



Revisiting the Principle of the “Legitimate Rights of the Palestinian People”

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BESA Center Perspectives Paper No. 1,262, August 23, 2019

EXECUTIVE SUMMARY: The US administration is reportedly considering the principle of autonomy for the Palestinians as the political goal of the “Deal of the Century.” This framework was initially introduced by Menachem Begin during the 1978 Camp David summit and appeared in the signed accords. Though the idea was never brought to fruition, it enabled the entrenchment of the mantra known as “the legitimate rights of the Palestinian People” – a formula that owes much to Israeli Chief Justice Aharon Barak, who served as Begin’s legal advisor at Camp David.

The US administration is putting together plans for a new Middle Eastern summit meeting on the occasion of the inauguration of the political portion of Donald Trump’s “Deal of the Century.” The proposed location is Camp David – a historically appropriate choice, as it was the site of the hammering out of the first peace treaty between Israel and a leading Arab state – Egypt – in 1978.

Early hints from the US team suggest that the basic framework of the deal will reflect a revival of the idea of “full autonomy” for the Palestinians in the West Bank and the Gaza Strip. In July 2019, US ambassador to Israel David Friedman said, “We would like that the Palestinians will enjoy an autonomy which they will control on their own.”

This diplomatic idea might be hard pressed to find favor with either the Palestinians or the many other international players who profess themselves committed to a two-state solution as the ultimate goal of any proposed solution to the Israeli-Palestinian conflict.

The historic Camp David Accords (September 1978), which recently reached their 40th anniversary, culminated in the March 1979 Egyptian-Israeli peace

treaty signed by Begin and Egyptian president Anwar Sadat at the White House. This event was described by US Secretary of State Mike Pompeo as “one of the most impressive diplomatic achievements of the 20th century – and perhaps even the most impressive. This is no understatement.”

Less often remembered is the second achievement of the Camp David summit, the “Framework for Peace in the Middle East,” which called for full Palestinian autonomy in the West Bank and Gaza Strip within five years. Egypt’s documentation of that part of the summit remained classified until very recently. Less than a year ago, in September 2018, Cairo finally released newly declassified documents from Camp David referencing the matter of Palestinian autonomy.

The autonomy plan never materialized, and later attempts at solving the Israeli-Palestinian conflict, including the 1993 Oslo Accords and the July 2000 Camp David summit, failed to produce a viable solution. But the autonomy notion first floated in 1978 nevertheless made a momentous contribution to all subsequent Palestinian negotiations with Israel. That contribution was the phrase “the legitimate rights of the Palestinian people and their just requirements” – a disputed formula that was extremely hard for the Begin-led right-wing government to digest.

The formula was subjected to harsh bargaining at Camp David – so much so that President Jimmy Carter ended up authorizing the legality of two different versions of the Palestinians’ “legitimate rights.” Had he not done so, the accords would not have been signed.

The Israeli version of “the legitimate rights of the Palestinian people and their just requirements” coincided with Begin’s ideological standpoint, in that it denied any recognition of the existence of a Palestinian People. In a separate letter sent to Begin on September 17, 1978, Carter acknowledged that

you have informed me as follows: In each paragraph of the Agreed Framework Document the expressions “Palestinians” or “Palestinian People” are being and will be construed and understood by you as “Palestinian Arabs.”

Prior to the final phrasing of “legitimate rights,” a tough debate within the Israeli delegation to Camp David almost led to a premature and fruitless end to the summit. Begin insisted on excluding any reference to the “Palestinian People” in the agreement. At that point, Aharon Barak – the former Israeli attorney general, invited by Begin to join the Israeli team at Camp David as legal adviser – provided the “magic formula.”

According to political journalist and writer Naomi Levitzky, who published a biography of Aharon Barak, it was he who broke through Begin's resistance to the phrase "legitimate rights of the Palestinian People" by arguing, "Can there be any rights that are not legitimate?"

Barak's influence can be heard in Begin's words when he elaborated on the Israeli-accepted parameters in a closed-door session of the Foreign and Defense Committee of the Knesset on September 26, 1978:

When you read the document as it was accepted, you will witness the fundamental changes inserted vis-à-vis the Egyptian document and the American document. Our concession was that we, for the first time, adopted UNSC Resolution 242 inclusive of all its parts. We agreed that wherever the term "Palestinian People" appears, in our written version it's "Palestinian Arabs"; wherever it's written the "West Bank," in our version it's "Judea and Samaria." We have agreed to write "Legitimate Rights," though I thought the adjective is unnecessary. Is there any right that is not legitimate? ... It was agreed that they use the term "Palestinian People" and we say "Palestine Peoples." I have wondered why we need the meaning of this; but if someone claims that it has a meaning, we will say that it's not legal.

Barak considered the term "legitimate rights" sufficiently ambiguous that Israel could live with it. According to Levitzky, Barak used such logic to persuade Begin that by conceding the Sinai Peninsula, he would be conserving entire Land of Israel. Barak's philosophy of ambiguity was the key to the concluding of the peace treaty with Egypt. Years later, his formulation from Camp David would yield the Oslo Accords.

Barak himself, during the 25th anniversary celebrations of the Camp David Accords in Washington in 2003, admitted:

We used ambiguity. Ambiguity was the word. It was, I think, a constructive ambiguity, because there were many things that we couldn't reach an agreement on. So we drafted these on a high level of abstraction. When we couldn't meet on a low level of abstraction, we went higher and higher and higher until we came to such level of abstraction that allowed us to agree. But – and here is an important point – we realized the ambiguities. It's not the situation where I had an ambiguity, they had an ambiguity, and everyone was throwing around these old ambiguities. We were honest with each other. They understood that we understood what their ambiguities were, and vice versa. So it was the use of ambiguity with the understanding that every side has his or her ambiguities and what are they and how it will be

used. It's a very interesting question, I think, that should be studied professionally about the use of ambiguity in international negotiations.

Justice Elyakim Rubinstein, then legal adviser for the Ministry of Foreign Affairs, viewed Begin as a verbal statesman who quite deliberately used the phrase "Palestinian Arabs" rather than "Palestinians." Zbigniew Brzezinski, then US National Security Adviser to President Carter, referred to Begin (on the occasion of the 25th anniversary of the Accords) as a "semanticist" and made a similar point:

...[Begin] did not say full autonomy for the Palestinians, because he didn't believe they were Palestinians. He used the term Palestinian Arabs. That's a very important distinction. He always emphasized that, because he didn't accept Palestinian nationalism. Secondly, when he spoke of full autonomy for the Palestinians, he made it clear, at least in private conversations, that it was full autonomy for the people, but not for the people on the land. He had a very subtle distinction here in mind, that it's autonomy for the people in the sense that they would have self-governing instrumentalities or authorities, but it would not involve self-government over land. And that was again, a very deliberate semantic distinction, designed to preclude the idea of a homeland for the Palestinians.

Brzezinski's prognosis appears to reflect Begin's thinking at the above-noted Knesset hearing on September 26, 1978, and it informs our understanding of the Israeli version of the Camp David Accords. At Camp David, Israel did not recognize the "legitimate rights of the Palestinian People" but "the legitimate right of the Palestinian peoples."

The Egyptian version was unequivocal:

The solution from the negotiations must also recognize the legitimate rights of the Palestinian People and their just requirements. (In Arabic transliteration: *Wayajib an ya'tarif al-hal al-natij an al-mufawadat bil-huquq al-mshrua'a li-sha'b al-falastini.*)

This formula had been agreed to by Carter and Sadat during the "Aswan Summit" (January 4, 1978). The consistency of Sadat's standpoint was manifested in a letter he sent to Carter on September 17, 1978, in which he stated that

to ensure the implementation of the provisions related to the West Bank and Gaza and in order to safeguard the legitimate rights of the Palestinian people, Egypt will be prepared to assume the Arab role

emanating from these provisions, following consultations with Jordan and the representatives of the Palestinian people.

In a 1982 CIA memo on "US-Israeli differences over the Camp David peace process," a leading Middle East analyst revisited the limits of the Israeli position:

Prime Minister Begin asserts that the Camp David Accords rule out the emergence of a Palestinian state. In Begin's view the agreements "guarantee that under no condition" can a Palestinian state be created. In practice, Begin effectively rules out any exercise of Palestinian self-determination except one that continues Israel's permanent position in the West Bank... Begin's view is that the Self-Governing Authority should be a solely administrative authority regulating the affairs of the Arab inhabitants and leaving control of the territory and all key security issues with Israel. In sum, autonomy is for people not territory and therefore does not prejudice Israel's territorial claims to the West Bank.

The Israeli standpoint on the "legitimate rights" issue was not retained as a binding guideline for the negotiation teams that followed the Camp David Accords. In fact, the Israeli position eroded very quickly. Israeli diplomacy allowed it to be superseded by the "popular" interpretation of the phrase "the legitimate rights of the Palestinian People," an interpretation that is now generally believed to have derived directly from the terms agreed to at Camp David.

In 1988, the Israeli delegate to the Third Committee of the General Assembly stated that

Israel believed that true negotiated peace with all its neighbors was feasible, and that within the framework a solution could be found to the problems and aspirations of the Palestinians. Israel had committed itself, as a signatory to the Camp David Accords, to seek and obtain a resolution to the Palestinian problem in all its aspects and had recognized the *legitimate rights of the Palestinians* (emphasis added).

Begin's formula was completely abandoned in the wording of the Declaration of Principles on Interim Self-Government Arrangements (DOP) signed on the White House lawn on September 13, 1993. The DOP's preamble set the precedent of drawing a clear equivalency between Israel and the PLO, as follows:

The Government of the State of Israel and the PLO team (in the Jordanian-Palestinian delegation to the Middle East Peace Conference) (the "Palestinian Delegation"), representing the Palestinian people, agree that it is time to put an end to decades of confrontation and

conflict, *recognize their mutual legitimate and political rights*, and strive to live in peaceful coexistence and mutual dignity and security and achieve a just, lasting and comprehensive peace settlement and historic reconciliation through the agreed political process (emphasis added).

The gravity of the choice to ignore the Israeli government's ideological standpoint as expressed at Camp David in September 1978 deserves special attention, as do the ramifications of Justice Barak's testimony on the issue of the "legitimate rights of the Palestinian People." As Levitzky made clear, to Barak, the phrase "legitimate rights" referred to the Palestinian People, not to Begin's formulation of "Palestinian peoples." Barak himself recognized that the enshrining of the phrase "legitimate rights of the Palestinian People" was the Palestinians' greatest achievement at Camp David, regardless of the fact that it did not correspond to the official text of the agreement.

Barak hailed the tactic of ambiguity as a kind of magic wand to unlock the negotiations. To the Palestinians, ambiguity worked to their advantage, as the language they preferred – with its emphasis on "legitimate rights" – was indigestible to Israel on its face.

The Palestinian columnist and independent researcher Ramona Wadi wrote in *Middle East Monitor* on June 20, 2019:

What constitutes Palestinian legitimate endorsement? The PA has endorsed many narratives which are detrimental to the Palestinian cause, including its concessionary attitude regarding the right of return and its fluctuating interpretations of historic Palestine, of which Jerusalem is a part.

A Hamas official statement issued on July 11, 2018 rejected the US plan for the Palestinian cause on the grounds that Trump's "Deal of the Century" violates "the Palestinian People's legitimate rights." The statement added that "all indications show that the deal violates our legitimate rights, mainly the right of return, liberating our land and establishing our independent state with al-Quds as its capital."

Attention should be paid to a newly published book entitled *Preventing Palestine: A Political History from Camp David to Oslo* by Dr. Seth Anziska (2018), in which the author emphasized that Camp David called for an autonomous self-governing authority in the West Bank and Gaza Strip and recognized the "legitimate rights of the Palestinian people" but did not address the Palestinian right of self-determination. Anziska highlighted the role of Begin, who, besides wanting continuing the building of Jewish communities in the territories, opposed the idea of Palestinian statehood and proposed limited Arab

autonomy. He described the peace agreement signed by Sadat and Begin as a paradox in which peace between Israel and Egypt stymied Palestinian aspirations.

The new US initiative to revive the concept of autonomy for the Palestinians rather than support the formula of self-determination could be an additional indication of the Trump administration's distrust of the current Palestinian leadership. Should the autonomy principle become the political framework for a future settlement of the Israeli-Palestinian conflict, it could drain all meaning from the phrase "the legitimate rights of the Palestinian People."

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