

## Official Response of the PLO to the Mitchell Report, May 15, 2001

### INTRODUCTION

After careful review and analysis of the Final Report ("Report") of the Sharm El-Sheikh Fact Finding Committee ("Committee") submitted April 30, 2001, and in consultation with representatives of Palestinian civil society, the Palestine Liberation Organization ("PLO") is convinced that the Committee's findings and recommendations offer Palestinians and Israelis a sensible and coherent foundation for resolving the current crisis and preparing a path back to meaningful negotiations. Although the Report does not fully address all of the concerns that we have raised with the Committee, we believe that it provides a balanced assessment of the facts, and we fully support the implementation of all of the Committee's recommendations as a comprehensive package.

The following response by the PLO ("Response") will review the key findings of the Committee and identify issues that will require further attention if we are to stabilize the situation on the ground and make concrete progress towards peace. We accept the Report as an attempt to provide a political solution to the crisis, rather than a legal analysis, carefully crafted to provide the parties and the international community with a package of the elements necessary to end the violence resulting from, and associated with, the on-going Israeli military occupation of Palestinian lands.

We are reassured that the Committee's findings appear to be generally consistent with international practice and international law, as well as complementary to the Egyptian-Jordanian Initiative. Still, we feel that the Committee did not adequately address all relevant Palestinian concerns. Nevertheless, as we move towards developing a plan for implementing the Committee's recommendations in their entirety, we hope that all involved parties will support full implementation of the recommendations, as we have, and regard international law as a primary reference point as recommended by the Committee.

The Committee has based its findings on an exhaustive fact-finding effort and has met with Palestinian and Israeli political and civic leaders, as well as numerous experts. The Committee's investigation has taken its members and staff to Palestinian cities and refugee camps throughout the Occupied Palestinian Territories, including East Jerusalem, as well as to the illegal Israeli settlements. The Report's conclusions reflect the thoroughness of the Committee's efforts.

The Report is the outcome of a broad international effort to assist Palestinians and Israelis in a desperate time, and we are grateful for the seriousness with which the international community has pursued this matter. Accordingly, it is of the utmost importance that, at this critical juncture, the international community renews its commitment to the Report and provides the full weight of its support to the complete implementation of the Committee's recommendations.

There is far too much at stake to allow the Committee's findings to

become merely an academic exercise. We trust that the participants at the Sharm El-Sheikh Summit in October 2000 who authorized the mandate for the Committee will continue to work with us and our Israeli counterparts to turn this Report into a roadmap leading to meaningful political negotiations whose goal must remain a swift end, not only to the current crisis, but also to Israel's occupation of Palestinian territory.

## **THE COMMITTEE'S CONCLUSIONS**

### Characterization of the Conflict

Since the beginning of the Intifada on September 29, 2000, following Ariel Sharon's provocative visit on September 28 to the Haram al-Sharif and the decision the next day by Israeli forces to use lethal force against unarmed Palestinian demonstrators, the government of Israel ("GOI") has unsuccessfully alleged that the Palestinian National Authority ("PNA") has planned, launched and continues to direct the Intifada as a negotiating tactic. The GOI has also tried to inaccurately characterize the conflict as one between two armies 'just short of war' and to use such characterizations to justify its excessive and disproportionate response to Palestinian opposition to the occupation. The GOI has also used such arguments in an attempt to justify such blatantly illegal activities as political assassinations. By characterizing the crisis in such a one-sided and self-serving way, Israel sought to avoid any discussion of the true underlying causes of Palestinian frustration.

The GOI has been unable over the course of four months of fact finding to present convincing evidence to the Committee to back up its allegations. The Report, therefore, correctly notes that there is no basis on which to conclude that there was a deliberate plan by the PA [1] to initiate a campaign of violence ..." (Report, page 7)

Furthermore, Israel's entire characterization of the crisis as an "armed conflict short of war" was rejected by the Committee as "not adequately" describing the variety of incidents that have occurred since September 29, 2000. Abandoning such a mischaracterization would allow the GOI to renew investigations by the Department of Military Police Investigations "whenever a Palestinian in the territories dies at the hands of an IDF soldier in an incident not involving terrorism." (Report, page 19)

### Settlements

The findings of the Committee unambiguously reject these Israeli characterizations and have gone to the heart of the current crisis - Israel's on-going occupation as most clearly exemplified by Israel's continuing policy of confiscating Palestinian territory and destroying Palestinian property in order to build and expand illegal settlements and related "bypass" roads.

Contrary to Israeli arguments, the Report points to the connection between Israeli-Palestinian violence and Israel's "settlement

construction activity." The Report emphasizes that the international community has universally condemned Israel's settlement policy as either the "greatest obstacle to peace" or, just as accurately, as illegal actions under international law and a violation of Palestinian-Israeli agreements. We wholeheartedly concur with the Committee's findings that Israel should cease all of its settlement activity and that Israel should carefully consider dismantling settlements that are particularly provocative flash points. We are also encouraged by a recent Israeli poll indicating that 62% of Israelis favor a settlement freeze as a means of ending the current crisis.[2]

The Report notes that on each of the two major visits to the region by the Committee principals, Israel announced the expansion of settlements. Indeed, upon public disclosure that the Report calls for an end to this illegal activity, the GOI announced its intention to seek an additional U.S. \$400 million from the heavily subsidized Israeli budget for continued settlement expansion. According to Israeli press reports, the GOI, on May 13, 2001, reaffirmed a decision to build an eastern "ring road" or bypass road around occupied East Jerusalem that would require Israel to confiscate more Palestinian land and destroy a number of Palestinian homes.[3] While the GOI's contempt for international legality is noteworthy in and of itself, it is even more important to recognize the effect this Israeli contempt has had on Palestinian lives and the inevitable Palestinian response.

#### Israeli Use of Force

This contempt has extended to the GOI's use of lethal force against Palestinian demonstrators. The Report quotes Israeli government sources as acknowledging that for the "first three months of the current uprising, most incidents did not involve Palestinian use of firearms and explosives." (emphasis in the original) (Report, page 18) Yet, despite the fact that the overwhelming majority of demonstrations involved no gunfire whatsoever, it was precisely in these demonstrations that most of the Palestinian civilians were killed and wounded, the Report noted. (Report, page 18-19)

The Committee concludes that Israel must differentiate between terrorism, which it defines as "the deliberate killing and injuring of randomly selected noncombatants for political ends" and protest, in which it includes stone throwing by youths. (Report, page 19) The Committee further criticizes Israel's unwillingness to apply the same code of conduct standards to Palestinians as it applies to Israelis who are in the Occupied Palestinian Territories. (Report, page 30) Finally, the Committee concludes that the Israeli armed forces "should adopt crowd-control tactics that minimize the potential for deaths and casualties, withdrawing metal-cored rubber rounds from general use..." (Report, page 21) The Report is clear that Israel's systematic utilization of deadly force in response to unarmed Palestinian demonstrators must stop.

#### Collective Punishment

The Report also restates the international community's consensus that

Israel's policy of collective punishment must end:

[The Committee] believe[s], however, that the [GOI] should lift closures, transfer to the PA all revenues owed, and permit Palestinians who have been employed in Israel to return to their jobs. (Report, page 23)

#### End to Incitement

The Committee has also asked the parties "to renew their formal commitments to foster mutual understanding and tolerance and to abstain from incitement and hostile propaganda." (Report, page 22) The Report particularly urges the parties not to use words "in a manner that suggests collective responsibility." (Report, page 22) We agree with the Committee's sentiments. Even as we submit this report, the GOI continues to create a climate of hate against Palestinians in general and against the Palestinian National Authority in particular. Israeli President Moshe Katsav very recently made statements attempting to remove Palestinians from the pale of humanity:

There is a huge gap between us and our enemies - not just in ability but in morality, culture, sanctity of life, and conscience....

[Palestinians] are people who don't belong to our continent, to our world, but actually belong to a different galaxy.[4]

The spiritual leader of Shas, the third largest party in the Israeli Knesset, also recently declared that "it is forbidden to be merciful to [Palestinians]. You must give them missiles, with relish - annihilate them. Evil ones, damnable ones." [5]

Unfortunately, these are not the only statements by highly placed GOI officials or political leaders demonizing the Palestinian people as a whole or arguing that Palestinians are collectively guilty for any act of violence directed at Israel or its occupation.

As the Committee noted, hate speech must be condemned. The statement of the Israeli president and other Israeli officials, particularly in the current volatile situation, helps to create an atmosphere in which Israeli violence against Palestinian civilians and other noncombatants can occur with impunity. We join the Committee in condemning all hate speech and other incitement regardless of the source.

#### Respect for Holy Places

The Committee also addressed the need to ensure that places deemed holy by Muslims, Jews, and Christians are afforded respect, protection and preservation. The Report recommends the creation of a 'joint initiative' to preserve and protect such places. These views are also consistent with Palestinian concerns for allowing full freedom of movement for worshippers of all faiths, particularly with respect to access to the holy sites in Jerusalem by both Christian and Muslim Palestinians living in the Occupied Palestinian Territories.

## Conclusions Form a Comprehensive Package

Perhaps most importantly, the Committee has linked all these elements into a comprehensive package to truly end the crisis and prevent its recurrence. The Report provides a sophisticated analysis of how Israel's occupation, particularly its settlement and lethal force policy, is inextricably tied to Palestinian-Israeli security cooperation, and how security cooperation can only be sustained in the context of meaningful political negotiations:

We acknowledge the reluctance of the PA to be seen as facilitating the work of Israeli security services absent an explicit political context (i.e., meaningful negotiations) and under the threat of Israeli settlement expansion. Indeed, security cooperation cannot be sustained without such negotiations and with ongoing actions seen as prejudicing the outcome of negotiations. (Report, page 13)

The Committee also makes it clear that neither side has a unique privilege to defy international law or to unilaterally abrogate agreements:

If the parties are to succeed in completing their journey to their common destination, agreed commitments must be implemented, international law respected, and human rights protected. (Report, page 3)

These findings are entirely consistent with the Palestinian perspective that remains rooted in the applicability of international law and standards to govern Israel's occupation of Palestinian territory as well as to Palestinian responses. The current crisis is the outgrowth of the consequences of Israel's illegal occupation of Palestinian territories, its systematic abuses of international humanitarian law, and its unwillingness to implement those measures agreed upon with the Palestinians over the last seven years designed to mitigate the worst of those consequences.

A resolution to the current crisis requires that this package of recommendations provided by the international community be implemented comprehensively with a view towards implementing U.N. Security Council Resolutions 242 and 338 that require an end to the Israeli occupation. As the Committee recognized, there is a need to have the Israeli government rearticulate its commitment to these principles by "[making...] clear to the PA that a future peace would pose no threat to the territorial contiguity of a Palestinian State to be established in the West Bank and Gaza Strip." (Report, page 29)

We accept these findings and are committed to working with the international community to prepare a road map for the effective implementation of all the measures recommended in the Report including those to be taken by the PNA to promote security in those areas of the Occupied Territories under its security administration.

## **THE LEGAL CONTEXT**

As noted above, the Committee's findings represent a political document and not a legal judgment. The Report alludes to the international context when it states that "[if the parties are to succeed in completing their journey to their common destination, agreed commitments must be implemented, international law respected, and human rights protected," but fails to explicitly set forth that context. (Report, page 3) The PLO wishes to directly address this deficiency in the Report by providing a record of the internationally accepted legal standards that apply to the Palestinian-Israeli conflict.

#### The Fourth Geneva Convention

During the June War of 1967, Israeli armed forces occupied the West Bank, including East Jerusalem, and the Gaza Strip, as well as the Syrian Golan Heights and the Egyptian Sinai Peninsula. U.N. Security Council Resolution 242, passed in 1968, restated the inadmissibility of the acquisition of territory by war and applied this international principle specifically to the Israeli occupation of Arab territory. Since then, all serious efforts to end the Israeli-Arab conflict have depended on implementation of this resolution requiring the Israeli withdrawal from Arab territory acquired by force and the subsequent termination of all states of belligerency.

Security Council Resolution 1322, consideration of which forms part of this Committee's mandate, makes explicit reference to several other Security Council resolutions,[6] all of which emphasize the de jure applicability of the Fourth Geneva Convention ("Convention") to the Occupied Palestinian Territories, the illegality of Israel's unilateral annexation of Jerusalem and of the steps Israel has taken to change the city's character. The international community, including the five permanent members of the UN Security Council, has repeatedly affirmed that the Convention applies de jure to the Occupied Palestinian Territories and the International Court of Justice has noted that the Geneva Conventions are customary international law as well. Israel itself originally recognized the Convention's de jure applicability but subsequently reversed itself.

The Committee's recommendations are in line with the Convention, and appear directly linked to the Convention's application. Israel's settlement policy, for example, is "illegal under international law" precisely because of the application of Article 49 of the Convention which prohibits the transfer of an Occupying Power's civilian population into the territory it occupies.

The Committee's recommendation that Israel cease using lethal force against Palestinian civilians and its differentiation between terrorism and legitimate protest is based, in part, on Article 47 of the Convention which affirms "the inviolability of rights" granted to the civilian population that can in no circumstances be suspended or evaded and Article 50 of the Convention which imposes a special burden on the Occupying Power to protect children from the effects of war and accompanying hardships.

The Report's recommendation that Israel lift the closures of

Palestinian towns and cities, stop the demolitions of homes and agricultural property including the uprooting of trees, and release Palestinian revenues back to the PNA are consistent with Article 33 of the Convention.

The Committee's work itself can provide the basis on which States can fulfil their Article 1 duty under the Convention to take steps to ensure that the GOI complies with all provisions of international humanitarian law.

#### Human Rights Law

In addition to international humanitarian law, the GOI's conduct in the Occupied Palestinian Territories is also subject to human rights instruments to which Israel is party, as well as customary international human rights rules. While the GOI has in the past denied the applicability of international human rights instruments in the Occupied Palestinian Territories, the various mechanisms created by these instruments have reaffirmed their applicability. These include, inter alia, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Rights of the Child. The Committee has acknowledged this applicability in its call for the parties to respect international law and respect human rights.

General rules of international law also apply to the Occupied Palestinian Territories. Most significant in this context is the Palestinian people's right to self-determination, recognized implicitly by the Committee in its call to Israel to make a statement recognizing that the goal of the peace process is to establish a viable and contiguous Palestinian State in the West Bank and Gaza.

#### **ISSUES FOR FURTHER ATTENTION**

##### International Protection Force

We note that the Committee did not oppose an international protection force but felt that such a protection force "would need the support of both parties." (Report, page 24) The Committee does not indicate that an International Protection Force is inadvisable, and consequently, further discussion on this matter is warranted. We believe that such a force remains necessary, particularly in light of the fact that Palestinians continue to be killed by Israeli forces in increasing numbers.

##### Israel's Continuing Assassination Policy

On May 14, 2001, Israeli forces assassinated five Palestinian policemen near Ramallah. This premeditated killing indicates a new GOI strategy of delegating authority to local Israeli commanders to initiate attacks against Palestinian civilians and PNA officials and police. However, Israel's assassination policy started much earlier, and was openly encouraged by officials of the previous Israeli government.

In light of the open advocacy, and indeed escalation, of Israel's extra-judicial execution or assassination policy, the Committee's failure to adequately address Palestinian concerns is difficult to understand. Articles 27, 32 and 33 of the Convention clearly stipulate that Israel's planned and systematic policy of assassinations, directed against specific Palestinian officials and local leaders, is a grave breach and a war crime. The international community has now made it clear, particularly through the precedents of the International War Crimes Tribunals for the

Former Yugoslavia and Rwanda, that all of those involved in the planning, instigating, ordering, or commission of grave breaches or who otherwise aid and abet in the planning, preparation or execution of grave breaches must be held individually responsible for the crime. This remains true whether those responsible are soldiers, government officials or even heads of state.

Although Israel has not signed or ratified the Protocol Additional to the Geneva Convention of 1977, the Protocol does provide guidance in interpreting international humanitarian law concerning assassination and arguably reflects customary law. Attacks on persons considered activists, or allegedly involved in encouraging resistance to Israel's occupation, clearly contravene Articles 51, 75, and 85 of the Protocol which consider such attacks grave breaches and war crimes.

#### Implementation of the Committee's Recommendations

The Report's findings fail to address the question of implementation of the recommendations, perhaps wishing to leave the matter to discussion with the parties and the international community. Although there are a number of models that have been utilized by the international community to stop the worst abuses of international law, this Response will be limited to a discussion of the most important elements required for any implementation effort. The international community, however, should discuss the actual models by which these elements are incorporated with the parties at the earliest possible date.

1. Third Party Involvement: Neither party should be permitted to play the role of both judge and jury. A fundamental problem with the implementation of many of the past agreements between the Palestinians and Israelis has been the lack of objective third party involvement. This failure has allowed one side to blame the other for alleged violations without an objective third party voice to determine the veracity of the complaint. It would be extremely counterproductive if implementation of the Committee's findings are not verified and/or enforced by third parties respected and trusted by both Palestinians and Israelis. Such involvement, once agreed to, must be able to make its decisions without possibility of a veto by either party. The Committee recommends that the parties consider requesting the Temporary International Presence in Hebron (TIPH) to expand its efforts in the Occupied

Palestinian Territories. However, if this is to be done, TIPH's mandate must be changed to address deficiencies in the ability of the current force to stop abuses of international law.

2. Findings of Fact: Third party involvement could alleviate the possibility of either party drawing negative conclusions on the other's implementation of an existing obligation without sufficient reason. The third party would investigate allegations of non-compliance and issue findings of fact on the allegations.

3. Dispute Resolution Mechanism: In order to address disagreements over implementation of the Report's recommendations, a peaceful and speedy dispute resolution mechanism must be created.

### Implementation of Past Agreements

Finally, a number of agreements have been signed between the PLO and Israel governing certain aspects of the relations between them and imposing certain obligations on each. The Committee has recognized that these obligations need to be fulfilled but fails to identify the most important of these unfulfilled obligations:

Section 2(d) of Article XI of the Interim Agreement calls for Israel to have withdrawn from all of the West Bank, with the exception of Israeli settlements and Israeli military bases. Today, almost three years after the deadline for Israel's third withdrawal, Israeli troops remain in control of 82% of the West Bank. Section 1 of Article XVI of the Interim Agreement and Annex VII thereof provides for the release of Palestinian political prisoners as well as the release of political prisoners from Arab countries. The release was to take place in three phases, the last of which was to occur during the permanent status negotiations. Israel has yet to comply with this provision. Article X of the Protocol Concerning Redeployment and Security Arrangements annexed to the Interim Agreement require Israel to open a safe passage route connecting the West Bank with the Gaza Strip for "the movement of persons, vehicles and goods." The Interim Agreement provides for the opening of a northern and a southern safe passage route as well as specifying the locations of designated crossing points. These commitments have also not been met. Israel has also failed to move forward on the issue of displaced persons (i.e. those who were displaced from their homes in the West Bank and Gaza during or after the 1967 War) by attempting to move the issue to one of the final status issues, in contravention to its obligations under Article XII of the Declaration of Principles and Article XXVII of the Interim Agreement. Article 40 of Annex I to the Interim Agreement, which requires Israel to increase the water allocation for Palestinians, has also yet to be fulfilled. The failure of Israel to take steps to mitigate the consequences of its occupation pursuant to its obligations under these agreements has also been an underlying cause for Palestinian frustration and desperation, and the Committee is correct in noting that the agreements must be implemented if political

negotiations are to be meaningful or if security cooperation is to be sustainable.

## CONCLUSION

Israel's emphasis on security considerations alone, while taken very seriously by the Palestinians, cannot dictate the course of peace talks or attempts to end the current crisis. The PNA has repeatedly expressed its desire to resume security cooperation with Israel within the context of those elements necessary to make such cooperation sustainable. The Committee has correctly identified that security cooperation is not sustainable without meaningful political negotiations and that such negotiations cannot exist while Israel continues to colonize the territory from which it is ostensibly negotiating a withdrawal.

Most importantly, the Report provides the international community with a package of guidelines on most, if not all, of the elements necessary to create the peaceful conditions that can promote meaningful political negotiations whose goal must remain the timely end of Israel's occupation of Palestinian territory and a two-state solution based on international law. These elements must be considered and implemented in tandem if any one element is to be successful.

We are also encouraged that the Report complements the recent Egyptian-Jordanian Initiative to end the crisis. Both the Report and the Egyptian-Jordanian Initiative represent a fair basis for resolution of the current crisis. As such, we recommend that the U.N. Security Council adopt both documents as a basis for ending the current crisis and implementing international law, including all applicable U.N. Security Council and General Assembly resolutions.

We accept this Report with the same sense of purpose with which it was written. Indeed, much has been accomplished already in Oslo, Washington, Cairo and elsewhere, but such progress will be lost if the international community does not give the Committee's recommendations the same level of consideration we are willing to provide the Report. This Report will inform Palestinian policy and must equally inform Israeli policy. For this Report to be considered by the GOI with the seriousness it deserves, the international community must also allow the Report to inform individual state policies towards the region.

We would hope that in their response to the Report, all member states and international bodies attending the Sharm El-Sheikh Summit in October 2000, together with the Committee Members, will join us in requesting a meeting at the highest level for all the parties in order to develop a mechanism for the timely implementation of the Committee's recommendations. We believe that this is within the spirit of former President Bill Clinton's October 17, 2000 statement at Sharm El-Sheikh and the logical conclusion to be drawn from the Report.

Too many innocent lives have already been lost or unalterably damaged and there are already too many people mourning in the Occupied Palestinian Territories, as well as in Israel. With that impetus in

mind, we consider this Report not an end, but a beginning to a resolution of not only the current crisis, but also the underlying occupation. We are prepared to exert every effort in conjunction with the international community to make certain that the entire package presented in this Report becomes a reality.

#### **ENDNOTES**

1. The Report references the Palestinian National Authority as the "Palestinian Authority" or "PA." Whenever this Response refers to the "Palestinian Authority" it is using the Report's own designation. The "Palestinian National Authority" is the same as the "Palestinian Authority."
2. The poll appeared in the May 3, 2001 edition of Yediot Aharonot, an Israeli daily.
3. Nadav Shragai, Cabinet Approval for E. Jerusalem Ring Road, Ha'aretz, Page 1, May 14, 2001.
4. Greer Fay Cashman, Katsav: We'd Never Stoop to Palestinians' Brutality, Jerusalem Post, A4, May 11, 2001.
5. Phil Reeves, God Must Kill "Evil" Arabs, Says Rabbi, The Independent, April 10, 2001.
6. UN SC 1322 makes explicit reference to Security Council Resolutions 476 (1980), 478 (1980), 672 (1990), 1073 (1996), and all other relevant Security Council resolutions.