
The Atkin Paper Series

**The Palestinians, the PLO,
and Political Representation:
*the Search for Palestinian
Self-Determination***

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June 2014

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Thanks to the generosity of the *Atkin Foundation*, the *International Centre for the Study of Radicalisation and Political Violence (ICSR)* offers young leaders from Israel and the Arab world the opportunity to come to London for a period of four months. The purpose of the fellowship is to provide young leaders from Israel and the Arab world with an opportunity to develop their ideas on how to further peace and understanding in the Middle East through research, debate and constructive dialogue in a neutral political environment. The end result is a policy paper that will provide a deeper understanding and a new perspective on a specific topic or event.

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Salem Barahmeh joined ICSR as a Autumn 2013 Atkin Fellow. Whilst Salem was in London his research analyzed representation of the Palestinian people and their various interests across governmental institutions such as the PLO and the PA. The concept of representation is essential to understanding the Palestinian position in peace negotiations with Israel, as well as the mechanism for future Palestinian governmental decision making. A Palestinian from Jericho, Salem has previously worked at the General Delegation of the PLO to the United States doing Government and Public Affairs. He holds a BA in Government from Lawrence University in Wisconsin, and an MA in International Peace and Security from King's College London.

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Introduction

As the sole legitimate representative of the Palestinian people, the Palestine Liberation Organization (PLO) is regarded as the entity responsible for acting on behalf of Palestinians everywhere. This status allows the PLO to represent Palestinians at the United Nations, open embassies in capitals around the world and enter into international agreements. It also gives the PLO the capacity to conduct peace negotiations with Israel, and to sign a peace agreement that in theory would bind the entity that it is said to represent (the Palestinian people). The agency and decision-making capacity ascribed to the PLO on behalf of the Palestinians is contingent on it being the 'legitimate representative'; without this status, the PLO is precluded from holding the aforementioned functions. Stated simply: recognition of the appropriate status dictates capacity.

So what would happen if the PLO were no longer considered to possess this status? Could it still claim to act on behalf of all Palestinians?

Internationally, the PLO currently enjoys unprecedented diplomatic recognition as the representative of the Palestinian people. This was evident in November 2012, when with 138 affirmative votes, United Nations General Assembly Resolution 67/19 upgraded Palestine to the 'State of Palestine', confirming that 'the Executive Committee of the Palestine Liberation Organization, in accordance with a decision by the Palestinian National Council, is entrusted with the powers and responsibilities of the Provisional Government of the State of Palestine'.¹

Yet within the Palestinian political system, a polar-opposite attitude towards the PLO persists. Parties traversing the Palestinian political spectrum have consistently questioned whether the PLO in its current form is the legitimate representative of the Palestinian people. Many have called for its reform, while others – more drastically – have called for its abolition.² This negative attitude stems from a variety of factors. First, since the creation of the Palestinian Authority (PA) under the Interim Agreement, within the framework of the Oslo Accords, the locus of decision-making power has shifted from the PLO to the PA, alienating the millions of Palestinians that reside outside the Palestinian territories and do not come under the jurisdiction of the PA.³ Second, the PLO lacks legitimacy due to the non-representative character of its institutions; seats within the organization are allocated through a quota system that has been dominated by Fatah to ensure its monopoly over the decision-making process. Third, it is argued that the PA-PLO leadership currently assumes power without an internally elected mandate.⁴ The fourth point rests on the manner in which the PLO has represented the Palestinian people in the context of the Oslo Accords;

1 A/RES/67/19 (2012)

2 Khalil (2013)

3 Barakat, et al (2013); Daba, et al (2012)

4 Ibid.

some claim that the PLO has forfeited the basic rights of Palestinians, and therefore does not possess any legitimacy.⁵

A discrepancy has therefore arisen between the external and internal recognition of the status of the PLO as a legitimate representative. Underlying these conflicting attitudes is a specific understanding of political representation, which must be grounded in a theoretical approach to that concept. This paper adopts a theoretical framework of political representation, as advanced by Andrew Rehfeld that relies on recognition, audience, descriptive legitimacy and function. It will be argued that the way to legitimize Palestinian political representation is by redefining the central function of any Palestinian political representative – namely, the promotion of the Palestinian right to self-determination. In accordance with this defined function, the structure and system of political representation – whether democratic or non-democratic – can be established.

5 Ibid.

Concept of Political Representation

Misconceptions of political representation often are a product of grappling with one dimension of an inherently multidimensional concept. This naturally follows from the etymological complexity of the word 'represent', the meaning of which shifts depending on the context. Hannah Pitkin illustrated this in her analysis of the various contexts in which the concept is applied: formalistic (authorisation and accountability), descriptive, symbolic and substantive.⁶ Complexity arises when any of these contexts – on its own or in conjunction with another – is used to define the entirety of the concept. This is compounded by the fact that the concept of legitimacy is attached to that of political representation. We tend to ask not only whether the case at hand constitutes political representation, but also whether it is legitimate political representation.

A dominant interpretation of political representation has emerged from the tradition established by Pitkin. It tends to be democratically oriented, stemming from authorization and accountability through elections, with an emphasis on the substantive context of representation (representatives looking out for the interests of their constituents). The legitimacy of political representation associated with this interpretation is normative in nature: what leads to a legitimate representation *should* align with certain standards, such as free and fair elections, and so on.

Although the concept of political representation often evokes the idea of democracy, this association grossly misrepresents its scope. The fundamental contention lies in understanding the difference between political representation and a representative government. The model that follows from Pitkin is only one form of political representation, one which happens to be couched in a system of governance that is built on representative government. It assumes that legitimate political representation only takes place within a democracy. Ultimately, it neglects the cases of political representation that occur outside such a system, and therefore has limited application to the study of other forms of political representation.

Rehfeld's Theory of Political Representation

In response to such limitations, Rehfeld's *Towards a General Theory of Political Representation* puts forward the most comprehensive theory of political representation to date. Any starting point for defining political representation lies in its one universal truth: there is something that is represented and an entity that purports to represent it; in other words, the represented and the representative. Political representation simply occurs in the case of 'an audience's judgment that some individual, rather than some other, stands in for a group in order to perform a specific function. The audience uses a set of "rules of recognition" to judge whether

6 Pitkin (1967)

a claimant is a representative in a particular case'.⁷ This argument is couched in descriptive legitimacy rather than normative legitimacy. The audience's judgment is the legitimising factor, built on its perception of things as *they are* rather than as *they should be*.

The first premise of Rehfeld's formula is that any form of political representation is defined by its function. A representative does not just 'stand for' the represented; the representative 'stands for another' to perform a specific function.⁸ A congressman is a representative to the legislative body *in order to make and vote on laws*. A diplomat is a representative to another country in order *to further a state's foreign policy*. Without those defined functions, the need for representation – standing in for another – does not occur.

The second premise – that an audience must recognise a claimant as a representative – is contingent on the first premise. An audience consists of the relevant parties before whom a particular case of representation needs to be accepted; the relevant audience is determined by the function.⁹ For instance, a congressman must be recognised by Congress as the representative of a certain constituency in order for the congressman to perform his function. Otherwise, Congress as an institution would deem his actions null and void. Similarly, a diplomat must be recognised by the receiving country in order for him to perform his function in an official capacity. Without the judgment of both audiences in the aforementioned cases, each form of representation ceases to be legitimate political representation. An example of this relationship between audiences can be seen in the case of Syria. After the outbreak of the civil war, the Arab League ceased to recognise the Syrian representative as the legitimate representative of Syria, instead extending recognition to a representative from the opposition. With that recognition, the representative from the Syrian opposition came to possess the capacity to vote and adopt resolutions on behalf of Syria.

The audience uses 'rules of recognition' to determine whether a claimant is indeed a representative. These rules dictate that a 'selection agent', based on a 'decision rule', choose a representative from a 'qualified set'. According to Rehfeld, however,

*rules alone do not create a representative. First, an audience must take these rules to be valid and appropriate given the case. Second, the audience must recognize that the rules in fact denote an individual claimant. When the audience recognizes the rules that it uses to designate a particular claimant, that claimant becomes representative.*¹⁰

7 Rehfeld (2006), 2

8 Ibid at 5.

9 Ibid at 5.

10 Ibid at 5.

In a democracy, the 'selection agent' is the voters, the 'decision rule' is selection based on majority rule through elections, and the 'qualified set' are the members of a constituency or district that meet certain criteria that make them eligible to run for office. In this system of political representation, the Congress – the relevant audience – uses these rules to determine whether a congressman is in fact a legitimate representative. Congress deems these rules valid and appropriate as they stem from the state's constitution. In a monarchy seeking to appoint an ambassador to the United Nations, the 'selection agent' is the king, the 'decision rule' is the king's preferences, and the 'qualified set' is whoever the king deems qualified. The United Nations would consider such rules appropriate and valid in the context of this specific form of representation, and any claimant that met these rules would be recognised as the ambassador of this monarchy.

Function → [Audience → Who Uses Rules of Recognition to Recognize a Claimant → Representative] → **Performance**¹¹

Representation obtains in case

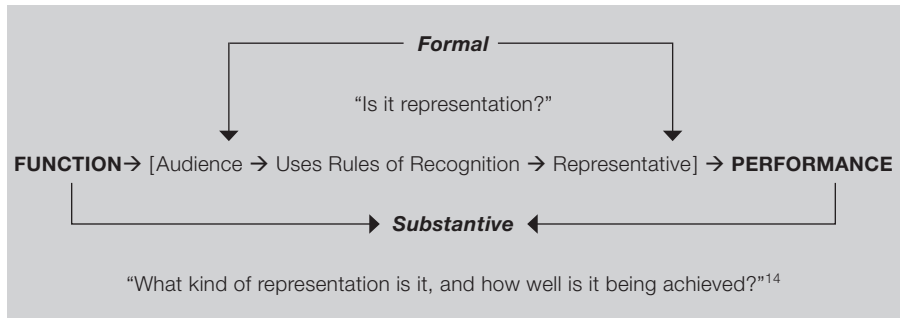
- R1: There is some Function that requires a Representative.
- R2: A particular claimant is a member of the Qualified Set.
- R3: The claimant was selected using the Decision Rule.
- R4: The Selection Agent used the Decision Rule to pick a member of the Qualified Set.
- R5: If applicable, the Representative accepts the charge.
- R6: The Audience, in fact, recognizes that R2–R4 have obtained (that a member of the Qualified Set was selected by the Selection Agent to represent the Represented according to the Decision Rule.)¹²

The second prong of the formula considers the substantive dimension of political representation: representation undertaken as an activity (i.e., to represent). In accordance with the mandate vs. independent debate, the question arises: are political representatives to act in accordance with every wish of their constituents, or are they to employ their independent judgment in the pursuit of their constituents' best interests, even if it might go against their wishes? According to Rehfeld, as political representation is contingent on function, the measure of a 'good representative' does not rest on an abstract standard of representation within this debate, but rather within the context of performing the function ascribed to the case of political representation. If political representation is established with the function of

11 Ibid at 19.

12 Ibid at 6.

negotiating a peace agreement, then an audience must judge the performance of the representative in pursuing a peace agreement. It is the relationship between function and performance that dictates the quality of representation.¹³



Through this formula, which rests on recognition and representation in pursuit of a function, a complete set of tools is provided that can address all aspects of political representation.

13 Ibid at 18.

14 Ibid at 19.

Palestinian Representation

Established in 1964, the PLO emerged among competing claims by different Palestinian parties as well as Arab states that sought to represent the Palestinian people. In its early years, the PLO was seen as an extension of Arab regimes, especially Gamal Abdel Nasser's Egypt, and did not possess complete autonomy over its decision-making. Nonetheless, the function of the PLO coincided with that of all parties that sought to 'stand for' the Palestinian people: to promote the exercise of Palestinian self-determination.

The struggle for political representation of the Palestinian people dominated the history of the Palestinian national movement from 1948. However, the field of competition drastically changed in 1968, when a restructured PLO unified the Palestinian political parties by including leading Palestinian guerrilla groups, shifting the decision-making power from Arab regimes to the Palestinians themselves. The contemporary structure of the PLO is a remnant of the one established in 1968, which signalled the inception of a Palestinian political system.

This form of political representation was embedded in a system of a national liberation movement. The 1968 structure of the PLO was not democratic, but rather relied on a quota system. Unlike a democracy, where the selection agent and the represented overlap through the voter, the PLO's non-democratic structure meant that the selection agent and the represented were two different entities. When this structure of political representation is juxtaposed against the self-determination function of the PLO, the relevant audience to confer recognition develops two components: the internal and the external. The internal, the Palestinian people, are the represented and it is their self-determination that the PLO seeks to promote. As the represented and the selection agent do not coincide within a national liberation movement's structure, the represented become a salient audience to employ the 'rules of recognition' in determining whether their political representative is in fact legitimate. The external audience extends to any entity meant to 'receive' the PLO as the agent of Palestinian self-determination, including regional and international actors. Therefore, the very structure and function of the PLO dictates that political representation, when applied to the case of the Palestinian people and their national movement, must include both sets of audiences.

External Audience

The external audience, in its essence, is the international community. Like any society, it is governed by a set of rules – a legal system. States, international organizations and other international actors must recognize the PLO as the legitimate representative of the Palestinian people in order for the PLO to carry out its function. Recognition in the international system is an institution of state practice that can

resolve uncertainties as to status and help regularise new situations.¹⁵ It is a political act, but one with legal consequences – specifically, consequences that affect the status of an entity under international law.¹⁶ Actions taken to promote that right within the international system – whether entering into relations with other entities, signing and ratifying agreements, acting in self-defence or submitting grievances to an international court of law – are all regulated by international law. Therefore, any grounding of the political representation of the PLO within the international system will encompass a legal dimension.

The Palestinian right to self-determination is also a right that stems from international law. It is the *function* that defines the need for political representation and, as such, establishes the premise for the recognition of the PLO as a political representative. Understanding the right to self-determination enables an understanding of the PLO's position as a representative within the international legal system. Although the principle of self-determination has two dimensions, political and legal, it can be generally defined as 'all people have the right to freely determine, without external interference, their political status and to pursue their economic, social and cultural development'.¹⁷ The legal dimension of self-determination is exercised through the formation of a state, integration in a state, or association with a third state. However, this legal right is not inherent, and therefore does not apply to all people. Its application is complex and selective due to its contention with other rules of the international society, particularly state sovereignty and territorial integrity. Crawford states that the right to self-determination is 'not applicable just to any group of people desiring political independence or self government, like sovereignty...it applies as matter of right only after a unit has been determined'.¹⁸ The determination of the right is presupposed by the recognition of a self-determination unit, which needs to comprise a people linked with a territory.

The Palestinians have been recognized as a self-determination unit, and are regarded as possessing the legal dimension of the right to self-determination. In 1969, United Nations General Assembly (UNGA) Resolution 2535 referred to the 'inalienable rights of the Palestinian *people*'.¹⁹ The territorial unit linked to the exercise of Palestinian self-determination has evolved through some configuration of the Mandate of Palestine, and today exists as the 1967 borders (the West Bank, Gaza and East Jerusalem) under the auspices of a two-state solution. In 1972, UNGA Resolution 2672 explicitly recognised the Palestinian right to self-determination. This was recently reaffirmed in the International Court of Justice (ICJ) *Separation Wall* case.

The PLO's capacity to act within international society stems from the legal personality it has acquired as the representative of a self-determination unit. Legal personality serves as the distinguishing factor between entities that belong to a

15 Crawford (2006), 27.

16 Klabbers (2005), 6.

17 A/RES/25/2625 (1970)

18 Crawford (2006), 127.

19 A/RES/2535 (1969)

legal system and those excluded from it. In international law, international legal personality is '*conditio sine qua non*' for the possibility of acting within a given legal situation. Personality is considered to be a threshold, which must be crossed. Without legal personality, those entities do not exist in law. Accordingly, they can neither perform the sort of legal acts that would be recognized by that legal system nor be held responsible under international law'.²⁰ Another understanding of international legal personality is that it is a bundle of rights, obligations and competences. In order for an entity with legal personality to act in a certain context, its bundle of rights must correspond to the threshold required to undertake that act (the bundle of rights itself is not all or nothing, but comprises degrees). For example, a child possesses rights under the law, and as such the child possesses legal personality. However, the child's bundle of rights does not include the right to vote, the right to take people to court or the right to consume alcohol. These rights are acquired once the child crosses a certain threshold – in this case, a certain age that signifies adulthood. Similarly, in international law, for an entity with legal personality to conduct a treaty or refer a case to the International Criminal Court, it must possess the appropriate bundle of rights.

The legal system itself determines which entities hold personality and the degree of personality they hold. As the international system is anarchic in nature, and lacks a 'centralized law of persons' which would regulate the designation of legal personality, entities such as states and international organizations are the central units that confer legal personality.²¹ The process of conferring legal personality is undertaken by recognition.

This is where the concept of legal personality in international law corresponds directly to the theory of representation advanced by Rehfeld. Just as recognition of a certain threshold of legal personality is necessary for an entity to act in certain circumstances within the international legal system, it is similarly necessary that the relevant audience – in this case, an international audience – recognizes the status of a claimant of political representation in order for that claimant to obtain the capacity to carry out his intended function. In this context, when an international audience recognizes a political representative of any entity within the international society, it is in fact recognizing the right of the representative's legal personality to act on behalf of the represented. When France recognizes the PLO as the representative of the Palestinian people, it confers on the PLO a certain right within that bilateral relationship that triggers the capacity to enter into diplomatic relations or an international trade agreement.

As aforementioned, the PLO's legal personality is contingent on the Palestinian right to self-determination. This must be contextualized within the historical period in which the PLO came to be regarded as the sole legitimate representative of the Palestinian people. The 1960s and 1970s were the era of decolonization, in which the principle of self-determination provided the legal foundation for the independence of

20 Klabbers (2005), 6.

21 Portman (2010), 9.

colonies and the emergence of new states. During this time, there was much debate regarding the status of national liberation movements. It has been suggested that the international community designated liberation movements as holders of the rights of non-self-governing territories, conferring on these movements temporary legal personality until the realization of their right to self-determination was manifested through the establishment of a state.²² Abi Saab, in his analysis of liberation movements and international humanitarian law, supported this notion, saying that 'liberation movements are considered here not in themselves (as recognized "belligerents" or "rebels") but as representatives of a people struggling for self-determination'.²³ William O'Brien concurred:

*What is recognized is a putative right of the Palestinian people to self-determination, which right is supposedly entrusted to the PLO as the agent of the Palestinian people. Following the analysis of international personality and recognition...there is no reason why states, international organizations, and international conferences cannot add to the categories of entities and situations to be recognized by recognizing an inchoate right of self-determination and identifying a particular organization as the party to deal with in matters affecting that right.*²⁴

The international community recognized that in an era of self-determination and decolonization, the PLO fit the prescription of an entity that was to further the rights of a people. This provided the function that defined the need for representation. The PLO emerged from a qualified set – the Palestinian people as the holders of the right to self-determination. It established a framework of a national liberation movement in which a decision rule (a quota system) was agreed upon by the selection agent, namely the various parties and guerrilla groups that comprised the institution.

However, it was not until 1974 that the PLO assumed this status internationally, and with it the legal personality to act on behalf of the Palestinians. During its Rabat Summit in October 1974, the Arab League recognised the PLO as the sole legitimate representative of the Palestinian people. In November of the same year, the UNGA passed Resolution 3210, recognising the PLO as the representative of the Palestinian people. Three days later, the UN granted the PLO observer status.

Timing is critical for understanding this drastic shift in the recognition of the PLO. Based on a calculation that will be explored further below, the PLO shifted its strategy in what is referred to as the Ten Point Program. Adopted by the PLO's Palestinian National Council (PNC) in June 1974, the program called for 'all means, first and foremost armed struggle, to liberate Palestinian territory and to establish the independent combatant national authority for the people over every part of

22 Vukas (1991), 494.

23 Abi-Saab (1979), 412.

24 Ibid at 379.

Palestinian territory liberated. This will require further changes being effected in the balance of power in favor of our people and their struggle'.²⁵

The call for the establishment of a national authority over part of the land was seen as a pragmatic shift by the PLO and is what elicited international recognition. Following recognition by the Arab League and the UNGA, one of the most significant resolutions regarding Palestinian self-determination was passed. UNGA Resolution 3236 recognized that the Palestinian self-determination unit was to possess the 'right of self-determination without interference, national independence, and sovereignty'.²⁶ This increased the Palestinian bundle of rights, and marked the attribution of the manifestation of the Palestinian right to self-determination through statehood. However, in line with past and future resolutions, the exercise of Palestinian self-determination through national independence and sovereignty was internationally qualified to being a product of Middle East peace. This suggested that recognition of the PLO was predicated on its pragmatic shift – not on its function of liberation of all historic Palestine, but rather a function in pursuit of an entity on part of the land.

Since 1974, the evolution of the PLO's legal personality through increased recognition has been associated with a particular statist conception of the right to self-determination. A legal adviser to the UN, Erik Suy, suggested that the status and privileges given to the PLO at the UN is 'strongly connected with [the] future state of the people [it] represents'.²⁷ Other major breakthroughs regarding the PLO and the rights associated with the self-determination unit revolved around this understanding of statehood. In 1988, the UNGA recognized the Palestinian Declaration of Independence by 104 to 2, with 36 abstentions, and changed the designation of the PLO to Palestine. It proclaimed the creation of the State of Palestine, using UNGA Resolution 181(II) as its legal framework, stating that it 'attaches conditions to international legitimacy that guarantee the Palestinian Arab people the right to sovereignty and national independence'.²⁸ The UN's recognition of this declaration reinforced the Palestinian right to statehood in line with Resolution 181 – considered by many as the inspiration for the concept of the two-state solution. In the 2004 Separation Wall case, the ICJ found Israel's construction of the wall illegal due to its infringement on the Palestinian right to self-determination. The court proscribed that 'this tragic situation can be brought to an end only through implementation in good faith of all relevant UN Security Council resolutions, in particular Resolutions 242 (1967) and 338 (1973)'.²⁹ Both 242 and 338 have served as the premise of the two-state solution, on the basis of which the PLO has negotiated throughout the peace process since its inception at the Madrid Conference in 1991. The most recent reaffirmation of this statist conception of the Palestinian right to self-determination came in the aforementioned UNGA Resolution 67/19, which recognised 'the right of the Palestinian people to self-determination and to independence in their State of

25 PNC (1974)

26 A/RES/3236 (1974)

27 Suy (1978), 112.

28 A/RES/43/177 (1988)

29 ICJ *Wall Case*

Palestine on the Palestinian territory occupied since 1967'.³⁰ The most remarkable element of this resolution is the elevation of the Palestinian bundle of rights to that of a state, thereby endowing it with the necessary legal threshold to access international courts such as the International Criminal Court – institutions only open to states.

It has been observed that in accordance with the function of promoting the Palestinian right to self-determination – the function that gives rise to the need for political representation – the PLO enjoyed widespread international recognition as the legitimate representative due to its pursuit of self-determination through establishing a Palestinian state under the two-state solution. The recognition of its representative status, and the legal personality necessary for the PLO to operate on behalf of Palestinians within the international system, came in 1974 as a result of its strategic shift. The PLO's legal personality as the political representative of the Palestinian self-determination unit continually evolved throughout its history, and has come to be attached to the idea of 'a Palestinian state living side by side in peace and security with Israel'. In other words, the PLO is recognized by the external audience as a legitimate political representative insofar as it promotes Palestinian self-determination through the accepted two-state solution.

Internal Audience

The Palestinian people assume the role of the internal audience, as the entity that is represented and the holders of the right to self-determination. The PLO thus must meet the function (established by the case of representation) of promoting Palestinian self-determination, and must be recognized in line with the rules of recognition that the internal audience deems appropriate. Although its legitimacy has declined among the Palestinian body politik, the PLO has enjoyed resounding popular support throughout several stages of its history. Therefore, any analysis of the PLO as a political representative must lie within a reconstructed political and strategic evolution of the organization.

Prior to delving into the case of political representation in relation to this audience, it is necessary to explore the *sui generis* case of the Palestinian body politik. As aptly described by Palestinian sociologist Jamil Hilal:

*The Palestinian political field differs from many others in that it includes Palestinian communities with differing socioeconomic, state, and civil society structures, not only in historic Palestine (the occupied territories and Israel) but also in the diaspora created by the 1948 Nakba.*³¹

The fragmentation of Palestinian society after 1948 led to a heterogeneous Palestinian body politik. Political orientation among Palestinians highly corresponded to the perceived identity of 'being Palestinian', which differed depending on the

30 A/RES/67/19

31 Hilal (2010), 25.

Palestinian community in question. For instance, the political consciousness of a Palestinian refugee in Lebanon differs from that of a Palestinian residing in the West Bank, a Palestinian in the United Kingdom diaspora and a Palestinian living in Gaza. These cleavages between the various Palestinian communities were further exacerbated in 1967 when Israel occupied the West Bank, Gaza and East Jerusalem, and a schism developed in which people in the occupied territories were regarded as the 'inside' and those in the diaspora and refugee populations were seen as the 'outside'.

Against this background of geographic dispersal, and political diversity governed by identity, the vacuum of Palestinian political representation produced competition between claimants who sought to represent the Palestinian people. Post-1948 regional politics among Arab states dictated the extent to which the Palestinian issue was addressed. Egypt, among others, vied to represent Palestinian interests, and it was expected that these Arab states would push for Palestinian self-determination through the liberation of historic Palestine. However, failure categorized these attempts; the pinnacle of these failures came after the 1967 war, when Egypt, Syria and Jordan were blamed for the loss of the West Bank, Gaza and East Jerusalem. This was one catalyst for the paradigm shift in the case of Palestinian political representation and the Palestinian national movement. The other was the perceived Palestinian victory in the 1968 Battle of Karameh, fought by Palestinian guerrilla groups alongside the Jordanian army against Israeli forces.

While Palestinian political parties and guerrilla groups emerged in the 1950s and 1960s, they faced contention among themselves as well as with the Arab states that harboured them. All of them jostled for hegemony over political representation of the Palestinian people. However, once the Arab failure of 1967 was juxtaposed against the perceived triumph at Karameh by the Palestinian guerrilla movement, the stage was set for the emergence of an exclusively Palestinian entity. Mass mobilisation among Palestinians to join these guerrilla movements took off, leading to the rise of groups such as the Popular Front for the Liberation of Palestine (PFLP) and Fatah. Their popular appeal was not only in the armed struggle as a strategy, but in the way the armed struggle was able to address the issue of Palestinian identity as a product of the era of 1948–1967. It was said, 'to declare Palestinian identity no longer means that one is "refugee" or second class citizen. Rather, it is a declaration that arouses pride, because the Palestinian has become a *fida'i* or revolutionary who bears arms'.³² The emergence of a Palestinian political representative within an authentically Palestinian political system devoid of the traditional influence of Arab regimes correlated to the rise of the Palestinian armed struggle.

This political system was conceived in 1968 when the guerrilla groups joined the PLO, bringing to the organization the mass support that it had lacked since 1964. This transition saw the amendment of the PLO Charter and Covenant in line with its newly acquired character. The main change was a move away from an electoral system of representation based on majority rule within the Palestinian National

32 Sayigh (1997), 195 *supra* Yusif (1973).

Council, to a quota system based on consensus rule. The rationale was that within an organization now dominated by guerrilla groups, the quota system was meant to ensure that specific factions associated with Arab regimes did not undermine the decision-making process that might take place in a majority-rule system if disagreement arose. Although consensus rule rested on negotiations, and agreement among all the parties, it often gave disproportionate power to smaller parties who did not represent a large constituency within the Palestinian body politik.

Structurally, the PLO moved away from a system of political representation that was democratic in nature – even espousing elements of representative governance – to one that was not. Although less accountable to the represented entity in theory, these changes produced ‘rules of recognition’ that the audience regarded as valid and appropriate due to the newly acquired character of the PLO. The PLO of 1968 represented the pursuit of Palestinian self-determination through liberation by the means of Palestinian armed struggle. Its legitimacy was derived from the mass mobilization surrounding the concept of Palestinian armed struggle that led to the popularity of the guerrilla movements of that time. The Palestinian people, as the internal audience, recognized that the selection agent – the Palestinian political parties and guerrilla groups – used the decision rule of a quota system to choose from qualified Palestinian parties within the framework of the PLO. Underlying these rules was the acceptance of the function, and the performance of the function – self-determination through armed struggle – within the structure of a national liberation movement. According to Sayigh, the ‘armed struggle was the source of political legitimacy and national identity’.³³ Therefore, although not democratic, the PLO was regarded as the legitimate political representative of the Palestinian people.

Armed struggle was not only the principle behind the legitimacy of the PLO – it was also a strategy adopted in pursuit of a specific military objective. As a military strategy, it leaned on Maoist conceptions of guerrilla warfare as a ‘people’s war’. The strategy incorporated various phases of combat; the final stage sought the occupation of a territorial base to allow more effective combat against the enemy. This was reflected in the strategic thinking of different streams within the Palestinian guerilla movement. As early as 1968, the leading and most popular group, Fatah, recognised that ‘we must be satisfied with the results we have achieved...combat in this way cannot be a long-term strategy, because attrition...makes developing ourselves difficult...and so it was imperative to...acquire a secure base’.³⁴ The appeal of this strategic phase to a diaspora-based and -dominated national liberation movement was rooted in an existence that was contingent on the acquiescence of the Arab states from whose territories it operated. However, as Sayigh observed,

the guerrillas had reached the limits of their military and organizational capabilities and political potential by 1970, although few could perceive the fact at the time and none would admit it openly. The Palestinian movement had expanded its

33 Sayigh (1997), 195

34 Ibid at 207 *spura Fateh* (1970)

*presence in Jordan, Syria, and Lebanon during its 'honeymoon period', but in each country success had already laid the seeds of future conflict.*³⁵

Conflict with Arab states, and the ineffective execution of the armed struggle in its respective contemporary stages, made the move towards a territorial base more imperative. It was both a strategic and pragmatic calculation based on the political context in which the PLO operated. The loss of its base in Jordan in 1970, and the consequences of the 1973 Yom Kippur War, increased the urgency of reformulating its strategy. This was compounded when the PLO's status as the representative of the Palestinian people was undermined by Henry Kissinger negotiating with King Hussein to return some of the occupied territories to Jordan.

This led to the adoption of the Ten Point Program during the 1974 PNC session, in which the PLO formally incorporated establishing a fighting authority on part of historic Palestine as an incremental phase for total liberation. For the first time, the PLO recognised that although the armed struggle was the principal means to enable Palestinian self-determination, it must be situated within a multifaceted strategy. Sayigh noted:

*Total liberation of Palestine presumably remained the genuine desire of most, if not all its [PLO] members, but they were keenly aware of the regional and international impediments to the destruction of Israel...The PLO faced a hypothetical choice between an indirect, phased strategy that would see the establishment of a state on the occupied territories as a first stage, and a direct strategy of unrelenting military conflict in which Arab resources would have to be fully mobilized. The latter option was simply unavailable...The indirect strategy still took the establishment of a secular democratic state over the whole of mandatory Palestine as its ultimate goal, but whether or not the leadership believed this to be a likely eventuality, it was perceptive enough to realize that attaining its statist ambitions could only come about through major compromise in historic claims, and opportunistic enough to make a choice.*³⁶

Although defining its strategic objective on a limited part of historic Palestine was an internally contentious decision within the PLO, the organization was able to maintain its legitimacy as a political representative by retaining the armed struggle. However, it realized that strategically the movement towards a territorial base would rely on compromise rather than military means. This led to the understanding that the exercise of Palestinian self-determination would come through a statist conception that did not conform to the function of liberation.

The second paradigm shift in the Palestinian political system followed this political and strategic evolution of the PLO. Similar to the previous shift that brought the PLO to prominence, the political environment dictated the extent of the

35 Ibid at 216.

36 Ibid at 343.

transformation. In 1982, the PLO lost its base in Lebanon, and with it the capacity to undertake any form of effective armed struggle. In 1987, the Palestinians in the occupied territories began the First Intifada and became the driving component for the exercise of Palestinian self-determination. Threatened by alienation, the PLO moved to territorialize, and in 1988 the PNC passed the Palestinian Declaration of Independence, pronouncing the establishment of the State of Palestine and renouncing the armed struggle. What ensued was the Madrid Conference, the Oslo Accords and twenty years of peace negotiations in pursuit of the two-state solution.

This had a drastic impact on Palestinian political representation. The very function that defined the need for political representation changed from self-determination through liberation to self-determination through independence. It altered the manner in which Palestinian self-determination would be exercised. Liberation entailed self-determination for all Palestinians within a Palestinian state on all of historic Palestine, and allowed for the unqualified right of return for Palestinian refugees. Independence, on the other hand, limited Palestinian self-determination to a specific territorial constituency, and detached the right of return from the right to self-determination. Once the exercise of self-determination changed, the function of the political representative changed. This separation of the application of the right to self-determination between geographical Palestinian communities reintroduced the clashes in Palestinian identity that were mitigated by the PLO and the armed struggle.

As in 1968, the new function dictated the structure of political representation and the appropriate rules to recognize its legitimacy. As a national liberation movement consisting of guerrilla parties, the PLO was deemed legitimate because it was structured to carry out the function of liberation. Once the PLO moved towards establishing a Palestinian state on the 1967 borders, the structure and rules changed. Independence and statehood entailed governance, and as such the Palestinian Authority (PA) was established as an administrative entity. Within the scope of this new function, not only did the locus of decision-making power shift from the outside – the PLO as a diaspora movement – to the inside, but so did the entire Palestinian political system. The PLO leadership assumed control of the PA, and as the PA exceeded its initial five-year mandate, a complex web of political representation emerged de facto. The PLO remained the sole legitimate representative of the Palestinian people, but the PA's capacities developed – even though it is formally considered a subsidiary organ of the PLO – to the point where the line between them is often blurred in practice.³⁷ The newly established political system was restricted to parties inside the occupied territories, and has become a contest between Fatah and Hamas within the bounds of the PA. The selection agent became a mix of antiquated guerrilla parties within the PLO, and voters residing in the occupied territories; the decision rule was a combination of the quota system in the PLO, and majority rule in the PA; and the qualified set

37 Al-Haq (2009), para. 27.

consisted of eligible candidates for election in the occupied territories, and members of former PLO political parties.

However, as Rehfeld suggested, rules alone do not determine legitimate political representation. The audience must deem those rules as valid and appropriate for them to apply. The internal audience is not limited to Palestinians in the occupied territories, but extends to all Palestinians as the entity that is represented and the holders of the right to self-determination. Once the altered function of self-determination through independence precluded a significant element of the represented from exercising their right to self-determination, the newly formed rules were deemed invalid. Essentially, the function that bound the represented and the representative together was severed, and so within the diaspora the PLO lost its legitimacy as the political representative of the Palestinian people. However, even among Palestinians in the occupied territory, self-determination through statehood has not materialized, and the function that was assumed by the PLO and PA has been further undermined by the lack of progress in the peace process and the increase in Israeli settlement of the provisional State of Palestine on the 1967 borders.

The critical factor for the PLO's lack of legitimacy in relation to the Palestinian body politik is not the structure of the political system, nor the rules that denote a claimant as a political representative. Rather, it is disagreement over the function it is supposed to hold. Addressing the legitimacy of Palestinian political representation is not about abolishing the PLO or dismantling the PA, holding new elections, developing institutional arrangements or reviving democratic or non-democratic systems based on majority rule or consensus rule. It is about defining the ability and the manner through which a political representative will promote the self-determination of the Palestinian people. It is about redefining the very function on which all the aforementioned issues are contingent. However, this is not devoid of political factors. The performance of function – especially when it is based on a people's self-determination – has been dictated by the political and strategic evolution of the Palestinian national movement as embodied by the evolution of the PLO as an organization. (It is for this reason that the legitimacy of the PLO has been analyzed against the backdrop of the organization's historical development.) As illustrated, although armed struggle was the legitimizing factor of the PLO in 1968, it lost its political and strategic expediency in 1974. As a strategy, it was unable to attain Palestinian statehood, whether through liberation of all of historic Palestine or independence within the 1967 borders, and as such has been abandoned. Therefore, it can be suggested that the PLO in its current form cannot be regarded as the legitimate representative of the Palestinian people.



The Current Political Context and Palestinian Political Representation

Palestinian political representation is contingent on the exercise of the Palestinian right to self-determination. As argued by Bassiouni and other analysts, the application of self-determination as a right is dictated by context:

*Self-determination is a catch-all concept which exists as a principle, develops into a right under certain circumstances, unfolds as a process and results in a remedy. As an abstract principle it can be enunciated without reference to a specific context; as a right it is operative only in a relative context, and as a remedy, its equitable application is limited by the rights of others.*³⁸

The discrepancy that arises from the internal and external recognition of the PLO as the sole legitimate representative is not over whether Palestinians have a right to self-determination. Rather, it comes down to the manner in which Palestinian self-determination is to be exercised, and thus the function that dictates the case for political representation. These two polarised phenomena of recognition stem from the very same principle that relates to the operation of the right, and its application within a context that is limited by the rights of others. Therefore, in order to determine the current state of Palestinian political representation and its future evolution, one must determine the extent of the application of Palestinian self-determination within today's political environment.

At this political juncture, the context for the wide international support for the concept of a Palestinian state, and as such the legitimacy of the PLO as its provisional government, comes from the recognition that Palestinian self-determination is being infringed upon by Israeli occupation and its undermining of the territorial integrity of the future Palestinian state through settlement construction. This stems from the belief of the international audience that the remedy for this right – Palestinian statehood – is applicable in accordance with the existence and security of the State of Israel, and thus the Palestinian right to self-determination exists within the context of the two-state solution. Along with this recognition, international support for Palestinian self-determination comes in the form of foreign assistance for state-building and initiatives meant to bring Palestinians and Israelis back to the negotiating table. Even the upgrade of Palestine's legal personality by UN Resolution 67/19 linked these initiatives to the Middle East peace process and the two-state solution.

On the other hand, the context that dictates the remedy for Palestinian self-determination within the internal audience reflects the deep schisms that have

38 Bassiouni (1971), 33.

remerged within the Palestinian national movement. The functional dilemma facing today's Palestinian national movement and the PLO is similar to the one faced in 1974. Political fragmentation, which has in turn exacerbated differences between the geographically dispersed Palestinian communities, comes from several strands within the Palestinian body politik that disagree on how to remedy the right of Palestinian self-determination. One idea, mainly represented by Fatah, and the current leadership of the PLO and PA, supports Palestinian self-determination through the two-state solution by means of negotiations and international diplomatic initiatives. Another, mainly represented by Hamas, seeks Palestinian self-determination in an Islamic state, principally obtained through armed struggle. Yet Hamas has gone through an evolution of its own, similar to the one experienced by the PLO when it evolved from a liberation movement to a governing party within a statist entity. A third emerging strand supports Palestinian self-determination through the establishment of a bi-national state for Palestinians and Israelis on all of historic Palestine.

What has magnified this dysfunctional state of the Palestinian national movement is the very same motivation behind the international recognition of the PLO, and that is the frustration of Palestinian self-determination in its current manifestation of a Palestinian state. The internal resentment of the PLO is fuelled by its inability to establish a Palestinian state, and the corollary of this statist objective that has led to the alienation of the right to self-determination of a segment of the Palestinian people. For either audience, the current frustration of the Palestinian right to self-determination has elicited a reaction of conferring or withholding recognition, which respectively strengthens or undermines the claimant seeking to be a legitimate political representative.

Both the international and internal audiences paint a picture of the political context in which a legitimate political representative of the Palestinian people is to emerge and undertake the ascribed function of promoting self-determination. However, the picture cannot be complete without considering Israeli attitudes and policy towards Palestinian self-determination. The state of Israeli domestic politics has often directed Israeli policy in relation to Palestinian self-determination. These considerations are compounded by the asymmetry of power between Israel and the PLO and the Palestinian national movement, under which any exercise of Palestinian self-determination is affected by the dynamics of the bilateral relationship and the protection of Israeli rights. The current Israel government is dominated by right-wing parties with ties to the Israeli settler community that have resisted Palestinian self-determination through a state on the 1967 borders, and as such have expedited the unravelling of the plausibility of the two-state solution. Israeli attitudes towards self-determination through a single bi-national state can only be assessed against the Israeli claims of recognition as a Jewish state for a Jewish people. This Israeli claim arises from the view that the Jewish people represent a self-determination unit and have a right to self-determination as well. Finally, underlying any Israeli attitude is the maintenance of Israel's security.

In sum, three dynamics are essential in defining the function which a Palestinian political representative will undertake to exercise Palestinian self-determination. First, the international community is set on the two-state solution, and any objective that deviates from that remedy of self-determination will lack the necessary recognition and legal personality to operate within the international system. Second, the ideological gap that exists within the Palestinian political system is vast, and bridging the various strands into one objective is an arduous task. This is illustrated by the numerous failed attempts at reconciliation between Fatah and Hamas, the largest political parties in Palestinian politics, who have clung to power within their respective territorial entities. Lastly, the formation of any Palestinian objective is contingent on Israel. The majority of Israelis are apprehensive about the establishment of a Palestinian state, let alone a bi-national state that threatens the survival of Israel as a Jewish state. Without taking these three factors into consideration, the question of how Palestinian self-determination will be exercised cannot translate into a legitimate Palestinian representative.



Recommendations and Conclusion

Legitimate political representation begins with the Palestinian people as the entity that is represented. Debate among the various strands of Palestinian politics must occur to reshape the direction of the Palestinian national movement as the vehicle for achieving Palestinian self-determination. This will require serious self-reflection among the Palestinians on what self-determination means to them and how it will be exercised within the political context of internal Palestinian division, international pressure for a two-state solution, and an Israeli society that has been polarized. Specific recommendations include the following:

- Palestinian unity is essential for peace, and a new paradigm shift in Palestinian politics must be undertaken to achieve this.
- For a legitimate political representative to arise, the Palestinian people must define the manner in which their self-determination is to be exercised, whether through a two-state solution, one-state solution or some third option. This must come through an international conference that includes all elements of the Palestinian political spectrum, in which the Palestinians reinvigorate the Palestinian national movement.
- A strategy must be established that corresponds to the newly acquired function/objective. This can include anything from grassroots organizations to Boycott, Sanction, and Divestment movement and diplomatic efforts.
- The PLO, as the institutional entity representing Palestinians, must be reformed to accommodate the newly determined function and strategy.

Once cross-examined with the theoretical concept of political representation advanced by Rehfeld, it becomes apparent that representation is dictated by function across relationships between various audiences that convey descriptive legitimacy. Within this framework, the discrepancy between the internal and external audiences was addressed, and misconceptions regarding the representation and legitimacy of the PLO were reformulated in order to identify the root of the problem at hand. Moving forward relies on redefining the function ascribed to the PLO and unifying the Palestinian national movement.



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