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Empowering Mahmoud Abbas after Disengagement

By Mohammed Yaghi
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Empowering Palestinian Authority (PA) president Mahmoud Abbas and fellow moderates at this critical time may be in the interest of everyone who favors a return to peace negotiations, but Abbas himself faces immense challenges to his authority that make him unlikely to be able to implement significant changes in the four months left before Palestinian legislative elections in January. The weakened position Abbas inherited included limited control over security forces, paralyzing rivalries within the Fatah movement that limit any support for difficult decisions, and an increasingly assertive Hamas that constantly flaunts its ability to act independently. None of these sources of Abbas's weakness is likely to change significantly in the coming months. And, despite Abbas's intentions to establish law and order and begin economic revitalization in Gaza as articulated in a speech delivered on September 13, the chaos exhibited along the border at Rafah and in the old Israeli settlements immediately after the Israeli withdrawal demonstrates just how difficult his task will be.

But a more fundamental reason for Abbas's limited authority as president -- the ambiguous legal powers of his office -- can be rectified.

The Structural Sources of Abbas's Weakness

In the great irony of the current Palestinian political system, the office of the prime minister was created as a means of limiting Yasser Arafat's powers as president. However, now that Abbas occupies the presidency, his own authority is limited by the very system he helped create two and a half years ago when he served as the first prime minister.

According to the modified Basic Law of March 2003, the Palestinian president's powers are defined precisely and limited carefully: The president is the commander-in-chief of the Palestinian security forces; he appoints and can dismiss the prime minister; he accredits PA representatives to foreign countries and representatives of other countries to the PA; he ratifies laws approved by the Palestinian Legislative Council (PLC) and can return draft laws with comments that can be enacted into law unless there is a legislative override of two-thirds of the PLC; and he can grant special pardons or commute sentences, but cannot grant general amnesty. Legally, Abbas has no authorities beyond these few.

The majority of powers associated with conducting policy and enforcing decisions reside with the prime minister and the Council of Ministers (the cabinet), headed by the prime minister. The Basic Law says, "The Council of Ministers is the highest executive and administrative tool, which shoulders the responsibility of implementing the program that has been approved by the legislative branch." Except for the powers specifically granted to the president, all the executive and the administrative authority resides with the cabinet. The cabinet organizes and supervises the PA's administrative work. It is responsible for preserving security and internal order. It has the right to create or dismiss any administrative body, appoint its executives, and decide the specific authorities of each ministry.

According to the Basic Law, Abbas has many symbolic authorities but little actual power. This structural division of power has limited Abbas's influence on PA institutions and their programs, especially in the many

areas where he openly disagrees with Ahmed Qurei, the prime minister, with whom Abbas's relationship is more contentious than cooperative. Abbas has the legal power to dismiss Qurei, but he cannot dictate what policies the prime minister chooses to implement or how he does so. And unlike Arafat, Abbas feels bound by the Basic Law. Each time he tries to affect the system, Qurei reminds him of Abbas' own argument against Arafat, "Let the Basic Law rule between us." Unless Abbas receives the kind of cooperation he has yet to garner from Qurei and the cabinet, only legislative modifications that empower the presidency will enable Abbas to implement the policies he promised when elected.

Streamlining the PA to Strengthen Abbas

The Palestinian political system did not learn the lesson of 2003 when disagreement between the president and the prime minister (Arafat and Abbas, respectively, at the time) led to dysfunction and paralysis until Abbas resigned. Unless the occupants of both offices happen generally to agree on the content and execution of their policies, the Palestinian political system will remain unstable and ineffective.

Examples abound of Abbas's inability to implement policies because of the opposition of the prime minister and his cabinet. When Islamic Jihad committed its attack in Beer Sheva on August 27, Abbas condemned the bombing as a terror attack. However, PA-owned television, which takes its directions from the minister of information, Nabil Shaath, ignored Abbas's statement and never broadcast it. Abbas's desire to fight corruption is similarly blocked by the powers of the prime minister, who protects senior officials suspected of embezzlement. And while Abbas urges the security forces to deal harshly with disruptions to law and order, the cabinet is reluctant to create the legal and judicial mechanisms required to enforce the president's position.

The positive news is that Abbas and some of his allies in Fatah are already discussing how to revitalize the power of the presidency through legislative and constitutional changes. The impetus for these changes stems from a desire to weaken Hamas's influence over PA institutions after legislative elections in which Hamas is expected to win a sizeable percentage of votes -- and perhaps join the government and assume ministries. Abbas, for his part, has already advocated establishing a presidential deputy as a means of ensuring stability and continuity in the event of his incapacitation. However, this means of presidential succession has met significant opposition since the current system passes temporary authority to the speaker of the legislative council, a process that worked well after Arafat's death and that many are reluctant to change. Another effort to curtail the power of Hamas was the successful effort to modify the municipal election law so that the last phases of local elections will be conducted based on a complete proportional system rather than the direct-election system that brought Hamas such success in the earlier rounds this year. But these legal steps are only partial measures and will yield minimal results.

The more significant question is why the president, who receives his mandate through a national election, should have his powers significantly bounded by an unelected prime minister. This contradiction may have made sense at a time when Yasser Arafat's rule had no end in sight, but now that Arafat has died and the Palestinian public conducted a fair and contested election for the presidency, the curtailment of the president's executive authority by the prime minister is outdated. The Palestinian political system should be adjusted for the next four years, until the next presidential election, to recognize this reality. The prime minister's powers should be returned to the president. Current reform initiatives, such as the ongoing security reform program, would have much sharper teeth were the president's control over administrative elements of the PA and its security apparatus made more definitive.

Constitutional Change for the Future

In the limited time available before legislative elections in January, this restoration of presidential authority through democratic means may be the best way for Abbas to implement his policies. These changes will only occur with the cooperation of the sitting PLC, which should also begin a process of enabling the Palestinian public to determine through a referendum whether it wants a real presidential system or a parliamentary system in which the president wields largely ceremonial powers.

What system will be the best fit for the Palestinian people remains to be seen, but it is clear that the current hybrid system that divides executive power between an elected but weak president and an unelected but powerful prime minister is dysfunctional. If Abbas and Fatah want to minimize Hamas's success in January and beyond, they must recognize this reality and act now to change it.

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