



**INSS Insight** No. 423, May 9, 2013

## **The Referendum Dilemma**

**Gilead Sher**

The basic guidelines of Israel's 33rd government appended to the coalition agreements stipulate that "Israel will pursue a peace agreement with the Palestinians with the goal of reaching a political settlement with them that ends the conflict. If such an agreement is attained, it will be brought to the Cabinet and the Knesset for approval, and if required by law, to a national referendum." The coalition agreement between Likud Beitenu and Hatnua states that on this issue, MKs may vote their conscience.

The current question whether ultimately to hold a referendum regarding a political settlement with the Palestinians will be echoed if the government makes a unilateral decision on annexation of territories, or alternatively, if Israel withdraws to the line of the security fence – or any other line – while evacuating the settlements east of that line.

Insofar as Israel stands to make fateful decisions on important political issues, and there are already calls to hold a referendum, it is necessary to discuss a mechanism for this procedure. In the absence of clear legislation regulating the mechanism and the conditions in advance, a referendum could well turn into a tool in the hands of the government. Adopting a referendum as a permanent mechanism neutralizes concern about manipulation by interested parties because at least some of the rules of the game are independent of issue, time, or place.

Some believe it is advisable to prepare a general outline for a referendum that is not connected to the subject on the agenda. Others see a need to define the subject of the referendum in advance, in this case, handing over control of territories that are today in Israel's hands, or annexing them, as a result of a political settlement or a unilateral government decision.

Advocates of holding a referendum contend:

- a. The true sovereign in a democratic state is the people, i.e., the citizens themselves, and not their representatives in the Knesset or the government. A referendum gives the citizens an opportunity to express their opinion on a defined topic directly and

prevents their representatives from distorting or reinterpreting their position. A referendum expresses the citizens' right to shape their destiny.

- b. A referendum increases citizens' participation and enhances their democratic participation, political awareness, and sense of responsibility. As a decision making mechanism acceptable to most of the public, it helps achieve broad public legitimacy for the decisions in question. There is no court of appeals for a decision by the people, and opponents will find it difficult to question the verdict of the popular majority.
- c. Almost all Western democracies have experience in at least one referendum, and Israel can learn from their experience.
- d. A referendum reduces citizens' alienation from the government because of the direct connection between the act of voting and actual government policy.
- e. Postponement of decisions on controversial issues on the national agenda is characteristic of the political culture of Israeli democracy. A referendum obligates the leaders and the people to confront the issues and make decisions about them.
- f. A referendum is a focused procedure, while by nature general elections tend to obscure the subject on which a decision is needed. At the same time, elections may lead to an excessive change of government, which is not healthy.
- g. The government of Israel can be freer, more creative, and more flexible in negotiations, or they can decide on independent moves, knowing that in any event a majority of the people will decide the issue.

Advantages of a referendum, however, are joined by several drawbacks, including:

- a. A referendum does not neutralize or even mitigate the opposition of those who reject the issue in question.
- b. It can create alienation between different sectors, instead of solidarity.
- c. The authority to decide whether to declare new elections or to hold a referendum is vested exclusively in the government that has negotiated an agreement that was approved by the Knesset. If there is a referendum, its results will be binding. However, if there are elections due to an agreement reached, implementation of the agreement will again be subject to the approval of the newly elected Knesset.
- d. This tool removes the constitutional responsibility of the Knesset and the Cabinet, which are the authorized representatives according to the system of government in Israel. Therefore, they will be quick to dissociate themselves from the results with the excuse that "the people have decided," and implementation of the agreement (or rejection, if it does not receive a majority) will sow tremendous confusion in Israel and abroad.
- e. The very fact of a referendum and the need to place before the people a decision on any political settlement could discourage those negotiating with Israel, knowing that the government does not really have the power to enforce an agreement.

- f. It is precisely because of fear about the future of the Zionist enterprise that additional obstacles must not be placed in the way of the two-state solution, and particularly those with which Israel has no experience.

Those who advocate legislation on a referendum, even in the format of a basic law, believe that intelligent and measured use of this tool allows advantages to outweigh disadvantages. Assuming that the subject does not disappear from the public agenda, here are several points to be considered:

*The question:* Since the way a question is worded influences how people respond, it is important to agree on the wording to the extent possible in order to avoid a situation whereby after the referendum there are claims that could undermine the legitimacy of the decision made by the majority. If a political agreement, law, basic law, treaty, unilateral step, or the like is presented for a decision, the text of that document should be presented as is rather than formulating a question in a referendum. This will give the citizen the possibility of voting “for,” that is, validating the document, or “against,” and avoid any particular bias latent in a specifically worded question. The documents relevant to the issue that concern the referendum will be published well in advance of the referendum to allow voters to study the issue. The chairman of the Central Elections Committee will determine how they will be published.

*Participation:* A minimal number of participants can be required to ensure that a significant portion of the people participate in taking the decision. Since these issues are of paramount public importance and relevant to all, the right to participate in the referendum is given to all citizens eligible to vote at the time the referendum takes place. In Italy, for example, a decision in a referendum whose purpose is to annul legislation that has already been passed requires a voter turnout in the referendum of at least 50 percent of eligible voters. However, this is a double-edged sword: opponents of the issue presented in a referendum could mobilize a boycott of the process, and without the required voter turnout no decision would be made. A reasonable middle road is in order, requiring the participation of no less than 40 percent of eligible voters, and requiring a simple majority among them to ensure broad popular support for a change with fateful consequences.

*The answer:* In order to avoid excessive complexity and out of concern of misleading the public, a referendum will contain one question only to which the answer will be either “yes” or “no,” “for” or “against.”

*Preconditions:* The government’s decision to hold a referendum should be subject to the approval of a majority of the members of the Knesset (61 MKs) and the attorney general. This will thwart the possibility of bypassing the Knesset by transferring a decision on an issue directly to the people, without a discussion and a decision in the legislature.

*General legislation:* Finally, in spite of the focused discussion on issues to do with control over the territories, consideration should be given to defining only generally the cases in which a referendum is possible. This would avoid creating a closed list of issues to be decided through a referendum and would give flexibility to those who initiate a referendum on issues of decisive importance where a government or Knesset decision is insufficient.

