Beyond the Blocs

Implicit Cooperation in the Shadow of the Gaza War

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On Monday, 25 March, the UN Security Council adopted a resolution demanding a ceasefire in Gaza and the immediate release of hostages, as well as emphasizing the need to increase the provision and distribution of humanitarian aid. The Resolution was adopted 14-0, with the United States the only member to abstain. As the Security Council website announces, this Resolution ended a "months-long deadlock".

The recent Resolution is not perceived by Israeli actors as binding. And yet, I argue that the fact that the US and Russia are now essentially voting together on the need to end this war could lead to significant further ramifications that may shape the region and beyond.

Unlike other organs of the international legal system, the UN Security Council has nearly unlimited power to tailor a wide array of measures ranging from military intervention through accountability mechanisms to the logistics of aid. Unlike international judicial processes in particular, the Security Council can act swiftly and be creative with the kinds of remedies it tailors.

With the years-long deadlock now undone, the Security Council provides a good opportunity to imagine an altogether different trajectory for a war-torn and increasingly famished Gaza Strip. Using its tools could not be more urgent.

The Security Council as Arena for a New Cold War

When historians will study where and when exactly the Second Cold War started, one immediate suspect will be the United Nations building in New York in March 2011. After the beginning of what was then called "the Arab Spring", concerns grew that Qaddafi would systematically kill his own people. Against this backdrop, on 17 March, the UN Security Council approved military intervention by a Western-led coalition in Libya. Ten Security Council member states endorsed the decision, including the United States. Although the remaining five countries in the Security Council, including Russia, abstained, it was still a historical moment of relatively broad consensus. For the first time ever, the Security Council authorized "humanitarian intervention," ostensibly for the defense of Libya's civilian population. However, in implementing the decision, the coalition seemed to act outside its agreed-upon mandate, which centered on imposing a no-fly zone, ultimately leading to the assassination of the Libyan ruler. The deviation from the mandate caused significant discontent, particularly in Russia. A rift among two major blocs in the UN Security Council was created, and has not been reconciled since.

Indeed, as far as the most difficult military and security issues are involved, there have been almost no moments of such consensus since then. On the contrary, the Security Council has become a central arena of conflict between the United States and Russia. For example, throughout the Syrian civil war starting in 2011, the Security Council was paralyzed due to clashes between the two blocs. When Putin invaded Crimea in 2014 – a blatant violation of international law – the ineffectiveness of the Security Council was particularly evident. Like the United States, Russia is a permanent member of the Council, and enjoys veto power. Because of this veto, conflicts in Syria and Ukraine have continued over the past decade, impacting civilians and displacing refugees. Arguably, because of the US's veto, Israel's control over millions of Palestinians without voting rights solidified and ultimately led to the current catastrophic outbreak of

violence. The three conflicts have become symbols of the Security Council's failure.

This does not mean that there haven't been any decisions in the past decade where the US and Russia found themselves on the same side. As President Barack Obama's term was ending in 2016, Israel had the honor of being the subject of Security Council Resolution 2334, adopted by a 14-0 consensus. However, the decision on the illegality of settlements merely echoed previous decisions and was not really new. As far as maintaining world peace and security – the UN's mandate – the Security Council has gradually become irrelevant.

Deadlock Undone

The Security Council's decision on Monday, which commits Israel and Hamas to a ceasefire during Ramadan, and includes an obligation to release hostages, is important. However, against the backdrop of the struggle between the United States and Russia in the Security Council, the main innovation lies not so much in the content of the decision, but rather in the reversion to a tacit agreement regarding the ongoing war – a conflict that, according to the International Court of Justice, may plausibly lead to a genocide of the Palestinians in Gaza.

Just as Russia abstained in 2011, so did the US this week. In both cases, such voting conveys an implicit message of cooperation. Granted, the decision in 2011 regarding Libya was a decision to intervene militarily, with much more far-reaching immediate consequences. However, it seems worthwhile to focus not only on the substance of the decisions but also on the procedure: this focus highlights the fact that both decisions constituted a form of collaboration between blocs, a practice that has become increasingly rare. This collaboration raises interesting questions about what's next.

Certainly, the implicit agreement here is fragile and may be temporary. Nothing conclusive can be inferred regarding future Security Council decisions. The US and Russia are engaged in proxy wars in several places around the world (e.g. Syria and Ukraine). Just a couple of days earlier, Russia and China opposed and thus killed an American-proposed resolution that also called for a ceasefire. But from a different perspective, the change in Russia's and China's stance, leading to their support of a new Resolution, ultimately allowed the US to abstain, and the decision on the Ramadan ceasefire to be approved. This is significant. Could it be that the US and Russia are now signaling that they are willing to exclude Gaza from the list of proxy wars between them? From such a viewpoint, the tenuous agreement we saw between supporters and abstainers may lead to more decisions where the opposing blocs find themselves on the same side.

The discussion within Israeli media following the Security Council's Resolution largely revolved around whether it has a binding nature. Most commentators were quick to reply with a resounding, overconfident, no. The truth is different. Even if the decision is not immediately enforceable, it does constitute international law binding upon Israel. But more important, in my view, is not the decision itself, but rather what may come next. What other measures could the UN Security Council adopt to put an end to this horrendous war? Remarkably, it now seems that both blocs are more interested in halting the violence than in maintaining their usual opposing voting patterns.

A Writ to Rebuild

Recall that in the past, Security Council Resolutions have triggered dramatic international processes. Military action by an international coalition was just one option, which doesn't seem particularly relevant to our region right now. But under Chapter 7 of the UN Charter, Security Council decisions have in the past led to the establishment of international criminal tribunals following the crises in Yugoslavia (ICTY) and Rwanda (ICTR); they have created international administration over territory; they have pressured states to adopt domestic legislation; they have resulted in financial ramifications for individuals, such as asset freezes; and they certainly have the potential, in principle, to expand humanitarian aid on behalf of the Palestinians, as may be deemed appropriate by the Security Council members. Imagine a Security Council writ to immediately rebuild Gaza. As courts have affirmed, there is

almost no limitation on the authority of the UN Security Council to adopt various measures, including, but not limited to, the use of force.

Lawyers working to end the war and ultimately to realize the Palestinian people's right to national self-determination have in recent years orchestrated an impressive campaign centered on domestic and international judiciaries. Starting from the 2004 ICJ Advisory Opinion on the Wall, their successes have been remarkable. These successes have come hand in glove with a political campaign that has successfully aligned solidarity with Palestinians with racial justice and anti-colonialism.

However, courts also have familiar drawbacks, starting from their sluggishness. With famine in Gaza "imminent", according to the World Health Organization, and attack on Rafah still impending, the situation could not be more urgent. If the Security Council deadlock is reversible, this organ may become more important and, indeed, transformative. Maximalist proposals are bound to fail. The key is to design subtle but firm constraints on open-ended military destruction. If sophisticated and diplomatically savvy proposals can be tailored such that they facilitate implicit inter-bloc cooperation in the shadow of war, they may become an important component in ending it.

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