

Peace Watch / משמרת שלום

Guidelines to Monitoring Compliance

October 1993

Mission

Peace Watch is an independent watchdog agency which monitors compliance with the Israel-PLO accords, including the Statement of Principles, the accompanying public letters, and any other agreements which are reached during negotiations. It was established in recognition of the fact that any peace in the Middle East will depend first and foremost on the adherence of all sides to the commitments they have undertaken.

Through public reports, statements, and publications, Peace Watch seeks to focus the attention of the political leadership, media, and public in Israel and abroad on the obligations to which each party has committed itself and their actions with respect to them. When one or both sides do not live up to their commitments, Peace Watch will analyze the nature and significance of the violations.

In the tradition of Helsinki Watch and other monitoring agencies, Peace Watch is not affiliated with any government, party, or movement. It is committed to maintaining the strictest standards of objectivity and fairness in its reporting.

International Law and Compliance

Although the Israel-PLO Statement of Principles may not have the formal status accorded to treaties, Peace Watch will relate to the agreement using the principles that have been established for non-treaty international agreements, as formalized under the "Vienna II" convention on international agreements (1986). In monitoring compliance with such agreements, international lawyers generally divide violations into three categories:

"Immaterial violations" are actions which are contrary to the letter of an agreement, but have little real effect. Transferring authorities or territories one day late would qualify as an example. Peace Watch will not register violations of this sort unless they form a consistent pattern.

"Material breaches" are concrete violations of one or more significant provisions of a treaty. They cannot be overlooked because they cause actual damage to the material or political interests of the side which suffers the violation.

"Violations of fundamental assumptions" refers to material breaches of such import that they throw the existence of the agreement into question. If one side resumes open warfare against the other, for example, it would be committing such a violation.

Peace Watch will focus its attention on material breaches fitting into these second and third categories.

In its reporting, Peace Watch will examine both sides' patterns of compliance, focusing on how they keep to their commitments as well as how they violate them.

The information Peace Watch provides will be aimed at increasing public pressure for concrete steps leading to full obedience of the terms of the treaty. It will also aid participants in the negotiations, as well as their constituencies, in making realistic assessments of how their agreements are likely to be carried out in practice.

Basic Commitments Undertaken

The Statement of Principles signed by Israel and the PLO constitutes the guidelines for a more detailed agreement. At the same time, however, it reflects a number of specific decisions, and as such imposes numerous concrete obligations on both sides.

In this document, Peace Watch presents its guidelines for analyzing and monitoring compliance with the commitments made in the Statement of Principles and the accompanying letters by Israeli Prime Minister Yitzhak Rabin and PLO Chairman Yasser Arafat. As subsequent agreements are negotiated, Peace Watch will adapt these guidelines to them.

Commitments undertaken by Israel and the PLO to date can be broken down into four categories:

I. Obligations which became effective with the exchange of letters between Prime Minister Rabin and Chairman Arafat (September 9, 1993). These are considered an integral part of the Declaration of Principles of September 13th, and they relate to such basic issues as mutual recognition and the cessation of violence.

II. Obligations contained in the Statement of Principles itself which relate to the timetable for negotiations and for transferring powers in the field to the PLO. The five-year schedule outlined in the Madrid process and finalized in the Statement of Principles provides the overarching structure for the entire agreement.

III. Obligations concerning the responsible fulfillment of duties assumed during negotiations over implementation of the agreement during the interim period. Particularly critical is the role that each side will play in ensuring the security and safety of Israelis and of Arab residents of the territories.

IV. Obligations relating to the final status, which goes into effect no later than December 13, 1998. Although many aspects of the Palestinian-Israeli relationship remain to be determined, the minimum to which both sides are striving is a "just, lasting and comprehensive peace settlement and historic reconciliation" (Preamble to the Statement of Principles).

Particular obligations undertaken to date in each category are as follows.

I. Obligations Effective Immediately

1. Renunciation of Terrorism

In his September 9th letter, Chairman Arafat renounces terror and pledges to "assume responsibility over all PLO elements and personnel in order to assure their compliance, prevent violations, and discipline violators."

Any act of terrorism committed by a PLO faction is a violation of this principle. If Arafat and his deputies refrain from making efforts to punish violators, they would be committing a second violation.

Also of critical importance is the public posture of the PLO as an organization which is responsible to "assure compliance" with the accord on the part of all PLO factions. Actions and statements by top PLO officials must be in keeping with the PLO's role as an agent obligated to enforce the agreement and the law. Actions and statements which clearly encourage the violation of the agreement, or a pattern of inaction which has the same effect (such as the non-condemnation of violence against innocents) will also be considered violations of the agreement.

Since the end of PLO terror was a *sine qua non* for Israeli recognition of the PLO as a partner for negotiations, consistent violations of these obligations could be considered a violation of a fundamental assumption.

2. Changes in the Palestinian National Charter

Chairman Arafat stated in his letter to Prime Minister Rabin that "the PLO recognizes the right of the State of Israel to exist in peace and security."

Israel has long insisted that actual recognition of Israel must be demonstrated through the amendment of the PLO's founding charter, which otherwise explicitly prohibits such recognition. Consequently, Chairman Arafat agreed in his letter that "The PLO undertakes to submit to the Palestinian National Council for formal approval the necessary changes in regard to the Palestinian Covenant."

No timetable is specified for convening the PNC to debate the changes. The most reasonable interpretation is that the PLO must do so as soon as is feasible, which could mean any time within a few months after the letter was signed. Any delay beyond such a reasonable period represents a violation of the PLO's commitment.

3. Resolution of Final-Status Questions Through Negotiation

In his letter to Prime Minister Rabin, Chairman Arafat obligates the PLO to the principle of conflict resolution through negotiations. He writes that: "The PLO commits itself to the Middle East peace process, and to a peaceful resolution of the conflict between the two sides and declares that all outstanding issues relating to permanent status will be resolved through negotiations."

The questions of permanent status to which Arafat refers are to be negotiated, according to Article V of the Statement of Principles, "as soon as possible, but not later than the beginning of the third year of the interim period." The issues which are to be discussed include: "Jerusalem, refugees, settlements, security arrangements, borders, relations and cooperation with other neighbors, and other issues of common interest."

It is not coincidental that the issues which the Statement of Principles leaves to final-status negotiations reflect the broad consensus in Israel as to what constitute the nation's vital interests. This reflects the fundamental

asymmetry in the negotiations, in which the PLO is asking to be granted prerogatives in a number of sensitive areas that are currently within Israel's exclusive purview. The concept of an interim settlement preceding final-status negotiations was developed in the Camp David accords and Madrid process precisely to bypass these issues by creating a "trial period" during which relations could be tested and trust built, so that issues that touch upon the most fundamental concerns of the Israeli public could be productively discussed.

Since Chairman Arafat's letter accepts the principle that only negotiations can resolve these final-status questions, any unilateral action to create "facts on the ground" and to assume authority prematurely over areas reserved to final-status negotiations is a violation of the terms of the agreement.

Although Israel has not specifically pledged itself to the same standard, it is reasonable to argue that Israel too must not have unlimited freedom in areas reserved for final-status negotiations. Unilateral actions which are within Israel's purview but which are so far-reaching as to foreclose any possibility of entering into the future negotiations to which it is committed would have to be considered a violation. An example might be the passage of a law prohibiting the government from negotiating over Jerusalem.

In examining specific behavior on the basis of this standard, a natural distinction suggests itself between words and actions. It is permissible for Israeli or Palestinian leaders to make public declarations concerning the outcome of the final-status negotiations, although it is readily apparent that such statements are likely to undermine the basis of trust which it was the intention of the interim period to build. It was therefore not a violation of the agreement for Chairman Arafat to say that Jerusalem will be the capital of an independent Palestinian State.

However, any act designed to create a Palestinian State in practice before negotiations have resolved its status or borders would be a violation. The public use of the term "State of Palestine" to refer to Palestinian institutions during the interim period is an example, since it attempts to present Israel with a *fait accompli* designed to circumvent the process of negotiating a mutually agreeable solution.

The one exception to the principle that words are not violations is if the intent and likely effect of those words is to inspire violence on one side or despair on the opposite side. The best example, applicable to both sides, is the threat of population transfer. Making statements that settlers are an unwelcome presence and will not be allowed to remain after the interim period is likely to encourage violence against them. It also carries the threat of a lack of protection in the future, which pushes settlers to leave and precludes

new settlers from coming, a demographic pattern which likewise affects the outcome of the negotiations.

II. Deadlines for Negotiations and Actions

Israel and the PLO are jointly obligated by the agreement to adhere to a strict timetable for negotiations and for transferring responsibilities to the PLO. The timetable laid out, based on a starting date of September 13th, is presented in the chart below. It is important to note that the agreement allows and encourages the two sides to accelerate the timetable.

Timetable for the Israel-PLO Agreement

<u>Elapsed</u>	<u>Date</u>	<u>Action</u>
1 month	Oct. 13, 1993	Negotiations begin on Gaza/Jericho
3 months	Dec. 13, 1993	Negotiations on Gaza/Jericho completed Implementation Begins
7 months	Apr. 13, 1994	Gaza/Jericho implementation completed Transfer of power begins in rest of West Bank
10 months	July 12, 1994	IDF leaves populated areas before elections
10 months	July 13, 1994	Latest date for elections to Palestinian Council (name)
10+ months	Not specified	Palestinian Council seated Civil Administration disbands
2 years, 3 months	Dec. 13, 1995	Negotiations to begin on final status questions
5 years, 3 months	Dec. 13, 1998	Deadline for implementation of final status

While the two sides are jointly obligated to start and conclude the negotiations by particular times, the transfer of responsibilities often requires particular actions by one side or the other. Thus, while Israel is obligated to withdraw its army from populated areas by the eve of elections, it is the Palestinian authorities who have the responsibility to make sure that "direct, free and general political elections will be held ... while the Palestinian police force will ensure public order" (Art. III, Sect. 1). Failure of either side to live up to its obligations in this regard will be considered a material violation of the agreement,

For certain functions, the responsibility is joint. For example, the Israeli army withdraws from non-populated areas only as the Palestinian police force deploys in those areas.

In monitoring compliance on these issues, Peace Watch will distinguish between trivial and material violations, and will avoid terming as a violation any changes in timing which are mutually agreed upon, unless these changes constitute an alteration of the fundamental commitments undertaken by the sides.

III. Responsible Fulfillment of Commitments

The third category of commitments is the responsible discharging of duties assigned to each side by the accords and the subsequent negotiations on their implementation. Initially in Gaza and Jericho, and later on in all of the West Bank, the Israeli Government must turn over responsibilities in areas such as health, education, direct taxation, and "internal security".

Once the PLO is empowered to administer Palestinian affairs in these areas, it will have a large measure of flexibility in how it exercises these prerogatives. However, since the ability of the Palestinians to responsibly "govern themselves according to democratic principles" (Art. III, Sect. 1) is perhaps the essential issue to be tested during the trial period of the interim agreement, gross negligence or abuse of authority in areas which have been transferred may be considered material violations of the Statement of Principles, as well as of subsequent agreements on specific issues such as public health.

Of cardinal importance will be the operation of the PLO's police force, since the manner in which it carries out its mandate to "guarantee public order and internal security" (Art. VIII) will inevitably affect the basic human rights, civil rights, and security of Arab and Jewish residents of those areas in which it is authorized to operate, as well as the security of Israel. Peace Watch will consider serious breaches of public order and security such as the functioning of terror organizations to be material breaches or even violations of the fundamental assumptions of the agreement.

During the interim period, the Statement of Principles and especially its annexes obligate both sides to work cooperatively in virtually all spheres related to development. One specific obligation on Israel is that it may not reduce its budgetary allocations to the Palestinians below what they were prior to the transfer of responsibilities.

The joint obligation to "Cooperation in the field of trade...which will encourage local, regional, and inter-regional trade" precludes the Palestinians

from working to maintain the Arab boycott, and may obligate them to take steps to end it. Likewise, Israel cannot seek to pressure the Palestinian entity economically as a means of extracting concessions in the negotiations.

IV. Final Status Commitments

The goal of the two sides in the Israel-PLO agreements, as laid down in the Preamble, is "to put an end to decades of confrontation, recognize their mutual legitimate and political rights, and strive to live in peaceful coexistence and mutual dignity and security and achieve a just, lasting and comprehensive peace settlement...."

Although the terminology is general, the obligations created are concrete. Israel and the Palestinians are committing themselves to establish and maintain relations befitting countries at peace with one another: full diplomatic relations, refraining from violence of any sort, trade ties unimpeded by non-economic factors, and unrestricted tourism with full security for the tourists, to name a few.

In addition, the two sides will have to honor the commitments they make in reaching the final status, many of which are likely to be more complex than in typical relationships between neighbors. The negotiations preceding the final status will cover "Jerusalem, refugees, settlements, security arrangements, borders, relations and cooperation with other neighbors, and other issues of common interest."

"Security arrangements," for example, is almost certain to include partial demilitarization of the Palestinian entity, which the Palestinians will be obligated to enforce. The conclusion on refugees will probably limit each side's freedom to make decisions on immigration, since the Israelis are likely to limit the number of Palestinians repatriating in the West Bank and Gaza each year, and the Palestinians will insist on minimum quotas or guidelines for Israeli acceptance of refugees.

Conclusion

The success of the peace process on which Israel and the PLO have embarked is dependent not only on forging compromises in drafting a series of agreements. It will also depend on how well each side lives up to the commitments that it makes.

The minimum condition for enforcing compliance is that political leaders, the media, and the public be informed about how obligations are being honored. Otherwise, there will be no pressure for stricter adherence.

And since negotiations on future agreements will proceed hand in hand with implementation of past commitments, it is critical that the negotiators and those who have influence on them base their judgments on what has already transpired.

Peace Watch, as an independent watchdog agency, will provide the information and analysis needed and trusted in Israel and abroad.