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Summary

The Oslo Accords reached by the Palestine Liberation Organization (PLO) and Israel in 1993–95 ushered into existence the Palestinian Authority and inspired efforts to build autonomous structures for Palestinian self-rule. Since the earliest days of the Palestinian Authority, a varied group of Palestinians has sought to lay the practical foundation for Palestinian statehood through the construction of strong institutions with clear (and generally liberal) legal bases. These efforts have been sometimes frustrated by the patterns of governance favored by the Palestinian leadership and by the restrictions and priorities imposed by the process of negotiating a settlement with Israel.

Out of this struggle a diverse coalition of Palestinian reformers has arisen. Some of the reformers are members of the elected Palestinian Legislative Council (PLC) and have sought to use their positions to build a solid legal basis for institutions such as the Palestinian judiciary and civil service. A second group of reformers consists of prominent NGO leaders, who have both cooperated and competed in proposing various reforms. A third group is made up of intellectuals, especially those associated with universities, who have developed many of their own proposals. A fourth group consists of political party activists who have provided some support for reform, though it has often been tangential to their main agendas.

Given their diversity, it should not be surprising that the reformers have rarely acted as a unified group and indeed have often displayed deep rivalries. Remarkably, however, they have coalesced around a solid, detailed, and well-articulated agenda for reform, concentrating their efforts in the following seven areas.

- ▶ *Constitution writing.* Reformers have focused on two projects to draft Palestinian constitutions. The first, the Basic Law for the Palestinian Authority, was passed in 1997 by the PLC. It was not signed by Yasir Arafat until 2002 and remains imperfectly implemented. The second has been a draft constitution for a Palestinian state, produced by a PLO committee in 2001 but not yet endorsed by any authoritative Palestinian body. Both documents might seem at first glance quixotic in the context of ongoing violence and political instability, but many domestic and international actors seem to have come to the opposite conclusion: The road out of the current conflict must pass through the sort of institutional reform that a constitution can enable. The two documents are carefully designed to contain the executive branch and hold it accountable to clear legal standards. Recently, some reformers have begun to feel that containment is insufficient and have sought to transfer authority from the president to a prime minister.
- ▶ *Defining the relationship between the PLO and the Palestinian Authority.* The Oslo Accords created a Palestinian Authority distinct from the far older Palestine Liberation Organization, but the leadership of the two bodies has overlapped in ways that frustrate reformers for several reasons. First, senior Palestinian leaders—

most notably Arafat himself—can slide between PLO and PA bases for their authority, vitiating institutional mechanisms of accountability. Second, reformers have felt that the continuing influence of the PLO institutional culture—involving revolutionary ideology, a focus on security, and secretiveness—has undermined PA institution building. Although they agree that Palestinians throughout the world (represented by the PLO) should have some voice in Palestinian governance, reformers have sought to ensure that the current institutional ambiguities do not survive a declaration of statehood.

- ▶ *Public finances.* A fundamental problem for PA critics has been the opaque nature of PA finances, which have been micromanaged by President Arafat and not subject to meaningful oversight by any public body. Large portions of the PA budget have not been carried on the official books but are run instead through secret channels and accounts. Not only are PA finances partly hidden, but also many economic activities have not been subject to oversight. The Palestinian Authority has lacked any kind of systematic policies on public expenditures. Hiring and personnel policies have been loosely defined and are often not followed even when defined. And reformers have questioned the fiscal priorities of the Palestinian Authority, calling for reductions in security expenditures and increases in health and education. Reformers did make some progress in laying the legal groundwork for more transparent finances and, supported by separate efforts by international donors, obtained far fuller disclosure of the PA budget and holdings.
- ▶ *The rule of law and judicial reform.* Reformers in the PLC have managed to pass a series of liberal laws on subjects ranging from public meetings to the independence of the judiciary. In most Arab political systems a solid legal foundation has been laid for authoritarian practice. In the case of the Palestinian Authority, the emerging framework is more liberal but actual practice remains authoritarian. Many parts of the new liberal legal framework remain unimplemented or unenforced. Reformers have also sought to build a more professional and independent judiciary and to dismantle State Security Courts, which were constructed to handle politically sensitive cases.
- ▶ *Corruption.* The Palestinian Authority quickly earned an international reputation for corruption. Many of the Palestinian Authority's international critics (along with critics of the Oslo Agreements more generally) have relied heavily on this reputation in calling into question the international assistance program to the Palestinian Authority and even the legitimacy of the Palestinian Authority itself. Fairly specific inquiries into the nature of corruption in the Palestinian Authority have revealed that the problem involves weak institutions and unclear procedures as much as it does venality. However, such a distinction has generally been lost in broader international and domestic discussions.
- ▶ *The structure and practices of the security services.* The agenda of PA reformers has focused on the loose restraints placed on the security services and their operation. The mechanisms of democratic accountability, though existing in

some matters under the Palestinian Authority's jurisdiction, have been largely inoperative with regard to the security services. Reformers have also faulted the PA leadership for failing to develop any legal framework to govern the structure and operation of the security services. They have also looked askance at the harsh methods employed by the security services and their involvement in matters unconnected with security, such as tax collection and dispute resolution.

- ▮ *Elections and local governance.* Finally, PA reformers have focused some of their attention on building democratic mechanisms through the electoral process. The most important step in granting the Palestinian Authority domestic legitimacy was the election of the PA president and the PLC in 1996. The first law passed by the PLC governed local elections. Although Yasir Arafat signed the law, those elections have yet to be held. Reformers have also sought to democratize other structures of Palestinian society, such as political parties, NGOs, and professional associations, but with only limited success.

Reformers have not been without impact. They have often been dominant in discussions among intellectuals, and they have exerted real influence on the formal legal framework of the Palestinian Authority. But they have had far less success in translating these achievements into actual reforms in Palestinian governance. In general, the accomplishments of the reformers have been real but limited by the patterns that have governed the Palestinian Authority since the beginning: the leadership is pliant, attempting to please all parties at once; most procedures are ad hoc and unclear; those rules that are clear are still bent and even broken; and chains of command and responsibility are obscure. PA reform has often foundered precisely because of the problems reformers have sought to overcome: the weak institutionalization and legal ambiguities that afflict all PA operations.

International actors have shown varying degrees of interest in PA reform, and their proposals, while sometimes similar to those of domestic reformers, are not identical. The United States displayed only limited interest in reform until 2002, when it moved the issue to the center of its Palestinian policy. Israel has also focused far more on security arrangements than on governance. European actors have shown a more consistent interest in reform and generally have an agenda close to that developed by Palestinian reformers. Arab states have displayed an interest in reform only insofar as it is necessary to pursue diplomatic efforts to resolve the conflict with Israel.

Prospects for the success of reform have seemed brightest whenever the domestic agenda and the international community's agenda have been linked. Such linkages were being built in the year prior to the eruption of the second intifada and have again been apparent since April 2002. Since then, however, the cause of reform has faced a difficult conundrum: On the one hand, real progress in reform seems impossible without some diminution of the conflict with Israel and some relaxation of Israeli restrictions on travel in the West Bank and Gaza. On the other hand, such political changes seem unlikely unless robust Palestinian institutions—the kind that the reformers have worked to build—can guide Palestinian society. In short, reform and an end to violence hold each other hostage.

Introduction

In May and June 2002, Palestinians who had worked for five years to build strong institutions with clear legal bases suddenly discovered that Yasir Arafat was adopting three of their oldest demands. First, Arafat announced that he had signed a law on the judiciary that had been passed by the Palestinian Legislative Council (PLC) in 1998. Second, he changed his cabinet, greatly reducing its size and clarifying its role. Third, he signed the “Basic Law,” an interim constitution that had sat on his desk for five years.

Each of these measures came in response to long-standing internal demands for reform. Arafat had never refused these demands. Instead, he had responded with inaction, silence, delay, unfulfilled promises, and half-measures. At first glance, the steps taken in May and June 2002 constituted a complete capitulation to the reform agenda. Yet reformers had learned that apparent victories could dissolve upon close examination, and on these occasions a careful look revealed that their triumph was less than complete. All three measures represented genuine and significant changes in the operations of the Palestinian Authority. Yet none was an unqualified concession.

The law on the judiciary, for instance, had been an early project of the PLC. Debated in 1997 and 1998, the law gave far stronger structural guarantees of judicial independence than generally prevail in the Arab world. Most notable was the creation of a strong and autonomous judicial council to oversee the courts. Yet the law lay unsigned on the president’s desk for four years. The first ostensible reason for delay had involved the PLC’s insistence that the law allow it to approve candidates for the post of public prosecutor. Bowing to presidential opposition, the PLC passed an amended draft in 2000 that dropped this provision. Arafat responded with a half-measure: he appointed a judicial council consistent with the law—but without approving the law itself. Strangely, his decree cited as part of its legal basis the law he was refusing to sign. And even more oddly, it became clear that the major obstacle to promulgation of the law came from the judiciary itself. A group of senior judges lobbied against the law because they feared they would be forced to retire under its provisions. In March 2001, Arafat had addressed the PLC, promising to sign the law “within hours.” Yet he did not actually take that step until his next appearance before the body, in May 2002. Even then, the senior judges publicly lobbied him not to publish the law he had just signed. Arafat pursued a compromise: he promulgated the law but then issued a decree (without any legal basis) extending the terms (and thus the careers) of the existing members of the judicial council for one year. Implementation of the law’s provisions meanwhile proceeded at a glacial pace.

The cabinet reshuffle received greater attention, with rumors rife that a broader and more technically competent body would be formed to replace the existing cabinet. In

1997, the PLC had claimed to find corruption in many ministries and called on the president to refer some ministers for investigation and prosecution. After a year of inaction, Arafat finally responded to this demand by appointing a cabinet that retained all of those accused of corruption and merely added a significant number of PLC members to ensure that the body would receive the necessary vote of confidence. In 2002, calls for reform gained renewed strength, and Arafat responded by forming a cabinet that was leaner, consolidating ministries as reformers had demanded. Yet the total number of ministers (twenty) was one more than the Basic Law (then unapproved) allowed, and several ministers accused of corruption retained their positions. Further, the president showed no sign of hurry to present the new body to the PLC for a vote of confidence. (Due to sharp Israeli restrictions on travel among Palestinian cities, the PLC was unable to meet on the matter until September, when it dramatically forced the new cabinet to resign—a modified cabinet was approved at the end of the following month.)

Finally, Arafat's approval of the Basic Law also fell far short of an unqualified success for the reformers. For a long time the centerpiece of reform efforts, the Basic Law (passed by the PLC in 1997) had been almost forgotten by the time it received Arafat's signature. Immediately after Arafat signed the Basic Law, rumors circulated that he had introduced changes in the draft without the approval of the PLC. When the Basic Law was finally promulgated, it did indeed include a change. In the version passed by the PLC, the PLC retained a role in approving the public prosecutor. Since the PLC had eventually acquiesced to a version of the judicial law that dropped a similar provision, the minister of justice apparently felt comfortable in publishing a version of the Basic Law that dropped the same requirement. Advocates of the Basic Law saw the change itself as minor but the procedure by which it had been amended as illegitimate. More ominously, however, the minister of justice made clear that the provision in the Basic Law barring extralegal detention would not be implemented in the case of Ahmad Sa'dat, the leader of the Popular Front for the Liberation of Palestine (who had been held since May 2002 as part of an internationally brokered agreement to end the Israeli siege of Arafat's headquarters). Since Sa'dat's detention had no legal basis, the Palestinian High Court in Gaza had ordered his release. The Palestinian cabinet had formally declared that it would not implement the court order. Under the terms of the Basic Law, the cabinet action was clearly illegal. While the cabinet decision came prior to the promulgation of the Basic Law, it could be argued that the continued detention of Sa'dat might render the entire cabinet liable to a Basic Law provision that those obstructing a court order are subject to imprisonment or dismissal.¹

In all three cases, the reforms were real but limited by the same patterns that had governed the Palestinian Authority since the beginning: the leadership was pliant, attempting to please all parties at once; most procedures were ad hoc and unclear; those rules that were clear were often bent and even broken; and chains of command and responsibility were obscure. PA reform often foundered precisely because of the problems it sought to overcome: the weak institutionalization and legal ambiguities that afflicted all PA operations.

When Palestinian reform switched from a domestic preoccupation to an international project in May 2002, it was often observed that the various parties had different

agendas. Israel sought to end Arafat's rule (and perhaps that of the entire Palestinian leadership); the United States focused on security (and came to oppose Arafat); and European actors sought fiscal and administrative reforms.

Yet there was still considerable overlap among some of the domestic and international agendas. All agreed that the Palestinian Authority needed to have clearer procedures, a sounder legal basis, and greater fiscal transparency. This was the core of the reform agenda that Palestinians had been pursuing, almost since the creation of the Palestinian Authority in 1994.

The Birth of the Palestinian Authority— and of the Reform Movement

The Palestinian Authority was created according a series of agreements (the “Oslo Accords”) between Israel and the Palestine Liberation Organization (PLO), signed between 1993 and 1995. The Oslo Accords provided for the establishment of limited Palestinian autonomy in the West Bank and Gaza while final status issues were being negotiated. In September 1993 Israel and the PLO adopted a general agreement (the “Oslo Agreement,” signed in Washington but negotiated in Norway) to establish an autonomous Palestinian administration while the two sides negotiated a permanent settlement; they then set to work on a series of documents governing the interim autonomous body. The most detailed and comprehensive agreement, often dubbed “Oslo II,” was concluded after tortuous negotiations in September 1995.

Oslo II was intended to extend the reach of the emerging Palestinian Authority in both competencies (security and civil affairs) and, more gradually, geographical scope. All areas of civil governance over Palestinians in the West Bank and Gaza were to be assigned to the Palestinian Authority. A side agreement allowed PLO (rather than PA) institutions to continue to operate in Jerusalem, but the Palestinian Authority managed to establish its own tenuous presence in the city (most notably in PLC representation, negotiated in Oslo II, and education, where the Palestinian Authority exploited some gaps in the agreement). On security matters, the West Bank was divided into three areas: Area A (consisting of Palestinian cities) saw full Palestinian control; Area B (covering some villages and outlying areas) fell under joint Palestinian-Israeli control; and Area C (the remaining areas, including Israeli settlements and military installations) remained under Israel’s full security control. Israel was to withdraw gradually, allowing Area A to expand, but the two sides disagreed on the meaning of the agreement’s provisions on the scope of the withdrawals. These explicitly interim arrangements were to be implemented as the two sides negotiated a permanent settlement.

The initial provisions of the agreement were largely implemented, but the progressive Israeli withdrawals proved extremely difficult to arrange. And talks on a permanent settlement—though hardly forgotten—foundered. In the meantime, the structures of the newly autonomous Palestinian Authority were assembled from various sources.

Most competencies under the Israeli Civil Administration—an arm of the military government for the West Bank and Gaza—were transferred to the Palestinian Authority. Thus, education, the courts, municipal government, health care, and other services were all assigned to the new entity for all the Palestinian population of the West Bank and Gaza.

The PLO transferred some of its personnel and structures to the Palestinian Authority. From the beginning the PLO and the Palestinian Authority were to be distinct entities, and the Israeli and Palestinian leaderships preferred to maintain some elements of that distinction. For the Israelis, maintaining the distinction between the PLO and the Palestinian Authority (assigning most international functions to the former) made it clear that the Palestinian Authority was not yet a Palestinian state. For the Palestinian leadership, the PLO represented Palestinians throughout the world, while the Palestinian Authority represented only the inhabitants of the West Bank and Gaza. Nevertheless, the PLO helped in the formation of the Palestinian Authority in several ways. First, some of the early legal framework of the Palestinian Authority was issued with the concurrence of the PLO's Executive Committee. Second, some security forces (such as Force 17) were moved to the newly autonomous Palestinian areas. Third, many PLO cadres returned to the West Bank and Gaza, often assuming high positions in the new administration.

Some new security structures were created, such as Preventive Security, to operate in Areas A and B.

Finally, in January 1996, Palestinians in the West Bank (including East Jerusalem) and Gaza elected a Palestinian Legislative Council as well as a president. The new body soon assumed the role of a parliament for Palestinians in the West Bank and Gaza, with authority to draft legislation and oversee the executive. The PLC deputies were elected individually by districts, ensuring that party affiliation was generally secondary to personal standing in explaining candidate success. Most Islamists and nationalists opposed to the Oslo Accords boycotted the elections, leading to a body dominated by deputies from Fatah (the largest Palestinian political party, headed by Yasir Arafat) but with a large number of independents. Party discipline in the PLC proved quite weak, resulting in an independent-minded body that was difficult for either government or opposition to control fully.

In general, the Palestinian security services were among the first to operate effectively on the ground, leading them to take on many of the functions of other official agencies (such as dispute resolution and tax collection). The relationship among the various bodies was unclear, and the Palestinian Authority was characterized from the beginning by overlapping authorities and ambiguous chains of command. Personal ties sometimes overrode bureaucratic hierarchies. Added to the confused situation were some emerging tensions in Palestinian politics. The West Bank and Gaza had different legal systems and different orientations (with Gaza more influenced by Egypt and the West Bank by Jordan). Islamists clashed with the mainstream nationalist leadership from the early days of the Palestinian Authority. Those who had spent their careers in exile often viewed matters differently from those who had grown up under Israeli occupation.

The new structures of the Palestinian Authority were to sort out such questions and provide channels for deciding many issues dividing Palestinians (though not all of them—the critical questions to be addressed in final status talks with Israel were the responsibility of the PLO; the Palestinian Authority itself was barred from such topics by the Oslo Accords). Yet the early legislative enactments by Yasir Arafat, acting as president of both the Palestinian Authority and the PLO's Executive Committee, clarified a few

matters while leaving fundamental political and institutional questions unresolved. The Oslo Accords and the Palestinian election law (Law 13 of 1995) both pointed to a solution: The newly elected PLC would write a “Basic Law” for the Palestinian Authority to serve as an interim constitution for the body.

Yet when the PLC was elected and began to take up the Basic Law as its first important piece of legislation in 1996, deputies found the president initially hostile and then uninterested.² Even smaller matters became more difficult. The president and the PLC struggled over the status of PLO Executive Committee members in the new legislative body and the oath that deputies should take. The council wrote its “Standing Orders,” containing some guidelines for executive-legislative relations, and sent them to the president for approval. Arafat made clear that the Standing Orders were an internal matter for the PLC—representing not only a grant of autonomy to that body but also a defeat, because Arafat refused to be bound by their provisions. For instance, the Standing Orders required the president to act on a piece of legislation and gave the PLC the power to override a presidential veto. By ignoring the Standing Orders, Arafat gave the PLC no recourse if he chose to ignore or reject a law, since the body responsible for publishing legislation and making it effective was under his authority, meaning that his interpretation of proper legislative procedures was authoritative. When faced with imperious presidential action (or, on some matters, inaction), PLC members were unclear how their authority related to that of the president and what they could demand that he do.

Yet out of the frustrations of the Palestinian Authority’s and the PLC’s early operations, a clearer reform agenda began to emerge. The PLC sought to review the PA budget, establish an independent court system, lay down a legal framework for an embryonic Palestinian state, unify disparate institutions in the West Bank and Gaza, and provide for democratic local governance.

Work proceeded very slowly, however. There were enormous areas to cover, and the PLC members had precious little experience in many of them. International guidance and assistance were often eagerly accepted by Palestinian legislators, who were aware that they had little experience in matters such as drafting legislation, or by NGO leaders facing daunting grant proposal procedures. Yet the international context was not always favorable. Assistance agencies from various countries were generally supportive, but their governments were often more interested in security issues and viewed central control as more important than good governance to building a strong Palestinian Authority able to face down internal opposition. This attitude was particularly marked in the leadership of two countries most critical to PA institution building—the United States and Israel.

In the midst of these ongoing efforts, a new issue rose suddenly to the top of the agenda: corruption. In a newly emerging political entity in which many rules were unwritten, unclear, or contested, it was not surprising that the line between private benefit and public purpose could be hard to draw, nor was it surprising that some of the new institutions did not operate efficiently. In 1997, the General Control Institute (a newly established monitoring body) forwarded to the PLC a report on PA operations. The institute found inefficiencies and corruption throughout many aspects of PA operations. The PLC immediately used the report to launch its own investigation, which confirmed many of the institute’s findings. Virtually no Palestinian body escaped unscathed.

Sometimes the flaws involved waste (such as the widespread practice of signing short-term leases for office space rather than constructing permanent quarters). Some of the problems stemmed from the failure to develop clear policies (on matters such as official travel or use of ministry cars). Yet unmistakable corruption was evident as well—sometimes petty (use of official funds to furnish private residences) but sometimes far more significant (such as skimming off transactions or steering PA contracts to relatives and friends).

The PLC demanded that ministers accused of corruption be investigated and brought to trial; it also demanded that the president dismiss the cabinet and appoint a new one composed of technical experts. Arafat repeatedly promised to respond to the PLC on the issue, but no ministers were ever prosecuted. He finally responded to the demand to overhaul the cabinet, but doing so took over a year and the resulting cabinet assumed a different form than PLC members had in mind, since Arafat only added new members to the cabinet and none of those accused of the more serious charges were dropped. The episode did result in one significant change, however: the General Control Institute reports were never sent to the PLC again—even though Arafat signed a law the next year requiring such submissions.

In 1997, the reformers in the PLC seemed to be at their most ambitious. During that year they not only investigated official corruption and called for a new cabinet; they also passed the Basic Law (despite Arafat's discouragement) and began work on other critical issues (such as the structure of the judiciary). When their ambitious plans seemed to lead nowhere (with corruption charges unpursued and the Basic Law unratified), many lost confidence in the PLC. The effort to reform Palestinian institutions became more diffuse. The PLC continued to be active, both on the legislative front (by passing laws aimed at fostering democracy and accountability in a variety of settings) and on the fiscal front (using annual debates on the budget to press for increased transparency). Other institutions joined the debate. Some NGOs began to show a greater interest in democracy and reform, and Palestinian intellectuals publicly explored ways of improving Palestinian governance.

In 1999, the New York-based Council on Foreign Relations released the report of a task force, "Strengthening Palestinian Public Institutions."³ The principal authors of the report, Yezid Sayigh and Khalil Shikaki, were Palestinian (Sayigh was based in the United Kingdom and Shikaki in the West Bank). Their report showed little mercy: they produced long lists of recommendations for the Palestinian Authority to change much of the way it operated in all fields. A more comprehensive reform manifesto has never been issued in any Arab polity. The report garnered international attention because of its sponsorship, and donors used it to pressure the Palestinian Authority to pursue reform more seriously. The Palestinian Authority dutifully appointed a committee to reform its institutions, but the committee's work proceeded at a glacial pace and was forgotten by the time violence erupted in the fall of 2000.

Thus, by the outbreak of the second Intifada in September 2000 the reformers had suffered many disappointments. Critical pieces of legislation—including the Basic Law and the law on the judiciary—still sat on the president's desk awaiting his signature. The consolidation of official accounts—initiated in early 2000—had only begun, and the

PLC still complained that it was unable to exercise fully its oversight of PA finances. Corruption and inefficiency were not disqualifications for holding high public office. Yet reformers could point to some real accomplishments as well: the emerging legal framework for the Palestinian Authority was probably more liberal than that in any Arab state, and there was far more open discussion of issues of governance.

Three

Reformers and the Reform Agenda

While the word “reform” is almost impossibly vague, admitting of innumerable interpretations, by 2000 there was a well-defined meaning in a Palestinian context. This coherence is remarkable given the diversity within the ranks of the reformers. Four main groups constituted the backbone of the reform movement.

First, some PLC members had hoisted the reform banner early in the body’s history. Some—such as Hanan Ashrawi, Marwan al-Barghuti, and Ziyad Abu Amr—spoke forcefully but sufficiently generally so that they generally avoided burning their bridges with the senior leadership. Others, such as Mu’awiyya al-Masri and Husam Khadr, coupled their reform rhetoric with bitter denunciations of the Palestinian Authority and (at times) the Oslo Accords. Such figures attracted domestic (and sometimes international) attention for their positions. But the most effective PLC reformers worked quietly to advance specific projects. Azmi Shu’aybi, perhaps the most widely respected member of the body, pursued fiscal issues from the budget committee until his resignation as chair in 1999. Abd al-Karim Abu al-Salah received far less respect, but his chairmanship of the PLC’s legal affairs committee allowed him to pursue reform of the legal system with dogged determination.

A second group of reformers consisted of prominent NGO activists. The West Bank and Gaza saw a proliferation of human rights, education, and social service organizations, with their leaders sometimes cooperating and sometimes competing in proposing various reforms.

Intellectuals, especially those associated with universities, were a third group of reformers. Bir-Zeit University’s Institute of Law, for instance, produced its own draft constitution, developed training programs for judges, and worked on compiling and disseminating collections of Palestinian law.

Political party activists also provided some support for reform, though it was often tangential to their agendas. Islamist and leftist opposition publications and parties frequently criticized the performance of the Palestinian Authority, often but not exclusively on human rights grounds. Such criticism was implicitly connected to broader opposition to the Oslo Accords, which created the Palestinian Authority, or to the arrests and detentions ordered in fulfillment of their provisions. Even some Fatah leaders, particularly younger activists, echoed reform themes, though they were more likely to lend general support rather than produce concrete proposals.

With such a diverse array of reformers, it should not be surprising that they rarely acted as a unified group and indeed often displayed deep rivalries. Yet, remarkably, they coalesced around a solid, detailed, and well-articulated agenda for reform. Much of this

reform agenda remained submerged during the first eighteen months of the Intifada. In the midst of ongoing violent conflict, efforts to reform Palestinian institutions (many of which were struggling simply to continue operating) seemed far less relevant.

But in the wake of the Israeli military campaign in the West Bank in March and April 2002, the issue of reform rose to sudden prominence. While much of the resurgence in interest was international, there were strong domestic factors encouraging reform as well: Palestinians had come to realize how poorly their institutions and leadership had performed. While most Palestinians held Israel rather than the Palestinian Authority responsible for the conflict, few could deny that the institutions established since 1994 had done little to protect Palestinian interests. Large portions of the edifice created by the Palestinian Authority seemed close to collapse under the combined pressure of its own weak performance and the Israeli military campaign. The leadership found that its nationalist rationale for forestalling reform—that it was premature to construct permanent institutions without a declaration of statehood and that pursuing reform risked opening divisions at a time when national unity was needed—no longer resonated. Indeed, even senior PA officials and party leaders joined the reform bandwagon, no longer willing to postpone governance issues.

Reformers had seven areas where they concentrated their efforts:

- constitution writing;
- defining the relationship between the PLO and the Palestinian Authority;
- public finances;
- the rule of law and judicial reform;
- corruption;
- the structure and practices of the security services; and
- elections and local governance.

Constitution Writing

One of the central problems in Arab governance generally is the domination of the executive over other branches of the state. The Palestinian Authority quickly adopted this broader regional pattern: the PA presidency was created before any of the other structures of government could establish themselves. Some Palestinians felt that the Palestinian Authority was characterized by a constitutional vacuum, but the reality was more complex. The Oslo Accords, preexisting PLO patterns, and the early legislative enactments of the Palestinian Authority all favored a constitutional system in which authority emanated from the presidency.⁴

The problem was not that the Palestinian Authority lacked a constitutional framework; instead, the real issue was that the emerging framework had little popular legitimacy, lacked any structures of accountability, and placed no limits on the executive. Writing a formal constitution to substitute for this emerging framework was therefore central to Palestinian reform efforts from the beginning. And reformers had a clear basis for their efforts—both the Oslo Accords and the Election Law called for writing an interim Basic Law for the Palestinian Authority while a final agreement between Israel and the PLO was negotiated.

Most countries writing a constitution draw on past constitutional texts to guide their efforts. But Palestinians discovered an ambiguous constitutional heritage: they had been governed by formal constitutions in the past, but they had written none of them. Further, the documents that had been written offered no solution to the concentration of authority in the hands of the executive. When Palestine was carved out of the Ottoman Empire under the League of Nations mandate system, the governing British authorities issued a series of documents that contained hints of popular participation in government but left all effective authority in the hands of their own high commissioner. The end of the mandate saw the first Palestinian effort to write a constitution, when in October 1948 a new body called the Palestinian National Council (PNC) met in Gaza. The PNC declared independence and drafted a provisional constitution that called for an interim parliamentary regime. This document was largely forgotten when Egypt asserted control over Gaza in the wake of the 1948 war. Egypt issued two constitutional documents for Gaza (in 1955 and 1962), and, after annexing the West Bank, Jordan issued a new constitution in 1952. The Egyptian documents were friendlier to Palestinian national identity, because they were explicitly temporary pending the creation of a Palestinian state. And they allowed a Palestinian legislative council, though almost all authority was kept in the hands of Egyptian officials. The Jordanian annexation of the West Bank was predicated on the denial of Palestinian national identity, but it had a liberalizing constitutional effect: in

1951, Palestinian deputies in the Jordanian parliament helped pass a series of constitutional amendments that included significant concessions to parliamentary prerogatives. In 1967, Gaza and the West Bank came under Israeli rule, and Israel immediately transferred all public authority to its own military governor, who ruled by fiat. This ended the effective life of the Egyptian and Jordanian constitutions and transferred any interest in constitutional matters to the Palestine Liberation Organization.

The PLO initially resisted steps toward statehood, but in November 1988 the PNC declared Palestinian independence, promising a parliamentary, democratic government and a constitution. Despite some pressure to translate this declaration into practical preparations, the provisions regarding governance were largely forgotten until the PLO signed the Declaration of Principles with Israel on September 13, 1993. The prospect of creating the Palestinian Authority prompted the PLO's legal affairs committee to begin drafting the Basic Law, an interim document to govern the new entity until a permanent constitution was written. The effort proceeded slowly but became increasingly public as Palestinians began to debate what constitutional arrangements should govern the interim phase. Rights, presidential prerogatives, and the role of Islam received particular attention. Progressive drafts of the Basic Law showed some evolution in a liberal direction under the influence of such public discussions.

With each iteration, the Palestinian Basic Law evolved from a skeletal and extremely provisional document into a more extensive and potentially more permanent basis for political life. The draft finally passed by the PLC in 1997 represents one of the most liberal constitutional documents in Arab history. It outlines a mixed presidential-parliamentary system not uncommon in Arab republics. More unusual is the strength of its rights provisions as well as an attempt to close loopholes that exist in many other Arab constitutions (involving emergency powers, constitutional interpretation, and the independence of the judiciary). Indeed, it is in this respect that the prolonged and public drafting process had real effects as vague provisions gradually gave way to carefully crafted limits on governmental authority.

In May 2002 Arafat finally announced that he had signed the Basic Law, and the document became legally effective in July 2002. Yet by the time it was promulgated, a separate effort was already well under way to prepare a permanent constitution for statehood. In April 1999, the Central Committee of the PLO authorized the necessary preparations for transforming the interim Palestinian Authority into a state. This led to the establishment of a new committee to draft a document to accompany a declaration of statehood. The committee worked quietly, producing a series of drafts before completing a public document in February 2001.

The 2001 draft recommended by the new committee follows much of the spirit of the Basic Law but contains three significant changes.⁵ First, the Basic Law was explicitly temporary and was to govern only the Palestinian Authority, itself authorized by the PLO. The draft constitution, in contrast, implicitly poses the state of Palestine as successor to the PLO by assimilating that body's ties to the Palestinian diaspora. The draft provides for a parliament with two chambers. One is to be the Legislative Council, elected by those in the state of Palestine (similar in structure to the existing PLC). The second is to be a Palestinian National Council, representing Palestinian refugees abroad and having a far

more restricted legislative role than the Legislative Council. The PNC, often referred to as the “Palestinian parliament in exile,” established the PLO in 1964 and has made pronouncements of basic policy in the name of the Palestinian people since then. In short, the state of Palestine would absorb the constituting body of the PLO, transforming it into a chamber of the Palestinian parliament. While Palestinian refugees abroad are thus to be represented in the upper chamber of parliament, this does not imply that the Palestinian state could negotiate their right to return. The drafters of the constitution not only asserted the right of refugees to return to their original domicile (and not merely homeland) but also described it as an individual right that could not be delegated. While the state of Palestine was therefore to represent all Palestinians, it would be constitutionally barred from negotiating away the right of each Palestinian to return to the pre-1948 home of his or her ancestors.

The second major structural change involved the executive. Whereas the Palestinian Authority had a strong president, the state of Palestine was to have a prime minister as well. The decision to separate the head of state from the head of government would bring Palestine into line with prevailing Arab constitutional practice, but its effects might be somewhat different from those elsewhere in the Arab world. Throughout the Arab world, the concentration of authority in the head of state is generally only loosely constrained by an elected council. A prime minister effectively answers only to the head of state. (Technically, most, but not all, Arab prime ministers serve only with the confidence of the parliament. But Arab parliaments do not refuse the head of state’s choice, nor do they withdraw confidence once they have granted it.) Yet the Palestinian parliament might be a more assertive body. The PLC did something in its short lifespan that other Arab parliaments have been shut down for merely discussing: in September 2000, it forced the resignation of a cabinet.

Third, the draft was clearly designed to correct some of the flaws that had developed under the Palestinian Authority since its creation in 1994, especially in confronting perceived presidential abuses. For example, fiscal provisions were unusually detailed in reaction to the annual budget disputes between Arafat and the PLC. Some of the corrective provisions were not obvious except on close reading. For instance, laws may go into effect even if the *Official Gazette* has failed to publish them. This represents a clear response to the PLC’s frustration: not only has the president failed to act on many pieces of legislation passed by the PLC, but the *Official Gazette* has not published laws that the PLC is convinced should have gone into effect. (This was the case with the Basic Law between 1997 and 2002, because PLC members felt it should go into effect after the president failed to reject it, and with the labor law between 2000 and 2001, because Arafat failed to have the law published for over a year and a half after signing it.)

Most of the debate on the constitution (as opposed to the discussion of the Basic Law) has remained far out of public view, obscured by its technical nature, lack of interest on the part of the senior leadership, and the drama of the daily violence of the second Intifada. So those who had participated in this debate must have been startled when in May 2002 the topic of the Palestinian constitution drew comments from the president of the United States. Palestinian constitutional specialists who had trouble attracting the attention of their own public and leadership heard George W. Bush proclaim,

“The Palestinians need to develop a constitution, rule of law, transparency.” Suddenly Palestinian constitutional issues were a matter of international attention.

Both the Basic Law and the draft constitution are well designed to contain presidential autocracy. But recently some reformers have begun to feel that containment is insufficient. They have argued for transferring authority from the president to the prime minister and perhaps even ending direct popular election of the president to cement the change from a mixed presidential-parliamentary system to a more purely parliamentary structure. The Basic Law—which now theoretically governs the Palestinian Authority—does not provide for a prime minister. The draft constitution does establish such a post but hardly robs the president of all authority. Yet the call for a parliamentary rather than a presidential system had some basis in Palestinian history: When declaring independence in both 1948 and 1988, different Palestinian National Councils endorsed the idea. In July 2002 the PLO’s constitution committee was brought back to life, perhaps giving the advocates of parliamentarism another opportunity to pursue their vision. And at the same time, talk of creating the new position of prime minister—dividing executive authority and enhancing accountability to the parliament—was revived.

Palestinians have written several constitutions but have not been able to bring any of them into effect; they are the only Arab people to have failed to do so. Given the current political disarray, constitution writing might seem quixotic, yet many domestic and international actors seem to have come to the opposite conclusion: The road out of the current crisis passes through the sort of institutional reform that a constitution can enable. And the experience of the period since 1993 has left definite traces: Palestinians now discuss constitutional issues with both interest and sophistication. The program of Palestinian political reformers seems extremely ambitious. But it must be acknowledged that the constitutions they have recently drafted are carefully designed, popularly supported, and liberal—which is one of the reasons none has born full fruit.

Defining the Relationship between the PLO and the Palestinian Authority

In their 1999 report, “Strengthening Palestinian Public Institutions,” Sayigh and Shikaki concluded that “the difficulty of distinguishing the mandates of PLO and Palestinian Authority institutions has impeded the promotion of key elements of good governance, especially the exercise of constitutional power, transparency and accountability, and the rule of law.” The claim may have seemed strange to many readers, since the relationship between the PLO and the Palestinian Authority was a temporary issue, governed by the Oslo Accords, which specified which functions the Palestinian Authority might assume.

Although the Oslo Accords had spelled out some aspects of PA operation in detail, the Palestinian Authority in practice had trouble defining its precise relationship with the PLO, and the senior leadership seemed determined to maximize the confusion. For most Palestinians, whatever legitimacy the Palestinian Authority possessed stemmed from the fact that the PLO had granted it, as the sole legitimate representative of the Palestinian people. Even those who strongly supported the Oslo Accords were reluctant to base PA legitimacy on agreements negotiated with Israel. Thus, the PLO was often referred to as the Palestinian Authority’s “source of authority” (*marja’iyya*) in Palestinian discussions. The effect of this view was to undermine the institutional clarity and accountability of the Palestinian Authority in two ways.

First, senior Palestinian leaders—most notably Arafat himself—could slide between the PLO and the Palestinian Authority as the basis for their authority in ways that vitiated institutional mechanisms of accountability. Every law, decree, or administrative order that Arafat issued contained a preamble citing his two positions—chairman of the Executive Committee of the PLO and president of the Palestinian Authority—making it unclear in which capacity he was acting.⁶ To the decaying PLO, Arafat’s position as PA president allowed him to appear as the head of an embryonic state, the first autonomous Palestinian body to administer Palestinian life. And to the Palestinian Authority, Arafat’s position in the PLO allowed him the ability to pose as the representative of all Palestinians throughout the world. The overlap was not merely theoretical; it took real institutional form. Arafat avoided calling the PA cabinet together but instead held sessions with the Palestinian “leadership”—a loosely defined body combining PA ministers and high officials with PLO leaders. Some PA ministers had portfolios similar to those of PLO officials—with both reporting to Arafat. And some senior leaders had formal positions in both the PLO and the Palestinian Authority. Neither the PLO nor the Palestinian Authority gave Arafat absolute authority on paper, but neither the PLC nor the PLO’s top bodies could pin

down the precise nature of Arafat's authority. Nor were senior Palestinian leaders alone in their willingness to obscure the distinction between the PLO and the Palestinian Authority. PLC members regularly expressed themselves on issues related to the final status talks between Israel and the Palestinians—matters that were to be negotiated by the PLO. Since several senior PA officials (including some PLC deputies and the speaker himself) had negotiated on behalf of the PLO with Israel, the confusion was natural.

Second, the fuzzy relationship between the PLO and the Palestinian Authority was problematic on the level of institutional culture. The PLO was a loose organization built to represent a widely dispersed population, and its vocabulary was that of a national liberation movement rather than that of an administrative entity. The Palestinian Authority, on the other hand, was responsible for running schools and clinics, collecting garbage, issuing identification cards, licensing professionals, and certifying who was needy. For those interested in building the Palestinian Authority into a state, the PLO brought precisely those practices that a well-governed state needed to avoid: secretiveness, patronage, an excessive concentration on security, a stress on revolutionary and ideological rather than professional and technical credentials, and a willingness to be dominated by strong personalities rather than governed by robust institutions.

PA reformers might talk dismissively of the PLO on occasion, but they could not call for its abolition as long as the body retained its status both internationally and among Palestinians.⁷ Yet in the short term, steps could be taken to avoid the blending of PLO and PA institutions. Reformers therefore sought to have the Palestinian cabinet—accountable to the PLC through votes of confidence—meet as a distinct body. Such a step might enhance the ability of the PLC to oversee some broad elements of PA policy.

Ultimately, however, the problem could not be solved as long as the Palestinian Authority remained an interim body with a restricted purview rather than a full state. Thus one of the major questions that arose in constitutional discussions was how to avoid permanently entrenching the confusions and overlap of institutions characteristic of the interim phase. Constitutional architects, as noted above, worked to incorporate some PLO functions—most notably the representation of diaspora Palestinians—into the prospective state. While agreeing that Palestinians throughout the world should have some voice in Palestinian governance, reformers have been skeptical that the PLO leadership currently fills that role well and seem determined not to allow current institutional ambiguities to survive a declaration of statehood.

Public Finances

Until the outbreak of the second Intifada in September 2000, the most reliable battlefield of reform was the annual PLC review of the budget of the Palestinian Authority. Indeed, the PA cabinet and the PLC skirmished over the same issues every year with the same result: the PLC would reluctantly approve the budget but demand that the errors and irregularities be corrected.

Palestinian finances were not merely a matter for internal debate. In 2002, Israel claimed to have captured documents that proved that the Palestinian Authority was financing terrorist attacks. The Israeli prime minister's office issued a report written in strident prose making strong claims that "Yasser Arafat was personally involved in the planning and execution of terror attacks" and that "Arafat's compound in Ramallah became the central command post for the terrorist activity and suicide bombing."⁸ Yet an examination of the documents published by Israel showed no support for the far-reaching charges of terrorism. What the documents—if authentic—demonstrate is something far more prosaic but still quite problematic and not just from an Israeli point of view. The PA president seemed to be using the PA budget to dole out small payments to party activists on the recommendation of senior party officials. Internal critics were not scandalized by the fact that some of those names appearing on lists of payees had been charged by Israel with involvement in terrorism. What troubled them was that Arafat was employing public funds to bankroll his Fatah party; that party, militia, and security forces were increasingly overlapping bodies; and that even very small expenditures required Arafat's personal attention.

The fundamental problem for PA critics was that PA finances were opaque, micro-managed by the president, and not subject to meaningful oversight by any public body. For example, large portions of the PA budget were not on the official books but run through secret channels and accounts. Year after year, the PLC Budget Committee would demand that PA accounts be unified, and international donors supported this demand. The critics won grudging concessions at times, but in 2000—the last year in which the PLC was able to conduct a meaningful review of the budget—the PLC's budget committee still found serious irregularities and even violations of the law. Large parts of the budget—such as the president's office and the security services—lacked details, making any kind of oversight impossible. Development expenditures and loans were either poorly reported or not reported at all.

Not only were PA finances partly hidden but also many other types of economic activities were not subject to oversight. In particular, the Palestinian Authority invested in a series of companies, as did many leading PA figures. Further, the Oslo Accords had

allowed and even encouraged the emergence of some monopolies. Under the 1994 Paris Protocol, the Palestinian Authority had agreed to peg its tax rates to Israel's. Israel had insisted that allowing the Palestinian Authority to charge lower rates than those prevailing in Israel would lead importers to bring goods into the West Bank, pay the lower tax rates, and then smuggle them over the very porous border and undercut Israeli suppliers. However, the Palestinian Authority was allowed to charge a lower rate on a few products. That made control over importation of those commodities especially lucrative (because importers could charge close to the Israeli price without paying the same tax rate), so official permission to import was a license to reap significant profits. And it made the Ministry of Civil Affairs, which was responsible for border crossings, a chokepoint for controlling access to the Palestinian market.

Reformers did not complain that the Palestinian Authority had significant economic holdings or that the Paris Protocol created opportunities for importers of specified goods to make tremendous profits. Their argument was more basic: PA holdings and the network of monopolies were not publicly reported. That made it impossible to tell whether private or public entities were reaping the benefits, how import licenses were assigned, and what happened to any public or private profits. Rumors of corruption, though widespread, were difficult to substantiate. Under external pressure, the Palestinian Authority finally released information on its holdings in 2000. Yet the outbreak of the Intifada made it impossible for reformers to follow up on the information or press calls for more complete disclosure.

The Palestinian Authority lacked any kind of systematic policies on public expenditures. Time and again, critics would complain about wastefulness in many PA agencies—travel expenses seemed excessive, for example, and ministry automobiles were doled out too generously. Some of these criticisms seemed petty, but it was impossible to answer a more fundamental criticism: The Palestinian Authority lacked any policies on such matters. Any oversight or control of such expenditures was thus impossible.

Hiring and personnel policies were loosely defined and were not followed when they were defined. The Palestinian Authority faced enormous and conflicting pressures on hiring. On the one hand, from the very beginning of its operations many political activists, former prisoners, and returning PLO cadres expected public employment as a reward for their national service. And the Palestinian Authority was also expected to provide an improved level of services in areas such as health and education. On the other hand, PA finances were not only limited but also dependent on external donors, who looked at the rapidly swelling payroll with alarm.

To add to the pressure, hiring patterns soon set off political rivalries within the Palestinian Authority. Party loyalty and personal connections were alleged from the beginning to determine who was hired. Rivalries on the matter within the dominant political party, Fatah, were in many ways worse than rivalries among political parties. In a public forum in 1998, Marwan al-Barghuti complained that Fatah cadres from the West Bank and Gaza were assigned only mid-level positions, while external leaders were awarded senior roles. He went on to claim that the central problem was institutional weakness: "Talk of building democratic institutions, meaning decision making by an institution in a democratic way, talk of collective leadership in the shadow of Yasir Arafat are hopes with

no basis in reality—not in the Fatah movement, not in the Palestinian people, not in the PLO, and not in the Palestinian Authority. As long as Yasir Arafat exists, he is the alternative to institutions. Yasir Arafat is the institution, and with his existence there will be no institutions.”⁹

Reform offered no escape from some of these problems, but it did at least offer a path to managing them through establishing (and supporting) appropriate institutions. One of the most complex pieces of legislation passed by the PLC was the civil service law, an attempt to establish clear hiring practices, civil service grades, and general personnel policies. Reformers also insisted that an established institution, the Palestinian Authority’s General Personnel Council, be given the central role in monitoring and implementing policies.

The Palestinian Authority initially attempted to implement the civil service law gradually in 1998 and 1999 but found its salary provisions too generous even when introduced in stages. Yet clearly more was at issue than salaries—indeed, the PLC budget committee discovered in 2000 that the president had used the General Personnel Council (the very body it had counted on to monitor implementation) to squirrel away dozens of employees for all sorts of bodies to hide them from public scrutiny.

Indeed, reformers came to feel that the GPC had become part of the problem in Gaza, failing to block presidential profligacy and patronage. International donors successfully lobbied Arafat to turn management of the PA payroll in Gaza over to the Finance Ministry instead, a decision that was only slowly implemented.

Finally, reformers questioned the fiscal priorities of the Palestinian Authority. To be sure, much of the public debate actually concentrated on process rather than substance, in an attempt to ensure that PA funds were spent effectively. But some critics thought funds should be spent more wisely and not just more transparently. In particular, the PA security budget came under frequent criticism: PA reformers argued that education and health were starved of resources but that the political domination of the security services as well as their sheer size bled the PA budget. The PLC itself made only timid forays in the direction of reallocation, concentrating its energies on ensuring that existing policies were followed rather than changing the policies.

In some ways, PA reformers made tremendous progress in fiscal affairs, but in other ways their efforts seemed futile. A more optimistic reading would focus on the policies that the Palestinian Authority put in place. An annual budget was prepared and published, a clear legal procedure was developed for presenting and approving this budget, and critics hammered away at PA fiscal practices, obtaining a series of concessions. In that sense, a clear institutional and legal basis was laid for making finances dependent less on personalities and ad hoc decisions and more on well-established institutions and procedures. As an example of what they had learned, reformers were able to build fairly detailed fiscal provisions into the draft constitution for statehood.

Yet the main problem came in implementing the procedures that reformers had won. A budget law was passed and the budget examined every year—but the PLC found itself reiterating the same complaints and making the same demands over and over again. A civil service law was passed, but implementation was frozen—partly for understandable reasons, but without any implementation schedule or substitute being introduced.

Especially in the area of fiscal practices, internal reformers and international donors had overlapping agendas. As will be seen, the coincidence of efforts between the two turned out to be the surest recipe for successful reform of the Palestinian Authority.

The Rule of Law and Judicial Reform

In many ways the pattern for legal development in the Palestinian Authority has been similar to that for fiscal practices: the reformers have won many major battles and, despite some initial problems, have played a significant role in laying down the legal framework for the Palestinian Authority. Yet that framework has been difficult to implement in practice, resulting in a pattern in which senior PA officials routinely operate outside of any legal structure.

The body of law inherited by the Palestinian Authority mixed Israeli military orders, Jordanian law (in the West Bank), Egyptian-era law (in Gaza), British mandatory law, and some traces of Ottoman law. From the beginning the Palestinian Authority emphasized legal continuity (even with regard to Israeli military orders, many of which were quietly retained). Yet at the same time, the source of additional legislation was unambiguously asserted to be Yasir Arafat, in his dual capacity as president of the Palestinian Authority and chair of the Executive Committee of the PLO. The resulting early legislative framework reflected this authoritarian origin, with PA legal drafters preparing restrictive press, party, and NGO laws.

Yet the election of the PLC transformed matters, especially because the PLC successfully insisted that it must pass all subsequent PA legislation. The effect was dramatic. The NGO law was transformed, for instance, from one based on authoritarian Egyptian practices into the most liberal in the Arab world. Liberal laws were passed on subjects ranging from public meetings to the independence of the judiciary. If followed, many of these laws would represent a sharp break from prevailing Arab political practice. They would allow a strong civil society, free assembly, and a judiciary autonomous from executive interference. Palestinians had legal provisions for a strong constitutional court before they had even adopted a constitution.

The problem with the new legal framework was not in what it said but in how far it could be applied. In many ways, this represents a departure from prevailing practice in Arab political systems. In most Arab countries the content and the application of the law are both authoritarian. In the Palestinian case, the content of the law was far more liberal but its application has been problematic or nonexistent. Indeed, it is startling how many of the Palestinian Authority's authoritarian actions have lacked any legal basis whatsoever. In most Arab political systems, a solid legal foundation has been laid for authoritarian practice. In the case of the Palestinian Authority the emerging framework is more liberal but the practice still authoritarian. For instance, PA security forces have sometimes shut down broadcasters for political reasons. The incident receiving the most international attention involved Al-Quds Educational Television, which was broadcasting sessions of the PLC.

The remarkably frank and sometimes heated tone of PLC discussions was apparently too much for PA leaders to bear, and in May 1997 the director was detained in Ramallah until the broadcasts ceased. Attracting much less attention was the closure of a radio station after it broadcast caustic comments by Umar Assaf, a leader of a wildcat teachers' strike and member of the Central Committee of the Popular Front for the Liberation of Palestine. On none of the occasions when broadcasters or journalists were detained or shut down did the authorities cite any legal basis for their actions. They simply proceeded on their interpretation of presidential will or national interest.

It is not merely the legal framework that has attracted the attention of the reformers, however. The judiciary itself has been a major focus of attention, with reformers viewing the existing structures as inadequate on several levels.

Judges are often seen as too few in number, ill trained, and ill supported. Courtrooms fall far short of impressing litigants with the majesty of Palestinian justice. From 1967 until 1994, the judiciary in the West Bank and Gaza operated under Israeli oversight. During that period, Palestinian critics frequently charged Israel with starving the system of resources and undermining it by transferring jurisdiction to military courts. With the eruption of the first Intifada in 1987, the work of the Palestinian courts further declined under strong social pressure to resolve disputes through means that avoided any Israeli control. After 1994, the Palestinian Authority moved very slowly to reverse the atrophy of Palestinian courts, though reformers expected quick changes in the number and quality of judges and other court personnel; they also pressed for professional training for judges. These demands were met slowly, and then only when international donors pressed ahead despite the indifference of the Palestinian Authority.

PA reformers sought not simply a more professional judiciary but also an independent one. Here, as in other areas, they often won in principle but lost in practice. When the Palestinian Authority initially assumed control over the judiciary, a contest erupted between the chief justice and the minister of justice over who was responsible for judicial appointments and promotion. Placing judicial appointments under a cabinet official did not inspire confidence in those who sought to establish judicial independence, but transferring responsibility to a senior judge did not solve the problem for reformers (especially after the Palestinian Authority showed that it would not respect seniority when it intervened in a heavy-handed manner to force the retirement of two senior judges).

Instead, reformers concentrated their efforts on developing a legal framework for judicial independence. The centerpiece of that effort—the law on the independence of the judiciary—was passed by the PLC in 1998, but, as detailed above, it was not approved by the president until 2002. The PLC also passed other laws governing court organization and operation.

The overall effect of these laws would be to create a strong and autonomous judiciary, with more structural guarantees than in almost any other judiciary in the region. A strong judicial council—composed primarily of senior judges—would oversee most judicial affairs. And joining the regular courts would be a constitutional court, capable of exercising judicial review. In a very short time, Palestine had developed a legal framework for judicial autonomy that it had taken Egypt a century to achieve.

Yet as with all Palestinian laws, the question was not only what was in the text of the law but also whether senior leaders were really committed to ensuring that the structures described in the laws actually came into being. And implementation proceeded quite slowly, if at all. The existing judicial council was given a one-year extension, postponing the date on which the body would be constituted fully in compliance with the new law. New courts (including a new, supreme level of appeals court and the constitutional court) were to be created, but the implementing laws and regulations were only slowly forthcoming.

Not all the demands of reformers have focused on the courts and judiciary. Some criticisms have also been directed at the refusal of PA officials to accept all court orders. The problem has been most acute with extremely sensitive political cases—for example, those in which PA security forces have arrested members of organizations involved in violence against Israel. The Palestinian High Court has jurisdiction in cases against official actions and regularly receives complaints filed on behalf of those detained without charge. The court routinely orders the release of those whom security forces have detained on a flimsy legal basis, but Palestinian prison and security officials have made clear that they answer only to the president, not to the courts, on such issues.

In addition to protesting the flouting of court orders, Palestinian reformers looked askance at the emergence of special courts—most notoriously the State Security Courts—constructed at the beginning of the Palestinian Authority to deal with politically sensitive cases. The State Security Courts have their origin partly in the obliquely worded but clear pledge given by the Palestinian Authority that it would grant Israeli extradition requests unless it held the person demanded in custody. Unwilling to take the politically unpalatable step of extradition (only one Palestinian was formally handed over—someone accused of raping an Israeli Arab boy), the Palestinian Authority set up courts to ensure that it could detain those requested. These courts quickly earned a reputation for ruthless efficiency with their extreme haste, nighttime sessions, and total disregard for any procedural safeguards. Yet they answered a clear (but, in Palestinian terms, almost unspeakable) need: they allowed the Palestinian Authority to answer U.S. and Israeli critics that it was not detaining would-be terrorists; they allowed the Palestinian Authority to maintain formal compliance with the Oslo Accords; and they avoided the assignment of such sensitive cases to the regular courts, where legal and perhaps even nationalist sensibilities would have resulted in far more lenient treatment of the accused.

The legal basis of the State Security Courts was laid in 1995, before the PLC began operation. Reformers have sought to remove the legal basis for such exceptional courts—for instance, the draft constitution bars their establishment—but they have proved far too useful politically for the senior PA leadership to abandon.

Those who have worked to build a Palestinian Authority based on the rule of law have some genuine accomplishments to show. The legal and judicial systems of the Palestinian Authority are, on paper, unusual in the region in their acceptance of rule-of-law principles. But implementation of that system remains problematic, and PA reformers have not found a way to bring the letter of the law into operation.

Corruption

The Palestinian Authority quickly earned an international reputation for corruption. Many of the Palestinian Authority's international critics (along with critics of the Oslo Agreements more generally) have relied heavily on this reputation in calling into question the international assistance program to the Palestinian Authority or even the legitimacy of the Palestinian Authority more broadly. "Corruption" admits of almost as many definitions as "reform" but generally involves illegitimate use of public resources for private gain. Fairly specific inquiries into the nature of corruption in the Palestinian Authority have revealed that much of the problem has involved weak institutions and unclear procedures as much as it has venality. However, such a distinction has generally been lost in broader international and domestic discussions.

The Palestinian Authority was the recipient, from its inception, of an enormous and diverse international aid program. Injection of large sums into a bureaucratic entity that was only beginning to function created inefficiencies as well as opportunities for corruption. It also led to some international monitoring, which made the inefficiency and corruption more obvious than in many neighboring countries. Indeed, what makes this international controversy about PA corruption especially ironic is that much of the specific information on corruption in the Palestinian Authority came from Palestinian investigations and discussions, buttressed by information gathered by international donors such as the World Bank. In other words, the Palestinian Authority stood out in the region not because of the extent of its corruption but because of the extent to which the problem was openly discussed. This irony could be used to undercut PA reformers on nationalist grounds. By highlighting the corruption issue, it was sometimes alleged, domestic critics were only serving the interests of the Palestinian Authority's international detractors.

Yet the reformers did not allow this criticism to inhibit them from airing their complaints quite publicly. As discussed above, the corruption issue first arose in its most public form in 1997, when the General Control Institute forwarded a report to the PLC detailing misuse of public funds and leading the PLC to launch its own investigation. The inability of the PLC to translate its ambitious rhetoric—which included calls for prosecution of ministers and withdrawal of confidence from the cabinet—into any action disillusioned many reformers. The most prominent member of the PLC, Haydar Abd al-Shafi, resigned in protest and the PLC did not take up the issue of corruption again until it forced the cabinet to resign in 2002, partly because of feelings that a large number of ministers had exploited their positions for private gain.

But in smaller ways, corruption continued to be discussed. Concerns are widespread—

ranging from disgust at the system of patronage for PA positions and business to serious allegations of graft and theft of public funds. More problematic, these charges are difficult to substantiate and pursue. Indeed, this is the broader and more fundamental issue: the paucity of clear guidelines on what constitutes illegitimate use of public resources and the almost total absence of structures to pursue and punish violators of the few policies that do exist. In this sense, the issue is much broader in Palestinian terms than the simple use of public resources for private gain; instead, the problem is symptomatic of the broader institutional weakness characteristic of the Palestinian Authority.

This institutional weakness expresses itself in two ways. First, the lack of clear policies and procedures, as well as the lack of transparency in PA finances, makes it difficult to tell when corruption is occurring, or how to distinguish among corruption, waste, and legitimate activity. The economic enterprises owned (partly or in whole) by the Palestinian Authority are a case in point. Since they operate outside of the regular budget, and since the Palestinian Authority failed to disclose its holdings until 2000, there was simply no way to uncover whether officially tolerated monopolies were benefiting the Palestinian Authority, private individuals, or both. The private business activities of high PA officials have led to many lurid rumors. Suspicions that influential individuals in the Palestinian Authority were using their positions to profit from such activities were difficult to prove—or disprove. In the absence of much transparency in public finance, it became difficult to disentangle mere secretiveness from actual corruption. On the eve of the second Intifada, the Palestinian Authority made major strides in satisfying international pressure by consolidating its accounts and disclosing its public holdings. Before the step could win it any credit domestically, however, the outbreak of violence in September 2000 distracted public attention and threw PA finances into confusion and crisis.

Second, the institutional bodies responsible for ferreting out corruption were either unwilling or unable to investigate, or, if they could investigate, to pursue any charges. The public prosecutor has almost never filed any charges of corruption. The PLC corruption report—which drew on the 1997 General Control Institute report, the only one received by the PLC—provided grist for public discussion and bitter PLC debate. That debate (and the PLC’s own report) generally centered on a laundry list of diverse illegitimate practices and did not progress to a more systematic examination of the nature of PA corruption. And in the end, the PLC passed a vote of confidence in a new cabinet that contained all the ministers who had been charged in the report. The General Control Institute continued its work, but after 1997 its report went to the president alone. The PLC complained that the budget law required that the institute’s reports be submitted to it as well, and the committee drafting a constitution was careful to insert such a requirement into its draft. Such strategies had no effect.

The result was to sully the Palestinian Authority’s reputation. Palestinians exchanged rumors about shady business deals and officials enriching themselves; lavish private houses belonging to public officials have become symbols of tolerated corruption. And internationally the Palestinian Authority earned a reputation that was just as unsavory. It was almost certainly the case that corruption was less widespread in the Palestinian Authority than in most neighboring countries. But absent the institutional framework to define and investigate corruption, such a defense became impossible to mount.

Indeed, a 2001 World Bank report based on a 2000 survey of Palestinian business leaders reported precisely this, arguing that fuller transparency might benefit the Palestinian Authority:

Informal payments to officials appear to occur less often than in other developing countries and regions for which we have data. Nor does corruption appear to be important in procurement. Further, a major issue of concern was removed in early 2000 when revenues of the Palestinian Authority were consolidated under the control of the Ministry of Finance. At the same time it was also revealed that most of the previously “diverted” revenues had been invested in business and the Palestinian Authority made public its audited equity holdings.

The chief victim of the previous lack of transparency, indeed, may have been the Palestinian Authority itself; consolidation of the Authority revenues and publication of its equity holdings served to put to rest rumors about the supposed uses of so-called “diverted” revenues. Additional efforts to increase transparency might similarly have beneficial effects for the Palestinian Authority. Examples of what might be done include publications of the terms of exclusive licenses such as that for Paltel. Agencies should also be created to carry out regulation that are separate from the policymaking ministries and from Palestinian Authority investments in business. Publication of the annual reports of the supreme audit institution, the General Control Institution, would further increase transparency, and accountability would also be improved by the adoption of conflict-of-interest and financial disclosure provisions for senior public officials.¹⁰

In one sense the report was excessively optimistic: In the highly charged political atmosphere prevailing after September 2000, transparency might satisfy international and domestic critics who followed the issue closely, but the general aura of corruption around the Palestinian Authority probably could not be dispelled by mere honesty or transparency.

The Structure and Practices of the Security Services

Like corruption, the structure and practices of the Palestinian security services were a topic of concern both domestically and internationally, though for different reasons. Internationally, the Palestinian security services often drew criticism on human rights grounds, but prior to the outbreak of the second Intifada, most attention in the diplomatic arena focused on fostering security cooperation between the Palestinian Authority and Israel, predicated on robust and active Palestinian security services. With the eruption of violence in September 2000, some of this international focus shifted. Members of the security services were increasingly implicated in attacks against Israelis, and security cooperation foundered. In 2001 and 2002, Israel increasingly targeted the installations of the various security services, ultimately rendering them impotent. And when international efforts to reform the Palestinian Authority began in mid-2002, the security services received early and prominent attention.

The domestic critics of the security services focused little of their attention on the involvement of members in political violence against Israel, and security cooperation with Israel has always been a subject of great ambivalence within Palestinian society. The agenda of PA reformers focused instead on the loose restraints placed on the security services and the weakness of any restraints placed on their operations.

First, the mechanisms of democratic accountability, while they did exist in some matters under the Palestinian Authority's jurisdiction, were largely inoperative with regard to the security services. The security services were among the first structures created by the Palestinian Authority, and when they were later joined by other institutions (such as the PLC or even most of the judiciary), they retained their autonomy. The head of each security service reported directly to Yasir Arafat—in his several capacities as president of the Palestinian Authority, chairman of the PLO, and (until June 2002) minister of interior. When PLC members would raise questions about the conduct of the security services, they found that they had no authority to hold anyone responsible except Arafat himself—and Arafat was essentially not answerable to the council.

On June 9, 2002, Arafat finally appointed his first interior minister, Abd al-Razzaq al-Yahya. The step was important for developing accountability within the security services, yet it hardly resolved matters. First, the PLC was unable to meet for a prolonged period after the appointment and thus could not even pass a vote of confidence in the new minister, much less direct questions to him. Second, the chain of command was not completely clear, with some security services still reporting directly to the president and others apparently brought under al-Yahya. Third, al-Yahya was himself a former

military and PLO figure, not one accustomed to working with the democratic structures that did exist under the Palestinian Authority. Al-Yahya lacked a strong political constituency of his own, leading many Fatah members to press for him to be replaced by a party leader. Their wishes were answered in October 2000, when Fatah stalwart Hani al-Hasan replaced al-Yahya.

Reformers also faulted the PA leadership for failing to develop any legal framework to govern the structure and operation of the security services. Because the Oslo Accords imposed security obligations on the Palestinian Authority, it was not surprising that security forces were constructed immediately, before a clear legal basis could be established to govern their operation. In a sense, these various security forces were founded on presidential will and the Oslo Accords rather than any domestic legal or institutional framework. But the number of services, their overlapping nature, and the obscurity of the command structure actually increased rather than decreased over time. There was little debate about the cause of this organizational ambiguity and confusion, since the president preferred to keep the security services divided and in a state of rivalry as a way of having them check each other. Such a strategy might have served the president well, but it left other Palestinians uncertain on what basis the services were operating or who had responsibility for what. And all the services operated completely outside of any legal framework. If one read through all the laws, decrees, and orders issued by the Palestinian Authority, one would be hard-pressed to find more than passing mention of any of the myriad of organizations responsible for security.

The absence of a legal framework was not merely an academic issue but was connected with another complaint of PA domestic critics: the security services involved themselves in a host of issues unconnected with security. Some security services took it upon themselves to collect taxes for the Palestinian Authority (to the occasional horror of the officials nominally responsible for revenue collection), leaving Palestinians uncertain whether taxation was a truly legal and authorized operation or merely a form of extortion. Local disputes were often referred to the security services as well, since they had more effective and persuasive methods of coaxing would-be litigants to resolve matters than the regular courts could employ. Some of the ancillary functions taken on by the security services diminished over time as the other parts of the PA bureaucracy began operation. Yet it was still the case that those who wished to have a problem solved (for instance, an argument with a neighbor or recovery of a stolen car) would often turn first to an acquaintance in one of the security services before turning to nominally responsible PA organs.

Finally, Palestinian security services quickly won a reputation for using fairly harsh methods. They would detain individuals without charges, sometimes torturing them, in seemingly arbitrary fashion. At times when the senior PA leadership wished to harass or suppress the Islamic opposition, the pattern seemed less capricious: Islamists often bore the brunt of the services' harsh methods. At other times, however, dissidents or journalists might be threatened with—or subject to—similar treatment. On a few occasions, even some PLC deputies complained of rough treatment. There was no address for such complaints, save the head of the security service in question or the president himself. A human rights ombudsman established early in the Palestinian Authority evolved into

one of its leading human rights organizations, but that body could do no more than its sister organizations in reporting, documenting, and publicizing abuses, sometimes sufficiently embarrassing the Palestinian Authority to win a release or a promise of improvement, but just as often sparking an annoyed and occasionally even threatening response. The professionalism of several security services did gradually increase in the years before 2000, and some even attempted to develop a less adversarial relationship with human rights organizations, leading to a slow diminution in complaints.

In the eyes of Palestinian reformers, the proper role of the security services is to assist in building a Palestinian state; many reformers feared that the security services had instead become a series of states within a proto-state. The reform process that began in May 2002—operating under both foreign and domestic pressures for reform—began to address some of this concern, but the effectiveness of the measures taken was uncertain, especially since the security services had effectively ceased operation in the wake of the April 2002 Israeli military campaign.

Elections and Local Governance

Finally, PA reformers concentrated some of their attention on building democratic mechanisms through the electoral process. The most important step in granting the Palestinian Authority domestic legitimacy was the election of 1996, in which Palestinian residents of the West Bank (including East Jerusalem) and Gaza elected a legislative council and president. The Palestinian Authority's electoral law and the resulting elections certainly had critics, domestic and international. Much of the potential opposition boycotted the elections, augmenting the bias in the law for conducting the election on the basis of personalities rather than party affiliation or program. Yet for a founding election, the 1996 election was remarkable by regional standards for its competitiveness.

There was another anomaly in the 1995 election law: It was designed to be used only once. To be sure, the law, coming as it did in a near vacuum (there was very little previous electoral law to draw on), was far broader than most electoral laws, going well beyond defining the proper procedure for preparing voter rolls, balloting, and vote counting. The PLC itself was defined in general terms, as was the PA president; the law even defined a succession mechanism for the presidency. Yet for all its comprehensiveness, the law was explicitly designed for the interim period, scheduled to end in 1999. Thus, rather than defining the nature of the electoral process with any permanence, Law 13 of 1995 was to govern only the 1996 elections.

Accordingly, members of the PLC set to work immediately to draw up the framework for subsequent elections. Indeed, the first law passed by the PLC governed elections for local government.¹¹ Unlike much subsequent legislation, this law was immediately signed by Yasir Arafat, who then appointed a committee to oversee local elections.¹² In October 1997, President Arafat signed a second law on the subject, detailing how local governments would be structured and what their authority would be.¹³ The law was vague on some critical points, but the PLC seemed to be encouraging (though not forcing) the development of strong, democratic, and autonomous local government.

But the promised elections were constantly delayed. The ostensible reason was that many of the areas covered remained under Israeli security control. Yet since the 1996 elections had taken place under similar circumstances, speculation centered on the possible results as the reason for official procrastination: Hamas and other opposition groups were expected to do well. Other sensitive issues were involved. Would East Jerusalem (where Israel would reject elections) be left out, and what impact would this have on Palestinian claims to the city? Would refugee camps adjoining Palestinian cities be included in local councils? City residents did not want their votes diluted; camp

residents worried about being disenfranchised; and many Palestinians were concerned that joining camp and city would undercut claims of refugees housed in the camps of the right of return to their original homes in Israel. In short, holding local elections raised almost every sensitive issue in Palestinian politics. And there were no international commitments or internal structures forcing the process to proceed. The PLC periodically pressed the issue, but not until May 2002 was the matter raised in a sustained way (with local elections finally tentatively scheduled for early 2003).

Palestinian reformers also sought to democratize other structures in Palestinian society. Political parties were often criticized for demanding democracy but not practicing it internally; most parties remained dominated by the same individuals until their retirement or death. While very slow movement toward party democratization took place, professional associations were more active. Palestinian professionals were often split among three or more organizations (often one rooted in Jordan and the West Bank, one in Gaza, and one in the external PLO). Labor unions were divided along partisan lines. The founding of the Palestinian Authority led to an effort among most of the professional associations and unions to form single national structures, with new elections for leadership. The process proved very slow, partly because of rivalries among the various groups. The Bar Association, the Engineers Association, and the Teachers Union had all shown some signs of progress by the time of the eruption of the second Intifada. The lawyers had a unified organization (though they were caught up in internal disputes and lawsuits that held up elections); the engineers had prepared legislation for a unified organization; and the teachers had agreed (after two very bitter wildcat strikes that split the union leadership from much of the membership) to a similar effort. Other professional associations saw similar struggles. A group of younger journalists, dissatisfied with their older leadership, sought to found a new association. Such efforts were generally suspended after September 2000, with nationalist issues edging out professional concerns.

To be sure, some Palestinian intellectuals did complain about the “militarization” of the Intifada from its earliest weeks. By this they meant that unlike in the first Intifada—recalled nostalgically by many Palestinians as a mass social movement and a time of nationalist solidarity—the primary participants on the Palestinian side in the second Intifada were members of local militias. While not calling for a total end to political violence, these opponents of militarization argued that the Intifada had to be given a mass participatory base. They urged a shift in focus to marches, demonstrations, boycotts, and stone-throwing. While their calls did sometimes resonate among some Palestinians, the growing violence of the period demonstrated the impotence of those advocating a less violent path.

In May 2002, however, the issue of internal democracy again came to the fore. The PLC—elected six years previously—had ceased operating effectively. And Arafat himself—the leader of the Palestinian people since 1969—was increasingly criticized for his weak and ineffective leadership. In the eight and one-half years since the signing of the first Oslo Accord, he had been unable (and, according to most, unwilling) to build the kinds of institutions that could unite Palestinians, define their interests, and defend them—a situation starkly undeniable in the wake of the April 2002 Israeli military campaign.

Accordingly, reformers began to call for new elections for all Palestinian structures. The leadership finally responded favorably, scheduling elections for early 2003. But the nature and the mechanics of those elections were not clearly defined, nor was it clear how they could be defined. Would they merely be a second round of the elections held in 1996 for the PA presidency and the PLC (with local elections added as well)? Or would they be elections more specifically designed to lay the groundwork for statehood? Was it necessary to carry out certain reforms—such as reducing the authority of the president in favor of a prime minister—before elections? How could voting take place in the shadow of an Israeli occupation far more intrusive than the one in 1996?

As with many issues, the call for Palestinian elections set off a complex domestic and international struggle. Domestically, reformers had called for new elections on many occasions. When Yasir Arafat addressed the PLC in a rare session in September 2002, he was even heckled about his failure to decree a precise date for the promised elections. Yet when he did issue a decree two days later for presidential and legislative elections (scheduled for January 20, 2003), it proved to be very much a mixed blessing for the reform agenda. First, Arafat's announcement seemed designed (unsuccessfully) to forestall the PLC's rejection of the new cabinet. Second, less obviously but perhaps more successfully, the decree hampered the PLC in its effort to introduce a thoroughly amended law. Reformers wished to introduce a measure of proportional representation and perhaps even a prime minister. One NGO had drafted a new law and a leading PLC reformer, Azmi Shu'aybi, had put forward that draft to the full PLC. The draft law was being considered by the PLC legal affairs committee when Arafat's decree was suddenly announced, leaving little time for full consideration of any proposed changes.

International supporters of reform were also caught off guard by the call for a snap election. The European Union was generally supportive of early elections, but the United States saw the step as a ruse designed to win a quick victory for Arafat before an alternative leadership could emerge.

Domestic and International Agendas

The domestic reform agenda in the Palestinian Authority has developed from the practical experience of operating Palestinian political institutions since the Palestinian Authority began in 1994. That agenda differs in some important ways from that developed by external advocates of reform. Indeed, various international actors have distinct (if often complementary) views of what sort of institutional reform is necessary.

The United States

The United States has been closely involved in the process that led to the establishment of the Palestinian Authority from the beginning, but U.S. enthusiasm for the cause of Palestinian reform spiked dramatically in 2002, especially after President Bush's June 24 call for a "new and different Palestinian leadership" spelled out the U.S. position:

True reform will require entirely new political and economic institutions, based on democracy, market economics, and action against terrorism.

Today, the elected Palestinian legislature has no authority, and power is concentrated in the hands of an unaccountable few. A Palestinian state can only serve its citizens with a new constitution which separates the powers of government. The Palestinian parliament should have the full authority of a legislative body. Local officials and government ministers need authority of their own and the independence to govern effectively.

The United States, along with the European Union and Arab states, will work with Palestinian leaders to create a new constitutional framework, and a working democracy for the Palestinian people. And the United States, along with others in the international community, will help the Palestinians organize and monitor fair, multiparty local elections by the end of the year, with national elections to follow.

Today, the Palestinian people live in economic stagnation, made worse by official corruption. A Palestinian state will require a vibrant economy, where honest enterprise is encouraged by honest government. The United States, the international donor community, and the World Bank stand ready to work with Palestinians on a major project of economic reform and development. The United States, the EU, the World Bank, [and] the International Monetary Fund are willing to oversee reforms in Palestinian finances, encouraging transparency and independent auditing.¹⁴

President Bush's speech struck many listeners as a dramatic departure in U.S. policy. In many important respects, there were novel elements. First, the Americans had never stressed reform so strongly, having focused on central control and security above all else—even at the expense of good governance. Second, reform was made a condition of further diplomatic efforts to allow the emergence of a Palestinian state (rather than

something that might be pursued simultaneously or even subsequent to the resolution of such issues). Third, the U.S. vision of reform encompassed “action against terrorism”; even those Palestinians horrified by the forms violence had taken saw security actions against violent groups quite differently.

But most dramatically, the U.S. vision personalized reform by calling for a new leadership. Those Palestinians critical of Yasir Arafat’s performance—and they were many—generally did not cast the solution so starkly. Some called for transferring some executive power (or even almost all of it) to a prime minister. Yet the U.S. position—emphasized in the following days—was that Arafat must be replaced.

For all its novelty, there were also significant elements in the U.S. vision that drew on the experience of other actors and even U.S. experience. First, while the emphasis on reform and institution building had dramatically increased, it was not wholly new. U.S. assistance in some areas was already well established. For instance, the United States Agency for International Development (USAID) had a long-standing project to develop the capacity of the PLC. Indeed, to the extent that the PLC was able to continue meeting despite Israeli travel restrictions, it was through the use of U.S.-supplied videoconferencing technology. USAID had newer projects concentrating on developing Palestinian NGOs as well as the legal and judicial sectors.

Second, execution of the U.S. vision of reform was explicitly based on the need for multilateral coordination. In 1994, the initial effort at international assistance for the emerging Palestinian Authority had led to the creation of some donor’s forums and working groups, though these tended to draw episodic high-level U.S. attention and had begun to decay in any case. Yet after President Bush’s June 2002 speech, such coordination drew higher-level attention as the United States consulted with other global and regional actors, sometimes working through the “Quartet” of the United Nations, Russia, the European Union, and the United States.¹⁵ The United States could be unusually deferential in the deliberations—for instance, in September 2002 a Quartet statement endorsed the European call for early elections despite U.S. suspicions.

Finally, the U.S. vision of reform, though it did introduce some unfamiliar elements, drew largely on themes emerging from Palestinian reform discussions (such as the need for new elections on the national and local levels and legislative empowerment).

Israel

The Israeli government’s lack of interest in reform was generally more marked than that of the United States. In some ways, early Israeli actions contributed to the extreme concentration of authority in the hands of the president. By agreeing to place all revenue collected in an Israeli bank account rather than transferring it to the Palestinian treasury, the Israelis cooperated in rendering Palestinian finances particularly opaque.¹⁶ Israel seems to have made a strategic judgment when signing the Oslo Accords to foster the development of a strong (and unrestrained) Palestinian leadership.

To be fair, the Israeli attitude was further encouraged by the actions of many Palestinians themselves. For those who lived in the West Bank and Gaza, the Oslo Accords offered a limited way to render Israel less relevant to their daily lives. The struc-

tures set up under Oslo—such as a joint Palestinian-Israeli legal committee—that might have been an avenue for Israel pressing reform issues were allowed to wither, not only by Israel but also by Palestinians eager to usher the occupation to an end in as many fields as possible. An ambitious Israeli reform agenda would hardly have been greeted warmly, even by those Palestinians who themselves championed the reform cause.

With the outbreak of the Intifada, Israel stopped transferring revenues, and security cooperation collapsed. Israel increasingly treated the Palestinian Authority as its adversary, charging that PA officials were actively involved in planning violence. As described above, for instance, Palestinian security forces were transformed in Israeli eyes from part of the solution (through cooperation) into part of the problem. In December 2001, the Israeli cabinet declared Yasir Arafat “irrelevant.” And in April 2002, Israeli actions against PA institutions and leaders reached a new stage with the siege of Arafat in Ramallah and the destruction of some civil and political institutions in the West Bank.¹⁷

When the April campaign subsided, the Israeli vision of Palestinian reform became somewhat clearer. First, the Israeli government was clearly unwilling to work directly with Arafat, though the acceptability of other senior officials to the Israeli leadership was less clear. Second, Israel viewed any financial support for the Palestinian Authority as tantamount to support for terrorism (though in July 2002, it finally agreed to release a small portion of the Palestinian revenue it had been encumbering since the beginning of the second Intifada).¹⁸ Third, Israel viewed any reform that did not result in a cessation of violence as meaningless. Other aspects of Palestinian governance still sparked very little Israeli interest.

Europe

Some European states, as well as the European Union, were involved from the beginning of the Palestinian Authority in assisting the development of its institutions.¹⁹ Indeed, some European funders were willing to support work in areas deemed too sensitive by others (such as education and human rights). And the European Union’s willingness to compensate the Palestinian Authority for the loss of its revenue after Israel ceased transfers in 2000 gave Europe considerable fiscal leverage.

When international interest in Palestinian reform increased in 2002, European actors probably had the most extensive experience as well as the most developed contacts within Palestinian society. Unsurprisingly, therefore, the European reform agenda closely resembled that of the Palestinian reformers. In a lengthy June 2002 statement to the European Parliament foreign affairs committee defending European funding of the Palestinian Authority, European Commissioner Chris Patten laid out the European reform agenda:

In particular we need to focus our efforts on creating a constitutional government by shaping the institutions foreseen in the Basic Law and making them efficient and accountable; establishing a truly independent judiciary and a harmonised national legal and regulatory framework more suitable to a free society and market, as well as abolishing state security courts; establishing democratic participatory politics and a pluralist society by creating a more effective Legislative Council that would exercise enforceable

oversight and decision-making authority, and which would be responsible for receiving and implementing the external audit findings of a statutorily established General Control Institute; and encouraging further financial openness and accountability.²⁰

These principles differed from the U.S. ones in several respects. First, they were at once broader (covering many different spheres) and more specific. Second, the European Union did not shy away from the implications of calling for a greater emphasis on democracy and human rights. It was unwilling, for instance, to join in the public call to replace Arafat. And in advocating the abolition of the state security courts, the European Union took a step that the United States had eschewed: in 1995 then vice president Al Gore had endorsed the courts, and the United States had never reversed its position.

Perhaps the most remarkable difference between the U.S. and European agendas, however, was not in their content but in the reaction they provoked. U.S. calls for reform were greeted cynically by all Palestinians—even by many reformers, who doubted U.S. sincerity and worried that overly close association of the United States with their causes would only sully their nationalist reputations. But the European Union was able to issue far more direct calls for reform without provoking any criticism. The most remarkable step in this regard came in May 2002, when the European Union formally conditioned its continued assistance—which kept the Palestinian Authority afloat—on a detailed reform program, including measures such as approval of the long-delayed law on the judiciary and the integration of the investment budget into the general PA budget for the 2003 fiscal year.²¹

The Arab States

The Arab states were odd participants in the international discussion of Palestinian reform. On the one hand, many (especially Saudi Arabia, Jordan, and Egypt) were interested in promoting renewed U.S. and European diplomacy and recognized the importance of Palestinian reform to enticing such involvement. Further, some Arab states were themselves supporting the Palestinian Authority financially and were just as interested as other donors in ensuring that their funds were not misspent.

On the other hand, much of the criticism of PA performance could also be directed against most Arab states. The Palestinian Authority was extreme in its institutional weakness as well as the willingness of its leadership to ignore regular legal forms, but other elements of the reform program could have been transferred with little change to much of the Arab world—such as greater parliamentary power, prosecution of corruption, and reining in the security services. Thus Arab states did indeed tend to be less critical of the Palestinian Authority on governance issues (with President Mubarak on one occasion dismissing calls for a symbolic presidency for Palestinians as alien to Middle Eastern political culture) and publicly hostile to calls to replace Arafat.

Saudi Arabia, Jordan, and Egypt worked quietly to bridge the gap between the international calls for reform and the practice of the Palestinian Authority. As such they

sometimes acted as facilitators. For instance, in July 2002 they coordinated in submitting a reform program to the Quartet. More quietly still, Saudi Arabia backed efforts to rewrite the draft constitution for statehood—with the strange result that one of the least constitutional Arab regimes was assisting Palestinians in developing a document it would not accept for itself.

Conclusion

Although the domestic Palestinian debate on political reform has not always mirrored the international discussion precisely, any reform efforts will ultimately depend on the willingness and ability of Palestinians to implement reform measures and make them work. Reformers have not been without impact. They have often been dominant in discussions among intellectuals, and they showed the ability to have real influence on the formal legal framework for the Palestinian Authority. But they have had far less success in translating these achievements into actual reforms in Palestinian governance.

Prospects for the success of reform have seemed brightest whenever the domestic agenda and the international constituency's agenda have coincided. The most comprehensive blueprint for Palestinian reform—the 1999 Council on Foreign Relations report—showed precisely how such a partnership would work. The international participants supplied political protection, publicity, and expertise, but the bulk of the recommendations were developed by Palestinian reformers reflecting on the experience of the Palestinian Authority. That project provoked resentment among senior Palestinian officials but forced a reaction as well, and a rather dilatory commission was set up to reform Palestinian governance.

In 2002, the alignment between international and domestic advocates of reform again seemed favorable. To be sure, the U.S. call for replacement of Arafat illustrated how sharply the domestic and international agendas could differ, but it proved less damaging to the reform cause than it might have been a couple of years earlier (indeed, it likely would have been a fatal blow before the Intifada).

On the domestic level, the ranks of the reformers suddenly swelled. In May, Yasir Arafat proclaimed reform to be his own goal, and the PLC quickly responded with its reform program. The Palestinian cabinet hastily assembled a “One Hundred Day Plan” with a list of goals impressive in both its length and its breadth. This new enthusiasm left many Palestinians skeptical. One commentator noted with irony that, since all Palestinian leaders had swung behind reform, it must be that the Palestinian population had become the true obstacle. He proposed that the people be dismissed so that “the sincere and righteous gentlemen, the enemies of corruption” in the government could remain in power and hold the people accountable for their failures.²² International observers tended to view Palestinian reform plans as overly ambitious, but even among interested states a consensus rapidly developed in support of a reform agenda similar to (though less ambitious than) the Palestinian agenda.

Yet despite the favorable alignment, reform was a far more daunting task in 2002

than it had been two years earlier. The Intifada and the Israeli response to it left many Palestinian institutions barely functioning. To be sure, some structures (such as education) have showed remarkable resilience, but PA finances remain in shambles and the restrictions on movement have shut down the legal system. The PLC itself has been able to meet only with great difficulty.

The cause of reform faces a difficult conundrum. On the one hand, real progress in reform seems impossible without some diminution of the conflict with Israel and relaxation of Israeli restrictions on travel within the West Bank and Gaza. On the other hand, such political changes seem unlikely unless robust Palestinian institutions—the kind the reformers have worked to build—can guide Palestinian society. In short, reform and an end to violence hold each other hostage.

In a sense, the very existence of such a conundrum represents a partial defeat for the reformers. Their project has been to begin building a Palestine that functions effectively and democratically in the short term instead of waiting for resolution of the conflict with Israel. The impatience of the reformers has been mollified partly by their large number of paper victories. They have laid the foundations of the sort of Palestine they wished to see—but they have actually built little of it.

In the long run, the reformers' cause depends on a confluence of international and domestic factors. In general, Palestinian reformers offer a comprehensive vision of a well-governed, democratic Palestine as well as specific recommendations on what such an entity would look like. The international participants in the reform process offer financial help, diplomatic incentives, technical expertise, and often a healthy dose of realism (with international agendas often far more modest than those of Palestinian reformers). Domestic reformers without a supportive international context seem capable of achieving only symbolic victories. But heavy-handed international support that ignores the well-formed domestic agenda only undermines the reform process.

Notes

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1. Basic Law, Article 97. An unofficial translation of the Basic Law by LAW (Palestinian Society for the Protection of Human Rights and the Environment) can be found at <http://www.lawsociety.org/LawsT/Laws/BasicL.pdf>.
2. I have treated the process of writing the Basic Law in more detail in "Constituting Palestine: The Effort to Write a Basic Law for the Palestinian Authority," *Middle East Journal* 54, no. 1 (winter 2000): 25–43.
3. The task force report is available at <http://www.cfr.org/public/pubs/palinstfull.html>.
4. The critical legislative enactments—which in total created a rough (and highly presidential) constitutional order for the Palestinian Authority—consisted of Decision 1 of 1994, Law 4 of 1995, and Law 5 of 1995. These effectively assigned legislative authority to the president and specified the procedures for making new laws. Later, the Palestinian election law (Law 13 of 1995) specified matters further, including some highly significant issues such as the duties of the PLC and succession procedures for the presidency. An English translation of the election law is available at <http://www.planet.edu/~cec/law/>.
5. An English translation of this draft constitution can be found in two parts at <http://www.pcpsr.org/domestic/2001/conste1.html> and <http://www.pcpsr.org/domestic/2001/conste2.html>.
6. In a decree dated October 10, 2002, appointing a chair to the election commission, Arafat added yet a third title to the preamble without explanation: president of the State of Palestine.
7. For a sophisticated critique, see Khalil Shikaki, "Palestinians Divided," *Foreign Affairs* (January-February 2002), http://www.foreignaffairs.org/Search/document_briefings.asp?i=20020101FAEssay6559.xml.
8. "The Involvement of Arafat, PA Senior Officials and Apparatuses in Terrorism against Israel, Corruption, and Crime," <http://www.israelemb.org/articals/embassybriefing/2002/May/2002050601.html>.
9. See Marwan al-Barghuti, "The Organizational Condition of the Fatah Movement and Its Relationship with the [Palestinian] Authority," in *Ma ba`d al-azma: Al-taghyirat al-bunyawiyya fi al-hayah al-siyasiyya al-filastiniyya, wa afaq al-`amal* (After the crisis: Structural changes in Palestinian political life and work horizons), Proceedings of the Fourth Annual Conference of the Muwatin Foundation, September 22–23, 1998 (Ramallah: Muwatin, 1999), 105–108.
10. David Sewell, "Governance and the Business Environment in the West Bank/Gaza," Working Paper Series no. 23, World Bank, Washington, D.C., May 2001, [http://lnweb18.worldbank.org/mna/mena.nsf/Attachments/WP+23/\\$File/WP-23.pdf](http://lnweb18.worldbank.org/mna/mena.nsf/Attachments/WP+23/$File/WP-23.pdf), p. 25.

11. Law 5 of 1996.

12. Presidential Decree 1 of 1997.

13. Law 1 of 1997.

14. The full text of the statement is available at <http://www.whitehouse.gov/news/releases/2002/06/20020624-3.html>.

15. The consultations became more formal with the formation of the International Task Force on Reform, a group representing the Quartet and leading donors (Norway, Japan, the IMF, and the World Bank) to work out design and implementation of a reform plan for the Palestinian Authority. The task force focused on seven areas: civil society, financial accountability, local government, the market economy, elections, the judiciary, and administrative reform. The Quartet also consulted with Saudi Arabia, Egypt, and Jordan.

16. Under the Paris Protocol, Israel collected taxes on imports but transferred the proceeds from those destined for Palestinian markets to the Palestinian Authority.

17. Israel's stated goal for the campaign was to root out terrorism and the supporting infrastructure. The latter was defined broadly to include a wide range of Palestinian political institutions and records, many of which bore no obvious relationship to violence of any sort, such as school examination results, personnel files, and automated teller machines. The pattern of destruction seemed haphazard and made sense only if the Palestinian Authority as a whole was a target—as was implicitly confirmed by a senior Israeli intelligence officer, who said on a U.S. television program that “[w]e went into what is the equivalent of the Palestinian CIA, the Palestinian FBI, the Palestinian Bureau of Education and the Palestinian Treasury” taking “anything we can find.” She concluded, “We’ve taken their mind, to a certain degree. We took their database” (comments of Col. Miri Eisen, *60 Minutes*, CBS, September 29, 2002). Such remarks probably imply a more methodical approach than was actually employed. Some Palestinian institutions (such as the PLC) were largely spared; others unconnected with the Palestinian Authority (such as al-Mawrid, an NGO devoted to science education) were badly damaged.

18. Most dramatically, Israeli officials bitterly charged that the EU funds—designed to fill some of the gap created by the Israeli decision to end revenue transfers—were used for terrorism. In its report “The Involvement of Arafat, PA Senior Officials and Apparatuses in Terrorism against Israel, Corruption and Crime” (<http://www.israelemb.org/articals/embassy-briefing/2002/May/2002050601.html>), Israel charged: “The palastinian [*sic*] Authority allocated vast sums of money from its budget to pay salaries to Fatah terrorists (45 million dollars a month from Arab countries, 9 million dollars a month from the European Unity [*sic*].”

While submitting a formal complaint to the European Union in May 2002, Israel adduced no public evidence to support the charge that EU funds had been used for such purposes. In fact, a close reading of Israeli statements made clear that the Israeli attitude was that all financial support for the Palestinian Authority constituted support for terrorism because of the involvement of some PA officials in attacks. Thus, the EU response—that it closely monitored the use of its funds—could not satisfy the Israeli government, which argued that EU funds for legitimate purposes freed non-EU revenue for those activities Israel found supportive of terrorism.

Israel did finally back down, not so much because it was satisfied with European assurances but because it was faced with the complete collapse of public services in the PA territories.

19. The most comprehensive treatment of international assistance to the Palestinian Authority is Rex Brynen's *A Very Political Economy: Peacebuilding and Foreign Aid in the West Bank and Gaza* (Washington, D.C.: United States Institute of Peace Press, 2000).

20. The transcript of Patten's remarks can be found at http://europa.eu.int/comm/external_relations/news/patten/sp02_293.htm.

21. See “Conditions Attached to the EC’s Budgetary Assistance to the Palestinian Authority and the Monitoring by the IMF,” http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=MEMO/02/90|0|RAPID&lg=EN&display=.

22. Hasan al-Kashif, “Keep the Government and Dismiss the People,” *Al-Hayah al-Jadida*, May 20, 2002.

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