



## The Palestinian UN initiative

On 23 September 2011, President Mahmoud Abbas made a formal application for UN membership for a Palestinian state on the 1967 borders, with Jerusalem as its capital, that is, in the West Bank, including East Jerusalem, and the Gaza Strip – the Palestinian territories which have been under Israeli military occupation since June 1967.

The Palestinian leadership has been under fierce pressure from the US and the EU not to apply for UN membership, so it is a minor miracle that the application has actually been made. The EU has been doing its best to save the US from opprobrium in the Arab world and further afield of having to apply its veto in the Security Council in order to block the application at the behest of Israel.

### Application certain to fail

At the time of writing (24 October 2011), the Palestinian application is still under consideration by the Security Council. To be successful, the application requires

- (1) a positive recommendation by the Security Council to the General Assembly, and
- (2) a two-thirds majority in the General Assembly (that is, two-thirds of the members present and voting, excluding abstentions).

The application is certain to fall at the first hurdle and will never reach the General Assembly, but it could be some time before that happens. In theory, under UN procedures a special 15-member committee (one from each member state) has to be set up to study the application and report back within 35 days, but members can stall things for weeks by requesting more information or by saying they are waiting for instructions from their capitals. The 193<sup>rd</sup> UN member – South Sudan – was admitted in a few days in July 2011. It's going to take a lot longer than that for Palestine to be refused.

However, if there is a vote, the application will be rejected. It may fail to get the required 9 votes in the Security Council, but if it succeeds in that the US will veto it.

Palestinian leaders have said that 9 members of the Council – Bosnia, Brazil, China, Gabon, India, Lebanon, Nigeria, Russia and South Africa – are committed to supporting UN membership [\[1\]](#). All of these have recognised a Palestinian state in the 1967 borders and granted it full diplomatic relations. But, since the US doesn't want the opprobrium of casting yet another veto on behalf of Israel, you can be sure that it is applying all the pressure it can to persuade these and other Council members to abstain. The others are Colombia, France, Germany, Portugal, the UK and the US itself. Of them, only the US is publicly committed to oppose.

### Observer rights as a “non-member state”

One way or another, the Security Council will reject Palestine’s application for UN membership. Palestinians then intend to apply for observer rights at the UN as a “non-member state”, a status currently enjoyed only by The Holy See. This requires a simple majority in the General Assembly, which will be easily achieved.

Around 130 UN member states have recognised a Palestinian state in the 1967 borders and granted it full diplomatic relations. Most if not all of them would vote for full UN membership for Palestine, if they had the opportunity, and they will certainly vote for this lesser status.

A further 30 or so states, including Ireland, while not going as far as recognition, have established some form of diplomatic relations with it. Some at least of these will also vote for this status.

Ireland will almost certainly be one of them. Speaking at the UN General Assembly on 26 September 2011, Minister for Foreign Affairs Eamon Gilmore said:

“The decision of President Abbas to seek Palestine’s membership of the United Nations is entirely legitimate and understandable. Palestine has the same right to membership of the United Nations as Ireland or any other Member of this Organisation. Some would seek to argue that Palestine cannot be recognised as a State because its borders remain to be agreed. But if the borders of Palestine are still a matter for negotiation, then so, by definition, are those of Israel which is rightly a full member of the UN.

“Membership of the UN of itself, however, would not change the unstable and unacceptable situation on the ground. ... What recognition of Palestinian statehood would do, however, would be to give dignity and support to the Palestinian people who have suffered for too long. ...

“The day will come, not too far off, when the General Assembly will be asked to vote on a proposal to admit Palestine as a member of this Organisation or perhaps, as an interim step towards the achievement of that goal, to accord Palestine non-member observer state status. Provided that the resolution is drafted in terms that are reasonable and balanced, I expect Ireland to give its full support.” [\[2\]](#)

Whether granting full diplomatic relations to Palestine will follow remains to be seen. Palestinians have had official representation in Dublin since 1993. In January 2011, this was upgraded to the status of a “mission”, which is one step down from full diplomatic relations and entitles the head of the mission to be called “ambassador”.

### What does it mean in practice?

What will observer rights at the UN as a “non-member state” mean in practice for Palestinians? At the UN itself, there will be very little change.

As far back as 1974, the UN General Assembly recognised the Palestine Liberation Organisation (PLO) as “the representative of the Palestinian people” and granted it observer rights at the UN. At present, Palestine has a permanent mission at the UN with observer rights, but as a liberation movement, not as a state.

Becoming a "non-member state" recognised by the UN means that Palestinians will continue to have observer status but now as a state, with a territory – the West Bank, including East Jerusalem, and the Gaza Strip – recognised by the UN. It will be a firm statement from the nations of the world that there should be a Palestinian state in the territories occupied by Israel since 1967 – and that Israel should withdraw to allow one to be established.

Being a "non-member state" will allow Palestine to apply for membership of a wide variety of international bodies. The International Criminal Court (ICC) has been widely mentioned in this context, with the possibility that Israelis could be prosecuted by the ICC for actions in the occupied territories, in particular, for planting Jewish settlers which is war crime under Article 8.2(b)(viii) of the Rome Statute of the Court.

An article in the Wall Street Journal on 17 September 2011, entitled *Palestinian Options at UN Lead to Legal Threat to Israel's Military* [\[3\]](#), identified other possibilities for Palestinians to use membership of international bodies to put pressure on Israel:

"If the Palestinian Authority succeeds in winning even an incremental upgrade of its status at the UN, it could subject Israel's military to international courts for actions in Palestinian territory – as well as allow Palestinian control of its Israeli-patrolled air space and national waters off Gaza. ...

"Such an upgrade could be more than symbolic, potentially altering the political equation between the Palestinians and Israel.

"As an observer state, Palestine could participate in Assembly debates, but couldn't vote, sponsor resolutions or field candidates for Assembly committees. But it could accede to treaties and join specialized UN agencies, such as the International Civil Aviation Organization, the Law of the Sea Treaty, and the International Criminal Court, officials said. Switzerland joined the ICAO in 1947 when it was still an observer state before becoming a UN member in 2002.

"Denis Changnon, an ICAO spokesman, said the treaty gives members full sovereign rights over air space, a contentious issue with Israel, which currently controls the air space above the West Bank and Gaza. The Palestinians could bring claims of violation of its air space to the International Court of Justice.

"If the Palestinians accede to the Law of the Sea Treaty, they would gain legal control of national waters off Gaza—where they are currently under an Israeli naval blockade. Under the treaty, the Palestinians could challenge the blockade at the International Court of Justice. They could also claim rights to an offshore natural-gas field now claimed by Israel.

"Even more troubling for Israel and the US would be Palestinian membership in the International Criminal Court. Ambassador Christian Wenaweser, president of the ICC Assembly of State Parties, said in an interview that a Palestinian observer state could join the ICC and ask the court to investigate any alleged war crimes and other charges against Israel committed on Palestinian territory after July 2002 including Israel's 2008-09 assault on the Gaza Strip."

The Rome Statute came into force on 1 July 2002. Ambassador Wenaweser asserts that Israeli activity after that date could be subject to investigation by the ICC. This is doubtful since Article 11.2 of the Rome Statute states that "if a State becomes a Party to this Statute after its entry into force, the Court may exercise its jurisdiction only with respect to crimes committed after the entry into force of this Statute for that State" [\[4\]](#).

That seems to rule out investigation of the events during Israel's assault on Gaza which began on 27 December 2008. However, it should mean that Israeli activity after Palestine becoming a party to the Statute would be open to ICC investigation.

### Negotiations mantra

In opposing, and promising to veto, UN membership for Palestine, the US keeps repeating the mantra that the only way for Palestinians to get a state is by entering into negotiations with Israel. Addressing the UN General Assembly on 21 September 2011, President Obama said:

“Peace will not come through statements and resolutions at the United Nations – if it were that easy, it would have been accomplished by now. Ultimately, it is the Israelis and the Palestinians who must live side by side. Ultimately, it is the Israelis and the Palestinians – not us – who must reach agreement on the issues that divide them: on borders and on security, on refugees and Jerusalem. Ultimately, peace depends upon compromise among people who must live together long after our speeches are over, long after our votes have been tallied.” [\[5\]](#)

There was much more in the same vein. One would never guess from this that Palestinians are an occupied people living under Israeli military occupation for over 44 years. That being so, it is impossible for Palestinians to achieve their objective of ending Israeli military occupation on their own by negotiation, if Israel doesn't want to end it.

And the present Israeli Government certainly has no intention of ending it, even partially. Prime Minister Netanyahu said so explicitly during the February 2009 election campaign, as a result of which he became Prime Minister, telling *The Times*:

“We will not withdraw from one inch. Every inch we leave would go to Iran” [\[6\]](#)

Of course, Netanyahu keeps on saying that he is prepared to enter into negotiations with Palestinians without pre-conditions. But, in his speech to the US Congress on 24 May 2011 [\[7\]](#), he laid down a whole host of them: NO to a return to the 1967 borders, NO to military withdrawal from the Jordan River (so a future Palestinian state would be completely encircled by Israeli armed forces), NO to a Palestinian capital in East Jerusalem, and NO to even a symbolic return of some refugees, pre-conditions that he knows are unacceptable to Palestinians. So, it can be safely said that his real policy is “not an inch”.

The negotiations between Israel and the Palestinians, as proposed by the US (and the EU) are equivalent to allowing a thief to negotiate with his victim about the amount of stolen goods, if any, he is going to give back, while he keeps his boot on his victim's throat. Without outside pressure being brought to bear on the Israeli thief, the Palestinian victim is not going to get any of its stolen goods back.

Of course, if the Security Council was doing its job, the Israel would be convicted of theft and sanctions imposed on it, until such times as it returned all the stolen goods and paid reparations for all the damage it did to them while they were in its possession. After all, that's what was done to Iraq when it invaded Kuwait in 1990.

Two years ago, in his Cairo speech on 4 June 2009, President Obama said:

“... it is ... undeniable that the Palestinian people – Muslims and Christians – have suffered in pursuit of a homeland. For more than 60 years they've endured the pain of dislocation. Many wait in refugee camps in the West Bank, Gaza, and neighboring lands for a life of peace and security that they have never been able to lead. They endure the daily humiliations – large and small – that come with occupation. So let there be no doubt: The situation for the Palestinian people is intolerable. And America will not turn our backs on the legitimate Palestinian aspiration for dignity, opportunity, and a state of their own.” [\[8\]](#)

In stark contrast, in his speech to the UN General Assembly this year, the word “occupation” did not pass his lips and he said nothing about the conditions of life Palestinians have had to endure for decades as a consequence of the Zionist project, backed by the West. Instead, listening to the speech, one could have been forgiven for thinking that Israel was the helpless victim of ongoing Palestinian and other Arab violence and threats of violence.

Another word that was missing from his speech was “settlements”. Back in June 2009, he declared:

“The United States does not accept the legitimacy of continued Israeli settlements. This construction violates previous agreements and undermines efforts to achieve peace. It is time for these settlements to stop.”

Two years later, Israel is still building settlements and, by so doing, is still violating previous agreements. But, now he has not a word of rebuke for Israel about this matter.

The agreement Obama had in mind in his Cairo speech was the Road Map [\[9\]](#), the internationally approved framework for negotiations between Israel and the Palestinians, which was drawn up by the Quartet in 2003 and endorsed by the Security Council. Israel accepted the Road Map in May 2003, when Ariel Sharon was Prime Minister. Under the Road Map, prior to the start of negotiations, Israel is supposed to freeze all settlement activity, including natural growth, amongst other things (see Sadaka briefing [\[10\]](#)).

Obama has now chosen to forget about Israel's continuing violation of a previous agreement. He has done so, because in September 2009 a few months after his Cairo speech, in the face of opposition from Prime Minister Netanyahu, he backed down ignominiously, and, instead of demanding that Israel halt settlement building prior to negotiations, he set about pressurising the Palestinians to enter into negotiations without Israel halting settlement building as required by the Road Map.

### **Colonise and claim**

It was utterly disgraceful that Obama has tried to pressurise Palestinians into negotiations without a settlement freeze. After all, why should Palestinians attempt to negotiate a new agreement with Israel when it is in violation of a previous one? Particularly, when the settlement building in violation of the previous agreement is the basis on which Israel claims that ever more Palestinian territory east of the 1967 borders be annexed to Israel in a final settlement.

At the White House on 20 May 2011, Netanyahu declared:

“I think for there to be peace, the Palestinians will have to accept some basic realities. The first is that while Israel is prepared to make generous compromises for peace, it cannot go back to the 1967 lines – because these lines are indefensible; because they don’t take into account certain changes that have taken place on the ground, demographic changes that have taken place over the last 44 years.” [\[11\]](#)

There, Netanyahu asserts that by planting Jewish settlers on occupied territory east of the 1967 border (in violation of Article 49(6) of the Fourth Geneva Convention, in violation of Security Council resolutions 446, 452 and 465 and, since 2003, also in violation of the Road Map) Israel has acquired permanent rights to the territory it has colonised. It follows that the more land Israel colonises, the more land it acquires permanent rights to, according to the Israeli Prime Minister.

No state in the world other than Israel would dare to argue openly in the 21<sup>st</sup> century that permanent rights can be acquired to territory not its own by planting settlers on it.

### **No negotiations without settlement freeze**

In the face of the Israeli refusal to cease this colonisation and Obama’s abandonment of any attempt to make them cease, Palestinians have refused to enter into negotiations with Israel. Instead, they have focused attention on bringing international pressure to bear on Israel, first by a international campaign for recognition (which has been very successful amongst the states of Latin America, because the US no longer holds sway there), and second by taking this UN initiative.

Negotiations with Israel have not been ruled out but firm conditions have been placed on entering into them. President Abbas told the General Assembly on 23 September:

“We adhere to the option of negotiating a lasting solution to the conflict in accordance with resolutions of international legitimacy. Here, I declare that the Palestine Liberation Organization is ready to return immediately to the negotiating table on the basis of the adopted terms of reference based on international legitimacy and a complete cessation of settlement activities. ...

“Negotiations will be meaningless as long as the occupation army on the ground continues to entrench its occupation, instead of rolling it back, and continues to change the demography of our country in order to create a new basis on which to alter the borders.” [\[12\]](#)

The Quartet (US, EU, Russia and the UN Secretary General) has laboured for months to agree a statement about restarting negotiations. It finally published one, which doesn’t mention settlement activity [\[13\]](#), after Abbas made his speech. Negotiations are not going to resume any time soon.

### **Life less comfortable**

Life is going to get less comfortable for Israel in the wake of the popular upheavals in neighbouring Arab states. It has had to suffer the indignity of having its embassy in Cairo stormed and its ambassador and his staff sent packing and of having to evacuate its embassy in Amman lest the same happen there. And it has had to endure all this quietly, knowing that its usual bullying tactics in the region would stir up further popular antagonism in Egypt and Jordan and make matters worse. The end result of the popular upheavals in the Middle East will be regimes that are more sympathetic to Palestinians in their struggle against Israel.

Against this background, Israel's refusal to apologise to Turkey for the killing of 9 Turkish nationals aboard the Mavi Marmara last year was crazy. The inevitable result was the rupture of diplomatic relations with Turkey, formerly its closest ally in the region and now, as a member of NATO, in a position to disrupt Israel's strategic ambition to develop ever closer relations with that organisation.

It was against this background that the Palestinian UN initiative has taken place. It has drawn attention to the reality of Palestine – Israeli military occupation, never ending settlement building, the sham of negotiations, etc – in a way that nothing else has done in recent years. In addition, it carries with it the possibility of some constraints being put on Israeli behaviour in the occupied territories via the International Criminal Court and other international bodies.

### **Ireland's position**

In response to the Palestinian UN initiative, Foreign Minister, Eamon Gilmore, has dispensed with the usual "balanced" statements on the Palestinian issue and singled out Israel's military occupation and colonisation of Palestinian territories as the root of the problem.

Here's what he said in answer to a question in Dáil Éireann on 13 July 2011:

"The continuing Israeli military occupation of the Palestinian territories is at the heart of the unresolved Arab-Israeli conflict. The issues which have been critical for Israel for most of its history – the existence of the state of Israel and its right to live in peace and security – have for many years been accepted in principle by most Arab and Palestinian opinion. It is the continuing occupation, and the creation and growth of illegal settlements on the occupied lands, which are now the major obstacles to peace." [\[14\]](#)

No Irish foreign minister has gone that far before.

Unfortunately, he goes on to call for the resumption of negotiations, as if Israel was going to abandon its military occupation and colonisation voluntarily. It is obvious that negotiations are a pointless exercise without a great deal of outside pressure being applied to Israel to end its military occupation and colonisation.

**David Morrison**  
**1 November 2011**

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*Sadaka supports a peaceful settlement in Israel/Palestine based on the principles of democracy and justice, be that in two states or in one state. We maintain an independent position on internal politics within Palestine, favouring neither Fatah, Hamas nor any other Palestinian political organisation.*