

# Peeling the Orange

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Karen Elisha

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## Biography

Born in Israel in 1977, Karen Elisha has a law degree from Haifa University. She is currently enrolled in an LL.M (masters in Law degree) at the Universities of Bologna, Ghent and Rotterdam.

TWO MEN ARE fighting over an orange. They each have legitimate claims, and property rights are not clear enough to give a simple solution. They can go to court and have it decide who should get the orange (if there is a court with existing jurisdiction on the matter), and the outcome will most likely be such that one side losses and does not get what he wants, if not both. Someone suggests they will simply divide the orange between them: cut it in half, so that each will receive exactly fifty percent of what he wanted. They both strongly object this solution, for getting only fifty percent is not enough and will do them no good. Finely, a friend asks them what they need the orange for, and reveals that the first man needs the juice, and the second needs the rind to use in a recipe. The friend suggests peeling the orange and giving each man the part he needs, making it possible for them to get a hundred percent of what they initially demanded. They both agree and the dispute is resolved.

The simplified case described above is a classic example in the field of alternative dispute resolutions, emphasizing the benefits of mediation, but can also be relevant to other forms of dispute resolutions, and specifically to negotiations between rival parties. The main principle is to unfold not only claims, but also interests and needs, and to try to be creative in finding solutions, going beyond what is obvious. In order to achieve those goals, what is needed first and foremost is to talk.

The Geneva Accord is the outcome of a process that began in talks, as all agreements do. In the course of life and - even more – of war, we sometimes “forget” the most basic rule of ending conflicts, which is that the parties must be willing to negotiate a solution. It seems that one of the main problems at this point, if not the most significant one, is that both sides of the

conflict are caught in the notion that “there is no one on the other side to talk to”. This notion, however justified by prior events, is destructive and can never lead to a positive outcome, for it is hopeless.

Hope has been elusive, and in many ways absent in our parts for a while now. There were times when at least in the eyes of some, a solution seemed more at reach, but during the last few years even the optimists among us have adopted a much more pessimistic approach. At times it seems that both Palestinians and Israelis gave up the hope of any improvement, any positive developments in the future, and that peace is so far away it is impossible to imagine it ever materializing. This state of mind is natural when you are faced every day with violence and death, and in many ways it is even essential in order to protect oneself psychologically, and in order to be able to carry on. This was true in the past as well, particularly when referring to certain groups or to individuals that were personally traumatized. The change that, in my opinion, took place only in recent years is that today it is less relevant to talk about individuals’ lack of hope, and instead it seems that we are dealing with nations’ hopelessness, which has become rooted within us. It is the result of fear, hate, anger and desire of vengeance, from both sides alike, which are accumulating with every passing day.

One might say that reaching an agreement, or even talking, is so difficult because of the great gap between the wishes and claims of the two sides. It is true that a great gap exists, but that is true in any conflict, or else there would not be a conflict. An additional obstacle in this case is the lack of hope and the lack of trust. How is it possible to talk and reach agreements when you have no confidence in the other sides true intentions, and when you find it hard to believe there is a chance to achieve any results? Why would one party or the other make any efforts, when they have no hope, when they believe there is no one to talk to, and that the parties claims collide in such a way that there is no solution in sight?

In this context, it is possible to see the real achievement of the Geneva Accord. It might not be the best agreement that can be reached. It certainly has opponents – both Israeli and Palestinian – that claim that the parties’ obligations are too much or not enough. It is an initiative prompted not by the formal leaders of the two nations (although there were claims that in one way or another those leaders gave their informal endorsement), and it might be argued that this fact diminishes its legitimacy and effectiveness. To think that this accord would put an end to the conflict and would be adopted as is - is somewhat naïve, and it is reasonable to assume that even the initiators of the accord do not believe this to be the case.

Despite all that, there is great significance in the fact that there is a chance we started the long and complex process of “peeling the orange”. There is more than one way to do that, and

many different possible outcomes, but they all must start with the willingness to talk and with at least a minimal degree of trust, and these two important elements, which are crucial for the success of any negotiations, were there at Geneva, to some extent.

In order to “peel the orange”, it is not enough to suggest a solution. It is necessary to reveal the true interests of the parties and to acknowledge them. When considering the prolonged conflict in the Middle East, one must keep in mind that previous attempts to reach an agreement were often influenced not only by Palestinian and Israeli interests, but also by those of other players, promoting their own agendas. The Geneva negotiations can be seen as a step in the right direction in terms of dispute resolution, in that the parties themselves were communicating their interests, and the external influence seemed to be minimized.

Another significant point is that the parties were talking to each other directly. Although mediators have many times a crucial and important part in helping rival parties resolve conflicts, it is essential that the mediator will be able to comprehend the mentality and the culture of the parties involved. In previous negotiation attempts, this has not always been the case, and so it became difficult to communicate true interests, and to “read between the lines”. It then also became difficult to come up with creative solutions that will satisfy those interests.

When the parties negotiate with no interference, isolated from external influence as much as possible, and making a real effort to reveal what they want, while at the same time listening to the other side and acknowledging its needs, only then it is possible to witness successful negotiations and real attempts to find solutions that will qualify as “orange-peeling”. As mentioned previously, the Geneva Accord can be seen as a beginning of this process.

If nothing else, the agreement and the talks that preceded it, might give hope for the future: not for an immediate end to the conflict, but for a possibility of effective negotiations. It might give hope for some kind of change for the better. It might give hope that there is someone to talk to after all. It might give hope – and we need it.

Time will tell if this hope is founded, if the Geneva Accord was an historic beginning to a chain of events that led to the end of the conflict and to peaceful co-existence, or was just another dream that led to nothing. Time will tell if we are capable of peeling oranges, or are we going to let them continue to rot in big warehouses, where no one can ever benefit from them.