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## **UN General Assembly "Uniting for Palestine"**

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Decision making in the UN General Assembly is on the basis of one vote for each member state. This may reflect the principle of sovereign equality of states, but clearly a situation where Micronesia and China have equal weight does not reflect political reality. The drafters of the UN Charter were therefore careful not to grant the General Assembly any executive or legislative power. Except on matters of procedure and budget, all General Assembly resolutions are only recommendations. The other main organ of the UN is the Security Council, which was granted the primary responsibility for matters of international security and peace. In contrast to the General Assembly, Council decisions are binding if adopted under Chapter VII of the UN Charter.

During the early years of the Cold War, the Soviet Union used its veto power in the Security Council to prevent decisions being taken against North Korea. At the time the UN General Assembly was dominated by the Western states, and in order to try and bypass the stalemated Security Council the United States initiated General Assembly Resolution 377, commonly referred to as the "Uniting for Peace Resolution." The resolution declared that where the Security Council could not reach a decision because of a veto, a special session of the General Assembly could be convened "with a view to making appropriate recommendations for collective measures...including the use of armed force when necessary." Such resolutions require adoption by a two thirds majority at a specially convened emergency session of the Assembly. Because of the present automatic anti-Israel majority in the Assembly, "Uniting for Peace" resolutions have been used frequently for condemning Israeli policies. Resolutions adopted at such sessions, however, are still only recommendations and are not binding on states

There are reports that this September, the Palestinian delegation to the UN, which has observer status at the organization, will attempt to introduce a new "Uniting for Peace" resolution. There are a number of possible scenarios for such a resolution. The most likely possibility would be a call for recognition of a Palestinian state within the 1967 boundaries. In fact, a 2003 Arab sponsored General Assembly "Uniting for Peace" resolution has already called for "Affirming the necessity of ending the conflict on the

basis of the two-State solution of Israel and Palestine living side by side in peace and security based on the Armistice Line of 1949." If adopted, a new such resolution would grant the Palestinians further international support for their demand for a return to the 1967 lines. It would not however be binding on Israel or on any other state, not even for those states voting for the resolution. Under international law, except for cases where a former border is inherited by new states, borders can only be delimited by agreement between the states concerned. No UN organ has the authority to delimit boundaries.

A General Assembly resolution recognizing a Palestinian state would not mean acceptance of Palestine as a member of the UN. In order to be accepted as a member of the UN, the Palestinians would have to officially declare that they are a state, an act they have refrained so far from doing. Should the Palestinians unilaterally declare themselves to be a state, it would be a violation of the Oslo agreements and of the Middle East Roadmap, but it might have the salutary effect of changing the current image of the Israel-Palestinian dispute from that of a homeless people under military occupation into a fairly minor border dispute between two neighboring states.

Even if the Palestinians were to declare themselves as a state, the General Assembly could then only accept Palestine as a member of the UN if there is a recommendation to that effect from the Security Council. In a 1950 Advisory Opinion, the International Court of Justice explicitly stated that "The General Assembly can only decide to admit [a new member state] upon the recommendation of the Security Council" and the admission of a state to membership in the United Nations cannot be done "by a decision of the General Assembly when the Security Council has made no recommendation for admission." The Security Council could make such a recommendation if it determines that Palestine fulfils the international law criteria for recognition. These requirements are that the presumptive state has an effective government, a permanent population, defined territory and an ability to conduct foreign relations. There is no need, however, for a state to have clearly defined boundaries provided there is at least some territory that is under its effective control. A Security Council recommendation cannot be adopted, however, if a permanent member of the Council vetoes it by voting against the resolution.

One other, less likely scenario, is that the General Assembly will call for a UN trusteeship to replace Israel in the West Bank and Gaza. The League of Nations mandate for Palestine could serve as a precedent, and the UN has undertaken such trusteeship functions in Namibia, East Timor, and Kosovo. For the Palestinians to propose such a trusteeship implies, however, that they do not see themselves as being ripe yet for statehood. It is unlikely that they will make such a statement. Furthermore many UN member states might be very reluctant for the UN to undertake such an expensive and thankless task. They have only to recall Britain's unhappy record as the Mandatory power.

A third possible scenario is that the Assembly will request the International Court of Justice to give an advisory opinion confirming that the 1949 armistice lines are the

boundaries of the Palestinian state. Requesting an opinion on the 1949 armistice lines might, however, be self defeating for the Palestinians as it would be extremely difficult for the World Court to find that a temporary Armistice Demarcation Line between Israel and Jordan is a binding international boundary. The Court in its 2004 advisory opinion on the "wall" in "Occupied Palestinian Territory," an opinion that was requested under a UN Arab sponsored "Uniting for Peace" resolution, refrained from making such a ruling regarding the 1949 Armistice Line.

The underlying issue remains that the UN General Assembly can only adopt non-binding recommendations. The Assembly cannot determine boundaries nor can it confer statehood. A boundary between Israel and a future Palestinian state can only be determined by agreement between the two parties. The international community can encourage or hinder agreement, but it cannot replace the parties in this respect.

