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Standards of a Negotiated Settlement to End the Israeli Occupation

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Second: Legitimacy of a Negotiated Settlement

Introduction

- 1- The Oslo Accord and its resultant agreements ignored references that could be applied on final solution negotiations and/or the possible emergence of disputes on its application or explanation of what had been agreed upon. In addition, there have been other serious sins committed by the Palestinian negotiator but now is not the time to delve into them. Unfortunately, some of the architects of these agreements are still holding posts in the Palestinian ruling system. Lack of reference, when coupled with a psychology of readiness to forego inalienable rights or to give up some of them in the hope of reaching a solution, opens the door wide open for other parties to impose solutions that better fit their needs. This is exactly what happened with Arab parties that went into negotiations and signed peace deals with Israel.
- 2- On the official Arab side, the reference of land-for-peace was always the key speech. That reference then disappeared from official Arab statements and was replaced with the so-called Arab Initiatives approved by Arab leaders in one of their summits. When Israel rejected the Initiative of the 2002 Arab Summit, the countdown for discarding it began and the follow-up committee that was supposed to market it internationally disappeared. Some Arab leaders started to avoid adhering to it in public statements during their press conferences with Israeli leaders. They would rather speak only about negotiations without certain references. It is ironic here that Arab regimes conditioned their acceptance of the Hamas government on Hamas' recognition of the Arab Initiative, although Arabs themselves dropped that reference. That left only the roadmap adopted by the Security Council, which stated the two-state solution for the conflict. But Israel made some 14 reservations on the roadmap that stripped it from its role as a reference for negotiations and its fate will be a slow death as was the case with Security Council resolutions pertaining to the Palestinian cause. That would leave the ground free for unilateral solutions Israel is working hard and systematically to impose.

The Legal Ruling of International Court of Justice as a Reference

3- It was fortunate, however, that the International Court of Justice on July 9, 2004, issued its legal ruling regarding the wall being built in the occupied Palestinian territories. That ruling settled the issue of reference in crystal-clear phrases that bare no ambiguity and has no room for maneuver. The references stated by the International Court of Justice in its ruling are based on the principles and rules of international and humanitarian laws. That is to say the ICJ did not just state that the principles and rules of international and humanitarian laws were the reference, but it underscored that said principles and rules are the legitimate basis in the court's ruling. Despite the fact that all indications refer to an Arab ignorance of that ruling, to put it mildly, we will still brief these principles and rules for the benefit of those who talk about international legitimacy. Our aim is to show the purpose as adopted by the International Court of Justice and the General Assembly of the United Nations in its resolution based on the ICJ ruling. So, what are these principles and rules adopted by the International Court of Justice and considered binding for all parties?

First: The principle of self-determination for all peoples, especially those under occupation or foreign control, is to the court, one of the general principles of international and humanitarian laws. Being a general principle, it must be respected by all. The International Court of Justice declared that right applies to the Palestinian people and the existence of Palestinians as a people is no more disputed or debated, adding Israel violated that right and it should respect it.

Second: The principle of prohibiting the acquisition of others' property by force. By the court's declaration of that general principle and its reference to UN resolution 242 in that regard, it settled a debate stirred by Israel around the English version of that resolution that included the phrase "occupied lands", not "the occupied lands" as included in the French draft. The point here is not the use of certain words or the use or lack of definition tools. The point is the principle. That principle does not allow the taking over of others' land or property by force. Based on that principle, the application of resolution 242 means only the withdrawal of all Arab lands occupied in the 1967 war. These lands, according to the International Court of Justice (and the General Assembly of the United Nations), are territories east of what is known as the Green Line; that is the borderline determined after the permanent truce signed between Jordan and Israel in 1949. The International Court of Justice has thus settled the matter ruling that these lands, including East Jerusalem and its surrounding areas, are occupied territory, not disputed – as Israel claimed and as mentioned in the Oslo Accord as a result of the ignorance and leniency of the Palestinian negotiator.

Third: The International Court of Justice settled the status of Eastern Jerusalem and the surrounding villages and lands, ruling they were all occupied territory. It thus supported Security Council resolutions deeming their annexation by Israel or any change of their geographic or demographic status as illegal. This comes in application of the illegality of seizing others' lands by force, in addition to the principles adopted by the binding-for-all Fourth Geneva Convention on the right of an occupying state to make changes to the status of a country under its occupation.

Fourth: As the armed conflict in 1967 led to the occupation of Palestinian territories, including East Jerusalem and the surrounding areas, the court ruled that Israel, which is a signatory to the Fourth Geneva Convention of 1949 related to the protection of civilians at the times of war, is committed to respect the rulings of that treaty. These include the article banning an occupying state from transferring its own citizens to settle on occupied territory. Therefore, the ICJ stated unanimously – the American judge joined the court's panel in his individual capacity – that settlements built by Israel on occupied Palestinian territories, including East Jerusalem and the surrounding areas – were a grave violation of that convention,

partially basing its ruling in this regard on the rulings of the Nuremberg Court that convicted Nazi leaders, in part, for committing similar violations by establishing German settlements on lands occupied by Germany during World War II. That means it is illegal to establish settlements and this is one of the general principles of international and humanitarian laws adopted unanimously by the International Court of Justice and that was an unprecedented first.

Fifth: The court stated that human rights law is a generally applied law. Countries should abide by respecting it, not just for its citizens as Israel claimed, but also for all citizens subject to its jurisdiction. Therefore, that law must be respected as far as Palestinians under Israeli occupation are concerned.

Sixth: The ICJ declared that the principle of compensating for damage was one of the general principles of international law. Based on that, it ruled, as regards to the wall, that Palestinians damaged by it must be compensated. Being a general principle, it should be applied to all damages that befell the Palestinians, be they natural or symbolic individuals, as a result of illegal Israeli practices in the occupied Palestinian territories, including East Jerusalem and the surrounding areas.

Seventh: A 'fait accompli' does not legalize what is illegal and it is not considered temporary as long as its features and goals indicate it to be permanent. Based on that, the ICJ rejected Israel's argument that the wall had become a 'fait accompli' and it was temporary. The court instead considered the wall's nature as not being temporary or justified by claims of self-defense.

Eighth: Security measures, including so-called self-defense, are subject to standards determined by international law and the United Nations' charter. The construction of that wall, which is illegal in the first place and must be removed according to the ICJ ruling, does not meet those standards. In addition, it is a means of annexing Palestinian lands in an illegal way that violates the human rights of the Palestinian people and their right to self-determination.

- 4- These are the most important principles and rules the International Court of Justice stated must be abiding in any negotiated solution to the continued pending problems. In brief, all these rules and principles say what is illegal cannot be legal because it exists. Instead it must be removed. Needless to say, the ICJ was not looking into the legality of the Partition Resolution and Right of Return. Still we realize that as long as the court stated that Israel and the entire international community were committed to respect the 1949 Fourth Geneva Convention, it has implicitly stated the right of refugees to return home. That Convention, in explicit terms, stated the protection of that right and commitment of its signatories to respect it even if they pulled out of the Convention itself. That means it is a right that does not fall or fade away. We also realize that the Geneva Convention preceded the decision of United Nations' General Assembly on the right of Palestinian refugees to return home. All that states that the right of return is one of the inalienable rights of international and humanitarian laws even before the adoption of the UN General Assembly resolution and that very resolution was a mere application of that law.
- 5- Of course Israel knows the principles and rules stated by the International Court of Justice as a reference for a negotiated solution. It realizes that "abiding" means destroying all settlements it set up on the Palestinian occupied territories, including East Jerusalem and the surrounding areas. It also knows the international community has already acknowledged these principles and rules by voting them in the UN General Assembly with an overwhelming majority. The only major country that voted no was the United States of America. But even the United States will find itself in an

embarrassing situation should it resort to the veto right against any resolution based on these principles and rules.

Israeli Way Out

- 6- The way out Israel undoubtedly has adopted is to work on ignoring the ruling of the International Court of Justice and obstructing any attempt to put it into effect. Israel instead focuses on holding on to negotiations without actually entering them or reaching any result by stalling using various claims and justifications. For one, Israel claims lack of a Palestinian peace partner to negotiate with. It is as if Israel has the right to decide on who represents the Palestinians in negotiations. It does not matter at all that the late Palestinian President Yasser Arafat was an acceptable peace partner during the Oslo negotiations and the following ones. It does not matter, either, that his successor the current President Mahmoud Abbas and the former Prime Minister Ahmed Qorei were the architects of the Oslo Accord. It does not matter that the current president Abbas, even after Hamas came to power, worked on restoring powers to the presidency when he himself had objected to such powers when he was Prime Minister and quit over the dispute. It does not even matter that Israel itself, the United States and the European Union have decided to back him up and deal with him. Nor does it matter that Abbas and the remaining members of the Executive Committee of the Palestine Liberation Organization (PLO) that agreed to Oslo Accord and the following agreements, still insist on considering the file of negotiations to be in their hands. All these considerations did not convince Israel to decide there was a partner with whom to negotiate. The reason is that the Israeli plan is not yet complete.
- 7- The second Israeli justification used to stall is its insistence on stopping Palestinian resistance of occupation before embarking on negotiations. Such justification aims only at maneuvering. This is asserted by the fact that Palestinian armed resistance stopped for over a year but Israel never stepped into any negotiations. Moreover, stopping Israel's military operations has never been a condition to engage into negotiations for settling a dispute. It is also utterly unacceptable that Israel continues violating Palestinian rights on a daily basis, while the Palestinians just sit and wait for more violations.
- 8- We sum up by saying that the call for negotiations is not made in good faith. Its real goal is to postpone negotiations until Israel is done with its plans on the ground, especially finishing the wall according to its own maps and facing the Palestinian side with the new reality that gives Israel all it wants. Israel actually wants to seize the whole of Palestine, locking Palestinians up in a huge prison surrounded by a high-fortified wall, behind which the Palestinians live unable to see or be seen by anybody and where settlers and Israelis can do whatever they please. In addition, the inside of the prison is to be cut into separate sections where residents can only meet under the watchful eye of the Israeli roadblocks and prison wardens, nor can they communicate with or receive communications from the outside world but through gates controlled by the Israeli jailer. This means Israel will not sit on the negotiating table before completing its plan of total control of the Palestinians' lives through realities on the ground. This way, negotiations will be limited to humanitarian services that can be given to the Palestinians. This is the case now with the Gaza Strip, such as opening crossings at fixed times to allow medicine and food supplies to enter. These crossings will be closed as is the case now in Gaza at any time the Palestinians complain. But they will always be open for those who want to migrate to escape the misery of prison life or to get away from settlers who have seized their homes making Palestinians life a nightmare. Palestinians will just have to establish their state within the confines of that prison. But if they show any sign of dissatisfaction, the rough stick will always be there, justified by self-defense against the aggressions of "the Palestinian state". In the negotiations, Israel of course will claim all its measures are, unlike what the International Court of Justice stated,

temporary and their only target is the defense of Israel's security. That excuse has already been swallowed by some Arab states even though it affected their sovereignty and control over their land. So, why would not the Palestinians accept it, especially if they could have their state on their national homeland?! Should the Palestinians refuse that offer, Israel would then declare it met its roadmap obligations and set up a Palestinian state to its side and that it would withdraw its troops from the lands of that "state", ending its occupation of the Palestinian territories. In that regard, Israel will find supporters, not only among foreign countries.

- 9- This is the Israeli plan and the main target behind establishing the wall and its accessories. This is the real reason behind stalling in entering negotiations while apparently adhering to them. What we demand is the failing of that plan whose episodes are about to be completed. One of the most important tools of resisting that plan is putting the ruling of the International Court of Justice into effect as a weapon in that battle. This is exactly what the African nations did when they put into effect a similar ruling for the benefit of what has become known as Namibia against the then racist South Africa. These countries managed to impose sanctions and blockades on South Africa. They also succeeded, through patient efforts and persistence, in snatching the independence of Namibia after 11 years of issuing that ruling. All that was achieved by working through the United Nations General Assembly. Arab and Islamic states are supposedly more effective inside the UN General Assembly now than the African nations then. We would like here to recall that the International Court of Justice, in the wall case, has interpreted the UN Charter in a way that gives broad authority to the General Assembly in its role to resolve the case in accordance with the principles and rules that the ICJ adopted. According to that interpretation, the authority of the General Assembly in making decisions to ensure global peace and security is just like that of the Security Council. Moreover, it stated that for an issue to be raised before the Security Council does not prevent the General Assembly from debating it at the same time and taking measures it deems necessary. No one has a veto right in the General Assembly.
- 10- Finally, we cannot help but repeat saying that official Arab leniency is the first and last responsible for wasting Arab rights. Definitely, had our brave rulers dared even for a minute in that historical moment of Arab-Israeli conflict to unite their ranks by insisting on the implementation of the ICJ ruling, to be active and committed to that goal, the course of events would have changed, without one Arab soldier ever having to leave their barracks. On the other hand, the policies of normalization, favoritism and putting pressure on the Palestinians in the hope of restraining Israel and its allies have proved to backfire. Such policies only increase Israeli greediness. We call on the National Palestinian Authority, presidency, government, factions and NGOs to be aware of that Israeli plan, to unite their ranks and to put aside their petty differences over powers and jurisdiction, and to instead gather all efforts to overturn that dangerous plan, using the weapon of international legitimacy in its loudest and clearest form; namely the ruling of the International Court of Justice. We also call on the Secretary-General of the Arab League, that excellent man of law who participated through his representatives before the court to reach that verdict, to double his efforts in that same direction. Such effort should not cause any embarrassment to any member state of the Arab League as the ruling is binding for all countries, including Arab League members.

Secretary-General

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