

16 May

Roundtable with a presentation by Dr. Gregory Mahler, Professor of Political Science, University of Mississippi, US

Topic: A Theory of Constitutionalism and Palestinian Constitutional Development

Participants: PASSIA Staff; Ayman Ayoubi, Businessman; Hania Bitar, Business Manager, The Jerusalem Times; Terry Boulatta, Project Coordinator, WATC Ramallah; Hanan Elmasu, Jerusalem Center for Women; Allison Fine, Researcher; Osama Halabi, Lawyer; Allison Hodgkins, Academic Director, School for International Training; Maral Kaprielian, EU Representation, Jerusalem; Elias Khoury, Lawyer; Dr. Riad Malki, Director of Panorama, Jerusalem; Dr. Anis Al-Qaq, Deputy Minister of Planning and International Cooperation; and Nancy Shalala, International Foundation for Electoral Systems.

SUMMARY

Dr. Gregory Mahler gave an overview of his research on constitutionalism in the Middle East, and especially on the forging of a constitution in the new state of Palestine (published by PASSIA; *see Research Studies*). He started by reviewing constitutionalism in general. According to Dr. Mahler, a constitution is generally a reflection of the basic ideology of a state and often presents the state's most fundamental laws. It also provides a framework for organizing responsibilities and power structures in a government. Finally, a constitution generally contains a mechanism by which it can be amended. However, Dr. Mahler stressed that the key in assessing constitutionalism in practice is not whether or not a state has a viable written constitution, but whether the government is constrained by some explicit or implicit set of basic laws: ideally, certain fundamental principles should be stronger than any individual or regime. Thus, states with fully developed constitutions, like the former Soviet Union or Syria, can be said to have a less constitutional government than Great Britain, which has no formal constitution. Dr. Mahler asserted that the "political culture" of a state is often more important than the actual written constitution in determining if a state has constitutional government. This raised several questions which Dr. Mahler asked the group to talk about. How should a constitution and political culture be reconciled? Should a constitution reflect political culture or try to counteract trends considered detrimental to the interests of the people? What is the political culture of Palestinian society? He concluded by noting that elsewhere in the Middle East, the key obstacles to achieving truly democratic constitutional governments have been the imposition of outside systems and the controversy over the relationship between Islam and government.

Dr. Mahdi Abdul Hadi said he felt that the key question is how to empower the people vis-à-vis the government. He wondered how we can ensure that the Palestinian people will be able to monitor their government's performance, in contrast to other political systems in the Arab world. He also noted that recent Palestinian history has resulted in the development of a national movement. However, new structures and

mechanisms are required for a normal, legitimate government.

Dr. Riad Malki asserted that those who write a constitution determine its content. Thus, great care must be taken to ensure that the constitution is not merely an elite imposition. He also wondered about the importance of a constitution in that in countries such as the US, the amendments to the constitution are often more important than the constitution itself.

Osama Halabi countered that this is the essence of the American constitutional system, and thus strengthens the argument that the constitution is important.

Dr. Malki criticized the notion of a Middle East political culture, due to Iranian, Turkish, Israeli and inter-Arab differences. Finally, he noted that in the West, democracy resulted from a long series of wars and violent upheavals. The Arab Middle East has had a very different history, which must therefore lead to a different kind of political system. Consequently, importing a Western-style democracy is a recipe for disaster.

Terry Boullata stressed that an effective NGO and lobbying community is crucial to the success of constitutional government for the Palestinians. She argued that an intermediary between interest groups and the government is indispensable in assuring that the people are well-represented in their new government. She cited the example of Palestinian women, whose rights are in constant peril in Palestine. She asserted that without mutual respect between the NGO community and the government, a stable democratic state will not develop.

Elias Khoury stressed that Palestinians must be open-minded in drafting a constitution. They must be willing to look at Palestinian society as it is, as opposed to an idealized version or a version that is biased by normative goals. There must be a genuine effort to discover the will of the people and their views of government. He raised the possibility that maybe Palestinians are not ready for democracy. Khoury pointed out that Israel's founders were well-schooled in political philosophy and had a sophisticated understanding of different forms of government. Meanwhile, Palestinian leaders have been nurtured in an atmosphere of clandestine organization and revolution, and lack a good understanding of the exigencies of democratic and transparent rule. Finally, he added that Palestinians have become accustomed to accepting whatever restrictions are imposed on them. There must be more organized and broad-based protest to injustice and to unwanted impositions by governing authorities.

Osama Halabi observed the tension in Palestinian society between West and East. He noted that the West is often insensitive in asserting its own values as universal. On the other hand, Palestinians can learn a great deal from the West. Unfortunately, however, there is often an immediate reaction among Palestinians that anything from the West is bad. Halabi noted that, paradoxically, there is a tendency among Palestinians to

assume that experts from the West are better-qualified, and there is thus too much reliance on the West for things that the Palestinian community can provide for itself.

Allison Fine related the fears of Palestinian Intifada leaders that a Palestinian state will fall into the same pattern of authoritarianism that other Arab governments exhibit. She expressed a need to pinpoint a specifically Palestinian political culture, as opposed to relying on the inaccurate model of a Middle Eastern political culture.

Hanan Elmasu expressed the need for increased education and infrastructure in cultivating a democratic society. She emphasized the importance of a grass roots connection to the government.

Maral Kaprielian asserted that people have no experience in participatory government and thus do not even know their rights in many cases. She echoed Elmasu's emphasis on education.

Hania Bitar noted that what Westerners often see as undemocratic measures, such as a ban on alcohol, are not necessarily undemocratic in a Palestinian context. She challenged the notion that Islamic *Shari'a* and democracy are incompatible, and asserted that it is possible and appropriate to have both in a new Palestinian state.

Dr. Abdul Hadi lamented the politicization of Islam, and noted that it has often been altered to serve the interests of certain regimes or individuals. He also expressed concern about the functioning of PNA institutions thus far, citing the example of members of the legislature who are not even aware of their responsibilities. Finally, Dr. Abdul Hadi gave an analysis of Palestinian NGOs and noted that most of them were designed to address the challenges of the period of the Intifada. He maintained that none of the NGOs has a solid base for the future, and that they must restructure themselves for the challenges of a new era.

Ayman Ayoubi stressed the need for checks and balances in the new government to prevent any individual or group of people from imposing its will over the people.

Dr. Anis Al-Qaq recommended that the Palestinian constitution be written without reference to official documents signed thus far, which all bear the influence of Israel. He also emphasized the importance of Palestinians learning from their experiences in the Diaspora, from the other Arab states' errors and from the Israelis. Al-Qaq noted that the unique opportunity to build a new state should not be compromised, as it was in the biased Palestinian election arrangements. He cited the protests surrounding the elections as a sign that a nascent democratic political culture exists and as a cause for optimism about Palestinian democracy. *Allison Hodgkins* supported this assessment that there is a solid base for democracy.

Hania Bitar was less sanguine, and noted the disenchantment of the people over the "cooked" results of the elections, as well as their fear that a constitution might also be imposed from above.

Dr. Mahler thanked everyone for their input and agreed with the general consensus that the new constitution must reflect the will of the Palestinian people, as well as that time must be allowed so that people feel that their concerns have been respected and so that implementation mechanisms can be developed.