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**Roundtable on UN Security Council Resolution 2334: Reflections by Noura Erakat, Mouin Rabbani, and Sherene Seikaly**

**Introduction**

On 23 December 2016, the United Nations Security Council unanimously adopted Resolution 2334 confirming the illegality of Israeli settlements in the occupied Palestinian territories, including East Jerusalem, as well as other measures to change the status of these territories. The resolution was sponsored by Malaysia, New Zealand, Senegal, and Venezuela—after Egypt submitted then quickly withdrew the draft text in in order to appease the incoming Trump administration and Israel’s Netanyahu government.

The passage of UNSC 2334 marks the first occasion since 1980 that the Security Council has censured Israel’s settler-colonialist practices, primarily because the United States had consistently threatened to use or exercised its veto power against similar initiatives for the past thirty-six years. On this occasion, Washington once again refused to support the resolution—but on account of its abstention, the Security Council was able to unanimously adopt the draft text.

In the commentaries below, *Jadaliyya* Co-Editors Noura Erakat, Mouin Rabbani, and Sherene Seikaly examine various aspects of UNSC 2334, including its broader political and legal implications. 

**Noura Erakat: UNSC Resolution Is Merely an Opportunity**by [*Noura Erakat*](http://www.jadaliyya.com/pages/contributors/436)

The most significant aspect of UNSC Resolution 2334 is that it forms the first break with an otherwise absolute US policy to obstruct every Palestinian effort to resist Israeli expansion, especially during the past eight years. During his tenure, President Barack Obama has witnessed and colluded in two massive Israeli onslaughts upon the Gaza Strip, helped shelve the Goldstone Report, and adopted an unprecedented thirty-eight billion US dollars memorandum of understanding with Israel that increases US military aid to it from 3.0 to 3.8 billon US dollars annually over the next ten years. The administration used its first veto in the Security Council in early 2011 to quash a resolution condemning settlements very similar to the one that has just passed, citing Washington’s distaste for [internationalizing](http://www.csmonitor.com/USA/Foreign-Policy/2011/0218/If-Obama-opposes-Israeli-settlement-activity-why-did-US-veto-UN-vote.) the conflict.

If the Obama Administration was concerned with ushering a new era of the peace process, it would have abstained five years ago and not mere weeks before departing office; or during Palestine’s 2011-12 statehood bid; or in 2015 when it quietly crushed an effort to set a deadline for ending the occupation in the United Nations’s law making body. The administration’s abstention appears more like a finger to US President-Elect Donald Trump and Israeli Prime Minister Benjamin Netanyahu rather than a change of heart. At this juncture of its tenure, the Obama Administration only had two embarrassing choices: to veto law and policy it has rhetorically upheld since 1967 or to abstain and expose Israel to international scrutiny. A veto was simply more costly in this instance. The resolution itself does not obligate member states to take action and includes no enforcement mechanisms for the action it recommends. In the wake of the UNSC 2334, Israel is set to approve [618 new settlements](http://www.haaretz.com/israel-news/1.761337) in East Jerusalem.

So then what does the resolution mean? It all depends on the conduct of the Palestinian leadership.

The worst thing it could do is use the opportunity to resuscitate bilateral negotiations under the terms of the Oslo framework. And sadly, all indications point in that direction. But this is an opportunity to break from the self-effacing terms of Oslo and its progeny since 1993.  It is an opportunity to take Palestine out of the backwaters of bilateralism and place it back on the international stage. Obamas’ abstention was a theoretical put of the issue out of the US’s absolute scope. The support of New Zealand, Malaysia, Senegal, and Venezuela in the face of Egyptian capitulation, and together with French enthusiasm to carry the mantle in lieu of the United States, indicates an international readiness to shift course.

What Palestine needs is a resistance strategy—one that is ready to confront rather than accommodate the occupation and that does not place undue faith in the United States to deliver a solution it has proved unwilling and unable to provide for nearly five decades. It should use this resolution, together with similar initiatives including the 2004 Advisory Opinion of the International Court of Justice (ICJ) as well as the 2013 UN Human Rights Council Fact-Finding Commission on Settlements to run a diplomatic marathon to pressure states to impose sanctions on Israel in order to highlight, and end, the structural violence of apartheid. It should isolate Israel and delegitimize its settler-colonial project not just to halt and dismantle settlements in the West Bank, but to highlight Israel’s demographic-based policies for what they are: racist and unacceptable. It should use this opportunity to teach the world that the Green Line is imaginary and settlements are not just in the West Bank but also within Israel as demonstrated by the impending wholesale destruction of Umm al-Hieran with the blessing of Israel’s Supreme Court. Netanyahu is already helping on this front by summoning the US ambassador to Israel, reprimanding the ambassadors of states that voted for the resolution, terminating Israeli contributions to five UN institutions and [downgrading relations](http://www.haaretz.com/israel-news/.premium-1.761299) with states that supported the Resolution. He is doing the work of sanctions on our behalf.

Unfortunately, the Palestinian leadership does not inspire much hope or confidence. Recall how it sabotaged the Goldstone Report, failed to call for sanctions after the ICJ Advisory Opinion, mourned Shimon Peres rather than highlight his violent and racist legacy, failed to resolve the schism with Hamas, and reified a sinking ship rather than usher a new leadership at the recent Fatah conference. Yet today the ball is in its court, the choice is one between more of the same losing game, or first steps on a much-needed new course that begins by removing Palestine’s eggs from the US basket.

**Mouin Rabbani: The Significance of UNSC 2334**by [*Mouin Rabbani*](http://www.jadaliyya.com/pages/contributors/8829)

US President Barack Obama’s record on the Question of Palestine has been so spinelessly atrocious that it almost makes one nostalgic for the days of Richard Nixon. To credit the United States for [United Nations Security Council Resolution 2334](http://www.timesofisrael.com/full-text-of-unsc-resolution-approved-dec-23-demanding-israel-stop-all-settlement-activity/), adopted on 23 December 2016, is simply laughable. It is the work of others, which Washington did not support but ultimately chose not to obstruct.

There is virtually nothing in the resolution that is new, but that does not make it insignificant. It has been a full thirty-six years since the Security Council last considered the legal status of Israel’s settlements in occupied Arab territory, when [UNSC Resolution 465](https://unispal.un.org/DPA/DPR/unispal.nsf/b86613e7d92097880525672e007227a7/5aa254a1c8f8b1cb852560e50075d7d5?OpenDocument) of 1980 unanimously determined they have none and must be dismantled.

During this interregnum Israel’s leaders worked ceaselessly to normalise its colonies and appeared to be making significant headway, particularly in the United States and especially so during the second Clinton and Bush *fils* administrations. Much of East Jerusalem had been effectively apportioned to Israel by the Clinton Parameters, while Bush in correspondence with Ariel Sharon stopped just short of formally recognizing Israeli sovereignty over most settlements abutting the Green Line. During his own eight years in office Obama indulged Israeli expansionism more than any of his predecessors, thwarting each and every attempt to raise the matter in international fora—including a 2011 veto of a draft UN resolution functionally indistinguishable from the one just adopted.

Increasingly exasperated with not only Israel but also the United States, and alarmed by signals emanating from Camp Trump that it intends to detonate the global consensus on the Question of Palestine as well as by Israeli legislative and physical initiatives to make this a reality, the international community decided it needed to confirm certain long-established principles in order to preserve them. We’ll eventually learn why Washington decided to not veto UNSC 2334, but it likely has more to do with Obama feeling personally slighted by Israeli Prime Minister Binyamin Netanyahu and prematurely marginalized by President-elect Donald Trump, than with reasons that can be characterized as serious or substantive.

Be that as it may, the primary significance of UNSC 2334 is that it sends an unanimous, unambiguous and indeed definitive message from the international community that Israel’s cumulative efforts have resolutely failed to make even a single settlement one shade less illegal than in 1980. This applies equally to what Israel and the United States term “neighbourhoods” in East Jerusalem. Possession may be nine-tenth of the law, but illegal possession, as the Resolution explicitly states, “has no legal validity and constitutes a flagrant violation under international law.” The Security Council resolution in effect amplifies politically the legal conclusions reached on these matters by the International Court of Justice in its [2004 Advisory Opinion](http://www.icj-cij.org/docket/files/131/1671.pdf) on the West Bank Wall.

The tsunami of *faits accompli* Israel has unleashed since 1967 in order to normalize its occupation has therefore, from a legal and diplomatic perspective, achieved precisely nothing. As stated in the Resolution, the international community “will not recognize any changes to the 4 June 1967 lines, including with regard to Jerusalem, other than those agreed by the parties through negotiations”. If and when meaningful negotiations to end the occupation materialize, furthermore, Palestinians will have the right to veto any proposed boundary changes, including land swaps.

To dismiss UNSC 2334 as “merely symbolic” does not quite capture the nature and scope of Israel’s defeat; everything it has done to change the status of occupied territory, and achieve recognition of such changes, has been dismissed as meaningless and irrelevant. More to the point, the Resolution provides added impetus and legitimacy to attempts to hold Israel and its officials accountable for their actions, including under Article 8.2(b)(viii) of the Rome Statute of the International Criminal Court that defines settlement practices such as those implemented in the occupied territories as “war crimes”.

Unlike Resolution 465, UNSC 2334 does not explicitly call upon Israel “to dismantle the existing settlements”, and only repeats the demand that it “completely cease all settlement activities in the occupied Palestinian territory, including East Jerusalem”. Yet, notes Norman Finkelstein, UNSC 2334 “prominently affirmed the principle of the inadmissibility of acquisition of territory by war, and the US didn't dissent from it”. It therefore seems “the United States no longer supports the interpretation of the operative clause of [UNSC 242](https://unispal.un.org/DPA/DPR/unispal.nsf/0/7D35E1F729DF491C85256EE700686136) that omits the definite article before ‘occupied territories’, as leaving room for Israel to annex territory”. Notably, adds Finkelstein, “inadmissibility was not balanced by the right of all States to live in peace and within secure borders” as it was in UNSC 242.

While many have pointed out that [the international community has done virtually nothing](http://www.aljazeera.com/indepth/opinion/2016/12/settlement-resolution-late-161225090002654.html) to implement similar resolutions adopted since the Security Council began censuring Israel’s colonialist practices in 1967, and that this latest resolution too lacks enforcement mechanisms, UNSC 2334 does call upon member states “to distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967”. This entails a clear obligation by states that recognize and/or trade with Israel to [differentiate](http://www.ecfr.eu/publications/summary/eu_differentiation_and_the_push_for_peace_in_israel_palestine7163) between it and the occupied territories, including East Jerusalem. Application of this principle will necessarily require far-reaching sanctions against institutions and corporations based in Israel because these almost uniformly and often deliberately ignore the existence of the Green Line. It also exposes foreign entities that conduct themselves similarly to the prospect of criminal prosecution.

UNSC 2334 does not tread any new legal ground but rather confirms established principles and positions—albeit padded with silly references to “incitement and inflammatory rhetoric” to save a gutless American’s face. It is precisely for this reason that the Resolution is above all a political statement. The problem is that—as demonstrated by Egyptian President Abd-al-Fattah al-Sisi’s pathetically craven attempt to kill his own government’s draft resolution—the current Palestinian and Arab leaderships are wholly unqualified to translate its articles into meaningful achievements, and without their lead others are unlikely to follow. The Palestinians will not have another thirty-six years to produce movements, strategies and leaders capable of rising to the occasion.

**Sherene Seikaly: UNSC 2334**by [*Sherene Seikaly*](http://www.jadaliyya.com/pages/contributors/872)

The legacy of Obama’s presidency is now subject not only to its own imperial machinations but also to the triumph of the right and the celebrity of stupidity that will define Trump’s rule. In the twelfth hour of Obama’s eight-year term, the theater of the United Nations witnessed some unexpected events. First and foremost is the United States government’s abstention on a resolution denouncing the policies of its prodigal child, the state of Israel. It will be this move, while not historically unprecedented, that journalists and commentators will focus on the most. For Israel’s prime minister, it is a source of US betrayal of the now decades long “special relationship” between the two settler colonies.

Yet there was another unexpected turn in this late December vote at the United Nations; Egypt’s withdrawal of its own draft resolution shortly after it was formally submitted to the Security Council and just before it was to be put to a vote.

It was expected that Egypt’s strongman Abd-al-Fattah al-Sisi would embrace the logic of the leaders he sees himself closest to: Israel’s Benjamin Netanyahu and US President-elect Donald Trump. While the Egyptian government had worked alongside the Palestinian Authority to draft the resolution, which after all is simply a reinforcement of conventional international law, Sisi decided to withdraw it at the last hour. His office stated this act came after a telephone call from Trump. Closer observers know that the ties between Sisi and Netanyahu also bore some credit. The two leaders have been fostering these ties since Sisi’s overthrow of Egypt’s first democratically elected president in July 2013. Those ties were at their most explicit during Israel’s brutal assault on Gaza in 2014, when Sisi’s closure of Rafah sealed the only exit for over a million Palestinians in an open-air prison. It was then that Netanyahu insisted to John Kerry that Israel would only negotiate a ceasefire with Sisi.

So what then is so unexpected about last week’s Egyptian drama? The shift here comes from Sisi’s unabashed rejection of the rhetoric of state-led pan Arabism. Scholars have long shown that Arab regimes and their initiatives and policies, at best, have been disinterested, duplicitous, and damaging to Palestine and the Palestinians. Egypt is not exceptional in this regard. But Egypt has been the nation that birthed the ill-fated and misguided state-led pan-Arab project. It has been a nation whose citizens have sacrificed lives and limbs in various wars and conflicts. It has been a nation that has served as the intellectual and cultural refuge for so many Palestinians. For Egypt to withdraw a resolution confirming the illegality of Israeli settlements in occupied Palestinian territory, is a rhetorical first. It is effectively, the final unmasking of the long-standing fallacy of regime led pan-Arabism. Since that fallacy has been rotting for decades now, perhaps Sisi has done us a favor. We can finally leave the wake and bury the corpse.