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Conflict Management or Conflict Resolution

This Bulletin aims to provide a brief overview of issues related to Palestinian Refugee Rights

Peace agreements--provisions on rights, refugees and participation: *This analysis of human rights provisions is the first of a 3-part series on recent agreements. Part Two examines how they deal with refugees and Part Three is on public participation in formulating agreements.*

Conflicts are unique and so are the mechanisms set up to resolve them. But in most cases, human rights are considered an important element for conflict resolution.

What makes the Palestinian-Israeli conflict and its resolution particularly unique is the virtual absence, in any peace proposals to date, of human rights regulations or provision for the establishment of human rights institutions. This implies that the two parties have yet to agree on the underlying root causes of the conflict and how they should go about resolving the conflict.

Peace agreements, like national constitutions, replace "the arbitrary use of power with its legal regulation through checks and balances."* Thus human rights are a key element in a successful agreement, providing a common framework to regulate relations between former antagonists, mediate future disputes and reconcile past injustices.

Many agreements include provisions for new human rights institutions to monitor respect for human rights, educate the general public, hold accountable persons who have violated the human rights of others and investigate and recommend remedies for past violations.

The following is a summary of the role of human rights and the Palestinian-Israeli negotiation process; a comparative overview of human rights provisions in other peace agreements; and observations on recent peacemaking experience.

Missing from the start

Human rights have been marginal to the Israeli-Palestinian peacemaking process that began in Madrid more than a decade ago. The Madrid-Oslo process focused primarily on security and the transfer of certain powers to a limited self-governing authority in 1967 occupied Palestine.

According to the initial framework agreement (1993 Declaration of Principles) Israel and the PLO agreed to recognize "mutual legitimate and political rights" in order to "achieve a just, lasting and comprehensive peace settlement and historic reconciliation through the agreed political process." There is no mention of international law or the UN Charter as the basic framework for negotiations and future relations between the two.

Subsequent interim agreements include only limited references to human rights. They are first mentioned in the 1994 Gaza-Jericho agreement (Article XIV; Annex I, Article VIII) in regard to the exercise of "powers and responsibilities" under the agreement. Annex III, Article II also stipulates that the parties to the agreement shall ensure that persons transferred for criminal investigation will be treated in accordance with accepted human rights norms. The 1995 Interim Agreement (Article XIX; Annex I, Article XI(7), Article 11(7)(h)(1)) and the 1998 Wye River Memorandum (Article II(4)) include similar provisions.

While the agreements include numerous references delineating agreed-upon "rights" of both parties the only reference in the agreements to "legal rights" concerns "Government and

Absentee property” that was “acquired” by Israelis in the occupied territories (Interim Agreement, Annex III, Appendix I, Article 16(3) and Article 22(3)). Palestinians are obliged under the agreement to respect these rights.

Common to all these agreements is the absence of specific references to internationally accepted human rights norms. None establish human rights institutions to monitor and investigate human rights violations. Moreover, both the Interim agreement (Article XI(1), Annex I) and the Wye River Memorandum (Article II(4)) suggest that internationally accepted norms are subject to the agreement rather than vice versa.

Recent unofficial initiatives on the outlines of a final status agreement follow a similar approach, omitting rights altogether (e.g. Nusseibeh-Ayalon and the Geneva understandings). The latter actually states that where the agreement and the UN Charter conflict, the agreement itself overrides the UN Charter Article 2 (6).

The absence of human rights and international law, in general, from past agreements and current initiatives can be explained in part by looking at some historical background.

- **Focus on security:** Since 1967, peacemaking has largely focused on security based on the political notion of ‘land for peace’ under which Israel would return some conquered land in the occupied territories for a lasting peace agreement. This incorrectly implies a symmetrical relationship between the parties and that Palestinians have peace and only need land. Human rights norms are secondary and their inclusion has been undermined or even cast aside when they interfere with Israel’s security considerations.
- **Unwillingness to recognize certain rights:** Recognition of certain rights such as refugees’ right to return to their homes of origin could lead, in Israel’s view, to unacceptable political outcomes. Human rights interfere with its arbitrary exercise of power.
- **Unresolved and conflicting narratives/views on the conflict itself:** Human rights and international law have played a fundamental role in the Palestinian view of the conflict. Their proposals during pre-Oslo talks in Washington, for example, include key references to international law. Israel disagrees fundamentally, hence the absence of human rights.

Key role of human rights in other agreements

Human rights are a key element in peace agreements, playing a particularly important regulatory role in ethno-national conflicts. Agreements in Bosnia, Kosovo, Burundi, and Rwanda, for example, contain particularly detailed human rights provisions. In general, they delineate applicable norms; provide for legal, including constitutional, reform to incorporate greater recognition of human rights principles; and establish institutions to monitor, investigate and adjudicate future and past human rights violations.

The peace agreements in Bosnia Herzegovina, Kosovo, Burundi, Cambodia, East Timor, Liberia, Sierra Leone, and Rwanda all have specific reference to applicable international human rights conventions and most delineate specific human rights. A list of 14 international human rights instruments to be applied in Bosnia Herzegovina is even annexed to the 1995 Dayton Agreements.

Provisions for constitutional reform to strengthen recognition of human rights norms are also included. The constitution attached to the 1999 Interim Agreement for Peace and Self-Government in Kosovo, for example, states that the rights and freedoms set forth in the European Convention for the Protection of Fundamental Rights and Freedoms and its Protocols shall apply directly in Kosovo and have priority over all other law. Similar provisions for constitutional reform are found in Bosnia and Cambodia.

Education is also an important component of peacebuilding. The 2000 Arusha Peace and Reconciliation Agreement for Burundi, for example, calls for a major educational and awareness program for peace, unity and reconciliation. In Cambodia, the UN transition administration was required to develop and implement educational programs to promote respect for and understanding of human rights. In Sierra Leone, the parties pledged to promote human rights education through schools, media, police, military and the religious community.

Mechanisms to monitor respect for human rights, investigate and provide remedies for future human rights violations also feature in some agreements. The 1994 Protocol of Agreement between the Government of the Republic of Rwanda and the Rwandan Patriotic Front on the Rule of Law establishes an independent National Commission on Human Rights to investigate human rights violations and use the findings to sensitize and educate the public on human rights and bring legal proceedings where necessary.

Similar commissions are provided for in the Sierra Leone, Liberia, Cote d'Ivoire, Guatemala, Afghanistan, Cambodia, Burundi, Bosnia, and Kosovo agreements. Remedies for victims of human rights violations include compensation.

Some establish independent mechanisms to investigate and prosecute individuals found responsible for past grave human rights violations. The Burundi agreement, for example, asks the UN Security Council to establish an international criminal tribunal to try and punish those responsible for acts of genocide, war crimes and other crimes against humanity. The Comprehensive Agreement on Human Rights in Guatemala (1994) establishes a Commission to clarify past violations and issue recommendations to encourage peace and national harmony. Agreements in Cote d'Ivoire, Sierra Leone, and Rwanda establish similar mechanisms for transitional justice.

Finally, many agreements also include provisions to commemorate the victims of human rights violations. The Arusha agreement (Burundi) calls for a national monument in memory of all victims of genocide, war crimes and other crimes against humanity and a national day of remembrance. The Guatemala agreement requires measures to preserve the memory of the victims to foster a culture of mutual respect and observance of human rights and to strengthen the democratic process.

Human rights, the common framework

Human rights are *sine qua non* for a peace agreement. Human rights provisions may not provide ironclad guarantees that violations will not recur, but they provide a common framework to regulate relations between former antagonists, resolve future disputes, rehabilitate victims of past violations, and ensure that no individual or party is above the law and can act with impunity.

As numerous human rights organizations have observed, recent experience around the world has shown the legitimacy and sustainability of political processes are strengthened, not weakened, by the inclusion of human rights standards. Disregarding human rights, or subordinating these rights to political considerations, can only undermine the prospects of achieving durable peace and security.

The inability of the international community to effectively monitor and enforce human rights in the Palestinian-Israeli conflict, and the lack of political support to ensure codification of such principles and the establishment of corresponding human rights mechanisms in peace agreements between Israel and the PLO has led to a situation where the peacemaking process continues to be governed by the arbitrary use of power.

A deeper problem

The virtual absence of human rights from Palestinian-Israeli peace agreements and current political initiatives also points to a deeper problem. Comparative experience

suggests that human rights provisions in peace agreements stem from agreement between the parties about the function and role of human rights and, therefore, an agreement about the nature of the conflict itself and related remedies.

The absence of human rights in existing agreements and recent initiatives thus implies that the parties have yet to agree on the underlying root causes of their conflict. Such agreements and initiatives can, at best, provide for conflict management, but cannot be seen as resolving all outstanding claims between Israel and the Palestinians or providing just and durable solutions for Palestinians and Israelis alike.

Past experience, community involvement and the rule of law are three major components of any peace and reconciliation plan, according to **BADIL Resource Center for Palestinian Residency and Refugee Rights**. BADIL promotes research into these areas, encourages Palestinian community participation in formulating peace agreements and organizes fact-finding visits to areas repairing the damage of conflict such as South Africa and Bosnia-Herzegovina.

* Christine Bell, Peace Agreements and Human Rights, 2000