

Shu'un Tanmawiyeh
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Speech of Saleem al-Zanoun

Arab Thought Forum Conference

"Palestine at a crossroads: Landmarks and Identity of the Palestinian Entity"

In the Name of God, the most Benevolent and Merciful. I shall begin my discussion by the following points:

First: The international character of Palestine has been continuous since the League of Nations and the mandate era. The independence of the people of Palestine has been recognized like any other Arab country that was under the Ottoman Empire according to Article 22 of the United Nations charter of 1919. This was reinforced in the Laussane Treaty in 1923 and was reconfirmed in the constitution of the Arab League upon which Palestine was represented as a full member in the League.

Second: The Arab Palestinian state has international legitimacy, granted to it in Resolution 181 in 1947, known as the resolution for the partition of Palestine and upon which the Hebrew state was established.

Third: The right of the Palestinian people to national independence and sovereignty is a natural, historical and national right and a project taken on by international legitimacy. It is a nonnegotiable right and not one that can be nullified. It is reconfirmed by UN General Assembly and Security Council resolutions. This right has been clear and frank since 1947 through the General Assembly Resolution 323 since it is an inalienable part of the right to self-determination.

It is the duty of the international community to respect this right and enable the Palestinian people to exercise it. Therefore, it is our right to request the international community to oversee the establishment of the independent Palestinian State.

Fourth: The recognition of the independent state is a reconfirmation of the existence of this state and not an establishment of it. And not recognizing the existence of an independent state from a foreign occupying power does not impact on the existence of this state.

Fifth: Sovereignty is the right to manage internal and external affairs without being subjugated to another country. It is also carrying out the appropriate actions for defending the independent political entity and establishing relationships with all peoples and countries. Sovereignty is a Palestinian national right. It has been a latent right for Palestine since the end of the Ottoman rule. It is congruent with the basic principles of international law. Sovereignty of a people cannot be divided, conceded or negotiated. Neither can the occupation annul it or take away from it, for the time when occupation and annexation were a means to gain sovereignty has long passed. This used to be implemented in past centuries and was condemned by the Hague Accords in 1899 and 1907. Since then, the principle that occupation does not

grant sovereignty to the occupier has been adopted, even if this means that it is suspended, detained or its exercise impeded. This was reinforced in Articles 2 and 9 of the United Nations Charter. The General Assembly issued a declaration in this regard on October 24, 1970, which said "Any regional gains that were achieved by the use of force or by threats of force shall not be legitimately recognized. That is, sovereignty, despite occupation, shall remain reserved for its original owners, that is, the people whose land is under occupation."

Sixth: The Oslo Accords between the PLO and the Government of Israel is a contracted agreement for a limited five-year period beginning on 4/5/1994 and ending on 4/5/1999. The agreement does not cancel the natural, historical and national legitimate rights of the Palestinian people and does not alter the international character of Palestine or its sovereignty even if it does touch on the form of government and the mechanism for solving the current conflict.

Seventh: The institutions, commissions, apparatuses and positions established by the Palestinian people on their national land in the Palestinian West Bank and Gaza Strip do not overshadow the institutions, commissions, apparatuses and positions established by the Palestinian people within the framework of their moral and national entity of the PLO. Given the aptitude of the political leadership, the latter commission continued to deal with the PLO as a higher reference for the Palestinian people. It was recognized by the Israeli government according to a letter sent to President Yasser Arafat by the late Israeli Prime Minister Yitzhak Rabin on 10/1/1993, as the representative of the Palestinian people.

Eighth: The institutions, commissions and apparatuses which were established in the homeland, despite their jurisdictions limited by the signed agreements, constituted and still constitute a step towards completing the components for the establishment of a Palestinian state. This is especially from the aspect of reinforcing the legitimacy of Palestinian governmental institutions and exercising actual control over regions whose unity is recognized and whose land is determined and over the people whose presence has been constant on this land for thousands of years. These institutions, like the PLO, proved that they are capable of carrying out their international commitments in the most efficient manner. Therefore, it is necessary to hold fast to our achievements, and to all we were able to build on the land and strive towards developing them to continue completing the components of the state and to create a reality adopted by the international community and supported by international law.

Ninth: According to what was presented, there is an essential difference between the declaration of independence issued by the Palestine National Council on 15/11/1988 and the declaration to establish the state with the end of the interim period. The first is an expression of exercising a policy for a fundamental and natural right, through which we were able to fill the gap resulting from the severing of ties between Jordan and the West Bank. It is also a response to the developmental level of our people on their land, which it expressed through its popular uprising (Intifada) in December of 1987.

Despite decisions by the National Council to form a temporary government for the declared state of Palestine and mandating the executive committee their jurisdictions and responsibilities, the government was never formed and the executive committee remained as a government in exile.

As for the international recognition that resulted in this, it reinforced the legal existence of the State of Palestine. It stressed its actual existence rather than establishing it. One should note that this declaration was recognized by the United Nations in its General Assembly Resolution 43/177, dated December 15, 1988, after which it was decided to use the name of Palestine instead of the Palestine Liberation Organization in the United Nations.

As for the materialization of declaring the establishment of the state at this time, it is a legitimate drive for the right to exercise sovereignty and self-determination with the existence of components and institutions of the state and government on the land. It is aimed at completing the specializations of the potential authority of the state and transforming them to unbinding specializations; that is, replacing them with the concept of sovereignty and its institutionalization, given that it is sovereignty drawn from the Palestinian people, its true caretakers. In short, it is the materialization of complete independence, the realization of national sovereignty and its exercise in all available fields. Thus, it is more of an expression aimed at recognition of the sovereignty of an authority over Palestinian land, determined by relevant international legitimate resolutions. It is also the collapse of the term "disputed land" in exchange for the "occupied land of the Palestinian State which reserves the right to regain it." This is an elevation of the basis and reference of the solution and its return to legitimate international resolutions. As for the aspired recognition of the state to be established after the end of the interim period, it is a confirmation of sovereignty and the right of the state to its entity and independence. It is also the right to achieve the necessary regulations and measures for the preservation of its interests, its various facilities and the achievement of prosperity.

It is important here to stress that the establishment of the state as an expression of the right to self-determination cannot be represented by anyone other than the Palestinian people and its sole legitimate representative, the PLO. It is an internal Palestinian affair and it is not Israel's right to determine the form of this state or to restrict its sovereignty. Any agreements on this level must originate from justice. It must be reciprocal and balanced and the basis for dealing with a sovereign independent state must be that of equality.

Indication to the borders and relationships with neighbors and international relationships, mentioned in issues set for the final status, is nothing more than an affirmation of the relationships between countries. They are meaningless except for their consideration as issues regarding an agreement between two states. It is known that the PLO specified the borders of the state and the borders of lands occupied in 1967 including Arab Jerusalem. This is the land internationally recognized as occupied Palestinian lands. Not one of the world's 92 countries ever dared recognize sovereignty for Israel over any part of these lands. It is worth noting that Resolution 242, upon which final status

negotiations will be based. It speaks of a just peace and secure borders for countries in the region. As for the relationship with Palestine's neighbors, especially Egypt and Jordan, it is of utmost importance to the state. It should receive the attention it deserves, especially in terms of recognizing the state, designating borders with it, and stressing Palestine's natural and national relationship with its Arab brothers. The PNC has determined the future relationship with Jordan in the context of a confederacy between two independent states and on the basis of voluntary and free choice between brotherly peoples.

It is our duty to confirm the necessity of formulating a comprehensive and integral plan on all levels inside the homeland and abroad on the political level and national, media, popular mobilization, legal, diplomatic and parliamentary construction.

Our media and political diplomatic and parliamentary activity requires the necessary activation of PLO institutions, departments, commissions, embassies and representatives including the PNC and its committees. It calls for ensuring active and well-studied participation in all conferences and Arab, regional and international parliamentary arenas. It also calls for continuing to demand full membership for the Council in the International Parliamentary Federation. We must also reinforce our legal understanding of the issue of statehood and benefit from any loopholes in this regard to ensure a fair legal interpretation for the legitimate rights of the Palestinian people, even if this requires resorting to the International Court of Justice. In conclusion, I would like to stress the importance of steadfastness, remaining strong, having patience and depending on our people's stance and its will to hold fast to our fixed rights. We must also have continuing aspiration for our higher national interests that will lead us, inevitably, even if the road is long, to our aspired goal and our eternal dream of establishing our independent Palestinian State with Jerusalem as its capital.

The Role of the PLO in Making the Palestinian Political System

Hani Al- Hassan

The late historian Jamal Hamdan used to discuss Egypt's history from the angle of the genius of the place. A Palestinian historian discussing the history of the Palestinian political system cannot ignore the genius of the crisis of the place. (Crisis of the Place – Al-Jiser) For centuries and centuries, Palestine has found itself time and time again stuck in history between global forces fighting over its land as if it really was the political center of the world. This explains why Palestine is an outcome of the interaction of historical developments on its land rather than an outcome of geography or a gift of a river.

The beginning of the twentieth century witnessed the holding of a workshop aimed at destroying the Ottoman Empire. This workshop was based on the connection between the decision of the Western European colonial powers to destroy the Ottoman Empire and their aim to control the Arab and Egyptian empires and establish a state for Jews in Palestine. As a result, Egypt and Greater Syria found themselves fragmented into smaller countries, each busy dealing with its national concerns. Sate' Al-Husary portrayed the nationalistic situation by saying:

“Here’s a Palestinian considering Zionism the first problem to be dealt with, and there’s a Syrian considering France’s ambitions the greatest threats to the Arab cause, and there’s an Iraqi emphasizing the necessity of revolting against the English before doing anything else.”

The Palestinian tragedy was characterized by some kind of uniqueness. If each specific stage in the history of peoples and their political movements has its specific characteristics than the condition of independence is the first condition for the making of a political system with all it means both in academic and legal terms. However, Palestine was not known as a state, having the boundaries drawn by the Sykes-Picot Agreement, until it was placed under British Mandate. In deed, the above mentioned agreement was aimed at drawing the stage (Palestine) that was going to be targeted by the Zionist invasion so as to establish on its ruins a racist entity called Israel. This would be achieved by exterminating the majority of the Palestinian people – who own the land – and fragmenting them on the global political map by stripping their land and national identity once and forever.

This brief historical background is necessary for shedding light on the tough birth of the political system of a people viewed since the beginning of the twentieth century as a surplus. The conflict over Palestine was characterized from the beginning by the interconnection and interaction between its local, Arab and international elements. This

interconnection and interaction has deepened and widened with time, and has led to two clear diametrical opposites which could be described as two sides of a coin. In the thirties and forties the leadership of the Palestinian national movement failed to utilize the divergence of interests between the local and the Arab in confronting the international because of the absence of a comprehensive strategy and existence of a personal crisis. As a result, the Palestinian national movement collapsed with the fall of the Palestinian government, the Palestinian political system disappeared and the Palestinians were fragmented into Palestinians of the interior and Palestinians of the exterior. In other words, Israeli citizenship was imposed on some Palestinians, while others had to become Jordanians, and the rest refugees.

In fact, the Palestinian people have forcefully become a people of refugees; some strangers in their land and others refugees outside their land. However, all of them, even the young, found that politics was imposed on them as a reality of life and had to learn because learning was their only way to survival. They joined Arab parties, thinking that they were on the verge of return. When they realized this was a dream, they began forming secret organizations and searching for a vision and a leadership through which they could resist their political dismissal and physical eviction and ensure their return.

This feeling was exacerbated by the tragedy of the 1967 war, the occupation of all of Palestine and the transformation of the problem of the Palestinian people from a political problem as viewed by Resolution 242. As a result, the idea of establishing a Palestinian national movement that is neither submissive nor subservient began growing gradually. The most tangible turning points that led to foiling the attempts to dismiss the Palestinian people and prohibiting the establishment of a world without a political system for the Palestinians (a state) can be summarized in the following positive historical turning points:

1. The emergence of President Jamal Abdul Nasser in the south and the Ba'athists in the north, who considered besieging Zionism as a primary task of Egypt, Syria and Iraq.
2. The founding of Fatah Movement and its assumption of the leadership of the Palestine Liberation Organization after 1967, and the drafting of the Palestinian National Charter (Watani) as an alternative to the Pan-Arab Palestinian Charter (Qawmi).
3. The Intifada.
4. The founding of the Palestinian National Authority.

The Egyptian response to the challenge of the establishment of Israel and the defeat of the Egyptian army in 1948 was embodied by the Egyptian army's coup d'état against the monarchic regime and birth of Nasserism which was able to contain a Zionist attack for nearly 20 years. Nasserist Egypt concluded from its own experience the strategic

importance of establishing a Palestinian political entity, so it worked with Mr. Ahmad Ash-Shuqeiri on establishing the Palestine Liberation Organization as soon as President Kennedy suggested, in his letters of 1961, resolving the Palestinian question in accordance with the partition plan and beginning to return half of the refugees to Palestine.

With the assassination of President Kennedy, the PLO became a political tool that was an extension of Nasserism. As the purpose of its establishment ceased to exist, it was transformed into a tool of national mobilization and expression of Palestinian national demands, within the framework of the Nasserist movement and its allies. Hence, the new political framework of the Palestinian political system was born from the womb of the Nasserist movement. It is true that it was formal, but Fatah provided it with content.

Since its establishment, Fatah worked on regenerating the Palestinian political system in a complicated political situation that necessitated adopting the policy of swimming against the political stream which prevailed at the time and which confiscated the Palestinian identity under the slogan of national struggle. The liberation of Palestine was second to the struggle for Arab unity, which was unattainable due to the existence of Israel.

After the 1948 defeat, the Palestinian national movement acquired exceptionally negative characteristics that were unfound in any other liberation movement in the twentieth century. These included its lack of immediate control over even a part of its people and natural resources. As a result, it had to lead fragmented people, the majority of whom lived outside their land and were governed by the reality and psychology of the refugee. This necessitated going along a road coined by Mao Tsi Tong as "the impossible road," a road burdened by the weight of the confrontation along the borders of Palestine before being transferred after twenty-three years to the inside (the Intifada). This required from the beginning, gaining legitimacy that formed three necessary, albeit not enough, bases of implementing the national work plan. These are gaining the Arab legitimacy toward the Arab countries and the international legitimacy toward the international system while at the same time not losing the Palestinian revolutionary legitimacy which contradicted with the requirements of the Arab and international legitimacy.

Gaining Arab legitimacy ensures the legitimacy of the existence of the legitimate revolutionary leadership of the Palestinian people on the Arab lands to be crossed in order to clash with the Israelis. Moreover, it enables the establishment of a Palestinian political system enjoying moral sovereignty over all Palestinians wherever they were while at the same time coexisting with the Arab regimes, especially those of the belt countries.

The beginning of the modern Palestinian revolution (1965) was the legitimate revolutionary birth of the Palestinian people after the failure of the Arab Higher Council. Consequently, all belt countries except Syria resisted it.

The 1967 defeat proved the correctness of the Palestinian vision: that Israel was preparing for expansion since 1963 and that we had to fight in a war that was imposed on us and to prepare for its political consequences. This explains Fatah's behavior in 1967: instead of standing at the ruins, Fatah used its revolutionary legitimacy to ally itself with Nasserist Egypt to assume the leadership of the PLO, the practical and material embodiment of the official Arab recognition of the Palestinian national movement. It immediately formulated the Palestinian National Charter (Watani), as an alternative to the Palestinian Pan Arab Charter (Qawmi).

The birth of the Palestinian National Charter was a unique development on the road of rebuilding the national identity of the Palestinian people and laying the foundations of the relationship between the nation and the Arab.

Sarter has invented, on the tongue of Dopwavier, the expression "a pot full of contradictions." The Palestinian people are full of contradictions in a way never witnessed in any other people in the Middle East. The Palestinian National Charter came to dismantle these contradictions and restructure them to serve a Palestinian entity having a national identity. It placed the Palestinian national struggle within the Arab national frame and emphasized that the Palestinian resistance did not have an independent plan from the Arab situation. But, it rejected the idea of timed succession between unity and return, explaining that they were dialectically correlative and that each served the other provided that each preserved the independence of its decision within the frame of its independent entity. Independence automatically breaks the battles of custodianship that have negatively shackled the Palestinian national liberation because positive custodianship means automatically canceling independence, as the case was during the era of President Jamal Abdul Nasser after 1967. Furthermore, the Palestinian National Charter made it clear that the PLO represented the Palestinian people wherever they were - identifying the Palestinian as any person born from a Palestinian father or whose siblings were born from a Palestinian father- and that every Palestinian was a natural member of the PLO.

In 1974 Arab legitimacy was secured when all members of the Arab League recognized the PLO as the representative of the Palestinian people. With this the Arabs reconciled with Palestinian revolutionary legitimacy. The comprehensive official Arab recognition of the PLO was achieved in return for the latter's recognition of the 'redlines' of Arab politics and a promise not to interfere in their internal affairs.

Consequently, the Palestinian national movement developed institutional content and form that prepared for the birth of the new Palestinian regime, although it was a small fetus. The PLO established a legislative institution in spite of the absence of Palestinian sovereignty over Palestinian land. Moreover, the Palestinian people were organized, mobilized and looked after socially, educationally and medically, etc. Furthermore, the PLO tried to improve the living conditions of the Palestinian people and to secure their basic rights of work, mobility and residency under circumstances that necessitated extremely sensitive balancing on the Arab and international

levels and working within the framework of conquering and ending the occupation. Hence, the framework of the PLO provided a political ground consolidated by the factions of the feda'yeen (political parties) as a self-existent regional factor. This framework established a symbolic homeland for the Palestinian people and put the Palestinians on the road of transformation from a case into a cause, and from a past into a future.

The PLO, the State and the Current Political Regime

The difference between Al Toubawi (idealist) and the realist is that the only clear thing the first sees is the final aim, while the realist sees the steps leading to the achievement of that aim, and can achieve goals while preparing for transition at the same time.

The PLO has always mastered the operation of correctly seeing the steps leading to the target and possessed the ability to practice the processes of preparation and transition regardless of the human and material sacrifices that were made. With this it was able to undermine the possibility of absencing the Palestinian people from the political map of the world and to gain the world's recognition of the right of the Palestinian people to establish their state. However, it found itself for the first time in its history entangled in the trap of the Israeli containment and its mechanisms which are based on controlling the land and water and controlling the freedom of the Palestinians to move inside their land. This has dangerously threatened the nature of the upcoming state, as well as its regional boundaries, sovereignty, identity and representation of all Palestinians.

After Oslo, the Palestinian political regime found itself in a transitional stage between an occupation whose end has been declared (although it was still existent), and an independence that was celebrated with the establishment of the PNA. At the same time, the PNA found itself sinking in non-independence and subordination to a security-economy-water equation drawn by Israel in accordance with its ultimate interests. Paradoxes and probably even dilemmas that require intervention in order to be solved accompany a stage having such characteristics. These paradoxes can be summed as follows:

1- The relationship between the PNA and the PLO:

No two persons disagree that the PLO, which lead the struggle of the Palestinian people toward achieving their goal of return and establishing a sovereign independent Palestinian state with Jerusalem as its capital, will have its duty ended with the realization of these national goals. When this is realized, the Palestinian people will replace its political framework with a new political framework, which is the framework of the state, not the framework of the authority.

The important question that requires an answer is how to react to this paradox. How to make the PLO crystallize, the axis of 'the authority- the state' rather than 'the authority-control' as the difference between the two is very wide.

There is a permanently existent interconnection between the national and the social, and realization of one cannot be achieved with the postponement of the other. The maximum limit of struggle against the Israeli existence is achieved through struggle against the internal because renewal of the internal always ensures conquering the external. The alternative to this is falling in the trap of the Israeli containment which aims, among other things, at keeping the Palestinian society in a state of stagnancy and allowing it to move circularly more than moving vertically if it was to move at all.

The process of terminating the Israeli occupation must be accomplished in the name of the future 'the authority-the state' which means achieving the task of modernizing the Palestinian society through the process of terminating the occupation.

Modernization of the structures of the contemporary Palestinian society requires coping with modernization of the process of terminating the occupation because the two are parallel tracks and linking each with the other through an argumentative relationship enables each to serve the other. This requires setting integrated national visions of our civil society. Such visions must be based on freedom of will, which depends on democracy and social justice in distributing wealth.

Immediately after its establishment, the PLO laid the microcosmic foundations of the institutions of the state in the West Bank and Gaza Strip. Such foundations included municipalities, universities, schools, hospitals and sponsorship of health and housing projects.

More important, it consolidated the idea of plurality as a basis for the relationships between the various political forces within the framework of freedom of thinking and expression. Furthermore, it enriched deep inside the Palestinian people the values of national belonging which gradually began forcing aside narrower belongings like the clan. This fact was demonstrated in the results of the Palestinian Legislative Council elections. The elections proved among other things, the success of the PLO in establishing the framework of the nation-state through its important achievement of progress on the road of molding the fragmented Palestinian societies in the West Bank and Gaza Strip.

However, in light of the absence of brave Palestinian party forces and brave pressure forces that have a vision and possess an ability to achieve the project of building the Palestinian civil society, the PLO had to shoulder this duty. As a result, the duties of the PLO in national liberation interconnected with the duties of 'the authority-the state' in building the civil society to a degree that it is no longer clear where the PLO ends and where the PNA begins. This is especially true as the PLO finds itself hostage to the Israeli interpretation of the Oslo agreements and the Paris Economic Agreement. As a result, the PLO, which interconnects with the PNA, was forced to implement a policy whose characteristic was prioritizing the preservation of security

before politics. Subsequently, the Palestinian political regime was forced toward 'the authority-control' rather than 'the authority- the civil society.'

Meanwhile, controlling unemployment, whose growth rate was alarming, was realized through piling employees in the PNA apparatuses and institutions rather than through creating a productive society. This resulted in the establishment of an authoritarian ruling system that hides within it the crisis of masked unemployment. At the same time, the security obligations inherent in the Oslo Agreement, some of which contradict with human rights and the bases of the civil society, have necessitated the imposition of an authoritarian reality that requires proportionate growth of the number of security apparatuses with the growth of the forces opposing it. Hence, there was the birth of a huge political regime whose political philosophy was limited to ensuring control over all components of the general situation until accomplishment of the duty of national liberation. This resulted in stopping work in the name of the future, for the sake of rescuing the present, and forced the society to enter a state of stagnancy. In fact, in the past two years this regime has been moving circularly more that moving vertically because rescuing the present cannot be done in the name of the past but in the name of the future, since building the internal and developing it is the only guarantee to terminating the occupation.

The current stage of the Palestinian-Israeli conflict is the stage that precedes progress toward the establishment of the Palestinian State. The tactic of Israeli strategists is based on merciless destruction of the tools of the Palestinians' political struggle under the leadership of the PLO in order to prevent the establishment of (the authority-the state) before the end of the permanent status negotiations.

It has become necessary for the PLO to readjust itself with the new and the distinguished which is necessary for rebuilding its infrastructure if it wants to guarantee continuity with the Palestinian people inside through establishing the institutions of 'the authority-the state' and outside through devising a mechanism for continuity with the Palestinians in the Diaspora, whose issue will soon reoccupy the top of the list of the national goals.

The role of the PLO as the sole legitimate representative of the Palestinian people and as its leadership necessitates preventing the PLO from replacing the PNA in order to make way for the establishment of the (authority-the state) to replace the regime (the authority-control).

Civil and authoritarian societies cannot be distinguished from each other because the latter monopolizes legislative and judicial authorities and political plurality. They are unique from each other in terms of an internal logic that determines the rules of the interaction between their institutions, their relationship with the elite and the means of the transfer of authority and distribution of wealth.

The civil society is based on the principle of preventing the authority of the state from completely superceding the society. The mechanism of doing this is establishing the principles of democracy as a tool, whose use enables questioning of the authority, then accountability and then change. This realizes the principle that was advocated and consolidated by Montesque (authority limits authority). It also makes the existence of plurality an indicator of the existence of democracy.

In a civil society the legislative authority is determinative, but in an authoritative bureaucratic society it becomes remonstrative. In the latter case it provides a democratic cover rather than a democratic structure because the legislative authority is vital for the establishment of a democratic society.

The Palestinian political regime is currently undergoing a comprehensive crisis that the Israeli political regime placed it in. This crisis makes way for moving toward a new situation in order to avoid sinking in it.

The primary dilemma in the current situation is to avoid the trap of Israeli economic and political containment, which forces the Palestinian society to move inside a closed cycle. In order to do so we have to overcome the illusions in ourselves about the ease of achieving this duty.

The aim of our participation in such meetings and forums is to evaluate the reality and needs for change to occur. It is to activate our political fiction and creative thinking in order to devise policies that can lead to the creation of a new reality through which we can undermine the Israeli policy of containment. This works on two levels: internal and external.

The Internal: The Paris Economic Agreement must be replaced by a new agreement that guarantees freedom of mobility for individuals and goods, prohibits Israel's resort to the policy of closures and makes way for the re-growth of the private sector and the middle class. Additionally, a democratic culture must be advocated in order to prevent the consolidation of the elements of an authoritarian-bureaucratic society. Enforcing the principles and values of civil society can do this: human rights, plurality and democratic practice. Moreover, the idea of loyalty to the political or ideological option must replace loyalty to the clan or to certain individuals. Furthermore, the concept of social justice and rule of the law must be consolidated as two conditions that must exist for the establishment of a positive rather a negative authority.

The External: European and American institutions must understand that peace leads to security, not vice versa. They must also be asked to help the Palestinians modernize their society by supporting civil society institutions and exerting pressure for the sake of their growth and development, rather than the security apparatuses who function at the expense of the democratic practices and human rights.

The United States and Europe must utilize their influence on the Israelis to guarantee freedom of mobility for individuals and goods and opening crossing

points for this mobility. They must also reject the Israeli security demands that violate human rights, especially since democracy cannot exist without opposition, including Islamic opposition within the limits of the law.

The birth of the Palestinian civil society is not an easy thing. The occupation has destroyed the Palestinian people's middle class and scattered their class hierarchy. As a result, the Palestinian enlightened elite and popular leaderships shoulder the responsibility of spreading awareness among the Palestinian people through escalating their critical rhetoric of the existent situation and forming appropriate pressure groups on the existent authority for the sake of taking steps toward the establishment of a real civil society through reviving the Palestinian Authority to shoulder its responsibilities and the PLO to play its role in coordination rather than contradiction with the Palestinian National Authority .

Obstacles facing the Judiciary Authority in performing its duties:

“A comparative study of the Palestinian case from 1994 to 1998”

Dr. Ahmed Mobarak Al Khaldi

Part One

In his book, “The Republic”, Plato equates judges to doctors. He considers that both groups are only needed by ailing societies.

In a statement made by Imam Malek Ben Anas, he quoted Omar Ben Abdel Aziz saying, “People are brought to court to the extent of the evil crimes they commit.”

When reasons or wrongdoing, manifested in not abiding by rights and obligations become individual or social disorders, what is the way to deal with them? Is it through litigation for disputes due to a conflict of interests? On what basis will the judge make his judgment? Does he balance between interests? Or does he rule according to his inclinations? Or on the basis of justice? What are the guarantees for the performance of justice? In general, what obstacles are in the way of achieving justice, particularly in the Palestinian judicial system? We will try to answer these questions in this paper.

Introduction

The judiciary is a sacred matter in all nations, in all heavenly religions and even in man-made systems. No matter how much a nation becomes civilized, the existence of someone or something which can resolve conflicts is a social necessity for stability, both in relationships and the prevailing of justice among human beings in any given society. Otherwise, the survival of the fittest will prevail while personal inclinations and selfish interests will rule relationships between people. Consequently, there will be no order in the life of a modern state which is characterized by the depth of its interconnected relations, to the extent that if there is no independent judiciary which is capable of disentangling conflicts in relations, chaos will prevail and will threaten the continuation of existence and development in the political entity of any state.

Many people see the state as a group of duties and jurisdictions for the benefit of its people. Duties are distributed among the state's various institutions, one of the most important being the duty of the judiciary which is to achieve and protect public and private interests. Division of the duties of the state are divided into three main sections:

1. The authority which legislates laws.
2. The authority which implements laws.

3. The authority which litigates in conflicts over implementing these laws, and the rights they stipulate, amend, or cancel; or legal centers which achieve compatibility between the interests and the stability of relations in the society of any state.

In terms of the historical stability of political systems in their constitutional implementation, we find that until late into the 20th century, the dominant view towards legislative authority was that the judicial authority is part of the executive authority and not independent from it. This is due to the consideration that both authorities (executive and legislative) implement the law and enforce a commitment to it. Whoever traces the implementation of separation between the two authorities, will realize that great developments occurred in different degrees in various systems; the status of the judicial authority's complete dependence on the executive authority has shifted to partial or complete independence from that authority. However, this development was paid for by the freedom of the people, until it became necessary for the judiciary to become independent, given that it is the main guarantee for the achievement of justice. The development was for the sake of implementing the separation of authorities. Afterwards, the separation of authorities became the concept upon which democratic constitutional systems are based, because democracy, in its theoretical basis and prevalent notions, is based on the need to separate the state's general authorities in terms of their duties, wherefore each authority gains its independence in its own practice and original specialization, and where neither authority impinges on the authority of another. In carrying out its duties, each authority implements its own law, which gives it the legitimacy and the basis for its legal existence and the practice of jurisdictions. Any authority which breaks the law by which it works is considered illegal. Its activities are considered legal to the extent of the law. In the same way, its financial actions and legal decisions are dominated by the provisions of the law. The mission of the judicial authority is to ensure this by monitoring the legitimacy of the work of all state authorities. This is with the consideration that the concept of separation of authorities is to guarantee the independence of the judicial authority in monitoring the legitimacy of the work of other authorities and individuals. It is a relative concept connected to the extent of how strong and how much interference there is by the authorities in the work of the judicial authority, especially the executive authority. Independence of the judicial authority includes independence of the judge and judiciary in the literature of national and international jurisprudence. This will be explained in the following paragraph.

Independence of Judge and Judiciary

Independence of the judge means his objectivity, integrity and his non-subservience to any influence. Among these influences, is the method by which the judge is appointed and the party supervising over him, in addition to the controlling party from the professional, administrative and financial aspects. Thus, independence of the judge is in many forms, some of which are related to his personal condition, his qualifications and his job condition. These may affect his integrity and independence in confronting the state or

any intervention by social groups or centers of power. Moreover, the judge's independence guarantees his reverence in regards to the society and ensures his objectivity and independence from personal inclinations.

Independence of the judiciary means the free practice of the judge's jurisdictions without any interference from both the administrative and executive authorities. This is in addition to his abidance by nothing other than the law and his conscience.

Consequently, independence of the law does not mean that any privileges are given to the judiciary authority. However it is the right of every citizen to have and spread justice. The importance of the independence of the judiciary has gained it the attention of several international documents such as declarations, agreements and protocols that call for the guarantee of this independence. The UN Charter declared the determination of peoples to create the conditions under which justice can be accomplished. The International Court of Justice regulations stipulates the necessity to form a court of independent judges. Article (8) of the International Declaration of Human Rights recalls the right of every human being to recourse in an independent court of justice. One of the international documents which is concerned with emphasizing the importance of judiciary independence is the International Pledge for Civil and Political Rights, Article (14). The concerns are also demonstrated in the Experts' Draft of Principles on Independence of the Judiciary issued in Chili in 1981. The draft defines independence of the judiciary as follows:

- A. Every judge is free to rule over incidents presented before him according to his understanding of the facts and law removed from any external influence whether by force or through direct or indirect pressure from any party or for any intention.
- B. The judiciary is independent from executing and from direct legislating or through reviewing all the issues of a judicial nature.

The International Declaration for Independence of Justice issued by the Montreal Conference in 1983 defines the independence of the judiciary as "the freedom of the judge in deciding over a law suit without discrimination, influence or subjugation to any pressures or temptations. Judges shall be independent towards their colleagues and supervisors and towards any organizational charter in the judiciary system. The judicial authority shall be independent from both the legislative and executive authorities. Reviewing judiciary decisions is normally restricted to the judicial authority alone. Exceptional courts are prohibited from being established and every person has the right to appear before ordinary courts. Military courts are entitled to deal with crimes committed by members of the armed forces, while maintaining the right to appeal their verdicts before the court of appeals specialized in legal affairs. The executive authority has no supervision over the legal authority. The judiciary system has jurisdiction over all disputes and its jurisdiction can not be bypassed. Judges are not liable to isolation, and in their discipline, they are subjected to strict restraints. A judge shall not be

interrupted because of his job and judges are prohibited from affiliation with political parties.

One outstanding work of the UN in respect to independence in accomplishing justice, is the draft of political principles which was issued by the 7th UN Conference to prohibit crime and the treatment of criminals (Milan) in 1985, in regards to independence of the judiciary authority, freedom of expression and establishing judge's societies in terms of qualifications for electing and training judges.

Constitutions of the world have been consecutive in stating the principle of judiciary independence and the phenomena of esteem and respect to the judiciary authority. For example, Article (165) of the Egyptian constitution stipulates that the judiciary authority is independent and Article (166) specifies the independence of judges; Article (97) of the Jordanian constitution; Article (76) of the Moroccan; Article (101) of the Italian; Article (65) of the French; Article (64) of the Tunisian; Article (132) of the Turkish; Article (76) of the Japanese and Articles (131, 133) of the Syrian and others.

Separation of Authorities and Independence of Each Authority in its Duties

According to what was mentioned, the significant role of the judiciary has become clear in monitoring the soundness of the practice of the public authorities' jurisdictions, their enacting of laws and their judgement over disputes which arise pertaining to law enforcement, whether the disputes are between or among ordinary individuals or between them and other private or public artificial personalities, or between public authorities or among themselves. No doubt, there is neither a separation of authorities nor a role for an independent judiciary in the absence of the rule of law. None of the authorities has legitimacy except by the law which establishes public authorities and defines their specialties. The judiciary system monitors the legitimacy of public authority and individuals' activities. One of the main functions of the judiciary is to resolve conflicts between public authorities in fields of specialization whenever a public authority transgresses the jurisdictions of another authority. Also one of its duties is to resolve conflicts in terms of rights and freedoms of natural, individual, material and moral personalities. In resolving disputes, the judiciary implements the regulations of the enacted legal system which are taken from the constitutional regulations, the basic law, the ordinary law, general charters or regulations and individual resolutions. This is because this group of legal standards, in their various gradated levels, constitute the legal system which organizes the establishment of the public authorities and which portrays the specialization and work mechanism of each of them. Consequently, the legal authority implements the enacted provisions of the legal system that determines the extent of legitimacy for the work of each authority or public administration. Provisions of the legal system do not permit transgression by any authority or control over the jurisdictions of another. They also determine the extent of legitimacy of activities by individuals of the society. The judiciary authority

judges in cases where there is a transgression of legitimacy in individuals practicing their rights and freedoms. The judiciary does not permit infringement on rights and freedoms. It also does not allow infringement upon jurisdictions of one authority by another, since it may lead to dictatorship which is the basis for the principle of separation of the authorities. Thus, jurisdictions have been divided between the public authorities in a way that one authority may not affect another in performing its duties other than that stipulated by law, given that it is for the achievement of public benefit.

Hence, the meaning of separation of authorities becomes obvious; specifying legal authorities in resolving conflicts; decentralization of power in the hands of one authority that may become the rival and the judge at the same time. Consequently, it is very significant that the judicial sector enjoys equality with other major state institutions, in order to monitor the enactment of laws and correcting violations of these laws, regardless if their perpetrators are state public administrations or any individual. It is true that there may be some popular levels for monitoring, such as the public opinion monitor over the performance of public authorities in their fields of specialization. There also may be some official monitoring parties, affiliated with the state's legislative or executive authority. However, none of them replace the supervision of the judiciary authority over the sound enactment of law and the application of its judgment over disputes, since law is the name of justice. But, in order to achieve justice, the judge and the judiciary authority must be freed of all influences and obstacles in order to perform their judicial duty of spreading justice according to law.

The Independence of the Judiciary and Influencing Factors in its Accomplishment

The definition of the judiciary is the controlling and resolving of a matter according to its standards and the termination of the matter. From here came the explication that the judiciary means resolving and ending a dispute between two rivals. The rivals could be normal persons, or private or public artificial persons. The judge is the person who carries out the rule of law, in regards to his understanding of the dispute between the two parties. He is the person who attempts to accomplish the spirit of legislation and the public determination which formulated the law. From this comes the seriousness of his mission and the necessity of his having the knowledge, capability and integrity to perform such a job objectively. He should not judge under the influence of anyone, either for his interest or external influence from the various authorities which contributed to his appointment, promotion, allowances or those responsible for his accountability or dismissal. Therefore, he should feel safe and stable in his work without feeling threatened, in order to ensure his independence. If the judge achieves his independence, then the independence of the judiciary will be achieved.

Whatever form of separation of authorities is applied in the judiciary system, there are certain relationships between the judiciary and other state public authorities that affect the extent of independence of the judiciary authority.

The effects are general in all the systems including the Palestinian judiciary system. There is the effect of the interference by the legislative authority in organizing the judiciary, or the executive authority interference in sponsoring the performance of the judge such as influencing the implementation of their judgment, in addition to the impact of personal, social and judicial influence. I will summarize this in two points: 1st, the independence of the judiciary in organizing other authorities and 2nd, the influence on the independence of the Palestinian judiciary during the rule of the National Authority.

Independence of the Judiciary in Organizing Other Authorities

In order that the separation of authorities achieves its results for the public benefit, an authority should not transgress another and should not be entitled to the jurisdictions of another authority except within the limits of the law and within the goals for the separation of authorities. We will try to clarify the need for independence of the judiciary authority in practicing its judicial function of resolving disputes and monitoring the legitimacy of works by the other state authorities in a way that guarantees judiciary independence, objectiveness and ability to judge the behavior of public authorities and individuals and subjecting them to the rule of law.

Views may differ over the extent of constitutional independence of the judiciary from the legislative or executive authorities. However, what is certain in all the legal systems is that functional independence of the judiciary is agreed upon in all constitutions which stipulate the rigid or flexible separation where authorities cooperate, share power of jurisdiction and influence for the benefit of the state.

One of the influencing factors on the independence of the judge, is the interference by the legislative authority in organizing the duties and guarantees of the judiciary functions for judges, and fields of jurisdictions for the parties which supervise over judges. Moreover, there is the interference of the executive authority according to law, in the appointment of judges whether this is conducted in isolation or with the participation of other authorities. Influence on the executive authority may take place directly through participation in the judiciary duties, or through changing the court verdicts before or after their issuance or during their implementation in violation of the law. In addition to that, there is a negative influence from the press, public opinion, and institutions of civil society and political parties.

Among the highly influencing methods on the independence of the judiciary, is the extent of its administrative and financial independence in facing other authorities particularly the executive authority which is given this specialization by law. Financial and administrative independence have a more comprehensive meaning than the merely the stability of the judge in his judicial post and his immunity against dismissal or accountability. The meaning however, extends to guaranteeing the prevention of any influence on judicial independence through interference in the budget of the judiciary apparatus, or in appointing courthouse employees or the financial and

administrative supervision over them. Yet, there is no doubt that the absolute separation of authorities and the absence of influence is an illusion. Public and executive authorities are not neutral when dealing with the judiciary. Also, when the legislative authority reviews general budgets, it is not neutral even if its determination to dominate is less than the executive authority. Thus, consultation and cooperation between the authorities is essential. Consequently, consultation and cooperation does not infringe upon the judicial system's vocational, administrative and financial independence, which we will explain later.

Independence of the Judiciary from the Legislative Authority

Constitutions are concerned with including the independence of the judiciary in the core of their articles. However, they do not accurately define the approaches of the judiciary, leaving their definition and organization to the ordinary legislature. Accordingly, influence on the judiciary authority by the legislative authority could occur through the legislator's power to organize the judiciary in terms of their structure, specialization, conditions for appointing judges, managing the judiciary, transferring judges, and by all ways which influence the duties of the judge.

The influence of the legislative authority on the judicial authority is not lessened because it is restricted by constitutional laws, which sometimes determine certain judicial parties to deal with certain disputes. The judicial authority can influence the independence of the judiciary through its reorganization. There are practical examples of abuse of these legislative jurisdictions, such as the case in Sudan where the legislative authority made alterations in the judicial authority by which large numbers of judges were arbitrarily dismissed. Also, in Egypt in 1967, 149 judges were dismissed in the same way. However, in Libya and in accordance to judiciary system Article no. 51 of 1976, a committee was formed by the Minister of Justice, with the membership of the attorney general and head of the Judiciary Inspection Department on claims of reforming the judiciary and the office of the attorney general, and to distribute law personnel and members of the office of the attorney general among courts and attorney general offices, Article (2/1). Paragraph 3 of Article 2, considers those who are not included in decisions of reappointment, as retired according to the power of law. Article (5) of the same law stipulates that it is not permitted to refute in any way the decisions that are issued according to the previous article. The danger of this negative interference by law in the judicial function is not alleviated by Article (6) of the same law which gives the executive authority (ministerial council or Minister of Justice) the right to appoint personnel of the judiciary or office of the attorney general to governmental posts. In this case, the executive authority is entitled to a semi-absolute jurisdiction. In other words, appointment in other jobs is not the right of the judge or attorney general personnel who are obliged to retire. A fourth example of this took place in Jordan according to the Law of Independence of the Judiciary System no. (19) in 1955. It stipulates the formation of a committee presided by the Minister of Justice to hold consultations and dismiss the judiciary personnel, Article (46). The committee

decisions were solid and not liable to refutation before a judiciary commission. The issue was repeated in Article (3) of the special law for organizing the Shari'a judiciary no. (37) of 1970 and in the Law of the Independence of the Judiciary System no. (49) in 1972 which mandates the ministerial council upon a recommendation or proposal from the Minister of Justice, to decide on the dismissal or transfer of any judge, Article (44).

Undoubtedly, these jurisdictions of the legislative authority in organizing the executive authority (sometimes the legislative authority mandates the executive to organize the judiciary) harms the essence of judiciary independence. Not mandating the executive authority to organize the judiciary, even with restricted mandates, is the only guarantee for the independence of the judiciary. Some law writers sense a danger to the independence of the judiciary from the legislative authority itself, since the legislator can influence the independence of the judiciary under the pretext of reorganizing the judiciary (as aforementioned). Therefore, how can the judge face the actions of the legislative authority that infringe upon the constitution, if the judiciary system itself is subordinate to the legislature and under its mercy.

Nevertheless, no absolute independence of the judiciary can be achieved in real life. However, certain restrictions and regulations can be set. That is, restricting the legislator to make any amendments to the status of the judiciary system and its judges. The constitution stipulates that amendments are not enacted immediately, but after a period of time, after a legislative term for example. The judiciary commission should be given an amount of independence in order to deal with the new order. Consequently, a certain amount of independence can be achieved in a way that meets objective legitimacy and the public benefit.

The phenomenon most hostile to the judiciary is the implementation of judiciary duties by either the legislative or executive authorities. Independence of the judiciary cannot be accomplished if its area of jurisdiction does not cover all the disputes no matter what their nature, subject and parties are. Also, the independence of the judiciary dictates that no interference from external parties outside the judiciary system should interfere in it. Independence of the judiciary means enabling it to achieve justice. Consequently, the legislative authority, while practicing its constitutional right in legislating, distributing the jurisdiction of the judiciary system and organizing its apparatuses, should avoid adopting any legislation that may influence the judiciary system while performing its duties in establishing justice; or in harming individuals' abilities to practice their natural right in litigation or their right to a natural judge. Accordingly, if the legislator transgresses the objective constraints for legitimacy of his job in legislating, any legislative function which transgresses legitimacy is considered illegitimate and non-constitutional since it decreases the constitutional rights of the judiciary system. On the one hand, the legislator should not deny the right of litigation or restrict it with a non-constitutional provision. Usurping or restricting the right to litigate contradicts the major legal elements of the state. Consequently, several constitutions guarantee the right to have access to the judiciary system. For example,

Article (68) of the Egyptian constitution states, “the right to the judiciary system is guaranteed to all people;” Article (8/4) of the Syrian constitution; Article (166) of the Kuwaiti constitutions; Article (60/b) of the Iraq constitution and Article (101) of the Jordanian constitution, etc.

The significant role of the judicial authority is its liberty from any possibility of being negatively impacted by the legislative authority due to legislative measures. The judiciary system has the right to monitor the legislative authority and judge whether its activities are legitimate or not. Judges oversee the performance of the legislative authority as part of the jurisdiction of the judiciary. Moreover, it is one of the obvious phenomena of judiciary independence in confronting the state’s public authorities.

Constitutional systems vary in approving the principle of independence and the level of adopting constitutional supervision over constitutionality in the functions of the legislative authority. However, all constitutions adopt one or more monitoring systems for judicial supervision by claiming the non-constitutionality of laws. This is stipulated in Article (145) of the Syrian constitution, which gives the high court the jurisdiction to review the constitutionality of laws, as appears in the text. Another example is that stipulated in Article (175) of the Egyptian constitution: “the high constitutional court alone, is responsible for judicial supervision on the constitutionality of laws and charters. The court will be responsible for explaining the legislative texts as is stipulated in the law.” A third example is in the draft of the Palestinian Basic Law in Article (94).

Judiciary supervision over the function of the legislative authority may subsequently take an indirect form through the courts’ rejection to enact a legislation on a certain dispute because of its violation to the constitution.

This shows the importance of guaranteeing the independence of the judiciary before the legislative authority, from a legal and methodical aspect.

Independence of the Judiciary in Facing the Executive Authority

Constitutional systems are concerned with assuring the independence of the judiciary in facing the executive authority, precisely because historically, the two authorities used to form one authority and worked on implementing and enacting laws. The administration implements the law because of its legal commitment to apply the rule of law in its decisions while running the country. The judiciary system reinforces the law in cases of conflict between ordinary individuals or between public or artificial personalities. The judiciary takes the place of the opponent who does not respect the law by confronting him, to force him to respect and implement the law.

Gradually, both the judiciary and executive authorities became independent from each other. Legal texts organize the independence of the judiciary from the executive authority and detailed texts are included to protect this independence. The executive authority is not permitted to interfere in any

functions of the judiciary which may cancel or obstruct it; the executive authority should assist in implementing the judgment of the judiciary. Despite this, we find the relationship between both authorities to be very close since in some systems, it seems to take the form of a minister in the ministry, normally the Minister of Justice who is specialized in judiciary affairs.

However, some academics and politicians see a danger in this relationship on the independence of the judiciary, which may be subjected to political inclinations. Other systems appoint a president of state as head of the judiciary authority, like Articles (5,64,65) of the French constitution which appoint the president as head of the supreme judiciary council, since he cares for the independence of the judiciary and for the respect of the constitution. No doubt, what can be applied in one country may not be applicable in another. Moreover, some other systems prefer to appoint a head of the judiciary authority as its supreme judge. They see this as significant to the protection of freedom and independence of the judiciary in facing other authorities. All fields of specialization pertaining to judiciary affairs are only entitled to judiciary personnel, either through a higher council which is comprised of all or the majority of the personnel. It is clear that involving members of the executive authority in supervising affairs of the judiciary, may affect the independence of the judiciary. By illustrating a number of laws that regulate the executive authority, we find that they include many methods through which the executive authority can influence the affairs of the judiciary. This could take place through the supervision of the executive authority over the judiciary, such as granting the Minister of Justice the power to appoint judges, the right to mandate heads of courts, requesting a disciplinary law suit against judges, appointing head of the Court of Cassation (in its various names: High Court or Court of Cassation) and other jurisdictions and interferences. Most systems give the presidency of the high judiciary council to an executive member, such as the Syrian constitution Article (132) which restricts the presidency to the president of the state. In Libya, the presidency was granted to the leading revolutionary council which mandates the Minister of Justice.

Influence by the executive authority on the independence of the judiciary could be through obstructing the judiciary regulations. Consequently, we find that the legislator in several systems, organizes legal protection to the judiciary by punishing whoever uses his influence to ban or obstruct the execution of the judiciary verdict. For example, Article (122) of the Egyptian penal code stipulates that "every public employee who uses his position to halt the implementation of a verdict, order, demand from a court or any issued order by the competent party, shall be punished." Another example is stipulated in Article (361) of the Lebanese law which states "every employee who uses his authority or influence, directly or indirectly, to obstruct or delay the implementation of laws, regulating or collecting fees or taxes, or implementation of a judiciary verdict, shall be punished by imprisonment."

Also, independence of the judiciary could be affected by the executive authority through decisions by the several systems of the executive authority with jurisdiction to organize fields of specialization in the judiciary. Moreover,

several constitutions grant the head of the executive authority a reduction or partial obstruction of the provisions of the judiciary system in cases of special pardons, according to considerations decided by the executive authority. In practicality, this permission may be misused to have a negative impact on the judiciary verdicts and the need for their implementation. For example, Article (149) of the Egyptian law stipulates that “the President of the Republic has the right to issue a special pardon or a reduction of a penalty.” Article (149) of the Tunisian constitution and Article (17) of the French code stipulates that “the President of the republic has the right to issue an amnesty.” Article (77) of the Italian code stipulates “he may be permitted to issue a pardon to reduce sentences”. Article (72) of the Indian code says “the right to grant amnesty or postponing or pardoning the implementation of a sentence and also the right to halt, cancel or reduce (replace) the issued sentence of a convicted person because of the crime he committed:

- In all cases in which the penalty or the verdict is issued by the military court.
- In all cases in which the penalty or the verdict is issued for a legal offense related to interference in the specifics of the executive authority of the federation.
- In all cases in which the issued verdict is a death penalty.

In Palestine, Article (23) of the constitutional system for the Gaza Strip of 1962 states that the general governor has the right to pardon or reduce the sentence. This is stated in Article (38) of the constitution of 1952 and was followed by the draft Basic Law in Article (59).

Among the influences of the executive authority on the independence of the judiciary in its ruling, is the interference in the work of the judges by dismissing or pensioning them before reaching the legal age and before the judge loses one of the requirements upon which he was appointed. Therefore, one of the important ways to protect judges and guarantee their neutrality and integrity to the utmost extent, is by preventing the executive authority or any other authority from the ability to threaten their source of living. It is also prohibits threatening the stability of the judges’ jobs through arbitrary administrative transfer, particularly by the executive authority. In taking stability and the prevention of intimidation into account, many legal systems emphasize on stipulating the insurance of the judges’ posts and their security in their jobs. In addition to the fact that this will protect the specific interests of the judge, it also protects the interests of retired judges and assures the sufficient proliferation of justice among the people.

For this reason, many legislations account for the principle of preventing dismissal of the judge, terminating his work, or forcing him to retire under conditions other than those stated in the law or according to his free will. Thus, we can reduce the influence on the independence of the judge where he will not answer except to the law and his own conscience in interpreting the law. Examples of the constitutional system are the following Articles: Article (64) of the French constitution, Article (78) of the Japanese constitution, Article (168) of Egyptian constitution, Article (67) of the Egyptian

Judiciary System, Article (163) of the Kuwaiti constitution, Article (85) of the Moroccan constitutions and Article (89) of the Iraqi constitution. In addition, international declarations are concerned with the independence of the judiciary such as the international declaration which was issued by the international conference on the independence of justice in Montreal in 1983. This was also interpreted in many internal legislations, through laws which regulate the judiciary, when deciding regulations to guarantee the independence of the judiciary such as inadmissibility of dismissal or transfer. Also, by putting legal conditions on the judge's mandate which are approved by him for a limited period of time, during which he is under probation; during this period the judge's integrity and freedom may not be threatened.

Independence of the Judiciary from the **Influence** of Public Opinion and Media

Media is one of the important ways in expressing trends of the public opinion, in which it shares in and influences its formation. Consequently, through public opinion, media can play a great influential role on the judiciary system. Perhaps what took place in the Palestinian territories in Gaza in July 1988 and on February 2, 1999 is a good example of the extent of the influence of the public opinion in which the media was a participant. It is true, that public opinion is the preferable means to monitor the activities of the judiciary in order to achieve a kind of popular supervision through permitting publishing measures and facts which take place in courts, by the various media means. This is to enable those who did not attend the court session to follow the court proceedings which are reviewing public cases. However, this influential method of public opinion can be based on sentiments more than on legal evidence in various cases. Accordingly, this freedom should not be misused in a way that may cause the obstruction of justice, particularly when the public opinion sends writers lacking in technical and legal awareness about the judges' performance. In this case, the writers may negatively affect the independence of the judiciary. Consequently, many legislatures are concerned with interference which organize methods of influencing the public opinion, given that they aim to guarantee the objectivity of these methods and their correct realization and to protect the right of the media to expose misdemeanors and the defendant's right to not being sentenced according to the sentiments of media writers and their desire to incite the public. Organizing the freedom of expression and media aims at finding a balance between the legitimate interests. Therefore, the press should not make statements that reduce the prestige of judges and the independence of the judiciary in making their legal objective decisions.

Self-independence of the Judge

Despite the mentioned importance of the independence of the judiciary, this independence cannot be achieved in the absence of the judge feeling that he is independent towards himself, towards authorities and towards other social, political and material influences. In the end, the judge should see himself as independent; what assists in endorsing this feeling is the support of the

media, public opinion, institutions of the civil society and legal organizations. Achieving independence of the judiciary system requires action by several individuals, institutions of the civil society and legal activists on the level of methodology and implementation such as colleges of law, lawyers and the press. However, it should be realized that the independence of the judiciary in Palestine cannot be achieved through building its institutions and its practice in practical terms in such a short time. Independence of the judiciary is an accumulated process that includes building institutions, citizens, judges, judges' assistants -- from the attorney general's office -- lawyers and the litigation department which implements the law. In fact, the role of the judge is not restricted to the literal execution of the law, but it is in fact much larger.

It is true that the judge applies law according to theoretical principles of democracy; he declares the rule of law when applying it in a certain dispute. However, from a practical perspective, he has a large role in setting the law in a certain restricted manner when he explains the general abstract legal basis to a certain case under implementation. Some argue that the judge is, in practical terms, the person who sets the law while taking into account the judiciary and courts in particular, which explain laws for implementation in the law suits under study do not issue general decisions that can be applied to similar disputes and do not issue charters and regulations but embody the rule of law to the dispute under discussion before courts.

This critical role of the judiciary makes interference in its practice harmful to the court's function of achieving justice and minimizing the right of individuals in fair litigation. The judge is not permitted to replace the role of the legislative authority after passing his verdict. He should be restricted to apply the rule of law to the conflict at hand. He should not replace or amend the rule of law with another decision. He is only restricted to interpreting the ambiguous text and ridding it of its abstractness and generalization by specializing it to the conflict which is presented before him. In addition, while the judge is legally justifying his decision, he may criticize the legal text and expose its shortcomings in a certain conflict; due to his conscience. He may be inclined to complete the existing legislation or recommend its replacement, amendment or cancellation. He can express what he believes to impact the law in terms of violations to justice and fairness in reasons for his verdict but cannot criticize his own verdict in that regard. This issue cannot be described as an interference by the judge in the work of the executive authority, but as a point of view which has practical value and an impact on the formation of public conviction which is needed by the legislation to gain its social legitimacy.

This critical role of the judge should be protected from the judge himself. Among the ways to protect it, is that the responsibility of the judge should take into consideration the requirements of its independence, to enable the judge to uphold justice. Also, it should be taken into consideration that the judge's independence is not a goal in itself but rather a method for protecting rights, freedoms, centers, individuals and public authorities.

There is no contradiction between the independence of the judiciary and holding the judge accountable for his actions. Independence does not mean absolute freedom from accountability or the judge's lack of subordination to follow-up of his work, monitoring and inspection of his judicial duties, to guarantee his safety and his sound performance, while protecting him from his own inclinations and interests that are not stipulated by law. Thus, responsibility and independence restrict each other in a balanced way between authority and responsibility. The guarantee of the judge's independence urges him to remain faithful to the principle of responsibility. Independence does not shadow over accountability or the responsibility of the judge.

For this reason and in different degrees, systems take the decision over accountability of the judge. These systems could be summarized in three points:

1. Systems taking the responsibility of the judge restricted by previously defined limits, constraints, conditions and measures.
2. Other systems decide to refrain from practicing accountability on judges at a high level or not holding them accountable for certain reasons.
3. A third group of systems decide that the state is responsible for the mistakes of the judiciary. It should be understood that what is meant by not holding the judge responsible is restricted to mistakes which he commits in his work. However, outside his work he shall be held accountable for personal mistakes. The systems differentiate between his criminal, civil and disciplinary mistakes.

Some systems decide a kind of immunity for judicial members in terms of their criminal responsibility according to the nature of the judiciary 's function and the role of the judge in the society. The systems specialized a regulation for their interrogation or sentencing. For example, Articles 96 and 106 of the Law of the Judiciary System in Egypt.

However, in terms of the civil responsibility of the judge, he bears the legal ramifications of his civil mistakes according to the general principles for civil responsibility, since he is a human being who may make mistakes. In order not to misuse this method, some systems decide not to hold the judge accountable for his civil actions while practicing his legal jurisdictions. Other systems stipulate certain situations of contentions with judges and decide special measures for this situation.

For the judge's disciplinary responsibility, it should be based on the mistake or misbehavior of the judge. In holding the judge accountable, legal systems have higher bases for the principles of behavior. The judge's status and his superior role call for firmness in his accountability in order to keep him away from suspicions and from what may violate the sound order of the judiciary system. However, the judge's interpretation, his mistake in interpreting the law or in assessing the facts are not considered as a diversion in his behavior and do not call for disciplinary accountability.

Out of Concern for the prestige and independence of the judge, some systems take the disciplinary accountability of the judge before a judicial party and in a way that restricts animosity against the judiciary. Many other systems, and for concerns over the prestige of the judiciary system, end the disciplinary suit if the judge retires or is pensioned.

IS THE 'DECLARATION OF PRINCIPLES' A GUARANTEED WAY TO AN INDEPENDENT STATE?

Presentation given by Helena Cobban at the Arab Thought Forum conference, at Bir Zeit University, June 1999.

The question, "Is the DOP a guaranteed way to an independent state?" has a simple answer: No. Joel Singer, who was the legal adviser on the Israeli team that negotiated the Oslo accord, has confirmed in subsequent writings that even after the implementation of the DOP, the legal bedrock of authority in the West Bank and Gaza, including in such areas as the IDF has withdrawn from, remains Israel's power as an occupying force, regardless of local arrangements concluded with any party. Therefore, as Abu Mazen and others have pointed out, the Oslo accord in itself does not determine the final-status outcome: it could lead to an independent state, or it could lead to Israeli annexation; or, anything in between.

The bigger questions, however, are twofold. Firstly, what is the meaning and importance having a 'state'? (Or, what is the function that a state plays in present-day human society?) And secondly, what do we mean by 'independence'? Though these questions seem simple, an exploration of them can, perhaps, help people to clarify what is really important to them.

On the first question, of what is the importance of having a state, I note first of all the distinction between the situation of the Bosnians, who have a widely-recognized state, but little solid international commitment to the realization of key national demands like the return of refugees to their homes, and that of the Kosovars, who have no recognized 'state', but a huge level of international commitment to most of their other key national demands, including the return of refugees to their homes. From looking at those two cases, it seems that the key to national wellbeing does not today depend solely on a group having, or not having, a recognized state. I note here, too, the important fact that a 'state' plays two different roles, to two quite different audiences. Firstly, there is the role it plays towards what is called the international community, that is, the club of other states which monopolizes power in all inter-governmental bodies, including the U.N.

Second to that in many respects is the role the state plays towards the men and women who are its citizens, or nationals. (In connection with this year's events in Kosovo, I note too that though it is extremely gratifying to see the 'international community' devote such huge resources to the important task of securing a speedy and total return of war refugees to their homes, there are also some disturbing dimensions of the related activities. One of these is that, in securing the return home of the Kosovar refugees, the American-led coalition has completely set aside any concern for the norms of the existing system of international law. There remain numerous tricky issues, in international law, related to the sovereignty and the ultimate source of

jurisdiction in Kosovo, since the province is still legally considered to be part of Serbia. But in its-generally admirable-pursuit of the rights of the ethnic-Albanian Kosovars, the United States has merely swept all those international law concerns aside, as if they are irrelevant. We have seen a strong tendency toward the same deliberate sweeping-aside of international-law considerations with respect to American policy on Israel's actions in the West Bank and Gaza. In both cases, the American thesis seems to have been merely that the source of legal right is might.)

In addition to the role a state plays toward its own people, and toward the international community, two other essential attributes of a state are its territory, and its communal ideology, which may be 'national', religious, purely ideological, or (more often) some mixture of the above. In European history, which under the post-Westphalian system became the bedrock of the present 'international' system, each state would have one 'national' ideology; and part of the role of the state would be to ensure the monopoly of this ideology over the claimed land and all people resident in it. In Islamic history, by contrast, the role of the (preferably unitary) Islamic state would be to organize the monopoly of Islamic religion over the claimed land and the people resident in it, regardless of the 'national' dimension of their culture and heritage. It is only in more recent centuries that we have seen the development of multi-ethnic states in the west, and also the emergence of states based on an ideology that is neither overtly ethnic, nor overtly religious.

In the current era, there is a disagreement about the virtues of a state in meeting basic human needs, versus the virtues of NGOs in meeting them. Many in the west who preach the virtues of lively NGO activity are often neglectful of, or even hostile to, the idea that states play any role in meeting basic human needs: that is, advocates of the philosophy known as 'neoliberalism.' I should note, though, that most neoliberals, that is, people who downplay the role of states, come from countries where the state already plays an efficient and unobtrusive role in guaranteeing public security, guaranteeing contracts and property rights, and ensuring the rule of an egalitarian and fundamentally agreed-upon body of law, under an administration that is accountable to its citizens. I believe that only people who live and work in a secure atmosphere like this could even start to question the importance of these issues, which make up the core of good human governance - and they do so because, thanks to their very lucky circumstances, they cannot even start to imagine what it is like to live in a place where these attributes of good governance are lacking. However, the effect of the influence of such neoliberal thinkers on western policy towards, for example, many African countries, has been disastrous. Ignoring or downplaying the importance of governance, they have helped exacerbate already-serious crises in places like Rwanda, Somalia, etc, where they acted on the basis that NGO and humanitarian activities could succeed in meeting basic human needs even when governance issues were not addressed.

The issue, then, is not necessarily, or not only, the presence or absence of a 'state'. (And states have anyway lost a lot of their international bargaining power, since the vote that a state has in the UN is no longer anything like

such a cashable commodity as it used to be during the Cold War.) The issue is the quality of the governance in and over any community, and this includes the degree to which this form of governance 'fits' with the interests and goals of the human group concerned. Some good-governance issues are universal, like the ones listed in the preceding paragraph. Others would be specific to different human groups. These might include: an attachment to a certain land, or certain Holy Places; a concern for the rights of 'compatriots' or co-religionists who are not in the state's territory; a concern for implementation and safeguarding of specific cultural norms. These group-specific issues of good-governance are, however, mutable over time. They can be changed or redefined through the action of social movements. For example, among Palestinians, there has been change over time between the discourse of Palestinian particularism or Arab nationalism or between advocacy of secular version of nationalism and the advocacy of Islamic values.

I do not presume to come to a gathering such as this with any answers. I just note that I don't know whether you could have good governance without an independent state; but I do know that you can have a state that not only does not bring about good governance, but also can set the course of good governance back by years or even decades. This was the case, for example, with ghastly, well-entrenched kleptocracies like that which Mobutu maintained for so long in Zaire, or with the Bantustans in South Africa.

In regard to the South African Bantustans, it is also very important to look at the role that any 'state' plays with respect to the 'international system'. Remember that during the apartheid era, the South African government and Bantustan leaders like Buthelzi maintained strong campaigns to have the 'international system' give formal recognition to the Bantustans; but luckily, no major governments ever gave them this recognition. The failure of the South African campaign to win international recognition for the Bantustans served to exacerbate the political crisis inside South Africa, and helped to bring the apartheid leaders to the negotiating table. Imagine how different the situation would today, if the western governments had given in to South Africa's request to recognize the homelands! You may have had 11 or 12 Bantustans recognized as 'states' by the international system, and perhaps even enjoying their own votes in the General Assembly. But the governance situation of the people of South Africa would have been far, far worse than it is in today's democratic South Africa. From this point of view, one can say that if the only entity that the Palestinians are able to win out of the final-status talks is a powerless, totally dependent and controlled Bantustan-type entity, it would be disaster if its leaders should choose (like Buthelzi) to describe this 'a state' - and more particularly so, if the powers-that-be (or, that power-that-is) in the international community should then give it international recognition as such.

Moving to the question of independence, it is clear that this is the opposite of 'dependence': in other words, the independent entity is one whose ability to take the decisions important to it are not unacceptably constrained. No state in today's system (or for quite a long time before today) enjoys total, unconstrained freedom. All face some constraints from international or regional agreements with other states. In the current Palestinian context, we

are talking primarily about the freedom of a Palestinian State or entity from unacceptable Israeli constraints. A large degree of such freedom is vital if Palestinians want to have a state that is economically and politically viable.

From the economic point of view, to be viable, a Palestinian state must have a strong, viable territorial base, divided (if at all) only into the least-possible number of segments and with guaranteed connections between them; and it must be able freely to exercise its own control over the passage of people and goods across its borders with other states. Israel cannot have the power to impose closures either between parts of the Palestinian State, or between the Palestinian State and other states like Egypt and Jordan, or to impose unilateral closures between itself and Palestine. We have seen, ever since Oslo (and under both Likud and Labor governments), how Israel has abused the power it had to impose 'closures' between different segments of the supposedly 'Palestinian' entity, with terrible effects on the developments of the Palestinian economy and society.

To be politically viable, meanwhile, the establishment of a Palestinian state must be accompanied by an acceptable resolution of the Palestinian refugee issue. If the refugee issue is left outstanding, no Palestinian State can expect to remain politically viable for very long. Contributing to the resolution of the refugee issue will be an important national task for the Palestinian State. This would include both offering a place of permanent national refuge within its territory to many of the Palestinian refugees still exiled completely outside the homeland - with priority given, I think, to the very disadvantaged Palestinian refugees in Lebanon -and concluding successful negotiations with Israel on a final settlement of all refugee issues arising from both 1948 and 1967.

The above, therefore, are the areas in which any Palestinian state, to be viable, absolutely needs to be able to act independent of outside control. That is, it needs to be able to control its own borders and economy, and undertake its own programs for rehabilitation of the Palestinian refugees. There are other areas in which states are usually active that are not so important for the Palestinians. I would argue that maintaining a national army is one of these areas. There are several states around the world that have deliberately chosen to disband their national armies. One of the clearest examples of the effect of this is in Costa Rica, a Central American country that abolished its national army in 1948. Cost Rica is, like most of its neighbors in central America, a country that has few valuable natural resources, and it could be just as poor today as the rest of its neighbors. But by not pouring money into its army over the past 50 years it has achieved two things: firstly, it has registered considerable gains in terms of the development of its human, social, and economic resources, compared with the other central American states, and secondly, it has been spared the terrible, deep-rooted internal and regional warfare that has plagued all its arms-heavy neighbors.

The above suggests to me that Palestinian strategists and negotiators thinking about the final-status period could have in mind some kind of a grand trade-off with Israel. If the Palestinians embrace demilitarization as a key attribute of their state, then they would be in a strong position to demand

generous fulfillment of their needs for territory, economic independence, and settlement of the refugee issue. It is a harsh fact that, given the present balance of power, Israel (and the Americans) is not going to allow any Palestinian entity to have any significant level of armament, anyway. But wouldn't it be better for the Palestinian negotiators actively to embrace the whole philosophy and outlook of the demilitarized state, as Costa Rica's leaders have done, rather than having demilitarization forced down their throats? One first step in this could be to invite former Costa Rican president Oscar Arias to visit Palestine as soon as possible, for consultations. Arias is an eloquent explainer of the Costa Rican philosophy (as well as a strong opponent of the international arms trade which is such a large part of Israel's national economy, and a strong critic of the role Israel played in the central-American wars of the 1980s).

The outcome, if Palestinians are able to win the kind of state implied by this 'grand trade-off', might be what people used to call 'Finlandization'. Now it is true that, during the Cold War, many people scoffed at the bargain the Finns had made with their massive neighbors in Soviet Russia. Basically, under that deal, Finland had independence to run its own internal affairs, but had to accept a Soviet veto over its foreign and defense affairs. Finlandization did have a bad name amongst many people then, but actually it was not such a bad deal for the Finns themselves. Though they could not run their foreign and defense affairs freely, still, were able to sustain a vibrant national economy-which today, for example, is a leader in mobile-phones and other hi-tech areas-as well as to safeguard vital national interests like their own hold on the national territory. Baltic neighbors Latvia, Estonia, and Lithuania did not fare nearly so well. For 45 years they were swallowed up by the Soviet empire, which wrecked their national economies along with its own-while implanting hundreds of thousands of Russian settlers into their lands. Indeed, in one of those countries, the number of Russians became greater than that of the local people...So compared with the situations of those nations, Finlandization did not look so bad, at all.

Regarding independence, I should note that much of the thrust of the original Oslo accord between Israel and the PLO was not towards increasing the independence of Palestinian decision-making in the economy and other fields, but towards building institutionalized and forced cooperation with Israel into Palestinian actions. The trend initiated by the DOP was thus not one which will necessarily help the Palestinians reach true independence of decision-making in these fields - just as it was not one which will necessarily lead toward the establishment of a state practicing good governance.

Thus, on both counts - that of independence and that of meaningful, viable statehood, the DOP was not a document that The guaranteed, or even necessarily led towards, a positive outcome. That outcome, if it is to be achieved, therefore still requires a lot of thinking, and a lot of hard political work.

REFLECTIONS ON THE EXTERNAL RELATIONS OF PALESTINE

Eberhard Rhein, Brussels

Introduction

The conduct of Palestinian external relations will be subject to two dominant constraints, i.e. the tiny size of the country in terms of population and economic resources and the neighborhood of Israel, which will heavily weigh on the Palestinian state and its policies. Both constraints will severely restrict Palestine's external freedom of maneuver. The art of Palestinian external policy will consist of turning these restrictions into virtue and making them beneficial for Palestinian society and economy. The small size of the country will impose on Palestine a sense of extreme modesty. Palestine will, for physical and economic reasons, not be able to indulge in 'luxuries' of bigger countries when it comes to the conduct of its external affairs. This will have to be reflected in particular in two major aspects of external affairs: in its security and defense policy and in the role of its diplomatic machinery.

Palestine can be defended militarily only at the price of self-destruction. With conventional means, the country cannot be defended against external aggression. Its population density and the nature of the terrain make major army movements practically impossible; the same goes for air or navy operations. It should therefore not hesitate, if put before the option, to renounce an army as the price of independence. A Palestinian army would be both useless and too expensive. It would therefore be well advised to follow the path of other small countries like Mauritius, Costa Rica, Singapore, Hong Kong or Cyprus which have essentially renounced an army and whose relative prosperity is at least partly due to the fact that their societies have not been burdened by the heavy burden of defense expenditure (which easily can absorb 5-10% of GDP and create major budgetary difficulties for a country, as was witnessed by Cyprus very recently).

Even at present, Palestine's security budget appears to be excessively high. It is not conducive to rapid socio-economic development if a country spends more for security than for education. The reasons for the high budget for security are well known. They have to do with the internal political instability, the absence of an independent state and the unsettled relations with Israel. It is therefore to be hoped that both the number and the cost of the security forces can be progressively reduced and that Palestine will, after independence, be able to focus its security forces fully on the protection of the borders (border police) on the one hand, and of life and property of its citizens on the other hand.

The smallness of Palestine will equally impose severe limits on the size and the functions of its future diplomatic service. Palestine with its less than three million people and tight budgetary resources will have to content itself with a very small but highly efficient diplomatic service. It should in this respect follow the example of small countries like Luxembourg or Singapore. It should focus its diplomatic representations on a dozen capitals where a diplomatic

presence appears vital for Palestine's economic and political interests. Washington, Brussels, New York, Riyadh, Cairo, Moscow, Beijing, Tokyo are such places. And, of course, Israel and Jordan for cultivating relations with its most immediate and closest neighbors.

Palestine will have to concentrate its external relations on a few basic objectives:

1. Play a constructive role in the world community. For this, Palestine needs to be well represented at the United Nations.
2. The sympathy and the support of the future global powers, i.e. USA, EU, China, Russia.
3. Cultivate close political and cultural links with the Arab League and help boost its role as a regional center of stability in the Middle East and the Mediterranean.
4. Follow major economic and technological trends in the world of tomorrow: this requires its active presence in the USA, Japan, Europe and Israel.
5. Continued financial support from the rest of the world: that is why the presence in Washington (World Bank and IMF), Brussels (EU), Riyadh (Arab Funds and GCC), Tokyo (bilateral aid) will remain of the utmost importance for a very long time to come.

Palestine should not overburden its foreign service with tasks that can be performed more effectively by the private sector. One of these is export promotion. Traditionally, this has often been a function of diplomatic missions...and usually performed badly. Palestine will definitely need to boost its exports of goods and services. This will be of vital importance for its economic development. But there are more effective models than the diplomatic service to do so; among these bilateral chambers of commerce run by the business community with modest financial support from the government. Before setting up whatever structures, Palestine would be well advised to look around in the world for the best model to follow.

Relations with Israel

Relations with Israel will be more important than with any other country or region of the world. Whether this is liked or not: Israel has to be the top priority of Palestine's external relations. This has to do with nature and geography, the weight of the Israeli economy, the very particular security relationship that still remains to be defined. Geography continues, despite globalization, to dictate the intensity of international relations: the Netherlands and Germany have become very intensive commercial and even political partners; despite strong Dutch misgivings against the Germans, relations have become very symbiotic. A close interdependence has developed.

Ideally, Palestine and Israel should strive to establish a similar relationship as between the Netherlands and Germany. That is much more easily said than done. Too big are the differences of culture, level of development, mentalities,

religion, education etc. Most important, Israel - or at least a major part of its population - continues to reject Palestinian claims for statehood, territorial rights, water rights etc. They claim special rights accruing to them because of their 'superiority' before God who according to them has conferred upon them the whole land of Palestine since times immemorial. They have mentally displaced the fact that, in 1948 and thereafter, they have driven out of their homes some 600,000 Palestinians, as others have done after them in subsequent operations of ethnic cleansing. With such a historical and psychological background, it will be extremely difficult to establish Israeli-Palestinian relations on the basis of equality and mutual respect. Still, it will have to be done, even if it will take a generation or longer.

What should be some of the essential steps on the long path towards Palestinian-Israeli normalcy?

First, Israel will have to return essentially all the occupied territories to a Palestinian state and confer full sovereignty to the Palestinian state within its recognized territories. In order to settle specific security issues (stationing of troops, Israeli settlements etc.) appropriate transitional arrangements will have to be negotiated; but without a clearly defined Palestinian territorial sovereignty including property rights to land and water, no permanent peace between the two countries appears possible.

Second, Israel and Palestine will have to settle their future coexistence through a series of bilateral agreements covering such diverse fields as transit, police cooperation, environment, water, land use, transport, customs, taxation, movement of persons, movement of goods, education etc. The objective of such agreements should be to establish a complex relationship of interdependence and mutual interest by which the two societies will feel inescapably bound to each other so that whatever positive or negative event takes place in one society will affect the interests of the other society. Israel must acquire the conviction that nothing is more important to its overall well being than a normal, prosperous and peaceful Palestine and vice-versa. But - in contrast to the present situation - such agreements will have to be negotiated between equal parties, even if Israel continues to have sufficient leverage to extract concessions from the Palestinian side.

Third, in the field of trade, Palestine has an interest in maintaining free trade with Israel and maintaining open borders. Whether free trade takes the form of a customs union (where both countries have the same customs duties towards the rest of the world and a closely coordinated customs administration) or of a free trade area, is a matter of practical expediency. A customs union has the advantage of being simpler and of avoiding distortions across borders. But it requires full trust in each other, when it comes to the correct distribution of customs revenues, the sharing of information and the participation in international negotiations etc. The difference between the two forms of free trade will naturally tend to shrink, as both Israel and Palestine will be part of the wider Euro-Med free trade area, stretching from Morocco to Syria. Most of the goods entering either Palestine or Israel will not be subject

to any duties; and therefore Palestine will have to rely more and more on other revenues, especially those coming from VAT.

One should expect to see the bilateral trade relationship between Israel and Palestine to become extremely intensive, once the present 'security barriers' will have been overcome by a normalization of the situation. Palestine should normally become the no. 1 sub-contractor for Israeli high tech companies. It should not despise such a role, which corresponds to economic logic, considering the prevailing differences in wages, and production costs for labor intensive manufacturing and services. This being said, Palestinian business must avoid becoming too dependent on Israeli suppliers or buyers. That is why the European link (cf. below) is of such a critical importance.

Fourth, a free trade between Israel and Palestine should also extend to agricultural and processed products. Both countries will progressively become more dependent on imports from the rest of the world for the supply of basic foodstuffs. Thus free trade would essentially apply to fruits, vegetables and processed foodstuffs where both countries will maintain production capacities.

But agricultural free trade requires, as a precondition, that Israel cease to subsidize water for irrigation purposes. Equally, Palestine will have no choice but to subject its producers to the strict Israeli phyto-sanitary standards, ideally by imposing similar ones within Palestinian borders.

In summary, it appears important for Palestine to take a much more 'offensive' stance towards Israel, once independence has been achieved. It is no use to try to protect Palestinian producers of goods or services against Israeli 'superiority'. Rather more efforts must be undertaken to upgrade the capabilities of Palestinian society to compete with Israelis, not everywhere but in those niches where this appears to be possible. The Israeli society should be taken as a chance to learn and to become as good as they and thereby to become able, over time, to compete in the world of tomorrow. Such an 'offensive' approach requires self-confidence in Palestinian values and capabilities: the slogan must become everywhere: be as effective and clever as the 'cousins'.

Relations with Jordan

Culture, religion, proximity and above all kinship militate in favor of the closest possible relationship with Jordan. In the past, relations have been far from close and cordial. To improve this unsatisfactory situation must be one of the foreign policy priorities of a Palestinian state.

What should guide these relations in the future?

Ideally, the two states, both extremely tiny, poor and lacking natural resources, should form a federation, if only to constitute a counter-poise against the Israeli 'heavy weight' and to use scarce resources of government in a more rational way. But many people on both sides will not share such an objective; it will therefore remain at best a long-term goal. In the short term,

Palestine should propose to establish the closest possible collaboration in practically all fields of government.

The two countries should be in free trade for goods and services, without further delay and without long transition periods or exceptions. Palestine can hardly, for evident political reasons, be on closer economic terms with Israel than with its brothers across the Jordan.

There must be free movement of people, without visa or other travel restrictions. Palestinians must be able to attend Jordanian universities and technical schools and vice-versa, on the basis of reciprocity (without discrimination of fees).

Nationals of either side must have the right to establish business on the other side. Free movement of workers will be a more difficult matter to achieve, and less urgent.

Free movement of capital and interaction between the two countries' financial service sectors should be a matter of course, as it already largely is.

There should be a very close interaction between the two governments, both at the political and the administrative level. The core Cabinets should meet regularly for wide-ranging consultations, say twice a year. The same goes for specific departments, which should informally consult each other on a wide range of policy issues.

The French-German model might serve as a precedent for the type of bilateral relationship to be established in the immediate future. Once a certain degree of confidence and cordiality has been established, more ambitious goals, e. g. federation, might be targeted.

Relations with Egypt

Egypt has been, for many years, the most precious supporter and friend of Palestinians in the Arab world. Palestine has a vital interest to safeguard these bonds of friendship beyond independence. Egypt should remain a pivot country for Palestinian diplomacy. Moreover, it constitutes the second biggest economy in the immediate neighborhood with a tremendous potential for development. It must therefore be a prime target for Palestinian business. To this end, the following actions should be undertaken without delay:

- Establish Egyptian-Palestinian free trade, in the framework of Euro-Med free trade;
- Improve the transport links with Egypt: Cairo and other main centers should be reached by car and truck within some 4 hours;
- Improve the facilities for border crossing so as to minimize delays;
- Allow for free travel of persons across the border;
- Establish close links in the educational field.

Relations with the EU

From the Palestinian end, the EU should be seen as a single player on the international scene. Its overall importance in world affairs is bound to grow, starting with trade, development, economic issues, environment, and extending progressively into the realm of politics and security.

After completing the ongoing enlargement process, the EU will become more or less identical with Europe. The EU will become the regional super-power, even if it will share responsibility for security with the USA, within the NATO framework.

A close relationship with the EU will therefore be a 'must' for the state of Palestine:

- as a balancing factor against Israeli dominance;
- As a major external player in the MED, even if it shares the responsibility for peace with NATO (pax NATO?)
- as major source of development assistance and FDI
- As the most important trading partner outside the immediate neighborhood (Israel, Egypt and Jordan).

The EU' s increasing global involvement will facilitate Palestinian diplomatic relations. Palestine will certainly not have to establish diplomatic missions in each of the future 30 or so European capitals. Ideally one Embassy in Brussels should do for the whole Union. But present practice and political wisdom would make it advisable to maintain diplomatic posts also in the key member states, say Germany, UK and France.

Conclusions

An independent Palestine will have to define a coherent external strategy. This strategy should reflect the smallness of the country and the scarcity of its economic and political resources.

Palestinian external interests will best be served by:

- Focusing on close cooperation with its immediate neighbors, especially in the economic field;
- Adhering to all relevant multilateral treaties and conventions which might help to underline Palestine's strong desire to live in peace and harmony with all its neighbors. This goes in particular for all conventions related to arms control, non-proliferation of ABC weapons, human rights, and the environment;
- Actively participating in the various institutional MED frameworks (Euro-MED partnership, Barcelona Convention relating to environment, Mediterranean Forum etc.)

- Upgrading its interim agreement with the EU into a full-fledged Association agreement.

In view of defining Palestine's external strategy a task force of 'wise persons' should be called upon to submit proposals in the following key areas of foreign policy:

- basic overall priorities
- nature of the contractual relations with Israel, Egypt and Jordan
- type of multilateral conventions and treaties to be adhered to as a matter of priority
- Basic guidelines for establishing a high caliber foreign service and diplomatic missions.

(Quarter Report)

Conclusions:

- 1- The Israeli right-wing government succeeded in impeding the political process in an attempt to present its own vision of the maximum ceiling of the Palestinian aspirations. It tries to violate the principles of international legitimacy and international agreements so that it can gain and confiscate more lands at the expense of the Palestinian people.
- 2- Despite the Israeli impeding measures, the Palestinian people proceed toward building and constructing their state; naturally, the Israeli measures resulting from control over many matters impede this process and affect it negatively, vis a vis the political objectives, the economic conditions and the daily activities.
- 3- The Palestinian leadership is exerting tremendous political efforts in its struggle with the Israeli government in order to maintain the momentum of the political process and ensure the continuous vitality of the Palestinian cause. On this level, several political gains were achieved, thus contributing to bringing the international standpoint closer to the Palestinian position and isolating the Israeli position, which has become exposed as one that obstructs the political process.
- 4- In light of the general public's dissatisfaction, and amid an uneasy political condition and limited sovereignty, the Palestinian government continues through its various ministries and administrations to exert efforts to upgrade the level of services offered to the Palestinian people, and at the same time, promote the level of performance. Despite observing some positive elements in several ministries and departments, much negativity prevails, in terms of relapses, and a decreased level of competence in some sectors.
- 5- Internal Palestinian security and the role of the security apparatuses received numerous criticism due to the continuation of what is called 'individual mistakes and violations,' represented in the unsafe use of arms and the abuse of authority; in addition to the use of torture during detention and arrests that are not based on legal sound procedures.
- 6- The practice of execution, which targeted three persons in two cases, is a deeply concerning issue, especially since these orders targeted persons in the Palestinian security services. Also disturbing is the fact that the executions did not coincide with sound legal measures.
- 7- Continued political arrests are affecting all sectors of Palestinian society. Still, the Israeli right wing ignores all signed agreements, imposing punitive and humiliating measures against Palestinians. More disturbing, these arrests are not legally justified.

- 8- The Palestinian society is still waiting for the announcement of local municipal elections. Although there were no observations on negative practices by the municipalities in general, elections are democratic obligations that cannot be stalled for too long.
- 9- Even if there were justifications for not holding legislative and presidential elections, which are due, it was necessary to make the delay based on legal legislation that does not pose any justifications, but sets a new date.
- 10- The Palestinian judiciary system still suffers from a lack of competency and a severe shortage in many of its vacant positions, including the attorney general and chief justice. In addition, a higher judicial council has not been formed and there are a limited number of judges and weak services in the court system.
- 11- Despite political pluralism among the Palestinian people, its reflection at the official level in relation to the Palestinian Authority to a great extent is limited and marginal. The PA and the opposition are both to be blamed for this limited role.
- 12- Regarding relations between the Palestinian NGOs and the PNA, the conflict surfaces from time to time; it seems that the conflict is not only limited to ratifying the draft NGO law, but goes beyond to look like a settlement of accounts that reveals lack of professionalism.
- 13- Despite the important role of the Palestinian human rights organizations, they need to take more self-disciplinary measures in order to become a model and a norm. This will grant it credibility to confront improper practices.

**Palestine at the crossroads: Perspectives of Citizenship
and Prospects of Identity
June 21-23**

An Analysis on the conference

by Said Ghazali

**The conference suggests new ideas: provides an unconventional
analysis**

Goals and Aspirations

The executive director of the Arab Thought Forum, Abdel Rahman Abu Arafah, says that the Palestinian people have arrived at a crossroads in the peace process. It is fundamental for them to start arming themselves with sufficient information and flawless, unbiased thinking on the issues of settlements, water, sovereignty, civil-society, the sovereignty of law, and the separation between governmental powers. The Palestinians cannot go to the final status talks ill prepared. They—like the Israelis are doing—should utilize the skill of experts and academics to guide them during negotiations on these most important issues.

After three days of enlightening discussions at the Bir Zeit conference, many people came up with fresh ideas about the need for efficiency and honesty in government. The government slogans of the last few years have failed to serve the cause of Palestinians. More to the point, they simply have allowed us to deceive ourselves.

I came away from the conference with the strong impression that many people were challenged in a way they hadn't been before. They seemed to come away from the sometimes-volatile discussions with a new vision about the issues of sovereignty, water, settlements, refugees etc. The PNA and the opposition parties should think seriously about the recommendations made at the conference and move forward toward positive changes. The conference painted a memorable picture where the PNA officials and PLO bureaucrats found themselves in confrontational debates with effulgent critics and an uncompromising, intelligent audience.

The central question raised by Abu Arafah was: Can we build a democratic Palestinian state which will make amends for the five decades of suffering which we have endured since the state of Israel came into being. This loaded question has many detailed answers.

Statehood prospects

American journalist Helena Cobban, from Washington, does not believe that the Declaration of Principles necessarily lays the groundwork for an independent Palestinian state. She backed up this opinion by referring to similar statements made by an Israeli expert who said that the DOP was a five-year interim arrangement between Israel and Palestinians, without any

solid commitments from Israel regarding Palestinian statehood. Cobban believes that the DOP is not an agreement that will end the Israeli occupation, but she lives in the hope for the eventual establishment of an independent Palestinian state. This view is a challenge to the conventional thinking of Palestinian officials who have been advocating that the UN resolutions 242 and 338 are the unshakable grounds of the Oslo Agreement.

Cobban's challenge, if adhered to by the Palestinian leadership, could backfire in their faces. It might be extremely difficult for the Palestinians to untangle themselves from (DOP) strings during the permanent status negotiations.

Cobban's arguments went on to elucidate the meanings of statehood and independence. In her way of thinking, the status of statehood does not mean accomplishing the national interests. To back up her idea, she talked about the situation in Bosnia where, although it achieved statehood, it is unable to bring back its refugees due to international constraints. The opposite example is Kosovo, which is not a declared state, but has received the international community's support for the return of its refugees.

Her second argument was also a challenging one. Cobban said that the existence of a state does not guarantee better protection for citizens and their properties. The well-backed examples for this argument are the numerous authoritarian regimes in Africa, which commit appalling human rights violations against their own citizens.

Her third argument was shrewd and sensible, too. No country in the world has an absolute sovereignty- even continental countries like the United States or China have to put checks on their relations with other countries. The Palestinian entity, whose powers of decision-making are held in Israeli hands, is without control over their land, economy and people. Israel, if it so chooses, can put a blockade on Palestinian-held areas. It can make the decision of who enters Palestinian land and who doesn't. As a result of this Israeli stranglehold, the viability of Palestinian statehood on both the economic and political levels will be shattered.

Her fourth and final argument stated that there is no need for a Palestinian army. Such a thing would be a waste of resources, she said.

Cobban's conclusion was somber one. The DOP will not automatically lead to the establishment of an independent Palestinian state and it is no guarantee of good governance.

Foreign Relations

Michael Hudson, Professor of Arab Studies at Georgetown University was just as forceful in his statements. He perceives a future where the Palestinian State will send its diplomats out into the world to study diplomacy and accumulate political acumen. Hudson suggests that these future Palestinian diplomats should study history and acquire strong political skills.

One such skill, Hudson says, is the art of secret diplomacy, which the Palestinians already used when they made the historic Oslo Agreement with Israel in 1993. The history of the Palestinian Intifada and the history of Palestinian resistance are worthy of study because without them peace would never have been achieved. What are the priorities of Palestinian foreign relations? Hudson unequivocally states that young Palestinian diplomats of the future should give top priority to Israeli affairs. He went on to say that the Department on Israeli Affairs should be the largest one in the Palestinian Foreign Ministry. Hudson said that the United States should be next on the list and warned against the illusion that the United States is a friend to the Palestinians, which it is not. Palestinians are advised to maintain a stronger diplomatic presence in the United States and the European Union states.

Hudson added that young diplomats should not forget their historic sanctuary, which is the Arab world. For many decades the other Arab nations were a friend to the Palestinians. The Palestinian cause unified them. However, he warned Palestinians however not to be too realistic. Hudson said that the Palestinian negotiators have perhaps been too realistic in accepting the negotiating parameters laid down by Israel and the United States. One can argue that the Palestinians weren't sufficiently prepared during the Oslo and post-Oslo negotiations. It follows that during the upcoming final status negotiations, the Palestinian leadership should seek to harness the possibility of future resistance if outside powers (the United States, Israel etc.) start dictating conditions and terms. The Palestinians should make it clear that they won't be rushed into signing an agreement detrimental to its national interests.

Economic Status

Muhammad Rashid, an economic advisor to Yasser Arafat, was unable to attend the conference but sent his presentation to be read. Rashid argued that Israeli measures, such as the blockades on the West Bank and Gaza during the past four years, scuttled the possibilities of economic growth. The weak structure of the Palestinian economy, the weakness in legislation and the PNA's poor performance has contributed to the faltering Palestinian economy. The loss from closures alone exceeds the amount of money disbursed by the donor countries during the previous years (About \$ 2.5 billion).

Economist Hisham Awartani noted that the deterioration in the Palestinian economy has been beyond all expectations and affects the way the average Palestinian arranges his priorities. A Palestinian citizen today places his income and job at the top of his worry list. In the past the Israeli occupation was the number one issue in the hearts and minds of every Palestinian citizen. Many Palestinians viewed self-rule as a step towards freeing themselves from the yoke of Israeli economic control. Sadly, Awartani notes the Palestinian dependency on the Israeli economy has only increased during the past years. "We are facing a big economic problem," Awartani said. "That problem is eventually going to get worse if we take into consideration that population growth is between 4 to 5% a year, one of the biggest percentages in the world." At the same time, the economic resources are very limited. "We

are not distinguished in the sectors of agriculture and industry,” Awartani noted. “Our industrialists have been impoverished over the last four years. Most of them have become commercial agents for Israeli and Turkish commodities.”

Awartani spoke about the widening gap between the elite class and the rest of the Palestinian people. He blamed the PNA for destroying the middle class. On this particular point, Awartani maintained a different view from Muhammad Rashid, who blames Israel for the destruction of the Palestinian middle class. Awartani sees potential for growth in the sectors of stone, salt, agriculture and tourism.

The Minister of Economy and Trade, Taher Al Masri, believes there is the possibility of resolving the economic problems in the future. He emphasized that economists and institutions should play an active role in future negotiations. He called for the creation of an efficient negotiation framework. “We have to be well-informed to avoid going into an irreversible political and economic crisis,” said Al Masri.

Borders and Levels of Sovereignty

The main question: Whether Palestinians will be sovereign or remain hopelessly entangled to the Israeli decision-making process during the final status talks? It is not an easy issue to determine now. Palestinians must fight for sovereignty, even though they do not have the driving political and economic thrust to achieve this. The DOP accords they signed have become a constraint on them. Chief negotiator Saeb Erekat argues differently: “We are pressing for the implementation of the 242 UN Resolution which stipulates Israeli withdrawal from occupied land back to the borders that existed before the June 4, 1967 war. We will not accept the Israeli interpretation of the 242 Resolution as if it does not mean a full, but rather a partial withdrawal from the land. “We will not accept that,” Erekat said. “This is an attempt to divide the West Bank.” The panorama on the ground looks different. Israel not only talks about its future scenario for the West Bank but enforces it, as well as the Palestinian density in the Jordan valley is weak. There have been many settlements constructed on the Green Line. The water resources in the West Bank are under Israeli control. The network of by-pass roads constructed after the Oslo Accords is destroying the integrity of the Palestinian territories.

Erekat is fully aware of all these constraints. Israel will suggest a demilitarized state and will try to transform the Palestinian demands for sovereignty into restricted powers of jurisdiction. Relations with our neighboring countries will be constrained. “ We will reject that, too,” Erekat promised.

“They won’t be easy negotiations,” declared Director General of the Applied Research Center, (Arij) Dr. Jad Ishaq in Beit Sahour. Ishaq crushed down any hopes for a future sovereign state as he referred to the Israeli maps. “There is no single map among the twenty that the Israelis have produced that suggest the option of full withdrawal from all the land, and that includes the map drawn up by the pro-peace Israeli organization, Peace Now. All Israelis

are in consensus on this issue.” Ishaq’s maps show a different situation than the propaganda of the PNA. In his version, the Jewish settlements have been expanding toward Palestinian cities as a measure of containment and control. “We have no land to build on. We have no future for our children,” Ishaq said. He dubbed the by-pass roads built by the Israelis after Oslo as “border roads” that demarcate the boundaries of the Palestinian cities. “The principle of making a solution based on justice is not available in the Palestinian-Israeli negotiations,” Ishaq gloomily concluded.

This conclusion, however, compels him and other Palestinian scholars to try to find solutions based on the fair distribution of land and water resources without dismantling the Jewish settlements. He displayed a map before the audience showing places where Jewish settlements and Palestinian communities share the land. Ishaq said that Palestinian negotiators should insist on a sovereignty, which will pave the way for a just solution of the conflict that is based on sharing the land. He noted that Palestinian negotiators committed mistakes in the Wye Plantation Accord when they agreed on Israeli West Bank withdrawals in percentages that were determined by Israel. Israel was allowed to incorporate for itself 312 km of the Jordan valley, an area of water resources and Jewish settlements from its calculations of the whole West Bank comprising a territorial area of 5854 Km.

Settlements

Minister of Negotiations Affairs Hasan Asfour says that the final status negotiations with Israel will not be commenced without reaching an agreement on a framework whereby Palestinian and Israeli negotiators will agree on where negotiations are heading on such issues as settlements, water, Jerusalem, refugees, borders, and sovereignty. “Without such a framework the negotiations will continue for scores of years. It would be a waste of time,” Asfour said.

This statement had come before his elucidation on the future of Israeli settlements. Asfour believes that they should be dismantled, because settlement construction on Palestinian land is illegal by the definitions of international law and UN resolutions. “They (the settlements) constitute acts of aggression as consequences of the 1967 war,” he said.

Unlike this ideal political scenario, the issue of settlements unfolds into a many-sided argument for Jeff Aronson from the Foundation for Middle East Peace in Washington, DC. Aronson says that during the 32 years of the Israeli occupation, a constituency was built in Israel around the Jewish settlements. The Israeli army in the West Bank is not seen as a belligerent occupying power, but merely an army that is protecting its own people. “Oslo has not changed this doctrine,” Aronson told the 300 people in the audience.

If the opponents of Oslo have used the issue of settlement expansion to torpedo the peace-making process, Aronson believes they won’t succeed. He backed up his argument by saying the Palestinians had made a concession in the Oslo Accords that recognized the legitimacy and expansion of Jewish settlements. Aronson believes it will be very difficult for the Palestinians to

counteract what they have already agreed. He noted that some 380,000 settlers live in the West Bank including East Jerusalem, Gaza Strip and the Golan Heights, which means that Israel has built up a sizeable constituency in the occupied land and the Israeli army is its guardian against outside attacks. "Whether Israel will withdraw from 70% or 40% from the West Bank, this strategic doctrine will not be changed and places a constraint on any future Palestinian sovereignty," noted Aronson.

Aronson, however, manipulated Sa'eb Erekat's distinction between sovereignty and jurisdiction as the key of the future solution. The settlements could be under Palestinian sovereignty but not under Palestinian jurisdiction. The opposite could also be correct. The settlements are not more than 6 percent of the West Bank and such a small area could one day facilitate a solution. But Aronson noted that this was not the case, because larger areas attached to settlements are also part of the Israeli master plan. Palestinian lands, which belong to Palestinian villages, do not exceed 8 percent, which means that larger areas would remain under what Israel considers its own land.

Jerusalem

Since the Palestinians and Israelis have both been claiming Jerusalem as their own for decades, one can predict that the issue of Jerusalem is unsolvable—a powderkeg that could explode at any time and bring down the peace process.

At the conference, Faisal Hussein, the PLO Executive Committee member-in-charge of Jerusalem, agreed that the city should be kept open without the construction of a "Berlin wall." At the same time, he mentioned the international positions that recognize East Jerusalem as an occupied city. Hussein theorized that the city's future will be that of one city with two capitals — West Jerusalem as the capital of Israel, and East Jerusalem as the capital of Palestine. Other arrangements on a whole variety of other issues such as joint holy places and tourism will be negotiable.

In his response to the cynical views from the audience, Hussein made clear that the Palestinians have not lost their battle over Jerusalem. The city still maintains its Islamic and Arab character. East Jerusalem's population is predominantly Palestinian, even though some fifty or sixty Israeli flags ominously flutter on the rooftops of Israeli homes inside the walled city. Hussein believes that Palestinians are active in maintaining their existence in and around the city and referred to a Palestinian belt of buildings in the north of Jerusalem as well as a corridor of buildings running from the city center towards Ramallah.

Professor William Quandt, from the University of Virginia, admitted that a solution to Jerusalem is an immense challenge but quickly added that it is not an insurmountable stumbling block. In his attempt to make a solution potentially viable, Quandt does not advise negotiating Jerusalem as a separate issue. It should be dealt with as part of an overall comprehensive

settlement. Quandt's advice to negotiators is to begin secret negotiations as soon as possible with very few people involved. He said that neither side to the negotiations will get everything they want but the outcome will most likely reflect the facts on the ground. He said that Israel will get much of what it wants because they are the stronger party. But Israel will have to make concessions. He said that the United States should play a major role as a mediator to help shape these compromises. He said that the international community could throw its weight against the hard-liners on both sides who oppose an agreement on Jerusalem.

Refugees

Many people believe that the refugee problem is a lost cause for the Palestinian side because Israel will not accept any compromise on this issue. Israel maintains such a stand out of principled considerations. The return of the refugees would pose a demographic threat to Israeli population, and the Israelis would hold up the legitimacy of Israeli statehood to great scrutiny themselves.

According to Saji Salameh, Director of the Refugee Department in the PLO, the plight of the refugees will be tackled one day but not in the near future. If faced by a unified and determined Palestinian and Arab position, Israel will eventually be forced to change its strategic policy. The legitimacy for the return of the refugees is based on the UN Resolution 194 issued in 1948, which calls on the return of the refugees. Refugee compensation for their suffering and land has not been dropped. Estimation of total refugee losses is \$ 500 billion.

Terry Remple, coordinator of research study at Badil Institute, read a paper prepared by Palestinian researcher Dr. Salman Abu Sitteh. Studying the demographic structure of the Israeli population, and its geographical density, Abu Sitteh states that most of the land owned by Palestinians is still uninhabited. Some 68% of Jews (around 2,924,000 people) live on 1683 square kms in urban areas. This is approximately 8% of the Israeli landmass. Thirty percent (20% of Israelis and 10 of Arab Israelis) live in 7 % of Israel. In total, 78% of the Jewish population lives on only 15% of the Israeli land. Abu Sitteh's conclusion is that it is feasible for the refugees to return to the rural areas in the north and center of Israel and to the Negev area in the south. Their return will not have much impact on Israel's population and doesn't threaten Israel's demographic ratio. He believes that agriculture in Israel will be improved. His analysis is based on two possible scenarios on the return of refugees from Lebanon and Gaza Strip.

Water

Water is a major obstacle without a feasible solution because there is a scarcity of water resources. Desalination of the seawater or building a channel to bring water from Turkey looks unfeasible and very costly. Both sides are facing the threat of severe shortages in the next 20 years. Yet Palestinians are paying the heaviest price for water scarcity today. Israel pumps 50% of its

total consumption from three aquifers from the West Bank. Needless to say that a large degree of destruction can be easily observed in the hundreds of villages which have no pipe network and must buy their drinking water from truck-driven tanks. Palestinians have been banned for decades from constructing artesian wells deep enough to access their own water. According to the Oslo Accords, Palestinians are not allowed to dig wells without permission from Israel—even in areas now in their control!

Israeli control of water resources has deprived the Palestinians from achieving significant development in agriculture and industry. These sectors remain backward. Palestinian economic dependency has increased. The assumption is that Palestinians have the right to demand compensation for 32 years of water losses.

The head of the Palestinian Water Authority, Fadel Kawash, estimates that this compensation, for both direct and indirect water damages and losses to the Palestinian economy is an incredible sum of money.

Thomas Stauffer, from Washington, D.C., calculated that Palestinians might ask for 4.4 -13.2 billion dollars for water losses. The costs of pipe installations, drilling, digging, etc, may be deducted. He stressed that Palestinians, even after receiving compensation, should not lose their rights as owners of water resources.

Other academics suggested that the first compensatory payment to the Palestinians should be used by all to find a regional solution to the Middle East water crisis.

Assessment of the PLO's Role under Autonomy

As its name suggests, the Palestinian Liberation Organization was founded in 1964 to achieve two goals: to liberate Palestine and to represent the Palestinian people. The PLO, which is an umbrella organization comprised of several factions, has been suffering divisions within its ranks for many years—long before the Oslo Accords were signed. The cause of these divisions centered on differences in tactics and ideology. Autocratic leadership and political corruption have also been contributing factors to these splits within the organization. Arab countries often interfere in PLO politics by creating groups or supporting individuals who work as stooges for the Arab regimes within the PLO. The division has been widened since the signing of Oslo. Factions such as the Popular Front and the Democratic Front for the Liberation of Palestine have opposed the Oslo Accords believing they will not achieve the national aspirations that the PLO is struggling for. However, key-leaders of the PLO however have moved from Tunis to the West Bank and Gaza Strip. Among them are a number of high-ranking officials from the opposition groups. The PLO's executive committee members have merged with the PNA cabinet.

The role of the PLO was a hotly debated subject at the conference. The strategic advisor to President Yasser Arafat, Hani Al Hassan, concluded it is

not clear when the work of the PLO ends and the work of the PNA begins. He elaborated by saying that because of the absence of bold opposition groups in Palestinian politics, the PLO must take up the slack and carry out two roles: to build democratic institutions, and to accomplish the liberation of the land. There is no demarcation now between the PLO and the PNA.

The head of the Political Committee at the Palestinian Legislative Council, Ziad Abu Amr, was blunt in his appraisal of the PLO. "The PLO is dying," he declared. "It will be finished before achieving the goals of liberation, independence and the return of refugees." Abu Amr's remarks provoked fury among some PLO leaders. Abu Amr further argued that the PNA has taken over the role of the PLO. "The relationship between the PNA and the PLO has become one of tacit rivalry," said Abu Amr. He gave the example of duplications in institutions to back his view. The PLO has an executive committee and the PNA has a cabinet. The first has a parliament and the second has a legislative council. The PLO has the National Fund and the PNA has the financial ministry.

Abu Amr went on to say that the opposition groups within the PLO are weak and ineffective and are contributing to its demise. He concluded that the PLO will end up functioning as an organization in the style of Israel's Jewish Agency; they will have the limited role of representing the Palestinians in exile.

Political parties in Palestine

The key question is should the PLO factions turn themselves into political groups? The faction leaders who debated this issue at the conference could come up with no convincing answers. They believe that the goal of national liberation is still valid (even though the PNA has banned armed struggle against Israel) and they believe in the goal of a civil society run under a democratic system. But their lack of experience in building such a society because of their military background, render them unable to create democratic institutions such as political parties and a functioning judiciary system etc.

Hamas representative Hasan Yousef was clear on stressing the goal of Jihad against Israel. Another key question is whether these factions should participate in the PNA or not. In fact, some groups did participate. Others like the DFLP and PFLP are refusing for political considerations. Secretary-General of the Popular Struggle Front, Samir Ghoushe, was minister of labor but he resigned.

"I participated in the Authority because I wanted to build a democratic society where the sovereignty of law would prevail," Ghoushe said. "We have corruption instead. I argued that all the ministers accused of corruption should be tried. This didn't happen. I said that the PLC should vote no confidence in the government. There was no such vote. I resigned because I refused to be a participant in embezzlement."

Security and Citizens Rights

In a society governed by the sovereignty of law, guaranteeing basic rights for all individuals, everyone should stand equal before the law. But others argue that national interest and the struggle for independence, requires the sacrifice of individual rights that may stand as an obstacle. This is basically the argument raised by the Palestinian security forces when they arbitrarily violate laws. At the conference, representatives of civil society argued against such logic. They accused the security groups in Palestine of taking the law into their own hands.

PLC member Azmi Shuaibi said that the PLC was unable to question the security groups on specific charges because President Arafat banned such questioning. Shuaibi said that the security groups have no law and they take orders only from the President. Shuaibi also accused the security forces of becoming involved in shady business dealings. "The Preventive Security is selling sand," Shuaibi said. "The group has a role in collecting customs duties and taxes." Shuaibi stated that even political parties are not immune, citing the example of the Military Intelligence raiding the Fatah offices in Ramallah.

Former head of the monitoring committee, Kamal Sharafi, added that security people have received no training on methods of questioning. Many of them are ex-prisoners. They imitate the Israeli interrogators who brutalized them years before. The average security person has no limit on what he can and cannot do according to regulations. All of this contributes to a state of lawlessness. "Once I asked Jibril Rajoub, head of the Preventive Security: 'What is the law you are practicing?' He said 'it is the law of national devotion'."

The present head of the monitoring committee at the Legislative Council, Hasan Khreisheh, told the audience that the security forces, under Israeli pressure, arrest people for political reasons. "The security groups have closed local private TV stations," Khreisheh said. "They have arrested journalists. The state security court holds its sessions secretly at night and issue sentences in five minutes. The accused can't appeal the verdicts." Within the same context, lawyer Adnan Abu Leila said that security forces are involved in lawless offences. "Who sells the weapons in the street?" he asked. "Who deals in the sale of rotten food? Why do the security forces act as a power above the law? The courts issue verdicts, and no one implements them. The judges make decisions, but someone asks them to change their decisions and they do."

Colonel Muhammad Al Masri, head of the political department at the Preventive security stated: "The offences committed by some security individuals do not reflect systematic policy in the PNA." He also said that the police forces are comprised of former fedayeen (guerilla fighters) and former activists in the uprising. These people are not qualified but they received training courses. He denied the charge that the security forces arrest people after pressure from Israel. He also justified arrests without legal warrants because the conflict between Israel and Palestinians is not yet over. "The Israeli intelligence have planted collaborators in our land," Al Masri said.

“They carry out activities including assassinations. We have arrested many of them. Do you expect me to wait for a legal warrant, Meanwhile, the bird will fly off.”

The Judicial System

The Palestinians have inherited various elements and codes from the Ottoman era. The British Mandate in Palestine ratified the application of all those laws. The British style of rule made its imprints on the judicial system when the West Bank became part of Jordan in 1948. In the Gaza Strip, the situation was different; the Egyptians enforced most of Ottoman and British laws. The Israeli occupation added several military restrictions. The judicial system was never independent during the three decades of occupation.

The Palestinian National Authority assumed power in 1994 and issued several laws. President Yasser Arafat issued a decree (No. 1) in May 1994, which stipulated keeping all the elements of the legal system that existed before June 5, 1967. This includes various legislative systems of the Ottoman and British periods, in addition to what was issued during the Egyptian administration in the Gaza Strip in 1948. Laws need to be updated. Guarantees for immunity of the judiciary should be provided. The development of courts has been halted.

“In brief, the judicial system in Palestine finds itself in an unparalleled situation among the contemporary judicial systems of the world. There is no unity in the judicial system in Palestine today,” said professor of law at An-Najah University in Nablus, Dr. Ahmed Al-Khaldi. This severely mutilated judiciary system is so evident that the head of the PNC, Salim Al Zanoun, spoke about its grave structural shortcomings. “Is it permissible to allow the judicial system to remain at a lower level than the judicial system practiced before 1958?” asked Al Zanoun, referring to the period when the Gaza Strip was under Egyptian administration. The judicial system has remained without a chief judge and attorney general for more than a year. Only recently, these positions were filled by the PNA. Zanoun raised doubts whether these appointments will constitute any major changes. “A new attorney-general was appointed. I hope he will not be intimidated. I hope he can defend his job,” said Zanoun.

Ghazi Al Atra, the High Court judge in Ramallah, noted that the Palestinian judicial system is not independent and is highly underdeveloped. “Individuals and groups interfere in it. They usurp its role, and levy pressures on the judicial authority. Its independence has been shattered and its fairness, neutrality, and correctness in judgement are in doubt,” said Al Atra. In addition to these major defects, the judicial system lacks almost everything for a smooth functioning branch of government. “It is incredible that 33 judges have to deal with 103,000 cases in the north of the West Bank,” Al Atra complained. He said that computers have yet to be introduced in the courts. “The executive power has allocated no budgets. The salaries of lawyers and judges are low. If powerful individuals and officials were parties to a case in dispute, it would be difficult for the judge to make a fair decision. If there is no guarantee

or protection for the judge, his verdict will reflect the balance of forces and interests. Powerless people will find no protectors.”

In this chaotic situation, lawyers cannot perform their jobs because of the interference of security groups,” said Dr. Walid Mustafa, the dean of student affairs at Bethlehem University. He cited cases that have lasted for years in the courts. Most lawyers prefer not to work at the courts because they make six times the salary of a government judge where they work in private offices.

Mustafa also criticized the state tribunal. “ We can understand the need for custom or tax courts but not a state security court,” he said.

The Legislative Council

Since the Palestinian Legislative Council commenced work in 1995, the PLC has discussed 44 laws covering all spheres of life. Eighteen laws were finalized and approved in the third reading. But President Yasser Arafat has only approved two laws: the municipal elections, and the civic status law. However they have yet to be enforced. Among the most important laws, which were not approved, are the laws concerning the independence of the judicial system and the Basic Law, which regulates affairs of self-rule.

Professor of Political Science at Bir Zeit University, Ali Jerbawi, said that the Declaration of Principles does not oblige the president to approve PLC legislation. “There is nothing in the DOP which commits the President to approve laws,” said Jerbawi. “There is nothing in the Basic Law which compels the Executive Power to implement laws. There is no legislative process.” Unlike the PLO’s bureaucratic establishment, the PLC has practiced a rebellious role at its headquarters where the President has been openly criticized. However, they remain inefficient in enforcing their resolutions. “The majority of their 88-strong members are members in Fatah, which is the ruling party,” concludes Jerbawi. “In the end the president is able to manipulate the council the way he wants.”

Minister of Parliament Affairs Nabil Amr made a similar conclusion: “It is difficult to institutionalize the relationship between the Legislative Council and the Executive Power. There will be no systematic, legal, and political separation between the two authorities. There is an authority, which makes laws, and another authority that does not implement them. The judiciary power is not qualified to work under this situation. There is a leadership that suffers from a lot of contradiction. We are still in the beginning, but we’ve had a lot of things that we could’ve done but we were unable to do so.”

Non Governmental Organizations

The non-governmental organizations are deeply rooted in Palestinian history. Many of them have been operating for more than one hundred years. Under the Israeli occupation, their role became more important in providing health and educational services to underprivileged Palestinians. These organizations rapidly grew under the Israeli occupation. Some of them were not well organized and did not practice accountability and transparency.

In May 1999, the PLC issued a law to organize their activities. Arafat has not yet approved it. The dispute between the Executive Authority and the non-governmental organizations was and still is over registration. The law approved by the PLC suggests registration should be done at the Ministry of Justice, but Arafat wants the registration and licensing to be done at the Interior Ministry in order to keep them under the control of the security forces.

The authority recently began a campaign to probe into the work of non-governmental organizations. The PNA's cabinet appointed a ministerial committee and after a week of discussion, the committee recommended making a law that would regulate the work of the non-governmental organizations.

In his lecture on the subject, Dr. Mustafa Barghouti, head of Medical Relief Committees in the West Bank praised the role of the non-governmental organizations. He said that 60 % of health care services are provided by these organizations. All services provided to the handicapped are executed by the private non-governmental organizations, in addition to educational programs and 1200 kindergartens. Hence, he noted "They should not be placed all in one basket."

However, the non-governmental organizations are only one segment of civil society. Political parties, trade unions, the parliament, the free press, and an independent judicial system are major components of the civil society.

Izzat Abdel Hadi from Bisan Center for Research and Development spoke about the need of independent non-governmental organizations, whose job is to control the work of governments and consolidate people's participation in social and developmental activities. "Without a law defining the relationship between these non-governmental organizations and the state, the relationship will not be institutionalized," he said. He opposed registration at the Interior Ministry. "Most non-governmental organizations will be scared to do this registration in the fear they will be placed under the jurisdiction of the state."

Promoting democracy

Since the practical elements for promoting democracy are not available, there are at least theoretical elements stipulating that the Palestinian system should be based on democracy and political pluralism.

In this context, Dr. Amin Maki Madani, an advisor for human rights said that the 1988 PNC's Declaration of Independence defines the shape of the future Palestinian state, not only in the national sense but also in the institutional sense. He believes the state will be governed by a democratic system. He said that the Basic Law suggested by the PLC speaks about the same principles. Madani suggests that the Palestinian constitution in the making should include this stipulation. He went on to suggest a constitutional court as part of the judicial system to arbitrate on disputes between individuals and the Executive Authority, and to ensure the implementation of laws.

Dr. Adnan Amr, who is a specialist in High Courts affairs, suggests a special independent body should work on drafting the constitution. The constitution

provides systems for electing the president, the executive power and making sure that basic human rights are respected.

Four years of experience

The past four years were not years of glory. “We have inherited all the negatives of the three decades long Israeli occupation,” said cabinet ministerial secretary, Ahmed Abdel Rahman. “We have the Declaration of Principles, which have a lot of constraints. Our long history of struggle has saved us from the anger of the people,” he said. “But certain achievements can not be ignored. This historic change (the return of the PLO and President Arafat to Gaza Strip) in 1994 was a positive one. Our people have achieved its unity on the homeland,” he said.

The Palestinian Authority has constructed institutions, ministries, and police. “It was not easy.”

The conclusion of Ahmed Qrei' “Abu Ala” is that an independent democratic state without Israeli settlements is what the Palestinian people have been struggling for. “But we will not accept a state without democracy and political pluralism” he said.

In summing up past mistakes, Ali Jerbawi makes the following analysis for the Palestinian political system:

- The political structure is connected with the charismatic character of the president who does not believe in institutionalization, and is incapable of practicing it. There is no structural framework for institutions. There are only individuals who are important not because of their efficient institutions but because of their relationships with the center of power.
- The political culture prevailing in the society does not provide the minimum for promoting and practicing democracy. Shortly after the Palestinians had elected the members of the Legislative Council, they tried to use them as mediators between the Executive Authority and the people. They wanted the PNA to approve on projects and provide jobs.

His final conclusion is not hopeful. “Under this stagnated political system, with many inefficient factions, you would discover that we have no institutions but only their mirror image. We are living in the period of the mirror image. Everything you see is not the thing itself, but its reflection.”

The importance of the conference

In his introductory remarks, well-known lawyer Jyries Khoury, head of the board of trustees of the Arab Thought Forum, said the conference had three aims: “ To probe the elements of democratic transformation, to consolidate the judiciary policies, and to reflect on human rights.” The conference has sent its own message of enlightenment. Now it is up to the powers of the society, its political parties, non-governmental organizations, the Palestinian Legislative Council, the Judiciary and lawyers, and the Executive Authority to

put the conference recommendations into practice. The ambassador of Egypt in the Gaza Strip Ahmad Fouad Raslan echoed this statement when he said “the conference is a substantiation for the vitality of the Palestinian people.”

Ideas raised at the conference

- Israeli and international interpretations for the Oslo Accords and subsequent agreements are radically different than the Palestinian interpretations. One of these is that the Declaration of Principles (DOP) does not provide a guarantee for the establishment of an independent Palestinian state by the end of the Permanent status talks.
- It is difficult for the Palestinians to liberate themselves from the constraints of the DOP. It will remain as the basis for a final status solution.
 - The DOP does not lead to an end of the presence of the Israeli army in the Palestinian occupied land.
 - The DOP gives Israel a chance to maintain its sovereignty on the state land, settlements, water sources and borders. It provides Palestinians with a chance to practice jurisdiction on the populated areas in the West Bank and Gaza Strip. The future ability of Palestinians to practice sovereignty on its land is strongly constrained by Israeli settlements and the Israeli army, which maintains its presence to protect the settlements. The DOP does not change the Israeli army ideology that says its presence is there for the protection of its citizens.
- The DOP has provided a ground of legitimacy to settlements and makes it difficult to remove them in the future.
- The DOP does not oblige the Palestinian president to implement the laws suggested by the Palestinian Legislative Council, as the formation of this institution was not stipulated in the DOP.
- The negotiations on the future status of Jerusalem should be conducted in a secretive manner, with the US as a mediator.
- The balance of forces lean toward Israel and eventually this will be reflected in the negotiations over Jerusalem.
- The Palestinian state should be demilitarized. This would save Palestinian national interests, strengthen their economy and minimize Israeli security fears.
- The Palestinian State should give a priority to foreign relations with Israel, the United States, the European Union as well as the Arab countries, especially Egypt, Jordan, Syria and Gulf States.
- The Palestinian diplomatic presence in Washington is insufficient and ineffective. It should be developed.
- The Palestinian State should demarcate its borders with Egypt and Jordan as a symbolic step towards practicing sovereignty.
- There is a feasibility of the return of refugees to their land in Palestine without endangering the demographic dominance of Jews in Israel.
- Palestinian can ask for compensation for what they have lost from the Israeli control of water resources over the last 32 years.

- The PLO and its opposition groups are suffering from a severe crisis in regard to its future role in a Palestinian state.
- The status of the security groups should be re-organized according to regulations and laws. There is a need to rehabilitate and train officers and cadres.
- The judicial system is suffering from a severe crisis because it is not independent from the executive power and is very poor in staff, equipment and budget. Judges are overwhelmed by thousands of cases. Different contradictory laws are practiced.
- As yet, there are no well-defined laws that govern the work of NGOs. IN the past, there was no governmental monitoring of their activities. Now, there is an attempt by the Executive authority to put these organizations under immoderate control without sufficient justifications. Many of these organizations play a crucial role in the society, especially in the spheres of development, education and health.
- The possibility of developing a democratic system in Palestine is available in the 1988 National Council's declaration of independence and also in the basic law. The declaration of independence talks about a democratic system and a sovereignty of laws.
- The political system in the Palestinian National Authority is centered on its charismatic president. He does not believe in an institutionalization. He is incapable of practicing institutionalization. Most of the government institutions have no efficient organizational structure. Individuals, and their relations with others, are much more important than the institutions.