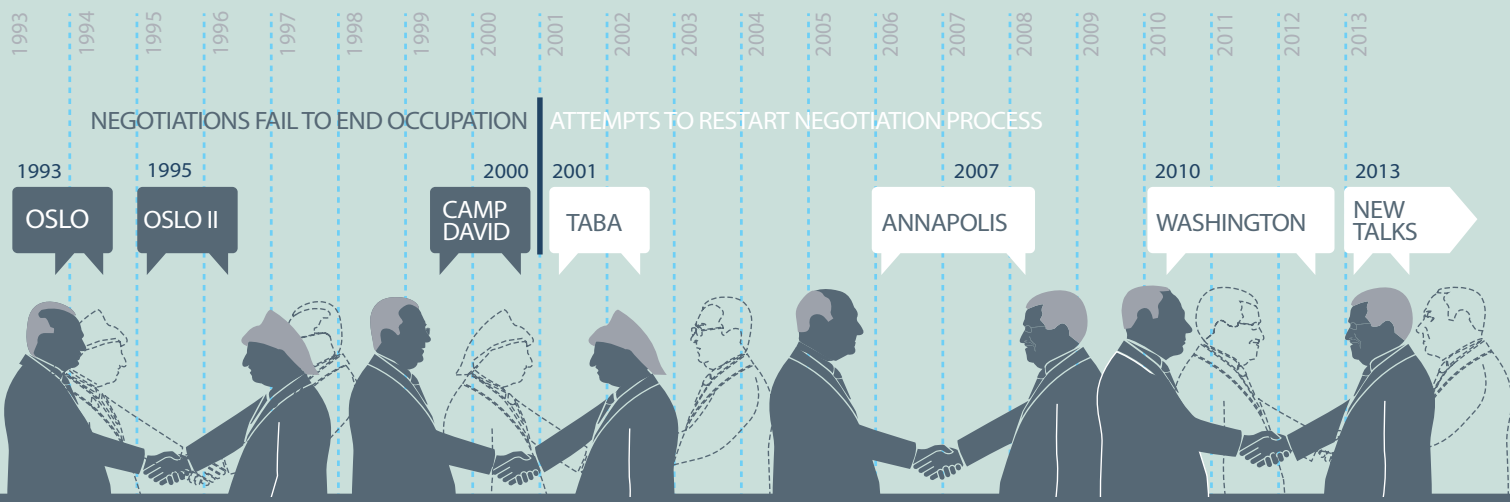


PERSPECTIVES

Political Analyses and Commentary from the Middle East & North Africa



20 Years Since Oslo: Palestinian Perspectives

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Editors: Bente Scheller, René Wildangel, Joachim Paul

Sub-Editing: Claudia Lewis

Layout: Heythem Smaali

Photographs: See attributions

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Heinrich Böll Foundation – Middle East & North Africa

Our foremost task is civic education in Germany and abroad with the aim of promoting informed democratic opinion, socio-political commitment and mutual understanding. In addition, the Heinrich Böll Foundation supports artistic, cultural and scholarly projects, as well as cooperation in the development field. The political values of ecology, democracy, gender democracy, solidarity and non-violence are our chief points of reference. Heinrich Böll's belief in and promotion of citizen participation in politics is the model for the foundation's work.

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Editorial

20 Years Since Oslo: Palestinian Perspectives

More than twenty years have passed since the historic handshake between Palestinian President Yasser Arafat and Israel's Prime Minister Yitzchak Rabin in Washington D.C. Originally this was supposed to be the beginning of a five-year-process leading to the establishment of an independent Palestinian state.

However, 20 years later, there is no such Palestinian state. The reasons for this are manifold, and no doubt Palestinians themselves have made mistakes and lost opportunities to advance their goals. The failure to achieve a final peaceful settlement to the conflict is an endless source of frustration for both Israeli and Palestinian society; but for Palestinians, who have failed to gain their independence, in particular. In contrast, Oslo has only succeeded in maintaining the occupation and tripling the population of Israeli settlements in the West Bank, leading to a total number of 550.000 settlers in the West Bank and East Jerusalem at present. Therefore it is hardly surprising, that the Palestinian judgment of the failed process is today extremely negative.

Some Palestinians predicted this outcome on the eve of the historic agreement. Among them American-Palestinian intellectual Edward Said, whose 1993 text, "the morning after", was a chilling warning of failure, and one that is worth reading in retrospect. Other authors in this volume look at the Oslo years from different angles, including political, legal and economic aspects.

Their main message is clear: The 1993 Oslo Accords need to be urgently revised by Palestinians, Israelis and the international community alike in order to be replaced by a new framework. As such, we have also included some articles that highlight current internal Palestinian discussions about their future strategies, including civil resistance and disobedience against the occupation (Just Vision, p. 95. A. Kopty, p. 98), a legal struggle in the international arena (S. Jabareen, p. 43) or the debate about a one state solution (D. Butto, p. 104).

This is not an attempt to provide a complete or "objective" review of the Oslo-process, but to provide space for on-the-ground analysis by Palestinian writers, thinkers and politicians of very different backgrounds. All authors express solely their personal views; the contributions do not represent the opinion of the Heinrich-Böll-Foundation. However we hope that this volume can contribute to rethinking the Oslo-framework and those elements, which have proven to prolong the conflict instead of delivering a historic compromise so urgently needed to allow security, peace and dignity for all citizens in the region.

René Wildangel, Bente Scheller, Joachim Paul

A Lot of Process, No Peace: A Timeline of 20 Years of Post-Oslo Meetings, Agreements, Negotiations and Memorandums



The historic handshake between Israeli Prime Minister Yitzhak Rabin and the chairman of the Palestine Liberation Organization, Yasser Arafat, overseen by US President Bill Clinton on the White House lawn September 13, 1993. Courtesy of Wikicommons.

1991: Madrid Conference

As a consequence of the Gulf War, the US and the Soviet Union initiated the Madrid Peace Conference to improve regional stability. The conference brought together Israel and various Arab states. For the first time, negotiators from the Palestine Liberation Organization (PLO) participated. The PLO was recognized as the sole representative of the Palestinian people.

September 1993: Oslo I Accord

The *Declaration of Principles on Interim Self-Government Arrangements* was signed in Washington DC on September 13. It was the outcome of secret negotiations between Israel and the PLO in the Norwegian capital. It included

a transfer of authority from Israel to the newly established Palestinian interim self-government authority (PA) within five years, during which time permanent status negotiations between the two parties were to be held. Israel recognized the PLO as legitimate representative of the Palestinians; in turn the PLO recognized the State of Israel's right to exist.

1994: Killing Peace

On February 24th, Baruch Goldstein killed 29 worshippers and injured another 125 at the Cave of the Patriarchs in Hebron during the Muslim holiday of Ramadan. On April 6th, a suicide bombing by a Palestinian against civilians in Israel took place, killing eight people in a bus in the town of Afula. However, on May 4th, Israel

and the PLO agreed on an Israeli Defense Force (IDF) withdrawal from the Gaza Strip and the Jericho Area set for 1995, allowing for Yasser Arafat, the chairman of the PLO, to return to Jericho.

1995: Oslo II Accords

The *Oslo II Accords* signed in Taba (the Taba Agreement) on September 28th split the West Bank and the Gaza Strip into Areas A, B and C. In Area A, about 3 percent of the occupied West Bank and Gaza Strip, the Palestinian self-government gained civil and security control. In Area B, about 25 percent of the Palestinian Territories, civil control was by the Palestinian Authority (PA) while there was a joint security control. Area C remained under full Israeli control. It was also stated that, “neither side shall initiate or take any step that will change the status of the West Bank and the Gaza Strip pending the outcome of the Permanent Status negotiations.” On November 4th, Israeli Prime Minister Yitzhak Rabin was assassinated by Israeli extremist Yigal Amir.

1997: Hebron Agreement

In January, Arafat had been elected President of the PA, while Oslo-opponent Benjamin Netanyahu was elected Israeli prime minister for the first time. The *Hebron Agreement* was signed by both in early 1997 and Israel handed over 80 percent of the West Bank town of Hebron to the Palestinians.

1998: Wye River Memorandum

The *Wye River Memorandum* was a political agreement negotiated to implement the Oslo Accords, completed on October 23rd. At this summit Israel agreed on further redeployments in the Palestinian Territories, extending Area A by 13 percent. The Palestinians promised to take further security actions, such as combating terrorist organisations, prohibiting illegal weapons and preventing anti-Israel incitement. Israel

and the PA agreed on resuming permanent status negotiations, until May 4th, 1999. The government of Benjamin Netanyahu collapsed.

1999: Sharm el-Sheikh Memorandum

New Israeli Prime Minister Ehud Barak promised to proceed with peace negotiations. The *Sharm el-Sheikh Memorandum on Implementation Timeline of Outstanding Commitments of Agreements Signed and the Resumption of Permanent Status Negotiations* had the goal to implement Oslo II and other, smaller agreements between the two conflicting parties and reach a final settlement in 2000. In the following half year, Israel transferred more occupied land from Area C to A and B as well from Area B to A. Still, Israel controlled 60 percent of the land exclusively (Area C). Israel furthermore released 199 Palestinian prisoners in September, but missed a deadline in October to release another 150 prisoners.

2000: Camp David Summit, Outbreak of the Second Intifada, Clinton Parameters

The summit was an unsuccessful attempt by US President Bill Clinton to finalize the negotiations between Israel and the PLO by directly discussing permanent status topics. As Israeli Prime Minister Ehud Barak and PA President Yasser Arafat were unable to agree on core issues and an Israeli offer with unfavourable conditions for the Palestinians was rejected, the US openly blamed Arafat for the failure of the negotiations. However, the summit was badly prepared and lacked a basis for a real compromise.

Following the abortion of the Permanent Status Negotiations at Camp David as well as provocations and incidents from groups and individuals on both sides, the Second *Intifada* broke out and lasted until 2005. Israel counted 1,036 casualties on its side, with 3,592 dead on the Palestinian side. The Second *Intifada* faded out only in 2004.

After the failure of the Camp David talks in December 2000, the Clinton Parameters envisioned a Palestinian State on approximately 95 percent of the West Bank and introduced the idea of a limited land swap consisting of an additional 1-3 percent.

2001: Taba Summit

In January, negotiations continued based on the Clinton Parameters in Taba. The summit led to a joint statement, however the talks ended without an agreement and Ehud Barak did not conduct further negotiations. Right-wing Likud candidate Ariel Sharon was elected Israeli Prime Minister in February 2001 and began implementing his policy of unilateralism. In 2002, the Israeli cabinet decided to build a separation barrier between Israel and the Palestinian territories, which was built beyond the Green Line and which unilaterally decided on de-facto borders that included major settlement blocks.

2002: Beirut Summit/Arab Peace Initiative

The *Arab Peace Initiative* was a decision made by the Arab League at the March 2002 Beirut Summit proposed by Saudi Arabia. At its core stood the offer of normalized relations between Israel and all Arab League members on condition of an end to Israeli occupation of the Palestinian Territories, recognition of an independent Palestinian state and a just solution to the Palestinian refugee issue. The initiative was reinforced by the Arab League several times, but was overshadowed at the time in Israel by a major Hamas suicide attack. The Israeli government never accepted the plan.

April 2003: Road Map for Peace

During the Spring, US President George W. Bush suggested a *Road map for Peace*, which was backed by the Middle East Quartet (UN, US, EU and Russia). It outlined a series of steps for the two parties to take to halt violence,

resume negotiations and reach a final settlement of the conflict by 2005. The implementation of the Roadmap reached a deadlock early on because of escalating hostilities and the ongoing settlement expansion by Israel as well as Palestinian orchestrated terror attacks.

December 2003: Geneva Initiative

In December, an alternative peace plan, known as the *Geneva Initiative*, was launched after two years of secret negotiations led by former Israeli minister Yossi Beilin and former Palestinian Authority minister Yasser Abed Rabbo. The document aimed to provide a blueprint for a just permanent Status Agreement but was never adopted by the governments.

February 2005: Sharm el-Sheikh Summit

After Arafat's death in November 2004, newly elected PA President Mahmoud Abbas and Israel's Prime Minister Ariel Sharon met to make progress towards ending the violence and to declare a mutual ceasefire. They agreed to work towards implementation of the *Road Map*. In August the Israeli disengagement from Gaza was carried out. However, Israel maintained control over the Gaza Strip.

2006: Hamas Wins PA Elections

The international community refused cooperation with the elected government and asked for recognition of three "Quartet principles." This was the beginning of a deep Fatah-Hamas divide, leading to violence in 2007 and the establishment of two separate PA governments. Ehud Olmert was elected as Israeli Prime Minister, promising again to reach a final settlement with the Palestinians. In July, war broke out with Lebanon, killing more than 1,200 Lebanese, 16 Israeli soldiers and 43 Israeli civilians.

2007: Annapolis Conference

The aim of the conference was to revive the peace talks between Israel and the PA; at the same time, international support was given by more than 40 countries and multinational organizations participating. Again, no agreement was reached but Prime Minister Olmert and President Abbas declared their intention to continue bilateral negotiations. Between 2006 and 2008 they met 36 times. In December 2008 Israel started "Operation Cast Lead," attacking Gaza. By the end of January 2009 more than 1,000 Palestinians and 13 Israelis had been killed.

2010: Direct Negotiations

In September, the Obama Administration reached its goal of bringing together Abbas and Israeli Prime Minister Netanyahu for their first face-to-face meeting in two years, after Netanyahu had imposed a ten-month settlement construction moratorium at the beginning of the year. In a private meeting in Washington DC both leaders agreed to work towards a peace deal within a year. In September the freeze on settlement building expired. No further negotiations were held, as Israel refused a renewal of its settlement freeze unless the Palestinians would recognize Israel as a "Jewish state."

2012: Amman Talks and Palestinian UN Initiative

In January, negotiators Yitchak Molcho and Saeb Erekat held several rounds of talks to explore the resumption of final status talks. After all preliminary talks failed, the Palestinians decided to go ahead with their UN membership application. On November 29th, the United Nations General Assembly passed Resolution 67/19 according Palestine Non-Member Observer State status at the UN. One hundred and thirty-eight states voted for the resolution and nine against it, with 41 states abstaining.

2013: Kerry Initiative

Direct Israeli-Palestinian talks were facilitated after intensive shuttle diplomacy by US Secretary of State John Kerry. Starting on July 29th, several rounds of talks were held. Once again, the goal remains to restart final status negotiations which are supposed to end in April 2014. However, after 20 years of negotiations, summits and declarations, the parties remain sceptical regarding a breakthrough.

Introduction to Oslo: Key Issues, Past Mistakes and Future Prospects

The four pieces that follow are designed to tackle some of the key issues in the Israeli-Palestinian conflict: Borders, Water, Jerusalem and Prisoners. The fifth and concluding piece highlights some of the lessons learned from the experience of Oslo. The authors are members of the newly established professional network, NEWPal.

1. Blurring the Lines: The Question of Borders

Israel refuses to define its borders while it continues to colonize land. But the definition of borders is an integral element of the Two-State formula. It is closely intertwined with the fate of Jerusalem and the question of Israel's settlements, along with the issue of the natural resources that are expropriated by this profoundly damaging settlement enterprise.

Working Towards 1967

During the five-year implementation period of the Interim Agreement, the Occupied Palestinian Territories were categorised into three zones: A, under full Palestinian autonomy; B, under Palestinian administrative and Israeli military control; and C, under full Israeli control. This was supposed to allow for a gradual transfer of the West Bank and the Gaza Strip to the Palestinian Authority, with the issues of Jerusalem and the settlements to be discussed during final status negotiations.

Oslo was clear on two important points. First, "neither side shall initiate or take any step that will change the status of the West Bank and the Gaza Strip pending the outcome of the permanent status negotiations."¹ Second, "the negotiations on the permanent status will

lead to the implementation of Security Council Resolutions 242 (1967) and 338 (1973),"² both of which refer to Israel's withdrawal from territories occupied in 1967.

Blurring the Lines

Unwilling to withdraw to the 1967 border, and taking advantage of the peace process, Israel accelerated its project of colonization, doing everything possible to force the border to be redrawn in its favor.

The facts today are clear. Since the signing of the Oslo Agreement, the number of settlers has almost tripled.³ The Green Line, which runs between East and West Jerusalem, is being unilaterally erased and a new line drawn. When complete, 712 kilometers of the Annexation Wall, along with settlement housing and infrastructure, will attempt to physically impose this border according to Israel's desire.⁴ Meanwhile, the border with Jordan is fully controlled by Israel. Gaza remains under a suffocating siege. The Oslo agreement, which was meant to take the people of Palestine from autonomy to statehood, took them from autonomy to Bantustans.

Settlements amount to a continuous violation of international law and a "war crime" according to the Rome Statute of the ICC,⁵ not a final status issue for negotiations. This is the first major problem of the Oslo agreement. By designating "settlements" as a final status issue, they were implicitly granted quasi-validity as an issue that was up for discussion. Since Israel perceived a Palestinian readiness to negotiate over settlements, it worked actively to expand them, in order to prejudice the outcome of negotiations.

NEWPal

NEWPal is a platform of young Palestinian professionals, from various backgrounds and fields, who are bringing together their experiences and expertise to benefit their homeland. The group aims at bringing new perspectives on matters of a national and international nature and helping empower a new generation in assuming its responsibilities towards the community, the country and the Palestinian cause. Contributors for this publication are Majed Bamy, Muna Dajani, Xavier Abu Eid, Sara Husseini, Inès Abdel Razek-Faoder, Zackaria Sabella and Alaa Tartir.

The second major difficulty of Oslo, which applies to all sections of the agreement, was a reliance on good faith that led to a lack of enforcement mechanisms, a lack of respect for timetables and a lack of respect for international law on the part of Israel.

The Way Ahead: Some Concluding Remarks

Oslo relied on ambiguity and a gradual approach. It is time, twenty years later, to transform the pre-1967 lines into the actual borders of Palestine and Israel. Settlements, which are illegal under international law and jeopardise the viability of the Palestinian state, cannot define the borders. The international community, which strongly advocates for the Two-State solution, should uphold and reinforce the 1967 borders by finally adopting effective measures against settlers and the settlement enterprise.

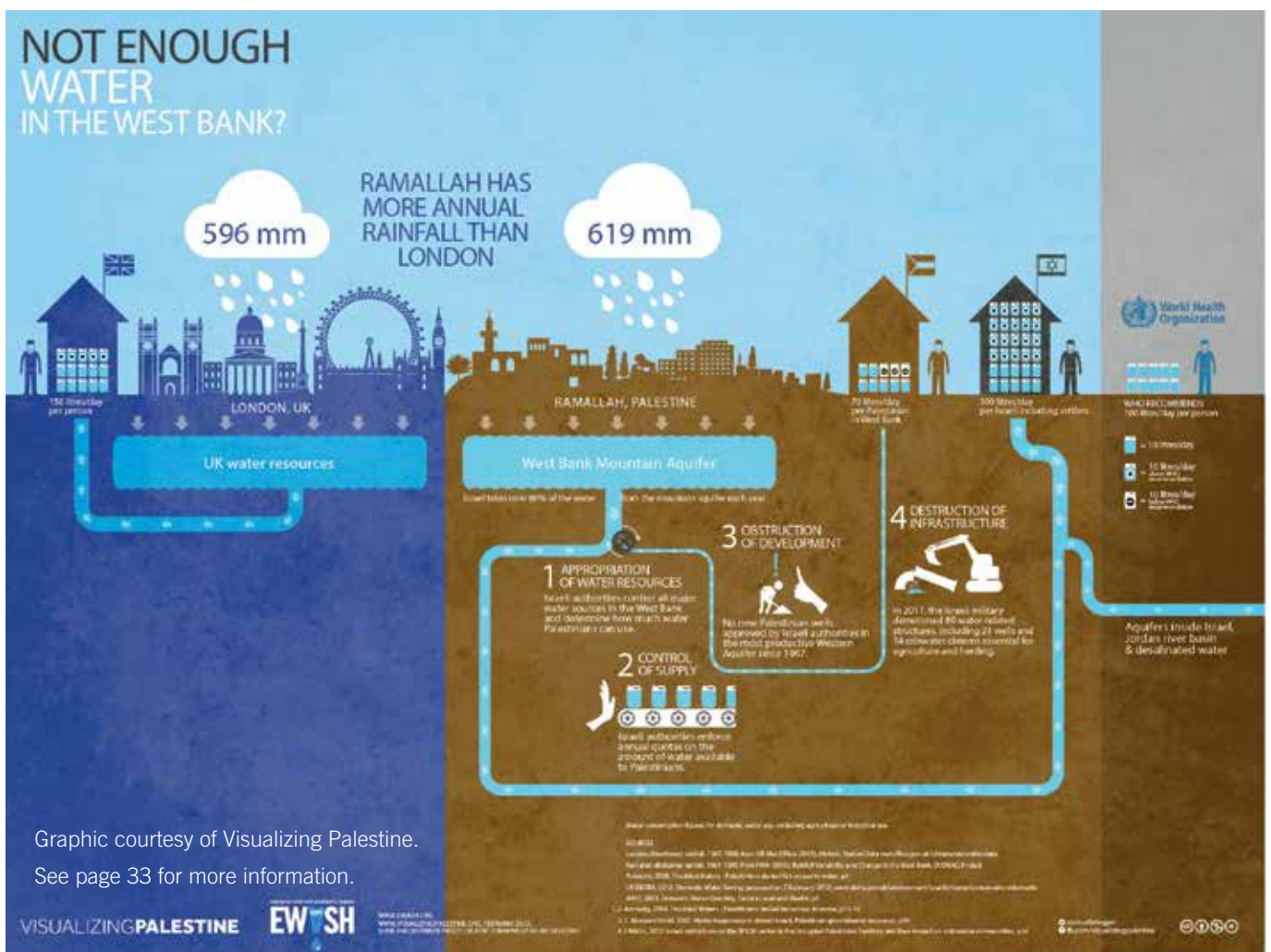
2. Dry Negotiations Over Palestine's Water

Water resources are only part of the equation of access to natural resources, but it is the most illustrative example of the asymmetry of power and shortfalls of the negotiation terms between Israelis and Palestinians.

What's Yours Is Mine and What's Mine Is Mine

At Oslo, Article 40 of the Interim Agreement was included to deal with "Water and Sewage", allowing Israel sovereign control over the water resources and violating Palestinian water rights in several ways:

- First, this water agreement is geographically limited to groundwater resources and the remainder of the Mountain Aquifer,⁶ as well as surface water,⁷ was left under Israeli control. The question of water was dealt with using a needs-based approach, giving



a fixed amount to the Palestinians, with an estimation of “future needs” increases⁸ during the interim period, instead of a rights-based percentage share of available resources.

- Second, Oslo limited the newly created Palestinian Authority’s ability to supply water for its population to Areas A and B, whereas the necessary infrastructure required the use of land in Area C, in addition to most of the available surface water being in Area C. This caused the de-development of the Palestinian water sector.
- Third, the Joint Water Committee (JWC) was created as a joint committee of Israeli and Palestinian experts supposedly holding complete decision-making power over water management.⁹ In reality, the Israelis have a veto power to refuse or postpone any infrastructural development project. The JWC is a management system under which one party has no option but to assent to the colonisation of its own land under the guise of mutual cooperation. Even if approval is granted by JWC, Palestinians have to seek approval from the Israeli army for projects in Area C, which has often overruled JWC decisions. Consequently, Palestinians must today buy around 50 million cubic meters of water per year from Israel.

Under the Guise of Cooperation

Water negotiations have undergone severe deterioration since Oslo and have, for the past two decades, blatantly excluded the Palestinians from attaining their water rights and controlling their resources, while causing irreversible damage to the landscape, economy, health, and food and agricultural systems. Since 1967 and under the JWC, no new Palestinian production well has been approved in the most water abundant western part of the Mountain aquifer.¹⁰ Eighty-nine water-related structures, including 21 wells and 34 agricultural cisterns, essential for agriculture and herding that have been built

by the Palestinians, have been demolished. 120 communities, mostly in Area C, have no access to water and sanitation and face the daily threat of expropriation and displacement. The JWC, created out of the Oslo accords, is therefore a coercion system that formalized the discriminatory regime already in place pre-Oslo.¹¹ The current premise of the Oslo water article is inadequate, obsolete and void of any rights-based components.

Start from Scratch: From Illegality to Equity

The formula for water requires emergency restructuring, first to meet the growing need of the Palestinian population and second to secure the right to access, develop and control our resources. Negotiations, or any further actions, must be based on International Water¹² and Environmental Law as well as International Humanitarian Law. On the political level, negotiations should only recognize fair solutions that acknowledge the necessity of sovereignty over natural resources and contiguity of the territories to achieve a viable state, sustainable development, and the realization of our human rights as indigenous people of this land.¹³

3. Jerusalem: A City Under Siege

Jerusalem is the centre of Palestinian life with its rich religious, historical, and cultural heritage. It is also the socioeconomic beating heart of Palestine given its geographic position at the junctions of communication and road networks between the Southern and Northern parts of Palestine.

The Status of Jerusalem Under Oslo

The designation of Jerusalem as a final-status issue effectively linked its political fate to the conclusion of the Oslo process. Following the signing of the Accords, Palestinian institutions began operating officially in Jerusalem. Palestinian national elections were held in 1996 and 2005-2006 with the active participation of Palestinian Jerusalemites. Israeli assurances not to curtail Palestinian political, religious,

socioeconomic and cultural life in Jerusalem were provided.¹⁴

Walling Off Jerusalem

The implicit and imperative assumption that no party would jeopardise the validity of the Oslo process by placing facts on the ground was invalidated with Israel's actions in Jerusalem. Following Oslo, Israel has illegally expanded settlements around Jerusalem, has reneged on its pledge to keep Palestinian institutions open,¹⁵ has imprisoned and expelled Palestinian parliamentarians, and has refused 94 percent of permits for Palestinians to build houses in the city and its vicinity.¹⁶ It has also concretized its stronghold of Jerusalem by extending parts of the wall, illegally built in the occupied territory, to ensure that access to Palestinians is meticulously and solely controlled through a network of checkpoints deployed around the city. All this has been done in complete contravention of international law and under the watchful eye of the international community.

Israel's urban policy in Jerusalem has been geared at maintaining a 73.5 percent Jewish majority¹⁷ and has employed, for that purpose, a well-oiled mechanism of biased urban planning, home demolitions, expropriation of privately-owned Palestinian land, and a mass revocation of Palestinian residency permits. The Israeli pledge to safeguard Palestinian freedom of worship under Oslo has proven to be disingenuous, with Israel overseeing a comprehensive permit regime to control the number of Palestinian Christian and Muslim worshippers who are allowed access to the city's holy sites.¹⁸

Saving the Vision of a Shared City

The political implications of Israel's actions in Jerusalem are grave. By actively altering the character of Palestine's hoped-for capital, Israel is effectively perpetuating the Israeli-Palestinian conflict, jeopardising the concept of a Two-State solution and increasingly limiting its viability. It is also fuelling Palestinian scepticism towards

Israel's sincerity in terms of negotiating a peaceful and just resolution to the conflict.

The Oslo process was supposed to be a transitional process that would begin with agreements on day-to-day issues, such as security cooperation, and would culminate in the resolution of the more challenging final-status issues. Throughout this process, the expectation was that the *status-quo* on the core issues such as Jerusalem would not change; an expectation which has proven to be futile.

There can be no political resolution to the conflict without the fulfilment of rightful Palestinian claims over Jerusalem, which will ultimately transform the city into a shared city of two states. The fate of Palestinian statehood and peace is intertwined with that of Jerusalem. It is therefore imperative that the international community step up its efforts to safeguard the prospects of peace, by transforming its rhetorical condemnation of Israel's colonisation practices in Jerusalem into meaningful action.

4. The Palestinian Prisoners: Their Freedom is Indispensable for Peace and Security

"What did they do wrong?" This question alone symbolises a presumption of culpability that is detrimental to efforts aimed at securing the prisoners' release and upholding their rights under international humanitarian and human rights law. In reality, this question disregards a series of important factors. Israel, the occupying power, has virtually criminalised all forms of political engagement. 750,000 Palestinians have been imprisoned since 1967. Are they all guilty? Israeli military courts have a conviction rate of over 95 percent for cases presented to them and no impartial mechanism for investigating violations by its own soldiers or settlers.

The Original Sin

Peace agreements usually lead to the release of all political prisoners. Some liberation movements have even conditioned the launch

of formal negotiations to such releases, as did the ANC in South Africa. The prisoner issue is always a central question and is dealt with as such during peace negotiations. In the Oslo agreements, following their signature and until recently, this central question was dealt with as a secondary issue.¹⁹

While the phased release of the pre-Oslo prisoners is underway, the fact that they spent two more decades in Israeli jails, after the signing of a peace agreement, is unthinkable. The prisoner issue should have been comprehensively and permanently addressed by the Oslo agreements. By accepting to stagger the release of prisoners, taking into account the condemnations issued by Israeli military tribunals,²⁰ the Oslo agreements paved the way for legitimising the Israeli “security” approach²¹ rather than a political or a peace approach. By considering releases as confidence building measures, rather than an obligation of the Occupying State, it was left to the Israeli side to decide exactly who and how many to release. The lack of an enforcement mechanism left the Palestinian prisoners hostage to Israeli political calculations and, in several cases, Israel did not go through with the phased releases, or released people imprisoned for criminal offences rather than political action.²²

From Releases to Mass Detention

At the end of the First *Intifada* (uprising), there were 12,000 prisoners in Israeli jails. During the interim period, several thousand were released. However, with the outbreak of the Second *Intifada*, the number of prisoners reached similar levels as those prior to the agreements. Today, there are 5,000 Palestinian prisoners. Marwan Barghout is the most renowned Palestinian political prisoner, sometimes hailed by Palestinians as “their Palestinian Mandela.” He was the first parliamentarian to be arrested in 2002. Many other leaders would follow, including Ahmad Saadat, Secretary General of the Popular Front for the Liberation of Palestine.²³ The leaders, while in detention, elaborated the prisoners’ document for national reconciliation

in 2006, which remains a central and historic document for unity and peace endorsed by all factions.

It All Starts With the Prisoners, It All Ends With Freedom

Many Israeli actions and laws regarding the prisoners are in contravention of international law: Administrative detention, whereby the defendant is imprisoned without charge for six months, renewable indefinitely, is, in fact, arbitrary detention. The use of torture and ill-treatment, the mass arrest of children, the transfer of prisoners outside of the Occupied Territories, the deprivation of, or severe restrictions on, visitation rights, and the failure to ensure due process and a fair trial,²⁴ all stand as proof that Israeli courts are often instruments to sustain occupation, not to fulfil justice.

The Palestinian prisoners are a political file, and their release is a necessary step towards peace. Until their release is achieved, it is the responsibility of the International Community to ensure that the Occupying power upholds international humanitarian and human rights law. For a long time, Israel was able to impose a security approach on this file, both in its dealings with the Palestinians and to avoid any international involvement. The exchange deal and the hunger strikes, as well as a new Palestinian attitude – making this issue a top priority – allowed a political, legal, and humanitarian approach to prevail. In 2011, Israel released 1,000 Palestinian prisoners in exchange for the Israeli soldier Gilad Shalit, who was taken hostage by the Hamas movement in 2006. It is time to release all other political prisoners for the cause of freedom, human rights and peace.

5. Oslo: Beyond the Agreement, the Need for a New Approach

Oslo was not supposed to be a destination, but the first step on a new path. It proposed a process that was supposed to have led to Israel’s withdrawal to the 1967 borders. While it had flaws, even when the agreement provided

commitments and timetables, they were not upheld. Oslo's failure, therefore, is not simply the result of a faulty agreement, but also of a lack of international will to ensure the implementation of obligations under the peace process and international law. Today none of the issues have been resolved, the Israeli positions are even more uncompromising, the situation on the ground has deteriorated heavily, and negotiations, as a tool to end occupation and the conflict, have lost a lot of their credibility.

So What Can We Learn From Oslo?

- Leaving an occupying power and an occupied people to “sort out their differences” allows the occupying power to dictate its will on the ground. International involvement is therefore necessary.
 - Any international involvement must aim at rectifying the asymmetry of power, push both sides towards an agreement and ensure its enforcement. This international involvement must be based on clear terms of reference and must be legitimate, i.e. aim at upholding international law and universal values.
 - The Palestinian people have been fighting for a century for their rights: The right to self-determination, freedom and dignity; the Right of Return for the refugees; the right to equality. The PLO accepted the Two-State solution hoping it would guarantee these rights. Any solution that does not ensure the rights of all Palestinians, including those in the 1948 territory, i.e. Israel, will not, and should not, be accepted by any Palestinian. This rights-based approach is the essence of the Palestinian struggle: it transcends debates over the One-State or Two-State solution.
 - Any Palestinian strategy must rely on and empower the Palestinian people, including in the Diaspora, in order to achieve the legitimate aspirations of our people, reach our full potential as a nation, achieve unity and guarantee democracy
- The Two-State solution on 1967 borders is a plan developed by the international community, not a Palestinian claim. It encompasses an historic compromise whereby Israel is recognized on 78 percent of historic Palestine. The Two-State solution means the establishment of a Palestinian state on 1967 borders, including East Jerusalem. The international community should therefore defend its own plan by taking all necessary measures to consolidate the 1967 lines as the borders, including decisive measures against settlers and settlement activity. The vote at the UN that granted Palestine Non-Member Observer State status should be translated on the ground, and the international community should support Palestine in employing the tools made available to it by its newly acquired status.
 - Accountability is key to upholding international law. It is time not only to take measures against the settlement enterprise, but also against the State responsible for such action, until such time as it ends its violations of international law. Colonisation and peace are not compatible. A government that chooses colonisation cannot pretend it wishes to reach peace.
 - If Palestinians are asked not to resort to armed resistance, while refusing to support their peaceful resistance or use of international forums, and if serious pressure on Israel to end the occupation is refused, this, in fact, helps to sustain the occupation. Third parties have responsibilities and by honouring these responsibilities they enhance their credibility and the chances of the peace process to succeed.

¹ Interim Agreement, Article 31.7.

² Declaration of Principles, Article 1.

³ From approximately 198,000 settlers to more than 544,000 today. Figures taken from the Palestine Liberation Organization Negotiations Affairs Department.

⁴ The International Court of Justice's Advisory Opinion of 2004 considered the wall and its associated regime to be creating permanent facts on the ground which would amount to "de facto annexation," which is illegal under international law.

⁵ The Rome Statute of the International Criminal Court in Article referring to war crimes, includes: "The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory."

⁶ Israel only agreed on the Eastern Aquifer as part of the deal for additional extraction by the Palestinians, thus keeping sovereignty over the other parts.

⁷ Surface water is mainly provided by the Jordan river.

⁸ This figure is fixed at 80 MCM per year.

⁹ JWC's mandate includes granting permits for drilling and rehabilitation of wells, increases of extraction from wells, protection of water resources and water and sewage systems, setting extraction quotas, resolution of water and sewage disputes and cooperation in the field of water, including exchange of information.

¹⁰ Out of all projects presented by Israel, only one wastewater project has been rejected by the Palestinian side (the proposed Wadi Nar/Kidron Valley treatment plant), which Israel has proceeded with unilaterally anyway.

¹¹ Jan Selby, J. 2013. "Cooperation, domination and colonisation: The Israeli-Palestinian Joint Water Committee," *Water Alternatives* 6(1): pp. 1-24.

¹² Notably, the 1997 UN Convention on Non-Navigational Uses of International Water Courses.

¹³ UN General Assembly Resolution 1803, December 14, 1962.

¹⁴ Assurances were provided in the form of a letter from Foreign Minister Shimon Peres to Norwegian Foreign Minister Holst, October 11, 1993.

¹⁵ A number of Palestinian institutions were closed in 2001, including Orient House, which was the official PLO Headquarters in East Jerusalem during negotiations ahead of the Oslo Agreement and afterwards. It has still not been reopened, despite a further commitment from Israel under the "Roadmap for Peace" of 2003.

¹⁶ Office for the Coordination of Humanitarian Affairs (OCHA)

¹⁷ "Inter-ministerial Committee to Examine the Rate of Development for Jerusalem," *Recommendation for a Coordinated and Consolidated Rate of Development* (in Hebrew), Jerusalem, August, 1973, p.3. The committee recommended that "a demographic balance of Jews and Arabs must be maintained as it was at the end of 1972" – which was adopted by the Israeli government. For percentage calculations see: See Binyamin Hyman and Gadi Izreich, *Population of Jerusalem and Region: Growth and Forecasts* (in Hebrew), Jerusalem Municipality, Municipal Planning Department, Planning Policy Section, July 1977, p.5.

¹⁸ According to the Inter-Church Center, a mere ten percent of Palestinian Christians living in the West Bank and Gaza were allowed permits to attend this year's Easter festivities in Jerusalem.

¹⁹ "Reaching the 'No-Peace' Agreement: The role of Palestinian prisoner releases in permanent status negotiations," published on Addameer.info, December 2009.

²⁰ Annex VII(2)(c) of the Israeli-Palestinian Interim agreement on the West Bank and Gaza Strip (Oslo II)

²¹ It is also important to note that the Palestinian side has agreed to security coordination with the Occupying power. Such security coordination should serve the interests of both sides, and serve to uphold a ceasefire which must comprise a no incursion, no arrest policy. This has never been the case, leading to severe internal criticism against such security coordination, which ensures the security of the Occupying power while it pursues its occupation and attacks against the occupied people.

²² In the Wye River Memorandum of 1998, Israel was supposed to release 750 Palestinian prisoners. It only released 250, with only 100 of them being political prisoners. In 1999, in the Sharm el-Sheikh Memorandum, a provision finally stipulated the release of the pre-Oslo prisoners. It was never implemented.

²³ In 2007, the number of imprisoned Members of Parliament reached 48, i.e. around 1/3 of the Palestinian Legislative Council.

Today, 13 Members of the PLC remain in Israeli jails.

²⁴ See especially reports by Addameer.info and the Public Committee Against Torture.

The Morning After by Edward Said*

** The following article by the Palestinian-American intellectual and academic, Edward Said (1935-2003), originally appeared in the October 1993 issue of the London Review of Books. It is reprinted here with the kind permission of the Said family and Wylie Agency.*

Now that some of the euphoria has lifted, it is possible to re-examine the Israeli-PLO agreement with the required common sense. What emerges from such scrutiny is a deal that is more flawed and, for most of the Palestinian people, more unfavorably weighted than many had first supposed. The fashion-show vulgarities of the White House ceremony, the degrading spectacle of Yasser Arafat thanking everyone for the suspension of most of his people's rights, and the fatuous solemnity of Bill Clinton's performance, like a 20th-century Roman emperor shepherding two vassal kings through rituals of reconciliation and obeisance: all these only temporarily obscure the truly astonishing proportions of the Palestinian capitulation.

So first of all let us call the agreement by its real name: an instrument of Palestinian surrender, a Palestinian Versailles. What makes it worse is that for at least the past fifteen years the PLO could have negotiated a better arrangement than this modified Allon Plan, one not requiring so many unilateral concessions to Israel. For reasons best known to the leadership it refused all previous overtures. To take one example of which I have personal knowledge: in the late Seventies, Secretary of State Cyrus Vance asked me to persuade Arafat to accept Resolution 242 with a reservation (accepted by the US) to be

added by the PLO which would insist on the national rights of the Palestinian people as well as Palestinian self-determination. Vance said that the US would immediately recognize the PLO and inaugurate negotiations between it and Israel. Arafat categorically turned the offer down, as he did similar offers. Then the Gulf War occurred, and because of the disastrous positions it took then, the PLO lost even more ground. The gains of the intifada were squandered, and today advocates of the new document say: 'We had no alternative.' The correct way of phrasing that is: 'We had no alternative because we either lost or threw away a lot of others, leaving us only this one.'

In order to advance towards Palestinian self-determination – which has a meaning only if freedom, sovereignty and equality, rather than perpetual subservience to Israel, are its goal – we need an honest acknowledgment of where we are, now that the interim agreement is about to be negotiated. What is particularly mystifying is how so many Palestinian leaders and their intellectuals can persist in speaking of the agreement as a 'victory'. Nabil Shaath has called it one of 'complete parity' between Israelis and Palestinians. The fact is that Israel has conceded nothing, as former Secretary Of State James Baker said in a TV interview, except, blandly, the existence of 'the PLO as the representative of the Palestinian people'. Or as the Israeli 'dove' Amos Oz reportedly put it in the course of a BBC interview, 'this is the second biggest victory in the history of Zionism.'

By contrast Arafat's recognition of Israel's right to exist carries with it a whole series of

renunciations: of the PLO Charter; of violence and terrorism; of all relevant UN resolutions, except 242 and 338, which do not have one word in them about the Palestinians, their rights or aspirations. By implication, the PLO set aside numerous other UN resolutions (which, with Israel and the US, it is now apparently undertaking to modify or rescind) that, since 1948, have given Palestinians refugee rights, including either compensation or repatriation. The Palestinians had won numerous international resolutions – passed by, among others, the EC, the non-aligned movement, the Islamic Conference and the Arab League, as well as the UN – which disallowed or censured Israeli settlements, annexations and crimes against the people under occupation.

It would therefore seem that the PLO has ended the intifada, which embodied not terrorism or violence but the Palestinian right to resist, even though Israel remains in occupation of the West Bank and Gaza. The primary consideration in the document is for Israel's security, with none for the Palestinians' security from Israel's incursions. In his 13 September press conference Rabin was straightforward about Israel's continuing control over sovereignty; in addition, he said, Israel would hold the River Jordan, the boundaries with Egypt and Jordan, the sea, the land between Gaza and Jericho, Jerusalem, the settlements and the roads. There is little in the document to suggest that Israel will give up its violence against Palestinians or, as Iraq was required to do after it withdrew from Kuwait, compensate those who have been the victims of its policies over the past 45 years.

Neither Arafat nor any of his Palestinian partners who met the Israelis in Oslo has ever seen an Israeli settlement. There are now over two hundred of them, principally on hills, promontories and strategic points throughout the West Bank and Gaza. Many will probably shrivel and die, but the largest are designed for permanence. An independent system of roads connects them to Israel, and creates a

disabling discontinuity between the main centers of Palestinian population. The actual land taken by these settlements, plus the land designated for expropriation, amounts – it is guessed – to over 55 per cent of the total land area of the Occupied Territories. Greater Jerusalem alone, annexed by Israel, comprises a huge tranche of virtually stolen land, at least 25 per cent of the total amount. In Gaza settlements in the north (three), the middle (two) and the south, along the coast from the Egyptian border past Khan Yunis (12), constitute at least 30 percent of the Strip. In addition, Israel has tapped into every aquifer on the West Bank, and now uses about 80 per cent of the water there for the settlements and for Israel proper. (There are probably similar water installations in Israel's Lebanese 'security zone'.) So the domination (if not the outright theft) of land and water resources is either overlooked, in the case of water, or, in the case of land, postponed by the Oslo accord.

What makes matters worse is that all the information on settlements, land and water is held by Israel, which hasn't shared most of these data with the Palestinians, any more than it has shared the revenues raised by the inordinately high taxes it has imposed on them for 26 years. All sorts of technical committees (in which non-resident Palestinians have participated) have been set up by the PLO in the territories to consider such questions, but there is little evidence that committee findings (if any) were made use of by the Palestinian side in Oslo. So the impression of a huge discrepancy between what Israel got and what the Palestinians conceded or overlooked remains unrectified.

I doubt that there was a single Palestinian who watched the White House ceremony who did not also feel that a century of sacrifice, dispossession and heroic struggle had finally come to naught. Indeed, what was most troubling is that Rabin in effect gave the Palestinian speech while Arafat pronounced words that had all the flair of a rental agreement. So far from being seen as the victims of Zionism, the Palestinians were characterized

before the world as its now repentant assailants: as if the thousands killed by Israel's bombing of refugee camps, hospitals and schools in Lebanon; Israel's expulsion of 800,000 people in 1948 (whose descendants now number about three million, many of them stateless); the conquest of their land and property; the destruction of over four hundred Palestinian villages; the invasion of Lebanon; the ravages of 26 years of brutal military Occupation – it was as if these sufferings had been reduced to the status of terrorism and violence, to be renounced retrospectively or passed over in silence. Israel has always described Palestinian resistance as terrorism and violence, so even in the matter of wording it received a moral and historical gift.

In return for exactly what? Israel's recognition of the PLO – undoubtedly a significant step forward. Beyond that, by accepting that questions of land and sovereignty are being postponed till 'final Status negotiations', the Palestinians have in effect discounted their unilateral and internationally acknowledged claim to the West Bank and Gaza: these have now become 'disputed territories'. Thus with Palestinian assistance Israel has been awarded at least an equal claim to them. The Israeli calculation seems to be that by agreeing to police Gaza – a job which Begin tried to give Sadat fifteen years ago – the PLO would soon fall foul of local competitors, of whom Hamas is only one. Moreover, rather than becoming stronger during the interim period, the Palestinians may grow weaker, come more under the Israeli thumb, and therefore be less able to dispute the Israeli claim when the last set of negotiations begins. But on the matter of how, by what specific mechanism, to get from an interim status to a later one, the document is purposefully silent. Does this mean, ominously, that the interim stage may be the final one?

Israeli commentators have been suggesting that within, say, six months the PLO and Rabin's government will negotiate a new agreement further postponing elections, and thereby

allowing the PLO to continue to rule. It is worth mentioning that at least twice during the past summer Arafat said that his experience of government consisted of the ten years during which he 'controlled' Lebanon, hardly a comfort to the many Lebanese and Palestinians who recollect that sorry period. Nor is there at present any concrete way for elections to be held should they even be scheduled. The imposition of rule from above, plus the long legacy of the occupation, have not contributed much to the growth of democratic, grass-roots institutions. There are unconfirmed reports in the Arabic press indicating that the PLO has already appointed ministers from its own inner circle in Tunis, and deputy ministers from among trusted residents of the West Bank and Gaza. Will there ever be truly representative institutions? One cannot be very sanguine, given Arafat's absolute refusal to share or delegate power, to say nothing of the financial assets he alone knows about and controls.

In both internal security and development, Israel and the PLO are now aligned with each Other. PLO members or consultants have been meeting with Mossad officials since last October to discuss security problems, including Arafat's own security. And this at the time of the worst Israeli repression of Palestinians under military occupation. The thinking behind the collaboration is that it will deter any Palestinian from demonstrating against the occupation, which will not withdraw, but merely redeploy. Besides, Israeli settlers will remain living, as they always have, under a different jurisdiction. The PLO will thus become Israel's enforcer, an unhappy prospect for most Palestinians. Interestingly, the ANC has consistently refused to supply the South African government with police officials until after power is shared, precisely in order to avoid appearing as the white government's enforcer. It was reported from Amman a few days ago that 170 members of the Palestine Liberation Army, now being trained in Jordan for police work in Gaza, have refused to co-operate for precisely that reason. With

about 14,000 Palestinian prisoners in Israeli jails – some of whom Israel says it may release – there is an inherent contradiction, not to say incoherence, to the new security arrangements. Will more room be made in them for Palestinian security?

The one subject on which most Palestinians agree is development, which is being described in the most naive terms imaginable. The world community will be expected to give the nearly autonomous areas large-scale financial support; the Palestinian diaspora is expected, indeed preparing, to do the same. Yet all development for Palestine must be funneled through the joint Palestinian-Israeli Economic Co-operation Committee, even though, according to the document, ‘both sides will co-operate jointly and unilaterally with regional and international parties to support these aims.’ Israel is the dominant economic and political power in the region – and its power is of course enhanced by its alliance with the US. Over 80 per cent of the West Bank and Gaza economy is dependent on Israel, which is likely to control Palestinian exports, manufacturing and labor for the foreseeable future. Aside from the small entrepreneurial and middle class, the vast majority of Palestinians are impoverished and landless, subject to the vagaries of the Israeli manufacturing and commercial community which employs Palestinians as cheap labor. Most Palestinians, economically speaking, will almost certainly remain as they are, although now they are expected to work in private-sector, partly Palestinian-controlled service industries, including resorts, small assembly-plants, farms and the like.

A recent study by the Israeli journalist Asher Davidi quotes Dov Lautman, president of the Israeli Manufacturers Association: ‘It’s not important whether there will be a Palestinian state, autonomy or a Palestinian-Jordanian state. The economic borders between Israel and the territories must remain open.’ With its well-developed institutions, close relations with the

US and aggressive economy, Israel will in effect incorporate the territories economically, keeping them in a state of permanent dependency. Then Israel will turn to the wider Arab world, using the political benefits of the Palestinian agreement as a Springboard to break into Arab markets, which it will also exploit and is likely to dominate.

Framing all this is the US, the only global power, whose idea of the New World Order is based on economic domination by a few giant corporations and pauperization if necessary for many of the lesser peoples (even those in metropolitan countries). Economic aid for Palestine is being supervised and controlled by the US, bypassing the UN, some of whose agencies like UNRWA and UNDP are far better placed to administer it. Take Nicaragua and Vietnam. Both are former enemies of the US; Vietnam actually defeated the US but is now economically in need of it. A boycott against Vietnam continues and the history books are being written in such a way as to show how the Vietnamese sinned against and ‘mistreated’ the US for the latter’s idealistic gesture of having invaded, bombed and devastated their country. Nicaragua’s Sandinista government was attacked by the US-financed Contra movement; the country’s harbors were mined, its people ravaged by famine, boycotts and every conceivable type of subversion. After the 1991 elections, which brought a US-supported candidate, Mrs. Chamorro, to power, the US promised many millions of dollars in aid, of which only 30 million have actually materialized. In mid-September all aid was cut off. There is now famine and civil war in Nicaragua. No less unfortunate have been the fates of El Salvador and Haiti. To throw oneself, as Arafat has done, on the tender mercies of the US is almost certainly to suffer the fate the US has meted out to rebellious or ‘terrorist’ peoples it has had to deal with in the Third World *after* they have promised not to resist the US any more.

Hand in hand with the economic and strategic control of Third World countries that happen to be close to, or possess, resources

like oil that are necessary to the US, is the media system, whose reach and control over thought is truly astounding. For at least twenty years, Yasser Arafat was taken to be the most unattractive and morally repellent man on earth. Whenever he appeared in the media, or was discussed by them, he was presented as if he had only one thought in his head: killing Jews, especially innocent women and children. Within a matter of days, the 'independent media' had totally rehabilitated Arafat. He was now an accepted, even lovable figure whose courage and realism had bestowed on Israel its rightful due. He had repented, he had become a 'friend', and he and his people were now on 'our' side. Anyone who opposed or criticized what he had done was either a fundamentalist like the Likud settlers or a terrorist like the members of Hamas. It became nearly impossible to say anything except that the Israeli-Palestinian agreement – mostly unread or unexamined, and in any case unclear, lacking dozens of crucial details – was the first step towards Palestinian independence.

So far as the truly independent critic or analyst is concerned, the problem is how he is to free himself from the ideological system which both the agreement and the media now serve. What is needed are memory and skepticism (if not outright suspicion). Even if it is patently obvious that Palestinian freedom in any real sense has not been achieved, and is clearly designed not to be, beyond the meager limits imposed by Israel and the US, the famous handshake broadcast all over the world is supposed not only to symbolize a great moment of success but to blot out past as well as present realities.

Given a modicum of honesty the Palestinians should be capable of seeing that the large majority of people the PLO is supposed to represent will not really be served by the agreement, except cosmetically. True, residents of the West Bank and Gaza are rightly glad to see that some Israeli troops will withdraw, and that large amounts of money might start to come in. But it is rank dishonesty not to be alert to what the agreement

entails in terms of further occupation, economic control and profound insecurity. Then there is the mammoth problem of the Palestinians who live in Jordan, to say nothing of the thousands of stateless refugees in Lebanon and Syria. 'Friendly' Arab states have always had one law for Palestinians, one for natives. These double standards have already intensified, as witnessed by the appalling scenes of delay and harassment that have occurred on the Allenby Bridge since the agreement was announced.

So what is to be done, if crying over spilt milk is useless? The first thing is to spell out, not only the virtues of being recognized by Israel and accepted at the White House, but also what the truly major disabilities are. Pessimism of the intellect first, then optimism of the will. You can't improve on a bad situation that is largely due to the technical incompetence of the PLO – which negotiated in English, a language that neither Arafat nor his emissary in Oslo knows, with no legal adviser – until on the technical level at least you involve people who can think for themselves and are not mere instruments of what is by now a single Palestinian authority. I find it extraordinarily disheartening that so many Arab and Palestinian intellectuals, who a week earlier had been moaning and groaning about Arafat's dictatorial ways, his single-minded control over the money, the circle of sycophants and courtiers that have surrounded him in Tunis of late, the absence of accountability and reflection, at least since the Gulf War, should suddenly make a 180-degree switch and start applauding his tactical genius, and his latest victory. The march towards self-determination can only be embarked on by a people with democratic aspirations and goals. Otherwise it is not worth the effort.

After all the hoopla celebrating 'the first step towards a Palestinian state', we should remind ourselves that much more important than having a state is the kind of state it is. The history of the post-colonial world is disfigured by one-party tyrannies, rapacious oligarchies, social dislocation caused by Western 'investments',

and large-scale pauperization brought about by famine, civil war or outright robbery. Any more than religious fundamentalism, mere nationalism is not, and can never be, 'the answer' to the problems of new secular societies. Alas one can already see in Palestine's potential statehood the lineaments of a marriage between the chaos of Lebanon and the tyranny of Iraq.

If this isn't to happen, a number of quite specific issues need to be addressed. One is the diaspora Palestinians, who originally brought Arafat and the PLO to power, kept them there, and are now relegated to permanent exile or refugee status. Since they comprise at least half of the total Palestinian population their needs and aspirations are not negligible. A small segment of the exile community is represented by the various political organizations 'hosted' by Syria. A significant number of independents (some of whom, like Shafik al-Hout and Mahmoud Darwish, resigned in protest from the PLO) still have an important role to play, not simply by applauding or condemning from the sidelines, but by advocating specific alterations in the PLO's structure, trying to change the triumphalist ambience of the moment into something more appropriate, mobilizing support and building an organization from within the various Palestinian communities all over the world to continue the march towards self-determination. These communities have been singularly disaffected, leaderless and indifferent since the Madrid process began.

One of the first tasks is a Palestinian census, which has to be regarded not just as a bureaucratic exercise but as the enfranchisement of Palestinians wherever they are. Israel, the US and the Arab states – all of them – have always opposed a census: it would give the Palestinians too high a profile in countries where they are supposed to be invisible, and before the Gulf War, it would have made it clear to various Gulf governments how dependent they were on an inappropriately large, usually exploited

'guest' community. Above all, opposition to the census stemmed from the realization that, were Palestinians to be counted all together, despite dispersion and dispossession, they would by that very exercise come close to constituting a nation rather than a mere collection of people. Now more than ever the process of holding a census and perhaps, later, world-wide elections – should be a leading item on the agenda for Palestinians everywhere. It would constitute an act of historical and political self-realization outside the limitations imposed by the absence of sovereignty. And it would give body to the universal need for democratic participation, now ostensibly curtailed by Israel and the PLO in a premature alliance.

Certainly a census would once again raise the question of return for those Palestinians who are not from the West Bank and Gaza. Although this issue has been compressed into the general 'refugee' formula deferred until the final status talks some time in the future, it needs to be brought up now. The Lebanese government, for instance, has been publicly heating up the rhetoric against citizenship and naturalization for the 350-400,000 Palestinians in Lebanon, most of whom are stateless, poor, permanently stalled. A similar situation obtains in Jordan and Egypt. These people, who have paid the heaviest price of all Palestinians, can neither be left to rot nor dumped somewhere else against their will. Israel is able to offer the right of return to every Jew in the world: individual Jews can become Israeli citizens and live in Israel at any time. This extraordinary inequity, intolerable to all Palestinians for almost half a century, has to be rectified. It is unthinkable that all the 1948 refugees would either want or be able to return to so small a place as a Palestinian state: on the other hand, it is unacceptable for them all to be told to resettle elsewhere, or drop any ideas they might have about repatriation and compensation.

One of the things the PLO and independent Palestinians should therefore do is raise a

question not addressed by the Oslo Accords, thereby pre-empting the final status talks – namely, ask for reparations for Palestinians who have been the victims of this dreadful conflict. Although it is the Israeli Government's wish (expressed quite forcibly by Rabin at his Washington news conference) that the PLO should close 'its so-called embassies', these offices should be kept open selectively so that claims for repatriation or compensation can be pressed.

In sum, we need to move up from the state of supine abjectness in which the Oslo Accords were negotiated ('we will accept anything so long as you recognize us') into one that enables us to prosecute parallel agreements with Israel and the Arabs concerning Palestinian national, as opposed to municipal, aspirations. But this does not exclude resistance against the Israeli occupation, which continues indefinitely. So long as occupation and settlements exist, whether legitimized or not by the PLO, Palestinians and others must speak against them. One of the issues not raised, either by the Oslo Accords, the exchange of PLO-Israeli letters or the Washington speeches, is whether the violence and terrorism renounced by the PLO includes non-violent resistance, civil disobedience etc. These are the inalienable right of any people denied full sovereignty and independence, and must be supported.

Like so many unpopular and undemocratic Arab governments, the PLO has already begun to appropriate authority for itself by calling its opponents 'terrorists' and 'fundamentalists'. This is demagoguery. Hamas and Islamic Jihad are opposed to the Oslo agreement but they have said several times that they will not use violence against other Palestinians. Besides, their combined sway amounts to fewer than a third of the citizens of the West Bank and Gaza. As for the Damascus-based groups, they seem to me to be either paralyzed or discredited. But this by no means exhausts the Palestinian opposition, which also includes well-known secularists,

people who are committed to a peaceful solution to the Palestinian-Israeli conflict, realists and democrats. I include myself in this group which is, I believe, far bigger than is now supposed.

Central to this opposition's thinking is the desperate need for reform within the PLO, which is now put on notice that reductive claims to 'national unity' are no longer an excuse for incompetence, corruption and autocracy. For the first time in Palestinian history such opposition cannot, except by some preposterous and disingenuous logic, be equated with treason or betrayal. Indeed our claim is that we are opposed to sectarian Palestinianism and blind loyalty to the leadership: we remain committed to the broad democratic and social principles of accountability and performance that triumphalist nationalism has always tried to annul. I believe that a broad-based opposition to the PLO's history of bungling will emerge in the diaspora, but will come to include people and parties in the Occupied Territories.

Lastly there is the confusing matter of relationships between Israelis and Palestinians who believe in self-determination for two peoples, mutually and equally. Celebrations are premature and, for far too many Israeli and non-Israeli Jews, an easy way out of the enormous disparities that remain. Our peoples are already too bound up with each other in conflict and a shared history of persecution for an American-style pow-wow to heal the wounds and open the way forward. There is still a victim and a victimizer. But there can be solidarity in struggling to end the inequities, and for Israelis in pressuring their government to end the occupation, the expropriation and the settlements. The Palestinians, after all, have very little left to give. The common battle against poverty, injustice and militarism must now be joined seriously, and without the ritual demands for psychological security for Israelis – who if they don't have it now, never will. More than anything else, this will show whether the symbolic handshake is going to be a first step towards reconciliation and real peace.

Interview I: Nabil Shaath

“Nabil, today the peace process has died”

Q: How did the Oslo Process start?

A: The peace process was actually started by the Palestinians, when we went to Algeria in 1988. We had an important conference for the Palestine Liberation Organization (PLO), and the month after, we had a particularly important meeting in Stockholm and a UN meeting in Geneva. In Geneva, the PLO accepted the requirements that the US had imposed for recognizing the PLO and negotiating with it; namely, to negotiate under the auspices of Resolution 242 and 338, to acknowledge the borders of 1967 and the right of Israel to exist in peace and to renounce and condemn terrorism. These were three matters that had held up the potential engagement of the US in the peace process for 14 years, between 1974 and 1988.

When the Palestinians started in 1974, immediately after the war of 1973, to talk about their participation in the international peace conference, the United States said: “You cannot participate in the peace conference until you recognize the three requirements.” It took 14 years to recognize these requirements, during which many battles were fought, particularly the 1982 battle – the invasion by Israel of Lebanon I mean – and the PLO’s dispersal of its forces and its leadership, outside of Lebanon. In 1988, the Palestinians took the initiative and they accepted. Yasser Arafat went to Geneva to tell the world about this development, but the United States refused to give him a visa to make his speech at the United Nations in New York. The UN took a decision to move to Geneva in order to listen to Yasser Arafat tell the world about the Palestinian peace initiative.

Q: How did the PLO get to that point?

A: I was one of those who worked very closely with Palestinian President Mahmoud Abbas, or Abu Mazen, in extensive discussions with Israelis and Jewish American and European representatives who were involved, and who we thought were able to start official negotiations. In fact, most of those we talked to in the Israeli peace camp, were violating Israeli law because I was a PLO member. We were actually strengthened in our call for negotiations by the *Intifada*, which was a major factor that gave us strength after the battle and dispersal of 1982. It was also the unique ability of Yasser Arafat to unify the PLO behind his program, which was something nobody thought possible, including at that time Founder and leader of the Popular Front for the Liberation of Palestine George Habash and Founder and leader of the Democratic Front for the Liberation of Palestine, Nayif Hawatmeh and all the left- and right-wing organizations in the PLO.

Still, nothing really happened. The dialogue with America was very low key. The Americans sent the ambassador in Tunisia, Mr. Robert Pelletreau, to talk with our ambassador in Tunisia, and there was really no attempt to take it to a higher level. That discourse was interrupted when a Palestinian militant operation was uncovered by the Israelis close to the shores of Jaffa, and the PLO didn’t make a clear denunciation of the operation.

The Americans ended the dialogue with the PLO, and the whole exercise vanished. I want to tell you this because I believe that many times we concentrate on individuals and details, and

Nabil Shaath

Nabil Shaath is a senior Palestinian leader who has held several influential positions in the Palestinian Authority (PA): Chief negotiator, cabinet minister, Palestinian international co-operation minister, planning minister for the PA, and acting prime minister of the PA. He is currently a member of the Fatah party’s Central Committee. The interviewer, Mohammad Daraghmeh, is a Palestinian journalist.

we forget the general context, and the potential which had been created and which was destroyed. Eventually that potential was created by two important international factors: First, the change in the balance of power in the whole world between 1989 and 1991, i.e. the collapse of the Soviet Union and the total end of the Soviet hegemony in Eastern Europe and central Europe, and the disintegration of the republics of the Soviet Union. Secondly, the Iraqi invasion of Kuwait and the ensuing war and the half million American soldiers who were stationed in Saudi Arabia, Bahrain, Qatar and Oman to protect oil resources in the Gulf, which considerably changed the strategic importance of the state of Israel.

Israel had previously fulfilled two very important objectives for its American ally: One, as a bulwark against communism and the Soviet Union, and two, as a strategic ally protecting the sources of oil, and the routes of oil for the United States. After the collapse of the Soviet Union and the Gulf War, there was really no need for Israel to do either of these two things. Many people tell me that the Palestinians lost two important supporters, the Soviet Union and Saddam Hussein, and I say: Yes, but Israel gained much more, it lost two important enemies who were capable of putting real pressure on Israel and the United States. As Henry Kissinger had done in 1973, the United States always worked on the peace process after major wars. Just remember all the initiatives that came after the 1956 war, after the 1973 war, after the 1982 war, the Ronald Reagan Plan, after the 1991 war, the Bush-Baker plan. In the last peace process, actually, the United States faced an uninterested Israeli government headed by Mr. Yitzhak Shamir.

Palestinians wanted the peace process, the Americans wanted the peace process, the world wanted the peace process, but Mr. Shamir didn't want the peace process; he said so, very clearly. He never accepted UN Resolution 242, nor the principle of land for peace, and therefore, the

United States simply dragged him to Madrid. They very publicly took away \$10 billion USD in loan guaranties. It was the first time that the Americans used public pressure on the Israeli government. In 1973 they used pressure on Israeli Prime Minister Golda Meir in order to pull her forces back to the center of Sinai, and to allow Egyptian President Anwar Sadat to reopen the Suez Canal, and for the real negotiation to start. However, in the case of Yitzhak Shamir there was a very public, humiliating pressure, and as a result Mr. Shamir came to Madrid but said very clearly: I will come to Madrid but I will negotiate for 10 years during which time I will fill the West Bank with settlements, and there will be nothing to discuss in 10 years. And therefore the beginning of the peace process in Madrid didn't work because the Israeli partner wasn't interested. But at the time there still was a "Peace Camp" in Israel that applied pressure, and eventually this pressure succeeded in changing the government of Israel, when Mr. Yikhasz Rabin was elected. And with Rabin's government, the beginning of the possibility of real progress started.

Unfortunately, when that happened, President George H. W. Bush's government was in trouble, as the elections were approaching very soon in America. Therefore we had to look for another partner. I was the person who looked for another partner, I visited Hans van den Broek the Foreign Minister of Holland, and Alois Mock, the Foreign Minister of Austria, and Sten Andersson, the Foreign Minister of Sweden. Look at them: They were three small European countries who had good relations with Israel and the Arab world, and two of them, actually, were Social Democrats, while Van den Broek was a conservative but was getting increasingly interested in the peace process. They all refused and said: We can't do it. Andersen had just lost the elections and Van den Broek thought it was too much for Holland. And therefore Mr. Andersen gave me a letter to the foreign minister of Norway telling him: You're the only Social Democrat left in Scandinavia, and you have a

good relationship with Mr. Rabin and Mr. Shimon Peres, and a good relationship with Israel and with the Arabs, so please, handle this. But Mr. Jens Stoltenberg, Norwegian Foreign Minister at the time, also would not do it. When PLO leader and former Prime Minister of the PA Ahmad Qurei, or Abu Alaa, came, a new foreign minister was there, Mr. Johan Jorgen Holst, and Norway accepted to proceed.

Q: Did the Americans know?

A: We informed the Americans, I went to Washington to inform US President Bill Clinton and US Secretary of State Warren Christopher about this. The Americans cannot claim that they didn't know, but they never believed that Norway could pull off what they couldn't pull off themselves. The world had changed and Israel had changed; it was no longer Shamir's Israel, it became Rabin's. That is really what finally brought about the Oslo agreement. I have to be very honest with you, I didn't see it until it had already been signed, I was in Washington conducting negotiations, I had some inkling that something was going on, but I had absolutely nothing to do with the Oslo agreement itself.

To make it very clear, Mr. Rabin sent two envoys to meet with me, Efraim Sneh to London and Yossi Sarid to Cairo. These two envoys gave me the feeling that something was happening. Rabin wanted to make sure that the negotiators in Oslo (I didn't know where they were) were really backed by Yasser Arafat, and secondly, he wanted to test with me some of the ideas to make sure that they were not defective.

Q: What did you like and dislike about the Oslo Agreement?

A: When I first looked at the Oslo agreement, I saw some interesting things. Firstly, there was the creativity of starting an interim process whereby the first process will involve the return of the PLO Leadership and the Palestine Liberation Army as the new police force in Palestine, as the first step in Gaza and Jericho, and, secondly, that the important matters, such as settlements,

refugees, borders, water were not neglected. It didn't end them; it was recognized that these are important issues that should have been discussed in the permanent settlement. I thought this was creative, it allows us to start with a simple process, will allow a process of peace building, trust building and confidence building to start, and then we will go into the more difficult matters that have been really an obstacle in any negotiation.

But I knew it depended very much on the players, on the singers not just the song, and thus on the commitment of Yasser Arafat and Rabin. I thought things would move along, but what happens if one or two of them go? Where are the guarantees? I asked Abu Mazen: For example, you say that settlements are going to be discussed in the final agreement, but what about settlement from now until we reach the permanent agreement? Are they going to be stopped? And he said: Yes. I said: Show me! And he showed me the assurance, you have the American assurance in the Oslo agreement: That none of the parties should do anything on the ground that will prejudice the outcome of the permanent settlement. Abu Mazen said that we spent a long time on this, and that this means that Israel cannot do anything regarding settlements or in Jerusalem. Fine, I said, what happens if they do not respect this? Do you have any arbitration agreement? He said: Yes, we have it, but when I looked at the arbitration agreement, it basically left arbitration to the two parties, which means that the stronger party will do what he wants, and when you tell him you are violating the rules, and when he says no, you tell him: Lets go to the arbitration to reread the agreement. That was really the first basic problem that I noted. Then he told me: In Jerusalem we were clear, we thought this was not enough, that Mr. Peres writes a letter to Norwegian Foreign Minister Mr. Holst that will protect the Palestinian Islamic and Christian holy places, and all cultural institutions and other institutions that are necessary for the people of Jerusalem.

Q: What about the refugees?

A: Abu Mazen showed me the letter, I said: Okay, fine, how about refugees? He said: We will handle refugees. How? He said: By insisting that we divide refugees into two parts, the 750,000 of 1967, who are called displaced persons. All of these people should return within the interim period, so at least a major part of the refugees will come back during the interim period, that will give us a signal, but we will not give up on the refugee problem. That was the agreement with the Israelis, and I was the head of the Palestinian delegation to negotiate the return of the 1967 refugees. The other members were Shimon Peres, Jordanian Minister of Foreign Affairs Abdelilah Al-Khatib and Egyptian Minister of Foreign Affairs Amr Moussa.

None of these meetings made any progress. We were not able to achieve anything. When I confronted Yossi Beilin in Taba in 2001, when we talked about the refugee issue, he said: We will negotiate every step as we go along, and I answered: Yes Yossi, I am sorry, but when you delay anything we don't get anything, either you agree now on the numbers and the modality and so on, or we get nothing from you. That didn't mean we didn't get any Palestinian refugees coming back to the West Bank and Gaza after Oslo. No, we got 250,000, and that in my mind is the major achievement of Oslo, that is the return of 250,000 Palestinian refugees and an end to deportation. The Israelis were simply deporting the Palestinians for years in a large numbers, and not allowing them to come back if they spent three years without renewing their residency – an attempt to transfer Palestinians totally by illegal means. How was the reversal carried out? Two issues, the first one is implementing the agreement on the return of all PLO personnel, both military and civilian. Secondly, allowing the Palestinians visitors to come, but after they come, they apply for residency, and it takes a long time. The result was: We were able to return 250,000 Palestinians, but it was not an implementation of the agreement to return the 1967 refugees. To me, the importance in that

agreement was the residency, that Oslo didn't neglect the issue of refugees, and the issue of Jerusalem, and the issue of settlements, that they were all considered, and there were solutions. But Israel never implemented any of those solutions and the USA never intervened.

If you go to the letter of assurances you see that the USA will oppose any expansion of settlements because it's an obstacle to peace. The Americans would punish us if we go to the United Nations, which has nothing to do with the Oslo agreement or with the assurances, but they will not punish Israel for violating their assurances and the commitments that Israel has given to the Americans, and therefore to end with this important history, because many people just forget, I was there, I'm not really talking about a book I've read, or an interview I've noticed.

Q: How did things go when you returned?

A: From the moment we entered Gaza it looked like, my God, peace has come. We were doing things fast, we were building trust. Chief of General Staff of the IDF Amnon Lipkin-Shahak, was a man I really loved, and I wept when he died. I had a meeting with him just a week before his death in his home. With Amnon Shahak, and with the Rabin-Arafat relationship growing warm and friendly, things were moving.

Amnon Shahak called me and said: Nabil, I have the following list of people who approach the borders saying that they are PLO officers of Fatah, and they don't have any passports, and they have only the Fatah cards, which is not recognized in the agreement. He sent me the cards by fax, and I answered, and he immediately allowed them in. They withdrew from Gaza and Jericho, and eventually in the agreement signed in 1995 in Washington, they withdrew from city after city in the West Bank. We were building our institutions, we had elections in 1996, we were making new laws and we were developing.

I signed agreements over free trade with the USA and Canada and with the European

Union where we were getting commitments for \$2 billion in October first, only two weeks after we signed the Oslo agreement; we were getting children from the *kibbutzim* around Gaza to spend the weekend in refugee camps with children of Gaza, and Gazan children to go to Israel to spend the weekend there. Really, something was happening.

Q: Where is Oslo now?

Of course, the continuance of Oslo died when two things happened. First, the murder of Yitzhak Rabin. When I told Arafat about this, he fell from his chair and said: Nabil, today the peace process has died.

This relationship had developed. I was standing in the club near the White House after Rabin and Arafat signed agreements in October, 1995, just two weeks before his murder. Arafat and Rabin were sitting, we all were standing, and Rabin said: I have come to believe that without an independent Palestinian state, side by side with Israel, we cannot make peace in the future.

I have seen commitments made, which didn't affect Palestinians only, but also affected Israelis. Israel had its biggest economic boom in its history in 1994 and 1995. They built their hi-tech industry, they had recognitions of Israel after they signed the Oslo agreement. Peace can work when you have the right leadership in Israel and Palestine, when you have the right commitment by the United States, when you have the international environment that is supportive for such a thing.

Things started to go back, Rabin was murdered, but the government of Netanyahu murdered the whole Peace Process. This is the second factor.

Netanyahu committed in his campaign for the elections against Peres that: If I win, I will destroy the implementation of the Oslo agreement. Shamir in the first place didn't commit himself to the 1967 borders or to Resolution 242.

All those factors derailed the process. The death of Rabin; the government of Netanyahu; the change in American interests, the new US president, Mr. Bill Clinton, who was interested, but had so many other interests in his hand; the immediate impact of the fall of the Soviet Union and the war in Iraq. Things were changing. However I think the most important thing was the assassination of Rabin. One of the things that worried me was the question of the unity of the West Bank and Gaza. Abu Mazen pointed two things out to me, one, the safe passage and, two, there is a commitment in Oslo to maintain the unity of the West Bank and Gaza as one united territory. The Israelis violated that, although it was a little bit easier to move from the West Bank and Gaza, but there was no real safe passage, there was no return of displaced people, there was no commitment to stop settlements, there was no commitment to maintain the Palestinian institutions, there was no commitment to maintain the unity of the West Bank and Gaza, and gradually, there was no commitment for the whole thing we call "Oslo."

Q: What about the future?

A: Today we are talking about an agreement that is not recognized by the major party, which is the occupier. Today the Israeli government doesn't recognize the Oslo agreement, and areas A, B and C. Area C is considered by many Israelis as belonging to Israel, so unfortunately all my fears were well founded.

However I don't like people who come now to criticize everything about Oslo from the scratch. I thought when Oslo started, it had many opportunities for success. The Europeans did their best, they provided us with Madrid, which started the Peace Process, and with Oslo, and with financial aid. I had negotiated association agreements with the European Union in three months and two days, and I think that is a record for the history of the European Union. We signed an agreement exactly identical to that which was signed by Israel; it took the Egyptians 14 years to sign the agreement with the European Union.

I think Europe wanted to offer help, to say: We are ready to contribute. Today, we are in a new exercise that Mr. John Kerry is leading. I am not a negotiator in this new round and I've said in a statement that nothing seriously productive and nothing new has been offered by the Israelis.

Q: Do you have any hope for the future?

A: Israel doesn't believe in Resolution 242 and in the borders of 1967. They don't believe that the West Bank is occupied, many of them declare they don't want a Palestinian State anyway, they want to continue settlement without restriction or limitation, they think Jerusalem is the unified capital of Israel, they don't want to see any refugees coming back, they want us to recognize Israel as an exclusively Jewish state when 22 percent of its population is Christian and Muslim. They want us to believe in a security doctrine in which, even after concluding a peace agreement, they will maintain their military control of the Jordan River, Jordan Valley, and of all the roads and hills. How can you make peace this way? Look, I never give up, I can see gradually the rise again of a small Peace Camp in Israel, I don't know if you saw the 600 signatures on the statement by Israeli scholars, and other important persons supporting the European Unions new restrictions on settlement goods and the increasing number who are now supporting the Arab Peace initiative.

There has to be international involvement, and there has to be commitments by international players to monitor implementation and take concrete steps if any party violates agreements. There should be no impunity for Israel, as has been the case in the past. There has to be equality when you talk about two states in the future.

Don't leave anything for the future. We have learned our lesson from the interim agreement. It's so dependent on the players, and on the international environment. Interim agreements can have a momentum forward, but a negative momentum will destroy the whole process.

Twenty Years of Oslo and the Future of the Two-State Paradigm

On the 20th anniversary of the 1993 Oslo Accord, the overwhelming consensus is that it has been a resounding failure. The continuation of the Israeli occupation and absence of a Palestinian state are typically put forward as definitive evidence that Oslo went awry somewhere between the White House handshake and Israel's latest announcement of thousands of new settlement units in the Occupied Territories. With increasing frequency, this is then mobilized to support the proposition that a Two-State settlement of the Israeli-Palestinian conflict either was a chimera from the outset or is no longer feasible.

While it is certainly true that the “peace process” has not produced the outcome most of its partisans believed or at least hoped would emerge, it is nevertheless mistaken to conclude that Oslo has failed. In practice, it has been among the most successful diplomatic agreements of the twentieth and for that matter twenty-first centuries. This becomes all the more apparent if we analyze Oslo in terms of what the agreement actually consists of, and the context in which it was produced and implemented, as opposed to projecting a wish list of wants and needs onto this fundamentally misunderstood mechanism.

The Oslo Accord, it should be recalled, was negotiated at a time in which formal Israeli-Palestinian negotiations were already underway for some two years in the framework of the 1991 Madrid Middle East Peace Conference. Rather than continue with these until they achieved either success or failure, Israel and the Palestine Liberation Organization (PLO), each for their

own reasons (and some joint considerations), consented to an alternative, secret and direct channel in Norway. The PLO did so because it was experiencing an almost existential political, financial and institutional crisis in the wake of the 1991 Gulf War, and hoped direct negotiations with Israel would once again catapult it to center stage, while Israel pursued this track because it sought to put an end to six years of Palestinian rebellion in the Occupied Territories, and hoped to use the PLO's fears of disintegration to pressure the Palestinians to abandon a number of longstanding principles, not least among them the insistence of the Madrid/Washington negotiators that any interim arrangements be predicated on a comprehensive and unconditional settlement freeze.

The resulting agreement can only be characterized as a decisive Israeli victory. Its very name, Declaration of Principles on Interim Self-Government Arrangements, more or less gives it away. Indeed, the terms occupation, self-determination, sovereignty, statehood, return, decolonization, to name but a few, are nowhere to be found in this document. Rather, it establishes a Palestinian administration in the occupied territories whose role is not to establish the infrastructure of a state or even administer these territories, but rather to rule most of their restive population.

If Oslo had any redeeming qualities, these lay in its references to various deadlines, the reference to arbitration and the reference to the implementation of United Nations Security Council Resolutions 242 and 338. Yet, the identified deadlines were merely aspirational,

Mouin Rabbani

Mouin Rabbani is a Palestinian researcher and analyst currently residing in Amman, Jordan. He is a Senior Fellow with the Institute for Palestine Studies, Co-Editor of *Jadaliyya* and Contributing Editor of *Middle East Report*.

unenforceable and almost immediately undone by Israeli Prime Minister Yitzhak Rabin's statement that, "no dates are sacred." Similarly, the clause on arbitration was meaningless because it did not identify a binding mechanism and made this subject to, "the agreement of both parties" (a euphemism for "at Israel's discretion"). In effect, arbitration and mediation became the sole and exclusive preserve of the United States, a state more pro-Israeli than Israel itself.

Most seriously, the agreement made no attempt to define UNSC 242 and 338, and in practice elevated Israel's interpretation (that it fulfilled its obligations when the last Israeli soldier left Sinai in 1982) to parity with that of the rest of the planet. More broadly, Oslo essentially jettisoned the corpus of international law and UN resolutions enshrining both Palestinian rights and the framework for a resolution of the Israeli-Palestinian conflict

Put into perspective, Oslo was never about conflict resolution, and was no more a framework for decolonization than was Rhodesia's Unilateral Declaration of Independence from Great Britain in 1965. Rather, the 1993 agreement sought to replace the status quo with a more viable formula for Israeli control. And that formula was to delegate the pacification of the Palestinians largely to their own leaders, who in exchange for ensuring Israel and its settlements security stood to reap the benefits of economic development.

The broader framework of this formula represents the more significant change institutionalized by Oslo: Separation. Whereas Israel had since 1967 pursued the enforced, subordinate integration of the occupied territories and the Palestinian economy into Israel's, the 1987-1993 uprising – in combination with structural changes in the Israeli economy and to a lesser extent the end of the Cold War – persuaded the Israeli leadership to reverse course. Henceforth, as expressed by Ehud Barak, Israel's policy would be one of,

"us here, and them there." The difference between separation and decolonization is the difference between withdrawal and what Oslo termed "redeployment;" separation would be as dominated by Israeli interests and priorities, and as subject to Israeli control as integration had been. The West Bank Wall, and various methods through which Israel continues to control life in the Gaza Strip, are clear evidence in this regard and visible illustrations of the distinction between separation and departure.

The Question of Palestine was thereby removed from the international arena, and transformed into a bilateral relationship between occupier and occupied under the supervision of the United States. In the meantime the United States was able to leverage Oslo to bully the Arab League into revoking the Arab Boycott,

The resulting agreement can only be characterized as a decisive Israeli victory.

and in no small part on account of access to new markets Israel enjoyed a sustained period of unprecedented economic growth. By contrast, the Palestinian economy's very existence remains hostage to Israel and the Palestinian Authority's foreign donors.

Why PLO Chairman Yasser Arafat consented to such a disastrous arrangement is not particularly difficult to fathom if one considers both his predicament on the eve of Oslo and his conviction that the agreement despite its flaws represented an opportunity, one that would create inexorable international momentum towards Palestinian statehood. Arafat was equally convinced that if proven wrong, he could always withdraw from the new framework and revert to a different one.

It was at the 2000 Camp David summit that Arafat finally recognized his efforts had been

for naught, that the maximum Israel would be prepared to offer fell considerably short of the minimum he or his people could accept, and that Washington would alter the balance of power only in Israel's favor. His attempt to overturn or at least re-direct Oslo by means of the *Al-Aqsa Intifada* ended in failure and his own demise, and the past decade has been one of setting it right again under the stewardship of Palestinian President Mahmoud Abbas.

If Israel's settlement enterprise today continues to expand at an unprecedented rate, this is not despite but rather on account of Oslo. Not only does the agreement place no restrictions on Israeli expansionism in the Occupied Territories, but the fragmentation of the Palestinian people, their political system and of the territory itself has made it significantly more difficult for Palestinians to stem this onslaught. Indeed, fragmentation is the flip side of separation.

The greatest danger Oslo poses to Palestinian rights is therefore not the failure to produce a diplomatic agreement, but rather the prospect that one may yet be achieved, institutionalizing both the permanent Israeli domination over the Palestinians sanctified by the agreement, as well

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as strategic changes on the ground introduced since 1967 and particularly after 1993. Even in the absence of an agreement, continued negotiations – bereft of a clear framework, agenda, or deadline – have come to serve as little more than political cover for Israel's continued colonization of Palestinian land.

Looking back over the past two decades, there is precious little that one can point to in terms of either Palestinian achievements or groundwork towards a just and lasting Israeli-Palestinian peace. The main achievement, the Palestinian Authority, was largely disemboweled during the 2000-2005 uprising, and rather than representing the infrastructure of statehood does little more than police its people and provide them with selected public services on the basis of foreign funding. As such, it has become part and parcel of the infrastructure of occupation.

In light of the above, it is somewhat ironic that on Oslo's 20th anniversary so many commentators have not only proclaimed its purported failure but on this basis also administered death rites to the prospect of a two-state settlement. Failed agreements normally do not last several decades. And if, as is demonstrably the case, Oslo was designed to perpetuate Israeli control, how does it prove that this control can no longer be challenged and that further efforts in this regard are an exercise in futility?

In recent years there has been much debate about the relative merits of a One or Two-State solution. Given that most proponents of a one state solution tend to suffice with assertions of its superiority rather than providing a credible plan of action on how to achieve it within a meaningful time-frame, and that terminating the 1967 occupation is almost certainly an essential precondition for the realization of more ambitious proposals for Israeli-Palestinian co-existence, greater attention should be focused on a different set of alternatives. Specifically, there is a need for robust debate on what a two-state paradigm actually entails. Is it confined to the establishment of a – any – Palestinian state resulting from US-sponsored bilateral negotiations, that will replicate the limitations of Oslo and produce an entity incompatible with either Palestinian self-determination or the minimum attributes of statehood and sovereignty as conventionally understood? Or is it the

outcome of a genuine process of decolonization, the core of which is the dismantling of the Israeli occupation and the establishment of a genuinely sovereign, genuinely independent Palestinian state throughout rather than *within* these territories and indistinguishable in these respects from other members of the international community?

The Israeli-Palestinian negotiations that started in mid-2013 are revealing growing indications that the former is seriously on the agenda, and the prospect of a new agreement in 2014 is therefore real and should not be so glibly dismissed. If achieved, it will only further institutionalize and perpetuate the current relationship between Israel and the Palestinians.

Such an eventuality can hardly be considered the logical culmination of the Two-State paradigm, because Oslo was designed to subvert rather than consolidate the 1967 boundaries and the centrality of the refugee question as the basis for implementing this paradigm. For the latter to become once again relevant, Palestinians will need to pursue the internationalization of their struggle. This would

It is apparent that withdrawing from the Oslo framework has become a necessary precondition for a meaningful Two-State settlement and meaningful Israeli-Palestinian reconciliation.

entail sustained mobilization on the ground, the reconstruction of the national movement in a manner that once again unifies the Palestinians as a people and a dynamic campaign waged in the international arena – at both the popular and institutional levels. The purpose of this campaign should be to delegitimize the occupation and systematically increase the price Israel pays for maintaining it by replacing its present impunity

with accountability – not only for its actions in the Occupied Territories, but for its very presence there.

It is an enormous challenge in the context of present realities, but one that builds on the Palestinians' strengths while exploiting Israel's weaknesses.

Popular mobilization, internationalization and Palestinian rights as defined in international law and enshrined by the international community in UN resolutions and other such statements are fundamentally incompatible with present arrangements. As such it is apparent that withdrawing from the Oslo framework has become a necessary precondition for a meaningful Two-State settlement and meaningful Israeli-Palestinian reconciliation.

Terminating Oslo is, of course, easier said than done. For the Palestinians, this would entail the long and difficult process of reconstructing the national movement and its institutions as an inclusive entity, on the basis of a coherent and credible strategy that is implemented by mobilizing the spectrum of available resources – first and foremost the Palestinian people themselves.

The danger is that delay in such an initiative, particularly if paired with the continuation of the Oslo framework, may lead to a gradual shift in the international consensus on Palestinian rights. Under current circumstances, this will most likely favor Israel and could include creeping recognition of some of the facts on the ground it has established since 1967.

20 YEARS OF TALKS

KEEPING PALESTINIANS OCCUPIED



ISRAELI SETTLEMENTS & PALESTINIAN DISPLACEMENT



ISRAELI SETTLER POPULATION
DOUBLED
TO OVER 500K SINCE 1993



11 K
PALESTINIANS FORCED
OUT OF JERUSALEM
SINCE 1993

\$6.3 B
ISRAELI GOVERNMENT
ANNUAL EXPENDITURE
ON SETTLEMENTS 2010



4.5 K
OUTSTANDING
DEMOLITION ORDERS
ON PALESTINIAN BUILDINGS



15 K
PALESTINIAN HOMES
DESTROYED
SINCE 1993

ISRAELI RESTRICTIONS & PALESTINIAN FRAGMENTATION

4.4 M
PALESTINIANS
IN GAZA & WEST BANK



CONFINED BY A
6 YEAR
BLOCKADE

SEGREGATED BY A
440 KM
WALL

RESTRICTED BY
522
CHECKPOINTS
& BARRIERS

Visualizing Palestine (VP) creates visual stories for social justice based on data from globally respected Palestinian, Israeli and international human rights organizations, academic institutions and other official sources.

VP was initiated in 2011 as a network and online platform. Its visuals are created by bringing together an international and interdisciplinary network of individuals and partner organizations working at the intersection between research, design, technology and new media.

VP disseminates these visual stories through its online platform and its social media presence – on Facebook, Twitter and Tumblr – under a Creative Commons license. By doing so, VP seeks to harness the power of social media to assist communities around the world in spreading an informed, factual narrative and – through collective action – to enable a more critically aware conversation on Palestine/Israel.

Palestinian Civil Society and the Oslo Process: Some Personal Reflections

If by “civil society” one means various organized groups working in the public sphere in relative independence from the state or political authority, then such groups have had a long history in Palestine. Both *Waqf* (endowment) allocations and religiously prescribed distribution of a share of one’s income (*Zakat*) that took the form of charity, or disbursement for public benefit, existed throughout Muslim majority countries including Palestine. In the 20th century, the Zionist colonization of Palestine and the ensuing conflict created new needs and spurred the development of charitable societies of various types. The *Nakba* in 1948 and the ensuing dispossession of nearly two-thirds of Palestinians created new emerging needs, and various charitable organizations were formed during this period to minister to refugees and others whose lives were shattered by the displacement.

The occupation of the West Bank in 1967 was, however, a watershed. The first decade after occupation witnessed the emergence of a new form of organization dedicated to self-help under occupation. Voluntary work committees, as they often described themselves, proliferated: Women’s committees, health committees, neighborhood committees, and student groups, among others sought to address various societal needs on a voluntary basis. Up to the mid 1980s, some received financial support from the Palestine Liberation Organization (PLO) and from various solidarity groups in European and other countries. PLO support went primarily to groups affiliated with the PLO whose dual aim was service provision and mobilizing support for resistance to occupation. By the time the Oslo

agreements were signed and the Palestinian Authority (PA) was established in 1994 (first in Gaza and Jericho, and, in late 1995, in the West Bank), the largest civil society institutions, now widely referred to as NGOs, were the ones still affiliated with various PLO groups. The establishment of the PA and the Oslo process, in more than one respect, brought about significant changes.

Hitherto, before Oslo, the reigning ideology governing the work of Palestinian NGO’s was *sumud*, which denotes a wide range of meanings including holding steadfast, staying on the land, and surviving in the face of adversity, among other cognate meanings. The establishment of the PA gradually introduced a new discourse. “Development” and “developmental” became anchor words allied with “institution building” and *sumud* disappeared from NGO parlance, in part as a result of the “peace-building” discourse of international donors. Now all of a sudden, the Occupied West Bank and Gaza were transformed into “post-conflict” areas that needed “reconstruction” and preparation for the establishment of a Palestinian State. The irony involved here is that many of the leading personalities in the NGO sector were themselves exceedingly critical of the Oslo agreements, but to some degree subscribed to such a hegemonic discourse.

The PA and NGOs

The first few years after the PA was established were fraught with tension between the PA and the larger NGOs. The PA was keen to receive as much donor funding as possible and viewed NGOs as a competitor for resources needed for

George Giacaman

George Giacaman is co-founder and General Director of Muwatin, The Palestinian Institute for the Study of Democracy and a faculty member at Birzeit University in the Department of Philosophy and Cultural Studies.

varied purposes including absorbing as many Palestinian “returnees,” as they came to be called (*‘a’idin*), in the various newly established “ministries.” The PA under Yasser Arafat had various priorities, and internal political stability was of paramount importance. Some form of financial remuneration had to be found for the several thousand returnees, and employment in the various departments of the governmental bureaucracy was effectively the main alternative. Arafat himself said on various occasions, one of which I was present at, that he simply could not “throw them into the streets.” This, in spite of the fact that donor funds allocated for support of NGOs actually decreased immediately after the establishment of the PA. The World Bank estimates that Palestinian NGOs received between \$180 and \$220 million USD annually before the establishment of the PA. This sum decreased to about \$90 million in the late 1990s, according to a study by the Welfare Association.

But this was not the only source of tension. Various NGOs believed that the PA regarded external funding as generating political independence from the PA, especially leftist NGOs whose leaders were critical of the Oslo

The irony involved here is that many of the leading personalities in the NGO sector were themselves exceedingly critical of the Oslo agreements, but to some degree subscribed to such a hegemonic discourse.

agreements in line with the position of the parties they belonged to. In addition, the way the PLO operated internally while outside the Occupied Territories was well known to many, and it was assumed that clientelism as a *modus operandi* would continue as usual under the PA, largely as a method of control. In part as a result, around thirty NGOs met in late 1993, after the first

Oslo agreement was signed, the “Declaration of Principles,” to form an association for the purpose of promoting the work of NGOs under the PA. Elections for the first steering committee composed of nine member institutions were held a year later and the Palestinian NGO Network (PNGO) was established. I was among those elected to the Steering Committee representing Muwatin, the Palestinian Institute for the Study of Democracy, which had been established several years before.

The membership of PNGO expanded gradually and within a decade it counted around 130 member organizations in the West Bank and Gaza. It was not the largest association of NGOs. The Palestinian Union of Charitable Societies had more members but was less active and less effective. The first order of business was to define through law the nature of the relationship between the PA and NGOs. The existing older Jordanian law governing the work of charitable societies still in force under the PA was deemed antiquated and designed to control the work of NGOs rather than promote it. A two-year campaign of advocacy and lobbying involving meetings with relevant PA officials, joint workshops and the preparation of draft laws took place until a new law governing the work of NGOs was finally approved. It was by no means the best law possible from the perspective of the PA or PNGO, but was one that both sides thought they could live with.

Discourse Shift

The Oslo years brought about several changes in the work of NGOs. While under direct occupation service provision and the bolstering of *sumud* was a priority, under the PA a host of new issues emerged. Human rights organizations, for instance, had so far only the violation of human rights by Israel to contend with. After the establishment of the PA, the degree to which it protects or violates the human rights of Palestinians now in its charge was placed on the agenda of such organizations. Service provision in several sectors such as

health was now taken over by the PA, and relevant NGOs had to reorient their work to areas that the PA did not or could not cover. But above all, now that the PA was involved in new legislation after the first elections of the Palestinian Legislative Council (PLC) in January 1996, the nature of government under the PA and the kind of laws that would henceforth govern the lives of Palestinians in almost every sector acquired urgency. Women's groups, business associations, unions of various types, democracy institutes, were among several NGOs that sought to influence legislation enacted by the PLC. "Development discourse" increasingly

A more apt criticism of NGOs, especially organized groups such as the PNGOs, is their inability to play a more effective role in countering the more docile role of the PA under occupation.

crept into their annual reports and promotional material and many saw their work increasingly "professionalized" given requirements of new donors such as governments and aid agencies which were keen to promote the Oslo process but also gradually developed new guidelines for applications for support, report writing, and clarity on "outputs, outcomes, and impact."

As a result of such professionalization, most funds went to larger NGOs and others that could develop the skills needed to raise funds on a continuing basis, given the very limited sources of internal financial support for their work. "Donor dependence" grew to be a charge leveled against many NGOs, with the added accusations of being "donor driven" in terms of agendas. Women's organizations were a particular target of more conservative elements in Palestinian society, since demands

for equality and the reform of various laws that affect women in particular were regarded as part of the "cultural invasion" of the West. A case in point would be the law governing "honor killing" by a relative of a woman suspected or accused by him of having an illicit relation with a man. The law in force under the PA governing such killings allows for a very lenient sentence if "attenuating" circumstances are present, such as the "state of mind" of the perpetrator at the time the murder is committed. Various attempts to reform the law were attempted but the PA has shown considerable reluctance to bring about the required change until today.

An additional and somewhat curious charge, in my opinion, leveled in particular against more prominent NGOs, is that they weakened Palestinian political parties affiliated with the PLO. Public debates often took place around this issue in magazines and newspapers. The genesis of the charge lay in the fact that some prominent NGO's leaders were also prominent party members in groups affiliated with the PLO, especially those on the left. Their numbers are not exceptionally large but many of them, under pressure from their own parties, sought to employ some party cadres in their NGOs, thus contributing later to the charge of the flight of activists from parties to NGOs, and the resultant weakening of political parties.

In my opinion the charge is false, but what is true is that many active party members, mostly on the left, ended up working in NGOs originally established by their own parties, whilst some broke away and grew independent, and some kept uneasy relations with their parties. This tension also contributed to the charge, but the reasoning behind it is faulty since it confuses cause and effect. It is true that most political parties within the PLO grew weaker especially after 1990 and the first Iraq war, and many members and supporters left or grew disillusioned with their own parties. But the reasons for this have little to do with the work

of former cadres in NGOs in the West Bank and Gaza. In my opinion, there are two main reasons for this: The near cessation of funding to the PLO especially by Gulf countries as a result of PLO support of Iraq in its invasion of Kuwait in August, 1990, and the failure of the national project. The first resulted in the inability of political parties within the PLO to continue to pay salaries for its cadres, as a result of which some sought to be employed elsewhere including NGOs. But the main reason in my opinion is the collapse of the “national project” of liberating occupied land for which the Oslo agreements were the culmination.

The flight of party members from their own parties was not restricted to the Occupied Territories. Various branches in Europe and the United States experienced a similar fate. I witnessed this personally while studying in the US among student groups, in particular, and the Palestinian communities as well. The charge builds on what is perceived to have taken place in the West Bank and Gaza. But the same phenomenon took place elsewhere without NGOs around to be the cause. Indeed, the rise of Hamas is to be explained in part as a result of such failure. It sought to pick up where the PLO had left off, especially after Oslo.

Professional Docility

A more apt criticism of NGOs, especially organized groups such as the PNGOs, is their inability to play a more effective role in countering the more docile role of the PA under occupation, especially in the years following the death of Arafat and the clear failure of the “Peace Process” and the continued dispossession of Palestinian land for the expansion of illegal settlements. Although part of the work of the PNGO, for instance, is to engage in public diplomacy on behalf of the Palestinian cause at the regional and international levels, very little effective work has been done. Unlike Israeli public diplomacy worldwide, a well-oiled and efficient propaganda machine supported by

the Israeli Foreign Ministry and various other governmental departments, Palestinian civil society organizations have no such support, and very few PLO “embassies” outside are effective in this effort. Nevertheless, it is precisely this lack that needs to be redressed and where PNGO along with other organized groups have not succeeded as well as they can and should.

To a degree then, the criticism leveled against NGOs, of being preoccupied with fundraising, program cycles, training workshops, conference attendance abroad and report writing to the detriment of broad national responsibilities is correct. If so, then their “professionalization,” at least in part, has led them to play a more docile role as far as the continuing Israeli occupation is concerned under the failed Oslo process, thus contributing to the illusion of “peace-making.”

Are the Oslo Accords Still Legally Binding?

Ten Points to Consider

September 13th, 2013 marked the 20th anniversary of the famous handshake on the White House lawn between Israeli Prime Minister Yitzhak Rabin, Chairman of the Palestine Liberation Organization Yasser Arafat and US President Bill Clinton to launch the Oslo Peace Process. It was telling that this anniversary passed without celebration.

Palestine is still not independent and exists only in United Nation's documents – just like in 1993. Palestinians would therefore be forgiven for thinking that not much has changed. Israel continues to expand settlements in flagrant violation of international law while the Palestinians are still negotiating in the forlorn hope that the “international community” will pressure Israel into acquiescing to the establishment of a Palestinian state in East Jerusalem, the West Bank and Gaza.

Given that the Palestinians – outside the environs of Ramallah – are, in many respects, worse off today than they were twenty years ago, one would have thought that the Palestinian leadership would need to rethink the status of the series of agreements they signed with Israel in the 1990s (the Oslo Accords). A rethink is also needed because the Oslo Accords and the lack of clarity over their legal status could have a detrimental impact on Palestine's ability to meet its international commitments in light of the UN General Assembly resolution that accorded Palestine Non-Member Observer State status on November 29th of last year.

Indeed, Palestine could face legal challenges against its attempt to accede to certain treaties

and apply to join certain agencies and institutions, as the Palestinian leadership has indicated they are considering. For example, accession to the Rome Statute of the International Criminal Court (ICC) would require Palestine to undertake measures that the Oslo Accords presently prohibit Palestine from doing, such as detaining Israelis who have committed crimes against Palestinians rather than handing them over to the Israeli side.

Of course, this assumes that the Oslo Accords are still binding. But are the Oslo Accords still binding? Moreover, does Israel think they are binding? Do the Accords serve Palestinian or Israeli interests? Are the two interests compatible?

Ten Points to Consider

The first point to note is that the legality of the Oslo Accords has always been questioned.¹ For international lawyers, the Oslo Accords have always been a legal anomaly because they are not treaties concluded between States. Thus, Anthony Aust, the former Deputy Legal Adviser to the British Foreign and Commonwealth Office, wrote the following in his much acclaimed book *Modern Treaty Law and Practice* (Cambridge University Press, 2007): “Since 1993, a number of bilateral instruments between Israel and the Palestine Liberation Organization have been concluded which cannot be regarded as treaties, the terminology “the two sides” being employed.”²

The second point to note is that under international humanitarian law, the Occupying Power must not conclude agreements with

Victor Kattan

Dr. Victor Kattan is a Postdoctoral Fellow at the National University of Singapore. He was formerly Legal Adviser with the United Nations Development Program (UNDP) in East Jerusalem in the Occupied Palestinian Territories. Prior to this, Victor was Program Director of Al-Shabaka, the Palestinian policy network, and Teaching Fellow at the Centre for International Studies and Diplomacy at the School of Oriental and African Studies (SOAS), University of London.

“the authorities of the Occupied Territories” that aim to deprive those persons from the benefits of the Fourth Geneva Convention, nor by any annexation by the Occupying Power of the whole or part of the Occupied Territory.³ Israel has already annexed Jerusalem; and it has de facto annexed Area C in the remainder of the West Bank (approximately 61 percent of the land of the West Bank) through its failure to fulfill its obligation to withdraw from the territories occupied in June 1967 “to specified military locations,” that is, the so-called “Third Redeployment,” as required by Article I.9 of Annex I to the 1995 Israel-PLO Agreement.⁴ Accordingly, it has been using the Oslo Accords to frustrate the establishment of an independent Palestinian State in East Jerusalem, the West Bank, and Gaza. Although the Oslo Accords do not explicitly call on Israel to refrain from building settlements, such activity is contrary to the spirit of the agreements, which call on both parties to refrain from jeopardizing the status quo.⁵ Moreover, whilst the Oslo Accords may be silent about settlement activity, such activity is nonetheless a flagrant violation of Article 49.6 Geneva Convention IV, which is binding on Israel and is also contrary to the prohibition of colonialism in customary international law.⁶

The third point to note is that the 1995 Israel-PLO Interim Agreement was never ratified by either the Palestinian National Council or the PLO’s Central Committee. This may raise questions as to the binding nature of the Accords under Palestinian law. Even if one were to argue that they are binding because the Fatah Central Committee and the PLO’s Executive Committee approved of them, they could only be binding in those areas subject to their authority. This is restricted to Areas A and B in the West Bank, and excludes Areas C, Jerusalem and Gaza.

The fourth point to note is that not one of the Oslo Accords has ever been registered with the UN Secretariat in New York. Whilst not all treaties are registered with the UN Secretariat – for instance, secret treaties – the Oslo Accords

are not secret, and are publically available.

Article 102 of the UN Charter provides:

“... every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it. No party to any such treaty or international agreement which has not been registered in accordance with the provisions of paragraph 1 of this Article may invoke that treaty or agreement before any organ of the United Nations.”

The fact that the Oslo Accords have not been registered with the UN Secretariat therefore strengthens the argument that they cannot be considered treaties between two states under international law. The obligation to register is a condition for recognition by organs of the UN, otherwise they are not treated as evidence of agreements between two states. This may explain why Israel, which is a member of the United Nations, and therefore could have registered the Oslo Accords, has never registered them. That international agreements which have not been registered with the UN Secretariat may not be invoked before any organ of the UN might explain why the Oslo Accords were hardly mentioned by the International Court of Justice in its Wall advisory opinion.⁷ But the fact that the ICJ did not address the Oslo Accords does not mean that other institutions and Courts that are not UN organs (like the ICC) will not address them. Nor is their lack of registration necessarily conclusive as to their legally binding quality. But it does raise the question as to why Israel never registered them – a question that Israel may have to address should the Accords be raised in international legal proceedings. The fact that Israel did not register the Oslo Accords with the UN Secretariat strongly suggests that Israel was not sure the Accords would qualify for registration because the Accords were not concluded between two States.

The fifth point to note is that there has been a fundamental change of circumstances that was not foreseen by the parties when they concluded the Oslo Accords: That is, Hamas ruling in the Gaza Strip. This has resulted in the *de facto* administrative partition of Palestine's self-determination unit, which arose as a result of Israel's 2004 unilateral disengagement from Gaza, an act that was itself arguably a violation of the Interim Agreement since it was undertaken

For political reasons it is understandable why the Palestinian leadership should hesitate to denounce the agreements. But doing nothing is not an option either.

unilaterally without the agreement and consent of the Palestinian Authority (PA). Presently this partition consists of Areas A and B of the West Bank that is subject to the authority and control of Fatah and the Gaza Strip subject to the authority and control of Hamas. Moreover, Hamas, unlike the PLO, does not recognize Israel, nor have they agreed to accede to the Oslo Accords, which were concluded between Israel and the PLO. Hamas is not a member of the PLO. Therefore the Oslo Accords cannot be binding on Hamas, which is not a party to those agreements, and their applicability to the Gaza Strip is therefore questionable.

The sixth point to note is that the 1995 Israel-PLO Interim Agreement – the cornerstone and most important agreement of the Oslo Accords – was an interim agreement with transitional measures that fell away more than a decade ago. It does not contain a termination clause, which given the imbalance of power between the two sides, has allowed Israel to apply it in a one-sided manner by refusing to carry out the third withdrawal, and by rapidly expanding settlements, which in combination, has had the effect of frustrating the aspirations of

the Palestinian people to establish a viable, contiguous, and independent State. The several annexes to the agreement are also highly problematic, one-sided, unbalanced, and contain clauses that are inconsistent with basic principles of law such as the provisions on legal assistance in criminal matters concerning arrest, detention, and extradition. This poses a related question; can unequal agreements like the Oslo Accords – akin to 19th century capitulation agreements – be binding in the 21st century if they violate self-determination, which today is a peremptory norm of general international law?

Related to this issue is a seventh point that is the issue of *jus cogens*. As Palestinian President Mahmoud Abbas has argued on more than one occasion, Israel can be viewed as implementing apartheid policies in the Occupied Territories in order to frustrate the Palestinian people's right of self-determination. If this had been foreseen at the time the agreement was concluded, could one argue that the agreement is *ipso facto* void because apartheid is a violation of a peremptory norm of international law? Alternatively, if the prohibition of apartheid and the denial of self-determination have emerged as peremptory norms of customary international law in the last 20 years, could one argue that the Interim Agreement has also become void?

The eighth point to note is that in the aftermath of the vote on November 29th, 2012, Palestine is now a Non-Member Observer State in the United Nations. If this Observer State is a separate political and juridical entity from the PLO, then arguably the Oslo Accords that were concluded between Israel and the PLO cannot bind the State. The Palestinian leadership should therefore consider making the case that it emerged as a state under occupation, and that those Accords, even if they are considered legally binding, have nonetheless fallen into desuetude, or obsolescence, due to the number of material breaches by the Israeli side, and the fact the negotiations between the two parties have failed to go anywhere despite twenty years of trying.

The ninth point to note is whether Israel even considers the Oslo Accords binding in their entirety. Although Israel ratified the agreements, this was subject to several reservations it reiterated on several occasions, and which conditioned Israel's acceptance of those agreements on Palestine's *lack* of statehood.⁸ This became most clear when Israel submitted these reservations to the 2003 Roadmap. The fifth of these reservations stipulated:

"The character of the provisional Palestinian state will be determined through negotiations between the Palestinian Authority and Israel. The provisional state will have provisional borders and certain aspects of sovereignty, be fully demilitarized with no military forces, but only with police and internal security forces of limited scope and armaments, be without the authority to undertake defense alliances or military cooperation, and Israeli control over the entry and exit of all persons and cargo, as well as of its air space and electromagnetic spectrum."⁹

Such an entity falls far short of Palestinian aspirations and would arguably fail to satisfy the conditions of statehood under international law, which requires that the entity claiming to be a State needs to be independent.

The tenth and final point to note is that it was envisaged by the parties that Final Status negotiations should have taken place by May 4th, 1999, that is some 14 years ago. In these 14 years, the negotiations have not progressed to the point that Israel is willing to acquiesce to the establishment of an independent, viable and contiguous Palestinian State, which from a Palestinian perspective was the very *raison d'être* of the agreement. Moreover, it may be assumed that negotiations with the new Israeli Government, where pro-settler politicians, many themselves settlers, now run the defense, foreign, and housing ministries, as well as the powerful Knesset Finance Committee, are

unlikely to go anywhere. If the current Israeli Government continues to act in bad faith, and refuses to enter into negotiations on Final Status Issues such as Jerusalem, then the Palestinians will surely have to reconsider their approach to the negotiations.

Conclusions

But what if it is not possible to reach a new agreement with the current Israeli Government because that government would prefer to negotiate another interim agreement (another Oslo II)? It is unlikely that the Palestinians would agree to this. It is equally unlikely that Israel would agree to an agreement that recognizes a Palestinian state on all or most of the territories occupied in June 1967, including East Jerusalem, and that will entail either dismantling the large settlement blocs or allowing Palestinians to live in them. It should also be obvious to the Israeli side that the Palestinians will never agree to an agreement which stipulates that the border of the Palestinian state should correlate to the wall that was declared illegal by the International Court of Justice in an opinion it delivered almost ten years ago. Therefore, in the event that the current negotiations fail, should the Oslo Accords, which have become a burden, be denounced? And if so, who should denounce them?

For political reasons it is understandable why the Palestinian leadership should hesitate to denounce the agreements. But doing nothing is not an option either. One avenue which could be utilized in this respect would be to raise the issue before the UN General Assembly by proposing a draft resolution that would refer to the number of Israeli breaches of international law (human rights violations, settlement construction, annexation of territory and theft of natural resources), and which would declare that Israel has no right to continue the occupation, that the Oslo Accords, the settlement project, and the annexation of Area C is "null and void", and that would demand Israel fully withdraw from all the territories it occupied in 1967 to let the Palestinian State recognized by

the UN General Assembly last year exercise independence. The resolution could also call for a temporary UN administration to assist the Palestinian ministries with their day-to-day work in the event that Israel severs relations. It could even establish an emergency fund should Israel withhold Palestinian tax revenues as it did when the Palestinians went to the United Nations in November 2012. Even if this UN administration was not allowed to function in Palestine it could do its work from a neighboring country or even remotely with the aid of digital technology. The point of denouncing the occupation in the UN would be to de-legitimize the occupation and realize an independent Palestinian state.

Of course we can assume that Israel will not terminate the occupation and will not agree to such a resolution. But a majority of votes in the UN General Assembly would provide a clear indication from the international community that not only do they disapprove of the continued occupation and Israel's settlement policy, but that the occupation and settlements are illegal. Palestinians may be surprised to learn that despite countless UN resolutions not one has explicitly labeled Israel's occupation illegal. This may seem obvious to Palestinians, but it needs to be spelled out. This would give Palestine extra leverage that could be useful before international courts and tribunals. Palestine might be a Non-member Observer State but it is not independent. To become independent the occupation must end. To end that occupation, Palestine must make the occupation a costly enterprise for Israel.

As a first step, Palestine's UN Mission in New York, the Foreign Ministry in Ramallah, and Fatah's Foreign Relations Committee could study the history of UN General Assembly Resolution 2145 (XXI) and the way in which that Resolution was used by the International Court of Justice in 1971 to pave the way for Namibia's independence. Presently there is a lot of confusion about Palestine's legal status – when it emerged as a state, is it a state, are the

Oslo Accords binding? The answers to these questions will come to haunt the leadership if they are not in a position to provide satisfactory answers to questions that will be raised in the years ahead.

¹ The only people who do not want to question their legality are those who have vested interests in Oslo such as Alan Baker who was Israel's Legal Adviser when the Accords were negotiated. Thus Alan Baker told a reporter from *The Jerusalem Post* that legally the Accords are still valid. See Tovah Lazaroff, "Diplomacy: The Oslo Reversal," *The Jerusalem Post*, September 13, 2013 via <http://www.jpost.com/Features/Front-Lines/The-Oslo-reversal-326023>. But Baker is not clear whether he is speaking of their legal validity under Israeli law or international law or whether the agreements in their entirety are still legally binding.

² Anthony Aust, *Modern Treaty Law and Practice* (Cambridge: Cambridge University Press, 2007), p. 62.

³ See Articles 7-8 and Article 47, Geneva (Civilians) Convention, 1949.

⁴ See the "Summary of Signed Agreements and Compliance with Signed Agreements" on the NAD website via <http://www.nad-plo.org/etemplate.php?id=75>. It is worth noting that this document is more than ten years old. Israel has still not completed the Third Redeployment, even though it committed to do so almost 18 years ago.

⁵ Article 7 of the Final Clauses to the Interim Agreement (Article XXXI) provides that neither side, "shall initiate or take any step that will change the status of the West Bank and the Gaza Strip pending the outcome of the permanent status negotiations."

⁶ "Declaration on the Granting of Independence to Colonial Countries and Peoples adopted by General Assembly Resolution 1514 (XV)," The United Nations, December 14, 1960.

⁷ "Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion," *ICJ Reports 2004*, p. 136 and p. 186. The Court only referred to the Interim Agreement in the context of the recognition by Israel of the existence of the Palestinian people.

⁸ See the statement by Rabin in the Knesset expressing his view that the purpose of the Interim Agreement was to establish a Palestinian entity that was less than a state. See "Prime Minister Yitzhak Rabin: Ratification of the Israel-Palestinian Interim Agreement," October 5, 1995 via <http://www.mfa.gov.il/mfa/mfa-archive/1995/pages/pm%20rabin%20in%20knesset-%20ratification%20of%20interim%20agree.aspx>.

⁹ "Israel's road map reservations," *Ha'aretz*, March 27, 2003 via <http://www.haaretz.com/print-edition/news/israel-s-road-map-reservations-1.8935>.

Palestinian Membership at the UN and a Rights-Based Approach



Courtesy of Chris Whitman

The on-going conflict between Israel and the Palestinians is chequered by a history of political interests prevailing over international law. The failures of repeated attempts at peace initiatives, including the (Oslo I) Accord of 1993, which have outlasted their intended timeframe by 15 years, provide a stark reminder of the consequences of reaching agreements that fail to ensure a respect for international law. This paper will caution against the dangers of sidelining international law in the current negotiation process by drawing on the risks posed by proposed land swap agreements. It will also illustrate the benefits to be reaped from a Palestinian pursuit of international justice mechanisms and accession to international legal instruments.

International Law as the Foundation of Peace Initiatives: Land Swap Proposals

International law is the most objective framework that can be applied equally to both parties, and is therefore the only way of ensuring that justice will prevail over power. Solutions to almost every “final status” issue that has thus far stalled negotiations between Israel and the Palestinian leaders can be found in international law – including international humanitarian law (IHL) and international human rights law (IHRL). This is true for the issue of territorial borders, claims over Jerusalem and the West Bank’s water resources, the question of the Jewish-Israeli settlements in the Occupied Palestinian Territories (OPT) and the Palestinian refugees’ right of return. Nevertheless, international law has been given limited relevance throughout the “Peace Process,” including Oslo, which failed, for example, to secure a commitment from Israel to dismantle its settlements in the Occupied Palestinian Territories (OPT), despite their unequivocal, internationally-conceded illegality.¹

With the 20-year anniversary of the Oslo Accords, underscored by the process of negotiations started by United States Secretary of State John Kerry in 2013, the Palestinian people – in the OPT and the Diaspora – and their representatives must re-evaluate the so-called “peace process” for its ability to ensure respect for international law. It has long since been clear that the Oslo Accords will not enable the Palestinian people to enjoy sovereignty and independence, but rather act as a means to delay the fulfillment of their right to self-determination. By undermining international law, Oslo has allowed Israel to single-handedly

Shawan Jabarin

Shawan Jabarin is General Director of Al-Haq, an independent Palestinian, non-governmental human rights organization based in Ramallah, Palestine.

continue its settlement project, which has gradually contributed towards the diminishing possibilities for the economic, social and political development of the Palestinian people. It is therefore imperative that in the current cycle of negotiations the Palestinian representatives learn from previous mistakes by ensuring the primacy of international law. Decisions taken by the Palestinian leadership in current talks will dictate the reality on the ground for years to come.

Proposed land swap agreements, which have been offered on several occasions as a potential solution to territorial disputes between Israel and the OPT, are an example of international law being sidelined in favor of a political settlement that serves to undermine individual rights. The Fourth Geneva Convention, which affords protection to people found in the hands of an Occupying Power, foresees the asymmetry that exists between an Occupying Power and the civilian population of the occupied territory. It therefore expressly prohibits situations in which occupied authorities are coerced into reaching agreements that serve the interests of the Occupying Power, while undermining the rights of the occupied population.² Land swap agreements, by their nature, would involve Palestine ceding its sovereignty over areas of land located in the OPT. However, under the law of belligerent occupation, sovereignty is protected and cannot be transferred.³ Consequently, such agreements undermine the rights of the occupied population and are therefore in and of themselves contrary to Articles 7 and 47 of the Fourth Geneva Convention.⁴

In addition, land swap agreements would essentially entail “legalizing” Israel’s unlawful annexation of large parts of the West Bank, including East Jerusalem, and its illegal settlement enterprise. An agreement of this nature would therefore implicitly condone Israel’s administrative and legislative acts that have resulted in the routine dispossession of Palestinians’ land and natural resources. Any

agreement based on land swaps would effectively be founded upon Israel’s grave breaches of the Geneva Conventions that have been undertaken over the course of the 46 years of its occupation of Palestinian territory.⁵ These breaches undermine fundamental norms of international law, such as the right to self-determination of peoples.⁶ Such a concession would set a dangerous precedent in which prolonged practices and policies of a colonial character perpetrated by an Occupying Power are afforded legal recognition by the international community.

Further inherent flaws in land swap agreements are evidenced by several proposals that have come to light in recent years. An example can be drawn from the proposal that was offered by Palestinian President Mahmoud Abbas in 2008, which suggested that territory amounting to 1.9 percent of the territorial scope of the West Bank be swapped between Israel and Palestine. In May of this year, journalist Avi Issacharoff discovered a map detailing former Israeli Prime Minister Ehud Olmert’s response to Abbas’s 2008 proposal.⁷ This counter-proposal would see Israel cede territory that it claimed amassed to the equivalent of 5.8 percent of the territorial scope of the West Bank. Meanwhile, the Palestinians would have transferred what Israel claims was 6.3 percent of existing West Bank territory to the State of Israel.⁸

However, the percentages referenced in the context of these exchanges exclude East Jerusalem. Taking East Jerusalem into account, the percentage of territory that was earmarked for transfer to the State of Israel in 2008 becomes significantly higher. Furthermore, Olmert’s counter-proposal would have had serious ramifications on the territorial contiguity of an independent Palestinian State. This is largely because the West Bank territory identified for transfer to Israel included the contentious E1 area, which is considered essential in ensuring that East Jerusalem is the capital of an independent Palestinian State and that it is territorially contiguous with the West Bank.⁹

An agreement of this nature would also likely entail revoking the citizen rights of residents of Palestinian communities transferred from the State of Israel into the State of Palestine. The right to retain a nationality corresponds to the prohibition on the arbitrary deprivation of nationality.¹⁰ It should therefore be emphasized that the consent of the affected residents is paramount in this respect.¹¹ Many Palestinians living in Israel are internally displaced as a result of the mass forced transfer that took place during and after the 1948 war, commonly known among Palestinians as the *Nakba*. If Palestinian communities currently located in Israel became part of the population of the State of Palestine, they would likely be prevented from ever returning to their ancestral land and from visiting family members living in Israel.

In light of the inherent flaws of proposals put forward in previous negotiation processes, which failed to respect international law, the international community as a whole must ensure that any motions offered in current negotiations at the very minimum respect the general principles of international law, and in particular its peremptory norms, which include the prohibition on the acquisition of territory through the use of force.¹² Failure to establish international law as the basis for negotiations will result in a peace agreement that is not just, and is consequently not durable.

Palestine's UN Membership and ICC Accession

Palestinian admission to the United Nations as a Non-Member Observer State, announced by Palestinian representatives as a demarche to “internationalize the conflict,”¹³ has the potential to bolster Palestine’s position at the international level and further the protection of the rights of all the Palestinian people, not only those living in the West Bank and Gaza Strip.

Palestine’s statehood pre-existed both the November 2012 UN General Assembly resolution and Palestine’s October 2011 admission into the United Nations Educational, Scientific and

Cultural Organization (UNESCO). The existence of a State is not a legal, but a purely factual and political matter, and Palestine has been treated as a State over the years by the majority of States and international organizations.¹⁴ However, Palestine’s admission to UN bodies and accession to international treaties is not only a symbolic “rubber stamp” of its existing status and rights as a subject of international law. It is also a way for the Palestinian people to access new legal and political fora and mechanisms, in order to claim and bring about protection for rights. Palestine’s membership in UNESCO, for example, provides its representatives with further political leverage and legal avenues to claim respect for cultural heritage rights in Palestine.¹⁵ Accession to international human rights and humanitarian law treaties on behalf of Palestine is also an essential step in protecting the rights of the Palestinian people and in securing Palestinian legitimacy on the international stage. To this end, the Palestinian representatives should ensure that measures are taken at a national level to secure protection of these internationally guaranteed rights – many of which are already applicable to the Palestinian authorities today by virtue of their customary status.

This increased leverage enables the Palestinian representatives to raise the political costs for Israel in the international arena. In light of the continuous disregard for international law and Palestinian rights in previous negotiation processes, the Palestinian representatives must now alter their strategy to embrace the options available at the international level. In particular, they must take advantage of mechanisms that can further the protection of Palestinian rights and strengthen the position of Palestinian negotiators vis-à-vis both Israeli negotiators, and international partners involved in the process, including the EU, UN and US. Accession to international treaties and organizations must be part of a concerted strategy undertaken by the Palestinian representatives, rather than an alternative fall back to negotiations. Most

eminently, the Palestinian representatives should seize the opportunity that has become available to them since Palestine's UNESCO membership to accede to international human rights treaties and international justice mechanisms.¹⁶

Political interests have played a significant role in the ability of the Palestinian representatives to pursue international legal mechanisms, including seeking redress at the International Criminal Court (ICC). Pressure from the US and some European countries has resulted in Palestinian representatives putting such measures on hold at the behest of political negotiations with Israel. At the time, the United Kingdom was only willing to support Palestine's November 2012 bid to upgrade its status in the General Assembly upon guarantees that it would refrain from pursuing cases before the ICC or the International Court of Justice (ICJ).¹⁷ The United States attempted to curb the UN bid, having expressed serious concern that recognition of the State of Palestine at the General Assembly could lead to Israeli officials being investigated and even prosecuted by the ICC.

Since the November 2012 General Assembly upgrade, Palestinian representatives have shied away from pursuing any measures at the international level. This not only maintains the void of accountability at the national level in terms of respect for rights by the Palestinian authorities, but also at the international level for Palestinian victims of Israeli violations of international law. The Israeli High Court of Justice (HCJ) has repeatedly proven to be an ineffective remedy for Palestinians, having consistently failed to apply international law in good faith and in a manner that reflects, and is at the very least functionally equivalent to, the determinations made by third States and international actors in regards to facts and situations under Israel's jurisdiction.¹⁸

Although they have been inactive in regards to the ICC since November 2012, in January 2009 Palestinian representatives submitted a declaration under Article 12(3) of the Rome

Statute of the International Criminal Court, which allows for States that are not a party to the Rome Statute to make a declaration accepting the Court's jurisdiction. Palestine requested that the Court extend its jurisdiction retroactively, to cover crimes committed on Palestinian territory since July 1, 2002, which would allow for, among other things, an examination of Israel's December 2008 – January 2009 offensive on the Gaza Strip, known as "Operation Cast Lead." On April 3, 2012 the Office of the Prosecutor, having focused erroneously on the question of Palestine's status as a State in international law, deferred the decision on this issue to the UN bodies or the Court's Assembly of State Parties.¹⁹ However, since the UN General Assembly's November 2012 resolution concerning Palestine's upgrade, the newly appointed ICC Prosecutor, Fatou Bensouda, has publicly stated that the Office of the Prosecutor is waiting for Palestine to re-approach the Court,

Without a legal basis, the parties have no means of limiting their discretion when deciding on certain fundamental issues, nor is there any guarantee that individual and collective rights will be properly upheld.

since the previously contested matter in regards to its status as a State had been resolved by the General Assembly.²⁰ Palestine is now in a position to request that the Prosecutor act upon the January 2009 declaration by opening an investigation into Palestine from July 1, 2002.

Pursuit of its previous Article 12(3) declaration does not preclude Palestine from also ratifying the Rome Statute, which should be addressed to the UN Secretary-General as depositary of the Statute and other international treaties. In fact, according to the Secretary-General's practice

as depositary of treaties, Palestine has been in a position to ratify the Rome Statute and other treaties since October 2011, when it became a member of UNESCO.²¹ Both ratification of the Rome Statute and pursuit of the January 2009 Article 12(3) declaration require action by Palestine's representatives, which has thus far not been forthcoming.

Conclusion

Although negotiations are a legitimate means by which to settle international conflicts peacefully, to ensure their legitimacy they must be founded on a clearly articulated legal framework. Without a legal basis, the parties have no means of limiting their discretion when deciding on certain fundamental issues, nor is there any guarantee that individual and collective rights will be properly upheld. While the process of negotiation is inherently political, the legitimate demands of the Palestinian people to effectively exercise their rights to territorial sovereignty and self-determination, as enshrined in international law, may not be made the subjects of negotiation.

The State of Israel has made clear, through its practices and policies as well as the rulings of its supreme judicial authority, the HCJ, that it formally rejects the application of the Geneva Conventions to the Palestinian territory. This has also been made clear by Israel's foreign ministry, which deems the territory of the West Bank as "disputed." However, it is the obligation of the international community to ensure that the Conventions and other international norms are respected in all situations of armed conflict,²² and in particular prolonged belligerent occupation that has served to further Israel's colonial agenda. The prolonged character of Israel's occupation has turned the OPT into an important testing ground for international law. Third States can either choose to uphold their commitment to its general principles, or risk allowing belligerents elsewhere to follow Israel's casual disregard for international law.²³

To this end, third States and international actors should become more conscious of the consequences of their relations and engagements with Israel. Third States must be mindful of their own obligations under domestic law, including respecting international law in the exercise of their powers and in their relations with other States. This applies in particular to relations with States whose institutional practice of wrongdoing may impinge on their ability to implement their own domestic law obligations. This "back door," national law approach to the enforcement of international law has recently resulted in the EU's issuance of a set of Guidelines to ensure that no Israeli entity, governmental or private, that is associated or works, directly or indirectly with a settlement, receives EU funds. This EU corrective measure is the first in a series of required corrective measures ensuring that the EU does not provide support to any acts considered illegal under international law.

In light of the current cycle of negotiations between Israel and Palestine, and the evident failures of Oslo, it is more important than ever that international law is placed at the foundation of any peace initiative. The empowerment of the Palestinian people on the international stage, through accession to international treaties and organizations, should complement on-going peace negotiations and act as a check to protect the Palestinian population in the Occupied Territories against Israel's asymmetrical power. It is equally important to take stock of the critical internal issues that need to be addressed to ensure the proper progress on the international plane. It is of primary concern to ensure that all the Palestinian people in the Diaspora, and in particular Palestinian refugees, are fully and effectively represented, both inside and outside the UN system. Future internal reforms of the Palestinian representative bodies must guarantee the legal protection of all the Palestinian people, and ensure their political participation in accordance with their civil and political rights and in the exercise of their right to self-determination.

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² Fourth Geneva Convention, *Supra.* no. 5, Articles 7 and 47.

³ “Exploring the Illegality of ‘Land Swap’ Agreements under Occupation,” *Al-Haq*, December 8, 2011, via <http://www.alhaq.org/advocacy/topics/housing-land-and-natural-resources/508--land-swap-agreements-under-occupation-are-illegal->.

⁴ *Ibid.*

⁵ Geneva Convention IV relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), Geneva, August 12, 1949, Articles 49 and 147.

⁶ Charter of the United Nations, via <http://www.un.org/en/documents/charter/chapter1.shtml>, Articles 1(2), 2(4) and 55.

⁷ Avi Issacharoff, “EXCLUSIVE: Olmert: ‘I am still waiting for Abbas to call,’” *The Tower.org*, May 24, 2013, via <http://www.thetower.org/exclusive-olmert-i-am-still-waiting-for-abbas-to-call-will-abbas-ever-say-yes/>.

⁸ *Ibid.*

⁹ “The E1 plan and its implications for human rights in the West Bank,” Report by B’tselem http://www.btselem.org/settlements/20121202_e1_human_rights_ramifications.

¹⁰ Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, UN Human Rights Council, *A/HRC/13/34* (December 14, 2009), paragraph 21.

¹¹ “Draft Articles on Nationality of Natural Persons in Relation to the Succession of States (With Commentaries),” International Law Commission, April 3, 1999, Supplement No. 10 (A/54/10), via <http://www.refworld.org/pdfid/4512b6dd4.pdf>.

¹² Charter of the United Nations, *Supra.*, no. 6, Article 2(4)

¹³ Mahmoud Abbas, “The Long Overdue Palestinian State,” *The New York Times*, May 16, 2011, via <http://www.nytimes.com/2011/05/17/opinion/17abbas.html>.

¹⁴ Valentina Azarov, “Tell it to the Judge: Palestine’s UN Bid and The International Criminal Court,” in *Palestine Membership in the United Nations: Legal and Practical Implications* (Cambridge Scholars Publishing), June 1, 2013, p. 262.

¹⁵ David Keane and Valentina Azarov, “UNESCO, Palestine and Archaeology in Conflict,” in *Denver Journal of International Law and Policy*, Vol. 41, No. 309, 2013, p. 339-340.

¹⁶ *Ibid.* p. 339.

¹⁷ Ian Black, “Britain Ready to Back Palestinian Statehood at UN,” *The Guardian*, November 27, 2012, via <http://www.theguardian.com/world/2012/nov/27/uk-ready-to-back-palestine-statehood>; Chris McGreal, “International criminal court is a lever for Palestinians on Israeli settlements,” *The Guardian*, December 15, 2012, via <http://www.theguardian.com/commentisfree/2012/dec/15/international-criminal-court-lever-palestinians>.

¹⁸ November 25, 2010, via <http://www.alhaq.org/advocacy/topics/military-administration-and-legal-remedies/380-al-haqs-new-study-legitimising-the-illegitimate->.

¹⁹ Office of the Prosecutor, “Situation in Palestine,” April 3, 2012, via <http://www.iccpi.int/NR/rdonlyres/C6162BBF-FEB9-4FAF-AFA9836106D2694A/284387/SituationinPalestine030412ENG.pdf>; Dapo Akende, “ICC Prosecutor Decides that He Can’t Decide on the Statehood of Palestine. Is He Right?” *Ejiltalk.org*, April 5, 2012, via <http://www.ejiltalk.org/icc-prosecutor-decides-that-he-cant-decide-on-the-statehood-of-palestine-is-he-right/>.

²⁰ John V. Whitbeck, “Palestine and the ICC,” *Al-Jazeera*, April 16, 2013, via <http://www.aljazeera.com/indepth/opinion/2013/04/201341561759725150.html>.

²¹ David Keane and Valentina Azarov, *Supra.* no. 12, p. 338; William A. Schabas, “Relevant Depositary Practice of the Secretary-General and Its Bearing on Palestinian Accession to the Rome Statute,” in *PHD Studies Human Rights*, November 3, 2011, via <http://humanrightsdoctorate.blogspot.com/2011/11/relevant-depositary-practice-of.html>.

²² Fourth Geneva Convention, *Supra.* no. 5, Common Article 1.

²³ Valentina Azarov, “Legal house-keeping in the EU,” *Open Democracy*, July 31, 2013, via <http://www.opendemocracy.net/author/valentina-azarov>.

Interview II: Nabeel Kassis

“We had too much trust in our ability to turn the situation to our favor”

Q: How were you selected as a member of the Jordanian-Palestinian delegation to the negotiations?

A: It is well known that the Palestinian cause was a concern to all Palestinians, including myself. At the time, I was at Birzeit University and actively involved in meetings and discussions of Palestinian issues. Therefore I was nominated to the Team, which I did not hesitate to accept. There were certainly considerations of representation in the composition of the Team: The North, the South, the West Bank and Gaza. I did not know then why I was selected, but I found out later (*he smiles*). The important thing is that I went to the negotiations and was so deeply engaged in the preparations that I became an active member of the negotiation team, and participated in every negotiation session except for the period during which the negotiations were boycotted. Within a short period of time, following the Madrid Conference, I was appointed as deputy to the chair of the negotiating delegation, Dr. Haidar Abdelshafi, with another deputy, namely, Dr. Saeb Erekat.

Q: How did you receive the American Letter of Invitation to the negotiations and what did it include? Why did you approve it?

A: Preparations preceded the Madrid conference and after intensive consultations with the concerned parties, a joint American-Soviet Union invitation was sent to the Palestinian side to attend the conference as part of a joint Jordanian-Palestinian delegation. The approval came in the final analysis from the Palestine Liberation Organization (PLO) Executive Committee and Central Council. I believe it was not possible to reject the invitation in spite of the

reservations. The Palestinian side reviewed the Letter and had reservations. So the American side sent a Letter of Assurances, which was probably first deemed a Letter of Guarantees. The Americans also sent a similar letter to the Israelis. It was intended that each party saw the letter sent to the other party. But, most probably, the Israelis had seen our letter before it was sent to us, but the opposite obviously did not happen. Sometime later, we were able to see some of the assurances given to them.

In general, such a letter is not binding; nevertheless we took time to analyze it in detail before going to Madrid. We analyzed every single word in the Invitation and Assurances Letters and tried to understand their meanings and the intent behind them. We thought of how we can build on them in the coming talks. At that time, Dr. Walid Khalidi, a Palestinian and a member of the Jordanian Delegation led the analysis work in which we all participated. The process was fastidious but absolutely necessary.

The Letter of Invitation – which constituted a reference document later on – divided the Palestinian-Israeli negotiations into two phases: Negotiations for interim arrangements for a period of five years and negotiations on the permanent status on the basis of UN Resolutions 242 and 338. We were not pleased with this division and with the concept of permanent status. We had concerns regarding the interpretation of “status” as concerns the land. The land status was introduced as if it was not clear, and required negotiations to settle, while it was obviously occupied land from which – consequently – occupying forces should withdraw completely

Nabeel Kassis

Dr. Nabeel Kassis is a Palestinian academic from Ramallah. He is the former President of Birzeit University and currently the General Director of the Palestine Economic Policy Research Institute (MAS). In 2003, he served as the Planning Minister of the Palestinian National Authority and was a member of the Palestinian Madrid Peace Conference delegation in 1991. The interviewer, Mohammad Daraghme, is a Palestinian journalist and the translation is provided by Rania Filfel.

as per UNSC Resolution 242, which affirmed the inadmissibility of land acquisition through war. This is why we expressed reservations on the Letter of Invitation that left the term “permanent status” ambiguous. Soon after the negotiations began, our concerns proved to be justified.

It turned out that there were two perceptions of the Permanent Status. We lacked any binding reference for the bilateral negotiations that could help in settling the difference. The Letter of Invitation left this matter in the hands of the two sides to agree upon. But how could this be achieved under the prevailing imbalance of power? Signs of the negative US attitude appeared already in the American president's address to the Madrid Conference in which he did not mention the principle of “land for peace,” which was a core principle we were counting on. Furthermore, UNSC Resolution 242 was clear as far as we were concerned and constituted, along with other relevant UN resolutions, a reference. However, for the American side, the position was: “Go and negotiate.” In other terms, they viewed the issue at hand to be a conflict to be settled by agreement, whereas for us, it was not a conflict but an act of occupation, aggression and dispossession. Therefore, we did not view this issue as one amenable to dispute settlement mechanisms but one that required the enforcement of international law. For us it was similar to a case of theft and dispossession. Do you negotiate with a thief or call the police? However, the US still insisted it was a conflict that can and should be settled through bilateral negotiations that lacked balance.

Thus, we discovered clearly during the talks that any legal argument, no matter how strong and persuasive, is useless because what makes a difference was not the strength of the legal argument but the arrogance of power that is used to impose entrenched positions.

Q: Was there any objection or protestation against the Letter?

A: Of course, as said earlier. Therefore the Letter of Assurances was written and delivered. But assurances are only assurances. The question is, were these assurances enough? To us, they were not. We tried to find in them any binding positions, but there weren't any. They kept saying: Peace in the Middle East and settlement of what they labeled as a conflict is an American national interest. We said: If there is an American national interest at stake, there should be American pressure to reach a solution. Quite evidently, twenty years later, everybody should have understood that words need proof. We said this from the beginning – twenty years ago.

Q: Were the Americans at the time trying to manage the process rather than reaching a solution or were they totally aligning themselves with Israeli demands?

A: The Americans actually wanted a solution, but a solution that is arrived at by the parties. They wanted to convince us to engage in the negotiations for this purpose. They said: When you cannot agree on everything, you can begin by agreeing on the possible and put it aside. Quite obviously, this position was not acceptable to us as we saw the dangers in it. If you agree on an issue and put it aside, it means you lose your points of strength one after the other. The position we expressed was: no issue is settled unless all issues are settled, at least in accordance with the terms of reference for the negotiations on the transitional period. The American side pressured us in this direction and attempted to exert pressure upon the Israelis to halt settlement activity. I am referring here to the withholding of loan guarantees that Israel needed for its colonial expansion. As we were heading to the negotiations, we had huge concerns about settlement expansion. We raised a demand to stop all settlement activity not only to show signs of good intent, but also as a condition for serious negotiation. As I remember, this was the position expressed in the PLO Central Council before going to Madrid. It was stated as a condition.

When we went to prepare for the negotiations, we raised the question of stopping settlement activity as a pre-condition for the engagement in the negotiation.

The American side demanded that we sit at the table and that we present everything there. They said: Get in and engage. We said: Settlements should stop first. They said: Let's make settlements part of the negotiations rather than a precondition. We said: It is not a matter of preconditions. It is a matter of a situation changing on the ground during the negotiations, which will prejudice the outcome of the negotiations. How could we be negotiating while work was underway to change the very basis of what we were negotiating on? To us, it was a question of occupation. Therefore, we were willing to negotiate on how to bring the occupation to an end: I.e. how to arrive at the situation that restores legality, and not to negotiate on where we are heading. This remains our demand, even twenty years later. Yet the American position vis-à-vis settlement activity was not strong at any of the phases of negotiations. Anybody following the evolution of this process would notice that the position shifted from considering settlements as an illegal act to presenting it as an obstacle to peace to one that does not help in achieving peace to one that there are facts on the ground that must be addressed.

Q: In your opinion, what is the reason behind this shift in the American position vis-à-vis settlement activity? Is it because the US was affected by the Israeli position or because we are the weaker party?

A: There is no doubt it is because of both issues. We cannot overestimate the power of the Jewish lobby and other religious forces in the USA. Even when the US had a very strong president who came to office without needing any support from that lobby – namely US President Dwight Eisenhower – he was wary of the influence of the Jewish lobby although he did not need them at all. Still, we underused the

elements of strength we had at the Arab level as well as the Palestinian level.

Q: Technically speaking, how were the meetings organized within the joint Jordanian-Palestinian delegation?

A: The first joint meeting, held in Madrid, was attended by both the head of the Jordanian delegation and a head of the Palestinian delegation. It was an opening session after which each party released a separate statement to the press. We had apprehensions about the absence of independent Palestinian representation. When we went to Washington, we spent time negotiating sitting on sofas in the corridors outside the negotiations hall (the corridor or sofa talks, as they became known later). We endeavored to affirm the independence of the Palestinian delegation. At the end we arrived at an arrangement that had a Palestinian delegation including two members of the Jordanian delegation and a Jordanian delegation with two members of the Palestinian delegation. The final formation comprised a delegation of 12 Palestinian members and two Jordanian members. The two Jordanian members participated but did not intervene and the same applied in the Jordanian delegation. This composition gave more weight to the Palestinian presence [in the negotiations].

Q: What were the issues discussed in the Washington negotiations?

A: The negotiations centered on the Interim Period and what it meant. To us, this would be a transitional period that leads to ending the occupation and exercising the right to self-determination and all other rights. To the Israelis, this represented interim arrangements prior to final-status negotiations in which “everything was open for discussion.” We had accepted an interim period in which we do not exercise the full powers and responsibilities of a state, i.e. we do not exercise full sovereignty in the Interim Period. We were willing to postpone until the next phase the elements of sovereignty that contradicted with the status under the Interim Period. For instance, during the Interim Period,

there may be a limited Israeli military presence in security zones until a full withdrawal.

Our position was that this is an interim phase that preceded final status devoid of any occupation in which we would fully exercise the right to self-determination. Therefore, during the interim period, there should not be a single piece of the Palestinian Territory – even if it were an Israeli Army base – without any form of Palestinian jurisdiction, no matter how minor, and even if it would be limited to public health issues. In other terms, we treated the Palestinian Occupied Territories as a single territorial unit that could not be divided and that our territorial jurisdiction, albeit not comprehensive, should be on the whole Territory. The Israeli position was totally the opposite and it stated: You shall not have jurisdiction over the land in the Interim Phase but only limited jurisdiction over the “Palestinian population only.” We shall grant you the jurisdiction that you need for the Transitional Period. In the area of health, for example, the Israeli side offered that we exercise limited powers according to a list that it dictated. Our position was: We want all powers to be transferred, but we will specify certain exceptions in a list. This is a huge difference. They proposed areas on which we have full jurisdiction and areas with joint jurisdiction and areas that would remain under sole Israeli jurisdiction. We utterly rejected this proposal in the Washington Talks, but later on it was realized in the so-called Areas A, B and C. When I use “we,” I do not refer to the Negotiation Team alone, but rather to the Palestinian side as a whole and its leadership.

To stress the centrality of the territory/land issue in the transitional arrangements negotiations, we strongly insisted from the beginning that we have access to the Land Register and the resumption of land registration that Israel had suspended – in the aftermath of its occupation of the West Bank and Gaza Strip in 1967 – to make it easier for it to steal land.

Q: What were the key differences that emerged during the Washington negotiations?

A: The main question was the land. Settlement was a key issue. Our position was to stop all forms of settlement activity, but the Israeli response was: This demand would undermine the final-status negotiations. Their plans to steal the land were quite flagrant but who would deter them? The Israelis refused to recognize the 1967 borders and kept saying: We leave this point to the final negotiations.

Another area of disagreement appeared when we demanded the transfer of all powers and responsibilities in all areas so that we can package these powers and responsibilities in a way that we decide (health, education, transportation, telecommunication among other areas). We wanted to regulate such areas into our own public administration system. But their response was that they had the Israeli Civil Administration officers in charge of certain so-called spheres and that the powers in these spheres would be transferred as is even if not completely (in other words, the lists of powers and responsibilities that I referred to earlier) while the two parties would cooperate and coordinate in the exercise of the transferred mandate in such spheres. To us, this was just another way to exercise occupation: Leaving through the door and reentering from the window. For instance, they asked that the sector of tourism and antiquities would be transferred to us as one package, i.e. one single sphere. We said: We'd rather separate tourism from antiquities. In the end, the powers and responsibilities were transferred to us as they were practiced under the Civil Administration and remained burdened with the necessities of cooperation and coordination or *tansiq*. This is the very term that started to weigh heavily on the heart of every Palestinian. It should be noted that the Palestinian side was able to adjust these spheres later on in accordance with its vision and many of the obstacles laid down in the Interim Agreement were bypassed regarding the separation of (executive, legislative, and

judiciary) powers and to increase the number of PLC (Palestinian Legislative Council) members in addition to enactment of laws and other aspects of sovereignty. Nevertheless, *tansiq* persisted.

Q: Did the Israelis determine the limits of the Interim Period during the Washington negotiations?

A: These were specified in the Letter of Invitation. The idea was to have a five-year period during which we were supposed to reach an end of the Interim Phase and move to a permanent status. The Israeli understanding of “interim,” especially when it comes to settlement and administration, projected an impression that they were seeking local self-rule in which they have the overall territorial jurisdiction and in which they would permit and allow for certain powers over the population to be exercised by the Palestinians themselves.

Q: Twenty years after Oslo, do you think that it was clear for the Israeli side that they wanted transitional self-rule to become a final-status solution?

A: In my opinion, the Zionist Project continues. It is not clear if its outcome for them includes Palestinian self-rule. I believe that Project did not give up on the evacuation of the land of its Palestinian population. I cannot exclude this idea in my mind. Self-rule is a transitional arrangement and cannot persist forever as this entails continued subjugation of another people to infinity. This won't be possible: Either they leave or force us to leave. The Settlement Project has been very active recently in terms of land acquisition and expropriation. Considering long-term developments, Jewish immigration from Eastern Europe began in 1882 – prior to the formation of the Zionist Movement. The settlement process continues and it increased during the negotiations. As we were negotiating, settlement activity increased and new settlements emerged. Even when the Israeli government was formed by parties that supported the two-state solution with a certain level of credibility under Israeli Prime Minister Yitzhak Rabin, settlement

activity continued. Indeed, it continued under every Likud or Labor government or coalition government, including Labor-Meritz in 1992. So, what should we conclude? Has this Zionist Project come to an end? Will it continue until it has taken all the land? It is true that the number of Palestinians is increasing, but the area of land available to them is decreasing at the same time. This is what is being proposed now. We have come to a situation in which Israel must either put an end to its expansion and start rolling back its settlements to the 1967 lines or continue settlement construction and further suffocating the Palestinian population in small enclaves, forcing them to emigrate. When I was on the negotiation team, we would say: Show us the evidence, we need a sign or a signal that proves that you really want peace and the only credible sign would be the cessation of settlement activity. As for a “just peace,” whenever we hear the term, we pause and wonder: Where is justice in all this?

Q: What was the role of Dr. Haider Abdelshafi in the negotiations?

A: He was a well-liked leader, known for his patriotic positions and trusted by all. He enjoyed a high level of credibility and was respected by everybody, even on the other side (of the negotiations table.) He had a refined style of negotiations, political but determined. I miss him. I was quite close to him during that stage as I was his deputy, but we also developed a personal relationship. I would sit on his right side in the negotiations and I would almost always be with him in side-meetings and when we went for long walks. He had many concerns and was totally against settlement expansion. We all rejected the continuation of settlement activity. To him, this was his major fear. After the conclusion of the Oslo Accords and its signing with initials, he withdrew. He did not attend the official signing ceremony. He feared its outcome.

Q: How did you react to an accord that did not include stopping settlement activity?

A: We pondered this point. The fact that it was not mentioned in the Declaration of Principles meant to me that we have either revoked our position on settlements, or that we trusted the good intentions of the other side or that we were confident that we could change the situation later. Of course, it was out of the question that any Palestinian would revoke the demand of stopping settlements, so I gather we had too much trust in our ability to turn the situation to our favor in the future.

Q: Why did you attend the Ceremony of Signature for the Oslo Accord while Dr. Abdelshafi boycotted it?

A: I had a position that I had expressed at the time orally and in writing. But in the end, we had a leadership that made the decision. It should be noted that the PLO had endured a suffocating siege and had no place to go. I think this issue will be left to future generations to judge. I considered the PLO to be the leader of the political process being the sole legitimate representative of the Palestinian people. On this premise, I attended the signing ceremony. There is no doubt we all wanted the settlement activity to stop and prisoners to be released but this did not take place. When the Israelis withdrew from Ramallah, we walked unbelievably in the streets and reached *Al-Muqata'ah* where we saw the empty cells in which detainees were previously held and tortured. We saw how the situation changed. And this filled us with hope at the beginning, but things did not proceed as we were hoping for. Some say we did not play it right, but there was another party in the field, which was always playing with the intent to score; it never stopped working toward realizing its original project. This party exploited all tools to weaken us and sabotage our case. It abused the local and international events, particularly pursuant to the September 11th attacks to weaken our position in the international arena.

Q: How do you assess the formulation of the recognition of Israel as stipulated in the Oslo Accord? Many people criticize it?

A: We recognized Israel's right to live in peace within recognized and secure borders, as stated in Resolution 242. "Israel's right to exist" is a credo of the founders of the Zionist Movement. It is not for us to repeat that credo. Why should we, of all peoples in this world, be asked to single out Israel, of all states in the world, with a right to exist?

Q: Did you raise the applicability of the Geneva Convention in the negotiations?

A: This is a very important point. It should be noted that the Geneva Convention is a document that regulates the disposition of occupied territory by the occupying power and how such power would treat the population under occupation including: Prohibition of deportation, transfer of the population from the occupying state into the occupied territory – in other terms, prohibition of settlement activity – and the prohibition of collective punishment. We had a list of the violations of the Fourth Geneva Convention committed by Israel. Israel did not acknowledge the applicability of the Fourth Geneva Convention over the Occupied Palestinian Territory, which it did not deem as occupied lands. It claimed that the provisions it applied from the Fourth Geneva Conventions were mere expressions of good will. On the other hand, we said, we had UN resolutions that condemned settlement activity, the annexation of Jerusalem, deportation and collective punishment.

Q: Was Oslo a shock for you?

A: It was probably a shock for some. For me, I had consented to play a role in a process, lead by the PLO. But maybe some in the PLO did not fully comprehend the extent of settlement activity, which was probably a surprise to them upon their return [to Palestine]. Obviously, many expressed multiple reservations against Oslo including the lack of clarity of its second phase and ambiguity in safeguards against preempting certain outcomes (that runs contrary to 242 and UN resolutions) and against prejudging

the final status. The drafting was very important and I believe our side suffered from a drafting problem. Most probably, in Oslo the Israelis were drafting and the Palestinians were commenting. Things would have been different had it been done the other way around.

Q: Was the reason behind this the weakness of the PLO?

A: It could be that the leadership was in a hurry for a solution, I am not sure. They could have benefited better from the rich experiences gathered in the Washington negotiations. I believe that the work in Oslo was done in a different manner compared to Washington. I was a member of a technical team with patriotic and probably political sense; but I was not a professional politician. In Oslo, the focus was probably more on the political rather than on the legal aspects.

Q: Have the Palestinians repeated the same mistakes after Oslo?

A: There were mistakes, but of a different type. We as a people have self-confidence but evidently we have to recognize that the other party has competences in addition to strong support, and practices trickery as well. There was a misperception of the situation. But there is another issue here: Are we still in the national liberation phase or should we focus on building Palestinian institutions that are capable of establishing the tenets of a state? This is an endless dialectical issue to date. We did not have the tools to empower us to support the negotiations with additional instruments, including any influential form of resistance. In addition, the world changed a lot, especially in the aftermath of the September 2001 explosions.

Q: What about the Geneva Initiative in which you took part? Does it express your vision of the Final Status Agreement?

A: No. The Geneva Initiative was for me an exercise. It showed that it was possible to improve on what was purportedly offered at Camp David, getting closer to realizing our rights and dismantling the claim that we had rejected a

generous offer. Some Israelis feared the Geneva Initiative because it included recognition of rights that Israel had not acknowledged before, including the right of return, although not stated explicitly. Some influential Israelis declared their refusal of the Geneva Initiative on the ground that it stipulated the exercise of the right of return for the Palestinian refugees/Diaspora. Some of them also rejected the Arab Peace Initiative for the same reason. The Geneva Initiative was a useful exercise between non-official Israelis and not-officially representative Palestinians.

Q: Is the US role in the current negotiations any different from what it was in previous negotiations?

A: Who knows what is taking place in the negotiations right now (*he laughs*)? I see the American position now as being worse. When the Americans come today after all of the well-known concessions on the side of the PLO over the past quarter of a century to demand reasonable concessions from both sides, to us, any concessions mean revoking rights, but for the Israelis this entails refraining from violating international law. What kind of justice is this? We want the Americans to tell the Israelis: Enough with your unjust treatment of the Palestinians; you must put an end to your expansionist project. What I hear now is that the Americans are not allowed by the Israelis to sit in the negotiations and that they are not able to do anything about it.

Q: If you were in a position to make decisions now, in which direction would you sail with the Palestinian ship, given all these complexities?

A: This is too far-fetched a proposition, but I think it pays to listen to political thinkers and experts and to assess options freely and openly. The current negotiations are to continue for up to nine months and my intuition tells me we will be pressed to extend while Israel goes on with its illegal settlement activities. Therefore we have to be very careful in preparing the next phase. We have achieved the status of Non-Member Observer State at the UN and I think we have to pursue this option with all of its potential and consequences.

Fixing the Paris Protocols Twenty Years Later: Some Lessons for Diehard Reformers*

* The following article is abridged from an English version published in *Jadaliyah*. An Arabic version also appeared previously in *Al-Quds newspaper*.

2013 commemorates two decades since the signing of the Oslo Declaration of Principles between Israel and the PLO. The endurance of what was supposed to be a five-year interim agreement is likely to be the subject of growing scrutiny from policy-makers, academics, international organizations, donors and Palestinians more generally. While such a retrospective is predictable if nothing else out of nostalgia for the euphoria of peacemaking in the 1990s and as material for today's media mill, some of the central pillars of the Oslo framework are increasingly challenged on the ground.

A key premise – and promise – of Oslo, was the potential of Israeli-Palestinian-Arab-international economic cooperation, which would in turn deliver prosperity to the Palestinian people. The September 2012 popular protests throughout the West Bank rudely repudiated these assumptions, perhaps always naïve, and only recently subject to critical political assessment. Among the targets of popular ire was the Paris Protocol on Economic Relations, annexed to the Oslo agreements. Many demonstrators identified the Protocol as a key instrument in the Israeli system of colonial control, occupation, and denial of sovereignty. The calls for its abrogation were explicit, and to make the point its effigy was burnt in some protests.

However, the broader popular contestation did not focus so much on the Protocol or Oslo frameworks *per se*, as on those politicians

managing them. In response, Prime Minister Fayyad reminded his critics that he was not responsible for negotiating the Protocol and that his government faced a sub-optimal situation in implementing it, even while insisting on its continued suitability as a framework for the Palestinian economy. But popular mobilization was unable to prompt a serious public or policy debate on the pros and cons of the Protocol and its continued application. While a growing critical chorus (not only Palestinian) has emerged over the years, the only party on record that is still unwilling to reconsider or re-negotiate the Protocol is Israel.

From the manner in which popular concern about the Protocol has receded from the political agenda, it would appear that expert and popular discontent with the Israeli-Palestinian economic relations has yet to go beyond scratching the surface of this issue. Over twenty years, that relationship and future options have been repeatedly debated, if rarely challenged, with little change in the status-quo, indeed with a major degradation in economic conditions as compared to the “golden era” of cooperation in the flush of the post-Oslo euphoria. Furthermore, it is likely that the balance of economic and political power and expertise wedded to the concept of the Two-State solution (on both sides of the equation) cannot countenance “opening” the Paris Protocol, which is an Annex to the broader Oslo framework, without putting the whole package into question. Even the debate currently focused on the twin deficit created by shortfalls in donor aid and, more systematically, by PA public revenue dependence on the goodwill of the occupation authorities is conducted as if

Hiba I. Hussein and Raja Khalidi

Hiba I. Hussein, JD, is Managing Partner of Hussein and Hussein Attorneys and Counselors at Law, Jerusalem and Ramallah, and has served as a legal advisor to the PLO Negotiations Affairs Department. Raja Khalidi has worked as a development economist since 1985 with the United Nations Conference on Trade and Development - UNCTAD, Geneva. The views expressed in this article are those of the authors and do not necessarily represent those of the PLO Negotiations Affairs Department or the United Nations Secretariat.

these could be treated in isolation from a re-examination of the Protocol or Oslo.

It should come as no surprise that Palestinian and international policy circles are again posing questions as to whether and how the Protocol can be modified, amended, enhanced, or otherwise “reconsidered” as the appropriate framework for Israeli-Palestinian economic relations, not to mention the future development of the Palestinian economy and of an independent state of Palestine.

Certainly, efforts to rehabilitate the Protocol (or save Oslo) are already underway. These may be motivated for example by the good intentions of some European or Israeli liberal think-tanks in the belief that the Two-State solution can be salvaged by prolonging economic peace and repackaging the Protocol. Israeli colonial planners might also be interested in a new version of Paris since its original elaboration has withstood Palestinian public objections. International organizations and major donors with a stake in the ultimate predominance of the neoliberal experiment that Oslo/Paris constitutes will also see more virtue in sticking with the Protocol. PA policy makers and business interests might also entertain reforming the Protocol, still believing, despite all evidence to the contrary, that it offers the optimal political and economic framework for Palestinian development. While political stalemate might discourage the PA from actively pursuing a re-negotiated, improved version of the Protocol, any resumption of a political process would demand a parallel economic process, especially given the pending, September 2012 PA request to Israel to “re-open” the Protocol.

As two observers and practitioners who have followed the (mis)fortunes of the Protocol since its infancy, we would like to offer our own brief contribution to exposing it for what it is today.

The Gaps and Shortfalls of the Protocol Are Numerous; Implementation Severely Lacking

Fiscal leakage is widely recognized by all international organizations, and has long been the subject of Palestinian complaints, as the biggest weakness in the Protocol's fabric. This is due to a cumbersome, costly and opaque “clearance” mechanism that leaves all the information and levers in the hands of the Israeli Ministries of Finance and Defense. An UNCTAD study released in September 2013 confirms over \$300 million USD of documented annual leakage because of weak customs control, antiquated clearance arrangements, and tax avoidance that the Protocol has made possible. This implies a cumulative amount since 2005 that is equivalent to the fiscal deficit the PA has run up since 2001. Any attempt to secure foregone revenue would most likely be a Sisyphean task.

On a conceptual and economic policy level, the absence of a national currency (and hence lack of resort to macroeconomic and exchange rate policy) is one of the Protocol's most enduring weaknesses. Trade diversion to Israel (instead of creating new trade with other partners) is another chronic burden on the prospect for building a strong Palestinian economy. Most significantly, the tariff structure of Israel is one appropriate for an advanced, industrialized, and increasingly outward looking economy. But the tariff structure required to rebuild the Palestinian economy and allow it to stand on its feet so it can “compete” implies a very different stance towards external trade than that which suits Israel or which is possible within the quasi- “Customs Union” (CU) between the Palestinian and Israeli economies.

Even the World Bank agreed with the Palestinian position when under the pressure of the intifada and Israeli separation measures, both were emboldened in 2002 to call for abandoning the CU with Israel and opting for a separate trade regime. But the PA has in recent years reaffirmed its commitment to the Protocol. It has also renewed Panglossian arguments that were fashionable in the 1990s

that the CU is the best possible option, effectively bucking all the expert wisdom. Since then, the Bank too has reformulated its position and reverted to supporting the counter arguments of Israel and a small minority of Palestinians that an autonomous trade regime was the least appropriate option.

No Amendments Have Been Made to the Protocol

No mutually agreed amendments have ever been made to the Protocol, even though certain items were added and quotas were raised on lists of goods that the Protocol allowed import from Arab and Islamic countries. This did not require amendments as such and the Protocol remains on paper very much as conceived twenty years ago. The PA never pursued the areas where it could have been amended. The one exception was at Camp David in 2000 when the chief Palestinian economic negotiator and former Minister of Economy, Maher Masri, succeeded in obtaining an agreement in principle with the Israeli Finance Minister on abandoning the CU in favor of a Free Trade Area (FTA). This would not have meant an amendment to the Protocol but rather its abrogation. By 2002 and in the face of the Israeli separation policy, Minister Masri and the PA were actively reassessing the costs and benefits of Palestinian separation from the Israeli economy. A discussion today about an “enhanced” CU lives up to that old definition of insanity: doing the same thing again and again and expecting different results.

The Joint Economic Committee (JEC) is a Moribund Mechanism

The JEC was not designed or used as a mechanism for trade arbitration, since it was predicated on a five-year interim self-government period that was treated by both parties as one best spent managing the new quasi-CU arrangements, however imperfect, rather than building a correctly functioning CU. Essentially, Israel used the JEC as a forum where the PA could raise implementation hiccups and, depending on how urgent they were or how accommodative Israel was at any

moment, some “treatment” would be decided. Follow-up usually entailed the establishment of a “new” JEC sub-committee at the technical level that met for months before agreeing or not on any given step, incrementally, not as part of any strategic economic cooperation process. Increasingly the JEC became dominated by the PA Civil Affairs Ministry and its concerns and interests rather than Minister of Economy and Trade (or Finance), which should have directed PA interaction with the JEC.

Israel succeeded in manipulating the JEC as another of the “bilateral” instruments for prolonged occupation, drawing PA officials into a collaborative logic instead of a state-building process. Since the 2000 intifada the JEC at the Ministerial level has been defunct, except for one brief, abortive meeting in 2009. Some of its sub-mechanisms persist to manage daily affairs, but largely as implementation mechanisms for Israel to inform the PA of its due tax clearance revenues, changes in Israeli tariffs or laws, and other one-way “coordination.” Simply put, the JEC is clinically dead and should be taken off life-support.

The Reestablishment of PA Presence at Rafah Should Not Be a Step Towards a Protocol V2

If anything, the new circumstances in Gaza spell the *de facto*, if not *de jure*, termination of the Protocol in that part of Palestine. As part of its broader colonial strategy of dividing the Palestinian people and ruling each under the appropriate regime, the Gaza disengagement provided a suitable way for Israel to shed itself of the economic “burden” of having to support the “hostile entity” that Gaza was designated. Within a few years of disengaging from direct occupation, Israel also deleted the Gaza code from its customs book, symbolizing its capacity to unilaterally cut economic links to such an “enemy territory.” The PA-Hamas divide since 2007 deepened that cut and played into Israel’s strategy. This has had a devastating impact on the prospects for realizing the principle of Oslo that the West Bank and Gaza Strip are an integral

economy and geographic entity, not to mention rendering the economic viability of statehood a chimera.

The Building of Modern Border Terminals and Bonded Warehouses Is Not a Solution for the Flaws of the Protocol

If the Israeli authorities have their way, soon all trade with the PA areas A and B of the West Bank will pass through sixteen “border crossings” that Israel is unilaterally establishing along the Separation Barrier. Israel intends to gradually develop these crossings into full-fledged commercial trade terminals, in some cases linked to inland “bonded warehouses.” These arrangements are not sanctioned by the Protocol. They run against the very spirit of a CU. They constitute new realities following the security-first logic of the Barrier, which Israel justifies as *de facto* realities and they hark back to previous Israeli schemes, packaged in a more attractive form and rationalized by the need to trace “actual trade.”

The PA may well be pressured to accept this proposition under the slogan of trade facilitation and capturing leakage. But in fact this would mean acquiescing to something that was resisted since the 1990s whenever Israeli authorities proposed inland “customs stations” which would not necessarily be on 1967 lines but dictated by Israeli settlement/roads/security lines in the West Bank. In case the Barrier borders, customs stations, and bonded warehouses are not going to be established along the 1967 borders, then it is incumbent upon the Palestinian side to examine whether continuation of the CU is reasonable.

If such crossings/terminals (“customs stations”) are now being planned, the PA will need sophisticated customs capacity to control and inspect. In such an eventuality, PA institutional capacity would be better applied to moving to an FTA with Israel, which would minimize the disadvantages of the Israeli-imposed trade infrastructure, while conferring

benefits from new trade with other partners. Even Professor Ephraim Kleiman, the Israeli economist godfather of the “Palestinian “customs envelope” believes today that this would allow greater Palestinian policy discretion in managing its trade with the rest of the world and eventually decrease Israeli domination of the Palestinian external trade sector.

UN Resolution Granting Palestine a Non-member State Status Could Be Basis for Strengthening Palestinian Economic Bargaining Position with Israel

In the eventuality of political and economic reunification of the West Bank and Gaza, with a “State of Palestine” national government based in Gaza, it could apply a range of trade, fiscal, and even monetary instruments appropriate to governing under the new circumstances.

A move to establish an autonomous Palestinian trade regime based in Gaza could be envisaged even while maintaining PA self-government arrangements in the West Bank more or less in cooperation with Israel and without prejudice to the ultimate disposition of the occupied territory. In Gaza a Palestinian currency could provide a range of hitherto inaccessible macroeconomic policy instruments to generate growth and public revenues. Indeed, the longstanding Palestinian argument that the occupied territory constitutes a “separate customs territory” that renders Palestine eligible for membership in the World Trade Organization would receive a credible boost in such a circumstance. If economic policy duality is the price to be paid for political unity, then Palestinian institutional capacities needed for such a complex strategic orientation would have to be mobilized within a new framework of “economic nationalism” that sheds the Oslo legacy of Israeli control and Palestinian subservience.

There Are No Viable Future Options to Renegotiate the Protocol or Expand its Coverage

Further trade or economic negotiations should not be pursued bilaterally with Israel,



nor should they be focused on optimizing the Israeli-Palestinian economic relation. At best, in the context of WTO-sponsored negotiations, a future trade relation with Israel and all other countries could be discussed multilaterally as part of constructing a new Palestinian trade regime that protects its developmental interests and puts an end to Israeli trade and economic sanctions, which are manifestly illegal under international trade law. To the extent that it can, the “State of Palestine” should begin to act unilaterally to move beyond the Protocol in any part of Palestinian territory that it can do so.

Beyond full monitoring and capture of PA revenue leakage through new clearance mechanisms, any changes that the occupying power intends to impose that imply any “amendment” to the Protocol or other negotiated agreement should be avoided. Instead, efforts should be focused on breaking free of the Israeli stranglehold on trade, through for example, establishing a trade corridor to Jordan through Allenby, supporting viable import substitution efforts, and designing a new trade regime that responds to national economic security in all parts of the occupied “State of Palestine.”

The Economics of the Oslo Accord

Palestinian business people anecdotally say that the transaction costs for the export of goods from Palestine are so high that they are unable to compete, and cite the fact that, with the various impediments placed in the face of exports, it is cheaper to ship a 20 foot container from Ashdod port in Israel to China than it is to get this same container from Nablus to Ashdod port. The reality of movement of goods from Palestinian producers to their targeted markets constitutes an ongoing nightmare for Palestinian businesses, and formulates a serious hurdle to potentially increasing Palestinian exports under the current situation.

The Paris Protocol Structure

The Paris Protocol is considered the main framework for economic cooperation and relations between the Palestine Liberation Organization (PLO), representing the Palestinian people and the Palestinian Authority of the West Bank and the Gaza Strip and the Government of Israel. The Protocol formalizes Annex V of the Oslo Accord signed in 1993, which, in addition to other parts and annexes of the Oslo Accord governs the economic relations between the two parties. The spirit of the Paris Protocol which is aimed at changing and challenging the characteristics of the post-1967 economic regime is clearly stated in its preamble, which indicates: “This protocol lays the groundwork for strengthening the economic base of the Palestinian side and for exercising its right of economic decision-making in accordance with its own development plan and priorities.”

In signing the Paris Protocol, the Palestinian negotiator had four basic benefits in mind that would accrue to the Palestinian economy and businesses. These four benefits are:

1. Free movement of Palestinian labor to the Israeli market;
2. Free movement of Palestinian goods to the Israeli Market;
3. The potential of transforming list A-1, A-2 and B of the Palestinian Tariff Book;
4. The proximity of the Palestinian economy to the Israeli economy, under the concept of a customs union would provide the Palestinian economy with an impetus to develop along the same lines.

It is important to note that the Paris Protocol was accepted by the Palestinian side with an understanding about its interim nature, the lifetime of which would not exceed five years. The Protocol has been in force for twenty years instead, with practically no significant adjustments, and hence does not reflect in any way the economic interests of the Palestinian economy. Unfortunately, notwithstanding its already expired nature, the implementation of the Paris Protocol was undermined by the fact that it was formulated to accommodate, and not to deal with the asymmetry of power and capacity of the two economies. This asymmetry was clear in the seriousness by which the Israeli side dealt with the roles of the Joint Economic Committee (JEC), which was to formulate the body for coordination and consultation between

Saeb Banya

Saeb Banya is the former Deputy Minister of National Economy for the Palestinian Authority and a specialist in economic and trade policy. He is currently the Palestinian Coordinator of the Aix Group.

the two sides. In the meetings of the JEC, the Israeli side took up the position of eliminating the potential for coordination and utilized political arm-twisting to empty this body of its wider context and to render the meetings and discussions meaningless.

As a result of the continuing occupation, the Palestinian economy is overridden by structural weaknesses that have manifested themselves in trade imbalances related to the customs union with Israel, labor shortages, monetary impotence, and extreme fiscal dependencies on Israeli clearances and external aid. The way in which the Paris Protocol is being implemented and/or violated by the Israeli government over the years has also created and continues to create fundamental imbalances and major obstacles in the Palestinian trade relations with Israel and with other countries – an action taken with the intent of minimizing the power of the Palestinian side once the final status negotiations commence. Moreover, Palestine now currently faces a tremendous trade deficit that hinders any anticipated, sustainable economic growth.

Israeli Violations

Currently, Palestinian exports to Israel are around \$618 million USD (PCBS, 2012), while imports from Israel are around \$2.9 billion (PCBS, 2012). As such, the balance of trade between Palestine and Israel is around \$-2,282 million to the benefit of Israel. When the Paris Protocol was signed, under the assumption of 150,000 workers working in Israel, the total income for the Palestinian economy was estimated to be around \$1.2 billion, significantly reducing the trade deficit between the two sides. Currently, less than 25 percent of the total labor force works in Israel, thereby maintaining the very large trade deficit. While the agreement secured the entrance of Palestinian laborers to the Israeli economy on paper, in reality the labor flows over the years was heavily curtailed and, since 2000, almost completely stopped from Gaza.

In 1998, Israel committed another serious violation of the Paris Protocol and the principle of free movement on which the Protocol was based, through the unilateral declaration by then Israeli Minister of Industry and Trade, Natan Sharansky, of a pledge for Palestinian importers which said that the goods they imported were only to be sold in the Palestinian market under the penalty of criminal sanction. Israeli importers did not have to do the same, and were allowed to sell their imported goods in the Palestinian market. Thus, Israeli importers could import goods to

Tariff Lists A-1, A-2 and B

Within the Paris Protocol, three lists were identified that would derogate from the Israeli trade regime as follows:

A-1: A list of goods that may be imported from Jordan or Egypt, and that would enter under Palestinian tariffs and technical specifications.

A-2: A list of goods that may be imported from Jordan, Egypt or other Arab and Islamic Countries or other countries that would enter under Palestinian tariffs and technical specifications.

B: A list of machinery to be used for infrastructure development that may enter Palestine under Palestinian tariffs, and Israeli standards and technical requirements.

the Israeli market, pay import taxes to the Israeli side, and then sell these goods to the Palestinian market. These indirect imports formulate a serious revenue leakage for the PNA, since the transfer of these goods into the Palestinian markets results in the transfer of Value Added Tax only from the Israeli side, while taxes such as customs and purchase tax remain with the Israeli treasury. Palestinian sources estimate that the losses incurred from the process of indirect importation exceeds \$100 million per annum.

This represents a major leakage of revenue from the coffers of the Palestinian National Authority. When the issue of the pledge was presented in the JEC, there was no willingness on the Israeli side to deal with the issue, even though it was a blatant violation of the spirit of the customs union, which is the basis for the agreement.

The refusal of the Israeli side to expand lists A-1, A-2 and B was another indication of Israeli intent. Even though the agreement clearly states that the lists were to be reviewed and expanded every six months, the lists were only expanded twice since the signing of the Protocol in 1993. Hence, it is clear from the examples given above that the Israeli side, which had the power of enforcement of the Protocol, ensured that all the potentially beneficial parts of the agreement for the Palestinian economy were not implemented properly, or implemented at all.

Customs Authority

The Paris Protocol contained some of the basic principles needed to gradually create a separate customs territory, with customs clearance gradually being done by Palestinian customs at the Rafah, Allenby and Damia border crossings, with supervision by the Israeli side. This transfer of authority from the Israeli customs to Palestinian customs never actually took place, thereby violating one of the main avenues for building a Palestinian capacity for statehood. Clearance of goods imported by Palestinians, along with the utilization of Israeli ports and airports on equal footing with Israeli importers and exporters also formulated a key construct of the Paris Protocol and the Oslo Agreement. Palestinian products, however were discriminated against at the ports and airport, including when it came to issues such as security procedures, the prevention of Palestinian cargo from being shipped on commercial passenger planes and the application of extraordinarily cumbersome technical standards and testing procedures all resulting in delays and an increase in costs for Palestinian trade. To this array of impediments, the Israeli side invented

the process of moving goods from Palestinian to Israeli trucks at security checkpoints which later developed into borders crossings, that surely violate the Paris Protocol and the Oslo Accord, through an unloading and reloading process known as back-to-back, which adds to the cost of transportation and increases the potential for delays in the movement of goods.

The Israeli side also created a list of “dual use goods” that cannot be imported into Palestine since an alternative use could pose a security threat. This list includes a large number of items, which are basic inputs to the productive process of industry, including items such as hydrogen peroxide, which is used by the food industry as well as leather tanning and textile production. The fact that the producers need to find replacement materials amasses higher costs for the production process, thereby increasing production costs and affecting competitive capacity.

The Paris Protocol also allowed for Palestinians to sign trade agreements with other trade partners such as the European Union, European Free Trade Association and others, as long as they do not diverge from the principles of the customs union on which the Paris Protocol was based. Once these agreements were signed, Israeli Customs Authorities, acting on a political decision to thwart such agreements, refused to recognize these agreements and therefore refused to clear Palestinian imports under these agreements, causing additional costs and delays and putting Palestinian businesses at a competitive disadvantage once again.

Lack of Economic Independence

As time went by, the Israeli government constantly introduced changes to the “joint” trade regime without coordination, such as a reduction of taxes on imports, a purchase tax and customs tariffs. Hence, these changes were aimed at meeting the needs of the Israeli economy irrespective of their impact on the Palestinian economy and purely on a unilateral

basis. This unilateralism, in itself is a complete violation of the spirit and letter of the Paris Protocol and is intended to rob the Palestinian Authority of the capacity to formulate trade policy, exactly in the same way that Israel refuses to accept Palestinian trade agreements with other trade partners.

Palestine's economic sovereignty, which was a pivotal part of the spirit and concept of the Oslo Accord and the Paris Protocol, has therefore not materialized yet and Palestine has no control of its trade relations, including its external trade regime and the capacity to create an import policy

**It is time to reconsider
the transformation of the
Palestinian Monetary Authority
into a full-fledged central bank.**

that reflects Palestinian development interests. Add to this a lack of labor mobility, fiscal and monetary control, which are all regulated by the Paris Protocol, and a lack of control of borders, land (particularly Area C) and natural resources including water, the Dead Sea and other natural resources that are regulated by other annexes of Oslo Agreement, and the result is a near total lack of sovereignty.

And the violations continue. Indeed, these violations are also manifested in the way Israel implements the collection of revenues on imports. The Protocol states in Article III that Israel collects clearance revenues and transfers them on a monthly basis to the PA (after deducting collection charges of up to 3 percent).

In late 2000, after the Second Intifada broke out, Israel indefinitely froze the transfer of tax money to the PNA, thus violating the principle of transfer, and enforcing the asymmetry of power and hegemony that the occupier has over the occupied. This action was repeated several times,

including in 2006, after the Hamas victory in the parliamentary elections and the establishment of a Hamas led government, as well as in October 2011, as punishment for Palestine's application for membership as a state in the United Nations, and again in November 2012 after the UN upgraded Palestine's status to "non-member state."

And of course, as a part of the continued "imposed integration" demonstrated by the Paris Protocol, the Palestinian National Authority has no currency, no exchange rate policy and Israel alone controls all aspects of monetary policy. The bank of Israel sets the short-term nominal interest rate according to its considerations to stabilize inflation and support employment, subject to inflation targeting. Needless to say, when the Bank of Israel sets the short-term interest rate, it does not take into account the implications of any particular interest rate for the Palestinian economy. Therefore, it is time to reconsider the transformation of the Palestinian Monetary Authority into a full-fledged central bank, thus granting Palestinian sovereignty in issuing its own independent currency and thus control over its exchange rates and monetary policy.

Other Restrictions in the Oslo Accord

Along with the Paris Protocol, the Oslo agreement had a number of provisions within it that had a tremendous impact on the economic functioning of the Palestinian–Israeli economic relationship. These provisions included the division of the West Bank and Gaza Strip into areas A, B and C, which divided governance into three categories. Area A, which included the cities and population centers inhabited by Palestinians, was placed in the Oslo Agreement under security and administrative control of the Palestinian Authority. Area B, on the other hand, which included villages and rural areas adjacent to Area A, were placed under the administrative control of the Palestinian Authority, while being at the same time under the security control of the Israeli side. Area C, which comprises around 60 percent of the total area of the West Bank,

remained under the administrative and security control of the Israeli Occupation Forces.

This division formulated from the beginning a severe obstruction to the potential development of the Palestinian economy, especially in two quarters. First, the control of natural resources, such as water, stone and marble quarries and other natural resources, which are mostly located in Area C, and which required Israeli licensing for access and for any establishment of industrial or excavation operations. One of the many examples of this can be seen in the delay in issuing quarrying permits for the stone and marble companies in Beit Fajjar, in the North of Hebron, where the requests for permits have been denied by the Israeli side since 1995. Second, the designation of Area C, which again requires Israeli approval for any work being done in it, formed an impediment to basic infrastructure work such as telecommunications, electricity, water and sewage lines, which could not be done without the constantly delayed or refused permits from the Israeli Occupation Army.

One example of the delay in infrastructure permitting is the inability of the Palestinian Telecommunications Company to provide

Steps must be taken to increase Palestinian independence from the Israeli economy.

telephone connections to several of the Palestinian villages in the Jordan Valley since the cables will have to run through Area C. And there is also the constant delay in the issuing of building or operations permits for establishing road connections between Palestinian cities and villages if these roads pass Area C. One example here is the prolonged negotiations that the Palestinian side entered into with the Israeli side supported by the Quartet and the US Government, in getting a permit to build a

road that would connect the new Palestinian city of Rawabi with the main road near the city of Birzeit.

Although the Paris Protocol placed economic relations between Israel and the Palestinian Authority in the hands of the JEC, which envisaged the relationship as a state-to-state cooperative mechanism, with relevant ministries being counterparts to the JEC and the subcommittees, the day-to-day coordination and operations relevant to movement of goods and people was placed under the umbrella of the Civil Affairs Committee (CAC) which actually puts the real power in the hands of the Civil Administration on the Israeli side, or the Israeli Ministry of Defense. This move, and the intentional empowering of the CAC and weakening of the JEC transferred relations from those of a potential state-to-state nature to a relationship between occupier (Israeli Military) and Palestinian security apparatus, thus reducing the relationship to a purely security nature. This led to creating a regime that is fully under the overriding whims of security personnel. Hence discussions no longer take place between civilian ministries of relevance, but become a dialogue between generals, whose sole focus is re-enforcing the occupation and whose sole activity is to enforce Israeli security requirements.

Conclusion & Recommendations

Taking all the aforementioned into consideration, it is imperative that the Palestinian economy, in order to enter into the cycle of development, must first start with the process of normalizing the business environment. This will require that the Palestinian business community should be able to enjoy and be a partner to fair competition, which is currently skewed by the irregularities and the unfair competitive edge of the Israeli trader. Creating such fair competition will help in opening the door for the Palestinian economy to start the process of recovery, on the way to development.

The process of development requires that the Palestinian government has within its reach a number of trade policy tools that allow it to direct its interests and needs. These tools must also be implemented by the government, and therefore will require that the government exercise control over movement of goods and on border crossings in order to ensure that it can implement policies that will eventually lead to an enabling business environment. It is therefore clear that in order to start the development of the Palestinian economy, steps must be taken to increase Palestinian independence from the Israeli economy through the achievement of a separate customs territory whereby Palestine can exercise the implementation of its policies to meet its developmental needs.

In order to further the process of recovery and move on to economic development, therefore, it is recommended that Palestinian inland customs clearing houses use modern and integrated customs and security management systems and infrastructure. To enforce such proposed systems, other trade-related impediments must be addressed and eradicated, including the removal of all trade constraints applied on Gaza, the removal of access and movement restrictions, including the back-to-back methods imposed by the Israeli government both within the West Bank, between the West Bank and Gaza, as well as with Israel itself and other trading partners. It is also imperative that Palestine starts applying its own tariff book, which meets its interests and developmental needs, among many other steps that enforce the existence of a separate customs territory.

In order to eliminate the Israeli hegemony over the Palestinian fiscal situation, it is important to reach a transit agreement with Israel which would allow for the clearance of goods destined for the Palestinian market by Palestinian customs at the aforementioned customs clearance houses, and to create a Palestinian presence at border crossings with Israel, Jordan and Egypt, which would facilitate the movement of Palestinian

goods, as well as ensure that all revenues are collected by the Palestinian Customs Department, thus eliminating Israeli control over Palestinian tax and customs revenue.

There is also a need to create mechanisms by which import taxes paid by Israeli importers on specific products, intended for sale in the Palestinian market, are transferred to the Palestinian coffers and to implement the Paris Protocol articles stipulating that customs clearance at the crossings with Jordan and Egypt is done through Palestinian customs. This would create a Palestinian customs presence at Israeli ports where the clearance of Palestinian goods is done and would represent a positive way of giving Palestinians control over their trade, until the customs clearing houses are ready for use.

Another step would be creating a mechanism for VAT clearance through shared invoices, instead of the clearance based on unilateral invoices, which will avoid tax evasion activities by either side's businesses. In addition, efforts must be channeled to improving the accuracy of revenues transferred on direct and indirect imports to the West Bank and Gaza through an effective customs-clearance information system.

As noted earlier, it is also essential to remove Israeli physical impediments to secure Palestinian economic sovereignty and control over resources and infrastructure development, in Area C and in the Jordan Valley in particular. The process for obtaining permits for infrastructure projects therefore must be changed, with no geographical restrictions on Palestinian development in the form of closed military zones, state allocation and designated green areas. The Jordan Valley and the northern Dead Sea area contain the largest land reserves in the West Bank, constituting 28.8 percent of the West Bank. Israel must remove the current regime that intensively exploits its resources, to an extent greater than elsewhere in the West Bank.



It is also essential to take immediate actions to improving Palestinian labor flows into the Israeli market, as increased access of Palestinian workers to the Israeli labor market could significantly help in easing the impact of high Palestinian unemployment and the depressed economic situation in the West Bank, and, more so, in Gaza. This can be done by negotiating a phased re-opening of the Israeli labor market for Palestinian workers, with the aim being to gradually replace foreign workers in the Israeli construction, agricultural and industrial sectors with Palestinian workers.

If the abovementioned recommendations are implemented, they will formulate a basic premise upon which economic recovery and development can take place. If not, Palestine will sink further into economic misery and the potential for reaching a viable Two-State solution will be eradicated.

Palestine's Private Sector: Two Decades of Disappointment



In an attempt to restart stalled Palestinian-Israeli peace talks and after a flurry of shuttle diplomacy between Israel, Palestine, Jordan and the United States, US Secretary of State John Kerry dropped the first bombshell, or I would rather say, set up the first layer of smoke and mirrors: He announced at the World Economic Forum that was held in Jordan in May 2013 that he was aiming for global business leaders to mobilize \$4 billion USD of investment in Palestine over the next three years. This investment is to spark life in the strangulated Palestinian economy while encouraging international efforts to revive Israeli-Palestinian peace talks. “It is time to put in place a new model of development ... that is bigger and

bolder than anything proposed since the Oslo Accord,” he said.

Raging applause was heard from all corners of the globe for this Marshall Plan-like announcement, even though the plan itself was no plan at all; it was merely a few sentences in an impassioned speech. The one place that applause was barely heard and a collective yawn filled the air was the Palestinian private sector. We have heard it all before – grand economic plans, global investments, double-digit growth, economic peace, and so much more. The only problem with all this positive talk is that the reality on the ground, dictated by a four-decade old, entrenched Israeli military occupation, is not being addressed; instead, the dumping of more

Sam Bahour

Sam Bahour is a Palestinian-American living and working in Ramallah/Al-Bireh, Palestine. He currently serves as managing partner of Applied Information Management (AIM). He blogs at www.ePalestine.com.

funds in Palestine is highlighted and placed in the context of a final peace deal.

The Palestinian private sector knows only too well, today, that for Palestinian economic development to gain traction does not require billions, or even millions. For Palestine's economy to stand on its own two feet and serve the emerging Palestinian state, what is required is that third states, the US at the forefront, have the political will to act in holding Israel accountable for its daily violations of international law. Here, in addition to human rights, we speak of economic rights too: Our rights to our economic assets and to be able to employ them within a Palestinian-defined economic development plan, free from Israeli or donor agendas.

The Quartet

Still fresh in everyone's minds is the failure of the last two people who attempted to kick-start the Palestinian economy outside of the context of ending Israeli military occupation: Former World Bank President James Wolfensohn and Britain's former prime minister, Tony Blair. Both took the position of Special Envoy to the US-manipulated Quartet.

Wolfensohn was a person of international stature, untainted by the Iraq war fiasco (unlike his successor, Blair). Practical and hands-on, he entered the conflict in May 2005 on an evangelical-like mission to break the historic stalemate, using Israel's Unilateral Disengagement from Gaza as the backdrop, and get things moving towards reviving the Palestinian economy. It took Israel only a year to frustrate and marginalize Wolfensohn, which led to his resignation in humiliation. He later stated in an interview with *Haaretz* ("All the Dreams We Had Are Now Gone" by Shahar Smooha, July 19, 2007) that none other than the US administration thwarted his efforts.

Tony Blair filled the Quartet's Special Envoy position next, ignoring the public advice of his predecessor, Wolfensohn. Blair could not have

picked a bigger challenge or a more volatile conflict at a more sensitive time. His path forward has been marked by big statements, dozens of public appearances, and little economic progress. Unlike Wolfensohn, who knew it was time to step down if the party monopolizing the process was not serious in holding Israel accountable, Mr. Blair not only remains in his position, but was picked as a key agent to undertake Secretary Kerry's \$4 billion challenge. During Secretary Kerry's initial announcement in Jordan, he noted:

"The preliminary results already reported to me by Prime Minister Blair and by the folks working with him are stunning: These experts believe that we can increase the Palestinian GDP by as much as 50 percent over three years. Their most optimistic estimates foresee enough new jobs to cut unemployment by nearly two-thirds – to eight percent, down from 21 percent today – and to increase the median annual wage along with it, by as much as 40 percent."

Structural Dependency

From the start of the Israeli military occupation of the West Bank and Gaza Strip over 46 years ago, Israel systematically linked the occupied territory's economy to its own. Before the Oslo Peace Accords, this forced linkage was most apparent in Israel's restriction of Palestinian business and its control of the freedom of movement of Palestinian labor. For nearly a decade prior to Oslo, Israel issued work permits to tens of thousands of Palestinian workers to allow them to enter Israel to find work. Palestinian labor was found in Israeli construction, agriculture, hotels and the like. Dealt with as a second class labor force, Palestinian laborers were exposed to working conditions that allowed Israeli businesses to benefit from offering lower wages without having to stringently apply Israeli Labor Law. Many Palestinian workers even found themselves building the illegal Israeli settlements that were threatening the sheer existence of Palestinian

communities. For Palestinians, being able to work, anywhere, while under Israeli occupation, was a matter of survival. For many, it still is.

The Israeli occupation authorities also levied taxes on the occupied people and used a portion of these taxes to flood the Palestinian areas with Israeli made infrastructure and goods. This created further Palestinian dependence on the occupier's economy.

Contrary to the obligations embedded in the Fourth Geneva Convention of 1949, the signatories of this key Convention – the US, UK and Russia (previously the USSR) included – allowed Israel, the occupying force, to create a structural economic Palestinian dependency, while at the same time applying a maze of restrictions on the Palestinian ability to become economically viable. Instead of demanding that Israel apply international law, these countries and others continued only reporting, year after year, these Israeli violations of international law, while simultaneously footing most of the costs of occupation.

Underwriting Occupation

When the Oslo Peace Accords were signed in 1993, an economic arrangement followed called the Paris Economic Protocol (signed in Paris on May 4th, 1994 and later incorporated into the Oslo II Accord, formally known as the Interim Agreement on the West Bank and the Gaza Strip of September 28th, 1995). Just as the Oslo agreement itself kept intact the ultimate Israeli control over all key aspects of Palestinian life, the Paris Economic Protocol institutionalized the occupier's economic interest in this bilateral agreement with the Palestinians.

After the Oslo agreements, state donors' role in funding Palestinians' "development" turned into an international underwriting of the Israeli occupation, reducing, and many times removing, the financial costs of military occupation from Israel. In short, knowingly or not, donor funding

had an accomplice-type role in allowing the situation to reach the place it is in today.

For the most part, the Palestinian private sector is a recent phenomenon. From 1967 until the Oslo agreements, the business community was nascent and deeply connected with Israeli suppliers – the only ones Israel would allow to have direct contact with the Palestinians. The number of private Palestinian companies was low and there was little business expertise. Export-focused thinking was non-existent, given Israeli restrictions and constraints. Nevertheless, the seeds of the locally grown private sector, which was able to maintain itself while the entire world was turning a blind eye, became the foundation on which the contemporary Palestinian business community was built.

Making the Best Out of It

With the advent of the Oslo Peace Accords, the Palestinian private sector took on a new dynamic, and one that was much more complex. A handful of investment firms was established that facilitated a flow of capital into the economy. With the newly created hope that the Oslo process was going to result in the end of Israeli military occupation, many Palestinians from all corners of the world came to Palestine to work, injecting new skills and expertise in the market. This new professional class was global in scope and diverse in know-how, since its skills came from all four corners of the globe, where the Palestinian Diaspora is scattered. However, throughout the entire Oslo period and to this very moment, Israel remains in total control of the borders and, as such, is able to micromanage Palestinian firms' access to external and internal (like those between Gaza, the West Bank, East Jerusalem and inside Israel) human resources. Palestinian refugees in neighboring Arab countries remain prohibited from entering the occupied territory, as are the majority of Palestinians from the Arab world.

As new, private sector firms began to be established after the Oslo agreement came into

effect – the first Palestinian telecommunications company, new hotels and an information technology sector – Palestinian students began focusing on the new skill sets that they needed to be absorbed in the changing domestic labor market. The Palestinian economy, though tiny, was a rapidly shifting economy, moving from traditional practices to modern ones and, more damagingly, from an agricultural base to a service sector and export-oriented one.

As firms started to realize that they had common interests and concerns, especially with regards to dealing with the newly formed Palestinian Authority as well as the continued Israeli structural constraints that were still being applied, trade associations started to be formed. The majority of these associations were created in a dynamic that merged existing, local sector players and know-how with the Diaspora newcomers that came from a different vantage point to economic development. Yet other associations brought firms and people together for the first time to establish brand new sectors in Palestine, such as the Palestinian Information Technology Association (PITA). All of this redefined the Palestinian focus on economic development and enriched the engagement of these sectors with the local environment, as well as the dynamic of donor interventions which were driving the bulk of business activity.

Separation

Although donor money fuelled the Palestinian economy, at no time did donors view the development of the private sector as the highest priority in building a viable Palestinian society. Donors assisted in the creation of sector associations and provided a certain level of assistance, but a strategic approach to the private sector never materialized. Many in the international community were quick to criticize the growing number of Palestinian public sector workers, but few, if any, had the foresight to see that a strong Palestinian private sector was the only way to provide an alternative to public employment. Those who did realize

this ignored it for the most part, since it would mean challenging the Israeli occupation and the restrictions placed on the Palestinian economy that come with it.

The international community collectively and closely followed the Israeli adoption of a policy of separation, which was publicly declared in a speech by former Israeli Prime Minister Ariel Sharon, made at the Herzliya Conference on the 18th of December 2003: “If there is no progress

The Israeli military and political actions to weaken the nascent Palestinian central “government” left the economy in freefall.

toward peace in a matter of months, then Israel will initiate the unilateral security step to disengage from the Palestinians.” This unilateral separation policy immediately materialized in a drastic reduction of Palestinian labor allowed into Israel, from more than 160,000 in the early 1990s to nearly 20,000 in 2003. Israeli officials also publicly announced that they intended to reduce the number of Palestinian workers allowed into Israel to zero by 2008. This never materialized, since Palestinian labor is a desired commodity in the Israeli business world, especially in sectors like construction, agriculture, and services.

While the most visible indication that Israel was strategically changing gears was the acceleration in the building of the Separation Barrier on West Bank land, there were realistic fears that the separation concept would soon materialize in many other areas such as health, trade, banking services, telecommunications, transportation and many others. With a policy of segregation at play, it was, and is, Israel, first and foremost, who decides at what pace the Palestinian private sector will grow or collapse. With the absence of any strategic alternatives, the unilateral Israeli implementation of separation

further pushed the nascent, but already exhausted, Palestinian private sector closer to collapse, first in the Gaza Strip and later, to a lesser extent, in the West Bank. The Palestinian economy in Jerusalem has been under severe attack even before the Oslo Accords were announced, and the separation policy only accelerated an already failing economy there.

All the while Israel was going forward with its unilateral separation plans and illegal settlement enterprise, which damaged the Palestinian private sector severely. Being, for the most part, dealt out of the developmental paradigm, the Palestinian private sector was left on its own to deal with the Israeli restrictions on Palestinian society. After being structurally linked to the Israeli market for decades, Israel's decision to unilaterally separate, or "disengage" as it was called, from the Palestinians came at a time of instability. The elimination of Palestinian labor that was employed in Israel increased the unemployment rate in the West Bank and Gaza overnight. The Separation Wall's land grab separated farmers from their lands, causing great strain on Palestinian agriculture. The Israeli military and political actions to weaken the nascent Palestinian central "government" left the economy in freefall.

With security and economic conditions becoming intolerable, Palestinian emigration, or desire thereof, peaked. Palestinians held parliamentary elections in hopes of getting things back on track. In response to the election results, Israel installed a policy of denying entry to foreign nationals, Palestinians and otherwise, that forced many skilled workers out of the country and struck a severe blow to the education sector in particular, which employed many foreign nationals. The list of Israeli policies to weaken Palestinian society goes on and on, but all with a clear purpose: To stunt Palestinian development and prohibit Palestinian steadfastness, economic and otherwise.

Donor Funds

The international community needs to understand a key lesson from the multiple failures of Oslo: That the Palestinian private sector's role in sustainable development is not a side show, but rather the only concrete platform that can create a viable Palestinian society. Likewise, any serious economic development cannot happen under military occupation. Thus, linking Palestinian economic development to some far-off goal of an end of conflict deal is not only a failing strategy, but allows the status quo of Israel causing more structural damage to the Palestinian economy to continue unabated.

On average, donors annually injected \$350-450 million into the Palestinian Authority from 1994-2000. From 2001-2007, the amount averaged about \$650 million annually. This amounts to over \$7 billion, more per capita than any place in the world except for Israel, which is heavily subsidized by the US. Of those funds, it is estimated that less than five percent were invested in private sector development. Even with this meager donor support, the private sector has repeatedly proved its stamina and resilience in the face of crisis.

In addition to donor funds, the private Palestinian banking sector is sitting on over \$7 billion of deposits, unable to fully engage them in the marketplace due to the high market risk associated with Israeli military occupation, characterized by restrictions on movement, access and economic resources, and brute military destruction.

That noted, Palestinian private sector achievements, albeit modest, can be found in different sectors, and many seeds of a stable economy have been planted, but now need nurturing. Productive economic sectors have been organized (but stifled by the occupation from acting in any meaningful way), firms are now experts in crisis management, and a greater understanding of the limitations of economic growth while still under Israeli occupation has

been internalized. The Palestinian private sector knows exactly what needs to be done, and on the top of every list is the end of Israel's military occupation – not the reshaping or rebranding of occupation, but its removal.

Viability

The word “viable” has been used and abused in trying to define what a Palestinian state should be. Even in the U.S. administration's newfound interest in realizing a Palestinian state, one continues to hear the requirement for it to be “viable,” but what does “viable” mean to Palestine? The viability of any future Palestinian economy must come within the context of a sustainable private sector, one that can create sustainable job opportunities, develop competitive products and services for the local market first and then for the export market. The Palestinian private sector must be able to absorb Palestinian university graduates in a knowledge-based thrust in our economy, while also absorbing the tens of thousands of construction workers that Israel dumped into unemployment after forcing them to be linked to the Israeli economy for decades. Similarly, a viable Palestinian economy must be able to feed itself, which requires land and water resources to be free from Israel's control.

Viable development must be seen through different lenses than those of relief. Even the World Bank, in its report, “Fiscal Challenges and Long Term Economic Costs” stated:

“...much greater attention must be given to the removal of obstacles to allow real Palestinian private sector-led growth. The Oslo Accords of 1993 anticipated an arrangement that would last for a five-year interim period during which a permanent agreement would be negotiated. They did not anticipate the lack of forward movement on the political process that has been experienced with its concomitant economic effects. This so called status quo belies a process whereby the continuation of restrictions

and the absence of real opportunities to open up the Palestinian economy are actually having a lasting negative impact on its overall competitiveness. While some of the costs imposed by the current situation are transitory and could be expected to disappear with a peace agreement, others are posed to remain and are likely to require significant time and financial resources to be remedied.”

Likewise, in a report by the United Nations Country Team in occupied Palestinian territory in August 2012 entitled, “Gaza in 2020: A Liveable

The challenge today is to remove Israeli military occupation and allow the Palestinian private sector to assume its natural role of becoming the foundation of a future state.

Place?” the UN describes the horrible situation of Gaza's economy and environment under the siege and questions if Gaza will even be livable by 2020. In other words, deep structural damage is being wrought on the Palestinian economy by maintaining the status quo.

Unfortunately however, internal Palestinian politics are often being put in the limelight as if the continued Israeli military occupation is an innocent bystander in creating the conditions for Palestinian social collapse.

The international community has an historic responsibility to Palestinians, especially after so many years of observing the Israeli occupation from afar and a decade of footing the bill as Israeli violations continue unabated. The challenge today is to remove Israeli military occupation and allow the Palestinian private sector to assume its natural role of becoming the foundation of a future state.

Humanitarian Aid and the Oslo Process

A distorted humanitarian ideology frames nearly all international aid to Palestinians in a manner that ultimately undermines both meaningful assistance and a commitment to rights. In the West Bank and the Gaza Strip, six major turning points resulted in a bloated humanitarian system that has become self-referential, self-perpetuating and, for many, lucrative. The first turning point was in 1993. The Oslo-inspired call for “peace dividends” invited a large number of donors and international NGOs to bring resources to Palestine. The massive response by professional development NGOs contrasted sharply with the more solidarity-oriented assistance of the pre-Oslo period. The second turning point came in 1999 when the interim period of the Oslo Accords expired. Although the assumptions and intervention logic of the Oslo period had been proven wrong,¹ international intervention continued as if Palestine was a “post-conflict” context. As if in denial, they continued to act as if rights were being handled by the (defunct) peace process, freeing them to focus on a politically-neutered concept of state-building.

(CAP) was implemented by the UN to coordinate the planning and solicitation of humanitarian aid. By the outset of the Gaza War in late 2008/early 2009, the Cluster System was fully implemented and all other international organizations were expected to function in relation to it.² A fifth turning point must be mentioned. In 2006, the increasing influence of post-9/11 anti-terrorism policies was felt in full force when Palestinian election outcomes, deemed democratic by Palestinian and international observers,³ were boycotted by most international donors who then effectively replaced the government. The ability of international governments, led by the US, to blatantly and unapologetically direct Palestinian policy, and Palestinian inability to resist this intervention, is evidence of the extent of Palestinian dependence on aid. In 2010, there was another turning point when the Palestinian Authority (PA) failed to hold elections as scheduled, and while their *de jure* status ended, international governments and aid actors continue to grant it legitimacy (though threats and aid cuts are used to keep the PA in line). Despite a lack of accountability to the Palestinians of the West Bank and Gaza, international actors treat the PA as their “one stop shop” for local input, thereby undermining real participation and democracy.

Then, in late 2000, aid dependence deepened. The second Intifada broke out and Israel’s violent response and numerous curfews caused a genuine humanitarian crisis. Various UN agencies responded by providing food, agricultural and financial aid, and the Office for the Coordination of Humanitarian Affairs (OCHA) established a humanitarian presence in Jerusalem in order to coordinate work among them. The fourth turning point – the humanitarian entrenchment – unfolded over approximately six years. In 2003, the Consolidated Appeals Process

Currently, there are around 24 UN agencies working in Palestine at any given time. Their combined expenditures in 2012 (including the United Nations Relief Works Agency – UNRWA – but excluding peace-keeping) were \$688,206,409 USD. There was an additional \$342,790,615 in funding spent for humanitarian projects (some non-UN) funded through the

Nora Lester Murad

Dr. Nora Lester Murad is a writer of fiction and commentary in Jerusalem, Palestine. She has published widely, including in *The Guardian*, *Al-Adab*, *Electronic Intifada*, *Arabic Literature in English* and in several academic publications. Her blog, “The View From My Window in Palestine” at www.noralestermurad.com covers issues of aid, development and daily life under occupation. She is a life-long social justice activist and a founder of Palestine’s first community foundation, Dalia Association (www.dalia.ps).

UN-led Consolidated Appeals Process.⁴ While this may sound positive, in fact, when massive amounts of money are injected through a foreign bureaucratic infrastructure for so long, even if there are benefits to local people, there is also calculable harm. United Nations and other humanitarian funds are disbursed outside locally-controlled mechanisms. Decisions about how to use funds are made in reference to each

Instead of tackling the fundamental injustice that leads to this situation, the majority of non-governmental organizations limit their work to the delivery of humanitarian aid.

agency's mandate and in response to donor requirements, not in relation to local priorities. Moreover, the humanitarian approach is an "emergency" approach that privileges provision of food aid over helping farmers access land so they can grow food, and privileges transporting humanitarian health cases to Israel rather than building an adequate health system for Palestinians that all can access without mobility restrictions. When these flaws are pointed out to international aid actors, they tend to explain that there are constraints presented by the "emergency" situation and their specific mandate as humanitarian actors. In fact, from a local point of view, the long-term imposition of a humanitarian presence in Palestine can be seen as a cause – not the response – to compromised rights.

Water provides an excellent example. According to EWASH, a coalition of international and Palestinian NGOs working on water rights, Palestinians' own water resources are estimated to be enough to meet their needs, but Israeli occupation tactics (e.g. monopoly control over shared water resources for the near exclusive benefit of Israeli citizens including settlers,

restrictions on development of water-related infrastructure for Palestinians, etc.) result in artificial water shortages. Some of these illegalities are even codified in Oslo II (1995), designed as an interim agreement, but in effect turned permanent, adopted ever since as the basis for water governance between Israel and the Palestinians.⁵

As a result, Palestinian water consumption is, on average, well below the 100 liters per person per day recommended by the World Health Organization for domestic consumption, the standard adopted as constituting the human right to water.⁶ Some Palestinian communities have access to as little as 20 liters per person a day, levels deemed appropriate only within the context of disaster areas.⁷ All the while, consumption in Israeli settlements just next door reaches 700 liters per person a day.⁸ Instead of tackling the fundamental injustice that leads to this situation, the majority of non-governmental organizations limit their work to the delivery of humanitarian aid. This in effect means that their end goal has not been the realization of Palestinian rights but instead finding ways of to keep Palestinians alive through limited humanitarian interventions. One example of this practice is the delivery of water tankers to underserved communities in the West Bank during the summer months, when demand increases and Israel reduces supply quantities. A developmental approach would be to help communities realize self-sufficiency by digging wells. However, because Israel denies permits to dig wells, humanitarian agencies provide water instead. Ziyaad Lunat, former advocacy coordinator for EWASH, says that humanitarian response programs that adapt to the realities of the occupation sideline accountability for Israeli violations.⁹ The cumulative impact of this approach has been an increased dependency on aid by Palestinians and arguably, postponement of the realization of their water rights.

What happens to local ownership and self-determination when such a massive humanitarian coordination system is in place for so long? The

Palestinian Authority, the ostensible governing institution of the West Bank, doesn't even have full access to information about all the funds that are spent in Palestine or on Palestinians' behalf. How does the massive inflow of funds, now institutionalized through the annual CAP fundraising mechanism, remove pressure on Israel to meet the humanitarian needs it is obliged to meet under international humanitarian law? Some practitioners also note that evoking "emergency" and "crisis" provides an excuse for shortcutting key processes, like participation of local people, making "aid" another obstacle, alongside occupation, to self-determination. What happens when humanitarian targets, often less demanding than human rights, become the standard? Unfortunately, promoting

In the guise of emergency response, donors are often able to distance themselves both from rights-based practice guidelines that come from the development field and from international human rights law that obliges governments.

"development" rather than "humanitarian" intervention isn't enough. Most development work isn't rights-based either. In Palestine, like in the rest of the world, the larger and more powerful aid actors continue to push a warped notion of development as economic growth. For example, donors to the agricultural sector in Palestine try to build Palestinian farmers' capacity to produce crops for export in order to alleviate poverty. This funding has pushed farmers away from traditional, organic methods of food production and away from responding to local market demands in favor of export opportunities. However, Palestinians do not have control over their borders and can only export with Israeli permission. Now, Palestinian farms are failing. They produce export crops

they can't sell and local markets are neglected. Increasingly, many of the fresh fruits and vegetables available in Palestinian markets are Israeli. Palestinian livelihoods and food security are undermined and healthy eating and living habits are being forgotten.¹⁰

An aid agenda that emanates from a government's self-interested foreign and economic policy can't possibly be neutral and impartial. Governments clearly have interests in the Israeli-Palestinian conflict that differ from Palestinians' own interests, and technocratic "policy coherence" statements cannot bridge the gap.¹¹ While many donor governments publicly decry Israeli policy toward Palestinians, they simultaneously maintain and upgrade their political, economic and cultural relations with Israel. In the case of the US, they even provide military aid to Israel – which no doubt, is used to maintain the occupation of Palestinians – and yet still pose as neutral mediators. They may attempt to mitigate the impact of their foreign policies with aid, but in fact, the humanitarian structure further denies Palestinian rights and may even promote victimization.¹²

Humanitarian projects (along with their unsustainable parameters like 12-month cycles) and development projects (seriously constrained, for example, by anti-terrorism policies) are funded while funding for locally-controlled, long-term development activities is hard to come by. Given the power that the label "humanitarian crisis" has to shape aid practice, it is not surprising that it is deployed selectively, intentionally and for political ends. In the guise of emergency response, donors are often able to distance themselves both from rights-based practice guidelines that come from the development field and from international human rights law that obliges governments.

Increasingly, Palestinians are talking about aid in harsher terms.¹³ At Dalia Association, a Palestinian NGO founded to address the lack of self-determination in Palestinian development,

there was a major change in thinking when we stopped focusing on trying to change international aid policy and focused instead on trying to change Palestinian aid policy, starting with grassroots and civil society attitudes. This approach emerged from a meta-analysis of all the input Dalia Association had received in the years since its establishment. While some input was technical (e.g., “we want donors to accept proposals in Arabic”), the underlying tone of the input was political. Palestinians want to control their own development. They want to control their own development resources. They want control because it would be more efficient, but they also want control because it is their right. Current international aid policy undermines Palestinians’ rights to self-determination in development. Efforts to shake off the yoke of aid are integral to the Palestinian national liberation movement.

In a series of workshops in 2011 and 2012, Palestinian participants decided that the main criteria by which international aid should be evaluated are the extent to which such aid advances Palestinian self-determination. They said that international aid that supports Palestinian self-determination should be actively sought and accepted with appreciation while international aid that undermines Palestinian self-determination should be rejected. This doesn’t mean that all aid should be boycotted, but rather that Palestinians should consciously, strategically and collectively decide what aid to receive or reject. Currently, most Palestinians do not recognize any choice; the decision to provide aid is made by international actors in cooperation with local Palestinians who, because of their dependence, are accountable to donors and not to local communities. In this context, “boycott thinking” has the potential to revolutionize power relations between donors and Palestinians.

More specifically, participants said that international aid that advances Palestinian self-determination is aid that:

- Consistently and explicitly opposes occupation and colonization and puts into practice policies that challenge structural inequality;
- Complies with international law and prosecutes those who break it;
- Actively challenges Israeli impunity through sanctions and political pressure; and
- Is actively committed to real democracy, including the right of all Palestinians to choose their own leaders, participate in political life, and receive benefits – regardless of political opinion or affiliation.

In other words, they want aid to be a part-and-parcel of a consciously political strategy by donor governments to challenge Israel and secure Palestinian rights. In addition, Palestinian participants said that international aid that advances Palestinian self-determination must recognize the historic and political realities facing Palestinians and be explicitly supportive of the national liberation struggle. Specifically, they said that international aid should be accepted when it:

- Recognizes the unity of the Palestinian community as a whole and aligns policies toward unification of Palestinians in the West Bank (including Jerusalem and Area C which is under Israeli control), Gaza, Israel, refugee camps around the world, and the Diaspora;
- Respects Palestinians’ right to resist oppression including through means such as boycott, divestment and sanctions;
- Leverages coherent political, economic and cultural policies to protect Palestinians, Palestinian rights and Palestinian resources;

They also demanded that international aid, to be deemed acceptable, advance a

more progressive and just understanding of development. They said acceptable aid:

- Conceptualizes “development” as a way of realizing rights, and respects the right and responsibility of Palestinians to lead the process;
- Implements Palestinians’ rights to allocate their own development resources including resources spent on their behalf;
- Provides information about its activities, including budgets, and engages in mechanisms whereby it can be held accountable by local people.

In accordance with acceptable criteria, international actors were expected to stop common aid practices seen by many Palestinian locals as harmful. They should:

- Eliminate the diversion of Palestinian aid funds to international NGOs or international private sector vendors;
- Intervene only when local actors cannot, and avoid duplication of or competition with local actors;
- Stop the payment of any aid funds to Israeli governmental organizations or to Israeli private sector organizations when there is a Palestinian or international alternative;
- Prevent waste of resources on experts that do not add to local knowledge, are overpaid, and are not selected by locals;
- Refrain from unethical practices including corruption, breaking commitments, paying beneficiaries for training, favoritism, double standards, stealing projects, etc.

Notably, much of the harm caused by international aid occurs at the level of collective impact. In other words, when bad practices

become standard among groups of international actors, the collective impact is even more harmful. To change these practices, international actors need to work together. Participants said that aid undermines self-determination when it enables Israel to avoid paying costs for which it is responsible as an occupier according to international law; when it is palliative, “humanitarian,” short-term, or in the form of loans; when it demands that Palestinians police one another (as required by many governments’ anti-terrorism policies); and when it makes funding conditional on activities that benefit Israel, for example, by requiring cooperation with Israeli organizations. Participants added that aid can also be a negative force when it supports economic or cultural “solutions” that do not include political rights; is based on priorities or strategies developed by non-Palestinians; relies on foreign-chosen or installed Palestinians to speak on behalf of the community as a whole; wastes funds on “capacity building” activities that aren’t requested or needed, such as democracy training; requires Palestinians to use foreign languages and frameworks; and when it disrespects local traditions and beliefs.¹⁴

Creating a movement based on “boycott thinking” is a way to take back control of aid. Decisions about development should be self-determined in Palestine, not in Brussels, Washington or Tokyo. And certainly not in Oslo.

¹ Sara Roy. “De-development Revisited: Palestinian Economy and Society Since Oslo,” *Journal of Palestine Studies*, Vol. 28, No. 3 (Spring, 1999), pp. 64-82.

² Allegra Pacheco. Email exchange with author. July 2, 2013.

³ “Palestinian Election Observation 2006,” a video available via <https://www.cartercenter.org/news/multimedia/PeacePrograms/PalestinianElectionObservation2006.html>.

⁴ Nicolas Rost, UN Office of the Special Coordinator for the Middle East Peace Process, e-mail message to author, July 1, 2013.

⁵ “FAQ,” Thirsting for Justice, available via http://www.thirstingforjustice.org/?page_id=1303.

⁶ See Covenant for Economic, Social and Cultural Rights, General Comment 15.

⁷ “Water Supply Standard 1: Access and Water Quantity,” The Sphere Project, available via <http://www.spherehandbook.org/en/water-supply-standard-1-access-and-water-quantity/>.

⁸ “Dispossession and Exploitation,” BTselem, 2011, available via <http://www.btselem.org/publications/summaries/dispossession-and-exploitation-israels-policy-jordan-valley-northern-dead-sea>.

⁹ Ziyaad Lunat. Email exchange with author. July 3, 2013.

¹⁰ Aisha Mansour, “Donor Interventions in Palestinian Agriculture: Helping Hand? Or Slap in the Face?” available via <http://www.noralestermurad.com/2013/02/22/guest-post-donor-interventions-in-palestinian-agriculture-helping-hand-or-slap-on->

[the-face-by-aisha-mansour/](#).

¹¹ "Policy Coherence for Development," OECD available via <http://www.oecd.org/pcd/>.

¹² See Donini, 188.

¹³ Shira Rubin, "Too Much of a Good Thing? Palestinians Realize Downsides of Foreign Aid Boom," *Christian Science Monitor*, March 28, 2013, available via <http://www.csmonitor.com/World/Middle-East/2013/0328/Too-much-of-a-good-thing-Palestinians-realize-downsides-of-foreign-aid-boom>.

¹⁴ This criteria was developed through a long process described in Nora Lester Murad's, "Aid on Palestinian Terms: The Case for a Boycott," available via <http://palstudies.org/2012/10/18/aid-on-palestinian-terms-the-case-for-a-boycott>.

Hamas and Oslo: Rejection, Confusion and *De Facto* Adoption



Courtesy of René Wildangel

Hamas' position regarding the Oslo Accord of 1993 could be seen as a mix of vehement rejection, denied confusion and *de facto* adoption. If any one of these "markers" become characteristically visible in Hamas' attitudes towards the Agreement and its outcome at any given time, the other two still remain valid. Hamas' rejection stems, unsurprisingly, from the contradictions between the contents of the agreement and the declared canonical principles that Hamas has continued to advocate (such as liberating Palestine from the River Jordan to the Mediterranean Sea, or the perceived religious impermissibility of compromise over the Islamically-endowed land of Palestine). Its confusion emanates from the difficult question of what practical action Hamas should/could undertake against Oslo, so that its clear position is reflected faithfully on the ground. Hamas' *de facto* adoption reflects not only how it has eventually dealt with the Oslo outcomes, but also how it has grounded major shifts in its strategies on political conditions that

were an integral part of the institutionalisation process dictated by Oslo. Hamas' participation in the 2006 Palestinian elections represented the culmination of the movement's mixed and confused approaches and dealings with Oslo. After seizing and controlling power in the Gaza Strip in 2007, Hamas leaders and its government ministers started touring abroad using Palestinian passports produced by the Palestinian Authority but effectively subjugated to a higher Israeli sovereignty.¹

Over the past twenty years Hamas has been growing and maturing under the political realities that were created by Oslo – with the establishment of the Palestinian Authority at the heart of these realities. In the early phase of the 1993/4 Oslo agreements, the then six-year old Hamas movement felt truly threatened. The almost universal euphoria and high expectations that went along with signing the first 'historic' official agreement between the Palestinians and the Israelis seemed to have cornered Hamas.

Khaled Hroub

Khaled Hroub is Professor of Middle Eastern Studies and Arab Media Studies at Northwestern University/Qatar, and a senior research fellow at the Centre of Islamic Studies of the University of Cambridge. He is also the author of *Hamas: A Beginners Guide* (2006/2010), *Hamas: Political Thought and Practice* (2000), and editor of *Political Islam: Context versus Ideology* (2011) and *Religious Broadcasting in the Middle East* (2012). In Arabic he published *Fragility of Ideology and Might of Politics* (2010) and *In Praise of Revolution* (2012).

Exhausted after six years of the First *Intifada*, and frustrated by regional Arab weakness and lack of support, many Palestinians wanted to believe that those agreements would pave the way to achieving national aspirations, or at least some of them. Hope and desire were consciously given sway against suspicion and confusion about the deal. With the heavy political weight and symbolic aura of the long-time national leader Yasser Arafat thrown behind the “process,” the popular tide disfavoured Hamas’ rejectionist position. A few years later, however, the very same agreements that initially posed great dangers to Hamas’ existence had ironically proved to become part of its *raison d’être*. Hamas’ subsequent growth in strength and popularity would become marked not so much by its offerings of new strategies to “liberate Palestine,” as by the failures accumulated by the offerings made by the Oslo Accords. Hamas’ successes have in fact marched in tandem with the failures of the Palestine Liberation Organization (PLO, or the Palestinian Authority – later on), Israel and the USA to deliver on the promises made by each party in these accords to fulfil the aspirations of the Palestinians and the realisation of their national rights.

Since its inception in late 1987, Hamas has projected itself as the bearer of the flag of “resistance” at a time when the leading Fatah organization, as Hamas kept arguing, was dropping it. In its very early communiqués and pronouncements Hamas was keen to distinguish itself from PLO factions by rejecting any “peace-talks strategy,” vowing to re-launch “resistance” and adhere to its principles as the sole, effective strategy to “liberate Palestine,” a core theme of Hamas’ discourse ever since. Seen as a latecomer to the area of confrontation and resistance against Israel, Hamas’ rhetoric in the early years was dismissed lightly if not belittled by PLO factions and their supporters. Feeling that they had the upper hand in leading the national struggle, Fatah and other Palestinian organizations that were mostly founded in the 1960s and 1970s, were fully engaged in the

First *Intifada* that broke out in December 1987 – perhaps more so than Hamas. In fact, Hamas’ emergence was the immediate response of the Palestinian Muslim Brotherhood to the *Intifada* itself, restructuring their organisation – first in Gaza, then in the West Bank – into a resistance movement in order to avoid being left behind as all Palestinians were marching on with the *Intifada*. The PLO factions formed the backbone of the *Intifada* with their “Unified Leadership of the *Intifada*,” which Hamas refused to join. Thus, Hamas’ claim to exclusively own the banner of resistance was difficult to sell. Yet with the coming of the Oslo agreements and the official, public renunciation of “terrorism” made by the PLO, Hamas was able to gear up its resistance claim which this time had more substance.

In the early 1990s the *Intifada*, and Palestinians as a whole, suffered set backs caused by the consequences of the Iraqi invasion of Kuwait, and subsequent regional outcomes. The Arab countries were severely divided, the military power of Iraq was diminished, the PLO was isolated by the Gulf countries and almost half a million Palestinians were kicked out of Kuwait. Subsequently, the Madrid Conference was convened in 1991 to launch, for the first time, face-to-face peace talks between Israel and all the Arab states surrounding Israel. Hamas strongly attacked the Madrid Conference considering it to be a complete capitulation to the American strategy of seizing a moment of Arab weakness in order to impose a new Middle East order where Israel is recognised by the Arab states – a view that was dominant among most Palestinian and Arab opponents of the Madrid Conference. The Madrid negotiations yielded a separate track of Palestinian-Israeli talks that soon moved to Washington. These talks attracted severe attacks by Hamas; attacks that continued to build up sharply and stopped only very short of accusing the Palestinian leadership of outright betrayal when the Oslo agreements were concluded in 1993.

Immediately after the Oslo Accord and the acceptance by the Palestinian leadership of the Accord were announced, Hamas made an unequivocal statement denouncing them. Hamas' official statements and pronouncements of its leaders detailed the premises of the movement's rejection of Oslo. In the first place the agreements confer legitimacy over the "illegitimate Zionist entity," as Israel has always been described by Hamas, which has usurped and occupied the land of the Palestinian people. Territorially, these agreements force the Palestinians, the victims, to recognise Israel and to surrender to it formally and permanently more than 78 percent of the land of historic Palestine. Morally and politically, as Hamas' argumentation goes, the Oslo Agreements betray the basic canons of the Palestinian struggle and break faith with the collective consent of the Palestinians about their homeland. From Hamas' perspective, the PLO gave in on each of the individual issues that constituted the essence of the Palestinian struggle exposing and weakening the Palestinian position. In their view, the Oslo agreements, with the endorsement of the Palestinian leadership, has compromised all Palestinian rights including the right of Palestinian refugees to return to their homes and properties; the right of retaining Jerusalem as the capital of any future Palestinian state; full Palestinian sovereignty over its borders; the continuing problem of illegal Israeli settlements; and even the rights to natural resources in the West Bank and the Gaza Strip.

Hamas' mixed position vis-à-vis Oslo, the mix of rejection, confusion and adoption, could be analysed on two levels: rhetoric and action. There has always been a considerable distance between Hamas' strong and dismissive discourse of the Oslo Agreements and the practical policies the movement has adopted to counter it. Hamas' inaction against Oslo in the first two years of the agreements did not match its strong denouncement of it. Furthermore, with the passage of time Hamas has started to deal with Oslo outcomes as *de facto* realities

that cannot be avoided. Juxtaposing Hamas' rhetoric against Oslo with its action (or lack of it) to correlate this rhetoric to action on the ground could be examined in three periodic phases. The first phase begins when the agreement was concluded in 1993 through to the year 2000 when the second *Intifada* erupted. The second stretches from 2000 to the year 2006 when Hamas won the Palestinian elections, formed a government, then seized power in the Gaza Strip. The third phase continues from then up to the present time. Although the rejection of Oslo remained the benchmark of the movement's position, each of these phases shows the other two markers of Hamas' position, confusion and adoption, playing out strongly.

1993: Moderate Rejection

In the first year of the Oslo Accord, Hamas was taken aback by the overwhelming "drama" of the event, especially when Arafat arrived in the Gaza Strip in 1994 to start building the Palestinian Authority. Arafat succeeded in rallying many Palestinians behind him, smartly portraying his return as a major victory for Palestine. Tens of thousands of Palestinians went into the streets of the Gaza Strip cheering him in a historic emotional spectacle. As a matter of fact, Hamas' position (and that of smaller Palestinian factions) was considerably marginalised. The continuous calls upon Palestinians by Hamas and other oppositional factions to reject the agreements had no practical impact. Not only was the atmosphere almost completely un-receptive to such calls, but also the vagueness of what form any practical act of "rejecting the agreements" might take left even those who shared Hamas' position confused as to what really needed to be done. This confusion among Palestinians who opposed Oslo reflected a sharper confusion within the ranks of Hamas' leadership. Apart from organizing some demonstrations and making speeches attacking Oslo and its outcome, Hamas' decision was to avoid any physical friction with the newly set up Palestinian police force in the Gaza strip and Jericho. A minority view within the movement

suggested more bold action: That the movement should confront and destroy, by force, any structures facilitating the implementation of the Oslo agreements. Hamas, according to this view, should not give the Oslo Accord the chance to be put into practice, and this should be exercised from the very beginning when the newly founded security institutions are still weak, and before it is too late. However, this view was marginalised and muted. Instead, Hamas offered subsistence and logistics, in terms of shelter, food and water, to the Palestinian personnel who arrived hastily in Gaza to form the core of the future police force and found nothing prepared upon their arrival to help them. In a nutshell, Hamas voiced its position against Oslo and against the PLO ferociously, but dealt with both softly on the ground.

Perhaps the only tangible active step that Hamas took in this phase was to ally itself with other (smaller) Palestinian factions under the banner of rejecting and opposing Oslo. In addition to Hamas, a loose and broad coalition of the “Ten Faction,” consisted of leftist groups, the Islamic Jihad Movement, and a couple of nominal pan-Arab-oriented groups that were considered to be representatives of the Iraqi and Syrian regimes more than being Palestinian. The “action” of the “Ten Faction” front was limited to issuing statements denouncing Oslo and its outcomes, including the Palestinian Authority. Later on, this alliance was fragmented and the leading factions were contained by the PA and took part in successive Palestinian governments.

Vehement Rejection and Growing Confusion

The most tangible manifestation of Hamas’ opposition to the Oslo Agreements is, arguably, its strategy of suicide attacks. Following a massacre against Palestinian worshippers in Hebron in February 1994, when a fanatic Israeli settler opened fire in a mosque and killed 29 people and injured many more, Hamas conducted a series of attacks inside Israeli cities killing dozens of Israeli civilians. The spectacular nature of these attacks put Hamas in the spotlight; the

movement had discovered a lethal weapon at its disposal. Israeli retaliation along with heavy crackdowns by the PA police on Hamas would follow each of these attacks. Implementation of the Oslo Accord was facing multiple difficulties, and, on the top of them, the continuation of illegal Israeli settlements on territories that were supposed to be allocated to the future Palestinian state which was to be declared after a five year interim period. Hopes and expectations were proving far-fetched. Hamas’ suicide attacks did in fact grant Israel a much needed excuse to delay and derail the Oslo process and free itself from commitments and scheduled withdrawals from

The confusion in Hamas’ position, however, stems from the continuous moderation of its political and ideological standing that went hand in hand with the rise of suicide attacks.

the Palestinian territories, and any movement on to the “final status” talks. Hamas (and the Palestinians at large) were blamed and accused of failing the Oslo process. Hamas itself would deny this, arguing that its attacks belonged to its strategy of resistance with or without the existence of Oslo.

The confusion in Hamas’ position, however, stems from the continuous moderation of its political and ideological standing that went hand in hand with the rise of suicide attacks. From 1994 the movement started issuing statements and “initiatives” in a language that intended to project a different image of Hamas. The more accusations directed at Hamas about being a terrorist organisation, the more “moderate” statements the movement would issue. Either by its various leaders such as the late Sheikh Ahmad Yassin, Mousa Abu Marzouq or Mahmoud Zahhar, or by its political bureau,

the movement issued initiatives that shifted the classical positions of Hamas' early days. Hamas declared its acceptance of a Palestinian state in the West Bank and Gaza Strip as an intermediate phase as opposed to its original slogan of liberating the entire land of historic Palestine. These new positions reflected further confusion regarding the perception of Oslo and its "institutions" and political processes. When the first legislative Palestinian elections, in accordance with the Oslo Accords, were organized in 1996, Hamas debated whether it should participate in those elections or not. The mere discussion was indicative of confused and shifting sands. But more so was the decision of a number of its prominent leaders to run for the elections independently and against the decision of the movement – Ismail Haniyya, Hamas' current prime minister in Gaza, was one of them. Eventually they backtracked and toed the official line, boycotting those elections.

There is a telling irony in Hamas' positions on Oslo when contrasted against periods of action and non-action. Before adopting the strategy of suicide attacks when Hamas' rejection of Oslo was kept to rhetoric and verbal criticism, the movement remained faithful to its original principles. It would miss no opportunity to assert its view that no partial solution should be accepted, and any Palestinian state should be on the land between the River Jordan and the Mediterranean Sea. When the movement became engaged in suicide attacks and found itself accused by Israel, the US and many other countries of terrorism, and accused by the PA of failing the realization of a potential Palestinian state, it started to express new positions.

De Facto Adoption

During its long years of rejecting Oslo, Hamas would, however, deal with Oslo's institutions and processes in one way or another. When Yasser Arafat was still alive, Hamas leaders would meet him in his capacity as the chairman of the PA. Hamas' leaders and members would acknowledge the authority of the security forces,

the ministries and other semi-state apparatuses built by the PA, which itself has always been renounced by Hamas as an Oslo product. There

Hamas had thus become the leader of the very same institution it had dismissed and attacked all of its life.

was no policy of "boycotting" Oslo institutions, despite the strong verbal attacks against the Oslo process. When Arafat's Fatah organization started the Second *Intifada* in the year 2000, declaring in essence that Israel was not interested in peace or the implementation of the Oslo Accords, Hamas exhaled a deep sigh of relief. The movement recharged its discourse of resistance welcoming the "return" of Fatah to the original and true path of struggle – armed resistance. Arafat's support of the Second *Intifada* was tactical, as he wanted to put pressure on Israel so that it would give the Palestinians what the Oslo Accords promised. Arafat brought Hamas closer to him by employing a containment strategy, under the umbrella of Oslo

After Arafat's death in 2005 and the emergence of Mahmoud Abbas as leader of the PA, Hamas felt some heated internal and external winds blowing in its direction. Internationally, US President George W. Bush was launching his "war on terror" designating dozens of groups and organisations as targets of that war, including Hamas. The American president enlisted regional states and leaders as partners in his global war, and included the PA and its leader. With Arafat's presence no longer there, and the approach of the second legislative elections in 2006, Hamas pragmatists took the lead and decided to participate this time. These elections are an integral part of the PA structures that operate under and because of the Oslo process. Hamas decided to care less. The instinct of political survival overran political and ideological principles. The positional blend

of rejection, confusion and adoption reached its zenith in Hamas' participation in these elections – and the preparations for them.

The victory that the results of the elections gave Hamas was a complete surprise to its leaders, and shocked all other parties. Hamas' intention was to win a considerable share of the seats so it could influence and even control the decision-making process without "dirtying" its hands in the leadership of the PA. Yet, Hamas had come out on top and found itself in the driver's seat of the structures that had been created by the Oslo process. Hamas had thus become the leader of the very same institution it had dismissed and attacked all of its life. When the prime minister and the cabinet of the Hamas-led government swore the oath before the president, Mahmoud Abbas in March 2007, they pledged to function and preserve the 'Basic Law,' law that was a product of the very Oslo process itself.

¹ The inside cover page of the passport states the following: "This passport/travel document is issued pursuant to the Palestinian self-government agreement according to [the] Oslo Agreement signed in Washington on 13/9/1993."

Interview III: Ahmad Youssef

“[Hamas] is now acting in this very framework”

Q: In 1993, when the Oslo Accord was signed, what was Hamas' position vis-à-vis the Peace Process?

A: In 1993, Hamas had announced the establishment of its political bureau outside Palestine headed by Dr. Mousa Abu Marzouq. Many statements were delivered by members of the political bureau to say that they considered [the Accord] a project bound to fail, because its security arrangement would not help Palestinians realizing their aspiration of establishing an independent and free state. The Accord itself consisted basically of a number of security arrangements that obligated the Palestinian side to help preserve the position of the occupation, while the settlers in the West Bank and in the Gaza Strip in exchange were allowed to manage their own affairs without restrictions.

Q: Did Hamas see the Accords as something that would change the form of the conflict?

A: Certainly. Hamas viewed the agreement as an attempt to co-opt the Palestinians and that Palestinian President Yasser Arafat and the Palestine Liberation Organization (PLO) leadership provided concessions without any tangible results for which they could build and manufacture the dream of the Palestinians.

Q: With the commencement of the Peace Process, did Hamas have access to information? Was it informed of the talks during the negotiations or not?

A: Hamas did not only depend on what was published in the American or Arab media, but held its own meetings to follow up on the sessions of different delegations in Washington, DC. We received summaries of some documents prior to the signature of the Accord and we had

our own ways to access other documents that we translated. We had also contacted some Arab and foreign experts in international law to provide a legal point of view about the Accord. We concluded that the Oslo Accords would only produce a convenient security situation for Israel by relieving the financial cost and ethical consequences of the occupation. But it would not lead to the establishment of a Palestinian state.

Q: Did Hamas at that time express a uniform position vis-à-vis Oslo, or were there polarizations?

A: In fact, there was consensus about the rejection of Oslo – in general – among the Islamic factions after extensive analysis and a common understanding of the goals behind the agreement. The rejection of the Accord was a common denominator inside Hamas' *Shura* (Advisory) Councils and the grassroots level, as well as in the Islamic movement in the Arab world including the International Muslim Brotherhood Organization.

Q: At that time, had Hamas decided to adopt a particular strategy such as escalating violence to abolish Oslo? And didn't Hamas' position towards Oslo affect the movement's policies and strategies?

A: There is no doubt that Hamas was quite keen to establish its presence and reiterate that the PLO was not the only decision-maker in Palestine. Therefore, the Hamas movement was refusing to recognize the PLO as the sole legitimate representative of the Palestinian people since none of the Islamic factions adhered to the PLO. Hamas did not present itself at the time as a substitute to the PLO; it

Ahmad Youssef

Dr. Ahmad Youssef is a former Hamas official and deputy foreign minister for the deposed government of Palestinian Prime Minister Ismail Haniyeh. He is currently the director of the think tank *Dar el-Hikma*. The interviewer, Omar Shaban, holds an MSc. degree in Entrepreneurial Studies from Stirling University, Scotland (1995). He is the founder and the main driver of a think tank in Gaza called PalThink for Strategic Studies. He was born in 1962 and lives in Gaza. The interview is translated by Rania Filfel.

rather expressed a stance that confirmed its religious position that Palestine is an “Islamic Waqf” and that nobody has the right to revoke any part thereof. After the Israeli settler Baruch Goldstein attacked the Ibrahimi Mosque in Hebron in 1994, killing 29 Moslems praying in the Mosque, the retaliation came from the Al-Qassam Brigade, who carried out five suicide bombings. These attacks constituted the launch of Hamas’ broader military operations, which were an attempt to abolish the Oslo Accord, so Arafat and the PLO could not go on with the negotiations to the desired extent.

Q: These operations ultimately resulted in enabling Israeli Prime Minister Benyamin Netanyahu to win the elections and come to power; how did Hamas feel about this indirect result?

A: Netanyahu was one of the most radical politicians in Israel at the time. It was clear from his political agenda that he was a fundamentalist Zionist, who did not want to give anything to the Palestinians. He was permanently inciting against them and encouraging settlement expansion. However Hamas thought it was favorable since he uncovered Israel’s policies of occupation and showed that Israel did not have any vision for peace nor offers anything to achieve the dream of the Palestinian people to live in a free and independent state.

Q: Since the outset of the Peace Process and the Oslo Accord up until now Hamas’s position vis-à-vis the peace process changed. How do you assess the movement’s position in the different phases that followed Oslo?

A: The real turning point in Hamas took place in the 1990s with the Islamic National Salvation Party. This idea was first conceptualized in 1996 following the problems triggered by the Palestine National Authority’s (PNA) arrest campaign against Hamas. Arafat attempted to appease Sheikh Ahmad Yassin by inviting him to participate in government and public work. Many of the movement’s leaders were supportive of this idea at the time including Dr. Yahia Mousa, Dr. Salah Albardawil and Eng. Ismaeel Abu Shanab.

By then, many of the movement’s leaders were in prison and the party thought that a political party would reduce pressure upon the movement and safeguard its leaders against prosecution. It was an attempt by the party to contribute to the protection of the Palestinian national project and higher national interests.

Q: This party did not continue?

A: No, it didn’t. It was technically brought to an end a few years later, around 2001 with the positions and opinions expressed by the leaders released from jail. They thought that the political party would weaken Palestinian resistance. Polarization intensified within the movement’s leadership leading to defamation and the dismissal of some party leaders for their insistence on maintaining the party, among them Dr. Yahia Mosa and Dr. Salah Albardaweel and other movement leaders. In the end, the party was suspended and dismantled, leaving only its newspaper, *Al-Risalah*, which is still published until today.

Q: Was this the reason why Hamas did not take part in the 1996 elections, or was it because it was not ready as an organization?

A: The lack of organizational preparedness was the main reason and not a fear over its popular base. Had the party received the movement’s blessings at the time, it would have participated in the elections. But some feared the party would then bypass the movement and this made some members fight it. Supporters of the party sought to liberate themselves from organizational pressure and work with society on different issues. There were attempts to provide for enough room and financial support mobilized in the name of the party through new frameworks, including a political office in each area with representatives. The idea was to establish a fully functional political party with an advisory (*shura*) framework and independent decision-making. This very idea raised fears within the movement and its older leaders in particular. They insisted therefore on removing Yahia Mosa and other members and threatened

some others with dismissal from the Hamas movement. Many members remained with a suspended membership for years before they re-entered the movement.

Q: Were there other events, including the 2006 elections, which made Hamas change its position?

A: Yes. There were shifting points including the August 2002 Document with which one of the leaders, Ismaeel Abu Shanab, tried to create harmony between the Islamic and the National factions. But he was opposed by his colleagues on the *Shura* Council and Hamas withdrew from the document, although they had previously endorsed it. This document laid the foundation for the Cairo Agreement of March 30, 2005 representing a milestone in the attempts to reach an agreement about joint positions among all national and Islamic factions. The agreement included a cease-fire with Israel until the end of 2005 endorsed by Hamas and Islamic Jihad, to give President Abbas time to restructure and reform the PA after Arafat's death.

Another milestone was the movement's participation in municipal elections in 2004/2005. This was when a real change in its former position of total rejection of any participation in elections under the Oslo Accord had taken place. This change has probably occurred after the movement was convinced that the majority of the Palestinian people supported Hamas and voted increasingly for its candidates. The results achieved by the movement and its affiliated labor unions and syndicates had encouraged its leadership to run more vigorously in the 2006 elections. It hoped to come out with a clear victory, which was predicted by many polls carried out by the party itself. By then, it was convinced that winning the elections was only a "matter of time" for Hamas. At this very moment, we can start speaking of genuine change in its position towards participation, which shifted from total rejection on religious and political grounds to participation, to even being considered a national duty aimed at safeguarding the resistance and preserving the influence of

Islamic movements. A lack of participation in the elections was perceived as endless control by the pro-Oslo parties over Palestinian decision-making.

Q: Does this mean that Hamas' not participating in the 1996 elections and its decision to take part in the 2006 elections were due to its increasing popularity inside the Palestinian Territories?

A: Certainly, this was the motivation behind running the elections. Previously, public polls showed it would only gain 13-19 percent of support, which, in Hamas' thinking, did not reflect the status of the movement or the role it should play in the Palestinian arena. Although the late President Arafat tried to provide Hamas with tempting offers including some ministerial portfolios and government positions, and in spite of his endeavors to build close relations with Sheikh Ahmad Yassin and to co-opt some of the Islamic militants in the West Bank and Gaza Strip by assigning them as ministers in the government, such promises were far below Hamas' aspirations. There were signs of a rise in its supporters' base that was supported by the results of the local and trade unions' elections in 2005. Hamas then realized that it had certain chances to win the legislative elections.

Q: Had you been a decision-maker in Hamas then, would you have supported Hamas's integration into Arafat's proposals and into the PNA?

A: The decision was made by the *Shura* Council in Gaza and other circles abroad that shared the same positions. My tendency and opinion then was to support Dr. Yaha Mosa's position from the Salvation Party and avoid any confrontation with the PNA, i.e. remain outside any circle of conflict with the Palestinian Authority and opt for joint action to reach consensus to achieve our higher national interests and avoid any side conflicts that would deplete our forces and make us lose respect in the Palestinian, Arab and Islamic world.

Q: Did Hamas' participation in the post-Oslo elections constitute an implicit recognition of this Accord and of the Peace Process?

A: Hamas refused this conclusion. It said that participation had come as a result of the people's choice, which empowered it with their votes and thus entrusted it with leadership. But it does not matter how much Hamas utters its rejection of Oslo, it is – and this is what really matters – now acting in this very framework, whether it accepts it or not.

Q: Should Hamas join the PLO, what would be the terms of adherence? Will Hamas recognize the agreements previously signed by the PLO?

A: Hamas has already declared that it would respect the previously signed accords provided that the Israeli side honored its obligations. It considers a contract to be the rules governing the relations between the parties to the contract. But since it appears that the Israeli side does not fulfill its obligations, we have the right to revise the signed agreements.

Q: Will Hamas become part of the Peace Process?

A: Why not? I remember that when we formed the national unity government, I was then entrusted with the drafting of our political agenda, which included a straightforward position toward resistance and the negotiations. We stated upfront that the negotiations file would remain in the hands of Abu Mazen (President Abbas) so long as he could achieve progress on this track. On our side, we committed to limit military operations to give room for a potential peaceful settlement. But in case of unsuccessful negotiations and Israeli violations, Hamas reserved the right to go back to military resistance of all forms as a legitimate right for Palestinians under occupation.

Q: But the position regarding negotiations is barely heard, while we are used to hearing a lot about "resistance"?

A: No. We really believe that negotiations are destined to take place in the end because any people under occupation aspiring for freedom

and independence must combine resistance with negotiations to fulfill their rights and be able to achieve self-determination, as was the case in other countries including Algeria, Vietnam and South Africa. All of these cases have proven that resistance and negotiations can complement each other to reach an agreed-upon settlement in the end result.

Q: Given the latest events in the Arab world and in Palestine, where is Hamas heading?

A: The Arab Spring had raised hopes that the reform powers would present national alternatives and new regimes that would be successful in consolidating the pillars of independence, security and prosperity. It was hoped that the state of chaos, internal conflict and absence of political balance would be replaced by better party organization. But, with the latest events in Syria and Egypt, Hamas lost two strategic allies who had always provided us with political and financial support. Losing Syria also reflected upon our relation with Iran, leading to a decline in financial support. And when President Mursi and the Muslim Brotherhood were removed by the Egyptian military with its anti-Islamic agenda, Hamas was severely affected as well.

The Hamas movement is now in a difficult position and it needs to create a new initiative to exit its current crisis. What is proposed today is to select a national commission to administer the affairs in the Gaza Strip as a step towards a broader initiative that would put an end to the fragmentation. This would be the best option to share the national concern and responsibility. I believe it is logical that Hamas would be forced to make concessions for the sake of the national project and to save its political future. At this stage, it would be wise to accelerate the formation of a temporary consensual government in Gaza prior to holding general elections on both sides of the homeland to re-unite the Palestinians under one government to protect their common national interests.

Oslo and the Systematic Exclusion of Refugee Rights

With the benefit of two decades of hindsight, there are two things we can say with certainty about the Oslo Accords. The first is that, despite all the fanfare attending it, Oslo never offered a realistic plan, sketch or path toward a just and lasting peace between Israelis and Palestinians; the second is that, on the contrary, the whole framework of the open-ended so-called peace process – the grounds of which were established at Oslo in 1993 – has helped make more permanent the very condition of occupation and dispossession to which it is nevertheless presented as a solution.

I will return to the first of these points in a moment, but in the meantime it is worth noting the unassailable fact that, even as one round of talks has replaced another in tedious fits and starts over the years, the Israeli occupation of the West Bank, East Jerusalem and (despite a clever tactical redeployment of Israeli forces in 2005) the Gaza Strip has become ever more profoundly entrenched. The data reinforcing this claim is unequivocal. When the Oslo Accords were signed in 1993, for instance, there were approximately 100,000 Jewish settlers living in Israeli colonies in the West Bank; that number tripled during the Oslo era to over 300,000, in addition to a further quarter of a million Jewish colonists now resident in East Jerusalem. The growth in the settler population has corresponded to the expansion of the infrastructural footprint taken up by colonies and related works in the occupied territories. According to the United Nations Office for the Coordination of Humanitarian Affairs, almost 40 percent of the West Bank is now taken up by Israeli colonial

infrastructure, closed military areas and so on. The land that remains for the indigenous Palestinian population is broken up into dozens of isolated sub-territories cut off from each other and the outside world: areas in which Israel has steadily continued its policies of not only refusing to allow Palestinians to build or develop their own infrastructure, but of actively demolishing the water wells, animal shelters, cisterns, workshops, and family homes that Palestinians try to build in defiance of blanket Israeli prohibitions.

In sum, the very territory that was in theory to have provided the geographical basis for an independent Palestinian state has been devoured by the intertwined processes of occupation, colonization and demolition. All of these have continued in the background, more often than not quietly and invisibly to the outside world, whose limited attention span has been all but exhausted by the well-orchestrated media spectacle of the post-Oslo “Peace Process” and its attendant cottage industry of centers, institutes, “experts” and miscellaneous commentators. And this in a sense was, and remains, part of the function of the process inaugurated at Oslo: To provide an open-ended and highly visible, infinitely commented-upon, spectacle of negotiation running precisely in parallel with what is by comparison the inscrutable and inaudible consumption and destruction of what was supposed to have been the very object of negotiation. The talking will finally stop only when there is nothing left to talk about; or so, at least, twenty years of minutely-documented experience would lead any reasonable observer to conclude.

Saree Makdisi

Saree Makdisi is Professor of English and Comparative Literature at UCLA and the author of *Romantic Imperialism* (Cambridge University Press, 1998), *William Blake and the Impossible History of the 1790s* (University of Chicago Press, 2003), *Palestine Inside Out: An Everyday Occupation* (WW Norton, 2008; revised and updated, with a new foreword by Alice Walker, 2010) and *Making England Western: Occidentalism, Race and Imperial Culture* (University of Chicago Press, forthcoming, 2013).

Providing fictional cover for the extension and entrenchment of realities on the ground in the occupied territories is not, however, the only (or even the primary) reason why the Oslo era has perpetuated Israel's conflict with the Palestinians rather than helping to wind it down towards a peaceful resolution. Strangely enough – even paradoxically in some sense – one of Oslo's greatest flaws was (and is) that it sought to restrict the parameters of peace talks only to the occupied territories. That it provided cover for the Israeli usurpation and colonization of those territories made an already bad situation worse, in other words, but it also deferred or excluded all of the elements of the conflict not immediately limited to or located in the occupied territories, even though they are absolutely central to the quest for any peaceful solution to the conflict.

To try to unravel the significance of this assessment, it is worth playing a little counterfactual mind-game. Let's assume, for the purposes of argument, that the vision of a genuinely independent Palestinian state which is often (albeit mistakenly) assumed to have been the whole point of the Oslo framework is actually accomplished: That the Israeli army withdraws from all of the territories it occupied in 1967; that all the Jewish settlements Israel has constructed since then are evacuated and handed over to Palestinians whom Israel has long deliberately deprived of housing; that the associated colonial works are dismantled; that Israel's "security" (i.e. military) apparatus surrounding the West Bank and isolating it from the outside world is taken apart; that Israel formally renounces its annexation of East Jerusalem and recognizes it as the capital of a Palestinian state; and, indeed, that a genuinely independent Palestinian state emerges in the currently occupied territories. None of this is even remotely likely, of course, but this is, as I said, a mind-game. So the question is: would these circumstances bring about the end of Israel's conflict with the Palestinians and enable a just and lasting peace?

The inevitable answer is in the negative, for two related reasons. First of all, the occupied territories represent only a small fraction (22 percent) of historical Palestine, and, more importantly, only a minority of Palestinians (about 40 percent) actually live there.

The majority of Palestinians live in enforced exile or as refugees or as second-class citizens of Israel. And yet, from the beginning, the Oslo process has, with official Palestinian connivance, excluded that majority, and the territory to

Israel's insistence on the continuing abrogation of the Right of Return and the negation of the rights of Palestinian citizens of Israel is built into the parameters of the negotiating process.

which they lay claim as their homeland inside what is today Israel. It is almost as though the occasional throw-away or symbolic references to "the refugees" as one of the agenda items for the perpetually-deferred "final status" stage of these endless negotiations is designed to make us forget that the matter of refugees is not a peripheral issue, a passing detail to symbolically be slotted into an already agreed-upon framework for peace (in the unlikely event that such a framework is ever actually agreed on) but rather, exactly the other way around, the very heart and soul of the question of Palestine.

And, in addition to the refugees and those waiting in enforced exile, official Israel's systematic, even obsessive, erasure of the material fact of the existence of Palestinians inside the state itself (to whom Israel refers, on those rare occasions when it acknowledges their existence at all, as "Israeli Arabs") has carried over – again, with official Palestinian connivance – to the total exclusion, over years of negotiations,

of any reference to the 1.5 million Palestinian citizens of Israel, who constitute 20 percent of the state's population. Like the refugees and exiles, their fate and their rights, too, have been entirely elided by the negotiating framework established at Oslo.

In fact, exactly the same process of violent social engineering that shapes everyday life in the occupied territories is also played out on a daily basis inside Israel itself. In both cases, the clear intention (manifested in the routine acts of constriction, expulsion, and demolition that have come to define day-to-day life for Palestinians) is to remove, or simply to negate, one people to make room for another. This process of displacement and replacement is the engine that drives – and has always driven – the conflict, yet it attracts hardly any international attention and has certainly never been on the agenda for negotiations from Oslo on.

In the summer of 2013, for example, the Israeli parliament approved a plan for the mass expulsion of Palestinian Bedouin from their ancestral lands in the Naqab (or Negev) desert in southern Israel. Forty thousand Bedouin now face the imminent prospect of home demolition and displacement in order to make room for new Jewish settlements on their land, or for yet more of the forests that the Jewish National Fund has been assiduously planting since 1948 among the ruins of demolished Palestinian homes, or in the uprooted stubble of what had been Palestinian orchards and olive groves all around the country. Now intent on the project to Judaize the desert, Israel considers the Bedouin to be outsiders and trespassers on their own land. Hundreds of Bedouin homes have been demolished by the state in recent years; the village of Araqib alone has been demolished over 50 times since it was first flattened by Israeli bulldozers in July 2010.

They may be, on paper at least, citizens of the state of Israel, but the fate of the residents of Araqib is materially indistinguishable from that of their Palestinian compatriots who live with

the constant threat of Israeli home demolition in the West Bank, East Jerusalem and Gaza. Like other Palestinian citizens of that state, they face an extraordinary array of institutionalized forms of discrimination that are expressly intended to secure the rights and privileges of Jewish citizens at the expense of the Christian and Muslim Palestinian minority (who constitute a fifth of the population of the state within its pre-1967 borders). Palestinian citizens of Israel face extraordinary obstacles in terms of access to land: they are essentially barred from accessing housing and land, most of which is reserved for the use of Jewish citizens of the state. About ten percent of them live in towns and villages whose very existence the state does not recognize – even though they predate the state – on the basis of which it denies them access to state services and cuts them off from the national infrastructure. As the case of Araqib illustrates, their homes can also be demolished if the state sees fit, a fate never meted out to Jewish citizens.

And it is not just in terms of access to land that Palestinian citizens of Israel face obstacles. Israel maintains separate and unequal educational systems for Palestinian and Jewish citizens of the state, making many more resources available to Jewish students than to Palestinian ones, and investing on average three times as much in the education of a Jewish citizen as compared to a Palestinian one. Israel's nationality law is designed exclusively for Jews, and various amendments to it, notably dating from 2006, explicitly deny Palestinian citizens rights. Marriage laws function differently for Jews as opposed to the Christian and Muslim Palestinian minority, and indeed state laws make it impossible for Jews to marry non-Jews, thus cementing these forms of racial and ethnic distinction. And so on and on: there are more than 50 laws that discriminate against Palestinian citizens in all areas of life.

All of these material and legislative mechanisms are designed to maintain the Jewish identity of the state by containing or

eliminating the Palestinian claim to the land. They work in seamless continuity with the dual regime of demolition (of Palestinian homes) and construction (of Jewish settlements) in the West Bank and East Jerusalem.

And they are also coextensive with the physical and political obstacles barring the right of return of those Palestinians who were forced from their homes during the creation of Israel in 1948, most of whom eke out a kind of existence in the refugee camps and slums to which they have been condemned ever since, despite their right of return, which has been recognized (repeatedly) by the United Nations. Denying that right, however, and barring any and all paths towards its implementation, has been one of the central policies pursued by Israel from the very moment of its foundation, again – as was the case with the ethnic cleansing through which Israel emerged in the first place – in order to secure the state’s claim to an exclusively Jewish identity.

Although the refugees and those Palestinians living in exile constitute the single largest component of the Palestinian people, their right of return, like the rights of the Palestinian citizens of Israel, were not merely forgotten or elided at Oslo. Rather, the very premise of Oslo was, as I mentioned earlier, the systematic and total exclusion of those rights and those components of the Palestinian people – the majority – from the framework of negotiations. Israel’s insistence on the continuing abrogation of the Right of Return and the negation of the rights of Palestinian citizens of Israel is built into the parameters of the negotiating process: Points that are not to be raised, or are to be raised only in order to be all the more comprehensively denied all over again.

Thus, just as Israel has repeatedly refused to countenance the return of Palestinians to their homes inside what is now Israel, Israeli politicians from across the spectrum have repeatedly suggested that their state’s Palestinian citizens could somehow be offloaded into the putative

Palestinian state whose future is supposedly being negotiated, if not by their physical removal then perhaps by redrawing borders so that as many of their towns and villages as possible are located on the wrong side of the line. The bellicose former deputy prime minister Avigdor Lieberman rose to power partly on the basis of these kinds of suggestions; and while many might seek to dismiss him as an “extremist” or outlier in Israeli politics (which he certainly is not), the former foreign minister Tzipi Livni, widely

Far more inexcusable, however, is the official Palestinian acceptance of [the] central Zionist claims.

regarded as a “moderate” and one of those most committed to the negotiating process, has said much the same thing as Lieberman. Livni has told the Palestinians of Israel that in the event of the creation of even a heuristic Palestinian state in the West Bank they must recognize that “the national solution for you is elsewhere,” i.e. not in Israel but outside it.

That Israel should seek to deny the return of Palestinians to their homeland or to remove that minority that survived the ethnic cleansing of 1948 is understandable from the standpoint of the Zionist project to create and maintain an exclusively Jewish state in what had always historically been a multicultural land.

Far more inexcusable, however, is the official Palestinian acceptance of these central Zionist claims. From Oslo on, Palestinian negotiators have not only made absolutely no effort whatsoever to secure the rights of Israel’s hapless Palestinian minority or those of the refugees and exiles, they have repeatedly expressed their acceptance of the Israeli-dictated “consensus” that Palestinian refugees and exiles will not be going home. The chief Palestinian negotiator, Saeb Erekat, himself derisively dismissed

refugee rights as what he called a “bargaining chip.” In secret negotiations, both he and PLO chairman Mahmoud Abbas have accepted the Israeli insistence that, insofar as there is any recognition of refugee rights at all, it will be strictly a symbolic affair, a trickle of perhaps a thousand or two per year for a few years – out of a refugee population of several million. “On numbers of refugees,” Abbas said at one stage, “it is illogical to ask Israel to take five million, or indeed one million.” That, he said, “would mean the end of Israel.”

The point here is not, however, the irony that the supposed leader of the Palestinians seems to place a higher priority on Israel’s demands than on the needs and rights of his own people. It is that ever since Oslo the Palestinian leadership has allowed Israel to define the parameters of what is and isn’t negotiable, and hence what is and isn’t possible. Oslo is the very embodiment and expression of that surrender. Indeed, as that line from Abbas so palpably illustrates, Israel’s claim to be a Jewish state is the main determinant of the negotiating framework set at Oslo and pursued ever since. As Abbas notes, the right of return of Palestinians to their homes inside what is now Israel is anathema precisely because it would mean the end of that claim. But at the same time, clearly, the denial of the rights of Palestinians inside Israel is also primarily driven by the need to reinforce the state’s claim to Jewishness. And so too, ironically, is the need to even talk about Palestinian statehood, however ephemeral or fantastical such a state may turn out to be. As it has been framed since Oslo, the point of such a state would not be to embody the rights and aspirations of the Palestinians, but rather to secure the demands and aspirations of Israelis. That’s why the form of the state, its viability, its territorial contiguity, its access to resources, airspace, and the outside world, is irrelevant to the negotiating process inaugurated at Oslo. What matters far more is that the talk of such a state go on – and that the state exist, as it were, in talk, rather than as a state in the normal understanding of that word.

The preservation of Israel’s precarious claim to a Jewish identity can thus be recognized as the driving force behind Oslo and everything that has followed from it. And it is exactly in this sense, more than anything else, that Oslo, far from marking a path toward a just and lasting peace, marks on the contrary the very opposite. This conflict has from its origins been driven by the unwavering project to transform a land of many cultures and faiths into one with a monochromatic identity. To secure that project is to guarantee the perpetuation of the conflict. To find peace requires on the contrary the abandonment of that project, and the acceptance of the genuine rights of all Palestinians – and placing those rights, those of the majority of Palestinians, front and center in any process of reconciliation.

Reaching the Next Generation of Nonviolence Leaders: Budrus, the Graphic Novel

Two decades ago, the Oslo Accord was highly anticipated by many. It quickly became clear, however, that they would not lead to the achievement of full Palestinian rights and freedoms or lasting peace, dignity, equality and human security for all parties, a sentiment widely held in Palestinian society today. Just Vision is committed to supporting Palestinians who pursue rights and freedoms through unarmed popular struggle. Using our award-winning films and community organizing tools, we engage Palestinian, Israeli and American audiences and render Palestinian and Israeli nonviolence leaders more visible, valued and effective in their efforts.

Given the lessons learned twenty years after Oslo, we know the realization of an inclusive, thriving, rights-respecting civil society hinges on the engagement of local communities. With renewed diplomatic negotiations taking place, the value, visibility and voice of grassroots leaders and community organizers are all the more important to hold political leaders consistently accountable to the needs of the people.

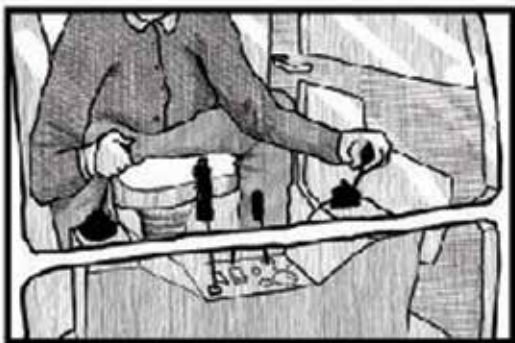
Earlier this year, we launched our Arabic graphic novel, *Budrus*, which features Iltezam Morrar, the 15-year-old female protagonist, as the central character, and profiles her successful quest to protect her village from destruction. Iltezam and her neighbors use courageous nonviolent actions that bring together men and women, diverse Palestinian political factions,

fellow residents and Israelis. The graphic novel offers a compelling local example of inclusive grassroots leadership and the power of unarmed popular struggle as a strategy for achieving tangible change in the Israeli-Palestinian context. Our objectives for the graphic novel are not only to inspire youth to participate, but to support rising leaders in building connections to a growing community of their peers in nonviolent movement-building. Using the graphic novel, we are working with students, women's groups, youth camps, and community centers at cities, refugee camps and villages across the Occupied Palestinian Territories to ensure youth have role models for their own burgeoning activism.



Just Vision generates awareness and support for Palestinians and Israelis who pursue freedom, dignity, security and peace using nonviolent means. For more information visit: www.justvision.org





Popular Resistance: A Personal Account from Bab al-Shams*



* This is a translated and edited version of an article which appeared first in Arabic in the *Majallat al-Dirasat al-Filastiniyah*, Arabic Quarterly, published by the Institute of Palestine Studies Beirut, No. 95, Summer 2013.

The current model of popular resistance grew in the aftermath of the Second *Intifada*, which was seen by many as a failure – due to the lack of strategy and coordination. These factors, in addition to the continued security cooperation between Israel and the Palestinian Authority (PA) in the West Bank, contributed to the end of armed actions, particularly in the context and absence of a strategic resistance vision that included the entirety of the Palestinian people.

Popular Resistance Today

A new wave of civil initiatives developed in recent years, aiming at establishing and inventing new unarmed ways of protest against the Israeli occupation. The idea for Bab al-Shams was born as a consequence of such initiatives and specifically in the local popular struggle committees, which were formed to coordinate actions. The Popular Struggle Coordination Committee (PSCC) is the central body that supports popular struggle whether in the Palestinian villages, which organize weekly demonstrations against the wall such as Bil'in,

Abir Kopty

Abir Kopty is a Palestinian activist in several movements and social change organizations focused on feminism and human rights and the struggle to end the Israeli occupation of Palestine. She works as a media analyst and consultant and is a former city council member in Nazareth and former spokeswoman for Mossawa, the Advocacy Center for Arab Citizens in Israel. She holds a Master of Arts in Political Communication from the City University of London. Her piece is translated into English by Irene Nasser.

This article is a first-hand account of the creation of the village of Bab al-Shams (Gate of the Sun in Arabic) in the area Israel classifies as E1, namely private Palestinian land that has been confiscated by the Israeli government to build settlements. The project, if carried out, will disconnect Jerusalem completely from the West Bank and divide the West Bank into two parts.

Palestinians have tried diverse models of “resistance,” from civil disobedience to armed resistance; the First and Second *Intifadas* were very different in their strategies and goals. Each model was contextualized by a specific historic, geographical, and political situation and different strategies were a result of particular internal factors as well as external-regional elements.

Ni'lin, Nabi Saleh, Ma'asara, Kuffur Qaddoum, and others, or outside of the villages. Likewise, the PSCC initiates and organizes civic action in various areas, provides legal, media, and documentation support, as well as a coordination platform. A large portion of the budget of the PSCC is invested in legal defense due to paying lawyer fees and bail for arrestees in the popular struggle. This amount constitutes the largest portion and reaches hundreds of thousands of Israeli *shekels* annually. The PA used to provide partial funding for legal defense but has now ceased to do so.

The idea for Bab al-Shams did not develop in a vacuum. Popular resistance in Palestine has a historical context: For example, in 1936, Palestine witnessed the longest general strike in its history. Furthermore, the First *Intifada* included a vast number of models and tactics of popular resistance, which the new civic demonstrations since 2003 (protests in Budrus, Bil'in and other villages) tried to continue. For eight years, Palestinians created new tactics of resistance as villages initiated weekly Friday demonstrations against the construction of the Wall and the settlements. They had limited success: While they did not lead the way to ending the occupation, they did prevent some land confiscations.

At the same time, popular resistance was not restricted to the West Bank. In Gaza, activists organized demonstrations in an attempt to reach Erez Crossing near Beit Hannoun, as well as in various areas that Israel calls the "Buffer Zone," which Palestinians are forbidden to approach. These demonstrations occurred from 2008 to 2011 until Hamas applied pressure to stop them. Different forms of popular protests take place also among Palestinians with Israeli citizenship. In the first weeks of the Second *Intifada*, Palestinians in Israel took to the streets and actively participated in the uprising. They faced violent repression by the Israeli police, killing 13 Palestinian Arab protesters. It is also possible to include the demonstrations in favor of the return

of the refugees commemorating the *Nakbah* in May 2011 as another form of popular resistance, which in a rare moment engaged the Palestinian people across Palestine and in the Diaspora in Lebanon, Syria, and Jordan.

Today, popular resistance models of weekly protests are still practiced on a weekly basis in various villages, in spite of the fatigue and depression that has taken over since the Second *Intifada* and which has been reinforced by internal political divisions. However, the weekly protests left the spheres of refugee camps and city centers and moved to the military checkpoints, leading to limited participation and confrontations, and an inability to revive the spirit of the First *Intifada*. These actions also failed to attract the Palestinian masses and did not manage to create a coordinated effort among all Palestinians.

The inability to alleviate the general frustration and apathy which dominates the Palestinian population has many reasons, and is not limited to the lack of strategy for mobilization by activists of the popular struggle, but also is an effect of the Oslo Accord. Among these reasons we should consider that:

- The Palestinian cause was turned from a national liberation struggle into a "development project." As a result, civil society organizations, which were the central force during the First *Intifada*, were tied up with foreign funding and interests. In turn, civil society organizations became occupied with legal defense issues and development, losing in this process their role as a political mobilizer. In addition, the PA's economic policy, especially the Paris Agreement, contributed to the developmental regression of Palestinian society.
- The segmentation and division of the Palestinian people led to several collectives each isolated from the other (e.g. Palestinians in 1948, refugees, West Bank

Palestinians, Jerusalemite Palestinians). Additionally, the political and geographical divide between Gaza and the West Bank deepened.

- The partial transfer of authority to the PA as well as Palestinian-Israeli security cooperation agreed upon in the Oslo Accord ultimately made the occupation less costly for the occupier, especially in major Palestinian cities (known as area A in the Accord). Meanwhile, checkpoints and the separation barrier have become routine and remain unchallenged.
- The security coordination succeeded in protecting Israel and the Jewish settlers in the Occupied West Bank, without providing Palestinians any protection from the occupation and terrorism inflicted by Jewish settlers.
- The failure of the current Palestinian leadership to deliver any national achievement, in addition to their subordination to Western pressure, have led

The symbolic success of Bab al-Shams and the international media coverage forced many of the PA leaders to compete with each other.

to a complete loss of confidence in them and a lack of faith in political parties.

All of these factors have added to the increasing feeling of despair among Palestinians. Palestinians started questioning the cost of any form of resistance in regards to violent actions by the Israeli army as well as the PA. At the same time, there is an incentive for Palestinian activists to seek new strategies of resistance. Palestinian activists in the months prior to Bab al-Shams organized many actions such as the closure of

streets and checkpoints created in the Occupied Palestinian Territories or demonstrations inside the shopping center of Rami Levy in Sha'ar Benyamin settlement, and other actions. All were intended at sending a clear message to the settlers and the Israeli occupation. These demonstrations departed from traditional strategies of resistance inside villages and towns. Their goal was to widen the circle of popular resistance and send a message to initiate new forms of civil disobedience and resistance.

Planning and Preparing Bab al-Shams

Planning for Bab al-Shams began in December 2012. A great advantage was the representation of popular resistance committees that had previously organized direct actions dealing with the occupation. Initially, the idea was suggested among a small group of activists. After a consultation phase, planning began for logistical needs such as mobilization and implementation, while keeping a level of secrecy and the element of surprise. The circle expanded, especially reaching activists and land owners living in the area of Bab al-Shams. A few preliminary meetings were held. In one of the last two meetings, the name Bab al-Shams (based on a 1998 novel by Elias Khoury) was chosen due to its connection to the right of return and resistance.

In order to mobilize a large number, we announced and sent out a call for the "First Popular Struggle Camp" to be held in the Jordan Valley region, quite far from the area of the future Bab al-Shams, and through this announcement we were able to attract hundreds of participants. Our original plan was to start on Thursday, January 10th, 2013. Due to a cold front, which caused snowfall in many areas, we were forced to delay by a day to ensure a large number of participants, who would have otherwise not been able to make it due to closed roads and travel delays. Participants who were able to make it on Thursday were brought to a location in Ramallah where they could stay for the night in order to start Friday morning, when weather conditions

were supposed to improve. That evening, Thursday, we practiced setting up the tents so as to construct as many as possible, as quickly as possible, before the Israeli army would be able to reach us and prevent the action. On the morning of January 11th, 2013, fifty participants left an hour earlier than all the others and began building the tents.

Others left Ramallah in stages and headed towards Bab al-Shams (or as Israel calls it: The E1 area) where a few months previously the Israeli government had announced that 4,000 settlement units were to be constructed in order to connect Ma'ale Adumim settlement to occupied Jerusalem. The area comprises approximately 13 square kilometers and belongs to the villages of al-Izariyeh, Issawiyeh, al-Tor, Anata and Abu Dis. Only once on the bus participants were informed of where they were actually going to go and given a choice, to either join or return to Ramallah. Almost all of them stayed on. A prominent role was played by women in planning, preparing, and erecting the tents in the village; women also played a significant role in creating the press and media center in the village and operating it nonstop.

Arriving at the location and building the tents, we realized that the element of surprise was maintained. Despite Israel's military capacity and our own simple means, we succeeded in carrying out the activity. However, our goal was not only to arrive, but also to remain and ensure the right of the landowners to their property, while obstructing the large settlement plan for the area. While this goal was not fulfilled, the overall activity can be considered a success.

Results and Implications

The symbolic success of Bab al-Shams and the international media coverage forced many of the PA leaders to compete with each other over the significance of the events. Many arrived at the scene and tried to capitalize on the event. For example Saeb Erekat, who is heading the negotiations team of the Palestinian

Liberation Organization, decided that the youth who participated in Bab al-Shams were in fact "protecting the Two-State solution," a statement that angered many of us. Firstly, no one asked Saeb Erekat to speak in our name; secondly, Bab al-Shams did not offer a political solution but rather an approach to resistance with no connection to political solutions, which the leadership refuses to see; thirdly, Bab al-Shams included Palestinians from many regions, from various political factions, from those believing in a Two-State solution to those believing in a one-state option and those only caring for the realization of Palestinian rights. The press release that was drafted and circulated by Bab al-Shams organizers was quite clear that the action did not carry the message for or against a certain political solution, but that it was a message confirming the right of the Palestinian people and the struggle against colonization. It was difficult to choose a decisive position by all participants since they belonged to different political parties (or none at all). There were also differences among us on how to deal with the PA leadership. It is not the first time that some political factions have tried to dominate the popular resistance movement, especially Fatah, which has been trying to take over the process of decision making in the popular struggle movement.

On the other hand, in regards to funding, the PA "Information Center Concerning Israeli Settlements and Annexation Wall Affairs" in the Ministry of State provided tents, mattresses and blankets for the establishment of the First Popular Resistance Camp, and one of the residents of the village of Bil'in funded electricity devices. Other citizen supporters of the popular struggle donated a few thousand *shekels* in order to fund some basic needs like gasoline, wood and transportation needs. Not one participant in the village was given money for participating, and unlike some had claimed, we were not showered with thousands of dollars. On the contrary, participants endured harsh weather conditions and meals that constituted just one or two small sandwiches a day. Another misperception

regarded the question of approaching the Israeli High Court. Activists did not approach the court to ask for permission; rather the landowners submitted an appeal regarding the demolition order we received in the first hours of our presence on the land. The court accepted the appeal and gave the Military Command of “Judea and Samaria” (the West Bank) six days from the time we arrived to respond to the appeal. However, the village was declared a “security threat” and they claimed it had to be removed.

This action should be seen in the larger context of acts of resistance: To meet demolitions with construction, the uprooting of olive trees with the planting of new trees, to resist through strikes and hunger strikes in the Israeli jails in solidarity with or alongside prisoners; to resist attempts to plunder the Palestinian national tradition and heritage by utilizing art and culture; to resist through education to combat ignorance; to resist through boycotts to combat normalization and economic dependence.

The main failure of Bab al-Shams was the inability to protect the land from Israeli confiscation. The land is still designated for settlement construction.

However there were also two failures regarding the organization of the event: First, we were not well prepared to confront our forced eviction. We did not have a concrete plan and, in my view, our eviction was quieter and easier than it should have been. However, one should take into account that the soldiers outnumbered us 5-to-1. There were approximately 500 police officers from the Special Patrol Unit (*Yehidat Siyur Meyuhedet Yasam*) who came to remove close to 120 residents from the village. We were all exhausted and suffering from hypothermia. Second, we did not succeed in effectively using the 48 hours we spent at Bab al-Shams, despite plans for art exhibits, cultural and intellectual events and workshops. Palestinians kept coming to Bab al-Shams to visit or join, and this was

a great opportunity to organize gatherings, strategize and network.

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What took place after the forced eviction was no less significant than what occurred prior to it. Activists tried to return to Bab al-Shams through a fake wedding march, but we were prevented and evicted by the Israeli army. It was a symbolic action to assert our Right of Return. On March 20, 2013, a Palestinian neighborhood called Ahfaad Younis (Descendants of Younis) was erected on the lands of the village of al-Izariyeh on an opposite hill from where Bab al-Shams was founded, the very same land that Israel now threatens to confiscate in Area E1, east of Jerusalem. Bab al-Shams has also inspired five new Palestinian improvised villages: Bab al-Karamah (Gate of Dignity) was erected on the lands of Beit Ikksa, a village northwest of Jerusalem whose lands are threatened with confiscation by Israel. Kan'aan was erected south of Hebron, and the village of Al-Sumud Wal-Tahaddy (Steadfast Perseverance & Challenge) in Jenin. Every time a village was founded, its destruction, removal and suppression took place in a matter of hours or days. These villages were founded through independent initiatives of the residents of the village and had no party affiliation and were not coordinated with the PSCC.

Conclusion

Great challenges remain for popular resistance. I would name the following most important points:

- Turning popular resistance in a routine action does not accomplish objectives. The

main goal was not to establish a village, but to find a way to protect the land and affirm our right to this land. If we do not succeed in that, the entire idea might turn into a media bubble.

- Bab al-Shams has become a symbol; we have to turn it into a reality. This means Palestinians need to return to the land that belongs to them and succeed in remaining in it. That, in and of itself, is a great challenge considering the permanent military presence in the area.
- This idea must be spread to all of historic Palestine. Our right to the land and our struggle against colonialism is not separated by the 1967 borders or the 1948 areas. Every Palestinian who remained in his/her homeland since the *Nakbah* (the 1948 expulsion of Palestinians) has the right to protect his land. It is one's right to be able to return to the village from which he/she was expelled, including Palestinian refugees in exile. Therefore, the idea has to translate to an actual return to every place from which we were expelled.
- Activities should not be random and unconnected. They must be part of a broader strategy and a united collective vision for popular resistance, including the international community. This in itself does not depend on the popular resistance committees, but on the Palestine Liberation Organization, on the condition that it is democratically elected directly by the Palestinian people, contrary to the current situation. Until such changes take place, popular resistance on the ground must not stop.
- The popular resistance movement must maintain its independence despite the difficulty of doing so given attempts by some factions to dominate and appropriate it.

Finally, one cannot attribute to the Bab al-Shams experiment more than it merits. It was an inspired and unprecedented experiment. Palestinians from across the political spectrum participated in it; and although they differed on many issues, they agreed on the core issue: Freedom, Right of Return and the Right to Self-Determination. Bab al-Shams represented a true image of Palestinian society with all its disagreements, contradictions and characteristics. It inspired people, both locally and internationally and showed that popular resistance has a huge potential. More importantly, it brought back hope. Thus, we must learn from this experience in order to develop it through positive and constructive criticism.

Oslo and the Re-Emergence of the One-State Solution*

* The following article is adapted from a version published in *The Boston Globe*, February 29th, 2012.

Twenty years ago, the late Yasser Arafat, Chairman of the Palestine Liberation Organization, and the late Yitzhak Rabin, Israeli Prime Minister, shook hands on the White House lawn, launching the “peace process” and purportedly marking a new era in Israeli-Palestinian relations. There was good reason to be optimistic: The handshake marked the beginning of a series of Israeli and international promises to the Palestinians that, within five years, Israel would end its military occupation, evacuate its illegal colonies and finally allow Palestinians to live in freedom. The “Two-State solution” (or divorce) as envisioned by Chairman Yasser Arafat in 1988 would finally come to fruition in May 1999.

For Israelis, the “peace process” yielded positive results. Between 1993 and 1999, 45 countries established diplomatic ties with Israel; more than in the four preceding decades combined. The Israeli economy flourished in part due to the financial support provided by the international community to the Palestinian people; funds that would have otherwise been paid by Israel. Israelis benefited from the new security arrangements (leading to the most secure years in Israel’s history to that point) as Palestinians were now, absurdly, responsible for providing security to their oppressor and occupier. It was “business as usual” for Israel’s colonies: between 1993 and 2000, the settler population in Palestine nearly doubled – from 190,000 in 1993 to 370,000 in 2000, marking

the fastest rate of growth of settlements in Israel’s history. Finally, the PLO now recognized Israel’s “right to exist” without securing any Israeli recognition of Palestine’s “right to exist.”

Today, even as the Israeli government demands a return to “peace talks,” it continues... to build new colonies and expand existing ones.

Yet, for Palestinians, the peace process was a disaster. Palestinians were assured that Israeli checkpoints preventing free movement, the repeatedly missed deadlines for Israel’s withdrawal from the West Bank and the Gaza Strip and the failure to release all political prisoners from Israeli jails were necessary “pains” along the path to achieving independence from Israeli rule. We simply needed to be patient. However, 20 years later, Palestinians are no closer to being free: Due to Israel’s military rule, Palestinian children can only dream of visiting Jerusalem or the sea; they live surrounded by checkpoints, walls and settlements and they live under blockade, deprived of their basic rights.

It is therefore unsurprising that the Israeli government continues to demand a return to negotiations: Negotiations improved Israel’s economy, improved Israel’s diplomatic status and simultaneously allowed Israel to continue to steal Palestinian land. Today, even as the Israeli government demands a return to “peace talks,” it continues – like all of the governments preceding it, including Rabin’s – to build new colonies and

Diana Buttu

Diana Buttu is a Palestinian-Canadian lawyer and a former spokesperson of the Palestine Liberation Organization’s Negotiations Support Unit. She earned a law degree from Queen’s University in Canada and a Master of Law degree from Stanford University.

expand existing ones. The settler population has tripled since 1993 and stands at nearly 700,000 settlers living in the West Bank, including in East Jerusalem. The resumption of negotiations has not stopped Israel's desire for more Palestinian territory: The Netanyahu government has announced more than 1,500 new housing units in the settlements. All of this was allowed to continue as the international community simply watched. There were few sanctions for Israel's illegal behavior and Israel was not ostracized for flying in the face of international law. Even as the international court ruled Israel's wall was illegal, the international community simply stood by (and continues to stand by) idly.

With these staggering numbers more Palestinians are now questioning the feasibility of the Two-State solution: How will Israel successfully evacuate its 700,000 Israeli settlers from the West Bank when its evacuation of 7,000 in the Gaza Strip caused such a national ruckus?

But the idea of one state is not new; and it is also not dependent upon the failure of the "peace process" or as a poor "second choice" to the Two-State "solution." Rather, the idea of one state predates the concept of two states with both Jewish and Palestinian intellectuals espousing one state from as far back as the 1920s. While the idea was largely marginalized for decades, it was revived in the 1960s by the Fatah movement (led by Yasser Arafat) and the Palestine Liberation Organization. The call then was for a democratic state for all in Palestine – Jews, Christians and Muslims – with the right of return afforded to Palestinian refugees. While the PLO refused to accept the legitimacy of Israel as a settler-colonial state and hence only recognized as Palestinians those Jews who "had normally resided in Palestine until the beginning of the Zionist invasion," Fatah and the PLO Charter were the first attempts to articulate a one-state vision.

While the "Two-State" concession platform replaced this one-state vision, unofficially in

1974 and officially in 1988, the One-State vision is now more relevant today than any Two-State concession. This is due to the fact that after twenty years of negotiations, and 25 years of advocating for a Two-State solution, Palestinians now see that Israel's version of "Two-States" fails to address the central reason why there is no peace: Israel's system of ethno-religious privilege – framed as Zionism.


I believe that rather than myopically focusing on the creation of a "state" we should begin to focus on the fulfillment of *rights* by advocating for equal rights for all individuals in the land irrespective of religion; by seeking reconciliation rather than separation and by protecting minorities rather than discriminating against them.

I am under no illusion that achieving equality for Palestinians and Israelis will be an easy feat. Power is never voluntarily shared by the powerful. Indeed, the idea of one state has already created hysteria among many of Israel's supporters who

Today, more than a quarter of Palestinians support a single democratic state, despite the absence of any political party advocating this approach.

claim that one state will "destroy Israel." What Israel's supporters fail to understand is that the only thing that one state seeks to destroy is the ethno-religious privilege that currently defines Israel in which Jews are afforded superior rights to Palestinians, irrespective of whether the Palestinians are citizens of Israel or non-citizens living under Israel's military rule.

Perspectives are already changing. Today, more than a quarter of Palestinians support a single democratic state, despite the absence of any political party advocating this approach. Israeli perspectives are also changing, with even



a right-wing parliamentarian, Likud legislator Tzipi Hotoveley, noting of Israel's policies of separation that: "The result is a solution that perpetuates the conflict and turns us from occupiers into perpetrators of massacres, to put it bluntly."

The primary obstacle to one state is the belief that this system of ethno-religious privilege – similar to the privilege that ruled apartheid South Africa – must remain. But these problems were also faced by other discriminatory societies: Jim Crow laws and South African apartheid were entrenched in the minds of many.

As Virginia Tilley notes, "The challenge for the One-State solution is to find a political path through the transition from rival ethno-nationalisms to a democratic secular formula which would preserve Israel's role as a Jewish haven while dismantling the apartheid-like privileges that presently assign second-class citizenship to non-Jews."

History demonstrates that ethnic privilege ultimately fails in a multiethnic society. Palestinians and Israelis are fated to live together. As the late Israeli Prime Minister Yitzhak Rabin once stated, Palestinians and Israelis are "destined to live together, on the same soil, in the same land." The real question is how – under a system of ethno-religious privilege or under a system of equality in the same state.

This publication can be ordered from:

Heinrich Böll Stiftung
North Africa Office,
5, Rue Jamel Abdennasser,
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Heinrich Böll Stiftung
Main Office Germany
Schumannstr. 8,
10117 Berlin

T: (030) 285 34-0

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