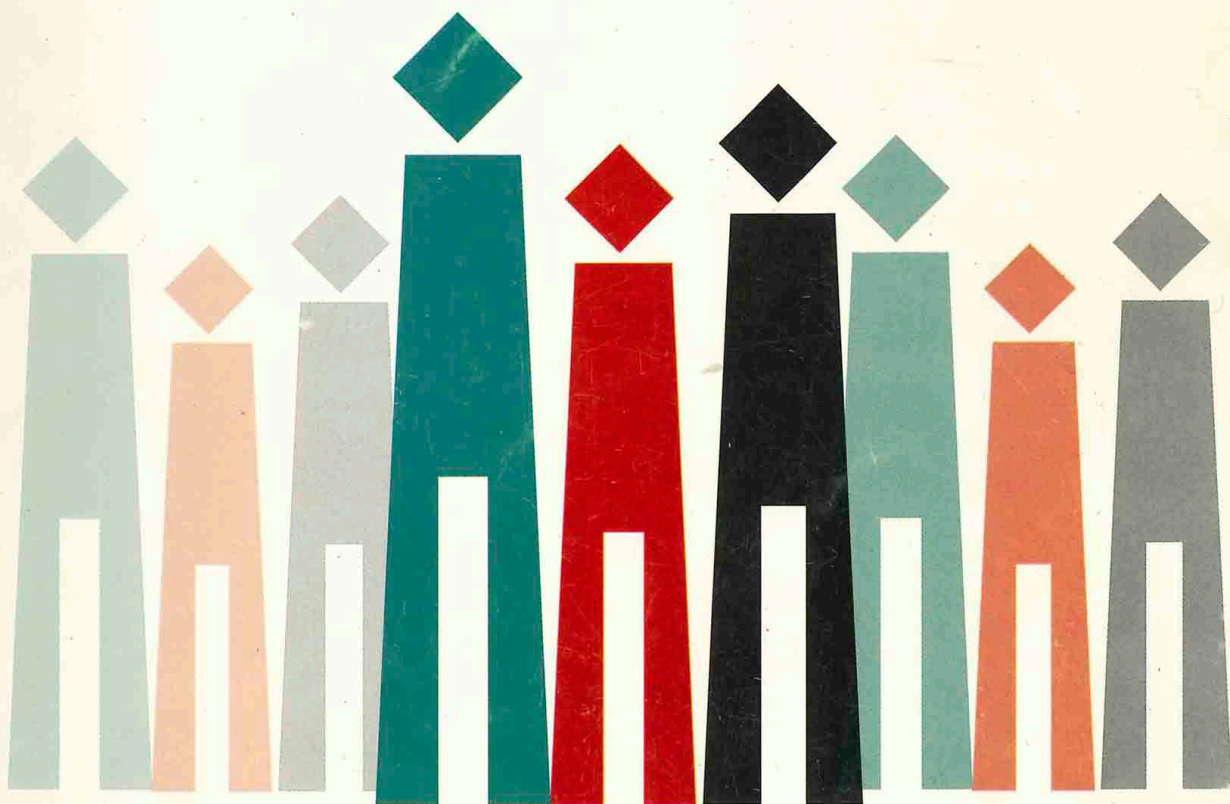


Cairo
Institute
for
Human
Rights
Studies

Human Rights
Guarantees
under
**The
Palestinian
Self-Rule
Authority**

1

The Political & Legal Considerations



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Human Rights Guarantees
Under
The Palestinian
Self-Rule Authority

1 *The Political & Legal Considerations*

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Introduction

Human Rights Debate Booklet

- Subject Matter, Methodolog and Style of Publication

Mohamed EISayed Said

This booklet represents the first publication by Cairo Institute for Human Rights Studies. The reader will find an introduction to the Institute at the end of the publication.

It is appropriate at this early stage to acquaint the reader or informed researcher with the booklet's subject matter, methodological bases and style of publication so that he/she may then be in a position to comment on all the above.

The booklet's subject matter is worthy of close examination. The bulk of literature published by institutes specializing in human rights studies pertains to human rights philosophy and focuses on cultural dimensions and long-term aims, including the expansion and strengthening of international protection for rights, especially civil and political rights, and the creation of more effective mechanisms with which to ensure the State's commitment to respect human rights. Some of this literature classifies different categories of rights by contrasting their nature according to their degree of commitment and their differences in cultural assessment , whilst also dealing with other issues related to the implication of rights and how they should be adhered to internationally and nationally. The methodology of the greatest bulk of this literature is either purely philosophical or essentially legalistic.

On the other hand, formal or non-formal literature issued by international, regional and national human rights organisations basically deals with current human rights developments. Being human rights defense organisations essentially obliges them to monitor violations. Consequently, the topics at

the top of their agendas are observation, classification and comparison of violations according to time and place, and, perhaps at most, the development of suitable indicators for establishing a practical early warning system for certain human rights' violations.

Unsurprisingly, the methodological foundations characterizing this literature are essentially legal. The basic, and sometimes the sole, perspective on monitoring human rights violations is the comparison between State commitment to international human rights treaties, agreements and declarations on paper and the behaviour of the State in reality.

The nature of the role of these organisations makes the majority of their work dependent on the State, and regional and international organisations and mechanisms. The principal mechanism employed by human rights organisations is that of pressurizing these bodies to abide by their commitments or to respect explicit international consensus, according to the international law of human rights.

Thus, the majority of human rights literature, whether it be studies or reports, either focuses on the past or establishes indefinite future perspectives. This is due to its function of either monitoring violations that have already occurred, or expanding legislation and mechanisms, including cultural mechanisms, believed to ensure a greater guarantee of adherence to rights.

Consequently, there exists a great dearth of literature which deals with the present and the near future. In other words, the current body of literature on human rights does not satisfy the pressing need to reflect a human rights perspective on current issues and controversies, at both national and international levels. Such a literature would lead debates around issues such as the adoption of resolutions and drafting of policies consistent with human rights, and would plant the seeds for nurture and development of rights and their guarantees.

Naturally, the existence of this vacuum does not lack logic, a powerful logic

that can not be ignored. The human rights movement is based on, and committed to, a non-political stance whose origin lies in the belief of the universality and interdependence of rights, and the prevention of their violation under all circumstances. Human rights organisations do not oppose a specific regime or government, nor do they participate in any efforts to depose existing regimes, nor struggle to replace one regime with another. In that sense, they are non-ideological, non-political movements. They even fear being accused of interfering in the internal affairs of nations or governments.

All that they do in effect is to put forward the belief that basic human rights are not to be considered a domestic affair alone, but the common responsibility of all humanity. A State or government can not legally protest sovereignty as an excuse to deny or violate the human rights of a citizen under its jurisdiction. Intervention to protect rights is the duty of the international legislator, as well as being the responsibility of the international system and all its agencies, especially the United Nations. That is not to say that the international human rights movement denies sovereignty. On the contrary, the right to self-determination enshrined in the Charter of the United Nations and in each of the two international treaties on civil and political rights, and economic, social and cultural rights, constitutes a basic branch of human rights. Human rights movements and organisations, out of respect for national sovereignty and for the laws of constitutional and legal jurisdiction, automatically refrain from intervening in a wide range of issues and topics that are related to local legislation, or local and national political processes. They even refrain from intervening in the policy-making process in general.

This stand, however, can leave substantial room for ambiguity at the point where the political and legal intersect. It also creates an acute contradiction, which becomes evident when calling on the State to adhere to rights while ignoring the actual need for restructuring the State and government to facilitate such a process. Thus, although human rights movements may declare their acceptance or rejection of a particular policy in view of its

negative influence on the safeguard of human rights, due to their non-political stand, they do not try to influence policy- or decision-making processes, neither do they struggle against a particular policy or decision, even though these organisations might reject or condemn such a policy or decision.

In reality, the direct consequence of this non-political stance greatly differs between the developed countries of the north and the developing ones of the south. The former group of countries basically acknowledges civil and political rights and there is a greater distinction between the legal and the political. Due to the level of political and social stability in these countries, governments rarely pose threats of serious violations to civil and political human rights. However, such a situation is not applicable to the vast majority of underdeveloped countries in the south where extensive political and social instability makes appalling challenges to human rights an everyday occurrence.

Moreover, there are a relatively large number of well-established human rights organisations in the democratic world and this fact alone restricts them to non-political tasks which are ultimately related to documenting legal and judicial information and providing support to individual victims of human rights' violations.

On the other hand, in other societies where there are no such organizations nor such suitable political and legal working conditions, the safeguard of rights falls ultimately in the political field.

Do these observations require us to abandon the non-political stance of the human rights movement? The initial answer to this question should be a definite "no". However, they do restrict our interpretation of this stance, in so much as there still remains a pressing need for the movement to reflect the human rights perspective on current intellectual and political processes which may reach the stage of legislation or policy making appropriate or otherwise for the safeguarding of rights. The non-political stance proceeds from two specific points:

The first is that human rights movements do not attempt to, nor wish to compete for, public offices or political power in any society. Furthermore, they are committed, in principle, to neutrality as regards political forces competing to form a government or public authority, except where one power poses a serious threat to human rights.

The second aspect is the absolute irrevocable commitment of human rights movements, without exception, to a purely peaceful struggle which aims at the recognition of human rights. They also reject all forms of material or symbolic violence, and take a critical, and even an opposing stance, against all calls for violence, regardless of their source or justification.

In addition to the above points, human rights movements should focus on struggling for respect for human rights, that is to say, they should exert pressure and influence the political process in order to finally achieve legislations and policies in accordance with the objectives of ensuring respect, protection and reinforcement of human rights. In this sense, they do not only observe violations, but strive to re-structure policies, and even institutions, in order to help prevent violations from occurring in the first place.

Thus, although the human rights movement views itself as non-political, it should also balance this by seeking to become a respected factor in the political process.

It follows that being politically neutral is a relative, conditional stand, i.e. political neutrality holds in the absence of circumstances which threaten a serious lapse of human rights. For example, under normal circumstances the movement does not show preference for any particular government or regime. However, it may - and should - in principle reject the coming to power of a government or regime whose ideology and declared policies could lead to a serious violation of human rights. It would seem that opposing such a government which had come to power through illegitimate means, i.e. a military coup, for example, would be a self-evident duty. However, we believe that such a government or regime should be opposed

even if it were to achieve public office through legitimate and constitutional means, and even if it were a popular government, i.e. enjoying the majority of the citizens' support.

If, for example, general elections in a particular country, executed by constitutional and legitimate means, brought to power a political party declaring its wish to repress a cultural or ethnic minority, or to colonize and annex lands abroad, it would be the duty of the human rights movement to struggle non-violently against this government and try to prevent it from coming to power. Human rights organisations should act similarly in the case of such elections bringing to power a government or a regime that declares its wish to suppress freedoms and essential human rights, such as freedom of belief, freedom of conscience, the right to a fair, honest trial, the right of participation, etc.

Nevertheless, this should not be rigidly interpreted nor implemented in the same way in all cases. It is historically necessary to independently measure and assess each case according to its circumstances, and as to whether it reinforces or threatens human rights. This assessment may be realised at the level of regions, complete cultural systems, or a number of social and political formations which are similar from a historical standpoint, or major developmental problems.

Naturally, the aversion to, or welcoming of, a certain government or regime is an "extreme" situation that the human rights movement might have to adopt based on evaluating the qualitative effects that political transformation might produce where the compliance with basic human rights is concerned. It cannot be said that the movement is obliged to adopt a certain attitude towards all cases of governmental change. What concerns us here is arguing for the need for the human rights movement to be connected to current political circumstances and to reflect its own perspective on current discussions, debates and political events, even though such a movement is non-political by nature.

The logical outcome of this proposition is the need to deal with various

subject matters which may not fall within a purely legal framework, except in view of their implications and results, so long as these topics afford strong possibilities of greatly affecting the guarantee of human rights.

Undoubtedly, the correct stance towards these issues should be based on a comprehensive, scientific study, and various probabilities and paths for decision- and policy- making on these issues.

The need for a scientific study, from a human rights perspective, of current issues and themes and their future implications, poses significant questions about the issue of methodology.

The deep-rooted traditions of human rights literature are essentially the result of juristic and ahistorical thought prevalent within the movement. The concept of human rights is viewed under natural law as an extension of human society itself, regardless of its manifestations, fluctuations, different expressions, different social structures, cultural formations, measures of achievement and performance within the economic, technological and social fields.

Moreover, since the human rights movement adopts a non-political stance in a broad sense, it was thus logical and conceivable that a purely legal perspective or methodology would suffice. The international law of human rights requires all countries and governments, without exception, to comply with basic human rights. This legal methodology naturally tends towards being State-centered and expressed as a set of demands. It was unable to question the essence of the factors leading to the increased or decreased compliance with these rights, or the historically determined conditions for comparing success within their field. Neither was it concerned with developing models with which to achieve historically the best possible returns from the perspective of the relative dimensions of roles.

From the outset, legal methodology represented a convenient starting point. It continues to be necessary in any comprehensive shaping of strategies in the struggle for human rights. Nevertheless, this is no longer sufficient. It

has become necessary to recognise the inevitability of studying and understanding the historical, economic, social, cultural and political factors which threaten human rights. Undoubtedly, this transition from a purely legal to a comprehensive perspective which studies historical factors influencing the field of human rights, frees the human rights movement from being exclusively centered on the State. The State, as well as its extensions in the form of regional and international organisations, is an important institution as far as human rights are concerned. However, requesting, or even compelling, the State to declare a total commitment to human rights and their compliance under the international laws of human rights is not at all sufficient to guarantee these rights. Human rights are also influenced by cultural, economic and social variables, some of which are not subject to the voluntary will of the State, however powerful it may be. The State itself is an objective product, to a certain extent, of these influences.

Consequently, it would be logically impossible to be content with just the legal-juristic perspective or approach, and inevitable to adopt a plurality of approaches, some of which may be extracted from accumulated knowledge in the fields of social sciences, such as sociology, political science, economics, anthropology, and their branches. This idea may be derived from the current international interest in human rights education. The assumption behind this interest is that respect for human rights is partially dependent on an awareness of these rights. However, the question which stems logically from this assumption is why are there such varying levels of individual and collective awareness of these rights?

It is possible to imagine, for example, that public awareness may be shaped in a way that opposes the acknowledgement of human rights. This may occur under the aegis of historically determined factors which relate to the field of politics, culture or a given interpretation of religion or social relations.

Furthermore, such factors may influence the shaping of awareness in the case where significant attention is paid to a certain group of rights, to the detriment of others. If we are to understand this shaping process, it is necessary that we undertake a vigorous and scientific research into the

various factors of social, economic and political change which affect both individual and collective awareness, as well as specific circumstances and conditions which lead people towards a political choice that may either facilitate or obstruct respect for human rights, and their equilibrium, comprehensiveness and inter-dependence.

Human rights literature cannot afford to deprive itself of the benefits of political, social and economic science methodologies merely out of insisted loyalty to non-political traditions. While we argued earlier that this stand should not be abandoned, it should not be interpreted in a way which disregards the need to deal with current political data. If we accept such a need, then we must make use of modern social scientific knowledge and methodology from various other fields, especially the field of political science.

The human rights discourse undertakes such a task at great risk, as legal, non political terminology may become intermingled with the terminologies of political science, economics, anthropology and even comparative religion . These risks should be carefully considered in order to avoid slipping into discrimination or political fanaticism, which would be undoubtedly fatal to the moral content of the human rights movement.

Furthermore, the discourse may be exposed to the temptation of taking a stance of political opposition. This should be regarded as a danger, even if such a temptation originates from a belief that there is no government or policies which are ideal in terms of their respect for human rights. The search for an absolute commitment to human rights, might lead to constant agitation, a rejecting morality or constant mode of irritation. On the other hand, admission - even if not explicit - of the relativity of respect for human rights might lead to political "preferences", which are not permanent. Such risks can not be ignored or under-estimated.

Naturally, the basic guarantee against all these risks lies in respecting the traditions of vigorous scientific research. This development has already taken place in Western human rights literature. Human rights literature in

the third world has yet to advance to achieving a language, methodology and conventions for scientific study of human rights implementation.

However, to show respect to the established traditions of the scientific discourse alone is not an adequate guarantee against prejudice. It is necessary for the human rights perspective to reflect itself in the formulations of its literature. One of the most significant indicators of this perspective is its assertion of the concept of plurality and participation. If we add to this the observance of the main premise of scientific practice i.e. the relativity of the truth, we would be able to draw an important conclusion: that human rights literature itself should be a pluralized one. The more we are able to deal with current subjects and issues relating to existing debates, especially those relating to proposals for legislation, policy- or decision-making by the authorities, so the importance of plurality will grow.

Such a plurality may be guaranteed by dealing with each issue from more than one perspective or approach, and by involving a variety of intellectuals, writers and public figures who are able to give an independent assessment of issues.

The Human Rights Debate Booklet aims to benefit all of these issues

Regarding subject matter: the booklet handles those issues and problems **currently** high on the West's political agenda, in both the regional and national fields, and deals with them from a human rights perspective, i.e. one which reflects the aspirations to shape circumstances and policies which influence human rights. This includes a wide range of issues which we will address in order of their importance in the Arab region and their degree of urgency in terms of the specific development of those countries, or the existing or potential developments of their international or regional links.

Regarding methodology: The Booklet will make use of legal data , but will basically use the methodology of political science, sociology and economics.

The essence of the task presented by Cairo Institute for Human Rights Studies is based on dealing positively with specific historical circumstances

currently experienced by the Arab world, especially in the political and economic fields, with the aim of concluding the appropriate policies and circumstances to maximise respect for human rights.

And finally: The Booklet will be distinguished by its style of publication. Initially, Cairo Institute will prepare a background paper, taking into consideration the various viewpoints which exist on a specific issue, and the various possible solutions to the development of questions related to the issue. The Center will then invite comments on this paper from two intellectuals or public figures belonging to different schools of thought or political trends, in order to guarantee plurality. Finally, a seminar or workshop will be held to discuss the background paper and comments in order to guarantee further treatment of the issue and a greater plurality of ideas and approaches. The booklet will include abstracts of both the seminar and the workshop's discussions, in addition to the background paper and comments.

This booklet is an example of this style.

***Guarantees for Human Rights
Under Palestinian Self-Rule***

*** (1) Political and Legal Considerations**

****Background Paper**

By

******Manal Lutfi***

* Part two of this booklet is coming in a separate volume that focuses on cultural considerations

** Concluded May 1st., 1994.

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Introduction

The palestinian-Israeli Declaration of Principles, known otherwise as Gaza-Jericho First, signed in Washington on September 1993 has opened a new chapter in Palestinian national history. It also raises several new challenges and issues in relation to human rights in the Palestinian territories occupied by Israel since 1967.

The Palestinian people, in general, and, more specifically, those living in the occupied territories, have suffered a unique form of violation of their human rights and the international human law. The Israeli occupation authorities have violated almost all articles of the universal Declaration of Human Rights and the International Covenants on Civil and Political Rights, and Economic, Social and Cultural Rights. Israel has also broken all its commitments according to the international human law, especially Geneva's Fourth Convention .

This unique form of human rights violations is not the subject of this paper, as it is already well documented and the international community is common with it to a great extent. However, we shall touch on some of its aspects as far as such violations continue in the new stage following the implementation of the declaration of principles and its related agreements .

The subject of this paper is to discover future guarantees for the respect of human rights under palestinian self-rule. The new authority might offer chances to set reasonable guarantees for human rights in the occupied territories . But there are also some fears, especially that many constraints which limit the self-rule authority might negatively effect its performance in relation to the respect of human rights in the west bank and Gaza Strip.

There is no doubt that one of the main reasons which accelerated the signing of the declaration of principles is to alleviate the suffering of

the Palestinian people living under Israeli occupation, and to put an end for violations of human rights in the West Bank and Gaza Strip.

Meanwhile, Israel's recognition of the establishment of a national Palestinian authority to administrate a certain aspect of social life in the occupied territories, is, in itself, a sort of surrender to the necessity of recognizing the Palestinians' right of self-determination.

Nevertheless, the core of the same declaration is devoted to postponing the possibility of the full recognition of such right, stating that the final settlement will be determined after an interim period of no more than five years. In other words, the occupation authority continues to prevent the Palestinian people from enjoying their full right of self-determination during this interim period, and does not commit itself in advance to recognize this right even during the final settlement negotiations to implement Security Council resolution 242 and 338. Moreover, "Specific interpretations of some articles of the Declaration will negatively effect... and weaken the Palestinian people's right in self-determination. " (1) And above all that, the fact that supreme sovereignty authorities remain in the hand of the Israeli occupation forces, and the continued presence of Israeli occupation army and Israeli settlements over most of the occupied territories, "except for the areas of Gaza and Jericho," threatens that the same pattern of human rights violations which the Palestinian human being has suffered since June 1967 might continue, at least to a certain extent.

With all these constaints, it cannot be denied that the Declaration of Principles, it applied with the spirit of honesty and justice, represented a step on the road towards recognition of the palestinian peoples's collective rights. There is now a document which includes an Israeli recognition of the Palestinian people's " legitimate and political rights," (The introduction), not to forget the recognition of the Palestine liberation Irganisation, The same Declaration could be

considered as halfway towards the establishment of a Palestinian national authority which has the ability to crystallize in a future independent state. According to the agreement, the aim of the Palestinian-Israeli negotiations is, among other things, to establish a Palestinian self-rule authority for an interim period. This authority will be elected by the Palestinian people in the West Bank and Gaza Strip. Article one of the agreement stated the "in order to enable the Palestinian people in the West Bank and Gaza Strip to rule themselves according to democratic principles, direct, free and general political elections should take place to elect a council."

This means that the Palestinian people will enjoy a national elected authority, even with limited sovereignty, for the first time in their modern history. This Authority might pave the way for the establishment of a full sovereign state from the legal aspect. Even if this state was not established according to the dates mentioned in the Declaration, there is going to be at least, a nucleus for a Palestinian national authority carrying the duties of government in many aspects of the Palestinians' life. Many of these aspects are closely related to human rights. All this represents a good chance to develop guarantees for the respect of human rights in the occupied territories, and to start a national democratic experience which might set itself as a model for the respect of human rights in the Arab region.

There is no doubt that there is a chance to obtain the right of self-determination, and to set guarantees for the respect of the Palestinian people's civil and political rights. But this is only a chance. To enjoy a certain level of sovereignty, or even full sovereignty and the rights of self-determination, development and control over natural resources in the West Bank and Gaza, does not automatically guarantee or strengthen in an established manner the human civil and political rights, or individual rights in general. This depends to a great extent on the directions and level of performance of the responsible authority, in this case the Palestinian self-rule

authority. There are many fears surrounding the future of this performance. These fears could be concluded from the dominating practices within the wider framework of the Palestinian national movement, the circumstances surrounding the signing of the Declaration, its negotiations and articles of the agreement itself, with all the interactions expected to take place following the implementation of the agreement.

At this point, it becomes important to have an early discussion on the guarantees for the respect of human rights under the Palestinian self-rule authority in the West Bank and Gaza Strip.

Good intentions and political statements, however positive they were in relation to human rights in the occupied territories, do not represent enough guarantees which could be depended on in legitimizing these rights and protecting them by the self-rule authority. This authority should, before anything else, legitimize these rights in written laws, and to provide the suitable institutional structures for their protection and defence against the growth of the executive authority, even if such authority is limited and its sovereignty constrained. Most important among these institutions is the judicial authority which should be effective, independent and built up according to standard international agreements. Civil society institutions, especially human rights groups, should also be allowed to act freely to defend and protect those legitimized rights. We cannot speak of legal guarantees of human rights without taking the necessary steps in building such institutions as soon as possible.

As a matter of fact, creating the laws which guarantee the respect of human rights is not an easy mission. The Palestinian self-rule authority is being established without the existence of a comprehensive national legal framework. The Jordanian law was applied in the West Bank since its annexation to the kingdom in 1950, while the Egyptian law was applied in Gaza Strip since 1948,

and finally, came the Israeli occupation to implement its own laws in many civil dealings in the West Bank and Gaza since 1967. Palestinians have also had their customary law to organize their dealings and inter-Palestinian civil relations.

This means that the new self-rule authority will deal with several legal structures, all containing severe violations of civil and political rights. In other words, the new Palestinian authority will face a distorted legal structure. It is detrimental that this authority creates a comprehensive legal system for civil and political aspects a process which took many decades for other countries in normal circumstances. Moreover, this process will not be free of complications, conflicts and tensions regarding the philosophy of the law itself due to the deep division among the Palestinian political society. International law, most probably, will be taken as one of the sources of legislation. Yet, the real challenge lies in taking that law as a general framework directing the process of creating laws and civil and political legislation. There are many reasons to worry that this attitude will not be adopted in the special circumstances surrounding the implementation of Palestinian self-rule.

Human rights guarantees are not merely a legal question. As a matter of fact, it might not be a legal issue in the first place, but these guarantees depend, more or less, on the circumstances influencing the formation, content and performance of the public authority everywhere, and more particularly, in the occupied territories. The establishment of the Palestinian self-rule authority is taking place amid deep divisions and conflicts among different political trends of the national Palestinian movement. These conflicts and contradiction might have their own effects on the Palestinian society, threatening to extend the conflict among the national elite into deep divisions in the society on the bases and guidelines of building this society. And at the same time guarantees for the respect of human rights is related to the actual pluralism of the political society, the same guarantees also

depend, and maybe to a greater extent, on the ability to achieve national consensus as the possibility of establishing a stable structure for national reconciliation and collective acceptance over the general guidelines of the public order. Without this agreed public order, the alternatives range between civil war, chaos, oppression or political totalitarianism.

The process of building a Palestinian national authority, which might turn into a nucleus for the future Palestinian state, is related to many other complicated factors concerning the mechanisms of turning a liberation movement, most of the time in exile, into a responsible national authority committed to a just law in the West Bank and Gaza. The bases and guidelines of building this authority will determine to a great extent, and for a long time, the nature of the Palestinian political society and the prospects and directions of its development.

We can summarize our fears in this respect by saying that there is an unstable balance between the factors which might lead to a democratic formation of the structures and institutions of the self-rule authority, and other factors which might lead to an authoritarian, and maybe violent, formation of the same institutions.

We can see in the process of formation of the self-rule authority something similar to the historic process of state formation, although this process is taking place according to very particular circumstances. Several Arab writers deny that this is the case, saying that the responsibilities of the self-rule authority do not exceed those of municipalities. This could be true to a great extent if we take the literal textual of the articles of the Declaration. But when we consider the practical political aspect of the matter, we might see that the self-rule authority will gradually get closer to the legal definition of the state as we know it in our world today. There are people and citizens who can clearly be distinguished, a region which

could easily be defined according to dates of occupation and related international decisions and a public authority or government, which despite its shortages, will turn in practice into a political state under formation, regardless of all opposition of the Israeli occupation authority.

This is not to minimize the big amount of contradictions lying in the interim period, mainly those stemming from the presence of two authorities: that of the Israeli occupation which remains in control of sovereignty duties, and the Palestinian national authority which will formally carry the duties of municipalities, but could enjoy all the symbols needed to express an unquestionable identity assuring the right of self determination attributed to it by its citizens. The most important of all contradictions are those related to the issue of security. There is no doubt that security policies are ones of the most important entries related to respect and protection of human rights. As a matter of fact, we consider them as major determining factors to guarantee the respect of human rights in the occupied Arab territories.

Chapter 1

REALISTIC HUMAN RIGHTS GUARANTEES IN THE OCCUPIED TERRITORIES

1 Introduction

There is, no doubt, a special logical relationship between the achievement of human rights by the Palestinian self-rule authorities on the one hand, and their ability to maintain their struggle to establish an independent state and emancipate the Palestinian people from all forms of persecution on the other. However, this may not be the view taken by some who have studied national liberation movements and have seen new governments in many third world countries rapidly become authoritarian after gaining independence. Such people may think it possible to separate the need to establish an initial framework for granting essential human rights within the new political and social democracy from the national struggle. However, to a large extent, such a conclusion is both rash and false, since national liberation is in itself a democratic action. This is seen more clearly when the concept of the right to self-determination is examined. The right to self-determination extends to the whole nation, which, in turn, is granted the liberty to choose its government freely, through regular and fair elections.

The right of the people to choose their government is, therefore, considered an inalienable part of the right to self-determination. Consequently, obstructing a nation's right to express its clear and unmistakable choice freely is considered a continuing denial of its right to achieve self-determination.

This argument may also be applied to the practical political level. A government that denies its citizens freedom and basic rights, or

discriminates oppressively among its constituents, undermines the moral significance of its own independence, even though the government may have been established according to specific legislation. On the other hand, the real meaning of independence is evident, not in ambiguous catch- words or terminology, such as "the National Glory" or "collective stature, " but rather in specific signs which indicate that freedom and dignity are ensured to all people . The right to self-determination can logically be considered to serve as a natural gate through which people are able to gain both their individual and their collective civil, political and socio-economic rights and freedoms.

The inseparable relationship between human rights and the right to self- determination is seen much more clearly, for a number of reasons, in the Palestinian national struggle, particularly during the period of self-rule. First of all, the Palestinian people have a profound need for self-rule policies that represent a total break with those violations and deprivations inflicted by the oppressive Israeli occupation policies since 1967. Moreover, this need cannot possibly be satisfied fully by the self-rule government unless it has committed itself totally to human rights, within the range of its capacity. Secondly, because the nature of self-rule is transitional, it can easily become an area of serious contradictions between the strategic aims of the Palestinian national movement and those of the Israeli occupation.

The former will definitely struggle in order to invest the self-rule to build a Palestinian state that enjoys independent sovereignty and full authority, while the latter will inevitably work hard to remove the self-rule concept from its liberation context, aiming at appropriating the Occupied Territories with the full consent of the Palestinian people and their government. One of the methods by which the Israeli authorities may try to achieve this is by involving the self-rule authorities in human rights violations. Such involvement would confirm their publicity campaign regarding the incompetence of the Arabs to rule themselves democratically, a claim which represents the major focus of Israel's foreign propaganda.

To combat this propaganda, PLO leadership has committed itself to the concepts and traditions of Palestinian democracy. However, this

affirmation alone is not enough to make a successful start to a comprehensive human rights policy for the West Bank and Gaza Strip.

Good intentions should be translated into well-defined human rights guarantees and be apparent in both the conduct and the institutional structure of the self-rule authority.

It can be said, then, that there are three possible areas of focus for developing real guarantees for human rights in the Occupied Territories:

- . the affirmation of national consensus within the pluralistic framework of the Palestinian political community,
- . a fair democratic structure for the institutional and representative framework of the self-rule authority (and, therefore, for the main core of the Palestinian state), and
- . a fair solution to the security problems during the transitional period.

Each of these areas will be examined separately.

2. National Consensus Within the Pluralistic Framework of the Palestinian Political Community

Legal regulation of the political pluralism is considered to be a prime indicator of approval and respect for human rights. It is, moreover, regarded as an essential guarantee of human rights, since any concealment or eradication of this pluralism is a natural premise for subsequent tyranny and exclusions or expulsions . Indeed, the legal regulation of pluralism and the approval of it is the prime mechanism by which social and political balance is guaranteed in actual practice. Moreover, pluralism prevents any single individual from possessing absolute power and ensures that all social strata have the right to participate .

In terms of human rights, national consensus complements the necessity for pluralism.

National consensus in this context, means the formation of an established framework for the political reconciliation, with total commitment to pluralism . Therefore, the essence of the national reconciliation is the establishment of an agreement regarding respect for constitutional legality and democracy, including guarantees for the possibility of power sharing.

The importance of national consensus from the human rights perspective can be illustrated at both an active and a passive level.

i At the passive level, a general consensus on the basic democratic, national and human values represents the main hedge against possible outbreak of civil war. This holds particularly true within the circumstances that surround the attitudes apparent in the Gaza-Jericho First Agreement, the Declaration of Principles, and the Palestinian-Israeli peace negotiations in general, since a civil war provides the perfect arena for the violation of human rights, particularly those of civilians and helpless bystanders.

ii At the active level, national consensus is essential to the promotion and fulfilment of essential public rights and freedoms, providing the agreement is based on pluralism and participation. In this case, the public national agreement is not an automatic result, but rather the outcome of hard and systematic efforts by both the public authority and the legal democratic opposition forces. Without a systematic process, the political climate may degenerate, allowing the stronger parties to disregard and curtail participation of their opposition. Such an attitude would then push the opposition either to fight or to give up. On the other hand, failure of the opposition to agree upon a minimum of shared values for national reconciliation may force the public authority to choose between armed suppression, or acceptance of a fragmented public system and a prevalence of disregard for the law. Each of these scenarios would provide conditions conducive to widespread and regular human rights violations.

In the current situation within the Palestinian political community, there are some fears that the national reconciliation might be squandered,

that there could be a spontaneous rush into civil war, or that there may be a personal appropriation of power. Nevertheless, there are also other reassuring factors which may ensure the establishment of those combined human rights terms.

Both the positive and negative expectations regarding the establishment of real human rights guarantees in the Occupied Territories will be examined in turn.

2.1 Reasons for pessimism

There are two basic reasons for pessimism regarding the building of a national Palestinian peace within a political and ideological pluralism. One deals with factors related to sustaining and sanctifying the individualistic authority, either within PLO or within the framework of self-rule. The other pertains both to factors related to parties who oppose the Declaration of Principles, and to the potential threat of a Palestinian civil war.

2.1.1 The Deepening Authoritarian Nature of the National Palestinian Authority

The fears emanating from the continuation and sanctification of the Palestinian Authority's individualistic nature and its tendencies to ban all opposition are due to the emergence of persistently extensive and deepening political traditions by which the higher PLO leadership claims exclusive authority. This leadership is also unwilling to dedicate itself to participate actively in the national reconciliation and widen the participation base of national decision making. These fears are also heightened by regional and international factors which tend to condone this trend, both within PLO, and within Palestinian self-rule.

2.1.1.1 PLO Traditions of Individual Claims to control and of Exclusion of Opposition

Many people think that the tradition developed within PLO is heavily

weighed by individual claims to authority and by a trend to exclude any elements of political opposition. During the last few years and, more specifically, during the period before and after the Oslo Palestinian-Israeli Declaration of Principles, PLO leadership experienced a tight, centralized control by Mr. Yasser Arafat. Within this general context, then, the overall performance of PLO is characterized by being biased and entrenched, so much so, that many of the attempts to achieve a dialogue between PLO leadership and other national Palestinian parties, particularly Hamas, and to bring them closer together, ended in failure. This attitude, in turn, leads to the belief that there are many aspects of the Palestinian conflict and Palestinian political polarization problem that may result in a propaganda, a political, or even a military civil war.

In fact, this development represents a drift from the historical Palestinian legacy, since both democracy and national unity were key principles on which PLO established itself. Parliament and executive institutions were developed within PLO, with National Palestinian Council at the top. This council is the main legislative authority within PLO. It had three regularly scheduled meetings on Palestinian territory between 1964 and 1967, and after that, only irregular sessions in one Arab country or another, depending on Arab and Palestinian circumstances.

Because of the difficulties that faced the National Palestinian Council in holding regular meetings, an agreement was made to create a legislative assembly that would be flexible as to its location and could gather the required members outside the territories to constitute a quorum.

Thus the Central Palestinian Council was formed, and, in this way, basic Palestinian democratic legality was maintained. However, it was not able to carry out its tasks fully, as the legal Palestinian institutions were paralysed and inadequate because of internal and Arab factors.

Consequently, the individual decision making mechanism has been able to dominate, even in matters which will determine Palestinian destiny.

Indeed, some critics see an authoritarian trend within PLO as far back as the original emergence of the national Palestinian movement. During this formative period, the compounded danger presented by both the British occupation and the Jewish settlement resulted in a unification of the national Palestinian movement under a leadership controlled by representatives of the traditionally dominant forces: the conservative landlords, distinguished individuals and the religious leaders. Neither a commercial nor an industrial working class, whose members could offer democratic styles of political conduct, emerged in Palestine. 2

On the other hand, some opposing viewpoints stress that the early roots of the authoritarian

nature of PLO do not go back to the traditional ruling segments of society, who were not necessarily, by tradition, hostile to a democratic orientation. Rather, the blatant danger facing the national movement rendered the democratic quest less important, compared to the need to maintain a Political entity. Consequently, the national movement had to reject some offers of formal political development, such as establishing legislatures, because it recognised that the main objective of such offers would be to let in an Israeli majority.

Generally, however, the organizations that were established by both the national movement and the different parties remained agencies for the elite, built on traditional loyalties, and with programs that were far from achieving democratic goals. It is worth mentioning that the major party led by Al-Hadj Ameen Al-Housainy insisted that the right to elect its leading board, according to an internal party regulation, should be restricted to a limited and select number of its party members, namely, the elite, and be denied to the rest of the party's members.3

However, in the 1950's, democratic development within the national Palestinian movement had a more competent effect, especially in achieving the difficult and precarious balance between the continuing existence of the national Palestinian movement on Arab territories and the interests and

priorities of those Arab host countries. Therefore, the first directive of PLO was

" to form preparatory committees in each Arab country where Palestinian groups exist. Those groups made all communications and consultations possible, taking into account the traditional considerations of the distinguished ranks and influence including the conference were chosen accordingly. 4

Influenced, therefore, by the combined effect of both the internal and the Arab factors, the first conference was held in May 1964. At the conference, concepts which stressed clear hostility towards the formation of parties and put tremendous legislative, executive, political, administrative and financial powers into the hands of the PLO president were developed. Then, after 1967, the military organizations which dominated the national Palestinian movement gained more influence and introduced essential adjustments to the national charter to settle two issues:

a pledge to reduce the disagreement between the contradictory forces;

the principle of pluralism, safeguarding each party's private affairs against outside intervention.

However, there are some views that do not consider PLO's experience of pluralism to be a democratic accomplishment. Although pluralism is a device that brings democracy into action, it is not the only feature of democracy. Such views tend to consider the whole PLO heritage to be an authoritarian one with various forms.

In actual fact, other factors had been interfering from the start and contributed to the formation of a rigid bureaucratic frame, and then, as well, to the reinforcement of a single focus of authority and decision making within PLO. Such factors included the frequent catastrophes experienced by the national Palestinian movement after the Black September events of

1970, PLO involvement in the Lebanese civil war since 1976, the Israeli invasion of Lebanon in 1982, and the relocation of PLO to Tunisia. As a result of all these disasters, a political crisis erupted within PLO, as well as within the national Palestinian movement generally, quickly leaving the credibility of using military approaches as a strategy to liberate the Occupied Territories in serious doubt, at a time when any diplomatic breakthrough was blocked for several international and regional reasons simultaneously.

In addition, it is widely held that the authoritarianism drift within PLO was dramatically intensified during the period just before and just after the signing of Oslo Declaration, when the effects of the serious dimensions of the political crisis, their moral and organisational impact, and the elimination of the historical, stabilising leadership of Abou Jihad and Abou Iyad in PLO were felt. After the explosion of the second Gulf crisis, the deterioration of PLO's financial situation and its repudiation by the rich Arab Gulf countries played key roles in deepening the organisational crisis within PLO, as well as within Fatah movement itself. Consequently, the potential for democratic reform at the time of Oslo Declaration were limited.

The trend toward further consolidating the authoritarianism and developing single-focus decision-making within PLO is clearly seen in its general method of managing negotiations with Israel which created a secret line parallel to Washington's bilateral Palestinian/Israeli negotiations.

When Madrid peace negotiations started, the Executive Committee decided to institute supervision for the daily follow-up of the Palestinian delegation's work in both the bilateral and the multilateral negotiations. Abu Mazen managed to coordinate the division and integration of internal and external tasks and to carry out the pre-negotiation preparations for every round, but Arafat frequently interfered in the work of the Committee and persisted in giving the Palestinian delegation direct instructions⁵. Many people stressed that Arafat's intervention in the work of the Committee stemmed from a fear that the USA might view the delegation as an alternative to PLO. Consequently, Arafat managed to delay and hamper the

negotiations and to raise the ultimate limits of the negotiations to such an extent that any possible expectations of achievement were precluded. With the Israeli Labour party taking over the authority, the desire of the Israeli leadership to achieve progress in order to avoid the repeated failure which had encircled the Likud Party, and its recognition that Arafat was the key player in the Palestinian arena, both the Palestinian and the Israeli parties managed to create an alternative route to Oslo.

Consequently, Washington's negotiations were hindered, while the role of the internal Palestinian delegation was obscured and replaced by a small group consisting of Abu Ammar, Abu Mazen, Yasser Abd Rabbou, Abu Alaa and Hassan Assfour. When the internal Palestinian delegates announced their resignation, the crisis between them and the higher Palestinian leadership was aggravated. Then, after the crisis died down a little and the delegates withdrew their resignations, Oslo Agreement was disclosed and brought renewed shock-waves to the delegates, pushing them to seclusion.

Indeed, the angry and bitter reaction of a majority of the Palestinian political elite is due to the unforeseen secret and personal nature of the announced agreement, an agreement which, above all, contains decisions related to the future of the Palestinian people as a whole. To protest against the clandestine and personal nature of the action, numerous resignations from Palestinian institutions, including the PLO Executive Committee, ensued: Mahmoud Darwish, Shafeek Al Hout and Tayseer Khaled, the Democratic Front representative, all resigned. Those who resigned then turned to protesting against such clandestine methods, as well as against PLO's administrative methods, its financial budgets, and against the contents of the agreement itself.

Finally, these protests resulted in marginalization, not only of PLO's legal and legislative institutions, but of its executive institutions as well.

The attitude towards the Palestinian negotiation delegation was not the only manifestation of personal domination in decision making as regards

the future of the Palestinian nation. Further examples of this domination followed immediately, although more randomly, when Yasser Arafat surprised the PLO Executive Committee by taking over the management of all negotiation, documentation and scheduling matters that would follow the Declaration of Principles. It was also very evident that Arafat was not at all pleased with the role of the Linkage Committee referred to in the Declaration of Principles, and that he would prefer to solve the critical issues through direct contact between himself and the major responsible Israeli officials. Consequently, the Linkage Committee held only one meeting, on December 13, 1993, after which, as a model of the way in which he wanted to manage the negotiations, President Yasser Arafat himself arranged to become the only delegate to the Taba meetings to determine the negotiations relevant to the self-rule arrangements. The personal nature of decision-making within PLO is further attested to by the intentional refusal to institutionalize the policy and decision-making process within it, and by the insistence on personal domination over important decisions made in the negotiation process.

2.1.1.2 The Rise of Palestinian Authoritarianism and The Role of Its Arab Support

As well as internal sources within the PLO of variations of authoritarianism, there is an equally effective regional Arab source and support of such a drift. In fact, the general prevalence of authoritarian systems within the Arab world, either of radical nationalist or of conservative monarchial styles, has already infected PLO, and there are fears that it might be carried over into the structure of the Palestinian self-rule structure itself and be sanctioned by it.

Throughout the military phase of the struggle, the suffocating Arab environment that surrounded PLO contributed to the concentration of authority within PLO. Many Arab regimes (in Lebanon especially, as well as in Jordan and Syria) engaged PLO in conflicts and controversies that were turned into armed confrontations. Such circumstances deprived PLO of reliable Arab support, which found itself stuck between the Arab rock and a

hard place. Consequently, military decisions affected political decisions most frequently, and military methods of organisation were stressed over democratic political ones.

Nevertheless, the key factor that led to authoritarian control may be more profound, in that it relates to the whole circumstance that resulted in the turning of Arab financial support, especially that of the Gulf states, to support the authoritative transformation. The principal basis of authoritative control inside PLO is the ability of the top leadership to implement mechanisms to purchase loyalty and to create a wide network of followers. Therefore, the main structure of PLO more closely resembles the patron-client relationship than that of other national liberation movements, particularly armed ones or those with revolutionary ideology, which are characterised by relationships of loyalty and obedience.

As a result, the national Palestinian movement in exile became quite corrupt through patron-client mechanisms. Therefore, for PLO, corruption and political authoritarianism were really twin diseases, and, as a result of the common Arab agreement that a single individual, namely Yasser Arafat, would have absolute domination over the PLO financial budget, the flow of Arab financial support was used to aggravate these diseases.

Nonetheless, it was impossible for the mechanisms of corruption and the purchase of loyalty to destroy the ideological basis of democracy inside PLO until it moved to Tunisia. As long as PLO faced difficult situations in Lebanon, it was impossible for the top leadership to neglect the requirements of Palestinian legitimacy completely. However, when PLO moved to Tunisia, the mechanisms of institutional legitimacy were persistently set aside in favor of the dogmatic dominance of, first, a small group, and then, of a single individual. This shift occurred because of the moral degeneration and absolute dependence on the top leaders in managing all social situations and the activities of organized personnel inside PLO.

The shift towards political authoritarianism was further accelerated by the introduction of compromise diplomacy. Just after the Gulf crisis, the Arab

forces who accepted the American architecture of peace diplomacy placed their bets on the top leadership of PLO, represented by President Arafat personally, not only as the only person capable of selling the diplomatic bargain, but also as the only person who could go the whole way needed to deliver a compromise that reflects Israeli inflexibility. Many statements attributed to major Arab administrations indicate a desire to push Mr. Yasser Arafat towards direct and full control over the decisions of the difficult Palestinian negotiation process, particularly since continuous major crises threaten a deterioration of the whole process. Undoubtedly, this attitude, which is attributed to great Arab leaders, particularly President Hosni Mubarak, who played an essential role in the diplomacy of peace and in the negotiations between PLO and Israel, is not just a projection of the authoritative nature of the ruling Arab political systems onto the complex Palestinian situation. It is also attributed to a partially justifiable fear of putting the mechanisms of Palestinian institutional legitimacy into action, lest they should lead to an extended paralysis and repeated crises in the negotiations. Such problems in the negotiations could end in their disintegration, as well as in the loss of an important opportunity to relieve the sufferings of the Palestinian people and to find the only possible solution, namely, the diplomatic solution, to the Palestinian question.

2.1.13 The International Attitude and Expansion of Authoritarian Domination Within PLO

The peace diplomacy-linked international circumstance led to an increase in strains that were conducive to an expansion of authoritarian domination within PLO, and, hence, within the Palestinian self-rule authority. This was to happen, not because the major Western countries who can affect the compromise diplomacy prefer authoritarianism to democracy, but because these countries, especially USA, definitely prefer a scenario in which the negotiations achieve any measure of success, rather than one which sees a democratic option within PLO. USA displays an almost inherited inclination towards combating the orthodox radical national trends within the national Palestinian movement, even at the expense of producing authoritarian

conditions inside the Palestinian self-rule administration. American leadership, including President Clinton, permitted this situation and considered combating Palestinian radicalism to be an integral part of the task of defending the peace option. As a consequence, the American human rights agencies clearly protested against what seemed to be an organized American action aimed, in effect, at liquidating the basis of Palestinian democracy⁶.

In fact, there is no coincidence between the immense call for democratic and institutional reform within PLO in general and the opposition to American architecture of peace diplomacy, or even the current that holds an orthodox vision of peace from the Palestinian point of view, because the democratic reform movement includes trends and individuals who have adopted a positive attitude toward diplomatic compromise. Nevertheless, the intense confusion among anti-compromise groups calling for institutional and democratic reform within the national Palestinian movement could be the most important single cause of Western and American attitudes of practical opposition to the basis of Palestinian democracy. However, this may not be the case for all the active participants in the diplomacy of peace. In addition, there is also the Western and American bet on Mr. Yasser Arafat as a person, not as a legal president of the organization with the legal right to represent the Palestinian people. Finally, the Arab attitude that does not object at all to sacrificing Palestinian democracy in order to bring success at any price to the diplomacy of peace also affects Western attitudes generally, and the American perspective specifically.

There may also be another equally important factor, namely the drive of the Israeli attitudes toward the same issues. It is possible that the Israelis think that PLO and the self-rule authority can be pushed to slip into authoritarianism and dictatorial rule through focusing solely on Mr. Yasser Arafat. Their objective of this focus would not only be to bring success to the Israeli peace diplomacy at the expense of democracy, but would also aim at destroying the base of Palestinian democracy, which is an Israeli objective per se⁷. Indeed, driving the self-rule authority towards authoritarianism will

bring the Palestinian movement closer to the brink of civil war and will free Israel from its obsessive fear of a confrontation with Palestinian unity.

It could also be considered by Israel as evidence for large-scale propaganda to prove that Arab culture is authoritarian by nature, and under these circumstances, some Palestinians may start to look at Israel in a less negative way and to feel more inclined to suspend their hostility towards it.

2.1.2 The Attitude of the Palestinian Opposition to the Self-Rule Authority

National reconciliation under self-rule depends on the attitudes of the Palestinian opposition groups, who are opposed the Declaration of Principles Agreement made between Israel and PLO. It is well known that, after the October 1991 National Palestinian Council's decision to participate in " the peace process", ten Palestinian groups banded together to form an opposition front to the Madrid style of peace diplomacy. However, this opposition front was satisfied by merely condemning the form of the Madrid compromise and the official leadership's participation in it, and it made no recommendations for terminating or undermining the route taken in the negotiations for a peaceful compromise to the Declaration of Principles Agreement on September 13, 1993, the front revealed a definite change in attitude. Its new approach was to achieve better methods of coordination within the front, struggling at all costs to terminate the agreement, escalating the Intifada, and at the same time, conducting armed struggle to ensure the agreement is stopped, cancelled and, any remnant of it, eradicated. This basic attitude may lead to widespread clashes between PLO and the self-rule administration on the one hand, and the Palestinian opposition front on the other. It is not impossible (and some preparations have taken place) that these clashes could escalate into violence, and, the use of military pressures which may threaten to explode into a Palestinian civil war.

On the other hand, the improvised reports regarding evidence of preparations for such a civil war under the self-rule agreement may be

seriously exaggerated. It is in fact possible to imagine the continuation of the main opposition to the agreement through peaceful means, but this essential solution should start with assigning priority to the preservation of national Palestinian unity. In the end, this will involve acceptance of the self-rule leadership's mandate and an automatic approval of it, before and after the public self-rule Council elections, since the legality of the self-rule authority does not necessarily emerge from, nor depend on, the Declaration of Principles Agreement, but on the spontaneous acceptance and approval of it by the Palestinian people in the Occupied Territories. Moreover, it is probably necessary to suppose that the national reconciliation will also depend on the voluntary approval of the self-rule authority by the opposition groups as well, in exchange for legal approval of the opposition's presence in appropriately peaceful or public forms. The real problem in this situation, however, is that the theoretical approval of the self-rule leadership's legal mandate may not achieve an automatic and complete commitment to its regulations and decisions regarding the right to launch armed struggle against Israel, in general, and against the Israeli forces and settlements in the Occupied Territories, in particular.

The issue of military confrontation with Israel and with Israeli settlements and people is considered a critical one, not only for the fate of the peace process, but also for the future of national reconciliation and for establishing a solid base for national harmony within Palestinian society. On top of its potential effect on the break-down of the peace process, this issue may provoke a Palestinian civil war. As long as the political polarization around the Declaration of Principles Agreement retains a dogmatic, extreme and intense nature, a situation characterised by severe diminishment of the national Palestinian society is very likely to arise, leading to serious and extended conflicts and, most likely, to serious violations of Palestinian human rights, either by the self-rule authorities, or by the radical opposition.

However, such potential situations also depend on political factors, and it is, therefore, appropriate to review the possibilities resulting from the actual divergences in the opposition groups' attitudes to the Agreement from

those of the self-rule leadership and, consequently, from that of the PLO's top leaders. In fact, intensification of the attitude taken by groups opposing the Agreement and their shift from merely opposing the Agreement to directly clashing with the self-rule leadership hinges on three main factors :

the durability of the opposition alliance and the subsequent freezing of the political polarization between two opposing political groups,

the credibility of PLO and its ability to initiate an organized inclusion of the opposition into a pluralistic and stable political framework, and

the fate of the peace process itself, at both the regional and the Palestinian levels.

2.1.3 The Durability of the Opposition Alliance and the Freezing of Political Polarization

Appreciation of the significance of this factor depends on an objective assessment of its implied political results, rather than on a negative assessment of the opposition alliance's main viewpoint. This approach is necessary because the determination of the opposition alliance to confront the Declaration of Principles Agreement, and to follow a policy that will terminate it, is increasingly dividing the Palestinian political society into two conflicting groups, and increases the probability of a violent confrontation between them.

On the other hand, ensuring the plurality and adaptability of the political field in the Occupied Territories necessitates some interaction to bridge the gaps may take place and make confrontation and violent conflict between them less probable and less critical. The probability that the opposition alliance will continue and that the polarization will subsequently stay frozen is supported by the agreement of the various opposition groups to a common viewpoint regarding the Declaration of Principles Agreement, by their lack of confidence in the upper levels of PLO leadership, and by their fear that

the self-rule administration will slip into authoritarianism and totalitarianism, obstructing the opposition's participation in the political system and national decision-making. These fears are compounded by their dominantly bitter and negative past experiences in dealing with the upper levels of PLO leadership.

The opposition groups are betting on the failure of the application process of the Agreement principles, since their Palestinian adversaries are not ready, lack planning, improvise their decisions, hastily assign key personnel to various committees, and choose such personnel on the basis of politics rather than scientific or technical expertise. This wager, combined with the fact that Israel lurks in anticipation of every possible opportunity to undermine the construction of an independent, settled national Palestinian entity, persuades the opposition groups to maintain their alliance in spite of their differences, in order to be able to lead the national Palestinian movement in the event that they win their wager, and the Agreement's application process fails.

In reality, on the other hand, there is probably a good chance that some severing of the opposition group alliance could occur and that the outlook of a few groups could be changed if the application process of the Declaration of Principles succeeds and Israel's peace negotiations with both Syria and Lebanon move forward. The probability of this, however, depends on three main factors, each of which is discussed below.

2.1.3.1 The Ideological and Organizational Contradiction

The alliance between the ten opposition groups neither cancels nor marginalizes the individual group loyalties and potential conflicts, since the alliance includes Islamic, secular, leftist and democratic forces. The contradictions between these forces encompass a very wide area of current and future issues, and even choosing a name for the alliance was the subject of intense conflict. Hamas wanted to label the group "Islamic," while the popular and democratic fronts insisted on calling it "National." The end result was that the opposition front was deprived of a name

altogether⁸. Moreover, it is also possible to view the two major fronts inside " the alliance of Palestinian forces " as the front for the nationalist forces on the one hand, and the front of the Islamic forces on the other, each of which features a common heritage of ideology and action, as well as a stronger level of confidence among the component groups within each front. There are now pressures towards an organizational unification of the nationalist front groups, and similar pressures aim at unifying and amalgamating the Islamic groups. If such unifications do occur, and if their contradicting viewpoints persist or increase, their wider, mutual alliance may break apart.

Currently, however, the attitude towards PLO may be the main political contention. The nationalist groups are inclined to retain PLO as a legal institution for the national Palestinian struggle as a whole, although with a change in PLO leaders acted against the national Palestinian charter during the peace negotiations. The Islamic groups, however, lean towards finding a more radical alternative to PLO in the continuing struggle against Israel. Similarly, while the nationalist front prefers to approach public work through public conferences, in order to draw out alternative national leadership, the Islamic front rejects such an approach and focuses on a private organizational work approach to contain the energies of the public⁹.

Furthermore, there is a wide gulf between the two fronts regarding the ratio of representation in the central leadership of the Palestinian force alliance. Hamas insists on having 40% for itself, 40 % for other groups, and 20 % for independent representatives, but the national groups rejected these demands. The nationalist stream is alerted by Hamas' utilitarian tendency shown by the fact that Hamas allied itself with the nationalists on Beer-Zeit University election list because the nationalists dominate there, but refused to be affiliated with them in the Islamic University elections and those of both the Engineers' and the Doctors' Unions, as it is sure to succeed alone there¹⁰.

Consequently, the nationalist groups are very apprehensive about Hamas' tendency towards carrying out work on the political front alone and,

possibly, dominating it. This tendency has, in fact, led to a freeze in the activities of the declared alliance between the ten Palestinian groups, as well as to sparse political and military clashes, especially between the democratic front and Hamas. 11

2.1.3.2 Difficulties in Achieving the Alliance Objectives

If the Declaration of Principles Agreement between PLO and Israel is successfully

implemented, the objectives of the opposition alliance will be particularly difficult to achieve, since one of its goals is to terminate the Agreement. Its slogan will be out of date and will specifically contradict, both the need to alleviate the sufferings of the Palestinian people, and the overwhelming eagerness to establish their political institutions and to launch important development activities to save the economy of the Occupied Territories from total collapse. After all, the call to abort the Agreement does not lend itself to any reliable alternative strategy, as the armed struggle against Israel is not a promising approach to liberation and independence at least not in the current regional and international circumstances. Above all, an outcry to terminate the Declaration of Principles Agreement may, in fact, isolate the opposition groups from the overall process of creating a political and representative framework for the Palestinian people in the Occupied Territories and, consequently, could subject the opposition to severe political losses.

2.1.3.3 Hamas vs the Opposition's Plan to Boycott the Self-Rule Council Elections

The fact that the Hamas Organization, when the time comes, is likely to decide to take part on its own in the public elections for the self-rule Council is an important factor in determining either the solidarity or the fragmentation of the opposition, should the Agreement application process be successful. The basic intention of the opposition groups to boycott the self-rule Council elections is based on the theory that any participation in these elections,

which are seen as administrative rather than representative, implies approval of the Agreement they are all attempting to overturn. Therefore, Hamas' participation in the elections on its own will dissolve the real political basis for the opposition groups' alliance.¹² In fact, Sheikh Ahmed Yassin has already announced to Al Hayat newspaper in mid-December 1993, that "Hamas intends to participate in the self-rule elections in order to prove its power in the Occupied Territories." Hamas' incentives to participate in the self-rule council elections, therefore, are much stronger of its image as an alternative to PLO, or, at least, to PLO's top leaders.

Should Hamas participate in the self-rule administration elections, a dual consequence will result for the rest of the allied Palestinian opposition groups. On the one hand, Hamas' undermining of the alliance may make the other groups feel weak and, thus, influence them to become more flexible in their attitude to the self-rule authority. On the other hand, Hamas' participation in the elections may prompt the other groups to take part as well, in order to retain the same status as the participants. Obviously, Hamas' participation has tremendous influence on identifying the characteristics and nature of the Palestinian political field, due to its political power among the common people, its administrative strength and ideological commitment, and the support it gets from many rich Arab countries.

2.1.4 Success or Failure of the Peace Process

All the analyses given above depend on a successful application process of the self-rule Declaration. In fact, the difficulties in conducting the negotiations, which resulted in seriously controversial agreements, led to a disintegration of popular Palestinian support for the Declaration Agreement after it was made, and to a predominance of violence between Israel and the Palestinian people. Within the Occupied Territories, subsequently, the base of support for the upper PLO leadership levels disintegrated. These circumstances condense the polarization factors in the Palestinian political field. Even if the Agreement's implementation process is successful, the upper levels of PLO leadership will still retain the needed

control over political and administrative institutions, although they will be less able to generate ethical, moral and political sympathy among the Palestinian people, who are increasingly sympathetic to the opposition forces, particularly Hamas.

Such an analysis encourages the conclusion that Israel's objective in undermining the powers of the national administration and obstructing the application process aims at creating an atmosphere of discord that could explode into a Palestinian civil war. However, the presence of these threats does not necessarily mean that a civil war will erupt, and it may not be too late to start building the Palestinian political institutions and organizing its political system in 1994. In turn, therefore, the factors which could shatter the opposition alliance and give adequate mobility and interaction to the Palestinian political field will be in effect, should the process of application achieve reasonable success, and before the continuous Israeli aggression and the endless political frustration of the Palestinian people lead to a total corrosion of public support for the application of the Agreement.

If, however, the process of application fails because of the inadequacy and incompetence of the national administration, or due to a systematic Israeli effort to initiate conflict and failure in the self-rule process, then other and perhaps unpredictable results may ensue. A situation like this will certainly accelerate the deterioration of support for both the Agreement and PLO. It may even lead to a complete change in the political situation within the Occupied Territories, which, in turn could isolate PLO as a whole, especially its upper leadership levels. On the other hand, PLO leaders may resort to cancelling the Agreement and return to open political struggle and military conflict with Israel, in an attempt to avoid the disturbing possibility of becoming isolated. The possible scenario of military conflict with Israel reduces the impact of the current active polarization process in the Palestinian arena, but it also essentially changes the balance of power here, in favor of the opposition, especially Hamas. In conclusion, the nature of the political environment produced by all of these possible scenarios creates a unique situation and makes a different strategic approach to human rights

in the Occupied Territories necessary.

2.1.5 The Attitude Taken by PLO towards the Palestinian Opposition

From the very beginning of the first phase of the Agreement implementation, PLO's attitude to the opposition plays an important role in determining the nature of the relationship between the self-rule administration and the organized opposition. The persistence of what may be called the authoritarian shift within PLO leads in practice, to its fragmentation and converts it into a bureaucratic device separate in character from the larger, representative whole that granted it the right to represent the Palestinian people. The self-rule administration will most likely draw on bureaucratic and tyrannical, rather than political and consensus methods in order to gain political advantages during the formation of self-rule Council election constituencies, if the top PLO leaders fail to approach the opposition groups in a democratic manner and do not achieve a national reconciliation.

Despite the bitter legacy of negative experience in the relations between the upper PLO leadership levels and the opposition groups, including Hamas, it is not too late to start some political initiatives to relieve the serious division, to show more flexibility, and to absorb the opposition successfully within the stable national reconciliation framework.

2.2 Reasons for Optimism

In counterbalance to reasons for pessimism there are a number of reasons for optimism. These include:

- the strength of democracy inherent in modern national Palestinian culture.
- the specific democratic focus of the national Palestinian question, and
- the possible provision of international non-governmental support to Palestinian human rights.

2.2.1 Democracy Inherent in Modern National Palestinian Culture

The Palestinian culture shares some unfavorable anti-democratic features with the wider Arab culture as a whole. Some of these features are

- * the domination of patron-client relationships,
 - * the dependence of both the leadership and the authority on personal subjective considerations
 - * the revival of paternalistic social frames with uncultivated mechanical loyalties, and
 - * the constant restriction in areas open to individual personal development
- in favor of a dominant collective philosophy focusing on the organic unity of the state and society.

Nevertheless, modern Palestinian culture was the Arab culture most affected by the ideas of pluralism and democracy, in the midst of difficult and devastating circumstances for the national Palestinian movement. Currently, the strength of the democracy inherent in the Palestinian culture is evident on more than one level.

2.2.1.1 *Democratic Reform Movement Within PLO*

The efforts to bring democratic reforms to PLO are the most significant in terms of direct political significance. In fact, throughout PLO's extended history, there has been a persistent inclination to propose ideas for revisions and reforms. However, previous attempts to bring in extensive and democratic reform often drifted to either opportunism or violence. Therefore, because the formation of an active organization with a flexible, peaceful and democratic approach failed, the upper PLO leadership levels succeeded in getting rid of individuals advocating democratic reform. Similarly, the first group suggesting such reform again, after the invasion of

infrastructure in Tunisia, was also Lebanon and the relocation of PLO forced to use the strategies of armed violence.

The prolonged conflict between this group and the mainstream of PLO led to a public rejection of the former, especially in the Occupied Territories, thereby silencing the voice of revision and reform. However, the current democratic reform movement is committed to democratic methods and extends across all PLO organizational levels, at varying degrees of commitment and consistency. Within the executive committee, there is a growing opposition to the individualistic and arbitrary decision-making method adopted for negotiations, and includes committee members: Abou Mazen, Yasser Abd Rabbou, Soleiman Al Naggab, Abou Al Lotf and Hany Al Hassan, as well as some independent executive committee members.¹³

2.2.1.2 Democratic Reform Among Independent Nationalists in the Occupied Territories

The democratic revision and reform movement is extremely credible among independent nationalists in the Occupied Territories, giving the movement extensive moral significance among the Palestinian public in general. Although the higher levels of PLO leadership continually ignore requests for reform, it can no longer ignore the substantial significance of the reform movement itself, nor the nationalists who inspired it.

Within the wider range of public and nationalist Palestinian fields of action, pluralism and democratic traditions are strong, and were already apparent in 1967, during the elections of university and institute student union councils, of the professional syndicates, and of the chambers of commerce. These elections, on the whole, produced a pluralistic political structure in which the different Palestinian national groups and forces are represented.

Similarly, the Palestinian human rights movement, especially such organizations as Al Haqq, Al Ard Wa Al Meyah (Land and Water Agency), the Palestinian Information Center, and the Gaza Center for Law and

Rights, is also a most important reserve of Palestinian democratic traditions, particularly human rights. The movement has gained outstanding credibility in the Occupied Territories as a result of its exceptional struggle, within and without, to defend Palestinian human rights against Israeli violations. These human rights organizations could become an important base for monitoring the self-rule authorities' performance in the area of human rights. The monitoring role, in turn, requires a creative adaptation to the new circumstances associated with the signing of the Declaration of Principles Agreement between Israel and PLO.

2.2.2 The Specific Democratic Focus of the National Palestinian Question

It can be maintained that a democratic solution to the Palestinian question is almost inevitable, or, in other words, that the solution to the Palestinian question must include the establishment of Palestinian democracy. The authoritarian shift within PLO emerged as a result of the struggles abroad and Western approval of the Palestinian people's right to self-determination in those territories occupied since 1967, is likely to reframe the nationalist issues in democratic and human rights direction .

As a result of the prolonged tragic nature of the Palestinian question, pluralism became a major focus of the Palestinian national movement. Moreover, the movement involved the Palestinian people as well as a supportive training group for matters of community politics. This predisposition towards pluralism is being deepened by the fact that the Palestinians' historic enemy, the Israeli establishment, successfully formed a resilient pluralistic system, despite its serious internal conflicts and discord.

On the other hand, the concept of assigning the Palestinian people's representational power to PLO alone is well established. However, the emergence of a form of self-rule and its inevitable development into national independence brings the representation issue back to its proper original foundation, which involves periodic public elections to choose candidates for official public offices. The Declaration of Principles (Article 3)

includes this interpretation as an integral part of the nation's right to self-determination. This right does not stop with the formation of an independent state, but also extends to the election and selection of the nation's government by the nation itself.

Since the Palestinian question was an international issue from the very beginning, the right to self-determination and its application will also be an international issue, to be managed, both physically and ethically, through international monitoring. This kind of supervision will, in turn provide a guarantee, albeit a relative one, against violation, by executive authority or military power, of the intrinsic insights of political community.

2.2.3 International Support for Palestinian Human Rights

The major international powers, particularly USA, tend to push for the formation of an authoritative Palestinian political reality. On the other hand, there is also vast potential support that could be given to the Palestinian struggle by the international human rights movement, to establish a democracy that approves and legislates these rights within the political community of the Occupied Territories.

3 A Fair Democratic Structure for the Institutional and Representative Framework of the Self-Rule Authority

The establishment of the self-rule administration in the West Bank and Gaza Strip is in fact a process of creating an embryonic state. The quality and manner with which the bureaucratic, institutional and representative frameworks of this state are instituted will certainly have deep effects on the true Palestinian human rights map in the Occupied Territories. Indeed, on the long run, unbiased creation of institutional, representative and bureaucratic frameworks is the most important genuine guarantee of human rights, since the map of political forces changes much more rapidly than the state systems. Within these systems, internal traditions grow and develop, and by the time these traditions become established fact, their acceptability is still relatively independent of political legitimacy. Even in democratic

states, the state bureaucracy is the main source of human rights violations, since modern bureaucracy tends to become detached from politics and from the public will, and turns into a vehicle by which the power relationships within the social structure itself can be altered. The people's alienation and isolation from, and their submission to the state bureaucracy are partly a logical result of more complicated relationships created by the participation of the bureaucracy itself.

The situation becomes even more complicated if the bureaucratic state frameworks are based on biased or irrational grounds, are divorced from public participation and monitoring, or when the frameworks are established without allegiance to modern institutional democracy. A tyrannical bureaucracy, which depends only on itself and is not tuned in to the public will of its citizens, making decisions and creating the objective environment for government programs and schemes that do not satisfy rationality, accountability, transparency, etc., nor the public interest, is the most likely bureaucracy to violate human rights in all fields, whether political or civil.

An unbiased structure for institutional, representative and bureaucratic state frameworks implies that they are built on the basis of an impartial abstract law, which should reflect the principle that "The will of the people is the basis of government" The law should also base performance measures and standards on rational, objective and accountable criteria, using a public civil service recruitment plan based on the concept of the right to equal opportunities for all people, and on the selection of the most efficient among the recruits according to theoretical and consistent criteria. These criteria themselves are basic to human rights standards, for, according to the Universal Declaration of Human Rights, "Everyone has the right to take part in the government of his country. . ." (Article 21/2) .

The issue of an impartial structure for the representative and bureaucratic institutions of self-rule creates several essential problems regarding current and future human rights guarantees. The main problem can, in fact, be seen as the essential difficulties in transforming PLO into a state. But there are other problems as well.

3.1 The Difficulties in Transforming PLO into a State

To transform PLO into an effective and democratic national governing entity presents a number of difficulties that must be overcome. These difficulties can be seen in three general problematic areas :

- * problems of public representation through fair elections,
- * the problem of competence and the authoritarian and political allocation of public offices, and
- * the ideological difficulties, with both social radicalism and traditional market policies.

3.1.1 Problems of Public Representation through Fair Elections

The main principle of the right to self-determination is the freedom which is given to the nation to choose its legal representatives through honest and periodic elections , guaranteeing the free expression of the electoral will to all people equally (The International Covenant on Civil and Political Rights, Article 25). Nonetheless, the right to represent the Palestinian people, which was given to PLO according to the 1974 Arab summit conference decisions, reflects the special conditions in which the Palestinian people found themselves under the Israeli occupation, during which their right to self-determination was denied. Since then, PLO in fact developed as an actual government or even a state without territories . However, this qualification could turn into a complex problem if Israel decided to recognize and accept the Palestinian people's right to self-determination or to give them self-rule. Such recognition would partially eliminate the exceptional conditions that turned PLO into the people's deputy, without public, free, unbiased elections. If such recognition occurs, the original legal terms of representation should be restored. The Declaration of Principles stated that the formation of the self-rule council should come through open public elections under appropriate international supervision. However, until the Palestinians are able to manage their affairs by themselves, including the management of internationally supervised public elections, PLO, as

the contracted party with representational power, will form the temporary council and the administrative structure needed to look after the common interests of the public.

In practice, however, there is a feeling that the upper leadership levels of PLO may benefit from this temporary measure, since it could, between now and the time for elections, adjust the situation in the Occupied Territories to offer PLO automatic advantages in the form of favorable circumstances for its candidates who ought to compete for representative public offices within the bureaucracy.

There is also a fear that PLO institutions as such, or as adapted by the top leaders, might be moved into the Occupied Territories, where they may function as alternatives to the state system, or turn themselves into the state system itself. If this happens, then the nation will have been plundered of its right to free choice in the selection of its government representatives. Moreover, there are indications that this difficulty will be exacerbated, in the context of the formation of the National Council.

In fact, there seems to be a hidden debate between two opposing views within PLO regarding the nature of the Council elections that will take place after the implementation of self-rule commences. The majority, headed by Yasser Arafat, look at the elections as just a procedure to start the Declaration of Principles application process, and should not lead to a selection of Palestinian representatives who are independent of or an alternative to PLO. The others, a minority, see that, although PLO should continue as the voice of all sectors of the Palestinian people, within and without, responsible for all aspects of the Palestinian question, Palestinian representation from the West Bank and Gaza Strip must also be introduced through future elections, even if these representatives are competing against or independent of PLO.

Undoubtedly, solving such a problem in terms of national Palestinian interests is extremely difficult, since it is impossible to accept the break-up of PLO which represents the Palestinian people, in order to extract full

political rights for the people. At the same time, transferring PLO into a state system within the Occupied Territories unfairly affects, if not violates, the right to legal equality and equal opportunities in managing the public positions, and eventually, it violates the right to self-determination itself. Furthermore, if there is a kind of functional or sectorial division of work between a freely elected administration in the Occupied Territories and PLO's authority to represent the Palestinians of the Diaspora, it may create a kind of dual authority or a competitive environment which would be harmful to the national rights of the Palestinian people. Nevertheless, this last solution seems to be the only progressive one to fulfil the different needs of the Palestinian people, especially in the transitional phase.

Such a view is a political one, but in legal and human rights terms, the temporary authority of PLO and its upper leadership levels should not suggest any practical or legal implications that violate the right to equality and free, unbiased expression of the Palestinian people's will in the West Bank and Gaza Strip, even if this right results in the emergence of a totally alternative representative agency to PLO there .

3.1.2 The Problem of Competence and the Authoritative/ Political allocation of the Public offices

An additional problem arises in the transformation of the revolution into a state power authority, even if it is still under formation. From the human rights perspective, this problem may be the most serious one in the long run, for , although there is nothing basically reproachable about building a state power authority with former soldiers, if the political positions are offered through free and impartial elections, but it would inevitably be a serious problem if the former soldiers are handed those positions by the dictates of a higher authority, without competition, or if they are assigned administrative jobs without considering the equality of opportunity principle or whether their qualifications are appropriate for the job. Moreover, there are several indicators that illustrate the seriousness of this problem in the context of forming the self-rule administration.

The first indicator is PLO's tendency to transform its administrative circles and agencies into national administrative institutions in the Occupied Territories, with the view that these circles, which resemble ministries, will help in the speedy replacement of the Israeli military rule in the West Bank and Gaza Strip. For example, Samir Ghousha, a member of the executive committee of PLO, stated that there is no point in forming a council board that includes expert economists to take over the tasks of the higher Palestinian Council for Reconstruction and Development, as long as PLO is capable of reinstating its Council of Economy which has been frozen for financial reasons.

In addition, the formation of the National (i.e. self-rule) authority according to the decision of the Central Palestinian Council at the exceptional session held on November 12, 1993, illustrated the fears of PLO domination over public political positions, since some of the members of the National (self-rule) Council are also PLO Executive Committee members or from its other organizational levels. Nevertheless, leading individuals in the Occupied Territories are explicitly loyal to President Yasser Arafat, who will be the chairman of the National (self-rule) Council. However, anxieties relating to the leadership of Arafat have been raised, for, although it has been announced that he is to be the chairman, his tasks and the extent of his powers have yet to be clearly identified.

There is a predominant sentiment, both internally and externally, regarding the spirit of entitlement among freedom fighters; a view which looks at public offices as rewards for roles in the Palestinian struggle, either within PLO or Intifada. Therefore, the main cadres in PLO wait for a reward in the form of a political or administrative public affairs management job, although there seems to be some controversy between the Intifada activists and the leading PLO members as to which of these two groups is more deserving of these positions. 14 Nonetheless, whatever the outcome of this dispute, its inevitable results will seriously harm the impartial development process of self-rule government, at both the political and the administrative level. Indeed, the controversy makes political privileges overshadow

considerations of equal opportunity and also brings harm to the national technical criteria on which this administration should be established.

There is no doubt, however, that accepting the political merit principle as a routinely sanctioned procedure may imply a human rights violation, since it leads to irrational and incompetent administrative development. This kind of administration could, in turn, lead to a lasting inability to fulfil the economic and social rights of people, for the fulfilment of these rights presumes the highest level of competence in running a limited resource base.

The merit controversy is more aggravated when the general direction of PLO makes use of this prevailing reward sentiment and adopts the assignment method rather than that of election, and prefers personal loyalty to national loyalty or professional competence. This contradiction is most serious in the instituting process of the official functional framework of self-rule administration. The awarding of assignments in the Higher Council of Development and Construction is considered a significant model of the authoritarian political method that may prevail in the establishment of Palestinian institutions. Many people think the problem that was aroused about the position of chairman for the Higher Council of Development and Construction clearly shows the serious extent to which the authoritarian method will dominate in the coming period. In fact, when, in spite of many objections, Arafat decided to manage the Council chair himself, he provoked resentment both internally and externally. The objections voiced were that it is not legitimate for the Higher Council of Development and Construction to be responsible to the Executive Committee while the Council is controlled by the Chairman of the Executive Committee himself. Moreover, it is not legitimate for politicians to dominate the Economic Council, as this Council's members included, in addition to Arafat, Farouk Kaddomy, Mohammad Zohdy Al Nashashiby and Ahmad Quraie, all of whom are members of the PLO Executive Committee. Although Arafat had to submit to the wishes of the donor countries, it was only a temporary submission, and he was able to encircle both internal

and external opposition immediately and regain the Economic Council chair position.¹⁵ In fact, Arafat's continued domination over the Economic Council is still generating fear in many people who see that, in order for the Council to be independent in its own decision-making, there must be a clear and publicized legislation to identify the scope of its capacities and responsibilities, including its methods for receiving and spending donations and loans and for monitoring this precisely. These people also see that historical experience indicates that Arafat's domination over the Economic Council may reinforce the criteria for awarding positions in the Council as rewards for loyalty and obedience, rather than on the basis of competence, and that this reward practice may threaten transparency and the right to monitoring and questioning.

These contradictions are undeniably serious and, in fact, threaten the unity of the Palestinian people. Moreover, they are also prejudiced against the right to equal opportunity and to the competent fulfilment of other rights, especially economic and social rights. A large portion of the West Bank and Gaza Strip populations protested against the higher PLO leadership level because it assigned an excessive number of general affairs management positions to many of its agents who had been living outside the Occupied Territories for a long time, expressing fear that the external Palestinians would dominate the internal groups.¹⁶ In fact, all of these incongruities and tensions could have been avoided completely if objective and unbiased criteria to select managers for public political and administrative affairs positions according to neutral mechanisms had been announced.

3.1.3 The Ideological Difficulty

The ideological difficulty relates to the future of the social policies of the Palestinian self-rule administration. The pressures which are exerted towards developing the nature of these policies come from two contradictory trends: social radicalism and traditional market policies .

3.1.3.1 Social Radicalism

Social radicalism emerges from the radical social heritage of the majority of those actively involved in the independence struggle, both in PLO generally and in Intifada within the Occupied Territories. This heritage corresponds with the background of the broader ranging national struggle which draws its tremendous energy mainly from the middle and lower working classes. As a rule, national and social questions become bound together in an integral whole in the course of intense nationalist struggle and this bond leads to a sustained process of transformation into social radicalism in a majority of nationalist movements. Indeed, social radicalism can be said to prevail among the majority of members of both Fatah and Intifada. At the same time, it is also usual for national evolution to foster or to inspire extremely high economic and social expectations which sometimes exceed the actual resource base. This issue is extremely prominent in the case of Palestine because of the Israeli policies of destruction, negligence, and economic exploitation in the Occupied Territories.

3.1.3.2 Traditional Market Policies

Considerable pressures are being applied on the Occupied Territories to adopt traditional market policies. Such pressures could have effect; because the Palestinian people achieved partial recognition of their political rights at a time when the credibility of the social radical ideologies (Marxism and socialism) had broken down. Consequently, the international pressures were increased to impose socio-economic policies based on the free market principles, and less state interference was requested in social and economic development and in closing class gaps. At the same time, both the international agencies and the Palestinian business persons who live abroad developed a sudden compulsion to inject massive capital resources into the Occupied Territories. Their attitude is to link the offer of investment resources to the adoption of liberal economic and social approaches in the West Bank and Gaza Strip. In other words, they offered

approaches biased towards the private sector and a reduction in governmental interference at the expense of the people's welfare, since that kind of approach usually leads, either to raising the tax levels, or to a failure in the public budget because of inflation. Consequently, complex polarizations in socio-political ideologies and alliances are expected to emerge, and they may limit the power of the self-rule authority to adopt favorable social policies capable of preserving economic and social rights. In fact, many members of Fatah, especially those who live in the Occupied Territories, believe that the last assignments given by Arafat are sufficient grounds to fear a new alliance between the wealthy men of finance and PLO leaders, as well as the genuine humiliation that the alliance may bring to the middle and working classes, where the Intifada independence movement originated. Such an alliance could certainly marginalize the political role of the middle class.¹⁷ On the other hand, Palestinian business-men, both inside and outside, are afraid that the political authoritarianism in the economy could encourage irrational economic approaches,¹⁸ and this is a prediction that should be taken into consideration.

The desire of PLO top leaders and the self-rule authority to show the advantages of its peace diplomacy, and, particularly, of the Palestinian-Israeli Declaration of Principles, will lead to the adoption of economic policies that may be incapable of building a sound economy founded on productivity. If we look at the Egyptian experience after the 1978 Camp David Agreement and the Egyptian-Israeli Treaty, 1979, those fears must be taken seriously, since the economic policy in the case of Egypt tended to give a superficial feeling of economic prosperity, through inflationary policies, by focusing on public sector infra-structure projects and expansion of imports, instead of concentrating on the production sector and encouraging local production. The same course, if applied to the Palestinian situation, may also create a superficial feeling of a temporary prosperity, but it will be at the expense of establishing the capacity to provide basic needs in the future, and of sustainable development in general.

4 A Fair Solution to the Security Problems between Israel and the Self-Rule Administration during the Transitional Period

The domain of security is the most pertinent to the human rights issue, and Palestinian human rights are no exception. Undoubtedly, the signing of the Declaration of Principles and its application will not lessen Israel's accountability as the main source of violations of Palestinian human rights. Of course, persistent Israeli contempt towards recognizing the full rights of the Palestinian people to self-determination is itself the most serious violation and the real origin of all the other human rights violations in the Occupied Territories. Moreover, Israel's persistent refusal and failure to shoulder its responsibilities of protecting the civilians according to the Fourth Geneva convention is considered an additional source of those violations. These violations are implicit in the declaration of principles, as well as in its specific articles related to security affairs.

4.1 Violations through the Implicit Spirit of the Agreements

Since the agreement of the Declaration of Principles still did not put an end to the state of occupation nor confirm any of Israel's responsibilities as identified in the Geneva convention with respect to human rights, Israel is directly and indirectly responsible for all the potential human rights violations in the Occupied Territories, inspite of the implementation of limited self-rule procedures. Nevertheless, the agreements regarding security arrangements specified in the Declaration of Principles, the Cairo Security Agreement of February 10, 1994, and the Declaration of Implementation of the Agreement of May 4, 1994, do imply that there is a danger of specific violations to both civil and political human rights. This danger is implicit within the general spirit of the agreements, as well as in the explicit points relevant to security. For example, the general framework of both Cairo Security Agreement and Cairo Declaration of Implementation of the Agreement establish reasons why the Palestinian self-rule administration

could involve itself in human rights violations, instead of having the occupation authorities commit the violations by themselves. Although partially withdrawn from Gaza and Jericho, Israel will continue to occupy the West Bank, East Jerusalem, and the Gaza Strip by keeping the most prominent positions of authority and external security to resist, including armed resistance. Thus, if some Palestinians happened to carry out this right, the self-rule administration will be confronted with two difficult options:

either to pursue those resisters and punish them, although their deeds are not indictable according to international law, in order to guarantee the continuation of the peace process as a whole and to prove its credibility as a negotiating party with Israel;

or to refuse to act as an executioner on behalf of Israel, thereby reducing its performance and credibility as a negotiating party, and possibly leading to a cessation in the peace process and a reversion to the situation prevalent before the Declaration of Principles Agreement was signed.

Since the self-rule authority would be inclined to favor the higher interests of sustaining the peace process in order to achieve the right to self-determination, it may have to choose the first option, which itself includes a potentially widespread violation of those rights and may push the Palestinian people towards a civil war which, implies the creation of an environment with even widespread and powerful violations.

Such an analysis is valid, since large segments of the Palestinian national movement have already declared their determination to uphold their right to resist. The persistence of the Israeli violations to Palestinian human rights certainly continues to increase the magnitude of moral outrage that makes up the objective background of continued armed resistance to the Israeli occupation.

4.2 Violations through Explicit Security-Related Points in the Agreements

There is serious potential for many Palestinian human rights violations to emerge because Israel retains sovereignty and other powers through the interim period characterized by the duality of power in the Occupied Territories especially in the area of security. Israel retains full power, at least during the transition phase of the self-rule, over Jerusalem, the settlements, the security arrangements, the borders, and the cooperative relations with neighboring countries (Article5. Cairo Security Agreement and its Appendices). Other emerging rights for Israel will be added to these, including the right to pursue suspects. This right allows the Israeli security forces to intervene, along with the Palestinian police forces, to pursue any Palestinian agents who are suspected of committing armed actions against the Israeli army or the settlements within the Occupied Territories. However, the Palestinian police forces cannot pursue or question any Israeli agents suspected of committing acts against the Palestinians, as the self-rule administration has no authority over any Israeli individual.

According to the Security Agreement that was signed in Cairo, Israel has the right to:

- continue managing internal and external security matters and public order of the Israeli settlements in the Occupied Territories;

- run joint motor patrols, led by Palestinian vehicles, on the main roads;

- administer necessary responsibilities, and undertake separate security procedures, including driving Israeli motor patrols on the three side roads which link the Israeli settlements in the Gaza Strip to Israel;

- run joint Palestinian-Israeli motor patrols on the roads that are related to safe crossing; and

take the responsibilities of border security with Egypt and Jordan, including the responsibility of guarding the crossing routes, and as Israel has the right to pursue those who are suspected of committing acts detrimental to Israel's security in the Occupied Territories, the national Palestinian authority must pursue those agents to reduce the range of tension and possible military conflicts that could be perpetrated by such pursuit.

The events at Ibrahim's Shrine revealed what could happen due to this Israeli security interference in the Occupied Territories, for the Israelis suspected of collaborating with the criminal actions against the Arabs most probably escaped punishment.

Similarly, Israel retains the right to prosecute Palestinians suspected of committing aggression against Israel, and this, in turn, means submitting them to a system of pursuit, arrest and prosecution devoid of basic human rights guarantees, such as a fair trial and the right to appeal, and the elimination of the cruel and intimidating punishments, especially torture.

Furthermore, the Cairo Protocols of May 4, 1994, included a number of articles that confirm the points in the Cairo Security Agreement, and together, these give legal endorsement to an administratively and legally independent Israeli entity within the Palestinian self-rule area. Consequently, the unsanctioned Israeli settlements will turn into isolated cantons within the Palestinian area, protected by Israel internally and by the Palestinian police forces externally. Moreover, these cantons will have more advantages and will be managed under far better economic, political and security conditions than the Palestinians. As a result, a number of Palestinian leaders have criticized the top level of PLO's leadership, for accommodating the security demands of Israel vis-a-vis settlements in the Occupied Territories. Moreover, to give administrative and legal independence to these illegally established Israeli settlements implies recognition of their legitimacy. In turn, this acceptance presents a potential for extensive and reoccurring conflicts between the Palestinians and the

settlers, fragmenting the national Palestinian entity and impeding communication between its parts.

In fact, Article 1 of the General Regulations states that Israel must maintain its responsibility to protect the Egyptian borders and the Jordanian line and to defend against any external threat by sea or air. It also stipulates that Israel should continue to defend the internal security and public order of the Israeli people and their settlements by providing them with complete protection. This provision opens the door for Israel to avoid arresting its citizens who use violence against Palestinian civilians, since the settlers are prosecuted only according to Israeli law, which discriminates between penal and terrorist acts. Since the Israeli judge in these cases has the full authority to assess the type of crime, without any specific guarantee of objectivity and impartiality, the judge determines who is a criminal and who is a terrorist. In fact, the International Judicial Committee in Geneva stressed in its last report that the armed settlers are generally immune to legal consequences of their crimes against Palestinians.

4.3 Resolution of Security Concerns

The security arrangements as provided by the Agreements provide a lot of room for numerous potential threats to Palestinian human rights. From an international human rights perspective, the excessive security capacities given to Israel should be re-negotiated by proposing limitations and subjecting these to strict regulations in accordance with international criteria. Since Israel's actual use of its given security entitlements may lead to more serious and damaging results for the Palestinians, application procedures for criteria to halt or at least to reduce the abuse of its rights should be negotiated with regard to pursuit, arrest, prosecution, and treatment in detention. Without such renegotiation, however, Israel's abuse of its security privileges may eventually lead to creeping civil war.

It is obviously also important to change the regulations and criteria for the role of the Palestinian police forces to reflect the views of relevant international treaties. Common knowledge reveals that Soquor Fatah (Fatah's

Eagles) manages the police force, but many researchers consider this a dangerous start, since the organizational basis upon which Fatah's Eagles are established is secrecy, unity, discipline, quick and strict use of violence, and vigilance against real or imagined enemies, all of which represent the worst characteristics for a system responsible for the security of its people.

Furthermore, the experiences gained during the struggle against Occupation has produced:

Activists with a mentality that makes the individual believe he is right and that the single source of his power is his weapon. Such a fighter acts without any regard to how his behaviour is judged, and he is accustomed to exceeding his limits frequently and to rationalizing this as necessary for survival and self-defense.

And he who had been used to seeing himself completely free to determine the public interest will never give up this approach, as long as he is assigned to do the same task, namely, to maintain public interests. 20

An alternative which is more in accord with human rights is to choose a police system which is composed of civilians who are specifically trained for this purpose, and the police profession as a whole should submit to strict legal regulations monitored by a neutral judicial system, independent from the executive authority.

No doubt, the latest developments, especially the inundation of Palestinian territory with weapons, are warning signs. Moreover, with the deluge of weapons, the process of killing those who cooperate with Israel continues. Fatah's Eagles carried out many of the murders of those who cooperated or were suspected of collaborating with Israel, but Hamas also liquidated many Palestinians for the same offense.²¹ Many Palestinian groups observed that the liquidation operations represent a major violation

of the right to fair trials, since many of the murdered Palestinians were not Israeli agents, but were killed, instead, for family or personal reasons.

Therefore, the issue of forming an independent judicial system and providing legislation to safeguard human rights against the executive authority is an extremely important and timely one. Some aspects of the legislation and institutionalization necessary to keep and maintain human rights under the authority of self-rule will be dealt with in the next chapter.

Chapter 2

LEGISLATION AND INSTITUTIONALIZATION OF HUMAN RIGHTS UNDER SELF-RULE

1 Introduction

Self-rule authority has a unique opportunity to codify, legislate and to establish institutional frameworks and the executive procedures to ensure respect for human rights within the political and civil Palestinian society. Such actions are necessary, since it is much more difficult in some older states to cancel or adapt legislation incompatible with human rights than it is to initiate new legislation compatible with international human rights laws from the very beginning. This relationship is concerned with a very important issue, relevant to the strategy adopted to ensure respect and support for human rights within the mandate of the self-rule Council and any other Palestinian legislative or executive agencies. It reveals that the main difficulty with the existing legislation is that it is not always possible to identify all the violations precisely, and that the legislation includes some tolerance of human rights violations. Added to this problem is the fact that the violations or tolerance of them may be imbedded in the state's legislative and legal structure, or, in other words, within the spirit of the law.

However, it is here that the unique opportunity for the Palestinian self-rule finds potential, as the many aspects of the legal vacuum in the Occupied Territories could be widely discussed.

The multiple legal systems, which are very arbitrarily applied there, are based on the law of the Israeli colonizer and the style of the illegal military administration, or the Jordanian law that developed during the absence of

public empowerment and the Palestinian people's right to self-determination, or on the national Palestinian conventions taken from various sources, especially from Islamic law (Shareea) which is determined by a special school of Islamic Jurisprudence (Fiqh).

The interpretation of the Palestinian self-rule by the Palestinians themselves will never be reliable unless comprehensive legislation regarding the civil and political relationships is put in place from the very beginning.

The process of establishing a comprehensive civil and political legal code from the beginning provides a perfect opportunity to legislate and secure the institutional guarantees for Palestinian human rights, since human rights cannot be adequately guaranteed and maintained by mere statements from the self-rule authority expressing its readiness to sign or approve the international human rights charters or treaties. 23 First of all, it is not likely that this authority will enter into international treaties as an original party before securing all the components of its national sovereignty, or before achieving an agreement with Israel on the final destiny of the Occupied Territories. Secondly, and more importantly, the records of the states which signed and approved the international human rights charters or treaties are not completely innocent or free from serious violations. From a legal perspective, such states take advantage of the ambiguity of working according to two legal systems: a local one, which often accepts violations of human rights, and an international one, which are themselves ruled by conditions that, in many instances, prejudice their integrity, neutrality, and independence.

Although it is a positive step for a single individual to pledge respect for the international charters of human rights, it is hardly enough, even though the individual is a president of a state or a chairman of a self-rule authority. Therefore the legislation and institutionalization of the human rights guarantees must be the key mechanism by which these rights are maintained and respected, and any unfair violations of them are contested. Nevertheless, the establishment of comprehensive legislation for a state which is on its way to independence will encounter major difficulties.

In the following discussions, these difficulties will be examined, and then, rather than the well identified solutions themselves, priorities which might establish a social approach strategy to these solutions will be discussed.

2 The Difficulties of Establishing a Comprehensive Civil and Political Legislation for Self-Rule

In addition to the greatest difficulty that may hamper the establishment of a comprehensive civil and political legislation for the Palestinian society, namely, the Israeli opposition, there are three difficulties inherent in this vital process itself:

the relatively extended period of time needed to put comprehensive civil and political legislation in place;

the probable existence of numerous sources of political legislation and of internal tensions and contradictions that accompany these sources; related to

the current political and cultural conflict inside the civil and political Palestinian society.

2.1 The Time Needed to Put Comprehensive Legislation in Place

The process of instituting comprehensive civil and political legislation is widely recognized to be a very complex process that takes a long time. The legal systems of independent societies develop with time and in successive stages. During some of these, individual laws are established or adopted, and during others, there is a tendency to compile the individual laws into a comprehensive, homogeneous and internally consistent legal code. Logically speaking, the newly independent and emerging Palestinian society must first of all endeavour to set up comprehensive civil and political legislation. However, the long time period needed for the procedures to put this legislation in place may leave the Palestinian society prey to the legal and practical confusion in the midst of which the self-rule authority has to

operate for a long time to come.

Specific priorities must be identified, therefore, in order to fulfil the need for an independent, homogeneous legal system for the civil and the political Palestinian society and deliberations for maintaining and supporting human rights should be a top priority.

2.2 The Problem of Sources and Procedures for Legislation

A certain facet of this problem may arise out of the ambiguity of the Declaration of Principles and the transitory nature of the self-rule period. Israel retains much of the real sovereign power over the Occupied Territories, and the capacities of the self-rule Council are limited, strictly speaking, to establishing legislation for specific functional areas. The Council's capacities are also limited by Article 9, Item 2, as Israel and the representatives of the Palestinian people are revising the currently valid laws and military orders relevant to the "remaining areas." Consequently, Israel keeps the right of veto on Palestinian legislation to itself. Nevertheless, the self-rule authority can, in reality, produce independent legislations in all issues that are not relevant to Israel, even in the transitional phase. In these cases, Israel can do nothing except try to hamper the real implementation of these legislations.

The most important procedural feature of this problem relates to the political terms for putting the correct mechanisms for proper legislation into action. That is to say, it is not appropriate for the self-rule Council to produce a constitution to regulate life and political relationships, since such a constitution should be produced by a constitutional assembly elected solely for this purpose. Furthermore, the presence of a sizable majority that belongs to one political agency, such as PLO, may be unfair to the general environment in which the self-rule Council performs its legislative functions, particularly as related to human rights in general, as well as specifically to the laws that regulate the action of constitutional bodies such as the judicial system. Some emerging circumstances may allow the

executive administration or its chairman to replace the whole self-rule Council as a legislative authority, or to obscure the legislative role of this Council and force it to legitimize executive orders related to essential issues that should be organized according to a constitution or a law. The constitutional and legal vacuum in the Occupied Territories allows such acts.

The essence of this problem is related to the tension and contradictions that exist between the likely sources of legislation, and the subject of the comprehensive civil and political legal Code that we called for. The potential tensions referred to here are those that exist among the customary source, the Islamic fiqh source, and the international human rights law, all of which are important sources of legislation in the Occupied Territories.

The customary source draws its value from several factors. In many instances, the process of legislation and making regulations depends on collecting the customary law and writing it in permanent texts. The customary law is an important product of the national culture, and, hence, it is easily and spontaneously accepted. In addition, concerns for the stability of transactions especially in civil relations, may devote considerable consideration to the customary sources of legislation. In the case of Palestinian society, those factors acquire greater importance, because the customs represent the society's actual independence from the legal systems imposed upon it, and because of the greater need for spontaneous acceptance of the law, as opposed to forced implementation by a distant authority. Thus the customary law will represent a main source of legislation in Palestinian society, especially in the ordinary public domain. Nevertheless, there are many defects and faults evident in this source. The main defect is that customary law is weak or deficient in many areas of social relations, especially in the political area, partly because this law evolved within politically and socially deprived circumstances where the need to ensure equality is usually absent.

The widespread interpretations of the Islamic law in the neighboring Arab societies will undoubtedly be an important source for generating legislation and legal codes. In fact, there will be heavy political pressures to make the Islamic law interpretations the first, or even the only source of Palestinian law. Those pressures may be more intense still, since political organizations such as Hamas and Al Jihad Al Islamy are focused only on this idea. Moreover, the process of generating legislation and regulations is also likely to be affected by sources of Napoleonic origin, which are present in some Arab countries, especially Egypt. In most cases and problems that lack a well-defined custom or generally accepted Islamic text, there will be a strong temptation to imitate the Napoleonic code, as imitation of established and relatively clear legal systems is very easy. However, this will depend on political pressures, which may prefer the Napoleonic source because it gives more weight to the executive and administrative authority, and on the considerations of what is known as the public order. All these factors do not necessarily undermine freedom and established rights, but they do tend to subject them to more limiting restrictions than what is needed and possible in other legal systems.

No doubt, if PLO alone forms the temporary self-rule Council until the public elections prescribed in the Declaration of Principles Agreement take place, it will be easier for the political and administrative leaderships to undermine the opportunities for establishing equitable legislation that is more compatible with international human rights law and the fundamental considerations for democracy in the future. Such obstruction is plausible, considering the tendency of this leadership to centralize authority and weaken the checking and accountability mechanisms. In other words, the self-rule authority assigned by PLO may resort immediately, or even after being democratically selected, to favoring a specific method for solving the tensions and contradictions that exist among the various sources for formulating legislation and regulations. This preferred method favors anything that confirms its authority and is oriented towards interests specifically linked to confirm this authority at the expense of the consideration of human and democratic rights of the people.

2.3 The Current Political and Cultural Conflict within Palestinian Society

The current political and cultural conflict taking place within the Palestinian society of the Occupied Territories is very likely to arouse tensions among the more preferred legislative sources. On one hand, the division into civil, secular and Islamic preferences is increasingly more intense. The main features of their divergence are

- * the law and the legislative source,
- * the world view of Palestinians
- * the recognition of the self and the other,
- * the patterns of social and political organization, and
- * the definitions of rights and duties.

In other words, the contradiction and disagreement may extend into the philosophy and the spirit of the law and they may originate from particular texts as well. This division affects the process of instituting a comprehensive legislation more than a particular law or individual regulation. On the other hand, the division and conflict could also, for various reasons, threaten to paralyse the legislative mechanism.

* Specific groups such as Hamas, Al Jihad Al Islamy, or the opposition group alliance in general may apply obstructionist approaches against the legislative process in which PLO and its official leadership have the majority, if and when this legislation is based on secular world view.

An extreme scenario, although only a small probability, may involve a civil war.

Changing the political majority of the Council during the transitional period of self-rule and immediately after it, from the civil secular trend represented by PLO's official leadership, into the Islamic trend linked to the need for

complete liberation is quite possible.

On the other hand, there is a high probability for tensions to emerge even within the bounds of consistent secular option. It is common for liberation movements, once in control of a state (or a state under formation) to split between two mentalities. The first advocates the centralization of national power and the consolidation of control over civil society. This is customarily justified by the need for mobilization as a precondition for development and the need to deliver on collective, and socio-economic rights. This mentality is rooted in the nationalist Palestinian legacy. The second urges for the liberation of society, and the assertion of the role of civil communities. This latter is more sympathetic to fundamental liberties, and could yield a legal code more conducive to human rights. But given that this latter view could be regarded as weakening the power of a centralized state, it is more than likely for it to be opposed by the armed rank and file of a liberation movement. This seems to be also true in the case of the Palestinian liberation movement.

3 The Priority of legislating political rights

All of the difficulties already discussed above indicate that the process of establishing comprehensive civil and political legal code for the Palestinian society will be an extended one. More important, however, is the fact that this process will have very complex and sophisticated social, political and cultural implications, which are likely to be changed from one period to another throughout the national development. That is why priorities should be established ranking the regulation and legislation immediately needed to organize the internal relations within the Palestinian political society.

The most important of these priorities in terms of human rights considerations and conditions related to their required guarantees is the need for a legally regulated mechanism to solve political disputes peacefully in order to safeguard the right of peaceful development on one hand, and to ensure smooth solution of the disputes that arise around the

issues of legislation themselves, on the other.

The first section of this report determined that the main conditions surrounding the self-rule authority and the process of the Palestinian-Israeli peace negotiations may lead to serious political divisions and conflicts that could drive the entire Palestinian population towards an armed confrontation. Consequently, absolute priority should be given to finding a precise legal mechanism to solve the political disputes peacefully. This indicates what the first three sub-priorities should be.

3.1 The Priority of a Constitutional Document Which is Guided by the International Human Rights Law

The constitutional document is a priority for Palestinian self-rule because it is the general regulatory framework for political performance and for civil rights at all levels. This document controls the process of promulgating the law, and then exercising and applying it. The legal regulation and establishment of institutional human rights guarantees are surely related, above all, to this constitutional document.

For this reason, the process of producing a constitutional document for Palestinian self-rule should take the general spirit of the international human rights law and its texts as a source. The process should therefore be based on promotion, transparency, and cooperation of all the sections, directions, groups and ideological schools of both political and civil Palestinian society. Moreover, this process should also come through the only people designated as being concerned, namely the Palestinian people in the Occupied Territories. With this approach, the process could be the subject of a plebiscite, parallel with the public Self-Rule Council elections. Before the plebiscite, there should be a wide ranging preparatory work involving all the forces and groups in the equivalent of a national constitutional assembly. Because these principles had been deeply rooted in both the mind and the inner consciousness of the civil Palestinian society, there was widespread rejection of what was called the "basic statute project" offered by PLO's Executive Committee as a subject for limited discussion.²⁴

This draft was very privately proposed by a legal committee assigned by PLO's leadership to do this task. In addition to its secret nature, which undermines the concept of a constitutional document, this project was inspired by the model of the presidential systems, giving excessive advantages to the chairman of the (National) Self-rule Council. Nossair Al Arory, a professor of political science at Beer Zeit University, asserted that "the possibility of achieving a level of democratic performance by the proposed basic statute, in order to fulfil the suggestions of the Palestinians in the Occupied Territories, is very limited."²⁵ This is so because, according to this project, the chairman of the national authority retains executive, judicial, legislative and military capacities, all at the same time.

Similarly, Raga Shehata asserted that the undemocratic beginning of the basic statute makes it more difficult to achieve a constitution that supports democracy.²⁶ Such a failure shows clearly that the struggle for the legal regulation and institutionalization of the Palestinian people's human rights guarantees should start from the constitutional self-rule document, which is the document that will control the likelihood of regulating all the following laws or statutes according to the essential grounds and considerations of human rights.

3.2 The Priority of Establishing an Independent, Integrated Judicial System

An independent and unbiased judicial system is, undoubtedly, the most important guarantee of any human rights. The basic and fundamental function of the judicial system is to achieve justice by resolving disputes according to law. Yet the special nature of the legal vacuum and chaos in the Occupied Territories doubles the need to give absolute priority to the process of establishing an independent professional and unbiased judicial system. That is to say, with the exception of establishing a constitutional document, it is possible, and might even be necessary, for the independent judicial system to be established before starting the process of establishing a comprehensive civil and political legal code. The constitutional document guarantees full independence of the judicial system as a balancing authority.

In addition, the elected self-rule Council should give higher priority to creating the law that controls the establishment and work basis of the judicial authority, in terms of the time given to it and the effort exerted in it by the Council. In fact, it is relatively easy to do so, guided by the principles of judicial independence proclaimed at the successive rounds of the UN Conference, particularly at the Milan round in 1985, concerning the prevention of crime and the treatment of criminals.

3.3 The Priority of Establishing a Special Court to Monitor Constitutional Law Disputes

In addition to the priority of establishing a fully and completely independent judicial authority, especially with regard to the rules to manage the responsibilities of judges and prosecutors, and to ensure the right to find recourse through the law, for example, there is also a special urgency to establish a court that monitors and judges special disputes concerned with the constitutional nature of laws and executive orders which are proclaimed by the self-rule Council, and to establish an administrative court to judge the disputes that may arise between the people and the self-rule authority, or between the executive authority and the administrative system in general.

A wide range of the basic human rights in both civil and political areas is related to those two branches of the judicial system, namely, the court designated to judge the disputes regarding constitutional issues, and the administrative court designated to judge the disputes that may arise between the people and the self-rule authority, or between the executive authority and the administrative system in general. The priority that should be given to those two branches in the first phase must be increased, not only because any new executive authority tends to place constraints, but also because the constitutional and the administrative courts may participate in establishing and interpreting the constitutional principles and the general principles of the law, in addition to their function of monitoring the constitutional features of the laws, the administrative decisions, and the executive regulations.

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 12. For this subject, see:

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23. See:

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26. Ruba Al Hussary, *Op. Cit.*

Comment by

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First observation:

Following on what was contained in page one, "the continuation of the higher functions of sovereignty in the hands of the occupation authority, and the continuation of the occupation army, and the Israeli settlements in most parts of the Occupied Territories with the exception of the "two areas of Gaza and Jericho". we would like to add the following:

1 - During the transitional phase, the settlements will continue to control nearly 40 per cent of the Strip's area, which is 365km².

2 - Israeli law will apply in the settlements and on Israeli settlers and civilians in the self-rule areas during the transitional phase.

3 - The number of Israeli soldiers currently inside the Gaza Strip following the redeployment of forces is estimated at 4,000 - 4,500, spread over 54 inspection points, surveillance centres and military locations in all parts of the Strip.

4 - Military orders and regulations, amounting to nearly 1,300, will remain in force during the transitional phase with the exception of the "tourism, education, health, social affairs and direct taxation" powers that have been granted to the Palestinian Authority. Similarly, the Israeli military courts will continue to operate in a more constrained manner than in the past, and they are actually operating now out side the city of Gaza within the Gaza

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strip in the Airez industrial area, where all the Occupation's administration centres have moved to.

In other words, the Occupation will remain both "legal and material" inside the self-rule areas.

Second observation:

We wish to confirm that, according to our understanding of the Declaration of Principles Agreement and the Cairo Agreement and their supplements, Israel must approve the "electoral system" and the "number of elected council members". Also, according to our analysis, the council's authority "is not legislative in the classical meaning" but rather is empowered to issue regulations. This, of course, is not to mention that the date of the elections set according to the agreement in July 1994 has been postponed for a period of nine months as announced by the Palestine Liberation Organisation.

It is worth mentioning that the population census and names have not been received from Israel. There are also two other observations: the first is related to the intellectual attitude of PLO's leadership, and Israel's pressing PLO not to hold elections for fear of an opposition victory which, according to their opinion, could threaten the agreement; and the second is that up till now the forces opposing the Agreement have announced their decision not to partake in the elections for as long as they do not contain a legislative capacity.

Third observation:

Discussion about a "national elected government" is not necessarily a prelude for the foundation of a sovereign state. Apart from the fact that Israel is opposed to the foundation of a Palestinian state in principle, and apart from the fact that, in my view, we shouldn't expect any elections in the near future, I wish to emphasize four major points that could form a real and serious barrier against founding a state or achieving the minimum of a lasting and just peace as the Palestinians have in mind. These are:

- 1 - East Jerusalem and its fate.
- 2 - The settlements in the Occupied Territories.
- 3 - The issue of the Palestinians abroad—"nearly 4 million refugees"
- 4 - The lack of linkage between what is transitional and what is final.

It is true that the Palestinian experience is remarkable , especially the experience of human rights organizations, but we must be aware that, even though we hope that the Palestinian experience will be a model for the respect of human rights in the Arab region, this hope may not materialize.

The issue will not depend on Palestinian performance, but will be related to circumstances and determinants which the Palestinians sometimes are unable to surmount for political and legal reasons. Moreover, what is taking place in reality, points to the frustration, confusion and inadequacy of the official Palestinian performance. In the appointments process, the Palestinian authority has given priority to loyalty over competence. Furthermore, the Palestinian authority doesn,t have the capacity to sign international treaties and agreements related to human rights, and the elected council cannot legally ratify these international instruments because it does not possess the classical legislative jurisdiction.

In all cases we are faced with complicated chemical interactions and not just a simple mathematical calculation.

Fourth comment:

To build an "effective and independent judicial system" is a heavy burden and an issue requiring thought, because through a long series of Israeli military orders, of whose cancellation the Agreement makes no mention, the handicap in the judicial system will continue, in our judgement, during the transitional phase. This is a very sensitive and important area, requiring in-depth discussion on its own, and precise treatment . We wish to point out here that "Palestinian military tribunals" have already been created. They will work on implementing the law of the "fundamentals of the Palestinian revolutionary penal trials "that had been applied in Lebanon since 1979",

about which we, in our capacity as a human rights organization, know nothing at all. The consequences of embarking on such an approach on principle are well-known. In addition, the presence of these tribunals will cause a conflict of jurisdiction with the civil courts machine.

Apart from the danger of creating such military tribunals, the conflicting laws and jurisdictions will throw us into endless legal and judicial complications.

Fifth observation:

Even though I discard the possibility of civil war and chaos, pluralism on the grounds of national consensus is not a practical and urgent matter. The fact is that there is a very real vertical Palestinian political split. Most of the opposition organizations have so far refused to participate in the elections for the legislative council. The existing rumors on agreements, reconciliations and dialogues are matters related to practical day-to-day details and not instrumental in building of national consensus on the foundations of the public order.

Sixth observation:

From my point of view, and according to the study—despite its concentration upon the Declaration of Principles Agreement—there is a sort of arbitrary separation between the Palestinians inside and outside. I confirm here that, although the situation inside the Occupied Territories is decidedly special, more than four million Palestinians outside the Occupied Territories were excluded from the Agreement.

Under Palestinian, Arab and international circumstances, conditions and determinants, and under economic-political circumstances the democratic formation of the edifices and institutions of self-rule may not necessarily lead to a Palestinian democratic entity in a wide and comprehensive sense, for two reasons. The first is: the Palestinians are not only those who live inside the Occupied Territories. The second is the possibility of a total boycott of the elections by the opposition.

The issue of Israeli security, as we all know, was and still is an Israeli strategic excuse, used extensively and indiscriminately in many cases. In spite of all the systematic human rights violations perpetrated by Israel in the Occupied Territories since the dawn of the Palestinian question right up to and throughout the Occupation, Israeli is still holding fast to its vision and definition of the concept of security based on the grounds of power and ability to enforce its viewpoint and its policies at a time. Palestinians and the Arabs, in general, lack on the other hand a formally defined understanding of this concept and the inability to translate it into action because of their lack of power and capability.

Seventh observation — Part One:

The practices of Palestinian self-rule do not constitute a total break with the comprehensive policies of human rights violations in the Occupied Territories. This is so because constraints on its jurisdiction forms a violation. East Jerusalem has itself become an extremely sensitive and complex issue. Some countries, in particular the US, have started to change their official attitude which regarded East Jerusalem as a part of the Occupied Territories; while official Israeli policy is still to impose physical and legal Israeli annexation. To this day, the settlements are still there, expanding and growing vertically and horizontally. On the West Bank the problem is far more dangerous than in the Gaza Strip. Also, the effect of the Israeli military orders remaining in force is the deepening of actual and legal fears about this on one side; on another, the work of the Palestinian police force outside the classical concept of police work, and its commitment to the security of the settlements, settlers and Israel, will mean an additional factor to anticipate violations by the Palestinian police force. As I have already pointed out, the supposedly elected Palestinian council will not be able to practise legislative powers, including passing laws that protect and uphold Palestinian human rights even in the Occupied Territories.

In spite of that, I emphasise that Palestinian society has proved through Intifada obvious and unprecedented distinction. For despite the absence of authorities and a police force, the Palestinian community did not go through

a state of civil disorder except in a partial and simple manner. Here I point to live models: the events of Los Angeles in the US, and to what a city like Paris would be like (theoretically) without any authorities or police for 48 hours. "This Palestinian context for civil society may be considered as one of the most important guarantees of democracy and human rights within the limits of the Palestinian society inside the Occupied Territories." Once again, I emphasise that the Palestinian people are not only the present community inside the Occupied Territories, but rather inside and outside the Occupied Territories.

Eighth observation:

The possibility of entrapping the Palestinian self-rule authorities in human rights violations, so that Israel secures the propaganda that the Arabs are not worthy of governing themselves, is one of the issues that must be dealt with very seriously, sensitively and with a sense of responsibility. PLO leadership's assured concern for democratic traditions is a fine thing, but we must be aware that there was not even the minimum practice of democracy within PLO. Similarly, good intentions alone are not enough. We must be aware of the unusualness of the current experience, in which the leadership of PLO finds itself for the first time in a special, unprecedented situation which is their presence in the midst of a Palestinian civil community. In spite of the limitations surrounding the agreement, and even though the mentality at the leadership level has not changed, there is a change in the political, legal and practical situation for PLO action within the self-rule areas.

It is worth mentioning that Israel is in practice persuading PLO not to hold elections. On a different track, Israel has been working—particularly during 1993—on flooding the Occupied Territories and the Gaza Strip with great amounts of weapons.

Ninth observation:

To the three fields for crystallising realistic safeguards for human rights in the Occupied Territories I add the "economic issue". Economic conditions in

the Occupied Territories, especially in the Gaza strip, are disastrous by any standards. Discussion of Palestinian political plurality is a must. The impartial, democratic construction of an institutional infrastructure for the self-rule authorities, and resolving problems of security, are similarly essential.

But this also needs to be emphasised in "economic" terms. The economic issue has several determinants, some of which are related to Israel (the almost total dependence of the Palestinians upon the Israeli economy through a systematic and organized policy of the Occupation over a period of twenty-seven years, particularly in the field of employing Palestinian labour and the continuation of Israeli economic dominance of most aspects of the Palestinian economy in the future) and others to Palestine: the inability of the self-rule council to pass laws that guarantee private sector investments, unusually limited Palestinian resources, and, internationally, the donor countries, the extremely complicated terms related to the financial aid and not allocating this aid in a tangible manner to the Occupied Territories. The economic situation will determine not only the security situation in the self-rule areas, but will also determine the future of the Declaration of Principles Agreement and the Cairo Agreement.

If the economic problem does not find a solution with the minimum constrictions and terms, it will lead to explosive conditions which may shatter the current and future course of reconciliation and peace.

Tenth observation:

Regarding the experience of pluralism, it is necessary to point out that democracy has never been practised inside the various Palestinian factions, including the Palestinian opposition. They have relied more or less on the same pattern of official authoritarianism as PLO.

Also, among factors that have helped this authoritarianism inside PLO, is the principle of "loyalty before competence" which has reflected—if only microcosmically—the influence of the mentality and methods of official Arab

regimes upon the PLO. This pattern has for several years been evident within the PLO, and all the factions, whether pro or opposition, are equally responsible for it. In my opinion, the signing of the Agreement of Principles was the harvest of this pattern within PLO as a whole.

Eleventh observation:

The Palestinian negotiating delegation in Madrid and Washington was appointed by decree from the Chairman of PLO. But it was clear from the first day that the loyalty of this delegation was to PLO as a political program and its official leadership. This they announced publicly from the very beginning.

The delegation was successful in formulating the basis for negotiations in a patriotic and objective manner. It was based on four axes: Jerusalem, the refugees, the settlements, and the integration of the transitional and permanent solution which delayed the negotiations in Washington for almost two years.

The Oslo agreement was a Palestinian political collapse in front of Israeli obstinacy towards the four axes presented by the delegation, and it was obvious that the Israelis were not going to relax their attitude towards these issues. In the end this led to Mr. Arafat's acceptance of what was given to PLO in Oslo, thereby reinforcing the individualist authoritarianism and bypassing the forms, structures and organizational institutions within PLO and letting the matter rest upon his individual decision.

To be sure, Israel has a strategic interest in destroying the basis of Palestinian democracy.

Twelfth Observation.

"The attitude of the opposition towards self rule".

To begin with we must talk about the general Palestinian national crisis which preceded the Madrid conference and which was represented in:

1 - An instrumentalist approach, proceeding without any restrictions or constraints towards a settlement—any settlement and at any political cost— and unstoppable by anything. (The official approach).

2 - An opposing dogmatic approach, unable to articulate an alternative or raise an appropriate political slogan.

The Palestinian political map was, on the eve of Madrid, formed along this line. The crisis, for anyone following closely the criticism of Palestinian political action, confirmed that the course of PLO after all these years had stopped at a stage of characteristic deviation.

Even though the Palestinian opposition has drawn up an agenda, it has not agreed on a practical one, or on mechanisms for implementation, or on plans to thwart the agreement. Therefore it has become an opposition on the theoretical level, leaving no visible footprints in the ground. In my judgement, the Palestinian opposition today needs to answer a specific question: Will it work from inside the system or from the outside? Obviously, working inside the system does not mean supporting the Agreement of the Declaration of Principles and the Cairo Agreement, but rather opposing them within the democratic traditions of political action. But as for operating outside the system, that will pose the threat of suicide for these political forces, because of their inability to stand up to the current political security conditions.

I bear in mind the experience of Palestinian organizations in Jordan after the setting up of a parliamentary system with elections, pluralism and freedom of opinion. Some Palestinian organizations adapted to this by formally breaking away from the parent body and using different names. This experience is one, in my opinion, that Palestinian opposition factions should consider, despite the different circumstances the Palestinian organizations live under in Jordan and the Occupied Territories.

As I see it, the opposition factions will not seek direct confrontation with the self-rule authorities, but will decide upon their stance and the fate of the peace process depending entirely on the mood and conditions of the Palestinian man-in-the-street inside the Occupied Territories.

Thirteenth observation:

To correct information concerning Fatah hawks taking over the police force. Until this moment recruiting new policemen from the Occupied Territories is a long way from the agreed basics of forming a non-politicised, democratic police force. The fact is that organising the police force is carried out on the basis of personal and family relations. As for the policemen from the Palestinian diaspora, most of them were living in a state of estrangement from their homeland, and are not professional policemen but professional military men.

The elimination of suspected collaborators with Israel has had its faults and has sometimes been a heavy burden to bear. But saying that most of these eliminations were carried out for family or personal reasons is incorrect. A fair trial is justifiable and legitimate, but we must also be aware that a large number—indeed most—of those who were eliminated were, in our estimation, within the circle of suspicion.

This does not mean that we vindicate murder and elimination; but it is a clarification of the facts.

From the moment the Palestinian authority began to operate, we in the Gaza Centre for Rights and Law stated clearly that we support the principle of holding accountable those suspected of collaboration, but that we do not support individuals or organisations taking the law into their own hands and enforcing it. We shall work so that those suspected of collaboration receive fair trials and we shall provide all the safeguards for them, so as to apply the principle of the rule of law. We shall condemn any organisation that works towards creating more than one source of authority.

Thus we emphasise the need for an independent judiciary and an assessment guaranteeing human rights. However, we fear that the legislative authorities will not have the backing of such a law under the self-rule authority.

Fourteenth observation:

In this study it is mentioned that, in practical terms, Egyptian law has been in

force in Gaza since 1948. We wish to emphasise that this is not the case; the only law in force has been Palestinian law. It is the law that was in force under the British mandate, and which has had some additions made to it through the Legislative Council which was founded during the Egyptian administration of the Gaza Strip. These include the narcotics law and the labour law. Only some articles were amended, in addition to the Palestinian Constitution for Gaza Strip by the Legislative Council in 1962.

We emphasise too that Gaza Strip was not annexed to Egypt but was only under Egyptian administration. Since the Israeli occupation in 1967, the civil laws in the West Bank and Gaza Strip remained valid, and military tribunals were formed. It was because of the Israeli military tribunals that the jurisdiction of the civil courts was undermined. The jurisdiction of these courts was discontinued in many areas or else was transferred under the jurisdiction of Israeli military tribunals. During Intifada period the civil courts lost any executive power, and prior to the Intifada their executive power had been extremely limited. As a result, they lost much of their status which is why the Palestinians within the Occupied Territories moved towards using common law in governing civilian Palestinian affairs. This was done in a not very effective, efficient or wholesome manner, and contained many faults.

In my opinion, the main problem is the contradictions and conflicts within the current law, which will continue on three levels:

- 1 - Palestinian law in force since the time of the British mandate in Gaza Strip until the present day;
- 2 - Israeli military decrees, which will also remain effective;
- 3 - Israeli law, which will be applied to Israeli civilians and settlers within the self-rule areas.

Fifteenth observation:

The second part, in my estimation, needs much study, and would be an excellent title for a conference for professionals in the fields of law, political

science and human rights and, if it were possible, selected group of capable academic and scientific individuals who have an interest in and awareness of the Palestinian legal-political situation. I hope you will take up the initiative to do this. But, in brief, I would emphasise the following:

1 - In Gaza Strip specifically, Palestinian law, despite the omissions and faults it contains, should be ratified and applied immediately.

2 - There exists a Palestinian judiciary and, particularly in the case of Gaza Strip, we must apply all the safeguards as to its independence. It is already established and needs developing.

3 - Civil law in the self-rule areas needs to be unified, by executing the Palestinian law already in force in the Gaza Strip in all areas of self-rule.

4 - The Criminal Procedures Law of 1939, currently used and applied in the civil courts to this day, is very reasonable. There is no need to promulgate a new law.

5 - The entirety of Palestinian civil laws, effective since the British mandate, needs calm revision, amendment, improvement, repealing or updating. As mentioned, most of them date back to the mandate period. But before doing this, two issues need to be taken into consideration:

a - The restrictions on the self rule authorities in accordance with the agreement, and on the powers of the Palestinian Council whose election is intended;

b - This needs to be carried out calmly, away from excitability and direct pressure.

Finally, I would like to emphasise the importance, depth and seriousness of this study. I was deeply appreciative of your Institute's interest in it and I hope that my humble remarks may be a positive contribution to it.

Please accept my appreciation and respect.

Comment by

** Khedr Shokairat*

Introduction:

To comment on human rights guarantees under Palestinian self-rule briefly and at such short notice is very difficult: this is a new area and one that has not been tackled previously. Before entering into a discussion of guarantees, I shall try to clarify some aspects of the Security Agreement signed by the Palestine Liberation Organization and Israel relating to upholding and respecting human right. Here we must shed light on the intellectual and historical background of the Palestinian leadership which signed the agreement, in dealing with the institutions of civil society as being the authority over the Palestinian people. This understanding inherent in the leadership's negotiating and current positions make its concept of human rights much less than necessary to achieve the simple basics for the rule of law within a national authority, giving Palestinian individuals a starting point for the exercise of their human rights in a natural way.

Given the obstacles and complications posed by the Security Agreement, signed between Israel and PLO in Cairo on 10/2/1994, and the Declaration to Execute the Agreement, also signed in Cairo on 4/5/1994, in front of the possibility of establishing safeguards for respecting human rights under Palestinian self-rule, it is useful to point out initially that the occupation of the areas of Gaza and Jericho has not practically come to an end; rather, the Israeli forces in these

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two areas have been reorganised.

The observations on this agreement and the many complications that bind it, putting the Israeli party in the position of determining the source of power, leads to the conclusion that this agreement does not have the power or internal mechanism allowing its self development towards statehood. Rather, it shall remain bound within the core of limited Palestinian authority. This leads to the conclusion that the Agreement itself will be the most outstanding obstacle in guaranteeing and upholding human rights under Palestinian self-rule.

It is possible to summarise the observations which resulted from this agreement as follows:

First:- According to the Agreement and its fine print, what took place is the establishment of a core authority which is not independent from Israeli terms of reference. Israel continues to control the basic aspects of life in the Occupied Territories through its armed forces and its control over the land, roads, borders, crossing points and sources of legislation, through innumerable joint committees to which it is necessary to refer for every detail no matter how large or small.

Second:- According to the Agreement, Palestinian authority in the self-rule areas may be enforced over the inhabitants only, and even this authority does not apply to any Israeli citizen even if he is present as a tourist in the area of self-rule.

Third:- The Agreement does not prevent the Israeli side from continuing to impose what it wants over the territory. Indeed it is possible to say that it permits the continuation of Israeli settler activity whether by expanding existing settlements and developing their infrastructure, including building roads or even building new settlements in the region of Jerusalem, whose border is determined by the Israelis as they please.

Fourth:- The Agreement has transferred the tasks of oppression and suppressing the freedom of opinion from the Israeli authorities to the

autonomous rule authorities.

The historical and current intellectual background in dealing with the Palestinian institutions of civil society.

Looking at the way the Palestinian leadership views its dealing with the institutions of civil society shows that it is not sure whether we will move any closer towards a society that is pluralist and democratic in nature, and that the future will depend on a struggle that will take place between democratic groups and institutions and various social forces.

One of the gravest difficulties that will confront the Palestinian people in upholding a democratic civil society under self-rule is the historical background, which has led to the existence of various groups in society with different conceptions of the importance of civil and democratic society based on plurality with varying interests. Here I refer to the Palestinian society in the Occupied Territories and the Palestinian society in exile, and the difference in mentality from which the political—inside and in exile—between these two parts leadership has been drawn. From one side the Palestinian society and its leadership in exile, who have lived in Arab countries and form the majority, have been affected by political conditions which have negatively influenced their thought, especially where democracy and democratic political thought are concerned because these elements are absent from public life in those countries. The effect of this was reflected in the make-up and skeleton of PLO and the undemocratic thought of its leaders.

What makes me pessimistic here is that our people have been brought up in two different schools of thought. Abroad, the school of personal will was founded, after PLO became a repository for military organizations and a prisoner of the military mentality, the banishment of democracy and the outbreak of individualism and authoritarianism which has dominated almost all the decisions of the political leadership.

The second school is that from within the Occupied Territories.

Here, formed over a number of years and becoming clear during Intifadah, a civil society whose popular committees glaringly manifested democracy was established. These committees were distinguished by their democratic constitution, and played a clear role in the success of Intifadah in its early stages. However, from another angle this experiment did not last long for two factors:

First, the Occupation's violent retaliation against the peaceful Intifadah weakened the second school's popular and democratic nature, contributing to its falling under the influence of the authoritarian school abroad.

Second, the practices of political organisations of a non-democratic nature in coming to dominate these committees and their administration ended by banishing the popular and democratic nature to weakening it. The end-intentionally-of Intifadah. This contributed result was weaker popular participation and in turn weaker democratic components with which to construct a democratic society.

The basic system of the Palestinian national authority confirms fears of a lack of respect for human rights under the self-rule authorities.

The Palestinian leadership in Tunisia has provided two regimes for the national authorities during the transition period. The more recent regime, called the "Plan for the National Authority's Basic System during the Period of Transition", consists of 106 Articles and has superseded the first Plan. From a quick glance at the system we can see that it is a disappointment on the level of having to transfer its thought from administrating a revolution to administrating a state and setting up its institutional structure.

These observations, which point to a potential lack of respect for human rights, may be summarised as follows:

- 1 - We observe that this system confers unrestricted powers upon the president, which increases the potential for a dictatorial, individualist rule.

2 - The judiciary is not independent, as the president has the authority to appoint the Supreme Judge whose role according the system is President of the Supreme Court.

3 - There is no mention in the basic system of the method of selecting a president during the transitional period or even of the possibility of the president being an elected one.

4 - The restrictions on the issues of freedoms and rights under the system point to the potential for their being violated and settled " according to the stipulations of the law" or "circumstances determined by the law" in the interests of "protecting national security" or "preserving public order". All of this weakens the protection of such rights.

5 - There is no article or mention of any right of election.

6 - The decrees and systems of the Executive Committee, Central Council and National Committee are above the basic system of the autonomous rule authorities, thus creating a duality of authority.

National Consensus and Democracy

The link between national consensus and democracy is of the utmost importance, because consensus plays a central role in the foundation of any civil society.

As far as Palestinian national consensus during the transitional phase in the self-rule period is concerned, I can say that the Agreement and its fine print do not put an end to the Occupation. Thus the priorities and aims of the struggle of all the various groups have not changed at this stage as far as resisting the Occupation is concerned. This negates the possibility of civil war. Even if we wanted from the angle of the constituent—to view things from a different angle—factors for a civil war we would find that such factors do not exist because people are not splitting into two sides in a struggle for power or for their willingness to fight each other to do so.

As for Israel's role in sparking off a civil war among the Palestinians,

I also doubt this for the following reasons:

1 - Israel is not interested at this stage for things to reach a civil war. Rather, it is principally interested in weakening the Palestinian negotiating side in order to obtain better conditions and further concessions. This is because Israel's entire project of economic penetration of the Arab world requires, even if only at the preliminary stage, the Palestinian element.

2 - The areas of self-rule and the Occupied Territories are right next to Israeli territory and affect Israeli security - particularly given that 800,000 Palestinians live inside Israel.

3 - Inside Israel, including places like the city of Jaffa which was known for its weak solidarity movement, the events of the Ibrahimiya mosque massacre triggered active participation in showing solidarity with their brothers in Hebron. This emphasises the ability of events that take place in areas like these to have an effect within Israel itself.

However, this does not allay the possibility of Israel fuelling disputes within the self-rule areas. To deny the possibility of civil war breaking out or of Israel's support for such a war does not negate the possibility of acts of violence occurring within Palestinian society.

Reasons for the Possibility of Acts of Violence Occurring within Palestinian Society.

The tendency towards violence in Palestinian society is present and has taken root for the following reasons:

One: The violence perpetrated by the Occupation over the past years against the Palestinians has given them this tendency.

Two: The prisons. Prisoners teach and practise violence against each other. Oppression and a lack of respect for pluralism within prisons has acted in such a way as to make it quite taboo for a prisoner to transfer from one organisation to another and to expose him to

punishment if he does so.

Three: The Palestinian military factions have reared their adherents on violence and the absence of democracy.

It is possible to summarise and confirm these reasons given the negative aspects of the Intifadah, which allowed grave human rights violations after the destruction of popular committees experiment. Examples of these violations are:

1 - Serious violations against individuals under the pretext that they have collaborated with the enemy, and extracting confessions from them under severe torture reaching the point of mutilation. In some cases, personal and political accounts were settled under this guise.

2 - Confiscation and destruction of property.

3 - Entering and storming homes without the consent of their owners.

4 - Resorting to violence to settle political differences between individuals and organisations.

In any case, not deviating from the struggle against the Occupation and not turning it against the Palestinian authorities must be accompanied by a tangible contribution by these authorities in strengthening the foundations of democratic society based on freedom of opinion and expression, political pluralism, denouncement of verbal and physical violence, respect for human rights and endorsing the principle of elections.

The basic elements of civil and democratic Palestinian society suggest that the political leadership should avoid favouritism and groupism in public office appointments or exploiting their position. The behaviour of the new authorities as regards these and other issues will, in the end, determine the extent to which human rights are respected.

As a consequence, it is useful here to point out that a people like the Palestinians, who have never exercised its right to self-determination or build an independent life, will be extremely sensitive to anything that limits their rights or handicaps their achievement. In the same way, they will be extremely sensitive to anything that reminds them of their suffering under the Occupation. The issue of democracy, therefore, will be a central one.

Also, anyone who thinks that democracy will be achieved by making an official statement about it is wrong. Such aims cannot be achieved without providing the organisations that can transform these pioneer ideas into an effective force supported by the people. Perhaps one of the most encouraging aspects of this is that Palestinian society in the Occupied Territories, despite the difficult conditions and limited resources that they are up against, has succeeded in creating a wide base of institutions and leadership potentialities that will be able to perform these tasks successfully.

The existence of the basics of democracy and pluralism is not simply a luxury which the Palestinians could do without over the next phase. It is in fact a vital necessity for their survival and continuity as a people who seek to achieve the right to determine their future and national independence.

And while acknowledging that the practice of democracy varies from one society to another, there are international qualities of democracy such as—that are absolute in character. Without these qualities pluralism, participation, the right to vote, the accountability of the Palestinian authorities, the right to political association, freedom of expression, the principle of the separation of power, the we cannot speak of—independence of the judiciary, basic human rights the genuine practice of democracy.

The most important guarantees that must be available in order to safeguard human rights in the self-rule areas are:

1 - A Palestinian constitution, whose articles recognise rights and political and civil liberties and their protection by the state institutions from any infringement by the ruling authorities upon these.

2 - The exchange of power through regular elections.

3 - legislature, executive and–The existence of three estates which are independent of each other.–judiciary

4 - The sovereignty of the law and the equality of all before it.

Conditions for realistic safeguards for the respect of human rights:

1 - Civil society should take the initiative and impose its demands through organised activity.

2 - Human rights organisations should play an active and effective role in pressurising the political leadership to strengthen the conditions for building a civil society and respecting human rights.

3 - International support for human rights.

4 - Active involvement of intellectuals, to leave the role of bystanders and put pressure on the Palestinian leadership.

Comment by

*** Fateh Azaam**

First, we should welcome the valuable study by our colleague, and praise the great effort she made to prepare it. It is actually an organized and profound work that deals with several aspects of the subjective and objective factors which will affect the potential for guaranteeing human rights in the coming stages for the Palestinian people in the self-rule areas (Gaza and Jericho first, and we do not exactly know what will follow on or what the final outcome will be). We must point first to the matching of ideas to all the conclusions and analyses in Manal's study, which excuses me from attempting to carry out the impossible—that is, to deal with all these numerous and diverging topics that it contained. This is because Manal was successful in summarising all the factors and problematics which face us either at this stage or in the near future. Compared to such an achievement I shall only be able, in this modest comment, to present some remarks and clarifications in the form of “in addition to that”, or to expand on some of the points in order to add to them rather than criticise them.

The right to self determination.

It is best to start with the the most important topic which is the right of the Palestinian people to self determination. The major problem we faced during the years of struggle in order to achieve this goal and exercise this right, which was obtaining Israel's and the international community's recognition of our existence, not to speak of the right to self determination. This situation no longer exists. Israel, in the Declaration of Principles agreement signed on

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the 13th of september, has acknowledged "the legitimate and political rights of the Palestinian people", and there is no longer a point in discussing this recognition.

The problem that is more complex and dangerous in the present and future stage, however, is determining and defining the nature and dimensions of "the legitimate and political rights of the Palestinian people". Nobody is unaware of the stance of Israel and USA on this matter, which is not to accept the idea of the independent Palestinian state or the idea of implementing the right to self determination as clearly defined and stipulated by UN decisions and international agreements including Article One of the two covenants on Civil and Political Rights and on Economic, Social and Cultural Rights.

We are also all aware of the major problem of the UN Resolutions nos 242 and 338, and recall that we rejected 242 basically because it dealt with the Palestinians as refugees only and not as a nation and an indivisible national entity. The explanations of Israel and many of the Western countries, headed by the US, that dominate the Security Council are clear and public and they do not include the recognition of the Palestinians as a , nationality, civilization or people.

Despite this major problem, Resolution 242 today forms the major point of reference and the ultimate target in solving the Israeli-Palestinian problem. It is the corner stone for the implementation of Oslo agreement and agreements that followed and will follow Oslo, such as that of Cairo last May.

But the ultimate goal is "land for peace", and not the Palestinian people's exercise of their right to self determination, i.e. Palestinian independence and the sovereignty of people on their land in return for peace.

The matter becomes more dangerous than that because, as Israel has announced more than once, it has reserved for itself the right to demand total legitimate sovereignty over all of the territory of Palestine, including the

West Bank, and that this "right" equals at least the right of anyone else demanding this sovereignty!

It is not unlikely that the Israeli interpretation of the Declaration of Principles Agreement will finally end up demanding official sovereignty over the West Bank and all the way up to Gaza strip, following the illegitimate annexation of Jerusalem, while giving "special consideration" to Palestinians represented in a certain level of self-rule as yet undetermined.

Palestinian political society

The study alluded to several important issues which will affect respect for human rights under the Palestinian national authorities, such as current political methodology, aspects of the dichotomy between Palestinians from the Occupied Territories and Palestinians from abroad and the role of political opposition, factions of the revolution, the individualist nature of the current authorities, international and Arab attitudes (with their various authoritarian models), and many others.

One of the most important points concerning Palestinian life that should be added is that in spite of the Occupation (perhaps even because of it) there has developed, in the Palestinian Occupied Territories, an important nucleus for civil society, consisting of institutions for development, health, agriculture, education, research, human rights, and other non-governmental and public service establishments that have undertaken as far as possible to fulfil the needs of Palestinian society in the absence of an authority working and caring for it. Today this civil society's role is being reflected in its reactions to current political events through newspaper articles, seminars, conferences, and a lively debate unequalled in most Arab countries. Such a society will not easily accept authoritarian rule to deal with its institutions that is, contextually or at root, no different from the style of the Occupation authorities. In other words, whoever tends towards individualism or authoritarianism will be confronted with a strong civil opposition, and will not be able to exercise policies of exclusion or individual decision-making easily.

I stress here the word “easily” to emphasise that the issue is not settled, but will be a fulcrum in the struggle between a society which has exercised types of relative freedom in decision-making and activity that did not infringe upon what the Israeli authorities define as security, and a national authority that has the right to decide upon all affairs of society.

In spite of the fact that most of these non-governmental, social institutions are of a clear political nature, on the plane of the various Palestinian ideologies they have acquired extensive experience and a precise knowledge of the nature and requirements of Palestinian society in the Occupied Territories. The coming national authority will be forced to rely on this experience in one way or another to exercise its mandate and provide its official services at all levels and in all fields.

This fulcrum has started to interact with the movements of some institutions (more than 50 at the time of writing) who present themselves as “non-governmental” through the foundation of a network of connections with each other in order to assure for themselves, for society, and for the authorities, through a shared open stand, their concept of their role in civil society, their importance to it and their future role with any national authority within a cooperative and complementary relationship. At the same time they are adamant about their political and professional independence, basing this upon human rights—the first of which is the right of association and expression. This stance, together with numerous details which space prevents us from going into, shapes up into a proper concept for civil society dominated by democracy and political and professional pluralism.

As for the role of the Palestinian political opposition, there remains the question of whether they are yet ready to accept the “new reality” as represented in the Palestinian-Israeli Agreement in spite of gross phallacies and curtailment of Palestinian rights that it contains. One of the high priority dilemmas is the possibility of “revolutionary thought” becoming “political thought”, and whether it is possible for the leaders of the revolutionary factions, be they for or against the agreement, to carry out such a shift in thinking, or whether this will require a new leadership. There is no doubt that

this new phase will require new thinking and new strategies from everyone—for or against—and yet there is little sign of this on the horizon at the moment.

Here I wish to emphasise that this is an all embracing problem, as the issue raised above includes everything previously mentioned in the study as far as the tendency towards authoritarianism, exclusion and centralisation of decision-making within the Palestinian authority is concerned. This tendency, however, is also prevalent among the opposition factions. The nature of these factions, in their operational and procedural methodology, is historically no different in essence from the nature of the current Palestinian authority.

In the absence of a program for the Palestinian opposition, it will have to take a decisive step towards effective participation in Palestinian political life, otherwise it will wither and its ideology will either be lost to the winds or will remain a card in the hands of other Arab countries which have their own political reasons for holding them hostage. Here we are not talking about the continued armed resistance by some factions against the Israeli occupation, but rather of their attitudes towards the national authorities in the areas of Palestinian self-rule. They have all openly declared their unwillingness to shed Palestinian blood—which of course is an honourable and reassuring attitude, bearing in mind that they would lose any credibility within society if they were to commence any armed operations or resistance against the national authorities. This may restrict the possibilities for the outbreak of a Palestinian civil war, which in fact are themselves very slight.

Thus there is no alternative to the effective participation of the political opposition being directed towards insisting upon free and direct election to decide the representatives of the Palestinian national authority, and playing an important role in establishing democratic principles. It is important that the opposition challenge the program of the governing authorities through their willingness to act politically, including founding parties, competing at election and voting, without resorting to violence, confrontation or civil war. This of course requires a civil democratic machine that guarantees political

pluralism, through which the opposition can freely express their points of view and influence Palestinian political decision-making. This is the hardest part of the challenge.

In addition to this, these opposition factions have to be accepted for the size they are in relation to Palestinian society as a whole. Historically, this reaches back as these factions were not the makers of public decision but participated in its making through their proportional representation within the Palestinian political and military institutions. If some say—and rightfully so—that this phenomenon is a testimony to the authenticity of “Palestinian democracy”, the fact is that this pattern of democracy nevertheless came about as a result of agreements between the military and political factions, and not as a result of genuine democratic procedure. Such opposition factions, representing groups of Palestinian society either at home or abroad that cannot be dismissed as insignificant, must continue their effective participation in the Palestinian decision-making process. They must be given the chance now for genuine participation through a genuine democratic system, if they and Palestinian society are to succeed in the establishment of such a system. The opposition would meet with wide support in the Occupied Territories if they adopt democratic methods and work towards creating and enhancing them within Palestinian political life.

The hidden dangers of not doing so and in abstaining from pluralist political dialogue would be the subsequent reinforcement of the pattern of authoritarianism. This would be sufficient excuse for a more autocratic pattern of decision-making and exclusion. There is no doubt that the opposition forces will win the support of most independents, professionals and the politically non-aligned if they were to offer a program that responds to the actual and practical needs of society and if they were to follow much needed democratic methods.

The law and the establishment of the National Authority

When talking of human rights guarantees and the principles of the sovereignty or the rule of law, we necessarily speak of a national democratic

authority by virtue of its institutions, include absolute separation of powers, an independent judiciary, a system that guarantees the checking of the executive power by an elected legislative power, and the public accountability of all government offices. As our colleague Manal's study dwelt in some detail on this subject, we need add only a few remarks.

From the latest developments regarding appointments in the institutions and employees of the National Authority, it seems that there are still fears and concerns, and the future looks bleak. Today we are at the stage before the preparatory stage of the transitional phase, both by assumption and according to the Agreement. The transitional phase calls for free and direct elections; but before these elections are held, PLO/Executive Committee/Yasser Arafat have begun to appoint a National Authority. (Most of its members are the same as in the Executive Committee of PLO, creating a problem). This National Authority is about to make a gradual take-over of power. Starting with the entry of Palestinian forces into Gaza Strip and the city of Jericho, until this authority assumes full decision-making powers there will be a system akin to military rule under which the two officials in both areas will be granted wide and loosely-defined powers which have not been clearly spelled out. It has been rumoured, although this has not actually been confirmed, that there is even a decree requiring the announcement of a "state of emergency in Gaza for a period of 45 days"!!? In addition, the implementation of "Palestinian Revolutionary Legislation" of 1979 has been declared, and there are rumours of the creation of military courts which will perhaps infect Palestine with the contagious "State Security Courts" of most other Arab countries.

It could be said that we have set off on the wrong footing, such as by giving the criteria of political loyalty priority over those of competence and ability. It is important to emphasise what Manal points out: that PLO is being subjected to intense pressures—especially by Israel—to speed up arrangements for issues on the political and security front. This hastening may itself push the Palestinian leadership into taking decisions which may be quick, but insufficiently researched and not taking into consideration the

long-term effects of these decisions. These include measures and systems that could lead to the formation of a proper democratic system to the edge of an abyss, where in the future it may be difficult for any elected authority to retrieve the basics of acceptable democratic organisation.

We must point out here that the problem of ability should not only be confined to current appointments, but must also extend to all aspects of society. Also, this problem is not confined to the Palestinian society: it is a chronic Arab disease. The most severe symptoms of this disease can currently be found in the quality of education at all levels, from the primary level up to university. The Arab world still considers education as a quantitative rather than a qualitative process, and educational institutions, especially at the primary level, do not encourage students to analyse, think, be creative or acquire self-confidence. Rather, they are dominated by the characteristic of severe caution, fear of deviation from the conservative morals of society, and society's rejection of innovative ideas. But this is a topic for another discussion.

Talk continues on the plan for the "basic law for the National Authority" which has now reached the third draft stage. The officials in charge of the plan have visited Occupied Palestine where they consulted a number of officials from various sections of society who gave their opinions frankly—especially the women's institutions and committees. The draft was duly amended, taking these considerations in mind, and everyone awaits the next steps. There is no doubt that this is an important project, in spite of its troubled beginning, and there are a few matters that require decision, such as the need to subject the draft of the basic law to a wider and more in-depth discussion, and the need to ratify this basic law through a general and comprehensive referendum in order to give it the required credibility as a constitutional document which stipulates in its first clause that the will of the people is the source of all power.

There is a problem connected to the relation of this constitutional document to the Palestinian national charter, for the basic law is expected to regulate the life of Palestinians in the self-rule areas. However, the national charter

includes them alongside with the refugees, expatriates, and Palestinians all over the world. This problem is only a part of a greater problem that is linked to the relationship between home and abroad, which will also have a major effect upon setting up the Palestinian National Authority. What form should this relationship take? Are the Palestinians living at home an indivisible part of the base, which is primarily the whole Palestinian people with the majority scattered all over the world? Or are the Palestinians abroad an indivisible part of the base, which is primarily the Palestinians who live in what remains of Palestine in the self-rule areas first, and then, if God wills and we are successful in our aims which seek more than the present agreement, the West bank and an independent Palestinian state with its capital being Holy Jerusalem? So far there is no clear concept of this problem. We must not underestimate the importance of the answer, as the answer will determine the basic direction for the establishment of the Palestinian National Authority.

As for legislation and law-making, I don't have much to add, except that the dependence on the local common law, as much as it is important and realistic, might pose a problem of another kind, as the dominant social customary law is not free of injustice to the rights of citizens, especially given that we still live in a "natural society" that is conservative and chiefly dominated by personal relations and tribal and clan customs and traditions. There are several problems that are raised by the issues of customary law, especially concerning women's rights and the freedom of religion and belief. These issues, like the rights of minorities for equal candidacy for and service to their countries, stand out in any society with an Islamic majority, in which these three problems are the points that may have raised the fundamental disagreement as far as they are concerned between Islamic jurisprudence fiqh and human rights as enshrined in the international charters and conventions.

More important than the issue of legislation and law-making is the issue of internal procedures, systems and regulations, which in many cases are capable of protecting human rights in a real fashion. There will be no harm if,

for example, there is a law passed that bans discrimination, or guarantees freedom to express opinion. However, infringement of these rights takes place in many cases because it is impossible to press charges against a private company or a governmental authority that has dismissed an employee unlawfully. If clear and strict procedures and effective penalties are not drawn up for the investigation process, we shall not be able to stop torture decisively and effectively.

I shall not add to what the study mentioned about the importance of an independent judiciary, on the grounds that its guarantee for democracy, human rights, assuring the above-mentioned principles and activating procedures to safeguard them goes without saying. However, I must point to one of the current attempts to establish human rights guarantees in the ascendant regime, which is the "Independent Palestinian Authority for Citizens' Rights". I use the expression "current attempts" because as yet they have not been completed, and will only be so with the finalisation of all organs of government: legislative, executive and judicial. Some Palestinians, under the initiative of Hanan Ashrawi, have used the presidential decree issued by Yasser Arafat on the 30th of september on the visit of a delegation from Amnesty International, which stipulates the foundation of a higher Palestinian authority for human rights. This initiative won official approval to start the work in order to found such an authority, and has gone a considerable way. It is currently working on speeding up the establishment of the authority as a monitor of the state, totally independent from the executive authority, with its own competence to review draft legislation and its concurrence with the principles of human rights and the sovereignty of law, to hear appeals from citizens, and to carry out investigations, examining the files of governmental administrative circles and summoning witnesses for that purpose. It also has the competence to take the initiative and suggest the necessary solutions to procedural problems related to the protection of citizens' rights, in addition to spreading awareness of those rights and other responsibilities.

The aim of this authority is to place the executive authority in front of its

responsibilities towards society, and assure the “transparency” and openness of the government. But the Independent Authority for Citizens’ Rights is suffering the first problem of its foundation as a result of a presidential decree: although it aims at total independence from the presidency and the executive authority, the latter is nevertheless trying to monitor it. The authority established in its initial organisation that its legal point of reference is drawn from the basic law and the legislative authority (not formed yet), but succeeded in adding an article concerning its foundation in the draft preliminary law (article 35). If this is ratified popularly and officially, it will be granted the necessary legal status that will replace this presidential decree. If the project succeeds, this authority will be the first of its kind in the Arab world. The authority is at a difficult stage now which is the beginning of its practice. We do not know the authorities’ willingness or ability to deny its legal credibility in these decisive preliminary stages, or whether it will have enough legal power to give it the ability to make the necessary changes in the government apparatus, aiming for maximum protection of citizens’ and human rights, and the establishment of the National Authority according to the agreed principles of the rule or sovereignty of the law—ie the separation of powers and so on.

In the Occupied Territories there are several human rights organisations, and the issue of human rights and their protection has become one that has to be raised at every seminar and conference. Perhaps it was our good fortune that the human rights discourse has concurred to a great extent with the national liberation discourse, at least during the Intifada years. This led to widespread respect for the professional and effective human rights organizations and gave them credibility and a pioneer role within society. These organisations have started to study the self-rule areas with the purpose of placing those in power there before their responsibility towards respecting human rights. Most of them have announced their willingness to interfere with the use of the policy of “calm diplomacy” or press statements or resorting to national and international public opinion. But they have also expressed their willingness to participate in the foundation of society on the basis of respect for human rights. Currently there is talk about the human

rights organisations participating in training the Palestinian police force, and earnest human rights education campaigns have started their work .

The continuation of the Occupation and its human rights violations

No two will disagree over the continuation of the Israeli occupation and the accompanying violations of Palestinian human rights. Even in the self-rule areas, the Occupation authorities have wide authorities and the right to block most of what the Palestinian National Authority decrees, either through their immediate jurisdiction such as external security and the security of the Israelis who loiter around every day (for example in nearly half of Gaza strip), or through the numerous joint committees which have the final say in most issues. On top of these is the committee for reviewing military legislation. Everything we are discussing could well be premature if conditions remain as they are today, where we enjoy a formal National Authority, but in fact are subject to Israeli decision to accept or reject.

Also, the daily violations by the Occupation authorities continue in the remainder of the Occupied Palestinian Territories. Most outstanding of these are the confiscation of property and the destruction of homes, especially in Jerusalem where the Occupation aims at removing any doubts concerning its claimed sovereignty of the whole city. The latest aspects of this policy have stood out in the war of words being waged by the Israeli government these days, concerning banning Palestinian National Authority establishments from entering or opening their offices in East Jerusalem.

As for other violations, there is now a noticeable increase in administrative detention, especially of the Palestinian opposition. This constitutes an obvious attempt to maintain the division of the Palestinian people, and implant the seeds of difference. Forcing political detainees to sign a pledge to support the current peace process as a condition for their release in accordance with the agreement, in addition to being an outrageous violation of the absolute freedom of opinion and belief, is just one clear example of that, and unfortunately occurred with the consent of the negotiating Palestinian parties. The outcome of this has been the complete opposite of

what was intended, as Palestinian society has been united in denouncing this base attempt at coercion.

Numerous other violations also continue, the worst of which is the division of Palestinian land by closing Jerusalem to most citizens. This has negative and deep effects on the unity of the Palestinian people, and has dangerous long-term prospects as far as the future of the land of Palestine is concerned—not to mention the rights of Palestinians in the holy city of Jerusalem.

We must not overlook the importance of bringing these war crimes before justice, including the grave violations to the fourth Geneva Convention and the crimes against humanity which will not be forgotten with the passage of time. For the Occupation authorities are still fervently destroying Palestinian homes and confiscating land, and the use of the special forces, which are as good as “death squads”, to carry out summary executions and murder of “wanted” persons. Policies that make the occurrence of massacres like the one at the sacred mosque at Hebron possible are still in force—and this horrendous massacre was not the first such crime. But no radical change was made after it happened, as the settlers are still entrenched and armed and enjoying absolute freedom of movement. It is possible that other massacres may occur.

The conclusion is that it is illogical to talk of human rights guarantees under the National Palestinian Authority while overlooking Israel's responsibilities in all the Occupied Territories, including the Palestinian self-rule areas. It is a joint responsibility at the very least, and it is important that we study the joint jurisdiction and monitor precisely the implementation of the agreement, so that we can understand the situation as it is without displaying excess optimism or pessimism.

Conclusion

In occupied Palestine today there is nothing definite, and what we hear today may not be true tomorrow. It is a very difficult phase at all levels. We

cannot talk of absolute matters, but only of personal interpretations, most of which are not objective. These proliferate with the proliferation of different points of view and political analyses, all of which are influenced by the ideological and intellectual loyalties of most of the analysts and historians. It is incorrect to talk about the success or failure of the current peace process, or the guarantee or lack of it of human rights in their absolute form, because we are talking about relative matters that depend on incidents and events that every day are happening faster, any of which may completely turn the tables. All we can do now is to try, and thank Manal Lotfy for her attempt.

*** THE DEBATE**
On
HUMAN RIGHTS GUARANTEES
UNDER THE PALESTINIAN SELF - RULE
AUTHORITY

List of Participants

- 1- Ahmed Bahaa El Din Shaa'ban, Writer.
- 2- Amin Mekki Medani, President of The Sudan Human Rights Organization.
- 3- Bahey El Din Hassan, Director, CIHRS.
- 4- Khidr Shuquqairat, Director, Land & Water Est. for Studies & Legal Services, Jerusalem.
- 5- Dr. Abdel Moneim Said, Director, Al Ahram Center for Political And Strategic Studies (ACPSS).
- 6- Ali El Din Hilal, Dean, Faculty of Economics and Political Science, Cairo University.
- 7- Fateh Azam, Coordinator, Al Haq Organization, Ram Allah.
- 8- Mohammed El Sayed Said, Research Advisor, CIHRS.
- 9- Mohamed Khalid Al Aza'r, Palestinian Researcher, CIHRS.
- 10- Mohamed Sobeih, the Reporter of the Palestinian National Council.
- 11- Mohamed No'man Galal, Egypt's Permanent Representative, Arab League.
- 12- Mustafa kamel El Sayed, Lecturer, Faculty of Economics and political Science.

* The seminars was held at CIHRS premises on July 10th, 1994.

13-Nabil Abdelfattah, Expert, (ACPSS)

14- Waheed Abdel Mageed, Director, division of arab affairs (ACPSS).

15- Yahia Al Gamal, Professor, Constitutional Law, Cairo University .

.Observers

1-Ahmed Karaud, Amnesty International, Tunisia.

2-Peter Mann, Legal Advisor, International Red Cross in Palestine.

3-Husni Amin, Vice Director, Center for Legal Studies, Arab Lawyers Union

4-Lynn Welchman, Center for International Human Rights Enforcement,
Ram Allah.

5- Christopher George, Director, Middle East Watch.

Dr. Amoen Makky Madany, PhD. Chairman

I would like to express my pleasure with CIHRS inauguration and my appreciation of its efforts. I am also pleased to participate in this important debate that deals with a subject which is both extremely lively and complex. The issue of the human rights guarantees under the Palestinian self-rule requires a lot of effort and support from everyone, both in the Arab World and the international community, because human rights guarantees during the self-rule period differ qualitatively from human rights in the Arab World. All the Arab countries, without exception, encroach upon human rights. However, all human rights violations in the Arab countries are inflicted by fundamentalist or totalitarian regimes, a civil war, or an international siege. In these terms we understand the causes and imagine the solutions, the mechanism of change, and how to restore the appropriate conditions.

On the other hand, the issue is more complicated under self-rule. Not only is the issue related to violations throughout a period of more than 50 years, but it is also related to a completely new situation which includes possibilities and expectations. A number of questions are then raised:

- . Are we dealing with an independent, sovereign state, or with a new administrative situation, under a sustained occupation that possesses both sovereignty and legislative power, in addition to the military presence?
- . Would the self-rule include only Gaza and Jerico, or could it extend to the other parts of the Palestinian territories?
- . Can we talk about the right to self-determination, where the human rights issue is inseparable in the rest of the West Bank and Jerusalem?
- . Should we deal with Palestine inside and neglect the fate of Palestine overseas and in the Diaspora?
- . Who is the new ruling authority? Is it PLO and its institutions?

Mr. Mohammed Sobeih

I welcome the theme of this debate. In fact, I was initially hesitant about it, and I asked myself: What is meant by this meeting? But my hesitation

vanished after I sensed that the national Palestinian authority is dealt with as an independent state, and this treatment is a very promising precursor to independence.

However, I was greatly confused, as I had just returned from Gaza, where I witnessed how the masses received this "authoritarian" leadership, and where I passed by the banners hung by the settlers who call for death to this "national authoritarian" leadership, and where I had also seen the occupation soldiers!! I was not sure which Palestine is being dealt with in this paper? Does it deal with the Palestinians in the Lebanese Camps, Cairo, Baghdad, Damascus, the Occupied Territories, or in Yemen, where they can hardly find a shelter?

Anyhow, we, the Palestinians of PLO, have our specific pattern of democracy, which is the western type of democracy with its system that rules their parliaments and meetings. We have our institutions which are supported by the majority of people, in fact. We admit that some people in the Palestinian arena take the side of a peaceful solution and some others do not. The issues of compromise were mostly discussed by the Palestinians, who spent about 600 hours discussing all its aspects, and the right of opposition was guaranteed, even to the smallest organization, where, during the course of discussions carried out inside through meetings, press, and voting, we never heard a word about threats to kill any one. I am astonished at the language of the paper, and I'm sorry to say that it sounds as if it were an Israeli report. As for the question of inside and outside, I ask, "Who has the right to divide these people?" Should we repeat the very words of the Likud and the Zionist mass media? It is strange to talk about an inside and an outside while we call for the return of 1967 refugees. Should we then establish a ghetto for them to live in, to be followed later by another ghetto for the 1948 refugees?

Brother chairman, I think that we in PLO have fully experienced the issue of both Arab and foreign interventions. There is no single Arab regime that did not interfere in the Palestinian arena since the very beginning of the revolution, until President Nasser interfered personally to bring those Arab

interventions to an end, saying that they should not intervene in our internal affairs. But the Arab nations are participating in our affairs with us up until this very moment. Nevertheless, we are managing this situation wisely and patiently through discussions and interaction with our brothers.

The Palestinian leadership is committed to pluralism and democracy in civil society. I speak here as a trustee of the National Council, and I state that nobody was ever punished during the past years in our arena because of an opinion, a leaflet or a statement. Undoubtedly, we will deal with the option of the market economy: we are neither responsible for this option nor do we have another choice. We start from the zero point, with a devastated infrastructure and a non-existent economy which will depend, at the very beginning, on foreign support. It is a subordinate economy, fully dependent on Israel in both the Strip and the Bank. All my brothers and sisters here, inside, know how the experts follow a one-way direction, in that Israel exports to us, and we import only from it. We need to remove the risks from every single cell of our body, till we achieve a free economy of our own, based on equality. I beseech, what sort of laws are we going to deal with now, while we are just taking our first step in the first stage of the peace process? It is impossible to question us when the Palestinian state is established, or at least when Israel acknowledges the rights of the Palestinian people on its own home land. However, these conditions require an extended struggle. We are still in a transitory phase in Gaza and Jerico. How, then, can we remove the settlements from our land? This will happen in the next stage. The emerging authority, which has just entered into the territories so recently, is busy thinking about how to guarantee a living for our people. When and how, therefore, has it been able to establish prisons and cells which are reported by some people to exist in the Occupied Territories? Thank God, the authority entered the Palestinian territories, made a vow to it, and established a fixed headquarters on it. These conditions will lead to an independent Palestinian state because this is how history proceeds. The current legislation for which we are criticized is not really ours. We already have the Jordanian laws, the laws of the pre-occupation legislative board of Gaza, the laws from the jurisdiction of the

British mandate which are still being implemented by Israel, in addition to the Israeli laws that are still in effect.

When the legal advisors recommended that brother Yasser Arafat cancel these laws, a massive outcry was provoked. We should not forget that a solution to this situation has multiple stages, and it will require many years, so human rights issues should not be mixed with those of the political regime.

As for the Palestinian institutions, I suggest, as a trustee of the national Council, that the decisions should be made through voting on a democratic basis, which is labeled authoritarian by those who do not like it. Although I am not advocating Arafat's policy, I do defend the institution. If this institution happens to fall apart, we will be considered annihilated. PLO is the point of reference for the Palestinian people until the final stage of the self-determination process. PLO will survive with its struggle, its history, its heritage and its personnel. We are proud of every PLO fighter.

I am astonished to hear criticism of authoritarianism and lack of efficiency in the Occupied Territories. The Israeli patrols and army are still in Gaza and inside Jerico to protect the settlers, and we are working hard to expel both the settlers and the army from our Occupied Territories in order to establish a state of democracy and plurality. We also have, as an endorsement, the Central Board and its declarations from both before and after Madrid. Those declarations are documented, and I doubt that any controversy could be raised by that issue.

It is now time to talk about the international community. We will not strike any of the parties of the opposition front, neither of our own volition nor for Clinton's, even if the opposition themselves strike us.

Thank God, those who imagined for a while that a civil war would take place in the Palestinian territory were disappointed. We accepted the challenge. The Palestinian people are a smart, politicized and cultured community, and they possess the genuine experience of struggle. I myself witnessed, as did everybody else who happened to go inside, how Hamas welcomed the

national Palestinian police and security forces and all the other returnees. This proves that any one who imagined that the guns will be raised as soon as we arrive in the Palestinian territories was mistaken. Hamas struggles for a central and respected cause, namely, forcing the enemy out. How could we disagree with them then? There could be a disagreement on the methods or the stages, but the final objective is one and the same. Thus, my honourable sisters and brothers, I assure you that a civil war in our country is out of question, inspite of the presence of a great number of Israeli intelligence agents and army personnel inside, in addition to the Israeli right-wing extremists who are all eager to get on with such a war. Civil war is an Israeli quest, exactly like Lebanon has seen with the Likud. I hope that we fully trust our Palestinian people, both their leadership and the opposition.

As regards official appointments according to competency, it is noted that what we call the Palestinian Cabinet still has unoccupied chairs waiting for Hamas, the Popular Front, the Democratic Front, and all the others. Those who would like to participate could have immediate admission to declare the oath of loyalty to Palestine and its territories. I do not think that the personnel who were appointed to that authority are clients or servants, as if appointments were a booty to be taken by force. Those people are dealing with a zero economy, and it is well known that the donations will be under control of the donor countries themselves, the International Bank, and other European agencies, etc. I think that those donor states will work hard to recover their donations, and they will supervise everything, leaving nothing for the others.

I really wish that Palestinian and Arab businessmen could occupy the foreground in this matter, as joining with Arab businessmen is not something shameful. It is a catastrophe to talk about both extremist socialism and capitalism simultaneously. We need the Palestinian businessmen to come inside to build the Palestinian economy, as everything Palestinian needs to be built. Inside, people say that Israel and the occupation authority did not build even a single hospital or school. We need schools, water and electricity facilities, and all the other facilities required by contemporary

human beings. We need all of that in our territories.

Ambassador Mohammed Noeman Galal

I have a very brief comment. As a follower of the human rights issues, I am very pleased by this seminar and its accompanying papers and comments. Nevertheless, I have some brief formal and objective comments.

The formal notes:

1. This paper, which was prepared by the researcher Manal, under supervision of Mohammad El Said Saeed, PhD, was not introduced by the researcher herself. I wonder where is she? Is she travelling, absent, or what?

2. I agree with Mr. Chairman's reference to the political discourse. I think that the paper contains a lot of political discussion. I was overwhelmingly astonished to find the paper indicating that human rights and their guarantees are not a legal issue. I'm just a student of political science, not of jurisprudence, but we have legal scholars among the participants here. I think that the concept of guarantees as nothing but a legal concept with, for example, political, social, cultural and economic sets and indices, and with evidence that the international covenant of civil and political rights, and the international covenant of economic, social and cultural rights all dealt with these rights. But the setting within which these rights act, that is, the guarantees, should be a legal one.

3. The other formal comment, which was noted also by my friend, Mohammad Sobeih, and others, is that the paper deals with the self-rule regime as if it were a settled and well-established state regime, with all its institutions, and thus the paper started to judge it accordingly. But we should note that the issue of self-rule has not started yet. President Yasser Arafat will go to settle there in a few days. We are judging this authority before it has really started to act, while the human rights issue is still a developing concept, even in Western states. We are still studying what are called the variable groups and other issues. Even the most democratic Western states treat economic and social rights modestly, and they are not

easily accepted there, as those countries did not join the international covenant of economic and social rights, while we judge the Palestinian authority according to them.

4. I have another note as a practitioner and follower of human rights principles. Combining the right to self-determination with that of free unbiased elections could have its background in Western thinking, and it is questionable. I personally believe that those two rights should be separated. Frankly speaking, the USA used the idea of such a combination to strike at the developing countries who retreated from human rights issues, while we repeat that the right to self-determination is linked to the UN General Assembly's decision number 1214, which supports the right of the areas which are under occupation to self-determination.

5. Another debatable point is related to Israel and its capability to block democracy and provoke civil war. Here I disagree with some of the paper's assumptions. The paper studied the assumption of optimism and pessimism in the political process, and it should rather have studied the question of whether Israel would gain any benefit from inciting a civil war in the Occupied Territories. I ask this question since any disturbance will be at Israel's expense, and it could effect a pre-1948 Palestine, with a negative repercussion on Israel. It would have been possible for the paper to study this assumption in fulfilment of the scientific methodology.

6. The last point is that the paper referred to the Egyptian-Israeli treaties only in general political terms, without relevance to this subject and the problems it triggers.

Dr. Yahya Al Gamal, PhD

On the one hand, I think that this seminar is premature, although, on the other hand, it might be quite timely. This contradiction exists because we deal with an inadequate authority by nature, suffering from an extremely difficult and critical situation. It is a limited self-rule authority on only a part of the Palestinian territories, under an occupation which will exist in one way or another. Thus, talking about human rights guarantees may put a burden on

this authority by requiring it to take over the responsibility of fulfilling those guarantees. Saying that, I intend neither to advocate this authority in any way, nor to give it any right to violate those guarantees. This authority could even be asked to provide more guarantees.

On the other hand, we may say that this seminar is held in due time, because, from the very beginning, it manages to monitor, forewarn, and guide the Palestinian self-rule authority to pay attention to an area which is manifestly anticipated by all. This says to the Palestinian self-rule authority: "Beware, you should never get involved in human rights violations."

I have had experience with the national Palestinian work for a long time, so I'm somewhat assured about the human rights guarantees. Most PLO systems used to encourage some democratic performance in a manner astonishing even for a liberation movement which is engaged in a comprehensive battle. Besides, the internal Palestinian institutions are developing. All of the Palestinian institutions are democratically oriented. Nevertheless, the Palestinian system is just a part of the Arab arena: "when the Arabs deviate from the right path, the Palestinians follow them, and when they behave rationally, the Palestinians behave rationally." How could the Palestinians escape from the Arab measures?

Moreover, Israel exists beside Palestine. This will inevitably lead the Palestinians to care about democratic concepts, because, whether we like it or not, the Israelis care for democracy in their internal interactions, and they have strong and active institutions, although their interactions with the Arab world have no relation to democracy.

The existence of Palestinians next door confronts the Israeli institutions with a challenge as regards democratic performance. Therefore, it is nice to talk about human rights guarantees, although we deal with a self-rule authority which possesses no right to sovereignty, nor even to put legislation in place, since these two aspects are still in the hands of the others.

This does not mean that human rights violations are to be ignored, but the rights should be considered in terms of the real power relationships in the

area. Any national authority should pay attention to these considerations in case it has to face problems. At the same time, it is too much for a temporary self-rule authority to be loaded with human rights guarantees now, as they are not the only factor, nor the decision maker, nor do they possess the primary role. But we warn the Palestinian authority: beware of the Arab heritage. Take the side of the human rights and democracy issues.

Take care not to oppress the Palestinians because this may end either in eliminating the Palestinian people or in not getting any more than what has already been achieved up until now. Palestinian independence will be achieved only through caring for human rights on one hand, and for national requirements on the other.

Dr. Waheed Abd El Mageed, PhD

In contrast to the previous speeches, I think that this subject comes at an appropriate time, or even later than it should have. In fact, the main problem relevant to Arab debates and discussions of such an issue is the lack of a clear, open and straightforward presentation of attitudes by some parties. I had hoped this debate to be between those who consider the human rights issue an actual and urgent one and those who do not see it like that. This situation exists, but it is never expressed explicitly, even though presenting the issue explicitly is not a problem. Today's discussion indicates that it is too early to promote this issue in advance, etc. This is partly due to the nature of the approach adopted by some speakers, but it is also partially an extension of a traditional approach which has had considerable weight in Third World ideology for a long time, namely, that during the stage of gaining independence, priority should be given to building the state rather than to democracy and human rights.

All of us know how serious the catastrophic after-effects of that approach in numerous southern and third world states were, although this approach had a reason in the context of different international situations where democracy and human rights were not a priority while the building of the state and national integration were being sought. Whether a Palestinian state will be formed or not, let us suppose that this state has an unclear beginning, and

that there are people related to the Palestinian authority or otherwise who believe the latter is the proper priority, and that all efforts should be devoted first to building the state. Nevertheless, some people do not benefit from the lessons of history, seemingly insisting on repeating the mistakes and violations over and over, even though those lessons are now very clear. We have an immense heritage of experiences based upon the assumption that building the state is a priority. Nevertheless, that obstinacy has led to social destruction and ended neither in realizing democracy nor in building the state. As we witness that approach and its huge catastrophic results, we can empirically prove that no state construction can be achieved through destroying the society, and that no state will ever be strong and independent because it destroys society in order to build itself on the wrecked fragments. This holds true also for Palestinians. Fears are real and many, not just a pessimistic preference, because a lot of detrimental activities were conducted during the few weeks that lapsed since the Palestinian authority took over the responsibility, or perhaps even started before that, through the issue of awarding appointments that gave priority to personal and political loyalties, and so on, ending with direct repression, arrest and torture, even though some people still maintain there is no martial rule and argue about what should or shouldn't be done according to the actual situation. This authority does not act according to legal criteria. The adoption of a martial rule is a given matter of fact, at least implicitly.

Therefore, since there are no legal criteria nor a judicial structure, what happens now to the people who are arrested? To whom are they going to be presented? Who will interrogate them? It is not just a matter of having a pessimistic nature, for there are very mean and nasty deeds. Nonetheless, I will ignore them. However, if the alleged statement regarding orders given about organising the mosque affairs in Gaza is true, it will represent the definite onset of a trend towards destroying society, especially since the statement goes far beyond the issue of the mosques, in that it explicitly forbids all Palestinian parties to issue any statements unless an application for permission has been accepted by those in charge of security. This is a trend that might destroy the opportunity for one of the most vital and capable

Arab societies to establish democracy in an Arab environment, as the Arabs are so deficient in this regard. Is it too early to say? We have people who die in jail. A person died from torture, and the authority commenced by confiscating a centre for the handicapped in Jerico, to use the building as a headquarters for the self-rule administration. We started with loyalties. When, therefore, will it be the right time to discuss that issue? Should it be after those acts are sanctified and a really tyrannical and overpowering authority is settled? Should we postpone this debate for five years until all acts are sanctified, and the only surviving Arab society has been destroyed before we can discuss the issue of human rights! The assumption that this is not an integrated authority is false. Even the independent states that adopt a system of domestic government and administration extensively are required to be committed to human rights.

Some regimes work according to a provincial system, where different administrative systems operate. There could be a provincial administration that is committed to human rights, because the first touchstone of human rights is the presence of an administration capable of publishing legal regulations, or the mere existence of a police system, because a regular human being, whether politically active or not, inevitably interacts with the police system, and he/she has the right to be protected against sustained police oppression. The mere existence of such a system is an essential motive for talking about human rights guarantees and control of police activities and gruesome actions against people and the community. It is much better to discuss these performances extensively now, while the emerging authority is still limited, than to wait until it possesses broad power, where these activities may worsen. A strong, vital and militant society is difficult, though not impossible, to destroy. This was the case in many southern and Third World societies after independence. Therefore, Palestinian society should take care. My clear and frank opinion is to be consistent: if it is impossible to provide human rights guarantees through internal interactions, we should seek international help in this field. Our emerging experience should never be aborted, nor should Israel get a chance to assume, before all the world, that its imperial occupational rule

was better than the Palestinian one. This Agreement did not bring the issue of international support to the Palestinian people to an end, and it should not. The most recent presentation of this issue was through the report of the Norwegians within the tertiary monitoring forces, to the Norwegian Board of Refugees. I think it is appropriate to ask for extending this international shelter to cover the issue of Palestinian human rights under self-rule. A good start could be full UN supervision, not just monitoring, of the domestic elections, if they take place, exactly as in the case of South Africa. By accepting such a UN supervision, PLO leadership will register an honorable stand, and prove that it equals the leadership of the African National Congress on this point, as these two experiences and leaderships are often matched together by some people, although they are quite different.

This is the real touchstone because, if the Palestinian experience starts off by perverting the coming elections, it will be the end to all anticipated human rights protection and to the establishment of democratic rule in this area. Democracy in Palestine still has some objective bases, and we should insist on maintaining them by seeking international intervention.

Nabeel Abdel Fattah

This is an important issue, presented just in time, but for different reasons than those presented by my colleague, Dr. Waheed Abd El Mageed. I think that it is now high time for the issue of human rights under the self-rule authority is discussed for the following reasons:

1. The regional situation after the second Gulf War, where the Palestinians were accused of getting involved with particular parties, created an indifferent, veiled political attitude against the Palestinians in the Arab region, and, for Arab public opinion, the last Palestinian-Israeli agreement represents an abandonment of the Arab settling of the history of the Palestinian question.
2. Before I start to comment on the paper and the discussions, I would like to warn the audience about the risk of describing the self-rule authority as a temporary one that lacks full sovereignty, and about the view that maintains

that the requirement of guarantees by sectors of the Palestinian people, both inside and outside the Occupied Territories, would be an overwhelming burden beyond its capacity. I fully disagree with this opinion, for it paves the way openly for unlawful human rights abuses and sanctifies legal and human rights violations.

Let us go back to the paper and the discussions. The paper arouses some major observations and problems. There are two types of observations regarding the structural obstacles confronted by the human rights system and the possibility of spreading human rights values and foundations extensively during the transitional stage where the self-rule authority performs its capacities, and legal, political and managerial roles:

- obstacles to social structure related to the prevailing social and legal settings in the occupied areas.
- obstacles to the structural nature of the self-rule authority and its capacities.

1 The first set of observations is related to secondary obstacles and problems raised by those main structural obstacles.

1.1 In the West Bank and Gaza, there is the difficulty of the patriarchal culture, which is linked to the tribal and extended family systems, with implicit values and a prevailing order that constitute obstacles to human rights, particularly in their attitudes which favor the family, the group, and the tribal community over individual social and personal rights and prestige, as well as their attitudes to women and to the idea of human rights as both a set of values and a legal realization. According to my assessment, the conceptual controversy aroused by these problems is caused by structural issues far beyond the self-rule authority and by the different political ideas of the various human rights activist groups.

1.2 An important point, as indicated by the paper, is the emerging conflicts between the rules of the prestige-based traditional laws, the Israeli and the Jordanian laws, and the residual decrees and regulations left by the jurisdiction of the British mandate. In my opinion, these conflicts represent

the most serious problem for the legal system, as the philosophies of these laws are controversial. The way to solve those conflicts is also crucial. The last Agreement reveals another legal problem that, I think, is also very critical, namely, the legal duplication of the Israeli legal system and the prevailing legal system in these areas, from the previously indicated sources. This situation reminds us of the bitter experience confronted by Egypt during the period of legal dualism and chaos before the Montréal Agreement in 1937, and Egypt's achievement of its legal independence, because resorting to the judicial mechanisms to solve the disputes between the different parties will provoke a lot of problems. For example, there is the question of which courts will be resorted to by the Israeli and Palestinian groups judging the disputes, the issue of applying justice impartially to all the citizens on territory under the self-rule authority, becoming instituted under one law, and resorting to an independent judicial authority that guarantees the right to contest, especially in penal cases.

1.3 The third observation is related to the problem of diversity and controversy within the Palestinian political groups, Hamas' request to apply the rules of Islamic law (Share'aa), and the veiled men who apply the rules of the customary law. Some Palestinian parties, both inside and outside the Occupied Territories, criticize the absence of any guarantees for the accused person before the customary courts, which present and implement a specific interpretation of Islamic law. They also criticize the lack of defense guarantees, the obscure legal rules by which the accused person is judged, and the prosecutor in cases judged in these traditional courts. Some people see also that the political Islamic phenomenon in the Palestinian environment, in Gaza particularly, and in the region generally, will dictate its pressures and different influences on the self-rule leadership, and that this leadership will be squeezed between these pressures, on the one hand, and, on the other, the international ones, which may put respect for human rights as a condition for economic support and donations, as well as the pressure of an international wave of advocacy and support for human rights application in various regions all over the world.

1.4 Lack of a civil society in its precise scientific meaning is also a problem in the Palestinian areas, in spite of the frequent usage of this term by the Palestinians and its adoption into Egyptian and Arab political discourse. Nevertheless, this expression is, in fact, nearest to the ideological expressions of the Egyptian and the Arab state, rather than to an expression reflecting a true social, realistic, multi-faceted and cultural state. We may say that we seek to form a civil society, but the elementary bases of such a society are still lacking in the Palestinian, and even in various Arab societies.

Anyhow, lack of a civil society is a problem for the support needed by human rights demands among some civil groups.

2 The second set of obstacles is related to the self-rule authority.

2.1 The first difficulty is relevant to security and approaches for establishing a firm respect for both legal and penal regulations during the transition stage. Perhaps the recent incident involving a person's death while in a police detention area may stimulate and strengthen fears about problems of security and legal guarantees during the transitory stage.

2.2 The second problem is related to the difference between the culture and pattern of managing the national liberation movement and building a national authority in a critical transitory period, and the method of political and ideological controversy management during this transitional period. This is a basic problem, despite our prevailing ideological and political wishes here in Egypt, or those of the Palestinian sympathizers and activists, or among the Palestinians themselves.

2.3 The third point is relevant to the issue of resorting to the military courts and starting with the exceptional law and concepts as legal values and regulations to control the relationships inside the Occupied Territories. In fact, this point indicates a suspicious and questionable problem. Why start with establishing martial courts? Why not start with civil legal customs? In this setting, a legal agenda or list could be established for the self-rule authorities to carry out during the transition stage. They could start by collecting and coordinating those diverse laws and regulations and preparing a set of prevailing legal codes in the various areas, in order to avoid any

conflicts there. Such an approach model was adopted by Egypt and some other Arab countries who had some previously established modern legal heritage, unlike other countries of the same region. This approach of legal revision involves refining the legal structure, coordinating its rules and standards, and modernizing some of them. At first, this might appear to be a gradual and reformist approach, subordinate to the adaptation of the dominant legal culture to the desire to develop a modern legal system. However, I think that the issue of legal modernity is a complex one. It needs a long time to develop, both in terms of the legal heritage and its points of reference, and in terms of the comparative law experiences.

It may also be more appropriate to propagate the civil legal heritage throughout the transitional stage. It may not only be just a Palestinian reply to a long history of transgressions that violated human rights under various claims within the Arab environment. I use this term intentionally, because the Palestinians were besieged throughout the Arab World. Nonetheless, it could also be a real Palestinian model for response to the turbulent changes that are now taking place all over the world. The most prominent mechanisms of this response could be respect for and compliance with human rights values and regulations by both the self-rule authority and the people themselves.

Mr. Ahmad Bahaa El-Deen Shaban

Mr. Mohammad Sobeih's address provokes me to speak, and I hope he tolerates what I shall say. He accused us of repeating an Israeli viewpoint. But I illustrate that we have among us in this seminar a selected group of young Egyptian leaders who are interested in taking the side of the Palestinian question. In terms of our sympathetic attitude towards this issue, I believe that we have the right to doubt and revolt against some reckless presentations. The facts tell us that some encroachment on the institutional role has recently taken place. For example, when Sheikh Abd El-Hameed Al Sayeh, the chairman of the most respected and recognized major Palestinian legislative institution, the Palestinian National Council, resigns

and says that he was neither informed about the direction of the secret talks nor asked to give his point of view about them, stressing that this agreement does not fulfill the demands of the Palestinian people, his contention indicates that the most important institution was violated.

In fact, it worries us to see the Palestinian leadership violating the law because we care about the future of democratic achievements within the emerging national entity. When President Arafat states, in his correspondence to the Norwegian Minister of Foreign Affairs, that PLO Rejects terrorism and other violent acts, we say that "terrorism" is an Israeli term, used usually to describe the Palestinian national and revolutionary struggle. Therefore, when President Arafat used this term in the above-mentioned statement, declaring that PLO is responsible for the actions of all its supporters and officials and will ensure their compliance, or it will take punitive actions against the resistance forces, this position admits an implied commitment to confront anyone who dares to reject the Gaza-Jerico Agreement. These points are officially recorded, my reference being the Palestinian Studies Review, Magalat Al Derasat Al Falastinya. However, they are also published in the press and are well known. When President Arafat stresses that PLO sees that the features of the national Palestinian charter which deny Israel's right to existence or are contradictory to the commitments given in his above-mentioned correspondence are going to be cancelled and invalidated from now onwards, it means that PLO is committed to present the needed modifications to the National Palestinian Council for an official agreement.

How then can the chairman stress that he cancelled these items, and then ask for a National Palestinian Council meeting to sanctify them? Such demonstrations justify our worries about the future of democratic achievements in the Occupied Territories. Another reason to justify our attitude is our bitter experience in the Arab world as a result of human rights violations. These led to defeats which we should never again tolerate. We see that the Palestinian military experience emerging is similar to what happened in Egypt. Undoubtedly, the self-rule authority is a national one, but in the final conclusion, it has its own vision, which could be limited to its

representative interests, and it could end up adopting procedures against the interests of a broad sector of the Palestinian people.

Although, until recently, none of us were interested in the human rights issues, I still believe them to be very important and essential issues, and the Palestinian authority should accept them, for such a high sensitivity towards discussing human rights issues would indicate that there is a clear intention to take a stand against them eventually.

All people who discuss this issue are sincere friends to the Palestinian Revolution. Even those who oppose the Gaza-Jerico Agreement – and I am one of them – are not hostile to the Palestinian revolution. I am against compromise for patriotic reasons, out of concern for the interests of the Palestinian people. But I have the right to object and to comment on the components of the Agreement and the future of the emerging Palestinian authority's performances.

I also think that another Palestinian party will emerge from the Occupied Territories with some reservations that should be taken carefully and objectively into consideration, without accusing those who adopt them with repetitions of the Israeli comments or claims, as it is not at all good for us to repeat those claims. On the contrary, we must be very careful to facilitate the success of the Palestinian experience, because one day we hope that this experience will become a realization of the dream in the Arab territories. That is why we are afraid, and we have the right to be so.

Dr. Moustafa Kamal Al-Sayed, PhD

I will start by expressing my embarrassment at having to deal with this issue, because it is clear that none of us can give the Palestinian revolution lessons, especially since all of us, from the roaring ocean to the rampant gulf, suffer because of the deterioration of the human rights situation. Not only that, but we also suffer from a degeneration of the Arab human rights movement. That is to say, the violations which used to be fiercely confronted in the past are now very placidly accepted by forces who call themselves democratic. So I feel the same as Dr. Yehya Al-Gamal, who

said that this seminar could be a sensitive one, yet it comes at an opportune time.

I will speak, although I feel embarrassed, and let me quote from brother Ahmad Bahaa El-Deen to explain that. He said that we talked about human rights in the Occupied Territories out of love, good rapport and sympathy with the Palestinian revolution, and out of fear that the Palestinian authority might be a typical copy of a lot of other currently ruling Arab authorities that could hardly be described as being national.

I hope that Mr. Mohammad Sobeih can tolerate our comments, because we do not mean to offend or accuse anyone by them. Rather, we really hope that this emerging authority will be able to avoid the faults of the current Arab authorities. In this context, I think that the best service that could ever be offered to the Palestinian authority is promotion of democracy all over the Arab world, rather than just to leave the Palestinian authority in the midst of an Arab dictatorship environment, because democracy and dictatorship are both contagious. No doubt, if popular democracy spreads in neighboring Arab countries, the leading Palestinian authority will be positively affected.

Although it is not appropriate to say so, I will still tell you frankly that I almost got bored of this "democracy chit-chat" which is prevalent everywhere, in a situation of actual democratic deterioration. I even was about to vow to stop attending any "democracy chit-chat." Nevertheless, this could be the most suitable opportunity for us to assert that we have gone beyond the "chit-chat" stage, even that we now have such a strong determination that we can go beyond it, even though it may have served as an initial induction to widen the democratic environment that surrounds the Palestinian authority. In fact, I invite you all, sisters and brothers, to recognize the lessons of history, and to realize that an authority respecting human rights can never just emerge out of the blue, and that the Palestinian authority faces real difficulties which prevent it from fulfilling commitments to human rights criteria.

It is worth mentioning, in this context, that some abused individuals were accused of collusion with Israel. Of course, this is not a rationale for not

respecting their human rights guarantees, even though, in similar historical experiences, it was difficult to remain committed to human rights guarantees in such cases. Yet we stress that the Palestinian authority should commit itself to these guarantees, as there are some optimistic considerations in terms of the nature of this authority, mainly, the plurality characterizing the Palestinian national movement, which includes well-established organizations within it. I imagine that the Palestinian experience will pay much more for repression than usual.

For example, I cannot imagine that neither Fatah nor any of the other Palestinian groups will be able to eradicate Hamas, because they are not composed of just a few dozens of individuals, but, in fact, have a genuine existence in the Palestinian territories. I think that the Palestinian situation in this context is similar to India's situation, which was able to develop a well established democracy because repression has a high price. In the Palestinian experience, repression will be extremely expensive.

In fact, none of these forces are democratic, but in practical reality, democracy is not built by democratic people. In the West, democracy was built out of the intense sufferings resulting from conflicts between totally non-democratic parties, yet they considered the commitment to the foundations of plurality and democracy as the single price which should inevitably be paid, so that they would be able to get settled. The single advice we may offer to these Palestinian forces is to participate in the coming elections, despite the fact that a lot of them are critical of the Declaration of Principles. Participation in the elections is the best guarantee to getting a future democratic Palestinian authority. In fact, any boycott of these elections or of any other Palestinian institution by the other groups will create a sanctification of dictatorship within this authority. That is to say, if these multiple forces, who are deeply rooted in the Palestinian territories, are introduced into the Palestinian institutions, I think that they will be the best guarantee for establishing and fixing plurality inside these institutions, and this will also have a strengthening factor generally for the Palestinians against the Israeli occupation authority.

Finally, despite all that was said about the constitution and the law, many people view these as mere formal frames. Nevertheless, we should not underestimate the importance of research and study of the constitutional and legal guarantees, as constitution and law are also arrangements that form social and political relations. Thus it is feasible to study the most suitable future election system for the Palestinian legislative authority:

Would it be the system of proportional representation, in real terms of the constitutional law, not in terms of its application in Egypt, for example? In other words, would the adoption of the proportional representation system be a guarantee for representation of all the Palestinian forces inside these legislative boards?

Would the proportional representation be expanded to cover the executive systems as well as the legislative ones, like the approach which was suggested for Northern Ireland? I think that this approach of two boards with guarantees given to them is suitable.

All these issues are important, not as formal issues in the internal relations between the social and the political forces, but inside Palestine itself. Again, I repeat that I feel embarrassed. Nevertheless, I speak entirely out of love and friendship.

Mr. Fateh Azzam

I thank all my brothers for their intervention, and I stress that we are all fighting one and the same war, sheltered by the same trench, namely, the human rights trench, where there is no difference between a Palestinian, an Egyptian, a Libyan or a Sudanese. The human rights terms are valid for all of us. But we could argue about the strategies and the criteria in our attempts to apply these rights, to guarantee them, and to put them into action. It is natural to find differences in this application from state to state, and in different situations of self-rule, occupation or independence.

In fact, we, the Palestinians, agree on a lot of issues, and the self-rule may widen our chance to build institutions, systems, and components of an

independent Palestinian state in the future. Even if we were not successful and our objectives were hampered for ten, or twenty, or even fifty years, we can guarantee one right today, or some rights for some people tomorrow. Such a success would be an achievement. Even under Israeli occupation, the Palestinian human rights movement is strong and supported by the community, and it will continue to deal with the variables and interactions in order to achieve its objectives. Of course, Arab and international support will contribute a lot to such an achievement. We have to carry out the task of Palestinian state institution building. Our point of view is that the human rights issue is not merely philosophical, but it is also basically a legal issue. I need to know which law is going to be applied and to make sure that this law guarantees the most respect possible for human rights, and that it ensures as many rights as possible. Therefore, I have to know which people are responsible for that and oblige them to fulfill their responsibility.

We intend to contribute to this process in our full capacity, and we need the cooperation of everyone so that we can succeed.

Since the human rights issue is a legal one, I would like to mention that the international law was unfortunately almost totally absent from the agreement that took place between Israel and PLO. The laws mentioned here are not the four Geneva laws, but they are UN laws and decisions, especially the ones relevant to occupation, claiming the lands of the others by force, capturing holy Jerusalem, and long-term settlements in territories which we can hardly be sure are going to be restored.

Certainly, some of these points are clear in the Agreement as points for postponed discussions, but the time for those postponed discussions may never come later on!

Nonetheless, I feel that these negotiations with Israel neglected a lot of legal ground, such as that war criminals should be judged. A lot of crimes were committed throughout 27 years of occupation, such as premeditated murder, eviction, demolition of houses, and confiscation of land. These are all crimes which could never be rationalized by military or any other necessity.

We call on the Palestinian leadership and authority to raise this issue in the negotiations and the international courts. We should reach the stage where we can call for judgement of the war criminals. This is a very serious issue, for if the agreement is not based on law, then the law of the jungle will rule us, where the strongest is the most dominant. In this very particular equation, we know well who is the strongest.

Mr. Mohammad Sobeih

I appreciate all the brothers who have a long history of advocating the Palestinian revolution, especially brother Ahmad Bahaa El Deen Shaaban. I repeat what we all know and acknowledge: the Declaration of Principles did not fulfill even a minimum of the Palestinian requirements. Therefore, I assure you that all our actions will be satisfactory to the Palestinian conscience and struggle, in terms of the Arab and the international findings.

Sheikh Al Sayeh, chairman of the National Council, resigned at the very beginning. He is an elderly man (92 years), who is unable to carry out his tasks of steering us away from adverse influences. It is supposed that he has not yet introduced his resignation officially to the National Council. On the other hand, the path of our peace process is based on the decisions that were taken by the National Council in 1974, regarding the establishment of the Palestinian authority in any area of the Territories or in any part where the Israeli forces have been driven out. There were also the decisions of the National Council in 1988 that gave a green light to the political line. Then we proceeded with unfair terms. In fact, a compromise was worked for along dozens of channels, and when one of these channels bore fruit, we revealed it. Then the results were presented to the Central Council, whose capacity was granted by the National Council meeting held in 1991. This Central Council carried out a detailed discussion of the Agreement, as it possessed all the official documents. There were no secret appendices, and their existence was a lie reported by the media, just as, for example, saying that the Palestinian police forces are paid by the Israeli Ministry of Interior was a lie, since all the police staff arrived via Egypt and are paid by the donor countries, with whom we are struggling to comply with this point.

As far as the civil war is concerned, it is noted, for example, that Israel hopes that this war will break out, in order to hinder the establishment of the Palestinian state. I appreciate Dr. Waheed Abdel Mageed's concern for national unity, and I welcome any criticism, but I say that the Palestinian people inside protect the National Authority. Mr. Fereih Abu Median, a well known, unbiased and fair judge, was appointed a minister of justice. Another well known judge, Quasi Al Abadla, was also appointed. We do not have any military courts, and the new presidential palace in Jerico is the palace which was occupied by the former Israeli military governor.

We are not a developing country. We are, rather, a country that suffers from a cowardly occupation that has merely backed off a few steps. Yet we have not developed an intolerance to democracy. I summon all the participants in this seminar, whatever their political affiliation may be, to call for future democracy and for the Palestinian state's commitment to human rights.

Needless to say, the incident involving the death of the young man, Farid Jarboo, in jail horrified us. The three officers responsible were arrested. But this does not mean that thousands of people are detained in Palestinian prisons, or even that there are no regular crimes. Nevertheless, Palestinian human rights guarantees should be ensured, taking into consideration that the Palestinian police forces are made up of young men from diverse places, educated under various educational and constitutional systems, and they are sure to commit some violations while they become acquainted with the new public order.

It is really painful to hear claims that we reject the international monitoring of the elections as happened in South African. Please, give credit to what I am about to say now: we request not only an international presence, but also an international participation in the elections. For us, elections mean that we are on the right path to the evolution of a state, and that we are a democratic society. We held elections before under occupation: in the syndicates, associations, and institutions where all the forces participated, and thus the civilized nature of the Palestinian people was demonstrated. I hope that Dr. Waheed corrects his information in this regard.

With regard to the Palestinian legislative capacity, it is noted that we have two stages: a transitional and a final one. We persistently insisted on getting the right to legislation in the transitional stage, and we were persistently denied this right because legislation signifies that a Parliament will exist.

Generally, no one at all can ever stop the progression and the ambitions of the Palestinian society, because there are "three leaders for every two Palestinians." Therefore, I hope that other Arab countries may have the same attention paid to their democratic performance as the Palestinians have to theirs.

Please, come on, all of you: entreat the Palestinian authority to take active steps to establish democracy and to protect human rights.

Dr. Mohammad Al Sayed Saeed, PhD

This seminar is intended to be a debate, and to give a chance for a plurality of opinions and ideas. If I'm allowed, I would like to highlight some points. The first point is related to the idea of flogging the national authority. In fact, we never ever used to think like this. This national authority belongs to all the Arabs and to all the democratic and national forces throughout the Arab World.

Therefore, the issue of flogging is irrelevant, just as we may say that we do not thrash the Egyptian government, nor any other authority. Rather we direct them towards human rights issues. Human rights logic is an apolitical one. That is to say, it never takes stands of enmity against any authority, but rather, we monitor human rights and invite the authorities to pledge themselves to identified, well-known, international criteria of human rights performance.

As for the issue of using an Israeli language, I think that Mr. Sobeih is exaggerating. Any reader of the Palestinian press, such as Al Quads newspaper, or even the Palestinian literature in the Arab press, such as Al Hayat and Al Sharq Al Awsat newspapers, is sure to find ideas far beyond those of our paper, for the ideas in our paper came as comparisons or

relative measures of fears and ambitions, while the Palestinian press says much more than that. The human rights stand is not directed against any party whatsoever. Rather, it just seeks expression: political and social rights for all.

Regarding the subject of discriminating between inside and outside Palestinians, I both accept and reject it. I reject dividing the Palestinian people, while I may accept this distinction if it were related to the follow-up of specific rights mentioned in specific agreements, and in terms of considerable achievements. For example, there is discrimination between inside and outside in the declaration of principles, specifically, that the citizens allowed to vote in the elections should be inhabitants of the Occupied Territories, not of the camps in Damascus or Beirut, nor of North or South America. Therefore, discrimination is already a matter of fact. All that we can say about discrimination is that it is really difficult to achieve a fair and sophisticated system from the situation already in existence. For example, what would the destiny of PLO be if a real representative authority were established inside the Occupied Territories? What would the relationship between this authority and PLO be? All of this was mentioned in the paper. It is not a discrimination in the sense of calling for a division of the Palestinian people. Frankly speaking, it is strange to hear such a speech from Mr. Sobeih. If there is someone who accepts the discrimination between inside and outside, he/she is certainly not one of the attendants at this seminar. However, there are such people who exist out there, and whoever condoned signing an agreement that states that inside inhabitants are granted specific rights, while those outside are denied these rights, is a politician, not a human rights activist.

As for the civil war, it is a real issue. The earlier reports about this issue came through the Palestinian, not the Israeli press. Although I'm not currently free to mention any names, I tell you that numerous discussions and reports by key social Palestinian figures took place both in Jerusalem and in the Occupied Territories. Six months ago, these figures said that an outbreak of a civil war was a probability. Actually, Palestinian civil war was

an established fact all the time, in the form of an extended armed conflict in Lebanon between 1985 and 1988. Camps were taken by force from PLO, to be given back to it later. This is a Palestinian civil war. Why do our Yemeni brothers deny what happened in Yemen is a civil war? It is because it is a matter of fact, and there are real fears of other outbreaks of civil war. Sudanese people also do not call their civil war by its proper name. Civil war is an event that may affect any nation. It is not something shameful; rather, it induces people to try to prevent such a catastrophe. According to my belief, human rights movements have not paid proper attention to the fact that anarchy, collapse of public order, and civil wars are the most disastrous human rights catastrophes. Nevertheless, the paper did not say that a civil war would occur, and this is a very unexpected event. The initial reports about this issue were improvised and did not give enough consideration to the deep moral and devoted relationship within the conflict that binds all the parties together. Yet, some societies had fallen into civil war, as Lebanon did, despite having a similarly great struggling power.

The main contention of the paper advises us to read the probable potentials of human rights under the self-rule authority by induction, to observe the kind of performances practised by PLO or its opposition parties. For the PLO, this is not a new issue at all. PLO has a full file of literature. The Palestinian literature discusses whether the first priority is to establish reform within PLO or to settle the national question by the elections. One view said that we should start by fixing our home inside, then we can start to negotiate with Israel. This view was expressed openly in various ways, including the machinery of the press, throughout Palestinian society.

Therefore, saying that it is an artificial issue is an exaggeration, given the Arab political traditions which prefer to deny reality or to give it phoney names. I would like to stress that there is a difference between a scientific scholar and a politician. The politician rationalizes his attitudes and stands in some way or another, while in the area of political or legal sciences, concepts should be identified in a scientific, unbiased and objective manner, where the issues are referred to using correct terminology.

In the first place, the dispute between the brothers about these issues is not something new. This extended dialogue was already taking place with our colleagues in the Palestinian human rights movement, who appreciate very well the vitality of the Palestinian civil society, its organizations and institutions, which are really so exceptional as to deserve appreciation, but there is still a question mark. It is not out of conceit that I call them to learn from their experience of Egypt and other countries. Egypt had a very vibrant society before 1952, and it was destroyed by the large mass of common people who were themselves merely involved in the same movements and organizations that were destroyed by them. Even mass demonstrations called for destruction of Al Wafd and Al Saadieen parties, in which they had had membership only a few days previous.

There is also the Sudanese political experience. The Sudanese political society, which produced at least the 1964 and 1985 revolutions, was destroyed without too much effort. The vast masses contributed partially to destroying it, by either their silence or their collusion. In other words, we have already had precious lessons about how to destroy a civil society. One of the mechanisms of this destruction is the client-patron relationship: "Give the people some money and finish it."

Abdel Nasser did so, and he said that this issue cost him only 4000 pounds. Yes, with 4000 pounds Nasser could buy the big labor leaders who led major demonstrations of 2000 or 3000 people against democracy, inspite of having had a million people calling for democracy in 1954.

Dear brothers and sisters, beware of excessive exaggeration. I know how critical and sensitive this prudence-creating issue is. All of us exaggerated in our 1968 and 1969 demonstrations at the university, when we considered the Palestinian revolution as a trigger for democracy in the Arab World. I am worried about Palestinian democracy, and I have my provisional reasons from the previous Egyptian and Sudanese experiences. There is one more point that I do not underestimate, but draw your attention to, and that is the fact that in many situations it is easy to destroy a whole society. According to Andrea Marlou, in his great novel, Hope, "Building a society takes

centuries, but destroying it takes just one second." How many seconds do we need to build a 40-year old human being for whom we need only one second to kill?

A final concern is related to the issue of economic and social rights, and it needs more attention. I would like to link this issue to the standards of achievements. The client-patron relationship and buying loyalties itself is not a human rights violation, but it is a major source of human rights violations, as it denies the nation its right to development, involving the right to establish impartial, unbiased bases. The loyalty-buying mechanism abuses the available resources for the sake of obtaining the means of corruption rather than the means of building.

Mr. Fateh Azzam

I have a comment on Mr. Mohammed Sobeih's speech. I'm worried about the punishment of three officers. To my knowledge, according to the statement of Mr. Freih Abu Meddain, the Minister of Justice, there is a current investigation of this issue. I hope no single officer will be punished before their responsibility is confirmed through investigations, and they are presented to a just and fair court, where they are allowed the right to be defended, and so on.

I'd like to draw your attention to another point. There is a need to retain a committee to investigate previous Israeli practices. I call Mr. Mohammed Sobeih to do so, exactly as was done less than a month after the regimes were changed in South Africa, Chile and El Salvador. Every new regime has to investigate the performances of the old, and to punish those who committed violations.

As for the inside/outside discrimination, I agree with all the ideas mentioned.

Take myself as an example: I am a 1948 refugee. I spent my life in Lebanon, Syria, and America. I returned home for the first time just 10 years ago, when I could get a foreign passport. I personally do not find any current inside/outside difference. So, each individual's experience is

different from the other's.

Another point: When we talk about a civil society, we raise the issue of civil institutions, which started to be raised throughout all sectors of the community, including women. But they now say there is no national liberation without women's emancipation and changes carried out by law.

We also talk about the NGOs who declared a common stand and insisted on obtaining their professional independence, whereas they are ready to work with the political authority on that basis. The movement of disabled people is also increasing, and they are eager to remove any barriers that hinder the realization of their rights. All these forces will never accept abandoning discussions about the legal and legislative issues and the formation of the future society.

I noticed that our colleagues dealt with the issue of the Palestinian inside/outside discrimination in a negative sense, although all Palestinians are a single integrated people, managing to develop as an emerging nation. In my opinion, we overlooked a very important issue which will be a matter of future negotiations, and that is forbidding the outside Palestinians to be settled or be granted the right to return. This is serious because even the self-rule areas, both in Gaza and the West Bank, where we only hope and endeavour to establish a Palestinian state, are unable to accommodate refugees. They are already heavily populated and, therefore, not ready to accommodate more inhabitants. Why do we not prepare ourselves for the probable pressure that may be exerted by Israel, USA, and the West to study, with other Arab countries, the issue of settling the 1948 refugees there, for this should be considered a violation of the right to return home.

Mr. Mohammed Khalid Al Azaar

I think that there is a misinterpretation in approaching the issue of civil war, both in Mr. Sobeih's and in the other discourses. Civil war is mentioned here in this seminar as a potential hypothetical issue for research and

discussion, which could either occur or not, as if it could tolerate different points of views. This is the essence of the debate, and Mr. Sobeih's presentation gave it its real form and meaning.

I would like to draw attention to another point, that the effect of the regional and international milieus was not discussed as it should be, There are regional and international parties which are intruding deeply into the peace process and into the process aimed at establishing the Palestinian entity. Therefore, could these parties exert specific pressures by means of granting or denying in order to expand or to reduce the area of guarantees? Perhaps the international forces may have some demands concerning this aspect. We do not exactly know how wide the area occupied by these regional and international forces in this issue is. These forces may or may not like the existence of a democratic authority.

On the other hand, as regards the whole idea of guarantees, I think that it was focused upon as a legal issue, but I think that human rights guarantees are primarily a cultural one. Some societies have an extended non-democratic culture, and we may say that some people mostly adopt a non-democratic culture that was acquired over an extended period. Other societies needed three or four centuries to establish the required change, so why should we imagine that the democratic culture will be deeply rooted in five to ten years in the case of Palestine? Of course, this does not mean seeking democracy should be stopped, given that the years and stages consumed to build the Palestinian entity offer a chance to disseminate the concepts of democracy.

Our issue also raises a question about the relation between a national regime and a democratic one. Are they supposed to be one and the same? Most of the Third World countries struggled against imperialism, assuming that it violated their rights and stole their fortunes. Nevertheless, many of them fell prey to a national regime that committed some even more severe violations than the imperialist acts. Then the imperialists began to refresh these countries' memories with their favors, talking about their potential return, under the umbrella of helping these people to

guarantee their human rights. Now we hear about the concept of humanistic intervention.

Lastly, a question is raised about comparing the Palestinian situation with what has happened in other Arab societies, and about the possibility of getting a different Palestinian model because of the extended experience of conflict. Could a different model of approaching rights emerge out of the difference in the liberation mechanism (an international decree, a peaceful compromise, an armed struggle, etc.) ? In other words, could the armed, legal and cultural struggle for about 100 years leave a different impression on the issue of human rights guarantees?

***Guarantees for Human Rights
Under Palestinian Self - Rule
Political and Legal Considerations.***

This study is intended to raise consciousness on needed guarantees for the respect of human rights in the occupied territories under self-rule regime and beyond.

It is stated that these guarantees are located in the political, cultural and legal spheres. This study addresses political and legal considerations akin to entrenched respect of human rights.

The study calls for combining recognition of pluralism with emphasis on Palestinian national consensus. Honest construction of Palestinian National Authority institutions on the basis of competence rather than legality is a crucial ingredient in a working human rights system in the present conjuncture. A fair resolution of contention on security affairs between Palestinian National Authority and Israel, in the course of negotiations for peace is regarded as absolutely indispensable for entrenchment of human rights under self-rule regime, and beyond.

As to legal guarantees, the study calls for, placing priority on the democratic production of a constitutional document, the establishment of a court system empowered to check the legality of administrative orders and legislation, and on the formulation of a law on legal procedures in full accord with international human rights law.