

International Law and the Future of Palestinian Citizens of the State of Israel

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Introduction

At the Red Sea Summit Mr Sharon declared: «It is in Israel's interest not to govern the Palestinians, but for the Palestinians to govern themselves in their own State»¹. Israel recognises the Palestinian right to Statehood. The blueprint for peace, the «Road Map», sets out three stages of reciprocal steps leading to a Palestinian State by 2005. Details include an agreement on final borders, Jerusalem, refugees and settlements.

Palestinian Arab citizens of the State of Israel have been excluded from any negotiation process. They comprise approximately 18% of the total population of the State of Israel. Geographically scattered within the State of Israel, they primarily reside in the Galilee region in the north, the Triangle area in the centre, and in the Negeve Desert in the south, which is mainly inhabited by Arab Bedouins, an indigenous tribal people that form part of the Palestinian community. Despite strong centrifugal State tendencies over the past 55 years Palestinian Arab citizens of the State of Israel have maintained their distinct identity.

Although the State of Israel has ratified various human rights treaties, among them the International Covenant on Civil and Political Rights of 1966, it has not ratified the protocol of the ICCPR. Therefore Palestinian citizens of the State of Israel cannot lodge complaints to Human Right Committee. What are the other options? Are they entitled to have recourse to the instruments of international law related to the right of self-determination?

Bearing in mind that international law vouchsafes the right of self-determination to peoples, this article will discuss the criteria of peoplehood in order to assert that Palestinian Arab citizens of the State of Israel might meet those criteria. If so, is the

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¹ See «The Times», 5 June 2003, p. 1.

autonomous regime an alternative option for them as a form of internal self-determination? Which kind of autonomous regime is the most suitable for them?

1. The General Legal Criteria for Entitlement to Self-determination

The notion of self-determination and the clarification of the entity that may be entitled to the right of self-determination were mentioned in Articles 1, 55 and 73 of the United Nations Charter, and also in other international instruments amongst them the International Covenants of 1966. Accordingly, peoples are the holders of the right of self-determination. Consequently, how one can design guidelines by which to measure a clear identity and its own characteristics, what are the criteria that one should draw in order to determine that a group of persons are people?

International law does not clearly respond to the need for precise definition. People have to include a sufficient number of persons to preserve by themselves their tradition and characteristics and that account should be taken of the circumstances under which each group of persons had come into existence to be qualified as people. Peoplehood would have two elements, one objective and the other subjective. The objective element is that there has to exist in common, history, ethnic ties, culture, language, religion and territory. The subjective element is that there has to be an awareness of being a people. Dinstein pointed out that

Peoplehood must be seen as contingent on two separate elements, one objective and the other subjective. The objective element is that there has to exist an ethnic group linked by common history... Side by side with the objective element, there is also a subjective basis to peoplehood. It is not enough to have an ethnic link in the sense of past genealogy and history. It is essential to have a present ethos or state of mind. A people is both entitled and required to identify itself as such.²

It seems that Dinstein defines «people» in terms of ethnic criteria, and on this basis of ethnic criteria one would say that several «people» could exist within one State. But the ethnic ties

² See Y. Dinstein, *Collective Human Rights of Peoples and Minorities*, in «International Comparative Law Quarterly», 25, 1976, pp. 103-104.

are not enough, the awareness and the belonging of the persons to the group, the psychological status is also very important and the most relevant element in defining a «people».

However, in a broad context international law recognised the right to self-determination of peoples. But this right has to be exercised according to the terms and conditions of the United Nations and other regional instrument such as the Helsinki Declaration of 1975 in which Principle VIII stated that self-determination can be achieved only «... in conformity with the purposes and principles of the Charter of the United Nations and with the relevant norms of international laws including those relating to territorial integrity of States»³. In other words the principle maintained that any attempt aimed at the partial or total disruption of the territorial integrity of a State is incompatible with the UN Charter. Therefore, self-determination operates within the framework of the principle of territorial integrity to prevent a precedence or rule authorising secession from an independent State from arising⁴. Moreover, the United Nations Charter, the declaration on the granting of Independence to Colonial Countries and Peoples of 1960, and the 1970 Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, legitimised the liberation of an oppressed people, but with the preservation of territorial integrity⁵. But, is the right of self-determination synonymous with the right to independence (external) self-determination? By examining Article 1 of International Covenant on Civil and Political Rights of 1966, one can notice that «all peoples have the right of self-determination». By virtue of that right they should «freely determine their political status and freely pursue their economic, social and cultural development»⁶. The broad definition of this Article gives the possibility that within this context, the right of environmental policy also should be included⁷. Therefore, one can distinguish between the political, economic, social, cultural and environmental self-determination. The political aspect of the right to self-determination refers to the right of peoples to freely determine their own political status⁸. From States' practice, there are different models of exercising then right to self-determination, externally, the creation of a new State or the integration into or federation with another State⁹. Internal self-determination would be

³ See I. Brownlie (ed.), *Basic Documents on Human Rights*, Oxford, Clarendon Press, 1994 (3rd ed.), p. 396.

⁴ See M. Shaw, *Title to Territory in Africa*, International Issues, Oxford, Clarendon Press, 1986, p. 82.

⁵ 1514 (XV) Declaration on the Granting of Independence Colonial Countries and People, 947 plenary meeting, 14 December 1960. 2625 (XXV) of 1970. See D. Djonovich J. (ed.), *United Nations Resolutions*, series I, vol. VIII: 1960-1962, New-York, Ocean Publications, 1974, pp. 188-1989. See also 2625 (XXV) Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations (1903rd plenary meeting, 12 November 1970). Reprinted in (1970) 9 *International Legal Materials*, 1292. See United Nations Charter, Ruth Russel, *A History of the United Nations Charter*, Washington, D.C., The Brookings Institution, 1958, p. 975.

⁶ See Article 1 of International Covenant on Civil and Political Rights. United Nations Treaty Series 171, reprinted in (1967) 6 *International Legal Materials*, p. 368.

⁷ See S.I. Skogly, *Complexities in Human Rights Protection: actors and Rights Involved in the Ogoni Conflict in Nigeria*, paper presented for the Gross Violations of Human Rights Conference at the University of Essex, August 1996, pp. 1-15.

⁸ See Declaration 1514 of 1960, D. Djonovich J. (ed.), *United Nations...*, cit., supra n. 5.

⁹ See H. Hannum, *Sovereignty and Self-Determination: The Accommodation of Conflicting Rights*, Philadelphia, University of Pennsylvania Press, 1990, p. 463.

exercised within a State in particular in a multi-people State. People could freely determine their internal political status in which each people would be given the possibility to participate in the decision-making process of the State, in particular on the constitution and amendments concerning their situation within the State. Therefore, in order to implement the internal right to self-determination there are a range of options such as, federalism, or democratic governance, and if a people constitutes a small number of the population and desires to preserve its lifestyle and its distinctiveness, in this case it could be granted a special protection by granting an autonomous status to the people concerned¹⁰. Therefore, the right to self-determination guarantees a people the opportunity to make a choice and implement it. Arguably internal self-determination may convert into a right to external self-determination, in such a situation; it may be exercised by a nation as a whole, as a case of dissolution. Such was as the dissolution of Czechoslovakia, the unification of East and West Germany, the secession of Bangladesh, or negotiations on constitutional reforms in Belgium, Canada, and Eritrea. However, Resolution 2625 (XXV) of 1970 which prohibits any action which would dismember or impair the territorial integrity of a State conducting itself «in compliance with the principle of equal rights and self-determination of people... and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour» must be taken into consideration¹¹. From the above it seems that the right of reversion appears whenever any part of a State's population is not represented in its government, in this case that part of population could be recognised as a separate people with a right of self-determination. Therefore, «people» are entitled to political self-determination, and not necessarily means secession from an independent State. Political self-determination could be also the possibility to have a democratic government in a multi-people State which represent all its population, if the government was partial and has failed to represent all its population. Therefore, for those peoples there are many models of self-determination one of the options is the autonomous regime as a form of internal self-determination, implemented within the internal constitutional structure of the State concerned. Therefore, could Palestinian Arabs citizens of the State of Israel be

¹⁰ *Ibidem*.

¹¹ See Declaration 2625 (XXV) of 1970, cit., *supra* n. 5.

qualified as a people, which could bear the features of a people? If they are a people what is their choice, in practice can they claim the right of self-determination, external or internal?

2. Do Palestinian Arabs Citizens of the State of Israel Meet the Criteria of Objective and Subjective Elements of People?

The purpose of this section is to give an account of the information on this unique situation of the Palestinian Arabs citizens of the State of Israel. First of all before the establishment of the State of Israel there were no separate nationals known as «Palestinians». In 1919 Amir Faysal of the Hijaz wrote to the Supreme Council of the Peace Conference that the «Arabs... expect the powers to think of them as one potential people»¹². In 1947 when the General Assembly adopted Resolution 181 (II) dividing the Palestine Mandate into two independent States, it referred to the «Jewish» and the «Arab State», with no reference to «Palestinians». Arabs residing in the Palestine Mandate were granted the citizenship as Palestinians¹³. At that time they were part of the Arab nations, they shared the same history, language, culture, religion and territory, yet they developed a consciousness amongst Arab inhabitants and refugees from the former Palestine Mandate which has resulted in the emergency of a new national identity, the Palestinian people, which was recognised by the General Assembly by adopting Resolution 2672 C (XXV) of 8 December 1970¹⁴. Therefore, Palestinian Arab citizens of the State of Israel are the remnant of the Palestinian people who were under the British Mandate from 1922 until 14 May 1948; they became citizens of a State not of their own choice¹⁵. To what extent is this population to be considered a people? According to what has been discussed in the previous section, there are objective and subjective elements which determine the identity of Palestinian Arabs citizens of the State of Israel as a distinct population in Israel.

The objective elements are:

- a) the ethnic element: originally they are semitic population, who moved and traveled in the Middle East;
- b) they are part of the Middle Eastern populations, part of the Arab nations. The State of Israel has been engaged for long time

¹² See Amir Faysal's Memorandum to the Supreme Council at the Paris Peace Conference, 1 January 1919, in J.C. Hurewitz (ed.), *Diplomacy in the Near and Middle East: A Documentary Record*, vol. 2, New York, Princeton, 1956, p. 36.

¹³ See Hau King NG, *The Applicability of Instrumentalist of Nationalism to the Evolution of the Palestinian National Identity*, Dissertation towards the degree of Master of Arts, University of Exeter, September 1997, pp. 19-36.

¹⁴ See D. Djonovich J. (ed.), *United Nations Resolutions*, adopted by the General Assembly, series I, vol. XIII: 1970-1971, New York, Ocean Publications, 1976, p. 252.

¹⁵ See M. Dumper, *Israel: Constraints on Consolidation*, in D. Peter, D. Kiloh Goldblatt, M. & L. Paul (eds.), *Democratization*, Cambridge, Polity Press, 1997, p. 383. See also A. Bishara, *The Israeli Arabs*, in «Journal of Palestinian Studies», 24, 1995, pp. 26-35 (in Arabic).

in a bitter conflict with the Arab nations. At the same time Palestinian citizens of the State of Israel are Arabs within the borders of the State of Israel, their size is smaller than that of the Jewish population¹⁶.

c) they share the same history with the Middle East despite their location;

d) they share the same language with the Arab nations which is the Arabic language;

e) the religious element: there are Arab Muslims and Arab Christians and different sects.

The subjective elements are:

a) their self-esteem and self-consciousness as Palestinian Arabs, despite their isolation from the rest of the Arab World;

b) they have preserved their own way of life which sets them apart from the Jewish majority. They must not be confused with the Oriental Jews who emigrated from the Arab States to Israel. Economic and educational disadvantages are the cause of the disparity between Oriental Jews and European Jews¹⁷.

According to the above elements it seems that the Palestinian Arabs citizens of the State of Israel could be classified as a people. The subjective elements of self-consciousness consolidate the objective element. Palestinian citizens of the State of Israel consist of a community in which the members are bound together by mutual loyalties, an identifiable tradition, and a common cultural awareness, with historic ties to their land. According to the above elements, Palestinian citizens of the State of Israel could be classified a people. But how has the State of Israel defined them? The State of Israel treats them as individuals and it distinguishes them by nationality; according to the State's definition they are «Arabs in Israel» or «Israeli Arabs». «Haaretz», Israel's newspaper, which expresses the government views, is specific in its distinction between rights accorded to Arabs citizens as individuals and rights denied Arabs as a national or ethnic group. It stated that

The structure that Israel has adopted and will not part with has to allow the Arab citizens wide possibilities so that they can go on living as Arabs in the state of the Jews... But as a basis of representation we can not accept anything else but the Arab individual «in contrast to national or ethnic group representation». We understand that this is not optimal from a national point of view. But the Arabs have to understand that this is the maximum they can expect.¹⁸

¹⁶ See N. Rouhana, A. Ghanem, *The Democratization of Traditional Minority in an Ethnic Democracy: The Palestinian in Israel*, in E. Abed, S. Kufman, R. Rothstien (eds.), *Democracy, Peace and the Israeli-Palestinian Conflict*, Boulder (CO)-London, Lynne Renne Publishers, 1993, p. 164.

¹⁷ See A. Friendly, *Israel's Oriental Immigrations and Druze*, Minority Rights Group, Report no. 12, London, 1982, pp. 3-22. See also From a Correspondent of Israel, *Ethiopians Criticism Pace of Absorption Process*, in «Jewish Chronicle», 8 December 1995, p. 6.

¹⁸ See «Haaretz», 8 June 1976.

But the State of Israel did recognise that there are non-Jewish communities within the State of Israel, and classified as religious communities. This system of religious communities was established during the Ottoman period, and maintained during the British Mandate. Following the establishment of the State of Israel, the Knesset maintained the *status quo*: religious law in matters of personal status¹⁹. Moreover, the State of Israel in its submission to the report concerning the implementation of the International Covenant on Civil and Political Rights, stated that «... only the non-Jewish communities – Muslims, Christians, Druze, Circassians, and Bahai – will be considered as minorities»²⁰. It seems that the State of Israel recognises that within its borders there are religious minorities rather than a distinctive people. But the Palestinian citizens of the State of Israel are not only religious community, they are people with a national and cultural extension outside the boundaries of the State of Israel.

To what extent should this population be integrated into the Jewish community, or could have the right to be different at the same time to enjoy full equality and not to be discriminated against? The conflict between the Israeli State and the surrounding Arab States has had its implications on the relationship between the State and its Palestinian citizens. Since the establishment of the State of Israel there is a relationship of distrust between the State and the Palestinian citizens of the State. Yigal Allon, a prominent Israeli official who admitted that «It is necessary to declare it openly: Israel is a single-nationality Jewish state. The fact that Arabs live within the country does not make it a multi-national state... The Arabs have many states, the Jews have one state only»²¹.

From the above statements the State did not strive to achieve the integration or absorption of the Arab population into the Jewish community. In this context the relationship between the State and the Arab community in Israel was defined in strict accordance with the goals of the dominant group. The Israeli policy toward the Palestinian Arabs was determined to control the Arab community in Israel rather than to develop a certain relationship of absorption²². The State's fundamental distrust of the Arab citizens has been reflected in the State's policy which isolated the Arabs from the Jewish community²³.

Zaydani pointed out that an Arab in Israel is not a member of

¹⁹ See State of Israel, *Implementation of the International Covenant on Civil and Political Rights*, submitted in 1998 to the United Nations Human Rights Committee, Ministry of Justice, Ministry of Foreign Affairs, p. 224.

²⁰ *Ibidem*, p. 353.

²¹ See Y. Allon, *A Curtain of Sand, Ha'am Hauved*, Tel-Aviv, 1979, pp. 322-327 (in Hebrew).

²² See U. Standil, *The Arabs in Israel, Between Hammer and Anvil*, Jerusalem, Academon Hebrew University, 1992, p. 83.

²³ See D. MacDowall, *The Palestinians, the Road to Nationhood*, London, Minority Rights Publications, 1991, pp. 19-20.

the Jewish society; at the same time he is a resident but less than a citizen. An Arab in Israel is not oppressed but he cannot be part of the decision-making process. An Arab in Israel is more than a refugee because he lives in his own house, but he is not the landlord²⁴. In other words a Palestinian Arab citizen of the State of Israel is floating in a middle area, between one end of the spectrum and the other end. From the above statements which are similar in their implications, one can see a people oppressed by the State through its measures and unjust policies²⁵. Therefore, what distinguishes the Palestinian citizens of the State of Israel from the rest of the population in Israel, is the marginalisation of their life²⁶. After the peace process between the PLO and the State of Israel in 1993, the Palestinian national identity within the State of Israel became the core of an academic debate between Palestinian and Israeli scholars. Al-Haj pointed out that this peace process will not guarantee any improvement of the situation of the Palestinians in Israel, but «will lead to economic prosperity and the new economic opportunity will be exploited by the economically strong in Israel»²⁷. The strong social strata in Israel are the so-called Ashkenazim and the exploited people are the so-called Mizrahim²⁸. Al-Haj adds that «The situation of the Arabs will be worse than that of the Mizrahim community. In the final analysis the State is a State of Jews and its central compensating mechanism are Jewish-Zionist. Arabs do not have a foothold there»²⁹. Therefore, the Palestinian citizens of the State of Israel have no space in the socio-economic strata in Israel; Israel has condemned the Palestinian citizens of the State to remain on the margins of the positions from which this important decision was made. But in this regard Samooha argued that «The process of democratisation which began in the 60's is now being expressed through border legislation for the protection of civil rights and expansion of the values of democratic culture»³⁰. It is difficult to accept this view. Because the Emergency Regulation of 1945 was partly abrogated in 1966 and the process of democratisation has not taken place; there is no equal distribution of resources between the Palestinians and the Jews. Therefore, what is the alternative available to the Palestinian citizens of the State of Israel for resisting or overcoming the injustice which has been its lot for over 55 years?

²⁴ See S. Zaydani, *The Democratic Nationality and the Arabs in Israel*, in «Qadaya (Issues)», 4, 1990, pp. 8-9 (in Arabic).

²⁵ See chapters 3 and 5.

²⁶ See A. Bishara, *To Be a Palestinian in the Jewish State*, in «News from Within», 8, no. 3-4, 1992, p. 9.

²⁷ How the Oslo Agreement of 1993 will affect Palestinian Arabs in the State of Israel, Ahmad Ashkar interviewed Majed Al-Haj and Sami Samooha. See A. Ashkar, *Will the Agreement Favor the Palestinians in Israel*, in «News from Within», 10, no. 1, 1994, p. 17.

²⁸ Jews from the Arab countries are Mizrahim, the Falasha from Ethiopia and Ashkenazim from developed countries. See «Ha'olam Haza», 18 August 1993, pp. 28-29.

²⁹ See A. Ashkar, *Will the Agreement Favor the Palestinians...*, cit., p. 17.

³⁰ *Ibidem*.

3. The Present Discrimination against Palestinian Arab Citizens of the State of Israel

As was stated above, every people has the right of self-determination, which is a collective right, set out in both Covenants on Human Rights of 1966³¹. Here it is important to recall the provision of the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States: «Nothing... shall be construed as authorising or encouraging any action which would dismember or impair totally or in part the territorial integrity or political unity of sovereign and independent States»³². The States in this context are qualified to be

States conducting themselves in compliance with the principle of equal rights and self-determination of peoples, and thus possessed of a government representing the whole people belonging to the territory, without distinction as to race, creed or colour.³³

Examining the above text, one can notice that contemporary international law does recognise the right of peoples to self-determination, without any specification of a «people», and the State to which a people belongs is subject to a government representing the whole people, without discrimination based on race, creed or colour. The question related to the fate of the Palestinian citizens of the State of Israel, does the State of Israel as a Jewish State represent all its citizens without distinction between its Jewish citizens and the Palestinian Arab citizens of the State?

To enjoy full membership of a society means to be equal and enjoy full citizenship, which entails rights and equal influence in the decision-making process. In Israel there are two types of citizenship: citizenship for the Jews and citizenship for the non-Jews (the Palestinian citizens of the State).

Only Jews enjoy full citizenship. Whereas Palestinian citizens of the State of Israel are citizens by a legal formulation but they do not enjoy the effectiveness of citizenship. An example of this argument is that of Minister Hammer:

Israel is not, accordingly, like other countries in the world, the state of its legal citizens only, nor is it a state of all its legal citizens either. The Arabs in Israel are not citizens in the strict sense of citizenship,

³¹ See Article 1 of the *International Covenant on Civil and Political Rights*, cit., *supra* n. 6. See also 2200 (XXI) International Covenant on Economic Social and Cultural Rights, International Covenant on Civil and Political Rights and Optional Protocol to the International Covenant on Civil and Political Rights, 1496th plenary meeting, 16 December 1966, United Nations Treaty, series 3, reprinted in (1967) 6 *International Legal Materials*, p. 360.

³² See Declaration 2625 (XXV) of 1970, cit., *supra* n. 5.

³³ *Ibidem*.

because the state is not – by definition – theirs. Citizenship for the Arab in Israel is not a right in the accurate sense of right «moral-religious right or moral-historical right», acquired or inherited. Citizenship – according to the legal accident – for the Arabs in Israel evidence of Jewish excessive «generosity» towards non-Jews.³⁴

It is clear from the above that the Palestinian Arabs of the State of Israel are not equal in the meaning of citizenship, one could say that the non-recognition of Arabs in Israel as equal members in the Israeli society. Therefore, they are second class citizens, and because of that status the Israeli government has failed to represent them. They are under a long chain of discrimination which led to oppression and injustice. The International Committee on Economic, Social and Cultural Rights in its 19th Session concluded that:

The Committee express concern that a excessive emphasis upon the State as a «Jewish State» encourages discrimination and accords a second class status to its non-Jewish citizens. The Committee notes with concern that the Government of Israel does not accord equal rights to its Arab citizens, even if they comprise over 19% of the total population of Israel. This discriminatory attitude is apparent in the comparatively lower standard of living of the Israel Arabs, as a result inter alia of lack of access to housing, water, electricity and health care and their lower level of education. The Committee also notes with concern that despite the fact that Arabic has official status, it is not given equal importance in practice.³⁵

Therefore, the State of Israel, has a government which does not represent the whole people belonging to the territory. The State of Israel is partial towards the majority (the Jews) and prejudiced against the minority (the Palestinian Arabs). Consequently, Palestinian Arabs citizens of the State of Israel according to the Declaration 2625 (XXV) of 1970, indirectly have the right of self-determination. However, self-determination to the Palestinian Arabs citizens of the State of Israel does not mean secession, it is internal self-determination which would guarantee their participation in the decision-making process in matters concerning their status within the State. Therefore, how could the Palestinian Arab citizens of the State of Israel exercise the internal right of self-determination.

³⁴ Zuvlun Hammer was the Minister of religious Affairs. See «Al-Midan», 23 March 1990 (in Arabic).

³⁵ See the concluding observations of the Committee on Economic, Social and Cultural Rights, 19th Session, 16 November-4 December 1998, E/C.12/1/Add.27.

4. The Internal Right of Self-determination of the Palestinian Arab Citizens of the State of Israel

Taking into account the Declaration 2625 (XXV) of 1970, in particular the clause of the «... the territorial integrity or political unity of sovereign and independent States»³⁶, shall not be impaired, Palestinian Arab citizens of the State of Israel would not threaten the territorial integrity of the State of Israel if they exercised their internal self-determination. This is because they are scattered throughout the country. When the PLO, as the representative of the Palestinian people signed the peace agreement with the State of Israel in 1993, it was not concerned with the status of the Palestinian Arab citizens of the State of Israel. Therefore, they have found themselves outside of any international arrangement. Consequently, the only solution is to reinforce their destiny within the State of Israel. Therefore, what are the options in the light of the concept of the internal self-determination that the Palestinian Arab citizens of the State of Israel can claim? How they can resolve the conflict between their demands for internal self-determination and the principle of territorial integrity of the State? They may be entitled to domestic self-determination, in other words internal self-determination in the sense of participating in the internal constitutional structure of the State of Israel. If so does this form have any basis in international law? It could be suggested that this internal self-determination is in the process of becoming a norm of international law. This view found its basis on the Declaration 2625 (XXV) of 1970. Hannum pointed out that

... self-determination should come to mean not statehood or independence, but the exercise of what might be termed «functional sovereignty». This functional sovereignty will assign to sub-groups the powers necessary to control political and economic matters of direct relevance to them, while bearing in mind the legitimate concerns of other segments of the population and the state itself.³⁷

In this context the internal right of self-determination does not endanger the territorial integrity of States. However, from states' practice the exercise of this internal right of self-determination could have a form of autonomy over most policies and laws in a region such as South-Tyrol in Italy³⁸; to a people having exclusive control over only certain aspects of policy, such

³⁶ See Declaration 2625 (XXV) of 1970, cit., *supra* n. 5.

³⁷ See H. Hannum, *Rethinking Self-determination*, in «Virginia Journal of International Law», 1, 1993, p. 66.

³⁸ See *Il Nuovo Statuto di Autonomia*, in «Gazzetta Ufficiale», 20 November 1972, no. 301. See also Provincia Autonoma Bolzano Alto Adige, *Il Nuovo Statuto di Autonomia*, Bolzano, Giunta Provinciale di Bolzano, 1993 (IV ed.), pp. 59-72.

as education, social and cultural matters. Clearly, it all depends on the constitutional structure of the State concerned. Therefore, on the basis of the above discussion, Palestinian Arabs of the State of Israel could invoke the internal right of self-determination. They might opt to form of an autonomous regime as a form of internal self-determination. This form might protect and preserve their distinctiveness as a people and at the same time guarantee their right as citizens of the State and might eradicate all forms of discrimination which the State of Israel is systematically practicing against them.

5. The Entitlement to Autonomy

There are few collective rights which are declared in international human rights instruments. Most of the rights included are individual rights which the human rights instrument appeals to the international community to observe. However, any form of autonomy could be a protection of the collective rights of a minority to which individuals belong. They may assert legal rights which are based on their group identity, such as the right to practice their own language or the freedom of association or professing their own political identity through their own representatives. Bear in mind that autonomous regimes lack a basis in human rights instruments, and it is a matter of domestic jurisdiction of a State to grant an autonomous regime to a minority. Crawford maintained that a form of an autonomous regime can only have consequences in international law if «it is in some way internationally binding on the central authorities»³⁹.

Even though, some scholars viewed that a formal autonomy could satisfy the aspiration of a particular people and at the same time would preserve the territorial integrity of the State. Hannum for instance considers that an autonomy is «less-than-sovereign self-determination», and is «a new form of new principle of international law», a form which can guarantee the basic rights of a group of people in respect of language, access to power, education, culture and rights on lands. In this respect there is room to share and support this view.

An autonomous regime should be developed into a new entity of international law, which could be a form of internal self-

³⁹ See J. Crawford, *The Creation of States in International Law*, Oxford, Clarendon Press, 1988, p. 211.

determination through autonomy schemes, as a way of reducing the ethnic conflicts within nation-states. Moreover, autonomy rights are collective in the sense that they can be exercised only by groups and by their representatives who would negotiate on behalf of the group with the central government⁴⁰. Therefore what is an autonomous regime or an autonomy schemes? Could Palestinian Arab citizens of the State of Israel exercise their internal self-determination through one of the autonomy schemes? If so, which autonomous regime is the most suitable to be applied?

6. What is Autonomy

«Autonomous regime» is a vague term which has been used in different ways, such as federal system, decentralisation, self-government and associate Statehood⁴¹. Originally the term «autonomous» derives from a Greek word which is composed of «auto» which means self and «nomous» which means rule⁴². Autonomy is the separation of a part of the population within a State from the majority, which possessing a large degree of self-government, while maintaining a common over-all framework within the State structure and remain part of the State's system of government. Is the self-government for a part of the population within the State, which may establish a form of a territorial, personal or another form of autonomy scheme⁴³. According to the *Hebrew Encyclopedia*, «autonomy»

indicates a certain relationship between a political or social body and a more general and comprehensive political or social force to which it is subject, religious group, national minorities or cultural and economic blocs hope to maintain a degree of independence from the all-powerful central government.⁴⁴

The *Encyclopedia of Social Sciences* defines «autonomy» as, «the legal sufficiency of a social body and its actual independence»⁴⁵. Clearly from the above definitions an «autonomous regime» is a social body which seeks to disassociate itself from the powerful central government. The concept of an autonomous regime means to have a decisive influence and control over the political, social and economic institutions which determine a

⁴⁰ See J.J. Corntassel, T. Hopkins Primeau, *Indigenous Sovereignty and International Law: Revised Strategies for Pursuing Self-determination*, in «Human Rights Quarterly», 17, 1995, pp. 352-353.

⁴¹ See R. Lapidoth, *Autonomy*, in «Mish'pat Vamim'shal Government and Justice Journal», Jerusalem, 1992, pp. 56-60.

⁴² See *Concise English Dictionary*, new edition, New York, Harper Collins Publishers, 1999, pp. 93-94.

⁴³ See Y. Dinstien, *Autonomy*, in Y. Dinstien (ed.), *Models of Autonomy*, New Jersey-New Brunswick, Transaction Books, 1981, pp. 291-292.

⁴⁴ See *The Hebrew Encyclopedia*, vol. A, Jerusalem-Tel-Aviv, The Encyclopedia Publishing Company Ltd, 1962, pp. 782-791 (in Hebrew).

⁴⁵ See E. Seligman (ed.), *Encyclopedia of Social Sciences*, vol. 2, New York, The Macmillan Company, MCMXXXV, p. 332.

people's way of life. This control will be achieved within a State where the central government respects the choice of the community. Members of a community which seek to demand the right of autonomy are citizens of the State. Inhabitants of the land legally belong to that State and are bound to exercise their rights within its borders and under its sovereignty. In fact Klein pointed out that,

Autonomy means the power of a given organ to decide in a given sphere without referring to a higher organ. This power is limited however, by the act which establishes the autonomous organ: the sovereign organ may alter the limits of the autonomous organ without the latter's consent.⁴⁶

Autonomy is regarded as a collective effort to create political and social arrangements based on the ethnic group's own tradition. This kind of collective effort is presented in heterogeneous societies. In this kind of society the State tends to create different norms and values in order to establish unity at the expense of a minority which exists within its borders. It is done by ignoring ethnic values and identity. As a consequence of state action, ethnic groups will seek ethnic homogeneity through autonomy, in order to determine on their own destiny. It is important, therefore, to emphasize that when a people suffers from economic and cultural discrimination within a State, this will increase their desire to demand autonomy. This should be seen as a subjective element that convinces an ethnic group to act against the majority. McCord and McCord wrote that:

For a separatist movement to emerge, people must first be convinced that they share something in common against an enemy. This is the subjective basis of the social movement. Objective differences in power, status, religion, ethnicity, or other factors may have little to do with the development of a subjective conviction.⁴⁷

⁴⁶ See C. Klien, *Israel as a Nation State and the Problem of Arab Minority: In Search of a Status*, International Centre for Peace in the Middle East, 1987, p. 21.

⁴⁷ See A. McCord, W. McCord, *Ethnic Autonomy: A Socio-Historical Synthesis*, in R. Hall (ed.), *Ethnic Autonomy Comparative Dynamic*, USA, Pergamon Press, 1979, pp. 427-436.

Where peoples are deprived of their rights it increases their feeling of separatism as in the case of the Jews in Europe in the 19th century. In their case the objective factor and the subjective factor overlapped.

McCord and McCord also list eight conditions which are likely to result in a demand for autonomy:

1. When a particular group has greater access to power at the political-economic centre of the state than another group.
2. When there is discrimination between different groups or areas in the same state.
3. When a group feels that its heritage has been assimilated into the mainstream or has been oppressed culturally.
4. When there is a leadership that can mobilize a population behind the cause.
5. When there is no other alternative to a solution between the minority groups and the majority within the state there is nothing left except autonomy.
6. When for centuries historical conflict has been rooted in divisive religious, social, economic and political life.
7. When the expectations of a minority for economic development are not shared by the majority.
8. When power is centralized in the political centre of the state, yet it allows some voices of discontent from ethnic groups to be expressed.⁴⁸

Examining the above, although it may be the case that often under economic development is the most important factor of the eight conditions, a combination of the different factors is the main cause of the demand for autonomy.

Furthermore, the specific historical circumstances of a minority will determine the success or failure of an autonomistic movement. For example, when the Europeans arrived in America the natives in America were unable to exercise power or fulfill their indigenous needs. Clearly, in a heterogeneous society where the central policy of equality is difficult to implement, the central government will find itself involved in opposition to groups who believe they are discriminated against. May be the only solution the group have to maintain their rights is to demand a form of autonomy.

7. Types of Autonomy

Territorial Autonomy: Territorial autonomy is granted to an ethnic minority concentrated in an area. To this minority would be given the right to govern its own affairs, including control of the land and the natural resources within its borders. This is subject to the consent of the central government. For example, the autonomous regime of German and Italian-speakers in Italy, the so-called Trentino-Alto Adige or Trentino-

⁴⁸ *Ibidem.*

South-Tyrol⁴⁹ devolution, federal structure, or regional system such as in Spain.

⁴⁹ The provinces are located in northern Italy, Bolzano known as Sudtirolo (South-Tyrol) in German or Alto Adige in Italian, is a mountain area bordering Austria. It contains a mixed population of three ethnic groups: German, the Italian and the Latin. According to the 1991-2001 Census, the Province of Trento with 449852 residents in which the Italians are the majority and the Province of Bolzano with 440508 residents in which the Germans in Bolzano are the majority. The Latins are the oldest and the smallest language group in the Province of South-Tyrol. They were already resident in South-Tyrol at the time of the Roman conquest of Raetia but were increasingly pushed back by invading German tribes and Germanised. Today the ancient Rhaeto-Romanche valleys, The Val Gardena and Val Badia. In the eight municipalities of these valleys an average of 90% of the inhabitants are belong to the Latin language group. The Province of South-Tyrol was given the New Autonomous Statute in 1972. See Giunta Provinciale di Trento, Ufficio Elettorale di Trento - Alto Adige, 1991 (in Italian). See also, F. Volgar, *Manuale dell'Alto Adige*, Bolzano, Giunta Provinciale di Bolzano, 1994 (VII ed.), pp. 23-50 (in Italian). See *Il Nuovo Statuto di Autonomia di Bolzano Alto Adige*, *Il Nuovo Statuto di Autonomia*, Bolzano, Giunta Provinciale di Bolzano, 1993 (IV ed.), p. 59 (in Italian). See also *Il Nuovo Statuto di Autonomia*, in «Gazzetta Ufficiale», no. 301, 20 novembre 1972. See L. Bonell, I. Winkler, *L'Autonomia dell'Alto Adige, Descrizione della Competenza Legislativa ed Amministrativa Autonoma della Provincia di Bolzano*, Bolzano, Giunta Provinciale di Bolzano, 1994 (III ed.), pp. 69-70 (in Italian).

⁵⁰ See A. Bishara, *To Be a Palestinian...*, cit., pp. 30-35.

⁵¹ See H.J. Steiner, *Ideals and Counter-Ideals in the Struggle Over Autonomy Regimes for Minorities*, in «Notre Dame Law Review», 66, 1991, p. 1542.

⁵² *Ibidem*, pp. 1542-1543.

Cultural Autonomy: This kind of autonomy is granted to a people regardless of their members' place of residence. It grants the right to control only the minority's cultural activities. They may have the right to have separate schools including universities and forming their own curriculum, but may not establish separate political institutions. In this type of autonomy, there is no land control and financial resources are allotted only for cultural objectives⁵⁰.

Personal Autonomy: This type of autonomy is granted to religious communities which are dispersed throughout the country. At the same time in some localities they are intermingled with the rest of the population. This is usually expressed by personal law, namely marriage, divorce, adoption, inheritance and has its own religious character. For example in Israel there is a kind of personal autonomy which granted to some degree to different religious groups, Jews, Muslims, Christian, Druze and others⁵¹.

Power-Sharing Autonomy: This type of autonomy assures that one or more ethnic groups will participate in the formation of the government. Through their representative body they will have a great influence in the decision-making in the State. It may affect the composition of the national legislation, for example through provision that members of a people are entitled to elect a stated percentage of legislators through the use of separate voting rolls specific to their size. The representative of a people may be assured of formal consultation by the government before decision are taken on matters related to their situation. A certain of percentage of the civil service or the army officer corps or of cabinet positions may be reserved for members of that people. Like personal autonomy, power-sharing does not require that the members of the people be regionally concentrated, for example, Belgium and Lebanon⁵². At this point the discussion will turn to the above types of autonomy in relation to the Palestinian citizens of the State of Israel. The discussion will focus on territorial autonomy, cultural and power-sharing. This is because the personal autonomy within the State of Israel is to some extent granted and it deals only and specifically with religious matters.

8. Practical Options for Achieving an Autonomous Regime within the State of Israel

After the Declaration in Algiers of the «Palestinian State» in 1988, there was talk of a proposed meeting of Israeli and Palestinian representatives in Cairo which would lead to elections in the Occupied Territories, the West Bank, and the Gaza Strip as a first step for peace between the PLO and the State of Israel⁵³. It was clear that Palestinian citizens of the State of Israel would not be part of this future accord and their problems would not be addressed during talks. Israel sees the problem of the Palestinian citizens of the State as an internal problem which should not concern any external entities. In any event, Palestinian citizens of the State of Israel learnt that even if a Palestinian State is established, their status in Israel would not be altered. After the Oslo Agreement in 1993 between the PLO and the State of Israel, inside Israel Palestinian citizens of the State felt isolated and frustrated by the lack of progress in the area of civil equality⁵⁴. The growing tensions in the relationship between the two peoples in the country has an impact not only on political life, but on everyday living as well. Fear of entering Jewish areas or *vice versa*, is an added incentive for altering the existing situation. From this one can see that there are two forces of pressure on the Palestinian Arab citizens of the State of Israel: one external-political and the other an internal-civil. Consequently, Palestinian Arab citizens of the State seek an alternative to their present status. The alternative may be the autonomous regime. The interest in the idea of autonomy is the realisation that in Jewish-Zionist State as the State of Israel defines itself, Palestinian citizens of the State will never achieve full equality in the light of the fact that Israel has no written constitution and no bill of rights to protect their rights. Palestinian citizens of the State and Jewish scholars at the present time have raised the case of autonomy as an alternative solution. However, in an article published in collaboration by Zaydani and Azmi Bishara from Nazareth in the newspaper «Al-Arabi», in 1989, they explained the pressures of the current situation in the Occupied Territories and its impact on the relationship between the State of Israel and the Palestinian citizens of the State, and concurrently, Israel's partial policy towards the non-Jewish citizens. Their joint conclusion was

⁵³ See J. Nasser, *The Palestine Liberation Organisation: From Armed Struggle to the Declaration of Independence*, New York, Praeger, 1991, pp. 4-5.

⁵⁴ See A. Ghanem, *The Palestinians in Israel are part of the Palestinian Question*, Giva'at Haviva, Institute for Peace, 1996, pp. 1-10.

that an alternative status should be found for Palestinian citizens of the State of Israel, not isolation towards which they may be swayed as a result of their identification with their Palestinian brothers, and not complete integration, considering the special character of Israel. The middle road they suggested was autonomy, without specifying the type or the degree⁵⁵.

In 1990 Zaydani elaborated his position and presented a detailed program in «Al-Arabi» newspaper. In his opinion, the Palestinian Arab citizens of the State of Israel should aim for territorial autonomy, a legal status similar to that of inhabitants of the cantons in Switzerland, which are affiliated with the Central Federal State, he wrote that:

1. I imagine Arab autonomy in the Triangle and the Galilee, in which their own elected administration would have as much authority as possible:

- A. To establish one or more Arab universities in Israel.
- B. To use Arabic as the official language in the autonomous regions.
- C. To make decisions about building, development, health and environment.
- D. To make decisions about civil services.
- E. To make decisions about educational issues, such as the aims and content of the Arab educational system.
- F. To issue licenses to journals and to local associations and trade unions.
- G. To set up a complementary network for social security and mutual support funds.

2. The autonomous regions will be in a federation with the State of Israel. They will be free to create and to strengthen their ties with other Palestinians and with the Arab people, both preceding and following the establishment of a Palestinian State beside Israel.

3. Autonomy will not interfere with their status as full-fledged and equal Israeli citizens.

4. Autonomy will not interfere with Arab-Jewish cooperation on a party level or otherwise.

5. This minimal legal arrangement will be subject to change accordance with circumstances which may arise following the realization of a historical settlement between Israel and the Palestinian nation.⁵⁶

Examining the above proposal, it seems unrealistic. It is physically impossible to segregate Arabs from Jews in any region in the country. There is no geographical area in which Arabs and Jews are completely separated from one another. Territorial

⁵⁵ See «Al-Arabi», 29 December 1989.

⁵⁶ See «Al-Arabi», 26 January 1990 (in Arabic).

autonomy in regions with an Arab majority would pose a problem of status for Arabs living in cities or in areas where they do not constitute a majority. The Arab community is economically dependent upon the Jewish regions. There is no economic infrastructure within the Arab areas. Therefore, they should not be segregated from the Jewish regions. Territorial autonomy would impair the Arabs' position in the State, the Jewish majority would reject any proposal for territorial autonomy. It would reinforce the ideas of the right wing that the Palestinian Arab citizens of the State would aim to detach themselves from the State of Israel, and afterwards demand annexation to a newly Palestinian State. Therefore, this idea of territorial autonomy to the Palestinian citizens of the State of Israel is impracticable. As far as cultural autonomy is concerned, is the right of a people to self-rule in regard to its educational and cultural affairs. This type of autonomy was suggested by Palestinian Arab political parties in Israel. There is no written program for cultural autonomy, but from interviews and platforms of different Palestinian Arab parties, the Progressive List for Peace, are called for the Arabs in Israel to have control of their own education system⁵⁷. The Islamic Movement is in favour of cultural autonomy, despite of its religious character, it aspires to have full control over the curriculum in the education system and inculcate, unimpeded, Moslem values⁵⁸. The Arab Democratic Party presents a slightly different view. The party is in favour of creating separate cultural institutions for Arabs, but is opposed to a separate education system. Although they demand Arab control of curricula they stress coordination with and subordination to the Ministry of Cultural and Education. Those demands were made in the manifesto of the second party's Convention in July 1990 for the establishment of a body which would foster Arab culture and art in Israel and for the establishment of an Arab university⁵⁹. Furthermore, Klein proposed an institutional system which will represent the Palestinian population before the Israeli government. Through these institutions the Palestinian Arab citizens of the State could establish their cultural autonomy⁶⁰. However, this kind of cultural autonomy would not resolve the other problems of land, internal refugees, housing, health, the non-recognised villages and others. However, the reaction of the State of Israel rejected any possibility of autonomy for the Arab citizens and regards even the theoretical

⁵⁷ The party's demand in this connection are elucidated in its July 1990 platform. See «Albian Alsias», July 1990, p. 6 (in Arabic).

⁵⁸ An Interview with Shiek Kamal Khatib, August 1998.

⁵⁹ An interview with M.K. Muhammad Darawish, August 1999.

⁶⁰ See C. Klien, *Israel as a Nation State...*, cit., p. 46.

discussion of the subject as dangerous. In May 1990 the Jewish-Arab Centre of Haifa University planned to conduct an academic study day on the idea of autonomy, its organisers were compelled to cancel the event⁶¹. Autonomy is perceived as a threat by the State of Israel to its security. An autonomous Palestinian entity within the Israeli State structure is the only way to achieve internal self-determination. This framework would demand an amendment of Israel's Basic Law. Power-sharing is recommended as the appropriate form of autonomy. This is because the Palestinian people in Israel is dispersed throughout the State. A power-sharing autonomy would form part of the Israeli State structure and participate in the formation of the Israeli government. Palestinian Arab citizens of the State would be elected both to the power-sharing autonomous body and to the central government of the State of Israel. In the existing situation there are the National Committee of Council Heads and the Supreme Follow-Up Committee which act on behalf of the Palestinian community in Israel. They are not directly elected by the Palestinian people and they are not officially recognised by the State of Israel⁶². Power-sharing autonomy would enable the Palestinian community in Israel to elect their own Autonomous Council and would enable them to participate in the parliamentary elections for the Knesset. Assuming that the Palestinian community would have a percentage of seats reserved for them in the Knesset, they would participate in the formation of the government in which a Minister of the Palestinian Community Affairs would be appointed. Also, according to the autonomous system of power-sharing, the Palestinian community in Israel would participate in the decision-making process of the State on matters concerning their community and they would cease to occupy a marginal position in the decision-making process.

The implication of a power-sharing autonomy is that the State of Israel would recognise the Palestinian Arabs in Israel as a national minority and not as religious community. They would be an influential minority which would participate in running the State's affairs. The government policy in the field of education would change and the Palestinian Arabs would have an important role in choosing their own curriculum and establishing their own universities and other educational institutions. Consequently the Arabic language would be official alongside

⁶¹ Interview with Majed Al-Haj, Director of the Jewish-Arabs Centre at the University of Haif, July 1996.

⁶² See M. Al-Haj, H. Rosenfeld, *Arab Local Government in Israel*, Giva'at Haviva, Institute for Peace, 1990, pp. 130-150.

Hebrew turning to laws enacted by the State of Israel in the sphere of land in general and land expropriation in particular, under the proposed system Palestinian Arabs in Israel would have the right as a national minority to propose the rescission of those laws and the right to be consulted in designing projects for suitable agricultural and economic development in their own land and areas. Under the recommended solution, the State of Israel would move from being a partial State into a democratic State of a pluralist character. The Palestinian Arab citizens of the State, therefore, would integrate into the Israeli system and be partners in political power; and the principle of equal rights to citizenship and equal opportunity would be the basis of the new form of government in Israel. Consequently, Palestinian Arabs in Israel would receive fair distribution of social welfare such as housing, health and fair redistribution of public finance allocation. It is submitted that if the above recommendation were to be implemented the Palestinian Arab citizens of the State would achieve their right to internal self-determination. Furthermore, such form of autonomous power-sharing would be ideally equipped to play a mediating role between the Palestinian Authority in the West Bank and the Gaza Strip and the State of Israel⁶³.

Conclusions

Palestinian Arab citizens of the State of Israel can be termed a people according to objective and subjective criteria. International law recognises the right of self-determination to all «peoples», and acknowledges that it entails representative government to all peoples within multi-people States. In other words, peoples that qualify to exercise the right to internal self-determination have the right to a democratic government which would represent all its citizens without discrimination. But, international law gives primacy to the territorial integrity of the State. The goal of internal self-determination is to guarantee equal rights to all peoples within a multi-people State and not to impair the sovereignty of the State. Therefore, this right would be exercised with the consent of the State concerned.

Autonomy is a form of internal self-determination which might be applicable in a multi-people State. There are different types

⁶³ See S. Taih, *The Election in Israel*, in «Al'awda (The Return)», 1 April 1999.

of autonomous regimes. The territorial autonomy for the Palestinian Arab citizens of the State of Israel is not practical, and cultural autonomy is not suitable. Therefore, power-sharing autonomy is the most suitable form of autonomous regime in the State of Israel, it would be implemented within the fabric of the State of Israel, within the constitutional structure of the State, and would guarantee the right of internal-self-determination to the Palestinian Arab citizens of the State of Israel to enjoy equality at the same time to preserve their own way of life. This type of autonomous regime would not endanger the sovereignty and the territorial integrity of the State of Israel.