Excluded Palestinians: Mediator Gatekeeping in the Israeli–Palestinian Conflict

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Executive Summary

Brief Points

- While inclusion is treated as a theoretical gold standard for successful mediation, these historical examples from the Arab–Israeli conflict highlight how exclusion can be the norm.

- Exclusion is often created in the pre-negotiation phase in which the terms of reference for the negotiations are decided.

- Mediators should avoid creating “ticket of admission” mechanisms as these can reduce a party’s incentive to join a negotiation process.

- Partial agreements can be helpful in reducing violence, but they are not sustainable in the way that long-term, comprehensive, and inclusive agreements can be.

The core of the Arab–Israeli conflict is the conflict between Israel and the Palestinians dating back to the 1940s. The history of peace negotiations has been marked by Palestinian exclusion. Only in 1993 – in the Oslo Process – were the Palestinians included as an independent party to negotiations. The dilemma of inclusion/exclusion is one of many central problems in Arab–Israeli peacemaking, and it has been present from the outset of the conflict. In this case brief I use three instances of international mediated involvement in the conflict to highlight how mediation gatekeeping has served to exclude Palestinians, either as a people, as a political unit, or as a spoiler group. The three historical phases used in this brief span the 1940s, the 1970s, and the 2000s. By highlighting how Palestinians have been excluded and the mediators’ role in these exclusionary negotiation formats, this brief sheds light on how the mediation terms of reference are core to understanding peacemaking dynamics.
Norms of Inclusion/Exclusion and the Mediator as Gatekeeper

It has become an established truism that an inclusive peace has a higher chance of success than an exclusive peace. While a peace treaty agreed on by all parties might be more robust because all parties to a conflict have a stake in it, a peace process including all parties to the conflict is more difficult to complete precisely because there are so many diverging interests present at the table. In any mediation process the parties, and the mediator, must find a way to maximize the advantages and reduce the disadvantages of inclusivity. The dilemmas of inclusion/exclusion are thus both ethical and practical in nature.

Inclusion can be both a premise and an outcome of negotiations. In theory a peace process can be exclusionary – by not including certain groups in the negotiations – and still result in an inclusive outcome, by addressing the grievances of the excluded groups in the final agreement. However, this is less than likely because the parties at the table will typically negotiate for their own benefit and not for the benefit of the excluded parties. Furthermore, an exclusionary process means that the grievances of the excluded parties will not be heard, and thus the negotiations will contain a structural bias to their disadvantage.

In this brief I analyse the question of mediation gatekeeping and legitimate participation in peace processes by looking at three different historical phases of the Israeli–Palestinian conflict in which Palestinians have been excluded: 1) In the late 1940s all Palestinians were excluded as the Arab states were accepted as their representative; 2) In the 1970s the Palestine Liberation Organization (PLO) had become the legitimate representative of the Palestinian people, yet in a series of peace negotiations between Israel and its Arab adversaries, its participation was rejected; and 3) During the early 2000s Hamas challenged the PLO, entered the political scene, and won the Palestinian parliamentary elections – yet they were excluded from negotiations.

The three historical phases discussed in this brief move beyond what we typically think of as the spoiler dilemma – that certain extreme groups can derail a process because the process does not serve their interests. The Palestinians are not a spoiler sub-group within a conflict; they are a core party to the conflict. While exclusion is a central feature in all the three historical phases, there are differences among them. In the first phase the Palestinians were excluded entirely; in the second phase it was the PLO that was excluded, but, since this took place at a time when the PLO was considered the “sole legitimate representative” of the Palestinians, this exclusion was essentially (but not formally) total. In the third phase diplomacy took place between the PLO and Israel, but Hamas was excluded.
Phase 1: The UN and the Making of the Arab–Israeli Conflict

Originally, the terms of reference for the division of Palestine consisted of the UN partition plan, issued by the UN General Assembly in November 1947. According to this plan, Palestine should have been divided between the Jewish population in Palestine and the Arab population in Palestine: the Palestinians. During the 1948 war, which broke out on 15 May 1948 as the surrounding Arab states invaded Palestine in a war against Israel, the UN appointed Special Mediator Count Folke Bernadotte to solve the conflict. He developed a separate partition plan, the Bernadotte plan, which was never implemented. However, one important element of this plan — that Jordan would be the representative Arab party — was implemented when the 1948 war drew to a close and Acting Mediator Ralph Bunche initiated armistice negotiations.

The terms of reference for those negotiations were embodied in a series of UN Security Council resolutions: 61 from 4 November 1948; 62 from 16 November 1948; and 66 from 29 December 1948. In this set of resolutions the parties to the conflict are specified as “Governments”. The Palestinians, who were fleeing or had already fled the territory that had become Israel, were not represented by any internationally recognized government and thus simply fell outside that point of reference. Although there existed a nominal Palestinian government in Gaza, the All-Palestine Government, this body was never internationally recognized and was very much a tool for Egyptian control of the Palestinian issue. Jordan also tried to co-opt the Palestinians through the Jericho conference, where a group of pro-Hashemite Palestinians supported the Jordanian claim to Palestine.

The revised terms of reference embodied in the Bernadotte plan and the Security Council resolutions, and supported by the Arab states, meant that the Palestinians were completely excluded as a party who could represent themselves. Thus, when the armistice negotiations were over in the first half of 1949, there was no semblance of a Palestinian state. Gaza was occupied by Egypt, and this occupation gained international acceptance through the Israeli–Egyptian armistice agreement signed on 24 February 1949. In the negotiations between Israel and Jordan the Israeli government used blackmail and military advancements to chip away sizeable portions of the Jordanian-held Palestinian territory. When the negotiations ended and the armistice was signed on 3 April 1949, Jordan retained control of, and later annexed, what we today call the West Bank. Twenty-two per cent of Palestine remained in Arab hands, but none of it was under Palestinian sovereign control.

UN Acting Mediator Ralph Bunche was utterly frustrated by the experience of these negotiations. In his diary he noted: “Another deal and as usual the Palestine Arabs lose”. There were many things about the mediation process that seriously bothered Bunche, but he was not in a position to change the structure because it was already agreed upon by the UN. Realistically, his only possible alternative was to leave the conflicting parties and return to the UN with no deal. This is not a simple ethical choice. When the two options are to either succeed at an imperfect deal or fail at a perfect deal, neither are optimal. The terms of reference are of essential importance in judging whether or not that call was correct. If the main purpose of mediation was simply to end violence, then
Bunche made the right call, since the 1948 war was formally ended. If justice for the victims of the war or a longer-term solution of the conflict was the goal, then the judgement is not as positive. By both postponing the Palestinian refugee issue and ensuring that the Palestinians were not represented in the negotiations, the armistice agreements arguably made the conflict more difficult to solve because these central questions were allowed to fester.

This, then, is an example of the UN mediator not only rubberstamping a negotiation format but actually also taking part in defining the exclusionary format of negotiations, because the premise of the negotiations was a series of UN documents. Paradoxically, the UN mediator was not a typical “manipulative mediator”, because he was what mediator typology defines as a “weak mediator”. This is not a value judgement of the qualities Bunche had as a mediator, but rather an assertion that, since he represented the UN and not his home country the United States, he lacked leverage that could push the parties to make concessions. Thus, once the UN had defined how he could work, he could only work within the confines of that framework.
By the 1970s, the UN had been replaced as the main mediator in the Arab–Israeli conflict. The United States had taken over. The US had been supportive of Israel since the early days of the conflict but this support gradually increased. When President Nixon took power in 1969, heavy pro-Israel support was institutionalized in US foreign policy. In parallel to the increased pro-Israel leaning developed a massive antipathy for the Palestinians, then represented by the PLO. Unlike in the 1940s, the Palestinians had organized behind a representative political body that was gaining international recognition as a legitimate representative for their national interests. Although various PLO groups engaged in global terrorism in the early 1970s, there was a gradual move away from such methods and the PLO leadership started advocating both diplomacy and more moderate objectives for their struggle.

Despite this development on the Palestinian side, the US insisted on seeing the PLO either as a terrorist group, as Soviet puppets, or as puppets of the radical Arab states. In the early Nixon–Kissinger years, Kissinger was not actually interested in mediating in the Arab–Israeli conflict at all, but the 1973 war shocked him into the realization that the conflict was of global importance. He then structured a peace-making edifice designed to exclude the Palestinians and create partial agreements between Israel and the neighbouring Arab states.

As in the 1940s, the exclusion of the Palestinians from the diplomatic process was manifested in a document defining the terms of reference. Unlike in the 1940s, the document was created in cooperation between one of the conflict parties, Israel, and the mediator, US Secretary of State Henry Kissinger. That
document was a secret letter sent in connection with the 1975 Sinai II agreement between Israel and Egypt. The US promised Israel that it would neither “recognize nor negotiate with the Palestine Liberation Organization [PLO] so long as the Palestine Liberation Organization does not recognize Israel’s right to exist and does not accept [UN] Security Council Resolutions 242 and 338”.16 The reference to UNSC Resolution 242 is important because, like in 1949, this UN document was based on the premise that agreements were reached between states.17 Since the Palestinians were not represented by a state, the UN once again created a frame of reference that excluded the Palestinians. The Sinai II side-letter compounded that UN-based exclusion.

Once Kissinger no longer stood at the helm of US foreign policy, the Jimmy Carter administration went into high gear to solve the entire Arab–Israeli conflict, including the core Palestinian issue. Unlike the Nixon and Ford administrations, which in this conflict were represented by Kissinger, the Carter administration represented an ethically oriented US foreign policy that highlighted human rights as a core US value. Carter spent his first year in office trying to make a comprehensive approach work and figure out a way to include the Palestinians. Bound by Kissinger’s letter to Israel, Carter was unable to get the PLO on board, despite attempting various creative ways of working around this promise. This included using third parties to talk with the PLO; getting the PLO to agree to a statement in which they accepted UNSC Resolution 242 with the reservation that it should address their national plight; or getting other Arab states to represent the Palestinians in negotiations. None of these attempts were successful, and in the end Israel and Egypt signed a separate peace agreement, excluding the Palestinians.18

Since the United States is the very definition of a strong mediator – what in mediation typology is called a “manipulative mediator” – the US had a defining power over the mediation format. By defining the talks as something that should take place between Israel and the Arab states, and that the Palestinians should be explicitly excluded, the US was not, like Bunche, merely accepting an exclusionary format. Rather, the US was working as an active gatekeeper purposefully excluding one party. While most of the Arab states rejected this format, Egypt accepted it because President Sadat had decided on a strategic shift towards promoting Egyptian national, rather than broader Arab, interests.

Like the 1949 phase this highlights a dilemma of how success is measured. If the measurement is the end of one particular conflict – the Israeli–Egyptian conflict – then the exclusionary process was highly successful. If the measurement is the Arab–Israeli conflict in its entirety, or the Israeli–Palestinian conflict in particular, one could argue that the separate peace agreement prolonged these conflicts. The Israeli–Egyptian peace treaty reduced the incentives for Israel to make concessions and it reduced the leverage held by the Arab states and the Palestinians to pressure Israel into making concessions that could have solved the broader conflicts.
Phase 3: The Hamas Preconditions

For all its faults, the Oslo agreement was a significant breakthrough in Israeli–Palestinian peacemaking because the Palestinians were finally allowed to be represented by Palestinians. As late as the 1991 Madrid talks, the Palestinians were only allowed to negotiate as part of the Jordanian team and on condition that they did not represent the PLO. A core tenet of the Oslo agreement was the so-called mutual recognition agreement. According to this, the PLO recognized Israel, and in return, “the Government of Israel has decided to recognize the PLO as the representative of the Palestinian people”. There are two very important things to note about this commitment. First, this was not a mutual recognition, since Israel did not recognize a Palestinian state. Second, since a political alternative to the PLO, Hamas, was gaining a foothold in Palestine as the agreement was signed, an exclusionary element was tied into the very same agreement that finally recognized the Palestinians as a legitimate party.

In 2006 it became difficult to ignore this question, as Hamas won the Palestinian parliamentary elections. Since Hamas was not part of the PLO, the Oslo agreement became a paradoxical agreement, which in effect stated that the elected representatives of the Palestinians were not a legitimate representative of the Palestinians. This is important because the Oslo agreement served as the central terms of reference for future talks. This was evident in what became known as the Quartet demands towards Hamas. The Quartet (UN, EU, USA, and Russia) demanded that they could only engage with a Palestinian government that recognized Israel, renounced violence, and adhered to previous diplomatic agreements. While the two first points were difficult for Hamas, the last point caught the organization in an odd bind. If Hamas recognized the Oslo agreement that would imply that Hamas recognized the PLO as the representative of the Palestinians people, thus excluding themselves. In other words, in order to become legitimate they had to accept that they were illegitimate.

The chronology of events following the launch of the Quartet principles were chaotic. A brief Palestinian national unity government, including Hamas, was followed by a breakdown in Palestinian political cooperation and a civil war in Gaza resulting in a Hamas takeover. Following that, Fatah bolstered its control over Palestinian affairs on the West Bank. Hamas has continuously been kept out of the diplomatic process.

Much as in the case of the PLO in 1970s, the mediation model here was designed as one in which the Palestinians were asked to make their main concession first to qualify to become a party to the negotiations. This admission ticket mechanism in the pre-negotiations phase was designed by the mediator (the US in the 1970s and the Quartet in the 2000s) and amounted to a highly exclusionary format. While Hamas fits the definition of a spoiler party in the conflict, the exclusion is still problematic. An essential component of peacemaking is that peace is made among enemies, not among friends. The idea, therefore, to exclude Hamas prior to negotiations because they have not made the concessions they consider as a potential end-point to a negotiated process is, paradoxically, to impose the no-peace approach espoused by the movement.
Debates around inclusion/exclusion in peace processes often focus on topics such as gender, youth, and civil society inclusion, or on more negatively oriented topics such as spoiler groups. The Israel–Palestine case illustrates how inclusion/exclusion can also relate to the core actors themselves. As these historical cases illustrate, the mediator can function as a gatekeeper by agreeing on or even creating the terms of reference that define the parties to the mediation process.

In the first phase, the UN created the terms of reference in which the parties were defined as states, and the UN-appointed mediator could either accept that premise or step down, but he could not alter that premise. His acceptance of that premise was simply a rubberstamping of an exclusionary process. In the second instance, the US created the exclusionary format in cooperation with one of the parties and then conducted negotiations under that exclusionary format. In this regard the third instance is very similar to the second, except that the exclusion was no longer the Palestinian national movement as a whole, but rather one branch of it – Hamas.

All three historical cases illustrate a fundamental downside of mediator gatekeeping – excluding a central party from the negotiations can simplify a mediation process by reducing the number of actors, remove difficult questions from the negotiations, and so on, but this is also detrimental to the peace process because it removes the potential for addressing the core questions of the conflict. Partial agreements can be helpful in reducing violence, but they are not sustainable in the way that long-term, comprehensive, and inclusive agreements can be.

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Notes


2. UN General Assembly (1947) Resolution 181. 29 November. Available at: unispal.un.org/DPA/DPR/unispal.nsf/0/7F0AF2BD897689B785256C330061D253.


4. Ralph Bunche replaced Folke Bernadotte as the UN mediator after Bernadotte was murdered, but he retained the title “Acting Mediator”. The Bunche-led armistice negotiations have been studied in detail in:


11. Excerpts from Ralph Bunche Diary, 1 April 1949, Brian Urquhart’s private collection in the UCLA Library, Department of Special Collections, UCLA 364/8-7.


18. Jensehaugen (2018);