POLICY BRIEF | POLITICS

Reclaiming Self-Determination

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Overview

Will a Palestinian state, no matter how sovereign, fulfill the Palestinian right to self-determination? In this policy brief, Al-Shabaka Policy Advisor Ali Abunimah reviews the evolution of the concept of self-determination, its applicability to the Palestinian people, and its gradual erosion since 1991. He argues not only that self-determination must return to the center of the Palestinian struggle; he also shows how the Palestinian exercise of this right can be compatible with eventual coexistence with Israeli Jews.

How the "peace process" eroded self-determination

In his 1974 speech to the United Nations General Assembly, Palestine Liberation Organization Chairman Yasir Arafat addressed "the roots of the Palestine question," declaring, "Its causes do not stem from any conflict between two religions or two nationalisms. Neither is it a border conflict between neighboring States. It is the cause of a people deprived of its homeland, dispersed and uprooted, and living mostly in exile and in refugee camps."

How ironic then that the "peace process" has reconceived the Palestine question precisely as little more than a border dispute between Israel and a putative Palestinian state. The "roots" were first reduced to a laconic list of "final status issues": borders, settlements, Jerusalem and refugees and then gradually buried.

Lost has been any commitment to self-determination in principle or in practice.

Although they have rarely been formally discussed, it has long been conventional wisdom in peace process circles that the "final status" issues have already effectively been settled, largely according to Israel's requirements (we have heard ad nauseam the refrain "everyone knows what a final settlement will look like"). The United States and its hand-picked Palestinian leaders have accepted that large Israeli "settlement blocs" housing most of the settlers, will remain where they are in the West Bank.

The same formula has been adopted for Jerusalem, as per the so-called Clinton parameters: Israel would get "Jewish neighborhoods" and the Palestinian state would get "Arab neighborhoods." What this means in practice is that Israel would keep everything it illegally annexed and colonized since 1967, and Palestinians might get some form of self-rule in whatever is left – which is shrinking daily as Israel aggressively escalates its Judaization of eastern Jerusalem. While everything east of the 1967 line is divisible and "disputed," the same does not apply to the west. Palestinians would not be entitled, for example, to seek the return of their West Jerusalem neighborhoods ethnically cleansed and colonized by Israel in 1948. The "peace process" has actually created an incentive for Israel to accelerate its colonization of eastern Jerusalem because Israel knows that whatever is left uncolonized would become the new maximum ceiling of what the United States and other peace process sponsors would support as Palestinian demands.

Similarly, the refugee question has been virtually "settled" as well. Palestinian Authority-appointed chief negotiator Saeb Erekat revealed in a paper he circulated last December that Fatah leader and acting Palestinian Authority President Mahmoud Abbas had proposed to Israel that no more than 15,000 Palestinian refugees per year for ten years return to their original lands in what is now Israel.[1] According to Erekat, then Israeli Prime Minister Ehud Olmert had countered with an offer of 1,000 refugees per year for a period of five years. In

other words, the parties had already agreed to abrogate the fundamental rights of millions of Palestinian refugees, and were haggling only over the difference between 5,000 and 150,000, or less than three percent of the Palestinian refugees registered to receive services from UNRWA (the United Nations Works and Relief Agency for Palestine Refugees in the Near East).

So what is left to negotiate? Camille Mansour's policy brief accurately summarizes the outstanding issues – as seen from within the peace process – the final borders and attributes of sovereignty of the Palestinian state. Mansour doubts that negotiations in present circumstances would lead to a peace treaty in which "Palestinian sovereignty requirements could be attained."

Let us assume for the sake of argument that Israel were to agree to a Palestinian state in the West Bank including East Jerusalem, and the Gaza Strip that satisfies official Palestinian positions and provides for a state no more or less sovereign than any other. The question that then arises is: Does this sovereign state provide for the self-determination of the Palestinian people? Does it restore and guarantee their fundamental rights? As argued, below, the answer is a clear no. And this underscores the need to distinguish the limited goal of sovereignty from that of self-determination.

Sovereignty is exercised by a state through the fulfillment of commonly agreed functions: effective control of territory, borders and resources, and maintenance of political independence among others. Self-determination is exercised by a people legitimately inhabiting a given territory. Self-determination may result in a sovereign state, but it may not. It is fundamental to understand this difference and to recognize that self-determination remains at the heart of the Palestinian struggle.

Understanding the principle of self-determination

The principle of self-determination as it is understood today was enunciated by US President Woodrow Wilson toward the end of World War I. In Wilson's words, "the settlement of every question, whether of territory, of sovereignty, of economic arrangement, or of political relationship" is to be made "upon the basis of the free acceptance of that settlement by the people immediately concerned and not on the basis of the material interest or advantage of any other nation or people which may desire a different settlement for sake of its own exterior influence or mastery."[2]

Put simply, territories and people could no longer be shifted around between empires and sovereigns like pieces on a chessboard. Any political arrangements – particularly in territories undergoing decolonization – had to enjoy the freely given consent of those who would have to live under them. The principle was no sooner enunciated than effectively violated in many cases after World War I, particularly in Palestine. However, it gained ground and was later enshrined in Article 1 of the United Nations Charter and other instruments, assuming particular importance in post-World War II decolonization.

Tomis Kapitan, a professor of Philosophy at Northern Illinois University, who has also previously taught at Birzeit University, provides an excellent summary of the history of the principle and its application. He argues persuasively that as conceived and practiced, the right belongs not to national groups qua national groups, but to the legitimate residents of any region whose status is unsettled (e.g. because it was previously colonized or under no sovereignty) or which is endangered because the current sovereign has persistently failed to protect, or has itself consistently violated the fundamental rights of the legitimate residents. The residents of regions meeting these criteria "have a right to determine their political future either by constituting themselves as an autonomous political unit, or by merging with another state, or by dissolving into smaller states."[3]

Palestine, as Kapitan observes, "is the only territory placed under a League of

Nations Mandate in which the established inhabitants were not granted this privilege."[4] Instead, Great Britain, the mandatory power, agreed to partition the country over the unified opposition of the overwhelming indigenous Arab majority, and aided and abetted the build up of settler-colonial Zionist forces arriving from other parts of the world and which eventually carried out a violent takeover of much of the country. By endorsing partition with Resolution 181 of 1947, Arafat noted in his 1974 speech, "the [UN] General Assembly partitioned what it had no right to divide – an indivisible homeland" and thus contributed to the denial of the right of self-determination. No form of consultation through referendum or plebiscite or other democratic process was ever contemplated.

Today, Kapitan argues, the legitimate residents of historic Palestine include at least all Palestinians living in any part of the country, and all refugees outside the country. "Because expulsion does not remove one's right of residency, then these Palestinians also retain residency rights in those territories from which they were expelled."[5] Thus, the Palestinian people collectively retain "an entitlement to being self-determining in that region [historic Palestine]… not qua Palestinians, but qua legitimate residents. That force was used against them has not erased the fact that they are, and are recognized as being, a legitimate unit entitled to participate in their own self determination."[6]

The peace process that began with the 1991 Madrid Conference has gradually excluded the majority of Palestinians from having any role in determining the future of their country. In the eyes of peace process sponsors, the "Palestinian people" constitutes at most residents of the West Bank and Gaza Strip, though even Gaza now finds itself as marginalized as the Diaspora. It is this exclusion that has allowed a cause of decolonization and self-determination to be reduced to little more than a "border dispute."

Palestinian self-determination and the rights of Israeli Jews

How and on what terms could a Palestinian exercise of the right to self-determination throughout historic Palestine be compatible with eventual coexistence between Palestinians and Israeli Jews? The concept that a settler-colonial community is entitled, under specific conditions, to participate in self-determination, not as a distinct national group, but as legitimate residents, accords fully with international law and with precedents in other decolonizing countries including South Africa, Namibia, Northern Ireland and Mozambique.

Omar Barghouti, a leader in the Palestinian campaign for boycott, divestment and sanctions (BDS) on Israel, has argued strongly against recognizing Israeli Jews as forming a national community in Palestine. Barghouti warns that "[r]ecognizing national rights of Jewish settlers in Palestine cannot but imply accepting their right to self-determination."[7] This would, he argues, contradict "the very letter, spirit and purpose of the universal principle of self-determination primarily as a means for 'peoples under colonial or alien domination or foreign occupation,' to realize their rights." Such recognition, he warns, "may, at one extreme, lead to claims for secession or Jewish 'national' sovereignty on part of the land of Palestine."

There can, Barghouti argues, be no "inherent or acquired Jewish right to self determination in Palestine that is equivalent, even morally symmetric, to the Palestinian right to self determination" as this would blur "the essential differences between the inalienable rights of the indigenous population and the acquired rights of the colonial-settler population."

Yet under Kapitan's formulation, Israeli Jews would be entitled to participate in self-determination not as a distinct national group, but to the extent that they are or become legitimate residents of the region. Barghouti spells out conditions under which colonial settlers can be accepted by the indigenous population as equal citizens living in a society "free from all colonial subjugation and discrimination." It would require the settler-colonial community, in this case Israeli Jews, to relinquish their colonial character and settler privileges, and accept "unmitigated equality,"

including the right of return and reparations for Palestinian refugees.

Inspired by the South African Freedom Charter and the 1998 Belfast Agreement, a group of intellectuals including Palestinians and Israelis set out similar principles in the 2007 One State Declaration:

The historic land of Palestine belongs to all who live in it and to those who were expelled or exiled from it since 1948, regardless of religion, ethnicity, national origin or current citizenship status;

Any system of government must be founded on the principle of equality in civil, political, social and cultural rights for all citizens. Power must be exercised with rigorous impartiality on behalf of all people in the diversity of their identities.[8]

Finally, the notion that Israeli Jews are legitimate residents, provided they shed their colonial character and privileges, derives directly from the traditional conception of Palestinian self-determination. As Arafat put it in his 1974 UN speech, "when we speak of our common hopes for the Palestine of tomorrow we include in our perspective all Jews now living in Palestine who choose to live with us there in peace and without discrimination."

Focusing on self-determination

Placing self-determination back at the center of the Palestine question compels us to formulate a strategy that addresses the rights of all segments of the Palestinian community inside and outside historic Palestine, and which ensures their right to participate in the struggle for, and enjoy the fruits of, self-determination.

It requires setting out an agenda that addresses the three historic and current sources of injustice, the "roots" of the conflict. Such an agenda, as stated in the widely-endorsed 2005 Palestinian call for BDS, demands that Israel recognize the Palestinian people's inalienable right to self-determination and uphold

international law by:

(1) Ending its occupation and colonization of all Arab lands and dismantling the [West Bank separation] Wall;

(2) Recognizing the fundamental rights of the Arab-Palestinian citizens of Israel to full equality; and,

(3) Respecting, protecting and promoting the rights of Palestinian refugees to return to their homes and properties as stipulated in UN Resolution 194.[9]

It is clear that the limited goal of sovereignty that a West Bank-Gaza state would achieve addresses at best only the first point and cannot possibly meet the minimum requirements of Palestinian self-determination. Therefore, the formula "everyone knows" is the answer – a state on a fraction of Palestine for a fraction of the Palestinian people – would only perpetuate the denial of self-determination for the vast majority of Palestinians no matter how "sovereign" that state.

It is of course possible in principle for all three demands to be met within the context of a two-state solution, but this would still require Israel to forgo its Zionist character and become a state of all its citizens in which Jews enjoy all the same individual rights and rights to community life and cultural expression as everyone else but no more.

The 1998 Belfast Agreement in Northern Ireland is an example of such a "two-state solution." It maintained two separate jurisdictions on the island of Ireland: Northern Ireland and the Republic of Ireland, but each is bound constitutionally, by treaty and under European law to be a state of all its citizens. Northern Ireland ceased to be, as it long was, "a Protestant state for a Protestant people." Indeed, the core of the peace process has been to dismantle state institutions, symbols, laws and practices that enshrined second-class citizenship for Irish nationalist Catholics and to replace them with strong mechanisms to redress the historic

imbalance in terms of political and cultural power, access to jobs, housing and other resources.

At the same time, Northern Ireland has no inherent "right to exist" as a separate jurisdiction. If a simple majority of the people who live in it vote for a united Ireland, the Belfast Agreement binds the United Kingdom and Irish governments to give effect to this wish. Protestant unionists – descended from settlers who arrived from England and Scotland in the 17th Century – thus established no right to self-determination as a separate national group even after more than three hundred years.

After 62 years, Israel is no closer to establishing its legitimacy. Neither passage of time, nor declarations cajoled, bullied or bought out of successive leaders of the Palestinian national movement, have settled the questions of Israel's creation, or its demand to be recognized as a "Jewish state" with the right to discriminate against Palestinians. Palestinian claims for self-determination have not been extinguished, nor have Palestinians generally pursued them with any less vigor.

Indeed, Israeli Prime Minister Benjamin Netanyahu's demand that Palestinians must accept Israel's "right to exist as a Jewish state," is nothing if not an implicit recognition that without the active consent of the Palestinian people, the Zionist project can never enjoy legitimacy or stability. Palestinians have steadfastly resisted granting such recognition because to do so would negate their rights and indeed threaten their very existence.

Conclusion

There has never been a more opportune moment for Palestinians to put forward their demands for equality and justice in clear, principled and visionary terms fully rooted in international law, numerous precedents and accepted principles. The tenacious resistance on the ground – in all its legitimate forms – and the growing

global BDS solidarity movement need to be complemented by a program worthy of such efforts and sacrifices. Our energy should be invested in developing support for such a program rather than worrying about the minutiae of moribund negotiations, which cannot result in the restoration of Palestinian rights.

Once the equality principle at the heart of the Palestinian struggle is recognized, it becomes easier and more logical to conceive of a solution involving a single, democratic state encompassing Israeli Jews and Palestinians as equal citizens, albeit with necessary mechanisms to protect collective cultural rights and other interests, and explicit, vigorous and appropriate mechanisms for decolonization, restitution and correcting entrenched social and economic injustices.

Whether in one or more states, the focus of Palestinian efforts should be on the fulfillment of the rights of all Palestinians and achieving equality rather than perpetual negotiations, which serve to undermine both.

1. *Ali Abunimah, "PLO paper reveals leadership bereft of strategy, legitimacy," The Electronic Intifada, 11 March 2010 (http://electronicintifada.net/v2/article11126.shtml)*
2. *As quoted in Tomis Kapitan, "Self-Determination," in Tomis Kapitan and Raja Halwani, The Israeli-Palestinian Conflict: Philosophical Essays on Self-Determination, Terrorism and the One-State Solution (Palgrave Macmillan, 2008), pp. 13-71.*
3. *Ibid., 27*
4. *Ibid., 58*
5. *Ibid., 59*
6. *Ibid., 58*
7. *Omar Barghouti, "Re-imagining Palestine: self-determination, ethical decolonization and equality," Znet, 29 July 2009 (http://www.zcommunications.org/re-imagining-palestine-by-omar-barghouti)*
8. *"The One State Declaration," The Electronic Intifada, 29 November 2007 (http://electronicintifada.net/v2/article9134.shtml)*
9. *"Palestinian Call for Boycott, Divestment, and Sanctions (BDS)," PACBI, 9 July 2005 (http://www.pacbi.org/etemplate.php?id=66)*

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