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FROM OCCUPATION TO CONFEDERATION: A FRAMEWORK FOR COMPREHENSIVE PEACE BETWEEN ISRAEL AND ITS NEIGHBORS

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A Functional Approach to Peace

Recent Middle Eastern developments shed new light on the functional approach towards the political process, aimed at establishing a just and lasting peace between Israel and its Arab neighbors. Israeli approval of the opening of an Arab bank in the administered territories linked with Jordan is not only a matter of monetary policy. Rather it marks a significant move towards the adoption of the functional concept and the sharing of governmental powers between Israel and Jordan. In this light, one should also understand Prime Minister Yitzhak Shamir's invitation to King Hussein to discuss cooperation against the PLO. It reflects the traditional feeling among decision makers that even without resolving

the ultimate status of Judea, Samaria and the Gaza district, that a concrete, pragmatic approach to the management of civilian life in the territories, based on undeclared but real Israeli-Jordanian joint interests, is feasible. That feeling was jointly realized by Hussein and the late Moshe Dayan when the two approved the open bridges policy which legitimized connections between Arabs west of the Jordan River and Amman, as well as the rest of the Arab world. This was followed by the export of agricultural products from the territories to Jordan and summer visits of local students studying abroad.

It is too early to anticipate when and how formal peace negotiations will come about. Nevertheless on the basis of what has

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already been achieved, the general direction of the process is clearly revealed. For that purpose an analysis of the Israeli-Egyptian peace process is required.

A New Reality

With President Sadat's visit to Jerusalem in November 1977, the concept of peace in Israel underwent a change: no longer a dream, but a reality; no longer a vision for the distant future, but an actuality. Once peace had been transformed from an abstract to a concrete and current matter, it became necessary to formulate a peace plan which would be both concrete and realistic. In so doing, the Israeli government had to take into account not only the ideal national objectives, but also the real international alternatives; not only Israeli claims, but also the demands of others; not only territorial rights, but also our desire for peace. Thus the contradiction between real and ideal forms the conceptual basis of the Israeli peace plan, as articulated by Prime Minister Menachem Begin. This is a plan built on a concept of peace as a dynamic process and not as a static fact, and it presupposes the need for a revision of positions, tactical considerations, and priorities; hence its pragmatic aspect, which is at times in conflict with the ideological aspect. The methodological solution which such a conflict suggests is the use of the dimension of time, in which the process itself is reexamined and updated at every stage. The idea of autonomy for the Arab residents of Judea, Samaria and the Gaza district is the outgrowth of this analysis: it does not resolve the contradiction between real and ideal; it does not provide a lasting compromise between the different claims; it does not resolve the contradiction between territorial considerations and considerations of peace; but it does present the opportunity of exploiting peace as an ongoing process to foster closer relations between human beings and mutual recognition, allowing for the constant review of policy and ideology.

Four Possible Solutions

In fact, the idea of autonomy is the only idea not based on a polar conflict between the Israeli and Arab positions, or on forcing one side to relinquish its principles and to give in. This

point can be understood by comparing the autonomy idea with the alternative ideas.

Prima facie, Israel was faced with four alternatives: first - a peace plan based on the extension of Israeli sovereignty to all the territories which were not under Israeli rule prior to the Six-Day War, namely the 'annexation' of these territories; second - the relinquishment of all these territories; third - a territorial compromise; and fourth - a non-territorial solution. The first alternative was viewed as acceptable and even ideologically desirable by the Likud government, which came to power on the platform of guarding the historical right of the Jewish people to *Eretz Israel*. Nevertheless in the context of peace negotiations, this idea was not constructive because it was totally unacceptable to any Arab side. Therefore Menachem Begin had been easily capable of agreeing with Moshe Dayan, prior to the appointment of the latter as his foreign minister, that in spite of having a legal and moral right to extend Israeli sovereignty to these territories, the new government would refrain from doing so "as long as peace contacts are being held." When Sadat came to Jerusalem it was after this policy had been explained by Begin himself to Presidents Carter and Ceausescu during his official visits to Washington and Bucharest. For the sake of peace, Begin told his hosts, he was ready to refrain from exercising what he always believed to be an unchallenged right of the Jewish People. This ideological concession helped to clear the way to the peace process.

Hence the first alternative, annexation, was unrealistic, but so was the second. While considered acceptable and desirable by the Arab side, total withdrawal was totally unacceptable to Israel, regardless of what government was in power. The third alternative, territorial compromise, while not considered desirable by the Likud government, was nevertheless examined by Foreign Minister Moshe Dayan and was found to be totally unacceptable to the Arabs. What all three alternatives have in common is that all are unacceptable to at least one of the parties concerned, hence none of the three is feasible - namely, none can serve as the basis of a peace plan that will be accepted by both sides. This verdict against the idea of a territorial compromise is based on the Arab reasoning as conveyed to

Moshe Dayan by King Hussein in their meeting in August 1977: "We Arabs will never agree to a territorial compromise. Have you ever asked yourself what such a compromise means from the Arab standpoint? It means to recognize the legality of the conquest of part of the territories which you seized from us and to this we cannot agree."

Hussein's statement means that a territorial compromise is an "annexation," and reflects a rigid, tough ideological position which demands Arab sovereignty in the "territories" as a condition for any political solution based on a territorial arrangement. Until now there has been no sign from King Hussein that a territorial compromise could even be negotiated. The Jordanians always insist on an Israeli declaration of intent to withdraw completely from all of the territories occupied in 1967, as a prior condition to the start of direct negotiations. This position is not open to substantive negotiation, as it is diametrically opposed to the Israeli position - not only the position of the Likud government but also that of the Labor Alignment. There is an unresolvable contradiction between the position adopted by Hussein and the national consensus in Israel, in its negative formulation - namely that Israel will not return to the pre-1967 lines in Judea and Samaria. Even those who favor a territorial compromise do not accept the Jordanian king's approach of "not an inch;" and except for the leftist fringe of the Israeli political map, there is a national consensus on this matter. No matter how divided Israelis are with regard to the fixing of the final border between Israel and Jordan, there is no controversy among us on where this border will not lie: it will definitely not coincide with the "green line" - as the pre-1967 lines were called.

During his talk with Dayan, as on previous occasions, Hussein also mentioned his demand for sovereignty over East Jerusalem as a condition for any arrangement with Israel. There is no need to dwell at length on this matter; no matter what government is in power, Israel will never agree to relinquish, or to divide, Jerusalem.

When negotiations with Egypt began, President Sadat and his representatives also adopted this rigid ideological position, as expressed in Sadat's speech before the Knesset. The Egyptian representatives also adhered to this

position in contacts which had taken place prior to the visit. Thus, in late November 1977, Israel seemed to be faced with an impossible task: negotiations could end in an agreement only if a compromise could be found between the positions of both sides. In this case, the position of one of the sides, as stated publicly as well as privately, was the rejection of any idea of compromise. How could this obstacle be overcome? Was there indeed no other alternative but to choose between peace and territories, as the enemies of Israel claimed? It should be remembered that this was not to be a peace agreement based on a fair compromise, but peace based on what all the previous governments of Israel believed to be a territorial surrender, which would have created conditions that all view to be unacceptable from the Israeli standpoint. But on the other hand, could the Israeli government pass up the first opportunity to make peace with the largest and strongest of the Arab states because of this difference of opinion?

The Idea of Autonomy

Israel's response to this was: We cannot allow this historic opportunity to slip through our hands; but neither is it true that we must choose between surrendering either Judea, Samaria, Gaza, and Jerusalem, or peace. There could and should be found a way out of the dilemma. From a pragmatic point of view, what was needed was a solution not based on the element of territory, thus evading the problem of sovereignty which remains unsolved. This solution was the autonomy plan. The autonomy approach has several advantages. First, from a humanistic point of view: before discussing territory, first try to settle the affairs of the people living in this territory. Before dealing with abstract matters, with the theoretical legal question of who has the ultimate, or a better, right to the land, let us first deal with concrete matters, with human life. From the Arab point of view, this approach has an advantage in that it does not require the Arabs to renounce their own territorial claims; and it also has an advantage from the Zionist point of view, for it does not require the Jews to renounce theirs either. The human aspect of the proposed autonomy plan should be emphasized: it was to be autonomy for the people, for the Arab inhabitants of Judea, Samaria, and the Gaza District, and not

for the territory itself.

The vulnerable part of the autonomy idea is that a lack of sufficient attention at any stage is liable to lead to the constitutional, organizational, or conceptual foundation of a Palestinian state. Indeed, preventing the establishment of such a state has been one of the major criteria in deciding which powers could be accorded to the administrative council and which could not. In general terms, regardless of the difficulties, Israel could not allow the autonomy council to possess institutions, powers and authorities which constitute the attributes of a sovereign state as long as the national consensus is based on unconditional opposition to the establishment of a Palestinian state in the territories. This was a basic axiom in the autonomy negotiations in Begin's era and will remain effective also in the future.

Menachem Begin did not conceive of and articulate the autonomy plan, nor did his government approve it, in order to sever Judea and Samaria from Israel or to bring about the establishment of a Palestinian state or to transfer the territories to any foreign sovereignty. Begin's autonomy plan was designed to evade the problem of sovereignty. The very idea of autonomy already constitutes a serious ideological and practical concession; but there cannot be an Israeli renunciation of its full right to sovereignty in *Eretz Israel* even if that right is not exercised due to political considerations. According to that concept it is reasonable to foresee a rejection of any proposal, initiative or plan to broaden the functional framework of the administrative council, transforming it into a government or parliament.

On these grounds the Israeli negotiators in 1979-1981 vigorously opposed the establishment of more than one administrative institution under the autonomy framework. If there was a separation of powers, there would be a legislative authority; and once a legislative authority was established, a declaration of independence would be inevitable. A legislative authority, while perhaps the most important, is only one of many attributes which together constitute a state: the authority to establish and maintain armed forces; the conducting of a foreign policy, maintaining diplomatic ties and accrediting ambassadors; the conducting of a domestic policy which expresses

or implies sovereignty. Hence the need, in Israeli eyes, to clearly define the authority of the administrative council. Even after the military governor and civilian administration were to withdraw from the territories, he was to remain the source of authority for the autonomy framework, with the power to determine questions involving land use and the exploitation of natural resources.

Security Remains in Israeli Hands

Security arrangements were already agreed upon in the Camp David Accords, which state that there will be a withdrawal, and that the "remaining" Israeli forces will be redeployed in "specified security locations." The Israeli interpretation of this article has always been that the number, type and nature of these forces are thus not a matter for further negotiation between the parties, as this was intentionally left to Israel's discretion. The same is said with regard to the fixing of "specified security locations": "specified," not "agreed." Thus, the IDF will remain in Judea and Samaria, both in the transitional period of the autonomy plan and afterwards.

This was Begin's interpretation of the agreement which he signed, and with this interpretation the idea of a Palestinian state was in fact dismissed by the signatories to the Camp David agreement. On the other hand, Presidents Sadat and Carter made a different interpretation. Another disagreement arose about settlements policy. Israel reserved the right to establish Jewish settlements, which are not mentioned in the agreement, and has carried out an extensive settlement policy which has already altered the demographic profile of Judea, Samaria and Gaza. Today most observers agree that it would be more than difficult to make Israel remove these settlements, which have been established as durable, stable facts. The longer the Arabs wait, the more Jewish settlements will grow.

At the same time, the self-governing autonomy authority was to be endowed with the power to manage the inhabitants' daily affairs, which will no longer be subject to the rule of an occupying force. For the first time since the beginning of Arab immigration to western Palestine, they were to be accorded the

opportunity for self-rule. Relations with the Palestinians were to be based on the principle that Israel will not agree to any foreign sovereignty west of the Jordan; but it will accept and even propose a generous and far-reaching functional arrangement, according to which the Arabs living there will be able to conduct their own affairs.

The autonomy negotiations broke down over disagreements on precisely these points; the Egyptians seeking to establish the institutions of an embryonic Palestinian state and Israel insisting on a more limited framework of self-administration. For the next several years there was a political stalemate so intense that even Israel's unilateral actions to formally replace the military with civil administration in the territories meant little.

After the establishment of the National Unity Government in 1984, however, new momentum was generated with King Hussein of Jordan as the Arab partner. In a secret meeting with then-Prime Minister Shimon Peres in France in September, 1985, he apparently agreed to a joint Israeli-Jordanian effort to achieve at least an interim functional solution. Implementation of that agreement began a year later, after Hussein had finished his explorations with Yassir Arafat which failed to produce results.

By September 1986, the beginnings of a de facto Israel-Jordanian condominium began to take shape. Earlier, a new set of local mayors were appointed for the major Arab cities in the territories, with the active involvement of the Jordanian government. Jordan stepped up its contacts with Arab notables, particularly those who supported greater Jordanian involvement west of the river, while Israeli security forces responded to Jordanian requests to expel or imprison anti-Jordanian leaders among the local Palestinians. Jordanian ministers and senior civil servants began visiting the territories to coordinate positions with their Israeli counterparts and with the local Palestinian Arabs. In sum, a de facto condominium is well on its way.

Not a Permanent Solution

Is this an arrangement which, if achieved, can be maintained on a permanent basis? It is doubtful whether a situation which does not provide a solution for the problem of sovereignty

can be maintained indefinitely. We can therefore assume that, sooner or later, it will be necessary to seek a solution to the problem of sovereignty as well. What will be the alternatives? Again, there will be four options. Just as the first three alternatives were found to be unacceptable in the initial negotiations with Egypt, so will they be found unacceptable in the decisive stage of discussions on the future of the territories. The Arabs will not agree to full or partial Israeli sovereignty; and Israel will not agree to foreign sovereignty. According to the Camp David Accords, the permanent status of the territories will be determined by the agreement of all parties, in other words, every party will have the right to veto the proposals of the other. Such a situation clearly invites a solution of the fourth type - some other arrangement. Such an arrangement can be one of two kinds: a continuation of the status quo, or a confederation.

The permanent solution will be the creation of an Israeli-Jordanian confederative framework, thus realizing the territorial unification of the Land of Israel within its historic borders on both sides of the Jordan. Expression will thus be granted to the unique national character of its inhabitants, whether Jews or Arabs. In this context, we can expect a change in the meaning of territorial sovereignty. This will be a completely new concept, different from anything we have known to date.

Will both sides, Jews and Arabs, achieve the full realization of their national aspirations in an arrangement of this type? Of course not. This will only provide partial realization through a mode of partnership - a shared rule within the framework of the proposed confederation. However, where partition did not bring about a solution, we must seek partnership.

Building Common Interests

The present framework of relations between Israeli Jews and Palestinian Arabs is one of occupation. Even those who fully believe in the unchallengeable and indivisible right of the Jews to the Land of Israel cannot deny this fact. The question of whether the land is "occupied" or "liberated" has nothing to do with this objective statement of fact. According to the autonomy plan, this framework will change: the framework

of occupation will become a framework of autonomy for the inhabitants of the territories, during a transitional period. Its temporary nature will have a protective effect, preventing radical changes but the very change of framework and the granting of self-rule to the Palestinians for the first time in their history has dynamics of its own which will lay concrete foundations for the transition from military occupation to coexistence. In the course of this development, common interests will emerge in the field of economy, society, administration, public services, and above all, in day-to-day human contacts, which will be freer and more natural than they are today. This process will encourage the deepening of cooperation, and cooperation is the only way to achieve maximum fulfillment of aspirations. More than this cannot be achieved without upsetting the delicate balance of conflicting aspirations.

The idea of confederation is intentionally presented as partnership in the realization of these aspirations, and not as a compromise between national rights. The right of the Jewish people to a homeland, to national independence, to a life of freedom, can only be realized in the Land of Israel. The rights of the Arab peoples can be realized in each of the 22 Arab states. This is the decisive difference between these rights, and it must lead every decent person to a conclusion

about which set of rights must take precedence in the event of conflict. On the other hand a shared rule based on a delicate balance between these rights can prevent such useless conflict. This land has known many partitions and unifications throughout its history, but as a small geographical unit, partition has never brought about the solution of any of its many demographic problems. This lesson must be kept in mind when looking toward the future. Hence we should look forward to a future of cooperation between Jews and Arabs in the framework of a confederation within the historical boundaries of the country.

When will this day come? It is still too soon to say. In the meantime, we can only believe and prepare ourselves, while attempting to sketch the framework of relations in a process of constant change and transition.

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