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# Autonomy and Minorities: The Status of the Kurds and the Palestinians

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## I. INTRODUCTION

This is neither a legal nor a political essay. It is a minor contribution to an emerging legal situation caused by recent profound political changes and developments. The reader should not, therefore, expect a structured or an orderly presentation. When David Lehman, the Chief Articles Editor of the *Loyola of Los Angeles International & Comparative Law Journal*, requested that I transform the remarks I made at the American Society of International Law's Annual Conference in April 1993 on "Autonomy and Minorities," using the Kurds and Palestinians as case studies, I realized that this task was bound to be very exacting and difficult to achieve.

Since then, the Kurds and especially the Palestinians have come to the forefront of international relations. This occurred most notably with the dramatic signing of a Joint Declaration of Principles ("Declaration") between Israel and the Palestinian Liberation Organization ("PLO") on September 13, 1993, in an historic ceremony on the White House Lawn.<sup>1</sup>

Despite the transformative effects of the Declaration on the Middle East region, the remarks I made last April remain relevant in many ways. Therefore, I shall attempt to factor my observations on the situation in the aftermath of the Declaration.

## II. THE STATUS OF THE KURDS

There is a clear distinction between the status of the Kurds and the Palestinians. This distinction lies in the following issue: If

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1. Israeli-PLO Declaration of Principles, Interim Self-Government Arrangement [hereinafter Declaration].

the term *minority* is applicable in their respective conditions, would their legitimate rights be addressed adequately within an autonomy framework, or do they have national rights that can only be satisfied by exercising their right to self-determination? Nevertheless, in both instances the right to self-determination continues to be denied.

In the case of the Kurds, their treatment as minorities in their respective countries persists. The justification for such treatment is that, if the Kurds were to exercise self-determination, they would most probably opt for an independent Kurdistan. This outcome would inevitably encompass part of the territories of at least four states: Turkey, Iraq, Iran, Syria, and, perhaps, Azerbaijan. In turn, an independent Kurdistan would precipitate a geo-political explosion in a strategic and volatile region of the Middle East. The key issue, then, is whether the moral imperative of self-determination takes precedence over the requirements of peace and regional security.

While this dilemma continues, the human rights community's quest is to ensure legal and political rights, economic opportunities, and cultural and linguistic autonomy for qualifying groups. For the Kurdish minorities in their respective states, autonomy could exist within a region of a state where being a distinct ethnic group does not exclude its constituents from equal national status as citizens of that state. Does this constitute denial of self-determination? From a purely nationalistic perspective, the answer is yes.

Is the formula thus flawed from an human rights viewpoint? It *is* flawed to the extent that the individual right to equality is denied and that their collective rights to a cultural identity are deliberately excluded. Here again, the overriding question becomes whether a pluralistic society erodes its prevailing culture through a proliferation of recognized, autonomous cultural regions within a civil society or a nation-state. Furthermore, in a secular and integrated society, should the ethnic or religious identity of the individual be subordinate to the overriding legitimacy of the state?

While the concepts of rights, opportunities, and autonomy are theoretically valid and practically desirable, progress in this direction has been slow and, in light of recent developments in the former Soviet Union and Yugoslavia, reversible. It can be argued that the breakdown of societies along ethnic, religious, tribal, and sectarian lines *is* avoidable. When it occurs, incentives for reconstruc-

tion and reunification can be made available. Even this process, however, is amenable to interruption, with dire human consequences and bloodshed. In other words, the question of *minorities* will remain with us as an issue of human rights and of the right to self-determination.

Kurds constitute substantial, identifiable minorities in their respective countries of citizenship. This distinct status gives them eligibility as an autonomous administrative entity on an ongoing basis, thus constituting an adequate and tacit recognition of a minority community with the concomitant rights of self-government, use of their language, and enjoyment of their culture. This level of autonomy—administrative, cultural, and linguistic—should not involve a decoupling from the mainstream culture, language, and sovereign attributes of the state of which they are supposedly equal citizens. In this respect, the community is a minority; the citizen, although belonging to a minority community, is not. Concern for the Kurds, therefore, must focus on ensuring their individual human rights as equal citizens of a pluralistic state. At the same time, opportunities should be optimized for administrative autonomy to a cultural, ethnic, or linguistic identity without endangering the territorial integrity of the sovereign state.

How to navigate such an undertaking in the midst of at least four countries with differing regimes and varied ideologies is an issue that renders the Kurdish question a challenge for the human rights constituency throughout the world. It is necessary to ensure a measure of compliance by the countries involved, including uniformity of treatment, that is in tune with universal standards of human rights. In this respect, and due, in part, to self-serving strategic interests, the human rights constituency and Non-Governmental Organizations (“NGOs”) must actively remove any double standards that exist in the region. At the same time, they must strengthen their own monitoring mechanisms and enhance the legitimacy of the United Nations’ role and intervention in this field.

Of course, this approach falls short in the exercise of self-determination for the Kurdish people. If successful, it could be a catalyst to strengthen their sense of belonging and reinforce the principles and institutions of democratic empowerment for all. This approach can thus provide a formula for the Kurdish minority

communities in Turkey, Iran, and Iraq<sup>2</sup> as a leverage for an overall thrust towards genuine democratization for the entire region. It must be admitted that this might not be considered total justice for Kurdish national aspirations and rights. It substantially mitigates, however, the injustice that many Kurds suffer as individuals and minority communities.

### III. THE STATUS OF THE PALESTINIANS

The Palestinian people's serious, albeit flawed, efforts are intended to ascertain their national rights. The recent Declaration between the PLO and Israel introduces a distinction between *political* rights and *national* rights. In the present agreement signed on September 13, 1993, the term *national* rights is not mentioned. The United Nations ("U.N.") resolutions pertaining to the question of Palestine have, however, repeatedly affirmed the Palestinian people's right to national self-determination, including their right to an independent state. Since the Arabs accepted U.N. Security Council Resolution 242,<sup>3</sup> the Palestinian national patrimony has been confined to the West Bank, Gaza, and East Jerusalem. Although the nostalgia for the *entirety* of the Palestinian homeland continued as part of a collective memory, the only feasible option for the PLO was to confine its efforts only to the Occupied Territories.<sup>4</sup>

This reality was reinforced further by the Palestine National Council's ("PNC's") Declaration of a State of Palestine ("Palestinian Declaration") on November 15, 1988. The Palestinian Declaration accepted, without equivocation or ambivalence, the two-state formula, with the 1967 line constituting the borders of Israel and Palestine. In December of 1988, at the U.N. General Assembly meeting in Geneva, PLO Chairman Yasir Arafat amplified Palestinian consent by declaring the PLO recognition of Israel's right to exist. Given that the PLO is recognized by the international community as the sole legitimate representative of the Palestinian people, this act of recognition of Israel's right to exist was a clear

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2. The Kurdish minority situation in Syria is much more complex than in other nations containing a Kurdish minority population. A unique formula is therefore necessary to achieve genuine democratization.

3. See S.C. Res. 242, U.N. SCOR, 22d Sess., 1382d mtg. at 8, U.N. Doc. S/PV.1382 (1967).

4. For the purposes of this Essay, the term "Occupied Territories" refers to those Palestinian lands, specifically the West Bank, Gaza, and East Jerusalem, illegally seized by the Israeli Government in June 1967.

disclaimer of any Palestinian territories beyond the June 1967 borders.

The Palestinians, unlike the Kurds, have a unified national organization framework. It can be argued that, since the Madrid Conference in October 1991 and the ensuing peace process that resulted, the unified characteristic became more contentious, although not necessarily challenged. The recent Declaration, however, renders the concept of *unified* far more vulnerable than before. The PLO national organizational framework may now be subject to future redefinition.

The scope of this Essay, however, is restricted to examining whether the Palestinians as a whole or any part of them can be classified as a *minority*, and whether their political rights can be substituted for their national rights. Moreover, the question arises as to whether the entire Palestinian population has a right to exercise national self-determination, and, if so, whether autonomy is a transition to statehood or a substitute for it. While my remarks last April remain valid, the political and legal implications of the Declaration cannot be underestimated, and should be underscored. Hence, what follows is a blend of my earlier remarks and my present assessments. I want to emphasize, again, that this Essay is more opinionated and judgmental than scholarly and documented. It is hopefully, however, a modest contribution to the current discourse.

The situation of the Palestinian people is, perhaps, unique. They are strongly attached to their nationhood and identity, which is recognized by the international community. This recognition is strongly represented by an impressive number of U.N. resolutions that comprise the juristic bedrock of their *national* rights. The recognition of the PLO as the embodiment of the Palestinian identity and the vanguard of struggle for self-determination puts to rest any question that the Palestinians are an identifiable national community and, as such, are entitled to the right to exercise national self-determination.

The Palestinians experienced different conditions within Palestine as compared to other Arab countries. Inside Israel, they are clearly considered and treated as a minority. They are Israeli citizens, but must accept a wide range of discriminatory practices and legislation. Their status as a minority has not entitled them to any form of administrative or cultural autonomy. They are accepted as

citizens of the Jewish State because they remained in their homes after the establishment of the State of Israel in 1948. The Law of Return, which restricts Israeli citizenship rights to Jews, makes an exception for those Palestinians who remained at the time Israel was established.

The Palestinians who now live in the Occupied Territories are Palestinians under Israeli occupation. They are, therefore, supposedly protected under Chapter Four of the Geneva Convention of 1949.<sup>5</sup> Israel, however, does not consider itself an occupying power. It regards the Palestinian territories of the West Bank and Gaza as, at best, *disputed* areas; thus, the legal shield of the Geneva Convention is not applied by Israel. The world community, however, considers the territories as *occupied*. The Declaration treats the West Bank and Gaza as a community and the jurisdiction of the elected Council applicable to it "as a single territorial unit, whose integrity will be preserved during the interim period."<sup>6</sup> This indicates that, during the interim period, the Palestinians in the West Bank and Gaza will enjoy a measure of administrative autonomy, with the issue of final status pending.

The term *interim* postpones the resolution of the issue of self-determination and the concomitant prerogative of sovereignty. In other words, the Palestinian people will remain under occupation with a self-governing authority. Whether this level of "autonomy" will be a prelude to statehood and independence, or whether that option is preempted by perpetrating the "autonomy plan," is a question not yet resolved. While, on the surface, this issue does not appear to be contentious, the fact that the Declaration has no reference to the ultimate outcome in the aftermath of the interim period makes the Declaration a seriously flawed one. The internationally-recognized inalienable national rights of the Palestinian people remain vague and questionable. This is particularly true for the rights of a third component of the Palestinian people, the Palestinian refugees. Israel's Law of Return precludes their right to return to their homes; additionally, they have no rights of compensation.

The Palestinian refugees in the various camps of Lebanon, Jordan, and other areas are an integral part of the Palestinian people.

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5. Fourth Geneva Convention Relative to the Protection of Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 (entered into force Oct. 21, 1950).

6. Declaration, *supra* note 1, art. IV.

The Declaration does not address their fate and rights, except for mentioning that the subject of refugees remains as part of the negotiations on their final status. Hence, during the interim period, they are expected to remain refugees. That might be grudgingly acceptable if the final status was defined in terms that will lead to a Palestinian authority that could then bestow them a right to Palestinian citizenship. In this Declaration, however, there is no indication of what the outcome will be. The absence of any reference to self-determination and the fact that illegal Israeli settlements in the Occupied Territories are allowed to remain signal an Israeli insistence that the territories either be totally annexed or, at best, disputed. This insistence transforms the current negotiations into discussions and agreements only on certain modalities of self-government.

Negotiations presume agreement on a mutually acceptable outcome. The process that ensues is geared toward structuring the modalities of such an outcome, determining the timetable by which it is realized. In other words, negotiations are not intended to discover what a party's rights are, but rather, how to achieve them. I mention this because the two types of Palestinian refugees, those evicted in 1948 and those displaced after June 1967, consider that, without an envisaged outcome, the refugees will remain either as refugees, an option totally unacceptable and morally unbearable, or will become citizens of the countries in which their camps reside.

The latter option, besides being rejected by the refugees themselves as well as by their host countries, may be a prescription for eventual demographic and communal imbalances. Particularly in Lebanon, these imbalances can be very destabilizing. If, on the other hand, a national Palestinian authority is envisaged in two or even five years and can bestow citizenship on these refugees, their new status can give them mobility and enable them to be residents of their host countries. This will remove the political threat of imbalance and allow them to enjoy the civil rights of residency.

With the Palestinian insistence that they are an identifiable national community having internationally recognized rights, autonomy in the occupied territories is acceptable if: (1) it is transitional; and (2) it is transitional to the ultimate status that complies with the outcome of self-determination.



#### IV. CONCLUSION

I have sought here to clarify the distinction between the minority status of the Kurds and the recognized rights of the Palestinians. In the case of the rights of the Kurds to self-determination, a redrawing of the Middle Eastern map becomes inevitable, with consequences, however, that could be both destabilizing and dangerous to regional peace. Diminishing the Kurdish rights to a nation-state will remain a burden on the conscience of human rights advocates. This, however, should not deter the Kurds from ensuring their autonomy as a community and their nationality as citizens. In the case of the Palestinians, denial of their right to self-determination is a prescription for regional instability. Further, it serves as a shield to Israel's hegemonic objectives. This not only denies *national* rights to the Palestinians, but also their *human* rights, whether in the Occupied Territories, in refugee camps, or within Israel itself.