

# DOCUMENTS AND SOURCE MATERIAL

## INTERNATIONAL

### A1. SYRIAN AND ISRAELI NEGOTIATORS, UNOFFICIAL BLUEPRINT FOR ISRAELI-SYRIAN PEACE, N.P., 29 AUGUST 2004.

*Billed as a "nonpaper" (an unsigned document of understandings that lacks legal standing), this "Framework Agreement" was leaked to the Israeli daily Ha'Aretz in January 2007. "Nonpaper" was also the term used for the successive draft agreements that came out of the Israeli-Syrian negotiations of 1995-2000. In contrast to those earlier official negotiations, however, neither Syria nor Israel has acknowledged any involvement in the series of eight rounds of talks between September 2004 and July 2006 that produced this draft. Nonetheless, reliable sources on both sides maintain that the talks, conducted with a European mediator in Berne, Switzerland, had been approved at the highest levels by both governments, and that senior officials in both were regularly briefed. According to Akiva Eldar (Ha'Aretz, 16 January 2007), the contacts ended when Israel refused a Syrian request to make the meetings official and to upgrade the level of representation. The senior participant on the Israeli side was Dr. Alon Liel, a former director general at the Israeli Foreign Ministry. Ibrahim Suleiman, a retired businessman and U.S. citizen, was the Syrian representative and also the prime mover behind the talks. The non-paper (draft number 4) was published by Ha'Aretz on 16 January 2007.*

#### **Preamble**

The objective of this effort is to establish normal, peaceful relations between the governments and peoples of Israel and Syria, and to sign a treaty of peace attesting to this achievement. The treaty will resolve the four "pillars" at the core of negotiations: security, water, normalization, and borders. There is to be no agreement on any single one of these issues unless and until all of these issues are resolved.

#### **I. Sovereignty**

1. Syrian sovereignty, based upon the June 4, 1967 line in the Golan Heights, is acknowledged by Israel. The mutually agreed upon border will be determined by

both parties (and guaranteed by the United States and the UN).

#### **II. Framework Agreement, Implementation, and the End to the State of Belligerency**

A "Framework Agreement" will address the issues of security (including early warning), water, normalization, and borders. Negotiations to reach such an agreement should proceed as expeditiously.

1. The state of belligerency between the parties will cease upon signature of a framework agreement between the parties, and will include the cessation of hostile actions by each party against the other.

2. Application of Syrian sovereignty in the Golan Heights, the establishment of normal, bilateral diplomatic relations, and the implementation of relevant provisions related to water and security will commence as soon as possible after the conclusion of a Framework Agreement but no later than the signing of a treaty of peace.

3. Implementation of the Israeli withdrawal to the mutually agreed border will occur during a period (the exact time frame to be mutually agreed) from signature of the Framework Agreement.

#### **III. Peace Treaty**

1. Satisfactory implementation of provisions and obligations established in the Framework Agreement will result in the signing of a peace treaty between the parties.

#### **IV. Security**

1. Demilitarized zones will be established in the areas of the Golan Heights that Israeli forces will vacate.

2. No military forces, armaments, weapons systems, or military infrastructure will be introduced into the demilitarized zones. Only a limited civil police presence will be deployed in the areas.

3. Both parties agree not to fly over demilitarized zones without a special arrangement.

4. The establishment of an early warning system includes a ground station on Mt. Hermon/Jabal al-Shaykh operated by the United States.

5. A monitoring and inspection and verification mechanism will be established to monitor and supervise the security agreements.

6. Direct liaison between the parties will be established in order to: Create a direct, real time communication capability on security issues in order to minimize friction along the international border; Help to prevent errors and misunderstandings between the parties.

7. Zones of reduced military forces will be established in Israel west of the international border with Syria and in Syria east of the Golan Heights. The respective depth of these zones (as measured in kilometers) between Israel and Syria will be according to a ratio of 1:4.

8. The Parties will cooperate in fighting local and international terrorism of all kinds.

9. The Parties will work together for a stable and safe Middle East, including the solution of regional problems related to the Palestinians, Lebanese, and Iran.

#### V. Water

1. Israel will control the use and disposition of the water in the Upper Jordan River and Lake Tiberias.

2. Syria will not interrupt or obstruct natural flow of water in either quality or quantity in the Upper Jordan River, its tributaries, and Lake Tiberias.

3. Syrian use of the waters of the upper Jordan River, its tributaries, and Lake Tiberias for residential and fishing purposes is recognized and guaranteed.

#### VI. Park

1. In order to safeguard the water resources of the Jordan River basin, Syrian territory east of the mutually agreed border will be designated as a Park open to all and administered by Syria. The Park is to be established in the Golan Heights upon completion of the Israeli withdrawal and application of Syrian sovereignty in accordance with the treaty of peace. The park will extend from the agreed upon border eastward to a line to be determined by mutual agreement.

2. Park characteristics:

- Park is open for tourism.
- Park will be policed by Syrian park service personnel.
- The park will be free of permanent residents except for conservation and law enforcement personnel.
- No visa will be required for entry into park [from Israeli territory].
- Syrians will issue onsite official entry permit for a nominal fee.

- Visitors wishing to enter other Syrian territory east of the Park must have a proper visa and transit Syrian controls on park's eastern perimeter.
- Entry to park is valid for one day during daylight hours.

#### A2. JOHN DUGARD, REPORT OF THE SPECIAL RAPPORTEUR ON HUMAN RIGHTS IN THE PALESTINIAN TERRITORIES OCCUPIED SINCE 1967, GENEVA, 29 JANUARY 2007 (EXCERPTS).

*John Dugard, a South African law professor and longtime UN Special Rapporteur on Human Rights in the Palestinian territories, was mandated in July 2006 by the newly created UN Human Rights Council (UNHRC) to head a fact-finding mission to the occupied territories following the arrest of members of the Palestinian government and the launch of Israeli military operations. His detailed report to the UN General Assembly (UNGA), submitted in accordance with UNGA Resolution 60/251, was based on his visit to the occupied territories from 1 to 8 December 2006. Israel did not cooperate with the mission.*

*The following excerpts detail Israel's military action in Gaza, the humanitarian situation there, the situation in the Jordan Valley, and Israeli military incursions into the West Bank. It was the report's section on "apartheid" that received the greatest publicity, perhaps because the report's release coincided with the growing controversy over former president Jimmy Carter's Palestine Peace Not Apartheid (see Docs. D1 and D4). Israel and the United States both decried the Dugard report as one-sided. It should be noted that the UNHRC was created in March 2006 to replace the UN Commission on Human Rights, which had been discredited for double standards and for singling out Israel for criticism.*

*In his introduction to the report, Dugard emphasizes "the scope and limitations of my mandate. I am required to report on violations of human rights and international humanitarian law by Israel in the OPT [occupied Palestinian territories]. This means that it is outside my mandate to report on violations of the human rights of Israelis by Palestinians, on the violation of human rights by the Palestinian Authority. . . . This does not mean that I am unconcerned about such human rights violations. . . . Such matters are of deep concern to me, but my mandate precludes me from examining them."*

*Footnotes in the report have been omitted here for reasons of space. The full report is available at [www.obchr.org](http://www.obchr.org).*

## II. Gaza

6. In August 2005, Israel withdrew its settlers and armed forces from Gaza. Statements by the Government of Israel that the withdrawal ended the occupation of Gaza are grossly inaccurate. Even before the commencement of "Operation Summer Rains," following the capture of Corporal Gilad Shalit, Gaza remained under the effective control of Israel. This control was manifested in a number of ways. Israel retained control of Gaza's air space, sea space and external borders, and the border crossings of Rafah (for persons) and Karni (for goods) were ultimately under Israeli control and remained closed for lengthy periods. In effect, following Israel's withdrawal, Gaza became a sealed off, imprisoned, and occupied territory.

7. On 25 June 2006 a group of Palestinian militants attacked a military base near the Israeli Egyptian border. In retreating, they took Corporal Gilad Shalit with them as a captive. They demanded the release of the women and children in Israeli jails in return for his release. This act, together with the continued Qassam rocket fire into Israel, unleashed a savage response from the Government of Israel that went by the name of "Operation Summer Rains." This was followed by another military assault in November with the name of "Operation Autumn Clouds." These operations, which took the form of repeated military incursions into Gaza, accompanied by heavy shelling, rendered the question whether Gaza remains an occupied territory of academic interest only. Israel's assault on, and siege of Gaza, in the course of Operations "Summer Rains" and "Autumn Clouds" is described in the following paragraphs.

### A. Military Action

8. Between 25 June 2006 and the truce that came into force at the end of November 2006, over 400 Palestinians were killed and some 1,500 injured. More than half of those killed and wounded were civilians. Of those killed some 90 were children; and over 300 children were injured. During the same period 3 Israeli soldiers were killed and 18 wounded, and 2 Israeli civilians were killed and some 30 injured in Sderot and its precincts by Qassam rockets fired by Palestinians from Gaza.

9. In the course of Operations "Summer Rains" and "Autumn Clouds" the IDF carried out 364 military incursions into different parts of Gaza, accompanied by persistent artillery shelling and air-to-surface missile attacks. Missiles, shells and bulldozers destroyed, or caused serious damage to, homes, schools, hospitals, mosques, public buildings, bridges, water pipelines, and sewage networks. On 27 June 2006, the Israeli Air Force destroyed all six transformers of the only domestic power plant in the Gaza Strip, which supplied 43 percent of Gaza's daily electricity. This resulted in depriving half of the population of Gaza of electricity for several months. (At the time of writing, this power plant had been largely repaired, thanks to generous funding from the Governments of Egypt and Sweden, and is now able to provide 85 percent of the electricity previously supplied.) Citrus groves and agricultural lands were leveled by bulldozers, and in the first phase of "Operation Summer Rains" F-16s flew low over Gaza, breaking the sound barrier and causing widespread terror among the population. Thousands of Palestinians were displaced from their homes as a result of Israel's military action. Israel justified its assault on Gaza on three grounds: the search for Corporal Shalit, the eradication of militant groups and their arms, and, above all, the stopping of Qassam rockets that have been regularly and repeatedly fired from Northern Gaza into civilian areas in Southern Israel.

10. Beit Hanoun in Northern Gaza, with a population of 40,000, was subjected to particularly vicious military action in November in the course of "Operation Autumn Clouds." During a six-day incursion 82 Palestinians, at least half of whom were civilians (including 21 children), were killed by the IDF. More than 260 people, including 60 children, were injured and hundreds of males between the ages of 16 and 40 were arrested. Forty thousand residents were confined to their homes as a result of a curfew as Israeli tanks and bulldozers rampaged through their town, destroying 279 homes, an 850-year-old mosque, public buildings, electricity networks, schools, and hospitals, leveling orchards and digging up roads, water mains, and sewage networks. In April 2006, the IDF narrowed the "safety zone" for artillery shelling, allowing targeting much closer to homes and populated areas. This, together with heavy artillery fire, contributed substantially to the increase in the loss of life and damage to property. There was also

evidence of the use of a new and unusual weapon in Beit Hanoun, and elsewhere in Gaza, which has resulted in an increase in amputations. This weapon is believed to be the Dense Inert Metal Explosive missile (DIME).

11. Israel's assault on Beit Hanoun on 8 November 2006 culminated in the shelling of a home which resulted in the killing of 19 persons and wounding of 55 persons. The house, situated in a densely populated neighborhood, was the home of the al-Athamnah family, which lost 16 members on that fateful day. Of the 19 killed, all civilians, 7 were women and 8 children. I visited the destroyed home on 3 December and spoke to Mrs. Sa'ad Alla Moh'al Athamnah, three of whose sons were killed and whose husband and a son were seriously wounded. Israel's explanation that a "technical failure" in the radar system of the artillery was to blame is questionable on a number of grounds. First, 12 to 15 high explosive artillery shells were fired over a time span of 30 minutes. Secondly, the home is located close to open fields that Israel probably suspected were used to launch Qassam rockets. Thirdly, the home had been occupied for the previous three nights by IDF soldiers who made a full inventory of the occupants of the building. Unfortunately, Israel has refused to accept any international investigation into this matter. It refused to allow a Human Rights Council mandated mission which was to have been led by Archbishop Desmond Tutu, to enter Israel and the Occupied Palestinian Territory and at the time of writing, has yet to respond to a resolution of the General Assembly of 17 November, adopted by 156 votes to 7, with 6 abstentions, which required the Secretary-General to send a fact-finding mission to the area. On 11 November the United States vetoed a Security Council draft resolution calling for the establishment of a fact-finding mission into the events of 8 November in Beit Hanoun. The failure of Israel to allow an international investigation into the killing of 19 persons in Beit Hanoun, or to undertake an impartial investigation of its own, is regrettable as it seems clear that the indiscriminate firing of shells into a civilian neighborhood with no apparent military objective constituted a war crime, for which both the commanding officer and those who launched the 30-minute artillery attack should be held criminally responsible. The failure to hold anyone accountable for this atrocity illustrates the culture of impunity that prevails in the IDF.

12. Israel has justified its attack on Beit Hanoun as a defensive operation aimed at preventing the launching of Qassam rockets into Israel. It is true that over a thousand homemade rockets have been fired into civilian areas in Israel without any military target and that 2 Israelis have been killed and over 30 injured. Such actions cannot be condoned and clearly constitute a war crime. Nevertheless, Israel's response has been grossly disproportionate and indiscriminate and resulted in the commission of multiple war crimes.

13. In recent months Israel has resorted to a policy of terrorism by telephone. Militants are telephoned by Israeli intelligence agents and warned that their home is to be blown up within an hour. This threat is sometimes carried out and sometimes not. It appears that over 100 homes have been destroyed following such threats. In November, Palestinians rallied to the defense of persons threatened in this way by gathering on the roof of the house or in the street outside to prevent the bombing of the house. It is difficult to categorize such conduct as a war crime, as originally suggested by Human Rights Watch in a statement of 22 November (subsequently largely withdrawn in a statement of 16 December). Voluntary, collective action of this kind can at most be categorized as an act of civil disobedience against the occupying Power.

#### *B. The Humanitarian Crisis*

14. Gaza has become a besieged and imprisoned territory as a result of the economic sanctions imposed on the Occupied Palestinian Territory by Israel and the West, following Hamas' success in the January 2006 elections, and the military assault on the territory, following the capture of Corporal Gilad Shalit. External borders have been mainly closed and only opened to allow a minimum of imports and exports and foreign travel. This has produced a humanitarian crisis, one carefully managed by Israel, which punishes the people of Gaza without ringing alarm bells in the West. It is a controlled strangulation that apparently falls within the generous limits of international toleration.

15. There are six crossings into Gaza, all of which are controlled by Israel. Erez, which is used by diplomats, United Nations officials, international workers, approved journalists and a restricted number of patients traveling to Israeli hospitals; Nahal Oz, which is designed for fuel imports and has operated

well below its capacity; Sofa, which is used for the import of construction material and some humanitarian supplies from United Nations agencies and has been open for only 60 percent of the scheduled days; Kerem Shalom, which has been largely closed since 25 June, but has opened to allow the import of cables and appliances from Egypt to repair the Gaza power plant destroyed on 27 June 2006, and some humanitarian assistance.

16. Rafah, the crossing point for Gazans to Egypt, and Karni, the commercial crossing for the import and export of goods, are the principal crossing points. They are the subject of an Agreement on Movement and Access (AMA), entered into between Israel and the Palestinian Authority on 15 November 2005, which provides for Gazans to travel freely to Egypt through Rafah; and for a substantial increase in the number of export trucks through Karni. Since 25 June 2006, the Rafah crossing has been open for only 14 percent of the scheduled opening days as a result of Israel's refusal to allow members of the European Border Assistance Mission, responsible for operating Rafah, to cross to Rafah through Kerem Shalom. The closure of Rafah has resulted in great hardships. The sick and wounded have not been able to travel freely to Egypt; those wishing to leave Gaza have had to wait patiently, sometimes for weeks, until Rafah opens; and Gazans returning home have often had to wait for weeks in Egypt until the Rafah crossing opened. The closure of Rafah has been justified as a reprisal for the capture of Corporal Shalit. The situation at Karni is no better. In terms of the AMA truckloads crossing Karni were to increase to 400 per day by the end of 2006. Instead, the crossing has been closed since April for 54 percent of the scheduled operating days (for 71 percent of such days since 25 June), and only 12 truckloads of goods on average have been exported. This has had disastrous consequences for the economy of Gaza. The agricultural produce from the former settlements was particularly affected as it perished while waiting to be exported at Karni. In the end most of this produce was donated or destroyed in Gaza. Imports have also suffered seriously and many basic foodstuffs have not reached local markets. On 22 December 2006 the Government of Israel promised to allow 400 trucks to pass through Karni per day. This promise has still to be implemented.

17. The siege has had a major impact on employment. Construction workers are out

of work as a result of the restriction on the import of construction materials; farmers (particularly those employed in the greenhouses of the former Israeli settlements) are unemployed as a result of the ban on exports of Palestinian produce; fishermen are out of work as a result of the ban on fishing along most of the Gaza coast; many shopkeepers have had to close their shops as a result of the lack of purchase power of Gazans; small factories employing some 25,000 workers have had to close; and the public service, while employed in theory is largely unpaid as a result of Israel's withholding of funds due to the Palestinian Authority and the refusal of the EU and the United States to transfer donations to the Palestinian Authority. Consequently about 70 percent of Gaza's potential workforce is out of work or without pay. The signs of unemployment are distinctly visible. Construction works are abandoned; greenhouses that were flourishing with produce when I visited them in 2005 are now empty of produce; and fishermen that I visited at Deir El Balah sit idly on the shore, prohibited from setting out to sea.

18. Poverty is rife. Over 80 percent of the population lives below the official poverty line. 1.1 million Gazans of a population of 1.4 million receive food assistance from the United Nations Relief and Works Agency for Palestine refugees in the Near East and the World Food Program. Recipients of food aid receive flour, rice, sugar, sunflower oil, powdered milk, and lentils. Few can afford meat, fish—virtually unobtainable anyway as a result of the ban on fishing—vegetables, and fruit. Shopkeepers generously give credit but their capacity to do so is being overstretched. (I visited a shopkeeper in Jabaliya who had granted US\$20,000 credit to customers.) Moreover some basic foodstuffs are in short supply, and prices are inflated due to the closure of Karni crossing.

19. Although the Gaza power plant has now been restored to 85 percent of its former capacity (thanks to Egypt and Sweden, and not to Israel which is responsible for supplying electricity to an occupied people), it must not be forgotten that for several months following the bombing of this power plant on 27 June 2006, the people of Gaza suffered in all aspects of their life from power stoppages: lighting, refrigerators, elevators, water supply, and sewage were all affected; hospitals were unable to operate properly; and so on. The bombing of the power plant has rightly been described as a war crime for

which Israel and members of the IDF must accept responsibility.

20. Living conditions in Gaza are bleak in a society dominated by poverty, unemployment, and military assault. Although hospitals have not suffered from strike action, as they have done in the West Bank, health care has suffered from military incursions and the closure of the crossings. For months hospitals were required to use generators for operation theatres; referrals abroad of patients have been hampered by the closing of Rafah; essential drugs are in short supply; clinics have been unable to operate because of military action; and members of the Palestine Red Crescent Society ambulance services have been killed in military operations. Chronic illnesses have increased. Anemia has also increased as a result of the nutritional situation. Mental health is a serious problem, particularly among children, as a result of the trauma inflicted by military incursions and the death or injury of friends and family. Education has been affected by military assaults: schools have been closed and school buildings destroyed. Domestic violence and ordinary crime are on the increase. In 2006, nearly 200 Palestinians were killed and 1,000 injured in internal disputes and factional violence. Morale is low. The very fabric of Gazan society is threatened by the siege. . . .

### *III. The West Bank and East Jerusalem*

#### *E. The Jordan Valley*

35. Israel has abandoned earlier plans to build the Wall along the spine of the Occupied Palestinian Territory and to formally appropriate the Jordan Valley. It has nevertheless asserted its control over this region, which constitutes 25 percent of the West Bank, in much the same way as it has done over the closed zone between the Wall and the Green Line on Palestine's western border. That Israel intends to remain permanently in the Jordan Valley is clear from government statements and is further manifested, first, by restrictions imposed on Palestinians and, second, by the exercise of Israeli control and the increase in the number of settlements in the Jordan Valley.

36. Palestinians living in the Jordan Valley must possess identity cards with a Jordan Valley address, and only those persons may travel within the Jordan Valley without Israeli permits. Other Palestinians, including non-resident landowners and workers, must obtain permits to enter the Jordan Valley

and in practice such permits are not valid for overnight stays, necessitating daily commuting and delays at checkpoints connecting the Jordan Valley with the rest of the West Bank. This has led to the isolation of the Jordan Valley. Travel restrictions make it difficult for farmers in the Jordan Valley to access markets in the West Bank as their produce is frequently held up at checkpoints, notably at al-Hamra, where it perishes in the process.

37. Housing in the Jordan Valley is a serious problem as most of the Valley is designated as Area C, which means that the Israeli authorities must give permission for the construction of houses and assert the power to demolish structures built without permission—a permission which is rarely forthcoming. On this mission I visited two villages in the Jordan Valley where structures were threatened with demolition by the IDF. The first was Jiftlik, where I visited a secondary school functioning in harsh conditions—with teachers mainly unpaid and no glass in the windows—where I was informed that the school had been served with a demolition order. The second was al-Aqaba, a village located on the slope between the Jordan Valley and the northern West Bank mountain range. The village, which has no running water and electricity is supplied by generators, comprises 35 houses of which 16, including a mosque, clinic, and kindergarten school, are threatened with demolition. The cheerful kindergarten, which I visited, has 85 children drawn from neighboring communities. Since 1967, al-Aqaba's population has decreased by 85 percent, from 2,000 in 1967 to 300 persons today. What cynical exercise in social engineering could motivate the demolition of nearly half the structures in the village? . . .

#### *G. Military Incursions*

42. Since the election of the Hamas Government in January 2006, the IDF has intensified its military incursions into the West Bank. In November 2006 alone there were 656 IDF raids into the West Bank. These raids have involved the killing of some 150 Palestinians; and search and arrest action resulting in damage to property, injuries (an average of 179 per month), and arrests (an average of 500 per month). Most of these IDF operations have taken place in the northern West Bank, particularly Nablus and Jenin. . . .

### *VII. Racial Discrimination and Apartheid*

49. Article 1 of the International Convention on the Elimination of All Forms of

Racial Discrimination of 1966 defines “racial discrimination” as meaning “any distinction, exclusion, restriction preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural, or any other field of public life.” This convention only requires States to prohibit and eliminate racial discrimination. Another convention, the International Convention on the Suppression and Punishment of the Crime of Apartheid of 1973, goes further and criminalizes practices of racial segregation and discrimination that, inter alia, involve the infliction on members of a racial group of serious bodily or mental harm, inhuman or degrading treatment, arbitrary arrest, or the deliberate creation of conditions preventing the full development of a racial group by denying to such a group basic human rights and freedoms, including the right to freedom of movement, when such acts are committed “for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them.”

50. Israel vehemently denies the application of these Conventions to its laws and practices in the Occupied Palestinian Territory. Despite this denial, it is difficult to resist the conclusion that many of Israel’s laws and practices violate the 1966 Convention on the Elimination of All Forms of Racial Discrimination. Israelis are entitled to enter the closed zone between the Wall and the Green Line without permits while Palestinians require permits to enter the closed zone; house demolitions in the West Bank and East Jerusalem are carried out in a manner that discriminates against Palestinians; throughout the West Bank, and particularly in Hebron, settlers are given preferential treatment over Palestinians in respect of movement (major roads are reserved exclusively for settlers), building rights, and army protection; and the laws governing family reunification (para. 48 above) unashamedly discriminate against Palestinians. It is less certain that the International Convention on the Suppression and Punishment of the Crime of Apartheid is violated. The IDF inflicts serious bodily and mental harm on Palestinians, both in Gaza (paras. 8–13 above) and the West Bank (para. 42 above); over 700 Palestinians are held without trial (para. 43 above);

prisoners are subjected to inhuman and degrading treatment (para. 44 above); and Palestinians throughout the OPT are denied freedom of movement (paras. 38–41 above). Can it seriously be denied that the purpose of such action is to establish and maintain domination by one racial group (Jews) over another racial group (Palestinians) and systematically oppressing them? Israel denies that this is its intention or purpose. But such an intention or purpose may be inferred from the actions described in this report. . . .

#### ***XI. Occupation, Colonization, and Apartheid: Is There a Need for a Further Advisory Opinion?***

58. The international community, speaking through the United Nations, has identified three regimes as inimical to human rights—colonialism, apartheid, and foreign occupation. Numerous resolutions of the General Assembly of the United Nations testify to this. Israel’s occupation of the West Bank, Gaza, and East Jerusalem contains elements of all three of these regimes, which is what makes the Occupied Palestinian Territory of special concern to the international community. . . .

61. Israel’s practices and policies in the OPT are frequently likened to those of apartheid South Africa (see, for example, Jimmy Carter, *Palestine Peace Not Apartheid* [2006]). On the face of it, occupation and apartheid are two very different regimes. Occupation is not intended to be a long-term oppressive regime but an interim measure that maintains law and order in a territory following an armed conflict and pending a peace settlement. Apartheid is a system of institutionalized racial discrimination that the white minority in South Africa employed to maintain power over the black majority. It was characterized by the denial of political rights to blacks, the fragmentation of the country into white areas and black areas (called Bantustans) and by the imposition on blacks of restrictive measures designed to achieve white superiority, racial separation, and white security. Freedom of movement was restricted by the “pass system” which sought to restrict the entry of blacks into the cities. Apartheid was enforced by a brutal security apparatus in which torture played a significant role. Although the two regimes are different, Israel’s laws and practices in the OPT certainly resemble aspects of apartheid, as shown in paragraphs 49–50 above, and probably fall within the scope of the 1973 International Convention on the

Suppression and Punishment of the Crime of Apartheid.

62. Colonialism and apartheid are contrary to international law. Occupation is a lawful regime, tolerated by the international community but not approved. Indeed over the past three decades it has, in the words of the Israeli scholar Eyal Benvenisti, “acquired a pejorative connotation.” What are the legal consequences of a regime of occupation that has continued for nearly 40 years? Clearly none of the obligations imposed on the occupying Power are reduced as a result of such a prolonged occupation. But what are the legal consequences when such a regime has acquired some of the characteristics of colonialism and apartheid? Does it continue to be a lawful regime? Or does it cease to be a lawful regime, particularly in respect of “measures aimed at the occupants’ own interests”? And if this is the position, what are the legal consequences for the occupied people, the occupying Power, and third States? Should questions of this kind not be addressed to the International Court of Justice for a further advisory opinion? It is true that the 2004 Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* has not had the desired effect of compelling the United Nations to take firmer action against the construction of the Wall. On the other hand, it must be remembered that the United Nations requested four advisory opinions from the International Court of Justice to guide it in its approach to South Africa’s occupation of South-West Africa/Namibia. In these circumstances a request for another advisory opinion warrants serious consideration.

**A3. INTERNATIONAL CRISIS GROUP, “AFTER MECCA: ENGAGING HAMAS,” AMMAN, JERUSALEM, AND BRUSSELS, 28 FEBRUARY 2007 (EXCERPTS).**

*This 35-page report, though occasioned by the Mecca agreement, which it analyzes, is primarily an assessment of Hamas’s year in office and its current situation on the eve of the establishment of a national unity government. The excerpts reproduced below include a summary of the internecine battles between Hamas and Fatah, a critical analysis of the perceived division within Hamas between a radical external leadership and a more flexible internal one, and assessments of Hamas’s current popularity and positions on Israel. Footnotes have been omitted here for rea-*

*sons of space. The full report is available at [www.crisisgroup.org](http://www.crisisgroup.org).*

**II. The Year of Living Dangerously**

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**B. Hamas and Security**

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**3. Internecine Battles**

Since assuming office, Hamas has consistently maintained it is merely defending its democratic mandate against Fatah “putchists” and “coup-plotters” (*inqilabiyyin*) in league with Israel and Washington. The government additionally has claimed the right to enforce law and order upon Fatah partisans sowing chaos. According to interior ministry spokesman Khalid Abu Hilal:

Their power comes from weapons and open channels of funding from the U.S. They claim to be Fatah but achieved power through their position in the PA [Palestinian Authority] and are trying to sabotage every attempt at reconciliation between Fatah and Hamas, using all possible methods to spread chaos and disorder.

In response, Fatah argues it rather than the Islamists has been engaged in legitimate self-defense, protecting the pluralistic nature of society and the national movement against the “trend of blood” (*tayyar al-damawi*) within Hamas. In the words of an opposition activist in the Gaza Strip unaffiliated with Fatah:

This government has failed in the fields of justice, administration, economy, development, security, and resistance. The only option left for Hamas is to impose obedience on the entire society by force. Violent opposition to opposing views has been part of this movement since before it was founded. They’ve practiced it against everybody.

Where Hamas saw a U.S. and Israeli hand behind Fatah, Fatah denounced Iranian and Syrian ones behind Hamas, their goals allegedly being to establish hegemony over Palestinian society in the service of regional rather than national interests.

The conflict gradually developed into a bloody power struggle between the two movements that has gained both the opprobrium of other organizations and widespread public disgust. Generally speaking Hamas, and particularly the ESF [Executive Security Force], gained the upper hand in the Gaza Strip, deploying superior tactics and firepower and usually fighting with greater motivation. But tactical success came at a heavy price as one red line after another was crossed. On 21 November 2006, Abd-al-Aziz



(Abu Ali) Shahin, a veteran member of the Fatah Revolutionary Council who founded its youth movement in the Gaza Strip during the 1980s, was shot and moderately wounded in the first such attack on a politician with no connection to the security forces. On 11 December, a hail of bullets aimed at the blacked-out windows of a car belonging to senior (Fatah) General Intelligence officer Baha Ballousha, killed his three sons and a passer-by (Ballousha was not in the vehicle, which was transporting his children to school).

On 4 January, Shaikh Adel Nassar, a Muslim cleric hostile to Hamas, was gunned down as he left a mosque in the Maghazi refugee camp where he had just delivered a sermon criticizing the Islamists' role in the escalating violence. As in the previous incidents, Hamas denied any connection to the unknown assailants. Nonetheless, suspicion of its role was widespread and, as far as Fatah was concerned, a certainty.

Hamas's denials were particularly hard to sustain in the incident that prompted Nassar's final sermon. On 4 January, dozens of ESF and Qassam Brigades gunmen laid siege for hours to the Gaza City home of Col. Muhammad Abu Ghayib, a close associate of Fatah's Gaza strongman Muhammad Dahlan, until Abu Ghayib and a number of his bodyguards were dead and his wife and eight children wounded, some seriously. Throughout the siege, Ghayib had been on the telephone to associates and finally the media, appealing for help. The event, replete with the prolonged siege of a private home, sustained indiscriminate gunfire that wounded every member of the household, and the grisly summary execution that concluded it, sent shock waves throughout society. If the killers had intended to send a message that no one is beyond their reach, it was not well received. In the words of a distraught Palestinian, "for Hamas every enemy is an infidel and pulling the trigger God's work, regardless who is on the other end of the barrel. I question whether Fatah gunmen have the capacity to kill other Palestinians. It contradicts the entirety of their political culture."

While there is insufficient evidence to reach a conclusive verdict on the wave of assassinations during the second half of 2006, it seems more than coincidental that a high proportion were conducted against senior officers associated with the Preventive Security Force and General Intelligence service. The former is considered a stronghold of

Muhammad Dahlan, who has repeatedly and in unambiguous terms been denounced by the Islamists as the leader of the campaign to unseat them. The latter played a lead role in the PA's violent crackdown on Hamas and Islamic Jihad in 1996. Today, many such officers—including Ballousha—have sought temporary refuge in the safer confines of Ramallah. Islamist victims of assassination have by contrast generally been lower level operatives, possibly suggesting their opponents have experienced more difficulty locating targets.

The next round of clashes, in the second half of January, led many to conclude a turning point was being reached. Dahlan, who according to some reports was appointed General Commander of the PA security forces by Abbas in the wake of the Ghayib killing, organized a mass rally in Gaza City on 7 January, where for the first time since the elections Fatah's demoralization and apathy seemed to be replaced by pride and determination. He also began to impose better coordination and communication within the unwieldy security services and made new appointments. On the ground, "the security forces occupied strategic rooftops and other key locations to prevent their forces from once again being bottled into their bases by the ESF." The result was that they were able to obstruct the Islamists in the next round, with the clear majority of dead and wounded in late January coming from Hamas ranks.

As demonstrated by the heavy clashes in early February, concentrated in the northern Gaza Strip, Fatah's cheer was short-lived. It sustained the majority of casualties, and most PA security installations in northern Gaza were overrun by the ESF as well as Qassam Brigades support units. By the time the leaders departed for Mecca, only the *saraya* (the main security headquarters in Gaza City) and the presidential compound remained under Fatah control in Gaza City.

For their part, Fatah forces rampaged through the campus of the Islamic University, a Hamas stronghold and its leading institution in the Gaza Strip, and launched a number of attacks against PA ministries. According to a Fatah participant in these clashes, "Hamas was able to attack our security installations, but doesn't really have any serious ones of its own [in the northern Gaza Strip]. That's why we went after the Islamic University and the ministries they control, because these are the symbols of their power."

Fatah compensated for its relative weakness in the Gaza Strip by exploiting Hamas's in the West Bank. Hamas loyalists were abducted, in part to force the relief of comrades under attack in Gaza. On 27 January, the armed siege of the Gaza home of senior Fatah activist Mansur Shalayil was lifted after nine Hamas cadres in Nablus were abducted and threatened with summary execution if Shalayil was hurt. The nine were later freed unharmed. Similarly, on 5 February, Fatah gunmen in Ramallah abducted interior ministry official Arafat Said to swap him for one of Dahlan's nephews, who had been seized a day earlier in Gaza.

While the clashes went on, life in the northern Gaza Strip, where they were at their most intense, came to a virtually complete halt. Streets emptied, and even journalists were compelled to cover the fighting from their homes. A PA employee from the Strip's central region made it only to the outskirts of Gaza City: "I was warned by armed men that there were snipers everywhere and should not attempt to proceed any further." One couple related how they were stuck in buildings on opposite sides of the same street, "but until the following day neither of us dared risk crossing it to be with the other." In the words of a Gazan, "it was impossible to tell who was Fatah and who was Hamas, so better to remain indoors rather than be mistaken by one for the other."

Ultimately, the clashes proved inconclusive. Hamas sought, and failed, to deal Fatah a fatal blow, while Fatah's numerical superiority did not provide it with a distinct advantage. According to a PA security officer aligned with Fatah, "we took a real beating in the early rounds and were forced to demonstrate that we, too, can inflict painful blows to deter further attacks. That is why so many from Hamas were killed in late January. That is why the Islamic University was ransacked." For its part Hamas believed it established its superiority and attached particular importance to its 2 February interception in the central Gaza Strip of a supply convoy from Egypt intended for the Presidential Guard—the incident that brought a rapid end to the cease-fire agreed only shortly before. While the convoy carried equipment of potential military value such as flak jackets but apparently no arms, "it was a clear message, especially to the Americans. Don't try this because it will not work."

The geographic imbalance was one factor restraining the slide toward full-scale civil

war. Indeed, should the latter come to pass, conventional wisdom suggests Fatah will be defeated in the Gaza Strip, Hamas eliminated from most West Bank cities and—more importantly as far the Palestinian people are concerned—what remains of the occupied territories' unity annihilated. Another mitigating factor has been the purely political and opportunistic nature of the conflict which, given the composition of Palestinian society, is not magnified by ethnic or sectarian differences. Indeed, thus far neither party has succeeded in mobilizing civilian support or drawing other Palestinian organizations to its cause. This, too, helped pave the road to Mecca. . . .

#### IV. Inside Hamas

##### A. Hamas versus Hamas?

Of all the assumptions concerning Hamas, perhaps the most widespread is that the movement is divided between a radical, hard-line, and uncompromising external leadership and a more pragmatic and flexible internal one; that the Damascus-based leadership follows orders handed down by Syria and Iran; and that they (notably Politburo chairman Mashal) possess the final word. The belief is not a product of Western minds alone. It is shared and echoed by many Arab leaders—most notably Egyptian—and Fatah officials who argue that Haniya's more conciliatory moves have been blocked by Mashal and that Mashal has been following dictates from Damascus or Tehran. Asked why he appeared to equate the organization with its exiled Politburo chairman, Tawfiq Abu Khusa responded: "because we have the transcripts of his telephone calls to Palestine and they concern everything large and small." Others point to an incident in which Qassam Brigades deputy commander, Ahmad Jabari, is alleged to have bluntly informed Interior Minister Said Siam "I don't take my orders from you"—an apparent reference to higher authorities in Syria.

Divisions within the movement undoubtedly exist. Sensitivities are based on geography, ideology, and membership in government, the political branch, or the military wing. The relative influence of Hamas's constituent parts has waxed and waned over the years in accordance with changing circumstances. The movement's most prominent West Bank leaders, for example, have—like Jamal Mansur and Jamal Salim in 2001—either been assassinated or, as with numerous others, imprisoned by Israel since

2002. This in part helps explain their successors' failure to sway their colleagues in the other leadership centers against participation in the 2006 legislative elections. Similarly, Israel's 2002–2004 killings of the movement's founder and leader, Shaikh Ahmad Yasin, and four of its most influential Gaza leaders—Abd-al-Aziz Rantisi, Ismail Abu Shanab, Ibrahim Maqadma, and Salah Shihada—significantly increased the influence of the veteran leadership in exile, and particularly of Mashal, which had been in relative decline following Yasin's 1997 release from Israeli imprisonment.

The leading role played by the Qassam Brigades in Hamas's ascendancy since 2000, the hundreds of casualties they have sustained and inflicted, together with the increasing appeal of militancy in the context of renewed conflict and hardship has given the military wing a much greater voice. The same might be said of the prison population, which has grown exponentially in recent years. That the Hamas signatory to the May 2006 Prisoners' Initiative, Abd-al-Khaliq Natsheh, was both a prisoner and a military commander was no coincidence; his background gave him a degree of credibility not many others within the movement possess, making it difficult for detractors to reject the document or denounce him for signing it without the movement's prior endorsement.

The installation of a Hamas prime minister and cabinet created a new locus of power outside the movement's formal structures that has a greater stake in the government's success and that the rest of the movement must take into account. Unlike Fatah, whose senior leaders (including Arafat and Abbas) assumed top PA posts—thus blurring the line between movement and government—Hamas's leaders are in Damascus and, in contrast to many Fatah Central Committee members during 1996–2006, not even members of parliament. The most senior Hamas politician in the occupied territories, Mahmoud Zahhar, assumed the foreign ministry portfolio rather than the premiership. Going further in establishing that distinction, members who have taken senior PA positions reportedly recused themselves from senior positions in the movement. "They remain members of Hamas and contribute to its internal discussions, but you can't, for example, be a PA minister and at the same time remain a member of the Consultative Council [*majlis sbura*] or Politburo [*maktab siyasi*]."

Different explanations are given, among them that "Hamas understands that the government is subject to different pressures and may need to make decisions that are different from the movement's." The corollary is that where a clash of interests occurs, Hamas must be relieved of responsibility for PA policies that contradict its basic principles; where this is not possible, the movement's interests supersede the government's and not the other way around—thus, for example, the insistence by Hamas that it will not participate in any government that explicitly recognizes Israel.

This complex picture is at odds with the simplistic notion of a Damascus vs. occupied territories divide, let alone that of an all-powerful Mashal. Some of the least flexible elements are based in Gaza, not Damascus, members of its Consultative Council dominated by clerics, or of the armed wing over which Mashal reportedly has formal though far from absolute control. According to those who have negotiated with the Islamists, its leaders have not coalesced into rigid rival camps but rather form a series of fluid and shifting alliances. "Different elements within Hamas show flexibility on different issues."

Decisions typically are made by consensus, and while not all leaders have equal power, none can be ignored. For senior Islamist legislator Salah Bardawil:

Hamas is a coherent democratic movement, and no single level in the organization can dictate to the others. Neither Khalid Mashal nor Ismail Haniya can take decisions on behalf of the movement, and every decision must go through the necessary decision-making levels before it becomes policy.

It is not only Hamas that insists it functions as an institution. A Palestinian who has mediated between Hamas and Fatah remarks that the Islamist movement "is not a one-man show. Some leaders are more influential than others, but none owns its decisions." Members of other Palestinian movements—including Fatah and other rivals—also acknowledge this, adding that "it is a phenomenon that should be studied and learned from." "Consultation [*sbura*]," adds a Palestinian mediator, "safeguards the decision-making process. It prevents hasty, individual decisions and helps ensure that decisions taken by Hamas will stick. It helps contain and conceal dissent." The depth and intensity of divisions are therefore difficult to assess, because "once Hamas takes a decision every member presents it as their

personal point of view.” Indeed, the Islamists’ bottom line regarding the political system, Israel, and the world beyond has been clearly expressed by Mashal, Abu Marzuq, Haniya, and other leadership elements inside and outside the occupied territories with consistency. It is democratic centralism with an Islamist twist.

That Mashal ultimately exercises greater power may well be true; as a Palestinian analyst comments:

Power reflects guns and money, like any other organization. The money comes from outside, and the military wing is subordinate to the Politburo, so this combination makes Mashal very powerful. At the same time, the Hamas leadership in government has become stronger by virtue of its position. But Hamas has institutions, and Mashal can’t impose his will on the rest if they don’t agree with him.

Misconceived analysis has led to misdirected policies. These include efforts by Fatah and others to bypass Mashal, dealing exclusively with Haniya in order to foster divisions within the movement and bolster so-called pragmatic forces. Such attempts regularly failed. As the Mecca Agreement illustrates, progress was made only when the two participated together, the Saudi-led negotiations being the first time that occurred. This is not, according to a Palestinian mediator, because Mashal is the organization’s supreme arbiter, but rather because “he can’t be bypassed.”

By the same token, those hoping that pressures on Hamas will lead to a schism within the movement are likely to be disappointed. Since the only previous organizational rupture experienced by the Islamists—the separation of radical Muslim Brotherhood elements in the late 1970s to form Islamic Jihad—the movement repeatedly has taken difficult strategic decisions without sustaining significant organizational damage. These have included the formation of Hamas in the late 1980s; the post-Oslo policy of neither confronting the PA nor participating in its elections and institutions; the 2005 decision to pursue integration with the PA through elections; the unilateral cease-fires of 2003 and 2005; and, in the 2006 National Conciliation Document, explicit endorsement of a Palestinian state in the areas occupied by Israel in 1967.

Corporal Shalit’s fate is another example of questionable analysis. In the months since Palestinian militants captured him on 25 June 2006, Haniya often has been blamed

for having been taken by surprise by the operation, appearing in the dark about the soldier’s status and prisoner exchange negotiations. Yet, there is reason to believe this reflects a natural division of labor instead of deep organizational strains.

Did Haniya’s critics expect him to order the attack, imprison the soldier in the prime minister’s office, and lead the negotiations for a prisoner exchange? It is a Hamas file, not a government one. When Haniya says he has no control over the Qassam Brigades and no knowledge of their activities, it’s a reflection of reality, not an admission of defeat.

Rather than reflecting a decision by Mashal (according to some versions an unsuccessful attempt to sabotage the National Conciliation Document of that same day), the operation more probably was a collective undertaking. “The political leadership will take a decision, such as renunciation of the cease-fire, and lay down general parameters—for example that military operations can be resumed but not suicide attacks within Israeli cities. How, when, and where this is translated on the ground is determined by the Qassam Brigades according to local conditions.”

U.S., Israeli, and Egyptian officials have since blamed Mashal and, more precisely, Tehran and Damascus, for undermining negotiations over a possible prisoner exchange. According to an Egyptian official, “on several occasions, we have been close to a deal. But then Iran or Syria said ‘no,’ and Mashal blocked it. We have no doubt that the internal leadership would have said ‘yes.’” This analysis suggests hard-line forces have been seeking to thwart any chance for progress. An alternative theory, at least equally plausible and as of yet wholly untested, is that Hamas views Corporal Shalit as one of its few available forms of leverage and that it has sought to extract other concessions—including on its ability to govern—before giving him up. Its leaders might not have seen the point of exchanging him at a time when Hamas was under intense internal and external military, political, and economic pressure with no end in sight.

### *B. Has Pressure Worked?*

...

1. Hamas and the Palestinian Public  
Reviewing an eventful year, Hamas spokesman and legislator Mushir Masri insists that “the present is better than the past for Hamas. Time is on its side.” Asked to

identify specific achievements, he responds confidently:

We have achieved the legitimization of resistance. It is now defined as a right by a formal Palestinian political decision rather than condemned. We have demonstrated that jihad and politics complement each other. We have begun the construction of a new political equation, based on fixed principles [*tbawabit*] forming red lines not subject to renunciation or backtracking. We are getting our people out of the state of corruption that dominated the system before the elections, and we have achieved self-reliance rather than throwing ourselves at the mercy of the Americans.

Our popularity is neither less nor more. Look at the election results of the professional associations. We won 85 percent of the seats in the Nurse's Association at the height of the crisis in September. We had never done so well.

Having survived the better part of a year despite crippling international sanctions and an unprecedentedly strict Israeli siege, Israeli offensives throughout the occupied territories and escalating clashes with Fatah, Hamas has in recent months been exuding growing self-confidence. In part this is accounted for by domestic realities. "Fatah assured the Americans that three months of sanctions would be sufficient to bring us down, but nothing happened." The failure of the civil service strike that commenced in September 2006, and the absence of anything approaching popular unrest, has further put the Islamists at ease. So, too, has Fatah's inability to pull itself together after the January 2006 elections.

Among Palestinians, Hamas also garners praise from those who believe it has introduced dedication and accountability to government. "Of course they're acting in the best interests of the Palestinian people," commented a woman in the Gaza Strip who voted for the Islamists but is otherwise unaffiliated with the movement: "Why else do you think the West is determined to get rid of them and starving us? If they were corrupt and selling us out, Haniya would be having breakfast with Bush and dinner with Blair every day." The government has also put its limited resources to good use in order to retain public support. After it reduced already symbolic annual school fees to an insignificant \$5 and provided many poorer pupils with free bags and supplies, a housewife insisted this demonstrated its fealty to the people. "God preserve Hamas and its leaders," she exclaimed.

Hamas's trump cards, however, are Israel and the Quartet. Not only do Israeli and

Western hostility guarantee any Palestinian leader at least several additional percentage points in public support, but the sanctions also allow it to deflect responsibility for the Palestinians' suffering. A Palestinian in the central Gaza Strip observed: "The problem is not that they're stuffing their pockets with the people's money like those before them, but that all of our pockets are being emptied by Israel, the U.S., and the Europeans. How can we say this government has succeeded or failed? We'll only be able to judge when those who used to fund corruption allow Hamas to show its qualities." Among Fatah members, many of whom insist Hamas "is incapable of governing because it doesn't understand the difference between a charity and government and thinks it can substitute slogans for experience," the complaint that Western sanctions have effectively delayed their return to power has not been uncommon.

That said, Palestinians who readily express discontent with their current government are not difficult to find. In the words of a civil servant, "better to be fed by thieves than to starve on account of angels." Others complain of political favoritism and nepotism in PA ministries, concluding that power is corrupting Hamas as readily as it did Fatah. "Their conflict is about which of them eats how much of the pie, and Palestine and its people be damned."

In this respect nothing has been quite as damaging to Hamas's popular standing as the internecine fighting with Fatah. The view that "they are no different" and are just as factional and committed to hegemony as their adversaries has in recent months become increasingly widespread, and proven much more damaging to the Islamists—who campaigned on the basis that they were different—than it has been to Fatah. Given Hamas's sensitivity to popular mood, it is this, much more than the effects of sanctions on public opinion, that contributed to its flexibility in Mecca.

On the whole those advocating a Fatah restoration appear far fewer in number than those expressing discontent about the Islamists. Hamas's loss is therefore not necessarily, and in the short run unlikely to be, Fatah's gain. Many—including sympathizers—accuse Fatah of having "learned nothing" from its electoral defeat. Apathy, and to a lesser extent other parties, probably will be the main beneficiaries of disillusionment with Hamas. All things considered, and these include not only public opinion polls

showing greater support for Fatah but also its abiding fragmentation, there is little reason to question the assessment of many independent analysts and also Palestinian politicians that the result of any new elections, though they may reflect decreasing levels of support for Hamas, are unlikely to differ substantially from the last ones.

## 2. Hamas and Israel

As Hamas has sought to break out of its isolation, it has gradually moved toward consensual international positions. To that extent, the policy can be said to have partially achieved its goals. But there are two important caveats: first, a similar evolution likely could have been obtained through careful engagement and at a far lower price in Palestinian lives and well-being; secondly, that Hamas appears to have moved as far as it will for the time being, so further pressure is highly unlikely to translate into further results.

Indeed, as noted previously, the political platform embodied in the Mecca agreement is not a significant departure: to a very large extent, it reflects compromises reached first in the 11 May 2006 prisoner's initiative and later in the 25 June 2006 National Conciliation Document. Hamas leaders insist they had already accepted a formula that is consistent with a two-state settlement—the National Conciliation Document, which clearly sets out a Palestinian state on the territories occupied by Israel in 1967 as the common objective of the Palestinian national movement, and mandates President Abbas to conduct negotiations to achieve this goal. They say, too, that they had agreed at the time that any agreement would be submitted to a national referendum, whose outcome they would honor. The months of wrangling that followed had little to do with extracting further Hamas concessions and much to do with both sides seeking to shift the balance of power on the ground.

What is more, these positions largely are in line with those enunciated by Hamas since before the elections and documented in prior Crisis Group reports. That these have now become formal Hamas positions is not an insignificant achievement; but the evolution was implicit for some time, and there is every reason to believe that a more open dialogue with the movement's leaders would have yielded the same outcome.

By the same token, there is no reason to believe that Hamas would respond to further pressure by explicitly complying with the

Quartet conditions, however desirable that would be. The Mecca agreement, claims to the contrary by some Palestinians notwithstanding, does not meet this standard and in particular does not express recognition of Israel or acceptance of a two-state solution as the end of the Israeli-Palestinian conflict. That is something that, in countless discussions with Crisis Group, Hamas leaders repeatedly emphasized.

On recognition, our position is this: we are prepared to deal with Israel on day-to-day matters. We are prepared to have President Abbas negotiate a peace agreement with Israel. And we are prepared to have any agreement submitted to a national referendum. No more, no less.

Hamas leaders also explain that they are prepared to enter into a long-term and renewable *budna* (truce) with Israel, assuming release of Palestinian detainees; withdrawal to the lines of 1967; and dismantling of settlements. What would happen at the truce's expiration, they say, "will be up to future generations. By then, they will have learned to live under different, more normal conditions. Who knows what they will decide."

In explaining why they cannot go further, Hamas officials offer two rationales, one ideological the other more pragmatic. Formal acceptance of the two-state solution, even in the context of the Arab League initiative (full withdrawal to the borders of 1967 in exchange for full normalization of relations and recognition) is incompatible with Hamas's religious worldview according to which all Palestinian land is an Islamic trust in perpetuity [*waqf*]. At the same time, Islamist officials argue that were they to take that step, more hard-line elements of the movement would split:

Fatah was deserted by those who were disappointed with its stance toward Israel. That is how Hamas came into being. We don't want to be deserted by those who will be disappointed by our stance—and the West shouldn't want that either. Today, the West has a historic opportunity: for the first time ever, all Palestinian organizations have agreed on the establishment of a state on the 1967 territories as a common political program. Seize this chance. Do not ask us for more—to say that this would end our conflict, that it would satisfy our claims. We would lose the people if we did so.

The organizational position of Hamas, in other words, is that a two-state arrangement would be an interim rather than permanent settlement and that while, as noted above, it recognizes that Israel is a reality it will never

recognize the moral legitimacy of the Jewish state. In the words of a Hamas official, “the West should be careful about its demands. Does it want leaders who tell it what it wants to hear but can’t deliver, or leaders who can carry their people with them because they know what they can and cannot accept?”

Summing up, Ziad Abu Amr, the independent member of the PLC [Palestinian Legislative Council] who is slated to become the next foreign minister, said:

Hamas has made a lot of concessions in a short time. They have accepted a state within the 1967 boundaries, Arab and international legitimacy [i.e., the collective corpus of resolutions issued by the UN and Arab League organizations], UN General Assembly Resolution 194, the PLO as the sole legitimate representative of the Palestinian people, and committed to honor existing agreements. Hamas is not obstructing, but the extent of the transition some want in such a short period of time is beyond the capabilities of a movement whose *raison d’être* is resistance. It would be too much to handle and risk internal splits.

Considering the principles on which it was established Hamas is—from their perspective and mine—moving very fast. What they have done in six months took the PLO decades. The challenge is how to transform without risking splits, polarization, or loss of credibility.

There is little doubt that no Israeli government would agree to Hamas’s proposal—at most, the promise of a long term truce in exchange for a withdrawal to the lines of 1967, while additionally insisting on the right of Palestinian refugees to return to homes within Israel, validating suspicion that it is only the first stage in a longer-term project in which Israel does not have a place. But the goal of the international community should be to use such statements along with formation of a national unity government as a means of achieving a cease-fire, further encouraging Hamas’s evolution and accelerating talks between the PLO and Israel on a final settlement. If a peace agreement is reached, it should be put before a national referendum, giving the people—not Hamas—the final say. If it is not, Hamas’s position on whether it recognizes Israel will be, alas, the least of the international community’s worries.

## ARAB

### B1. HAMAS DELEGATION, DRAFT PROPOSAL FOR A FIVE-YEAR TRUCE WITH ISRAEL, N.P., LATE SUMMER 2006.

*This unofficial document drafted by a Hamas delegation working with research*

*institutes linked to the Swiss, British, and Norwegian governments, lays out what would be required of Israelis and Palestinians to achieve a five-year truce as a step toward a permanent peace and the establishment of “two states living side by side.” Hamas never officially acknowledged the document, entitled “Proposal for Creating Suitable Conditions for Ending the Conflict,” but the fact that the Hamas delegation was headed by Dr. Ahmad Yusuf, political adviser to Ismail Haniyeh, makes it significant. The text of the document, first published by the PLO news service Wafa on 10 September 2006 and reprinted by al-Hayat on 24 December 2006, was translated by Brian Wood of the Institute for Palestine Studies.*

1. Israeli withdrawal from the West Bank to a temporary, agreed upon line.

2. A *budna* to last five years. No Palestinian attack will be launched inside Israel or on Israelis wherever they are. Similarly, no Israeli attacks will be launched on Palestinian land or on Palestinians wherever they are.

3. Israel will not take any steps that change the status quo in the areas that were not subject to its control on 4 June 1967, nor will it build new housing units in settlements or build new roads or alter natural areas.

4. Palestinians will have unhindered access to East Jerusalem as well as free movement in the rest of the occupied West Bank.

5. Freedom to travel between Gaza and the West Bank and vice versa, as well as to Egypt and Jordan.

6. International supervision: Any breach of points 1-5 above will be considered a breach of the *budna*.

#### **Rationale:**

This *budna* will serve as a step to calm the atmosphere between Israelis and Palestinians in order to move forward as part of a serious process to establish two states, side by side, favorable to life in the future. This *budna* will be considered a preparatory and serious step toward reaching a permanent peace agreement with Israel.

It will give both peoples, Israeli and Palestinian, the opportunity to come to trust one another and open future opportunities. If the *budna* is successful, it will allow the Islamic world to grant the Palestinian government more room and the freedom to investigate ways to solve the conflict with Israel for good.

The Palestinian vision after the *budna* is as follows: A Palestinian state on all land occupied in 1967 with East Jerusalem as its capital while upholding the principle of the right of return.

**The Immediate Goal:**

[The immediate goal] is an end to the circle of armed confrontation, including all Palestinian and Israeli attacks on each other and ending the international economic and political isolation of the Palestinian government. This will help the Palestinian people and allow them to build their own economy and achieve a measure of economic prosperity.

**Palestinian Responsibilities:**

1. Honor the *budna* that
  - a. Will last for five years;
  - b. Is obligatory for all Palestinian factions;
  - c. Is applied to all of Israel and the Palestinian lands occupied in 1967.
2. Stop all forms of armed activity inside Israel and end targeting Israelis wherever they are.
3. Facilitate the establishment of joint Israeli-Palestinian projects and zones (industrial, agricultural, etc.) between Gaza, the West Bank, and Israel.
4. Continue normal trade relations with Israel.
5. Ensure transfer of all international funds to governmental activities and projects, not to Hamas. For this purpose, the government will form an independent committee comprised of Palestinian academics and professionals that will work directly with the international community and submit reports to it. This committee will oversee the usage of government funds and aver that the government is honoring the international guidelines [for its usage].
6. Present transparent reports on disbursement of incoming funds from Arab or Islamic sources that should go directly to the Ministry of Finance.
7. Grant the desired security assurances for the freedom of movement and trade with the rest of the world (such as those in force at the Rafah border crossing).
8. Complete adherence to international standards concerning democracy, the rule of law, and good governance.
9. Complete respect for applicable international law, including the Geneva Conventions.

**Israeli Responsibilities:**

1. Honor the *budna* that
  - a. Will last for five years;
  - b. Will be honored by all branches of the Israeli security services;
  - c. Is applied to all of Israel and the Palestinian lands occupied in 1967.
2. Stop all warlike activity in Palestinian land occupied in 1967 and all (targeted) assassinations against Palestinians wherever they are in the world, as well as removing all military checkpoints on Palestinian land occupied in 1967.
3. Freeze all Israeli construction (settlements, roads, schools, etc.) outside of the area that Israeli controlled on 4 June 1967, including the wall/fence.
4. Free all political prisoners.
5. Ensure freedom of movement and trade between Gaza, the West Bank, occupied Palestinian land, and the outside world.
6. Allow the Gaza International Airport and the sea port to be rebuilt (according to previous agreements) as well as the airport in the West Bank (Qalandia Airport).
7. Allow Palestinians in the West Bank and Gaza to enter East Jerusalem freely, allow Palestinians with Jerusalem IDs to enter the West Bank and Gaza with their Jerusalem IDs, and ensure their free participation in Palestinian political life.
8. Establish joint Israeli-Palestinian economic projects and zones (industrial, agricultural, etc.) between Gaza, the West Bank, and Israel and ensure that Palestinian laborers have access to the Israeli labor market.
9. Complete respect for applicable international law, including the Geneva Conventions.

**Role of the International Community:**

The international community will work to preserve the *budna* and participate in building trust between the two parties. It will also play a role in stopping the occurrence of any shortcomings in implementing previous agreements.

For this purpose, a multinational force will be formed under the leadership of the Quartet and Turkey whose mission will be to oversee the adherence of both parties to the conditions of the *budna*. Likewise, [the multinational force] will provide security guarantees, facilitate aid, ensure the implementation of the agreement, and solve disputes related to it, and take punitive measures in situations where the agreement is breached.



Further, it will present reports on a regular basis to the UN Security Council concerning both parties' respect for all aspects of the *budna*.

**B2. PA PRESIDENT MAHMUD ABBAS AND HAMAS POLITICAL LEADER KHALID MISHAL, MECCA ACCORD, MECCA, 7 FEBRUARY 2007.**

*Brokered by Saudi Arabia in Mecca, the agreement between Fatah and Hamas laid the ground for the formation of a national unity government. The agreement was accompanied by a letter from PA president Mahmud Abbas inviting Ismail Haniyeh to form a new government and a document concerning the attribution of portfolios in the new cabinet. Noteworthy in Abbas's letter is his request that Haniyeh "abide by the interests of the Palestinian people and to preserve their rights... and work on achieving their national goals as ratified by the resolutions of the Palestine National Council meetings and the Basic Law articles and the national conciliation document and Arab summit resolutions, and, based on this, I call upon you to respect the Arab and international legitimacy resolutions and agreements signed by the PLO."*

*The text of the agreement, the Abbas letter to Haniyeh, and the preliminary agreement on portfolios were published by al-Ayyam newspaper on 9 February 2007 and translated by Agence France-Presse (available online at [www.jmcc.org](http://www.jmcc.org)).*

Based on the generous initiative announced by Saudi King Abdallah Bin 'Abd al-'Aziz and under the sponsorship of his majesty, Fatah and Hamas movements held in the period 6–8 February 2007 in Holy Mecca the dialogues of Palestinian conciliation and agreement and these dialogues, thanks to God, ended with success and an agreement was reached on the following:

*First:* to ban the shedding of Palestinian blood and to take all measures and arrangements to prevent the shedding of Palestinian blood; to stress the importance of national unity as the basis for national steadfastness and confronting the occupation and to achieving the legitimate national goals of the Palestinian people; and to adopt the language of dialogue as the sole basis for solving political disagreements in the Palestinian arena.

Within this context, we offer gratitude to the brothers in Egypt and the Egyptian security delegation in Gaza, who exerted tremendous efforts to calm conditions in the Gaza Strip during the recent period.

*Second:* Final agreement to form a Palestinian national unity government according to a detailed agreement ratified by both sides and to start on an urgent basis to take the constitutional measures to form this government.

*Third:* to move ahead in measures to activate and reform the Palestine Liberation Organization and accelerate the work of the preparatory committee based on the Cairo and Damascus understandings.

Both sides have agreed on detailed steps regarding this issue.

*Fourth:* to stress the principle of political partnership on the basis of the effective laws in the Palestinian Authority and on the basis of political pluralism according to an agreement ratified between both parties.

We gladly announce this agreement to the Palestinian masses and to the Arab and Islamic nation and to all our friends in the world. We stress our commitment to this agreement in text and spirit so that we can devote our time to achieving our national goals and to ridding ourselves of the occupation and regaining our rights and devoting work to the main dossiers, mainly Jerusalem, refugees, al-Aqsa mosque, prisoners and detainees, and confronting the wall and settlements.

**ISRAEL**

**C1. HIGH COURT OF JUSTICE, DECISION ON THE LEGALITY OF TARGETED ASSASSINATIONS, SUMMARY OF JUDGMENT, JERUSALEM, 14 DECEMBER 2006.**

*After several years of delays, the High Court of Israel finally issued a ruling (HCJ 769/02, The Public Committee against Torture in Israel v. The Government of Israel) on the legality of Israel's policy of targeted killings. The three-judge panel—the last on which Chief Justice Abaron Barak sat before retiring—unanimously upheld the policy, fixing some legal limits but leaving wide latitude to the IDF and Shin Bet for interpreting those limits. The case had been brought against the government in 2002 by two human rights groups, the Public Committee against Torture in Israel and the Palestinian Society for the Protection of Human Rights and the Environment. The Associated Press quoted Israeli army colonel Pnina Sbarvit Baruch, head of the military's international law department, as saying that "everything in the decision is compatible with our existing policy." The full text of the ruling can be found on the High Court*

of Israel's English-language Web site at [elyon1.court.gov.il/eng/system/index.htm](http://elyon1.court.gov.il/eng/system/index.htm).

The Government of Israel employs a policy of "targeted killings" which cause the death of terrorists who plan, launch, or commit terrorist attacks in Israel and in the area of Judea, Samaria, and the Gaza Strip, against both civilians and soldiers. These strikes at times also harm innocent civilians. Does the State thus act illegally? That was the question posed before the Supreme Court.

### ***International Armed Conflict***

The Supreme Court, in a judgment delivered by the President (ret.) A. Barak, with President D. Beinisch and Vice President E. Rivlin concurring, decided that the starting point of the legal analysis is that between Israel and the terrorist organizations active in Judea, Samaria, and the Gaza Strip, there exists a continuous situation of armed conflict. This conflict is of an international character (international armed conflict). Therefore, the law that applies to the armed conflict between Israel and the terrorist organizations is the international law of armed conflicts. It is not an internal state conflict that is subject to the rules of law enforcement. It is not a conflict of a mixed character.

A fundamental principle of the customary international law of armed conflict is the principle of distinction. It distinguishes between combatants and civilians. Combatants are, in principle, legitimate targets for military attack. Civilians, on the other hand, enjoy comprehensive protection of their lives, liberty and property. The Supreme Court rejected the view according to which international law recognizes a third category of "unlawful combatants."

### ***Harm to Civilians***

The Supreme Court decided that members of the terrorist organizations are not combatants. They do not fulfill the conditions for combatants under international law. Thus, for example, they do not comply with the international laws of war. Therefore, members of terrorist organizations have the status of civilians. However, the protection accorded by international law to civilians does not apply at the time during which civilians take direct part in hostilities. This too is a fundamental principle of customary international law. It is expressed in Article 51(3) of the 1977 Additional Protocol I to the Geneva Conventions which states as follows: "Civilians shall enjoy the protection afforded by this section, unless

and for such time as they take a direct part in hostilities."

Thus, a civilian, in order to enjoy the protections afforded to him by international law during an armed conflict, must refrain from taking a direct part in the hostilities. A civilian who violates this principle and takes direct part in hostilities does not lose his status as a civilian, but as long as he is taking a direct part in hostilities he does not enjoy the protections granted to a civilian. He is subject to the risks of attack like those to which a combatant is subject, without enjoying the rights of a combatant, e.g. those granted to a prisoner of war.

When can it be said that a civilian takes part in *hostilities*? Hostilities are acts which are intended to harm the army or civilians. A civilian takes part in hostilities when he is engaged in such acts, or when he prepares himself for such acts. It is not required that he carries or uses arms.

When can it be said that a civilian takes a *direct part* in hostilities? A civilian bearing arms (openly or concealed) who is on his way to the place where he will use them, or is using arms, or is on his way back from such a place, is a civilian taking a direct part in hostilities. So are those who decide on terrorist acts or plan them, and those who enlist others, guide them and send them to commit terrorist acts. On the other hand, civilians who offer general support for hostilities, such as selling of food, drugs, general logistic aid, as well as financial support, take an indirect part in hostilities.

How shall we understand the scope of the words "*for such time*" during which the civilian is taking direct part in hostilities? A civilian taking a direct part in hostilities one single time, or sporadically, who later detaches himself from that activity, is a civilian who, starting from the time he detaches himself from that activity, is entitled to protection from attack. He is not to be attacked for the hostilities which he committed in the past. On the other hand, a civilian who has joined a terrorist organization and commits a chain of hostilities, with short periods of rest between them, loses his immunity from attack for the entire time of his activity. For such a civilian, the rest between hostilities is nothing other than preparation for the next act of hostilities. These examples point out the dilemma regarding the requirement which "for such time" presents before us. On the one hand, a civilian who took a direct part in hostilities once, or sporadically, but detached himself from them (entirely, or

for a long period) is not to be harmed. On the other hand, the “revolving door” phenomenon, by which each terrorist can rest and prepare for the next act of hostilities while receiving immunity from attack, is to be avoided. In the wide area between those two possibilities, one finds the “gray” cases, about which customary international law has not yet crystallized. There is thus no escaping examination of each and every case. In that context, the following four things should be said:

*First*, well based, strong and convincing information is needed before categorizing a civilian as falling into one of the discussed categories. Innocent civilians are not to be harmed. Information which has been most thoroughly verified is needed regarding the identity and activity of the civilian who is allegedly taking a direct part in the hostilities. The burden of proof on the army is heavy. In the case of doubt, careful verification is needed before an attack is made.

*Second*, a civilian taking a direct part in hostilities cannot be attacked if a less harmful means can be employed. A civilian taking a direct part in hostilities is not an outlaw (in the original sense of that word—people deprived of legal rights and protection for the commission of a crime). He does not relinquish his human rights. He must not be harmed more than necessary for the needs of security. Among the military means, one must choose the means which least infringes upon the humans rights of the harmed person. Thus, if a terrorist taking a direct part in hostilities can be arrested, interrogated, and tried, those are the means which should be employed. Arrest, investigation, and trial are not means which can always be used. At times the possibility does not exist whatsoever; at times it involves a risk so great to the lives of the soldiers, that it is not required.

*Third*, after an attack on a civilian suspected of taking an active part, at such time, in hostilities, a thorough investigation regarding the precision of the identification of the target and the circumstances of the attack upon him is to be performed (retroactively). That investigation must be independent. In appropriate cases compensation should be paid as a result of harm caused to an innocent civilian.

*Fourth*, every effort must be made to minimize harm to innocent civilians. Harm to innocent civilians caused during military attacks (collateral damage) must be proportional. That is, attacks should be carried out only if the expected harm to innocent civil-

ians is not disproportional to the military advantage to be achieved by the attack. For example, shooting at a terrorist sniper shooting at soldiers or civilians from his porch is permitted, even if an innocent passerby might be harmed. Such harm conforms to the principle of proportionality. However, that is not the case if the building is bombed from the air and scores of its residents and passersby are harmed. Between these two extremes are the hard cases. Thus, a meticulous examination of every case is required.

### ***Jusiticiability***

The Supreme Court rejected the position of the State that the issue of targeted killings is not justiciable.

*First*, this position must be rejected in cases that involve impingements upon human rights.

*Second*, the disputed issues in this petition are of legal nature. They involve questions of customary international law.

*Third*, these issues were examined by international courts and tribunals. Why do those questions, which are justiciable in international courts, cease to be justiciable in national courts?

*Fourth*, the law dealing with preventative acts on the part of the army which cause the deaths of innocent civilians requires *ex post* examination of the conduct of the army. That examination must—thus determines customary international law—be of an objective character. In order to intensify that character, and ensure maximum objectivity, it is best to expose that examination to judicial review. That judicial review does not replace the regular monitoring of the army officials performed in advance. In addition, that judicial review is not review instead of *ex post* objective review, after an event in which it is alleged that innocent civilians who were not taking a direct part in hostilities were harmed. After the (*ex post*) review, judicial review of the decisions of the objective examination committee should be allowed in appropriate cases. That will ensure its proper functioning.

### ***The Scope of Judicial Review***

The Supreme Court decided that the scope of judicial review of the decision of the military commander to perform a preventative strike causing the deaths of terrorists, and at times of innocent civilians, varies according to the essence of the concrete question raised. On the *one* end of the spectrum stands the question regarding the content of international law dealing

with armed conflicts. That is a question of determination of the applicable law, par excellence. That question is within the realm of the judicial branch. On the *other* end of the spectrum of possibilities is the decision, made on the basis of the knowledge of the military profession, to perform a preventative act which causes the deaths of terrorists in the area. That decision is the responsibility of the executive branch. It has the professional-security expertise to make that decision. The Court will ask itself if a reasonable military commander could have made the decision which was made. Between these two ends of the spectrum, there are intermediate situations. Each of them requires a meticulous examination of the character of the decision. To the extent that it has a legal aspect, it approaches the one end of the spectrum. To the extent that it has a professional military aspect, it approaches the other end of the spectrum.

***A Democracy Fights with One Hand Tied behind Her Back: The Ends Do Not Justify the Means***

In conclusion, the Supreme Court observes that in a democracy, the fight against terror is subject to the rule of law. In its fight against international terrorism, Israel must act according to the rules of international law. These rules are based on balancing. We must balance security needs and human rights. The need to balance casts a heavy load upon those whose job is to provide security. Not every efficient means is also legal. The ends do not justify the means. In one case the Court decided the question whether the state was permitted to order its interrogators to employ special methods of interrogation which involved the use of force against terrorists, in a "ticking bomb" situation. The Court answered that question in the negative. In President Barak's judgment, he described the difficult security situation in which Israel finds itself, and added:

We are aware that this judgment of ours does not make confronting that reality any easier. That is the fate of democracy, in whose eyes not all means are permitted, and to whom not all the methods used by her enemies are open. At times democracy fights with one hand tied behind her back. Despite that, democracy has the upper hand, since preserving the rule of law and recognition of individual liberties constitute an important component of her security stance. At the end of the day, they strengthen her and her spirit, and allow her to overcome her difficulties. (HCJ 5100/94 *The Public Committee against Torture in Israel v. The State of Israel*, 53[4] PD 817, 845)

***The Decision***

Thus it is decided that it cannot be determined in advance that every targeted killing is prohibited according to customary international law, just as it cannot be determined in advance that every targeted killing is permissible according to customary international law. The law of targeted killing is determined in the customary international law, and the legality of each individual such act must be determined in light of it.

**C2. HA'ARETZ, ET AL., SUMMARY LIST OF TRAVEL RESTRICTIONS IN THE WEST BANK, JERUSALEM, JANUARY 2007.**

*Notwithstanding Prime Minister Ehud Olmert's commitments to Palestinian Authority president Mahmud Abbas during their 24 December 2006 meeting in Jerusalem, an investigation by Ha'Aretz, in cooperation with the UN Office for the Coordination of Humanitarian Affairs and the Israeli NGO Machsom Watch, found that little had changed with regard to freedom of movement restrictions in the West Bank. The following list of prohibitions was reproduced from Amira Hass's 19 January 2007 Ha'Aretz article entitled "Impossible Travel."*

***Standing Prohibitions***

- Palestinians from the Gaza Strip are forbidden to stay in the West Bank.
- Palestinians are forbidden to enter East Jerusalem.
- West Bank Palestinians are forbidden to enter the Gaza Strip through the Erez crossing.
- Palestinians are forbidden to enter the Jordan Valley.
- Palestinians are forbidden to enter villages, lands, towns and neighborhoods along the "seam line" between the separation fence and the Green Line (some 10 percent of the West Bank).
- Palestinians who are not residents of the villages Bayt Furik and Bayt Dajan in the Nablus area, and Ramadin, south of Hebron, are forbidden entry.
- Palestinians are forbidden to enter the settlements' area (even if their lands are inside the settlements' built area).
- Palestinians are forbidden to enter Nablus in a vehicle.
- Palestinian residents of Jerusalem are forbidden to enter area A (Palestinian towns in the West Bank).
- Gaza Strip residents are forbidden to enter the West Bank via the Allenby crossing.

- Palestinians are forbidden to travel abroad via Ben-Gurion Airport.
- Children under age 16 are forbidden to leave Nablus without an original birth certificate and parental escort.
- Palestinians with permits to enter Israel are forbidden to enter through the crossings used by Israelis and tourists.
- Gaza residents are forbidden to establish residency in the West Bank.
- West Bank residents are forbidden to establish residency in the Jordan valley, seam line communities, or the villages of Bayt Furik and Bayt Dajan.
- Palestinians are forbidden to transfer merchandise and cargo through internal West Bank checkpoints.

#### ***Periodic Prohibitions***

- Residents of certain parts of the West Bank are forbidden to travel to the rest of the West Bank.
- People of a certain age group—mainly men from the age of 16 to 30, 35, or 40—are forbidden to leave the areas where they reside (usually Nablus and other cities in the northern West Bank).
- Private cars may not pass the Swahara–Abu Dis checkpoint, which separates the northern and southern West Bank. (This was canceled for the first time two weeks ago under the easing of restrictions.)

#### ***Travel Permits Required***

- A magnetic card (intended for entrance to Israel, but eases the passage through checkpoints within the West Bank).
- A work permit for Israel. (The employer must come to the civil administration offices and apply for one.)
- A permit for medical treatment in Israel and Palestinian hospitals in East Jerusalem. (The applicant must produce an invitation from the hospital, his complete medical background and proof that the treatment he is seeking cannot be provided in the occupied territories.)
- A travel permit to pass through Jordan Valley checkpoints.
- A merchant's permit to transfer goods.
- A permit to farm along the seam line requires a form from the land registry office, a title deed, and proof of first-degree relations to the registered property owner.
- Entry permit for the seam line (for relatives, medical teams, construction workers, etc.). Those with permits

- must enter and leave via the same crossing even if it is far away or closing early.
- Permits to pass from Gaza through Israel to the West Bank.
- A birth certificate for children under 16.
- A long-standing resident identity card for those who live in seam-line enclaves.

#### ***Checkpoints and Barriers***

- There were 75 manned checkpoints in the West Bank as of 9 January 2007.
- There are on average 150 mobile checkpoints a week (as of September 2006).
- There are 446 obstacles placed between roads and villages, including concrete cubes, earth ramparts, 88 iron gates, and 74 kilometers of fences along main roads.
- There are 83 iron gates along the separation fence, dividing lands from their owners. Only 25 of the gates open occasionally.

#### ***Main Roads Closed to Palestinians, Officially or in Practice***

- **Road 90** (the Jordan Valley thoroughfare).
- **Road 60** in the north (from the Shavei Shomron military base, west of Nablus and northward).
- **Road 585** along the settlements Hermesh and Dotan.
- **Road 557** west from the Taybeh–Tulkarm junction (the Green Line) to Anabta (excluding the residents of Shufa), and east from south of Nablus (the Hawara checkpoint) to the settlement Elon Moreh.
- **Road 505** from Zatarra (Nablus junction) to Ma'ale Ephraim.
- **Road 5** from the Barkan junction to the Green Line.
- **Road 446** from Dir Balut junction to Road 5 (by the settlements Aley Zahav and Peduel).
- **Roads 445 and 463** around the settlement Talmon, Dolev, and Nachliel.
- **Road 443** from Maccabim-Reut to Givat Ze'ev.
- **Streets in the Old City of Hebron.**
- **Road 60** from the settlement of Otniel southward.
- **Road 317** around the south Hebron Hills settlements.

#### ***Travel Time before 2000 versus Today***

##### *Tulkarm–Nablus*

Then: half an hour, at most.

Now: At least an hour.

*Tulkarm-Ramallah*

Then: less than one hour.

Now: Two hours.

*Bayt 'Ur al-Fawqa-Ramallah*

Then: 10 minutes.

Now: 45 minutes.

*Katana/Bay Anan-Ramallah*

Then: 15 minutes.

Now: One hour to 90 minutes.

*Bir Naballah-Jerusalem*

Then: seven minutes.

Now: One hour.

*Katana-Jerusalem*

Then: five minutes.

Now: "Nobody goes to Jerusalem anymore."

**C3. GISHA, LEGAL CENTER FOR FREEDOM OF MOVEMENT, "DISENGAGED OCCUPIERS: THE LEGAL STATUS OF GAZA," TEL AVIV, JANUARY 2007 (EXCERPTS).**

*Aimed at rebutting Israel's claim that Gaza is no longer occupied and that its obligations to the Gaza population have ceased, this 100-page report argues that modern means not envisaged by the international conventions governing humanitarian law of occupation make possible "effective occupation" even in the absence of permanent military ground installations. To this end, the report demonstrates how Israel's control since disengagement is effectuated through the administrative control created during the occupation and maintained by force or threat of force. Israeli control of land crossings, airspace, territorial waters, the population registry, the tax system, as well as its veto power over the Palestinian Authority's exercise of government power are examined in turn. Finally, the report focuses on international humanitarian law and Israel's ongoing obligations to the population. The excerpts reproduced below concern Israel's position on the end of occupation, a segment on its control of the Palestinian population registry and the tax system and fiscal policy; and a brief section showing the impact of technological advances on means of control. Footnotes have been omitted for reasons of space. The full report appears on [www.gisha.org](http://www.gisha.org), the Web site of Gisha, an Israeli NGO founded in 2005 that specializes in freedom of movement issues for Palestinians in the occupied territories, especially Gaza.*

**Chapter 2: Israel Claims It Owes No Obligations to Gaza Residents**

Since capturing Gaza from Egypt in 1967, the laws of belligerent occupation have applied to Israeli actions in Gaza. These rules, laid out in the Fourth Geneva Convention and the Hague Regulations, grant powers to and impose duties on a foreign power that exercises effective control over a territory, in order to protect and provide for the occupied population.

Indeed, the Israeli Supreme Court has held that Israel is a belligerent occupant in both Gaza and the West Bank and has applied the Fourth Geneva Convention and the Hague Regulations to evaluate Israel's conduct there—a position that the international community almost uniformly shared.

Immediately upon completing its disengagement plan on September 12, 2005, however, Israel adopted the position that it was no longer bound by these rules. As a first matter, Israel declared an end to the military government that had administered the Gaza Strip since Israel's capture of the territory in 1967, claiming that control over Gaza had been transferred to the Palestinian Council. While the applicability of the laws of occupation does not depend on the existence of a military administration, three days later, in a speech before the United Nations General Assembly, Israeli prime minister Ariel Sharon declared "the end of Israeli control over and responsibility for the Gaza Strip."

While the Israeli government has refrained from declaring an end to the occupation of Gaza in public international fora, in Hebrew language submissions before the Israeli High Court, the Government of Israel has taken the position that it no longer holds Gaza through belligerent occupation and that international humanitarian law governing occupied territory therefore no longer applies to its actions vis-à-vis Gaza residents.

The State's argument, as set forth in detail before the High Court in a case challenging the practice of flying sonic booms over Gaza, is that the laws of occupation, according to which an occupying power owes legal duties to protected persons living in occupied territory, apply when the territory is under the authority of the enemy and such authority is "established and capable of being exercised." These two conditions establish the test for effective control, which determines whether belligerent occupation exists. Effective control is the ability to exercise the powers that international law requires the

occupier to exercise in the occupied territory, in order to restore public order, protect civilians, and fill the vacuum left by the former government, which has been displaced by the occupier.

According to the Government of Israel, once it removed its settlers and permanent military installations from the ground in Gaza, its occupation of Gaza ended. While the State of Israel admits to continuing ground troop activity in Gaza, it characterizes its military presence in Gaza as sporadic, limited to entering specific areas of Gaza in order to thwart attacks or stop the firing of Qassam rockets toward Israel. The state also claims that control of the airspace or territorial waters do not meet the criteria for imposing the laws of occupation.

Israel's position is that its control of the crossings between Gaza and Israel does not constitute belligerent occupation, and that it does not control the Rafah crossing between Gaza and Egypt, where its troops are not physically present. The state argues that the restrictions on passage of people and goods through Rafah crossing are not imposed by military might but rather determined consensually by the 15 November 2005 Agreement on Movement and Access, entered into by Israel and the Palestinian Authority (hereinafter also: PA). As stated in the State of Israel's submission before the High Court:

The restrictions on the passage of certain travelers and on importing goods through Rafah crossing were not imposed by Israel but rather determined by agreement between Israel, the Palestinians, and the United States. Israel of course (like any state) continues to control the crossings between the Gaza Strip and the State of Israel, by virtue of its sovereign power to control its border and entrance to its territory. In any event, currently, with the opening of Rafah crossing (with the agreement of Israel, but not under its control), one can no longer claim that Israel "controls the perimeter" of the Gaza Strip, both because the Gaza Strip's southern border, on the part of the border between the Gaza Strip and Egypt, runs as a crossing without control by Israel, and also because the entire length of this [southern—Ed.] border of the Strip is under full Palestinian control, without any Israeli control.

The thrust of the State's argument is that it no longer has the capability to exercise the powers—and thus to fulfill the obligations—imposed by the international law of occupation. This claim is based on defining "effective control," the legal test for occupation, as dependent on a permanent ground troop presence in the territory:

The existence of belligerent occupation depends on the ability of the occupier effectively to exercise governmental powers in the territory. With the absence of forces, the occupier of the territory cannot exercise any governmental authorities whatsoever, and thus, in any event, the legal basis for the existence of belligerent occupation is extinguished.

Accordingly, Israel has made changes in its domestic law treating Gaza as a foreign territory, separated from the West Bank and subject neither to Israeli control nor Israeli duties. The State of Israel has issued administrative orders defining the Erez, Kerem Shalom, Sufa, and Karni crossings between Gaza and Israel as international border crossings. It has compared Gaza to Syria, claiming that it bears no obligation to permit the provision of humanitarian aid in Gaza and no obligation to permit people and goods to cross between Gaza and the West Bank.

The implications of this position are far-reaching. In response to a series of legal claims brought by Palestinians seeking remedies that are under Israeli control—opening Gaza's crossings to imports and exports; permitting Gaza residents to enter the West Bank; permitting patients from Gaza to enter the West Bank and Israel for medical treatment not available in Gaza—the State of Israel's response has been that it owes no obligations to Gaza residents and that any relief it provides in terms of opening crossings or permitting passage, it provides as a policy choice, with no obligation to permit more freedom of movement than it chooses to provide. . . .

Israel's position is that responsibility for the civilian population of Gaza, including the functioning of Gaza's economy, is the sole responsibility of the Palestinian Authority.

As we shall see in the next section, Israel has kept Gaza's crossings mostly closed in the year following the completion of its disengagement plan, has withheld monies needed to pay the salaries of civil servants and to run civilian institutions in Gaza, and has severely restricted movement of people between Gaza and the West Bank, Gaza and Israel, and between Gaza and third countries via the Egypt-Gaza border. The results of these controls have been devastating and have helped plunge Gaza into an economic and humanitarian crisis unprecedented in nearly four decades of occupation. Israel's position that it owes no legal obligations to Gaza residents, if accepted, could lead to the conclusion that should it desire, Israel could prevent all persons from entering and

leaving Gaza, block all trade in and out of Gaza including the ability to export goods, withhold tax money including the revenues needed to maintain schools and hospitals—without violating any duties owed under humanitarian law. That conclusion would not only be dangerous as a policy matter—it is incorrect as a statement of law. It creates a framework in which the civilian population of Gaza is vulnerable to denial of basic humanitarian protections. . . .

### ***Chapter 3: Israel Continues to Exercise Effective Control over Gaza***

. . .

#### ***D. Israel Controls the Palestinian Population Registry***

The definition of who is “Palestinian” and who is a resident of Gaza and the West Bank, for purposes of entering and leaving Gaza and the West Bank and for every other purpose, is controlled by the Israeli military. While the Interim Agreement was to have given the Palestinian Authority “the power to keep and administer registers and records of the population,” such power was limited to printing changes in the Palestinian Population Registry, common to the West Bank and Gaza, that Israel had already approved. Even when Rafah is open, only holders of Palestinian ID cards can enter Gaza through the crossing, so control over the Palestinian Population Registry is also control over who may enter and leave Gaza. Since 2000, Israel has not permitted additions to the Palestinian Population Registry, with the exception of minor children of Palestinian ID card holders.

Indeed, some Gaza residents who have lived in Gaza for years and who have no other home but Gaza, are trapped in Gaza because of Israel’s control over the borders and the Population Registry. Estimated tens of thousands of residents, including women who entered Gaza on visitor permits and married Gaza residents, are living in Gaza but cannot receive Palestinian ID cards. As a result, they cannot leave Gaza—because they will not be permitted to return. . . .

While as a technical matter, the Palestinian Authority prints and issues ID cards, it does not print ID cards that contradict the registration in the Israeli computers, because of Israeli control of the borders of Gaza and the West Bank; for purposes of crossing through checkpoints and crossings, the Israeli population records determine who is Palestinian and who may enter and leave Gaza.

#### ***E. Israel Exercises Control over Gaza’s Tax System and Fiscal Policy***

According to the Paris Protocol of 1994, Israel controls the tax system in the territories of the Palestinian Authority, including Gaza and the West Bank, with the exception of direct taxes such as income tax and some kinds of value-added (“VAT”) and customs taxation. Israel, which controls all imports into Gaza and the West Bank, collects VAT and customs duties imposed on imports on behalf of the Palestinian Authority and is to transfer them to the PA each month. This system gives Israel control not just over tax policy and the provision of humanitarian goods to Gaza, but it also gives Israel control over the Palestinian Authority, particularly its civil services, funded by tax revenues.

Israeli control over tax policies affects civilian life in Gaza, including the delivery of humanitarian services. For example, the ability of nonprofit organizations to receive tax-exempt donations of equipment or materials is dependent on approval from the Israeli authorities. If such approval is not forthcoming, groups in Gaza must pay taxes that can be as high as 100 percent, making it impossible for them to receive the donations. The director of the National Center for Community Rehabilitation (“NCCR”), a nonprofit rehabilitation center in Gaza, explains the meaning of Israel’s control over import policies:

NCCR needs Israeli approval in order to receive exemptions from taxes on donated goods . . .

In the past, when the Israeli authorities have refused to issue the customs exemption, NCCR has had to return equipment to the European donors who sent it, because NCCR does not have the money to pay the customs duties.

Israel retains full control over Gaza’s “customs envelope.” Israel controls and monitors what goods are allowed into and out of Gaza and collects duties and VAT, based on Israel’s rates, on behalf of the Palestinian Authority. These elements of control give Israel substantial power over economic and fiscal policy in Gaza:

Palestinian policy makers do not have any instruments for monetary, exchange rate and trade policies or even a complete set of fiscal policy instruments. The PA retains only limited control over tax and budgetary management, since the largest part of public revenue is determined by Israeli rates. . . . [T]he clearance of such revenue from the Israeli side to the PA is subject to Israeli political decisions.

The Israeli Supreme Court has also recognized the importance of tax policy in



controlling the economy in Gaza and the West Bank, noting that an occupier's duty to restore public order includes providing for a working economy. . . .

***Chapter 4: Israel Continues to Owe Obligations to Gaza Residents under the Law of Occupation***

...  
*B. Israel Continues to Bear Responsibility under the International Law of Occupation even if the Occupation of Gaza is Effected through Nontraditional Means*  
 ...

**2. Technological Advances Have Reduced the Dependence on Ground Troops**

In particular, the humanitarian law of occupation should be interpreted in light of changes in technology and in the use of force.

This was the holding of the ICJ [International Court of Justice] in the Nuclear Weapons Case, which affirmed that the principles of humanitarian law must apply to new methods of exercising force, made possible by advancements in military technology. To leave these situations outside the realm of humanitarian law would be, in the court's words:

[I]ncompatible with the intrinsically humanitarian character of the legal principles in question which permeates the entire law of armed conflict and applies to all forms of warfare and to all kinds of weapons, those of the past, those of the present and those of the future.

The court cited to a submission by New Zealand, which stated,

International humanitarian law has evolved to meet contemporary circumstances, and is not limited in its application to weaponry of an earlier time. The fundamental principles of this law endure: to mitigate and circumscribe the cruelty of war for humanitarian reasons.

On this doctrine, the relevant subject of analysis is not the means by which military control is exercised but rather the extent of the control and the effects it has on the civilian population. In other words, so long as Israel maintains effective control over Gaza, humanitarian law protections continue to apply, even if that control is facilitated by means not contemplated by the Geneva Conventions and Hague Regulations, using technology not in existence at the time they were drafted and through agreements delegating certain responsibilities to representatives of the local population.

Technological developments have made it possible for Israel to assert effective control over significant aspects of civilian life in the Gaza Strip without a permanent ground troop presence. While in the past, scholars had discussed the control element of occupation as likely being effected by a continuous presence of ground troops, the substantive test was and remains effective control and the ability to exercise authority. This test is consistent with the purpose of humanitarian law: to protect civilians who are under the control of a foreign military power, irrespective of how such control is exercised.

For example, in the Gaza Strip, Israel exercises "police functions" through the use of image technology and drone planes which allow it to identify a suspected militant from the air and to kill that person using missiles fired from the air—without sending ground troops to attack or arrest that person. The ability to fire artillery from the Israeli-Gaza border and to fire from gunboats along Gaza's coast permits Israel to maintain a "no go" buffer zone in northern Gaza without keeping ground troops there on a permanent basis. The use of closed circuit cameras at Rafah crossing, together with the agreements concerning EU monitors, allows Israel to monitor those entering and exiting Rafah and to ensure that only those individuals fitting into the specific categories of approved persons enter the Gaza Strip and that no goods (other than personal items) pass through that crossing. Israel can ensure compliance with these agreements without the need to be physically present at the crossing. And of course, Israel exercises its ability to restore its physical ground presence in Gaza at will.

To be clear: the basis for this control is military superiority, whether exercised in fact, as when compliance is assured by the use of force, for example by Israeli ground troops operating along the Philadelphi route between Gaza and Egypt, or whether control is exercised by the threat of use of force, as when Israeli security officials communicate to EU monitors and the Palestinian Authority when Rafah crossing may or may not open, and those instructions are followed, where all concerned know that Israel has the ability to enforce those instructions through its military superiority.

Gaza residents know that significant aspects of their lives—the ability to exit or enter Gaza, the supply of medicine, fuel, and other basic goods, the possibility to

transport crops to export markets, the ability to use electric lights and refrigerated goods—depend on decisions made by Israel's military. Israel does not need to maintain ground troops to exercise this form of control.

## UNITED STATES

**D1. PRESIDENT JIMMY CARTER, "SPEAKING FRANKLY ABOUT ISRAEL AND PALESTINE,"** *LOS ANGELES TIMES*, 8 DECEMBER 2006.

*President Carter's op-ed in the Los Angeles Times appeared shortly after his book Palestine Peace Not Apartheid was published in mid-November. It succinctly describes the furor unleashed by the book's publication—though a good deal more was to follow (see, for example, Doc. D4). The attacks on President Carter and the treatment of his book also prompted wide discussion on the limits of discussion of Palestine or criticism of Israel in the United States, including the influence of pro-Israel lobby groups on U.S. government policy regarding Israel and the Palestinians.*

I signed a contract with Simon and Schuster two years ago to write a book about the Middle East, based on my personal observations as the Carter Center monitored three elections in Palestine and on my consultations with Israeli political leaders and peace activists.

We covered every Palestinian community in 1996, 2005, and 2006, when Yasser Arafat and later Mahmoud Abbas were elected president and members of parliament were chosen. The elections were almost flawless, and turnout was very high—except in East Jerusalem, where, under severe Israeli restraints, only about 2 percent of registered voters managed to cast ballots.

The many controversial issues concerning Palestine and the path to peace for Israel are intensely debated among Israelis and throughout other nations—but not in the United States. For the last 30 years, I have witnessed and experienced the severe restraints on any free and balanced discussion of the facts. This reluctance to criticize any policies of the Israeli government is because of the extraordinary lobbying efforts of the American-Israel Political Action Committee and the absence of any significant contrary voices.

It would be almost politically suicidal for members of Congress to espouse a balanced position between Israel and Palestine, to

suggest that Israel comply with international law or to speak in defense of justice or human rights for Palestinians. Very few would ever deign to visit the Palestinian cities of Ramallah, Nablus, Hebron, Gaza City, or even Bethlehem and talk to the beleaguered residents. What is even more difficult to comprehend is why the editorial pages of the major newspapers and magazines in the United States exercise similar self-restraint, quite contrary to private assessments expressed quite forcefully by their correspondents in the Holy Land.

With some degree of reluctance and some uncertainty about the reception my book would receive, I used maps, text, and documents to describe the situation accurately and to analyze the only possible path to peace: Israelis and Palestinians living side by side within their own internationally recognized boundaries. These options are consistent with key U.N. resolutions supported by the U.S. and Israel, official American policy since 1967, agreements consummated by Israeli leaders and their governments in 1978 and 1993 (for which they earned Nobel Peace Prizes), the Arab League's offer to recognize Israel in 2002, and the International Quartet's "Roadmap for Peace," which has been accepted by the PLO and largely rejected by Israel.

The book is devoted to circumstances and events in Palestine and *not* in Israel, where democracy prevails and citizens live together and are legally guaranteed equal status.

Although I have spent only a week or so on a book tour so far, it is already possible to judge public and media reaction. Sales are brisk, and I have had interesting interviews on TV, including "Larry King Live," "Hardball," "Meet the Press," "The NewsHour with Jim Lehrer," the "Charlie Rose" show, C-SPAN, and others. But I have seen few news stories in major newspapers about what I have written.

Book reviews in the mainstream media have been written mostly by representatives of Jewish organizations who would be unlikely to visit the occupied territories, and their primary criticism is that the book is anti-Israel. Two members of Congress have been publicly critical. Incoming House Speaker Nancy Pelosi for instance, issued a statement (before the book was published) saying that "he does not speak for the Democratic Party on Israel." Some reviews posted on Amazon.com call me "anti-Semitic," and others accuse the book of "lies" and

“distortions.” A former Carter Center fellow has taken issue with it, and Alan Dershowitz called the book’s title “indecent.”

Out in the real world, however, the response has been overwhelmingly positive. I’ve signed books in five stores, with more than 1,000 buyers at each site. I’ve had one negative remark—that I should be tried for treason—and one caller on C-SPAN said that I was an anti-Semite. My most troubling experience has been the rejection of my offers to speak, for free, about the book on university campuses with high Jewish enrollment and to answer questions from students and professors. I have been most encouraged by prominent Jewish citizens and members of Congress who have thanked me privately for presenting the facts and some new ideas.

The book describes the abominable oppression and persecution in the occupied Palestinian territories, with a rigid system of required passes and strict segregation between Palestine’s citizens and Jewish settlers in the West Bank. An enormous imprisonment wall is now under construction, snaking through what is left of Palestine to encompass more and more land for Israeli settlers. In many ways, this is more oppressive than what blacks lived under in South Africa during apartheid. I have made it clear that the motivation is not racism but the desire of a minority of Israelis to confiscate and colonize choice sites in Palestine, and then to forcefully suppress any objections from the displaced citizens. Obviously, I condemn any acts of terrorism or violence against innocent civilians, and I present information about the terrible casualties on both sides.

The ultimate purpose of my book is to present facts about the Middle East that are largely unknown in America, to precipitate discussion and to help restart peace talks (now absent for six years) that can lead to permanent peace for Israel and its neighbors. Another hope is that Jews and other Americans who share this same goal might be motivated to express their views, even publicly, and perhaps in concert. I would be glad to help with that effort.

**D2. HUMAN RIGHTS WATCH, STATEMENT ON ERROR IN ITS 22 NOVEMBER 2006 PRESS RELEASE ON THE GAZA STRIP, NEW YORK, 19 DECEMBER 2006.**

*In an incident on 18 November 2006, hundreds of Palestinian civilians, alerted to Israeli preparations to destroy an activist’s house in Gaza’s Jabatiya refugee camp, gathered on the roof and around*

*the house to prevent its bombing. Several days later, Human Rights Watch issued a press release headed “OPT: Civilians Must Not Be Used to Shield Homes against Military Attacks,” suggesting that such use of civilians as a shield against military operations constituted a war crime. The press release, which is available at [brw.org](http://brw.org), was sharply criticized, prompting the following statement of explanation (also available at [brw.org](http://brw.org)).*

We regret that our press release below (“OPT: Civilians Must Not Be Used to Shield Homes against Military Attacks”) gave many readers the impression that we were criticizing civilians for engaging in nonviolent resistance. This was not our intention. It is not the policy of the organization to criticize non-violent resistance or any other form of peaceful protest, including civilians defending their homes. Rather, our focus is on the behavior of public officials and military commanders because they have responsibilities under international law to protect civilians.

It has also become clear to us that we erred in assessing the main incident described in the press release. We said that the planned IDF attack on the house of a military commander in the Popular Resistance Committee, Muhammadwail Barud, fell within the purview of the law regulating the conduct of hostilities during armed conflict. We criticized Barud for reportedly urging civilians to assemble near the house in order to prevent the attack, in apparent violation of that law. Our focus was not on the civilians who assembled, their state of mind, or their behavior (such as whether they willingly assembled or not), but on Barud for risking the lives of civilians.

We have since concluded that we were wrong, on the basis of the available evidence, to characterize the IDF’s planned destruction of the house as an act of war. If the planned attack against the house—a three-story building housing three families—was, in fact, an administrative action by the Israeli government aimed at punishing a militant for his alleged activities, the law regulating the conduct of hostilities during armed conflict would not apply and could not be violated.

An important consideration in this regard is whether the IDF had reason to believe that the house was being used for military purposes at the time of the planned attack. To date, Human Rights Watch has not obtained conclusive evidence as to whether the

house was being so used, but eyewitnesses we have been able to speak with, including two journalists on the scene, claim they saw no such evidence. The IDF, moreover, has not responded to our requests to explain what military objective it could have had in targeting not a militant but his home after having ordered it vacated.

We recognize that it is important to view the planned destruction of Barud's house in light of Israel's longstanding policy in the occupied Palestinian territories, sharply increased in Gaza since June, of demolishing houses not as legitimate military targets but as a punitive measure. HRW has repeatedly criticized Israel for unlawful demolition of houses.

Our intention in issuing this press release was to underscore one of the most fundamental principles of international humanitarian law: the obligation of warring parties to take all feasible measures to spare civilians from harm. This includes the important principle that parties to a conflict, including military leaders and civilian officials, may not use civilians to "shield" against a military attack or otherwise unnecessarily put civilian lives at risk. Unfortunately, judging by the response, we did more to cloud the issues than clarify them in the press release.

This continues to be a live issue in the Israeli-Palestinian armed conflict. In July 2006, Israeli and Palestinian human rights groups documented the IDF's forcible use of Palestinians as human shields in a well publicized incident during military operations in Beit Hanoun. According to the groups, the IDF blindfolded six civilians, including two minors, and forced them to stand in front of soldiers who took over civilian homes during a raid in northern Gaza. And on November 3, Hamas militants hid behind civilian women when exiting from a mosque where the militants had been cornered by IDF forces after more than two days of fighting. The fact that the women voluntarily went to aid the men does not absolve the militants of their duty not to endanger civilians. Both of these cases took place in the course of armed conflict so that the laws of war did apply.

We invite readers to visit our Web site at [www.hrw.org](http://www.hrw.org) to see all that we have said on the conflict between Israel and the Palestinians. We continue to urge all parties to this conflict to respect international humanitarian law, whatever their share of its violations, and most important, to keep civilians out of it as much as possible.

**D3. U.S. CONGRESS, PALESTINIAN ANTI-TERRORISM ACT, WASHINGTON, 21 DECEMBER 2006 (EXCERPTS).**

*Signed into law by President Bush on 21 December 2006, the Palestinian Anti-Terrorism Act (Public Law 109-466) in effect prohibits U.S. funds to Palestinian government and nongovernmental entities controlled by Hamas. Passed to express displeasure with Hamas's electoral victories in democratic local and national elections in December 2005 and January 2006 respectively, the bill's provisions are largely congruent with existing U.S. law prohibiting funding for groups, including Hamas, that are designated as foreign terrorist organizations by the State Department. The bill does allow the president financially to support the PA president, armed forces loyal to him, non-Hamas members of the Palestinian Council, the PA's judiciary branch, and "other entities." It also allows funds to go to non-Hamas-affiliated NGOs in the West Bank and Gaza for humanitarian aid and "democracy promotion," and requires a presidential waiver to allow PA and PLO personnel at the UN (except the PA president and his representatives) to move beyond a 25-mile radius from UN headquarters in New York. The bill signed by the president was the Senate version (S. 2370; passed by unanimous consent on 23 June 2006); the House of Representatives had passed its own, far stricter, version (H.R. 4681) in May 2006, which would have effectively ended official U.S. contact with Palestinians, increased the difficulty of delivering U.S. humanitarian aid to Palestinians, and restricted U.S. contributions to UN agencies dealing with Palestinians. Facing White House and State Department opposition to the more restrictive House version, the House "reconciled" the two versions by quietly passing (by voice vote, under a motion to suspend the rules) the Senate version on 7 December, the second-to-last day of the 109th Congress. (Proponents of the House version vowed to seek to pass legislation in the 110th akin to H.R. 4681.) Provisions of the Palestinian Anti-Terrorism Act are in keeping with previous Congressional actions dating back at least to the Anti-Terrorism Act of 1987 (H.R. 2548), which prohibited PLO offices in the United States.*

*The text below includes all the major provisions of the act. Minor cuts were made, reducing or eliminating sections*

*relating to procedures of certification, exercising the presidential waiver, definitions, various technical requirements, and audits. The full text is available online at [thomas.loc.gov](http://thomas.loc.gov).*

**SEC. 2. LIMITATION ON ASSISTANCE TO THE PALESTINIAN AUTHORITY.**

(a) Declaration of Policy- It shall be the policy of the United States—

- (1) to support a peaceful, two-state solution to end the conflict between Israel and the Palestinians in accordance with the Performance-Based Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict (commonly referred to as the ‘Roadmap’);
- (2) to oppose those organizations, individuals, and countries that support terrorism and violently reject a two-state solution to end the Israeli-Palestinian conflict;
- (3) to promote the rule of law, democracy, the cessation of terrorism and incitement, and good governance in institutions and territories controlled by the Palestinian Authority; and
- (4) to urge members of the international community to avoid contact with and refrain from supporting the terrorist organization Hamas until it agrees to recognize Israel, renounce violence, disarm, and accept prior agreements, including the Roadmap.

(b) Amendments- Chapter 1 of part III of the Foreign Assistance Act of 1961 (22 U.S.C. 2351 et seq.) is amended—

- (1) by redesignating the second section 620G (as added by section 149 of Public Law 104-164 (110 Stat. 1436)) as section 620J; and
- (2) by adding at the end the following new section:

**‘SEC. 620K. LIMITATION ON ASSISTANCE TO THE PALESTINIAN AUTHORITY.**

‘(a) Limitation- Assistance may be provided under this Act to the Hamas-controlled Palestinian Authority only during a period for which a certification described in subsection (b) is in effect.

‘(b) Certification- A certification described in subsection (a) is a certification transmitted by the President to Congress that contains a determination of the President that—

‘(1) no ministry, agency, or instrumentality of the Palestinian Authority is effectively controlled by Hamas, unless the Hamas-controlled Palestinian Authority has—

‘(A) publicly acknowledged the Jewish state of Israel’s right to exist; and

‘(B) committed itself and is adhering to all previous agreements and understandings with the United States Government, with the Government of Israel, and with the international community, including agreements and understandings pursuant to the Performance-Based Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict (commonly referred to as the ‘Roadmap’); and

‘(2) the Hamas-controlled Palestinian Authority has made demonstrable progress toward—

‘(A) completing the process of purging from its security services individuals with ties to terrorism;

‘(B) dismantling all terrorist infrastructure within its jurisdiction, confiscating unauthorized weapons, arresting and bringing terrorists to justice, destroying unauthorized arms factories, thwarting and preempting terrorist attacks, and fully cooperating with Israel’s security services;

‘(C) halting all anti-American and anti-Israel incitement in Palestinian Authority-controlled electronic and print media and in schools, mosques, and other institutions it controls, and replacing educational materials, including textbooks, with materials that promote peace, tolerance, and coexistence with Israel;

‘(D) ensuring democracy, the rule of law, and an independent judiciary, and adopting other reforms such as ensuring

transparent and accountable governance; and

- ‘(E) ensuring the financial transparency and accountability of all government ministries and operations.

...

- (c) Previously Obligated Funds- The provisions of section 620K of the Foreign Assistance Act of 1961, as added by subsection (b), shall be applicable to the unexpended balances of funds obligated prior to the date of the enactment of this Act.

### **SEC. 3. LIMITATION ON ASSISTANCE FOR THE WEST BANK AND GAZA.**

- (a) Amendment- Chapter 1 of part III of the Foreign Assistance Act of 1961 (22 U.S.C. 2351 et seq.), as amended by section 2(b)(2), is further amended by adding at the end the following new section:

#### **‘SEC. 620L. LIMITATION ON ASSISTANCE FOR THE WEST BANK AND GAZA.**

- ‘(a) Limitation- Assistance may be provided under this Act to nongovernmental organizations for the West Bank and Gaza only during a period for which a certification described in section 620K(b) is in effect with respect to the Palestinian Authority.
- ‘(b) Exceptions- Subsection (a) shall not apply with respect to the following:

- ‘(1) ASSISTANCE TO MEET BASIC HUMAN NEEDS- Assistance to meet food, water, medicine, health, or sanitation needs, or other assistance to meet basic human needs.
- ‘(2) ASSISTANCE TO PROMOTE DEMOCRACY- Assistance to promote democracy, human rights, freedom of the press, non-violence, reconciliation, and peaceful coexistence, provided that such assistance does not directly benefit Hamas or any other foreign terrorist organization.
- ‘(3) ASSISTANCE FOR INDIVIDUAL MEMBERS OF THE PALESTINIAN LEGISLATIVE COUNCIL- Assistance, other than funding of salaries or salary supplements, to individual

members of the Palestinian Legislative Council who the President determines are not members of Hamas or any other foreign terrorist organization, for the purposes of facilitating the attendance of such members in programs for the development of institutions of democratic governance, including enhancing the transparent and accountable operations of such institutions, and providing support for the Middle East peace process.

- ‘(4) OTHER TYPES OF ASSISTANCE- Any other type of assistance if the President—

‘(A) determines that the provision of such assistance is in the national security interest of the United States; and

‘(B) not less than 30 days prior to the obligation of amounts for the provision of such assistance—

‘(i) consults with the appropriate congressional committees regarding the specific programs, projects, and activities to be carried out using such assistance; and

‘(ii) submits to the appropriate congressional committees a written memorandum that contains the determination of the President under subparagraph (A).

...

### **SEC. 4. DESIGNATION OF TERRITORY CONTROLLED BY THE PALESTINIAN AUTHORITY AS TERRORIST SANCTUARY.**

It is the sense of Congress that, during any period for which a certification described in section 620K(b) of the Foreign Assistance Act of 1961 (as added by section 2(b)(2) of this Act) is not in effect with respect to the Palestinian Authority, the territory controlled by the Palestinian Authority should be deemed to be in use as a sanctuary for terrorists or terrorist organizations for purposes of section 6(j)(5) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(5)) and section 140 of the Foreign Relations

Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 2656f).

**SEC. 5. DENIAL OF VISAS FOR OFFICIALS OF THE PALESTINIAN AUTHORITY.**

- (a) In General- Except as provided in subsection (b), a visa should not be issued to any alien who is an official of, under the control of, or serving as a representative of the Hamas-led Palestinian Authority during any period for which a certification described in section 620K(b) of the Foreign Assistance Act of 1961 (as added by section 2(b)(2) of this Act) is not in effect with respect to the Palestinian Authority.
- (b) Exception- The restriction under subsection (a) should not apply to—
- (1) the President of the Palestinian Authority and his or her personal representatives, provided that the President and his or her personal representatives are not affiliated with Hamas or any other foreign terrorist organization; and
  - (2) members of the Palestinian Legislative Council who are not members of Hamas or any other foreign terrorist organization.

**SEC. 6. TRAVEL RESTRICTIONS ON OFFICIALS AND REPRESENTATIVES OF THE PALESTINIAN AUTHORITY AND THE PALESTINE LIBERATION ORGANIZATION STATIONED AT THE UNITED NATIONS IN NEW YORK CITY.**

- (a) In General- Notwithstanding any other provision of law, and except as provided in subsection (b), the President should restrict the travel of officials and representatives of the Palestinian Authority and of the Palestine Liberation Organization, who are stationed at the United Nations in New York City to a 25-mile radius of the United Nations headquarters building during any period for which a certification described in section 620K(b) of the Foreign Assistance Act of 1961 (as added by section 2(b)(2) of this Act) is not in effect with respect to the Palestinian Authority.
- (b) Exception- The travel restrictions described in subsection (a) should not apply to the President of the Palestinian Au-

thority and his or her personal representatives, provided that the President and his or her personal representatives are not affiliated with Hamas or any other foreign terrorist organization.

**SEC. 7. PROHIBITION ON PALESTINIAN AUTHORITY REPRESENTATION IN THE UNITED STATES.**

- (a) Prohibition- Notwithstanding any other provision of law, it shall be unlawful to establish or maintain an office, headquarters, premises, or other facilities or establishments within the jurisdiction of the United States at the behest or direction of, or with funds provided by, the Palestinian Authority during any period for which a certification described in section 620K(b) of the Foreign Assistance Act of 1961 (as added by section 2(b)(2) of this Act) is not in effect with respect to the Palestinian Authority.
- ...
- (b) Waiver- Subsection (a) shall not apply if the President determines and certifies to the appropriate congressional committees that the establishment or maintenance of an office, headquarters, premises, or other facilities is vital to the national security interests of the United States.

**SEC. 8. INTERNATIONAL FINANCIAL INSTITUTIONS.**

- (a) Requirement- The President should direct the United States Executive Director at each international financial institution to use the voice, vote, and influence of the United States to prohibit assistance to the Palestinian Authority (other than assistance described under subsection (b)) during any period for which a certification described in section 620K(b) of the Foreign Assistance Act of 1961 (as added by section 2(b)(2) of this Act) is not in effect with respect to the Palestinian Authority.
- (b) Exceptions- The prohibition on assistance described in subsection (a) should not apply with respect to the following types of assistance:
- (1) Assistance to meet food, water, medicine, or sanitation needs, or other assistance to meet basic human needs.

- (2) Assistance to promote democracy, human rights, freedom of the press, non-violence, reconciliation, and peaceful coexistence, provided that such assistance does not directly benefit Hamas or other foreign terrorist organizations.
- (c) Definition- In this section, the term 'international financial institution' has the meaning given the term in section 1701(c)(2) of the International Financial Institutions Act (22 U.S.C. 262r(c)(2)).

#### SEC. 9. DIPLOMATIC CONTACTS WITH PALESTINIAN TERROR ORGANIZATIONS.

No funds authorized or available to the Department of State may be used for or by any officer or employee of the United States Government to negotiate with members or official representatives of Hamas, Palestinian Islamic Jihad, the Popular Front for the Liberation of Palestine, al-Aqsa Martyrs Brigade, or any other Palestinian terrorist organization (except in emergency or humanitarian situations), unless and until such organization—

- (1) recognizes Israel's right to exist;
- (2) renounces the use of terrorism;
- (3) dismantles the infrastructure in areas within its jurisdiction necessary to carry out terrorist acts, including the disarming of militias and the elimination of all instruments of terror; and
- (4) recognizes and accepts all previous agreements and understandings between the State of Israel and the Palestinian Authority.

#### SEC. 10. ISRAELI-PALESTINIAN PEACE, RECONCILIATION AND DEMOCRACY FUND.

- (a) Establishment of Fund- Not later than 60 days after the date of the enactment of this Act, the Secretary of State shall establish a fund to be known as the 'Israeli-Palestinian Peace, Reconciliation and Democracy Fund' (in this section referred to as the 'Fund'). The purpose of the Fund shall be to support, primarily, through Palestinian and Israeli organizations, the promotion of democracy, human rights, freedom of the press, and non-violence among Palestinians, and

peaceful coexistence and reconciliation between Israelis and Palestinians.

- (b) Annual Report- Not later than 60 days after the date of the enactment of this Act, and annually thereafter for so long as the Fund remains in existence, the Secretary of State shall submit to the appropriate congressional committees a report on programs sponsored and proposed to be sponsored by the Fund.
- (c) Authorization of Appropriations- There is authorized to be appropriated to the Secretary of State \$20,000,000 for fiscal year 2007 for purposes of the Fund.

#### SEC. 11. REPORTING REQUIREMENT.

Not later than 90 days after the date of the enactment of this Act, and annually thereafter, the Secretary of State shall submit to the appropriate congressional committees a report that—

- (1) describes the steps that have been taken by the United States Government to ensure that other countries and international organizations, including multilateral development banks, do not provide direct assistance to the Palestinian Authority for any period for which a certification described in section 620K(b) of the Foreign Assistance Act of 1961 (as added by section 2(b)(2) of this Act) is not in effect with respect to the Palestinian Authority; and
- (2) identifies any countries and international organizations, including multilateral development banks, that are providing direct assistance to the Palestinian Authority during such a period, and describes the nature and amount of such assistance.

#### SEC. 12. DEFINITIONS.

In this Act:

- (1) APPROPRIATE CONGRESSIONAL COMMITTEES- The term 'appropriate congressional committees' means—
- (A) the Committee on International Relations and the Committee on Appropriations of the House of Representatives; and
  - (B) the Committee on Foreign Relations and the Committee on Appropriations of the Senate.



- (2) PALESTINIAN AUTHORITY: The term 'Palestinian Authority' has the meaning given the term in section 620K(e)(2) of the Foreign Assistance Act of 1961 (as added by section 2(b)(2) of this Act).

**D4. FOURTEEN BOARD MEMBERS OF THE CARTER CENTER, LETTER OF RESIGNATION TO PRESIDENT JIMMY CARTER, N.P., 11 JANUARY 2007.**

*The letter to President Carter, signed by fourteen members of the Carter Center's 224-member Board of Councilors, details the reasons why they felt compelled to resign following the publication of Palestine Peace Not Apartheid (see Doc. D1). Kenneth Stein, the Carter Center's first permanent executive director and, until recently, its Middle East fellow, had already severed all ties with the institution on 5 December 2006. Those who resigned were: Alan Abrams; Steve Berman; Michael Coles; Jon Golden; Doug Hertz; Barbara Babbit Kaufman; Liane Levetan; Jeff Levy; Leon Novak; William B. Schwartz, Jr.; William B. Schwartz III; Steve Selig; Cathey Steinberg; and Gail Solomon. The text of the resignation is available on the Web site of the Anti-Defamation League, [www.adl.org](http://www.adl.org).*

Dear President Carter,

As members of the Board of Councilors each one of us has been proud to be associated with the Carter Center in its noble struggle to repair the world. However, in light of the publication of your latest book *Palestine Peace Not Apartheid* and your subsequent comments made in promoting the book, we can no longer in good conscience continue to serve the Center as members of the Board of Councilors.

In its work in conflict resolution the Carter Center has always played the useful and constructive role of honest broker and mediator between warring parties. In your book, which portrays the conflict between Israel and her neighbors as a purely one-sided affair with Israel holding all of the responsibility for resolving the conflict, you have clearly abandoned your historic role of broker in favor of becoming an advocate for one side.

The facts in dealing with the conflict are these: There are two national narratives contesting one piece of land. The Israelis, through deed and public comment, have consistently spoken of a desire to live in peace and make territorial compromise to

achieve this status. The Palestinian side has consistently resorted to acts of terror as a national expression and elected parties endorsing the use of terror, the rejection of territorial compromise and of Israel's right to exist. Palestinian leaders have had chances since 1947 to have their own state, including during your own presidency when they snubbed your efforts.

Your book has confused opinion with fact, subjectivity with objectivity and force for change with partisan advocacy. Furthermore the comments you have made the past few weeks insinuating that there is a monolith of Jewish power in America are most disturbing and must be addressed by us. In our great country where freedom of expression is basic bedrock you have suddenly proclaimed that Americans cannot express their opinion on matters in the Middle East for fear of retribution from the "Jewish Lobby." In condemning the Jews of America you also condemn Christians and others for their support of Israel. Is any interest group to be penalized for participating in the free and open political process that is America? Your book and recent comments suggest you seem to think so.

In the past you would inject yourself into this world to moderate between the two sides in the pursuit of peace and as a result you earned our admiration and support. Now you repeatedly make false claims. You wrote that UN Security Council Resolution 242 says that "Israel must withdraw from territories" (p. 38), but you know the word "must" in fact is not in the resolution. You said that since Mahmoud Abbas has been in office there have been no peace discussions. That is wrong. You wrote that Yassir Arafat told you in 1990 that, "The PLO has never advocated the annihilation of Israel" (p. 62). Given that their charter, which explicitly calls for Israel's destruction, was not revised until the late 1990s, how could you even write such a claim as if it were credible?

You denied on Denver radio on December 12 that Palestinian Prime Minister Haniyah said he would never accept or negotiate with Israel. However the BBC monitoring service reported just the opposite. In fact Haniyah said: "We will never recognize the usurper Zionist government and will continue our jihadist movement until Bayt al-Maqdis (Jerusalem) and the al-Aqsa Mosque are liberated. When presented with this fact you said, "No he didn't say that, no he did not do that, I did not hear that." These are not points of opinion, these are points of fact.

And finally, it is a disturbing statement to write: "that it is imperative, that the general Arab community and all significant Palestinian groups make it clear that they will end the suicide bombings and other acts of terrorism when international laws and the ultimate goals of the Roadmap for Peace are accepted by Israel." In this sentence you clearly suggest that you are condoning violence against Israelis until they do certain things (p. 213). Your use of the word "apartheid," regardless of your disclaimers, has already energized white supremacist groups who thrive on asserting Jewish control of government and foreign policy, an insinuation you made in your op-ed to the *LA Times* on December 8, 2006: "For the last 30 years, I have witnessed and experienced the severe restraints on any free and balanced discussion of the facts." According to Web site monitoring by the Anti-Defamation League, U.S. white supremacists have enthusiastically

embraced your suggestion that the Israel lobby stifles debate in this country, saying it confirms Jewish control of government and foreign policy as well as and the inherently "evil" nature of Jews. If you doubt the support you are giving and receiving, please refer to the Anti-Defamation League Web site.

From there you can get to the postings of four different white supremacist organizations that both support and make use of the contents of your book and what you have said in public.

As a result it seems that you have turned to a world of advocacy, including even malicious advocacy. We can no longer endorse your strident and uncompromising position. This is not the Carter Center or the Jimmy Carter we came to respect and support. Therefore it is with sadness and regret that we hereby tender our resignation from the Board of Councilors of the Carter Center effective immediately.



A Palestinian walks next to a section of Israel's separation wall, here between Jerusalem and Bethlehem, 15 December 2006. (Reuters/Yonathan Weitzman)

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