

A Plan for Palestinian Statehood

In 1948, following the United Nations' call for Partition of Palestine, the State of Israel was proclaimed. The Arab world rejected partition, and in the war that ensued, the area that was to have been a Palestinian state fell under the control of Israel, Jordan, and Egypt. In the 1967 War Israel gained control over the entire area. The Palestine Liberation Organization (PLO) came into existence dedicated to the destruction of Israel. Today it seeks peace with Israel, a peace that embodies the two-state solution, the original ideal behind the Partition Plan. In December of 1987, in the occupied territories of the West Bank and the Gaza Strip, the Palestinians launched a massive and sustained Uprising which continues to this date. Thus far hundreds of Palestinians have died and thousands have been wounded and imprisoned.

Yet it is not obvious that the Uprising has moved the Palestinian people any closer to attaining an independent state. The present strategy of the PLO appears to be to put pressure on the United States to force Israel into an international conference, from which will emerge a negotiated agreement creating a Palestinian state. But it is exceedingly unlikely that Israel will ever agree to a Palestinian state. The failure of Palestinian hopes on this point is likely to lead only to a major upsurge in violence, spiraling toward disaster for both Palestinians and Israelis.

The present strategy for attaining an independent Palestinian state embodies a model that needs to be challenged. That model is that statehood emerges from negotiated agreements. Yet consider how Israel itself came into existence. Following the United Nations Partition Resolution of 1947, the Israelis simply declared the existence of the State of Israel. Indeed, they made that declaration contrary to the urging of the U.S. Department of State. They did not obtain advance Arab or Palestinian approval. They did not negotiate with the Palestinians. They proceeded unilaterally and gradually secured international recognition, admission to the United Nations, and effective control of territory.

There are important analogies and disanalogies here for the Palestinians. Today's military and political realities totally preclude achieving statehood through force of arms. But on the other hand, today's political, moral, economic, and psychological realities offer new alternatives within the same basic concept: The Palestinians do not need prior Israeli approval to bring a state into existence, nor should they cede such power to Israel. An alternative strategy is possible.

Declaring a State

Here is how the Palestinians might proceed. The PLO simply issues a declaration of independence and statehood, announcing the existence of the State of Palestine, in the West Bank and Gaza. As its final act, the PLO proclaims its transformation into the provisional government of the State of Palestine, pending the possibility of free elections by the Palestinian people.

Given the fact of Israeli military occupation of the territories, one is likely to scoff at the idea of a Palestinian declaration of statehood. The cat may call himself a king, but this does not make him so. In order to understand the logic of the unilateral declaration, it is important to think through exactly what a state is and to understand how states come into existence.

A territorial state exists when there is a piece of land over which some body makes a claim to sovereignty, a claim that is accepted by the people of that territory and by the other states of the world.

To gain control of a territory is essentially to gain control not over the actual land (no ruling body can physically occupy every square inch of territory), but over the people who occupy that land. Ultimately, it is to gain their acceptance of one's rule-making authority. States are social inventions, political entities. Their existence is dependent on the attitudes and behavior of people. When a state exists, its laws are broadly obeyed and followed, even in the immediate absence of armed authority. The motives for obedience may range from fear to loyalty; the key point is that citizens undertake a generalized obedience. They respect the state's laws and follow its conventions for, say, what ceremonies will count as legal marriage and what pieces of paper will count as legal currency. Once deposed by the people, either overtly or through collective disobedience and disregard, what was once the government of a state is now a band of individuals. Even if they are heavily armed, if they are able to control the people only at gunpoint, they are not a government. They are brigands, criminals, outlaws, foreign soldiers. They are not a state.

The Uprising has already meant that the Israelis have lost effective control of the territories. The unilateral declaration of statehood of the new State of Palestine will essentially be the establishment of a formal relationship between the people of Palestine and the entity that they accept as their government. Because the State of Palestine will have no significant power to

coerce obedience from the Palestinian people, its very existence of necessity will depend on the free consent of the people themselves.

The acceptance of one state's claim of sovereignty by other states can be expressed in many ways. On one extreme, it can involve formal recognition of the state, symbolized by the exchange of ambassadors. On the other hand, outside acceptance may lie merely in the absence of any actual challenge to its rule within the territory. The new State of Palestine should embark on a worldwide diplomatic effort seeking international recognition and admission to the United Nations.

States. Moreover, the viability of a Palestinian state depends on its ability to mollify even irrational Israeli fears on this score. Jewish fear, combined with the realities of overwhelming Israeli military prowess, guarantees that if the project of building a Palestinian state becomes part of a project of destroying Israel, not only will it fail, but catastrophe will follow. Put bluntly: there can be no Palestinian state unless it is truly and deeply prepared from the outset to live at peace with Israel and can convince the Israelis of its peaceful intent. Demilitarization is one good first step toward this goal.



Photo by Beverly Orr

Palestinian children display their flag.

The Peace Initiative

The first step of the new government should be to proclaim that the State of Palestine is at peace with the State of Israel; it should offer Israel mutual recognition, symbolized by the exchange of ambassadors. It should declare that the State of Palestine will not maintain an army. These two provisions, a unilateral declaration of peace and a self-imposed demilitarization, are closely related. They are essential not only for winning worldwide support and eventual Israeli withdrawal, but also for the long-term preservation of peace in the region.

Why must the State of Palestine undertake a peace initiative, instead of harboring hopes of establishing a base for a military offensive against Israel? For one, dreams of a Palestinian victory against Israel can never be more than the wildest fantasies. Israel possesses one of the most advanced military technologies in the world, backed by the military might of the United

A demilitarized State of Palestine will have to rely on outside powers for some of its national security needs, but in this it will not be unique. For example, Costa Rica by its constitution does not have an army, and it is the most prosperous and peaceful nation in Central America.

A Ban on Terrorism

The new State of Palestine should next issue a proclamation forbidding all acts of terrorism and announcing penalties for any violations.

From its inception the Palestinian cause has been harmed by the terrorism issue. For the average Israeli or American Jew, the association of the PLO with terrorism is so automatic that rational discussion of policy toward the PLO has been impossible. It is absolutely essential that the new state start off clean on this score. The rejection of terrorism is critical for relations with Israel because of the potent symbolic connection be-

tween terrorism and the Holocaust. Terrorism asserts the primacy of the project, of the struggle, of the cause, over the everyday existence rights of ordinary people. For the remnants of a people who survived the Holocaust, terrorism is not a phony issue.

Palestinians may well raise the issue of Israeli hypocrisy on this score: The Israeli leadership itself contains, as is well known, individuals with terrorist backgrounds. But double standards abound in politics. The fact remains that it would take a rare politician, Israeli or American, who would have the courage to sit down with PLO representatives when the next day a terrorist attack on Israeli civilians could be broadcast across the world's TV screens.

Objectively, the terrorist undermines and harms the Palestinian cause. Tactics of struggle that are most removed from the taint of terrorism will simply be the most successful.

Securing Israeli Withdrawal

If Israel does not respond to the peace initiative, the Palestinians should focus on motivating Israeli troop withdrawal. How can the State of Palestine achieve Israeli withdrawal from its lands?

First it is important to see how this will *not* be achieved. It will not be achieved by exercising lethal force against Israeli soldiers and settlers. A lethal strategy will not only fail to win withdrawal, it will result in the destruction of the new Palestinian state and bring staggering suffering to the Palestinian people. For this reason, the provisional government should announce a ban on all lethally violent attacks on Israeli soldiers and settlers.

The Israelis will withdraw not because they are physically forced out of the territories, but because they are forced out politically and psychologically. A country of over four million is not physically forced to withdraw by even thousands and thousands of deaths, and before the Palestinians could inflict 10,000 deaths on the Israelis, the Israelis could inflict a million deaths on the Palestinians. Essentially all strategies are a matter of affecting the costs and benefits of alternative Israeli policies as they are perceived by Israel.

Withdrawal holds out the real possibility for the Israelis that they will achieve their deepest aims: national security, preservation of Israel as a Jewish state, preservation of democracy. Israel faces insoluble problems if it does not withdraw. What can it do with the West Bank and Gaza? If it annexes the territories, then it must either institute apartheid or it must give the Palestinians the full rights of Israeli citizens. If it does the latter, it will soon have a non-Jewish majority. Thus, Israel as Jewish and Israel as democratic are incompatible so long as Israel holds the territories.

But, despite the evident benefits to Israel of withdrawal, it will probably not be achieved until Israel has come to appreciate the high costs of continued occupation: disruption to the Israeli economy, interruption of tourism, diversion of national security resources, danger of breakdown of the Egyptian-Israeli peace trea-

ty, and so forth. In time, however, these will take their toll. If the Palestinians also hold out a credible prospect of lasting peace, Israeli withdrawal is likely.

Creating the Sinews of Statehood

The real focus of Palestinian energies should be on building the inner sinews of national life and statehood even under foreign occupation.

The new Palestinian government will become a genuine government insofar as it begins acting like one. Governments are not mere roosters crowing their existence. They have jobs to perform, carrying out the functions for which people want and need governments. Many of the core functions of government — maintaining a functioning criminal justice system, adjudicating disputes, decision making on a range of issues — can be carried on despite the presence of Israeli troops.

The form of government most suited for present conditions is one that is highly decentralized, with a great deal of power resting on the organs of local government. Thus, within each village, now operating under the framework of the new government, there can arise secretly elected local councils and boards. Their role would be to carry out the normal functions of government, such as decision making with regard to schools and local police.

In building a sense of true statehood, the new Palestinian government should pay special attention to the symbolic dimensions of a state. Certain universal symbolic features are shared by all modern governments: flags, national anthems, national currencies, stamps, and passports. The State of Palestine should have these as well.

The Palestinians already have a flag, and already it is a symbol of resistance, persistently displayed by the Palestinians and removed by the Israeli soldiers. With the formation of the new state, this will become a state flag. The creation of a national anthem will also have a unifying impact on the Palestinian people. Every act of singing the national anthem will be an act of resistance against Israeli occupation and an affirmation of the independence of the State of Palestine.

With the assistance of the Arab states the provisional government should issue a new Palestinian currency. To ensure its use and value even during the period of occupation, its conversion into dollars could be guaranteed. A small gold coin could also be introduced; its inherent value will ensure that it is taken seriously even by Israelis. And every time a transaction is paid using this coin, Palestinian statehood will be affirmed. With international cooperation, Palestinian postage stamps can be issued as well.

To symbolize the end to statelessness, the new government should promptly issue passports to any Palestinian in the world who desires one. Palestinians who are citizens of other countries should be encouraged to apply for and travel on Palestinian passports.

In these and other ways, a Palestinian state will come into being.

A Personal Postscript

Let me add a final personal note. If it seems odd that a Jew should offer his thoughts on how Palestinians can be successful in their struggle for statehood, I should state my conviction that the struggle for an independent Palestinian state is also the struggle for a humane and safe Israel, and that there can be no Judaism without a commitment to justice.

— Jerome M. Segal

Jerome Segal's working paper, "How to Create a Palestinian State and Bring Peace to the Middle East" (170 pp.), is available from the Institute for Philosophy and Public Policy for \$10.00.

Property Rights and Environmental Law

It is a commonplace that people are or ought to be free, in general, to use their property as they wish, as long as they do no harm to — and respect the rights of — others. Yet environmental laws and regulations apparently impose further duties on landowners, obliging them, for example, to maintain the integrity of landmarks and scenic areas, to refrain from filling wetlands, to preserve open space, to restore mined land to its original contours, to maintain habitat for endangered species, to allow public access to waterways and beaches, to leave minerals in place to support surface structures, and so on. State and local governments, in general, impose these duties on landowners by regulation rather than by exercising eminent domain. States prefer regulation to condemnation so that they do not have to compensate landowners for the substantial losses in market value that often accompany statutory duties and restrictions. Governments may dedicate property to public use, then, not by taking property rights through eminent domain, but by regulating those rights away and, therefore, without compensating owners for the market value of those rights.

Courts are then called upon to decide whether a statute that imposes public-spirited duties on property owners complies with the Fifth Amendment of the Constitution, which provides that "private property [shall not] be taken for public use, without just compensation." When courts sustain these statutes and ordinances, as they frequently do, local governments gain an important legal weapon for protecting the aesthetic, cultural, historical, and ecological values that often attract people and, therefore, subdividers and developers to a region. If the courts sheathed this legal weapon, however, society may have to kiss these values goodbye, since it cannot afford to exercise eminent domain to purchase the property in question, nor can it depend, except in a quite limited way, on private action in common law courts to protect these values.

When should a regulatory "taking" of property re-

quire the state to pay compensation, when not? I shall argue that compensation need not attend a regulation that takes property rights unless it also burdens some individuals unfairly to benefit other individuals. The "takings" question, in other words, may not depend simply on an analysis of property rights. Rather, it may also depend on a conception of justice.

Takings and the Police Power

In *Just v. Marinette County*, the Wisconsin Supreme Court sustained a local statute that prevented owners from using landfill and from building structures on coastal wetlands. The court held that the takings clause of the Constitution does not protect an interest, however profitable, in "destroying the natural character of a swamp or a wetland so as to make that location available for human habitation." Citizens have no claim for compensation, the court reasoned, when an ordinance restricts their use of property, "not to secure a benefit for the public, but to prevent a harm from the change in the natural character of the citizens' property."

The power to zone arises under the police power of the state, for which there is no precise definition, but which is often associated with the power to protect the health, safety, welfare, and morals of the community. The Wisconsin court argued that "it is not an unreasonable exercise of [police] power to prevent harm to public rights by limiting the use of private property to its natural uses."

In a remarkable book, *Takings: Private Property and the Power of Eminent Domain*, Richard Epstein castigates the *Just* court for its decision. Epstein observes that "the normal bundle of property rights contains no priority for land in its natural condition; it regards use, including development, as one of the standard incidents of ownership." Epstein concludes: "Stripped of its rhetoric, *Just* is a condemnation of those property rights, and compensation is thus required."