First Steps Toward Justice

BY GARY A. HENGSTLER

If the Israeli-Palestinian peace accord holds and Palestine becomes an autonomous, self-governing region that may evolve into the state of Palestine, it will be in no small part due to the work of two relatively obscure lawyers. They have never met, but each, in his own way, is working to create a valid and acceptable legal structure that will be the foundation upon which peace and stability can develop in this strife-ridden area.

At first glance, they are a study in contrasts. One is near retirement age, while the other is in his youthful prime. One is Islamic, the other Jewish. One represents the legal interests of the occupied, the other the occupier.

But both are firmly committed to the rule of law as a means of resolving the centuries-old hatred that has separated people of common lineage. Both are reasonable, highly personable and intelligent.

After discussing with them the issues they face, one can’t escape the conclusion that if the extremists on both sides would just back off and let people like Anis M. Al-Qasem and Joel Singer work out the details, a solution could be found that would be acceptable and ensure justice and fairness to both Palestinians and Israelis.

Whether they ultimately will succeed remains iffily.

Al-Qasem is a barrister in London, a member since its inception in 1964 of the Palestine National Council—a Palestinian parliament in exile headquartercd in Tunis—and a consultant on laws of the Middle East. He graduated in 1948 from the University of London, Kings College, and received a law degree in 1950 and doctorate in 1969, both from the University of London.

Palestinian National Authority President Yasser Arafat named Al-Qasem to chair the Palestinian National Authority’s High Legal Commission, responsible for drafting the constitution and legal structure of the new Palestine.

Singer is the legal adviser to the Israel Foreign Ministry and one of the key Israeli negotiators with the Palestinians.

On the Palestinian side, the four-member legal commission will, according to Al-Qasem, expand to “include some members from the occupied territories who are residents with a legal background. At the moment, all of them are from outside.”

Restructuring the Courts

The commission faces the daunting task of re-establishing a Palestinian legal system, Al-Qasem said, because “the Israeli occupation affected the judicial process in addition to the legal framework of the country. There are the [Israeli] military courts, which are hardly courts in the sense that courts are known. They were appointed by the military commander in the area.

“Most of the criminal cases were transferred to these military courts. So ... the jurisdiction of the Palestinian courts in criminal matters was severely restricted. The civil courts were allowed to continue.”

But, again, their jurisdiction in a number of respects has been taken away. For example, questions of land ownership are outside the jurisdiction of the civil courts. The effect of that has been a deterioration and
demoralization of the judicial system. There was no possibility of the growth of an independent judicial system in control of its affairs and capable of enforcing respect for the law, Al-Qasem explained.

Not surprisingly, Israeli sources uniformly disagree with the Palestinians as to the impact the military courts have had on the Palestinian civil court system and the degree to which Palestinians have been adversely affected.

Singer emphasized that "there is a system of local courts—Palestinian local courts, Palestinian prosecution officers—that has been functioning since 1967 until today. In addition to that, or parallel, you have the military court system. So you have the civilian court system that deals with common law offenses and all civilian matters, and you have the military court system that deals only with criminal issues but on security matters. So you have this duality that is the existing situation.

"In some cases, you have to decide what is a common law offense and what is a security offense. Let's say a Palestinian kills a Jew. If the reason for the murder is robbery, then it is one thing. If the reason is security, then it is another. And sometimes it is not easy to distinguish between the two."

But who makes that final determination as to motivation when a crime has been committed?

"Today it is the military system," Singer said. As to whether a military court can override the civil court, he said, "It won't reach that point. The deviation from criminal to security would start during the [military] investigation."

But, Al-Qasem argues, "The civil courts were subject to the military commander. The commander had an overview of the activities, civil and non-civil, and had all the powers in the area, which is normal in occupation. So these courts, whether they were civil or military, were created by a military order and were really under him."

Both agree that, however the current judicial relationship is viewed, the accord will change the status quo. "The Declaration of Principles would change the situation entirely," Singer said. "You have two police systems that would not be unified. You will have the Israeli system that will play a much more marginal role in being responsible only for Israelis, the Israeli settlements and the extent of security. And you will have the Palestinian system, local court system and local
police system, that will deal with virtually anything else."

But suppose there is a situation of either a Palestinian killing an Israeli or an Israeli killing a Palestinian. Who will have jurisdiction under the agreement?

"We are still negotiating this point," Singer said. "The Declaration of Principles stated that the Palestinian Authority would have jurisdiction over Palestinians but not over Israelis, which means that any offense committed by Israelis would be an Israeli responsibility. They would be apprehended, investigated, tried and imprisoned in the appropriate cases by the Israeli system."

"The jurisdiction of the Palestinians would be a Palestinian responsibility. However, in security matters—Israel will continue to be responsible for protecting Israelis, both for public order and internal security."

**CREATING ECONOMIC LAW**

Criminal law, however, is not the only concern. As economic development is sought, the Palestinian legal commission is concerned about updating the laws to make Palestine business-compatible.

"First of all," Al-Qasem said, "we have to review the existing legal situation—the situation prior to Israeli occupation—to find out what legislation has to be repealed, updated or unified. Most of the basic legislation was left undeveloped. For example, in the Gaza Strip, the company [corporate] law is an old 1929 [statute]. And between 1929 and the present, jurisprudence has developed considerably."

The legislative challenge will be to modernize a legal system to protect investments at the same time leaders are seeking investments. "Well, time is not on our side," commented Al-Qasem. "All I mentioned have equal priority; where to start is a difficult task. But the antiquated legislation is certainly a concern of the Palestinians and prospective investors."

"Besides encouraging foreign investment, you have to deal with the local economic situation to create an atmosphere for that to develop. According to the World Bank report, in some instances it took 10 years for a local enterprise to obtain permission from the Israeli military authority for that enterprise to be started because of the many approvals needed—sometimes reaching 12 approvals. By the time you reach the seventh approval, the first approval
The changes among nations

The Gaza Strip and Jericho lands in which Palestinians are to share control have been entangled in changing international power since after World War I.

1920
Following the collapse of the Ottoman Empire after World War I, Palestine and Transjordan came under British mandate and Lebanon under French mandate.

1938
A British partition plan was to create a Jewish state in the north and an Arab state in the south. Jerusalem and Nazareth were to be under international control.

1948
With the end of British control, Israel quickly defeated invading armies of Egypt, Syria, Lebanon, Transjordan and Iraq and annexed most of the planned Arab state to the south.

1967
Israel seized the West Bank from Jordan, the Golan Heights from Syria, and the Gaza Strip and Sinai Peninsula from Egypt during the Six Day War.

Life in Israel and Palestinian lands

- Israel's population of 5.2 million is 81.5 percent Jewish, 14 percent Muslim, 2.7 percent Christian and 1.7 Druze (a religious blend of Christian and Muslim beliefs).

- The Gaza Strip population of 700,000 living in 141 square miles, includes from 1,400 to 5,000 Jews (less than 1 percent), and 480,000 refugees.

- Jericho's population of about 15,000 consists of a Muslim majority and a Christian minority. The total West Bank population of 1.35 million includes about 130,000 Jews (about 10 percent).

- Per capita income of Israel is the equivalent of $10,900; of the West Bank, $1,700. (Estimates for Gaza were unavailable.)

- Annual Gross Domestic Product of Israel is $60 billion; of the West Bank and Gaza, $3 billion.

What the Israeli-PLO peace agreement provides

An exchange of promises

A letter from PLO chairman Yasser Arafat to Israeli Prime Minister Yitzhak Rabin recognized Israel's right to exist within its pre-1967 borders and pledged to curtail Palestinian uprisings in the occupied territories. In return, Rabin's letter to Arafat recognized the PLO as representing the Palestinian people and promised to negotiate with it.

Self-rule

The Israelis are not granting Palestinian statehood, but autonomous self-rule in designated regions. Palestinians will gain control of the civil government, but the Israeli military will still protect Israeli settlers and visitors in these areas.

The time frame

From Dec. 1993 to April 1994 Israel is to grant Palestinians autonomous self-rule first in the Gaza Strip and the West Bank town of Jericho. In July 1994, Israeli troops are to continue withdrawal from the rest of the West Bank as Palestine holds elections for a governing council. The five-year stop-watch on the permanent status of Palestinians begins upon withdrawal from Jericho and the Gaza Strip.

To be decided

- Exact boundaries of the autonomous region in Jericho.
- Travel between Jericho and the Gaza Strip.
- Control of borders between the autonomous regions and Egypt and Jordan. For example, Israel claims that it must retain control of the border between Egypt and the Gaza Strip to maintain national security.

ABA JOURNAL RESEARCH BY JOSEPH WHARTON; MAPS BY JEFF DIONISE
would already be out of date. So you have to start again. So this task of trying to bring up to date existing company law, investment law, banking law, commercial law—you have to do almost instantaneously."

Then there is the natural environment, which the accord specifically addresses as a concern.

"The question of environment is not concerned simply with the future," Al-Qasem said. "It is concerned primarily with the present. When you visit the Gaza Strip, you will see the problem. No sewage system. Garbage left in the open air. The health situation is bad. So you have to deal with the existing problem first before thinking about the future.

"Throughout this period, no attention has been given by the Israeli occupiers to these questions. We don't have the industry that spoils the atmosphere. Really, it's the problem of just living. This will take a considerable amount of time. To build housing—in Gaza you have [an estimated] 700,000 refugees to accommodate. On top of that, the 1967 [Six Day War] refugees now in Jordan and Egypt have agreed that they will return. Now you have another 700,000 to accommodate and find work for and educate. One and a half million would be a burden to a major state."

On the need for the Palestinians to create economic stability, the Israeli leaders are in agreement. In fact, Israel is helping the PLO secure the necessary start-up funds.

"We are working with the Palestinians," Singer said, "and with the World Bank, the European Union. We have a triangle of continuous negotiations that eventually will settle everything. It will just take some time.

"Some of the problems are purely personal. Arafat keeps the cards very close to his chest. He doesn't let anyone know exactly what is going on. It is part of his being able to maintain control. So [the Palestinians] will work it out between themselves eventually."

(Another Israeli source put it more bluntly: "They are used to living in Tunis, without any responsibility. They don't have to do anything; they only criticize and oppose. Suddenly they are given the responsibility. It is frightening because they will have to deal with all the opposition that is building its power. Probably the euphoria is going to turn into frustration because they believe that once the PLO enters the Gaza Strip, they are going to have a paradise instead of refugee camps.")
Singer, however, is quick to stress that the Palestinians are "very capable." He said, "I think they are capable and willing and pragmatic, but they are not experienced in actually carrying the responsibility."

Given that the Palestinians must create a legal structure overnight, could existing Jordanian or Egyptian law be adapted?

"In some respects, yes," said Al-Qasem. "But in others you cannot. We can adopt a modern commercial code, either the developed Egyptian or Jordanian code. The civil code, we can also adopt the Jordanian civil code, because it has been based on Palestinian law, which was enforced before the West Bank was joined with Jordan."

"But when you come to other areas—investment, for example—you really have to be very innovative. Because the situation we have inherited has no parallel."

REGAINING ARAB TRUST

Curiously, Israeli leaders find some irony in the fact that other Arab countries seem to be dragging their feet in terms of helping the Palestinians.

"Sometimes history is so absurd," Singer said with a sigh. "We are, instead of collecting funds for the Israeli economy, now collecting funds and obligations for the Palestinian Authority. And I have seen a cable from one of our embassies just a few weeks ago in which an Israeli diplomat had a discussion with a Kuwaiti diplomat. We have asked Kuwait to contribute its share to the Palestinian Authority."

"They told us: 'You can ask us to terminate the Arab boycott against you. We would be more willing to do that than to give one cent to the PLO.'" (Kuwait remains angry over the PLO's support of Iraq during the Gulf War.)

(Another Israeli source echoed Singer's observation: "If you ask Hafez Assad, the Syrian president, he would probably say, 'I will make peace with Israel more willingly than have peaceful relations with the PLO,' because he hates the PLO. You can take the Arab countries one by one—Saudi Arabia would not invite Yasser Arafat to visit Jedda.")

"So, curiously," Singer added, "Israel and the PLO are now partners. We have this joint venture that both of us want to succeed. And we are trying to pursue it with other Arab countries to accept this new reality and support it."

All of which could create a Jordan-Israel-Palestine economic bloc. "In fact, this is no longer merely a vision," Singer said. "It's becoming a reality, because... we and the Palestinians are negotiating with the Jordanians. We don't have a formal agreement, but soon we will begin to develop this triangle because our economies are tied to one another. We need to agree about who is going to supervise the banks, what legal tender is going to prevail in the West Bank and Gaza Strip, at least during the five-year transitional period."

"Once we agree—and I believe that the decision has already been taken—that this a fait accompli, then we are going to have, in all likelihood, a unified system with Israel, the West Bank and the Gaza Strip. We won't have a customs boundary."

In effect, a Middle Eastern NAFTA agreement?

"Right," Singer replied. "Well, we'll have the outer envelope where customs will be imposed and then we will share the proceeds."

So how does a foreign entrepreneur go about establishing a business hand over files and the local employee system that worked for us. And they will, at least initially, continue the existing system, then progressively introduce changes but within the principles that we agreed upon about an economic union."

DRAFTING A NEW CONSTITUTION

But for this to all work the Palestinians themselves must be satisfied with the new governmental structure. They must be convinced that they are truly under Palestinian rule and that it is fair and equitable.

"That is, of course, right," Al-Qasem said. "One of the things that I have already finished is the first draft of a provisional basic law—a provisional constitution to set out the framework for the future government of Palestine and to have it widely publicized to receive comments from the Palestinians. Because, at the moment, we cannot hold a referendum on Palestine to get approvals of the people."

"So the best that you can do is to publicize it to let the people know..."

IDF checkpoint where the authors were blocked from going to Ramallah on the West Bank.
ties, and for that they do not need the consent of the government as is the case in many other countries.

"When the [Israeli] withdrawal begins, I don't think that a legal vacuum will be created—at least not like that in the Soviet Union where you have to change the entire legal and constitutional system. In our case, the main burden is the military orders that restrict freedom and act in arbitrariness.

"Once you remove that, you will be left with laws to take care of a situation—not adequately at first, but at least the basic things can be attended to. You will need to bolster the judicial system to create more courts, recruit more judges, but it will not be a complete vacuum.

"The chaos that one sees now can be attributed in large measure to the presence of occupation. People are not inclined to obey the laws of an occupier. This is natural. Particularly when they see that human rights are fundamentally being denied. What worries me is [how] to really re-educate people who now are under a new system and have to respect the law. In the past, there was the temptation, perhaps justifiable, not to obey. But now that is not the case. You have to obey the laws.

"The other factor is to impress on them that the organization now, the new administration, will itself be subject [to the law]. Because the trouble is that the arbitrariness of the military occupation and the violations of the human rights of the Palestinians give the impression that the administration is not subject to [the law]—that it could do whatever it liked. So you now have to educate your own people and administrators that really you have to obey the law and respect the rights of others—citizens and noncitizens—under the law."

And that presents the biggest risk, the biggest fear among the Israelis.

A NEED FOR PRAGMATISM

"They have so many obstacles," Singer said. "First of all, you are talking law and order, you are talking about courts and police. Remember, we are basically talking with an organization that is in transition from a terrorist organization to a statehood. I cannot tell you where it is now situated—is it somewhere in the middle or closer to statehood or closer to a terrorist organization? Sometimes it depends on who you speak with. We have lots of problems with regard to their being able to assume the responsibility.

"They are not prepared, mentally or physically. They have not yet come to grips with the new reality. I can give you a few examples. The police force. We want them to establish a strong and efficient police force, because we are well aware of the opposition that they will encounter and we want them to succeed. Because if chaos would be created, we will have to somehow come back—which is something we don't want to do. They come to us proposing a police force of 30,000 officers. We tell them that you don't need more than 3,000 to 6,000 police officers.

"You cannot afford paying the salaries of 30,000 police officers; it would take years to train them and you can't do that. But for them it is very important to have something which is like an army because of national pride and so on. But they don't think of how to pay their salaries. This comes as a second priority."

(Another Israeli source described the internal conflicts within the PLO: "We know that Yasser Arafat thinks like a politician and we are talking with the people who hold the budget. The individual with whom this agreement was negotiated with in Oslo was the secretary of finance, and he knows better than anyone else what the situation of the PLO is. And they don't talk with one another now.

"Arafat says, 'I want to have my own money.' When he says his own
money, it means with his picture on the [bill]. And the PLO economists
tell him and us, ‘We can’t do that. We
need to maintain our economic ties
with both Jordan and Israel. It takes
time.’ And he [Arafat] says, ‘No, I
want my own money.’ So you have
this clash. And I can go one issue
after another to show the clash be­
tween pragmatism and ideology.”

But does Israel think Arafat
will be willing to turn over decision­
making powers to a judicial system?

“No,” Singer replied. “That will
create a conflict. He is not ready.

Listen, in the PLO delegation, there
are individuals who tell us, not in the
conference room but in the corridors,
how they personally killed other
[Palestinian collaborators] with their
own hands. And we are talking about
the legitimacy of a court system? It
will take time.

“The Palestinian court system
that exists now in the streets is that
whenever they capture someone ac­
cused of either collaboration with
Israel or unmoral behavior, they
take him to the main square of the
town and read aloud the sentence
and either shoot him in the head or
the legs. Now, they need some time
to progress to a [legal system that is
more just]—but it will happen.

“But, with all due respect to the
profession, the court system is not
the first priority. The first priority is
to be able to establish [their own
internal stability]. You see, they
have the PLO from the outside—
from Tunis—and they have the PLO
from the inside. And they have inter­
nal clashes in Tunis. I guess that
probably 50 percent, if not more, of
the PLO proper either voted against
the agreement or voted against it by
not being there.

“They have the Hamas, the
Islamic Jihad in the Gaza Strip,
which is not only against the agree­
ment, it is against the existence of
Israel. They have 10 opposition
groups situated within Iraq, Syria
and Libya who are cooperating against
the PLO and Israel.

“First of all, they have to estab­
lish control. And they need money
desperately because the PLO is still
on the verge of bankruptcy. Before
they start modernizing the sewage
system, they need to pay salaries.
And then will come other priorities
like the court system, human rights.”

PROTECTING HUMAN RIGHTS

“Incidentally, in the draft agree­
ment I am working on,” said Singer,
“I am including articles about human
rights. And I am talking about the
Palestinians treating humanely their
own opposition, because we feel that
so long as there is not complete
independence, we have some respon­
sibility, if only marginal. They will
carry the main responsibility, but we
cannot absolve ourselves of all
responsibility for whatever is going
to happen there.

“I have been talking to the Red
Cross, urging that they not only visit
our prisons but their prisons as well,
in order to make sure that their
detainees are treated humanely, not
only our detainees.”

Human and individual rights
are a primary concern for Al-Qasem
as well. “Two important sections of
the Palestinian constitution I have
prepared deal with human rights,
because all of us are concerned with
that,” said Al-Qasem. “We want to
establish a system that gives the
people the security that they have
been missing for the last 26 years.
That’s why there will be a great
emphasis on due process of law.

“And this I am also introducing
so that not only the affected party
can go to the court and claim his
remedy, but any citizen who hears of
a violation can go to the court and
ask for a remedy. I am also thinking
of a law, in addition to the normal
procedures under the criminal law
and the constitution, to create the
office of ombudsman to whom any
citizen can go and complain.

“In this, I am resurrecting and
modernizing a Shari’a concept, be­
because the ombudsman really started
in the Shari’a. The ombudsman is
really a guarantor of public order,
public rights.”

Sort of a nonjudicial dispute
resolution?

“Exactly, to reinforce the reso­
lution of disputes and rights so we
have it on two cycles. This man or
body to whom people can complain if
they have made an application to that
administration and did not receive a
reply—because, remember, I want to
address a situation now from which
people have suffered. I want to give
the citizen a right to a remedy to
enforce the concept that a citizen’s
rights have to be respected. It’s not
only that you ask the citizen to
perform his duty, but you also have
to respect his rights.”

Al-Qasem’s proposed court struc­
ture would follow “the normal proce­
dure—court of first instance, court of
appeal and supreme court, which
would be the highest court in the
land. And also an administrative
process under which you can chal­
lenge the decisions taken by the
administration if they are illegal, if
they are arbitrary, if they are beyond
the powers of the administration.

“We have in English law, as you
know, mandamus, etc., but we want
to give it a wider scope so that any
administration is not beyond judicial
review. If you want to challenge an
act of the administration, you won’t
need [its] approval.”

But is there a provision in the
draft constitution for emergency pow­
ers, for suspending the constitution?

“No. There isn’t because we
Palestinians have been living under
emergency powers for the last 70
years—under the British mandate
and then under Israel. I am not going
to maintain any emergency powers.

Not one of them ever. Israelis them­
selves appealed the emergency regu­
lations enacted under the [British]
mandate. But then they instituted
them to apply to the Palestinians. I am not going to have my people under them. And in my draft of the constitution, it is my proposal that there be no capital punishment.”

A PEOPLE IN TRANSITION

Still, as does Singer, Al-Qasem has concerns about the transition period and the adjustment problems for the Palestinians.

“I think it comes down to experience,” he began. “You have spent most of your life trying to overcome a situation that was egregious. Once you have reached that, you have to be able to shift gears.

“That is the biggest challenge, in fact. It is not a question of a revolutionary simply changing himself into a builder, but whether he has the mentality to change, whether he has the capacity to realize that at that moment in time, the role has become that of a manager, a builder, rather than a fighter. That is why I thought it is better to start with a constitution, with political parties, with safeguards for human rights.

“The Palestine National Council will vote on [the draft of the constitution]. I insist on that. Then when we reach the stage of elections, you have a different situation. You can present it to the people and let them have their say.

“But I do not want to leave [the people] in a constitutional vacuum until elections take place, which will be, at best, looking to the end of 1994,” he explained. “During that time, habits may grow. And I would like those habits to be controlled by some sort of constitution.”

Moreover, Al-Qasem is adamant about the independence of the new Palestinian judiciary, including appointing judges rather than electing them.

“We will appoint our judges the same way you have in the [U.S.] federal system. We have to give them all the guarantees. It is essential, the guarantees of independence and tenure. They will be self-regulating through a high judicial council composed of judges in charge of appointment, promotion and so on. It will be an entity separate [unto] itself.”

Al-Qasem also wants the judiciary insulated from the legislative and executive branches, because “their motives may not be judicial.” He remained optimistic that the executive will enforce the court orders.

“There are enforcement procedures under the civil procedure laws,” he said. “But what is more important is how to make the administration obey the decisions of the court. In all of the Arab countries the police are under the administrative branch, not the judicial branch. Prisons will be subject to judicial inspection.

“But on the police, my recommendation was accepted that the new Palestinian police force be given courses in human rights so that they are fully aware that their duty is not simply to enforce public order but to respect the rights of citizens and others.”

Under Al-Qasem’s view, women will also play key roles in the government. “Women will have all civil rights. This we cannot deny. They have been participating in the struggle with men equally all these years. They are the mothers of the young boys in the Intifada. I cannot say, ‘You have no right.’ Palestinian women have suffered equally, perhaps more. For a mother, her suffering for the loss of a son is more than the suffering of fathers.

“Look,” he continued. “You don’t do it [draft a constitution] lightly, and you don’t do it every day. It is a fascinating subject to draft a constitution—how to frame it so that it cannot be violated or how to frame it to make it enforceable.

“I have in mind the judgment of the Israeli Supreme Court, which declared that those principles in the Israeli declaration of independence of the equality of rights [were] not constitutionally enforceable. They were ruled only declarations of political intention so you could not rely on that as a legal document to claim one’s rights.

“I am concerned about this. I don’t want anyone in the future to say that any provision of the constitution is political and therefore not enforceable. I would not accept that.”

A QUESTION OF SETTLEMENTS

Probably no issue in the peace process is more fraught with peril and emotion than that of the Israeli settlements in the occupied lands. Eventually, some courts are going to have to rule on ownership and rights. And it is one area where Singer and Al-Qasem have diverging viewpoints.

Singer said, “The issue of settlements was postponed until permanent status negotiations take place in five years.

“But I can tell you that most of the settlements were established either on public lands—land not owned by anyone but the state, whatever state, so there is no conflicting ownership. Or in some cases, settlements were established on pre-1948 Jewish property, like in the area in the West Bank that was settled by Jews until 1948 and then during the Israeli independence war was captured and all the Jews either killed or forced out. And there are some places inside Hebron still registered as Jewish property.

“But in most cases, public property—state land. Whose, what state? Those issues will be settled in five years. There are some cases in which private land was seized by the military government, specifically 15 years ago, and settlements were established. This is a minority of the cases.

“My feeling is that eventually they will agree to the continued existence of settlements in the West Bank. There are Palestinian Arabs living in Israel. There could be Jews living in the West Bank.”

But Al-Qasem sees the introduction of the settlements as another example of Israeli abuse of the military orders. “In 1967, Israel came into the situation,” he said, “and started its own process of military orders. Those military orders are, at the present, about 2,600 military orders.” (A senior Israeli military spokesperson put the number at 1,400—a possible explanation is whether you add the 1,400 orders for the Gaza Strip and 1,400 for the West Bank, which are governed by separate military commanders.)

These military orders concern what broadly, in Israel’s view, were called security orders, but some had a serious effect on the existing legal order. The occupier under international law has no right to legislate except to the extent necessary for the protection of its forces. But Israel in its military orders went much beyond that, including expropriation of property.

“According to some statistics, about 60 percent of the West Bank has been expropriated by Israel. About 40 percent of the Gaza Strip. When these expropriation acts were challenged before the Israeli Supreme Court, the Court simply accepted the statement of the administration that these are for security interests and did not investigate further to see what security really required.”

Al-Qasem continued: “The areas were not used for military purposes. These areas were used for settlements. And under international law, an occupier has no right to expropriate land and transfer its foreign population to settle in the occupied territory. The United Nations Security Council has decided on a number
of occasions that these settlements were illegal. Even the United States could not vote against a resolution which declared these settlements to be illegal, despite its known support for Israel, because this is a clear case of illegality against international law.”

Nevertheless, Al-Qaseem agreed that it is likely that, eventually, Jews will reside in Palestine just as Palestinians reside in Israel. But he sees them coming under Palestinian sovereignty. “The future of the settlements, as you know, is on the agenda in the negotiations. My expectation is that the whole situation will be governed by the rule of law in international law. So in law, all of these expropriations are illegal. And I, as a lawyer, would not be prepared to give legality to an illegal act.”

**ADJUSTING TO CHANGES**

Besides questions of land ownership, there remains the uneasiness of enforcing the law with Palestinians and the settlers in the occupied lands. Is a dual police force workable, and if so, how? What if it is something as simple as a Palestinian officer giving an Israeli settler a traffic ticket?

Singer acknowledged that “there is lots of misunderstanding among Israelis. They should not accept a traffic violation ticket because, as I said, the Palestinian Authority will not have jurisdiction over them. It is only the Israeli police officers who could deal with Israeli offenses. Incidentally, there is no distinction under the Declaration of Principles between Israeli settlers or tourists coming from Israel to visit the area.

“The only thing that the Palestinian police officers could do with regard to Israelis is to require identification that would demonstrate that these are Israelis not subject to the Palestinian police. If an offense has been committed, the Palestinian officer would call an Israeli officer to deal with the situation.

“Because on many occasions we may have involvement of both Israelis and Palestinians in an incident, we are establishing with the Palestinians a joint security committee to deal with all issues of common concern and will cover more than just incidents with Israelis and Palestinians. We have common enemies as well that we need to coordinate our activities against.

“Under this joint security committee, we will have a joint emergency center manned by representatives of both sides and connected by means of communications with both sides in a 24-hour-a-day system. Underneath this emergency center, we will have situation rooms in different places. There will be joint Palestinian-Israeli patrols on routes that may have both Israeli traffic and Palestinian traffic.

“We will have mobile units and units stationed in key positions that can be called to the scene of a crime or an incident and take care of it. In each case you will have someone responsible. Then all problems will be coordinated from the terrain up to a semi-political security committee.

“Above that, we will have a real joint liaison committee headed by Shimon Peres on our side and Abu Mazen, who is the number two on the other side. I am a member of the high liaison political committee, and one of our functions is to deal with disputes. So we have a spectrum of means to deal with incidents.

“What we try to do with Israelis is to take them to Israel and try them in Israel. We may have military courts in order to try in some cases—and we have to deal with it in the agreement and define the situations—where terrorist activity against Israelis has occurred and we apprehend the perpetrator. We would like to retain the ability, in some cases, to try terrorists.”

“In other cases, we will hand them over to the local system to try them because we do recognize the responsibility of the Palestinian Authority to maintain law and order in the area. We have to somehow agree on the dividing line between the cases in which we will hand over the suspects [and be satisfied that they dealt with that] and those limited cases in which we will insist on trying them ourselves.”

Singer did say it is possible the Palestinian police might be allowed to detain Israelis until Israeli police arrive.

“We are thinking about allowing Palestinian police to detain Israeli suspects until Israeli police arrive. We will need to define for how many hours, but basically, we don’t want the suspect to disappear from the scene of a crime.”

Al-Qaseem agrees that it will be difficult, but remains more optimistic about the Palestinian people adjusting to a law-and-order society. He worries about the reaction of the Israeli settlers.

“They [the settlers] will have to find a political solution. It is certainly a problem, particularly when you have someone who is not prepared to accept that now there is a Palestinian administration and they have to live under it.”

How much will Islamic jurisprudence, the Shari’a, influence the legal system?

“We will have a legal system which will try to benefit from modern legal systems,” Al-Qaseem replied, “to provide justice as far as justice can be seen and provided for in law with no discrimination and no preference to one legal system against another. The influence of the Shari’a would be limited to the general principles of law which are recognized in any legal system.

“We will certainly not make it a system like something they are trying to do in the Sudan or with the Shari’a in Iran because that is not the perspective of the Palestinian people.”

But what about the emphasis on the Shari’a and the Qur’an which is viewed as the supreme law?

“The supreme law of the Moslems,” Al-Qaseem corrected. “Don’t forget, there are many Christian Palestinians. There will be Moslem personal status courts in the same way there will be Jewish personal status courts and Christian personal status courts. This had existed in Palestine before the British mandate. And this will continue.

“But when you come to the civil code or the criminal law or commercial law or banking law, you don’t create exceptions on the basis of religion. No, everyone will be subject to the same law.”

So it is unlikely that Palestine will evolve into an Islamic fundamentalist state like Iran?

“For us, the Palestinians as far back as 1974, the PNC adopted a resolution calling for the creation of a secular Palestinian state,” Al-Qaseem said, “We are committed to that. The problem of Hamas on legislation is there, but they will not be the deciding factor.”

“I want to try to create a system of which our people can be proud,” Al-Qaseem said. “I don’t want the new Palestine to be another small dictatorship like in some Latin American countries. I want it to be one you can visit, and go to in peace and know full well that there is a law that will protect you. That is my hope.”

Singer also remains optimistic.

“At one point, I remember one of [the PLO negotiators] telling me very sincerely, ‘You know what my problem is, that you are my enemy, but I like you so I have an inner conflict. I should hate you, but I like you very much and it’s true. I mean after you know someone and you meet with him so intensively ...’.”

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