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The Proper Role of Referendum

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The purpose of the Prisoners Document was to achieve national unity between the various political factions. Public opinion polls are showing that if the referendum were held today, 80% or more of the Palestinian public would vote in favor of the prisoners' document. This overwhelming support, might cause one to think the referendum will contribute to Palestinian unity, and offer a way forward. Yet the truth is quite different.

The prisoners document deals with both matters of substance and matters of process. On matters of substance, the key questions are:

- What solutions to the refugee problem are acceptable?**
- Is an independent Palestinian State in the territories occupied in 1967, with Jerusalem as its capital, the key to an end of conflict agreement with Israel, or is it merely the basis for a long-term hudna?**
- Should violence be ended in favor of negotiations, or just focused inside the occupied territories?**

The document does not resolve these questions. Rather, what it does is paper-over the disagreements with words and formulas, using what Henry Kissinger called "constructive ambiguity." Thus it speaks of a "right to establish a state on all the land occupied in 1967, with Jerusalem as its capital" but leaves open the key issue of hudna vs end of conflict. It calls for upholding the right of return, but doesn't address the key issue: that no

comprehensive agreement with Israel is possible unless it is accepted that in reality, very, very few Palestinians will ever return their homes inside Israel.

Thus, even if the Document is supported by 80% of the public, when it comes to questions such as whether to negotiate with Israel, and what to accept in those negotiations, all the key disagreement will remain unaddressed.

The real contribution that the document makes is with respect to process. Here the issue is one of government. It is the problem that the Israelis are calling, “the government with two heads.” Unfortunately, when some Israeli leaders use this expression, what they have in mind, by way of a solution, is for Palestinians to use the guillotine to cut off one or the other head.

Wisely, the Prisoners’ Document, addresses this problem by clarifying the internal process of decision making. Here the key issue is “How do the Palestinian people make its most important decisions.”

The answer is found in paragraph seven of the document, which reads:

“ 7. Managing the negotiations is the authority of the PLO and the President of the PA, on the basis of upholding Palestinian national interests and realizing them, provided that any fateful/decisive agreement be presented to the new PNC to ratify or be put up to public referendum if possible.”

[Note to editor, use the original Arabic, rather than translating from the English]

Here the most important element is the difference between negotiating a treaty and ratifying a treaty. For Americans this is a common distinction. Our Constitution puts the power of negotiations in the hands of the President, but requires that to be

ratified, a treaty must be passed by a two-thirds vote of the Senate. Thus, the United States never joined the League of Nations, because the treaty that President Woodrow Wilson negotiated, was never approved by the Senate.

Here it is important to recall the stance of Hamas. They have thus far not been part of the PLO and they have never accepted that the PLO is the sole legitimate representative of the Palestinian people. And this, of course, is what leads to the problem of the “government with two heads.”

The Prisoners’ Document solves this problem by introducing a process of ratification. It says, negotiations should be done by Abu Mazen, either under his PLO hat or his President’s hat. But whatever he negotiates has to be submitted to ratification. And here, either it will be approved by a reconstituted PNC to which Hamas belongs, or by a popular referendum.

This last provision, for a popular referendum on a fateful/decisive treaty, is really the better alternative. Moreover, it should include all of the Palestinian people, including those in the diaspora, if it is to deal with issues such as refugees, and end of conflict.

Importantly, this provision addresses a central condition that has been imposed by the Quartet, adherence of the PA to previously negotiated agreements. Essentially, what it says, is that up to this point, there has not been a clear and agreed upon process of ratification. However, from this point forward, any properly negotiated and ratified international treaty, will become the law, and must be faithfully implemented by any successor government, whether or not it approves the treaty.

Not only does this process offer a constructive way of responding to the Quartet, it empowers Abu Mazen in his relations with those in the Israeli government who seek only to impose unilateral decisions. It has been said that negotiations with the PLO are pointless because Abu Mazen cannot sign an agreement and that he cannot implement anything that he does

sign. But by building on the approach in the Prisoner Document, it become clear that the Palestinians can have a coherent governmental structure, in which Abu Mazen does negotiate and sign, but then must fight for ratification in a referendum. If he wins the ratification battle, then any government, even one dominated by Hamas ministers, must either resign or faithfully implement the treaty. And if it does not, then acting as President, Abu Mazen, would and should, dismiss the government.

Hamas leaders maintain that the present Palestinian law does not give Abu Mazen the power to call a referendum on the Prisoners' Document. Fatah leaders say that current law does not deny him that power, and that it is implicit in his other powers. With this disagreement, a referendum forced on one faction by another, will itself be viewed as illegitimate by one party. And since there is strong popular support for the Prisoners' Document, it is likely that Hamas will lose. However, rather than contributing to a solution to Palestinian problems, this is likely to reverse the major progress that Abu Mazen has made of bringing Hamas into a structure of democratic governance and law.

Rather than pushing for a referendum on the Prisoners' Document, President Abbas and Prime Minister Haniya should jointly agree on a change in the Basic Law, a change that will introduce the concept of referendum as the key means for ratification of any decisive treaty. Such a change in the Basic Law could state:

- 1. Bilateral negotiations between Israel and the Palestinian people are to be carried out by the President of the Palestinian Authority, in coordination with the Executive Committee of the PLO.**
- 2. Any negotiated agreement must be brought by the Prime Minister to a referendum of the Palestinian people, including the diaspora and conducted by the Palestine Central Elections Commission. If the Prime Minister does not bring the treaty to a**

referendum within 45 days, the President shall call and oversee a referendum by Presidential decree.

3. Any negotiated agreement that is approved by a majority of those voting in a referendum shall be considered ratified, and will become the law of the land, binding on future governments, and is to be faithfully implemented by the government of the PA.

If President Abbas and Prime Minister Haniya can work together to modify the Basic Law in this way, they will have not only improved governmental coherence, they will have made a major contribution towards addressing the financial and diplomatic siege which is presently in place.

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