

Early Implications of the UN Settlements Resolution

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Dec 27, 2016

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Brief Analysis

The legal consequences of UNSCR 2334 may be significant, while the impact on U.S.-Israeli relations and future peacemaking efforts could be profound.

On December 23, the UN Security Council passed Resolution 2334 to condemn Israel's settlement projects in the West Bank and its construction efforts in East Jerusalem, stating that such activity has "no legal validity and constitutes a flagrant violation under international law." The United States abstained on the 14-0 vote, spurring Israeli prime minister Binyamin Netanyahu to blast Washington during a December 25 cabinet meeting. According to his official website, he told ministers, "From the information we have, we have no doubt that the Obama administration initiated it, stood behind it, coordinated on the wording, and demanded that it be passed." He also called the resolution "unbalanced," "shameful," and "very hostile to Israel," noting that he told Secretary of State John Kerry last week that "friends don't take friends to the Security Council."

Yet White House official Ben Rhodes publicly disputed the notion that Washington led the resolution. U.S. officials say the abstention is in line with previous Democratic and Republican administrations who have opposed settlement activity. They also note that the Obama administration has been very consistent in this opposition, that Israel has only itself to blame given its recent actions, and that they have defended Israel in the past against one-sided measures, including a veto on a settlements resolution in 2011.

Despite the heated words, neither Washington nor Jerusalem has said much about the vote's practical implications. U.S. officials seem unwilling to rub salt in a serious diplomatic wound, while Israel likely prefers not to fuel its detractors with such speculation. The vote occurred under Chapter 6 of the UN Charter and not the more binding Chapter 7, so formal international sanctions are not on the table. Yet a preliminary assessment suggests that the move could have profound negative implications for Israel on other fronts, inviting more diplomatic pressure and reinforcing the concept of internationalizing the Palestinian conflict.

LEGAL IMPLICATIONS

First, while the legal validity of settlements was already opposed by UNSCR 465 in 1980, the context has clearly changed since then. Most notably, the new resolution comes at a time when the International Criminal Court (ICC) has been weighing various actions against Israeli officials. For example, Israel has long held that the Fourth Geneva Convention -- which bars countries from transferring any of their populations to occupied territory -- does not apply to the West Bank, since no recognized sovereign ruled there before the 1967 war. Yet most countries disagree with Israel's interpretation, and the ICC may be more emboldened to formally weigh in on the issue now that a UNSCR has been adopted denying the "legal validity" of settlements.

Second, 2334 explicitly establishes the 1967 prewar boundaries as the baseline contours for a Palestinian state, declaring that the council "will not recognize any changes to the 4 June 1967 lines, including with regard to Jerusalem, other than those agreed by the parties through negotiation." In other words, the resolution effectively enshrines the Palestinians' biggest demand, and their ongoing precondition for resuming final-status negotiations. Yet it does not put forward an offsetting Israeli final-status demand such as recognizing Israel as a Jewish state. Given its history of vetoing anti-Israeli resolutions, Washington presumably could have exerted enormous leverage to extract a concession every bit as monumental as the language about 1967 lines. The Obama administration's apparent decision not to use this leverage is certainly puzzling.

Indeed, there is tension -- some may say contradiction -- between the resolution's sweeping "no legal validity" declaration and President Obama's seminal May 2011 speeches stating that any grand deal would involve territorial exchanges under which Israel will incorporate certain settlement blocs adjacent to the 1967 lines. At a time when few analysts believe a comprehensive peace agreement is possible in the near term, the resolution's broad language could complicate efforts to launch creative measures in the interim that distinguish between settlements consistent with a two-state solution.

Moreover, years of Obama administration pressure have not convinced Israel to halt settlement activity in portions of the West Bank most likely to be swapped, so it is difficult to see how international pressure would do the trick. In fact, the new resolution is more likely to exacerbate the Israeli-Palestinian impasse and legitimize sanctions efforts focused on settlements. For example, it adopts language previously reserved for European Union measures distinguishing "between the territory of the State of Israel and the territories occupied since 1967," so it remains to be seen how this distinction will be drawn in the context of a much broader UNSCR. The EU has already established a separate labeling system for Israeli products made in the West Bank, while its science research and development program prohibits economic aid to Israeli institutions that operate beyond the 1967 lines. Some will no doubt speculate whether the new resolution might pave the way for imposing boycotts or economic sanctions on West Bank settlements.

DIPLOMATIC RECKONING

Although some Israeli officials stated they were caught off guard by the UNSC move, the Palestinians had announced their desire for such a resolution at the council as early as October, and Washington had previously signaled that its displeasure with certain Israeli moves could have negative consequences. For example, while U.S. ambassador to the UN Samantha Power reiterated the organization's lamentable "double standard" on Israel and noted that Washington did not agree with all of UNSCR 2334's provisions, she also suggested that the administration was upset about Israel ignoring its past warnings on settlement activity. She singled out a preliminary law put forward in the Israeli Knesset in November [that would legalize Israeli outposts](http://www.washingtoninstitute.org/policy-analysis/view/israels-brewing-settlements-law-could-stir-problems-in-washington) (<http://www.washingtoninstitute.org/policy-analysis/view/israels-brewing-settlements-law-could-stir-problems-in-washington>) outside the West Bank security barrier. She also defended the resolution as a means of

enabling Israel to preserve its identity as a Jewish and democratic state, citing the demographic problems raised by allowing the settlements impasse to linger indefinitely.

Israel's much-touted rapprochement with Russia and Egypt in recent months did not derail the resolution either. Moscow's ye a vote was in line with its consistent track record of backing Arab diplomatic positions over Israel's. And while Cairo indicated at the last minute that it might pull its draft of the resolution amid Netanyahu and President-elect Trump's direct appeals to President Abdul Fattah al-Sisi, in the end Egypt's version was put forward by other countries (New Zealand, Senegal, Venezuela, and Malaysia), and Cairo voted ye a.

For his part, Palestinian Authority president Mahmoud Abbas declared the vote a "moral victory." The resolution will no doubt be viewed as the most important achievement in the PA's effort to internationalize the conflict, especially given the widespread Palestinian belief that direct talks will achieve little or nothing -- a view that Netanyahu hotly disputes. Yet it remains to be seen whether the Palestinians can build on this internationalization momentum during the Trump era, since the United States will still wield its veto power.

FINAL DISCORDANT NOTE

With Obama about to walk out the door, Netanyahu was explicit in his latest condemnation of the administration. In addition to his previously mentioned accusations, he publicly declared that the singling out of Israel was infuriating given that "half a million Syrians are being slaughtered in Syria" and "tens of thousands are butchered in Sudan." He continued: "The Middle East is up in flames, yet the Obama administration and the UN Security Council choose to set upon the only democracy in the Middle East." He also ordered the Foreign Ministry to summon the ambassadors of all fourteen Security Council countries that voted for the resolution, then personally summoned U.S. ambassador Dan Shapiro on Sunday. And he urged cabinet ministers to restrict their travel to, and working ties with, the ye a-vote countries.

Although Netanyahu excluded the United States from the latter exhortation, the council obviously includes the other leading countries in the world, so it is unclear whether and how his request to limit ties will translate into concrete action. Israel did cancel a visit by the president of council member Ukraine -- a move that might be interpreted not just as a signal of Israel's displeasure with the vote, but as a bid for closer ties with Putin, regardless of Netanyahu's intent. In protest of the cancellation, Ukraine summoned Israel's ambassador to Kiev.

In short, the UN vote could end the eight-year relationship between Obama and Netanyahu on a particularly discordant note. Despite their well-known tensions over Iran, settlements, and other issues, the two leaders have maintained very strong bilateral security ties, culminating most recently in a [September memorandum of understanding \(http://www.washingtoninstitute.org/policy-analysis/view/israels-new-mou-the-money-and-the-message\)](http://www.washingtoninstitute.org/policy-analysis/view/israels-new-mou-the-money-and-the-message) on U.S. military aid. Yet the symbolic value of such achievements could be diluted if last week's vote is their last high-profile interaction.

POTENTIAL FOLLOW-UP STEPS AT THE UNSC

At Sunday's Israeli cabinet meeting, Netanyahu urged ministers to avoid echoing the damaging statements from the right calling for partial annexation of the West Bank in response to the UN move. Yet they are well aware that the diplomatic situation remains very fluid. Israeli officials indicate that they will boycott the international foreign ministers meeting scheduled to be held in Paris on January 15, five days before Trump's inauguration. Some cabinet members mentioned the possibility that the Security Council could use the summit as an opportunity to push through a communique on the Palestinian issue, perhaps imposing parameters for a final-status solution. Sweden, which has formally recognized Palestine as a state and has had difficult relations with Jerusalem over the years, is expected to assume the UNSC presidency in January, so the diplomatic climate could favor such a move.

As for the United States, Ben Rhodes indicated that Secretary Kerry would put forward the administration's parting

two-state ideas in an upcoming speech. Meanwhile, leading Republican senator Lindsey Graham has threatened to retaliate for the UNSC vote by cutting U.S. funding to the UN.

TRUMP FACTOR

Netanyahu will likely to seek to draw closer to Trump in the coming weeks, in part by backing the latter's call for relocating the U.S. embassy from Tel Aviv to Jerusalem. He will also likely urge the resurrection of President George W. Bush's 2004 letter to Prime Minister Ariel Sharon, which made clear that the United States supports Israel's eventual annexation of several settlement blocs as part of a final-status peace deal involving land swaps (i.e., Israel would swap for the large clusters of West Bank settlements located close to the security barrier and home to some 80 percent of the settlers). The Obama-Netanyahu relationship began to go downhill in 2009 when the president refused to endorse the Bush letter, and the new UNSCR could complicate efforts to revive it.

The vote also raises questions about Netanyahu's much-touted hope that quiet relations with Russia and various Asian, African, and Arab states will have growing political salience inside Israel over time. He may believe he can leverage the Trump presidency with these countries along the same lines he tried with Sisi last week. While that Egyptian gambit ultimately failed, he may feel that Trump's presence will give him a better chance of success. The question is to what degree Trump himself is willing to cooperate with such efforts.

CONCLUSION

U.S. officials say they hope the Security Council resolution will be a wakeup call for Israel. Yet Netanyahu's anger makes clear that Jerusalem views it as a blatantly one-sided move by an administration heading out the door, and that defusing the resolution will be easier when the Trump administration enters office with a different tone. As such, the unbalanced nature of the resolution's text could undermine any internal Israeli reckoning -- the very reckoning that Palestinians and their international supporters hoped to force.

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