

al-shabaka policy brief

Palestine 2010: Time for Plan B

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Overview

The likelihood of current diplomatic initiatives resulting in a meaningful two-state settlement is for all intents and purposes non-existent, argues Al-Shabaka Policy Advisor Mouin Rabbani, due to Israel's determination to permanently control East Jerusalem and large swaths of the West Bank, and the lack of political will in the U.S. and Europe to reverse Israel's expansionist momentum. He foresees an unwelcome future of further ghettoization and fragmentation of Palestinians in the occupied territories and within Israel, greater marginalization and atomization of the Diaspora, and an increasingly regionalized and existential conflict in which the initiative will lie with non-state actors operating beyond the confines of Israel/Palestine. Thus, rather than relying on continued diplomacy and alternative peace scenarios in the forlorn hope that the dominant American-Israeli framework will be modified, advocates of Palestinian self-determination should focus their efforts on arresting and where possible reversing realities on the ground, and undertake global campaigns to challenge Israeli impunity and promote the concept of Israeli accountability for its actions toward the Palestinian people. This, Rabbani concludes, presents the only realistic option for preserving Palestinian rights and, perhaps in the longer run, establishing meaningful diplomatic options.

Why peace talks can't succeed

Almost 18 months into his mission United States Special Envoy, George Mitchell is once again shuttling between Israeli Prime Minister Binyamin Netanyahu and Palestinian leader Mahmoud Abbas, this time purportedly with a four-month deadline to finally secure "progress". Yet there is no indication that the United States (and therefore the broader "international community") has the will to exercise the sustained pressure on Israel for the minimum outcome required for the acquiescence of a Palestinian leadership - even that of Abbas. In the unlikely event that it does, it is not at all clear that the current Israeli government - or a less extremist successor - can survive capitulation to such demands. Indeed, given the commitment to maintain perpetual Israeli rule over East Jerusalem and West Bank territory within significant sectors of Israeli society and institutions, including the security establishment, it is highly improbable that a formal Israeli decision to withdraw from the occupied territories can be implemented (see also Camille Mansour's policy brief here).

Additional factors, such as inter-Palestinian division and the absence of an Arab challenge to Israeli regional dominance, contribute to the impasse and serve to make the status quo Israel's least unattractive option. Mitchell's mission notwithstanding, it seems equally reasonable to conclude that Washington and the European Union will, however reluctantly, once again reach the same conclusion.

While the prospects for a two-state settlement have for all intents and purposes been overtaken by reality, a democratic or bi-national resolution is an even less likely alternative for the foreseeable future. This would require multiple transformations at least as profound as transpired in South Africa during the 1990s, and in a considerably less propitious local, regional and international environment; the challenges of dis-establishing Zionism far exceed those of removing Israel from the territories it occupied in 1967.

A sober analysis of the facts therefore points toward an unwelcome future: further ghettoization and fragmentation of Palestinians in the occupied territories and within Israel, and greater marginalization and atomization of the diaspora, all unchallenged by Western governments and enjoying unprecedented levels of Arab support. This is likely to be paired with increasingly regionalized and existential conflict, in which the initiative will lie with non-state actors operating beyond the confines of Israel/Palestine. The establishment of what Salam Fayyad, the Palestinian Authority's appointed Prime Minister, has called a "Mickey Mouse state," will facilitate rather than stem these developments.

While these conclusions can only be speculative in the sense that, although derived from the available evidence they can be neither conclusively verified nor refuted, one implication is that retaining a primary focus on conflict resolution, such as by advocating more robust American and European promotion of a two-state settlement, is the equivalent of fighting the last war. What was sensible and possible before the 1991 Madrid Conference that inaugurated Israeli-Palestinian negotiations - and perhaps even until the late 1990s - is today unachievable because the requisite conditions are almost entirely absent.

Diagnosing the impasse

It is critical to understand how the above impasse came into being, particularly so far as the contribution of American and European diplomacy is concerned. In a nutshell, the diplomatic framework formulated during the early 1990s consolidated several trends that ultimately sabotaged the prospects for a negotiated settlement.

First and foremost, Washington has since the late 1980s - and particularly during the presidency of Bill Clinton - spared no effort to eliminate international law as a framework for Israeli-Palestinian negotiations and a resolution of the conflict. It is often forgotten that as late as the Carter and Reagan administrations, Washington supported or condoned UN Security Council resolutions that confirmed the illegality of all Israeli settlement activity (including in East Jerusalem), condemned Israel's annexation of East Jerusalem as "null and void," and insisted on the applicability of the Fourth Geneva Convention to all territory occupied in the June 1967 War.

Dennis Ross has been at the center of this change in American policy. A prominent pro-Israel lobbyist, his government career began in the Carter presidency and Ross rose to prominence in successive administrations eventually becoming Clinton's Middle East envoy. In perhaps his greatest achievement,

Ross successfully substituted the coalition calculus of increasingly extremist Israeli governments as the outer limits of Palestinian rights. Aaron David Miller, Ross' deputy, would later concede Palestinian assertions that Ross was an irredeemably invested mediator: "Far too often the small group with whom I had worked in the Clinton administration, myself included, had acted as a lawyer for only one side, Israel".¹ Ross's tenure at the helm of Israeli-Palestinian negotiations saw an unprecedented acceleration of Israeli colonization paired with unprecedented levels of American shielding of Israeli conduct. He effectively undermined any prospects for ending the Israeli occupation and thus a two-state settlement. When it all collapsed like a house of cards in 2000 (an outcome which Ross, in one of the more brazen instances of political self-justification and deflection on record, attributed to Yasir Arafat), Washington (with full European support) in 2003 promulgated a new framework, "A Performance-Based Road Map To A Permanent Two-State Solution To The Israeli-Palestinian Conflict." Proclaimed in the context of the American-Israeli campaign for Palestinian regime change (essentially replacing Arafat with Abbas), the criteria for sovereignty were so stringent (including, for example, an unconditional "end to [Palestinian] violence" and the establishment of a "practicing democracy"), that had its terms been applied to African and Asian colonies during the twentieth century, only those with effective guerilla movements would have achieved it.

Second, and following from the above, the U.S. and EU in practice acquiesced in Israel's definition that the territories in question were "disputed" rather than "occupied." It was thus left to the occupier and occupied (effectively, the occupier) to determine the dispensation of these territories. This is a fundamentally different paradigm than the norm for decolonization, from India and Indonesia in the late 1940s to South Africa and East Timor in the 1990s, where negotiations have primarily been about developing mutually satisfactory mechanisms to achieve a pre-determined outcome – the termination of foreign (or minority) rule.²

Third, efforts to address the realities that mattered most, primarily colonial expansion, separation, pauperization and other long-term Israeli strategies actually being implemented on the ground, were consistently subordinated to the imperative of keeping an inherently flawed process alive. This

¹ Aaron David Miller, *The Much Too Promised Land* (New York: Random House,) 75. In an earlier opinion piece Miller put it thus: "For far too long, many American officials involved in Arab-Israeli peacemaking, myself included, have acted as Israel's attorney, catering and coordinating with the Israelis at the expense of successful peace negotiations". Aaron David Miller, "Israel's Lawyer," *The Washington Post*, 23 May 2005.

² Thus, for example, former South African president Thabo Mbeki, speaking at the Al-Jazeera Forum in Doha, Qatar, on 24 May 2010, made the following comparison between the South African and Palestinian experiences: We should perhaps conclude with some of the most important lessons specific to this [South African] experience. One of these is that the path to the negotiations became possible once the dominant ruling power in our country realized that it could not achieve its objectives by any other means, including by continuing resort to the considerable means of repression it had at its disposal ... [I]t would seem to me that some of the elements that differentiate the two situations, namely the South African and the Palestine-Israel conflicts, are that: though there appears to be an agreement that the negotiations should result in a 'two-state solution', there is in fact no agreement on this fundamental issue, as the current government of Israel has not agreed to respect the 1967 borders, with Jerusalem serving as the capital of independent Palestine: The so-called security wall Israel has built on the West Bank and the settlements it has and is building objectively create new facts on the ground that militate against its recognition of the 1967 borders. Thus while the South African belligerents could and did agree on what was most fundamental regarding the future of the country, this has not been achieved in the Israel-Palestine context ... Thabo Mbeki, "Lessons of the South Africa Experience: Thoughts on the Israeli-Palestinian Conflict", at http://mideast.foreignpolicy.com/posts/2010/05/26/lessons_of_the_south_africa_experience_thoughts_on_the_israel_palestinian_conflict (accessed 28 May 2010).

inexorably led to a reality where process consistently trumped peace, and thereby became more than meaningless; it actively contributed to the destruction of prospects for peaceful Israeli-Palestinian coexistence.

It is in this respect worth recalling that settlement expansion's coup de grace to the two-state settlement was delivered after rather than before the commencement of Israeli-Palestinian negotiations in 1991. This happened not only on account of Israel's successful instrumentalization of diplomacy to consolidate control over territory it sought to permanently incorporate, but - and more pertinently - because Washington and European capitals consistently found it in their own interests to condone this state of affairs.

The clearest examples in this regard are Israel's establishment of Har Homa on Jabal Abu Ghnaim southeast of Jerusalem in 1996, and the construction of the West Bank Wall since 2002. Rather than using the opportunity to reformulate the process or at least suspend it while compelling Israel to rescind unilateral initiatives which made an absolute mockery of the two-state paradigm, the US and EU exerted massive pressure on the Palestinians to return to the existing, mortally flawed framework (respectively the Oslo Accords and Road Map). This was hardly for lack of understanding that the above Israeli activities constituted fatal blows to the prospects of viable Palestinian statehood and sovereignty. The most recent incarnation of this approach is the ongoing Mitchell shuttle. In renouncing an Israeli settlement freeze, Washington once again effectively imposed continued Israeli settlement expansion as a precondition for a resumption of negotiations that are therefore by definition rendered meaningless.

Yet the most dangerous development remains the political transformation of the occupied territories into disputed territory and in some cases into de facto Israeli territory. America and Europe have for all intents and purposes already ceded most of East Jerusalem and most of the primary West Bank settlements to Israel. Indeed, Israel's recent admission to the Organisation for Economic Co-operation and Development (OECD) constitutes nothing less than member states' de facto recognition of permanent Israeli rule over these territories. Where a decade ago the US sought to divide occupied Palestinian territory on the basis that 'what is Jewish is Israeli and what is Arab is Palestinian', the current trend seems to be that what is Jewish is non-negotiable, and what is Arab is up for discussion. Under such circumstances, negotiations are not - and cannot be - about how Israel should leave, but rather (as in Ireland almost a century ago) where it should stay.

Options for a time of increased conflict

Israel's recent murderous assault on the Gaza Freedom Movement Flotilla, and the widespread condemnation of Israeli conduct, has led a number of commentators to conclude that the long-elusive turning point in international tolerance for Israeli lawlessness has finally been reached. Certainly, history has a way of introducing sudden and unexpected transformations, and there are plausible scenarios - such as a new Middle East war, regime change in Cairo or a mass rebellion by Palestinian citizens of Israel - that could serve as a catalyst for significant change in the Israeli-Palestinian relationship. Given the urgency of the present situation, it would however be foolish in the extreme to passively await salvation from the unexpected - particularly given that its actual impact is virtually impossible to predict and could potentially be catastrophic. In this respect it is worth recalling that in the aftermath of Israel's

much more murderous and no less lawless assault on the entire Gaza Strip one year ago, the blockade was actually tightened.

At the end of the day, Palestinians have no alternative but the reconstruction of their national movement, without which their ability to determine their destiny will continue to atrophy irrespective of changes in the broader environment. Pending the realization of this objective, advocates of Palestinian self-determination need to focus on immediate priorities rather than long-term outcomes.

As indicated above, the reality on the ground is almost certainly irreversible and there can therefore be no prospect of a successful two-state (or any other) settlement under current conditions. Indeed, all indicators point to increased repression and conflict, producing growing instability in the region and perhaps beyond, with no prospect of a happy outcome for at least a generation.

The instinct to revive talks about a two-state settlement and produce scenarios to achieve this goal is admittedly as deeply ingrained as Israel's settlement enterprise. This notwithstanding, advocates of Palestinian self-determination should at the very least seek to ensure negotiations not be allowed to proceed at the expense of reality on the ground, in order to reverse the trend prevalent since the 1991 Madrid Conference which subordinated reality to diplomacy, and treated continued Israeli settlement expansion as a transient inconvenience. Given the current Palestinian leadership's existential immersion in U.S.-sponsored diplomacy, prioritizing Palestinian rights is much easier said than done. The best options, however, appear to consist not of advocating a more equitable process through engagement with its participants, but rather by acting outside its parameters. This is particularly the case since a return to the negotiating table is consistently prescribed as the panacea to dealing with the latest Israeli outrage - without, of course, otherwise addressing it in any way.

Palestinians need to focus on the incremental dismantling of what Israel has incrementally built and realized within the occupied territories since 1967, utilizing instruments such as the 2004 International Court of Justice advisory opinion, the Goldstone Report, and similar documents and institutions their present leadership would rather consign to the dustbin. Given finite resources, the priority should be confronting and gradually reversing Israeli impunity, with the aim of making Israel accountable for its actions, rather than building costly infrastructure which indebts Palestinians in various ways and will remain under permanent threat of destruction (as happened in 2001-2002).

Indeed, there is an array of practical measures on which American and European governments could be lobbied to increase the cost of Israel's settlement enterprise. These include addressing the tax-exempt status of American foundations that play a crucial role in settlement expansion, ending the EU's 40-year prevarication with regard to preferential access to European markets for settlement products, and more direct measures by the governments concerned, such as invoking the human rights clauses of the EU-Israel Association Agreement.

A key priority at this juncture is to promote once again the international/great power consensus that Israel's settlement enterprise, including the annexation of East Jerusalem, is illegal under international law and should be dealt with accordingly. In other words, to reclaim the pre-1991 consensus that the territories in question are occupied rather than awaiting the conclusion of bilateral negotiations to determine their dispensation.

There is little chance that individual governments will issue such a declaration. What does however appear feasible is a new United Nations Security Council resolution restating the relevant principles repeatedly endorsed by the body on previous occasions. A positive outcome is by no means guaranteed, but the prospects in 2010 are reasonable enough – certainly higher than at any point since 1991. This is particularly so since Washington is less likely to veto a resolution that is purely declarative. If subjected to an intelligent campaign by a combination of domestic public opinion and international partners Washington could – particularly if no immediate punitive steps are on the agenda – be persuaded it is in its best interests to occasionally desist from the habit of being more pro-Israeli than Israel itself. The advantage of such a resolution is that it will reinvigorate the discussion about Israel's settlement enterprise and provide valuable ammunition to those engaged in efforts to compel their governments to address this issue. Most importantly, it will provide a clear demonstration that the purpose of diplomacy is to reverse reality rather than to reinforce it.

At the level of activism and public opinion, there is also much that can be done to delegitimize the occupation and isolate Israel along the lines of the anti-apartheid campaigns of the 1970s and 1980s, particularly in Europe and Latin America (see Omar Barghouti's policy brief on BDS here). As the Free Gaza Movement effectively shows, it is also possible to directly challenge Israeli policy toward the Palestinian people – and Western and Arab complicity in such policies – without governmental sponsorship. As the Turkish response to the Flotilla attack demonstrates, it is of course immensely preferable to have state support. Yet a key lesson is that this is no precondition. Even without Ankara's energetic role in the bloodbath's aftermath, the global shock waves resulting from Israel's conduct made an investigation by the UN Human Rights Commission – and perhaps additional legal measures – a virtually foregone conclusion.

Rather than seeking to persuade Palestinians to seek salvation through negotiations that are about and can achieve nothing, the focus of such efforts should be to arrest and reverse Israeli impunity in the occupied Palestinian territories. In practice this amounts to advocating the entirely novel concept that Israel is and should be held accountable for its actions. Moreover, it demands that rather than continuing with negotiations for the sake of negotiations, Palestinians and those who support their struggle for self-determination should engage more actively and directly with global public opinion to confront Israeli impunity, and temper the futile quest to curry favor with 'friends' in high places who have consistently remained sponsors of Israeli conduct and impunity. Such an approach is not only the most effective in terms of preserving Palestinian rights, but over the longer run also forms the only feasible option for laying the groundwork for more meaningful and substantive diplomacy. In other words, negotiations will only become an option when they are about finding mutually satisfactory arrangements about how Israel should leave rather than where it should stay. And we remain a very long way off from the day when Israel concludes terminating the occupation is in its best interests.



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