

The Importance of What Was Not In Hamas's New Political Document

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Hamas's new political document, with its ambiguous statement that "Hamas considers the establishment of a fully sovereign and independent Palestinian state, with Jerusalem as its capital along the lines of the 4th of June 1967, with the return of the refugees. . . to be a formula of national consensus" has generated a flood of conflicting interpretations. In many ways it resembles statements that came from the PLO in the years prior to the historic compromise of 1988. Such statements can be read in multiple ways. Efforts to say what they "really" mean, brings to mind the story of the three blind men, each trying to describe an elephant. The first, feeling the elephant's trunk says it is like a garden hose. The second, feeling its tail, says it is more like a snake. And the third, feeling its legs, says it is much like a tree. In truth, no one knows the real meaning of the Hamas document, not even those conflicting parties who participated in drafting the compromise document. Its real meaning will emerge only in the future, through the interaction between Hamas and the document's multiple audiences: Palestinian, Israeli, American, Iranian and Arab states.

There is however, an enormously important issue that has thus far not been commented upon, an element that was left out of the document, yet was the most important step Hamas has taken to position itself as capable of living with an Israeli-Palestinian peace agreement. I am referring to Hamas's acceptance of what initially appeared in the 2006 Prisoners' Document on National Conciliation.

The Prisoners' Document was drafted by Palestinian prisoners being held by Israel, and represented all of the major political factions. The key passage read:

"Administration of the negotiations is the jurisdiction of the PLO and the President of the Palestine National Authority on . . . condition that any final agreement must be presented to the new Palestinian National Council for ratification or to hold a general referendum wherever it is possible."

Subsequently, in negotiations between Fatah and Hamas it was reaffirmed in amended form with the specification that the referendum would include those Palestinians living in "the Diaspora." This addition, while it complicated matters, made sense because of the centrality of the refugee issue to any peace agreement.

The approach taken in this 2006 agreement, in structural form, is similar to that in the American Constitution. The power to negotiate treaties is given to the President. However, before an agreed treaty becomes binding on the United States, it must be submitted to another body and ratified. In the United States, treaty ratification requires a two-thirds vote of the United States Senate. In the Fatah-Hamas agreement there are two forms of possible ratification:

- Approval by a restructured PLO [Palestinian National Council] that includes Hamas, or
- Approval in a referendum of the full Palestinian people.

In 2006, I met with the Hamas leader, Ismail Haniyeh, who had recently become Prime Minister of the Palestinian Authority. I suggested to him that perhaps, following the American approach, it should be the Palestinian Parliament, where Hamas held a newly elected majority, that should decide on ratification. He rejected that approach, something I interpreted as his not wanting to put Hamas in a position where a peace treaty could go into place only if Hamas agreed. Far better for Hamas, to oppose it, but allow the decision, Yea or Nay, to be made by the people themselves.

"Ratification-by-referendum" will confer real legitimacy in a way that even a reformed PLO would not, and given that the refugee issue will be central to any proposed agreement, it offers direct engagement with the people most affected. Its importance cannot be overstated:

- It provides a coherent mode of Palestinian governance, without having to establish a unity government. Thus, it allows Fatah and Hamas to remain alternative political parties with very different policies, without having to play verbal games that paper over very

real differences. In relation to negotiations, Hamas plays the role of an opposition party that can oppose ratification of a treaty with Israel.

- At the same time, it gives President Abbas, the agreed power to negotiate on behalf of all Palestinians, based on his acceptance that a negotiated agreement must be submitted for ratification.

- To the Israelis the message is two-fold. On the one hand the price of peace will be higher, in that an agreement, in order to pass a referendum, will have to be more forthcoming on the refugee issue than Israel has been thus far. On the other hand, the benefit is also much greater. An agreement that passes a referendum will have deep legitimacy; it can offer Israel true end-of-conflict, end-of-claims; and it will bring with it a commitment from Hamas that it will respect the agreement, even if Hamas comes to power through free and fair elections.

- To the Americans and the Europeans, a re-affirmation of the ratification by referendum framework, offers an opportunity to re-visit the unworkable "Quartet" conditions for engaging with Hamas. Rather than insisting on prior recognition of Israel by Hamas or on Hamas accepting prior agreements reached by the PLO, it provides what can reasonably be demanded of Hamas: That it not stand in the way of negotiations, and that it abide by a negotiated treaty so long as it is ratified.

- For Hamas the framework offers a way to hold on to its identity, yet to re-engage in the electoral competition for power. Down the road, it will offer to Hamas a way of recognizing the authority of the State of Palestine and to transfer to the new state, effective control of Gaza, including military forces.

The benefits are many. The unanswered question is: "Why was the ratification-by-referendum framework left out of the new political document?" Has Hamas abandoned this approach which is central to Hamas's future and to attaining a viable peace agreement? Or perhaps Hamas will recommit to this framework? This critical question needs to be answered by Ismail Haniyeh, now that he is the political leader of Hamas. If Mr. Haniyah does decide to announce Hamas's continued commitment to ratification-by-referendum, he

should be very explicit that this means that Hamas will abide by a peace treaty that is properly ratified, even if Hamas opposes it. If Hamas takes this step, it will deliver a message that is likely to shape any future negotiations, even though Hamas will not be at the negotiations table. The message is to Israel and has two parts. First, it says to Israel that real peace is indeed possible. Second it says, to achieve that reality, ultimately, you must make peace with the Palestinian people themselves.

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