



ISRAEL *and* INTERNATIONAL LAW

Summary CONVERSATIONS Episode 3

The conflict between Fatah and Hamas: the End of Oslo?

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The path to lasting Israeli-Palestinian peace is cooperation, but the PLO must first accept the legitimate existence of the Jewish State as a necessary condition for final status negotiations.

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In the 1990's, Israel and the PLO agreed in the Oslo Accords to a process for negotiations that would eventually lead to Palestinian autonomy. The Palestinian Authority and many other institutions were established. But 'Oslo' has failed. For over a decade there have been no negotiations.

One reason 'Oslo' has failed is that the Palestinian society is deeply divided. The cancellation of Palestinian elections and the recent Hamas' aggression have exposed the vicious power struggle between Fatah/PLO and Hamas. The PLO leadership in Ramallah is on the verge of collapse.

Is there a future for 'Oslo'? If not – what are the alternatives?

What is the background to the Oslo Accords?

AT: "The foundations of the modern Middle East were laid under the Mandate system after WWI. The primary purpose of the Mandate for Palestine (1922) was to enable the establishment of a national home for the Jewish people in Palestine. The territory of Mandate "Palestine" undoubtedly included not only what is currently Israel but also what is now known as Gaza, East Jerusalem and the West Bank. The Mandate was intended to result in a Jewish state, in which non-Jews would have equal civil and religious rights.

The fact that the territory west of the Jordan was intended as a Jewish homeland is shown by the fact that in 1921 a political decision was made to separate Palestine into two parts: one west of the Jordan River and one east of the Jordan River (Trans-Jordan) that later became the Hashemite Kingdom of Jordan (1946). In other words, Jordan was created as a state for the Arab Palestinians.

Nevertheless, many proposals were made for dividing the territory west of the Jordan. The most significant was the UN partition plan in November 1947 after the British had announced they were going to depart from Palestine. That partition plan envisaged the creation of 2 states west of the Jordan River: a Jewish state and an Arab state, with an internationalized Jerusalem. The plan was rejected by the Arabs, the Jews reluctantly accepted the plan on the condition that the Arabs would accept it too, but it was never implemented.

The State of Israel was created in 1948. The Palestinian society refers to this fact as the Nakba - the tragedy that overcame the Palestinian people, to wit the creation of a Jewish state.

The modern idea of a “Palestinian” state arose after the Yom Kippur war (1973). After the Israel-Egypt peace agreements at the end of the 1970s Europe felt excluded by the Camp David process and decided to engage in its own way with the peace process by issuing the Venice declaration in 1980 in which it committed itself to supporting the Palestinian cause.”

What are the Oslo Accords?

AT: “In the early '90s, the Madrid process resulted in Israel entering into secret negotiations in Oslo with the Palestinians, leading to the Oslo Accords. These are a series of agreements signed by both the Israeli leaders and the PLO leadership under Arafat. In the agreements the parties agreed to engage in negotiations that should lead to a final status agreement.

The Oslo Accords are an agreement between Israel and the Palestine Liberation Organization (PLO), the PLO being regarded as the sole legitimate representative of the Palestinian people. It is not an agreement with the Palestinian Authority (PA), which was created under the Oslo Accords.

Neither Israel nor the PLO has officially withdrawn from or cancelled the agreements.

It is important to stress that **there is no mention of Palestinian statehood in the Oslo Accords. Israel did not agree to Palestinian statehood, and the PLO agreed that the end result of negotiations may be something less than full statehood.**

The parties agreed to negotiate the most difficult issues, including *inter alia* Jerusalem, refugees, settlements and borders.

The PLO has not fulfilled the promise made by Arafat to amend the PLO Charter. The official PLO position to this day remains that everything west of the Jordan River is “illegal Zionist

occupation.” In other words, the PLO still formally rejects the legitimacy of the Jewish State of Israel, and is committed to its destruction.

Since 1995, the PLO has rejected at least two concrete offers by Israel of Palestinian statehood covering more than 95% of the “occupied” territory.”

What does the conflict between Hamas and Fatah mean for the PLO today?

KM: “The PLO is still the sole representative of the entire Palestinian people, and it is Israel’s preferred partner. However since 2007, Hamas is in control of the Gaza Strip. Hamas is not a member of the PLO. Hamas threw out the PA and is in conflict with Fatah – the largest political party in the PLO.

The internal conflict within the Palestinian territories is part of a bitter and bloody struggle in the region since the Arab Spring. Four axes are striving for influence and hegemony in the Middle East:

- Iranian axis – includes Syria and proxies such as Hezbollah in southern Lebanon, Houti’s in Yemen, Palestinian Islamic Jihad in the Palestinian territories, and in a way Hamas;
- Salafia Jihadia – which is the most extreme and violent version of Islam, such as ISIS;
- Political Islam (the Muslim Brotherhood) – supported by Turkey and Qatar. Hamas is the Palestinian branch of the Brotherhood, and Gaza Strip is the only place in the Middle East where the Brotherhood is the ruling power of territory;
- Pragmatic Sunni Arab states – led by Saudi Arabia and Egypt, and includes Gulf states (excl. Qatar) and Jordan. The Palestinian Authority (PA) is part of this camp.

What we see in the Palestinian territories – both the West Bank and the Gaza Strip - is a reflection of this wider political struggle. Hamas and Fatah are not the only actors. Hamas is influenced and supported by Iran, Turkey and Qatar. The Palestinian Islamic Jihad, which operates from the Gaza Strip, is a full Iranian proxy. So in the small area of the Gaza Strip (365 square kilometers) we find Hamas, PIJ, Fatah and Iran, Turkey, the UN and other players – all with competing agenda’s and interests.

It is important to realize that Iran is working simultaneously on several fronts against Israel, which it can activate at any time it feels Israel has crossed “red lines”. They are Syria, South Lebanon and the Gaza Strip. In fact there are potentially six fronts, because Iran is not only preparing weapons in Iran itself, but also long-range rocket infrastructure to attack Israel from Iraq and Yemen. Israel has to be able to tackle the threats emanating from each of these fronts simultaneously. In all of this, the Palestinians are pawns on a chess board.

The recent hostilities from Gaza show Hamas reaching out and gaining control and political support amongst the Palestinians in Jerusalem and the West Bank.

The chance that Hamas and Fatah will reconcile is equal to the probability that President Sisi in Egypt will accept the Muslim Brotherhood in Egypt. This is a zero-sum game.

This is a very challenging and complex situation for Israel. Even though the PLO is Israel's preferred partner, the PA has become more important than the PLO. Mahmoud Abbas is the Chairman of the PLO and the PA, and he is also leader of Fatah, the most important political movement within the PLO. But the PA has no say in the Gaza Strip, where Hamas is in control. But Israel cannot work with Hamas because it is a terrorist organization, and to legitimize Hamas would undermine the PA and Fatah.

This means Israel has to use two internally-contradictory strategies – one in Gaza Strip, one in the West Bank. All of this is further complicated by the fact that Abbas, the PLO, the PA and Fatah are rapidly losing legitimacy and credibility amongst the Palestinian constituency.”

How is Palestinian society organized? What does it look like on the ground?

KM: “This is a very complex question. In short, Palestinian society is very fragmented. It is divided between those living in refugee camps; those who live in the villages; and those who live in the big cities.

Even between the cities there are big differences. Most Palestinians living in Hevron are Bedouins, whose natural affinity is with the Bedouin tribes in Jordan; their immediate loyalty is to their own tribes and clans, and only then to the PA in Ramallah. The Hevron Palestinians are very different from those in the northern cities like Jenin.

Ramallah is exceptional. It is the seat of the Palestinian Authority. Most Palestinian Christians live in Ramallah and Bethlehem. Ramallah is identified with the Palestinian elite, like Arafat and Abu Mazen and their families, who came from abroad after the Oslo Agreements. Most Palestinians deeply mistrust the elite.

Then there are the Palestinians in East Jerusalem who have a unique status, because they are Israeli residents and have Israeli ID, meaning they have all the rights of Israeli citizenship (excepting the right to hold an Israeli passport, and the right to vote for the Israeli parliament (Knesset)). They can travel freely and hold properties within Israel and the Palestinian territories. The Jerusalemite Palestinians have their own leadership, and are not easily affiliated with the PA. This tension was one of the triggers for the recent conflict with Hamas.”

What is the status of the Oslo Accords today?

RS: “The Oslo Accords were a sea-change. For the first time, the Palestinians understood and agreed not to use force, but to negotiate with Israel. Israel also made many concessions; we accepted that the Palestinians, and not Jordan, would be our partners.

Both sides made concessions. For example, regarding settlements: the PLO agreed that settlements exist, and that Israel was entitled to build new settlements. Israel agreed that their status would have to be negotiated as part of a final status agreement.

The Oslo Accords are binding on Israel and the PLO, even though they are not treaties.

There have been very serious violations of the Oslo agreements. The PLO payment of salaries and pensions to people for killing Israelis is a clear inducement to commission of crimes of terrorism. Further, the parties agreed that neither party would act unilaterally; the PLO has violated this by declaring the 'State of Palestine'.

'Palestine' is not a state. It clearly does not satisfy the Montevideo criteria. Resolution 67/19 only granted Palestine the status of a state; it did not recognize Palestine as a state.

'Oslo' was conditioned on negotiations. This is the key. Only negotiations can lead to a final agreement. Neither the UN nor any other party can impose a solution."

Given the fact that the PLO is collapsing, can negotiations really lead to a peaceful solution?

RS: "Negotiations can work. The agreements with Egypt and Jordan prove this. I also believe we can negotiate with the Palestinians. We cannot decide who represent the Palestinians. It is up to them. We cannot deal with Hamas. We have to accept that the PLO is not a liberal democracy. We have no alternative but to work with the PLO. There has been movement within the Palestinians, and hopefully they will move far enough to make concessions."

KM: "One possibility would be that the PLO assigns authority to the PA. But this will not happen, because it would mean giving up the claimed right of return, which it cannot do."

KM: "The situation is even more complicated than that. The PLO is still the partner for Israel. But the parties governing the PLO are losing legitimacy. Abu Mazen has only 8% of support, while Hamas has 74% of support in the Palestinian territories (including the West Bank). Remember that the people in the Gaza Strip are more moderate than those in the West Bank. Even if an agreement is reached with the PLO, who will support it? It is not realistic."

The fact is that the current PLO leadership is unable to reach an agreement. They are unable to make the concessions required to reach an agreement. The gap between Israel and the PLO on the key issues are unbridgeable.

The fundamental problem is not territories, borders, Jerusalem, water or similar issues. It is the historical refusal of the Palestinians to accept the right of the Jewish people for self-determination. They have deliberately been confusing people. But they regard the creation of the Jewish State as an original sin. Even Abu Mazen refuses to recognize the existence of the Jewish people as a nation. If he reaches an agreement, it will be with the State of Israel which he does not accept as being a Jewish State. The other side of this coin is the right of return; they demand Israel to accept this Palestinian right and their right to implement that right."

Has Israel failed to assert its national rights and interests concerning Jerusalem, Judea and Samaria?

RS: “Menachim Begin said: ‘The Jewish people have rights and claims in Judea and Samaria ... but we recognize others also have rights and claims. We must negotiate.’ I believe the only way forward is to sit and negotiate, which involves both sides being willing to make difficult decisions and compromise.”

What is the way forward? How can the US or other states assist?

RS: **“What the US and Europeans and others should not do is produce solutions. We don’t need advice. The most the Europeans and others can and should do is encourage both parties to sit and make difficult decisions.** They can offer to provide assistance and aid, provided that first difficult decisions are made.”

KM: “I would recommend that others should be more modest and sober. They need to recognize the difference between the parties, and also the Palestinians hold to a ‘sacred principle’ that ‘nothing is agreed until everything is agreed’. So (putting aside Hamas – which is a separate issue and needs to be tackled separately) our only option is to work with the PA. **We need to keep the horizon of a final status agreement, but in the meantime we can reach and implement interim agreements. We have already successfully reached important agreements on issues like infrastructure, environment, economy, transportation. These agreements make a big difference to the people on the ground. Implementing these agreements will build trust and create a new atmosphere, which in turn will facilitate the negotiation of the more difficult issues.** All of this will take time.

There is a very dramatic change in the Middle East, following the consequences of the Arab upheaval. This is the new normalization process between Israel and Arab countries in the region - a strategic alliance between Israel and Egypt, Jordan, Morocco, and the Gulf states and even the PA, reflecting the three strategic threats facing all of them: Iran, which is undermining stability in the region, the Jihadic Salafia, the Muslim Brotherhood and Turkey. This may become a new regional framework, allowing thinking at regional level but also European countries like Cyprus, Greece and Italy. **We must think not just of the Middle East but of the Eastern Mediterranean basin. Such cooperation will provide more security, self-confidence and opportunities.”**

Possible next steps?

KM: “The PA could collapse soon. Abu Mazen cannot continue much longer and there are no agreed procedures for the succession. All we have are various factions, each with its own armed militia. So if and when Abu Mazen leaves or dies, this will lead to armed conflict, resulting in collapse of the PA. Then, Israel will have no option but to re-install its military administration, and there could be a possibility for some kind of coalitions between the various Palestinian families and clans. But Israel should not try to engineer this in advance.”

RS: “Unilateral annexation by Israel (i.e. application of Israeli sovereignty to all or parts of the West Bank) is not an option, because both sides agreed not to act unilaterally. One thing I think we should look into is the role of Jordan. Jordan is a stable state, and it could become more involved in West Bank affairs.”

Is there a role for the United States?

RS: “The US definitely has an important role to play. Without US support, there will be no solution.”

KM: “The US Administration has a very significant role. The US can be helpful, but it can also be unhelpful – as we experienced under the Obama Administration. The current Biden/Blinken administration is more cautious than Obama/Kerry. However, they have already created damage by renewing financial assistance to the PA and UNRWA without conditions. The previous decision under Trump to stop the financing was absolutely right – the PA and UNRWA are daily inciting terror and hatred against Israel and the Jewish people. **UNRWA is a very problematic organization that should disappear. It is fully controlled by Hamas in the Gaza Strip, and its continued existence is just prolonging the conflict.**”