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## **Aftermath of the Hamas Tsunami**

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The shock of the landslide victory of Hamas in the January 25 Palestinian parliamentary elections has confronted all interested parties with stark problems and choices with little preparation. It is not merely that the extent of the Hamas electoral triumph was unanticipated by so many and that the various parties to the conflict assumed a post-election environment and set of issues far different from the ones they are actually facing. The situation is especially murky because of the nature of Hamas: The language and arguments it uses depart so sharply from those used by other actors that it is difficult to discern a rhetorical feint from a sincere initiative.

In an effort to clarify options and possible outcomes, this analysis will address four questions:

- What did Palestinians vote for on January 25?
- What agenda and set of priorities is Hamas likely to pursue?
- What is Hamas likely to be able to do with a parliamentary majority?
- What choices do Western donor states have—is there any possibility of coaxing Hamas into a more promising set of positions regarding Israel?

#### ***What Did Palestinians Vote for?***

While Palestinian voters surprised many observers by their choices, their basic inclination was so clear before the election that the various parties crafted very similar platforms to answer the public mood. Indeed, it was sometimes difficult to distinguish among the parties: All opposed corruption and favored job creation; most parties glorified the intifada and resistance (however vaguely defined) and opposed Israeli occupation. Jerusalem figured centrally in many campaigns as well. Most parties sought to burnish their nationalist credentials—Fatah by festooning Palestinian cities with posters of a handcuffed Marwan al-Barghuti; Hamas by adopting the slogan “America and Israel say no to Hamas... What do you say?”

There were, to be sure, some differences: Fatah openly favored negotiations with Israel; Hamas generally opposed them (although the statements of some leaders left some room

for maneuver). Islamic images (such as al-Aqsa mosque) figured in many campaigns, but none could compete with Hamas for the thorough use of religious symbols and language in every conceivable location (even on baseball caps worn by campaign workers that proclaimed the Islamic profession of faith: “There is no deity but God, and Muhammad is the messenger of God”). The Hamas list registered under the name of “Change and Reform,” and some observers expected the electoral list to maintain some distance from Hamas itself to attract more independently minded voters and candidates. But in the end, Hamas eschewed such an approach, and the organization openly and thoroughly identified itself with “Change and Reform,” portraying itself as an arm of the Egyptian-based Muslim Brotherhood.

The campaign was striking, however, for the extent to which it seemed to downplay the essential difference between Fatah and Hamas: Fatah favors a two-state solution and has been an active participant in the peace process since 1993, whereas Hamas opposes such a solution and rejects the peace process. On election day, January 25, 2006, however, there was no peace process in sight upon which to vote. Fatah, knowing that its positions are far closer to the Palestinian mainstream, did make some limited efforts to raise the issue of Hamas’s uncompromising stands on negotiations and a two-state solution. But with no viable peace process to point to, claiming a superior ability to negotiate with Israel hardly seemed relevant to the campaign.

With most parties running on similar platforms, the election was as much about competence and credibility as ideology. And that put Hamas in a very advantageous position. Fatah vacillated between trying to run on its record and apologizing for its mistakes, and neither effort proved particularly convincing. Hamas, by contrast, was able to show some record of successful municipal government. But more important, it was able to project an image of public service and personal rectitude that contrasted sharply with Fatah’s internal squabbling and desperate internal maneuverings. Fatah disarray was not merely unseemly; it was threatening. In the weeks before the voting, Fatah gangs engaged in kidnappings, violent attacks on government offices, and even attacks on each other. In such an atmosphere, a vote for Hamas was a vote against domestic chaos and violence.

Much has been made of the social services that Hamas provides, and this is undoubtedly part of its appeal. But Hamas represents something more formidable than a political machine handing out benefits to potential supporters—it is a broad-based social movement connected to multiple institutions in the West Bank and Gaza. Palestinian society has developed a rich set of voluntary organizations, charitable societies, nurseries, and educational institutions. Those with an Islamic coloration often have no formal affiliation with the movement but still establish a set of local social networks that provide a supportive environment for Hamas. Six years of economic devastation have increased reliance on such structures.

Thus, the electoral triumph of Hamas owes far more to its discipline and organization than to its platform—and especially its platform on Israeli–Palestinian issues. This is quite clear from the voting itself. Palestinians cast two ballots on January 25. The first was a national ballot in which voters selected one of eleven parties. In this ballot, Hamas received just under 45 percent of the votes on the national ballot, which meant that 55 percent of Palestinian voters favored parties that explicitly endorsed a two-state solution. Hamas owed its landslide victory to the second ballot, in which voters were divided into sixteen multi-member districts. Voters could select as many names as there were seats in their district (so that the ballot in the Gaza district of Khan Yunis, for instance, asked voters to select up to five names out of 43 on the ballot; the top five candidates receiving

the most votes in the district were elected). Hamas's discipline and electoral mobilization paid off handsomely. While the movement's supporters voted largely for Hamas candidates, supporters of Fatah and other parties scattered their votes among a large number of candidates. This electoral system was the product of internal Fatah maneuvering and bargaining with the smaller parties that much preferred the national system. In the end, it transformed a narrow Hamas plurality into a landslide majority.

On January 25, Palestinians voters chose among parties that all stressed their dedication to clean government and the nationalist cause. Although most did not vote against the two-state solution, the election resulted in a triumph for the one party that (sometimes circumspectly but also undeniably) opposed it. What are they likely to get?

### ***What Is Hamas's Agenda?***

Hamas is a political party that prides itself on keeping its word and holding fast to its principles. What are those principles and how will it move to achieve them?

In domestic terms, Hamas has a very clearly religious agenda. Its campaign was full of religious symbols, but it is not clear that many religious issues will feature immediately on its legislative agenda. In some areas, its aims can be achieved in more effective ways. For instance, it may not be necessary to ban the sale of alcohol by law; the prevailing religiously conservative atmosphere and the party's control of many municipal governments may be sufficient to end public consumption in most areas. In matters of personal dress, there may be no need to require women to cover their hair by law; social pressure has been sufficient to change prevailing practice in most Palestinian areas already. Hamas has hinted that the educational system may be an early priority, and it is likely to wish to increase gender segregation (already practiced in some schools) and increase religious education (already a mandatory subject). Progressive elements of the new Palestinian curriculum (on gender issues and civic education) might come under renewed scrutiny, although Hamas has not issued detailed proposals for change.

Hamas's economic program may present more difficulties for implementation because of the endangered—and very extensive—international assistance program. This assistance comes in three forms: direct budgetary support for the Palestinian authority; extensive development programs in areas ranging from water to legal education; and humanitarian assistance (much channeled through the United Nations Relief and Works Agency). The first of these is under severe threat because of the Hamas victory; the second may be greatly scaled back both in extent and scope; and even the third will likely come under political attack in some countries (especially the United States).

Hamas has suggested that it will find other foreign contributors to compensate for any cutoff of Western donor funds. Iran, Saudi Arabia, and other Arab states in the Gulf region, awash in oil revenues, are the most likely sources. Funding from these states is not always reliable, but it generally comes without any strings and few accounting requirements.

Less realistically, Hamas has suggested that it will pursue a policy of economic self-reliance. With the Palestinian economy thoroughly integrated into the Israeli economy, such an approach is likely to deliver little in the short run and is implausible even in the long term. Indeed, if Hamas moves to abrogate the Paris Protocol (the agreement that still largely governs Israeli–Palestinian economic relations) in an effort to end Palestine's economic dependence on Israel, it is likely that Palestinians would suffer far more deeply than Israelis.

Yet the economy poses fewer challenges than the issue that has understandably drawn most international attention: Hamas's approach toward the conflict with Israel. On this issue, Hamas has taken an extreme position: It rejects a two-state solution, refers to all of Palestine as "occupied," calls for an Islamic state in the entire country, views violence against Israeli targets (even civilians) as legitimate resistance, and asserts that individual 1948 Palestinian refugees have a right to return to their homes (and that since the right belongs to individuals rather than the nation it cannot be abrogated or traded away). There is no room for a peaceful settlement with such a set of positions. Hamas has hinted—but only hinted—at more forthcoming stances, however. Are these real escape hatches that could be used to justify a renewal of peace negotiations, or are they merely window dressing to cover the movement's extremism? This may be the most important question that Hamas—and other actors—have to answer.

Hamas has traditionally suggested a more forthcoming position by reference to a long-term truce (*hudna*) between Israel and a Palestinian state. Although Hamas does not recognize the legitimacy of Israel (and sometimes suggests that it can never do so), it has suggested that it could accept the reality of Israel as a practical matter and live peacefully alongside it so long as it withdrew to the 1967 boundaries. The most generous presentations of this proposal suggest that the truce could last for a considerable period, leaving it to future generations to work out an alternative. The idea of a truce does suggest a softening in the party's position, but it does not seem to be a promising basis for any diplomacy. The language used is likely to be seen by Israel as a clumsy ruse at best.

Recently Hamas has hinted at a second way of living with Palestinian–Israeli negotiations. The Palestinian Legislative Council—in which Hamas now enjoys a majority—has no mandate to negotiate with Israel. That is the task of the Palestinian Liberation Organization (PLO), a body that, while largely moribund, represents Palestinians throughout the world. In 2005, all Palestinian factions met in Cairo and hammered out agreements on a variety of issues—a cessation of violence against Israel (to last, if Israel reciprocated, until the end of 2005), arrangement for legislative elections, and a revival of the PLO. This last element provoked almost no interest at the time, but it was an important part of the effort to integrate Hamas into the Palestinian political order, since Hamas had never joined the PLO. No precise terms were set and few efforts were made to implement the pledge. But as parliamentary elections approached, Hamas leaders began to float the idea that although Hamas would not negotiate with Israel, it would participate in PLO bodies that would carry on such negotiations. And since the elections, other Palestinians have joined Hamas in suggesting revival of the PLO as a means to continue negotiations despite the Hamas win. Others have suggested that Abbas can negotiate in his capacity as Palestinian president.

Such approaches do offer real formulas for renewed Palestinian–Israeli negotiations. But to date, a crucial element has been missing from Hamas hints: There has been no indication that Hamas would accept the outcome of such negotiations.

Whatever the inclinations of the leaders—and they have given little ground in the days since the election—Hamas is limited in how far and how fast it can move. It has made serious rhetorical commitments against past negotiations, and the movement jealously guards its reputation for keeping its word. It is also burdened by a cumbersome style of collegial decision making among a geographically dispersed leadership. It can however make decisive decisions on issues that clearly divide the leaders. Indeed, the move to enter parliamentary elections and then to enter the government are themselves examples of such decisions. On a core issue such as negotiations with Israel, a changed position is likely to

come more slowly and in a more nuanced manner—if it comes at all. The best way to assess a genuine change and openness to ultimate acceptance of a negotiated settlement is to look for a clear commitment to accept the outcome of a negotiating process that is endorsed in an appropriate manner (such as the Palestine National Council, the founding body of the PLO, or perhaps a referendum). If Hamas pointedly avoids such a statement or lays out overly stringent conditions for joining the PLO, then its hints at more forthcoming positions are unlikely to develop in any meaningful way.

### ***What Did Hamas Win?***

Hamas won a landslide victory on January 25 and will now dominate the parliament. But what does that allow Hamas to do?

The 2006 Palestinian parliamentary elections bear many of the hallmarks of a classic transition election: a governing party pressed internally and externally to make liberalizing concessions agrees to elections that it feels it can dominate while still allowing the opposition to make a respectable showing. Instead of following the regime's script, however, voters deal the incumbents a surprising defeat. Transition then depends on the incumbent rulers accepting their defeat and the opposition accepting democratic rules and eschewing the opportunity to establish a new authoritarian regime.

In the Palestinian parliamentary elections, Fatah accepted its defeat with far less violence than was feared. And Hamas has shown great respect for the existing constitutional framework. Yet the transition is incomplete. There are, to be sure, some striking peculiarities of the Palestinian case—for instance, 10 percent of the newly elected deputies are currently held in Israeli prisons and one member is held in a Palestinian prison.

But even more fundamental issues are raised by the outcome of the elections. First, in a reversal of more common patterns for political transitions, Hamas questions not the rules of the domestic political game (which it has faithfully observed) but the international commitments made by the defeated regime.

Second, the party's electoral triumph is at the parliamentary level only. The presidency remains in the hands of a leader of Fatah. The Palestinian constitutional structure was built as a result of a series of conflicts among actors who are either much changed or removed from the scene. Partly emerging as a result of bilateral Israeli-Palestinian negotiations, the system was then given a grounding in the Basic Law, authored by a Fatah-dominated but sometimes independent PLC. Because it reined in some presidential powers, Yasser Arafat did not approve the Basic Law until 2002, and then only under severe domestic and international pressure. In 2003, continued pressure resulted in a series of amendments that strengthened the parliament and created the post of prime minister.

The result in general can be described as a mixed presidential-parliamentary system. The president is directly elected, and while some executive authority lies in the president's hands, most resides in a cabinet that can serve only with the confidence of the parliament. The precise meaning of some constitutional provisions remains unclear, and the years since 2003 have seen sometimes open and sometimes more muted rivalries among the president, the prime minister, and the parliament. Although the basic structure of a mixed presidential-parliamentary system is fairly common in new democracies, the Palestinian Basic Law has some unusual features produced by forgotten political struggles. Yasser Arafat, for instance, successfully insisted on a provision allowing the president to fire the prime minister. Other oddities seem to reflect oversights by the drafters. There is, for instance, no provision for early parliamentary elections; unless the constitution is changed,

the Hamas-led parliament will sit until 2010. (In its final days, the outgoing parliament moved to change this provision to allow for early elections, but it could not muster the necessary number of deputies for a vote.)

As with any constitutional system (but especially one with ambiguities and rivalries built into the text), the meaning of the text changes over time according to the actions and strength of the political actors involved. Although Palestinians have never experienced cohabitation (in which the president and prime minister come from rival parties), the existing constitutional structure would probably allow a determined and coherent parliament to rob the president of most of his authority. There are strong reasons to believe that the Hamas-dominated parliament will act with more restraint, however. First, its few tenuous links to important international actors (the United Nations, the European Union, and the United States) run through the president. Second, there are areas (especially involving relations with Israel) that Hamas would probably prefer not to have to take on. Finally, Hamas has constitutional limitations as well: It can write whatever laws it wishes, but it does not have a sufficient majority to override a presidential veto or to amend the Basic Law.

Indeed, Hamas was sufficiently aware of the limitations of its parliamentary majority that it sought to pull other parties into the government. While that effort appears at this writing to be unsuccessful, the option of enlisting technocrats and independent national figures seems very much alive. Thus one should not expect an immediate attempt to rule Palestine from the parliament, but instead an effort to set some clear priorities but also leave large swaths of governing to other structures.

And indeed, besides the presidency itself, there are other critical Palestinian institutions that may prove to be obstacles to Hamas political domination:

- *Security services*: In the 2002-2003 reform period, domestic reformers and their enthusiastic international backers worked to consolidate the security services and place them under cabinet rather than presidential control. That effort was successful only to a limited extent, because Yasser Arafat found ways to continue to exercise influence over the security services from the presidency. And indeed, the amended Basic Law was quite ambiguous: It made the president the commander in chief of the security services but also insisted that internal security was under the cabinet's jurisdiction. Presidents and prime ministers tussled over command and control issues while the relevant legislation was written. Much of that legislation was passed in the last year by the outgoing parliament, but it hardly clarifies matters. It gives the president some significant appointment authority (and attaches the intelligence apparatus directly to the presidency), but it does not remove the cabinet from security matters. And, because it is ordinary legislation, the Hamas-dominated parliament could rewrite it to suit its own preferences. Yet Hamas is likely to move gingerly in the area of security service reform. The security services have been highly partisan organizations, closely associated with various wings of Fatah. Although they can sometimes operate in a highly professional manner (such as on election day itself), they can also act as lobbies for their own interests, ad hoc militias, and local protection rackets. Assuming the Palestinian Authority can meet its payroll, Hamas may have the tools to reform the security services, but it will likely proceed slowly. If Hamas is unable to meet the payroll, then the security services will likely become a source of instability and perhaps violence within Palestinian society.

- *Judiciary*: Palestine's court system has weak capacity but surprisingly strong independence. Palestinian reformers pressed steadily for a legal framework that would establish an independent judiciary. With international support, they eventually imposed a law on President Arafat, but many came to regret the extent of their triumph. The legislation created a judicial council that was independent from the other two branches of government and quickly began to feud with both the parliament and the Ministry of Justice over all matters concerning court administration and judicial structure. The parliament finally voted to revise the law to rein in what it considered to be a runaway judicial council; the judiciary responded by declaring the law unconstitutional. And when the outgoing parliament attempted to revise the Basic Law to allow for the reforms, it found that it could not gather a sufficient number of deputies. Thus the outgoing parliament has bequeathed to its Hamas-dominated successor a staunchly independent judiciary—and one that has shown a willingness at times to tread on sensitive political turf.
- *Media*: Palestinian media will likely be reshaped by the Hamas victory, but the process may be slow and uneven. Broadcast media controlled by the Palestinian Authority fall under the cabinet and might be expected to reflect the new government's desires fairly quickly. Private broadcasters are licensed but are more difficult to manage; the most significant change will likely be a reversal of the decision (taken immediately before the election) to close down a new Hamas station in Gaza. Newspapers may also change slowly. Two of the main dailies are privately owned, but they survive in part on government printing contracts and advertising, and they will likely give more attention to Hamas, a movement they have ignored at some times in the past.

In these and other areas, Hamas is likely to find that its new political influence will allow it to bend some existing institutions, but it is unlikely to exercise direct control.

### ***Western Choices***

The prospects for successful incorporation of a Hamas-led political system into the regional order are not bright. But failure is not yet inevitable. The stakes are enormously high—not simply for Palestinians, but also for Israelis, neighboring states, regional Islamist movements, and external actors.

As American and European officials struggle to hammer out a common response to the electoral victory of Hamas, they have stopped short of rejecting the possibility of accommodating Hamas. Instead they show a strong inclination toward conditioning their assistance and support on fundamental changes on the part of the triumphant Islamist movement. Conditionality may indeed force Hamas to confront difficult choices, but if it is exercised in an overly dramatic and stringent manner, it will likely backfire and handcuff the United States and Europe to a set of policies they will find difficult to wriggle out of later.

Should the donor community actually withdraw financial support for a Hamas-led Palestinian Authority, several bad outcomes are possible. The West Bank and Gaza could face economic collapse, leading to a humanitarian disaster. Concomitant political collapse of the Palestinian Authority would result in a society devoid of authoritative national leadership in a continuous state of low-level warfare with Israel. Islamists in the region who have argued with their colleagues in favor of a democratic path will find themselves unable to answer the charge that the international community will never accept Islamists in

power. Alternatively, Hamas could stave off fiscal collapse by turning to Iran and Saudi Arabia, an alignment hardly likely to serve either U.S. or Israeli interests.

To avoid such outcomes, accommodating a Hamas-led government may therefore be desirable. But is it possible? Or is the group's agenda simply too radical? Here it is difficult to be sanguine: Hamas rejects a two-state solution and maintains a right to resistance—and the group's definition of resistance includes murderous attacks on civilian targets.

Accordingly, the Americans and Europeans have laid down a challenge to Hamas: It must recognize Israel and renounce violence. Although the general idea is sound, such conditionality must be accompanied by careful thinking about appropriate benchmarks and criteria.

An approach that lays out these conditions in stark and pugnacious terms is likely to backfire. Hamas is a movement that prides itself on its principles and is unlikely to abandon them easily. Even if some of its leaders wished to shift positions, its ponderous collegial decision-making structures would make it difficult to do so quickly.

So any change in the movement's positions will likely be gradual. But the United States and Europe are not alone in wishing to coax Hamas to be less rigid on Israel. The movement is extremely sensitive to Palestinian public opinion and recognizes that the majority of voters actually favored parties supporting a two-state solution. For this reason, the Hamas electoral campaign avoided mention of its hard-line position. Other mainstream Islamist groups in the region—looking to Palestine as a test case—are unlikely to criticize (and may even cheer) a moderation of the Hamas position if it helps demonstrate that Islamists can govern effectively.

But if Hamas cannot be asked to repudiate all its positions overnight, what realistic benchmarks might be used to judge its moderation? What sort of steps might assure Israelis that a viable negotiating process can be created despite the Hamas victory?

The U.S. and European demand that Hamas recognize Israel can be converted into several different workable formulas, some of which Hamas leaders have hinted—admittedly quite vaguely-- might be acceptable. For instance, Hamas might allow President Mahmud Abbas to negotiate as he pleases, with any resulting agreement subject to a referendum.

Or it might allow the PLO to bargain with Israel, with any final agreement subject to approval by the body that oversees the PLO, the Palestine National Council. Hamas might also be pressured to recognize the Arab League declarations, which clearly endorse a two-state solution. Such formulas would allow Hamas to hold to its positions while still bowing to political realities.

None of these approaches is a guaranteed success; indeed, the prospects for failure seem substantial. In the days since its election triumph, Hamas has given few signs that it is looking to back out of its ideological commitments. But there will be plenty of time to deal with the consequences of failure; the task for the present is to convince the various parties to avoid entrenching themselves too deeply in positions that they will later regret.

If prospects for Arab democracy, democratic Islamic political movements, and Israeli–Palestinian peace are to survive the Hamas landslide, calibrated benchmarks rather than rigid slogans must be the guide.