

EXECUTIVE SUMMARY

Third Submission of the Palestine Liberation Organization to the Sharm El-Sheikh Fact-Finding Committee

SUBMITTED: APRIL 3, 2001

Part I: The Roots of the Current Uprising

According to the Government of Israel, the current uprising did not arise from Israel's continued military occupation of Palestinian territory despite more than seven years of peace negotiations. It was not the result of the arbitrary restrictions on movement and routine harassment endured by Palestinians every day under Israel's rule. And it has little to do with the underlying conflict – with Israel's refusal to abide by international law as evidenced by its illegal construction of thousands of settlement housing units on Palestinian land since the start of the peace process, its adamant refusal even to consider recognizing the right of Palestinian refugees to return to their homes, or its efforts to perpetuate its rule over Palestinian East Jerusalem. Rather, according to the Government of Israel, the uprising was contrived and directed by Palestinian officials as a means of improving their bargaining position in permanent status negotiations and deflecting blame for the failure of the Camp David summit.

This narrative is elegant in its simplicity: If the Palestinian Authority orders Palestinians to “stop the violence,” the demonstrations will stop. If the Palestinian Authority confiscates more weapons and jails dissidents indefinitely, there will cease to be unrest. If the Palestinian Authority prevents Palestinians from expressing their anger and frustration in sermons and editorials and interviews, they will cease to feel angry and frustrated.

However, Israel's version of events gives the Palestinian Authority both too much credit and too little. It assumes that the Palestinian people are homogeneous in perspective, obedient, and easily manipulated. It ignores the significant efforts that the Palestinian Authority has made to promote peace and security during the Interim Period, notwithstanding the severe constraints on its powers and jurisdiction. Moreover, it fails to take into consideration the profoundly destructive effect of Israel's failure to take decisive steps to end its occupation of Palestinian territory and its repeated acts of provocation and hostility in violation of both bilateral agreements and international law.

A. *Palestinian Expectations from the Peace Process*

The Palestinian people entered the peace process with the understanding that it would yield an end to Israel's occupation of Palestinian territory and the realization of their internationally-recognized legal and political rights. Although the Declaration of Principles (“DOP”) and subsequent agreements reserved the resolution of a number of issues for “permanent status” negotiations, the agreements established a path toward peace guided by several key principles. The parties' commitment to these principles forged the expectation among the Palestinian people that the peace process would yield a just and expeditious resolution of the conflict and provided a basis for responding to the criticism of opponents of the process.

- The first of these principles was that the newly established “transitional” arrangements would, in fact, be transitional. The Declaration of Principles on

Interim Self-Government Arrangements stated that the peace process was “to establish a Palestinian Interim Self-Government Authority . . . for the Palestinian people in the West Bank and the Gaza Strip, *for a transitional period not exceeding five years.*”¹

- The second of these principles was that the agreements provided a schedule for the gradual redeployment during the interim period² of Israel’s armed forces from the majority of Palestinian territory. In light of these agreements, Palestinians in the West Bank and Gaza Strip believed that Israel’s occupation forces would withdraw *by mid-1997* from the vast majority of West Bank and Gaza Strip territory.
- The third of these principles was that Israel would cease its construction and expansion of settlements based on the agreements that state, “The two Parties view the West Bank and the Gaza Strip as a single territorial unit, the integrity and status of which will be preserved during the interim period.”³ The Palestinian people also expected that Israel, once it took the decision to negotiate peace, would cease its systematic violations of basic rights; those enshrined under the Fourth Geneva Convention.
- The last of these principles was that the peace process would lead to “the implementation of Security Council Resolutions 242 and 338”⁴ that confirm the international principle against acquisition of territory by force and call for Israel’s withdrawal from lands it had occupied during the 1967 war and for a just settlement of the refugee problem.

The affirmation of these principles in the Oslo accords gave many Palestinians good reason to support the peace process – and provided a concrete basis for responding to critics of the process. It is important to understand, however, that Palestinians’ support has been contingent on their confidence that the process would improve the conditions of life under occupation and, ultimately, yield an end to the occupation.

B. *Palestinian Prevention of Violence*

The Palestinian Authority has taken concrete steps to prevent acts of violence against Israelis, particularly since establishing its domestic legitimacy through popular elections in 1996.

¹ DOP, art. 1 (emphasis added).

² The Oslo accords refer to both the “transitional period” and the “interim period” in describing the period prior to the achievement of a permanent settlement during which the DOP, the Interim Agreement, and related agreements are applicable. Because of its more common usage, the term “interim period” will generally be used in this submission.

³ Interim Agreement, art. 31, para. 8; *see also* DOP, art. 4.

⁴ DOP, art. 1

- The Palestinian commitment to preventing violence of this kind elicited high praise from otherwise critical Israeli and United States officials. For example, then-Assistant Secretary of State Martin Indyk stated in June 1999:

We have always said that the Palestinians have done a good job on some of the issues, particularly on the security cooperation issue and combating terrorism. We weren't the only ones to say that; Prime Minister Netanyahu, at one point, called Yasir Arafat and thanked him for the efforts that he'd been undertaking.

- Israel, however, has made minimal effort to comply with its reciprocal obligation of curbing settler violence against Palestinians. According to the United States Department of State, "Israeli settlers harass, attack, and occasionally kill Palestinians in the West Bank and Gaza Strip." However, "the Israeli Government did not prosecute settlers for their acts of violence [against Palestinians]," and "settlers rarely serve prison sentences if convicted of a crime against Palestinians."⁵
- Israel's claim that the Palestinian Authority has implemented a "revolving-door policy" with respect to the detention of criminal suspects and convicts is also unfounded. The Committee should note that Israel has demanded the re-arrest of a list of allegedly released detainees without describing in what capacity and to what extent any of them was involved in "acts of violence and terror against Israelis."⁶ The PA cannot legitimately or legally jail Palestinian dissidents indefinitely simply because the Government of Israel demands it. If Israel seeks to call the Palestinian Authority into account for releasing criminals or criminal suspects, it should provide clear information to the PA and to the Committee regarding these persons' alleged criminal conduct.

C. Regulation of Weapons Possession

The Palestinian Police began conducting intensive campaigns to confiscate unlicensed weapons in January 1995, prior to the conclusion of the Interim Agreement.⁷ These efforts were formalized through a series of official measures in 1998 and 1999. The implementation of these measures has met with considerable success. From late 1998 through September 2000, the Palestinian Police's efforts resulted in the confiscation of significant quantities of illegal weapons and ammunition, including 336 AK-47s, 204

⁵ U.S. Dep't of State, Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices, 2000: Occupied territories*, at sec. 1(a) <<http://www.state.gov/g/drl/rls/hrrpt/2000/nea/index.cfm?docid=882>> (hereinafter State Dep't Report:2000).

⁶ Israel's Statement, at 62, para. 153.

⁷ Memorandum from Ghazi Jabali, Dir. Palestinian Police, regarding "Mechanism of Police Work Regarding Arms Licenses and the Confiscation of Illegal Arms and Explosives" (Nov. 8, 1998) (hereinafter "Licensing Mechanism"), at paras. 10-11.

pistols, 66 grenades, 268 mortars, 14 rockets, and 4204 rounds of ammunition.⁸ Indeed, the effectiveness of these measures was implicitly recognized in the Sharm El-Sheikh Memorandum, which calls, *inter alia*, for the “*continuation* of the program for the collection of the illegal weapons.”⁹

D. School Textbooks

It is important to note (i) all the “hostile propaganda” quoted by Israel were drawn from Egyptian or Jordanian textbooks - until September 2000, there was no such thing as a Palestinian textbook, and (ii) in September 2000, the Palestinian Ministry of Education published the first-ever school textbooks produced by Palestinian authors – these textbooks have earned almost unanimous praise, including from Israeli organizations, for their commitment to encouraging the ideals of peaceful coexistence.

E. Israeli Lawlessness and Provocation During the Interim Period

The peace process established pursuant to the Oslo agreements was premised to a great extent on trust – on the idea that, over time and through close daily cooperation, the parties would develop a relationship strong enough to allow them to resolve their differences regarding the larger, more difficult “permanent status” issues. The Palestinian people made a leap of faith -- they believed that Israel had agreed to certain core principles: that the interim period would be limited in time, that nothing would be done during that period to prejudice resolution of permanent status issues, and that a final settlement would be consistent with Resolutions 242 and 338. In the years since the Declaration of Principles was signed, however, Israel’s attitude of lawlessness and its repeated acts of provocation have eroded Palestinian confidence that Israel stands by those principles.

- **Broken Deadlines.** In keeping with late Israeli Prime Minister Rabin’s declaration that “no deadlines are sacred,” virtually every deadline established during the Oslo process has been broken. Key missed deadlines include the following:
 - *Duration of the interim period.* Article 1 of the DOP provides that the interim period is not to exceed five years. The interim period commenced upon Israel’s withdrawal from the Gaza Strip and Jericho area,¹⁰ in May 1994, and it continues to this date – **almost seven years later.**
 - *Commencement of permanent status negotiations.* Under Article 5(2) of the DOP, permanent status negotiations were to commence no later than the “beginning of the third year of the interim period.” Aside from one negotiation session in Taba in May 1996, permanent status negotiations did

⁸ Illegal Weapons Confiscated by the Palestinian Authority, Dec. 1998 – Aug. 2000.

⁹ Sharm El-Sheikh Memorandum, para. 8(b) (emphasis added).

¹⁰ DOP, art. 5(1),

not actually resume until November 1999 – well into the **fifth year** of the interim period.

- *Completion of permanent status negotiations.* The parties agreed in the Wye River Memorandum to “make a determined effort” to reach a permanent status agreement by May 4, 1999. After missing this deadline, the parties agreed, in Article 1 of the Sharm El-Sheikh Memorandum, to make yet another “determined effort” to reach a Framework Agreement on Permanent Status by February 13, 2000, and a Comprehensive Agreement on Permanent Status by September 13, 2000. **Neither agreement has been concluded.**
- *Second further redeployment.* Although the Wye River Memorandum defined the extent of the first and second further redeployments, the second further redeployment was delayed until after Ehud Barak’s election as Prime Minister. The second further redeployment was implemented in three stages, completed on March 21, 2000 – **more than three years overdue.**
- *Third further redeployment.* The third and final Israeli further redeployment in the West Bank was to have occurred within eighteen months of the inauguration of the Palestinian Legislative Council, i.e., July 1997. The redeployment – one of Israel’s primary obligations of the Interim Period – **remains unfulfilled two and a half years after this deadline.** Israel remains in exclusive control of around 59% of the West Bank, even though only Jerusalem, settlements, and specified military locations are to be excepted from the further redeployment process.
- **Settlement construction and expansion.** In the seven years following the signing of the Oslo accords, settlements (in terms of both housing units and number of settlers living in occupied Palestinian territory) increased at a rate unprecedented in the entire 26 years of occupation preceding Oslo. In addition to increases in the settler population, settlement expansion has involved confiscation of land, destruction of homes and unprecedented construction of by-pass roads in the Occupied Palestinian Territories:
 - Housing Units Have Increased By 52.49% Since Oslo.
 - Settler Population Has Increased By 72% Since Oslo¹¹.
 - Approximately 54,000 Acre (215,700 dunums) of Palestinian Land Have Been Confiscated Since Oslo.
 - 480 Kilometers of New “By-Pass” Roads Have Been Planned.
 - 769 Palestinian Houses Have Been Destroyed Since Oslo.¹²

¹¹ Unless otherwise indicated, statistics for this paragraph are drawn from Peace Now, *supra* note 87.

- Palestinian Villages and Water Sources Continue to be Polluted.
- Water Resources and Consumption Continue to be Denied.
- **Restrictions on Freedom of Movement.** Israel has repeatedly imposed severe restrictions on the movement of persons, vehicles, and goods within, between, and into and out of the West Bank and the Gaza Strip, as well as between the Occupied Palestinian Territories and Israel. As a general matter, Israel has compelled all Palestinian residents of the West Bank and Gaza Strip to apply for permits to enter Jerusalem and Israel. Even prior to the current uprising, however, “Israel often denie[d] applicants permits with no explanation, and [did] not allow effective means of appeal.”¹³ The United States State Department described the situation in 1997 and 1998 as follows:

In general Palestinians find it difficult to obtain permits to work, visit, study, obtain medical care, or attend religious services outside of the West Bank or Gaza. Palestinian residents of Jerusalem are sometimes prohibited from entering PA-controlled areas of the West Bank, and they require written permits from Israel to travel to the Gaza Strip. Residents of the Gaza Strip are rarely able to obtain permission to travel to the West Bank, or residents of the West Bank to the Gaza Strip. . . . Israeli authorities permit only a small number of Gazans to bring vehicles into Israel and infrequently permit West Bank vehicles to enter Jerusalem or Israel. It is also difficult for Palestinians married to Jerusalem residents, but not themselves Jerusalem residents, to obtain permission to live there. . . . Except for senior PA officials, Palestinians of all ages crossing between the Gaza Strip and Israel are not permitted to travel by car across the main checkpoint. Instead, they must travel along a narrow walkway almost a mile long. Israelis moving into and out of the Gaza Strip are permitted to use their cars.¹⁴

- **Camp David and the Abandonment of the Terms of Reference.** The terms of reference of the peace process were clear from its inception as

¹² Geopolitical Situation, *supra* note 97; Peace Now, *supra* note 87; and B’Tselem online database (2000).

¹³ U.S. Dep’t of State, Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices, 1997: Occupied territories*, at sec. 2(d) http://www.state.gov/www/global/human_rights/1997_hrp_report/occterr.html (hereinafter State Dep’t Report: 1997).

¹⁴ U.S. Dep’t of State, Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices, 1998: Occupied Territories*, at sec. 2(d).

http://www.state.gov/www/global/human_rights/1998_hrp_report/occterr.html. The short-lived “safe passage” arrangements alleviated these conditions somewhat for the small number of persons granted a permit to travel between the West Bank and Gaza Strip along specified routes, but did nothing to improve the situation for Palestinians travelling into Israel.

emphasized by a letter of assurance to the Palestinians from the United States: “a comprehensive peace must be grounded in United Nations Security Council Resolutions 242 and 338 and the principle of territory for peace.”¹⁵ Thus, as sponsor of the peace process, the United States understood Resolution 242 to compel “an end to the Israeli occupation,” with the consequence of delivering to Palestinians control over the decisions that define their present and future – i.e., self-determination. The proposals offered by Israel at Camp David in July 2000 departed dramatically from these terms:

- **Territory.** Israel proposed to annex around 11.2% of the West Bank (excluding Jerusalem). In effect, the proposal would have functionally divided the State of Palestine into four cantons (including Gaza) and would have denied the Palestinians the ability to exercise key functions of government, including *inter alia*, exercising sovereignty over its economic policy, promoting the security of its citizens, and implementing national development plans.
- **Jerusalem.** Under all scenarios proposed by Israel, Israel would be granted sovereignty over all of its illegal settlements in East Jerusalem, which would be connected contiguously to West Jerusalem, as well as over the Haram al-Sharif/Temple Mount complex in the Old City. This proposal would have severed the State of Palestine at its physical, economic, and political center. It would have established small, loosely connected Palestinian cantons in East Jerusalem, surrounded by annexed settlement areas, isolated from the rest of the West Bank, and unable to grow and develop. Moreover, Palestinians’ access to their holiest sites – the Haram al-Sharif and the Church of the Holy Sepulcher – would continue to be subject to Israeli veto.
- **Security.** Notwithstanding far-reaching security concessions made by the Palestinians, Israel continued to demand measures that would have represented a perpetuation of its military occupation and control over Palestinian land: (i) an Israeli military force in the Jordan Valley of an unspecified size and for an undefined period, (ii) the right to pursue suspected border infiltrators up to 4 kilometers into Palestinian territory, (iii) the right to deploy a larger force in Palestine during Israeli-declared “emergencies”, (iv) the right of overriding control over air space and frequency allocation and (v) the right to conduct military operations and training in Palestinian airspace.
- **Refugees.** Resolution 242 calls for a “just settlement of refugee problem.” At Camp David, however, the Israeli side refused to discuss –

¹⁵ United States Letter of Assurances to the Palestinians (Oct. 18, 1991), in 2 DOCUMENTS ON PALESTINE 8 (Mahdi Abdul Hadi ed. 1997).

or even to contemplate – any of the proposals submitted by the Palestinian side for a just solution. Israel refused to enter into any discussion regarding UN General Assembly Resolution 194, which forms the only internationally-recognized basis for ending the refugee problem. It refused to acknowledge any responsibility for the creation and perpetuation of the refugee problem, contrary to overwhelming historic evidence (much of which was based on information contained in official Israeli archives) presented by the Palestinian side and it refused any discussion of the right of return.

Part II: The Legality of Israel’s Use of Force

Israel has characterized the current demonstrations as “an armed conflict short of war.” Such a characterization ignores basic realities: that the elements necessary for establishing an “armed conflict” as a matter of international law are not present; that demonstrations are resistance to occupation; and that Israel, as an occupying power has a *duty* to ensure that the Palestinian people are protected.

A. Requirements for an “Armed Conflict”

The Palestinian submission argues that necessary *indicia* of an armed conflict include the participation of armed forces that are (a) organized and under a responsible command, and (b) pursuing a military plan or purpose. That is not the case here. The elements of organization and plan are of prime importance. The presence of firearms at some demonstrations and the use of firearms on some occasions does not convert an outbreak of acts of resistance against an occupying army into an “armed conflict.”

B. Legal Standards Applicable to Israeli Occupation

Two standards of law apply to Israel’s occupation of Palestinian lands, despite Israel’s failure to recognize either: international humanitarian law (as embodied in the Geneva Conventions) and international human rights law. Unfortunately, Israel refuses to recognize the *de jure* applicability of the former, while failing to make any pronouncements on the applicability of the latter. Given its failure to abide by both sets of law, one can only assume that Israel feels unbound by the international community’s rules. In fact, it is the absence of a legal framework to which Israel is bound that has contributed largely to this current uprising.

Part IV: Recommendations

The recommendations outlined in the Palestinian submission aim at improving the daily lives of Palestinians not as an end unto itself, but as a step to restore confidence that the

Palestinians will one day live in a viable Palestinian state, forever free of all vestiges of Israeli occupation. The recommendations offer *immediate* solutions that will help the parties get back to the negotiating table; they will improve the lives of Palestinians immediately; they will demonstrate to the Palestinian people that their compromises, their steadfastness, and most importantly the faith that they placed in the Oslo peace process will not have been in vain.

1. Scrupulous compliance with the Fourth Geneva Convention

The applicability of the Convention to the Occupied Palestinian Territories has been affirmed unanimously by the international community, including the United Nations Security Council and the International Committee of the Red Cross, whose interpretation of the Convention is authoritative.

2. Freeze on settlement construction and expansion

Israel's ongoing land confiscation, settlement expansion, accompanying house demolitions, and by-pass road construction have severely eroded Palestinian confidence in the peace process: in addition to the direct burdens placed upon Palestinians whose land is confiscated, or whose movement and development are restricted as a result of settlement policy, Palestinians perceive Israel's settlement program as a bald attempt to prejudice the result of territorial negotiations. The Palestinian people want a viable Palestinian state. Settlements hinder the achievement of this state.

3. End to restrictions on freedom of movement of persons, vehicles, and goods

Israel's imposition of severe and often arbitrary restrictions on the movement of Palestinian persons, vehicles, and goods is an impermissible form of collective punishment and bears no reasonable relation to legitimate security goals. These restrictions have had a catastrophic effect on Palestinian economic life, have precluded access to Muslim and Christian holy sites, and have fostered despair and instability within Palestinian communities.

4. End to the violence against the Palestinian civilian population

In accordance with its legal obligations, Israel must desist from its use of excessive force against the Palestinian civilian population. Israel must also take active measures to protect Palestinians from settler violence, in accordance with its commitments under Articles II and XI of Annex I of the Interim Agreement, including initiating legal proceedings against settlers accused of engaging in criminal conduct against Palestinians.

5. Gun control

In light of the repeated attacks by Israeli settlers on Palestinian citizens and communities, however, Israel should take steps to confiscate weapons held by settlers in the Occupied

Palestinian Territories, in accordance with United Nations Security Council Resolution 904 (1994). At minimum, Israel should revoke the registration of weapons held by Israeli settlers found to have engaged in criminal acts against Palestinian civilians.

6. Compliance with past agreements

In order to create a positive environment for permanent status negotiations and to reduce tensions on the ground, Israel should fulfill its outstanding commitments under the Interim Agreement on the West Bank and Gaza Strip and subsequent agreements.

7. Deployment of international monitoring and implementation mission

The PLO believes that an international presence could play an important role in bringing an end to the current violence and preventing its recurrence, as well as in facilitating freedom of movement for goods, vehicles, and persons.

8. End to attacks on the Palestinian environment

Israel must fulfill its obligations concerning the protection of human health and protection, and the preservation of the environment. This requires Israel to prevent all activities occurring under its sovereignty and control that are causing harm to the Palestinian environment.