COMMENTARY | POLITICS

Talking Palestine: What Frame of Analysis? Which Goals and Messages?

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Overview

To say there is no longer a consensus among the Palestinian people on the ultimate political solution is to state the obvious. On the one hand, those claiming political leadership over the Palestinians are pursuing a sovereign state alongside Israel. On the other, the voices calling for a single democratic state in all of the land that constituted Mandate Palestine until 1948 are growing louder. Indeed, Palestinian and other analysts are taking advantage of US President Donald Trump's statement that he could live with either outcome to push the boundaries of debate beyond two states.[1]

That Palestinians are no longer able to agree on what political settlement they seek is a major problem. There are others. Perhaps the most important is the lack of consensus on a common framework of analysis to articulate the Palestinian condition. This prevents the adoption of clear messages to articulate both what has befallen the Palestinians and what we aspire to. It also obstructs the development of effective strategies for achieving these aspirations. These problems are the subject of this commentary. We begin by tackling each in turn before proposing some ways forward.

The Dangers of a Debate Focused on the Political Settlement

The reality is that there is no political settlement in sight that would realize the rights of the Palestinian people. Israel is working on a number of scenarios to achieve a political settlement of the conflict that brings it the maximum amount of Palestinian land with the minimum number of Palestinian people through annexation or by simply maintaining the status quo until it can end the conflict to its advantage.

Beyond this reality, there is a problem in the debate itself. By focusing on the ultimate settlement and whether it should be one state or two, the discussion too often leapfrogs the need for a process of decolonization as well as reparations for the damage inflicted upon the Palestinians. Decolonization and reparations must be part of the final settlement, whether it is that of a Palestinian state in the Occupied Palestinian Territory (OPT) adopted at the Palestinian National Council in 1988 as an expression of the Palestinian right to self-determination, or that of one state in all of the former British Mandate Palestine in which all citizens are equal.

The leap to one state involves a particular risk if it erases the Green Line that demarcates Israel from the OPT – a line Israel itself is eager to erase. As discussed in previous analysis, erasing the Green Line risks eroding important sources of power the Palestinians have – ones that they will need to ensure that any final settlement is grounded in decolonization and secures reparations. These sources of power include the international consensus on the right to self-determination of the Palestinian people, the applicability of international humanitarian law (IHL) in the OPT, the related fact that the occupying power has no right to sovereignty there, and Palestinian membership of the state system. The fact that Palestine is part of the state system gives it the power to, among other things, challenge Israel through the International Court of Justice and the International Criminal Court –

however ineffectively these avenues have been used to date.

Perhaps at the end of the day a just one-state solution will become a reality, and then there will be no need to insist on holding on to the Green Line to ensure that IHL is applied to the OPT. Until then, however, Palestinians must not give up the sources of strength and power they have today. Otherwise, we risk losing the tools offered by IHL and legitimizing the Israeli settlements instead of advancing our cause.

It is clear that the process of decolonization and reparations cannot be the result of negotiations with the current Israeli regime (or indeed with past regimes). Israel has consistently blocked the emergence of the sovereign Palestinian state envisaged in a two-state solution, and it will certainly not agree to carry out the political and legal transformation required for the goal of one state. Indeed, Israel is apparently collaborating with those Arab states that have recently formed the Arab Quartet (Egypt, Jordan, Saudi Arabia, and the United Arab Emirates) to impose a non-sovereign state on the Palestinian people in parts of the OPT as a final settlement that would end all claims.

Decolonization and reparations, therefore, are the matter of a struggle that seeks to change the balance of power in favor of the Palestinian people – with negotiations about the ultimate political solution to follow once Israel has been forced to accept a settlement based on decolonization, reparations, and respect of fundamental rights. Such a struggle must utilize all available Palestinian sources of power, including those mentioned above.

Until a final settlement is possible, there are interim goals that can guide the struggle for decolonization and reparations. However, it will be impossible to achieve consensus on such interim goals – let alone the political solution – without clarity and consensus about the appropriate framework of analysis of the Palestinian condition.

A Multiplicity of Frameworks Obscures Strategy and Goals

There are multiple frameworks of analysis competing to be applied to the devastation of the Palestinian homeland and people caused by the implementation of the Zionist project since its launch in 1897, the creation of the state of Israel in 1948 in 78% of Palestine, and the Israeli occupation of the remaining part of Palestine in 1967.

In recent years, an increasing number of scholars and analysts have called for applying a settler colonial framework to Palestine, drawing comparisons between the policies of elimination of indigenous populations by settler colonial movements in Africa, the Americas, Australia, and elsewhere, including Palestine. Debate about Zionist settler colonialism has given prominence to other, associated frameworks, in particular ethnic cleansing and forcible population transfer. Arguments are also made for an indigenous peoples' frame for Palestinians as a people that predate Israel's settler colonial society. This framing has the additional advantage of being able to draw on UN-recognized indigenous rights of a people to its native country, land, and natural resources.

Other scholars have chosen the prism of racial discrimination, highlighting Israel's discriminatory legal system, racist policies, and violations of the Anti-Racism Convention on both sides of the Green Line. This line of argument has led to the call to see the Palestinian case through the lens of apartheid, with scholars and analysts drawing on international law and highlighting analogies with the former apartheid regime in South Africa. There are also those who speak of "sociocide" or "cultural genocide," and those who argue that genocide as defined by the Genocide Convention applies to the case of the Palestinian people.

All these frameworks of analysis can certainly be applied to the Palestinian condition. In fact, in some contexts – particularly in academia – it is useful to explore these and other analytical frames because this builds understanding and

knowledge about new ways to articulate Palestinian rights. However, what Palestinians need is a framework of analysis that does more than create knowledge: We need one that is also strategic.

Choosing the Most Strategic Framework of Analysis

A framework of analysis is strategic if it allows Palestinians to make effective use of their available sources of power in a struggle for decolonization and reparations that pursues a set of clear core goals. The question that arises at this point is: What are the Palestinians' core goals? To date, the "goal" has been largely defined as a sovereign state along the 1967 borders with Israel. Yet referring to what is actually a political settlement as a goal confuses the issue. The Palestinian struggle has always been about Palestinian rights in and to the land of Palestine. The original solution adopted by the Palestine Liberation Organization in the 1960s was that of a secular democratic state in all of Palestine. This was followed in 1974 by a decision on an interim solution for a state in any part of Palestine that was freed, and in 1988 by a decision for a state on the 1967 borders. However, the purpose of all these political solutions was to fulfill Palestinian rights in and to the land of Palestine.

Therefore, and in the absence of clarity about the ultimate political solution, the core goals must be the fundamental rights that are the essential elements of the right to self-determination of the Palestinian people and that, as such, must form part of any future political solution. These are: Freedom from occupation and colonization, the right of the refugees to return to their homes and properties, and non-discrimination and full equality of Palestinian citizens of Israel. These three goals, as essential elements of self-determination, were eloquently laid out in the Palestinian civil society call for Boycott, Divestment and Sanctions (BDS) against Israel until these goals are achieved.

If we agree that these are the three core goals of the Palestinian people, then we

can identify the framework of analysis that would be most strategic in pursuing decolonization and reparations and ensuring that they are intrinsic to the final political settlement. The two frameworks of analysis that are most comprehensive and have been most consistently promoted are that of settler colonialism and of apartheid. The settler colonial framework is strategic in many ways: It captures the historical experience of Palestinians as the indigenous people of the country and asserts that our cause is a cause of freedom and self-determination. The international framework of decolonization and self-determination of the 20th century focused on liberation of the territory, return of the displaced, and sovereign statehood. As such, it is also a framework that mobilizes solidarity and support, in particular among formerly colonized nations in Africa, Latin America, and elsewhere, whose political backing is urgently needed, for example, in the UN General Assembly and for bringing a case to the International Criminal Court (ICC).

The settler colonial framework also has added value because it opens up a legal argument that can be used by Palestinians as a source of power. International law deals with colonialism, which includes settler colonialism. Unlike military occupation under IHL, which is internationally tolerated if it is temporary and is conducted in accordance with the Fourth Geneva Convention, colonialism is absolutely prohibited today and treated as a serious violation of universally-binding norms of customary international law.[2] Therefore, all states and the UN have a legal obligation to give no recognition, aid, or assistance to the practice of colonialism by any state, and to cooperate and adopt measures, including sanctions, in order to bring it to an end.

However, there are serious problems relating to the settler colonial framework that should preclude it from being the Palestinians' overarching framework of analysis. For one, the state system considers colonialism to be an issue of the past, and the UN treats decolonization as largely accomplished. More importantly, international

law itself also limits the strategic value of this analytical frame. There is no criminal responsibility because colonialism has not been criminalized.

Moreover, the prohibition of colonialism and the above legal obligations of all states and the UN are applicable only to Israel's settler colonial enterprise in the OPT. Experts at an international law conference held at Birzeit University in 2013 clarified this fact: Colonialism was not expressly prohibited by international law at the time Israel was established. The normative shift began only in the 1950s as result of anti-colonial liberation movements, and colonialism became expressly prohibited in 1960, when the UN adopted the Declaration on Granting Independence to Colonial Countries and Peoples. Earlier settler colonial movements, including the Zionist movement, that had by then established themselves as nation states were thus de facto immunized and normalized by UN-led decolonization. The dominant legal opinion is that colonialism is not legally applicable within the borders of existing states.

Thus, for Palestinians who continue to struggle against Israeli settler colonialism in the 21st century, this anti-colonial framework is problematic: It risks creating contradictions between the core rights and goals we seek to achieve, and of promoting political solutions that deny the full set of these rights to many Palestinians. The international legal and political consensus is that the right of Palestinians to liberate territory and establish a sovereign state is restricted to the OPT. The framework cannot incorporate the right of the refugees to return to homes and property in Israel or the right to nondiscrimination and equality of Palestinian citizens there. Moreover, for Palestinians and their allies in the movement for Palestinian rights, the anti-colonial approach has, because of its focus on two states and the 1967 borders, proven in practice to be divisive and to sideline the right of return of the refugees and the right to equality of Palestinian citizens of Israel. This is one of the lessons learned in particular since the 1990s from peace diplomacy based on the Oslo Accords.

By contrast, none of the above problems arise with the anti-apartheid framework. It should be noted that apartheid is not defined by similarities with the former racist regime in South Africa. Rather, it has a universal legal definition dating back to the Anti-Apartheid Convention of 1973 and updated in the Rome Statute of the ICC (2002) as "Inhumane acts…committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime." Inhumane acts of apartheid include forcible transfer of population, persecution, murder, imprisonment, and other severe deprivation of physical liberty and fundamental human rights.

We argue that the most strategic framework of analysis that should be applied to the Palestinian condition is the anti-apartheid framework. In the first place, it incorporates and builds on the analysis of settler colonialism: In the case of Palestine, apartheid began when the Zionist settler colonial society transformed into the state of Israel and incorporated its ideology of Jewish superiority and policy of ethnic cleansing into the laws and institutions of the state. Contemporary Israeli apartheid is thus best defined as the institutionalized regime of racial discrimination whereby Israel, as state and occupying power, systematically privileges Jews and oppresses, fragments, and dominates the entire Palestinian people and colonizes the OPT, with the intent of maintaining and consolidating this regime in all of pre-1948 Palestine. Population transfer and ethnic cleansing of Palestinians, including denial of return, is an inhumane act of oppression and a pillar of Israeli apartheid.

Secondly, while it builds on the settler colonial analysis, the apartheid framework goes further, drawing on international law as a strategic asset. As a severe form of racial discrimination, apartheid has been prohibited and treated as a serious violation under customary law at least since the end of World War II. It is also criminalized by the Anti-Apartheid Convention and the Rome Statute of the ICC,

constituting what is probably the second most serious crime against humanity after genocide.

For these reasons, the framework is applicable at least back to 1948 when Israeli apartheid formally began with the establishment of the state, and to all of former British Mandate Palestine since 1967. In the OPT the apartheid framework applies *in addition to* the IHL. As an apartheid regime, Israel bears legal responsibility for inhuman acts of apartheid against all Palestinians, including refugees, citizens of Israel, and those under occupation. The state of Israel is responsible for restoring their rights through reparations, while individual criminal responsibility applies to those who carry out, aid, or abet the crime of apartheid. The responsibility of all other states and the UN is to ensure that those who are guilty are brought to justice. Neither states nor the UN must give recognition, aid, or assistance to Israeli apartheid, and all have a legal obligation to cooperate and adopt measures, including sanctions, to bring it to an end and ensure reparations.

Thirdly, apartheid is a framework that mobilizes solidarity and support among people worldwide. Due to the legacy of the international campaign that brought down apartheid in South Africa, many people also know that apartheid regimes are to be boycotted and isolated. It is also a framework that has already become popularized as part of the Palestinian struggle because of such events as Israeli Apartheid Week, which since 2005 has been held every spring in a growing number of cities around the globe.

Moreover, there is increasing international support of the apartheid analysis. Since 2006 at least, independent legal scholars and UN human rights experts have held Israel responsible for apartheid against Palestinians and called for international measures, including sanctions. The recent report by the Economic and Social Commission for Western Asia (ESCWA), *Israeli Practices towards the Palestinian People and the Question of Apartheid*, remains in the public sphere as an authoritative legal study even though the UN secretary general has ordered the

report withdrawn, leading to the resignation of its Executive Secretary Rima Khalaf, whose powerful resignation letter is also being widely circulated. Indeed, the coalition of Palestinian human rights organizations in the OPT – the Palestinian Human Rights Organizations Councils (PHROC) – sent a letter to the UN secretary general condemning the withdrawal of the ESCWA report and saying it will adopt the apartheid framework as laid out in that report.

Finally, the 2013 international law conference at Birzeit cited earlier clarified that apartheid does not necessarily end with a "one-state solution" in the entire territory that is controlled by an apartheid system. The post-apartheid system can have a two-state solution. This is illustrated by the example of Namibia, whose people achieved self-determination through independence as a result of their struggle against the South African apartheid regime that had controlled and colonized their country. Based on international law, the solution to apartheid is ending institutionalized racial discrimination in order to allow exercise of the full set of human rights by the oppressed group, including the right to self-determination of oppressed peoples. It does not proscribe a political solution.

Equally importantly, and as the ESCWA report emphasized, there is no basis for the claim that describing the actions of the state of Israel as apartheid would be anti-Semitic. The very preface of the report refutes this claim, noting that findings on Israeli apartheid are based on the same body of international law that also prohibits anti-Semitism.

A Common Frame for Our Goals and Messages

We have sought to set out the way in which the challenges that face the Palestinian people are compounded by confusion over a common framework of analysis and an agreed set of goals. We have pointed out how the common use of the word "goal" to describe the ultimate political settlement muddies the water. Whatever the ultimate political settlement, it should enable the Palestinians to

finally be free from colonization, to enjoy equal rights, and to have rights in and to their homeland, including the right of return to their homes and lands and compensation for what has been lost.

We believe that the multiplicity of frameworks of analysis that have been applied – and indeed are applicable – to the case of Palestine obscures both our goals and our messages. There is a pressing need for the adoption of a single framework of analysis that is strategic, that would enable us to crystallize our demands around our goals and to communicate these through clear and compelling messages. We argue that the anti-apartheid framework of analysis is the most strategic.

The anti-apartheid framework will enable the Palestinians to craft messages that clearly communicate what has happened to the Palestinian people as well as the goals of the Palestinian struggle. It helps to clarify that this is a struggle for decolonization and reparations, and not merely a struggle for a state. The powerful message must be that the Palestinian struggle is for freedom, justice, and equality in the homeland, whether in a single secular democratic state or in two sovereign states side by side, in which all citizens enjoy all human rights.

Once there is agreement on this framework, existing strategies can be honed and new strategies can be developed. As messages are refined, it is important to avoid the temptation to use other frameworks of analysis beyond the academic sphere. The term apartheid needs to again become common parlance as it was during the time of the South African struggle for freedom. Moreover, an education and awareness-raising campaign is badly needed to build consensus around this framework of analysis as is investment in the knowledge and skills of the Palestinian and solidarity activists working to advance it.

Furthermore, those working to disseminate messages about Palestinian rights through the media should go beyond such rhetoric as "time for one state" or "the

two-state solution is dead." If they truly want to advance Palestinian freedom and rights, then they should focus on the process of decolonization and reparations that must be realized whatever the political settlement. Otherwise there is a risk of doing more harm than good by leapfrogging that process and the heavy lifting that remains to be done. This is not to say that the message must focus only on the horrors on the ground. On the contrary, messages should also be forward looking and focus on a future where all can live freely and enjoy justice and equality.

At this stage of the Palestinian struggle for self-determination, when the ultimate political solution cannot be defined, the concept of apartheid provides a clear analytical framework for a struggle for decolonization and self-determination that can isolate and weaken the oppressive practices of the Israeli state and – at the same time – preserve and strengthen the fundamental Palestinian rights that are not negotiable: The right to freedom from occupation and colonization, the right to full equality of Palestinian citizens of Israel, and the right of the refugees to return to their homes and properties.

1. Al-Shabaka publishes all its content in both English and Arabic (see Arabic text here). To read this piece in French, please click here. Al-Shabaka is grateful for the efforts by human rights advocates to translate its pieces, but is not responsible for any change in meaning.
2. See *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, Article 40, comment 8 and footnote 651 with reference to the 1969 Vienna Convention on Treaties, Article 53. Also see Article 41 explaining third-state obligations: http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf

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