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A Two-State Solution Requires Palestinian Politics

Michele Dunne

*The United States
should patiently
support Palestinian
institution building and
tolerate the political
competition that must
accompany it.*

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Summary

Successful Israeli–Palestinian negotiations, whether the indirect talks begun in May 2010 or direct talks, will require a Palestinian leadership that enjoys adequate support in the West Bank and Gaza. Building the institutions of a Palestinian state is also crucial and long overdue. Prime Minister Salam Fayyad’s two-year plan for institution building, announced in August 2009, is laudable but has significant limitations. That plan, and Palestinian decision making, suffer from a common problem: the suspension of normal political life since the 2007 rift with Hamas and Gaza coup. Without a presidential election, legitimacy is draining away from President Mahmoud Abbas; without a functioning Palestinian Legislative Council (PLC) and its ability to make laws, institution building is severely limited.

The United States should move beyond the short-term thinking—that inconvenient Palestinian politics can and should be delayed because a negotiating breakthrough is just around the corner—that has afflicted its policies for decades. This does not mean that the United States should engage Hamas directly, which would have the unfortunate effect of validating the group’s violent and rejectionist tactics. Instead, the United States should develop a strategy that patiently supports Palestinian institution building and tolerates the internal Palestinian political competition and bargaining that must accompany it; seeks breakthroughs in negotiations with Israel; and holds the Palestinian Authority to a commitment to prevent violence against Israel.

It is tempting to consider it impossible to negotiate a two-state solution to the Israeli–Palestinian conflict. The United States faces many obstacles in facilitating any such agreement: *inter alia*, a lack of confidence on the Israeli and Palestinian sides; ongoing Israeli settlement construction; and the rift between Palestinian secular nationalists and Islamists. Moving forward with a new approach requires untangling the various problems as well as considering how previous U.S. policies have contributed to them and how the United States can help the parties extricate themselves.

U.S. President Barack Obama correctly identified divisions within Israeli and Palestinian camps—“the political environment, the nature of their coalitions or the divisions within their societies”—as a reason his administration’s first peace efforts failed.¹ Obama did not acknowledge, however, that the United

States bears some responsibility for this problem. Over the past twenty years, Washington has badly mishandled Palestinian domestic politics, attempting to ignore or manipulate it, with equally disastrous results. At one time the United States sought to exclude the Palestinian Liberation Organization (PLO); in recent years it has been the Islamic Resistance Organization (Hamas). While concerns about Hamas and terrorism are real and need to be taken seriously, it is time to recognize that the organization cannot be pressured or starved out of existence or political relevance.

The Fatah–Hamas rift is only the most recent consequence, however, of a long-running problem: the international community’s ambivalence about allowing Palestinians to choose their own leaders. Since its founding in 1964, the PLO struggled for international recognition, partly because of its use of terrorism. In 1974 it won recognition from Arab states as the “sole legitimate representative of the Palestinian people.” A majority of UN members accepted a self-declared Palestinian state in 1988, but Israel and the United States did not accept the PLO as a legitimate leadership until 1993. West Bank and Gaza Palestinians held presidential and parliamentary polls in 1996, following the Oslo I and II agreements, lending electoral legitimacy to their institutions for the first time.

The international community, particularly the United States and Europe, initially dedicated funds and efforts to the building of Palestinian institutions of self-government. These foreign governments believed this would be short-term assistance—no more than five years—until negotiations resolved the outstanding issues between Israel and the Palestinians. This short-term thinking about building institutions, however, contained the seeds of its own destruction. The international community, led by the United States, failed to take Palestinian institution building seriously in the crucial early years of the 1990s, and later tried to use it as an instrument to control leadership selection. After more than fifteen years of alternating neglect and manipulation—and no peace agreement—various Palestinian institutions are in danger of collapsing or have already done so.

Why do Palestinian institutions matter? Is it not possible to keep PA institutions alive without holding elections? Would it not be easier to reach a peace agreement with the current PLO leadership, then get popular support through a referendum or similar device? This belief that peace is just around the corner, and that Palestinian politics can and should be put on hold until peace is achieved, is precisely the sort of short-term thinking that has paralyzed Palestinian leadership and led to the disastrous rift with Hamas.

Institutions chosen through free political competition provide a peaceful way to mediate differences and reach decisions that enjoy legitimacy among citizens. In most cases, legitimate institutions cannot be built in the absence of, or as a precursor to, a basic political settlement involving the main political forces in the country.² Palestinian leaders including Abbas and his predecessor,

Yasser Arafat, have made it clear that they will not sign on to a peace deal unless it enjoys clear popular support throughout the Palestinian territories. It should be apparent by now that no such agreement is just around the corner, and that the United States should think about these issues more strategically.

The tendency to neglect long-term institution building for Palestinians can be attributed, to some extent, to the tendency of policy makers and diplomats to focus on immediate crises. Also, there is a fear among some U.S. officials that Palestinian voters would choose leaders unwilling to negotiate with Israel (or with whom Israel is unwilling to negotiate), as occurred in the January 2006 parliamentary elections. Hamas's victory created a serious policy problem for the United States, which could not give its taxpayers' dollars to an organization deemed a terrorist group under U.S. law. But the United States' response turned that bad situation into a disastrous one. In its single-minded pursuit of a negotiated solution to the conflict and a cooperative Palestinian partner, the United States has refused to take a realistic view of Palestinian politics and has thwarted—at times inadvertently, at times deliberately—the emergence of Palestinian institutions capable of mediating differences peacefully.

Ignoring the Need to Build Institutions: The Legacy of the 1990s

Although the Bush administration's handling of the 2006 parliamentary elections has been broadly criticized, Washington's failure to weigh the repercussions of Palestinian politics goes back much further. From 1993, the time of the first Oslo Accord, until 2000, when peace negotiations collapsed after the second Palestinian uprising began, the United States mostly ignored how Arafat's behavior harmed nascent Palestinian institutions. He undermined the PLC, created multiple security services, and allowed human rights abuses and corruption. Opportunities to begin building institutions for a future Palestinian state—or a “Palestinian entity,” in the U.S. diplomatic parlance of the time—were squandered in the 1990s.

The U.S. approach was to allow Arafat to do as he liked within the newly established Palestinian Authority (PA) as long as he cooperated with the United States and Israel on preventing terrorism and continuing negotiations. Diplomats in the field raised concerns with Washington officials that allowing Arafat to undermine the PA's legislative and judicial arms would have dangerous consequences. But officials in Washington were “tone deaf,” according to one former U.S. diplomat, and preoccupied with addressing a series of short-term security crises so that Israel would not abandon the negotiating process.³ “We traded stability in the peace process for concerns about governance and corruption,” a former U.S. negotiator acknowledged.⁴

Two episodes from the mid-1990s illustrate how the United States assisted in undermining institutions of the new PA. In the first, the United States

urged the creation of state security courts that would bypass the newly created Palestinian justice system in order to mete out swift punishment to those suspected of planning or carrying out terrorist attacks. The Supreme State Security Court, established by decree in early 1995, was immune to legal challenges and conducted truncated trials, often late at night and within hours of a suspect's arrest. In March 1995, Vice President Al Gore praised the court as "an important step forward in helping to build confidence in the peace process and in the effort by authorities on all sides to control violence and stop terrorism and defeat the enemies of the peace process."⁵

The court ostensibly was created to show PA responsiveness to Israeli security concerns, but there were at least two other reasons for Arafat to take the step. First, the court would allow the PA to avoid the politically difficult possibility of having to extradite to Israel a Palestinian suspected of crimes against Israeli soldiers or settlers. Israel could demand such extradition under the provisions of the May 1994 Gaza-Jericho Agreement. Second, the court provided Arafat with a way to handle politically sensitive cases—in many cases unrelated to terrorism—rapidly and ruthlessly, setting aside the procedural safeguards in the nascent Palestinian judicial system. Amnesty International and Human Rights Watch documented copiously the human rights violations perpetrated by the court, attributing its creation to (in the words of Human Rights Watch) "enormous pressure exerted by Israel and the United States on President Arafat to prevent and punish anti-Israeli violence by militant groups."⁶

The Palestinian security court was "audacious and brazen," even by the standards of military and security courts in other Arab countries, according to Arab legal affairs expert Nathan J. Brown. Such courts "generally observe more safeguards and take more than a few hours to finish their work."⁷ The opportunity to build a credible institution and enshrine the rule of law—a longer-term goal—was sabotaged by a short-term need to deal swiftly with terrorist threats to the peace process. In focusing on the shorter term, the United States encouraged Arafat down the path of authoritarianism trod by other Arab leaders.

The second example, which has had even greater ramifications, was the United States' failure to stand up for the elected PLC. The September 1995 Oslo II accord called for elections to establish the council "in order that the Palestinian people in the West Bank, Jerusalem and the Gaza Strip may democratically elect accountable representatives" and specified that the elections should be understood to "provide a democratic basis for the establishment of Palestinian institutions."⁸ The council would have legislative powers and some executive powers, in the sense that it would form an "Executive Authority" (i.e., a cabinet) from among its members, to which the separately elected president could add members. Although the PA was not a sovereign state—at the time the United States had not publicly favored creation of such a state—the agreement implicitly recognized a principle articulated by Locke: "... the first

and fundamental positive law of all commonwealths is the establishing of the legislative power....”⁹

Arafat undermined the PLC from the start, refusing to sign important legislation and insisting on holding broad leadership meetings that blurred the separation of powers. In the words of legislator Ziad Abu Amr, “If the PLC is the embodiment of institutionalization, Arafat’s style of leadership is the antithesis of this institutionalization and the concepts of separation of power and power-sharing.”¹⁰ This was the case even though the PLC at the time was populated by secular nationalists supportive of his broad goals, because the Islamic Resistance Movement (Hamas) had boycotted the 1996 elections to show its opposition to the Oslo agreements.

Even before the first PLC was elected on January 20, 1996 (concurrent with Arafat’s election as president of the PA), Palestinian legal experts were at work on a Basic Law that would serve as a legal framework for the interim period and rationalize the patchwork of laws prevailing in the Palestinian territories. The September 1995 Interim Agreement on the West Bank and Gaza Strip, which is also known as Oslo II, specifically tasked the “Palestinian Council” that was to be elected with adopting a Basic Law. PLC deputies immediately embarked on the effort, drawing on the draft Basic Law in circulation and additional legal advice from Palestinian and foreign experts. Arafat took the position that the PLO, not the PLC, should draft the law so that it could apply to Palestinians everywhere, but the train had already left the station: The PLC debated the law and passed it in 1997, referring it to then-President Arafat for his signature.

Having failed to outmaneuver the PLC politically or procedurally, Arafat resorted to a classic bureaucratic method: delay. He refused to sign or even to discuss the law. The PLC presidency asked PLC Legal Committee Chair Ziad Abu Zayyad, PLC Secretary General Rawhi Fattuh, and another deputy to meet with Arafat and explain the importance of signing the law. It did not go well.

“Arafat talked around the subject for two hours, telling stories, etc.,” Abu Zayyad said. “Finally I asked him straight out, ‘Do you want a Basic Law or not?’ He refused to answer. Rawhi said to me, ‘He doesn’t want it! Let’s go.’”

“Arafat was suspicious of all institutions and laws,” Abu Zayyad said. “He trusted no one and wanted to keep all power in his hands.”¹¹

The United States and Europe held tremendous leverage over Arafat at the time, but were of no real help as the PLC struggled with how to persuade him to endorse the strikingly liberal Basic Law. Nearly all the funding for the PA came from foreign assistance (approximately \$100 million per year from the United States and \$125 million from European donors, according to the Palestinian National Authority’s Ministry of Planning¹²) and tax revenue collected by Israel and turned over to Arafat personally. The United States did not object to the Basic Law—in fact, it had funded experts who contributed to its drafting—but did not consider its passage a high-enough priority to raise the

issue seriously with Arafat. The message he received was that only two things mattered: continuing negotiations and satisfying Israeli security concerns.

The Basic Law sat in Arafat's inbox until 2002—after negotiations had broken down, the second Palestinian uprising had broken out, the EU had grown increasingly dissatisfied with Arafat's authoritarian ways, and the United States suddenly had become interested in Palestinian reform and institution building in order to circumvent the problematic Palestinian president. But by then quite a bit of damage had been done to the PLC as an institution and the PA as a functioning entity. The absence of a Basic Law for those crucial five years prevented the development of proper relations among the executive, legislative, and judicial branches of the PA; according to PLC Deputy Hanan Ashrawi, “During the 1990s there was no separation of powers; Arafat treated the PLC and the PA as if they were one entity.”¹³ PLC Deputy Ziad Abu Amr observed that the contempt with which Arafat treated the legislature led to its marginalization. Everyone could see that Arafat cared nothing for democracy and had agreed to hold elections and constitute the PLC only so that the other aspects of the Oslo II accord would be fulfilled: Israeli redeployment from more areas of the West Bank and the expansion of PA jurisdiction.¹⁴ Thus the Basic Law episode demonstrated to all Arafat's determination to run affairs on an ad hoc, personalized basis, and international donors' contentment to let that continue—an approach they would reject a few short years later.

Manipulating Palestinian Politics: 2000 to 2008

The administration of President George W. Bush took office in January 2001 with a radically different conception of the problems plaguing the Middle East from that of the Clinton administration. Even before the September 2001 terrorist attacks that would prompt the Bush doctrine of preemptive action and the spread of democracy, senior officials made clear that they did not share their predecessors' sense that the Arab–Israeli conflict was central and that U.S. diplomacy was crucial. Rather, they saw the region as beset by troublemakers (particularly Iraq, Iran, and Syria) and thought it foolish to try to extinguish regional conflicts while such players were pouring gasoline on the flames. The classic example of this regional meddling was a report that Iraqi leader Saddam Hussein paid \$25,000 to each Palestinian suicide bomber's family.¹⁵

Moreover, Bush administration officials believed that neither Palestinian leaders nor Israelis had made the difficult decisions necessary for peace, as evidenced by the failure of the Camp David II summit in summer 2000. The outbreak of violence in the fall of that year—and the growing suspicion that Arafat was secretly encouraging attacks despite his pledge a decade earlier to forswear terrorism—added to the Bush administration's conviction that an entirely new approach was needed. The September 2001 terrorist attacks raised sensitivities to a high pitch. The final straw came in January 2002, when Israel

captured the *Karine A*, a ship loaded with weapons reportedly supplied by Iran for the PA to use in the uprising.

As Bush and other U.S. officials became convinced that Arafat was no longer a viable peace partner, they began to regret that the United States had done so little to help develop the nonexecutive branches of the PA that could curb his power as president. They turned their attention to the PLC and the cabinet, which according to the Oslo II accords should be composed primarily of PLC deputies. Meanwhile, they discouraged the holding of overdue presidential or parliamentary elections, fearing that a new electoral mandate would strengthen Arafat; the postponement was not difficult to justify in light of the ongoing uprising.

In June 2002, Bush gave a speech announcing two major developments in U.S. policy on the Palestine issue. First, he announced explicit support for the creation of an independent Palestinian state, setting aside the coy refusals to take a position on the issue that had prevailed since 1967. Second, he made clear that the United States would no longer deal with Arafat and called on Palestinian voters to “elect new leaders, leaders not compromised by terrorism” and to “build a practicing democracy, built on tolerance and liberty.” He stressed the need for reform of Palestinian institutions in order to promote democracy and fight corruption and terrorism.¹⁶

Bush’s speech paradoxically acknowledged one reality—that the Palestine issue would be resolved only by creating a state—and denied another. By refusing to deal with the Palestinians’ chosen leader, however odious, Bush rewound the U.S. position to what it had been before U.S.–PLO contacts began in 1988. Arafat had been elected president in 1996, and although the uprising had postponed new elections, he remained popular enough to be re-elected if subjected to a vote. But unlike in the 1970s and 1980s when the U.S. refusal to talk to the PLO limited its ability to engage with Palestinians, by 2002 Washington had extensive contacts with West Bank and Gaza Palestinians and was able to influence internal politics via diplomacy and assistance programs.

U.S. officials embarked on several efforts to shift the balance of power between the Palestinian presidency and other institutions between mid-2002 and Arafat’s death in November 2004. First, they exerted extensive efforts to increase financial accountability and transparency (in cooperation with Finance Minister Salam Fayyad, appointed in June 2002) and to reform and train the security services. Second, they pressed legislators to revise the Basic Law to divert power from the presidency. The supervisory body for this international intervention was the “Task Force on Palestinian Reform,” formed in July 2002 of representatives from the Quartet (United States, United Nations, European Union, and Russia) and other donors and international financial bodies.

Under intense international scrutiny and pressure, the PLC passed a set of amendments to the Basic Law on March 18, 2003, creating the post of prime minister and spelling out in great detail the powers and prerogatives of the

prime minister and his government. Mahmoud Abbas, the first Palestinian prime minister, served from that March until he resigned in October 2003, citing a lack of Israeli and U.S. seriousness in pursuing peace efforts as well as the difficulty of working under Arafat.

Looking back on the reform efforts related to the PLC and cabinet, U.S. officials and Palestinian representatives concur that some reforms were worthy and unavoidable (particularly financial reform, and at least some aspects of security reform). However, those changes related to the PLC and cabinet were awkward and had unforeseen negative consequences. “We stunted Palestinian political development,” according to a former USAID official, “because we discouraged Arafat from holding elections in 2002–3” in order to deny him a new electoral mandate. “We decided instead that we believed in an ‘empowered’ prime minister and forced the Basic Law to be amended accordingly.”¹⁷ The United States would regret that decision a few years later, when Abbas, who was elected in 2005 to succeed Arafat (who died in November 2004) as president, was forced to name Ismail Haniyyah as prime minister after Hamas’s victory in January 2006 legislative elections.

Another problem with the international community’s interventionist and instrumentalist approach, according to Ashrawi, was that it displaced and discredited the efforts of Palestinian reformers. She and other deputies, notably Azmi Shuaibi, had been spearheading internal PLC efforts for reform for several years, forming the “National Reform Commission” as well as organizations including Miftah (The Palestinian Initiative for Global Dialogue and Democracy) and Aman (Transparency Palestine) in 1999. Then Bush made his speech in 2002, “and suddenly the United States rushed in, hired dozens of Palestinian consultants, and wanted to spend \$17 million on PLC reform,” Ashrawi said. Palestinians understandably started to see such reforms as imposed from outside, and “our internal opponents found it a beautiful way to undermine us,”¹⁸ she said.

U.S. efforts to manipulate Palestinian politics from 2002 to 2004 were mild, however, compared with such efforts after the 2006 legislative elections. Much ink has been spilled over whether Bush should have encouraged Abbas to fulfill his 2005 pledge to hold legislative elections as soon as possible. Observers also have regretted that the United States did not insist that Abbas require Hamas to meet certain conditions in order to participate, such as accepting Israel’s right to exist, pledging to accept agreements signed with Israel, and renouncing the use of terrorism.

Internal Palestinian politics at the time, however, made it difficult to impose such conditions. Hamas by 2005 had decided its interests were better served by participating in elections than by boycotting, as it had done in 1996. In March 2005 thirteen Palestinian factions signed the Cairo Declaration to signal an end to the second intifada, paving the way for political participation and promising electoral reforms and possible incorporation of Hamas into the

PLO.¹⁹ Because the PLC had not created a political parties law, there was no legal basis to prevent Hamas's "Change and Reform" list from participating. In short, Abbas promised that he would hold legislative elections, Hamas wanted to participate, and the clear Palestinian consensus was that the elections would be legitimate only if Hamas were included.

In addition to helping the Palestinians develop a capable electoral commission and electoral system, the United States also attempted to influence the elections' outcome by offering a more unusual form of assistance. In the few months leading up to the elections, USAID made some \$2 million available to Abbas and the PA for short-term projects intended to boost the chances of Fatah, whose political fortunes had suffered due to widespread perceptions of PA corruption and inefficiency.²⁰ This \$2 million was only a small share of U.S. assistance to the PA, but it was more than parties such as Hamas had to spend on the elections.

However, the effort did not succeed: Hamas's "Change and Reform" list won 74 of the 132 PLC seats, creating a painful conundrum for the United States. West Bank and Gaza Palestinians had held a free and fair election and used their votes to punish Fatah, a ruling party that had failed in negotiations and in governance. In theory that fit well with President Bush's 2002 call for democratization and accountability in Palestine, as well as the freedom agenda that by 2005 had become the organizing principle of his foreign policy. But according to U.S. law, Hamas was a terrorist organization; its continued belligerence toward Israel made giving it U.S. taxpayer dollars legally and politically impossible. Hamas showed no interest in changing its positions to the degree necessary for a breakthrough in relations akin to what happened between the United States and the PLO in 1988.

In a January 30, 2006, statement, the Middle East Quartet laid out three principles that should govern donors' willingness to extend assistance to a new Palestinian government: "non-violence, recognition of Israel, and acceptance of previous agreements and obligations, including the Road Map."²¹ Hamas formed a government in March, and in April the United States and the EU announced that they would not extend aid to the Hamas-led PA; however, humanitarian assistance would continue to flow to the West Bank and Gaza through nongovernmental organizations. Israel began withholding the tax and custom revenues it collected on behalf of the PA, which found itself under mounting pressure, having lost two-thirds of its revenue. It could not get international financing, either, as banks declined to do business with the PA out of concern that doing so would violate U.S. anti-terrorism laws.²²

Animosity between the Hamas-led PA and Israel increased in late June 2006, when Palestinian militants captured Israeli soldier Gilad Shalit in a cross-border raid from southern Gaza into Israel. The raid apparently was retribution for a June 24 Israeli raid into Gaza to capture two Hamas members. In the months following the kidnapping, Israel arrested some 40 Hamas PLC legislators, plus

several from other factions, effectively paralyzing the legislature. Without its majority in the body, and with speaker Aziz Dweik imprisoned, Hamas would not call the PLC into session. Fatah and its allies did not possess the 70-seat quorum required to convene without Hamas.

While the United States' initial unwillingness to continue funding to a Hamas-led PA—coupled with the acknowledgment that the group had won in a free and fair election—was understandable, later efforts to thwart Palestinian reconciliation and compromise were less so. During 2006 and into early 2007, relations between Hamas and Fatah deteriorated, and violent clashes increased. In early February 2007, Saudi Arabia brokered the Mecca Agreement, which called for ending internecine violence, forming a “national unity government” including ministers named by Fatah and Hamas, reforming the PLO (which had not happened after the 2005 Cairo Declaration), and respecting political pluralism.²³ The agreement created a dilemma for the United States; its response was ambivalent. Washington expressed courteous appreciation for Saudi Arabia's efforts and delayed passing judgment on the agreement until the government was formed.

It became clear once the government was formed and its platform announced in March 2007 that the United States would not deal with it. Although Hamas had taken care to place moderate secularists well known to Washington in some of the key positions (Abu Amr as foreign minister, Mustafa Barghouti as information minister), Haniyya was still prime minister. Moreover, the government's platform did not unambiguously embrace the Quartet principles, although it took steps in that direction by pledging to “honor” agreements made by the PLO. It vigorously defended Palestinians' rights to “all forms of resistance,” however, and made no mention of recognizing Israel's right to exist.

U.S. Secretary of State Condoleezza Rice was discouraging during a March 19 joint press conference with EU Foreign Minister Javier Solana: “I'm not going to try to interpret what the right of resistance means, but I'll tell you, it doesn't sound very good to me, when one talks about all forms of resistance.” She and Solana concluded that they would continue humanitarian assistance to the Palestinian people and cooperate with Abbas. Among European states, only Norway recognized the unity government and dealt with it directly. Unable to muster international recognition and the crucial financial assistance on which the PA always had depended, the unity government foundered as the two parties moved toward renewed confrontation.

The United States' rejection of the unity government was not its only step that heightened tensions. Its decision to build up security forces loyal to Fatah led Hamas to conclude that an armed coup aimed at overturning the 2006 election results was in the works. This aid expanded and developed security assistance programs that dated to the mid-1990s but had been suspended during the second intifada. The United States maintained it was providing the assistance to ensure that the PA would fight and prevent terrorism, whatever

Hamas's position might be.²⁴ But even official explanations of the assistance made clear that the United States saw itself as arming one side against another. Rice clarified the thinking behind the aid in remarks to members of Congress on March 21, 2007: "I believe very strongly we do need to support the development of security forces that are loyal to those who accept the Quartet principles because I'm quite certain that those who do not accept it will continue to build their security forces."²⁵

Hamas preemptively attacked Fatah forces in June 2007, leading to a bloody weeklong battle for Gaza. According to the International Red Cross, more than 500 people were injured and 116 killed.²⁶ When the fighting ended, Hamas was in possession of Gaza; Abbas retained control of the West Bank. He dissolved the national unity government and appointed a new one composed mostly of capable technocrats (notably Prime Minister Salam Fayyad). This new government enjoyed dubious legitimacy according to Palestinian law but won international support: Donors redoubled their attentions and funding. The United States spearheaded a new negotiating process, inviting Abbas and Israeli Prime Minister Ehud Olmert to Annapolis, Maryland, in November 2007 to inaugurate what turned out to be a year's worth of serious, detailed talks. But before long Olmert was forced out of office on corruption charges, announcing his departure in July 2008 and remaining in office as a lame duck until March 2009. The Bush administration finished its second term not with a breakthrough in peace negotiations but with a three-week Gaza war between Israel and Hamas in early 2009.

2009 Onward: The Fayyad Plan and Aborted Reconciliation Efforts

In 2009 President Barack Obama came into office promising to be "immediately engaged in the Middle East peace process," appointing former senator George Mitchell as a senior envoy on his second day in office. Later that year, after several bruising rounds of public differences with Israeli Prime Minister Benjamin Netanyahu over settlement construction in the West Bank and East Jerusalem, the U.S. administration lowered its sights from attempts to restart direct negotiations to "proximity talks" in which Mitchell would shuttle between the parties in the hope of returning to direct talks.

Abbas, frustrated by U.S. backtracking after Netanyahu refused to freeze settlement construction in September 2009, had said he could not engage in direct talks without a freeze. That October he announced that he might soon resign and in any case would not run for re-election. In a notable sign of how weak the PLO had become, Abbas felt that he needed the blessing of the League of Arab States to engage even in indirect talks, which began in May 2010.

On the Palestinian side, the major developments during this period were several failed attempts at Fatah/Hamas reconciliation and Fayyad's announced

plan to build the institutions of a Palestinian state regardless of negotiations. Arab and other governments tried several times to mediate between Fatah and Hamas; Yemen even brokered a short-lived agreement in March 2008. But the most enduring negotiations have been episodic talks directed by Egyptian Intelligence Director Omar Sulaiman and conducted mostly in Cairo. In October 2009 those talks came close to an agreement—Fatah had actually signed, although Hamas had some reservations—but the United States reportedly intervened and privately discouraged Egyptian mediation efforts, while praising them publicly.²⁷

The Obama administration clearly was not ready for Palestinian reconciliation, but it was more receptive to Fayyad's August 2009 plan, "Ending the Occupation, Establishing the State." Fayyad's government pledged to "develop effective institutions of government based on the principles of good governance, accountability and transparency," in order to "establish a *de facto* state apparatus within the next two years."²⁸ The program identified institution-building goals including unifying and modernizing the patchwork of laws in the West Bank and Gaza, rationalizing government structures to avoid duplication, improving the PA's use of information and communications technology, improving financial transparency and accountability, and professionalizing human resources management. The program included specific goals for each PA ministry.

Fayyad's plan was innovative in several respects. It was the most detailed and systematic plan to date in which Palestinian leaders took primary responsibility for building a state rather than waiting for it to emerge from negotiations or other outside intervention. Fayyad's reputation for managerial competence and incorruptibility gave the plan credibility in the eyes of the United States and EU, which responded with efforts to marshal resources in support.

Another notable and controversial aspect of Fayyad's program was that it made clear that once the named institutions were built, the Palestinian state should be created and command international recognition regardless of the status of negotiations with Israel. This was not the first time that Palestinian leaders had declared statehood unilaterally; the Palestinian National Council had done so in 1988, winning recognition by most members of the United Nations. This time, however, the European Council added its voice to the implicit threat, reiterating in a December 8, 2009, policy statement its "readiness, when appropriate, to recognize a Palestinian state." In the months between the initial announcement of Fayyad's program and the European statement, hopes for high-level, direct Israeli–Palestinian talks had collapsed, and Europe was keen to show its frustration. It was unclear, however, whether Fayyad's plans for a declaration of statehood enjoyed full support from Abbas, who dismissed the possibility of a unilateral declaration in an April 2010 interview with Israeli television.

The Fayyad plan's can-do spirit is laudable, and the reforms it spells out are needed. It deserves international and Israeli support. But it is unrealistic to see the plan as a substitute for or supplement to negotiations, even setting aside Abbas's recent statement on statehood. The PA can carry out many of the reforms only with Israeli government cooperation, which can be spotty at the best of times and likely would collapse upon a renewal of violence or further deterioration in Israeli-PA relations. The plan will succeed only if there is a gradual expansion of PA authority into certain zones of the West Bank; such expansion clearly needs Israeli agreement.

Beyond the well-known vagaries of Israeli-Palestinian relations, however, the Fayyad plan has another serious limitation: How can the PA develop its institutions without the ability to make laws? Since the PLC last met several years ago, the PA has had to rule through presidential decrees, which are of dubious legality and would need PLC approval when that body eventually convenes. The Fayyad plan recognizes the existing weaknesses of PA legal structures; for example, it tasks the ministry of justice with "developing, in cooperation with all relevant public institutions, an integrated civil and criminal legal framework which safeguards separation of powers." It blithely ignores the issue of legislation, however, while duly saluting the need for "concluding the national dialogue and ending the factional split," as well as holding national elections. The further the Fayyad plan proceeds with carrying out reforms and institutional development by presidential decree, the more likely it becomes that much of this work will be undone when the PLC eventually reconvenes and overturns the decrees.

A New Approach

The United States has hindered, constrained, and at times actively prevented Palestinians from practicing politics. This excessive U.S. intervention has become a major impediment to meaningful peace negotiations and to building the institutions of an independent, viable Palestinian state. Abbas believes he lacks a popular mandate to take chances in negotiations, but this mandate can come only through free and inclusive elections. And those elections cannot be held without reconciliation between Fatah and Hamas.

Palestinian voters will not accept holding presidential and legislative elections only in the West Bank, because doing so would cement the break with Gaza. It is also far too late to exclude Hamas from Palestinian elections, whatever misgivings outsiders (and some Palestinians) might have about its inclusion in 2006. Without successful talks with Israel in the near future, Abbas and the PA will continue to lose legitimacy. The results of this loss are unpredictable, but likely to be unpleasant, and will drive Fatah toward reconciliation with Hamas.

Similarly, Fayyad's plan to build the institutions of a state depends on uncertain contingencies such as Israeli cooperation and a lack of Palestinian unrest; it also suffers from serious inherent limitations. Until the PA regains the ability to make laws and extends its authority to Gaza—which can happen only once Fatah and Hamas reconcile—the plan remains far too slender a reed on which to build a U.S. policy toward a Palestinian state.

All roads lead toward the need for Palestinian reconciliation, as difficult as that is for Israel, the United States, and many European states to accept. This does not mean that the United States should open a direct dialogue with Hamas, particularly when that group has not yet renounced the use of terror. But the United States should adjust its policies now in recognition of the inescapable imperative of reconciliation. It should:

- **Pursue a durable state-building plan as well as Israeli–Palestinian negotiations.** The United States historically has focused on securing a negotiated Israeli–Palestinian deal at the expense of promoting the emergence of functioning and representative Palestinian institutions. Instead, the United States should take the long view, encouraging the building of Palestinian state institutions in a serious way while pursuing a negotiated agreement.
- **Support the resumption of politics.** The United States has tried for too long to control and constrain Palestinian politics and leadership choices. Decision making and institution building can succeed only if Palestinian democratic political life resumes. The United States should explicitly support the holding of legislative and presidential elections with the participation of all Palestinian parties. The United States also should support negotiations among Palestinians about revisions to the electoral system. Abbas's September 2007 decree, which changed the system from a mixed system to one of complete proportional representation, does not enjoy widespread support.
- **Signal openness to Palestinian reconciliation.** The Fatah/Hamas rift is deeply painful for Palestinians and has distorted and paralyzed political life. It is time to remove the impediments to reconciliation and the excuses for avoiding it by signaling that the international community will accept a deal that allows Palestinians to move forward. The 2007 Mecca agreement and national unity government, although not a panacea, offered an important opportunity; missing it resulted in bloodshed and years of political stalemate. The United States should indicate its openness to a Palestinian *modus vivendi*—even if it does not meet the specific Quartet principles—as long as a Palestinian unity government would be willing to negotiate with Israel and to maintain security cooperation in order to prevent terrorism.

One possible objection to the above recommendations is that, by making such changes, the United States would weaken its Palestinian ally (the PA and Fatah) and strengthen Hamas. There is a danger of such an outcome should the United States engage Hamas directly in high profile dialogue, elevating the organization's status. But Hamas need not be strengthened at Fatah's expense should the United States merely encourage Palestinians to work out an arrangement among themselves, on the understanding that the United States will cooperate with the resulting government only if it upholds the PA's security responsibilities and is willing to allow the PLO (which is officially the negotiating party) to negotiate peace.

Some might say that it is fruitless to encourage Palestinian reconciliation because Hamas by definition cannot make peace with Israel. But other Palestinian liberation organizations, such as Fatah and the Democratic Front for the Liberation of Palestine, once defined themselves in terms of Israel's destruction; they later relented to accept coexistence. Hamas does not appear to be on the verge of such a change, but it is pragmatic enough to accept that it cannot impose its will on all Palestinians. Senior Hamas leaders such as Haniyya have said that they support the establishment of a Palestinian state within the 1967 borders and accept the existence of Israel as a political reality. And Hamas has reversed course before: In 2006 it accepted participation in Palestinian electoral politics authorized by the Oslo accords, which Hamas rejects. This makes it reasonable to expect that the group would agree to peaceful coexistence with Israel should negotiations yield a two-state solution that was broadly acceptable to West Bank and Gaza Palestinians.

Israel's refusal to deal with a PA that incorporated Hamas is another possible obstacle to any shift in U.S. policy that permitted Palestinian politics. But Israel is already communicating with Hamas on matters including the release of hostage Gilad Shalit; in fact, there is debate within Israeli circles about whether to deal with the Islamic movement more directly.²⁹ Many Israelis recognize that isolating and starving Gaza will not destroy Hamas. As long as the PA that would result from any internal Palestinian reconciliation does all it can to prevent militant or terrorist attacks on Israel and is willing to allow the PLO to negotiate with Israel, it will be possible for the United States to persuade Israel to deal with this new government.

If the United States adopts a policy of encouraging reconciliation and resumption of Palestinian politics, it will have to overcome several obstacles to deal with a PA that might have Hamas support and include Hamas members. The "Palestinian Anti-Terrorism Act of 2006" established stringent requirements for the provision of assistance to a "Hamas-controlled Palestinian Authority." But the United States has shown it can be pragmatic: Consider its continued support to the Lebanese government despite the inclusion of Hizbollah, which is also a terrorist organization according to U.S. law. The

United States can work with such organizations if they are not currently carrying out terrorist attacks.

Some might also object that, if Hamas were included in a new PA, the organization would seek to undo many of the positive internal PA reforms brought about by Fayyad. But intra-Palestinian bargaining and compromise on reforms is inevitable; Fayyad cannot complete reforms and make them sustainable without the buy-in that comes from electoral politics.

By allowing political competition in the Palestinian territories, the United States can help lay the groundwork necessary for a lasting peace settlement. And Israel can have faith that a Palestinian negotiating partner possesses enough popular support to make agreements and uphold them. The choices that Palestinian voters make in elections, when they are eventually held, will affect their chances of getting international financial and diplomatic support as well as a peace agreement.

Such elections pose a risk to U.S. interests, but subverting or indefinitely postponing Palestinian politics is not the answer. The failures of the past fifteen years make that clear.

Rather, the United States should encourage Palestinians to make their own choices and be realistic about the likely consequences.

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