

The emerging reality in Palestine: entrenched occupation and “fragnation”

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■ Executive summary

The Oslo process was expected to facilitate a gradual end to Israel’s occupation of the Palestinian territory and a gradual strengthening of Palestinian national institutions, leading within five years to a negotiated two-state solution to the conflict. Twenty years later the opposite has occurred: Israel’s occupation has become further entrenched, and Palestinian political and economic development has been paralysed by mutually reinforcing dynamics of fragmentation and stagnation (what we call “fragnation”). These trajectories pose formidable challenges to the achievement of a two-state solution, but may yet be reversible. The emerging reality is complex and dynamic, shaped by contradictory trends that point to both opportunities and risks.

Israel’s entrenched occupation

Israel’s occupation of the Palestinian territory is expanding and becoming entrenched in ways that make any resolution of the conflict through the partition of the Holy Land increasingly difficult.

The most visible and dangerous manifestation of this dynamic is the continuing expansion of Jewish settlements in the West Bank, including East Jerusalem. Since 1967 the Israeli government has “openly led and directly participated in the planning, construction, development, consolidation and/or encouragement of settlements” through a variety of means, including land seizures, infrastructure development, public services provision, and a system of subsidies and incentives (HRC, 2012: 7). Around 250 Jewish settlements have been established in the West Bank, where the settler population now exceeds half a million (approximately 200,000 in East Jerusalem and 320,000 in other West Bank settlements) (HRC, 2012: 7). Since Prime Minister Netanyahu assumed office in 2008 almost 40% of new construction starts were in isolated settlements deep in the West Bank (Peace Now, 2013).

Israel’s West Bank settlements need not, of course, be treated as irreversible facts. France’s repatriation of more than a million *pieds noirs*, many of whom had resided in Algeria for generations, points to what is possible when there is political will. Israel itself repatriated some 9,000 settlers from the Gaza Strip in 2005 and around 3,000 from the Sinai in 1982. Over the last few years Israel has also

evacuated settler outposts in the West Bank pursuant to court orders, despite a concerted religious-nationalist campaign to prevent their enforcement (Sher & Ofek, 2013).

Even so, settlement growth greatly increases the political costs of a territorial compromise. In past negotiations Israel has sought to avoid relocating 80% of its West Bank settlers, demanding the annexation of the settlements where they reside. This demand has already proved to be a major impediment to a negotiated settlement. Among the points of contention during the first round of permanent status negotiations in 1999-2001 were the fates of Ariel, Maale Adumim and Har Homa. Since then, the population of these settlements has increased, respectively, by 13%, 49% and 1,185%, according to figures compiled by the Foundation for Middle East Peace. In addition, the Shomron settlement bloc, which encircles the Palestinian city of Qalqilya and extends deep into the northern West Bank, has experienced steady growth over the last 20 years, raising concerns that it will become the next stumbling block in efforts to devise a secure and coherent border between Israel and a Palestinian state.

The challenge of implementing partition is exacerbated by the scale of Israel’s investment in the settlements – and the anticipated cost of resettling their growing population. By 2009 Israel had spent \$18 billion on settlement construction in the West Bank, where Israeli residential property alone is valued at around \$11 billion (Arieli et al., 2009: 7). This figure is roughly equivalent to the sum the international

community has spent since 1993 to finance the United Nations (UN) Relief and Works Agency, which serves approximately five million Palestinian refugees. Were Israel to offer repatriated West Bank settlers the same compensation provided to those who owned property in the Gaza Strip – \$350,000 per family (Eiran, 2009: 108) – the total sum (assuming the repatriation of at least 20,000 families) would be at least \$7 billion, i.e. almost double Palestine’s 2012 gross domestic product. In view of the illegality of Israeli settlement activity and the incompatibility of settlement infrastructure with Palestinian development priorities, it seems unlikely that Palestinians will agree to offset this sum against their own claims for compensation from Israel.

Settlement growth also increases the security costs of partition. In 2005 Israel deployed 50,000 soldiers and 7,000 police to evacuate 9,000 settlers from the Gaza Strip. Analysts are divided regarding the security implications of a large-scale repatriation of settlers from the West Bank: some raise the spectre of civil war (Biger & Sher, 2013); others regard such concerns as overblown (Krieger, 2012). Although the evacuation of Sinai and Gaza settlers unfolded without serious violence, the repatriation of many times their number from areas considered central to Jewish history will present far greater security challenges. To be sure, not all West Bank settlers are likely to resist relocation if offered compensation (Rifkind, 2012: 15-18); and even among those who are ideologically committed to the settlement enterprise, many strongly oppose the use of violence against state institutions like the army (ICG, 2013a: 16-17). Nevertheless, gangs of “hilltop youth” – who number up to a few thousand families – have engaged in a campaign of escalating violence and intimidation not only against Palestinians, but also against the Israel Defence Forces (IDF) and even settler leaders (ICG, 2013a: 18-19). Although Israeli security institutions reportedly are now dedicating unprecedented resources to combatting “Jewish terror”, the impunity with which such groups have long operated has fostered a climate of lawlessness that is now difficult to contain.

Beyond the growing number and dispersion of settlers, what makes Israel’s occupation increasingly difficult to reverse is the physical, political and legal infrastructure linking the settlement enterprise to Israel. The West Bank road network, which previously emanated from the north-south route (Road 60) connecting Palestinian communities, has become dominated by east-west roads linking Jewish settlements to one another and to Israel (OCHA, 2007: 60). In addition, Road 60 has been incorporated into the Israeli road network in a number of areas, disrupting transportation between Palestinian cities and towns (OCHA, 2007: 62-63). The problem is not just that Palestinians are denied access to the Israeli road network, but also that it is built without their needs in mind. For example, Route 443, which links Jerusalem-area settlements with Tel Aviv, was designed to reduce congestion on Israel Highway One. Although the Palestinian communities on whose land the

road was built won limited access to it after a lengthy court battle, they are unable to use it to reach Ramallah, which Route 443 bypasses entirely (Zacharia, 2010). Similarly, Israel’s West Bank security barrier is producing a new political geography. Although the Israeli government objects strenuously to claims that the barrier’s route was devised to facilitate annexation of territory, senior government officials regularly refer to it as Israel’s future border, and even critics of settlement activity now distinguish between construction east and west of the barrier.

The physical infrastructure linking Israel to the settlements is built on an increasingly immovable political and legal infrastructure. Settlers and their advocates dominate Israel’s current government and are becoming more influential in the country’s security establishment (ICG, 2013a: 22-28). One indication of what the future holds is the proportion of religious nationalists in IDF officer training courses, which rose from 15% in 2000 to 43% in 2012 (ICG, 2013a: 22). On the legal front, the 2012 report of the government-appointed Commission to Examine the Status of Building in Judea and Samaria (the “Levy Report”) provides another worrying indication of the trajectory: the report finds that “the classical laws of occupation as set out in the relevant international conventions cannot be considered applicable to the unique and *sui generis* historic and legal circumstances of Israel’s presence in Judea and Samaria spanning over decades”, concluding that “Israelis have the legal right to settle in Judea and Samaria”. According to the Foundation for Middle East Peace,

These conclusions, if implemented, would all but erase the distinction between land ownership and settlement in Israel and in West Bank settlements, and transfer jurisdiction from the military occupation administration to Israel’s domestic institutions as a way of consolidating Israeli control and effective sovereignty in the West Bank (Aronson, 2012).

Although the Levy Report has not been formally adopted by the Netanyahu government, which reportedly fears that it would elicit “international controversy” (Levinson, 2012), its proponents continue to urge its consideration by the Knesset (Yashar, 2013).

These trajectories are especially pronounced in Jerusalem, which remains the geographic, political and religious focal point of the conflict. Following the June 1967 war, Israel expanded the boundaries of its Jerusalem municipality into the occupied West Bank, absorbing East Jerusalem and 64 square kilometres of surrounding land and authorising the application of Israeli law throughout the expanded city. A number of Israeli measures have had the effect of erasing the Green Line in the Jerusalem area, including the establishment of two dozen Jewish settlements in East Jerusalem, the routing of the security barrier through Palestinian neighbourhoods and alterations to the road network. However, several recent developments have the potential to do particularly serious damage to efforts to

implement a territorial compromise in the Holy City: firstly, the construction of a new settlement, Givat Hamatos, which would sever Arab neighbourhoods in Jerusalem from the southern West Bank (just as the plans to develop the E1 zone would sever Arab Jerusalem from the northern West Bank); secondly, the acceleration of Jewish settlement deep in Palestinian neighbourhoods, including Sheikh Jarrah, Silwan, Al-Issawiya, At-Tour and others, creating additional flash points and complicating the division of sovereignty over the city; and, thirdly, the development by settler associations of tourist infrastructure in the Holy/Historic Basin in ways that inhibit the growth of Palestinian neighbourhoods and bolster demands for Israeli sovereignty over the area.

The situation in the Gaza Strip also offers a worrying glimpse of the future. Since Israel's 2005 "disengagement", Israeli military operations in the Strip have become increasingly destructive, many – including this summer's "Operation Protective Edge" and "Operation Cast Lead" in 2008-09 – involving major ground incursions. Israel enforces a "no-go" zone on the Gaza side of the 1949 armistice line by firing on any Gaza resident who comes within 500 metres of the border – and within 1.5 kilometres in some areas (HRW, 2012), barring Palestinian access to around 17% of the Gaza Strip's total land mass and an even more substantial proportion of its agricultural land (OCHA, 2010: 5). Palestinian maritime activity is hemmed in by Israeli patrols, which fire on and confiscate any Palestinian vessel that sails more than three nautical miles from the coast, depriving Palestinian fishermen of access to 85% of Gaza's maritime area and causing the over-fishing of shallow waters and a steady decline in the catch (Bashi & Feldman, 2011: 12). In addition, the blockade imposed by Israel and Egypt has seriously undermined the Gaza Strip's already weak economy: around one-third of Gaza's workforce is unemployed, almost half of Gaza residents lack food security, 40% live under the poverty line and almost 80% are aid recipients (OCHA, 2012). As these facts make plain, Israel's unilateral "disengagement" has yielded not an end to occupation, but a virulent new form of it. Indeed, the situation in Gaza affords a worrying window onto the future of Palestinian enclaves in the West Bank if current trajectories are not altered (Li, 2006). To cite one example, many of the policies now imposed on the so-called seam zone along the Green Line were first tested in the "yellow area" of the Gaza Strip during the 1990s.

Palestinian "fragnation"

As Israel's occupation has become increasingly entrenched, Palestinian economic and political life has become fragmented and stagnant. These trends are mutually reinforcing, creating a dynamic – what we call "fragnation" – that threatens to undermine two decades of investment in state-building and security cooperation and to turn Israeli leaders' claims that they lack a Palestinian partner for peace into a self-fulfilling prophecy.

As a geographic space, Palestine is today more fragmented than it has been at any time since the *nakba*¹ of 1948. Palestinians live under a proliferating array of legal regimes in their homeland: unequal citizenship in Israel; tenuous "permanent" residency in Jerusalem; isolation under authoritarian rule in the Gaza Strip; and, in the West Bank, an archipelago of areas (A, B, C) and zones (seam zones, fire zones, nature reserves), each with its own rules – few of which were devised by institutions accountable to the Palestinians whose lives they regulate.

In addition, the legal status of Palestinian refugees elsewhere in the region remains precarious. Not all are as thoroughly restricted as those in Lebanon, who continue to face severe constraints on their mobility, employment and land ownership. However, their lack of citizenship everywhere but in Jordan has left them vulnerable to dramatic reversals of fortune as conflict and demographic change alter the political temper and policies of host governments, a predicament recently highlighted by the plight of Palestinian refugees in Syria. Even in Jordan, thousands of Palestinians have been stripped of their citizenship rights over the last decade and hundreds of thousands more – mostly those displaced from the Gaza Strip during the 1967 war and their families – were never granted citizenship in the first place.

Palestinians' economic space is similarly fragmented. Since 2007 Israel has absolutely prohibited the marketing of goods from the Gaza Strip in the West Bank and Israel, which previously were the destination for 85% of Gaza's exports (Gisha, 2012: 2). Since 2000 Israel has also sharply restricted the movement of people from the Gaza Strip to the West Bank, entirely banning such travel for the purpose of obtaining higher education (Gisha, 2012: 6). According to the Israeli NGO Gisha – Legal Centre for Freedom of Movement, this policy "is designed not just to prevent Palestinians from relocating from Gaza to the West Bank but also to encourage or force Palestinians who are in the West Bank to move to the Gaza Strip" (Gisha, 2012: 7). In East Jerusalem Israel's erection of the separation barrier and the accompanying regime of permits and checkpoints have transformed the city from "a central urban hub that provides services and opportunities to wide portions of the West Bank, to a border city with extremely limited access", with catastrophic consequences for Palestinian businesses and employment in the area (Alyan et al., 2012: 3-5). It has also had a severe impact on Palestinian access to health care, because West Bank and Gaza residents previously depended substantially on health-care facilities in Jerusalem. Across the West Bank, moreover, restrictions on access to Area C, only 1% of which has been designated by Israel for Palestinian use, although it constitutes 61% of the West Bank (World Bank, 2013b: 4), have severed Palestinian urban areas from space and resources critical to their development and curtailed Area C residents' access to services and commerce. Israel imposes even more

1 "Catastrophe".

onerous restrictions on Palestinian economic activity in the “seam zone” between Israel’s West Bank barrier and the Green Line, which is expected to encompass the homes of around 30,000 Palestinians by the time construction of the barrier is completed (Cahana & Kanonich, 2013: 9).

As Palestine’s geographic and economic space has grown more fragmented, so too has its politics. While Fatah’s lack of a coherent ideological vision or political programme has enabled it to assemble a socially and politically diverse base, the movement is riven by personal rivalries and factionalism, which threaten to erupt into a battle over succession should Mahmoud Abbas step down. And even though many Fatah cadres remain dependent on Palestinian Authority (PA) salaries, they grow increasingly remote from the leadership of the PA security apparatus, reducing its capacity to rein in renegade elements (ICG, 2013b: 18-19). Hamas also faces increasing political challenges in Gaza, both from Islamic Jihad, whose popularity has risen as Hamas’s has fallen (Abou Jallal, 2014), and from Salafist groups (Abu Amer, 2013). Neither Fatah nor Hamas has succeeded, moreover, in rebuilding a base in East Jerusalem, which has been effectively isolated from Palestinian politics since Israel’s closure of Orient House and other Palestinian institutions in Jerusalem in 2001 (ICG, 2012: 6-7). As described further below, the revitalised effort to achieve Fatah-Hamas reconciliation provides a promising opening for reversing the fragmentation that has bedevilled Palestinian politics. However, a range of thorny questions remain unresolved and it will take considerable work to remedy the longstanding dysfunctions in Palestinian politics. Israel, moreover, has undertaken systematically to undermine Palestinian unity, urging foreign governments to boycott the PA, threatening further economic sanctions against it, and conducting a sweep against Hamas activists in the West Bank – and military operations in the Gaza Strip – that has placed pressure on PA security cooperation. So far these measures have not succeeded in derailing reconciliation attempts, but Israel seems intent on maintaining the pressure.

The fragmentation of Palestinian life in the occupied Palestinian territory (OPT) is producing stagnation. Economically, Palestine is hobbled by one of the world’s highest rates of unemployment and lowest shares of exports (World Bank, 2013a: 5). Private investment, seen by many as the key to addressing both of these problems, is stymied by Israeli restrictions on trade, movement and access, particularly in Area C and Gaza. These restrictions have grown increasingly severe, despite repeated entreaties to Israel to facilitate Palestinian development. The already swollen Palestinian public sector is less and less able to compensate for these distortions (World Bank, 2013a: 6). The result has been a precipitous decline in economic growth in both the West Bank and Gaza Strip over the last two years (World Bank, 2013a: 3). The decline is expected to worsen if no “bold measures” are put in place to change Israel’s policies on the ground (World Bank, 2013b: 24). More worryingly, certain trends – eroding

infrastructure, deindustrialisation and the labour force’s diminishing skills base – will not easily be reversed even in the unlikely event that a Palestinian-Israeli peace agreement is concluded (World Bank, 2013a: 12).

Palestinian politics has also stagnated. Palestinians are sceptical that peace can be made with Israel, but unenthusiastic about the alternatives (PSR, 2013: 2). Fatah and Hamas face no serious competitors in the West Bank and Gaza Strip, respectively, but the vitality of both movements has been sapped by their democratic deficit (Brown, 2010: 38-45). When asked in an opinion poll which of approximately a dozen parties or factions they support, more Palestinians (42.5% in the West Bank; 33.7% in the OPT as a whole) selected “none of the above” than any other option (PSR, 2013: 20). For years lawmaking has been paralysed by disagreements about which Palestinian government is legitimately entitled to pass legislation, undermining the development of legal infrastructure and fostering authoritarianism (Brown, 2013). Advocacy by civil society organisations, which once served as an important check on governmental abuse, has also been stymied by factional politics: e.g. conflict between Hamas and Fatah prevented the Palestinian Bar Association from conducting elections in the Gaza Strip (Brown, 2012).

These trends – fragmentation and stagnation – are mutually reinforcing, creating a dynamic, “fragnation”, that has done serious damage to the Palestinian national movement. The problem is not just that Palestinians are divided, but also that their atrophying political institutions and economic infrastructure will make it increasingly difficult to unite them behind a single leadership or political programme in the future. The fate of the state-building project championed by Salam Fayyad is instructive. It was undermined not only by Israel’s failure to create an enabling environment for it, but also by internal political challenges, particularly from Fatah leaders who felt alienated and threatened by Fayyad’s leadership. The demise of the project, however, did little to strengthen Fatah. Demonstrations staged to protest Fayyad’s policies in 2012 quickly turned against the PA as a whole and its continuing security cooperation with Israel. And following Fayyad’s resignation, Fatah became consumed by increasingly toxic internal rivalries. Just as fragmentation has led to stagnation, stagnation has produced further fragmentation.

Countervailing trends

Palestinian self-determination in the framework of a two-state solution cannot be realised without a viable territorial space and a robust national movement capable of uniting and representing Palestinians. The trends described above may not portend an imminent transformation of the status quo and they are proving increasingly difficult to reverse. However, three recent developments offer cause for hope, if not optimism.

Firstly, Israelis are beginning to understand that the occupation is a threat not only to the two-state solution, but

to Israel itself. Although Israel's government continues to take steps to consolidate its hold on the OPT, voices within and outside it increasingly express concerns that entrenched occupation will lead to binationalism, posing a threat to Israel's character as a Jewish state. Over the last 12 months fears of international isolation have also become a prominent feature of mainstream political discourse in Israel. Indeed, a poll conducted in February 2014 indicated that "removal of the threat of economic boycott" was the single most influential factor animating Israeli support for a peace agreement with the Palestinians, particularly among right-wing and centrist Israelis (New Wave-Nielsen Alliance, 2014: 6). This trend may be a consequence of unprecedented recent European action against settlements and a number of well-publicised victories by the boycott, divestment and sanctions movement.

Secondly, Palestinian diplomacy in multilateral institutions has created a new legal and political reality, albeit one yet to be translated into changes on the ground. The UN General Assembly's recognition of Palestine as a non-member observer state has paved the way for enhanced Palestinian participation in an array of multilateral regimes, which may eventually serve as a vehicle for deterring violations of Palestinians' rights by both Israel and the PA. It has strengthened advocacy of a two-state solution by creating a political fact – recognition – that will not easily be undone. It has also served a symbolic function, offering Palestinians a non-violent means of pressing for their national aspirations at a time when peace talks are stalled.

Thirdly, political reconciliation between Fatah and Hamas offers an opportunity to re-energise Palestinian national institutions. The longstanding schism between the West Bank and Gaza governments has undermined Palestinian governance and diplomacy – paralysing lawmaking, creating costly redundancies in the civil service and raising questions about whether agreements endorsed by one government will be accepted by the other. To be sure, reconciliation does not offer easy answers to many of the thorny questions confronting Palestinians: how to rebuild the Palestinian economy in the face of crippling Israeli restrictions; how to end Gaza's isolation; what strategy to adopt vis-à-vis negotiations with Israel; whether to press for one state or two; etc. In addition, it presents difficult challenges of its own, particularly with respect to the future of Palestinian-Israeli security cooperation. It does, however, have the potential to reverse the fragmentation of Palestine's politics and, to some extent, of its geographic space. It may even breathe new life into the long moribund Palestine Liberation Organisation (PLO), which Hamas seeks to join.

These three developments, however, do not necessarily point toward a negotiated two-state settlement. The situation on the ground is vulnerable to sudden shocks: a succession crisis, an act of horrific violence, a serious provocation at the Haram al-Sharif/Temple Mount, or a

sustained halt to aid or clearance transfers could cause Palestinian-Israeli security cooperation to unravel, with far-reaching consequences. The results of Palestinian elections could prompt Israel to take even more serious punitive action against the PA. Israeli concerns about demography could animate a push toward unilateralism instead of renewed talks. Palestinian efforts to rebuild the PLO could produce a new liberation strategy focused on equal citizenship or binationalism rather than a two-state solution, particularly if Palestinian initiatives in multilateral forums fail to yield meaningful changes in Israeli policy. What happens next will depend to a substantial extent on the steps the international community chooses to take at this critical juncture.

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