

# Reclaiming Self-Determination

In his iconic 1974 “gun and olive branch” speech to the United Nations General Assembly, Palestine Liberation Organization chairman Yasser Arafat addressed “the roots of the Palestine question,” declaring, “Its causes do not stem from any conflict between two religions or two nationalisms. Neither is it a border conflict between neighboring states. It is the cause of a people deprived of its homeland, dispersed and uprooted, and living mostly in exile and in refugee camps.”<sup>1</sup> How ironic, then, that the endless “peace process” that began more than two decades ago has reconceived the Palestine question as little more than a border dispute between Israel and a putative Palestinian state. The “roots” were first reduced to a laconic list of “final status issues”—borders, settlements, Jerusalem, and refugees—and then gradually buried. Any commitment to self-determination, in principle or in practice, has been lost.<sup>2</sup>

Although they have rarely been formally discussed, it has long been conventional wisdom in peace-process circles that the “final status” issues have already been effectively settled, largely according to Israel’s requirements (we have heard *ad nauseam* the refrain “everyone knows what a final settlement will look like”). The United States and its handpicked Palestinian leaders have accepted, for instance, that the large Israeli “settlement blocs” housing most of the settlers will remain where they are in the West Bank, often on land violently seized from Palestinian communities. The same formula has been adopted for Jerusalem, as per the so-called “Clinton parameters” set out by the former president just before he left office: Israel would get

“Jewish neighborhoods” and the Palestinian state would get “Arab neighborhoods.” What this would mean in practice is that Israel would keep everything it has illegally annexed and colonized since 1967, and Palestinians might get some form of self-rule in whatever is left—which is shrinking daily as Israel aggressively escalates its Judaization of eastern occupied Jerusalem. While everything east of the 1967 line is divisible and “disputed,” the same does not apply to the west. Palestinians are never entitled, for example, to seek the return of the West Jerusalem neighborhoods Israel ethnically cleansed and colonized in 1948.<sup>3</sup> The “peace process” has actually created an incentive for Israel to accelerate its colonization of the West Bank, including Jerusalem, because it knows that whatever is left uncolonized automatically becomes the new maximum ceiling of what the United States and other peace-process sponsors would contemplate as Palestinian demands. Thus there was no contradiction between Secretary of State Kerry’s “breakthrough” announcement of the resumption of direct negotiations between Israel and the Palestinian Authority “without preconditions” in July 2013, on the one hand, and, on the other, Israel announcing a few days later a massive increase in the number of settlements eligible for special government funding, a policy aimed at attracting more settlers.<sup>4</sup>

Similarly, the refugee question has been virtually “settled” as well. Palestinian Authority–appointed chief negotiator Saeb Erekat revealed in a paper he circulated in late 2009 that Fatah leader and acting Palestinian Authority president Mahmoud Abbas had proposed to Israel that no more than fifteen thousand Palestinian refugees per year, for ten years, return to their original lands in present-day Israel.<sup>5</sup> According to Erekat, then–Israeli prime minister Ehud Olmert had countered with an offer of one thousand refugees per year for a period of five years. In other words, the parties had already agreed to abrogate the fundamental rights of millions of Palestinian refugees and were haggling only over the difference between five thousand and one hundred and fifty thousand, or less than 3 percent of the Palestinian refugees registered to receive services from UNRWA. These concessions were confirmed by the Palestine Papers.<sup>6</sup> So what is left to negotiate?

Yet, despite these concessions, even now one still hears arguments that a two-state solution can still provide Palestinians with “sovereignty” in a state—and therefore “self-determination.” So let us imagine, for the sake of argument, the remote scenario that Israel would agree to a Palestinian state in the West Bank, including East Jerusalem and the Gaza Strip, that satisfies official Palestinian positions and provides for a state no more or less sovereign than any other. The question that then arises is: Does this sovereign state provide for the self-determination of the Palestinian people? Does it restore and guarantee their fundamental rights? As I argue in

this chapter, the answer is no. And this underscores the need to distinguish the limited goals of sovereignty and statehood from that of self-determination. Sovereignty is exercised by a state through the fulfillment of commonly agreed-upon functions: effective control of territory, borders, and resources and maintenance of political independence, among others. Self-determination is exercised by a people legitimately inhabiting a given territory. Self-determination might result in a sovereign state, but it might not. It is fundamental to understand this difference and to recognize that self-determination remains at the heart of the Palestinian struggle.

## Understanding the Principle of Self-Determination

The principle of self-determination as it is understood today was enunciated by US president Woodrow Wilson toward the end of World War I. In Wilson's words, "the settlement of every question, whether of territory, of sovereignty, of economic arrangement, or of political relationship" is to be made "upon the basis of the free acceptance of that settlement by the people immediately concerned and not on the basis of the material interest or advantage of any other nation or people which may desire a different settlement for sake of its own exterior influence or mastery."<sup>7</sup> Put simply, territories and people could no longer be shifted around between empires and sovereigns like pieces on a chessboard. Any political arrangements—particularly in territories undergoing decolonization—had to enjoy the freely given consent of those who would have to live under them. The principle was no sooner enunciated than it was effectively violated in many cases after World War I, particularly in Palestine. It would be decades before Wilson's conception was extended to include lands and peoples colonized by Europeans, among others. However, the principle of self-determination gained ground and was later enshrined in Article 1 of the United Nations Charter and other instruments, assuming particular importance in post-World War II decolonization.

Tomis Kapitan, a philosophy professor at Northern Illinois University, provides an excellent summary of the history and application of this principle. He argues persuasively that, as conceived and practiced, the right of self-determination belongs not to national groups as national groups, but to the legitimate residents of any region whose status is unsettled, for example because it was previously colonized or recently liberated from foreign domination, or which is endangered because the current sovereign has persistently failed to protect or has itself consistently violated the fundamental rights of the legitimate residents. The residents of regions meeting these criteria "have a right to determine their political future either by constituting

themselves as an autonomous political unit, or by merging with another state, or by dissolving into smaller states.”<sup>8</sup>

Palestine, as Kapitan observes, “is the only territory placed under a League of Nations mandate in which the established inhabitants were not granted this privilege.”<sup>9</sup> Instead, Great Britain, the mandatory power, agreed to partition the country over the unified opposition of the overwhelming indigenous-Arab majority and aided and abetted the buildup of settler-colonial Zionists from other parts of the world, who eventually carried out a violent takeover of much of the country. British officials from Balfour to Churchill explicitly understood and articulated that in order to support and fulfill the Zionist program, as they were committed to doing, the principle of self-determination, as even they understood it, could not be applied to Palestine.<sup>10</sup> Arafat noted in his 1974 speech that, by endorsing partition with Resolution 181 of 1947, “the [UN] General Assembly partitioned what it had no right to divide—an indivisible homeland” and thus contributed to the denial of the right of self-determination. No form of consultation through referendum, plebiscite, or any other democratic process was ever carried out or even contemplated.

Today, Kapitan argues, the legitimate residents of historic Palestine include, at minimum, all Palestinians living in any part of the country, as well as all refugees outside the country. “Because expulsion does not remove one’s right of residency, then these Palestinians also retain residency rights in those territories from which they were expelled.”<sup>11</sup> The establishment and maintenance of Israel as an exclusionary state over much of historic Palestine does not extinguish these rights. Thus, the Palestinian people collectively retain “an entitlement to being self-determining in [historic Palestine] . . . not *qua* Palestinians, but *qua* legitimate residents. That force was used against them has not erased the fact that they are, and are recognized as being, a legitimate unit entitled to participate in their own self-determination.”<sup>12</sup> The peace process that began with the 1991 Madrid Conference, by contrast, has gradually excluded the majority of Palestinians from any role in determining the future of their country. In the eyes of peace-process sponsors, the “Palestinian people” now constitutes, at most, residents of the West Bank and Gaza Strip, though even Gaza now finds itself as marginalized as the Palestinian diaspora. Along with sidelining most Palestinians, peace-process discourse has also redefined and limited Palestinian horizons in a manner compatible with Israeli demands. In his famous June 2009 speech at Cairo University addressing Muslims around the world, for instance, President Obama declared, “America will not turn our backs on the legitimate Palestinian aspiration for dignity, opportunity, and a state of their own.” This formula garnered applause for mentioning a “state,” but what it notably lacked was any mention of Palestinian rights, particularly

those of refugees. In the speeches of Obama and other international officials, vague terms such as “dignity,” “aspirations,” and “opportunity” have replaced any talk of enforceable rights, international law, or justice. These exclusions and obfuscations have allowed a cause of liberation, decolonization, and self-determination to be reduced to little more than a “border dispute.”

## Palestinian Self-Determination and the Rights of Israeli Jews

Could Palestinians exercising the right to self-determination throughout historic Palestine be compatible with eventual cohabitation between Palestinians and Israeli Jews? If so, on what terms? Omar Barghouti, a founder of the international Palestinian BDS campaign, has argued strongly against recognizing Israeli Jews as forming a national community in Palestine. Barghouti warns that “recognizing *national* rights of Jewish settlers in Palestine cannot but imply accepting their right to self-determination.”<sup>13</sup> This would, he argues, contradict “the very letter, spirit and purpose of the universal principle of self-determination primarily as a means for ‘peoples under colonial or alien domination or foreign occupation,’ to realize their rights.” Such recognition, he predicts, “may, at one extreme, lead to claims for secession or Jewish ‘national’ sovereignty on part of the land of Palestine.” There can, Barghouti argues, be no “inherent or acquired Jewish right to self-determination in Palestine that is equivalent, even morally symmetric, to the Palestinian right to self-determination” as this would blur “the essential differences between the inalienable rights of the indigenous population and the acquired rights of the colonial-settler population.”

This is an important point: Israel insists that an entity called “the Jewish people” has the right to “self-determination” in Palestine and the right to express that self-determination by creating and maintaining a state that discriminates against Palestinian citizens and other non-Jews living in it, as well as Palestinians living outside it, by denying their return solely on the grounds that they are not Jews. This is a clear violation of the rights of Palestinians, whose citizenship was recognized as a matter of international law in the 1924 Treaty of Lausanne and in the 1925 Palestinian Citizenship Order issued by the British Mandate authorities. As Susan Akram, a professor of international law at Boston University, noted in her speech at the One-State Conference at Harvard University in March 2012:

Jewish claims of nationality and self-determination must be clearly distinguished from the claims of Israeli Jews to nationality and self-determination as a matter of international law. Israel proclaimed her state on behalf of “the Jewish people,”

a concept and definition that grants rights to and within the state on an extra-territorial basis. Israel enacted its citizenship law of 1950 to grant “nationality” to Jews only, repealing the Palestine citizenship law [of 1925]. Israel’s claim of a state on the basis of exclusive and discriminatory rights to Jews has never been juridically recognized—in other words, the concept of “the Jewish people” as a national entity with extraterritorial claims has never been recognized in international law. The people entitled to national status in the “Jewish state” defined under [the 1947 United Nations partition resolution] 181 included both Jews and Palestinians already residing in the territory, all of whom were to be granted equal rights under a constitution to be in force in both new states (the “Jewish” and “Arab” states contemplated in the resolution) prior to UN recognition. The United Nations, including its treaty bodies and the International Court of Justice, has repeatedly called Jewish-preferencing under Israeli citizenship, property, and other laws, a violation of the UN Charter and human rights treaties. In other words, there has been no recognition of the “Jewish people” as a nationality concept that grants self-determination. Nor is there legal consensus that Israel has a right to maintain a legal-preferencing system that grants superior rights to Jews as against other citizens.<sup>14</sup>

In chapter 2, I argued that Israel has no “right” to exist as a “Jewish state” because that “right” can only be exercised by violating the fundamental individual rights of Palestinians. The additional point to be made here is that Israel’s claim of self-determination for “the Jewish people” is not only unsupported in international law, but violates the well-established collective self-determination rights of the Palestinian people as a whole.

Yet the concept that a community established through settler-colonialism is entitled, under specific conditions, to participate in self-determination—not as a distinct national group but as legitimate residents—accords with precedents and international law in other decolonizing countries, including South Africa, Namibia, Northern Ireland, and Mozambique. Under Kapitan’s formulation, Israeli Jews could be entitled to participate in self-determination not as a distinct national group, but only to the extent that they become legitimate residents in the context of complete decolonization. Barghouti spells out conditions under which colonial settlers could be accepted by the indigenous population as legitimate residents, as citizens in a society “free from all colonial subjugation and discrimination.” It would require the settler-colonial community, in this case Israeli Jews, to relinquish their colonial character and settler privileges and accept “unmitigated equality,” including the right of return and reparations for Palestinian refugees. This is, moreover, “the most magnanimous offer any indigenous population, oppressed for decades, can present to its oppressors.”<sup>15</sup> From a legal and a political standpoint, Israeli Jews would have to

relinquish their legally enshrined and socially normalized privileges, the way whites did in South Africa. It must be emphasized—especially in light of the incomplete process of decolonization in South Africa and the New Jim Crow in the United States—that decolonization must include comprehensive programs to redistribute wealth, income, and power while offering protection to all and working to build new political coalitions, so that the existing caste system does not persist in pernicious ways even under the guise of liberal democracy.

It is possible to begin to lay out principles that can guide such an approach. Inspired by the South African Freedom Charter and the 1998 Belfast Agreement, a group of intellectuals that included Palestinians and Israelis set out similar principles in the 2007 One State Declaration:

The historic land of Palestine belongs to all who live in it and to those who were expelled or exiled from it since 1948, regardless of religion, ethnicity, national origin or current citizenship status;

Any system of government must be founded on the principle of equality in civil, political, social and cultural rights for all citizens. Power must be exercised with rigorous impartiality on behalf of all people in the diversity of their identities.<sup>16</sup>

Mindful that decolonization extends far beyond notions of formal equality and representation, the declaration insists that “there must be just redress for the devastating effects of decades of Zionist colonization.” Finally, the notion that Israeli Jews can be legitimate residents on the condition that they shed their colonial character and privileges derives directly from the traditional conception of Palestinian self-determination, which is inclusive and rights-based, not ethnic or religious. Indeed, Arafat embodied this in his 1974 UN speech, declaring that “when we speak of our common hopes for the Palestine of tomorrow we include in our perspective all Jews now living in Palestine who choose to live with us there in peace and without discrimination.”

## Focusing on Self-Determination

Placing self-determination back at the center of the Palestine question compels us to formulate a strategy that addresses the rights of all segments of the Palestinian community, inside and outside historic Palestine, and which ensures their right to participate in the struggle for and enjoy the fruits of self-determination. It requires setting out an agenda that addresses the three historic and current sources of injustice, the “roots” of the conflict. Such an agenda, as stated in the widely endorsed 2005 Palestinian call for BDS, demands that Israel recognize the Palestinian people’s

inalienable right to self-determination and uphold international law by ending its occupation and colonization of all Arab lands; dismantling the apartheid wall in the West Bank; recognizing the fundamental rights of the Arab-Palestinian citizens of present-day Israel to full equality; and respecting, protecting, and promoting the rights of Palestinian refugees to return to their homes and properties, as stipulated in UN Resolution 194.<sup>17</sup>

These three demands do not dictate a specific political outcome, but it is clear that the limited sovereignty that a West Bank–Gaza state would achieve addresses at best only the first point and cannot possibly meet the minimum requirements of Palestinian self-determination. Therefore, the formula “everyone knows” is the answer—a state on a fraction of Palestine for a fraction of the Palestinian people—would only perpetuate the denial of self-determination for the vast majority of Palestinians, no matter how “sovereign” that state. Once we accept nonracial equality as a principle, it becomes easier and more logical to conceive of an outcome involving a single democratic state encompassing Palestinians and decolonized Israeli Jews.

After six and a half decades, Israel is no closer to quieting the challenges to its legitimacy, nor could an agreement with an unrepresentative Palestinian leadership ever do so. Neither the passage of time nor declarations cajoled, bullied, or bought out of successive leaders of the Palestinian national movement have settled the questions of Israel’s creation or its demand to be recognized as a “Jewish state” with the right to discriminate against Palestinians. Palestinian claims for self-determination have not been extinguished, nor have Palestinians generally pursued them with any less vigor. Indeed, Netanyahu’s demand that Palestinians must accept Israel’s “right to exist as a Jewish state,” is an implicit recognition that the Zionist project can never enjoy legitimacy or stability without the active consent of the Palestinian people. Palestinians have steadfastly resisted granting such recognition because to do so would negate their rights and indeed threaten their very existence. There has never been a more opportune moment for Palestinians to put forward their demands for decolonization, equality, and justice in clear, principled, visionary, and inclusive terms. The tenacious resistance on the ground, in all its legitimate forms, and the growing global BDS solidarity movement need to be complemented by a program worthy of such efforts and sacrifices. Our energy should be invested in developing support for such a program rather than worrying about the minutiae of moribund negotiations which, long experience has shown, cannot result in the restoration of Palestinian rights. It is onto this new territory that the battle for justice in Palestine is now decisively shifting.