

Translated from Arabic

International will and the Palestinian initiative in response to the failure of negotiations

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There have been nearly 20 years of direct Israeli-Palestinian negotiation since the 1991 Madrid Conference. Those negotiations intensified noticeably after the conclusion of the Oslo Accords to include the so-called permanent status issues; they were meant to be concluded within five years, which was the transitional period specified in the Accord, and are the basis for the formation of the Palestinian National Authority. Several American Presidents oversaw negotiations and the United States Government was directly involved in supervising and moving the negotiation process forward. Negotiations also took place under Israeli Governments that covered the entire political spectrum — right, left and centre — and that were led by Labour, Likud, and Kadima, along with other political parties which were part of coalition Governments. For its part, the Palestine Liberation Organization has consistently dealt with this political kaleidoscope on the basis of the strategic decision it took in 1989 that negotiations should be founded on Security Council resolutions 242 (1967) and 338 (1973) and the principle of land for peace. It also endorsed the two-State solution called for by the General Assembly in its resolution 181 (II). Meanwhile, Palestinian negotiators have had to deal with constant changes in Israeli Governments and negotiators.

Even as the influence of Hamas on Palestinian politics grew, President Mahmud Abbas was able to reach an agreement with the movement to continue the negotiation process. This agreement was affirmed by the 2005 Cairo Agreement, the agenda of the Palestinian Government of National Unity in 2007 and the Palestinian National Accord Document, which was signed by all Palestinian factions. The latter clearly provides that negotiations are the responsibility of the Palestine Liberation Organization and that adherence to the outcome of negotiations will be approved by popular referendum or subject to ratification by a new Palestinian national council.

The question that must be asked is why have so many years of negotiations resulted in failure? Why has the transitional period, which was meant to help build confidence, resulted in a seemingly quasi-permanent situation that undermines confidence? There has been a noticeable increase in conflict, including the complete reoccupation of the West Bank in 2002 and the war of aggression against the Gaza Strip in 2008. The

Goldstone report clearly documented the dangers of the war in the Gaza Strip and the extent to which international instruments were violated.

There are a number of reasons for this, and I would to draw attention to those that I consider the most important:

I. The structural flaw of the negotiation process

The negotiation process has been plagued by a persistent structural flaw. If that flaw is not corrected, negotiations are doomed to failure, regardless of the parties intentions. The elements of this flaw are as follows:

1. *The bilateral nature of negotiations, limited international involvement and the lack of an obligation to comply with international demands*

From the beginning, the Israeli policy on negotiations has been built on two elements. First, Israel has insisted that negotiations must be bilateral and unconditional. As a result, all international actors and institutions have been marginalized, and the United States Government alone is allowed to become involved in negotiations. Such involvement is only to the extent approved by Israel and any suggestions made by the United States are subject to prior approval. This has raised doubts among Palestinians in view of some of the suggestions made by the United States at Camp David and the role played by some American officials.

Bilateral negotiations constantly put the Palestinians in a situation where they are unable to rely on international institutions and international resolutions or on international law, which regulates international relations. Instead, the Palestinian are forced to deal with the harsh reality of the imbalance of power on the ground. The bilateral format also allows Israel to exclude discussion of its status as the occupying Power, resulting in a situation whereby the parties to the negotiations are not equals. Meanwhile, Israel has pushed the Palestinians to accept occupation as the status quo.

Practically speaking, this fundamental flaw has made direct bilateral negotiations a process by which the occupying Power seeks to force the occupied party into submission. Although this is contrary to international law, the essential nature of the negotiations was being masked by the insistence of the United States and many other international parties on adherence to the negotiation mechanism. Instead of attempting to remedy the flaw of the negotiation process, they deflected or weakened Palestinian demands for meaningful intervention in response to Israel's violation of international resolutions.

2. *The weakening of international terms of reference and the permanent status framework*

Despite the fact that many documents and plans, including the Road Map, affirm that United Nations resolutions constitute the terms of reference for negotiations, the reality is that those negotiations take place in the context of the changes to the situation on the ground. This can be attributed to the position adopted by Israel and various United States Governments, and is embodied first and foremost by the understanding reached in 2004 between President George H. Bush and Ariel

Sharon. That dangerous understanding was added to international resolutions as the basis for resolving the question of borders. Israel and the United States have similarly imposed mutually agreed limitations on the question of the Palestine refugees, the application of General Assembly resolution 194 (III) and other matters. Thus was born a practice of substituting international resolutions and terms of reference with terms established by Israel and the United States. We are faced with a situation in which a prior agreement between those parties serves as a substitute for international resolutions, despite the repeated affirmation of those resolutions in various initiatives. Practically speaking, Israel has succeeded in substituting the terms of reference established by the United Nations with new terms which it decided and approved. The terms of reference and the permanent status framework have been eroded: implementation of United Nations resolutions and compliance with international law are no longer the benchmark for assessing the progress of negotiations. Instead, the continuation of negotiations has become more important than their outcome or the implementation of United Nations resolutions.

3. *Continued settlement activity and changes on the ground made by Israel*

One of the greatest flaws in the Oslo Accords and subsequent negotiations was the lack of seriousness accorded to the question of settlements, as though the problem were not constantly being exacerbated and could be put off until permanent status-negotiations began. In fact, settlement-building is the issue that threatens to undermine all other permanent-status issues, including the borders and contiguity of the Palestinian State, its sources of water and its capital.

Among the most prominent manifestations of the flawed negotiation process is Israel's success in separating that process, which it depicts as being inconsequential and not binding, from its continued occupation of Palestinian territory and the unilateral changes it makes on the ground. Consequently, a number of strategic changes have happened on the ground that threaten the goal of the two-State solution.

- The most important of those changes are:
 1. The complete separation of the Gaza Strip from the West Bank, as a first step towards shattering the political, legal and geographic unity of the future Palestinian State. In view of that measure, the continued division of the Palestinians represents a greater danger than political conflicts between other forces or factions. The purpose of the measure was clear from the moment Sharon announced the unilateral withdrawal from the Gaza Strip, which took place outside the political process and was disconnected from the political future of the West Bank.
 2. The construction of the separation wall. This is a racist endeavour in every sense, and it was roundly condemned by the International Court of Justice in its advisory opinion. That political procedure, which was justified on spurious security grounds, was intended to impose borders on the State or entity of Palestine in the West Bank and confine it within the wall, while systematically destroying the geographic contiguity of the Palestinian State and dissecting the West Bank into discontinuous pockets.

3. The isolation and demographic alteration of Jerusalem. This process, which is aimed at ensuring that the city cannot become the capital of the Palestinian State, began when entry to the city was limited to the bearers of Jerusalem identity cards. Homes in Arab areas continue to be appropriated and their inhabitants expelled. Resident status is arbitrarily withdrawn. Work is also underway to change the architectural and demographic character of the Old City; excavation activity continues around the al-Aqsa Mosque and settlements within the city are growing substantially. A systematic attempt is underway to obliterate the city's Palestinian character.
4. The continuation and intensification of settlement building. Settlement blocks are expanding, and the number of residents is growing. In 1994, there were some 250,000 settlers; they now number approximately 580,000. Those individuals live in settlement blocks and in new units established during that period. An attempt is also being made to cut off the Jordan Valley, which constitutes some 28 per cent of the West Bank.
5. Israel's complete disavowal of any responsibility as the occupying Power. This applies to the inhabitants for whom the Palestinian Authority has become responsible, and also to Israel's other responsibilities towards the State that it occupies.

Arguing that negotiations are ongoing and that a Palestinian Authority is in place, Israel has not complied with any of the obligations set forth in international instruments concerning the territories that it occupies. It has left that responsibility to the Palestinian Authority and the international community, while maintaining control as an occupying Power and issuing military orders at will, including most recently Military Order 1650. Israel retains its grip on the greater part of the Palestinian territories, which it has designated Area C. Here, it has kept control over every aspect of life, including construction, organization, water supplies and security. Israel oversees or controls crossing points, imports, exports and the movement of goods and individuals. It conducts repeated raids using security as a pretext. It maintains military check points and prohibits trade between the Gaza Strip, the West Bank and Jerusalem. These practices, among so many others, are those of an occupying Power; and yet they have not entailed any commitments. That situation assumes that the occupation will continue, and that the Palestinian Authority will remain in place to shoulder those commitments, including security. However, the Palestinian Authority was not established in order to perpetuate the occupation, but rather as part of a process leading to its end.

Proposed alternatives

The structural flaw in the negotiation process is not conducive to success. Only a fundamental change in that process can lead to a genuine political process. That change should be based on international involvement and the establishment of a binding international legal framework that addresses the following points:

1. The current situation should once again be defined as what it is, namely an ongoing occupation combined with arbitrary and racist practices. Efforts should be made to end the occupation in accordance with United Nations resolutions. That process should not be dependent on the will and self-perception of Israel, or indeed on conditions that it is creating in contravention of international resolutions. It should commit Palestinians once again to focus their efforts on what ought to be the natural aim of a national liberation movement that has yet to bring about an end to occupation. Along with the international community, the Palestinians should seek through their institutions to achieve that objective and ensure that international resolutions are respected.
2. Responsibility for the implementation of United Nations resolutions should be reclaimed by the Organization. So long as the occupation continues, there will be numerous problems and practices that require the United Nations to enforce international law, including the application of the Fourth Geneva Convention throughout the Occupied Palestinian Territory. Particular attention should be paid to the right of the Palestinian people to self-determination, and the focus of international efforts should be on ending the occupation and implementing United Nations resolutions. Those efforts should not be restricted by the outcome of negotiations, or even by the work of the Quartet.

These considerations, together with the structural flaw in the negotiation process, suggest the adoption of a strategy aimed at increasing international involvement and enlisting international will in support of the inalienable rights of Palestinians, including the right of return, the right to self-determination and national independence.

The most notable feature of such a strategy would be to request the Security Council and the General Assembly to adopt a binding framework resolution concerning the final borders of a future Palestinian State, thereby removing that issue from Israeli control and manipulation. The strategy should also support the ever increasing Palestinian calls for the United Nations to establish and delineate the borders of that State in accordance with United Nations resolutions. Doing so would give expression to the right of the Palestinian people to self-determination and lead to a resolution of permanent status issues.

As the Palestinians look to the United Nations and its organs to achieve what negotiations have been unable to, they will inevitably encounter scepticism about the Organization's double standards. The sceptics will also raise doubts about the role the United Nations can play as compared with the role the United States administration is capable of playing unilaterally or as a member of the Quartet. Other doubts will be raised by Israel's disregard for scores of United Nations resolutions and its insistence on adhering to a single mechanism

for dealing with the Palestinian issue — bilaterally and in isolation from international resolutions and institutions.

Such doubts notwithstanding, the development of an alternative Palestinian strategy based on international will and the initiative of the Palestinians themselves is the correct approach given the structural flaw of the negotiation process, which can only be rectified through greater international involvement and by marshalling the international will needed to compel Israel to end its occupation of Palestinian territory, in implementation of United Nations resolutions, and to establish a Palestinian State.

Examples of the effect of such involvement in other international disputes are many and varied. The important element in those situations was the readiness of the international community to exert its will in order to resolve conflicts on the basis of United Nations resolutions. When it comes to the Palestinian issue, there is an interconnected web of complications, both regional and international. The Palestinian live in a strategic region that is undergoing changes in the balance of power owing to the growing regional influence of emerging States like Iran and Turkey. At the same time, racist extremism is on the rise in Israel, which insists on maintaining military superiority and controlling the dynamics of power in Middle East. In view of the weakness of Arab officials and the sharp decline in the credibility of the peace process, it is both entirely realistic and necessary for all parties truly interested in achieving peace, and above all the Palestinians, to focus on international will and international involvement rather than the negotiation process.

Such a strategy would enable the Palestine Liberation Organization to continue leading the Palestinian people and regain the initiative. That would entail resuming and stepping up activity in international institutions and forums and taking advantage of growing international solidarity with the Palestinian people in order to expose the practices of the ongoing occupation. It would mean enlisting international support not only to put an end to daily Israeli practices, such as the continued siege of the Gaza Strip and settlement-building activity in the West Bank, but also to preserve the ultimate goal of peace in the region and prevent Israel from systematically undermining the two-State solution and denying the right of the Palestinian people to self-determination and national territorial integrity by perpetuating the separation between the Gaza Strip and the West Bank, including occupied Jerusalem.

The final component of this strategy would be strengthening the initiative of the Palestinian people themselves. This effort would be a multi-dimensional process founded on strengthening popular resistance to the occupation. That resistance is an ever-expanding mass movement that draws inspiration from the 1987 intifada, which garnered unprecedented international sympathy for the Palestinian people. Integral to that initiative would be the intensification of the boycott against Israeli goods, particularly goods produced by Israeli settlements, and the expansion of efforts to end the siege of the Gaza Strip and disband any isolated enclaves. It would also involve strengthening the steadfastness of the Palestinian people, improving Government and private services, and revitalizing the institutions of the Palestinian Authority within a framework of protection under the law and respect for the rights of citizens.

There can be no doubt that resolving Palestinian differences would strengthen Palestinian capacities. It has become clear that Palestinian reconciliation will require attention to a number of considerations that are not unique to the Palestinian situation. The most important such consideration is agreement on and preservation of

the principles and foundations of a pluralistic and democratic political system that guarantees full political participation by all parties without discrimination. That system must be consistent with international principles and resolutions aimed at achieving a solution to the question of Palestine and a just peace. There must also be respect for the principles of the international law of armed conflict, which first and foremost forbids the harming of civilians. In addition to the fulfilment of these Palestinian requirements, the United States administration and other parties must demonstrate a willingness to change their policies concerning Palestinian reconciliation and adopt a constructive position that allows for genuine progress in that regard.
