



# المنظمة العربية للقانون الدستوري

The Arab Association of Constitutional Law

## **Between Separation and Unity: a Federal Solution for the Palestinian Case?**

**Policy Paper**

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## By Ikram Ziade

PhD researcher at the Faculty of Law and  
Political Sciences – University of Tunis El Manar



This paper is published as part of the outcomes of the fifth session of the Constitutional Law Academy, held in Tunisia in 2019. Since 2014, the Academy has been an annually organized project by the Arab Association of Constitutional Law to discuss and learn about the prevalent trends in constitution-writing in different Arab countries and to explore the most timely and controversial constitutional topics.

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## Introduction

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The Palestinian division, which has been ongoing for 13 successive years, has threatened the chances of restoring unity between the West Bank and the Gaza Strip under the current system. The two quarrelling sides have taken measures to establish their own administrative, economic, service and security institutions, and the political and legal systems have been marked by duality, amid the absence of political unity between the two regions.

The Palestinian case resembles to some extent the situation in several Arab countries where the nation-state (as a political and national entity) collapsed. During the past two and a half decades, the Palestinian political entity, which was formed and dominated by the Palestinian Liberation Organization (PLO) during its first three decades, gradually disintegrated. Whereas the Arab nation-state (Iraq, Syria, Yemen, Libya) collapsed due to direct foreign pressure and intervention, and the accumulation of domestic socioeconomic and political discrepancies; the national political arena crumbled in the Palestinian case under the encroachment by the settler-colonial state and due to the impact of internal contradictions.<sup>1</sup>

The Palestinian case is at a stalemate with no indications of a way out in the foreseeable future. The division between the two regions is gradually turning into an advanced degree of independence. In this context, the option of a federal state is discussed in this paper.

This policy paper is only a primary attempt to determine the headlines of the multiple intertwining factors and situations that led to the current internal crisis of the Palestinian political system. It is also an attempt to figure out the nature and manifestations of this crisis and propose some solutions before revisiting the whole Palestinian political system. Additionally, the paper aims at outlining the federal solution as a way out of the division to ultimately meet the aspirations of the Palestinian people. This paper is an initiative and primarily a Palestinian attempt to discuss the Palestinian federal proposal from a scientific approach.

The study tackles the themes of division and unity. What are the causes and repercussions of the division, and what obstacles have prevented the achievement of unity? Another main question is the following: Will a federation between Gaza and the West Bank constitute a way out of the division?

Two main hypotheses exist: the first is that the different forms of initiatives to end the division will only reproduce said division based on power and influence sharing between Hamas and Fatah, thus undermining the ability of these initiatives to end the division and further entrenching separation. The second hypothesis is that political

federalism as a political model for the State of Palestine might be a more realistic alternative to division and separation.

To answer the questions of the study and verify its hypotheses, and based on its nature, the researcher used the analytical descriptive method because it is in line with the phenomenon under study. She followed the descriptive analysis based on describing the phenomenon, then analyzed it in a way that clarifies and indicates the causes of the Palestinian division, the obstacles to unity and the future of the federal alternative.

To address the above questions, the study is divided into three parts. First: Problem of the Palestinian political system; second: Theoretical framework of the federal system; third: Palestinian federal choice. The paper ends with a conclusion and recommendations.

## **First: Problem of the Palestinian Political System** \_\_\_\_\_

Although different studies present different definitions of the Palestinian political system, they all agree that a Palestinian political system does indeed exist. A conceptual problem underlies the recognition of the existence or non-existence of a Palestinian political system, which has always constituted an exceptional situation because of the non-establishment of a Palestinian State. A political system cannot be established in the absence of a nation state or sovereignty. In fact, a sovereign state is a key condition for the existence of a political system. In the Palestinian situation, neither exists. Moreover, political independence requires components that contribute to cementing the establishment of a system on clear foundations.

Some researchers believe that, as much as this conclusion is theoretically accurate, it is equally deluding and inconsistent with the features of the Palestinian reality. The absence of a state and lack of sovereignty have not prevented the existence of features, elements and components of a Palestinian political system and field.<sup>2</sup>

Since its establishment in 1964 and its restructuring in 1969, the PLO has been at the core of the Palestinian political system, and it constituted a political national authority that united Palestinians wherever they were. It was a starting point for the project of a central Palestinian Authority as Palestinians unanimously agreed on a key objective — the liberation of Palestine. The PLO laid the foundations of a political system based on institutions and legal controls governing the working relationship between its various institutions.

Those various institutions constituted the institutions of the political system consisting of the Palestinian National Council, the Palestinian Central Council and the Executive Committee, and they reflected models and trends similar to those of a state.

The National Council resembled the Palestinian parliament, while the Executive Committee was the organization's cabinet. The Central Council reflected the Palestinian reality and the impossibility of holding the National Council and bringing the representatives of the people from the entire diaspora.<sup>3</sup>

After Oslo, the Palestinian political system entered its second phase and took a significant turn with the creation of the Palestinian Authority (PA), as per the Declaration of Principles known as the "Oslo Accords" ratified between the PLO and the Israeli government in Washington in September 1993. The PA represented a temporary tool for Palestinian self-rule in the West Bank and the Gaza Strip, and a decision was postponed on delicate and critical issues like Jerusalem, refugees, the state, water and borders.

With the establishment of the Palestinian National Authority (PNA and later PA) in 1994, the institutions of the emerging authority constituted a key component that was added to the components of the Palestinian political system. Those institutions included the president who was directly elected by the citizens of the West Bank and the Gaza Strip; the elected Palestinian Legislative Council (PLC) and the government that did not have a leader until 2003 (when the position of prime minister was created). Various institutions affiliated with the PA were also established and were equivalent to state institutions, especially the judiciary.<sup>4</sup>

The PA had its own Basic Law and a draft constitution, both of which gave an overview of the mechanism that should be followed to manage and organize life in the PA territories. The PA extracted its legitimacy from the PLO's National Charter and the legitimacy of the agreement signed with the Israelis.<sup>5</sup>

The Palestinian Basic Law issued in 2000 and amended in 2003 is considered the legal and constitutional cover for the system of governance in Palestine, and its introduction states that it is a law suitable for the interim period.<sup>6</sup>

The Basic Law is the determining element for the type and form of the system of governance. Article 5 stipulated that "the governing system in Palestine shall be a democratic parliamentary system, based upon political and party pluralism. The President of the National Authority shall be directly elected by the people. The government shall be accountable to the President and to the Palestinian Legislative Council."

However, none of the criteria of the presidential or parliamentary system apply to the Palestinian political system. It is actually a mixture of both, as the president is directly elected by the people (presidential), and the government is accountable to parliament and must obtain its vote of confidence (parliamentary).

The mixed political system that was adopted in 2003, after the amendment of the Basic Law, played a key role in further deepening the conflict between Palestinian forces. It was an imbalanced system that contributed to the failure of the peaceful transfer of power after the second legislative elections in 2006. Consequently, many problems arose, mainly the issue of separation of powers and their overlapping jurisdictions, because the Basic Law failed to determine the jurisdiction of each power accurately. As a result, the peaceful transfer of power was obstructed, and the ambiguity and contradiction in the texts was clearly a contributing factor to the power conflict following the 2006 legislative elections.<sup>7</sup>

The Palestinian political system consisted of various institutions. There were two institutions performing legislative tasks (the National Council and the Legislative Council) and several executive institutions (the PA cabinet and the Executive Committee). The issue of the PA president and the head of the Executive Committee was avoided because the same person held both positions. Although the Palestinian political system created laws to regulate the work of all these components, the first problem arose when attempting to delineate the controversial relationship between the PLO and the PA ever since the creation of the latter.

Several academic and theoretical studies and research focused on the particularity of the Palestinian political system, which can be summarized in three aspects:

1. The forced coexistence between the National Authority) the PA (and the settler military occupation) Israel (controlling the territories and undermining the powers of the National Authority).
2. The role of the donor states in directing the National Authority and dictating its public policies.
3. The emergence of *Al-Aqsa intifada*) uprising ,(which weakened the central role of the National Authority on the Palestinian territories ,and that led to the spread of various military factions.

Administratively, the Palestinian territories are divided into 16 administrative units (governorates)<sup>8</sup>, and the Ministry of Local Governance is the guardian of decentralization. It is responsible for putting policies and organizational structures, institutionalizing the work of the local governance bodies and overseeing their budgets.<sup>9</sup>

The 1997 Local Authorities Law No. 1 shows that the powers of these authorities are limited and mainly restricted to organizing construction, public markets, transportation, traffic and parks. These authorities do not have real powers in the fields of education and social affairs or health services. In addition to their limited administrative powers, they are not allowed a reasonable margin of independence in imposing taxes and charges.

Under the Oslo Accords, the Palestinian National Authority was created as a form of self-rule. As the largest political faction in the PLO, Fatah controlled the PA's institutions (government, presidency, security apparatus, judiciary and the PLC) more strictly than it controlled the PLO's institutions.

Since the Oslo Accords, Palestinian society has been living under serious duality and polarization between two sides, factions, ideologies or political programs – political settlement and political struggle, on the one hand, and armed resistance and military struggle, on the other.<sup>10</sup>

This duality drove a serious wedge and division between the two sides, amid exclusion attempts and tarnishing and refusal of the other<sup>11</sup>, and the situation escalated to the point of using arms and occasionally resembled a civil war between them.

The implications of the second legislative elections in January 2006 constituted a dangerous turn in Palestinian national unity and the stability of the institutions of the Palestinian political system. With Hamas winning the majority of the PLC seats\*, the elections directly resulted in a vertical division in the pyramid of executive authority of the Palestinian National Authority, with a Fatah presidency and Hamas-majority parliament, leading to a Hamas-composed government. As a result, the political system entered a raging conflict over the execution of powers and created a new crisis.<sup>12</sup> Ever since, deep-seated division has surfaced in the PA structure, politically, administratively and legally.

\*Hamas won 56.8% of the PLC seats, as opposed to 33.4% for Fatah. The leftist electoral blocs won 8.6%, as opposed to 3% of seats for independents mostly endorsing Hamas. Source: website of the Central Elections Commission ([www.elections.ps](http://www.elections.ps)).

However, as a result of the incidents between Hamas and Fatah in the Gaza Strip and the armed clashes which ended in June 2007 with Hamas' total control over the Gaza Strip, the Palestinian political system entered the phase of deep-rooted imbalance. Two separate entities were being ruled by two fiercely competing factions in the West Bank and the Gaza Strip. The first entity was under Israeli occupation, while the second suffered a suffocating Israeli blockade. Each had a government; one initially secular and controlled by Fatah and the second Islamist and controlled by Hamas and security forces. Both "political entities" relied on foreign funding and established alliances with rival regional forces. Over time, the rift between them grew wider.

The division affected the Palestinian public institutions. The PLC was the first Palestinian power that suffered under the political division. It was totally crippled and could not perform its key role of monitoring the performance of the Executive Authority and holding it accountable, in addition to its role in passing laws and legislations.<sup>13</sup> Meanwhile, the situation of the judicial authority continued to deteriorate, and the



chasm deepened during the division years. Two separate judicial systems were established. The Gaza Strip had its own judicial system created by the government in Gaza, in violation of the Basic Law, and the citizens of Gaza were under its jurisdiction, while the citizens of the West Bank were under the jurisdiction of another judicial authority there.<sup>14</sup>

The Palestinian political system faced a quandary of serious and total division when Palestinian President Mahmoud Abbas dissolved the PLC that represents the legislative authority end of December 2019. Before that, the judicial authority and the judiciary in Gaza and the West Bank split when Abbas issued a decision to dissolve the High Judicial Council in August 2019 and created a transitional council for a year. Only the executive authority represented by Abbas remained in the Palestinian political system, and it was far from Hamas' executive authority in the Gaza Strip. With the dissolution of the legislative and judicial authorities in the West Bank and the Gaza Strip and the division between the executive authorities, the rift took on a geographical form and aggravated the conflict between Hamas and the PA. The gap between them widened, and the prospects of re-uniting became bleak.

Abbas' legal term ended since the end of 2008, as did the public mandate that the Palestinian voters granted to their representatives in the PLC at the end of 2009. No party can thus claim that it still represents the public will.

Since the Cairo Declaration in 2005, then the legislative elections in January 2006 and the geographical and political division in June 2007 and until now, the Palestinian arena has become the stage of a series of dialogues, initiatives and Palestinian, Arab and international agreements.<sup>15</sup> However, all of them failed to restore unity and end the division.

Ultimately, people grew more convinced that the signing and collapse of agreements shortly after beginning to implement them, like the Mecca Agreement, or barely after signing them, like the Sanaa Declaration which collapsed only a few hours later, or the stalling dialogues like the Egyptian Document, or their suspension until further notice, like the Cairo Agreement, the Doha Agreement and Al-Shate' Reconciliation Agreement only fueled concerns that the reconciliation had become an operation lacking reconciliation. Similarly, the ongoing Peace Process after the 1991 Madrid Conference was viewed as a 'peace process without peace'.<sup>16</sup>

The implementation of the provisions of the successive reconciliation initiatives has repeatedly failed for several reasons. Those include the lack of a clear national program and Palestinian vision, the absence of political will of both disputing parties, the restriction of dialogue and national agreements to Fatah and Hamas, the adoption of the factional quota system, the prioritization of the PA over the PLO - although the opposite should be true - and the increasing influence of Arab, regional and international parties that grew with the division and the dependency on aid provided by these axes.

However, according to the researcher, the successive initiatives were unable to restore unity mainly because they were neither novel nor realistic and did not reshuffle the Palestinian political system in a way that adapts to its changing reality, circumstances and complicated particularities as a state under occupation. All the discussed initiatives still tackle the same points that arose in the 2005 and 2011 Cairo Agreements and that center on holding elections and distributing roles without reconsidering the political system and the existing Basic Law.

In light of the above, we can say that the first hypothesis of the study is valid, namely: that the different versions of initiatives to end the division only end up reproducing it as these initiatives are based on dividing power and influence between Fatah and Hamas, which undermines their [the initiatives'] ability to end the division.

In this light, and given the detailed overview of the problems in the Palestinian political system and the divisive components between Gaza and the West Bank, is it still realistic to talk about living, economic, administrative, legislative, judicial and executive unity and about the political horizon between the two entities?

The PA leadership, the factions and political elites insist that the elections are the answer to the political system problem. Objectively speaking, elections, despite their importance as a mechanism for solving disputes, are not enough on their own, as they do not constitute a guaranteed way to settle political disputes. Neither the 1996 nor the 2006 elections helped the political system overcome its crisis. Furthermore, if elections are conducted under the current division, they will only entrench the separation, regardless of their outcome and of the winners.

*What is then the alternative to division and separation?* Dr. Ibrahim Abrash presents an answer to this question, and the author agrees with him. Abrash says that we should take matters from a rational and national perspective rather than a partisan one, in the framework of national political realism rather than compliant realism, to avoid slipping into two conflicting Palestinian entities, which would threaten the national project. Consequently, the national interest dictates coming up with creative solutions that would block the road to establishing a state in Gaza in exchange for abandoning the West Bank, Jerusalem and the right to resistance, and obstruct the attempts of those using geographic separation between Gaza and the West Bank and the differences between them as pretexts to entrench total separation. A solution would thus be a federal system or the Federal State of Palestine between Gaza and the West Bank.<sup>17</sup>

At this point, it becomes important to explain what is meant by a 'federal state' and whether it would be a valid solution for the Palestinian situation. Without going into the elaborate details of this system, the next section tries to lay out some of its main points as they relate to the Palestinian political system.

## Second: Theoretical Framework of the Federal System \_\_\_\_\_

Federalism is defined as a system of political arrangement connecting small political entities to the political system while distributing power between the larger central government and the smaller governments in a way that ensures the protection of powers of both governments, and grants them the decision-making ability.<sup>18</sup>

Federalism is a form of organization for the state constitutionally, socially, culturally, economically and politically. It is an optional constitutional and administrative method of organization that has several practical applications.<sup>19</sup> It can be established either through disintegration, by transforming an initially simple unitary state into an actual composite federal state, or at the level of states by building federal relations among several independent and sovereign states to serve a certain purpose. As a result, each of the sub-states voluntarily loses its independence, sovereignty and membership in the international community in favor of the unitary state, while constitutionally retaining some autonomy and protection for its internal entity.<sup>20</sup>

Federalism is increasingly gaining ground with the presence of 28 federal states accommodating 40% of the world population.<sup>21</sup> Many factors dictate this *voluntary and optional* system of rule among its units, mainly common interests and geographical communication. It combines two desires: the desire for independence and the desire for union and unity (the latter desire being the stronger one).

The federal system is based on a hierarchy in federal power. The federal constitution and the federal authorities enjoy supremacy, especially when dealing with foreign and security threats. Only the federal state has an international personality. What distinguishes this system is that each region (state or sub-unit) retains its internal (local) personality, as though the federal authority contributes to preserving this personality. **The region-specific powers are the following:**

- 1. Legislative powers:** The legislative authority in the region has an authentic power, which is issuing and enacting legislations related to that region specifically. The laws and systems specific to the region might differ from those of other regions, depending on the different nature and circumstances of that region, as long as they do not contradict the federal constitution. Normally, each federal sub-state has a parliament in addition to the federal parliament, and its members are elected through a universal suffrage within that region.
- 2. Executive powers:** The executive authority in the region is held by the regionalistic government, which enjoys all powers except for those exclusive to the federal government, like defense and foreign policy. The regionalistic powers include all tasks required to govern the region administratively, notably the establishment of the police and internal security forces.

- 3. Judicial powers:** The judicial authority in the region handles the settlement of disputes and conflicts within that region, and it is organized as per the constitution of that region. The region's judicial authority region is independent from the federal judicial authority. The regionalistic governments can practice their judicial powers with complete autonomy, without the intervention of the central government, except when the federal constitution dictates such intervention.<sup>22</sup>

## Motives for a Federal State

Before exploring the motives that push people to opt for federalism, two points must be noted. First, people might choose federalism for several motives, not just one. In the US, for instance, federalism was chosen for defense and economic motives. Second, all countries that were established through integration were not necessarily motivated by racial, linguistic or religious diversity or different social cultures to resort to the federal model. On the contrary, the aforementioned factors might have been motives for separation rather than unity. Had these countries considered the nationalistic, social or linguistic diversity important, they would have overcome the motivation to choose the federal option. For instance, the Swiss people are quite diverse. Had they considered this diversity important, it would have prevailed over the federal option and its defense and economic motives.

### 1. Defense factors (military power motive):

This factor is among the oldest and most important motives pushing towards unity among people, in general, and in federal states, in particular. The major contemporary federations that are the most successful and rooted were driven by the motive of military power, including Switzerland, the US and Canada.

In the US, it was fear of European policies that incited the founding fathers to move forward with uniting the existing states, which were facing many impediments. This necessitated having power to ward off the greed of surrounding countries, and that power emanated first and foremost from unity, because separation and division only serve the interests of enemies.<sup>23</sup> Canada's fear of the US drove it to establish a federation.<sup>24</sup> As for Switzerland, it was afraid of Austria and the German empire, and it needed military power and sufficient diplomacy to shield itself from its powerful and greedy neighbors. Consequently, it declared the creation of its federation.<sup>25</sup>

The defense military factor creates a feeling of unity among different people and communities on all levels. Common danger was the main motive for the establishment of many federal states because foreign threats or resistance of common aggression create a feeling of a shared destiny for these states.<sup>26</sup> Federal states that are driven by this motive are more likely to unite rather than separate.

## **2. Economic factors:**

The economic aspect is key for modern states, because it is a firm element of the state that enables it to perform its duties and tasks towards its people in the best way possible. Accordingly, and in their quest to form a strong economic force, states have resorted to the federal model, like the US, Canada and Australia. They established federal states to control the economy and reduce border trade barriers between districts.<sup>27</sup>

In this regard, Paul Booth believed that the federal state leads to the emergence of a relatively large internal economic entity that plays a significant role on the international arena, while retaining the needed flexibility to fulfill civil governmental services to meet particular social and economic needs.<sup>28</sup>

The economic factor is among the key factors in the establishment of a federation, when independent states are economically lagging behind and cannot make progress if they remain independent. Consequently, they unite for the purpose of economic integration. For instance, states that have natural resources unite with others that have labor force and industrial states to flourish and develop.

## **3. Geographical factors:**

Geographical dispersion is a main reason behind the creation of federations, especially those that were established in modern times. Federal states comprised cantons, provinces or districts that were relatively far from each other, like the United States, the Australian states and the Canadian provinces. The mountainous borders of Switzerland divided it into separate cantons.<sup>29</sup> The vast surface area of some countries weakens the control of the central state and the performance of the central government. Consequently, they solve this dilemma by shifting from the simple state to the federal state model.

## **4. Political factors:**

Political factors surface when societies are connected through political links prior to the creation of the federation, like being linked to a confederation, such as the US and Switzerland. Likewise, political ideology connections, especially cross-border credos based on globalism, lead to the creation of federations among a group of states that have nothing in common except for their credo. The Soviet Union is an example of a federation that united a group of rival states that shared nothing except for their belief in communism.<sup>30</sup> It is common knowledge that every homogeneous national minority or religious group with independent characteristics has the right to political participation. For that reason, they often call for a federal system because it grants more space for participation.

## 5. Cultural and social factors:

Diversity in society means the existence of several homogeneous groups connected through language, nationalism or culture. Social diversity prevails over all societies, and there isn't a society that is ethnically, culturally, linguistically and socially homogeneous.

Diversity becomes an issue when the nationalistic, sectarian or religious affiliation prevails over the national affiliation to the state, whether from the minority or majority. For that reason, some states resorted to the federal model because they saw in it an ideal system of a state that protects the rights of a pluralistic society. Federalism grants all social groups some independence to satisfy their nationalistic or religious needs and desires all the while retaining the country's unity and harmony.

The democratic system rather than the federal system is the one that guarantees equality for all social groups. The diversity in democratic societies can be preserved through ensuring equality among all social groups and believing in the rights of others. It regulates relations between the state and the citizens based on the law and rights.<sup>31</sup> In fact, the social factor is the weakest and least common motive for the establishment of federations around the world.

After this discussion about the motives for a federal state, what are some of the characteristics that set federalism apart from other political systems in terms of its advantages and flaws?

When it comes to its advantages, a federation is considered a compromise solution in countries that contain a mixture of nationalities, multiple ethnicities and disparate sects, with distinct religious, ideological and sectarian beliefs and historical backgrounds. The central government seeks to preserve the unity of the state through this complex political structure, as it reconciles the independence of the different nationalities with their solidarity and cooperation in a unified state and provides the states with legislative, executive, judicial and administrative powers. It enables each state to run its affairs separately according to its local circumstances, in a way that preserves its traditions and cultural roots, all the while enjoying the advantages of belonging to the federal state. This system thus avoids some of the problems that arise in political societies where there are many power centers that may fuel disturbances and conflicts, which in turn could lead to wars and fragmentation of the state, thus preventing development and stability.<sup>32</sup>

Additionally, the federal system allows several constitutional experiments where the success of one system in a state or region might be adopted in other regions as well, a practice that is not easily applicable in a unitary state.<sup>33</sup>

As for its flaws, the federal system fragments the unity of the federal state, if the constitution strengthens the powers of the smaller state authorities. This weakens the federal government and makes the task of controlling the affairs and public interests of the federal state more difficult.<sup>34</sup>

Some authors believe that federalism is not a good system of rule, since in many societies, there are secessionist groups calling for total independence from the federal state and the establishment of an autonomous state. However, each country has its own circumstances. In some countries, federalism might be a reason for unity, while it might entrench division and separation in other countries.<sup>35</sup> Another flaw of this system is the duality of authority, which leads to overlapping powers and increasing disputes.<sup>36</sup>

In light of the above flaws, Arab countries are still overly sensitive to using the term federation, which constitutes a point of polarization and contention between those who believe it is a pretext used by callers for separation and division, and those who see it as a guarantee for the unity of the state, as it ensures powers and resources for the regions or sub-states.

Federalism is essentially a form of political settlement and a democratic means of managing public affairs. It guarantees relative representation for minorities as opposed to the majority. It might be a good solution for disputes in multinational and multi-religious states, and even in relatively homogeneous countries, if the six conditions ensuring the unity and non-secession of the regions are met.

First, there must be two or more regions or member states. Second, there must be a federal constitution determining the powers of these state levels, and these powers must be constitutionally defined and are not merely granted by the federal government and can be taken away at any time. Third, the regions and states must have a say in the decision-making process at the central level, especially when the matter at hand has an impact on the affairs of the region. A senate or state council would guarantee such representation. Fourth, a higher constitutional court settling disputes between the regions and central government should exist. Fifth, no level of government should be allowed to amend the constitution alone, without the other levels. Sixth, coordination relations must be legally regulated. The above six conditions are the driving elements of the federal system.<sup>37</sup>

In sum, federalism is a flexible system of rule that enables regions or states to govern themselves with a certain degree of autonomy. At the same time, they remain under the united nation-state in a way that prevents secession without negating the legitimate demands of minorities. Therefore, one must think beyond the term itself and explore the advantages of this system in terms of ensuring justice among the regions, managing public affairs in an inclusive manner, allowing all social components to

participate in managing the state based on democracy and fair distribution of wealth, ensuring a flexible structure of rule, reducing the administrative hierarchy, allowing citizens to govern themselves and instilling peace and stability.

The question thus arises when it comes to the Palestinian case: will a federal state between Gaza and the West Bank be a way out of the division, or will it be a prelude to separation?

### Third: The Palestinian Federal Option

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The official and factional Palestinian discourse never seriously tackled the federalism proposition. It was only two years ago that the political and academic elites started discussing it. The collective Palestinian vision had always embraced a unified central Palestinian state based on the 1967 borders. The mere thought of federalism or confederation was deemed as a walk in a field of mines, being, as popularly assumed, an idea that poses a threat to Palestinian unity and entrenches Palestinian division.

The first reference to federalism as a solution to division was made when, in a slip of the tongue, the senior Hamas official Mousa Abu Marzuq said during an interview, “If division is to linger on, then a federal government will be one of the possible solutions, and federalism is better than division.”<sup>38</sup> He subsequently backtracked on his vision, denied the idea and said that “federalism was never put forth as a project to solve the Palestinian division. It was never discussed within the movement’s institutions, and there is no state without Gaza, and no state in Gaza.” This came after his speech was widely condemned by all PLO factions as a serious infringement that genuinely undermines the foundations of the revolution, namely the establishment of an independent Arab Palestinian state.<sup>39</sup> For his part, Azzam Al-Ahmad, a member of the Fatah Central Committee, went so far as to say that proposing the idea of federalism is tantamount to treason.<sup>40</sup>

The call to federalism sparked a political debate between supporters and opponents within political parties on the one hand and academic elites on the other. Many explanations have been given for the Palestinian Authority’s rejection of the federalism proposal. As he voiced such a rejection, Dr. Naji Shurrab argued that federalism is a form of division. Federalism infers a set of regions unified under a central federation, while in Gaza it just means the geographical division of a land on a partisan basis rather than a national basis. Federalism, in this case, is a clear and explicit headline for division. It aims to establish a Palestinian emirate or a Palestinian state in the Gaza Strip while keeping the West Bank under the rule of Israel.<sup>41</sup>



Meanwhile, another camp believes that federalism, a political initiative that matches the reality on the ground, might be a way out of the Palestinian issue. In this regard, Dr. Ibrahim Abrash argues that

*“when everyone rejects the conspiracy of the state of Gaza, when there are people convinced that the one-state solution over the whole historical Palestinian territories is impossible, and when the two-state solution becomes impossible in the sense of establishing a Palestinian state in the West Bank and Gaza and the state of Israel, then why not consider federalism between Gaza and the West Bank? There could be a local national unity government in the Gaza Strip and a local national unity government in the West Bank with the two governments following a central authority. This authority could be the Palestinian Liberation Organization once it is activated and after everyone has joined it, or a legislative council after elections are held. This authority could have one president and one constitution.”<sup>42</sup>*

In this context, it is noteworthy that the debate was limited to the elites and political academics. While it was voiced through media statements and op-eds, there were no legal opinions or proposals of a scientific legal nature, be they in the form of studies, reports or published articles. This made it more difficult for the author in the writing of this paper, a paper that can be considered the first on the topic. The suggestions presented in this paper are merely a modest attempt to put forward a principle-based visualization of the federal option as a solution to the Palestinian case.

In order to objectively and realistically discuss the proposition, it should be first mentioned that the separation between the Gaza Strip and the West Bank cannot be boiled down to the fact that they are politically separate, as the two entities are also geographically apart, not bound by any borders, and with the occupation determining the communication channels. This complicates the process of managing and molding the Palestinian state, let alone finding a solution thereto. This state finds itself unable to manage its affairs without the approval of the Israeli occupation, which has been besieging the Gaza Strip since 2007.

Meanwhile, the West Bank is reeling under administrative division<sup>43</sup>, amid widespread Israeli checkpoints, the apartheid wall<sup>44</sup>, and the settlers’ devouring of land<sup>45</sup>. Consequently, the Palestinian community areas, which amount to about 39% of the West Bank and Jerusalem, lack direct contact due to settlements, devious roads, military zones and the ruling Israeli right projects aimed at annexing the West Bank and considering the settlement blocs as part of the occupation state. This is fundamentally due to the fact that the West Bank, given its geostrategic nature, size and location, is at the heart of Israel. All of these facts on the ground show that a re-examination of the the political and legal organization of the PA is in order.

In addition to the geographical separation, the administrative and legal separation between the Gaza Strip and the West Bank has been entrenched since before the establishment of the Palestinian National Authority, but has taken on over the last decade the character of division with two governments. The West Bank was under Jordanian rule, and the Gaza Strip was under Egyptian administration before both were subject to the Israeli occupation in 1967, and then the two entities were reunified under the control of the Palestinian National Authority in 1996. The administrative division lingered on under the form of territorial quotas in the formation of the government and the executive and administrative bodies (a minister from the West Bank and an Undersecretary from Gaza or vice versa). This allows each official to manage their area in accordance with its circumstances and environment. Meanwhile, there is a legal separation given the difference in laws applicable to the two regions. The Jordanian Penal Code belonging to the Latin school and applied to the West Bank differs in many of its articles from the English Penal Code belonging to the Anglo-Saxon school applied in the Gaza Strip.

The division is represented by the economic gap between residents of the Gaza Strip and residents of the West Bank and the different living conditions, as per 2019 data. The economic growth rate in the Gaza Strip reached -8% compared to about 2% in the West Bank. Also, 70% of the population of the besieged Gaza Strip suffers from food insecurity, while 53% live below the poverty line. This is four times the figure in the West Bank, where 14% of the population is poor and the unemployment rate is 18%, compared to about 46% in Gaza.<sup>46</sup>

In another context, the current division is clearly affecting the internal management and administration of the two entities. However, at the level of the foreign and international representation, the PA is still unified under Mahmoud Abbas. The international community is still dealing with the PA prior to division, which does not contradict the essence of federalism.

All the facts on the ground prove that the Gaza Strip and the West Bank are separate entities and show the lack of seriousness or effectiveness on the part of any single unifying authority controlling and governing the two entities in line with the considerations described above.

Since the regional situation entrenches separation through different labels, like the (Deal of the Century) and (the State of Gaza-Sinai), and instead of heading toward confederations promoted by the US administration and the Israeli occupation (the Confederation of the West Bank), and instead of having the representative bodies of the Palestinian people deeply involved in public life and running the daily affairs of citizens while they should be channeling their efforts toward foreign policy, confronting the occupation and restoring Palestinian rights, the option of federalism is a proposition that may fit the peculiarity of the Palestinian arena as an authority under occupation to overcome the obstacles of occupation and the crises resulting from division.

And because federalism is a political and administrative system with multiple visions and applications and is not governed by a single model or a single theory, it would be possible to formulate a unitary federal model that goes in line with the Palestinian reality to strengthen its unity without justifying the state of separation. Under such a model, consensus is reached on general issues and national goals.

Since the State of Palestine still lacks sovereignty and is subject to the Israeli occupation with core issues - refugees, borders, and Jerusalem - yet to be resolved, it would be difficult to form a federation with a federal government based on Palestinian territories. Therefore, federal tasks still need to be transferred to the PLO, being the sole and legitimate representative of the Palestinians in the homeland and diaspora.

The PLO Basic Law and National Charter constitute a good legal model to be built upon while drafting the constitution of the proposed federalism. Such a model would help form federal councils and determine their functions. The PLO organizations and organizational structure would consist of (1) an elected national council that carries out the tasks of the federal parliament and enacts federal legislation, (2) a central council with a different name that carries out the duties of a federal council and consists of members representing each region of the federation in addition to the diaspora regions in refugee camps and popular action committees, and (3) an executive committee that replaces the federal government, its permanent headquarters being the city of Jerusalem. This committee may temporarily convene in another location under exceptional circumstances.

As for the federal regions, they would consist of the Gaza region and the West Bank region, including East Jerusalem<sup>47</sup>, to which will be added in the future any occupied Palestinian territory that gets liberated — provided it is geographically separate from one of the two regions — as part of a political settlement, or a swap of lands with the Israeli occupation.

Each region or province would have its own basic law legislated through a legislative council that is elected according to an agreed upon electoral system. Such a council is to handle the legislative tasks of the region in accordance with its conditions and peculiarity. A regional government is to emerge from this parliament to run the region's affairs and implement the laws according to its own considerations. This government is to be supervised by a special judicial council in every region, in a manner that does not conflict with the provisions of the Basic Law.

Every region, be it Gaza or the West Bank, shall have its own prerogatives in the fields of education, health, tax policy, internal trade, municipal affairs, internal security and personal taxation. The activities of these two regions shall be financed through internal financial and federal resources as well as foreign donations. Meanwhile, the Executive Committee of the PLO, through its departments located across the

regions, shall follow up on federal affairs, especially national and sovereign issues (the Prisoners Committee, the Jerusalem Committee, the Crossings Committee, the Refugees Committee, the Settlement Confrontation Committee, etc.) in addition to foreign trade and customs issues.

Concerns over the party quota scenario and federalism reinforcing and managing division can be addressed through an electoral system and a regional basic law that defines the legislative, executive and judicial powers of each region in a way that does not conflict with the Federal Basic Law of the PLO and guarantees free and fair elections, freedom of political participation and civil society oversight amid national and factional consensus. To guarantee such principles, it is necessary to establish a constitutional court that deals with and adjudicates disputes between regions and the PLO.

## Recommendations

1. The PLO and its legislative and executive councils must reconsider the nature of the existing Palestinian political system and adopt the federal system, since the central system caused problems that have entrenched the conflict over power and impeded the peaceful transition of power, amid the geographic and political division.
2. The federal regions (Gaza Strip and the West Bank) would be responsible for managing the affairs of Palestinians in their regions, while the real political tasks, like negotiations and foreign policy, would be handled by the federal government (the PLO).
3. To establish a Palestinian federation between the Gaza Strip and the West Bank that would promote unity and prevent division, the PLO and the PA must determine a clear working strategy in the short, medium and long term:
  - a. On the short term: Setting a strategy for up to six months requiring deliberations between the PLO, the PA, Palestinian factions and legal institutions affiliated with the Palestinian political system separately to agree on a national program and discuss the issue of reforming the Palestinian political system and developing it into a federal system.
  - b. On the medium term: Setting a strategy for up to a year to task a legal committee of experts in constitutions and political systems with drafting a new basic law for the prospective federation according to the agreed upon points in the national program. The law would regulate relations between the different authorities and determine the powers of each authority, in addition to avoiding conflicting laws and legal loopholes that rigged the previous

Basic Law. The law would then be put to a public referendum in all areas where Palestinians live. Afterwards, each region would call for elections to establish a legislative council and a regionalistic government.

- c. On the long term: Setting a strategy for up to two years during which an actual federation is established and its effectiveness is put to the test through the work of districts and their relationship with the central government. During this phase, local laws convenient to the particularity of each region would be legislated and enacted, and the legitimate local government would oversee their implementation.
4. It would be necessary to establish centers devoted to research in administrative systems and federal and decentralized systems of rule, to produce in-depth studies about the federal system and other systems and contribute to making crucial decisions in the future.
5. For the federation to be a legal and homogeneous state, the Basic Law (the interim constitution) must be abided by and its provisions must be respected. The federal state (PLO) must address the regions legally to avoid disintegration and separation and to cement unity.

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- (3) أبو سيف، عاطف: النظام السياسي الفلسطيني- الحاجة إلى التغيير، مجلة سياسات، العدد8، 2009، ص 14
- (4) ص 14، ibid، أبو سيف
- (5) The first version of the Basic Law that was drafted after signing the Oslo Accords stipulated that the PLO shall be the point of reference for the PA.
- (6) See the introduction of the Basic Law amended on March 19, 2003: "Within the framework of the interim period, resulting in the Declaration of Principles Agreement, the establishment of the Palestinian National Authority with its three pillars – the legislative, executive and judicial branches – became among the most urgent of national missions. The establishment of the Palestinian Legislative Council, through free and direct general elections, made the adoption of a Basic Law suitable for the interim period a necessary foundation upon which to organize the mutual relationship between the government and the people. It is a first step on the way to determining the distinguishing characteristics of a civil society capable of achieving its independence. At the same time, it is a basic foundation upon which to enact unifying legislation and law for the Palestinian national homeland."
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- (9) The number of local bodies increased under the Palestinian National Authority. There were 106 municipalities in the West Bank and the Gaza Strip, except for Jerusalem, in addition to 378 village councils. See:  
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- (15) Mainly: the 2005 Prisoners' Document, the 2006 Mecca Agreement, the 2008 Sanaa Declaration, the Comprehensive National Dialogue Conference under Egyptian brokerage, which lasted for a long time and ended with the Egyptian Document, the 2011 Cairo Agreement which presented nothing new, the Doha Agreement signed in 2012, which Abbas could not implement, despite his insistence on signing it himself with Hamas leader Khaled Meshaal, under Qatari brokerage; the failure to activate the second Cairo Agreement in 2012. Palestinians finally signed Al-Shate' Reconciliation Agreement in Gaza in April 2014 without anyone's mediation. It was considered a significant breakthrough to return the Gaza government to the PA to form a National Reconciliation Government. But, the Palestinian reconciliation hit a wall once again. In March 2017, Hamas declared the establishment of an administrative committee as substitute to the National Reconciliation Government to manage Gaza. The PA responded by imposing punitive measures and taking unprecedented steps against Hamas. Six months later, Hamas announced disbanding the administrative committee and signing a reconciliation agreement in Cairo in October 2017 based on the 2011 Cairo Agreement and its annexes. As per the agreement, the National Unity Government headed by Rami Hamdallah would take over power in the Gaza Strip and hold general elections. This still has not happened, and reconciliation remains far-fetched.
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nearly empty. The wall in Jerusalem isolates 30 Palestinian communities inhabited by about 150,000 Palestinians, or about 38% of the population of the Jerusalem Governorate.

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