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The Palestine State Project in Question

By: Nadia Hijab · October, 2015

Overview

Just as a Palestinian revolt against Israel's nearly 50-year occupation was spreading from Jerusalem throughout the rest of the Occupied Palestinian Territory (OPT), Mahmoud Abbas was raising the flag of Palestine at the United Nations with a host of dignitaries in attendance. The ferocity of the Israeli response by the Israeli military as well as by illegal settlers – which included live fire, vigilante attacks and extra-judicial killings against unarmed Palestinians – puts the Palestine state project into question.

The state project was already on shaky ground, with severe limits on the capacity of the Palestinian leadership to advance it. There are also limits on the capacity of Palestinian civil society to make the State of Palestine a truly independent sovereign state and to ensure that all Palestinians, including the refugees and the citizens of Israel, can enjoy their fundamental rights. Al-Shabaka Executive Director Nadia Hijab addressed these limits in a talk at a recent seminar at the Harvard University Kennedy School of Government on which this commentary is based.

The Flag-Raising: A Moment for Jubilation or Despair?

When President of Palestine Mahmoud Abbas addressed the General Assembly on September 30, 2015, his message began with a plaintive appeal to the international community to save the Palestinian people. For about two-thirds of his speech, as plea followed plea, it sounded like the purported leader of the Palestinian people assumed that neither he nor his people had any agency to challenge Israel's prolonged military occupation, the inequality faced by the Palestinian citizens of Israel, or the refusal to recognize the refugees' right of return.

In the last third of his speech, he suddenly shifted to the "bombshell" he had been promising the media for several weeks. He formally called on the UN for international protection of the Palestinian people. He said that the Palestinians would no longer uphold the agreements with Israel so long as Israel did not abide by them and that Israel would have to assume its responsibilities as an occupying power. He also said that Palestine would continue acceding to and using international conventions and tools.

Although Abbas sounded forceful, he did not say anything that he could not backtrack on if negotiations resumed. Nor did he declare the end of the hated security collaboration between Israel and the US- and European-trained Palestinian Authority (PA) security forces.

So was the speech and flag-raising ceremony at the United Nations a moment for jubilation or of despair for the Palestinian people? It is certainly a moment for reflection because the Palestinians seem to be rapidly moving further away from achieving their universally recognized rights given that nothing has yet been able to stop Israel's relentless colonization project – on both sides of the Green Line.

The Limits of the PLO/Palestine in Advancing Statehood

For the Palestine Liberation Organization (PLO) the main strategy has recently

been to secure the recognition and benefits of statehood. Its first step in this direction began in 2011 and by the end of that year Palestine was voted in as a full member state of UNESCO, provoking a Congressionally-mandate cut-off of US aid. This was followed by the PLO securing non-member observer state status for Palestine at the United Nations General assembly in 2012, going to the General Assembly after the US blocked its efforts to secure a majority vote at the Security Council.

After the negotiations with Israel facilitated by Kerry definitively failed in April 2014, the PLO/Palestine began looking to membership at the International Criminal Court. By year-end, the US blocked a resolution on Palestinian statehood without having to use its veto, and in January 2015, Palestine ratified the Rome Statute and 15 other treaties. On April 1 it officially became a member of the International Criminal Court. In fact, Palestine has now ratified or acceded to a total of 44 treaties and conventions.

However, these moves have not been used to full effect and remain at the level of symbolism rather than substance. For example, according to an analysis by Al-Shabaka's Nidal Sliman and Valentina Azarova, Palestine did not fully use the benefits that its membership of UNESCO provided after it ratified UNESCO's constitution and joined eight other UNESCO conventions and related protocols.

The PLO/Palestine did take some steps to prevent Israel listing Palestinian heritage sites on its national list and in listing Palestinian world heritage sites. But Palestine could also have used and can still use the UNESCO membership to reassert sovereignty over its land and sea – and it can oblige third states to hold Israel accountable for its obligations. In addition, one of the UNESCO protocols Palestine signed also provides for individual criminal responsibility and sanctions under the principle of universal jurisdiction.

The PLO/Palestine's UNESCO membership continued a pattern of opting for

symbolism rather than concrete action. If the PLO were really dedicated to pursuing legal avenues for Palestinian rights, they could have more forcefully pursued the International Court of Justice Advisory (ICJ) Opinion on Israel's Separation Wall after it was made in 2004.

The Advisory Opinion not only found the Wall illegal, but also that Israel was obliged to make reparations for all the damage it had caused. It affirmed that the settlements breached international law and that the West Bank and Gaza, including East Jerusalem, were occupied. Perhaps the Court's most important finding was that all states were obliged not to recognize the situation as lawful and cease any assistance or aid to Israel in maintaining it.

As Al-Shabaka Policy Advisor Diana Buttu and I noted in a co-authored piece, although advisory opinions are not legally binding, the Court's impact is that it set out the law. Countries that believe in the rule of law – like the member states of the European Union – do pay attention to such a ruling.

This last point is key because the PLO could have forcefully and consistently demonstrated to European and other states and other actors that their dealings with Israel posed legal and economic risks to their authorities. And yet they did not. As one of the Palestinian officials who had played a major part in leading the successful Palestinian presentation at the ICJ told me several months after the Opinion was issued, "Our ICJ win was a treasure, a national treasure, and they did nothing with it."

This is particularly relevant as regards the European Union (EU), given its efforts to work as a body of law. As an EU representative said at a private meeting last year: It is important to make Israel see that settlements are wrong not only because they violate Palestinian rights but also because their illegality undermines the Europeans' own efforts as to build an international system of law that is respected.

Can we imagine what the status of Palestine would be today had the PLO made

effective use of the Advisory Opinion 11 years ago? Would the illegal settlements and settlers have mushroomed at such a rate? Would Area C, 60% of the West Bank, and under Israel's sole control under the disastrous Oslo Accords, have been so thinned out of its Palestinian population with even European Union-supported projects under attack? Would Jerusalem be living the nightmare it is living now, and being steadily thinned out of its population?

This is why so many Palestinians are skeptical of the PLO/Palestine moves today. The tools have existed for a long time: They just had to use them to better effect – and they did not.

As for Palestine's membership of the International Criminal Court (ICC), it is not insignificant, but there are several obstacles. For one thing, the ICC moves very slowly indeed towards a decision. As Valentina Azarova discussed in a policy brief, it may take the ICC years to open an investigation and several more to issue indictments; in Afghanistan and Colombia, the ICC's preliminary examinations took nearly 10 years. Issues that may slow things down include the heavily politicized nature of the Israeli-Palestinian conflict, the Prosecutor's limited resources, and the lack of state cooperation. It is difficult to imagine a situation in which Israel will actively collaborate with the ICC to investigate its war crimes and its settlement building, although it may pay lip service to the Court.

The limits on the ability of the PLO/Palestine to make the Palestine State project a reality are clear. It is unwilling or unable to take full advantage of the legal or other tools available to it or to cut back on the security coordination with Israel. It is too locked into the status quo and it knows that any forceful actions would lead to harsh US and Israeli repercussions including a cut in aid and a tightening of Palestinians' already limited freedom of movement and access.

Palestinian Civil Society Efforts to hold Israel Accountable

In recent years the most prominent step to hold Israel accountable has been, of course, Palestinian civil society's launch, in 2005, of the Call for Boycott, Divestment, and Sanctions which has become broadly known as BDS, and which has galvanized international civil society in support of Palestinian rights. It is worth noting that the Call was made a year to the day after the International Court of Justice on the Wall decision, in part because the PLO was not taking advantage of the opportunities it offered to challenge the Israeli occupation.

Certainly Palestinian and international civil society efforts for accountability predate the BDS Call. In the OPT several human rights organizations such as Al-Haq and grassroots organizations such as the Stop the Wall Campaign were active, as were trade unions and women's unions, among others.

And in the US, for example, a coalition of civil society groups, including churches and grassroots organizations, took shape in 2001 and 2002 as the US Campaign to End the Israeli Occupation; it has by now grown to some 400 member organizations nationwide. Moreover, by now, many of the activists for Palestinian human rights and equality for all in the US and Europe are Jewish. Jewish Voice for Peace, now a nationwide organization with some 200,000 supporters and over 60 chapters recently, formally signed on to the BDS Call this year.

The significance of the BDS Call is that it provided Palestinian leadership to the disparate efforts of activists and actually created a movement that was bigger than the sum of its parts. For example, it enabled the setting of targets for worldwide action. Top on the list for citizen actions, beyond consumer boycotts of Israeli settlement products, has been divestment from companies involved in the illegal settlements and Israel's mechanics of population control such as Veolia, Elbit, HP, and G4S, among others.

Take Veolia, for example. After nearly seven years of targeted activism that included Palestine solidarity activists' efforts to stop renewal of town council

contracts for waste management and other services in places as far afield as Birmingham and Bordeaux, among many other actions worldwide, Veolia this August withdrew completely from all its activities in Israel. This included bus lines on segregated roads in the OPT, services to the illegal Israeli settlements, and the Jerusalem Light Rail, which connects the settlements with Israel. It is estimated that Veolia lost more than $20 billion in contracts worldwide. Such actions naturally send a signal to other companies doing business with Israel.

The growing awareness in Europe and elsewhere of the risks posed by relations with Israeli entities, together with a combination of citizen activism, has contributed to divestment both in US churches and in European pension funds from companies that profit from the Israeli occupation. As early as 2009 the Swedish national pension fund AP7 followed the Dutch ASN Bank in excluding the French transportation giant Alstom from its portfolio.

In 2015 Norway's largest pension fund KLP excluded two companies from its portfolio on the grounds of "their exploitation of natural resources in occupied territory on the West Bank." Their decision was based on "a review of applicable international law", which they made available, and in which they noted that the "opening of a quarry in occupied territory is in all probability incompatible" with international law.

The Civil Society Call for BDS is important for two other reasons that are as significant if not more so than the strategic use of boycotts and divestment. The first is that it led to the establishment of a representative Palestinian leadership – albeit one that coalesced around a specific strategy – which does not exist anywhere else at the present time. The initial Call was co-signed by over 170 civil society organizations, trade unions, women's unions and groups, and professional associations, among others. By 2007, the BDS National Committee (BNC) emerged – in the wake of the first Palestinian BDS Conference held in Ramallah in 2007 – to provide guidance and coordination for the BDS campaign worldwide.

In addition to representatives of civil society organizations the BNC includes representatives of the Council of National and Islamic forces, a body that includes all Palestinian political parties in the OPT, and decisions are taken by consensus.

The other reason that the BDS Call is so important is that it reminds the Palestinians of the goals for which they struggle: Self-determination and the three goals of freedom from occupation, equality for Palestinian citizens of Israel, and right of return for the refugees. As the PLO made compromise after compromise without getting anything in return, many Palestinians lost sight of what their goals were – a disaster for a national movement, to put it mildly.

The BNC and the BDS Call in no way speak for – or attempt to speak for – a Palestinian national movement. Yet, thanks to the 2005 Call education and activism around Palestinian rights increasingly cover all three goals. Moreover, each goal speaks to the rights of a part of the Palestinian people: Freedom speaks to an end of Israel's occupation of the Palestinian territory it took it 1967; justice to the rights of the Palestinian refugees; and equality to the rights of the Palestinian citizens of Israel.

There is a misperception that the BDS movement is against Israel's existence as a state. This is not the case. The Call itself is rights-based rather than politically based, and the BNC does not take a decision on whether the ultimate outcome should be one or two states. Furthermore, the Call directly addresses the rights of the Palestinian citizens of Israel and calls on Israelis of conscience to support the BDS campaign. BDS supporters point out that they are against the colonial and apartheid state of Israel that privileges Israeli Jews just as the world was against the apartheid state of South Africa. South Africa still exists: Apartheid does not (at least, not in South Africa.)

Moreover, according to reliable sources, most of the individual members of the BNC support a two-state solution. In addition, the majority of US and European

churches and pension funds that are divesting from Israel's occupation target Israeli activities beyond the Green Line and not in Israel itself (although it is of course difficult to distinguish because Israeli government, financial, educational and other institutions are inextricably enmeshed in Israel's illegal settlement project.)

The BDS movement is now perceived to be so powerful, including by Israel and its allies in the US, that millions are being poured into efforts to stop it in its tracks in the US. In June Prime Minister Benjamin Netanyahu called for a "wide front" to combat boycott, and the rightwing American billionaire Sheldon Adelson convened a summit in Las Vegas to fight BDS with a special focus on campus. There are also major efforts to pass university rulings that conflate criticism of Israel's policies with anti-Semitism and to get states to pass resolutions against dealing with companies that boycott institutions that profit from Israel's occupation.

It is ironic that what we are seeing here is an attempt by Israel and its supporters to enable its colonization project to move forward uninterrupted, effectively laying claim to the entire West Bank and putting in place a one-state apartheid "solution". By contrast, most of the supporters of the BDS movement, including many members of the BNC leadership itself, still support a 2-state solution.

There are other Palestinian civil society efforts underway. In Europe, human rights organizations and groups like Mattin are working to take advantage of the EU's and individual countries' obligations under their own laws, for example in the field of consumer protection, and of their stated commitment to human rights and international law. Together these efforts and civil society activism around BDS and Palestinian rights began to bear fruit when individual countries started to label settlement products and when EU guidelines in 2013 explicitly prohibited EU grants and loans for Israeli activities in the OPT (including East Jerusalem). Still, even if labeling guidelines are fully implemented, they are a mild sanction: The EU should

ban settlement products from its markets altogether, and take other sanctions to stop Israel's occupation.

Also significant are the business advisories that some European countries – including the UK, France, and Spain – have issued that firms could face legal action tied to "land, water, mineral and other natural resources" as well as "reputational risks" if they do business in the settlements. Although these are non-binding warnings, companies do not like to go where there is risk. For example, the European Council on Foreign Relations issued a ground-breaking report proposing a series of measures the Europeans could take to differentiate their dealings with Israel from the settlements and defend the two-state solution while upholding its own laws. They zeroed in on Israel's banking sector, causing a drop in the stocks of four Israeli banks.

In the US, in the wake of successes in moving church divestment resolutions, some grassroots organizations – such as the American Friends Service Committee, Jewish Voice for Peace and the US Campaign to End the Israeli Occupation Coalition – are building an advocacy presence on Capitol Hill, which is beginning to show some signs of success. For example, Congresswoman Betty McCollum initiated a Dear Colleague letter regarding Israel's practice of detaining Palestinian children that was signed by 19 Members of Congress as a result of such advocacy.

However, just as the limits of the PLO/Palestine are clear, the limits of Palestinian civil society and the international solidarity movement are also clear though of course for different reasons. The reality is that there is no national leadership that can take advantage of and build on the successes of civil society and indeed there is limited space for collaboration between civil society and the PLO/Palestine in their respective endeavors, for many reasons, greatly reducing the ability of each side to translate these into meaningful political outcomes on the ground.

As civil society and the international solidarity movement forge ahead, the PLO/Palestine steps gingerly, fearful of reactions and responses, accepting the most modest acts like settlement labeling instead of working for international sanctions against Israel's colonization of the West Bank, including East Jerusalem, and siege of the Gaza Strip.

Worse, the Palestinian security forces have become increasingly draconian in their crackdowns and intolerance of criticism. For example, at the end of September they cracked down on demonstrations in Bethlehem that were called to protest the security forces' assault on a young Palestinian at a rally in support of Al-Aqsa mosque. The demonstrators called for the resignation of the city's governor and the ousting of Abbas. It is ironic that Palestinian civil society is most free to work abroad.

Moreover, the fragmentation of the Palestinian body politic continues. In his speech at the UN General Assembly, Abbas spoke of his determination to preserve the unity of the land and the people but – in a clear thrust at reports of Hamas efforts to negotiate a long term truce with Israel – he also said he would not accept temporary solutions or a fragmented state. There are fears that once Abbas goes, the PLO and its main political party Fatah will fragment further. And there are fears of a police state – or rather series of police statelets being established.

The outlook is bleak in the short-term. However, in the medium to longer term there is a groundswell of activism in civil society worldwide, and growing measures in European states that will continue to make dents in Israel's colonization of the occupied Palestinian territory. Soon, some form of Palestinian leadership will emerge that more authentically represents the aspirations and rights of the Palestinian people. This is not as far-fetched as it might sound: Such a leadership emerged during the 1st Intifada. A leadership focused on a key and effective strategy emerged with the BDS Call. And a leadership also unexpectedly emerged

this year among the Palestinian citizens of Israel. When a Palestinian national leadership emerges, it will find the ground more than ready to lead the Palestinian people to freedom, justice, and equality.

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