve at the world body and now are scrambling to avoid further loss of domestic credibility. Israel, overdramatising the impact of a UN move and determined to stop the Palestinians in their tracks, has threatened all manner of reprisal, from halting the transfer of tax clearance revenues, to decreeing the death of the Oslo agreement, to worse. The U.S. administration, unable to steer events, fed up with both sides, and facing a Congress that will inflict a price for any Palestinian move at the UN, just wants the whole thing to go away. Virtually all its (dwindling) attention on the Israeli-Palestinian conflict over the past months has been geared toward that goal: from President Obama's 19 May speech laying out principles guiding the resolution of the Israeli-Palestinian conflict to its last-ditch attempt to produce a Quartet statement that would enable resumption of talks.

The difficulties of coming up with a satisfactory Quartet text aside, the effort is almost bound to backfire. Begin with the objective itself. It is hard to understand how negotia-

tions can help get the parties out of their fix when (failed) negotiations are what led them there in the first place. If there is one thing on which U.S., Israeli and Palestinian officials concur, it is that it is virtually impossible in the present context for Abbas and Prime Minister Netanyahu to make substantial progress, let alone reach an agreement. Reasons abound: deep substantive gaps between the two parties; decreasing U.S. authority and enhanced domestic constraints in the run-up to a presidential election; Palestinian divisions; and the weight of the Israeli Right. Restarting talks now to prevent a so-called train wreck in September could well provoke a more dangerous crash when negotiations collapse. It is not enough to take care of September when the rest of the year looms.

Attempts to persuade or pressure Abbas to renounce the UN bid also make short shrift of – or, worse, misread – the realities of Palestinian politics. If he were to postpone it or settle for an essentially symbolic UN resolution and then return to bilateral talks without a settlement freeze, he would likely face a crippling domestic challenge by constituents who have long lost any faith in negotiations and to whom the leadership has built up the UN option for months. Most Palestinians do not strongly support the UN bid; but they would strongly oppose a decision to retract it without suitable compensation. Abbas is said to live in fear of a second “Goldstone episode” – a reference to the attacks he endured when, under U.S. and Israeli pressure, he agreed to delay consideration of the report on the 2008-2009 Gaza War at the UN Human Rights Council. He has every reason to.

Best then to forget the effort to produce a statement by the Quartet – the U.S., EU, Russia and the UN Secretariat – or at least not view it as a substitute for a UN resolution. The least harmful outcome at this point is a UN resolution that is viewed as a victory by the Palestinians but addresses some core Israeli concerns and preserves the option of a two-state settlement. Achieving that result requires some skilful third-party diplomacy. The U.S., which so far has been reluctant to engage on the content of a UN text, has taken itself out of the running. That leaves the Europeans, whose backing the Palestinians are desperate to receive and who therefore can leverage their support.

Several considerations should guide the EU's endeavour. First, it should persuade the Palestinians to forget about trying to obtain full membership in the UN through the Security Council. That would divide the EU, which very much wants to remain united, and force a U.S. veto that would paint Washington as the slayer of Palestinian aspirations – hardly a desirable reputation at a time of Arab turmoil. Besides, it makes no sense for the Palestinian themselves, who would start their quest for statehood with a setback and the associated loss of momentum.

Secondly, the General Assembly resolution should include core parameters for the resolution of the Israeli-Palestinian conflict. The U.S. has expressed concern that a UN text might harden the Palestinians' position by endorsing concepts – such as the borders of 1967 without mention of swaps, or the right of return for refugees – that they would be hard pressed to walk back. What better way to address that fear than to ensure the parameters are balanced? The EU should thus condition its support on the text meeting not only core Palestinian requirements (the 1967 lines with agreed, equal territorial exchanges; Jerusalem as the capital of two states) but also important Israeli ones: the need for negotiations; the necessity that any agreement mark the end of the conflict; and the goal of establishing two states for two peoples (a step that is not tantamount to recognising a Jewish state, an Israeli demand but for now a Palestinian taboo, but that can be understood as pointing in that direction).

Thirdly, the resolution should upgrade the Palestinian status at the General Assembly to non-member observer state. That's not quite full membership in the UN – Security Council approval is needed for that. But it is second best, a strong signal of support for statehood, and a path toward possible participation in certain international institutions.

The U.S. and Israel have voiced a number of concerns about this option. Each is worth considering in turn. They worry that Palestinians, once the realisation dawns that the UN vote will not change conditions on the ground, might erupt in frustration. The possibility of renewed upheaval cannot be discounted, particularly in light of broader regional events, though it is unlikely to be a result of such disappointment. Palestinians appear to realise that what happens at the UN will not immediately affect their lives; if they choose to rise up, it will be because of the entrenched and seemingly unmoveable realities of occupation, not because of what happens or not as a result of a UN vote. If anything, Abbas's failure is more likely than his success to provoke unrest over the next months.

A second apprehension involves Palestinian access to the International Criminal Court (ICC) and its use as a forum to pursue Israelis. Put aside the incongruity of seeking to immunise any party from the reach of international law at a time when the international tribunal is considered a per-

fectly appropriate forum for others – Colonel Qaddafi the latest in line. Put aside the myriad obstacles Palestinians would need to overcome before a case could make it before the ICC. And put aside the fact that some Palestinians also could be hauled before the court if they are accused of war crimes – as they were during the last Gaza war. Still, this clearly is a major cause for anxiety and could prompt Israel to initiate severe moves in reprisal. In this respect, the EU, optimally in conjunction with the U.S., should urge restraint and wisdom from all sides in the aftermath of a UN vote – for the Palestinians not to overplay their hand, and for Israel not to overreact.

Indeed, there is the potential for far-reaching financial retaliation by Israel and – compelled by Congress – the U.S. These are not idle threats. A cut off in aid or a halt in revenue transfers could have disastrous impact on the Palestinian Authority (PA); it would be up to the Arab states and the EU to try to make up for the losses. Israelis have evoked other potential harsh measures against the PA as well as intensified settlement construction. It is to be hoped that Jerusalem understands that taking such steps would be scoring an own goal: triggering upheaval, ending Israeli-Palestinian security cooperation, jeopardising the PA's survival and, ultimately, forcing Israel to carry the true burden (and costs) of the occupation.

The possibility of a doomsday scenario is not to be entirely dismissed. It remains within the grasp of Palestinian, Israeli, U.S., and EU policymakers to ensure it is not so. To that end, they will have to show far more wisdom and political savvy in extricating themselves from this mess than they displayed getting into it.

RECOMMENDATIONS

To the Palestine Liberation Organisation (PLO):

1. Reach agreement with the EU on a UN strategy.
2. Forego applying for full membership in the United Nations at the current time.
3. Promote a resolution in the General Assembly that:
 - a) enshrines the principles of a two-state solution, including:
 - i. a border based on the pre-5 June 1967 lines, with agreed, equal land swaps;
 - ii. Jerusalem as the capital of both Israel and Palestine;
 - iii. security arrangements that protect both states' security, preserve Palestine's sovereignty, and deal effectively with existing and emerging threats facing Israel; and

- iv. a negotiated final settlement that ends the conflict on the basis of two states for two peoples.
 - b) upgrades Palestine's status at the UN from observer entity to non-member observer state.
4. Display restraint in the aftermath of a positive UN vote in order not to provoke a harsh Israeli response.

To Member States of the European Union (EU):

5. Reach agreement with the PLO on a resolution along the lines described above.
6. Seek an implicit, U.S.-backed understanding with Palestinians and Israelis to exercise restraint in the aftermath of a UN vote and, in particular;
 - a) press Israel not to initiate harsh retaliatory measures, notably a halt in tax clearance revenue transfers to the Palestinian Authority; and
 - b) press the Palestinians not to overplay their hand in international bodies.
7. Seek to make up, together with Arab countries, any shortfall in PA assistance.

To the Government of Israel:

8. Refrain from punitive actions in response to the UN bid, such as withholding tax clearance revenues and a new wave of settlement expansion.
9. Make clear to the U.S. Congress that a cut-off of assistance would harm Israeli interests, in particular by jeopardising the PA's survival and security cooperation.
10. Exercise maximum restraint, in particular regarding the use of live fire, in dealing with Palestinian protests.

To the Government of the United States:

11. Press Congress to preserve as much Palestinian funding as possible and to maintain security assistance.
12. Press Israel to maintain transfer of tax clearance revenues.

To the Palestinian Authority:

13. Ensure that any protests remain non-violent and avoid steps that could lead to violence.

To Fatah, Hamas and Other Palestinian Factions:

14. Speed national reconciliation and undertake a dialogue on the significance of the UN bid and the role it can play in national strategy.

To the Arab States:

15. Fulfil funding obligations to the PA promptly and, in coordination with the EU, augment aid to compensate for any budgetary shortfall resulting from the UN bid.

**Ramallah/Jerusalem/Washington/Brussels,
12 September 2011**

CURB YOUR ENTHUSIASM: ISRAEL AND PALESTINE AFTER THE UN

I. THE ROAD TO THE UN

A. A LONG DISILLUSIONMENT

The notion of seeking to internationalise the Palestinian question and, in particular, turn to the UN for support, is nothing new in the history of a movement that has long banked on international sympathy and seen the world organisation as friendly territory.¹ What is striking, however, is that Mahmoud Abbas – the Palestinian leader traditionally most invested in bilateral negotiations and least persuaded by attempts to circumvent them – would preside over the most intense and determined effort to extract UN endorsement of statehood.

The apparent paradox is rooted in Abbas's and the leadership's² growing disenchantment with the Obama administration and the negotiations process itself, as well as in the hardening conviction that they cannot do business with Prime Minister Netanyahu's government. Even before the two rounds of Israeli-Palestinian negotiations that took place in 2010 – the indirect talks that began in May and the direct talks that were launched (and swiftly broke down when Israel refused to extend its moratorium on settlement construction) in September – the Palestinian leadership in Ramallah had begun to question whether the U.S. could or would broker a historic peace agreement. Crisis Group wrote at the time: "Hovering over Palestinian decision-making throughout this recent period has been a central question: whether their leadership would still rely on the U.S. to rectify the imbalance of power inherent in negotiations with Israel"³.

¹ On how the Palestinian UN strategy unfolded in 2009 and early 2010, see Crisis Group Middle East Report N°95, *Tipping Point? Palestinians and the Search for a New Strategy*, 26 April 2010, pp. 18-21.

² As used in this report, "the Palestinian leadership" reflects the dominant sense of the term in Ramallah, the U.S. and Europe, where it refers to President Abbas and his advisers in addition to certain PA officials and some members of the PLO Executive Committee and the Fatah Central Committee. It does not include Hamas, which should not be understood to imply that the Islamist movement does not have a right to participate in national affairs.

³ Crisis Group Report, *Tipping Point?*, op. cit., p. 14.

Since those words were written seventeen months ago, that question has been answered in the negative – and resoundingly so. If Palestinian officials in Ramallah had invested scant hope in Prime Minister Netanyahu, the same cannot be said of their attitude toward U.S. President Obama. Abbas bet that by repeatedly and forcefully proclaiming his commitment to a negotiated peace, providing security for Israel, tasking a competent prime minister with state-building and embracing U.S. interests, he would strip away any excuse for preventing the establishment of a Palestinian state. He was elated by Obama's early call for a settlement freeze – but with all his eggs in Washington's basket, he has suffered disappointment after disappointment. The U.S.'s impotence left him bereft; Ramallah's most deeply felt and consequential disappointment today lies not with its adversary and occupier, but rather with the would-be mediator.

The nearly twenty years of failed negotiations since the 1991 Madrid Conference stoked doubts about bilateral peacemaking; the last year and a half confirmed them. As the Palestinian leadership sees it, it engaged forthrightly, as the U.S. asked, only to be met by Israeli stonewalling. The first of two attempts were the indirect talks which produced little,⁴ despite – or perhaps because of – the lack of progress, the U.S. decided in July 2010 to move to direct negotiations, after Netanyahu apparently convinced Obama of his goodwill in a White House meeting.⁵ The Palestinian leadership

⁴ U.S. officials largely echoed these concerns about Israeli engagement but also cast blame on the Palestinians. They said that Israeli negotiators were "stalling" and "buying time by avoiding real engagement with the issues". But they were quick as well to identify shortcomings among Palestinians who, they lamented, generally reiterated well-worn positions without displaying the necessary creativity and flexibility. Crisis Group interviews, Washington, May and June 2010.

⁵ While both Obama and Netanyahu were tight-lipped about what transpired during the session, the former apparently came away convinced of the soundness of the logic and goodwill of the latter. A U.S. official commented, "This does not mean Obama is convinced Bibi can go as far as will be required. It means Obama thinks it is possible that Bibi is more serious than he thought, and thus that it is worth the try". Crisis Group interview, Washington, July 2010. Some U.S. analysts speculated that, as much as any commitment by Netanyahu, Obama was swayed by the desire to avoid yet another confrontation with the Israeli leader in the wake of the storm over settlements. Crisis Group interviews, U.S. analysts, Washington, July 2010.

was resentful about this shift, feeling that it had entered the indirect talks at substantial domestic cost, only for their sponsor to change the rules in line with its adversary's preference.⁶ Still, under intense U.S. pressure, Abbas acceded.⁷ When the talks got underway in early September, the first sessions appeared somewhat positive,⁸ but they quickly bogged down.⁹ Abbas was said to be stunned by what he heard from the prime minister on final status issues, for example regarding the insistence on a decades-long Israeli presence in the Jordan Valley.¹⁰

⁶ A PA official commented: "The U.S. ignored the fact that we submitted detailed proposals. Instead of pushing the party that was stalling [Israel] to engage, they turned around and pushed the party that was engaging [the Palestinians] to move to direct talks. But if you keep adopting your mediation style to suit one party – and always the same one party – you are never going to get anywhere". Crisis Group interview, Ramallah, July 2010.

⁷ The pressure exacted a personal toll on the president. A Fatah Central Committee member said, "Abu Mazen is tired. This is not the same man who was elected president in 2005". Crisis Group interview, Ramallah, August 2010. More broadly, the hullabaloo over the format of the talks had become an unproductive distraction for Palestinian diplomacy. A Fayyad adviser commented: "There is enormous pressure from the outside and not just from the U.S. Virtually every single diplomatic encounter we have winds up being about whether we will agree to direct talks. Even with the European and Russians. We can't talk about anything else". Crisis Group interview, Ramallah, September 2010. Accordingly, a negotiator said, "we have to get the U.S. off our backs. There is a feeling that simply saying 'no' is the wrong way to go, since we are taking all the blame. It is better to say 'yes'; then if Israel refuses to renew the settlement freeze, the breakdown will be their fault". Crisis Group interview, Ramallah, August 2010.

⁸ Obama and Netanyahu both mounted a charm offensive. A Palestinian negotiator said, "the U.S. strategy boils down to 'Trust Me'. We are prepared to do that. Obama seems more engaged, more committed than his predecessors. He certainly knows the details earlier than they did. Let's be honest: we don't really have a choice". Another echoed this point: "I have to admit this is a different Bibi from the one I knew in the 90s. He seems to have a different perspective and different intent. And I respect his [chief] negotiator, [Yitzhak] Molcho. Unlike some other Israelis, they tell you what they can and cannot do. They don't pretend and then mislead. Who knows if we can reach an agreement? But what choice do we have but to try?" Crisis Group interview, Palestinian negotiators, Washington, 2 September 2010.

⁹ A U.S. official said, "Bibi is playing his usual game, of husbanding resources for the final moment – but as we have told him often, that is not how it works in real life. If he keeps holding on to his political assets, the time to use them will never come. Or, alternatively, when he decides to make his move, it will have lost its value".

¹⁰ Palestinian officials say that what Abbas heard was miles away both from what he had anticipated and from where he had reached with Prime Minister Olmert. He reportedly

Once the talks broke down (after the U.S. was unable to broker an extension of Israel's ten-month settlement moratorium),¹¹ Abbas announced in November that he was contemplating a series of options, including a turn to the UN.¹² On 7 December, the U.S. announced that it was abandoning its efforts to convince Israel to extend the moratorium,¹³ and the UN push picked up steam. Having failed to secure what he sees as the minimum necessary conditions for successful bilateral negotiations, Abbas asked the international community to enshrine them via bilateral recognition of Palestine on the 1967 borders.¹⁴

emerged from the talks deeply discouraged. Crisis Group interviews, Washington, September 2010. U.S. officials who had been involved in preparing the meetings were bewildered by Netanyahu's approach. Apparently, he had agreed to discuss territorial matters and show some flexibility; instead, he put forward only Israel's positions on security, angering Abbas. A U.S. official called the proposals themselves "disappointing". Crisis Group interviews, Washington, September and October 2010. In an incident particularly noteworthy for the Palestinian team, lead negotiator Saeb Erekat tried to give his Israeli counterpart, Yitzhak Molcho, a document containing the Palestinian negotiating positions. Molcho refused to accept or even touch the document. Crisis Group interview, Palestinian negotiator, Ramallah, September 2010. Israel journalist Ben Caspit described this and a similar event in *Maariv*, 3 January 2010. Israeli officials explained that any document received as part of negotiations has to be shared with the inner cabinet, which, given the composition of the coalition, Israeli negotiators were loath to do. Crisis Group interview, U.S. official, Washington, September 2010. A Palestinian analyst took a distinctly minority view, criticising the leadership for giving up on talks on the basis of only a few hours of discussion. "We should have known it was not going to be easy with Netanyahu. But why engage in talks if you walk out after a few hours when you don't hear what you want? Either you give negotiations a serious chance, or you don't". Crisis Group interview, May 2011.

¹¹ On the settlement moratorium, see Crisis Group Report, *Tipping Point?*, pp. 11-12 and passim.

¹² The options that Abbas laid out at the Arab Summit in Sirte were: "(1) Accord priority to bilateral negotiations, which would resume only if Israel decided to halt settlement activities; (2) call on the United States to recognise Palestine within the 1967 borders; (3) go to the UN Security Council to recognise Palestine; (4) ask the UN Security Council to impose a mandate on Palestine; (5) call on Israel to reoccupy the territories; (6) dissolve the Palestinian Authority and leave Ramallah". *Al-Sharqal-awsat*, 11 November 2010.

¹³ A U.S. official told the website Politico: "After consulting with the parties, we have determined that a moratorium extension will not at this time provide the best basis for resuming negotiations". Politico, 7 December 2010.

¹⁴ Abbas said in November 2010: "One of the choices is for the Security Council to demand from the states of the world recognition of a Palestinian state on the 1967 border. We will not make recourse [to the UN] unless we are forced to, and all the other doors are closed. We don't want to go to the Security Council and the General Assembly, but if Israel insists on not accepting negotiations and on not stopping settlement, what is to be done?"

Among the leadership, the sense of frustration has only grown in the months since, with both Netanyahu¹⁵ and the U.S.¹⁶ There is a feeling that the Palestinian leadership is simply out of choices, externally (in terms of where to take the national project) and internally (in terms of how to justify its continued stewardship). An Abbas adviser said, “we knew we were in a situation where we did not have an answer to give to our people about how we would satisfy their needs, which is the core of legitimacy”.¹⁷ In this sense, Abbas is merely reflecting the much stronger views of his people. A stark departure from his core convictions, the current path was chosen largely because he feels he has run out of choices. A Palestinian analyst said:

At bottom, Abbas remains attached to negotiations, which he continues to see as the only pathway to a solution. The UN is and will always be a second best option. But, as faith in negotiations receded, he was inexorably dragged to the UN. It plays to the Palestinians’ strength in the international arena; it is consistent with the domestic march toward statehood; it is consistent with President Obama’s own vision, in September 2010, of welcoming a new state at the UN a year later; and it can provide a victory on the domestic scene. Abbas does not much care for the UN – but, given his lack of hope in negotiations and loss of trust in the U.S., what was the better alternative?¹⁸

In the view of the Palestinian leadership, it has done everything in its power to advance a political process: Abbas has “turn[ed] over every stone” to see whether Netanyahu was a serious partner, and Fayyad is on the verge of completing his two-year government project to build the state.¹⁹ As a result, its responsibilities fulfilled, it believes that the ball is no longer in its court.²⁰

Where will we go? There is always a place to go, and that is the Security Council, which is international legitimacy”. *Al-Anba*, 4 November 2010.

¹⁵ “We left no stone unturned in order to test Netanyahu. We are faced with a stubborn, ideologically fanatic Israeli government”. Crisis Group interview, Abbas adviser, Ramallah, July 2011.

¹⁶ “We can all be foolish in life. Four years ago, I was very foolish: I was optimistic when Obama was elected. And for the first year, his was the best administration we’ve had. But now ... I’ve had experience with five or six administrations, and none has caved more to Israel than this one”. Crisis Group interview, Abbas adviser, Ramallah, July 2011.

¹⁷ Crisis Group interview, Ramallah, August 2011.

¹⁸ Crisis Group interview, June 2011.

¹⁹ “Two years ago, our thirteenth government program created a contract with the world. It was welcomed by the international media and financed by the international community, who gave it their stamp of approval. We’ve held up our end of the bargain [in this contract]. No one can deny it. The

Further expanding on this view, one of President Abbas’s advisers said:

The Palestinian leadership chose the international track because it faced an impasse in negotiations with Israel and a very incapable sponsor in the U.S. The Palestinian leadership will welcome any proposal or initiative from Washington and deal with it smoothly, because in the end we need the international community to pressure Israel to return to serious and productive negotiations. We know there is no escape from negotiations. But look at us. We are weak; there is no government; the president is not legitimate; there is no prospect for elections. We have no options because the process’ sponsor has checked out. We went to the UN because we wanted the international powers to intervene in our cause, to put pressure on Israel to get involved seriously in the peace process.²¹

Engineering a time-out to force the world to take stock while maintaining quiet on the home front could only succeed, the leadership claimed, if the time-out had a clear endpoint, and so a deadline was fixed in accordance with three key dates: the end of Prime Minister Salam Fayyad’s two-year program (“Ending the Occupation, Building the State”) that began in August 2009 and aimed to construct institutions and demonstrate readiness for statehood; Obama’s September 2010 statement that he hoped to see Palestine as a UN member in 2011; and the one-year timeline that had been agreed in August 2010 for the duration of direct talks.

Planning for what would happen if the deadline elapsed has been anything but smooth. There has been lack of clarity – at times, outright inconsistency – in Ramallah about what leaders want, what is doable, and how it should be done. The initial focus on obtaining UN membership through the Security Council proved a false hope; the idea had been that the U.S. could be pressured into not exercising its veto over Palestine’s membership application or, failing that, General Assembly Resolution 377 – known as “Uniting for Peace” –

World Bank, IMF [International Monetary Fund] and others said we built the institutions of the state. So what about the world’s side of the bargain? I’m not just talking about the U.S. I’m talking about all of those who financed this project. From the beginning we said we are not going to administer the continuation of the occupation. After September, if this contract is not fulfilled, then that is exactly what we are doing. What more do you want from our side?” Crisis Group interview, PA minister, Ramallah, July 2011.

²⁰ Going to the UN, an Abbas confidant said, is a way to say: “We won’t go back to the old days of fruitless negotiations, and you [the world] need to handle it”. Crisis Group interview, Abbas adviser, Ramallah, July 2011.

²¹ Crisis Group interview, Ramallah, March 2011.

would provide a way around that obstacle.²² At that point, leaders claimed, Israel would be occupying another UN member state, a situation the international community would act to reverse.²³ Why and how this would happen was never entirely clear,²⁴ but by the time it became plain it was not workable, the UN idea had widely percolated into Palestinian political discourse and been announced to the world; stepping back would be seen as a major retreat by a leadership whose credibility already was battered. Instead, there has been

a scramble to keep the UN option alive, if under a different guise.²⁵

B. ATTEMPTS TO PRE-EMPT SEPTEMBER

Much of the effort over the past several months has been geared toward persuading the Palestinians to abandon their UN bid. This was behind the decision to have President Obama include in his May 2011 speech on the Arab Spring a section laying out principles to guide resolution of the Israeli-Palestinian conflict. By meeting some of the Palestinian demands (notably endorsement of the 1967 borders with mutually agreed territorial swaps), the administration hoped to convince Abbas to drop his bid and resume talks on the basis of the president's speech; at a minimum, it wanted to persuade the EU not to support the Palestinians, by pointing to a better way forward.²⁶ As early as March, senior U.S. officials predicted the president would soon deliver the speech, but several considerations – internal debates (some wanted comprehensive principles; others a sole borders and security focus; still others questioned whether either Israelis or Palestinians would welcome U.S. ideas);²⁷ the announcement of the Fatah-Hamas reconciliation deal; and Osama bin Laden's killing – all contributed to numerous delays.

On 19 May, Obama finally gave a speech in which he made clear his opposition to Palestinian efforts at the UN²⁸ but also laid out his vision of the “basis of ... negotiations”:

²² Crisis Group interview, Fatah Central Committee member, Ramallah, July 2011. For an explanation of Uniting for Peace, see fn. 66 below.

²³ PA Foreign Minister Riyad Al-Malki foresaw “political and legal pressure on Israel to withdraw its forces from the land of another state that is recognised within the ‘67 borders by the [UN]”. Associated Press, 10 January 2011. In a March study, PLO Chief Negotiator Saeb Erekat wrote that given Palestinian membership in a variety of regional and international organisations, “the option that Palestine presents a request for full membership to the UN Security Council is a realistic option that it is necessary to work to implement as fast as possible”. Saeb Erekat, “The Political Situation in Light of the Continuation of the Stoppage of Negotiations – and the Success of Palestinian Options”, study no. 5, November 2010–March 2011, copy on file with Crisis Group. In a subsequent report, Erekat reversed himself: “It is evident that the use of the United States’ ‘veto’ makes it impossible for Palestine to become a member state ... [While Palestine could] become a non-member state, [t]his is totally different from having a full membership in the United Nations, where it becomes a country under occupation by another member state with its borders being the 1967 lines”. “The Eminence of September 2011”, copy on file with Crisis Group. Abbas, however, seemed to revert to the original conception when he said in late August that following recognition, “we will be a state under occupation. The Israelis deal with us now as if we are not a state, as if Palestinian territory were disputed territory, but when international recognition of our state on the 1967 borders comes, we will be a state under occupation”. *Al-Watan* (Qatar), 28 August 2011.

²⁴ UN membership – or even statehood – is not a prerequisite to enjoying the organisation's protection should it be inclined to offer it: “Since the members of the United Nations are under obligation to keep the peace in relation not only to members but also to non-members, the organisation may protect non-members against members. This is true even if the statehood of the non-member is in doubt; this point was settled when the Security Council considered the situation in Palestine in 1948. As the representative of Israel pointed out in the debates, aggression can be committed against a victim not universally recognised as a state”. Jochen A. Frowein, “The United Nations and Non-Member States”, *International Journal*, Canadian International Council, vol. 25, no. 2, 1970, p. 340.

²⁵ Fatah leader Qaddura Fares described the UN bid as “zigzag politics”: “We talk about the Security Council and the General Assembly. We talk about UN membership, recognition of a state, declaration of state. We are calling for negotiations today but threatening a diplomatic intifada tomorrow, maybe with popular protest, but only the kind of protest that won't threaten Israel, but intimating the spectre of chaos and armed resistance if everything fails, except that are instructing the security forces to stop it. There is no overall strategy”. Crisis Group interview, Ramallah, July 2011. ²⁶ “We would tell the Europeans that U.S. principles serving as a basis for renewed negotiations offered a better way forward than statehood recognition”. Crisis Group interview, U.S. official, May 2011.

²⁷ There were several views at the State Department and the White House. While all initially agreed on the need for a speech on the Arab Spring, and in that context concurred that the president could not be silent on the Israeli-Palestinian conflict, his advisers were torn as to what precisely he should say. Crisis Group interviews, U.S. officials, March–May 2011. Senator Mitchell, then the Special Envoy for Middle East Peace, reportedly favoured laying out principles on all final status issues, but he was in a minority; others wanted a far vaguer reference to the conflict, arguing that nothing the president would offer could fully satisfy either side or produce a breakthrough, so would highlight the gap dividing the parties and U.S. impotence. *Ibid.*

²⁸ He said, “for the Palestinians, efforts to delegitimise Israel will end in failure. Symbolic actions to isolate Israel at the United Nations

The United States believes that negotiations should result in two states, with permanent Palestinian borders with Israel, Jordan, and Egypt, and permanent Israeli borders with Palestine. The borders of Israel and Palestine should be based on the 1967 lines with mutually agreed swaps, so that secure and recognised borders are established for both states. The Palestinian people must have the right to govern themselves, and reach their potential, in a sovereign and contiguous state.

As for security, every state has the right to self-defence, and Israel must be able to defend itself – by itself – against any threat. Provisions must also be robust enough to prevent a resurgence of terrorism; to stop the infiltration of weapons; and to provide effective border security. The full and phased withdrawal of Israeli military forces should be coordinated with the assumption of Palestinian security responsibility in a sovereign, non-militarised state. The duration of this transition period must be agreed, and the effectiveness of security arrangements must be demonstrated.²⁹

The speech, coming as it did on the eve of Netanyahu's visit to Washington, was viewed by the Israeli leader as a cause for major embarrassment, and he reacted accordingly. Meeting with the president in the oval office, he lectured his host on the security threats faced by his country, saying of the 1967 lines: "these were not the boundaries of peace. They were the boundaries of repeated wars".³⁰ Netanyahu mischaracterised the president's words, which had never called for a return to the 1967 borders but rather for modifications to those lines to be agreed by the two sides. Israeli officials explained the prime minister's reaction on substantive and procedural grounds. Substantively, they argued, it was a mistake to set the starting point at "1967 with swaps", for it amounted in effect to endorsement of the Palestinian position that the 1967 lines were a legitimate baseline. Procedurally, they felt that the prime minister had been

in September won't create an independent state". www.therightscoop.com/watch-obamas-speech-on-the-arab-spring.

²⁹ Ibid. Obama also said: "Ultimately, it is up to Israelis and Palestinians to take action. No peace can be imposed upon them, nor can endless delay make the problem go away. But what America and the international community can do is state frankly what everyone knows: a lasting peace will involve two states for two peoples. Israel as a Jewish state and the homeland for the Jewish people, and the state of Palestine as the homeland for the Palestinian people; each state enjoying self-determination, mutual recognition, and peace". The reference to Israel as a Jewish state was an important gesture toward Netanyahu who had insisted on this. It also was meant to mollify his anticipated anger at the reference to the 1967 borders. Crisis Group interview, U.S. official, June 2011.

³⁰ *The New York Times*, 20 May 2011.

sandbagged and that, contrary to precedent, the speech had not been properly coordinated.³¹

There is little question that the speech was not fully harmonised with Israel but that reflects, at least in part, its last-minute nature. Although the principle of a speech had long been agreed, arguments about what to say on the Israeli-Palestinian conflict flared until the final moments. As late as five days before it was delivered, senior U.S. officials were saying it would not break any new ground.³² It was only a few days before he was to deliver the speech that the president opted for describing U.S. views on territory and security – a midpoint between those arguing for a comprehensive set of ideas and those backing a more modest approach.

The timing of the speech itself was a matter of debate. Some made the point that it should not be delivered just as Netanyahu was leaving for Washington, as it was certain to provoke discord; others asserted that the long-delayed address could wait no longer and, most importantly, pointed to the fact that the president was about to embark on a trip to Europe. Insofar as a central objective was to dissuade European leaders from backing a Palestinian UN bid, laying out an American vision before Obama was to meet with his counterparts was deemed important. The key audience, in this respect, was less Israel or the Palestinians than it was the EU.³³

In the event, the speech did not have the intended effect. Netanyahu's angry reaction led Obama to rephrase his position a few days later in an address to the American Israel Public Affairs Committee (AIPAC), a pro-Israeli lobbying group; although he did not retreat from his earlier position (and, in fact, implicitly chided the prime minister for distorting it), he emphasised points that were more to Israel's liking – and less to the Palestinians'.³⁴ The Palestinian reaction

³¹ Crisis Group interview, Washington, May 2011. An Israeli minister said, "the U.S. made a mistake by not fully appreciating Bibi's 16 May speech at the Knesset in which he specifically mentioned that Israel would keep the settlement blocks [which implicitly meant it would give up the rest]. Instead of embracing this and working with the prime minister toward further progress, the U.S. brushed these far reaching statements aside as insufficient and insisted on the 1967 lines. This was a big mistake. My impression is that Netanyahu took this as a personal insult". Crisis Group interview, Jerusalem, June 2011.

³² Crisis Group interviews, Washington, May 2011. That same view was being conveyed to Israel. Crisis Group interviews, May 2011.

³³ Crisis Group interviews, U.S. officials, Washington, May-June 2011.

³⁴ In particular, Obama said, "by definition, it means that the parties themselves – Israelis and Palestinians – will negotiate a border that is different than the one that existed on June 4, 1967. It allows the parties themselves to account for the changes that have taken place over the last 44 years. It allows the parties themselves to take account of those changes, including the new demographic realities on the ground, and the needs of both sides", www.therightscoop.com/watch-obamas-speech-on-the-arab-spring.

to the twin addresses was muted. European leaders generally warmly welcomed the remarks but were not yet prepared to announce what they would do at the UN.

Since then, the U.S. has sought to persuade Israelis and Palestinians to resume talks on the basis of Obama's speeches and thus to avoid a September showdown at the UN. The administration's position – at least for now – is that it will oppose anything at the UN and that the president's principles provide a satisfactory alternative. The effort, so far, has been to no avail, as the two sides' demands are difficult to reconcile: as a condition for resuming negotiations, Palestinians insist on an explicit Israeli acceptance of 1967 with swaps, state (though with less consistency) that they require an Israeli settlement freeze³⁵ and balk at accepting any reference to Israel as a Jewish state; Israelis, though having softened their opposition to the president's stance on territory,³⁶ demand acceptance of Israel as a Jewish state and refuse a freeze.

The latest, ongoing, effort has involved formulating a Quartet statement on the basis of which both sides would be invited to come back to the negotiating table. At this writing, Quartet members have been unable to reach an agreement. In July, U.S. officials presented a

whitehouse.gov. The emphasis on "new demographic realities on the ground" in particular – an echo to the assurances President George W. Bush had given to Prime Minister Ariel Sharon – was welcome in Israel and cause for concern among Palestinians. Crisis Group interviews, Jerusalem, Ramallah, May-June 2011.

³⁵ The Palestinians' position on the freeze has been ambiguous. An official said it was not a "precondition" for resumed talks, though he added that any settlement activity would jeopardise them; Crisis Group interview, June 2011. Another official said that, should the EU condition its support for a General Assembly resolution on Palestinian acceptance of a return to negotiations – without a freeze – the leadership would agree. "If that is the price for EU support, we will pay it". Crisis Group interview, August 2011. By contrast, the PLO and Arab League repeatedly have included a settlement freeze in their demands for renewed talks. PLO Executive Committee members Hanan Ashrawi said, "the position of the PLO Executive Committee remains clear. There will be no negotiations without a cessation of all settlement activities, without clear terms of reference in conformity with international law, and without a binding time line". Wafa News Agency, 19 April 2011. A 28 May 2011 statement of the Arab League Initiative Follow-Up Committee called a settlement freeze necessary for restarting negotiations. *Al-Ayyam*, 29 May 2011.

³⁶ According to a U.S. official, Netanyahu is now prepared to accept "1967 with swaps" as a basis for negotiations as long as Palestinians accept – or make clear that, as part of a final settlement, they will accept – Israel as a Jewish state. Crisis Group interview, Washington, July 2011.

draft that was built around the president's two speeches. According to participants in the talks, differences emerged concerning the draft's reference to demographic changes as a basis for modifying the 1967 lines (a reference some Quartet members feared would legitimate settlement construction); the hardline position taken on Palestinian reconciliation; the statement that the UN was not the proper body to address this issue (a stance that was particularly difficult for the UN Secretary-General to swallow); and reference to Israel as a Jewish state, which non-U.S. Quartet members saw as a redline for the Palestinians.³⁷ When several participants objected to the language, the U.S. representative reportedly said, "sorry, these are the president's words, and we can't play with them". To which the Russian envoy replied: "My president has words too".³⁸

Palestinian officials did not conceal their anger at the U.S. draft. A Fatah leader said:

We are extremely disappointed with the U.S. and feel betrayed by their surrender to Israel. During the last trip an American envoy made here, Israel asked for a letter of assurances from the U.S. At that time, the U.S. response was clear: we will not alter or clarify the president's 19 May speech. But look what happened at the [July] Quartet meeting: the U.S. adopted the Israeli position.³⁹

In early September, Quartet members remained engaged in efforts to reach a consensus, and several officials expressed guarded optimism, although a major stumbling block remained whether – and how – to include a reference to Israel as a Jewish state.⁴⁰

Even should the Quartet succeed in forging a common statement, however, it is highly uncertain whether this

³⁷ Crisis Group interviews, UN, EU and U.S. officials, July 2011. A purported copy of the American proposal was published in the Palestinian newspaper *al-Ayyam*. The draft said, inter alia: "Permanent peace means two-states for two peoples: Israel as the Jewish state and homeland of the Jewish people, and the state of Palestine as the homeland of the Palestinian people, each state having the right to self-determination and mutual recognition and peace"; "we do not expect any state to negotiate with a terrorist organisation that is committed to its destruction"; and "the two sides shall negotiate over the borders of Palestine and Israel that shall be different from the borders that existed on June 4th 1967 so as to take into account the changes that have occurred over the past 44 years, including demographic changes and the needs of both sides". *Al Ayyam*, 17 July 2011.

³⁸ Crisis Group interviews, July 2011.

³⁹ Crisis Group interview, Ramallah, July 2011.

⁴⁰ Crisis Group interviews, U.S., EU and UN officials, Washington, New York, August and September 2011. Quartet envoy Tony Blair was said to be taking the lead in the talks; he reportedly focused chiefly on the Europeans and Israelis, hoping to be able to sell any ensuing deal to the Palestinians. Crisis Group interviews, U.S. and Palestinian officials, August 2011.

would suffice to persuade Abbas to abandon his UN bid⁴¹ – and equally uncertain how, were he to do so, the Palestinian body politic (which for months has been told by its leadership that the UN quest was critical) would react. Conceding this point – as a U.S. official put it, “if we get a Quartet statement, Abbas is not going to like it”⁴² – the administration defended the approach on the grounds that such a statement would mirror the president’s speech, of which the Palestinians broadly approved; provide a basis for negotiations; and thus constitute an alternative to the UN should the Palestinian leader want it.⁴³ Were Abbas nonetheless to go to the UN, a prospect that appears increasingly likely, the U.S. would make the case it had done its part – and thus try to shift the blame onto the Palestinians.

II. PALESTINE AT THE UN: MYTH AND REALITY

The Palestine Liberation Organisation received observer status at the General Assembly in 1974, and its privileges progressively expanded over succeeding decades.⁴⁴ The General Assembly conferred its most recent upgrade in 1998, when Palestine⁴⁵ was reclassified in the UN Bluebook⁴⁶ as the sole entry under the unwieldy category, “Entities Having Received a Standing Invitation to Participate as Observers in the Sessions and the Work of the General Assembly and Maintaining Permanent Observer Missions at Headquarters”. There are two possible paths for further upgrading this status: via the Security Council and via the General Assembly.⁴⁷ They are not mutually exclusive; the Palestinians could turn to both, in either order, and repeatedly,⁴⁸ though

⁴⁴ For a detailed timeline of the expansion of these privileges, see Background Paper Related to Status of Palestine at the United Nations, issued by the Permanent Observer Mission of Palestine to the UN. Document on file with Crisis Group.

⁴⁵ Resolution A/52/1002 (4 August 1998) grants Palestine the following rights: “1. The right to participate in the general debate of the General Assembly; 2. Without prejudice to the priority of Member States, Palestine shall have the right of inscription on the list of speakers under agenda items other than Palestinian and Middle East issues at any plenary meeting of the General Assembly, after the last Member State inscribed on the list of that meeting; 3. The right of reply; 4. The right to raise points of order related to the proceedings on Palestinian and Middle East issues, provided that the right to raise such a point of order shall not include the right to challenge the decision of the presiding officer; 5. The right to co-sponsor draft resolutions and decisions on Palestinian and Middle East issues. Such draft resolutions and decisions shall only be put to a vote upon request from a Member State; 6. The right to make interventions, with a precursory explanation or the recall of relevant General Assembly resolutions being made only once by the President of the General Assembly at the start of each session of the Assembly; 7. Seating for Palestine shall be arranged immediately after non-Member States and before the other observers; and with the allocation of six seats in the General Assembly Hall”.

⁴⁶ Published by the UN Protocol and Liaison service, the Bluebook lists contact information for permanent missions, observer missions and specialised agencies.

⁴⁷ For a useful review of Palestinian options at the UN, see Elizabeth Sellwood, “State-building and Political Change: Options for Palestine 2011”, Center on International Cooperation at New York University, March 2011.

⁴⁸ Others have used this tactic; for instance, Japan’s applications for UN membership in the 1950s were repeatedly vetoed. A U.S. official warned against this approach: “If the Palestinians go to the Security Council in September, it will produce a U.S. veto and tensions with Washington. By doing it repeatedly, as some have threatened, they will only multiply the clashes and tensions several fold”. Crisis Group interview, Washington, July 2011.

⁴¹ A U.S. official concurred, saying, “right now, we are concentrated on getting a Quartet statement. But we have no idea whether that will turn Abbas away from the UN. So we may end up having expended considerable time and energy on a Quartet statement and still have to deal with a UN debacle”. Crisis Group interview, Washington, August 2011. Tellingly, Abbas clarified his redlines: “Present us something reasonable. Do not present us a Jewish State; we will not accept it. Do not say that that the settlement blocks are a fact on the ground or that the solution to the refugee problem is in the Palestinian state. We will not accept this language. The Quartet cannot impose on us the shape of the state or that we recognise the nature of the Israeli state. This is not its business”. Wafa News Agency, 27 August 2011.

⁴² Crisis Group interview, Washington, August 2011.

⁴³ The Quartet statement could, presumably, form the basis for a UN Security Council resolution, though at this point Washington has not clearly indicated what its position would be.

probably not concurrently.⁴⁹ As of now, the Palestinian leadership's official position is that it will submit its application for UN membership for consideration by the Council, a decision confirmed by the Arab League.⁵⁰

Admission to the UN as a member state requires a positive recommendation from the UN Security Council (a majority of nine votes, without a veto by any of the Council's five permanent members) followed by a two-thirds majority (of those present and voting)⁵¹ in the General

Assembly.⁵² Such a move at the Security Council almost certainly would encounter a U.S. veto⁵³ – assuming that the request comes to a timely vote, since there are legal and procedural tools Washington or others could deploy to delay its consideration.⁵⁴ The veto alone would quash Palestine's

⁴⁹ Article 12, paragraph one of the UN Charter states: "While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests". Palestinians could argue that the two requests – full membership in the Council and non-member state observer status at the General Assembly – are different. But UN observers felt that would not be well regarded by many in the Assembly – notably the Europeans, whose support the Palestinians are desperate to secure. Crisis Group interviews, August 2011.

⁵⁰ This was confirmed by the Arab League on 4 August 2011. *Al-Ayyam*, 5 August 2011. That said, the Palestinians could always shift course at the last minute, and at this writing debates were ongoing as to whether it might be wiser to go directly to the General Assembly. As a Palestinian official put it, "if we go to the Security Council first, we will alienate the U.S., possibly lose the Europeans and be headed for certain defeat. Why not start with a success at a lesser diplomatic and international cost? Indeed, if the EU votes with us at the General Assembly, it will be more difficult for them to subsequently oppose us at the Security Council". Crisis Group interview, August 2011. Should the Palestinians begin at the Council and the U.S. engage in procedural manoeuvres to delay consideration of the resolution, it arguably would be difficult for them to turn to the Assembly before the Council has acted. Although this matter is legally debatable, as described above, the issue essentially is political: desirous of avoiding a confrontation with the U.S. and the exposure of internal disagreements, the EU might decide to oppose the General Assembly resolution not on substantive but on safer procedural grounds. "If the EU wants an easy way out, this could be it". Crisis Group interview, UN official, New York, August 2011.

⁵¹ The UN Charter Article 18(2) defines admission of new members as a "major issue", requiring a two-thirds majority. As will be seen below, non-member observer state status is not included on the list of major issues and so would require only a simple majority of 50 per cent plus one. The Assembly, by a simple majority, potentially could decide to reclassify Palestine's elevation to non-member observer state status as a "major issue"; a U.S. official speculated that the Assembly might find it more palatable to encumber a Palestinian resolution through a procedural as opposed to a substantive move. Crisis Group interview, Washington, July 2011. Still, it is hard to imagine that even a simple majority would sign on to such an effort to stymie the Palestinians' bid.

⁵² For a description of the process by which Palestine's application would be considered, see "Update Report: Israel/Palestine", from the NGO Security Council Report, 25 July 2011; also Tal Becker, "A Coming Storm? Prospects and Implications of UN Recognition of Palestinian Statehood", Washington Institute for Near East Policy, June 2011. Before the Security Council votes on the matter, a committee – itself comprised of all Council members – considers the application and issues a recommendation, by majority vote, as to whether the applicant meets UN eligibility requirements. If the committee reaches a negative determination, there is no vote in the Security Council, and a report of the committee's findings is passed to the General Assembly. If the committee reaches a positive determination, it submits a report, along with a draft membership resolution to the Security Council president, which proposes that the Council approve the application by consensus. If any member state refuses to join a consensus, a formal vote is held on the resolution. If the resolution passes (whether by consensus or formal vote), the application then moves to the General Assembly. A timeline determines the number of days for each step, though these requirements can be waived. Crisis Group interview, member of the Security Council Practices and Charter Research Branch, Department of Political Affairs, New York, July 2011.

⁵³ On substantive (as opposed to procedural) matters, a "no" vote by a P5 member counts as a veto, so the U.S. and the other four permanent members of the Council (China, France, Russia and the UK) would either need to abstain or vote "yes" for the application to be forwarded to the General Assembly for consideration.

⁵⁴ There are at least three. First, the Secretary General – who receives the letter of application from the applicant – could delay or decide not to forward it to the Security Council; however, according to UN and Palestinian officials, Ban Ki-moon has assured the Palestinians he would not do so. Crisis Group interviews, August 2011. Secondly, the committee deciding on whether Palestine meets UN eligibility requirements could, by a simple majority vote, postpone its recommendation on the application by requesting further information, for instance, in order to determine whether Palestine should be considered a state. That could delay a vote by a "matter of months", said a U.S. official, but, according to a UN official, a delay extended as a matter of courtesy is unlikely to last indefinitely. There is no possibility of vetoing such a vote (since placing items on the Security Council agenda is considered procedural, not substantive). Crisis Group interview, member of the Security Council Practices and Charter Research Branch, Department of Political Affairs, New York, July 2011. Still, a Palestinian legal expert and former PA adviser asserted that contestation over the application would be a significant drawback of applying for membership: "I wouldn't want the U.S. to react to a Security Council application by articulating a doctrine that Palestine cannot become a member state because it is not a state. I don't want to weaken the global consensus that we ought to be considered a state. Even if we then get the General Assembly vote, agencies and other bodies that operate under the UN charter will be confronted with the question of whether they have the authority to admit a state when the issue of state status has been raised

application, though Security Council members by and large believe that a membership application could muster at least nine affirmative votes and thereby demonstrate that the Palestinians enjoy support and that the U.S. is in a distinct minority on the issue, even though the final tally⁵⁵ – and particularly the positions of the UK, France and Germany – “only will be decided at the last moment”.⁵⁶

The Palestinian leadership could pursue less ambitious Security Council options. It could aim for a resolution specifying terms of reference for negotiations with Israel, although this would be considered something of a retreat – what a former PA legal adviser called a “consolation prize” – in exchange for foregoing its application for membership (or other privileges through the General

(and challenged) in other parts of the UN”. Crisis Group interview, Ramallah, July 2011. The expert added that U.S. articulation of such a point of view could make future U.S. recognition more difficult. There is a third possibility: the Security Council passes a resolution that neither accepts nor rejects the Palestinian application but rather defers consideration and urges all parties to return to negotiations. Tal Becker, *op. cit.*, p. 4.

⁵⁵ China and Russia seem ready to support the Palestinian bid. The Associated Press (25 August 2011) reported that China’s special envoy to the Middle East affirmed his country’s backing for membership and statehood. A Chinese diplomat in New York explained: “Abbas has to take something back from New York, something to say to his people. The last thing anyone wants is instability in West Bank and/or Gaza as a result of a failed UN bid”. Crisis Group interviews, New York, August 2011. A European diplomat with experience in Beijing explained the Chinese position: “It is an indication of China’s sense of power. A ‘yes’ vote – like China’s vote on the Goldstone report – is a statement that ‘I’m strong enough to be contradictory in my positions’. Of course China does not want human rights commissions investigating it either, and of course, it has own problems with its own restive, internal minorities, but China feels that it’s strong enough to bear the contradictions of its positions”. Crisis Group interview, Jerusalem, July 2011. Russia has held its cards closely, though most observers expect it to support a Palestinian initiative. Like certain Eastern European countries (such as Hungary), its official position is that it recognised the Palestinian 1988 Declaration of Independence (not statehood). That said, the PLO has an embassy and ambassador in Russia. See the accounts of President Medvedev’s statement during his visit to Jericho. *The Jerusalem Post*, 23 January 2011. A Russian diplomat explained: “In 1988 the PLO declared independence, but so far it has not declared statehood. If they do so, then we will recognise statehood”. Crisis Group interviews, Russian and Hungarian diplomats, July and August 2011.

⁵⁶ Crisis Group interview, French foreign ministry official, Paris, July 2011. She continued: “It couldn’t be any other way, in no small part since the Palestinians have yet to tell us what precisely they want”.

Assembly).⁵⁷ Other lesser options could include a Security Council affirmation of Palestinian readiness for statehood or the granting of specific privileges – such as the right to accept the jurisdiction of and bring cases to the International Court of Justice; so far, the leadership has not indicated any willingness to consider these. Nor is it clear what the U.S. might accept, given its so far unyielding position that the UN is not the proper venue for action at this time.

In the General Assembly, the Palestinians have a different array of choices, which – given the absence of a veto – would be easier to obtain. They could seek a resolution that includes any or all of the following, which would require only a simple majority to pass:

Reaffirmation of past resolutions. The General Assembly every year passes numerous resolutions relating to the Israel-Palestinian conflict, which tend to lean significantly more toward the Palestinians than those adopted by the Security Council. Thus, in its 65th session, which opened in September 2010, the Assembly passed at least seventeen such resolutions, touching on nearly every aspect of the conflict, including the illegality of settlements; the necessity of an Israel withdrawal to the 1967 lines and the inadmissibility of the acquisition of territory through war; the necessity of establishing two states based on the 1967 border; East Jerusalem as the capital of the Palestinian state; and a solution of the refugee crisis in accordance with General Assembly Resolution 194.⁵⁸ Support for these positions in the Assem-

⁵⁷ A Palestinian negotiator said that the leadership would not accept anything less than specification of the 1967 borders with East Jerusalem as the capital, in addition to a limited timeline for talks and a freeze on Israeli settlement. However, an Abbas adviser cautioned against such speculation, saying, “We have not yet opened the bazaar”. Crisis Group interview, Ramallah, August 2011.

⁵⁸ See for instance A/RES/65/16 (“Peaceful Settlement of the Question of Palestine”), which, after reaffirming (a) “the illegality of the Israeli settlements in the Palestinian territory occupied since 1967, including East Jerusalem”, (b) “illegality of Israeli actions aimed at changing the status of Jerusalem”, and (c) “its commitment, in accordance with international law, to the two-State solution of Israel and Palestine, living side by side in peace and security within recognised borders, based on the pre-1967 borders”, stressed the need for a “withdrawal of Israel from the Palestinian territory occupied since 1967, including East Jerusalem” and “the realisation of the inalienable right of the Palestinian people, primary the right to self-determination and the right to their independent State”. It also “stresses the need for a just resolution of the problem of the Palestine refugees in conformity with its resolution 194 (III) of 11 December 1948”. The 165 countries voting in favour included: France, Germany, Italy, Spain and the UK. Seven countries voted against: Australia, Israel, Marshall Islands, Micronesia, Nauru, Palau, and the U.S. Four countries abstained. Resolution 194 resolves “that the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to

bly came from nearly all quarters – including most European countries, even though they have yet to vote for similar language in the Security Council.⁵⁹

Terms of reference. These could reflect previous positions taken by the Assembly, such as those passed during the 65th session. Alternatively, they could incorporate European positions, either the December 2009 European Council Conclusions⁶⁰ that were reaffirmed the following year⁶¹ or the joint statement issued by the UK, France and Germany after the U.S. vetoed a resolution affirming the illegality of settlements in February 2011.⁶²

Endorsement of Statehood. A resolution might affirm Palestinian readiness for statehood, praise states that have bilaterally recognised Palestine and urge all UN member states to follow suit. Of particular interest to

return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible”.

⁵⁹ Bruce Jones, Director of the Center for International Cooperation at New York University, ascribed the different voting patterns to the differences between the two bodies. In the General Assembly, he said, votes usually have fewer practical consequences, whereas the Security Council is a forum for international policymaking. Crisis Group telephone interview, 7 August 2011.

⁶⁰ On 8 December 2009, the Council of the European Union adopted its Conclusions on the Middle East Peace Process. Notable elements include: “The European Union will not recognise any changes to the pre-1967 borders including with regard to Jerusalem, other than those agreed by the parties”; “The Council reiterates that settlements, the separation barrier where built on occupied land, demolition of homes and evictions are illegal under international law, constitute an obstacle to peace and threaten to make a two-state solution impossible”; “If there is to be a genuine peace, a way must be found through negotiations to resolve the state of Jerusalem as the future capital of two states”.

⁶¹ When the Council reaffirmed the 2009 conclusions in December 2010, it added a provision on refugees: “The EU calls for an agreed, just, fair and realistic solution to the refugee question”.

⁶² “We therefore call on both parties to return as soon as possible to direct negotiations towards a two-state solution, on the basis of clear parameters. For those negotiations to be successful, they will need to achieve: An agreement on the borders of the two states, based on June 4 1967 lines with equivalent land swaps as may be agreed between the parties; Security arrangements that, for Palestinians, respect their sovereignty and show that the occupation is over; and, for Israelis, protect their security, prevent the resurgence of terrorism and deal effectively with new and emerging threats; A just, fair and agreed solution to the refugee question; Fulfilment of the aspirations of both parties for Jerusalem. A way must be found through negotiations to resolve the status of Jerusalem as the future capital of both states”. <http://ukun.fco.gov.uk/en/news/?view=News&id=554040582>.

the Palestinian leadership is that countries recognise Palestine “on the 1967 lines”.⁶³ Although this would be essentially hortatory – and many would point out the irony of European countries calling on others to recognise the State of Palestine if they did not do so themselves – it nonetheless would be seen as a political message regarding the legitimacy of the Palestinian position and might even influence the views of some international bodies about Palestine’s eligibility for membership.⁶⁴

Privileges. The General Assembly might seek to extend new privileges to Palestine as an observer entity, such as calling on international and particularly UN bodies to admit it as a member. This would not be determinative of the outcome but could influence deliberations.

Urging UN Membership. The General Assembly could urge the Security Council to recommend the admission of Palestine as a member, which, some Palestinians argue (albeit without much conviction), would put political or moral pressure on it (and specifically the U.S.) to yield on the matter. Per a 1950 case at the International Court of Justice, the General Assembly cannot go further and circumvent the Security Council by admitting a state to membership without positive Security Council recommendation.⁶⁵

⁶³ This has been the focus of Palestinian diplomatic lobbying efforts since the breakdown of aborted final status talks in September 2010. As of 9 September, 126 states have recognised the State of Palestine; according to Palestinian officials, another fifteen are expected to follow suit. *Haaretz*, 9 September 2011. The phrase “recognition on the 1967 border” is ambiguous; it could be interpreted to imply that the 1967 line will become the border of Palestine. This is the message that Israelis tend to hear. Crisis Group interview, Likud minister, Jerusalem, 23 August 2011. Palestinian officials affirm that they intend this language to enshrine their rights to the land east of that line to which adjustments subsequently could be negotiated. Crisis Group interview, Abbas adviser, Ramallah, July 2011.

⁶⁴ A U.S. official commented that such a resolution could be taken as a call that Palestine be treated as a state, and so could tip the balance in terms of its eligibility to accept International Criminal Court jurisdiction. See further discussion of the ICC below.

⁶⁵ In “Competence of Assembly regarding admission to the United Nations”, Advisory Opinion: I.C.J. Reports 1950, the Court responded to a question posed by the General Assembly: “Can the admission of a State to membership in the United Nations, pursuant to Article 4, paragraph 2, of the Charter, be effected by a decision of the General Assembly when the Security Council has made no recommendation for admission by reason of the candidate failing to obtain the requisite majority or of the negative vote of a permanent Member upon a resolution so to recommend?”. The Court, by a majority of twelve to two, decided it could not. Most see this as settled law, though the former dean of the Bir Zeit Law School (and current Institute of Palestine Studies researcher) Camille Mansour points out that a dissenting opinion held that the Court should have distinguished between two situations – the first in which an application fails to receive the requi-

Theoretically, the Assembly could pursue a more confrontational course by resorting to an infrequently used resolution, known as Uniting for Peace, which has been invoked in the past when the Council was incapacitated due to division among its members on matters of international peace and security.⁶⁶ Were the GA so inclined, it could move to admit Palestine in defiance of the negative Security Council recommendation. But there is very little likelihood of that happening. The Assembly has shown no such inclination, to the contrary; nor is there reason to believe it would be successful, since – although the General Assembly is the UN’s highest authority – there would be substantial opposition to an act that flies in the face of a plain reading of the UN Charter and the 1950 court decision. The result would be legal wrangling and even greater confusion regarding Pales-

tine’s status – precisely the opposite of what the Palestinian leadership seeks.⁶⁷

Few among the Palestinian leadership evince any desire to take this direction, least of all President Abbas, who repeatedly has said that he does not want to clash with the U.S.⁶⁸

Finally, attaining **non-member observer state status**.⁶⁹ This has been perhaps the most discussed – albeit one of the least understood – options at the General Assembly. Abbas recently dismissed this option, as did his foreign minister,⁷⁰ and senior Palestinian officials have said that their decision to go the Security Council, supported by the Arab League,

site number of positive votes in the Security Council and the second in which the application receives the requisite number of positive votes but a permanent member vetoes. See Judge Alvarez’s dissent, www.icj-cij.org/docket/files/9/1887.pdf, pp. 19-20. Mansour argued that the General Assembly could request the Court to clarify the 1950 ruling by disaggregating the two situations and, perhaps, rule that the General Assembly can bypass the Security Council in the latter case. “Palestinian Options at the United Nations”, Institute for Palestine Studies www.palestine-studies.org/column/details.aspx?t=1&id=34.

⁶⁶ Uniting for Peace (Resolution 377(V)), was passed in November 1950 in response to the Soviet Union’s refusal to allow the UN to take follow-up action to the Security Council’s initial decision to respond to the North Korean invasion of South Korea in June – a decision taken when the Soviets were absenting themselves from the Council. In effect, it allows the General Assembly to act regarding international peace and security, which is a primary Security Council responsibility according to the UN Charter. In upholding the legality of Uniting for Peace the ICJ decided that establishing and sustaining consensual peacekeeping missions – for which the resolution provides – was in fact within the realm of the General Assembly’s competence and fell more within the realm of “recommendation” than “action”. Crisis Group interview, international law professor, Boston, 7 September 2011; *Certain Expenses of the United Nations*, advisory opinion, 20 July 1962. Theoretically, the General Assembly could claim that a U.S. veto preventing Palestinian membership in the UN was a threat to international peace and security and therefore move to circumvent its veto via an emergency “Uniting for Peace” session. Such a session is in fact already open, as the tenth emergency Uniting For Peace session that was initiated in 1997 has yet to be concluded. (Professor Christian Tomuschat describes that session as a “special forum to deliberate on the policies and practices of Israel with regard to the occupied Palestinian territories, totally changing [the emergency session’s] character from a meeting convened to discuss urgent matters to a permanent, but intermittent conference on a topic of paramount interest to the international community”. <http://untreaty.un.org/cod/avl/ha/ufp/ufp.html>.)

⁶⁷ Were the General Assembly to try to bypass the Security Council, the move likely would provoke internal disarray and legal disputes over who has the final word about membership. International law scholar and former senior Israeli political adviser Tal Becker writes: “Such a resolution, if passed in the GA, would be highly irregular and fail to comply both with the UN Charter’s conditions for membership and with an unambiguous opinion of the International Court of Justice on the subject. But, surprisingly enough, it may not be without some effect within the confines of the UN system. This is because the UN Secretariat has historically shown deference to any GA decision, even those decisions that violate the UN Charter, on the grounds that its mandate is limited to implementing the decisions of the UN’s political bodies, not questioning their legality”. Becker, *op. cit.*, p. 5. Joseph Deiss, current president of the General Assembly, said that it would be impossible for the General Assembly to circumvent the Security Council. Associated Press, 27 May 2011. U.S. officials and UN legal staff expressed similar sentiments, saying that a Uniting for Peace resolution on membership was highly unlikely and “bad for the institution” in that it would permit membership “through the back door”. Crisis Group interviews, New York and Washington, July 2011.

⁶⁸ “We don’t want a clash with America. We want to coordinate our positions with the world, including the U.S.” Quoted in the *Jerusalem Post*, 27 July 2011.

⁶⁹ Observer status “offers limited participation in the work of the UN on a permanent basis for non-member States, regional organisations, certain groups of States, as well as for certain national liberation movements”. The status at its inception resulted from an invitation to non-member states to participate in GA debates on questions of relevance to them; as the practice developed, non-members states requested the status via an “informal communication” to the Secretary-General. “If there were doubts about the statehood of a non-member State wishing to establish a permanent observer mission, the SG let himself be guided by the degree of diplomatic recognition of the State concerned or by the fact that the State concerned was already a member of at least one specialised agency of the UN”. Bruno Simma, et. al. (eds.), *The Charter of the United Nations: A Commentary*, vol.1 (Oxford, 2002), pp. 187-188.

⁷⁰ “We have received an offer to be an observer state in the UN like the Vatican, but we do not support that; rather, we want to be a state with full membership in the UN”. *Al-Ayyam*, 19 August 2011. Foreign Minister Riyad Al-Malki made the same point. *Maan*, 2 September 2011.

was final.⁷¹ That said, other officials have indicated that there still may be some room for bargaining on the matter, as have European diplomats involved in discussions with Palestinians.⁷² If attained, Palestine would join the Holy See, the only present non-member observer state, but also a much longer list of earlier cases.⁷³ Palestinian officials and most observers feel that success would be all but assured if this course were pursued.⁷⁴ If Palestine were to inherit the privileges that the Vatican currently enjoys, the marginal advantage that would accrue to it within the General Assembly itself would be limited to a few minor procedural points.⁷⁵ Outside the Assembly's confines, however, effects could be far more extensive.

Upgrading the Palestinian delegation to non-member observer state status via a General Assembly resolution would break new ground. Historically, the status has been conferred as a bureaucratic measure undertaken by the Secretary-General – without instruction from the

General Assembly⁷⁶ – on behalf of *states* that either did not wish to, or were blocked from joining the UN. There were no special rights or privileges associated with the status “other than a seat and a pass to get in and out of the building”, as a former UN diplomat put it.⁷⁷ The situation would be entirely novel were the General Assembly to accord that status as a means of endorsing the statehood status of what previously had been considered a non-state actor.⁷⁸ Given that the privileges are conferred on a case-by-case basis, the Holy See and the putative State of Palestine would not necessarily enjoy the same rights and obligations, either inside or outside the Assembly; that said, the precedent set by the Vatican likely would be influential in some spheres.⁷⁹ “There are precedents”, a former UN official and international law professor said, “but there are no hard and fast rules, so it’s hard to know what non-member status for Palestine will bring”.⁸⁰

The uncertainty of non-member observer state status notwithstanding, it could enhance the Palestinian claim to statehood⁸¹ in a variety of different venues. Member state status,

⁷¹ Crisis Group interview, Ramallah, August 2011.

⁷² Crisis Group interview, Ramallah, August 2011; New York, August 2011.

⁷³ Palestine’s status, if upgraded to that of the Holy See, would be “Non-member State having received a standing invitation to participate as observer in the sessions and the work of the General Assembly and is maintaining a permanent observer mission at Headquarters”. UN Bluebook, *op. cit.* The standards for the status are as confusing as its title: “The status of and criteria for an observer have never been clearly defined. In practice only states recognised by all or the vast majority of the membership have been able to establish permanent observer missions”. Jochen A. Frowein, “The United Nations and Non-Member States”, *op. cit.*, p. 337.

⁷⁴ Upon returning from a tour of European capitals in late July, a Palestinian official claimed: “The voting issue has been resolved. We can get a majority for whatever we might put forward, including in Europe”. Crisis Group interview, Ramallah, July 2011. The voting procedure in the General Assembly – where the requisite majority needs to be obtained only of those states present and voting – works to the Palestinians’ advantage; even a two-thirds majority should be relatively easy to achieve since in order to prevent it, more than one-third of all states would have to cast a negative vote. Achieving a two-thirds majority is important to Palestinian officials, in order both to make the case that they would achieve membership if the Security Council issued a positive recommendation and also to score a “moral victory”. Crisis Group interview, Fatah Foreign Relations Bureau official, Ramallah, July 2011.

⁷⁵ Crisis Group interview, UN legal officer, New York, June 2011. The right and privileges that had been extended to the Palestinian Liberation Organisation (as an observer entity) were in fact the model used by the Holy See when putting together its request for privileges, which were granted in July 2004 via Resolution A/58/314. Crisis Group interview, former Palestinian UN official, Ramallah, July 2011.

⁷⁶ “The GA accepted this practice of the SG [accepting the credentials of non-member observer states] without objection; it has, however, never made any statement of principle on the legal bases for its observer missions nor on the resultant rights of non-member States”. Simma, *op. cit.*, p. 188.

⁷⁷ Crisis Group interview, former UN official, Jerusalem, June 2011.

⁷⁸ “There is no set of agreed rights and privileges that non-member states enjoy”, a European diplomat said. “We are making it up as we go along”. Crisis Group interview, Jerusalem, July 2011. The official added the upgrades in status that the Palestinians had received in various European capitals were of a similar ad-hoc nature. “When the UK and France upgraded the Palestinian status from ‘general delegation’ to ‘mission’, the telephone lines were buzzing with questions about what it meant. But France just made up the title, and then the UK copied it to make it look like they were doing something for the Palestinians”. A Harvard law professor said, “the Palestinians are not only simply moving across a legal terrain; they are shaping it as they go”. Crisis Group interview, David Kennedy, Cambridge, January 2011.

⁷⁹ Of course, this could mean that Palestine would end up with superior privileges, if the General Assembly so designated. Crisis Group interview, former Palestinian official, Ramallah, July 2011.

⁸⁰ Crisis Group interview, Boston, September 2011.

⁸¹ The question of whether Palestine fulfils the criteria of statehood is controversial and the debates about those criteria no less so. The most oft-cited – though not the sole – criteria are set forth in the 1933 Montevideo Convention (entered into force 1934): a permanent population, defined territory, government and the capacity to enter into relations with other states. Montevideo Convention on the Rights and Duties of States, Article 1. Other factors, such as independence or recognition, have also been argued to affect statehood status. Applying those factors to Palestine, scholars have taken different positions. Law professor John Quigley argues that Palestine meets the Montevideo requirements and rejects the importance of independence or recognition to statehood, *The Statehood of Palestine: International Law in the Middle East Conflict* (Cambridge, 2010). By contrast Dore Gold, former Israeli ambassador to the UN and head of the Jerusalem Cen-

of course, would enhance that claim all the more, but neither would actually create or confer statehood – recognition being a bilateral act that in principle cannot be performed collectively.⁸² Rather, a positive Assembly

(and, a fortiori, Council) vote would widely be viewed as an endorsement of Palestinian statehood that would carry weight in other bodies. In particular, it would further legitimise the Palestinians' position in the international arena and allow them to deploy particular tools linked to statehood (discussed further below). In this regard, the distinction between Security Council and General Assembly endorsement is a matter of degree rather than kind.

ter for Public Affairs, rejects the notion that Palestine meets the criteria, citing disagreements among Palestinians about what the state's territory should be; the fact that the Ramallah-based PA shares control over the West Bank with Israel and lacks control over Gaza; and is prohibited by the Oslo Accords from engaging in foreign relations. *The Jerusalem Post*, 18 October 2010. Citing President Abbas's claim in *The New York Times* (17 May 2010) that the PA fulfils the Montevideo requirements, law professor Omar Dajani points out that the PA lacks independence – “an attribute that is implicit in but gives meaning to the others” – but adds, however, that “Palestine looks more like a state every day”, considering its institutions and the recognition it has received from various states, “September Song”, Foreign Policy Middle East Channel Blog (24 May 2011). Cambridge University's James Crawford writes of the pre-1993 period: “It is odd to see the Montevideo definition ... minutely examined in order to argue that a particular entity fits within those criteria when it self-evidently does not”; eighteen years after Oslo, Crawford saw no reason to modify his conclusion: “The essential point is that a process of negotiation towards identified and acceptable ends is still, however precariously, in place. That being so, it misrepresents the reality of the situation to claim that one party already has that for which it is striving”, *The Creation of International States in Law*, second edition (Clarendon, 2006), pp. 437, 446.

⁸²Obstacles “exist to fully realising an equation between [UN] admission and recognition. One obstacle is institutional: the UN is not clearly equipped to serve as a collective mechanism for recognition. Another obstacle is political: the discretionary character of recognition has proved resilient”. Thomas D. Grant, *Admission to the United Nations: Charter Article 4 and the Rise of Universal Organization* (Martinus Nijhoff, 2009), p. 255. Grant quotes John Dugard's *Recognition and the United Nations* on the matter: “Many writers, who favour collective recognition, acknowledge that admission to the United Nations has had a major impact on the law of recognition but stop short of accepting it as an act of recognition in itself. Thus we find admission to the United Nations described as a ‘kind of collective recognition’, ‘a step forward towards the principle of collective recognition’, ‘a system of certification which as in substance fulfilled the function of recognition’ ... and as a substitute, ‘to a large extent, but not for all aspects’, of traditional recognition”. (Grotius, 1987), pp. 44-45. Yet in terms of statehood – as opposed to recognition – Dugard concludes: “Today near universality of membership in the United Nations has been achieved. The United Nations has for practical purposes become the collective arbiter of statehood through the process of admission and non-recognition”. (p. 126). With regard to Palestine, European countries have taken opposite positions on whether voting for non-member status would have recognition implications. For the UK, such a vote “would be a clear indication that Palestine constitutes a state and would be a kind of, or imply, recognition. Our legal advisers say if the UK wants to recognise

[bilaterally], that's fine, but it has to figure that out before the UN vote since you cannot separate the two”. Germany and France take a different position. In the view of their legal advisers, there is no necessary link between a UN vote and bilateral recognition. Crisis Group interviews, European diplomats, Jerusalem, New York, Berlin, July and August 2011.

III. PALESTINIAN POLITICS AND THE UN

From the outset, the Palestinian's UN effort has been marked by uncertainty and confusion, a reflection of difficulty in mastering (and, at times, outright ignorance of) pertinent UN rules and international law; divisions within the leadership; and competing Palestinian needs. The balancing act has been inherently challenging, and the end result likely will reflect the weighting of diverse concerns. Among the competing interests that Palestinians must consider are the following: not returning empty handed from the UN for fear of a domestic backlash; enhancing their position vis-à-vis Israel; not overly provoking the U.S., which could prompt a crisis in bilateral relations and a possible aid cut-off; not overly provoking Israel, which could trigger retaliatory measures on the ground and possibly postpone negotiations for the foreseeable future; and ensuring strong EU backing. These interests are not weighted equally by all decision-makers or activists; indeed, several (such as preserving a possibility of negotiations in the short term or avoiding steps that might harm the PA) are dismissed by some.

This overall situation has left the leadership in an awkward position, alternating between strong statements of resolve about going to the Security Council, to hints of possible compromise, to studies of General Assembly options. Even a last minute compromise – involving an alternative EU-sponsored resolution, a Quartet statement or some other formula – cannot be entirely excluded.

Although it is impossible to map with any precision the outlook of various Palestinian leaders or constituencies, several broad views can be identified based on what they expect a UN effort can achieve. There is of course overlap between the various trends and a range of outlooks within them.

- Many if not most Palestinians – both ordinary residents and members of the elite – appear to be greeting the entire UN episode with considerable scepticism, a result of growing frustration with the leadership and of concrete questions regarding the impact of the move. Ironically, they also likely would be among the most hostile to a decision to drop the bid, viewing it as yet more evidence of the leadership's powerlessness and vulnerability to outside pressure.
- As some see it, going to the UN essentially is a *faute-de-mieux*, a default option that became necessary for lack of any viable alternative. It is a means of doing something, demonstrating activism in the eyes of a jaded public opinion and of paving the way toward a return to more meaningful negotiations – ie, with

clearer terms of reference. Under this view, there is no desire to fundamentally alter the paradigm that has governed Palestinian diplomacy in the past: strong relations with Washington; reliance on bilateral negotiations with Israel; preservation of the PA. Indeed, negotiations and the UN can go hand-in-hand: there is no incompatibility between the two and the former can immediately follow the latter.

- Some, including among those who wish to reform the negotiations paradigm rather than jettison it, accord greater weight to what can be achieved via the UN. The goal is to use whatever tools derive from enhanced statehood status to legitimise the Palestinian position and pressure Israel in international forums, most importantly – albeit not exclusively – the ICC. For adherents of this view, the priority is to come as close to statehood status as possible, at the UN (via non-member state status) and through bilateral recognitions, and to ensure EU support. They do not rule out negotiations – indeed, they would be prepared to resume them as the price to pay for EU backing – but do not hold much faith in them in the foreseeable future. The old paradigm – what some have dubbed the negotiations' "straightjacket"⁸³ – is not to be entirely discarded, but seriously retailored.
- Among civil society activists in particular, a third objective can be discerned. It sees the UN endeavour as part and parcel of a more radical strategic reorientation, and wishes to weaken the possibility that negotiations resume anytime soon. The UN gambit is one move in a broader strategy including reinvigorated international activism, domestic Palestinian reconciliation and popular protest.

A. A SCEPTICAL PUBLIC OPINION

Even among PLO factions whose leaders officially back the UN bid – the Palestinian Front for the Liberation of Palestine, Democratic Front for the Liberation of Palestine, Palestinian People's Party and others – the most that can be said is that their ranks are divided.⁸⁴ Within Fatah, many below the top leadership are wary, especially among the youth: "What state are they talking about?", asked a young Fatah member, "One that will extend from the Qalandiya checkpoint [south of Ramallah] to the Hawara checkpoint [south of Nablus]?"⁸⁵ Another Fatah-affiliated youth said, "first we saw two decades of armed struggle, which failed. Then we

⁸³ Crisis Group interview, Palestinian official, August 2011.

⁸⁴ While the leader of the Popular Front for the Liberation of Palestine (and PLO Executive Committee member) Abdel Rahim Mallouh believes that "going to UN is an enormous political and diplomatic battle that we need to win", a member of his faction, invoking an Arabic idiom, derided the strategy as "an empty pistachio". Crisis Group interviews, Ramallah, August 2011.

⁸⁵ Crisis Group interview, Nablus, August 2011.

had almost two decades of negotiations, which also failed. Now are they going to tell us that we need two decades to accumulate decisions at the UN?⁸⁶

Hamas also must be counted among the sceptics,⁸⁷ although it has yet to take an official position, and some internal divisions have surfaced. Mahmoud Zahar, a Gaza leader and politburo member, has openly criticised the move,⁸⁸ as has his politburo colleague, Khalil Hayya.⁸⁹ In contrast, Deputy Politburo Chief Mousa Abu Marzook offered a more positive appreciation of what the UN has to offer the Palestinian people.⁹⁰ Hamas has formed a committee to prepare a report on the question's legal and political aspects, on the basis of which the political leadership is expected to make a decision.⁹¹ In parallel, a movement leader asked Fatah a number of questions about the strategy but has yet to receive a reply.⁹² Meanwhile, Hamas leaders say their priorities are

clear: not to provide Fatah or the PLO any excuses for what Hamas assumes will be a failed initiative and refrain from any escalation that would enable Ramallah to blame them.⁹³ Beyond that, one should assume that they will not hesitate to criticise Abbas for once again having failed if the effort falls short of its declared goal – full membership – which it evidently will.⁹⁴

Islamic Jihad has been more outspoken. A spokesman said:

The best outcome Abbas can hope for at the UN is a mirage. He is talking about drawing some imaginary bor-

ganisations including the UN Relief and Works Agency (UNRWA); and what steps would be taken when nothing changes on the ground. "All these questions need answers and we have gotten none from Fatah, which never consulted us. They are making a unilateral decision so our position is that we will not back a move that is totally unclear to us, but we will not stand against the declaration of a Palestinian state. We will neither sabotage nor adopt this effort. Our own position on Palestine is well known. We accept a Palestinian state based on the 1967 borders with Jerusalem as a capital on the condition that Palestinian refugees return to their homes and no recognition of the State of Israel". Crisis Group interview, Gaza City, 23 July 2011.

⁹³ Crisis Group interview, Gaza City, 14 July 2011.

⁹⁴ Attitudes within Hamas toward popular resistance are changing, though it is not yet clear to what effect. Whereas Hamas in the past has been critical of the practice on the grounds that it does not exact sufficient cost from Israel, so could not be effective, it today seems considerably more open to the idea. A Gazan leader said, the Arab Spring has changed ideas throughout the Arab world about what is politically effective; Palestinians are part of the Arab people; and Hamas is part of the Palestinian people, "so we too are being affected". Crisis Group interview, Gaza City, May 2011. A senior leader in exile, reflecting comments by Khaled Meshal at a press conference in Cairo, also spoke positively: "There is a broad spectrum of resistance. It is not a binary choice between nothing or armed struggle. Resistance ranges from the popular to the armed and includes boycotts, international pressure, legal prosecutions, publicising Israeli crimes and other tools. The most important thing is that the principle of resistance not be subject to question. In exercising that principle during the interim period [as specified in the reconciliation agreement], we are ready to work by consensus. There needs to be consensus on tools, on tactics and methods, on timing, and on whether to maintain calm or to escalate. We are ready for agreement on all of those things". Crisis Group interview, Cairo, May 2011. As Hamas leaders see it, the mass actions on Israel's borders with Syria and Lebanon on Nakba Day (15 May) and Naksa Day (5 June) were a success, as they reinvigorated the refugee question and brought it to the fore as a practical matter to be addressed. Crisis Group interview, Hamas senior leader in exile, Beirut, May 2011. The extent of the movement's transformation, however, should not be exaggerated. For many, the more important question is still how the mass protests will play out in the surrounding states and what the consequences will be for Hamas's regional position. Moreover, many movement leaders see popular resistance as a way to expand the spectrum of possibilities, not limit it. Crisis Group interviews, Hamas leaders, Gaza City, June 2011.

⁸⁶ Crisis Group interview, Balata Camp (near Nablus), August 2011. In Gaza, Fatah officials are more biting still, since they are even more removed from the centre of power: "This is totally useless. What we will get? A few more countries to recognise us than we got in 1988? This is what makes Abbas happy? This is nonsense. Nothing will change on the ground. Even his own prime minister is against it". Crisis Group interview, Gaza City, August 2011. In Gaza more generally, the UN strategy is infrequently discussed since it is seen as having little relevance to the coastal strip and its residents' lives.

⁸⁷ For instance, a Hamas leader said: "We don't care about recognition, what we care about is the reality on the ground. Let's get a state first and then we can worry about recognition". Crisis Group interview, Gaza City, August 2011.

⁸⁸ Abbas "wants to postpone [the various elements of reconciliation], including the temporary leadership, for this jump in the air ... which is meaningless and promises the Palestinian people nothing". Quoted in *Al-Safir*, 8 July 2011.

⁸⁹ Hayya said that a UN bid "is an illusion and nothing will come out of it that serves the Palestinian cause". Sama News Agency, 31 July 2011.

⁹⁰ "It is high time that the force of international law plays its part in guaranteeing a future for our people. The UN vote would recognise a state of Palestine, which would be a crucial starting point for participation in the community of nations, rebuilding our country and determining our own future without interference or control of others". *The Los Angeles Times*, 12 June 2011.

⁹¹ Crisis Group interview, Hamas leader, Gaza City, August 2011.

⁹² The leader said that before passing judgment, Hamas needed answers on such issues as: the relation between the proposed UN resolution and the 1988 Palestinian Declaration of Independence, previous UN resolutions such as UN Security Resolution 181 (passed in November 1947, otherwise known as the partition plan) and the Oslo Accords; the effects on refugees; the effects the UN bid would have on the negotiating structure; how the 1967 lines would be determined; whether the resolution's language would include land swaps and if so what areas they would affect; the effects on international or-

der, while every day the Israeli entity is making our lives a bitter reality through Judaizing of the Holy City and building settlements, leaving us without any land to build our Palestinian state.⁹⁵

In general, the Palestinian public seems broadly apathetic about the UN initiative and expresses clear doubts about the impact it will have, particularly on the ground, where Palestinians are most concerned to see a change. Many see it as a purely symbolic move by a leadership in desperate need of some achievement. “Let’s wait and see what it brings”, said a college student at Bir Zeit, “Maybe there will be a state in New York, but what about here in Palestine?” A Palestinian analyst added: “People aren’t engaged in the idea. Maybe if there are protests, the shop owners and people walking in the street will pay attention, but in the meantime it’s just political blah-blah that goes in one ear and out the other”.⁹⁶

Among the political elite, questions are more pointed.⁹⁷ In the immediate term, some wonder about violence provoked by settlers or the Israeli army and the effects of the UN bid on the PA’s budget.⁹⁸ In the longer term, they see a host of problems. They do not understand exactly what the UN strategy is or what it aims at – an understandable confusion given that the leadership itself still seems uncertain.⁹⁹ They do not discern a post-September strategy: “What will happen in September, October, November? More UN votes? Is [Chief Negotiator] Saeb [Erekat] going to rent an apartment in New York?”¹⁰⁰ They do not understand how the UN move is connected to local politics and developments in the West Bank and Gaza. A leading activist said:

Nobody, from the political classes to the ordinary people on the street, has any idea what the leadership is thinking. This is very dangerous. People are

frustrated. Israel continues to exert pressure on us – building the wall, expanding settlements, paving settler roads, demolishing homes, confiscating land. And while this is taking place the leadership is talking about the possibility of future negotiations. They want empty celebrations of the UN vote in the streets of the cities. If, on the other hand, they wanted to confront Israel, to send people to the checkpoints, to the Wall, to settlements, to homes being demolished, then they would need the popular groups. But all they want is for people to bring their *nargilas* [water-pipes] to watch and applaud a projection of Abu Mazen on big screen TV set up in Ramallah, Bethlehem and elsewhere.¹⁰¹

Some intellectuals fear that once the world recognises Palestine as a state, the conflict with Israel will be transformed in international eyes into a more routine border dispute; they worry that at that point the focus will be governance and issues of bilateral interest to Palestine and Israel such as security, economics and water – rather than those relating to liberation and achieving genuine independence within permanent borders and a resolution to the refugee issue. Israel, they argue, will have achieved what it has long wanted – establishment of a state within provisional borders.¹⁰²

There also is anxiety that replacing the Permanent Observer Mission of Palestine to the United Nations¹⁰³ with the State of Palestine would undermine the PLO’s status as the sole legitimate representative of the Palestinian people¹⁰⁴ and the

⁹⁵ Crisis Group interview, Gaza City, August 2011.

⁹⁶ Crisis Group interviews, Ramallah, September 2011.

⁹⁷ A number of forums in both the West Bank and Gaza, with larger than average attendance, indicate the significant interest in the UN question among the politically active. Crisis Group observations, Ramallah, Jerusalem, Gaza City, July-August 2011.

⁹⁸ “We are entering a tunnel, but how do we know there is going to be light at the end of it and that we’re not entering a big black hole?” Crisis Group interview, Palestinian journalist, Nablus, August 2011. “PA employees are only getting paid by force [that is by threatening strikes], and that’s before donor aid gets cut off. Nearly twenty years later and still nowhere close to self-sufficiency”. Crisis Group interview, PA employee, Ramallah, September 2011.

⁹⁹ Crisis Group interview, Jamal Juma’, head of the Stop the Wall Campaign, Ramallah, 5 September 2011.

¹⁰⁰ Crisis Group interview, Palestinian journalist, Nablus, August 2011.

¹⁰¹ Crisis Group interview, Jamal Juma’, head of the Stop the Wall Campaign, Ramallah, 5 September 2011. This attitude was reflected at a public conference on the UN strategy in Ramallah, where audience members screamed at a PA representative, “Talk to us! Talk to us!”, Crisis Group observation, Ramallah, August 2011.

¹⁰² Crisis Group interview, Palestinian columnist, Ramallah, July 2011.

¹⁰³ In 1988 UN Resolution 43/177, “Question of Palestine”, changed the name of the Palestinian representative at the UN but did not change the actual entity that represents the Palestinians; the duties, obligations and responsibilities of representing the Palestinian people were (and still are) with the PLO. The resolution decided “that, effective as of 15 December 1988, the designation ‘Palestine’ should be used in place of the designation ‘Palestine Liberation Organisation’ in the United Nations system, without prejudice to the observer status and functions of the Palestine Liberation Organisation within the United Nations system, in conformity with relevant United Nations resolutions and practice”. The change in name to ‘Palestine’ “merely reflected the Palestinian declaration of independence and the aspirations of becoming a state but did not transfer powers to another entity; rather all powers stayed within the PLO structure”. Email exchange, Hala Shoaibi, lawyer, 27 August 2011.

¹⁰⁴ An intense debate on the effect of the UN move was precipitated by a legal opinion prepared by Professor Guy Goodwin-Gil, which argued that recognition of a Palestinian state could threaten the status of the PLO as the sole legitimate representative of the Palestinian people, disenfranchise the refugees and damage Pales-

refugees' position.¹⁰⁵ The leadership flatly rejects the contention;¹⁰⁶ in theory, a Palestinian negotiator said, the new State of Palestine could take over and represent Palestinians worldwide – just as, after its establishment, the State of Israel assumed the place of the Jewish Agency – but the PLO by necessity would remain the “ultimate source of authority” [*marja'iyya*] “since the State of Palestine will be unable to physically take hold of its territory”. By the same reasoning, the PA potentially could continue as the government.¹⁰⁷

tinian self-determination. His opinion can be found at www.documentcloud.org/documents/238962-final-pdf-plo-statehood-opinionr-arb.html; a response by law professor John Quigley can be found at www.jadaliyya.com/pages/index/2532/john-quigley-critique-of-goodwin-gill-legal-opinion. An open letter from Palestinian intellectuals to Abbas called for “all diplomatic initiatives, including the UN initiative in September, [to] maintain the status of the PLO as the sole legitimate representative of the Palestinian people at the UN, and [to] protect and reinforce the non-negotiable rights of the Palestinian people”. Text on file with Crisis Group.

¹⁰⁵ A Palestinian intellectual expressed concern about Abbas's suggestion that the state could issue passports to Palestinian refugees in Lebanon. “When the Palestinian state is established, Palestinians will carry Palestinian passports and nationality”, Abbas, quoted in the *Daily Star*, 17 August 2011. In July, a Palestinian negotiator said that the question of whether Palestinian citizenship would be extended to the Palestinian refugees, and what that would mean for their refugee status, “has yet to be studied”. Crisis Group interview, Ramallah, July 2011.

¹⁰⁶ Democratic Front for the Liberation of Palestine Politburo member (and PLO Executive Committee member) Qais Abdul Karim said that Goodwin-Gil was wrong, since it is the PLO “that will ask for recognition of the State of Palestine that was declared in 1988 by a resolution of the Palestine National Council [the PLO's legislative branch]”. For decades, he said, the State of Palestine has been a full member in the non-alignment movement and a number of regional and international organisations, and that has not affected the PLO's status. *Al-Quds*, 26 August 2011. Fatah Central Committee member Nabil Shaath said that the PLO will retain its status since most recognitions of the state came in 1988; putative recognition in September would not be new. Chief Negotiator Saeb Erekat said that the PLO will retain its authority for final status negotiations, and the Palestine National Council “will remain the state parliament”. *Ibid.* A Palestinian negotiator claimed: “Refugee status will not be changed by a statehood decision. The PLO is the representative of the refugees, whose rights are determined under Resolution 194. The legal authority that pertains to the refugees stems from a different source of authority than the state, so there is no legal issue here. The state will not undermine their rights, and the General Assembly will continue to determine their status”. Crisis Group interview, Ramallah, July 2011.

¹⁰⁷ This is not a unanimous opinion. A PLO Executive Committee member said, “the PA should be folded into the government of the State of Palestine. We can't say to France,

These examples point up how the notion of statehood – despite the prominence it has gained over the past several years – does not figure among the key notions of the Palestinian national movement. Much more significant to Palestinians is ending occupation; statehood only has relevance to the extent that it does so. “The idea of an independent Palestinian state in the West Bank and Gaza emerged after the October 1973 war [between Israel on the one hand and Egypt and Syria on the other] as a way to end the occupation. But if that doesn't work, people have no particular attachment to it for its own sake, and so will look to the other options”.¹⁰⁸ Regardless of whether or not statehood would be a useful diplomatic or legal tool, its unreality means that it is something to which most Palestinians, on a visceral level, do not connect.

Still, and somewhat paradoxically, while there is not strong popular support for the move, there would be enormous popular hostility in the event the leadership, facing international pressure, were to retreat. The reaction would not result from the public's optimism about and investment in the idea, but because stepping back would further solidify the belief at the heart of popular scepticism toward the UN gambit – that the leadership lacks a plan, the capacity and will power to achieve its self-proclaimed goals.¹⁰⁹ The same would hold true were the leadership to move ahead but prove unable to muster support in the form of demonstra-

‘Consider us a state’, and then keep looking and behaving like we are still the same old Palestinian Authority. If we ask the world to take a decision, we ourselves need to take a decision first. Why should the world change the way it relates to us if we do not change the way we do business?” Crisis Group interview, Ramallah, July 2011. A negotiator downplayed the issue, saying the leadership already is well practiced at wearing multiple hats. Abbas is both head of the PLO and president of Palestine, see Crisis Group Middle East Briefing N°25, *Palestine Divided*, 17 December 2008, p. 7. Similarly, the Palestinian Authority, in domestic Palestinian parlance, is known as the Palestinian National Authority even though Israel had refused that appellation during the Oslo talks because of its implication about statehood and sovereignty. Crisis Group interview, former legal counsel for foreign ministry, Jerusalem, July 2011. He said, “for our contacts with the Israelis or with the Americans, we can continue to use the PNA [Palestine National Authority] or put that and State of Palestine on our stationary; that's not such an issue”. Crisis Group interview, Ramallah, July 2011. That said, a PLO Executive Member admitted: “There are a lot of questions that we haven't answered yet. I'm sure that many of them will not have answers for a long time”. Crisis Group interview, Ramallah, July 2011.

¹⁰⁸ Crisis Group interview, Mouin Rabbani, Institute for Palestine Studies Senior Fellow, Ramallah, March 2011.

¹⁰⁹ “If Abu Mazen retreats now, the demonstrations will not be at Qalandiya [the checkpoint between Ramallah and Jerusalem] or in the Manara [Ramallah's central square], but at the Muqata'a [presidential headquarters]”. Crisis Group interview, Ramallah resident, August 2011.

tions, which would point up the gap that divides it from the people.

B. CAN THE UN BID BOLSTER NEGOTIATIONS?

At core, President Abbas remains committed to a bilateral path. As mentioned above, he has never been a true believer in the UN; does not have faith that internationalisation of the conflict with Israel can deliver a solution for his people; and does not have extensive experience with the UN as an institution. As he sees it, he is resorting to the UN not in order to close the book on talks – and certainly not at the cost of a crisis with Washington – but mainly because he has been left with no other option and because he hopes it can pave the way for more meaningful bilateral talks. Indeed, even after September, Abbas told a Ramallah audience, the Palestinian choice “will be negotiations and nothing other than negotiations”.¹¹⁰

Abbas’s vision of what successful negotiations require remains unchanged, though the address for registering the demand has; the UN has become the venue in which to secure what he sees as the requisite conditions.¹¹¹ An adviser reiterated what his boss repeatedly has said over the past month: “Abu Mazen has been clear that he wants a state in order to continue talks with Israel, not to put a stop to them”.¹¹² This explains why, even as Abbas brandished the UN option, he at times has suggested the move might be suspended if Palestinian demands for entering talks were met.¹¹³

Viewed from this perspective, the initiative becomes at heart a political, not legal one.¹¹⁴ Despite what Abbas wrote in *The New York Times* about possibly pursuing legal remedies,¹¹⁵ one of his advisers put it bluntly: “It is not our intention to go the ICC or the ICJ [International Court of Justice]. Our application at the UN is a wake-up call, not a legal summons”.¹¹⁶ Indeed, legal wrangling could provoke confrontation with the U.S. and divide the EU, particularly the core member states that have taken the lead on the issue (France, Germany, Italy, Spain and the UK, the Quintet), the avoidance of which is a “guiding principle” of the Palestinian leadership as it designs its September strategy.¹¹⁷

If a central goal is to return to negotiations under more auspicious conditions, the UN move raises many questions. The leadership could argue that, with internationally endorsed terms of reference and acceptance of statehood, the Palestinians would be in a stronger position to enter into talks with Israel (perhaps without its other conditions having been met, especially a freeze on settlements). A first issue is whether that in fact would be the case, since Israel would not have accepted these terms. Moreover, depending on what the Palestinians achieve, Israel might be in no mood to resume talks, as further discussed below; Jerusalem also might initiate a series of counter-measures (eg, accelerating settlement construction; halting the tax revenue transfers) that would make it very hard for Abbas to justify restarting negotiations.

The U.S. Congress likewise has pledged retaliatory steps, including an end to financial assistance; more broadly, going

you give us a solution that guarantees us international legitimacy, that is a state on [the] 1967 [lines] and stop settlement, we will go to negotiations, and without it we will go to the UN”. *Al-Sharq al-Awsat*, 28 August 2011.

¹¹⁴Crisis Group interview, Ramallah, July 2011.

¹¹⁵“Palestine’s admission to the United Nations would pave the way for the internationalisation of the conflict as a legal matter, not only a political one. It would also pave the way for us to pursue claims against Israel at the United Nations, human rights treaty bodies and the International Court of Justice”. Mahmoud Abbas, “The Long Overdue Palestinians State”, *The New York Times*, 17 May 2011. A UN official, commenting on the schizophrenic tones coming out of Ramallah, said, “Abbas needs to decide which way he’s playing it. Is he trying to isolate Israel or not? He writes in *The New York Times* that he is, and then spends the next month running around telling everybody he’s not. Which is it?” Crisis Group interview, Jerusalem, July 2011. A Palestinian official who claimed involvement in authoring the op-ed expressed regret at some of its language and said he had not anticipated the negative reaction. Crisis Group interview, Ramallah, May 2011. Since his May op-ed, Abbas has been careful to distance himself from the delegitimation charge. As he told the Fatah Revolutionary Council, “the goal is to delegitimise occupation which must end”, *The Jerusalem Post*, 4 September 2011.

¹¹⁶Crisis Group interview, Abbas adviser, Ramallah, July 2011.

¹¹⁷Crisis Group interview, Abbas adviser, Ramallah, August 2011.

¹¹⁰*Al-Hayat*, 28 August 2011.

¹¹¹Crisis Group interview, Ramallah, August 2011. “Even if Abbas were to do everything the U.S. is asking of him and run back to negotiations under the same old format, we will reach a dead end in six months. So why are they asking us to do that?” Crisis Group interview, PA official, Ramallah, July 2011.

¹¹²“Once admitted to the United Nations, our state stands ready to negotiate all core issues of the conflict with Israel”. *The New York Times*, 17 May 2011. Similarly Nabil Shaath, Fatah Central Committee member and head of the movement’s Foreign Relations Commission, said, “by seeking recognition, we make negotiations more possible, more equal and more doable”. *Maan*, 3 August 2011.

¹¹³“If [the Quartet] comes with a solution, it will have two elements: the first is international legitimacy and the 1967 border, and the second is a settlement freeze. With that we will go to negotiations. Without that it will be hard for us, and we will continue in going to the UN”. Quoted in *Al-Quds*, 27 August 2011. Similarly, *Al-Sharq al-Awsat* quoted Abbas as saying, “What do you suggest? What is your solution so that we don’t go to the UN? We say that we are ready to listen to any reasonable suggestion that will give us the chance to achieve what is our right and we won’t go anywhere If

to the UN over U.S. objections could well harm relations with Washington, again eroding an important principle of the PLO's traditional strategy. Other Israeli steps could affect the PA's financial well-being and viability. In other words, a UN step intended with a modest goal in mind could activate a series of unintended consequences that would carry the Israeli-Palestinian process in very different directions.

All of this could argue for a less ambitious resolution – a General Assembly text strictly restricted to the endorsement of terms of reference for example, or a hortatory call on member states to recognise the Palestinian state. But returning to talks under those conditions could expose the leadership to intense domestic criticism, particularly after the long build-up.¹¹⁸ Asked about this, a Palestinian analyst said that if it were to pursue such a path, the leadership would be creating a “Goldstone on steroids”.¹¹⁹

In this context, some also have speculated that Abbas might see an advantage in going to the Security Council, provoking a U.S. veto and then turning away from the UN. A Fatah Central Committee member assessed that a veto might help Abbas walk the thin line between embarrassing and openly challenging the U.S.: it would threaten the world with a diplomatic crisis while keeping the immediate, practical consequences – those which the U.S. and Israel most fear, for instance Palestinians access to the ICC – to a minimum.¹²⁰ What is more, it arguably could put the leadership roughly on the same side as its people – rejected by the U.S. and the Security Council – as opposed to a General Assembly resolution

that the leadership would try to spin as a victory but which ordinary Palestinians would see as of little benefit.¹²¹

That said, it could be difficult for the leadership to justify ending its quest at the Security Council without even a back-up plan – for example at the General Assembly – to carry its effort forward, particularly in light of the fact that the veto has long been known to be inevitable.¹²² Some officials reply that their choice then would be to return to the Council as many times as necessary, although that inevitably would only exacerbate tensions with the U.S.¹²³ Likewise, it is not easy to imagine a return to negotiations after a veto; on what basis could Abbas argue that any of his conditions had been met or that chances of successful negotiations had improved?

C. CAN THE UN BID PROVIDE PALESTINIANS WITH EFFECTIVE INTERNATIONAL TOOLS?

Many in the leadership – including, at times, Abbas himself – appear to have greater faith in what the UN move can achieve and make a different argument on its behalf. The goal here is not so much a quick return to talks as it is heavier international involvement and securing of enhanced (non-violent) tools against Israel. In this undertaking, acceptance of Palestinian statehood – ideally through the Security Council, realistically at the General Assembly – is the critical, obligatory step, with potentially wider-ranging ripple effects, from broadening international involvement in the peace process to hauling Israel before international judicial and other forums through what a negotiator termed “a legal or diplomatic intifada”.¹²⁴ Negotiations having reached a dead-end, the objective must be to modify the entire array of circumstances surrounding them.¹²⁵

¹¹⁸ In Arabic, the leadership often refers to its UN bid as an *istihqaq*, a term whose translation is awkward and means, more or less, “the realisation of something that one deserves”. (The same word is used to describe the maturation of bonds or other financial instruments.) By pairing this term with *ay-lul* [September], the Palestinian leadership has been telling its people that come September, they can expect to receive what is owed them. An Abbas confidant expressed faith that the hype notwithstanding, “Palestinians are political animals and know the UN won't solve all their problems”. Crisis Group interview, Ramallah, August 2011.

¹¹⁹ Crisis Group interview, August 2011.

¹²⁰ A Fatah leader said, “Abbas could be a national hero for confronting the U.S. without having to endure any real-world consequences for the action”. Crisis Group interview, Ramallah, July 2011. A U.S. official echoed this view, saying that an unsuccessful Security Council move would in many ways be less damaging to U.S. interests than a successful – albeit less ambitious – General Assembly effort. Crisis Group interview, Washington, August 2011. This strategy, of course, would depend in part on the U.S. not cutting aid to the Palestinians, which is a distinct possibility even if their move proves unsuccessful at the Security Council, a possibility that is discussed below.

¹²¹ A veto arguably could amplify the Palestinians' message: “This is a historic moment in the Arab world. It is boiling, but the U.S. doesn't seem to be able engage with it at all beyond offering a few flowery words of praise and a few million dollars here or there. Let the U.S. veto the resolution – not because we are trying to embarrass the U.S. at a time when they are regionally exposed, but because there comes a moment to say, ‘Enough is enough’. How do I tell my people that they are entitled to anything less than the other peoples of the region?” Crisis Group interview, Ramallah, July 2011.

¹²² A PA official said: “People in the street aren't stupid. They want an end to the occupation, not posturing in New York”. Crisis Group interview, Ramallah, July 2011.

¹²³ Crisis Group interview, PLO official, July 2011.

¹²⁴ Crisis Group interview, Ramallah, April 2011. A Fatah Central Committee member used a particularly belligerent tone when he threatened to “make [Israel's] life hell”. Crisis Group interview, Ramallah, March 2011. Fatah, PA and PLO leaders most frequently mentioned international justice mechanisms as a tool against Israel. Crisis Group interviews, Ramallah, November-December 2010; March-April 2011; July-August 2011.

¹²⁵ Fatah Central Committee member Muhammad Shtayyeh said, “this [UN membership] means ending one model and beginning

In their attempts to market the effort, some within the leadership initially exaggerated its potential impact and repeatedly evoked the goal of full membership. As seen, that is out of reach in the Security Council, and earlier calculations that the General Assembly could effectuate an end-run have turned out empty. This has prompted strong internal criticism from colleagues who depict September as much less consequential and argue for a more modest, incremental course.¹²⁶ A PA official said, “it is irresponsible for the leadership to continue pursuing the same policy at the UN (admission to membership) even after the original premise – that the goal could be achieved – was demonstrated to be wrong”.¹²⁷

Going to the Security Council, under this view, would yield nothing but a series of unfortunate results: a defeat due to the veto; loss of momentum on the drive toward international recognition; loss of U.S. aid and goodwill,¹²⁸ and at best a split European vote at the Council. A Security Council resolution also could hurt their interests within the UN system if, for instance, the U.S. or other countries were to take a stand against Palestinian statehood.¹²⁹ Instead, they say, the leadership should focus on small but positive steps in the General Assembly that improve the Palestinian position.¹³⁰

another model – the end of the negotiating model, because it hasn’t taken us where we need [to go]”. Quoted in *Al-Hayat*, 28 March 2011.

¹²⁶ A prominent political analyst commented: “If you undertake a suicide mission, you do it to win, to remove an obstacle, to destroy your enemy. If we are vetoed at the Security Council, what do we get for it? Nothing”. Crisis Group interview, Hani Masri, Ramallah, July 2011. A Palestinian official in New York expressed similar concerns, saying that the Permanent Observer Mission feared “being sent on a kamikaze mission”. Crisis Group interview, New York, July 2011. Given the certainty of a U.S. veto, a senior PA official recommended delay: “If we’re certain to get a veto, then there’s no rush. Take it next year and avoid the negatives this year”. Crisis Group interview, Ramallah, July 2011.

¹²⁷ Crisis Group interview, Ramallah, August 2011.

¹²⁸ “It’s not going to do any good to embarrass the U.S., to force it go out in its underwear in front of the region – to scare it with regional concerns and to damage its ability to claim to be on the side of Arab democratic forces. The U.S. doesn’t learn well from humiliation”. Crisis Group interview, former PA adviser, Ramallah, July 2011. An Abbas adviser countered: “I am not worried about embarrassing the U.S. This administration has lost the capacity to be embarrassed. Look at all the embarrassing things they have done, but I cannot discern that they have any effect on them”. Crisis Group interview, Ramallah, August 2011.

¹²⁹ See fn. 54 above.

¹³⁰ The criticism extends to the raising of expectations among Palestinians about the Security Council. “The leadership has been doing a huge disservice by telling everyone how differ-

The idea of garnering EU support for an Assembly resolution that enhances Palestine’s status to a non-member observer state should be understood within this context.¹³¹ This, its proponents argue, would accomplish much the same goal as full membership, if with lesser potency: to enable Palestine to be considered a state in a variety of international forums by joining treaties and international organisations in order to act more like a state and thereby to normalise its status as one.¹³² Many treaties and organisations have provi-

ent things will be, as if things will be so good – someone will be coming in to vacuum their homes and look after their children”. Crisis Group interview, senior PA official, Ramallah, July 2011. ¹³¹ A senior PA official speculated that the EU could support a resolution including the following elements: language from the text of the EU position from December 2009, reaffirmed in 2010; an acknowledgement of Palestinian readiness for statehood; a call on UN member states to recognise Palestine bilaterally; a request that the Secretary-General take the steps necessary to upgrade Palestine from an “entity” to a non-member state; and call on the parties to speed negotiations on permanent status issues. Crisis Group interview, Ramallah, 1 August 2011.

¹³² The Oslo Accords gave the PLO permission to “conduct negotiations and sign agreements with states or international organisations for the benefit of the Council in the following cases only”: certain economic agreements; agreements with donor countries; agreements for implementing regional development plans arising in the framework of the multilateral negotiations; and cultural, scientific and educational agreements. Were Palestine a state, it could endeavour to accede to treaties and the constitutive acts that form the basis for the UN’s approximately seventeen “specialised agencies”. Accession alone would not suffice for admission, which also requires a positive vote – by either a simple or two-thirds majority, with no veto power – of the agency’s members. Each agency would need to decide whether, for its own purposes, Palestine qualifies for membership, the standards for which may be different in different cases. That said, an Assembly vote overwhelmingly endorsing the statehood of Palestine would greatly increase its chances of joining the agencies. Crisis Group interview, international law professor, Boston, 7 September 2011. These are autonomous organisations that are incorporated into the UN system and carry out activities on its behalf. They include the Food and Agriculture Organisation (FAO), International Monetary Fund (IMF), United Nations Educational, Scientific and Cultural Organization (UNESCO), and the World Bank Group. There are precedents for admitting non-state entities to specialised agencies; Namibia, for instance, was admitted to the International Labour Organisation in 1978 when still occupied by South Africa. In theory, Palestine could emulate this path, but when it tried as a non-state entity, it failed: in 1989, the PLO sought full membership in the World Health Organisation (WHO) and UNESCO; the U.S. blocked both applications. In 1989, Switzerland rejected a request from the Permanent Observer of Palestine to accede to the Geneva Conventions. Crawford, *op. cit.*, p. 440. (That said, Palestine has been a member of the Economic and Social Commission for Western Asia (ESCWA) – one of the UN’s five regional commissions – since 1977.) The Palestinians also launched campaigns in 2010 to join the International Telecommunications Union and UNESCO, but pulled back in the face of U.S. opposition. *Haaretz*, 19 November 2010. The UN’s “programs and funds”,

sions that enable state parties to bring complaints against other state parties for alleged treaty violations.

A former aide to a UN Secretary General said, “perhaps the most significant outcome of upgrading Palestine to a non-member state observer is that Palestine would have the opportunity, perhaps even the right, to accede to several human rights treaties and use their provisions to repeatedly embarrass Israel”.¹³³ Should it be admitted to the relevant bodies, for example, Palestine theoretically could raise complaints against Israel for labour abuses against Palestinians in the International Labour Organisation or for violating the International Covenant on Civil and Political Rights. It could seek to join the Fourth Geneva Convention, designed to protect civilians in wartime; Switzerland, as depositary of that convention, would find it hard to deny membership once the Assembly decided Palestine is a state.¹³⁴

The venues for activism most often cited by Palestinians are judicial: the ICJ and, above all, the ICC. While the favourable advisory opinion issued by the ICJ in 2004¹³⁵ has spurred some to consider exploiting that tribunal further, non-member statehood status may not expand the Palestinians’ range of options. Upgraded status in and of itself would not entitle Palestine to become a state party to the Court’s statute, nor would it enable Palestine to initiate contentious cases (which, in contrast with advisory opinions, could produce a theoretically binding result).¹³⁶ Even if Palestine success-

which as opposed to the specialised agencies, were formed not by treaty but by the General Assembly and the Economic and Social Council, include the UN Children’s Fund (UNICEF), World Food Programme (WFP) and UN Population Fund (UNPFA). A list is at www.un.org/Depts/otherprgs.htm. States do not join these bodies per se; they are members by virtue of membership in the UN, so non-member state observer status would not automatically entitle Palestine to participate in the UN’s programs and funds. For Palestine to have that right, the “parent body” – in most cases the General Assembly, sometimes the Economic and Social Council – would need to grant Palestine new privileges; a status upgrade in and of itself would not be sufficient.

¹³³ Crisis Group interview, New York, September 2011.

¹³⁴ Israel claims to apply the Conventions de facto, although it disagrees they apply de jure on the ground that the Palestinian territories are disputed, not sovereign territories. Israel alone advances that interpretation.

¹³⁵ “Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory”, Advisory Opinion, 9 July 2004. The case was decided by the ICJ on request of the General Assembly; that could happen again even if the status of Palestine is not upgraded.

¹³⁶ The International Court of Justice (ICJ) was established by the UN Charter as the UN’s principal juridical organ. Article 93 of the UN Charter holds: “1. All Members of the United Nations are de facto parties to the Statute of the International

fully brought a case, it could face the same limitations as in the aftermath of the 2004 advisory opinion,¹³⁷ the implementation of which Palestinians consider deeply disappointing.¹³⁸

But the ICC looms largest, for Palestinians, for Israel and for the U.S. That is because it affirms criminal responsibility of *individuals* and because Rome Statute parties are legally obliged to enforce its rulings – both of which, together, lead Israeli officials to fear the repercussions of a hypothetical future adverse finding.

There admittedly exists no precedent for an ICC case involving a non-UN member observer state.¹³⁹ Still, achieving

Court of Justice”. Non-member states can be granted that right on a case-by-case basis under the article’s second provision: “2. A state which is not a Member of the United Nations may become a party to the Statute of the International Court of Justice on conditions to be determined in each case by the General Assembly upon the recommendation of the Security Council”. The July 2004 case (“Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory”) was brought under Article 96 of the Charter: “The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question”. These provisions inspired the former dean of the Bir Zeit Institute of Law and IPS researcher, Camille Mansour, to suggest that the Security Council could offer the Palestinians a sort of consolation prize: per Article 93, paragraph two, it could pass a resolution giving Palestine – despite its non-state status – access to the International Court of Justice, just as it did for Switzerland and Japan before they became UN members. “Palestinian Options at the United Nations”, op. cit. This would allow it to bring cases on its own initiative and obtain, in the right instances, binding judgments (as opposed to advisory opinions).

¹³⁷ The Court can issue a binding decree in only two instances: if the two parties agree to submit a case to it, which Israel is unlikely to do; or if it has compulsory jurisdiction – which it most often does not – either on the basis of a particular treaty to which all parties to the case are parties, or if the parties have accepted the jurisdiction of the Court on the basis of Article 36(2) of the ICJ Statute.

¹³⁸ A Palestinian attorney said, “look at the 2004 case. The very countries that should have been applauding the Palestinian recourse to non-violence and the rule of law ostracised the Palestinians for bringing the case and made sure that its effects were contained. The ‘countries that count’ belittled the outcome, derided it as ‘only advisory’, and closed their eyes to the important legal principles involved, advisory or not”, Crisis Group interview, New York, April 2011.

¹³⁹ A leading authority on international justice mechanisms noted that while the case of Palestine would be unprecedented and therefore unpredictable in many ways, “moving from an ‘entity’ to a ‘state’ would be a significant and potentially determinative shift”. He noted that during the negotiations over the Rome Statute and the creation of the International Criminal Court (and in the negotiations leading up to them), the Holy See participated actively and had “state character”. While the Holy See had already been treated like a state and its status was not contested, he

this status undoubtedly would enhance the Palestinian bid to use the Court. Three paths exist to establish ICC jurisdiction for a state that is not a party to the Rome Statute. The first, recently employed on Libya, involves referral by the Security Council; given Washington's position, this is not a possibility. Secondly, a state not party to the Rome Statute can nonetheless recognise ICC jurisdiction on an ad hoc basis for crimes allegedly committed on its territory. In October 2009, the PA lodged a declaration recognising ICC jurisdiction "for the purpose of identifying, prosecuting, and judging the authors and accomplices on acts committed on the territory of Palestine since 1 July 2002".¹⁴⁰ The Prosecutor has yet to rule whether Palestine is eligible as a state non-party to the Rome Statute.¹⁴¹ If the General Assembly were to decide that Palestine is a state, it would become far more difficult – some would say impossible – for the prosecutor to take a negative stance.¹⁴²

The third path entails becoming a party to the Rome Statute. If Palestine deposited an instrument of ratification with the treaty's depositary – the UN Secretary-General – it would not become a party until the depositary accepted it. According to UN practice, in discharging his functions as depositary and deciding whether a particular entity is a state, the Secretary-General "will follow the practice of the Assembly", which "is to be found in unequivocal indications from the Assembly that it considers a particular entity to be a State Such indications are to be found in General Assembly resolutions".¹⁴³

said that its participation, as a non-member state, would nevertheless constitute a precedent. Crisis Group telephone interview, 8 August 2011.

¹⁴⁰ Declaration at www.icc-cpi.int/NR/rdonlyres/74EEE201-0FED-4481-95D4-C8071087102C/279777/20090122/PalestinianDeclaration2.pdf.

¹⁴¹ Article 12(3) permits non-party states to lodge a declaration with the Registrar accepting the exercise of jurisdiction by the Court on an ad hoc basis. In this instance, the Court has yet to respond, as it faces a preliminary, crucial question: whether Palestine should be considered a state. If the answer is "no", then the ICC has no jurisdiction over the case; the Rome Statute is a state-based system, so Palestine would need to be a state for proceedings to continue.

¹⁴² Of course, the prosecutor would also have to determine – and convince a panel of Court judges – that the alleged crime is within the Court's jurisdiction and that a state party is not adequately investigating the case in its own domestic courts. Rome Statute of the International Criminal Court, Article 17 (1).

¹⁴³ See UN's Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties. <http://untreaty.un.org/English/Summary.asp>. The text reads in full: **82**. This practice of the Secretary-General became fully established and was clearly

In other words, a General Assembly resolution indicating recognition of Palestine's statehood – through granting of non-member state status or perhaps even a call on others to recognise Palestine as a state – theoretically could prove dispositive for the Secretary-General or the ICC Prosecutor.¹⁴⁴ This explains in part, as further discussed below, why both the U.S. and Israel have been extremely hostile to the type of General Assembly resolution others – notably the Europeans – tend to view as a reasonable compromise.¹⁴⁵

Finally, Palestinians put stock in the more abstract impact on the overall discourse. As a Palestinian legal expert said, "how people talk matters", in that the terms people use condition the way they think. Some believe a General Assembly resolution on non-member state status would confer an air of inevitability to future full UN membership.¹⁴⁶ A for-

set out in the understanding adopted by the General Assembly without objection at its 2202nd plenary meeting, on 14 December 1973, whereby "the Secretary-General, in discharging his functions as a depositary of a convention with an 'all States' clause, will follow the practice of the Assembly in implementing such a clause and, whenever advisable, will request the opinion of the Assembly before receiving a signature or an instrument of ratification or accession". **83**. The "practice of the General Assembly", referred to in the above-mentioned understanding is to be found in unequivocal indications from the Assembly that it considers a particular entity to be a State even though it does not fall within the "Vienna formula". Such indications are to be found in General Assembly resolutions, for example in resolutions 3067 (XXVIII) of 16 November 1973, in which the Assembly invited to the Third United Nations Conference on the Law of the Sea, in addition to States at that time coming within the long-established "Vienna formula", the "Republic of Guinea-Bissau", and the "Democratic Republic of Viet Nam", which were expressly designated in that resolution as "States".

¹⁴⁴ This would be equally true of other treaties and conventions for which the Secretary-General is the depositary. Some have considered the insertion of language into a General Assembly status upgrade indicating that the upgrade is not for purposes of treaty ratification in order to preclude this possibility, though the chances of such language passing the Assembly, given its overwhelming support for the Palestinians, is unlikely. Indeed, many EU governments would object to language that seemed designed to deny the Palestinians access to the ICC. Crisis Group interviews, EU and U.S. officials, Washington, August 2011.

¹⁴⁵ EU officials also tend to be less convinced than their U.S. counterparts regarding the impact of a General Assembly resolution on Palestine's access to the ICC. Crisis Group interviews, EU officials, August 2011. See also below.

¹⁴⁶ The Palestinian UN delegate, Riyad Mansour, said, "settling the matter of recognition as a state will change the situation of Palestine in the UN. It will decide that a Palestinian state is there and is not an international project. [The variety of] membership [it enjoys] as a state – whether as a full member or as an observer member – does not at all affect that a state is in fact there and is recognised by the international community". He described moving from an "observer entity" to an "observer state" as the "local

mer Israeli negotiator echoed this sentiment: “If you think delegitimation [of Israel] is bad today, just wait till you see what it looks like five years from now, after five years of people talking about ‘Palestinian sovereignty’ and the rest. We are going to think back to today as the good old days”.¹⁴⁷

There are downsides to this course of action as well. To the extent Palestine makes use of international judicial instruments such as the ICC, it risks alienating not only the U.S. – which has clearly come out in opposition – but to a degree also the EU. Seeking to find a compromise, some European states have suggested that Palestinians agree to forego resort to the ICC for the duration of negotiations, which they expect to begin after adoption of a General Assembly resolution. Besides the fact that such negotiations might not resume (if only due to Israeli anger post-UN), there would of course be no way to enforce such a commitment. U.S. officials in particular are sceptical:

Suppose there is renewed fighting in Gaza. How long before Palestinians rush to the ICC? Even after the latest incident [following a terror attack in Eilat, Israel launched attacks on Gaza, and Palestinian militants responded with a barrage of rockets], loud voices within the Palestinian community already urged recourse to the ICC.¹⁴⁸

Moreover, Palestinians have inflated hopes of what they could achieve. The effects of the legal and institutional wrangling that would unfold in the months and years after a General Assembly resolution would be quite unpredictable; a resolution bolstering the Palestinian case for statehood arguably would accord an advantage over its current anomalous status, but how big an advantage is unclear. International bodies have specific, sometimes restrictive, processes for admission; gaining status as a non-member observer state would not afford Palestine access to all.

The Assembly can influence decisions – all the more so since its members also are members of the UN’s specialised agencies – but it cannot force a specialised agency to admit a state; each is an independent organisation with its own rules of admission;¹⁴⁹ nor does non-member observer state status grant automatic rights in the UN’s program and funds. Efforts to join could de-

generate into acrimony as has occurred in the past. The U.S. threatened to withhold funding from the World Health Organisation in 1989, which ultimately decided not to admit Palestine; a similar battle occurred at UNESCO.¹⁵⁰

Even with regard to the ICC, European officials are less convinced than their U.S. counterparts about the impact of non-member state status. As they see it, the Palestinians still would face many hurdles, not least the fact that the ICC would want to avoid a hugely controversial step that could in particular harm its relations with the U.S. As an official said, “the Prosecutor has shown sensitivity to political realities in the past. There is no reason to believe he or his successor will not do the same in the future. There are many ways *not* to accept a case, and the ICC could find one if so inclined”.¹⁵¹ That said, there are others who have a different view about how the Prosecutor would be likely to proceed and perceive him as potentially more receptive to Palestinian claims.

D. A PARADIGM SHIFT?

Much of Palestinian political society believes that a return to negotiations in the near future – however they may be reformulated – would be misplaced. Even if talks were premised on the 1967 borders with land swaps and a settlement freeze, they are convinced that the current lopsided balance of power would condemn them to irrelevance or worse. In this respect, Abbas’s unusually strong stance, resisting an unconditional return to negotiations, has earned him plaudits, though it still falls short of what many Palestinians, especially among the younger generation, want. Asked what he would like to see the U.S. offer to get negotiations back on track, a young Fatah leader replied:

Nothing If recourse to the UN were a one-off event, then it would make sense to try to extract something from the U.S. in exchange for forgoing the move. But if you think about the UN as one part of a bigger process,

lane” as opposed to the “fast lane” to full membership. *Al-Hayat*, 3 August 2011.

¹⁴⁷ Crisis Group interview, Jerusalem, July 2011.

¹⁴⁸ Crisis Group interview, Washington, August 2011.

¹⁴⁹ An expert on UN matters said, “perhaps the General Assembly could ‘urge’ the organisations to admit Palestine, but that would be no more than a recommendation”. Email communication, September 2011.

¹⁵⁰ The U.S. withdrew in 1977 from the International Labour Organisation and in 1984 from UNESCO, accusing them of being politicised over (among other things) apartheid and the Arab-Israeli conflict. A former UN official and international law professor said, “it would probably end up polarising the agencies, which is exactly what the UN hates. The politics would be at the surface, which would remind everyone of the difficult days when the U.S. pulled out of UNESCO for political reasons. That’s not going to win any converts to the Palestinian cause, probably the opposite”. Crisis Group interview, Boston, March 2011.

¹⁵¹ Crisis Group interview, Washington, August 2011. With regard to the case that is currently pending, for example, Ocampo could decide that a 2011 vote endorsing Palestinian statehood did not apply retroactively to a 2009 case; indeed, he could argue that a finding two years later suggested Palestine did not enjoy that status when it sought to bring the case. *Ibid.*

then taking a deal would be trapping ourselves in the very box we are trying to get out of.¹⁵²

Only as part of a general strategic reorientation, a wide swath of the Palestinian political class believes, could recourse to the UN have merit. With the leadership calling for popular protests and adopting a new posture toward the international community, the space may be opening for a national realignment – vis-à-vis the PA, Hamas and Israel – that some hope to exploit.¹⁵³ Elements of the readjustment they promote include:

Palestinian Unity. Reconciliation is viewed as central to the effort to strengthen the Palestinians' position, focus energy on ending the occupation and reverse the atomisation of the Palestinian people. A young Fatah activist said, "we have been distracted by settlements even while arguably the more important weapon that Israel used against us was the fragmentation and denationalisation of the Palestinian people, with the West Bank separated from Gaza, 1948 [within Israel] from 1967 [outside the Green Line], East Jerusalem from the West Bank, refugees from everyone".¹⁵⁴ Whatever

strategy comes next, an independent youth organiser said, it should include all Palestinians and represent all their interests.¹⁵⁵

Internationalisation. As proponents of a paradigm shift see it, not only should the model of bilateral negotiation be ended, so too should U.S. monopoly over the diplomatic process. The UN is just one – and not necessarily the most important – part of internationalising the conflict, which would also include expanding BDS¹⁵⁶ and otherwise deepening ties with international civil society. A resolute insistence on international law is another key element they emphasise. The implication is that pursuing a compromise to enable the resumption of bilateral negotiations (through a Quartet or General Assembly resolution, for example) is not only misguided but dangerous.

Popular protest. This is deemed a vital aspect of the strategic reorientation, particularly in light of the Arab Spring – as a means of equalising on the ground the unequal relationship at the bargaining table. Its potential and limitations are further addressed in the next section.

¹⁵² He added: "What could we possibly ask the administration for? Look at how they back-pedalled from their own positions. Look at Obama's 19 May speech, then look at the language the U.S. put forward at the Quartet meeting. The U.S. can't even stick to its own position?" Crisis Group interview, Ramallah, July 2011.

¹⁵³ Hani Masri, a prominent Palestinian columnist, repeatedly has emphasised this point. Concerning the debate between turning to the Security Council or the General Assembly, he wrote: "It does not matter much which course we Palestinians finally decide to take. What is important is that we adopt a new strategy to replace that of bilateral talks, which has cost us much without providing anything in return Trying to combine going to the UN with bilateral talks is destined to fail and will render the decision to go to the UN meaningless. We must remember that it was because of the failure of bilateral talks that we decided to go to the UN in the first place. It is also the reason why we need a new political, diplomatic, and legal course that aims to alter the balance of power that is skewed in Israel's favour. We must create a new balance that allows us to impose a fair settlement on Israel by making it more costly for it to hold on to the occupied territories. While it is true that conflicts must be settled by negotiation, we cannot hope to reach the negotiating table unless we achieve on the ground what we hope to achieve at the table A new UN resolution cannot enable us to achieve what we failed to do with the raft of resolutions we already have, some of which (eg, UNSC Resolution 181) are far more significant than that we hope to receive". *Al-Ayyam*, 27 July 2011.

¹⁵⁴ Crisis Group interview, Ramallah, July 2011. The reconciliation process between Hamas and Fatah remains stuck, with no progress on any of the files. See Crisis Group Middle East Report N°110, *Palestinian Reconciliation: Plus Ça Change ...*, 20 July 2011. The same Fatah leader said it

might be stuck for now, but at least "the train is not going backward. The tracks have been laid, and they only run in one direction". Crisis Group interview, Ramallah, July 2011. Speaking about an August Hamas-Fatah meeting in Cairo, a senior Hamas leader said, "the purpose of the meeting is to give the impression that reconciliation is still alive and to maintain hope until the proper conditions obtain to resume forward movement. Each party has its own benefit from maintaining the image that reconciliation is still on". Crisis Group interview, Cairo, 7 August 2011.

¹⁵⁵ Crisis Group interview, Ramallah, July 2011.

¹⁵⁶ "BDS" stands for Boycott, Divestment and Sanctions, which urges imposing economic costs on Israel to advance Palestinian rights. Israelis tend to see the campaign as seeking to delegitimise their state.

IV. THE PERILS OF SEPTEMBER – AND BEYOND

A. THE VIEW FROM THE U.S.

For the past several months, much of Washington's (dwindling) diplomatic energy regarding the Israeli-Palestinian conflict has focused on seeking to persuade – or pressure – the Palestinians to forsake their September UN bid. At bottom, this reflects the conviction that the Palestinians have no justification, since the president did what they long asked him to do by endorsing the 1967 lines with territorial swaps as a basis for negotiations:

The president has done what he could, delivering a speech that addressed the two sides' core concerns. Obama offered an alternative to the UN path: a speech that broke new ground and pointed a way forward. And yet, Israel reacted by pillorying the speech and embarrassing the president while Palestinians – who already had embarrassed the U.S. with their surprise reconciliation announcement – reacted to the address by reaffirming their determination to go to the UN.¹⁵⁷

The powerful sense of frustration after more than two years of fruitless peacemaking efforts and the feeling that the president has expended precious political capital (notably by angering Israel and its allies in the U.S.), helps explain the administration's general reluctance to take any new initiative, particularly given dim prospects for a breakthrough and as the presidential campaign approaches. As a U.S. analyst put it, "there is no appetite left for doing anything even remotely risky, let alone to provoke a new fight with Netanyahu – not given the experience of the recent past, not given how pessimistic the White House is about chances of success, not with a hostile Congress, not with a re-election campaign looming".¹⁵⁸

This context helps explain the core components of U.S. policy to date: pressure on Abbas (including raising the possibility of a cut-off in assistance and deterioration in bilateral ties); efforts to reach agreement with other Quartet members on a statement that would either per-

suaire Abbas to shift course or cost him EU support at the UN; and refusal to engage in negotiations (with the Palestinians and the EU) on an alternative, more acceptable UN resolution.

Whether – in the event the Quartet cannot produce a statement or that statement does not suffice to stop the UN bid – that latter position (no negotiations) will change as a September showdown looms remains uncertain. Views appear somewhat divided within the administration. Some, persuaded it has done all it could, that the fallout from a resolution would be manageable for the U.S. and that any price borne by the parties would be of their own doing, argue that Washington should refrain from involvement in any negotiations on a UN resolution.¹⁵⁹ To soften the administration's opposition to any UN move, these officials believe, could have two costly effects: encouraging the Palestinians in their gambit¹⁶⁰ and exposing Obama to harsh criticism from Israel, its U.S. allies and members of the Congress.

Others, who seem to be gaining the upper hand, privately suggest that the time could come for the U.S. to sit down with the EU and others and implicitly give a green light for a less damaging Assembly resolution – one that would endorse principles for a final settlement and perhaps call for future recognition of a Palestinian state, but without upgrading Palestine's status at the UN, even if the U.S. ultimately voted against it. This, they say, would both avert a U.S. veto in the Security Council and minimise damage from what might otherwise be a more far-reaching resolution. In support of this view, those officials point to the damage that UN action could provoke: introduction of a resolution at the Security Council inevitably would be vetoed by the U.S.; coming almost exactly one year after Obama, speaking to the General Assembly, raised the prospect of welcoming the State of Palestine as its newest member, that would be deeply embarrassing. It could intensify anti-American sen-

¹⁵⁷ Crisis Group interview, Washington, June 2011. Asked whether the U.S. did not fear Abbas could be severely discredited at home if he dropped the UN, an official said, "Right now, helping Abbas deal with internal politics is not the prism through which we are looking at this. The feeling is that the Palestinians (and Israelis) let the president down, so it is not the top consideration". Crisis Group interview, Washington, August 2011.

¹⁵⁸ Crisis Group interview, Washington, August 2011.

¹⁵⁹ From a strictly domestic political vantage point, it could well be advantageous for the administration to sit back and simply veto or oppose whatever emerges at the UN. "It would show the president standing firmly with an ally even in the face of international opposition, thereby both responding to critics who claim Obama has not been sufficiently loyal to America's friends and reassuring Israel's backers in the U.S. Politically, the more isolated the U.S. is in its support for Israel, the better". Crisis Group interview, U.S. political analyst, Washington, June 2011. The view that the administration should refrain from embroiling itself in another round of Mid-East diplomacy and risk alienating Israel is said to be most widespread among the president's political advisers. Crisis Group interviews, U.S. officials and analysts, Washington, June-August 2011.

¹⁶⁰ "The Palestinians have been imploring us to engage with them on the wording of a possible UN resolution. But if we do so, and show any softening in our opposition to the UN, we will simply be opening up the floodgates". Crisis Group interview, U.S. official, Washington, July 2011.

timement and radicalise public opinion in the Arab world, as important events (such as the Egyptian parliamentary elections) approach. Moreover, a Council vote would underscore increasing U.S. irrelevance and inability to shape events. A U.S. official commented:

A vote at the UN over our opposition and against our wishes would harm our reputation in the Arab world. More than that, it would signal that we are incapable of controlling events and symbolise the fact that the peace process is escaping our grasp. The Palestinians' decision to seek a UNSC vote on the illegality of settlements despite the certainty of a U.S. veto was a first step in that direction, but this would be far more serious – it would amount to the Palestinians rejecting U.S. authority over, and management of, the peace process.¹⁶¹

A Palestinian initiative arguably also could complicate efforts to resume negotiations in the future by widening gaps between the two sides. In the words of another U.S. official:

If the Palestinians succeed in internationalising the conflict and achieving endorsement of their principles – a state in the 1967 borders, East Jerusalem as the capital, without any caveats – it will lead to a hardening of positions on both sides. If they gain access to the ICC, they can repeatedly harass Israel. From that point on, the conflict will be transformed into an international legalistic battle in which it would be far more difficult for the Palestinians to accept the kinds of compromises they might accept today.¹⁶²

Likewise, some worry that Israel will enact its own damaging counter-measures, as discussed below.

There could be financial repercussions on the PA as well. U.S. officials appear convinced that Congress will cut off assistance to the Palestinians in the event they proceed at the UN – indeed, almost regardless of *how* they proceed at the UN.¹⁶³ Such a decision could worsen

the PA's already severe budgetary woes and, perhaps more significantly, make it difficult for Washington to pressure Israel not to take the far more serious decision of halting the monthly transfer of Palestinian tax revenues. Republican Congressional leaders have gone further and introduced legislation that would withhold funding to any UN entity that "recognises a Palestinian state or upgrades [the status of the Palestinian observer mission] in any way".¹⁶⁴

Any resolution paving the way for Palestinian resort to the ICC is seen as harmful by some officials for yet another reason. They believe that Palestinian accession to the Rome Statute (which the U.S. has refused to join) and filing a court case against Israel would provoke a serious domestic backlash, notably within Congress. This in turn would deal a blow to efforts by the Obama administration to improve ties with and make use of the tribunal (as in the case of Libya's Gaddafi today and, possibly, Syrian President Bashar Assad tomorrow).¹⁶⁵

UN is the most explosive issue of all, more so even than Palestinian reconciliation". Crisis Group interview, Washington, June 2011. A number of bills to limit funding have been proposed including H.RES.268 (Reaffirming the United States' commitment to a negotiated settlement of the Israeli-Palestinian conflict through direct Israeli-Palestinian negotiations, and for other purposes); H.R.1592 (To limit United States assistance to the Palestinian Authority if the Palestinian Authority unilaterally declares a Palestinian state); and H.R.2457: (To restrict funds for the Palestinian Authority, and for other purposes). Ultimately, the ban on aid might include provisions for highly conditional, limited aid to be disbursed through NGOs; while they also could include a presidential waiver, it likely would require such far-reaching conditions to be met as to make it essentially meaningless. Finally, the ban could well be linked not only to the UN effort, but also to Palestinian reconciliation. Crisis Group interview, U.S. analyst, Washington, September 2011.

¹⁶⁴The relevant portion of the legislation, known as the "United Nations Transparency, Accountability, and Reform Act of 2011" reads: "The Secretary of State shall withhold United States contributions from any United Nations Entity that recognises a Palestinian state or upgrades in any way, including but not limited to full membership or non-member-state observer status, the status of the Palestinian observer mission at the United Nations, the Palestine Liberation Organisation, the Palestinian Authority, or any other Palestinian administrative organisation or governing entity, at that United Nations Entity, prior to the achievement of complete and final peace agreement negotiated between and agreed to by Israel and the Palestinians. Funds appropriated for use as a United States contribution to the United Nations but withheld from obligation and expenditure pursuant to this section shall immediately revert to the United States Treasury and shall not be considered arrears to be repaid to any United Nations Entity".

¹⁶⁵Anxiety about the impact of a UN resolution on Washington's relations with the ICC is a significant factor for those U.S. officials who believe strongly in international justice and accountability mechanisms. Crisis Group interviews, July-August 2011. An Arab analyst commented wryly: "This is far from the first time

¹⁶¹ Crisis Group interview, Washington, June 2011. An official echoed this view, stating that the administration at best would seek to manage the conflict in the coming year. Crisis Group interview, Washington, August 2011.

¹⁶² Crisis Group interview, U.S. official, Washington, March 2011.

¹⁶³ As an observer put it, "you cannot overstate the degree to which the UN is toxic in the U.S. lexicon. It is viewed as pure evil when it comes to Israel, and the president would find himself completely isolated and exposed, particularly within the Jewish community, were he to acquiesce in any Palestinian step at the UN". Crisis Group interview, Washington, July 2011. Another added: "From Congress' point of view, the

Finally, officials raise the prospect of renewed violence, prompted either by PA-organised demonstrations or by spontaneous expressions of frustration after the UN vote fails to produce any tangible change on the ground. In both instances, they do not doubt that the PA would seek to control the situation and ensure the protests are non-violent. But officials question the Palestinian leadership's ability to do so. "There could be provocateurs among the Palestinians or among Israelis, settlers in particular; Israeli forces might react forcefully if protesters approach a checkpoint or a settlement. We have seen this before: one incident turns bloody, and then all bets are off".¹⁶⁶

All in all, in a worse-case scenario, administration officials imagine cascading negative developments. In the words of an official:

Let's suppose that Palestinians achieve non-member state status through a UNGA vote. The Congress has threatened to cut its assistance to the PA, and they could well follow through. Israel might then halt the transfer of clearance revenues which are critical to the PA budget. Security cooperation likely will be damaged. Violence could well resume. Israel also might well take its own unilateral measures in response. Ultimately, one should not exclude the possibility that, under the circumstances, Abbas might resign and dissolve the PA, saying this enterprise has come to an end.¹⁶⁷

Summing up the administration's debate, a U.S. official said:

Things could heat up at the last minute, and there could be a mad scramble for a compromise to avoid the most harmful outcome. At this point though, the administration is not of one view. Some say, "The president already paid at the office with his statement, for which he incurred a heavy domestic political price. He offered a way out of the UN quagmire. If the parties don't seize it, that is too bad for them. Let the Palestinians go to the Security Council. We will veto. Let them next go to the General Assembly, and let Israel manage the consequences of the vote and the Palestinians live with the consequences of our Congress' expected reaction". Others fear the consequences of this course of action – a cut-off of U.S. aid to the PA, the PA's possible collapse, rising anti-U.S. sentiment, etc, just in time for the

Egyptian elections, etc. They would like the U.S. to explore compromises with Europeans and others. But the battle between opposing views has yet to be fully joined. That likely will only happen later in September.¹⁶⁸

At this writing, there are indications the administration has begun to explore ways of minimising the impact of a UN vote. Besides seeking to minimise the number of European nations backing the resolution, the U.S. appears to be quietly pressing for a less far-reaching text that would reduce the benefits Palestinians might gain (notably with regard to the ICC).¹⁶⁹

B. THE VIEW FROM ISRAEL

Unsurprisingly, Israel has taken a strong stance against a Palestinian move it describes as a unilateral decision proving (yet again) Abbas's lack of interest in negotiations, a breach of the Oslo accords¹⁷⁰ and a possible prelude to hostile Israeli counter-action. Israelis are split over how serious the consequences of UN action would be.¹⁷¹ For those on the Israeli left and centre (including some who serve in the coalition, like Defence Minister Ehud Barak and certain other ministers), September constitutes a threat of sizeable proportions – one that will turn out to be, in what has become a catch phrase, a "diplomatic tsunami".¹⁷² Among them, some believe that it is not too late, and that Israeli acceptance of the Obama parameters – perhaps accompanied by a reference to

¹⁶⁸ Crisis Group interview, Washington, June 2011.

¹⁶⁹ Crisis Group interview, Palestinian official, September 2011.

¹⁷⁰ Israeli officials assert that recognition of a Palestinian state would constitute a material violation of the Oslo II accords, which provide: "Neither side shall initiate or take any step that will change the status of the West Bank and the Gaza Strip pending the outcome of the Permanent Status negotiations". Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, Article 31 (7). Crisis Group interviews, June-August 2011. Palestinians offer several rebuttals, including that UN recognition would not change the status (particularly since a large number of countries have recognised Palestine for years), and Israel has violated that clause by building settlements. Crisis Group interviews, June-August 2011.

¹⁷¹ "Nobody here thinks the UN move is positive for us; the question is how bad. There are different schools. The minister of defence believes it will be a diplomatic tsunami, and others say it is barely an issue at all. You can say it is simply a paper exercise, but legitimacy plays a role in international politics. The recognition of a Palestinian state will have political and legal consequences for us, especially if it is within the 1967 borders". Crisis Group interview, Israeli official, Jerusalem, August 2011.

¹⁷² The "tsunami", Defence Minister Ehud Barak said, "will culminate in September this year with the intended recognition of a Palestinian state along the '67 lines, followed by a wide effort aimed at de-legitimisation of Israel". *Haaretz*, 23 March 2011.

that left-leaning, internationalist-minded Americans find a reason to shield Israel from normal international scrutiny". Crisis Group interview, August 2011.

¹⁶⁶ Crisis Group interview, Washington, August 2011.

¹⁶⁷ Crisis Group interview, Washington, July 2011.

Israeli reservations – could trigger renewed negotiations and thus put an end to the UN effort.¹⁷³

Although some officials, while not dismissing potentially adverse legal consequences, view the bid as essentially symbolic, most in the governing coalition take an in-between view. The practical consequences are far from negligible, they say. It could bring an end to the bilateral forums through which Israeli-Palestinian cooperation has been conducted in recent years.¹⁷⁴ Of no lesser concern in the longer term, they add, would be the effects on their country's legitimacy and consequently on its economy. A successful UN bid would accelerate a gathering "delegitimisation" campaign – by which Israeli officials mean that Palestinian criticism extends beyond critique of Israel's policy towards the West Bank and Gaza to an indictment of their country's very legitimacy; Israelis of various stripes see the September bid as only one example of this trend, which they expect to accel-

¹⁷³ Some foreign ministry officials argued that such acceptance of the Obama parameters would be a wise move and enable the renewal of negotiations. Alternatively, Israel could opt not to oppose a carefully worded Security Council resolution expressing terms of reference for negotiations so long as they included mention of Israel's Jewish character. Crisis Group interview, foreign affairs official, Jerusalem, 29 June 2011. A Likud minister argued that Israel should propose a freeze on construction to the east of the separation barrier in exchange for a one-year postponement of the Palestinian move to the UN. Crisis Group interview, Jerusalem, 28 June 2011. The opposition sees this problem as one of the governing coalition's own making, in that more effective diplomacy could have headed off the impending disaster. Kadima's Knesset member Shaul Mofaz called in May for "immediate recognition of a Palestinian state pending negotiations and security arrangements". *Yedioth Ahronoth*, 6 May 2011.

¹⁷⁴ An Israeli human rights attorney commented, even though both Israel and Palestinians have treated the Oslo Accords as optional in recent years, they still structure the functional, day-to-day relations between the two sides. "If those mechanisms fall apart, we will be in a different reality". Crisis Group interview, Jerusalem, July 2011. "Once the Palestinians are recognised as a state by the General Assembly, they will be in a position to apply for membership in tens of different international organisations, from the ICC to those monitoring the level of electric and magnetic fields. This can cause a lot of trouble for Israel. It will put in question the nature of Israel's bilateral ties with the PA. It will cause a lot of friction between us. Things can quickly escalate from very small disputes – which no longer could be handled bilaterally – into very large ones". Crisis Group interview, former Shin Bet official, Tel Aviv, 29 August 2011. The Israeli Ambassador to the U.S., Michael Oren, said, "we have no agreements with a 'Government of Palestine'. [A UN upgrade would] put us in a different realm". He added that move would invalidate economic treaties, including export, import and water sharing, as well as security cooperation agreements. *Ynet*, 31 August 2011.

erate regardless of the outcome at the UN. To a certain extent the notion of delegitimisation is connected to the security question, since Israeli officials believe that it limits their country's ability to defend itself.¹⁷⁵

But the move also could present broader challenges in international organisations and international civil society.¹⁷⁶ In this context, Israeli officials are concerned that the UN move could pave the way for hostile action in a variety of forums, including but not restricted to the ICC,¹⁷⁷ and embolden the Palestinians to challenge Israeli control over the West Bank. Countries recognising the State of Palestine, they worry, might not only upgrade their relationship with the Palestinians but also downgrade relations with Israel.¹⁷⁸

As one official put it:

The Palestinians likely will acquire increased capacities to attack Israel in international institutions. In two to three years we will be looking at a real intensification of Israel's delegitimisation. We will see assertions of Palestinian sovereignty by their building in Area C.¹⁷⁹ We will wonder how it happened. And the answer would be September.¹⁸⁰

¹⁷⁵ Opposition leader Tzipi Livni reportedly told Netanyahu, "only a diplomatic process can prevent [the Palestinian statehood bid in] September and also enable Israel to fight terror The lack of a diplomatic process has harmed Israel and its ability to defend itself". *The Jerusalem Post*, 29 August 2011.

¹⁷⁶ "Some people say that the Palestinians did this before [when Arafat issued the Palestinian Declaration of Independence] in 1988, but it's not 1988 now. Now the PA has structures on the ground, and there has been twenty years of legal movement in the international sphere to create organisations and mechanisms that are pipelines of trouble for us". Crisis Group interview, senior Israeli official, Jerusalem, August 2011.

¹⁷⁷ An official said, "A UN resolution could cause a lot of problems in three areas: the political/diplomatic (you can imagine this as delegitimisation on steroids); the legal/diplomatic (here, the precise wording of the draft will be critical); and on the ground, where we could see a deterioration". Crisis Group interview, Jerusalem, August 2011. Officials fear the ICC could be used not only to challenge Israeli military actions but also its settlements activity, insofar as Palestinians might argue that such actions constitute a war crime under international humanitarian law. Crisis Group interviews, Washington, September 2011.

¹⁷⁸ This might include, for example, limiting trade and other kinds of interaction with Israeli companies and associations operating in the West Bank or applying sanctions, formal or informal, to Israel as a punitive measure for violating Palestinian rights, for instance, by refusing to play football against Israel so long as Israel prevents Palestinian players from traveling freely. Crisis Group interview, foreign affairs ministry official, Jerusalem, 29 June 2011.

¹⁷⁹ Per the Oslo Accords, the West Bank is nominally divided into Areas A, B, and C. In Area C, Israel is responsible for security and maintains control over PA civil planning.

¹⁸⁰ Crisis Group interview, Jerusalem, August 2011.

Still, the governing coalition by and large considers this aspect relatively manageable. The overall political effect of the UN move, they hope, will be relatively limited¹⁸¹ and its consequences not particularly dramatic.¹⁸² A foreign ministry official used a Hebrew idiom to characterise the prevailing feeling within the coalition: “We made it past Pharaoh, and we’ll make it past this too”.¹⁸³

Yet in another way, the ruling coalition tends to see the UN bid as symptomatic of a much more serious problem in that it reflects Abbas’s lack of desire and willingness to negotiate, and, even worse, the international community’s acquiescence to his obstinacy.¹⁸⁴ It is nearly a consensus position among the ministers that ever since Abbas rejected Olmert’s offer,¹⁸⁵ he has not been

willing to negotiate, either because he is unwilling to end the conflict with Israel or because he is too weak to deliver on any agreement.¹⁸⁶ The conditions Abbas has set for talks – a settlement freeze and agreed terms of reference – are seen as a smokescreen to avoid them; the UN move, they feel, illustrates the same unwillingness to engage, to only take and not to give. The international community – by adopting the Palestinian premise that Israel holds all the cards and so needs to make all the concessions – has encouraged this tendency. As a senior Israeli official sees it:

For twenty years we’ve had the same structure: that Israel has the assets, so it’s Israel that has to make the concessions, and its territory that it needs to concede. In that view, territory is the key to unlocking the conflict, so nobody can ask the Palestinians to do anything; Abu Mazen has to be strong enough to make a deal, so don’t ask him for anything; all the other issues will be resolved at the exit from, not the entrance to, the process. Israel is asked to pay up front so that Abu Mazen is not weakened.¹⁸⁷

Coddled in such a manner, the official said, Abbas repeatedly paints himself into a corner and threatens to resign if he does not get what he wants; the international community reacts by asking Israel to offer a concession so he can extricate himself. While the Obama administration recently has showed more understanding for Israel’s concerns, particularly on the question of a Jewish state,¹⁸⁸ it too stands accused, because it first demanded a settlement freeze and then failed to appreciate the significance of what Netanyahu signalled in his Knesset speech.¹⁸⁹ The international community, officials believe, should be exerting more pressure on the Palestinians – both to enter talks¹⁹⁰ and regarding the definition of Israel as a Jewish state, which, as they see it, is the core of the issue.¹⁹¹

¹⁸¹ A senior Israel official said, “on the scale of severity, with the highest being ten, Barak is saying it’s a ten. [Former Bush Administration official] John Bolton wrote that it doesn’t matter and that it’s our reaction that is giving this issue legs. Let’s say that’s a zero. I’d give it a four, the low side of medium”. Crisis Group interview, Jerusalem, August 2011.

¹⁸² A Likud minister and member of the inner cabinet doubted that after the vote “the PLO will be any closer to concluding stage one of its phased plan, a Palestinian state in 1967 borders. [To the contrary], for a long time there will not be negotiations – perhaps a year, perhaps ten years”. Crisis Group interview, Jerusalem, 23 August 2011.

¹⁸³ Crisis Group interview, Jerusalem, July 2011. The Pharaoh reference is to the Biblical story of the escape of the Israelites from Egypt. Some ministers, including those from Likud, evince greater concern. A Likud minister said, “the key reason a GA resolution on Palestinian statehood would be problematic for Israel is that it would set in motion a process in which Israel finds itself increasingly isolated in many international forums and organisations. The states that support the resolution will likely then vote the same way in other organisations, and we will find ourselves again and again pushed into a corner. Such isolation may initially only be symbolic and with limited concrete effects, but it may develop into more than that over time”. Crisis Group interview, Jerusalem, 7 June 2011. Another Likud minister agreed: “A UNGA vote on non-member state status is no small matter. There are serious legal ramifications. They can start suing us over the settlements; they can upgrade their diplomatic status bilaterally with other states; they can refuse henceforth to negotiate borders”. Crisis Group interview, Jerusalem, 25 July 2011.

¹⁸⁴ “If Abbas were interested in reaching a deal, this Israeli government would be easier for him than others because internationally it bears a greater burden of proof of goodwill. If Abbas wants a deal, this right-of-centre government could deliver. As someone recently said to me, it’s not that the ball is in the Israeli court; it’s that a stake is in the Israeli court. It can’t be removed”. Crisis Group interview, senior Israeli official, Jerusalem, 2 August 2011.

¹⁸⁵ For a discussion of whether a clear offer was made or rejected in the negotiations between Abbas and former Prime Minister Olmert in 2008, see Crisis Group Report, *Tipping Point?*, op. cit.

¹⁸⁶ “The situation today with the UN mirrors the process of the last few years: ‘I am weak, and if I don’t get what I want, I am going home’. Abu Mazen continues to avoid negotiations, with U.S. and European assistance”. Crisis Group interview, senior Israeli official, Jerusalem, 2 August 2011.

¹⁸⁷ Ibid.

¹⁸⁸ Crisis Group interview, Likud minister, Jerusalem, 7 June 2011.

¹⁸⁹ See fn. 31 above.

¹⁹⁰ “Abu Mazen’s decision to avoid negotiations will work for him as long as there’s no price for it. The moment the pressure from the U.S. starts, he caves in. He will change his policy if there’s a price to be paid. But meanwhile, why should he change. At the UN, he would only take, not give, not compromise. He gets to take and continue the conflict against Israel”. Crisis Group interview, senior Israeli official, Jerusalem, 2 August 2011.

¹⁹¹ “The core of the problem is that Palestinians do not accept the fact that Jews have a claim here. In Israel, the question of whether there should be a Palestinian state has been resolved, or virtually resolved, with the exception of some fairly marginal elements. There is recognition of the Palestinian or Arab claim, and the

Like their U.S. counterparts, Israeli officials also worry about possible violence particularly in late September and early October around the time of a UN vote, when demonstrations in the West Bank are being planned, but also in the months ahead, should frustrations set in when the expectations raised by the UN appeal go unmet. Although they acknowledge that the Palestinian leadership's intent is to keep any demonstrations peaceful, they question whether this will be possible. Ramallah has an interest in preventing chaos – as does the Israeli security establishment, which has invested in preparing for them¹⁹² – but as an Israel Security Agency official remarked, mass protests by nature are unpredictable.¹⁹³ A government minister said, “Abbas understands on what side his bread is buttered. He knows that if the demonstrations turn violent, the PA is in jeopardy, and he himself is in danger. But can he succeed in getting people to refrain from violence? We have told him he is playing with fire. One never can be sure to contain mass protests”.¹⁹⁴

question is how to share something that we both consider our house. But on the Palestinian side, there is no such thing”. Crisis Group interview, senior Israeli official, Jerusalem, 2 August 2011.

¹⁹² A defence official explained that Israel, in what has been named “Operation Summer Seeds”, is planning to contain Palestinian protests in a manner that limits casualties. A large amount of equipment has been purchased to do so, including stench bombs and water hoses. Crisis Group interview, Jerusalem, 22 August 2011. The Israeli army has conducted training exercises with its own troops as well as with settlers in the expectation, as detailed in an army document, of “marches toward main junctions, Israeli communities, and education centres; efforts at damaging symbols of [Israeli] government. Also, there may be more extreme cases like shooting from within the demonstrations or even terrorist incidents. In all the scenarios, there is readiness to deal with incidents near the fences and the borders of the State of Israel”. The main thrust, according to the document, is to avoid friction between Palestinians and settlers. Around each settlement, the army has designated a red line which if Palestinians cross they will be shot in the legs. *Haaretz*, 30 August 2011.

¹⁹³ “For sure the PA wants to avoid confrontation with Israeli soldiers. And they want to avoid having the demonstrations go to the settlements. But these demonstrations can very quickly lead to confrontation with the IDF”. Crisis Group interview, Tel Aviv, 29 August 2011.

¹⁹⁴ Crisis Group interview, Jerusalem, August 2011. Another official made a similar point: “There is apathy in the West Bank regarding the UN bid, but I would caution that popular protests are unlikely to remain peaceful for a long time. You know how it begins: they start throwing stones, then they turn to Molotov cocktails. Our soldiers react in the way they are trained to react. It's not hard to imagine a conflagration erupting”. Crisis Group interview, Jerusalem, August 2011. A former official pointed to inauspicious precedents: “Things can change very quickly in this part of the world. Look at Ja-

For now, Israel's hope has rested in persuading Europe (or getting the U.S. to persuade Europe), viewed as the crucial battlefield, to oppose the Palestinian bid. With Palestinians virtually assured of a numerical majority in the General Assembly, Israel has chosen to focus on depriving them of a so-called “qualitative” majority – the notion being that without strong EU support, Abbas would either have to shift course or would at best score a pyrrhic victory. An Israeli official explained: “Europe is vital because Europe is the key to international legitimacy. The U.S. is the key to the effective exercise of power, but the U.S. cannot confer legitimacy. The Europeans alone can do that”.¹⁹⁵

Like the U.S., however, Israel is not prepared to negotiate a different, softer General Assembly resolution with the EU, viewing the entire exercise as illegitimate.¹⁹⁶ Instead, it has worked with the U.S. on a possible Quartet statement that Israel would accept even while expressing its concerns or reservations; in the process, Netanyahu softened his opposition to Obama's stance on borders (insisting, however, that any reference to territorial modifications be coupled with a reference to the need to reflect changes on the ground – ie, settlement construction – and that the statement speak of Israel as a Jewish state).¹⁹⁷

Agreement on such a formula arguably would put Netanyahu in a win-win position. It either would pre-empt the Palestinians' move or shift the blame onto them. As an official said:

The best option is to put something on the table, such as a Quartet statement, to trigger negotiations. If we get something good on the table, then, no matter what Abbas does, it's good for us. If he doesn't go to the UN, that's good. And if there is something on the table, and he goes to the UN nonetheless, that works in our favour as well by exposing his unwillingness to negotiate, and the Pal-

balya in 1987 [at the start of the first Palestinian intifada]. It started with a road accident and four or five casualties. Look at September 2000, when an Israeli minister [Ariel Sharon] ascended the Temple Mount. All it takes is four or five casualties, and we're all facing a very new reality. In this part of the world, emotions reign. Just look at the Facebook protests in surrounding countries and at the social protests here in Israel over the last several weeks”. Crisis Group interview, Tel Aviv, August 2011.

¹⁹⁵ Crisis Group interview, Jerusalem, August 2011.

¹⁹⁶ “Of course, we would react quite differently to an EU sponsored resolution that, for example, did not include an upgrade in status. But don't expect us to sit down with Europeans and negotiate a text whose basic premise – that the conflict needs to be addressed at the UN rather than at the negotiating table – we reject”. Crisis Group interview, Israeli official, August 2011.

¹⁹⁷ Crisis Group interviews, U.S. officials, Washington, July-August 2011.

estonians would end up on the wrong side of the powers whose votes they are courting.¹⁹⁸

Assuming a resolution passes, the question will become how Israel responds. Many officials, speaking privately, concede that far-reaching retaliatory action would face U.S. and international opposition and could well backfire. Measures that would bankrupt the PA would be particularly counter-productive, insofar as they would render Israel directly responsible for the West Bank's welfare and damage any security cooperation between the two sides. An official said, "Israel has real interests in keeping the situation on the ground as is. Our economy is thriving, and the security cooperation with the PA is proving itself worthy. Israel's reaction to a UNGA resolution is unlikely to be an annulment of Oslo or annexation of settlement blocs, as these would jeopardise these gains".¹⁹⁹

The vote could provoke painful warning measures – for instance, the temporary disruption or rerouting of tax clearance revenues – especially since the Israeli government will be hard-pressed to continue them should the U.S. cut donor assistance. Most observers, however, believe that it will find a way to do this and to avoid the worst of the possible consequences – a threat to the existence of the PA – since it wants security cooperation to continue.²⁰⁰

¹⁹⁸ Crisis Group interview, senior official, Jerusalem, August 2011.

¹⁹⁹ Crisis Group interview, July 2011. A PA official scoffed at such warnings: "Israel would be scoring an own goal. Without the PA, there would be instability, no security cooperation and a much higher burden on Israel. These are empty threats". Crisis Group interview, August 2011.

²⁰⁰ Crisis Group interviews, U.S. official, Washington, August 2011; former legal adviser to Israel foreign ministry, Jerusalem, 11 July 2011; foreign ministry official, Jerusalem, 10 July 2011. Giora Eiland, a former National Security Adviser, forcefully argued for a measured response: "Israel can either engage in a frontal struggle versus any Palestinian attempt to infuse any real content into their own declaration of independence or it can refrain from any clash as long as no real Israeli interest is being compromised. Opting to take the former will involve taking a retaliatory course of action to the Palestinian declaration itself Choosing to take that course of action will quickly result in a conflict between Israel and the international community. It will create Palestinian unity between Fatah and Hamas and will necessarily lead to a third Intifada that quickly will be called the 'Palestinian people's war of independence'. It would be a grave mistake to choose that course of action. The second option, which will allow the Palestinians to do and declare to their heart's fancy provided it doesn't impinge on any of our vital interests, is the correct choice to make [I]t will be easier to explain our actions as self-defence and not as punitive meas-

ures against Palestinians who dared to call for independence. Secondly, it will increase the chances that the Palestinian silent majority will refrain from joining anti-Israel activity. Thirdly and most importantly, there is a chance that the UN resolutions and the statements in Ramallah about the establishment of a Palestinian state will remain on paper only". *Yediot Ahronot*, 8 September 2011.

Yet, although this would appear a sensible position – one to which Netanyahu reportedly subscribes and that the government's relatively muted posture so far would seem to suggest²⁰¹ – he could succumb to powerful political headwinds.²⁰² Some on the right believe that Israel cannot but react strongly to what they deem a clear violation of the Oslo accords and that, if Palestinians decide to unilaterally change the rules of the game, so too must Israel. An official said:

[The government] would find it hard to proceed as if nothing occurred, especially if the Palestinians registered an important victory at the UN. We would view this unilateral Palestinian action as a blatant violation of the Oslo agreement. It will be far more difficult to achieve after September what already has been extremely difficult to achieve beforehand.²⁰³

Some officials have suggested that, depending on the precise wording of the resolution and on whether the Palestinians move to capitalise on it in international forums, Israel might retaliate by hardening its position in the occupied territories, halting the transfer of tax clearance revenues collected on the PA's behalf, ending the customs union between the West bank and Israel, opposing peace talks (even

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²⁰¹ "The approach of the government of Netanyahu and Barak is a very restrained one. Look at how they responded to the Eilat attack [in which eight Israelis were killed] and the subsequent rockets from Gaza. Look at how they have not responded to the rockets fired after the ceasefire. This is a very cautious government, very reluctant to use force. Israel understands it benefits greatly from Salam Fayyad's project. It is going forward not in spite of the Likud government but rather because the government wants it to continue". Crisis Group interview, former Israeli Security Agency official, Tel Aviv, 29 August 2011.

²⁰² Finance Minister Yuval Steinitz's late-August decision to stop the early transfer of tax clearance revenues is instructive in this regard. Despite the fact that the transfer had already been agreed, Steinitz blocked it, condemning the UN initiative as "a more serious threat than that posed by Hamas". *Maan*, 31 August 2011. A unity government with Kadima theoretically would provide Netanyahu with a clear majority for a policy shift, but it would mean sharing power with political adversaries from the left and exposing his electoral flank – both within his own Likud and from without – to a hawkish right-wing challenger, a scenario Netanyahu dreads.

²⁰³ Crisis Group interview, Jerusalem, July 2011. Not all officials took this view, and the U.S. likely would exert pressure to avoid the most damaging measures; still, given the depth of Israeli resentment at what is viewed as Palestinian provocation, severe steps cannot be ruled out.

were Abbas to agree to their unconditional resumption),²⁰⁴ intensifying settlement activity, notably in Jerusalem, or, in the most extreme case, unilaterally annexing major settlement blocs and annulling the Oslo accords.²⁰⁵

Finally, a minority see the UN bid not as a threat but as an opportunity – although for strikingly different reasons. Some view it as a way to transform the dead bilateral process; Palestinian statehood – its drawbacks notwithstanding – could turn out to be a net positive by pushing negotiations into a less emotional, more manageable state-to-state framework.²⁰⁶ Others have a more cynical appreciation for the state-to-state framework – seeing it as a way to freeze the situation, with the Palestinians, for all intents and purposes, living within provisional borders.²⁰⁷

²⁰⁴ A minister said, “in the most general sense, if there is a resolution, it means that the peace process will be put on a back burner for a long time. The first consequence will be that there will be no negotiations”. Crisis Group interview, Jerusalem, August 2011.

²⁰⁵ Crisis Group interview, Likud Arab Affairs adviser, Jerusalem, 13 June 2011.

²⁰⁶ Former Mossad head Meir Dagan reportedly argued that it would be an error for Israel to reply harshly to a UN move, that eventual recognition of a Palestinian state is inevitable, and that Israel’s attempt to stop the move would only bring it about under conditions set by the Palestinians rather than Israel. *Maariv*, 26 May 2011. Knesset member Isaac Herzog, a candidate for the leadership of the Labour party, also holds that Israel should recognise a Palestinian state whose borders would be set in negotiations between the sides. *Haaretz*, 28 April 2011. A former adviser to Prime Minister Ehud Barak argued: “The chances for a comprehensive agreement are slim to none. The only path for progress is to first create a Palestinian state, then gradually resolve the final status issues in a state-to-state framework. That will enable the resolution of the permanent status issues one at a time, without the problem of nothing-is-agreed-until-all-is-agreed”. Crisis Group interview, Tel Aviv, November 2010.

²⁰⁷ A strategic affairs ministry official said that UN endorsement of a Palestinian state would be “the greatest thing that could happen: a quasi-state within provisional borders – which is exactly what we’ve been asking for and they’ve been rejecting all along!” Crisis Group interview, Jerusalem, March 2011. Another defence official also embraced the UN move, referring to it as the implementation of just one part of President Obama’s 19 May speech: a partial agreement limited to borders and security. Crisis Group interview, Jerusalem, June 2011. Defence Minister Barak said, “I can’t tell you for sure it [final status negotiations] will work. It probably won’t. A minority even argues that it could redound to Israel’s benefit both by straining U.S.-Palestinian relations and turning Palestine into a state with provisional borders, thereby demoting the conflict to the level of a border dispute of the sort that exists elsewhere”. One official said, “the big-

C. THE VIEW FROM EUROPE

In many ways, this has turned into Europe’s moment. With the U.S. position and that of most of the rest of the world essentially known – the former opposing the Palestinian bid; the latter backing it – the EU has emerged as a swing vote, not critical to the numerical result but rather to its political significance. Both Israel and the Palestinian leadership suggest they will measure the outcome by the stance adopted by European nations, so both have assiduously courted European capitals; some Palestinians have gone so far as to imply that they are only interested in a resolution enjoying EU support.²⁰⁸ For its part, the U.S. has taken a relative backseat, unenthusiastic at the prospect of re-engaging this politically charged issue and unwilling to negotiate the content of an alternative resolution. For Washington as well, as evidenced by the timing and content of Obama’s speech, the critical question is whether it can persuade the EU to oppose Abbas’s effort. To a degree, then, the EU enjoys unique leverage and can determine the end result.

Being in a position it has long sought has created its own difficulties. Persuaded Netanyahu bears much of the blame for the impasse in the peace process, determined to show Abbas support and fearful of a vacuum without some form of action, European officials by and large are convinced that the Palestinians cannot leave the UN empty-handed. But the EU has struggled to meet its disparate, at times competing goals: maintaining unity among its 27 members; avoiding a clash with the U.S.; providing Abbas an achievement sufficient to protect his domestic credibility but not so great as to provoke Israeli retaliation. The preference has been to agree within the Quartet on a statement acceptable to both Israel and the PLO as a basis for resumed negotiations and have it endorsed by the Security Council as an alternative to a Palestinian resolution. So far, the gaps between the parties remain too difficult to bridge, though EU diplomats retain hope. Should it not be achievable, the EU wants to avoid Security Council consideration of full Palestinian membership, which likely would lead to a European split.²⁰⁹

gest loser from September will be Abbas. He will be exposed as ineffectual before his people because nothing will change on the ground – at least nothing for the better. He will provoke a crisis with the U.S. and might well lose U.S. funding. And we will have achieved what we wanted – a state with temporary borders that will turn this existential conflict into a routine border dispute”. Crisis Group interview, July 2011.

²⁰⁸ A Palestinian official made clear that the EU was the prize. “Netanyahu has said that the test is what the EU does. We accept the challenge. It is critical for us to have as widespread backing as possible from European countries. Without that, a UNGA vote will look like a defeat”. Crisis Group interview, August 2011.

²⁰⁹ “France might vote in favour, Germany would oppose, and the UK would be on the fence. This is an outcome we definitely want to avoid”. Crisis Group interview, EU diplomat, Washington, Au-

The second best option, it follows, would be an EU-sponsored resolution at the General Assembly that the Arabs and Palestinians support, in which the U.S. implicitly acquiesces, and to which Israel does not vehemently object. Again, this is no easy task; it requires achieving internal EU agreement and, more difficult, selling it to the parties.²¹⁰ Washington's refusal to engage in discussion on such an alternative has complicated matters. European officials have been considering several possible resolutions. These include one or more of the following: endorsing parameters for a final settlement echoing Obama's speech and the EU's own prior statements; exhorting Assembly members to recognise Palestine at a time of their choosing; postponing recognition of statehood to a certain date (in order to give a chance to negotiations); providing non-member state status; and calling for the unconditional resumption of talks.²¹¹

That said, it likely will prove hard to forge a common position. EU officials tend to concede that a resolution containing terms of reference alone is unlikely to match Palestinian requirements. Beyond that, opinions differ most visibly on the issue of non-member state status, which some deem the minimum acceptable to the Palestinians and others as a bridge too far.²¹² With consequences around the ICC looming largest, EU officials at this writing were considering ways of assuaging Is-

gust 2011. Another European diplomat said the EU "wants to avoid another Kosovo [where member countries went their separate ways on the matter of recognition] at all costs", Crisis Group interview, New York, September 2011.

²¹⁰ "Our current approach is to make a last push for a Quartet statement that would be sufficient to relaunch negotiations. The fear is that if we end up with a resolution at the UN, we will end up with a divided EU since I cannot see all 27 accepting Palestinian statehood nor all 27 rejecting it". Crisis Group interview, EU official, Brussels, July 2011.

²¹¹ Crisis Group interviews, EU diplomats and officials, Brussels, Washington, New York, June-August 2011.

²¹² A EU diplomat said, "this so-called Vatican option could be considered a reasonable outcome, especially if coupled with a call for the unconditional resumption of negotiations. We would be giving the Palestinians something they want and Israel something it wants". Crisis Group interview, New York, July 2011. Other EU representatives feared that this status, viewed as tantamount to statehood recognition, could have damaging consequences (including resort to the ICC) and provoke U.S. opposition. Crisis Group interview, EU diplomat, New York, July 2011. Tensions between countries are not the only source of problems; there also are differences in appreciation between those negotiating the texts in New York and missions in the region. "The problem is that the drafting goes on in New York within the confines of the UN, where things look different. They then get upset when the Palestinians in Ramallah won't sign on to the product". Crisis Group interview, EU diplomat, New York, July 2011.

rael (and the U.S.); one option was to obtain a Palestinian commitment not to resort to the court for as long as negotiations (which would have to begin in the wake of the Assembly resolution) last. Member states also were debating how to deal with the divisive issue of recognition of a Palestinian state; suggested wording included calling on states to extend such recognition "in due time".²¹³ Some could do so now; others would wait.

Critically, European countries also are eager to manage – and minimise – the aftermath of any UN vote. That would mean limiting Israeli retaliation (notably the cut-off of tax revenue transfers) and Palestinian action in international forums, specifically the ICC. Achieving that goal almost certainly would require working in tandem with the U.S. given its influence with Israel. Although for now Washington has refused to engage in discussions on an alternative resolution, EU officials hope that its interest in averting a catastrophic scenario will persuade it to get more involved in the near future in order to limit the fallout from the UN.²¹⁴

D. IS THERE A RISK OF VIOLENCE?

As seen, several policymakers and commentators point to the risk that in the aftermath of a UN resolution mass unrest could erupt in the West Bank – either due to popular frustration at the gap between expectations and reality or to popular demonstrations gone awry. Palestinians activists generally discount the first view; West Bankers appear sophisticated – and jaded – enough to realise that what happens at the UN will not change their condition; if they choose to rise up, it likely will be because of the seemingly unshakable realities of occupation, not because of what happens or not as a result of New York.²¹⁵

The second possibility – that PA-organised action could slip out of control or provoke aggressive settler or disproportionate IDF reaction – inspires somewhat greater concern. Of late, the Palestinian leadership has called for mass demonstrations to coincide with the UN request for statehood. Fatah Central Committee member Marwan Barghouti,²¹⁶

²¹³ Crisis Group interview, EU official, Washington, September 2011.

²¹⁴ Crisis Group interviews, EU officials, Brussels, Washington, August 2011.

²¹⁵ At a panel discussion in Ramallah, attended by activists from around the West Bank, mention of Israeli fears of violence in September provoked laughter in the crowd. After the session, one of the speakers offered the following interpretation: "Those who want to go out and protest are not doing so because of September; they are doing it because they think it's important to do, period. And those who are not inclined to do so are not going to be inspired by a UN vote". Crisis Group interview, conference speaker, Ramallah, July 2011.

²¹⁶ *Al-Ayyam*, 21 July 2011.

followed by PLO Secretary General Yasser Abd Rabbo,²¹⁷ called for a million-man march; the PLO has formed a committee that is tasked, among other responsibilities, with coordinating demonstrations for the week preceding the vote.²¹⁸ Independent youth activists – who spear-headed the 15 March protests²¹⁹ – wish to use September to pursue a more confrontational approach toward both Israel and the PA.²²⁰ For them, like others who want to see a significant shift in strategy, the UN vote is not important in and of itself; rather, it could serve as a backdrop to broader efforts to spur popular activism.

The Palestinian leadership's attitude in some respects appears puzzling. It long has been worried that popular protest could turn violent due to Palestinian or Israeli provocations.²²¹ Its willingness to allow the gatherings – should it be borne out – suggests two things: the feeling that it needs to recoup a measure of popular legitimacy notwithstanding the risks, coupled with confidence that its security forces can control the protests. In this respect, they apparently are betting that Hamas has been sufficiently subdued in the West Bank or will see little interest in provoking clashes.²²² As for potential clashes with Israel, the PA is planning to circumscribe demonstrations carefully, limiting them to the centre of cities and towns, away from checkpoints and potential confrontations with soldiers and settlers.²²³

²¹⁷ *Haaretz*, 1 August 2011. Abbas too voiced support: "In this coming period, we want mass action, organised and coordinated in every place . . . This is a chance to raise our voices in front of the world and say that we want our rights". Quoted in *Haaretz*, 27 July 2011.

²¹⁸ Crisis Group interview, committee member, Ramallah, 7 August 2011.

²¹⁹ On the 15 March protests, see Crisis Group Report, *Palestinian Reconciliation*, op. cit.

²²⁰ Crisis Group interview, youth leader, Ramallah, July 2011.

²²¹ Crisis Group interview, senior PLO official, Washington, June 2011.

²²² A Gaza-based Hamas leader said the movement has not taken an official position on the UN bid nor on whether, or how, to mobilise in September. Crisis Group interview, Gaza City, August 2011. According to West Bank Hamas PLC members, the PA crackdown renders mobilisation impossible. Crisis Group interview, Ramallah, August 2011.

²²³ A PA security official said, "we will not give the occupation any excuse to abuse our children or to kill our residents". Quoted in *Maan*, 12 August 2011. A member of the Palestinian security forces related that in preparation for the September protests, plain-clothes security personnel had walked toward various Israeli checkpoints, with whatever factional flags they had at hand raised aloft, in order to determine the point at which Israeli troops responded. That point will be the absolute limit of where protesters will be permitted to go in September. Crisis Group interview, interior ministry official, Nablus, August 2011.

Palestinians further discount the prospect of violence by arguing that neither Fatah nor the PLO will be able to turn out more than their core supporters and PA employees.²²⁴ In part, this is because old complaints about these stalwarts of the national movement have persisted,²²⁵ and new ones have been added.²²⁶ A PA minister said, "Fatah and the factions cannot move the street". A PLO Executive Committee member admitted that the people have all but given up on their leadership: "The Authority leads by power, not trust".²²⁷ Beyond the question of the leadership, there is also the issue of what people are being asked to support. The UN agenda,

²²⁴ A former employee in the Palestinian president's office explained that for significant occasions, the PA instructs employees not to report to work but rather directs them to attend rallies – for instance, on the anniversary of the launching of Fatah or Yasser Arafat's death – under penalty of their pay being docked if they do not show up. Instructions (*waraqat al-ta'amim*) shown to Crisis Group. In this way, PA employees estimated, the PLO might be able to secure the attendance in September of tens of thousands. A leader of the PLO's efforts to prepare the September demonstrations disputed the assessment that the majority of protesters would be there only out of self-interest: "Don't underestimate Abbas's legitimacy. He was the number two in the PLO for twenty years and still has the legitimacy of elections. If he – and Marwan [Barghouti] – tell people to go, they will go". He added, however, that he had "no idea" if they would be able to sustain protests after September. Crisis Group interview, Ramallah, August 2011.

²²⁵ On the travails of Fatah, see Crisis Group Middle East Report N°91, *Palestine: Salvaging Fatah*, 12 November 2009. Even movement leaders see little evidence of the renewal that was ostensibly the goal of the Sixth General Congress, in August 2009. "All the energy was poured into the Congress itself. There was no renewal. It was about legitimising the leadership, not renewing the movement". Crisis Group interview, Fatah official, Ramallah, July 2011. Internal fissures and internecine struggles, the deep association with the PA, and the perception of endemic corruption continue to plague the movement today – as is recognised even at the highest levels. Crisis Group interviews, PA ministers and Fatah Central Committee members, Ramallah, March and July 2011.

²²⁶ Political infighting has intensified of late. At Abbas's urging, the Fatah Central Committee ejected former Gaza security chief Muhammad Dahlan from its ranks and the movement. He returned to Ramallah to contest the decision before a Fatah court. Crisis Group interview, General Intelligence official, Ramallah, August 2011. Contestation between Fatah and Fayyad also has escalated. In August, the General Union of PA employees threatened to strike if salaries were not paid in full. The union was established after Hamas won the PLC election in January 2006, as a way for Fatah rank and file within the PA to pressure Hamas. Since Fayyad assumed the premiership in June 2007, the union has been used to pressure him. A Palestinian political analyst asserted it was no coincidence the union became more restless just as reconciliation raised political pressure on Fayyad. "You should think of the union as a political lobby as much as a union". A Palestinian journalist said, "It's hard to generate the trust to lead when they are busy fighting among themselves". Crisis Group interviews, Ramallah, July 2011.

²²⁷ Crisis Group interviews, Ramallah, July 2011.

as seen above, does not excite the passions of ordinary Palestinians.²²⁸

None of this is to discount all risk of violence. PA security forces cannot ensure total control; moreover, despite strict guidelines for demonstration to remain non-violent, Palestinian and Israeli security officials might not share definitions of the concept. In the Palestinian national context, the main distinction long has been between popular resistance – which is comprised of a variety of activities that are mainly non-violent but also include, most troubling for Israel and many Western audiences, rock throwing – and armed struggle, which commonly are identified with the first and second intifadas respectively. With the Arab Spring, the parameters of this debate have changed somewhat; the cry of “silmiyya” (peaceful) has – in certain Arab countries at least – proven popular and effective. Still, Palestinian activists who promote “non-violence” say they encounter resentment from those who feel it is an external notion that lacks resonance in the Palestinian context.²²⁹ Were Palestinians to engage in rock throwing, for example, a harsh Israeli reaction is to be expected, and a dangerous cycle could be triggered.²³⁰

²²⁸ Asked to describe popular attitudes toward the UN strategy outside the factional leadership and the political elites, a Palestinian analyst said, “people don’t really care and don’t spend much time talking about it”. Crisis Group interview, Ramallah, August 2011.

²²⁹ Ibrahim Shikaki, “What is the ‘right’ type of resistance?”, Al-Jazeera, 6 July 2011.

²³⁰ A Fatah leader active in the first intifada and no stranger to non-violent resistance, said that while there have been some indications of interest, “the conditions are not ripe” for a peaceful uprising similar to Egypt’s. He listed several reasons: unlike neighbouring Arab countries, where people have been oppressed but had been living relatively normal lives, “we are still living the last round with Israel”; Palestinians are talking about ending occupation and the liberation of territory, not bringing down a regime; and the feeling that the world is fundamentally unsympathetic to Palestinians even when they choose peaceful means. He included going to the UN in this category: “The world is telling us that we should be doing only peaceful resistance, but what we are doing at the UN is not even resistance, it’s just a legal move, and we are being told that even that is illegitimate. Is there anything that would be considered legitimate?” (Fatah leader Qaddura Fares echoed the sentiment: “It’s not like we are going to Ahmadi-nejad. We are going to Ban Ki-moon!” Crisis Group interview, Ramallah, July 2011.) Finally, he noted the widespread belief that Israel will drag Palestinians into violence, since that is where it has the advantage. He concluded: “We need first to be very sure that the philosophy of non-violence is deeply rooted in the people before we go to mass struggle. Currently it is not – nor is there even a consensus that it should be – and we cannot afford to be dragged into another

Youth claim to be planning more aggressive protests if they can manage it.²³¹ Security forces, as noted, are making sure they do everything to prevent it. But as a PA security chief said, “if people are intent on confronting the Israelis, there is nothing we can do to stop it. Look at what happened in Egypt – and their security forces were stronger than ours”.²³²

E. BEYOND SEPTEMBER

With so much attention riveted on September and the UN, little thought appears to have gone into what comes after. Indeed, in their eagerness to avoid a so-called UN train-wreck (notably by persuading the Palestinians to drop their bid and resume negotiations), U.S. officials in particular risk creating a far more serious crisis down the road.

The challenges facing Israelis and Palestinians are much broader and deeper than what might happen or not at the UN. More than their cause, the UN gambit is a symptom of these challenges: the widening gap between the two parties; deeply entrenched mutual scepticism about their respective intentions; Washington’s dwindling credibility; and, on the Palestinian side, a multiplicity of significant domestic political and economic predicaments. In this sense, policy-makers who, in their effort to dissuade Abbas from going to the UN, highlight his “day-after problem” (the frustration born of the inability to translate a positive vote into changes on the ground) appear to be missing the point. The problems facing Abbas and others will not suddenly emerge the day after – not only do they exist today, but they will not be resolved and could even worsen if the UN effort is aborted or the outcome is perceived by Palestinians as a defeat.

In this respect, international efforts to parry a Palestinian move at the UN by relaunching talks, notably by issuing a new Quartet statement, raise several issues. The first, immediate one relates to the difficulty of finding language that Israelis and Palestinians can accept as a basis for negotiations, given how entrenched their respective positions have become, particularly on the question of Israel as a Jewish state and the justification for land swaps.

Secondly, and more importantly, even should such language be found, it is unclear what benefit there would be to renewed talks at this stage. U.S., Israeli and Palestinian officials concur that it is virtually impossible in the current circumstances for Abbas and Netanyahu to make substantial progress, let alone reach an agreement. For reasons related both to the two leaders’ substantive positions and to their respective political situations, compromise on any of the final status issues – Jerusalem, refugees, territory and security

round with Israel”. Crisis Group interview, Ramallah, July 2011.

²³¹ Crisis Group interview, youth leader, Ramallah, July 2011.

²³² Crisis Group interview, Ramallah, March 2011.

– is almost certainly out of reach.²³³ The atmosphere has deteriorated in important ways since they last met, and each is now persuaded that the other is uninterested in or incapable of reaching a fair agreement. As discussed above, this clearly is the case for the Palestinians, who believe Netanyahu has retreated from all of the positions staked out by his predecessor and is more determined to avert a challenge from his right-wing allies than to address Palestinian needs.

But it also is true of Israelis who – as seen – have their own reasons to be dubious about how the Palestinians have handled past negotiations and whose doubts have only hardened as a result of the UN threat. A Netanyahu confidant stated that, “in the government, nobody believes that the current Palestinian leadership wants to end the conflict with Israel. The only difference concerns what Israel should do in response”. Shedding light on how the prime minister and others viewed the recent past, he continued:

For more than two years, the Palestinians have consistently avoided negotiations. They’ve changed their tune about why: at first Abbas talked of wide gaps with Olmert; now he says they were five minutes from an agreement. Sometimes they blame the U.S. for forcing Abbas to climb a tree, and so we are treated to endless metaphors about trees on top of trees. Palestinians paint themselves into a corner by demanding a settlement freeze or Israel acceptance of the 1967 lines or a UN resolution, then say they have no choice, and Israel is asked to pay the price to extract them from the corner.²³⁴

Obama’s predicament – he faces re-election in 2012 under extremely delicate circumstances, with a dire economy and low approval ratings – also has persuaded the two parties that he will be unwilling to expend any amount of political capital or risk another clash with Netanyahu to push the process forward. While this might be a cause for depression among the Palestinian leadership and of comfort among the Israeli leadership, the

result is the same: a shared conviction that Washington will not be taking any bold moves for the next year and a half.

It follows that the risk of a rapid collapse of talks, assuming they recommence, is very high. Resuming talks that swiftly break down could, in the view of all three parties, prove even more damaging than not holding them at all.²³⁵ In this respect, the desire to restart negotiations as a means of avoiding a so-called train wreck in September is short-sighted and could well backfire, averting one crisis at the cost of a far more perilous one.²³⁶ A Palestinian analyst said:

If the U.S.’s exclusive goal is to overcome September, without regard to what happens afterwards, it will end badly. Our goal should be to find a solution that lasts past September, something that can be sustained in the longer term. That won’t be done if people are entirely obsessed by averting a UN resolution no matter what. What is required is a long-term approach of which managing September is a component, not the entirety.²³⁷

Thirdly, attempts to persuade or pressure Abbas to renounce the UN approach tend to make short shrift of – or, worse, misread – the realities of Palestinian politics. U.S. officials are said to be warning the Palestinian leader of the dire consequences of a UN move.²³⁸ Should Abbas either postpone the bid, swallow a purely symbolic General Assembly or even Security Council resolution (with no reference to statehood), or accept a return to bilateral talks, he likely will be strongly challenged at home by constituents who have long lost any faith in negotiations and to whom the leadership has built up the UN option for months. A retreat from the UN strategy would deepen the crisis of confidence suffered by the Palestinian leadership in the eyes of an increasingly sceptical public.

Palestinian officials argue that they need a diplomatic achievement – or something they publicly could present as such –

²³³ See the discussion of the Olmert-Abbas negotiations in Crisis Group Report, *Tipping Point*, op. cit.

²³⁴ He added: “The Palestinians have been able to stay away from the talks without paying a political price. To the contrary: we pay an international price for there not being talks, even though we are willing to enter them without conditions; even though we lifted roadblocks and established a level of freedom of movement the West Bank has not known for ten years; even though a Likud prime minister spoke about two states, even though we implemented a settlements freeze. And about those negotiations that we pay a price for not entering: we are asked to pay a price upfront [in the form of another settlement freeze or acceptance of 1967] in order to get into them”. Crisis Group interview, Jerusalem, August 2011.

²³⁵ Crisis Group interviews, Washington, Ramallah, Jerusalem, May-July 2011.

²³⁶ A Palestinian analyst asked: “Why do the U.S., the Palestinians and Israel all say that resuming negotiations is their first choice when they all know with virtual certainty they would end in failure and that failure would come at a very high cost”. Crisis Group interview, June 2011. A U.S. official conceded that there was little faith in the possible success of talks but said the administration was driven almost exclusively by the desire to get through September. In that context, negotiations are the administration’s “default position – it is always viewed as preferable to have negotiations than not to”. Crisis Group interview, Washington, June 2011.

²³⁷ Crisis Group interview, June 2011.

²³⁸ A U.S. official said, “we are seeking to convey to Abbas a sense of the consequences of his proceeding at the UN. He is beginning to understand them – in terms of financial assistance to the PA, of course, but, more broadly, in terms of his relationship with Israel and the U.S.”. Crisis Group interview, Washington, August 2011.

both to boost their credibility at a time when neither negotiations nor internal reconciliation is moving and to convince people that a peaceful resolution to the conflict remains possible:

Abbas needs something from the UN to give people faith in a peaceful path. Arafat worked decades to root in his people the conviction that a peaceful resolution is possible, but every path to get there has failed. Soon that conviction will be shaken. The U.S. has failed, at the cost of grave harm to its credibility. If there's nothing at the UN, there's nothing, period. If it doesn't work, I foresee, at some point, some kind of explosion.²³⁹

With or without a UN resolution, in short, the problem remains the same: the growing sense that the Israeli-Palestinian process has reached the end of the road, with no realistic prospect (whether through bilateral negotiations or at the UN) of a peaceful way out.

This comes atop other worrying signals concerning the PA. Since Prime Minister Fayyad announced a cabinet reshuffle the day after Mubarak stepped down on 11 February, he has been unable to form a new government.²⁴⁰ The West Bank economy, economists say, has been softening;²⁴¹ corruption investigations against two ministers are ongoing; and Fayyad has been demoralised by the way he was treated in the Fatah-Hamas reconciliation

process.²⁴² The PA's financial crisis – acute even without a cut-off of U.S. aid or halt in Israel tax transfers²⁴³ – is causing distress among its employees, especially given that financial obligations are heightened during the summer.²⁴⁴ In addition, delayed salary payments are becoming harder to bear, since many PA employees have taken out substantial loans.²⁴⁵

At the same time, security coordination with Israel reportedly has decreased somewhat. The next in a sequence of National Security Forces battalions to be trained in Jordan under U.S. supervision has been delayed;²⁴⁶ granting of per-

²⁴² See Crisis Group Report, *Palestinian Reconciliation*, op. cit., p. 25. A Fatah Central Committee member said Abbas's treatment of Fayyad – and particularly the president's insistence that he was the only internationally acceptable candidate – made him seem like an outside imposition. This, he added, was "humiliating". Crisis Group interview, Ramallah, July 2011. A senior PA official said Fayyad had been put in a no-win situation: "On the one hand, if he said he would refuse to head a future reconciliation government, it would have appeared that he was derogating from his national duty. On the other hand, if Fayyad had trumpeted himself as a candidate, he would have seemed presumptuous". Crisis Group interview, Ramallah, July 2011.

²⁴³ Half of the June PA salaries were paid only in August, and while July salaries were paid in full, this was at the cost of other vital expenditures. Salaries were not paid in August, and the PA and Public Employees Union are engaged in contentious negotiations over a payment schedule. Crisis Group interview, PA official, 7 September 2011. PA and international aid officials are working on the assumption that U.S. budgetary assistance for 2012 (the amount in 2011 was just over \$200 million) will not be forthcoming. This has implications for the PA's 2011 budget shortfall; because the U.S. fiscal year starts in October, the PA had been hoping that it could use – as it has in previous years – the first instalment of U.S. 2012 money to cover its 2011 budget shortfall. After not having given anything during the first half of 2011, the Saudis transferred \$30 million in July, but the PA still faces a \$600 million shortfall for the year. Worse, all the PA's normal avenues for borrowing (particularly private banks and the private sector) have reached their limit. PA debt to Palestinian banks stands at about \$1.1 billion. Crisis Group interviews, PA finance ministry official, Ramallah, July 2011; international aid official, Jerusalem, August 2011. Economist Raja Khalidi argued that to speak of a "budget crisis" is misleading, since the reason the PA workforce is so large and its payroll consequently so high is that the workforce was disproportionately expanded in the early years of the second intifada to compensate for diminishing Palestinian employment inside Israel. "There is not really a PA budget crisis: There is a crisis in the economic sustainability of the entire 'governance' project that has been in place since Oslo". *Haaretz*, 1 August 2011.

²⁴⁴ Expenses include those associated with weddings, many of which take place during the summer; with Ramadan and the holiday, Eid al-Fitr, that concludes the month; and with children going back to school.

²⁴⁵ Total loans to PA employees stand at about \$350 million.

²⁴⁶ On U.S.-led training and the Palestinian security sector in general, see Crisis Group Middle East Report N°98, *Squaring the Circle: Palestinian Security Reform Under Occupation*, 7 Sep-

²³⁹ Crisis Group interview, Ibrahim Khreisheh, PLC Secretary General, Ramallah, 16 July 2011. A senior PA official expressed a related, albeit different concern: "My biggest fear is that some members of the political elite will see in the failure of September an opportunity to mobilise support for themselves, perhaps even by inciting violence". Crisis Group interview, Ramallah, July 2011. Fatah leader Qaddura Fares made a similar point, not about the UN per se but about the impossible position in which the Palestinian leadership finds itself: "Where is the real danger in the road ahead? It is that people come to the conclusion that peace is not possible. If the moderates here have no message to offer, people will listen to anyone, to the radicals and the religious". Crisis Group interview, Ramallah, 13 July 2011. An Abbas adviser said that, domestically at least, keeping the peace this long must be seen as an accomplishment. "The fact that we have already gotten this far, that we have postponed the explosion this long, is itself an achievement. Back in November, we were thinking it would come in January or February. Also, we have channelled people's anticipation in a peaceful direction, in the direction of international legitimacy. For both these things, the world should thank us". Crisis Group interview, Ramallah, August 2011.

²⁴⁰ Key figures are said to have rebuffed Fayyad's invitations to serve as ministers.

²⁴¹ Crisis Group interviews, Fayyad adviser and international aid officials, Ramallah and Jerusalem, June and July 2011.

mission for Palestinian security forces to move between various areas in the West Bank has been slowed; and decisions that were taken by Israeli field commanders have been kicked up the chain.²⁴⁷ The PA seems as intent as ever on combating crime and Hamas, but forward movement on security reforms has ceased.²⁴⁸ All of this has further shaken popular confidence in their leader's ability to deliver²⁴⁹ and in ministers' faith in their ability to govern.²⁵⁰ The most difficult consequences may be yet to come: "Our budget situation is absolutely debilitating. We are now working on a very serious austerity budget that could fairly be described as draconian", a senior PA official said.²⁵¹

tember 2010. The delay in training was due partly to financial problems, partly to the fact that Israel officials discouraged it. The message was, "don't ask about training the battalion because the answer will be no". Crisis Group interview, international security consultant, Jerusalem, July 2011.

²⁴⁷ Ibid.

²⁴⁸ Crisis Group interview, international security consultant, Jerusalem, July 2011. On the ground, there have been several minor incidents in the West Bank that led some to charge security control was fraying, but there is no indication this is the case. In Jenin, the family of someone arrested by the PA threw stones and damaged a police car. In Al-Ayn Camp, near Nablus, shots were fired to celebrate the release of two Palestinians from Israeli jails; Preventive Security arrived promptly and arrested the shooters. Crisis Group interview, Palestinian journalist, Ramallah, July 2011. A former Al-Aqsa Brigades member dismissed the accusations: "Are you kidding? The Authority rules with an iron fist". Crisis Group interview, Balata Camp, August 2011. A senior PA official commented: "We responded and dealt with all incidents. This government has had critics from the beginning. When we came out with the government program, they called it the Program of Complicity with the Zionist Entity. When there is a wedding at which someone fires a weapon in the air, critics are quick – too quick – to say we're sliding into security chaos". Crisis Group interview, Ramallah, August 2011.

²⁴⁹ A PA minister said, "the problem is not just paying half-salaries; it's that morale goes down when people are not paid. People become frustrated. They don't work as hard. But it's more than that; people want to know – and justifiably so – how we can build a state when we can't even pay salaries. People don't understand the difference between building the institutions that make us ready for statehood and the ability to pay salaries". Crisis Group interview, Ramallah, July 2011.

²⁵⁰ A minister said, "working in a caretaker capacity has been horrible. The staff doesn't look at you as someone who will be there tomorrow". Crisis Group interview, Ramallah, August 2011.

²⁵¹ Crisis Group interview, Ramallah, August 2011. Asked if this is not a reason to abort the UN appeal, a Fatah leader turned the question around: "If we are already facing the distress, why not go to the UN?" Crisis Group interview, PLC official, Ramallah, July 2011.

This process of growing political and economic disenchantment could well accelerate, making the leadership seem even more impotent than it already appears to many of its constituents.²⁵² Many in the leadership – the PLO, PA and Fatah alike – fear the consequences of further straining their credibility to the point that the PA has trouble functioning. It is not, they say, that they would dismantle the PA on their own initiative, despite occasional threats to do so.²⁵³ But they fear that the PA will be hollowed out from within:

After the 1967 war, the old PLO leadership lost legitimacy because it had no answer to the question of what happened in the war, the reasons for failure and what could be done to reverse them. Who had the answer? Fatah and Arafat, so he took over the PLO within a couple of years. We are facing a similar risk today. How can the current leadership mobilise and lead the Palestinian people if it can't provide answers for why we have failed and if we have nothing to offer? The people with the answers are the extremists.²⁵⁴

The PA, officials say, has been telling the people since 2009 that the government program aims to create a state within two years. What happens, they worry, when that goal is revealed as essentially empty – again, regardless of the UN outcome? Some brush off any concern: few really expected a state to be created within such a short period, and it is the pay check that brings PA employees to the office every day, not their national fervour or their commitment to Fayyad.²⁵⁵ But others offer a darker prediction: that the failure of the statehood program will strip away a nationalist fig leaf that is indispensable for those earning the checks. A senior PA official said, "what is the story the PA will tell the people now? Abu Mazen and Salam Fayyad tied their hands with deadlines; that helped build their credibility, because they were saying that they would bring the transitional period to an end. Now they will have to backtrack, and that will cost them".²⁵⁶

Of particular concern is the effect that diminished PA credibility could have on the security forces. On the one hand, the 4 May reconciliation agreement notwithstanding, PA security personnel continue to feel that repressing Hamas is a matter

²⁵² The U.S. and Israel could accelerate this process further yet, should the U.S. cut aid or Israel stop the flow of tax clearance revenues, intensify restrictions on movement within the West Bank (that have been substantially eased in the past years) or slow security coordination.

²⁵³ "The PA is a great achievement", an Abbas adviser said. "Abu Mazen will never wake up one morning and call Salam Fayyad and tell him to pack his bags because we are going home". Crisis Group interview, Ramallah, August 2011.

²⁵⁴ Crisis Group interview, Abbas adviser, Ramallah, July 2011.

²⁵⁵ Crisis Group interview, PA employees, Ramallah, March-August 2011.

²⁵⁶ Crisis Group interview, Ramallah, June 2011.

of self-preservation; more generally, there is a sense that public order and the rule of law are, first and foremost, Palestinian interests.²⁵⁷ On the other hand, many are posing, with newfound urgency, the question about how long the PA forces will remain loyal in the absence of a political horizon, particularly in light of the significant role of security coordination with Israel.²⁵⁸ A senior PA official said, “for the last two years, the security services have been telling themselves, their families and their communities that they were involved in the national project.²⁵⁹ What will they say now? If there is no political horizon, the PA will end up looking like a Vichy regime”.²⁶⁰ Should a cut off or failure to deliver clearance tax revenues stop salaries, the danger will be much greater.

V. CONCLUSION

The Palestinian leadership in Ramallah is in an unenviable position. It lacks legitimacy. Negotiations, after decades of failure, have been discredited in the eyes of the people, who are convinced talks have prolonged occupation. Reconciliation with Hamas is frozen. Israeli settlement building continues. Elections are long overdue, and there is no prospect they will be held anytime soon. The PA is under financial strain. The regional mood is inhospitable to slow and deliberative progress. The leadership thus is unable and unwilling to maintain its course of the past two decades – but so too is it unwilling to jettison it. Because the UN traditionally has been sympathetic to Palestinians (in its decisions and resolutions, though not in its implementation), the leadership turned there to push the world to give what it needed to return to the negotiating table. Abbas was never a true believer in the institution or in launching a legal or diplomatic “intifada”, and the practicalities of how a State of Palestine could win UN membership were never clear. But as a platform for political activism, the UN bid has served him relatively well.

Now that it has become clear that membership cannot be attained, however, the leadership finds itself twice burdened. First, it is still in search of a strategy for ending the occupation or at least for convincing its people that it can move in that direction. Less than a month before the General Assembly session that was supposed to be Palestine’s date with destiny, the cracks in Palestinian public opinion about the UN options are widening, and the leadership seems unsure what to do. Secondly, with the original strategy revealed as impractical – Palestine will not get membership; the leadership’s cry of protest will fall on deaf ears; it will end up clashing with the U.S. and dividing Europe; it could lose U.S. funding and, as a consequence, perhaps Israeli tax clearance transfers as well – the leadership is considering ways of getting out of the corner. There has been no groundswell of support for going to the UN over the past months, but if it reverses course now, it is likely to see one rise up against it.

Abbas could be exaggerating his commitment to pursue UN membership at the Security Council in order to strengthen his leverage in negotiations with the EU or even the U.S. on a compromise General Assembly text. Adoption of a Security Council resolution is virtually out of the question, because the Obama administration has no appetite for the fight with the U.S. Congress (or with Israel) that an abstention or positive vote in that forum would trigger; a Quartet statement that could pre-empt a UN move, remained a possibility at this writing, though increasingly improbable.

With the U.S. refusing to engage in talks over a UN resolution, and the Palestinians eager for European support, the EU has emerged as the party best placed to use its leverage and

²⁵⁷ See Crisis Group Report, *Squaring the Circle*, op. cit., pp. 37-40.

²⁵⁸ As an Israeli general said, “in the short term, [Palestinian-Israeli security] cooperation will remain solid, even in the absence of a political process. Both sides realise that without the cooperation, everything will collapse in the West Bank, and neither side wants that to happen. The big question is how long this situation can last. In the long run, things might change, since without any prospect of Palestinian statehood, the [Palestinian security forces] will start to look like collaborators”. Quoted in Crisis Group Report, *Squaring the Circle*, op. cit., p. 39.

²⁵⁹ As a policeman said in 2010, “before I go to bed at night, I look at myself in the mirror with pride, as I know that what I am doing is the only way to an independent Palestinian state”. Quoted in *ibid*, p. 37.

²⁶⁰ Crisis Group interview, Ramallah, July 2011.

help produce a text at the General Assembly that minimises damage. Such a text should meet several important criteria:

- ❑ first, a resolution should move the political process forward by enshrining principles of a two-state solution. These cannot be one-sided; the EU can condition support on it addressing key concerns of both sides;
- ❑ secondly, Abbas should emerge with an achievement, since, without that, his already diminished credibility will be even further damaged; and
- ❑ thirdly, the solution needs to avoid the weakening or possibly even the collapse of the PA, whose problems, notably a rising legitimacy deficit, have been compounded by lack of funding.

The first of these, though not easy, is the easiest. Working with the Palestinians, the EU should seek to shape the language in a balanced way. A General Assembly resolution should affirm that the future border will be based on the 4 June 1967 lines with equal, agreed swaps (which of course would simultaneously accord Israel internationally recognised borders) and that Jerusalem will be the capital of both states. Likewise, it should make clear that security arrangements would need to respect Palestinian sovereignty and security while protecting Israel's security and deal effectively with existing and emerging threats. It should stress that a final settlement will only be achieved through bilateral negotiations, and that the goal is an end of the conflict and the establishment of two states for two peoples. This last clause is not equivalent to recognition of the Jewish state – an Israeli demand but a step Palestinians cannot accept, at least at this time – but could be seen as pointing in that direction.

To break new ground and meet what has become a Palestinian requirement, the outcome would have to include some movement toward statehood. This is a far more controversial and tricky issue, given the need to weigh the requirement of some tangible Palestinian gain against hostility in Israel and the U.S. as well as division within the EU. Both the Palestinian and Israeli leaderships tend to portray the element of statehood in unambiguous and far reaching terms – as portending a fundamental move toward a sovereign state for the former and as a critical move toward Israel's de-legitimisation for the latter. There is no certainty that either will be the case, and both sides, each for its own reason, have tended to exaggerate the step's impact. While the putative State of Palestine may be able to act like a state in certain ways, it might not be able to do so in the ways that matter most. Even if Palestinians gain formal equality with Israel, they might not end up with the state they always wanted to have – free and independent – but rather with

the one they don't want to have: a state in name only, still under occupation, and, for all intents and purposes, locked within provisional borders.

There are no good options, though Palestine's upgrade to non-member observer state status has emerged as the most promising – one that, short of full membership, comes closest to meeting Palestinian aspirations. For the same reason, of course, it is not the least controversial. Nor would it be without cost to the Palestinians. Abbas formally has opposed it, though a turnabout would be the least of his problems. Pursuing this option almost certainly would run him afoul of the U.S.; as seen, the U.S. (and Israel) could find it as hard to stomach a deal along these lines as the clash at the Security Council (and subsequent veto) that the deal was designed to head off. Some Palestinian activists, convinced the governing approach of the past twenty years has been highly damaging to national interests, believe it is high time to end reliance on Israeli and American good, as well as on bilateral negotiations. For them, the possible loss of U.S. funding and potential punitive action by Israel are worth the risk, because they favour a radical strategic reorientation. But that is not Abbas's position.

Enter the EU. In exchange for supporting such a move, it should insist on shaping the parameters, as seen above. One of the more delicate issues to surface has been the ICC, to which both Washington and Jerusalem fear Palestinians will gain access and use to bring repeated cases against Israelis. Some have argued that the General Assembly resolution should be written in such a way as to diminish the Palestinians' chances of access; others that the EU should extract at least a temporary commitment by the Palestinians not to resort to the court. But it would be very hard to justify why Palestinians should not have access to a legitimate international institution to which the world community increasingly has been turning.

A better option would be for the EU, ideally in conjunction with the U.S., to seek to minimise the negative fallout from a UN resolution by impressing upon Palestinians and Israelis the need to display maximum restraint. Abbas and the Palestinian leadership have no interest in a vicious cycle that would see the halt of revenue transfers, a new wave of settlement activity or other steps harmful to the PA's viability; likewise, Israel would be ill-served by an approach that provoked Palestinian unrest, jeopardised the PA's survival, undermined security cooperation and encouraged the Palestinians to use the ICC. The U.S. also has an interest in maintaining calm; moreover, an Israel decision not to halt revenue transfers would bolster the administration's hand in discussions with Congress over the future of Palestinian assistance. As an EU official said, "the Palestinians should wait to see how Israel reacts before rushing to the ICC, and Israel

should wait to see what the Palestinians do in practice before retaliating”.²⁶¹

Finally, together with the Arab world, the EU should seek to make up for any loss of PA budgetary support.

Time is short. If a deal covering both the UN and its aftermath is to emerge, Palestinians need parameters that are acceptable to them – as opposed to parameters that will put them in a corner and deny them any reason to compromise; the EU needs to come together on a viable package; and all parties need to commit to a restrained reaction.

At this writing, efforts are still underway to achieve a Quartet statement aimed at triggering a return to negotiations and heading off a UN resolution. Even were this effort to succeed, it could provoke serious problems down the line. Abbas could be made to choose between endorsing what he and his constituents consider unacceptable – a return to talks on the basis of an unsatisfactory statement and without a settlement freeze – or rejecting what his most important foreign allies ask him to embrace. Either would constitute a personal defeat and deepen the Palestinian political crisis by emboldening his domestic foes.

Regardless of its behind-the-scenes involvement, one should expect the Obama administration – given the strength of Congressional resistance – to oppose virtually any UN resolution. But this need not stop the U.S. from quietly acquiescing in – and working with – an EU-brokered deal. Crucially, even though it could not promise that U.S. aid will keep flowing since that is within Congress’ purview, it could strive to maintain as much assistance as possible and push Israel to both preserve its transfer of tax revenues and refrain from the most damaging retaliatory measures.

Of course, even if a viable deal were to emerge, nothing of great consequence will have been resolved. The traditional peace process appears to have run its course, and no alternative is on the horizon. The turn to the UN is a symptom of this impasse, but those trying to find a way past it are missing the deeper malaise; a rush back to talks with the gaps remaining wide, mutual mistrust deep, the Palestinian national movement in crisis, and

Washington in no mood for energetic involvement hardly is an answer. A collapse this time could have serious and damaging implications for all. A wiser course would be to focus on steps that would end the Palestinian division, ensure rebuilding of the Palestinian national movement, and – through initiatives on the ground – minimise the risk of violence. And yet, a quick return to negotiations is the price that, in knee-jerk reaction, Europeans likely will ask in return for offering their support at the UN, and it is one Abbas might be willing to pay. At best, that will only kick the problem a few months down the road. It will inevitably re-emerge, more difficult and intractable than ever.

**Ramallah/Jerusalem/Washington/Brussels,
12 September 2011**

²⁶¹ Crisis Group interview, Washington, September 2011. A senior Palestinian official dealing closely with these matters explained that the leadership had no intention of rapidly resorting to the ICC; instead, it would calibrate its approach to the Israeli reaction. He analogised it to a deterrent: “We won’t go on the offensive. But if Israel took harsh measures, such as halting tax transfers or intensifying settlement activity, we will not remain passive”. Crisis Group interview, September 2011.

APPENDIX A

MAP OF ISRAEL/WEST BANK/GAZA



APPENDIX B

ABOUT THE INTERNATIONAL CRISIS GROUP

The International Crisis Group (Crisis Group) is an independent, non-profit, non-governmental organisation, with some 130 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international decision-takers. Crisis Group also publishes *CrisisWatch*, a twelve-page monthly bulletin, providing a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world.

Crisis Group's reports and briefing papers are distributed widely by email and made available simultaneously on the website, www.crisisgroup.org. Crisis Group works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The Crisis Group Board – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring the reports and recommendations to the attention of senior policy-makers around the world. Crisis Group is chaired by former U.S. Ambassador Thomas Pickering. Its President and Chief Executive since July 2009 has been Louise Arbour, former UN High Commissioner for Human Rights and Chief Prosecutor for the International Criminal Tribunals for the former Yugoslavia and for Rwanda.

Crisis Group's international headquarters are in Brussels, with major advocacy offices in Washington DC (where it is based as a legal entity) and New York, a smaller one in London and liaison presences in Moscow and Beijing. The organisation currently operates nine regional offices (in Bishkek, Bogotá, Dakar, Islamabad, Istanbul, Jakarta, Nairobi, Pristina and Tbilisi) and has local field representation in fourteen additional locations (Baku, Bangkok, Beirut, Bujumbura, Damascus, Dili, Jerusalem, Kabul, Kathmandu, Kinshasa, Port-au-Prince, Pretoria, Sarajevo and Seoul). Crisis Group currently covers some 60 areas of actual or potential conflict across four continents. In Africa, this includes Burundi, Cameroon, Central African Republic, Chad, Côte d'Ivoire, Democratic Republic of the Congo, Eritrea, Ethiopia, Guinea, Guinea-Bissau, Kenya, Liberia, Madagascar, Nigeria, Rwanda, Sierra Leone, Somalia, Sudan, Uganda and Zimbabwe; in Asia, Afghanistan, Bangladesh, Burma/Myanmar, Indonesia, Kashmir, Kazakhstan, Kyrgyz-

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