

## **OBAMA AT THE UN, GIVING CONTEXT TO THE CONFLICT**

**Herb Keinon**

*Jerusalem Post, September 21, 2011*

**It took some 34 months, but on Wednesday at the UN Israel finally heard the speech it wanted to hear from US President Barack Obama.**

**Gone were so many elements of previous Obama speeches on the Middle East that rankled so many Israelis, and left a taste in many people's mouths that here was a president who simply did not get us; who did not understand our history, our daily reality, or our fears.**

**Gone was any reference at all to the settlements. Not in this speech were his words from Cairo in June 2009 that did so much to knock the diplomatic process off kilter: "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."**

**Gone were veiled comparisons between the Palestinian struggle and the US Civil rights movement, as was done in his Cairo speech when, during his discussion of the Israeli-Palestinian conflict, he said, "For centuries, black people in America suffered the lash of the whip as slaves and the humiliation of segregation. But it was not violence that won full and equal rights. It was a peaceful and determined insistence upon the ideals at the center of America's founding."**

**Gone too were infuriating hints that the Jewish people's link to Israel was the result of its tragic history, not because Israel is the cradle of the Jewish people. Gone too was the striving after perfect balance, talking about the Holocaust in one breath, and then saying in the very next, "On the other hand, it is also undeniable that the Palestinian people—Muslims and Christians—have suffered in pursuit of a homeland."**

**No, this was a speech of an entirely different tone and tenor.**

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FINALLY SPEAKS TRUTH TO HYPOCRISY**

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**This was a speech in which the US President, speaking to the world, gave context to words that other world leaders will undoubtedly spew out over the next two days from the UN podium about Palestinian degradations and humiliations, about the evils of Israeli checkpoints and security barriers and defensive actions. “Let us be honest with ourselves: Israel is surrounded by neighbors that have waged repeated wars against it,” Obama said. “Israel’s citizens have been killed by rockets fired at their houses and suicide bombs on their buses. Israel’s children come of age knowing that throughout the region, other children are taught to hate them. Israel, a small country of less than eight million people, look out at a world where leaders of much larger nations threaten to wipe it off of the map. The Jewish people carry the burden of centuries of exile and persecution, and fresh memories of knowing that six million people were killed simply because of who they are. Those are facts. They cannot be denied.”**

**That was a dose of empathy and understanding that goes a long way toward explaining so much of Israeli policy, past and present. Looked through this prism the security fence isn’t a land grab, and Operation Cast lead was not just another opportunity by a blood thirsty people to persecute the Palestinians. This was a dose of empathy and understanding Obama had not articulated strongly in the past. Had he mouthed these words during the first few months of his presidency, so much of the tension in the US-Israeli relationship over the last two-and-a-half years could have been avoided.**

**Speaking to a body often obsessed with the difficult reality under which the Palestinians live, Obama urged the UN to actually consider the Israeli reality as well. “This body—founded, as it was, out of the ashes of war and genocide, dedicated, as it is, to the dignity of every single person—must recognize the reality that is lived by both the Palestinians and the Israelis,” he said. “The measure of our actions must always be whether they advance the right of Israeli and Palestinian children to live lives of peace and security and dignity and opportunity.”**

**Obama did not jettison his desire to see a Palestinian state, he just gave articulate expression to the truth that it will only come about through talks. In the early days of the Obama tenure, when the president harped on the settlement issue, he created the impression that the US believed**

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that if the settlements were just halted, then the Arab world would pitch in and take steps toward Israel, and everything else would fall into place.

On Wednesday he acknowledged that there were no shortcuts, period. No magic formulas, no silver bullets. As he said, “I know that many are frustrated by a lack of progress. I assure you, so am I.” But this frustration seems to have begot a more realistic appreciation of what is, and what is not, possible.

He even spoke—although not directly—of something not often mentioned publicly by world leaders: of the need for the Palestinians to compromise as well. “Ultimately, peace depends upon compromise among people who must live together long after our speeches are over, long after our votes have been tallied,” he said.

Cynics will argue that Obama doesn’t mean it, but that he is just mouthing the words—pandering to the Jews, worried about re-election, re-calibrating his message after a Democrat was roundly defeated by a Republican in a heavily Jewish congressional district that the Republicans have not represented in nearly 90 years. No one can read into his heart, but the words—at this time, at that forum, in the manner in which they were expressed—do matter....

At the UN podium on Wednesday, Obama sent a message—whatever the reasons for that message may have been—that between Israel and the US there will be no wedge. And that is not an insignificant message.

## **THE UN TO PUSH AN APARTHEID, JUDENREIN, ISLAMIC PALESTINE**

**Alan M. Dershowitz**

*Jerusalem Magazine, September 22, 2001*

The United Nations is being asked to grant the Palestinians the status of a “state,” for at least some purposes. The question arises what kind of a state will it be? In an effort to attract Western support, the Palestinian Authority claims that it will become another “secular democratic state.” Hamas, which won the last parliamentary election, disagrees. It wants

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**Palestine to be a Muslim state governed by Sharia Law.**

**We know what the Palestinian leadership is saying to the West. Now let's look at what its saying to its own people, who will, after all, be the ultimate decision makers if Palestine is indeed a democracy.**

**The draft constitution for the new state of Palestine declares that "Islam is the official religion in Palestine." It also states that Sharia Law will be "the major source of legislation." It is ironic that the same Palestinian leadership which supports these concepts for Palestine refuses to acknowledge that Israel is the nation state of the Jewish people. Israel, in contrast to the proposed Palestinian state, does not have an official state religion. Although it is a Jewish state, that description is not a religious one but rather a national one. It accords equal rights to Islam, Christianity and all other religions, as well as to atheists and agnostics. Indeed, a very high proportion of Israelis describe themselves as secular.**

**The new Palestinian state would prohibit any Jews from being citizens, from owning land or from even living in the Muslim state of Palestine. The Ambassador of the PLO to the United States was asked during an interview whether "any Jew who is inside the borders of Palestine will have to leave?" His answer: "Absolutely!" After much criticism, the Ambassador tried to spin his statement, saying that it applied only to Jews "who are amid the occupation."**

**Whatever that means, one thing is clear: large numbers of Jews will not be welcome to remain in Islamic Palestine as equal citizens. In contrast, Israel has more than 1 million Arab citizens, most of whom are Muslims. They are equal under the law, except that they need not serve in the Israeli army.**

**The new Palestine will have the very "law of return" that it demands that Israel should give up. All Palestinians, no matter where they live and regardless of whether they have ever set foot in Palestine, will be welcome to the new state, while a Jew whose family has lived in Hebron for thousands of years will be excluded....**

**It is noteworthy that the very people who complain most loudly about Israel's law of return and about its character as the nation state of the**

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**Jewish people, are silent when it comes to the new Palestinian state. Is it that these people expect more of Jews than they do of Muslims? If so, is that not a form of racism?**

**What would the borders of a Palestinian state look like if the Palestinians got their way without the need to negotiate with Israel? The Palestinians would get, as a starting point, all of the land previously occupied by Jordan prior to the 1967 War, in which Jordan attacked Israel. This return to the status quo that led to the 6 Day War is inconsistent with the intention of Security Council Resolution 242, which contemplated some territorial changes.**

**The new boundaries of this Palestinian state would include Judaism's holiest place, the Western Wall. It would also include the access roads to Hebrew University, which Jordan used to close down this great institution of learning founded by the Jews nearly 100 years ago. The new Palestinian state would also incorporate the Jewish Quarter of Jerusalem, in which Jews have lived for 3000 years, except for those periods of time during which they were expelled by force.**

**It is contemplated, of course, that Israel would regain these areas as part of a land swap with the Palestinians. But there is no certainty that the Palestinians would agree to a reasonable land swap. Palestinian leaders have already said that they would hold these important and sacred sites hostage to unreasonable demands. For example, the Western Wall covers only a few acres, but the Palestinian leadership has indicated that these acres are among the most valuable in the world, and in order for Israel to regain them, they would have to surrender thousands of acres. The same might be true of the access road to Hebrew University and the Jewish Quarter....**

**An Apartheid, Islamic, Judenrein Palestine on the 1967 borders is a prescription for disaster. That is why a reasonable Palestinian state must be the outcome of negotiations with Israel, and not the result of a thoughtless vote by the United Nations....**

## **MAHMOUD AHMADINEJAD SHOULD BE LOCKED OUT OF THE U.S.**

**Irwin Cotler**

*National Post, September 22, 2011*

**Iranian President Mahmoud Ahmadinejad's impending visit to United Nations is a cruel parody of law. Ahmadinejad will enter the U.S. despite being inadmissible under American law. He will address the United Nations General Assembly despite being in violation of its UN Charter and international law. And, he will be indulged—even feted—by universities, institutes and the media, thereby sanitizing his crimes and mocking the suffering of the Iranian people.**

**This charade—repeated annually since 2007—ignores and undermines basic principles of domestic, international and humanitarian law.**

**First, President Ahmadinejad belongs on the U.S. “watchlist” of persons barred from entry—those who “aid terrorists...persecute religious minorities...or commit or incite to genocide.” Indeed, President Barack Obama issued a proclamation just last month barring entry for persons “who participate in serious human rights and humanitarian law violations and other abuses.”**

**The evidence of Ahmadinejad's criminality on each of these counts is compelling. The recent U.S. State Department Annual Report lists Iran as a leading state sponsor of international terrorism. Iran directly supports terrorist proxies such as Hamas and Hezbollah, whose platforms and policies are replete with genocidal calls.**

**Under Ahmadinejad, Iran has intensified its persecution and prosecution of religious minorities, especially the Baha'i—its largest religious minority—whose members are subject to harassment, repression, torture, imprisonment and execution. As for Christians, whose persecution has also accelerated, even praying together is a criminal act. These assaults on the religious rights of his own people, combined with the many other repressive acts carried out by his regime, are crimes against humanity.**

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**Ahmadinejad's violations of the Genocide Convention's prohibition against "direct and public incitement to genocide"—symbolized by parading down the streets of Tehran with a Shiab-3 missile draped with the emblem "Wipe Israel off the map"—is cause alone for exclusion.**

**A person who pursues the world's most destructive weaponry in violation of Security Council resolutions; who has already committed the crime of incitement to genocide in violation of international law; who is complicit in crimes against humanity; and who engages in massive domestic repression against his own people belongs in the dock of the accused, not at the world's most watched podium.**

**Yet, Ahmadinejad has been admitted before and is likely to be admitted again. How can this be?**

**In 1947, the U.S. and the UN signed a treaty wherein the U.S. agreed not to impede access of representatives of member states to the UN headquarters in New York. This "Headquarters Agreement" is said to trump American domestic law. But the Vienna Law of Treaties states that responding to crimes against humanity overrides any treaty.**

**Ahmadinejad's crimes qualify. Nor would this be the first time a sitting head of state was denied entry—in 1987, Austria's Kurt Waldheim was barred for complicity in war crimes committed during the Second World War.**

**If the U.S. allows him entry, Ahmadinejad's travel should be restricted to only those parts of New York under UN control, the Iranian Mission and the airport. He should be shunned like the criminal he is. Further, countries like the U.S. and Canada should fulfill their responsibilities under international law—including the Genocide Convention—and refer the Iranian leaders' criminal incitement to genocide to appropriate UN agencies. It is astonishing that this criminal incitement has yet to be addressed by any UN body, though the UN finds it fit to give Ahmadinejad a podium.**

**Inter-state complaints against Iran could be initiated at the International Court of Justice, while Ahmadinejad and his cohorts could be made to answer for their crimes at the International Criminal Court. President Ahmadinejad and other Iranian leaders should be placed on a "watchlist"**

by concerned countries, preventing their entrance as “inadmissible persons.”

Finally, strong sanctions should be adopted—and enforced—not only for Iran’s continued pursuit of nuclear weapons, but for its sponsorship of international terrorism and systemic violations of human rights.

History shows that sustained international juridical efforts can bring dictators like Milosevic and Pinochet to justice. Our choice is clear: We can either act or be on the wrong side of history.

*(Irwin Cotler, a Canadian Member of Parliament,  
is the former Canadian Minister of Justice and Attorney General.)*

## **THE LEGAL CASE AGAINST PALESTINIAN STATEHOOD**

**David B. Rivkin Jr. & Lee A. Casey**

*Wall Street Journal, September 20, 2011*

Later this week Palestinian Authority President Mahmoud Abbas is expected to seek recognition of a Palestinian state from the United Nations. The move is opposed by the Obama administration, which has rightly called it a “distraction.” Nevertheless, the PA’s effort has wide support among the U.N. membership, including Security Council members Russia, China and Britain, as well as other important regional states such as Turkey. These powers should think again because putting the U.N.—and particularly the General Assembly—in the business of state recognition is inconsistent with international law and the U.N. Charter, and it is manifestly not in their interests.

The U.N.—General Assembly or Security Council—has no power to create states or to grant all-important formal “recognition” to state aspirants. The right to recognize statehood is a fundamental attribute of sovereignty and the United Nations is not a sovereign. Those who cite as precedent the General Assembly’s 1947 resolution providing for the partition of Palestine misread that instrument and its legal significance.



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Resolution 181 outlined a detailed (and rigorous) process whereby the British Mandate in Palestine was to end and two new states, one Jewish and one Arab, were to be established. It recommended that process to Great Britain (as the mandate-holder) and to other U.N. members. It did not create or recognize these states, nor were the proposed states granted automatic admission to the United Nations. Rather, once the two states were established as states, the resolution provided that “sympathetic consideration” should be given to their membership applications.

In the event, the Arab countries rejected partition and Israel declared (and successfully defended) its independence. Israel’s statehood was recognized, in accordance with international law, by other states—including the United States and the Soviet Union.

The Palestinian Authority, by contrast, does not meet the basic characteristics of a state necessary for such recognition. These requirements have been refined through centuries of custom and practice, and were authoritatively articulated in the 1933 Montevideo Convention on the Rights and Duties of States. As that treaty provides, to be a state an entity must have (1) a permanent population, (2) a defined territory, (3) a government, and (4) the capacity to enter into relations with other states.

As of today, the PA has neither a permanent population nor defined territory (both being the subject of ongoing if currently desultory negotiations), nor does it have a government with the capacity to enter into relations with other states. This pivotal requirement involves the ability to enter and keep international accords, which in turn posits that the “government” actually controls—exclusive of other sovereigns—at least some part of its population and territory. The PA does not control any part of the West Bank to the exclusion of Israeli authority, and it exercises no control at all in the Gaza Strip.

The PA does not, therefore, qualify for recognition as a state and, concomitantly, it does not qualify for U.N. membership, which is open only to states. All of this is surely understood by the PA and its backers, and is also why the administration has correctly labeled this effort as a distraction—“stunt” being a less diplomatic but even more accurate term

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in these circumstances. What is unfortunate is that the Obama administration has failed to present the case against a Palestinian statehood resolution in legal rather than tactical terms, even though these arguments are obvious and would greatly reinforce the U.S. position, also providing a thoroughly neutral basis for many of our allies, particularly in Europe, to oppose Mr. Abbas's statehood bid.

The stakes in this battle are high. The PA's effort to achieve recognition by the U.N., even if legally meaningless, is not without serious consequences. To the extent that state supporters of that measure may themselves have irredentist populations or active border disputes with their neighbors—as do Russia, China, Britain and Turkey—they will certainly store up future trouble for themselves.

Traditionally, states rarely recognize (even if they may materially support) independence movements in other states. This is because granting such recognition may have very serious consequences, up to and including war. (The classic example here being France's recognition of the infant United States in 1778 and its immediate and inevitable entry into the War for Independence against Britain).

With respect to Israel, although it does not actually claim all of the territory on which the "State of Palestine" would be established, it is and has been engaged in difficult negotiations over that territory—and the PA's status—for many years. Support for U.N. recognition might not rise to the level of an act of aggression against Israel, but the U.N. Charter also forbids members to act in a "manner inconsistent with the Purposes of the United Nations." First among those purposes is maintaining international peace and security, and efforts prematurely to force recognition of a Palestinian state clearly undercut this goal. This is, in fact, a rare instance in which a measure is bad policy, bad law, and has the real potential to damage the interests of its opponents and its supporters.

*(Messrs. Rivkin and Casey are Washington, D.C., lawyers who served in the Justice Department during the Reagan and George H.W. Bush administrations.)*