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THE NUSSEIBEH–AYALON PLAN: Common Ground or Quicksand?

Peter Lippman

The establishment of the state of Israel fifty-six years ago and the Israeli occupation of the West Bank and Gaza in 1967 deprived the Palestinians of their self-determination. The resulting ongoing struggle for the return of Palestinian refugees and for a homeland has been manifested in continuous violence and insecurity for both sides. Over the past few decades, numerous “peace processes” have been launched and failed.

With the advent of the new *Intifada* in the fall of 2000, and the subsequent arrival of hardliner Ariel Sharon as prime minister, Israel and Palestine have descended into the fiercest cycle of violence yet seen between the two adversaries. The Oslo peace process, ostensibly the most promising attempt since the beginning of the occupation, is dead. In its place several other schemes intended to bring the ongoing strife to an end have surfaced. One of these is the Nusseibeh–Ayalon plan,¹ named after the Palestinian and Israeli figures who crafted it.

The Nusseibeh–Ayalon plan is bold and simple, expressed in one page of text that proposes, through significant compromises for both sides, to put the conflict to rest forever. One of the plan’s strengths is that it foresees the resolution to sticky “final status” questions whose lack of resolution doomed the Oslo process. The plan also proposes to go directly “to the people” for support, instead of being conducted entirely at an elite level. These two elements of the Nusseibeh–Ayalon approach could, if pursued sincerely, ensure a greater chance of success than that enjoyed by any previous peace process.

However, the Nusseibeh–Ayalon proposal has fatal defects that will prevent its acceptance by a great majority of Palestinians whose fate it

purports to resolve. Furthermore, the plan has been stillborn into an environment where far stronger forces have ensured that it is quickly marginalized.

I. PROBLEMS WITH NUSSEIBEH–AYALON

At first glance, several elements of the Nusseibeh–Ayalon proposal immediately stand out as problematic. The most troublesome include:

1. Recognition of Palestine as the only state of the Palestinian people and Israel as the only state of the Jewish people.

This establishment of two ethnocracies goes against the several generations long trend of recognition that modern states cannot award citizenship rights to inhabitants solely on the basis of their ethnicity and expect to thrive in peace. It also legalizes before the world, in contravention of all international human rights law, the discrimination against Palestinians—one fifth the Israeli population—now in practice in Israel.

2. Permanent borders between the two states will be agreed upon on the basis of the June 4, 1967 lines.

For a two-state solution to be successful, it will certainly have to involve Israel's return to its 1967 borders. Gaza is currently inhabited by approximately 7,000 Israeli settlers (alongside over one million Palestinians) who control over 20 percent of its land. The West Bank, including Palestinian East Jerusalem, contains over 150 Israeli settlements dotted throughout the countryside. A good faith withdrawal would send all the settlers who are not willing to become Palestinian citizens back to pre-1967 Israel. However, the third item of the proposal, covering the issue of Jerusalem, states:

3. Arab neighborhoods in Jerusalem will come under Palestinian sovereignty, Jewish neighborhoods under Israeli sovereignty.

It happens that vast sections of East Jerusalem, formerly 100 percent Palestinian and illegally annexed by Israel soon after the 1967 takeover, have been made into Israeli settlements. These massive settlements, constantly stretching the geographic definition of Jerusalem, have grown to extend all the way to Bethlehem in the south, Ramallah in the north, and well into the West Bank to the east. Thus granting Israeli sovereignty to these settlements automatically means the annexation to Israel of large parts of the West Bank. Not only does this annexation truncate the future Palestinian state and severely disrupt Palestinian thoroughfare, it is also unrealistic to believe that any land of equal value on the current border between the West Bank and Israel could be found that would compensate for the loss of this territory.

4. Palestinian refugees will return only to the State of Palestine; Jews will return only to the State of Israel.

For the Palestinians, this point is so objectionable that it cannot be taken seriously. During the war that led to the establishment of the state of Israel in 1948, Israeli forces expelled over 800,000 Palestinians from their land, and destroyed at least 400 villages. Over 300,000 Palestinians were further displaced during the 1967 war. Today, these refugees and their descendents exceed four million, living in camps in the Occupied Territories, all the countries surrounding Israel, and in many other countries throughout the world. They have not given up their dream of returning to their ancestral homeland.

These are the most problematic points of the Nusseibeh–Ayalon plan, though not the only ones. Altogether, the plan's implementation requires the Palestinians to swallow their long-held hopes for repatriation without promising them a viable homeland in an intact West Bank and Gaza. More likely, implementation of this plan would see a crowded, impoverished, and

under-developed Palestine subservient to its rich and powerful Israeli neighbor.

Clearly, there are conflicting claims upon the land of “historic Palestine.” Israeli and Palestinian national myths and dreams clash, and it cannot be denied that both sides must make compromises. In the eventual resolution of this conflict, strident calls for absolute justice will have to be left behind. But the Nusseibeh–Ayalon plan, a reflection of the long-term power imbalance between Israeli and Palestinian negotiators, does not afford the Palestinians a measure of justice sufficient to reassure them that they can look forward to self-determination and a healthy livelihood.

II. CONSULT THE REFUGEES

The Nusseibeh–Ayalon plan involves a process whereby masses of Israelis and Palestinians are encouraged to sign a petition in its support, which will thus translate into pressure on the Israeli government in favor of the plan’s implementation. According to the plan’s drafters, by early Spring 2004 activists had indeed collected over 300,000 signatures, around 40 percent of them Palestinian.² Promoters of the plan characterize this work as a way of consulting the grassroots of both peoples for support.

However, at the same time the Nusseibeh–Ayalon plan has met with a heated, angry response on the part of many Palestinians who resent its facile way of trading off their right to return. This right is enshrined in the UN’s Universal Declaration of Human Rights, UN General Assembly Resolution 194³ (whose implementation was intended to be a condition of Israel’s entry into the United Nations), and other significant international legal documents. The Nusseibeh–Ayalon plan constitutes an abrogation of these documents for all time.

In the Fall of 2002, soon after the Nusseibeh–Ayalon proposal was first publicized, eighty Palestinian grassroots and refugee organizations in the Occupied Territories and surrounding countries released a statement condemning the proposal. The statement reaffirmed the commitment of

Palestinians to their right to return and criticized the proposal for granting Israel impunity for its expulsion of the Palestinian population. An official launching of the Nusseibeh–Ayalon plan in Ramallah was cancelled due to protests.

The question of support for return is in fact a thorny one. Given the time that has elapsed since the expulsions, some Palestinians have resettled comfortably—especially in Jordan, where they have acquired citizenship—and will not be interested in uprooting themselves to return. Others—especially in the impoverished camps of Lebanon, where discrimination has been the rule—will be quick to come back. But regardless of circumstance, Palestinians have not renounced their rights en masse. Whether or not individuals are prepared to return, they still wish for their rights to be recognized. This is a basic requirement for the fulfillment of justice needed for Palestinians, from their side, to lay the conflict to rest.

At present, assertions that “no Palestinians have relinquished the right of return,” countered by assertions that “only an insignificant number of Palestinians would move to Israel” constitute a fruitless rhetorical polemic, fueled more by passionate insistence than by fact. It seems obvious that an open process of direct consultation with the mass of Palestinian refugees would go a long way towards shoring up one position or the other, and would as such be a helpful step in identifying a resolution to the conflict.

Some work has been done in this direction, notably by Khalil Shikaki, director of the Palestinian center for Policy and Survey Research in Ramallah. In 2003, Shikaki released findings from a survey of 4,500 refugees living in the Occupied Territories, Jordan, and Lebanon.⁴ While over 95 percent insisted on Israel’s recognition of the right to return, Shikaki reported that over half of the respondents said that they would accept compensation or homes in a Palestinian state, and only around ten percent stated that they would return to present-day Israel.

The Palestine Liberation Organization’s Refugee Affairs Department contested these results, and a group of angry Palestinians attacked Shikaki’s

office and damaged it when he tried to make a public statement concerning his findings. Shikaki's evaluation of these events was that Palestinians interpreted his findings as a rejection of the right to return, even though he publicized his respondents' clear desire for the recognition of that right.

It is apparent that with regard to the question of refugee return, the basic principle of consultation has not been fulfilled. Thus, it seems clear that a wide-ranging survey to clarify the refugees' wishes is in order. This investigation should be led by the refugees themselves. If the results lean towards return, the project should transform itself into a grassroots movement. Only in this way will the voice of the refugees be heard. That the millions of refugees are fragmented and under-represented is understandable, but only they can take matters into their own hands and change this situation.

III. NUSSEIBEH–AYALON PLAN FLESHED OUT: THE GENEVA ACCORDS

If the Nusseibeh–Ayalon plan is the skeleton, the forty-six page Geneva Accord⁵ is the flesh. This unofficial initiative, hammered out by Israeli opposition figures together with officials from the Palestinian Authority (PA), gives life to the ideas presented by Nusseibeh and Ayalon. Nusseibeh and Ayalon assert that their plan is different from the Geneva Accords, and potentially more rooted in the will of the people, by virtue of their petition campaign, as well as the fact that they have left the details of their plan to be determined by greater participation.

However, the Geneva Accord, released in the fall of 2003, has so much in common with the Nusseibeh–Ayalon plan that it should be taken as a faithful representation of the intent of the Nusseibeh–Ayalon project's goals. It is important to examine the Geneva Accord not only for this reason, but also because the Accord has captured the imagination of politicians and moderate opponents of the occupation worldwide. In effect, it has piggy-backed on the momentum of the Nusseibeh–Ayalon plan.

Significant elements of the Geneva Accord include: restrictions against the return of Palestinian refugees to their pre-1948 homes;⁶ de-militarization of the new state of Palestine without a corresponding de-militarization of Israel;⁷ annexation of Israeli settlements⁸ (especially the large settlements around Jerusalem) with the unlikely promise of an equal land swap;⁹ and an ongoing Israeli and international military presence in Palestine.¹⁰

Like the Nusseibeh–Ayalon proposal, the Geneva Accord undercuts the entire body of international law supporting the Palestinians’ right to refugee return and, in spite of its detail, makes no provision for an Israeli acknowledgment of its own responsibility in the decades-long suffering of the Palestinian people. On the contrary, it frees Israel from this burden materially by leaving the number of Palestinian refugees allowed into Israel up to the discretion of the Israeli government.¹¹

IV. “OSLO WARS”

If one takes a closer look at developments in Israel and Palestine since the first *Intifada*, a common theme of intensification of the occupation becomes visible. While moderate opponents of the occupation fervently believed that the 1993 Oslo agreement signaled peace between the two peoples and the end to the occupation, that “peace process” was in fact the front end of a continuum that finds its culmination in the initiatives of Nusseibeh–Ayalon and Geneva.

The commonality between these three projects is their lack of concrete improvement for the Palestinians, which translates into the lack of a promise of peace for all parties. Oslo promised much, but the thorniest problems have never been addressed. After 1993, checkpoints and roadblocks proliferated throughout the Occupied Territories at a drastic rate, closures and other draconian restrictions on Palestinian rights skyrocketed, and illegal Israeli settlements in the West Bank doubled their population within ten years.

Not only did the Israeli authorities (both Likud and Labor) demonstrate their long-term goals of unofficial annexation and their disregard for Palestinian self-determination quite clearly during the Oslo period, but the nature of the Palestinian Authority as a collaborationist organ also became obvious to those whom it governed. This may come as news to those who have been persuaded that Yasser Arafat is the “head of all terrorists,” (as the current rhetoric of the Sharon government holds), but in fact Arafat and his colleagues, after they repatriated from Tunisia in 1993, formed a regime that did little more than subcontract the occupation on behalf of the Israelis. Euphoria reigned when Israeli troops left the centers of most Palestinian cities, but it did not take long for the Palestinians to realize that Israeli rule had been replaced by a very corrupt government that served, in many ways, as a proxy occupation.

The Palestinian Authority has shown itself to be the embodiment of the impulse among a few Palestinians to make vast compromises with the Israelis, going against the interests of its own constituents. These people agreed to the Oslo agreement even though it left all international borders with Palestine under the control of the Israeli government, gave Israel veto power over all decisions taken by the Palestinian government, and placed the better part of the West Bank (“area C”) under the complete control of the Israeli occupying force.

The agreement also required the Palestinian Authority to police and repress its own subjects as they began to feel the increasing constriction from an occupation that had not withdrawn, but only redeployed. To do so, the PA established a bewildering number of secret security forces, and Palestinians began to be incarcerated—even tortured, at times—in the same jails in which they had previously been mistreated by the Israeli authorities. Needless to say, this proxy Palestinian enforcement of the Israeli government’s desires did not endear the PA to the Palestinian population, and one of the only things that has to a small extent repaired

Yasser Arafat's esteem in the eyes of his subjects is the fact that the Israelis have incarcerated him in his Ramallah compound for several years.

Sari Nusseibeh is president of Al Quds University in Jerusalem, and former Palestinian Authority political commissioner for East Jerusalem. Yasser Abed Rabbo, head of the Palestinian group that negotiated the Geneva Accords, is Arafat's Minister of Information. Thus both of these initiatives, from the Palestinian side, have been crafted by figures whose political stance can be interpreted as directly representative of the "cooperative" position of the PA.

During a recent visit to Israel and the Occupied Territories, I had occasion to listen to the presentation of a hard-line Israeli settler living in one of the small enclaves of Hebron. I was startled when he referred to the current *Intifada* as the "Oslo War." His implication was that giving Palestinians hope for statehood gave them the audacity to rebel against the "rightful (Israeli) owners of the land." Upon reflection, I would have to accept the term, if not its racist implication. The present *Intifada* is a rebellion against the deal made between the Palestinian elite and the Israeli government, and the Nusseibeh-Ayalon plan and the Geneva Accords are two new, if only theoretical, incarnations of that arrangement.

When proponents of these schemes speak of "painful concessions for peace" on the part of the Palestinians, they are ingenuously acknowledging the fact that the Palestinians simply do not have the negotiating leverage to win justice for their cause. At least, that is what the Palestinian elite believes, and its representatives seem to be satisfied with selling off Palestinian rights in return for a few villas and other ostentatious, but limited, emblems of power. However, the Palestinian grassroots anti-occupation movement has another kind of power, and it will continue to defy the occupation, and the manipulations of its own illegitimate leaders, persistently.

V. EUPHORIA?

There has been a strong contrast between the response to the Nusseibeh–Ayalon plan and the Geneva Accords in the Occupied Territories and in the West. Other than the above-described reaction, the Nusseibeh–Ayalon plan did not make much of a splash in Palestine. When the Geneva Accords were announced in the fall of 2003, they were met with vituperation by the mainstream Israeli press, which denounced Yossi Beilin (one of the chief Israeli drafters) as a “traitor.” Meanwhile, around the West Bank my inquiries as to the value of the initiative were met, more or less, with a “huh?” response. It was clear that Palestinians at home in the West Bank are much more preoccupied with issues such as the oncoming “Separation Wall,” which is steadily advancing through the olive groves of the West Bank and the neighborhoods of East Jerusalem.

As this Wall progresses, it increasingly separates Palestinian farmers from their cropland, urban families from their relatives, students from their schools, and merchants from their shops. When the Wall is finished, the mass of Palestinians will be fenced off into ghettos. This specter, far more than the advent of yet another unpromising peace deal, is what is on the minds of the Palestinians in the Occupied Territories.

Meanwhile, the Nusseibeh–Ayalon plan and especially the Geneva Accords have been hailed as a breakthrough by moderate opponents of the occupation in the West. Governments and mildly liberal peace activists alike have taken up the banner of Geneva as a “brave and encouraging solution” and as “proof that there is a negotiating partner” among the Palestinians. Given the stark contrast between this hopefulness and the reality of the intensifying occupation, this euphoric response is reminiscent of a messianic movement, quite in denial of the facts.

Community organizations promoting the Nusseibeh–Ayalon plan and the Geneva Accords in the West tend to be top-heavy with supporters of Israel whose impulse for peace stems much more strongly from the desire for a “secure Israel” (with as few Palestinian citizens as possible) that retains the

vast (heretofore) illegal Israeli settlements, than from any great concern about equal justice for all.

VI. SIDESHOW

In the end, the Nusseibeh–Ayalon plan and the Geneva Accords have no prospects because their parent, the Oslo peace process, is long since dead. The militaristic option of corralling the Palestinians now reigns, and the softer approach of cooperation with a Palestinian collaborator regime has been discontinued. However, the advent of the annexationist Wall also closes off the possibility of a two-state solution, and cements the accomplishment of the current single state that exists between the Mediterranean and the Jordan River.

If it is not already so, soon the two-state option will be yet another peace fantasy. Commentators and activists are increasingly turning their attention to the prospect of a single democratic state that allows both Palestinians and Israeli Jews to live in freedom, democracy, and tolerance. At present this too is but a fantasy, but all political realities, pleasant or atrocious, start this way. It is for the residents of the land to decide, eventually, how they can live together in a decent way. A prerequisite for this future will be compromise. But justice will also be a necessary ingredient.

¹ Principles of Agreement, *The People's Voice*, at <http://www.mifkad.org.il/eng/PrinciplesAgreement.asp> (last visited Apr. 19, 2004); see also Ami Ayalon & Sari Nusseibeh, *Finding Common Ground: The Missing Pieces of Middle East Peace*, 2 SEATTLE J. SOC. JUST 415 (2004)

² *The People's Voice*, *supra* note 1.

³ See G.A. Res. 194, U.N. GAOR, 3d Sess., para. 11, U.N. Doc. A/810 (1948) (stating that “refugees wishing to return to their homes and live at peace with their neighbors should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of, or damage to, property which, under principles of international law or in equity . . .”).

⁴ Press Release, Policy & Survey Research (PSR), Results of PSR Refugees' Polls in the West Bank/Gaza Strip, Jordan and Lebanon on Refugees' Preferences and Behavior in a Palestinian–Israeli Permanent Refugee Agreement (July 18, 2003), available at <http://www.pepsr.org/survey/polls/2003/refugeesjune03.html>. See also James Bennett, *Would the Refugees Actually Return?*, HERALD TRIB., July 14, 2003.

⁵ *Geneva Peace Accord*, available at http://www.heskem.org.il/Heskem_en.asp (last visited Apr. 15, 2004).

⁶ *Id.* art. (7)(4)(e)(iii).

⁷ *Id.* art. 5(3)(b).

⁸ *Id.* art. 4(1)(a).

⁹ For the only available map of the land exchange, see Jewish Virtual Library, Map of the Territorial Exchanges Under the Geneva Accord (last modified Oct. 20, 2003), at <http://www.us-israel.org/jsource/Peace/genevemap2.html>. In Hebrew, this map depicts the settlements that would be retained by Israel (though not the land traded in return for that territory). See also Geneva Accord, *supra* note 5, art. 4(1)(a).

¹⁰ Geneva Accord, *supra* note 5, art. 5(7)(f).

¹¹ *Id.* art. 7(4)(e)(iii).