

**A Human Rights Assessment
of the Declaration of Principles
on Interim
Self-Government Arrangements
for Palestinians**



Al-Haq 1993

West Bank Affiliate of the International Commission of Jurists

The following text of the Declaration of Principles on Interim Self-Government Arrangement was obtained by al-Haq from Palestinian Team to the Peace Conference, Office of the Advisory & Technical Committees, Jerusalem. Where significant errors in numbering or wording appear, al-Haq has noted this with the designation "[sic]."

Declaration of Principles on Interim Self-Government Arrangements

The Government of the State of Israel and the Palestinian team (in the Jordanian-Palestinian delegation to the Middle East Peace Conference) (the "Palestinian Delegation"), representing the Palestinian people, agree that it is time to put an end to decades of confrontation and conflict, recognize their mutual legitimate and political rights, and strive to live in peaceful coexistence and mutual dignity and security and achieve a just, lasting and comprehensive peace settlement and historic reconciliation through the agreed political process.

Accordingly, the two sides agree to the following principles:

Article I

Aims of the Negotiations

The aim of the Israeli-Palestinian negotiations within the current Middle East peace process is, among other things, to establish a Palestinian Interim Self-Government Authority, the elected Council, (the "Council") for the Palestinian people in the West Bank and the Gaza Strip, for a transitional period not exceeding five years, leading to a permanent settlement based on Security Council Resolutions 242 and 338.

It is understood that the interim arrangements are an integral part of the whole peace process, and that the negotiations on the permanent status will lead to the implementation of Security Council Resolutions 242 and 338.

Article II

Framework on the Interim Period

The agreed framework for the interim period is set forth in this Declaration of Principles.

Article III

Elections

1. In order that the Palestinian people in the West Bank and Gaza Strip may govern themselves according to democratic principles, direct, free and general political elections will be held for the Council under agreed supervision and international observation, while the Palestinian police will ensure public order.
2. An agreement will be concluded on the exact mode and conditions of the elections in accordance with the protocol attached as Annex I, with the goal of holding the elections not later than nine months after the entry into force of this Declaration of Principles.
3. These elections will constitute a significant interim preparatory step toward the realization of the legitimate rights of the Palestinian people and their just requirements.

Article IV

Jurisdiction

Jurisdiction of the Council will cover West Bank and Gaza Strip territory, except for issues that will be negotiated in the permanent status negotiations. The two sides view the West Bank and the Gaza Strip as a single territorial unit, whose integrity will be preserved during the interim period.

Article V

Transitional Period and Permanent Status Negotiations

1. The five-year transitional period will begin upon the withdrawal from the Gaza Strip and Jericho area.
2. Permanent status negotiations will commence as soon as possible, but not later than the beginning of the third year of the interim period, between the Government of Israel and the Palestinian people representatives.
3. It is understood that these negotiations shall cover remaining issues, including: Jerusalem, refugees, settlements, security arrangements, borders, relations and cooperation with other neighbors, and other issues of common interest.
4. The two parties agree that the outcome of the permanent status negotiations should not be prejudiced or preempted by agreements reached for the interim period.

Article VI

Preparatory Transfer of Powers and Responsibilities

1. Upon the entry into force of this Declaration of Principles and the withdrawal from Gaza Strip and the Jericho area, a transfer of authority from the Israeli military government and its Civil Administration to the authorized Palestinians for this task, as detailed herein, will commence. This transfer of authority will be of preparatory nature until the inauguration of the Council.
2. Immediately after the entry into force of this declaration of principles and the withdrawal from the Gaza Strip and Jericho area, with the view to promoting economic development in the West Bank and Gaza Strip, authority will be transferred to the Palestinians on the following spheres: education and culture, health, social welfare, direct taxation, and tourism. The Palestinian side will commence in building the Palestinian police force, as agreed upon. Pending the inauguration of the Council, the two parties

may negotiate the transfer of additional powers and responsibilities, as agreed upon.

Article VII

Interim Agreement

1. The Israeli and Palestinian delegations will negotiate an agreement on the interim period (the "Interim Agreement").
2. The Interim Agreement shall specify, among other things, the structure of the Council, the number of its members, and the transfer of powers and responsibilities from the Israeli military government and its Civil Administration to the Council. The Interim Agreement shall also specify the Council's executive authority, legislative authority in accordance with Article IX below, and the independent Palestinian judicial organs.
3. The Interim Agreement shall include arrangements, to be implemented upon the inauguration of the Council, for the assumption by the Council of all of the powers and responsibilities transferred previously in accordance with Article VI above.
4. In order to enable the Council to promote economic growth, upon its inauguration, the Council will establish, among other things, a Palestinian Electricity Authority, a Gaza Sea Port Authority, a Palestinian Development Bank, a Palestinian Export Promotion Board, a Palestinian Environmental Authority, a Palestinian Land Authority and a Palestinian Water Administration Authority, and any other Authorities agreed upon, in accordance with the Interim Agreement that will specify their powers and responsibilities.
5. After the inauguration of the Council, the Civil Administration will be dissolved, and the Israeli military government will be withdrawn.

Article VIII

Public Order and Security

In order to guarantee public order and internal security for the Palestinians of the West Bank and the Gaza Strip, the Council will establish a strong police force, while Israel will continue to carry the responsibility for defending against external threats, as well as the responsibility for overall security of Israelis for the purpose of safeguarding their internal security and public order.

Article IX

Laws and Military Orders

1. The Council will be empowered to legislate, in accordance with the Interim Agreement, within all authorities transferred to it.
2. Both parties will review jointly laws and military orders presently in force in remaining spheres.

Article X

Joint Israeli-Palestinian Liaison Committee

In order to provide for a smooth implementation of this Declaration of Principles and any subsequent agreements pertaining to the interim period, upon the entry into force of this Declaration of Principles, a Joint Israeli-Palestinian Liaison Committee will be established in order to deal with issues requiring coordination, other issues of common interest, and disputes.

Article XI

Israeli-Palestinian Cooperation in Economic Fields

Recognizing the mutual benefit of cooperation in promoting the development of the West Bank, the Gaza Strip and Israel, upon the entry

into force of this Declaration of Principles, an Israeli-Palestinian Economic Cooperation Committee will be established in order to develop and implement in a cooperative manner the programs identified in the protocols attached as Annex III and Annex IV.

Article XII

Liaison and Cooperation with Jordan and Egypt

The two parties will invite the Governments of Jordan and Egypt to participate in establishing further liaison and cooperation arrangements between the Government of Israel and the Palestinian representatives, on one hand, and the Governments of Jordan and Egypt, on the other hand, to promote cooperation between them. These arrangements will include the constitution of Continuity Committee that will decide by agreement on the modalities of admission of persons displaced from the West Bank and Gaza Strip in 1967, together with necessary measures to prevent disruption and disorder. Other matters of common concern will be dealt with by this committee.

Article XIII

Redeployment of Israeli Forces

1. After the entry into force of this Declaration of Principles, and not later than the eve of elections to the Council, a redeployment of Israeli military forces in the West Bank and the Gaza Strip will take place, in addition to withdrawal of Israeli forces carried out in accordance with Article XIV.
2. In redeploying its military forces, Israel will be guided by the principle that its military forces should be redeployed outside populated areas.

3. Further redeployment to specified locations will be gradually implemented commensurate with the assumption of responsibility for public order and internal security by the Palestinian police force pursuant to Article VIII above.

Article XIV

Israeli Withdrawal From the Gaza Strip and Jericho Area

Israel will withdraw from the Gaza Strip and Jericho area, as detailed in the protocol attached as Annex II.

Article XV

Resolution of Disputes

1. Disputes arising out of the application or interpretation of this Declaration of Principles, or any subsequent agreements pertaining to the interim period, shall be resolved by negotiations through the Joint Liaison Committee to be established pursuant to Article X above.
2. Disputes which cannot be settled by the negotiations may be resolved by a mechanism of conciliation to be agreed upon by the parties.
3. The parties may agree to submit to arbitration disputes relating to the interim period, which cannot be settled through reconciliation. To this end, upon the agreement of both parties, the parties will establish an Arbitration Committee.

Article XVI

Israeli-Palestinian Cooperation Concerning Regional Programs

Both parties view the multilateral working groups as an appropriate instrument for promoting a "Marshall Plan", the regional programs and

other programs, including special programs for the West Bank and Gaza Strip, as indicated in the protocol attached as Annex IV.

Article XVII

Miscellaneous Provisions

1. This Declaration of Principles will enter into force one month after its signing.

2. All protocols annexed to this Declaration of Principles and Agreed Minutes pertaining thereto shall be regarded as an integral part hereof.

Done at Washington, D.C., this _____ day
of _____, 1993.

For the Government of Israel

For the Palestinian Delegation

Witnessed By:

The United States of America

The Russian Federation

Annex I
Protocol on the Mode
And
Conditions of Elections

1. Palestinians of Jerusalem who live there will have the right to participate in the election process, according to an agreement between the two sides.
2. In addition, the election agreement should cover, among other things, the following issues:
 - a. the system of elections;
 - b. the mode of the agreed supervision and international observation and their personal composition; and
 - c. rules and regulations regarding election campaign, including agreed arrangements for the organizing of mass media, and the possibility of licensing a broadcasting and TV station.
3. The future status of displaced Palestinians who were registered on 4th June 1967 will not be prejudiced because they are unable to participate in the election process due to practical reasons.

Annex II

Protocol on Withdrawal of Israeli Forces From the Gaza Strip and Jericho Area

1. The two sides will conclude and sign within two months from the date of entry into force of this Declaration of Principles, an agreement on the withdrawal of Israeli military forces from the Gaza Strip and Jericho area. This agreement will include comprehensive arrangements to apply in the Gaza Strip and the Jericho area subsequent to the Israeli withdrawal.
2. Israel will implement an accelerated and scheduled withdrawal of Israeli military forces from the Gaza Strip and Jericho area, beginning immediately with the signing of the agreement on the Gaza Strip and Jericho area and to be completed within a period not exceeding four months after the signing of this agreement.
3. The above agreement will include, among other things:
 - a. Arrangements for a smooth and peaceful transfer of authority from the Israeli military government and its Civil Administration to the Palestinian representatives.
 - b. Structure, powers and responsibilities of the Palestinian authority in these areas, except: external security, settlements, Israelis, foreign relations, and other mutually agreed matters.
 - c. Arrangements for the assumption of internal security and public order by the Palestinian police force consisting of police officers recruited locally and from abroad (holding Jordanian passports and Palestinian documents issued by Egypt). Those who will participate in the Palestinian police force coming from abroad should be trained as police and police officers.

- d. A temporary international or foreign presence, as agreed upon.
 - e. Establishment of a joint Palestinian-Israeli Coordination and Cooperation Committee for mutual security purposes.
 - f. An economic development and stabilization program, including the establishment of an Emergency Fund, to encourage foreign investment, and financial and economic support. Both sides will coordinate and cooperate jointly and unilaterally with regional and international parties to support these aims.
 - g. Arrangements for a safe passage for persons and transportation between the Gaza Strip and Jericho area.
4. The above agreement will include arrangements for coordination between both parties reading [sic] passages:
- a. Gaza - Egypt; and
 - b. Jericho - Jordan.
5. The offices responsible for carrying out the powers and responsibilities of the Palestinian authority under this Annex II and Article VI of the Declaration of Principles will be located in the Gaza Strip and the Jericho area pending the inauguration of the council.
6. Other than these agreed arrangements, the status of the Gaza Strip and Jericho area will continue to be an integral part of the West Bank and Gaza Strip, and will not be changed in the interim period.

Annex III

Protocol on Israeli-Palestinian Cooperation in Economic and Development Programs

The two sides agree to establish an Israeli-Palestinian Continuing Committee for Economic Cooperation, focusing, among other things, on the following:

1. Cooperation in the field of water, including a Water Development Program prepared by experts from both sides, which will also specify the mode of cooperation in the management of Water resources in the West Bank and Gaza Strip, and will include proposals for studies and plans on water rights of each party as well as on the equitable utilization of joint water resources for implementation in and beyond the interim period.
2. Cooperation in the field of electricity, including an Electricity Development Program, which will also specify the mode of cooperation for the production, maintenance, purchase and sale of electricity resources.
3. Cooperation in the field of energy, including an Energy Development Program, which will provide for the exploitation of oil and gas for industrial purposes, particularly in the Gaza Strip and in the Negev, and will encourage further joint exploitation of other energy resources. This program may also provide for the construction of a petrochemical industrial complex in Gaza Strip and the construction of oil and gas pipelines.
4. Cooperation in the field of finance, including a Financial Development and Action Program for the encouragement of international investment in the West Bank and the Gaza Strip, and in Israel, as well as the establishment of a Palestinian Development Bank.
5. Cooperation in the field of transport and communications,

including a program, which will define guidelines for the establishment of a Gaza Sea Port Area, and will provide for the establishing of transport and communications lines to and from the West Bank and the Gaza Strip to Israel and to other countries. In addition, this program will provide for carrying out the necessary construction of roads, railways, communications lines, etc.

6. Cooperation in the field of trade, including studies, and Trade Promotion Programs, which will encourage local, regional and inter-regional trade, as well as a feasibility study of creating free trade zones in the Gaza Strip and in Israel, mutual access to these zones, and cooperation in other areas related to trade and commerce.
7. Cooperation in the field of industry, including Industrial Development Programs, which will provide for the establishment of joint Israeli-Palestinian Industrial Research and Development Centers, will promote Palestinian-Israeli joint ventures, and provide guidelines for cooperation in the textile, food, pharmaceutical, electronics, diamonds, computer and science based industries.
8. A program for cooperation in, and regulation of, labor relations and cooperation in social welfare issues.
9. A Human Resources Development and Cooperation Plan, providing for joint Israeli-Palestinian workshops and seminars, and for the establishment of joint vocational training centers, research institutes and data banks.
10. An Environmental Protection Plan, providing for joint and/or coordinated measures in this sphere.
11. A program for developing coordination and cooperation in the field of communication and media.
12. Any other programs of mutual interest.

Annex IV

Protocol on Israeli-Palestinian Cooperation Concerning Regional Development Programs

1. The Two sides will cooperate in the context of multilateral peace efforts in promoting a Development Program for the region, including the West Bank and the Gaza Strip, to be initiated by the G-7. The parties will request the G-7 to seek the participation in this program of other interested states, such as members of the Organization for Economic Cooperation and Development, regional Arab states and institutions, as well as members of the private sector.
2. The Development Program will consist of two elements:
 - a) an Economic Development Program for the West Bank and the Gaza Strip.
 - b) a Regional Economic Development Program.
 - A. The Economic Development Program for the West Bank and the Gaza Strip will consist of the following elements:
 - (1) A social Rehabilitation Program, including a Housing and Construction Program.
 - (2) A Small and Medium Business Development Plan.
 - (3) An Infrastructure Development Program (Water, electricity, transportation and communications, etc.)
 - (4) A Human Resources Plan.
 - (5) Other programs.
 - B. The Regional Economic Development Program may consist

of the following elements:

- (1) The establishment of a Middle East Development Fund, as a first step, and a Middle East Development Bank, as a second step.
 - (2) The development of a joint Israeli-Palestinian-Jordanian Plan for coordinated exploitation of the Dead Sea area.
 - (3) The Mediterranean Sea (Gaza) - Dead Sea Canal.
 - (4) Regional Desalinization and other water development projects.
 - (5) A regional plan for agricultural development, including a coordinated regional effort for the prevention of desertification.
 - (6) Interconnection of electricity grids.
 - (7) Regional cooperation for the transfer, distribution and industrial exploitation of gas, oil and other energy resources.
 - (8) A Regional Tourism, Transportation and Telecommunications Development Plan.
 - (9) Regional cooperation in other spheres.
- C. The two sides will encourage the multilateral working groups, and will coordinate towards its success. The two parties will encourage inter-sessional activities, as well as pre-feasibility and feasibility studies, within the various multilateral working groups.

Agreed Minutes to the
Declaration of Principles on
Interim Self-Government Arrangements

A. General Understandings and Agreements

Any powers and responsibilities transferred to the Palestinians pursuant to the Declaration of Principles prior to the inauguration of the Council will be subject to the same principles pertaining to Article IIV [sic], as set out in these Agreed Minutes below.

B. Specific Understandings and Agreements

Article IV [sic]

It is understood that:

1. Jurisdiction of the Council will cover West Bank and Gaza Strip territory, except for issues that will be negotiated in the permanent status negotiations: Jerusalem, settlements, military locations, and Israelis.
2. The Council's jurisdiction will apply with regard to the agreed powers, responsibilities, spheres and authorities transferred to it.

Article VI (2) [sic]

It is agreed that the transfer of authority will be as follows:

- (1) The Palestinian side will inform the Israeli side of the names of the a [sic] authorized Palestinians who will assume the powers, authorities and responsibilities that will be transferred to the Palestinians according to the Declaration of Principles in the following fields: education, tourism, and any other authorities agreed upon.
- (2) It is understood that the rights and obligations of these offices will

not be affected.

- (3) Each of the spheres described above will continue to enjoy existing budgetary allocations in accordance with arrangements to be mutually agreed upon. These arrangements also will provide for the necessary adjustments required in order to take into account the taxes collected by the direct taxation office.
- (4) Upon the execution of the Declaration of Principles, the Israeli and Palestinian delegations will immediately commence negotiations on a detailed plan for the transfer of authority on the above offices in accordance with the above understandings.

Article VII (2) [sic]

The Interim Agreements will also include arrangements for coordination and cooperation.

Article VII (5) [sic]

The withdrawal of the military government will not prevent Israel from exercising the powers and responsibilities not transferred to the council.

Article VIII

It is understood that the Interim Arrangement [sic] will include arrangements for cooperation and coordination between the two parties in this regard. It is also agreed that the transfer of powers and responsibilities to the Palestinian police will be accomplished in a phased manner, as agreed in the Interim Agreement.

Article X [sic]

It is agreed that, upon the entry into force of the Declaration of Principles, the Israeli-Palestinian delegations will exchange the names of the individuals designated by them as members of the Joint Israeli Palestinian Liaison Committee.

It is further agreed that each side will have an equal number of members of Joint Committee. The Joint Committee will reach decisions by agreement. The Joint Committee may add other technicians and experts, as necessary. The Joint Committee will decide on the frequency and place or places of its meetings.

Annex II [sic]

It is understood that, subsequent to the Israeli withdrawal, Israel will continue to be responsible for external security, and for internal security and public in order [sic] of settlements and Israelis. Israeli military forces and civilians may continue to use roads freely within the Gaza Strip and the Jericho area.

[REDACTED]

Declaration of Principles on Interim Self-Government Arrangements

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I. Introduction

From its perspective as an organization dedicated to promoting human rights and the rule of law in the Occupied Palestinian Territories, al-Haq has reviewed the Declaration of Principles on Interim Self-Government Arrangements, signed on 13 September 1993 in Washington, D.C.¹ by the Palestine Liberation Organization and by the state of Israel, and offers the following analysis. This is not an interpretation of the exact meaning of the agreement, rather it is an assessment of the Declaration of Principles to the extent that it affects Palestinian human rights and the rule of law in the Occupied Territories.

Three basic human rights issues arose from al-Haq's analysis:

First, while the Declaration of Principles (DP) is designed for an interim period, certain interpretations of provisions of the DP allow substantial changes to occur in the interim period whose implementation will impair the Palestinian People's inalienable right to self-determination;

Second, the absence of any human rights provision and the failure to agree expressly to the amendment of Israeli military legislation and practice raise serious questions as to the standard of protection of human rights, and the real potential for their improvement, during the interim phase; and

Finally, the proposed jurisdiction of Israeli and Palestinian authorities remains obscure, creating potential problems of accountability in the protection of Palestinian human rights.

¹Al-Haq tried repeatedly to acquire a copy of the official final text signed in Washington, but without success. The Arabic version reviewed was that received from the offices of the Palestinian Team to the Peace Conference (Orient House, Jerusalem), and was stamped "Final Draft, agreed to on 19 August 1993". The English version was acquired from the Palestinian Team's Office of Advisory & Technical Committees.

II. Preliminary Comments

- A close reading of the Declaration of Principles (DP) reveals vaguely-worded, general provisions which expressly envisage clarification in later agreements.
- No "definition" section delineates the meaning and scope of important concepts such as "security", "withdrawal", and "redeployment."
- The Arabic and English versions of the DP differ on key matters such as whether "authority" (English) or "the authority" (Arabic) in certain spheres is to be transferred.
- The points in the "Agreed Minutes" attached to the DP are not always numbered sequentially; B, Art. IV is followed by B, Art. VI(2), for example, and the only annex is Annex II. It is not clear whether these missing sections actually exist and why they have not been published.
- No enforcement of the DP appears possible without the willingness of both sides. The only obligation evident is that of good faith.

III. Certain Interpretations of the Declaration of Principles Will Impair the Palestinian People's Inalienable Right to Self-Determination.

A. The Right to Self-Determination

The Palestinians and Israelis have recognized "their mutual legitimate and political rights" (introductory preamble) by signing the Declaration. The DP does not address directly the Palestinian right to self-determination, but aims, after a five-year transitional period, for "a permanent settlement based on Security Council Resolutions 242 and 338" (Article I).

Comments

The Palestinian People's legitimate and political rights are based on the right to self-determination,² which was recognized in the first article in the United Nations (UN) Charter and has been expressly recognized by the UN General Assembly.³ While debates continue on

²The UN General Assembly, in Resolution 1514 (XV) of 14 December 1960, adopted the Declaration on the Granting of Independence to Colonial Countries and Peoples which stated:

2. All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

The language of the Declaration was incorporated verbatim as the first paragraph of common Article 1 of the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights, ratified by Israel in 1991. The next two paragraphs of that article further strengthen the right to self-determination:

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

³For example, Resolution 3236 (XXIX) of 22 November 1974 affirmed "the inalienable rights of the Palestinian people in Palestine, including: (a) The right to self-determination without external interference...." (Passed with 87 votes for, 8 against, 37 abstentions). In 1975, the General Assembly formed a committee on the Exercise of the Inalienable Rights of the Palestinian People. In 1976, the General Assembly reaffirmed "the inalienable right of the peoples of Namibia and Zimbabwe, of the Palestinian people and of all peoples under alien and

the exact scope of the right to self-determination, its interpretation in the case of the Palestinian People clearly includes sovereignty without external interference, and the free pursuit of economic, social and cultural development, with free disposition of natural wealth and resources without prejudice to any obligations arising out of international economic co-operation.

- Security Council Resolutions 242 and 338 have been subjected to different interpretations in the past; some of these, if implemented, will not lead to the full recognition of Palestinian human rights, including the right to self-determination. Implementation of Resolutions 242 and 338 in a way that increases respect for Palestinian human rights, including the right to self-determination, should be actively promoted by politicians and human rights activists during this time.

- In the interim period, certain interpretations of the DP, if implemented, will prejudice the future status of the Occupied Palestinian Territories and the Palestinian people, and impair the Palestinian people's right to self-determination. (See IV.B of this paper)

B. Political Rights

During the next nine months, some authority will be transferred from the Israeli military government to "the authorized Palestinians." (Article VI) These authorized Palestinians will retain power until the inauguration of an elected Council, which will take place at least ten months from the signing of the DP. On 12 October, the media announced that the Central Council of the Palestine Liberation Organization had ratified the DP, and appointed a National Council which presumably represents the "authorized Palestinians."

Comments

- Al-Haq welcomes the introduction of "direct, free and general political elections" for the Council within ten months which "will constitute a significant interim preparatory step toward the realization of the legitimate rights of the Palestinian people...." (Article III) During the nine months prior to election, however, the Council appointed by the

colonial domination to self-determination, independence and sovereignty without external interference." (Resolution 31/34, 30 Nov. 1976).

PLO will be assuming powers of government, including legislative powers, in their spheres of authority. These authorities include education, culture, health, social welfare, direct taxation, tourism and the building of a Palestinian police force, as well as "additional powers and responsibilities, as agreed upon." (Article VI.2) If "the Palestinian people in the West Bank and Gaza Strip [are to] govern themselves according to democratic principles," (Article III.1) they must be governed by a body responsive and accountable to the needs and wishes of the electorate. There are potential difficulties in the assumption of powers by an appointed body which has the power to change and implement laws. Any decisions by the appointed council should be temporary, pending ratification by the elected Council.

● It is imperative that an elected Palestinian body be elected fairly, by all eligible voters. The generality and obscurity of some of the language in the DP presents the possibility that some Palestinians may be excluded from voting in the elections. Annex I to the DP states that "Palestinians of Jerusalem *who live there*" may participate (paragraph 1, emphasis added). Al-Haq is not sure what the significance of adding the proviso "who live there" may be, and whether voters will include Jerusalem identity-card holders who happen to live outside the present municipal boundaries. Exclusion of any Jerusalem Palestinians will undermine the legitimacy of the Council and discredit its actions, increasing instability and insecurity.

● Al-Haq is pleased that the "future status of displaced Palestinians who were registered on 4th June 1967 will not be prejudiced" because of inability to vote (Annex I, para. 3). Serious efforts should also be made to include all such displaced Palestinians in the upcoming elections through the provision of absentee ballots or similar mechanisms. As parties directly affected by the decisions of the elected Council, they have the right, flowing from the right to self-determination, to participate in the election of such a council.

● Al-Haq is alarmed that international supervision has not been clearly written into the DP. Instead, it is up to the two negotiating parties to agree to "the mode of the agreed supervision and international observation..." (Annex I, para. 2b). In our view, it is crucial for a first Palestinian election to be fully supervised, not just observed, from beginning to end, by impartial international experts. International

supervision will increase election conformance with international human rights standards. However, those standards will be violated if the participation of Palestinians has been severely circumscribed before voting begins, due to identification residency requirements, or intimidation, or for any other reason.

- A "temporary international or foreign presence, as agreed upon" during the early withdrawal of Israeli military forces from Gaza and Jericho (Annex II), will increase the chances that human rights will be observed by all sides during the difficult transition.

- We welcome the statement that "the status of the Gaza Strip and Jericho area will continue to be an integral part of the West Bank and Gaza Strip, and will not be changed in the interim period" (Annex II) and the indication that the status of East Jerusalem is still negotiable. Al-Haq reminds all parties that under international law all of the Gaza Strip and the West Bank, including East Jerusalem, are occupied territories; any eventual just and lasting settlement, recognizing this fact, must be based on the full compliance of Israel with the UN Charter and the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 1949.

C. Economic, Social, and Cultural Rights

Much of the DP creates a framework within which close economic, social, and cultural connections with Israeli and regional bodies will be formed and/or maintained. For instance, a joint committee will cooperate in the fields of water, electricity, energy, finance, transport and communications, trade promotion, industry, labor relations, social welfare, human resources development, environmental protection, communication and media, and "any other programs of mutual interest." (Article XI and Annex III)

This cooperation could lead to joint action in the following spheres: exploitation of oil, gas, and other energy resources in the Gaza Strip; construction of energy pipelines; development of a petrochemical industrial complex in Gaza; the encouragement of international investment in the Occupied Territories; the establishment of a development bank; construction of roads, railways and communications lines; trade promotion programs for local, regional and inter-regional trade; free trade zones in Gaza; joint industrial ventures and research in

all areas of industry; and joint vocational centers, research institutes, and data banks. Similar regional plans and a "Marshall Plan" with the participation of the industrialized Group of Seven and the Organization for Economic Cooperation and Development are foreseen in Article XVI and Annex IV.

Comments

● The joint nature of these economic ventures will undermine Palestinian self-determination by irrevocably altering their choices of economic, social, and cultural development unless strict constraints are placed on Israeli participation and decision-making power. Economic cooperation and development on the basis of mutual equality and respect are necessary and can be beneficial to all parties. However, indigenous peoples and developing countries have found that maintaining existing modes of economic relations with more powerful nations and international institutions leads to economic dependency and increased poverty. The joint economic "cooperation" foreseen in the DP between Palestinians and Israel and regional and international powers is so broadly conceived as to perpetuate the situation of dependency in which Palestinians currently exist.

The details of these joint economic ventures have yet to be decided; these details include deciding where the ventures will take place physically and whose law will apply to them and the workers who participate. These future decisions will determine the degree of self-determination available to Palestinians.

● Careful planning and broad participation by all sectors of Palestinian society are necessary to safeguard economic, social, and cultural self-determination, promote sustainable development, and avoid the pitfalls of dependent economics. Existing Palestinian and international non-governmental organizations have amassed considerable experience, and should play a pivotal role by contributing their expertise in the coming period.

● The basic Palestinian right to all natural resources in the Occupied Territories as an integral part of the right to self-determination must be affirmed. "[P]lans on water rights of each party as well as on the equitable utilization of joint water resources" (Annex III) should recognize the basic Palestinian human right to adequate food and water

supplies. This recognition must bring an end to the inequitable distribution of water in the Occupied Territories between Palestinians and Israeli settlers until the final status of the Israeli settlers is decided. While international cooperation in the utilization of water resources is important, the wording of the DP could be interpreted to establish for Israel water rights within the West Bank and Gaza Strip which it does not have under international law. This will impair the Palestinian people's exercise of self-determination and the right to dispose of their own natural resources in accordance with their national priorities.

● Serious attention must be paid to environmental protection and development so that the healthy, diverse, and self-sustaining environment, which constitutes one of the major resources of the Palestinian people, can be preserved. The emphasis on "exploitation" of the area without a clear parallel focus on the protection of the environment (Annex III) will lead to the environment's destruction in the near future. The references to prevention of desertification and an environmental protection plan are cryptic (Annex IV, para. 2B(5) and Annex III, para. 10). Development of a petrochemical industrial complex in the Gaza Strip, for example, threatens the densely populated Strip with heavy pollution. Failure to preserve the environment will severely curtail the range of economic and social choices that Palestinians have in the future, irrevocably affecting Palestinian self-determination.

IV. The Declaration of Principles Raises Important Questions Regarding the Standards of Protection of Human Rights, and the Real Potential for Their Improvement, During the Interim Phase.

A. Continued Applicability of Human Rights Provisions

While certain rights are mentioned in the Declaration of Principles, an express provision for the protection of human rights is absent.

Comments

● Al-Haq reiterates that international law continues to protect Palestinian human rights during the interim self-government phase under the DP.

● The legal status of the West Bank and Gaza Strip continues to be that of occupied territories, and Israel the Occupying Power because Israel will continue to hold all authority regarding external security, border control, and internal security and order concerning Israelis and Israeli settlers, as well as holding partial authority in the many areas controlled by joint cooperative committees. Therefore, the Fourth Geneva Convention will continue to apply and the Palestinian residents will continue to be "protected persons" under the Convention. Israel will continue to be legally responsible for upholding humanitarian standards in all areas of authority that have not been transferred in full to the Palestinian authority; that is, Israel will remain responsible wherever it performs the "functions of government" (Article 6 of the Convention).

● Customary human rights and humanitarian law, such as that contained in the Universal Declaration of Human Rights and the Hague Regulations of 1907, continue to apply. These standards for protection of Palestinians should be recognized and applied by all authorities.

● Al-Haq repeats its call for Israel to acknowledge and adopt, as a matter of legal commitment, the Fourth Geneva Convention of 1949.

● We respectfully remind the High Contracting Parties to the Geneva Conventions that they remain, pursuant to Article 1 thereof, under an ongoing obligation to "ensure respect" by Israel for the provisions of the Conventions as a matter of contractual legal commitment.

● We further call on Israel to withdraw its reservations as to the applicability of all other relevant human rights standards to the Occupied Palestinian Territories. These standards include those set by the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights; and the conventions concerning torture, discrimination, women, and children.

● On 14 June 1989, the Permanent Observer Mission of Palestine submitted a letter to the Swiss government expressing its will to be bound by the four Geneva conventions and the two Protocols by acceding to them and affirming "the application and observance of their provisions in all circumstances". Although the request was not accommodated, and these instruments are not legally binding on the Palestine Liberation Organization, this unilateral commitment on the part of the Palestinian authorities to uphold and respect the provisions of

these instruments is laudable. In particular, al-Haq calls on the Palestinian Council, once elected, to respect the provisions of Protocol II in the event of any internal armed conflict arising in the future.

● All Palestinian authorities should uphold other internationally-recognized human rights standards and incorporate into any laws drafted or systems established the standards set by these conventional and customary laws. As a first step, the Palestinian authority could enact legislation incorporating the Geneva Conventions, the Protocols, and both International Covenants into Palestinian domestic law. Many of the provisions of these instruments come within the legislative mandate of the Palestinian Council under the specific authorities granted it by the DP. These matters should be given highest priority, since these instruments will set the standards that govern the actions of the future Council.⁴

B. Perpetuation of Massive Human Rights Violations

The DP postponed the rectification of several ongoing human rights violations although they are occurring on a massive scale and affect the Palestinian collectivity. Examples of these include: the illegal annexation of East Jerusalem, the presence of settlements and settlers in the Occupied Territories in violation of Article 49 of the Fourth Geneva Convention, and the refusal to allow the return of refugees or their compensation as urged in UN General Assembly Resolution 194 (III) of 11 December 1948. Nor does the DP make any concrete commitment to change the laws through which these violations are implemented.

Comments

● The passage of time compounds the effects of these ongoing violations; therefore they should be halted as soon as possible. Unless all building in settlements stops immediately, for instance, and unless land illegally confiscated is returned to rightful owners, and unless settlers stop moving into the settlements, Palestinians' human rights will continue to be violated and the possibility of reversing this illegal practice will become less likely. Although the DP states that "the

⁴See al-Haq Press Release No. 63: "Al-Haq Views Positively Recent Statements of President Arafat on Human Rights," 7 October 1993.

outcome of the permanent status negotiations should not be prejudiced or preempted by agreements reached for the interim period" (Article V), the DP does not mention the principle of halting the establishment of settlements or the expansion of existing settlements. Failure to do so immediately will prejudice the permanent outcome of the five-year agreement on an interim Palestinian self-government period.

● The principle of the rights of all refugees to return or compensation should be affirmed immediately; allowing more time to pass before this right is acknowledged prejudices these rights further. Although the DP foresees a final solution based on Security Council Resolution 242, which called for a "just settlement of the refugee problem," and on SCR 338 which called for the implementation of 242 in all its parts, the DP does not expressly mention, as one of its principles, the right to return or compensation. This right was expressed in UNGA Res. 194 (1948) and UNGA Res. 3376 (XXX) (10 Nov. 1975) expressed concern that the "exercise by Palestinians of their inalienable right to return to their homes and property from which they have been displaced and uprooted" had not yet been implemented. A positive step towards partial redress with respect to refugees is the Continuity Committee composed of representatives of Israel, Egypt, Jordan and the Palestinian people which is supposed to agree "on the modalities of admission of persons displaced from the West Bank and Gaza Strip in 1967" (Article XII)⁵. However, all Palestinians uprooted from their homes, including those internally displaced and all those who have fled as refugees to other countries since the beginning of the Palestinian-Israeli conflict, have the right to decide to return or receive compensation.

● The illegal use of disproportionate force appears likely to continue based on the wording of the DP unless international standards for the use of force are adopted and implemented by all authorities operating in the Occupied Territories.

The DP states that Israel will withdraw from the Gaza Strip and Jericho area (Article XIV, Annex II) and "a redeployment of Israeli

⁵The Arabic version of this article reads: "admission of *the* persons displaced."

military forces in the West Bank and the Gaza Strip will take place" (Article XIII). However, in addition to their presence on all border points, it appears that an armed Israeli force will remain in many parts of the Occupied Territories as long as settlements exist and as long as East Jerusalem remains illegally annexed by Israel. According to the Agreed Minutes to the DP, these forces will continue to operate freely on West Bank (including Jericho) and Gaza roads (Minutes, Annex II). As long as the Israel Defence Forces' Open Fire Regulations and rules of engagement remain unchanged, the legitimization and frequent use of illegal and disproportionate force will continue to violate Palestinian human rights.

The DP's discussion of a "strong" Palestinian police force which will "ensure public order" and "guarantee public order and internal security" raises concerns. There is no mention of holding the police force responsible for following internationally-accepted law enforcement standards or the basic principles of human rights. (Articles III, VIII) The police training "as police and police officers" (Annex II) must include training according to internationally-accepted law enforcement standards to respect human rights in the conduct of their duties.

- The establishment of a joint Palestinian-Israeli Coordination and Cooperation Committee "for mutual security purposes" (Annex II) could have both positive and negative consequences. Freedom of expression, opinion, and assembly must be guaranteed and protected by law and implemented without discrimination, otherwise the human rights of individuals and groups in political opposition will be in danger of abuse and violation by both the Israeli and Palestinian law-enforcement authorities. (See comments to Section V. E. below)

- An important question not clearly addressed in the DP concerns the dissolution of the Civil Administration and the withdrawal of the Israeli military government (Art. VII). Will the structures and operating regulations of the Civil Administration remain, subject to the same laws and military orders which created them, with Palestinians merely replacing Israeli functionaries? Clearly, the very structure and the law must be amended radically if human rights violations created and perpetuated by the Civil Administration, such as travel restrictions, work permit restrictions, refusal to grant family reunification, and many others, are to cease.

C. Impunity and Prosecution of Perpetrators of Grave Breaches

● Provision should be made for the seeking out and bringing to justice of those who committed or ordered the commission of Grave Breaches of the Geneva Conventions, such as deportation, wilful killing, wanton destruction of property not justified by military necessity, and others. The duty to prosecute those suspected of such crimes is universal under Article 146 of the Fourth Geneva Convention. Perpetrators must be brought to justice so that such crimes may not be committed in future with impunity. Al-Haq urges all parties to the Geneva Conventions to ensure that redress is granted to victims of Grave Breaches.

V. Obscure Jurisdiction of Israeli and Palestinian Authorities Creates Doubts As to Accountability In the Protection of Palestinian Human Rights.

A. Israeli Jurisdiction

Israel will retain all authority in the spheres of "Jerusalem, refugees, settlements, security arrangements, borders, relations and cooperation with other neighbors, and other issues of common interest" (Article V). In Annex II, the areas in which Palestinians will have no powers or responsibilities include: "external security, settlements, Israelis, [and] foreign relations", while in the "Agreed Minutes" it is understood that the Palestinian Council will have no jurisdiction "for issues that will be negotiated in the permanent status negotiations: Jerusalem, settlements, military locations, and Israelis." Israel remains responsible for "external security, and for internal security and public in [sic] order of settlements and Israelis." ("Agreed Minutes")

In addition to spheres where it will retain complete authority, Israel will retain some authority in other spheres. It will continue to exercise "the powers and responsibilities not transferred to the [Palestinian] council" notwithstanding "[t]he withdrawal of the military government". ("Agreed Minutes")

B. Palestinian Jurisdiction

The Palestinian Council's jurisdiction "will apply with regard to the agreed powers, responsibilities, spheres and authorities transferred to

it" ("Agreed Minutes"). Palestinians will receive some authority in the spheres of: "education and culture, health, social welfare, direct taxation, and tourism" (Article VI) and "may negotiate the transfer of additional powers and responsibilities, as agreed upon."

Although the Arabic version of the DP states that a "transfer of *the* authority" (emphasis added) will occur from the Israeli military government and its Civil Administration to the authorized Palestinians, the English version simply says "transfer of authority" in both Article VI and in Annex II, leaving the amount and type of authority to be transferred to be defined later. The Interim Agreement, to be negotiated later, will specify "Structure, powers and responsibilities of the Palestinian authority in these areas." (Annex II)

The territorial jurisdiction of the Palestinian Council "will cover West Bank and Gaza territory" (Article IV, "Agreed Minutes") but will obviously not cover all of the Occupied Territories because the Israeli settlements are located on this territory and the Council is not given jurisdiction over them or over East Jerusalem. The "Palestinian side will inform the Israeli side of the names of the authorized Palestinians" ("Agreed Minutes") who will assume the powers and responsibilities transferred.

C. Legislative Powers

The DP grants the Palestinian Council power to legislate within the authorities transferred to it (Article IX). Moreover, the rights and obligations of the spheres transferred to Palestinian control "will not be affected" according to the "Agreed Minutes". The DP provides that Israel and Palestinian representatives "will review jointly laws and military orders presently in force in remaining spheres". (Article IX)

Comments

● Difficult problems of accountability will arise because the DP proposes areas of double or overlapping control between Israeli and Palestinian authorities. It is unclear as to the scope of authority to be transferred to Palestinians; what is clear is that not all authority in all spheres of government will be transferred to them. Israel will retain all legislative authority in some spheres and at least some authority -- the power to review jointly with Palestinians the laws and military orders

presently in force -- in other spheres. Overall control of important resources such as land (no provision for returning illegally confiscated land is made) also remains with Israel. Thus, the Palestinian authority will be unable to exercise many of the most important functions of government. It is difficult to envisage any scenario flowing from this DP in which Israel will not retain ultimate jurisdiction and control over the Occupied Territories.

- Insofar as Israel retains such jurisdiction, it will remain accountable for its actions under international law. Now that political decisions have been made towards a resolution of the conflict, it is al-Haq's view that no military, security, or other reason prevents Israel from accepting in full the legal applicability of the Fourth Geneva Convention to the Palestinian Territories it occupied in 1967.

- To the extent that the government of Israel no longer exercises the functions of government in certain spheres, it may be practically and/or juridically difficult to hold Israel accountable in those spheres, at least on the domestic plane. In such cases, provision must be made to hold the Palestinian authorities accountable. (See comments to Section IV. A. above)

- If there is to be joint Palestinian-Israeli review of military legislation, then the Israeli government will have *de facto* veto power over any changes the Palestinian authority wishes to make in the legislation affecting all but a few spheres. It is important to note that over 26 years of occupation, the Israeli military government and its civil administration have implemented more than 1390 military orders in the West Bank and over 1100 in the Gaza Strip. Most of these orders are illegal under the provision of international law which requires the Occupying Power to act for the benefit of the population, subject only to the occupier's legitimate security needs. It has been the existence and implementation of these laws and orders, more than any other single factor, that has contributed to the constant and systematic violation of Palestinian human rights in all matters civil, political, economic, social and cultural. If the Palestinian Council may only legislate in a limited number of spheres of authority, subject to Israeli veto and control, and if the Occupation's legal system remains largely or even to a small extent unchanged, human rights violations will continue to occur.

D. Dispute Resolution

A Joint Israeli-Palestinian Liaison Committee will deal with disputes (Article X) by arranging for negotiations (Article XV). If a dispute still exists, the parties can agree on a "mechanism of conciliation" and then may agree to establish an Arbitration Committee to deal with any outstanding disputes (Article XV).

E. Security Issues

The jurisdiction of the Palestinian police force is "public order and internal security for the Palestinians of the West Bank and the Gaza Strip" (Article VIII). Israeli forces will continue to have jurisdiction over "defending against external threats,... responsibility for overall security of Israelis ... [to safeguard] their internal security and public order." (Article VIII). The creation of a joint Palestinian-Israeli Coordination and Cooperation Committee "for mutual security purposes" (Annex II) may clarify areas of double or overlapping jurisdiction. It appears that extradition arrangements between Israel and the Palestinians are not envisioned.

Comments

● The future conduct of security matters is particularly alarming; the limits of "Israeli security" must be reasonably defined and constrained. There is a serious imbalance in jurisdiction: on the one hand, the Palestinian Police Force will have no jurisdiction over settlements or settlers, although they are present on Occupied Territories land and may perpetrate, as they have continuously for the duration of the occupation, violations of Palestinian rights; on the other hand, Israeli forces will retain jurisdiction over the settlements and settlers, East Jerusalem Palestinians and any other Palestinian, wherever he or she may be, in order to protect Israeli security. A situation may arise, for example, where if a Palestinian threatens other Palestinians, he or she would be subject to Palestinian authority, but if that same Palestinian acts against Israelis, the act would fall within the jurisdiction of Israeli authorities. Such a discriminatory system is reminiscent of *apartheid* practices and fails to recognize the equality of persons before the law.

● The clarification of dispute resolution mechanisms is necessary immediately and could elucidate some jurisdictional issues. The extent

to which Israeli government representatives exercise control over the dispute resolution process, will be an indication of the degree of control Israel will retain in the Palestinian Territories. No fair dispute resolution process exists unless, ultimately, it can be implemented by either party without necessarily obtaining the agreement of the other side; the decision-making body is composed of members agreed upon by both sides; and the final arbitration decision is recognized as binding.

VI. Final Comments

● No agreement can undermine the rights granted Palestinians under the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 1949 (according to Articles 7 and 47 of the Convention). The rule of law and international legal standards must be observed by Israeli occupation authorities as long as they have any jurisdiction and exercise any governmental functions in the Occupied Territories.

● Implementing a Palestinian judicial system, and a representative governing entity accountable under the rule of law is necessary for the protection of human rights.

● Incorporating international human rights standards into any future Palestinian domestic legislation is imperative in order to guarantee legal protection for Palestinian individual and collective human rights.

● No agreement should impair Palestinian rights to self-determination; nor should it perpetuate human rights abuses. Some autonomy for the people, but none for the land has unacceptable future implications.

● No democratic society can function without the free flow of information. The provision by both Palestinian and Israeli authorities of information on any issue under public discussion is imperative for the community to be able to exercise its right to self-determination by making informed decisions regarding the choices that will face it in the future.

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AL-HAQ, the West Bank affiliate of the Geneva-based International Commission of Jurists (ICJ), is a Palestinian human rights organization which was founded in 1979 by Palestinian lawyers concerned with the protection and promotion of the principles of human rights and the rule of law. "Al-Haq" is an Arabic word meaning "fairness", "justice", "law", and "truth". The organization's offices and library are located in the city of Ramallah, 18 kilometres north of Jerusalem.

Al-Haq's core program includes the monitoring, documentation and investigation of human rights violations; research pertaining to the rule of law in occupied territories; the publication of studies on various aspects of the legal and human rights situation in the Israeli-occupied West Bank and Gaza Strip; and an ongoing effort, through direct intervention and other means, to bring specific abuses to an end.

THE INTERNATIONAL COMMISSION OF JURISTS, whose headquarters are in Geneva, Switzerland, is a non-governmental organization devoted to promoting the understanding and observance of the rule of law, and the legal protection of human rights throughout the world.

**Al-Haq, P.O. Box 1413, Ramallah, West Bank,
Tel: 972-2-956421, Fax: 972-2-955194**

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AL-HAQ
P.O. Box 1413, Ramallah, West Bank
Telephone: 972-2-956421

