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**Legal and Political Observations on the Defeated
Palestinian-Jordanian Draft Resolution
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Although not adopted, the text of draft resolution submitted to the UN Security Council by Jordan on behalf of "Palestine"¹ merits examination. The submission of the draft resolution as such on behalf of the Palestinians was clearly a violation of the Palestinian undertaking under the Oslo agreement, in which Israel and the PLO agreed that "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."

Insofar as the UN Security Council is a political body making political decisions, even had the draft resolution been adopted it would not have been a judicial finding or a statement of international law, but rather a statement of the political views of the majority of members of the Council. The Security Council is authorized by the UN Charter to take binding decisions, but only when it determines under Chapter VII of the Charter that there has been "a threat to the peace, breach of the peace, or act of aggression." None of the UN Security Councils resolutions since 1948 have used Chapter VII language in relation to the Israel-Palestinian conflict, including the Jordanian draft. Even Resolution 242 was not adopted under Chapter VII and only became binding when it was accepted by all the parties to the conflict.

Whereas Resolution 242 used ambiguous language in order to allow the parties to negotiate a solution, the Jordanian draft spelled out in full the Palestinian position, leaving nearly nothing to be negotiated. The draft resolution clearly drew inspiration from the 2002 Arab League Peace Initiative, but differs from it in a number of important aspects. The Jordanian draft sets out a rigid timetable calling for an end of "the occupation" by December 2017. The Arab League initiative had no such timetable. Unlike the Arab Peace Initiative, the preamble of the Jordanian draft refers to the 1947

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¹ UN Doc. S/2014/916.

UN General Assembly "partition" resolution. This reference is surprising since the partition resolution excluded Jerusalem from both the proposed Jewish and Arab States. The partition resolution furthermore explicitly referred to a "Jewish" state alongside an Arab state. One very positive element in the 2002 Arab League initiative was the statement that as a result of an agreement with the Palestinians, all the Arab countries would "consider the Arab-Israeli conflict ended and enter into a peace agreement with Israel" and "establish normal relations with Israel in the context of this comprehensive peace." This positive overture by all the Arab states was omitted from the Jordanian draft.

While calling for total withdrawal from all the territories, including East Jerusalem, the Jordanian draft does, however, refer to the possibility of "mutually agreed, limited, equivalent land swaps," a proposal not included in the Arab League initiative.

Along with the artificially rigid timetable and the call for total withdrawal, the Jordanian draft proposes that the Arab refugee problem be resolved on the basis of UN General Assembly Resolution 194 (III). Like the Arab League initiative, the Jordanian draft thus indirectly tries to introduce the so-called "right of return" as a condition of negotiations. When Resolution 194 was passed in December 1948, all the Arab states voted against it, and there is no reference to this resolution in UN Security Council Resolution 242, nor in the 1978 Camp David Agreement with Egypt, the 1979 Peace Treaty, the Israel Jordan Peace Treaty, or even in the Oslo agreements with the PLO. It is thus an attempt to introduce an element that is completely unacceptable to Israel and had in fact been quietly abandoned in all the agreements with Israel.

In voting against the draft, the US was not only expressing its political displeasure but was also fulfilling its obligation as part of the 1979 Egypt-Israel peace treaty, where the US reaffirmed its commitment to "oppose and, if necessary, vote against any initiative in the Security Council to ... change Resolutions 242 and 338 in ways which are incompatible with their original purpose."

The December 30, 2014 vote in the Security Council is certainly an Israeli diplomatic victory, given the various resolutions of UN bodies of previous years and the resolutions that were adopted in recent months, for example, in several European parliaments. Whatever doubts existed as to how the US would handle the Palestinian move were removed by a very firm position during the weeks before the vote and the clarification, unquestionably conveyed to other members of the Security Council, that the US would veto even a softened version of the initial draft. However, the US vote should not mislead anyone as to the mood in Washington and the voices in the administration. The statement made by Britain's ambassador in explanation of the UK vote (abstention) that his country agreed with the content of the draft submitted and that it would like to see the revisiting

of the idea of a "parameters resolution on the Middle East Peace Process in 2015" may very closely reflect other views circulating in Washington.

A reason for concern is not only the French vote but the determination to continue to push for the resolution in the future. The four EU votes were divided between the two that abstained (Britain and Lithuania) and the supporters (France and Luxemburg). If indeed the issue is revisited in 2015, there is no reason to hope that there will be any improvement in the EU members' vote, as Spain replaced Luxemburg.

While some comfort may be found in the Nigerian and Rwandan votes, Latin America's votes were cast for the Palestinian draft. While the large Palestinian diaspora in Chile explains the country's vote, the Argentinian vote should not be taken lightly; the fact that in 2015 Venezuela replaces Argentina eliminates any prospects for a change. The same can be said about the way the two Asian countries will vote in 2015 if a similar draft or even what from Israel's perspective is a worse version is submitted.

Many Israelis raise the question as to the Jordanian role in the developments leading to the December 30 vote. As a representative of the Arab League, Jordan had no other option but to submit the draft and vote for it. At the same time, the Palestinian move in the Security Council was hardly coordinated with the Jordanian Embassy to the UN. Behind the scenes, the Palestinian tactics have aroused much dismay in Amman.

All this raises the question as to why the Palestinians did not wait for the more promising membership of the Security Council to take their seats, just a few hours after the actual vote took place. Was it the result of misinformation regarding how certain members would vote, or, as some suggest, a reflection of tacit understanding that the draft would be defeated without the US pushed into imposing a veto. Yet regardless of the explanation, it is clear that the Palestinian political campaign has moved to a slightly different arena. The results of the March 2017 elections in Israel may encourage the Palestinians and others to revisit the idea in the Security Council, and if indeed that occurs, the US veto becomes absolutely necessary. However, too many variables make it difficult to predict with certainty that it will be imposed. They include the language of the draft, the domestic political situation on the Israeli and Palestinians sides, pressures by certain European allies on the US, and pressures from certain Arab states. A more sophisticated Palestinian political leadership may well make the US decision to vote a new resolution in the Security Council more difficult to predict and achieve.