THE EMERGING PALESTINIAN DEMOCRACY UNDER THE WEST BANK AND GAZA STRIP SELF-GOVERNMENT ARRANGEMENTS

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I. INTRODUCTION

On 20 January 1996, the Palestinians of the West Bank and the Gaza Strip held, for the first time in their history, fully democratic political elections for a Palestinian Council. The elections were conducted pursuant to the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, signed on 28 September 1995 in Washington, DC ("Interim Agreement").1 This agreement contains a number of additional elements

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1 The Interim Agreement is the latest of six main agreements signed thus far between Israel and the PLO as part of the current peace process. The six agreements are the following:

4. The Agreement on the Preparatory Transfer of Powers and Responsibilities, signed on 29 August 1994 ("Early Empowerment Agreement I"), circulated by the Israel Information Center.
5. The Protocol on Further Transfer of Powers and Responsibilities, signed on 27 August 1995 (Early Empowerment Agreement II and, together with Early Empowerment Agreement I, "Early Empowerment Agreements").

designed to foster the development of democratic institutions and processes, including provisions formulating the structure of the elected Palestinian Council and mechanisms for accountability and oversight. As detailed below, these democratic arrangements are promising, especially when compared with the political standards prevalent in the Middle East.

The relationship between democracy and Middle Eastern politics and traditions has been the subject of much commentary in recent years. In 1993, Bernard Lewis observed that “considering the difficulties that the Middle Eastern States have inherited and the problems they confront, the prospects for Middle East democracy are not good”. Historians and political scientists have focused on various aspects of these “inherited difficulties” as explanations for the region’s current political culture. Some have noted the effects of centuries of Ottoman rule, during which an autocratic Sultan and a powerful centralized bureaucracy impeded the development of democratic institutions in the area. Others have noted the inherent conflicts between Islamic religious tradition and the basic elements of democracy. As Elie Kedourie described it, traditional Islamic political theory posits a religious community governed by a ruler who is both “the prophet’s apostolic successor” and the “sole political and military authority” within that community, and to whom obedience is due as an absolute religious obligation. Given this religious understanding of the nature of political leadership, Kedourie noted, “[t]here can be no question of checks and balances, of division of power, of popular sovereignty, of elections or representative assemblies”. Other writers have argued that the Arab States reject democracy as the product of a much resented Western culture.

These historical and religious factors, which analysts see as inhibiting the evolution of fully functioning democratic political systems in the area, are also present in the Palestinian political culture. Nevertheless, and despite the reality of 30 years of Israeli military occupation, democratic patterns have developed among the Palestinians of the West Bank and the


The Gaza-Jericho Agreement and the Early Empowerment Agreements were superseded by the Interim Agreement (Art. XXXI.2).


5 Id. For a contrasting view suggesting that Islam does include a number of pluralistic and constitutional traditions, *see* Lewis, *supra* note 2, at 97.

6 Deegan, *supra* note 3, at 135.
THE EMERGING PALESTINIAN DEMOCRACY

Gaza Strip. Moreover, as detailed in this article, the new self-government arrangements for the West Bank and the Gaza Strip may provide the framework for what it is hoped will allow the Palestinians to develop one of the most democratic Arab regimes in the area.

In order to understand the latest developments in the right context, this article first reviews the democratic trends in the West Bank and the Gaza Strip during the 30 years of Israeli military government rule that preceded the Palestinian self-government arrangements. It then examines the various political plans that were developed for the West Bank and the Gaza Strip which called for elections. Finally, the article analyses the pertinent provisions of the Israel-PLO agreements, describes the background of their negotiations, and recounts their actual implementation.

II. DEMOCRATIC TRENDS UNDER THE ISRAELI MILITARY GOVERNMENT

A. General

Under the Interim Agreement, during the five-year transitional period, the status of the West Bank and the Gaza Strip is that of a Palestinian autonomy under the supreme authority of the Israeli military government. Given the nature of this arrangement, and in order to better appreciate the unique characteristics of the Palestinian autonomy, it is pertinent to examine first the base-line of "pure" military government that preceded the autonomy.

The structure of a military government contrasts sharply with the ideas of Montesquieu and the Jeffersonian ideal of a government in which the legislative, executive and judicial branches are clearly separated. Instead, the military government's administrative, executive and legislative functions are normally vested in one person – the military commander of the occupied territory. Thus, in 1944, General Dwight D. Eisenhower, acting as the Supreme Commander of the Allied Expeditionary Force, announced in a proclamation addressed to the inhabitants of occupied Germany that "[s]upreme legislative, judicial and executive authority and

8 See generally, The Federalist (No. 51), reprinted in Readings in American Democracy (G. Stourzh & R. Lerner eds., 1959) (arguing that a full separation of governmental powers is needed so that "the constituent parts may, by their mutual relations, be the means of keeping each other in their proper places".)
powers within the occupied territory are vested in me as Supreme
Commander of the Allied Forces and as Military Governor, and the
Military Government is established to exercise these powers under my
direction".9

Furthermore, civil rights and free elections are usually limited during a
military occupation. It has been stated that “[p]olitical laws and
constitutional safeguards are as a matter of course suspended during
occupation: for example, the laws concerning ... suffrage, the right of
assembly ... and the freedom of the press”.10 While occupants have
occasionally allowed the inhabitants of occupied territories to hold local
elections,11 their participation in national elections is, as noted above,
generally forbidden, and even municipal elections under occupation have
not been a particularly wide-spread phenomenon. Indeed, notwithstanding
the humanitarian guarantees provided by international law, the nature of
military government is not conducive to a democratic exercise such as
elections, even when limited to the local arena.

B. Elections to Palestinian Local Authorities and Chambers of Commerce
in the West Bank (1967-1980)

In June 1967, when Israel occupied the West Bank, which until then had
been under Jordanian control, the next municipal elections in this area
were only three months away.12 Consistent with the international law and
practice reviewed above, the Israeli military government suspended these
elections, and extended the term of office of all the existing local
authorities (including municipal and rural councils) “until a further order

9 Proclamation No. 1 of September 18, 1944, Art. II, reprinted in G. von Glahn, The
Occupation of Enemy Territory - A Commentary on the Law and Practice of Belligerent
Occupation 43 (1957). The Israeli practice since 1967 with regard to the West Bank
and the Gaza Strip has been similar. J. Singer, “The Establishment of a Civil
Administration in the Areas Administered by Israel”, 12 Israel Yearbook on Human
Rights 259, 266 (1982).
10 The Law of War on Land, being Part III of the Manual of Military Law Sec. 519, (H.
11 G. von Glahn, supra note 9, at 98.
12 The last municipal elections under Jordanian rule were held in September 1963. Since
under Jordanian law municipal elections were to be held every four years, the next
elections were due in September 1967. M. Drori, “Local Government in Judea and
Samaria”, in 1 Military Government in the Territories Administered by Israel 1967-
1980 - The Legal Aspects 237, 262 (M. Shamgar ed., 1982).
is issued by the Commander of the Israel Defence Forces in the Region".13

Four years later, however, Israel concluded that the time had come to hold municipal elections in the West Bank as part of the over-all process of normalization. Thus, in 1972, the military commander issued the Order concerning Municipal Elections,14 pursuant to which elections were held for the municipal councils of the Northern part of the West Bank (Samaria) and Jericho on 28 March 1972, and for the municipal councils of the Southern part of the West Bank (Judea) on 2 May 1972.15 These municipal elections, held in 23 towns of the West Bank, were received favourably by the public, with a resultant high percentage of participation – 83.9% in Samaria and 87.8% in Judea.16

Subsequently, from 1972 through 1973, the military government held successive elections for Chambers of Commerce in a number of towns in the West Bank.17 Thereafter, in 1975, encouraged by the success of the municipal and chamber of commerce elections, Israel decided to hold elections for the rural councils of the West Bank. These elections, which also attracted a high percentage of participation, were held in stages throughout 1975 for 60 West Bank rural councils.18

In 1976, when the term of office of the municipal councils elected in 1972 was about to expire, Israel decided to hold municipal elections once again. While the previous municipal elections, like the other elections held during the Israeli military government rule, scrupulously followed the provisions of the pertinent Jordanian laws, this time Israel decided to introduce a number of amendments to the Jordanian Municipalities Law,19 which also regulated municipal elections. The purpose of these amendments was to expand the scope of suffrage and thus to strengthen the democratic nature of these elections. Accordingly, the right to vote, which under the Jordanian Law was confined to men,20 was extended to women as well.21 In addition, the Jordanian rule that the franchise was

13 Section 2 of the Order concerning Extension of the Terms of Office of the Executives of Local Authorities (West Bank) (No. 80), [1967] Collection of Proclamations and Orders (Judea and Samaria) 200.
14 (No. 454), [1972] Collection of Proclamations and Orders (Judea and Samaria) 1099.
15 Drori, supra note 12, at 264-66.
16 Id.
17 Ibid., 269.
18 Ibid., 275.
19 Law No. 29 of 1955, Jordanian Official Gazette No. 1225, 1 May 1955.
20 Ibid., Sec. 12(1).
21 Order concerning the Municipalities Law No. 29 of 1955 (Amendment No. 9), [1975] Collection of Proclamations and Orders (Judea and Samaria) 54.
limited to property owners, i.e., persons normally belonging to the middle and upper classes,\(^\text{22}\) was amended so as to extend the franchise to tenants,\(^\text{23}\) i.e., to members of the lower socioeconomic classes as well.

The elections were held on 12 April 1976 and, as a result of the Israeli amendments to the Jordanian law, the number of eligible voters almost tripled in 1976, as compared with the 1972 figures.\(^\text{24}\) The turn-out was somewhat lower than in 1972 (72.3%); however, the elections were conducted in an orderly manner, displaying a clear democratic attitude by both candidates and voters.\(^\text{25}\)

In 1980, however, when the four year term of the municipal councils was reaching its end, the military government suspended the upcoming elections and extended the term of office of the existing councils indefinitely.\(^\text{26}\) This decision was based on the two following considerations. First, in 1980 Israel was already engaged in negotiations with Egypt and the United States over political elections for an autonomous Palestinian regime to take place throughout the West Bank and the Gaza Strip, pursuant to the Camp David agreement.\(^\text{27}\) Consequently, the limited municipal elections might have lost some of their original appeal.\(^\text{28}\) Second, the members of the municipal councils elected in 1976 adopted harsh anti-Israel positions and they actively opposed the Camp David autonomy plan.\(^\text{29}\) Israel was concerned,

\(^{22}\) Jordanian Municipalities Law, *supra* note 19, Sec. 12(3), which confined the right to vote to persons who have paid Land Tax or other municipal tax. The duty to pay these taxes applied to landlords only. Drori, *supra* note 12, at 278.

\(^{23}\) Before the elections, the military government issued regulations imposing municipal taxes, not only on land owners, but on tenants as well. See Municipal Regulations (Sanitations Services) (Judea and Samaria) (194-1) (1976).


\(^{25}\) Drori, *supra* note 12, at 283-84.

\(^{26}\) Order concerning the Extension of the Terms of Municipal Councils (Judea and Samaria) (No. 830), [1980] *Collection of Proclamations and Orders (Judea and Samaria)* 318.


\(^{28}\) See Drori, *supra* note 12, at 275, n.130.

\(^{29}\) See, e.g., H.C. (High Court of Israel) 774/83, Amar et al. v. Minister of Defence et al. 38(4) *Piskei Din* (Reports of the Supreme Court of Israel, hereinafter: *P.D.*) 645 (in which the Israeli Supreme Court dismissed a petition submitted by members of Durah, a town in the West Bank, requesting the Court to order the Israeli Minister of Defence to hold municipal elections, on the ground that Israel was not required under international law to hold such elections because members of the Durah council and other municipal councils in the region were engaged in anti-Israel activities.)
therefore, that new municipal elections would result in even more extremist leaders assuming power and a redoubling of their efforts to defeat the autonomy plan Israel was pursuing.

C. Palestinian Elections for Civic and Social Organizations and Quasi-Governmental Bodies (1980 - 1993)

Although, as described above, the process of regular municipal elections in the West Bank and the Gaza Strip came to a halt in 1980, Israel did not object thereafter to the holding of elections for the numerous non-governmental Palestinian bodies and organizations established in these areas. Thus, while the Israeli military government took necessary steps against participation by Palestinians of the West Bank and the Gaza Strip in terrorist groups and activities, it did not usually interfere with the operation of various professional associations, labour unions, women’s organizations, youth movements and other similar groups. Student organizations in the areas’ various educational institutions also proliferated under military occupation. These groups functioned democratically during all the years of the Israeli military government in that complex multi-party elections were often conducted, with different factions within and without the PLO putting forth lists of their candidates in elections for various student unions and chambers of commerce. Beginning in the 1980s, other movements, such as the labour unions and women’s organizations, were organized in federations aligned with the different PLO and non-PLO factions. Many of these groups and organizations continued to hold elections and to function democratically even during the Intifada.

In 1991, in the spirit of the Madrid Conference, the military government began what was intended to be a phased return to the regular

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31 R. Hamid, Legal and Political Aspects of Palestinian Elections 67 - 70 (1995). Maoz also notes that the student union factions were also known to engage in various types of undemocratic behavior as well, including physical attacks on their opponents. Maoz, supra note 30, at 232-33. See also Kaufman & Abed, “The Relevance of Democracy to Israeli-Palestinian Peace”, in Kaufman, Abed & Rothstein, supra note 30, at 41, 46-47 (arguing that the Palestinian experience with such elections is one factor which gives Palestinian democracy a particularly strong chance of success).
32 Maoz, supra note 30, at 231-34.
33 Ibid., 234-36.
holding of all municipal and quasi-governmental elections in the West Bank and the Gaza Strip. Thus, because of the precedent which they set, the 1991 and 1992 elections to the Chambers of Commerce in the West Bank and Gaza Strip were particularly significant.\footnote{Elections to the Chambers of Commerce were suspended in 1980 along with other municipal elections. See supra notes 26-29 and accompanying text. The results of the 1991 and 1992 Chambers of Commerce elections gave the Islamic Bloc successes in Ramallah and Hebron and the PLO-identified National Bloc a majority in the Gaza Strip. R. Hamid, supra note 31, at 66-67.} In light of the signing of the DOP, the plan to hold further municipal elections was not pursued by the military government.

Not surprisingly, much of this activity has paralleled the democratic methods used by analogous Israeli organizations in choosing leaders and conducting organizational affairs. Furthermore, through the media and through daily contact with Israelis, the Palestinians of the West Bank and the Gaza Strip were continuously exposed to Israeli attitudes toward democracy, political, and civil rights. Specifically, the West Bank and Gaza Strip Palestinians had the advantage of access to Palestinian newspapers published in Jerusalem, which were subject only to limited civilian Israeli censorship and not the stricter limitations imposed on materials published in areas under the military government. Access to these Jerusalem papers gave the West Bank and Gaza Strip Palestinians the opportunity to publish relatively freely and to read about a wide variety of political issues affecting life in the territories.

The Palestinians' easy absorption of Israeli political culture is evidenced most strongly, perhaps, in the frequency with which Palestinians have petitioned the Israeli High Court of Justice, a court which has original jurisdiction over all disputes regarding allegedly improper actions of any branch of the Israeli government, including the military government in the West Bank and the Gaza Strip.\footnote{On the supervision of the High Court of Justice over the military government see E. Nathan, “The Power of Supervision of the High Court of Justice over Military Government”, in Shamgar, supra note 12, at 35-42.} Thus, the Israeli Supreme Court, when sitting as the High Court of Justice, reviews the actions of the military government with the same standards of review applied to actions of any other part of the Israeli government. Through appeals to the High Court of Justice, the Palestinians have learned to appreciate the principle that decisions of government officials are subject to review and must conform to recognized legal standards of due process and proportionality.

Given this background, it has frequently been argued that the Palestinians of the West Bank and the Gaza Strip are particularly well
prepared for democratic self-government.\textsuperscript{36} Significantly, their experience with democratic practices contrasts with the political culture of the PLO itself, which has rarely been characterized by the kind of participatory democracy that has become familiar to residents of the West Bank and the Gaza Strip.\textsuperscript{37}

To a large extent, therefore, the Palestinians’ articulate attitude toward the elections to the Palestinian Council reflected a compromise between the position of the PLO, who considered the elections primarily as a means of assuming control and legitimacy, and the position of the Palestinians of the West Bank and the Gaza Strip, who sought an electoral process that would allow power-sharing between the young local leadership and the PLO.\textsuperscript{38}

III. POLITICAL PLANS FOR THE WEST BANK AND THE GAZA STRIP CALLING FOR ELECTIONS

A. General

Palestinian elections were a centerpiece in all the major political plans developed for the West Bank and the Gaza Strip following the 1973 Geneva Peace Conference. The significance of elections to Israel was twofold. First, having a democratic regime and recognizing its values,

\textsuperscript{36} Kaufman & Abed, supra note 30, at 46. Kaufman and Abed list several “democratizing” factors which suggest that the unique experience of the Palestinian population will render the success of a democratic regime in the West Bank and the Gaza Strip more likely. \textit{Ibid.}, 46-47. For a comprehensive review of factors militating both for and against the emergence of a strong Palestinian democracy, see A. Wing, \textit{Democracy, Constitutionalism and the Future State of Palestine} 5-21 (1994), and M. Monshipouri, “The PLO Rivalry with Hamas: the Challenge of Peace, Democratization and Islamic Radicalism”, 84 \textit{Middle East Policy} (March, 1996).

\textsuperscript{37} For example, the current members of the Palestinian National Council (PNC) have never run in any kind of popular elections. (The exceptions, of course, are those members of the PNC who became members of that body as a consequence of their election to the Palestinian Council of the West Bank and the Gaza Strip – see the discussion at infra note 120.) The PLO Constitution itself calls for the holding of elections to the PNC, but also provides that if elections should prove to be impossible its original membership will continue as members, with replacements to be appointed as needed by the rest of the PNC. Constitution of the PLO, Art. 5, reprinted in Y. Harkabi, \textit{The Palestinian Covenant and its Meaning} 125 (1979). In fact, the PNC membership has always been appointed by the leaders of the various PLO constituent factions and no form of elections have ever been held. See G. Bechor, \textit{Lexicon of the PLO} 200 (Hebrew, 1991).

\textsuperscript{38} \textit{See infra} note 83 and accompanying text.
Israel wanted to see a democratic Palestinian society developing by its side.\textsuperscript{39} Second, since Jordan had progressively detached itself from the West Bank until it renounced all claims to this area and severed the legal and administrative links between the East Bank and the West Bank in 1988,\textsuperscript{40} and because Israel, until the exchange of the letters of mutual recognition with the PLO in 1993,\textsuperscript{41} did not recognize the PLO as the representative of the Palestinian people, the contemplated elections served an additional purpose of creating a Palestinian representative body with which Israel could negotiate.\textsuperscript{42}

\textsuperscript{39} It has been stated that the importance of a democratic Palestinian autonomy is also rooted in the assumption that democracies do not initiate military attacks against each other. First, the constraints on leadership eliminate many aspects of secrecy needed for such attacks. Second, citizens in a democracy develop mutual respect for people sharing similar value systems and public support for belligerent foreign policies diminishes. R. Rothstein, "Democracy and Conflict", in Kaufman, Abed & Rothstein, supra note 30, at 20-21.


\textsuperscript{41} Mutual Recognition Letters, supra note 1. Rabin’s letter of response to Arafat concludes with a statement that “Israel has decided to recognize the PLO as the representative of the Palestinian people and commence negotiations with the PLO within the Middle East peace process.” \textit{Id.} Of course, once Israel recognized the PLO as its negotiating partner, the importance of elections based on the need to create a Palestinian body, alternative to the PLO, lost its relevance. The other factor (i.e., Israel’s wish to see a democratic Palestinian society by its side) has remained valid even after the initiation of the current Israeli-Palestinian negotiations in Oslo.

\textsuperscript{42} See supra note 54 and accompanying text. An early attempt made in the Camp David Agreement to substitute Egypt for the Palestinians failed. Thus, in a side letter to the Camp David Agreement, reprinted at 17 \textit{I.L.M.} 1474 (1978), Egyptian President Sadat wrote to US President Carter that “[t]o ensure the implementation of the Provisions related to the West Bank and Gaza and in order to safeguard the legitimate rights of the Palestinian people, Egypt will be prepared to assume the Arab role emanating from these provisions, following consultations with Jordan and representatives of the Palestinian people.” Similarly, a joint letter, dated 26 March 1979, sent to US President Carter by Prime Minister Begin and President Sadat, in conjunction with the signing of the Israeli-Egyptian Treaty of Peace, stated that the Egyptian delegation for the autonomy talks “may include Palestinians from the West Bank and Gaza Strip or other Palestinians as mutually agreed” (18 \textit{I.L.M.} 530 (1979)). In fact, however, Egypt could not find any Palestinians who were prepared to be included in the Egyptian delegation, and therefore proceeded with the negotiations alone. These negotiations took place from 1979 through 1982, at which time Egypt decided to suspend the negotiations, realizing that it could not proceed any longer without Palestinian participation. See generally, W. Quandt, \textit{Peace Process} 328-29 (1993) (describing the nature of the talks during the last days of US President Jimmy Carter’s administration).
B. Prime Minister Begin's 26 Point Autonomy Program

Thus, in 1977, a short time after President Sadat made his historic visit to Israel, Prime Minister Begin put forward a 26 point autonomy program ("Begin Self-Rule Program") which introduced the idea of Palestinian elections for the first time.\(^{43}\) This program suggested administrative self-rule (or autonomy) as a permanent solution for the West Bank and the Gaza Strip, with the question of sovereignty left open. With regard to elections, the program stated as follows:

3. The residents of Judea, Samaria and Gaza district will elect an Administrative Council composed of eleven members.
4. Any resident, 18 years old or above, without distinction of citizenship, or if stateless, will be entitled to vote in the elections to the Administrative Council.
5. Any resident whose name is included in the list of candidates for the Administrative Council and who, on the day the list is submitted, is 25 years old or above, will be entitled to be elected to the Council.
6. The Administrative Council will be elected by general, direct, personal, equal and secret ballot.
7. The period of office of the Administrative Council will be four years from the day of its election.

The program also provided the residents of the West Bank and Gaza Strip with the option of choosing either Israeli or Jordanian citizenship, enabling those selecting Israeli citizenship to also participate in the Israeli elections and those selecting Jordanian citizenship - in the Jordanian elections.\(^{44}\)

C. The Camp David Accords

While the Begin Self-Rule Program served as the basis for the ensuing Israeli-Egyptian-American negotiations, the resultant Camp David Accords deviated sharply from the original program with respect to a number of fundamental issues. Among these differences was Egypt’s

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\(^{43}\) "Self-rule for Palestinian Arabs, residents of Judea, Samaria and the Gaza District which will be instituted upon the establishment of Peace", presented by Prime Minister Begin to the Knesset on 28 December 1977, reprinted in *Israel's Foreign Relations, Selected Documents 1977-79* 272-79 (M. Medzini ed., 1981).

refusal to accept Begin’s idea of an “administrative authority”, to be run by an eleven member “Administrative Council”, devoid of legislative powers. Instead, Egypt wanted to see a “Self-Governing Authority” run by two bodies: a large parliament and a smaller executive body. The Egyptian proposal did not stem from Egypt’s concern regarding the nature of the Palestinian democracy, but rather reflected its support for expanding the scope of the Palestinian authority. Since an agreement on this point was not possible, the Camp David Accords included both of the terms used by the two sides: “self-governing authority (administrative council)”, deferring the resolution of this issue to a later stage. Regarding elections, however, the Camp David Accords followed the original concept of the Begin Self-Rule Program. These Accords thus called briefly for free elections for a self-governing authority (administrative council) by the inhabitants of the West Bank and the Gaza Strip, leaving all the details of the election modalities to be negotiated later.45

D. The Post-Camp David Autonomy Talks

Throughout the autonomy talks that lasted from 1979 through 1982, Israel and Egypt argued doggedly over a number of fundamental differences in their positions regarding the implementation of the Camp David Accords. One of these differences continued to be the question of whether the Palestinians would elect one body, of an administrative nature, comprised of eleven members, as Israel proposed, or whether there would be two bodies: one elected body with legislative functions, consisting of 80-100 members, and a second, smaller administrative body, as Egypt proposed. Israel was concerned that a large body with legislative authority would resemble the governmental structure of an independent State and, therefore, insisted on its position.46 With regard to election modalities, the

45 Camp David Accords, supra note 27, at 1467-68.
46 During the autonomy talks, Israel agreed to raise the number of elected members of its proposed Administrative Council from 11 to 13. Prime Minister Begin, however, rejected US Secretary of State Haig’s compromise proposal of a 20 to 30 member body, because he had heard that a certain European State had a parliament of that size. H. Sicherman, Palestinian Self-Government (Autonomy): Its Past and its Future 43, n. 9 (The Washington Institute for Near East Policy, Policy Paper No. 27, 1991). The Israeli concerns with regard to the proposed creation of a Palestinian legislative council separate from the Palestinian administrative body appear to be exaggerated. Research conducted for the US State Department on the subject of the Theory and Practice of Governmental Autonomy suggests that the existence of an elected legislative body is almost universal among autonomous entities. H. Hannum & R.B.
parties did make significant progress in their negotiations by agreeing on a long list of principles pertaining to such issues as rules for campaigning, eligibility to vote and eligibility for candidacy, the creation of a joint Central Election Commission (comprised of Israelis, Palestinians and other civilians – individuals and institutions – to be worked out and agreed upon by the autonomy negotiators) and the Register of Electors. The parties were not able, however, to agree on the system of elections (because this issue was closely linked to the question of the size of the council). Moreover, the parties differed sharply on whether the elections would also take place in Jerusalem. The Egyptian delegation insisted that elections, as well as the authority of the elected council, should also cover east Jerusalem, whereas Israel objected to both of these proposals. The parties were not able to work out these or other differences by the time the autonomy talks were suspended by Egypt in August of 1982.47

E. The 1982 Reagan Initiative

In September 1982, in a speech and accompanying Talking Points, US President Reagan launched a new initiative regarding the Palestinian autonomy which presented American proposals on a number of issues with regard to which Israel and Egypt had not been able to reach an agreement previously.48 With regard to Jerusalem, the Talking Points put forward a proposed compromise, according to which the Palestinian inhabitants of east Jerusalem would participate in the elections of the Palestinian Council (the implication being that the Palestinian Council would not have authority over east Jerusalem).49 The language of the Reagan Initiative left open the question of the extent of the participation (i.e., whether it would include the right to vote only, or both the right to vote and the right to stand as candidate). Israel rejected the Reagan Initiative because of this and other provisions, which deviated, in Israel’s view, from the Camp David Accords,50 and thus this plan has never


47 See generally Sicherman, supra note 46; R. Lapidoth, “The Camp David Process and the New US Plan for the Middle East: A Legal Analysis”, Univ. of Southern California Cities 17 (Fall – Winter, 1982-83). Egypt declared that the suspension was made, among other things, pending a new concept for discussion. Sicherman, supra note 46, at 46. For other reasons for the suspension, see supra note 42.

48 Reprinted in Quandt, supra note 42, Appendix H, at 476.

49 Ibid. 483, point B of the section entitled “Transitional Measures”.

50 See Sicherman, supra note 46, at 50.
become the subject of further negotiations. The US compromise regarding the participation in the elections of Palestinians of Jerusalem, however, was adopted by Israel and the PLO 11 years later in Oslo.\footnote{See infra notes 85-87 and accompanying text.}

\section*{F. The 1989 Israeli Government Peace Initiative}

In 1989, after a long hiatus in the autonomy talks, the Government of Israel published a new plan on Palestinian self-rule, which was included in a broader Peace Initiative prompted by the events of the Intifada.\footnote{Israeli Government Peace Initiative of 14 May 1989, reprinted in Sicherman, \textit{supra} note 46, at 147.} Like previous autonomy plans, this Initiative also called for a five-year transitional period for the West Bank and the Gaza Strip. However, this Initiative deviated from its predecessor plans in placing the “free, democratic and secret”\footnote{\textit{Ibid.}, 150, Para. 18.} elections before the beginning of the negotiations on the autonomy agreement, rather than after the beginning of its implementation. As elaborated in the Initiative, the purpose of this switch was to use these elections in order to choose a Palestinian representative body with which Israel could negotiate the terms of the self-rule agreement.\footnote{\textit{Ibid.}, 148, Para. 4.D.} In addition, according to the Initiative, the Palestinian-elected body would have become the self-governing authority during the transitional period, once the self-rule agreement had been concluded.\footnote{\textit{Ibid.}, 150, Para. 15.A.II. Israel thus adopted for the first time the expression “self-governing authority” previously used by Egypt. It is unclear, however, whether this meant that Israel also changed its substantive position on the administrative nature of the Palestinian autonomous body, since this Israeli Initiative did not deal with the structure or nature of the Palestinian elected body.} Furthermore, the Initiative designated this elected body (together with Jordan and Egypt, if it so wished) as Israel’s negotiating partner in the permanent solution negotiations.\footnote{\textit{Ibid.}, 149, Para. 10.} The Israeli Initiative, however, did not spell out the mechanism by which the details of the election modalities would be developed, i.e., whether it would be a unilateral Israeli effort or whether it would involve an agreement, and if so - with which party this agreement would be negotiated.
G. President Mubarak's Ten Point Election Plan of 1989

After its publication, the 1989 Israeli Peace Initiative became the subject of intensive consultations led by the United States with Israel, Egypt and other governments. In this context, less than two months later, Egyptian President Hosni Mubarak published a ten-point plan for the holding of Palestinian elections.\(^57\) This plan read as follows:

1. An Israeli commitment to accept any and all results of the poll.
2. The placing of international observers for the elections.
3. The granting of total immunity to elected representatives.
4. A withdrawal of the IDF [Israeli Defence Forces] from the balloting area.
5. An Israeli commitment to start talks on the final status on “date certain” (a specific predetermined date).
6. An end to all settlement activities.
7. Complete freedom of election propaganda.
8. A ban on entry of all Israelis to the territories on election day.
9. The participation of East Jerusalem residents in the elections.
10. The tenth condition is that Israel accept in advance the four principles of the US Middle East policy as stated in recent months by the State Department. These include:
   a) A solution based on UN Security Council Resolutions 242 and 338;
   b) The principle of peace for territories;
   c) Security for all States in the region; and
   d) Political rights for the Palestinians.

The US-led consultations, which also took into account Mubarak’s ten-point plan, continued until the outbreak of the Gulf Crisis in 1990, which led to the suspension of these consultations. Upon the conclusion of the Gulf War, the US resumed its efforts to launch a peace initiative, which culminated in the 1991 Madrid Conference.\(^58\) The new US initiative no longer focused on the Palestinian elections and thus Mubarak’s ten-point plan was set aside. Ultimately, however, Israel and the PLO effectively adopted points 1, 2, 4, 5, 7 and 9 of the Mubarak plan.\(^59\)

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\(^57\) President Mubarak’s list of ten conditions for the holding of elections in the West Bank and the Gaza Strip of 5 July 1989 is reprinted in The Arab-Israel Conflict, supra note 40, at 362.

\(^58\) See infra Chapter III. H.

\(^59\) See infra Chapters IV and V.
H. The 1991 Madrid Letter of Invitation and Assurances

The joint US-Soviet Union Letter of Invitation to the Peace Talks in Madrid, issued on 18 October 1991 to all of the participants of the Madrid Conference abandoned the Israeli concept of using the elections as the kick-off for the peace process.\(^{60}\) It resolved the issue of the Palestinian representation by establishing a joint Jordanian-Palestinian delegation. While neither the Letter of Invitation nor the US Letter of Assurances, sent to Israel in conjunction with the invitation, mentioned the Palestinian elections, the US Letter of Assurances sent to the Palestinians\(^ {61} \) included the following statement: “Furthermore, it is also the United States position that Palestinians of east Jerusalem should be able to participate by voting in the elections for an interim self-governing authority”. The United States thus concretized the extent of its long-standing position regarding the participation in the elections of Palestinians of east Jerusalem by ruling out the passive element of standing as candidates.\(^ {62} \) The Palestinian response to the US-Soviet Union Letter of Invitation, while accepting the invitation, declared that “[i]t is also our firm position that East Jerusalem is occupied territory and that all transitional arrangements are applicable to it”.\(^ {63} \) Thus, the Palestinians insisted that the same electoral arrangements regarding the right to stand as a candidate that would apply throughout the West Bank and the Gaza Strip would apply equally in Jerusalem.

I. The 1991-92 Washington Negotiations

Immediately after the conclusion of the Madrid Conference, in late 1991, negotiations on self-government arrangements commenced in Washington, DC between Israel and the Palestinian team of the joint Jordanian-Palestinian delegation. These negotiations lasted until August 1993, when the DOP was initialed in Oslo. The Washington negotiations reflected the same wide gaps between the positions of the two sides as had been displayed during the post-Camp David negotiations. The two sides

\(^{60}\) Reprinted in The Palestinian-Israeli Peace Agreement: A Documentary Record 3 (1994); hereinafter: Documentary Record.


\(^{62}\) See supra text accompanying notes 49-51.

\(^{63}\) Palestinian Response to the Madrid Invitation, dated 22 October 1991, reprinted in Documentary Record, supra note 60, at 12.
again presented opposing views on whether the self-government arrangements should be applicable to Jerusalem. With regard to the elections and the structure of the elected body, they differed on the following main elements:

1. **Structure and Nature of the Palestinian Elected Body**: The Palestinians proposed the establishment of a self-governing authority consisting of three bodies, including a legislative assembly and an executive council,\(^64\) whereas Israel advanced the idea of a self-government authority with an "administrative-functional nature" without legislative powers (except for the authority to promulgate regulations).\(^65\) The United States sided with the Palestinian position that the self-governing authority should have legislative powers,\(^66\) without specifying, however, whether these powers should be exercised through a body separate from the one exercising executive powers, or whether both powers could be exercised by a single Palestinian authority.

2. **Size**: The Palestinians proposed a 180 member legislative assembly,\(^67\) whereas Israel presented a proposal for a 15 member administrative council.\(^68\)

3. **Palestinian Elections**: Both sides agreed that the elections should be fair, free, general and direct, and that the modalities of these agreements should be worked out through detailed negotiations.\(^69\) However, the parties held opposing positions regarding a number of fundamental elements of the elections as reviewed below.

4. **Eligibility to Vote and Stand as Candidates**: The Palestinian position was that "Palestinians from the West Bank and Gaza, as well as persons displaced since 1967 and deportees should participate [in the elections] fully".\(^70\) The Israeli position was that only Palestinians from the


\(^{65}\) Informal Compilation of Israeli Ideas on the Concept of the Interim Self-Government Arrangements, 10 December 1992, reprinted in *Documentary Record*, supra note 60, at 79.


\(^{67}\) Outline of Model of the Palestinian Interim Self-Government Authority, supra note 64.


\(^{69}\) This agreement is reflected in the numerous documents presented by the parties, including those referred to in notes 64 through 68, supra.

\(^{70}\) Outline of Model of the Palestinian Interim Self-Government Authority, Para. 3(a), supra note 64.
territories (i.e., those Palestinians actually living in the West Bank and the Gaza Strip) could participate.\(^71\)

5. **Observation and Supervision:** While both sides agreed that international observers should monitor the elections, they differed on the issue of supervision. The Palestinians suggested that the elections be supervised by international supervisors provided by the United Nations, and that the supervision was to include an international election high commissioner, an international supervising committee (to arbitrate elections disputes) and the stationing of UN or other international forces.\(^72\) Israel opposed the concept of international supervision and proposed the use of the term “agreed supervision” instead.\(^73\)

### IV. THE DECLARATION OF PRINCIPLES

#### A. General

The signing of the DOP in Washington, DC on 13 September 1993 constituted the first time that Israel and any Palestinian representative body had come to an agreement regarding arrangements for Palestinian self-government – in fact, it was the first agreement of any kind signed by Israel and a Palestinian representative body. This historical agreement envisaged the development of the Israel-Palestinian peace process in four stages of increasing complexity and sensitivity. The first stage was the Gaza-Jericho Agreement, implementing the DOP provisions dealing with the withdrawal of Israeli military forces from the Gaza Strip and the Jericho Area,\(^74\) and the transfer of powers from the Israeli military government and its Civil Administration to a PLO appointed Palestinian Authority.\(^75\)

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74 The term “Jericho Area” is defined in Art. I.a of the Gaza-Jericho Agreement by reference to the map annexed thereto.

75 For a discussion of the reasons for transferring power at this stage to a non-elected body, *see infra* note 83 and accompanying text.
The next stage, set out in Article VI of the DOP, was carried out through the implementation of the Early Empowerment Agreements. This stage was designed to prevent an unbalanced situation in which self-government arrangements were in force in the Gaza Strip and the Jericho Area, while the rest of the West Bank continued to be subject to the Israeli military government in its fullest scope. The implementation of the Early Empowerment Agreements entailed the transfer of authority in certain spheres of responsibility throughout the West Bank to the Palestinian Authority - six in August of 1994 and eight in August of 1995.

The Interim Agreement, the third stage of implementation of the DOP, provided for the establishment of an elected Palestinian Council and for the redeployment of Israeli forces throughout the West Bank. The arrangements contained in this agreement are to remain in force throughout the five year interim period which began on the date of entry into force of the Gaza-Jericho Agreement and will be completed by 4 May 1999. Finally, the DOP called for permanent status negotiations to begin no later than the third year of the interim period, and the arrangements concluded as a result of these negotiations are to be implemented at the conclusion of the interim period. The DOP envisioned the permanent status agreement to be the fourth (and last) stage of implementation, bringing about full peace and reconciliation between Israelis and Palestinians.

B. Structure of the Elected Body

The DOP provided for the establishment of an elected council to serve as an interim Palestinian Authority, whose structure and size were to be negotiated in connection with the Interim Agreement. Nevertheless, the DOP provisions clearly indicated that only one body – the Council – would exercise both legislative and executive authority within the Palestinian autonomy.

76 DOP, supra note 1, Art. III.1.
77 Ibid., Art. VII.2.
78 Ibid.
C. Elections

Although the details of the electoral process were left to the interim period negotiations,79 the DOP set out a number of general principles regarding the elections. Specifically, the DOP stated that the elections would be "direct, free and general political elections" and that they would be held "under agreed supervision and international observation".80 During the DOP negotiations, the Palestinian side proposed that both the observation and the supervision be international, while Israel suggested that supervision be provided jointly by the two sides. Since the two parties were not able to resolve this issue at that time, it was decided to defer it to a later stage, and hence the expression "agreed supervision".81

Similarly, many of the difficult issues involving participation in the election process were left to the Interim Agreement negotiations. Nevertheless, regarding those Palestinians who had left the West Bank and the Gaza Strip in 1967, the DOP adopted the Israeli position that they would not be able to participate in the elections for the Council, but that their non-participation would not prejudice their future status.82

While previous political plans had always provided for elections of a Palestinian representative body as the first step of an autonomy plan, the DOP did not. Rather, as elaborated above, the DOP deferred the elections to the third stage of its four stage plan of implementation. The rationale for this departure from the earlier plans was the initial concern of the PLO...

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79 The DOP envisioned the conclusion of an election agreement covering issues such as the system of elections, the mode of agreed supervision and international observation, and the rules and regulations regarding the election campaign. DOP, supra note 1, Art. III. 2 and Annex I, Para. 2. During the subsequent Interim Agreement negotiations, this contemplated election agreement evolved into an annex to the Interim Agreement (Annex II), supra note 1.

80 DOP, supra note 1, Art. III.1. By describing the elections as "political", the parties intended to emphasize that they would not be municipal elections. This issue had been raised repeatedly during the pre-DOP talks with the Palestinians in Washington, DC, during which the Israelis had taken the position that municipal elections should be held, at least as a preparatory stage, and the Palestinians had contended that the proposed elections should be for an autonomy-wide legislative body.

81 When this issue was tackled again in the Interim Agreement negotiations, the Palestinian side no longer insisted on international supervision. Rather, as described below, the parties developed a framework pursuant to which some aspects of the supervision were provided jointly (e.g., in matters pertaining to security and to the list of eligible voters), some were provided by Israel alone (e.g., in connection with voting by residents of Jerusalem) and others were provided exclusively by the Palestinians.

82 DOP, supra note 1, Annex I.3.
that holding early elections would force it to prematurely share powers with the Palestinian opposition forces and with the local leadership that had developed in the West Bank and the Gaza Strip during the Intifada, coupled with Israeli recognition of the PLO as the representative of the Palestinian people. As a result, Israel and the PLO agreed to negotiate the transfer of powers and responsibilities to a Palestinian Authority made up of Palestinians appointed by the PLO (with Israeli approval), rather than to an elected Palestinian body. Thus, as originally envisioned in the DOP, the elections themselves were to be held after the completion of the transfers of authority contemplated in the first two stages of the peace process (i.e., the stages implemented through the Gaza-Jericho Agreement and the Early Empowerment Agreements.) The parties originally expected that these agreements would be concluded and that the elections would therefore be held not more than nine months after the entry into force of the DOP.

D. Participation in the Elections by Palestinians of Jerusalem

While the parties had agreed to exclude Jerusalem from the jurisdiction of the Council but to allow the Palestinians living there to participate in the elections, an issue of contention during the DOP negotiations was the extent to which such Palestinians would be permitted to participate in the elections. During these negotiations, the Palestinians proposed that Palestinians residing in Jerusalem be given both the right to vote and the right to stand as candidates in the elections. This proposal was rejected by Israel, which insisted that Palestinians residing in Jerusalem would not be permitted to stand as candidates. Israel also rejected a proposal that the Palestinians residing in Jerusalem cast their votes within the city. The

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83 Israel recognized the PLO as the representative of the Palestinian people in a letter sent by Prime Minister Yitzhak Rabin to PLO Chairman Yasser Arafat dated 10 September 1993, which constituted part of the Mutual Recognition Letters, supra note 1. See also supra text accompanying note 38.
84 DOP, supra note 1, Art. III. 2. The elections were in fact held more than two years after the signing of the DOP, because the Interim Agreement was not signed until September of 1995. This delay was in large part due to problems encountered in the implementation by the Palestinian Authority of the security provisions of the Gaza-Jericho Agreement. Singer, “The West Bank and Gaza Strip: Phase Two”, supra note 7, at 15.
85 DOP, supra note 1, Art. IV and the Agreed Minute relating to Art. IV.
extent of participation remained unresolved, with the DOP stating only that “Palestinians of Jerusalem who live there will have the right to participate in the elections process, according to an agreement between the two sides”.

V. THE INTERIM AGREEMENT

A. General

The Interim Agreement deals with a multitude of issues ranging from security arrangements to economic co-operation. Of all these issues, the two subjects which were pre-eminent throughout the negotiations were the two issues most critical for the development of a democratic regime – the structure of the Palestinian self-governing body and the democratic election of its members. These two issues were central to the entire interim period arrangements, and the various elements of a democratic and accountable system of self-government in the West Bank and the Gaza Strip were carefully designed during the Interim Agreement negotiations.

Consequently, a sizeable portion of the Interim Agreement deals with the structure of, and the elections for, the Palestinian self-governing institutions. Specifically, the structure of the Palestinian Council, its size, its committees and its powers and responsibilities are dealt with in Articles III through IX and Article XVIII of the Interim Agreement itself, and the election arrangements are set out in Article II and in Annex II – the Protocol Concerning Elections. The Interim Agreement also envisioned the enactment of a Palestinian Law regarding the Ra’ees and Council.


88 Negotiations over these issues commenced in late 1994 and were concluded almost a year later when the entire Interim Agreement was completed with some of the most difficult issues (such as participation in the elections of Palestinians of Jerusalem) being resolved at the very last moment. Significantly, because of the security problems encountered in the implementation of the Gaza-Jericho Agreement, Israel refused to commence negotiations regarding the other parts of the Interim Agreement and for the first six months the parties negotiated only the election arrangements and the structure of the Palestinian Council.

89 Interim Agreement, supra note 1, Annex II, Art. I.2.
elections ("Palestinian Elections Law") and the Palestinian Elections Regulations, which were expected to provide the details of the election procedures.90

B. The Palestinian Council

1. Structure of the Council

a. General

The Council, elected in accordance with the Interim Agreement, replaced the Palestinian Authority formed pursuant to the Gaza-Jericho Agreement.91 As noted above, the DOP did not provide for a separation of powers between the executive and legislative branches. Consequently, the Palestinian Authority established pursuant to the Gaza–Jericho Agreement was vested with both legislative and executive authority.92 However, in accordance with its interest in strengthening the democratic nature of the Palestinian self-government, Israel agreed during the Interim Agreement negotiations to a separation of powers between the legislative body – the Council itself – and a smaller executive committee of the Council ("Executive Authority").93 The structure thus established provided for a system of checks and balances by giving the elected Council the power to oversee the work of the Executive Authority and by making the executive accountable to the elected legislature.94

b. Composition of the Council

The size of the Council was a point of contention during the Interim Agreement negotiations. The Palestinians argued that a large Council, consisting of 180 members, was necessary. Israel’s original position was

90 The Palestinian Authority did in fact adopt the Palestinian Elections Law, Law No. 15 of 1995, on 9 December 1995 ("Palestinian Elections Law"). For a description of the regulations, see the orders cited in infra note 104.
91 Ibid., Art. XXXI.3.
92 Gaza-Jericho Agreement, supra note 1, Art. IV.1.
93 Interim Agreement, supra note 1, Art. V.1.
94 In order to simplify the proceedings of the Council and to assist in overseeing the activity of its Executive Authority, the Interim Agreement provides that the Council may form small committees which will establish their own internal procedures. Interim Agreement, supra note 1, Art. VI.
that the Council should be relatively small, with a size not significantly larger than 24 members,\(^95\) making it similar in size to the legislative authorities of other autonomous entities.\(^96\) However, Israel eventually became convinced that a larger Council was necessary in order to allow representation for the various sectors of the population – urban and rural, Muslim and Christian, Palestinian leaders who grew up in the West Bank and the Gaza Strip as well as those who arrived from the PLO headquarters in Tunis, etc. It was also thought that a larger council was necessary in order to provide for meaningful oversight of the work of the members of the council who would be engaged in executive functions.

The parties eventually agreed to determine the size of the Council by taking the number of legislators who, before 1967, had represented the West Bank in the Jordanian parliament\(^97\) and adding to it the number of representatives in the parliament set up in Gaza by the Egyptian government in 1962,\(^98\) and then adding to that sum a number of seats to reflect the increase in the areal population since 1967. This calculation provided the basis for the establishment of an 82 member council\(^99\).

After the conclusion of the Interim Agreement, Israel approved two Palestinian requests for the creation of additional seats in the Council – first, a request to add an additional seat on the Council, to be reserved for a representative of the Samaritan community of the Nablus district,\(^100\) and later, a request for five additional seats.\(^101\) Accordingly, the Council today comprises a total of 88 elected members and the head of the Executive

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\(^95\) The Palestinian Authority, exercising both legislative and executive functions in accordance with the provisions of the Gaza-Jericho Agreement (Art. IV.1), had 24 members.

\(^96\) Examples of small legislative authorities in autonomous entities are: Netherlands Antilles - 22 (Constitution of Netherlands Antilles, Art. 44) Nieuw - 21(Constitutional Act, 1974, New Zealand Act No. 42, 29 August 1974, Art. 16.2 (a) & (b), and historical autonomies: Danzig - 22 (Constitution of the Free City of Danzig, Art. 25), Memel – around 30 (Convention & Transitory Provision Concerning Memel, Para. 5). For a compilation of documents establishing these and other self-governing authorities, see Documents on Autonomy and Minority Rights (H. Hannum ed., 1993).

\(^97\) According to the Jordanian Election Law No. 24 of 1960, the West Bank was represented by 30 delegates, comprising half of the then 60 member Jordanian Parliament.


\(^99\) Interim Agreement, supra note 1, Art. IV.


\(^101\) Jerusalem Post, 27 December 1995 at page 2, cols. 1-3.
Authority of the Council (the “Ra’ees”), elected separately from the Council but simultaneously with it. The members, elected through regional elections, represent the 16 constituencies into which the West Bank and Gaza Strip were divided.

c. The Executive Authority

As noted above, the DOP provided for one elected body, exercising both legislative and executive powers. During the course of the negotiations, Israel agreed that while some members of the Council would have both a legislative and an executive role, there would be other council members who would have no executive role. The parties also agreed that Council members who functioned in an executive capacity would be the members of the executive committee of the Council. This committee was originally envisioned as a smaller body functioning within the larger body of the Council. Eventually, Israel agreed to a complete structural separation between the Executive Authority of the Council and the Council itself, in order to facilitate supervision of the executive’s functions by the larger Council.

As a result of this negotiation process, the Interim Agreement provided that the executive authority of the Council is to be exercised on its behalf by a committee entitled the Executive Authority of the Council. The

102 The Ra’ees is an ex officio member of the Council. Interim Agreement, supra note 1, Art. IV. On the use of the term President or Ra’is see infra note 111.
103 Interim Agreement, supra note 1, Art. III.3.
104 The constituencies are listed in Art. 5.1 of the Palestinian Elections Law, supra note 90. The allocation of seats to the various constituencies, which was based on the proportion of registered voters in the constituencies was as follows: Gaza-12, North Gaza-7, Rafiah-5, Dir el Balah-5, Khan Yunis-3, Salfit -1, Nablus-8, Tulkarm-4, Kalkilya-2, Jenin-6, Tubas-1, Ramallah-7, Bethlehem-4, Jericho-1, Hebron-5 and Jerusalem-7. See Order No. 2 of 1995 Concerning Elections, published in the Official Palestinian Gazette on 14 December 1995, Art. 1, and Order No. 6 of 1995 Concerning Elections, published in the Official Palestinian Gazette on 29 December 1995. On the Jerusalem constituency see infra Chapter V.D. The Council now has six seats reserved for Christian representatives – two out of seven seats in the constituency of Jerusalem, two out of four seats in that of Bethlehem, one out of twelve seats in the Gaza constituency, and one of seven seats in the Ramallah constituency. See Order No. 2 of 1995 Concerning Elections, published in the Official Palestinian Gazette on 14 December 1995, Art. 2. The reservation of seats ensured a minimum representation, but did not impose a maximum limit on the number of Christian representatives who could be elected.
105 Interim Agreement, supra note 1, Art. V.2. For a discussion of the evolution of the role of the Speaker of the Council, see infra Chapter V.B.1.e.
Ra’ees is an *ex officio* member of the Executive Authority. The Interim Agreement further provides that the members of the Executive Authority must be drawn primarily from the Council, but that the Ra’ees, with the approval of the Council, may appoint a number of non-elected members to the Executive Authority who may not vote in the meetings of the Council and whose number must not exceed 20% of the membership of the Executive Authority. Although this provision constituted a departure from the DOP stipulation that all Council members would be elected, Israel agreed to this arrangement in recognition of the fact that certain individuals who would be suitable as members of the administrative body might not, for various reasons, run as candidates in the Council elections.

### d. The Ra’ees of the Executive Authority of the Council

The Ra’ees heads the Executive Authority of the Council. The creation of this position was the outcome of a lengthy process of negotiation regarding the relationship between the Ra’ees, the Council and the Executive Authority of the Council.

In the course of the negotiations which led to the signing of the DOP, the Palestinian side had suggested that Yasser Arafat would automatically assume the position of “President” as a continuation of his role as the leader of the Palestinian people and would not run as a candidate in the elections. Thereafter, during the negotiations on the elections, the Palestinians revised their position and proposed that Arafat would run for

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106 Interim Agreement, *supra* note 1, Art. V.4.a.
109 DOP, *supra* note 1, Art. III.
111 This title constituted a compromise between the term proposed by the Palestinians, “President”, and the Israeli proposal, “Chairman”. Since the PNC declared the independence of a Palestinian state in 1988, which Israel and most countries have not recognized, Arafat has been using the title “President of Palestine” along with his title as Chairman of the PLO. Israel therefore opposed the use of the term “President” in the Interim Agreement because it had been used in conjunction with the so-called State of Palestine. The term Ra’ees satisfied both Israel and the Palestinians because in Arabic it means both “president” and “chairman”. In the same vein, paragraph 4 of the Exchange of Letters accompanying the Gaza-Jericho Agreement, *supra* note 1, stipulated that Chairman Arafat, upon his entry into the Gaza Strip “will use the title ‘Chairman (Ra’ees in Arabic) of the Palestinian Authority’ or ‘Chairman of the PLO’ and will not use the title ‘President of Palestine’.”
election, but not in the regular Council elections. Instead, they proposed that he would stand in a separate election for the "Presidency." This proposal was problematic in that the DOP spoke only of elections to a Council. Recognizing this difficulty, the Palestinians reformulated their proposal and suggested that the separate elections would be for the position of President (or Chairman) of the Council. Israel was able to accept this new formula, and in a special meeting between Prime Minister Rabin and Chairman Arafat in early 1995, the Prime Minister informed the Chairman of Israeli agreement to the holding of separate elections, referring to the recent change in Israeli law which provided for a similar direct but separate election of the Prime Minister concurrent with the elections to the Israeli Knesset. At this stage, the parties agreed that the Ra’ees would head both the Council and the Executive Authority. Later, when the parties agreed to the separation between the Executive Authority and the Council, it was agreed that the Ra’ees would head the Executive Authority only and a separate position would be created for the person heading the Council, namely, the Speaker.

e. The Speaker of the Council

The role of the Speaker developed from a Palestinian proposal regarding the deputy of the Ra’ees’. Initially, the Palestinian negotiators proposed that the Ra’ees would preside over the Executive Authority meetings and activities and that his deputy would preside over meetings of the Council, at least in a number of specific instances. In effect, the list of specified instances covered most of the activities of the Council. Eventually, when

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112 Palestinian answers to Israeli questions, 24 October 1994, contained in the files of the Israeli Ministry of Foreign Affairs.
114 For a discussion of the evolution of the role of the Speaker of the Council, see infra notes 115-18 and accompanying text. The negotiators had also included in the initial drafts of the Interim Agreement provisions regarding the issue of a replacement for the Ra’ees in the event of his death or incapacity. In the end, they decided that the Palestinian elections law would deal with this issue. Thus, Art. 90 of that law provides that in the event of the Ra’ees’ death, resignation or incapacity, the Speaker of the Council would take his place until the holding of new elections within 60 days.
116 Id. The instances in which the deputy was to preside over the council included the submission to the Council by the Executive Authority of matters for debate and the review by the Council of any Executive Authority acts.
the two sides agreed to a separation of roles between the Council and the Executive Authority, they also agreed that the same person could not stand at the head of both bodies and that the Ra’ees would therefore head the Executive Authority only. The position of the Speaker who would stand at the head of the Council was created at the same time.

Thus, according to the Interim Agreement, the Speaker of the Council is a member of the Council elected by his or her peers. In the capacity as head of the Council, the Speaker presides over the meetings of the Council, administers the Council and its committees, decides on the agenda of each meeting, and lays proposals for voting before the Council, and declares their results.117 The Speaker also presents for the Council’s approval proposed internal procedures that regulate, among other things, its decision-making processes.118

f. Open Government

In order to guarantee the type of openness which is essential to the democratic functioning of a governing body, the Interim Agreement provides that all meetings of the Council and of its committees other than the Executive Authority be open to the public. The Council, however, retains the power to close specified meetings on the grounds of security, or commercial or personal confidentiality.119 Participation in the deliberations of the Council, of its committees or of the Executive Authority is limited to their respective members only.120 Experts may address such meetings on specific issues upon invitation on an ad hoc basis.121

117 Ibid., Art. III.5.
118 Ibid., Art. III.9.
119 Ibid., Art. VII.1.
120 This arrangement resolves the issue of the relationship between the Council and the PNC. During the Interim Agreement negotiations, three options were considered. One was that there would be no formal connection between the two bodies. Another was that any member, or a selective list of members of the PNC, could join the Council as non-elected members. A third option was that Council members would automatically join the PNC. The Palestinian Elections Law adopted the third option, and thus Art. 3.1 of the Law provides that Council members automatically become members of the PNC. The second option was ruled out because the Council is an elected body representing the Palestinians of the West Bank and the Gaza Strip. If PNC members could join the Council, it would no longer be a representative body. However, nothing prevented the elected Council members from also becoming members of a different body such as the PNC.
121 Interim Agreement, supra note 1, Art. VII.2.
2. Legislative Powers of the Council

a. Scope

The legislative power of the Council applies only to its area of jurisdiction, within which it has the power to adopt primary and secondary legislation, including basic laws, laws, regulations and other legislative acts. The Ra’ees promulgates legislation adopted by the Council. He himself may issue secondary legislation relating to matters specified and within the scope laid down in any primary legislation adopted by the Council.

b. Conformity of the Council Legislation with the Interim Agreement

The Council has no authority to enact legislation (including amendments or abrogation of existing laws or military orders) which exceeds its jurisdiction or which is otherwise inconsistent with the provisions of the DOP, the Interim Agreement or any other agreement that may be reached between the two sides during the interim period. The adoption by the Council of such legislation, therefore, has no effect and is void ab initio. The Ra’ees may not promulgate any legislation approved by the Council which fails to satisfy this requirement.

To ensure that the Council legislation conforms with these provisions, the Interim Agreement provides that all legislation adopted by the Council must be communicated to the Israeli side of a joint Legal Committee established in accordance with Article XVII.7 of the Interim Agreement. The Israeli side may refer to this committee any legislation which it considers to be exceeding the jurisdiction of the Council or inconsistent with the various agreements as mentioned above, in order to discuss issues arising from such legislation.

This arrangement is significantly different from that of the Gaza-Jericho Agreement. In the latter agreement, a complicated mechanism was established for a joint review of all legislation of the Palestinian Authority. Most important, according to the Gaza-Jericho Agreement, the legislative

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122 Ibid., Art. XVIII.1, 2. In addition, in accordance with international law, the Israeli military government retains those legislative powers necessary for the exercise of any powers and responsibilities not transferred to the Council. Ibid., Art. XVII.4.b.
123 Ibid., Art. XVIII.3.b.
124 Ibid., Art. XVIII.3.
125 Ibid., Art. XVIII.4.
126 Ibid., Art. XVIII.5.
127 Ibid., Art. XVIII.6.
powers of the Palestinian Authority were subject to an effective Israeli veto, since entry into force of legislation was dependent on the agreement of both sides.\textsuperscript{128} During the Interim Agreement negotiations, Israel decided not to demand the application of this mechanism to the elected Council legislation, for a number of reasons. First, both parties were concerned that Israel’s retention of the power to veto Council legislation would delegitimize the Council as an elected representative body. Second, the parties’ experience with the Gaza-Jericho arrangements had proven the earlier restraints to be impractical for both sides. The Palestinians had been burdened by the need to submit every law or regulation for prior Israeli approval, and the Israelis had been similarly burdened by the monumental task of continuously monitoring, translating into Hebrew and reviewing all primary and secondary Palestinian legislation.\textsuperscript{129} The parties therefore agreed to the mechanism described above, which applies to the elected Council legislation, in the belief that it would alleviate concerns regarding delegitimization and eliminate the problems encountered under the Gaza-Jericho arrangements.

3. The Judiciary

The Interim Agreement provides that the Council will have, within its jurisdiction, an independent judicial system composed of independent Palestinian courts and tribunals.\textsuperscript{130} This local court system will function

\textsuperscript{128} Under the provisions of Art. VII of the Gaza-Jericho Agreement, all legislation was supposed to be communicated by the Palestinian Authority to a joint Legislation Subcommittee, before it entered into force. In this forum Israel could request a review of legislation which it considered to exceed the jurisdiction of the Palestinian Authority or to be inconsistent with the Gaza-Jericho Agreement. Upon receipt of the request, the Legislation Subcommittee was to decide, as an initial matter, on the entry into force of the legislation pending its decision on the merits. If such a decision could not be reached within 15 days, the issue was to be referred to a joint board of review. The legislation could then enter into force only if the board decided that it did not deal with a security issue which falls under Israel’s responsibility, that it did not seriously threaten other significant Israeli interests protected by the agreement, and that its entry into force could not cause irreparable damage or harm. As for the decision on the merits of the matter, the Legislation Subcommittee was to determine that issue within 30 days from the date of the request, otherwise the matter was to be referred to the joint Liaison Committee, which reaches its decisions by agreement. The Gaza-Jericho Agreement, \textit{supra} note 1, Art. XV.4. Thus, agreement between Israel and the Palestinians was necessary in order for the legislation to enter into force.

\textsuperscript{129} Singer, "The West Bank and Gaza Strip: Phase Two", \textit{supra} note 7, at 17.

\textsuperscript{130} Interim Agreement, \textit{supra} note 1, Art. IX.6.
alongside the military court system of the Israeli military government which continues to exist during the interim period.\textsuperscript{131} The Interim Agreement also provides for judicial review by Palestinian courts of the activities of the Executive Authority of the Council. Any person or organization affected by an act or decision of the Ra’ees, or of a member of the Executive Authority, may appeal to the relevant Palestinian Court of Justice.\textsuperscript{132} The Palestinian Court of Justice may decide whether an act or decision of the Ra’ees or of a member of the Executive Authority is \textit{ultra vires} or otherwise incorrect in law or procedure.\textsuperscript{133} This court is similar in nature to the Israeli High Court of Justice and the provisions reviewed above were inspired, at least in part, by the 30 years of experience the Palestinians of the West Bank and the Gaza Strip have gained in petitioning the Israeli High Court of Justice for the reversal of various decisions of the military government.\textsuperscript{134}

\textit{C. The Electoral Process}

\textit{1. System of Elections}

The Protocol concerning Elections, included as Annex II to the Interim Agreement, provides that the documents governing the holding of elections are Annex II to the Interim Agreement itself, the Palestinian Law on the Election of the Ra’ees and the Palestinian Council,\textsuperscript{135} and the regulations made under that law.\textsuperscript{136}

Throughout the negotiations regarding the elections, Israel was mindful of the fact that the elections were to be \textit{Palestinian} elections. Accordingly, Israel was prepared to allow the Palestinian side to decide all issues relating exclusively to the conduct of the electoral process without any Israeli interference, and to express its concerns only with regard to issues

\textsuperscript{131} \textit{Ibid.}, Art. XVII.4. Since the military government continues in existence, Israeli military courts continue to function in the West Bank and the Gaza Strip with jurisdiction over offences that are retained under the authority of the military government, primarily security offences. On the existing military courts, Z. Hadar, “The Military Courts”, in Shamgar, \textit{supra} note 12, at 171.
\textsuperscript{132} Interim Agreement, \textit{supra} note 1, Art. VIII.
\textsuperscript{133} \textit{Ibid.}, Art. VIII.
\textsuperscript{134} See \textit{supra} text accompanying note 35.
\textsuperscript{135} When adopted by the Palestinian Authority, this law was entitled the Palestinian Elections Law, \textit{supra} note 90.
\textsuperscript{136} Interim Agreement, \textit{supra} note 1, Annex II, Art. I. 2.
affecting Israel, such as the maintenance of security during the electoral process.

Moreover, because Israel did not wish to be seen as interfering with the electoral process, the provisions of the Interim Agreement called for a redeployment of Israeli forces from the Palestinian populated areas of the West Bank on the eve of the elections.\textsuperscript{137} Accordingly, on 28 December 1995, i.e., four days prior to the commencement of the official Palestinian electoral campaign period, the Israeli military forces completed their redeployment.\textsuperscript{138}

The Palestinian Elections Law opted for a simple majority electoral system with open lists, in which members of the Council were to be elected in sixteen constituencies.\textsuperscript{139} In October of 1995, Chairman Arafat, in his

\textsuperscript{137} Interim Agreement, \textit{supra} note 1, Art. X.1. This provision followed the DOP, \textit{supra} note 1, Art. XIII.

\textsuperscript{138} Under the DOP, \textit{supra} note 1, Art. XIII, the redeployment from all the Palestinian populated areas was to take place on the eve of the elections. Art. X.1 of the Interim Agreement, \textit{supra} note 1, established that the redeployment would be completed no later than 22 days before the elections, so as to free the Palestinian populated areas of any Israeli presence, not only during election day but also during the 22 day electoral period as well. It was agreed that the Israeli forces would be redeployed through a series of sub-stages, beginning with redeployment from the northernmost areas and ending with the redeployment in Hebron - the southernmost district of the West Bank. As discussed during the Interim Agreement negotiations, in each sub-stage, the redeployment was to take place only after the completion of by-pass roads which would allow Jewish residents to travel to nearby settlements without crossing through areas from which Israeli forces had been redeployed.

Because the construction of the by-pass road in the Hebron district was expected to be difficult and time-consuming, this requirement resulted in a scheduled redeployment from Hebron in March of 1996, with the elections scheduled to take place 22 days after this final redeployment. During the last days of the Interim Agreement negotiations, however, Arafat took the position that the elections should be held earlier, and requested that the elections be scheduled for a date prior to the redeployment from Hebron. Israel concurred. Interim Agreement \textit{supra} note 1, Annex I, Appendix 1.

\textsuperscript{139} Regarding the division of the West Bank and the Gaza Strip into constituencies, see \textit{supra} note 50. All of the constituencies, except for Jerusalem, are under the Council’s authority. Interim Agreement, \textit{supra} note 1, Art. XVII. With regard to the Jerusalem constituency, see infra Chapter V.D. There was some criticism that the chosen system created a bias in favor of candidates identified with the main Fatah-PLO faction. It was argued that while a regional system was appropriate when two or three parties were dominant, it was not appropriate in the Palestinian case which had one dominant party, thus eliminating many candidates who would have been elected in non-regional elections. See Peace Watch, News Release dated 18 January 1996. See also Khalil Shikaki, “The Peace Process, National Reconstruction and the Transition to Democracy in Palestine”, \textit{Journal of Palestine Studies} 5, 18 (Winter, 1996).
capacity as chairman of the Palestinian Authority, declared the election date to be Saturday, 20 January 1996.\textsuperscript{140}

2. Election Administration

In order to facilitate and co-ordinate the conduct of the election, the Interim Agreement provided for the establishment of a Palestinian Central Election Commission ("CEC") by the Palestinian Authority.\textsuperscript{141} The CEC was the supreme Palestinian organ responsible for the preparation, organization and adoption of all necessary measures to ensure free and fair elections. The Palestinian Elections Law specified that the CEC members would be nine reputable persons – members of the Palestinian judiciary, outstanding academics or lawyers.\textsuperscript{142} Under the Interim Agreement, the CEC was required to be completely independent in economic and administrative terms.\textsuperscript{143} The decisions of the CEC were reviewable by the Palestinian Election Appeals Court, which was required to decide any appeal within 5 days of its submission.\textsuperscript{144}

The Interim Agreement further called for the establishment of District Election Commissions (DEC) and District Election Offices (DEO) to be established in each electoral constituency.\textsuperscript{145} Each DEC and DEO was a subordinate body of the CEC and was responsible for the organization and monitoring of all electoral activities within its respective constituency.

\textsuperscript{140} This declaration followed Art. II.4 of the Interim Agreement, supra note 1, which stated that "[t]he elections shall be called by the Chairman of the Palestinian Authority". One of the reasons for holding the elections on a Saturday was that Saturday is the official day of rest in Israel, which meant that the elections could be conducted with minimal interference. On 17 January 1996, an Israeli rabbi petitioned the Israeli High Court of Justice to postpone the elections in order to prevent massive violation of the Sabbath religious laws by Israeli security forces. The High Court dismissed the petition on the ground that the petition was submitted three days prior to the election date while the petitioner knew of the date of the elections long before the petition. H.C. 496/96, Halperin v. Prime Minister et al., (not yet published).

\textsuperscript{141} Interim Agreement, supra note 1, Annex II, Art. I.3.

\textsuperscript{142} Palestinian Elections Law, supra note 90, Art. 22. 2.

\textsuperscript{143} Interim Agreement, supra note 1, Annex II, Art. I.3.

\textsuperscript{144} Palestinian Elections Law, supra note 90, Art. 25.

\textsuperscript{145} Interim Agreement, supra note 1, Annex II, Art. I.4.a.
3. The Right to Vote

The Interim Agreement provided that the right to vote would be universal, regardless of sex, race, religion, opinion, social origin, education or property status. To have the right to vote, however, the individual had to be registered in the Palestinian electoral register. In order to be included in the electoral register, an individual had to meet the requirements listed in the Interim Agreement. He or she had to: (1) be Palestinian; (2) be 17 years old or older; (3) have his/her abode in the polling district where he/she was registered to vote; (4) not be disqualified under the relevant provisions of the Interim Agreement; and (5) not be an Israeli citizen. In addition, the Interim Agreement required that the individual be entered in the population register maintained by the Israeli authorities or by the Palestinian Authority (the Population Register).

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146 Ibid., Annex II, Art. II.1.a.
147 Interim Agreement, supra note 1, Annex II, Art. II.1.b.
148 Ibid., Annex II, Art. II.1.f(1). In view of the other qualifications listed in the Interim Agreement, which are cumulative, this criterion has a symbolic value only. In the course of the negotiations, the parties failed to reach an agreement on the definition of the term “Palestinian” in this context, and the Interim Agreement therefore does not include such a definition. The Palestinian Elections Law, supra note 90, in Art. 7.2, provides an expansive definition of this term which includes all persons not having Israeli citizenship, born in “Palestine” as defined by the territory covered by the British Mandate or had the right to Palestinian citizenship according to the laws in force during that period, born in the Gaza Strip or the West Bank, or, irrespective of birth, has at least one direct ancestor born in Palestine. Under the definition contained in the law, the spouse of a person meeting these criteria is also considered to be a Palestinian, unless he/she is an Israeli citizen.
149 Ibid., Annex II, Art. II.1.f(2). The age of 17 was chosen as a cut-off date for inclusion in the electoral register because it was not known exactly when the elections would take place. In order to actually vote, a person was required to be 18 years old or older on the day of the elections. Ibid., Annex II, Art. II.1.d.
150 Ibid., Annex II, Art. II.1.f(3).
151 Ibid., Annex II, Art. II.1.f(4). The grounds for disqualification are listed in Art. II.1.k of Annex II and include any person who, by decision of a Palestinian court, is deprived of the right to vote, declared incapable, or detained in a psychiatric institution.
152 Ibid., Annex II, Art. II.1.e.
153 Ibid., Annex II, Art. II.1.f(5). Until the signing of the Gaza-Jericho Agreement, the population register in respect of the West Bank and the Gaza Strip was maintained by the Israeli Civil Administration. Pursuant to the Gaza-Jericho Agreement, supra note 1, Art. VI.1.d, and Annex II.27, the Palestinian Authority assumed powers and responsibilities with regard to the maintenance of the population register in the Gaza Strip and the Jericho Area. However, in the rest of the West Bank and in Jerusalem, the relevant Israeli authorities continued to hold responsibility for maintaining the
These qualifications reflected the results of negotiations between the two sides on two main issues. One issue raised by the Palestinians was the question of whether only persons who were actually living in the West Bank or Gaza Strip would be entitled to vote. The DOP explicitly stated that the elections were to take place “in order that the Palestinian people in the West Bank and the Gaza Strip may govern themselves according to democratic principles” (emphasis added). During the Interim Agreement negotiations, the Palestinians argued that certain Palestinians living abroad should be entitled to participate in the elections even though they were not technically in the areas as described in the DOP provision. Specifically, they pointed to Palestinians with a family connection to Palestinians living in the West Bank or the Gaza Strip, or to those Palestinians who had once lived in these areas and had since lost their right to residency in the West Bank or the Gaza Strip due to a long period of absence. This issue was resolved when the Palestinian side agreed that pertinent register. As the population register referred to in the Interim Agreement was therefore a combination of registers which had been maintained by both the Israeli Civil Administration and the Palestinian authority, Art. II.1.f referred to the “population register maintained by the Palestinian Authority or the Israeli Authorities”.

154 DOP, supra note 1, Art. III.1
155 See infra note 157. In this context, the Palestinian side argued that displaced Palestinians, i.e., those who left the territories during the 1967 war, should also be entitled to participate in the elections. Palestinian estimates regarding the number of persons fitting into this category ran as high as 900,000. See Al-Kuds, 17 August 1995. Israeli sources estimated the number at 300,000. See S. Gazit, The Palestinian Refugee Problem 12 (1995). The DOP, supra note 1, dealt with this issue with the following language:

The future status of displaced Palestinians who were registered on 4 June 1967 will not be prejudiced because they are unable to participate in the election process due to practical reasons.

DOP, supra note 1, Annex 1.3. The Palestinians argued that if a displaced Palestinian happened to be in the West Bank or the Gaza Strip as a visitor on polling day, he/she should be entitled to vote since there were no “practical reasons” preventing his/her participation. Concerned that if the Interim Agreement allowed such displaced persons to vote, hundreds of thousands of Palestinians falling within this category would pressure Israel to be allowed to enter the territories as visitors in order to vote, Israel pointed to the drafting history of this DOP provision to show that an earlier Palestinian proposal had provided that the displaced Palestinians’ “right to participate in the election process... will not be prejudiced even if they will not be able to participate for practical reasons”. This rejected proposal would have indicated clearly that all displaced Palestinians would be able to participate, unless they were prevented for practical reasons. However, the changes made to this proposal by the parties specifically deleted the reference to a “right to participate” and replaced the phrase “if they are unable to participate” with the phrase “because they are unable to participate”
one of the qualifications for being included in the electoral register would be that the individual must have his or her abode in the polling district in which the individual is registered to vote.\textsuperscript{156}

The second issue related to Palestinians actually living in the West Bank or the Gaza Strip but who, for various reasons, were not included in the Population Register.\textsuperscript{157} Israel opposed the inclusion of Palestinians not listed in the Population Register, because of concerns that this would serve to legitimize the presence of those Palestinians in the West Bank and the Gaza Strip who were not legally entitled to be living there. Although most of the individuals involved were, in fact, living illegally in the West Bank and the Gaza Strip, the Palestinian side argued that, given the long duration of their illegal stay, it would be unfair to exclude these “de facto residents” from participating in the elections. This issue was resolved when Israel proposed moratorium arrangements, under which any individual who could provide satisfactory evidence that he/she had lived in the West Bank or the Gaza Strip continuously, except for short absences, for at least 3 years (if the person was at least 40 years old on 1 January 1996) or 4 years (if the person was less than 40 years old on 1 January 1996) would be entitled to be included in the Population Register, and consequently in the Electoral Register.\textsuperscript{158}

(emphasis added) to indicate that there was no possibility that such individuals would actually participate.

The status of displaced persons is handled by a quadripartite committee (comprised of representatives of Egypt, Jordan, Israel and the PLO). This committee was established in accordance with Art. XII of the DOP in order to decide by agreement on the modalities of admission of persons displaced from the West Bank and the Gaza Strip in 1967. See also Gaza-Jericho Agreement, supra note 1, Art. XVI.2 and Interim Agreement, supra note 1, Article XVII.2. As of this writing, the committee has not yet reached an agreement on the definition of a displaced person.

\textsuperscript{156}This criteria meant that the individual was required to actually live in the territories. Art. II.1.j of Annex II defined the term “abode” as follows: “the community, house, street, neighborhood or other description identifying the specific abode in which, at the time of the initial registration canvass, a person actually lives”.

\textsuperscript{157}During the negotiations, the parties considered a list, presented by the Palestinian side, of seven categories of Palestinians whose status during the elections needed to be specially discussed: (a) expellees; (b) Palestinians who had lost their residency status as a result of having spent more than seven years abroad, but who were in the areas on election day; (c) Palestinians who had in fact been in the areas continuously since 1967 but had never been included in any Israeli census; (d) Palestinians whose identity cards had been confiscated and who were “in hiding” within the areas; (e) Palestinians who had left the areas in 1967 but who were present in the territories as visitors; (f) foreign passport holders living in the areas; and (g) Palestinians holding Israeli identity cards.

\textsuperscript{158}Interim Agreement, supra note 1, Annex II, Art. II.1.g.
Pursuant to these moratorium arrangements, the Israeli Civil Administration and the CEC published a joint announcement inviting those persons who were not entered in the Population Register and who met the above-mentioned residency criteria to submit applications to be entered in the Population Register. Israel made special arrangements to expedite such applications, so that all persons entitled to be entered in the Population Register would be included in time to be listed in the Electoral Register as well. Despite some initial concerns that this announcement would generate a flood of requests, approximately 3,000 applications were submitted, of which approximately 2,500 were accepted.

4. The Electoral Register

a. Preparation of the Electoral Register – the Initial Registration Canvass

The Interim Agreement called for the CEC to compile and maintain an Electoral Register listing the names of all eligible voters.\textsuperscript{159} In order to assist the CEC in accomplishing this task, Israel provided the Palestinians with all the information included in the population register maintained by Israel regarding the Palestinians living in Jerusalem and in the parts of the West Bank outside of the Jericho Area, on the assumption that together with the population register information already passed on to the Palestinian Authority in implementation of the Gaza-Jericho Agreement, this information would be sufficient to serve as the basis for the Electoral Register.\textsuperscript{160} The Palestinian side claimed that the information provided was incomplete, because the Civil Administration population register had not been fully updated. Specifically, they argued that many births and deaths had not been recorded in the Register due to lack of notification, and that a significant number of addresses were no longer correct. Consequently, Israel accepted a Palestinian suggestion to have some 7,000 Palestinian teachers conduct a door-to-door Initial Registration Canvass of Palestinians in the West Bank and the Gaza Strip, the results of which would be used to prepare a draft electoral register. During this Canvass,

\textsuperscript{159} Interim Agreement, \textit{supra} note 1, Annex II, Art. II.2.a. In this connection, on 23 September 1995, when the Interim Agreement was initialed at Taba, the parties also signed the Initial Registration Canvass Agreement, which contained the agreed arrangements for all the technical aspects of the registration canvass.

\textsuperscript{160} Following the signing of the Gaza-Jericho Agreement, the Israeli Civil Administration had earlier provided the Palestinian Authority with the population register details relating to the residents of the Gaza Strip and the Jericho Area. \textit{See supra} text accompanying note 75.
which took three weeks to complete, 830,837 people were canvassed in the West Bank and the Gaza Strip.\textsuperscript{161}

\textit{b. Verification of the Initial Electoral Register}

The Interim Agreement set out a procedure for confirming the information contained in the register. Within 6 weeks of the compilation of the initial draft register, and following the adjudication of all claims, the Palestinian side was to provide the Israeli side with a copy of the register in a computer format outlined in the Interim Agreement.\textsuperscript{162} The purpose of the confirmation was to verify that the Palestinian Electoral Register contained only the names of those persons entered in the Population Register. After the initial draft register was compiled, it was publicly displayed within each polling district with a notification indicating that inclusion in the posted list was subject to verification.\textsuperscript{163}

The verification of the initial draft register was carried out during the first half of December 1995. In accordance with the Interim Agreement, the information contained in the initial draft register was cross-checked against the computerized Population Register.\textsuperscript{164} Despite pessimistic forecasts, the results indicated a correspondence of more than 99% between the Canvass information and the Population Register data in the West Bank and the Gaza Strip.

\textit{c. Final Electoral Register}

In total, Israel confirmed 928,000 persons as being eligible to be included in the Electoral Register. Of these, 586,085 voters were confirmed in the West Bank, and 341,915 voters were confirmed in the Gaza Strip. In accordance with the provisions of the Interim Agreement, the Electoral Register listing the names of the confirmed voters was published within each polling district and the CEC presented it to the Israeli side of the

\textsuperscript{161} For a discussion of the results of the canvass of Palestinians in Jerusalem, conducted simultaneously, see infra notes 227-28 and accompanying text.

\textsuperscript{162} Interim Agreement, supra note 1, Art. II. 2.g. The agreed computer format is set out in Appendix I to Annex II of the Interim Agreement as well as in Appendix 1 to the Initial Registration Canvass Agreement.

\textsuperscript{163} Ibid., Annex II, Art. II.2.e.

\textsuperscript{164} Ibid., Annex II, Art. II.2.g.
Joint Civil Affairs Coordination and Cooperation Committee (CAC) a few days prior to the elections.\textsuperscript{165}

5. Candidates

The Interim Agreement described the various qualifications for candidates for the Council and for the position of the Ra’ees. First, the candidates had to be registered voters. Second, every candidate had to have a valid address in an area under the jurisdiction of the Council. Finally, candidates could not be Israeli citizens.\textsuperscript{166} The Palestinian Elections Law provides additional qualifications for these candidates. Candidates for the position of Ra’ees had to be over 35 years old on the day of the elections and candidates for the Council had to be at least 30 years old on the day of the elections.\textsuperscript{167} In total, 680 candidates ran for the elections to the Palestinian Council. Two candidates, Yasser Arafat and Samiha Khalil, ran for the position of the Ra’ees.\textsuperscript{168}

During the Interim Agreement negotiations, some Israeli voices expressed the view that Islamic fundamentalist organizations such as Hamas or Islamic Jihad, which accepted neither the Israel-PLO agreements nor even Israel’s right to exist, should be barred from participating in the elections. Others suggested as an alternative that Israel demand that every candidate wishing to stand in the elections undertake to support either the Israeli-Palestinian agreements or at least the right of the State of Israel to exist as a condition for registration.\textsuperscript{169} These views were in line with the Israeli law, which prevents the participation of a political party in elections to the Knesset if its goals include the rejection of Israel as a Jewish State or the rejection of the democratic character of the State, or if its policies constitute incitement to racism.\textsuperscript{170}

\textsuperscript{165} Ibid., Annex II, Art. II.2.i.
\textsuperscript{166} Ibid., Annex II, Art. III.1.
\textsuperscript{167} Palestinian Elections Law, supra note 90, Article 12.
\textsuperscript{168} Jerusalem Post, at 1, cols. 2-4, 26 December 1995.
\textsuperscript{170} Basic Law: The Knesset, Para. 7a (Amendment No. 9), [1985] Sefer HaHukim 1155, at 196. The legislation was enacted in the wake of two Supreme Court judgments on the disqualification of political parties: E.A. (Elections Appeal) 1/65, Yeredor v. Chairman of the Elections Committee for the 6th Knesset, 29(3) P.D. 365 (Yeredor); E.A. 2,3/84, Neiman v. Chairman of the Central Elections Committee for the 11th Knesset, 39(2) P. D. 225 (Neiman I). Together, the two cases dealt with the Central
In fact, however, Israel did not demand any of these qualifications because it did not want to create the impression that it was effectively blocking the major opposition forces from participating in the elections. Israel knew that many, if not all, of the potential Islamist candidates would not be able to accept these requirements, if such conditions were imposed, and would therefore not be able register as candidates. For this reason, the Interim Agreement prohibited only the nomination of any candidates, parties or coalitions which advocated either racism or the implementation of political programs through the use of unlawful or non-democratic means. The negotiators believed that a qualification phrased in this manner would not in itself prevent any but the most extreme opposition forces from participating in the process.

Election Committee’s refusal to register three different groups on the ground that the groups espoused courses of action which were either illegal, or undemocratic or aimed at the destruction of the State of Israel. In the Yeredor case, the Court upheld the Committee’s action; in Neiman I its decision was overturned. Neiman I involved the disqualification of two parties – Meir Kahane’s Kach party and the Progressive List for Peace (PLP). Kach’s rejection was overruled on the ground that its racist and undemocratic platform did not justify restrictions on the candidates’ fundamental right to run for office, while the PLP’s rejection – based on its allegedly illegal and anti-Israel policies - was overturned on technical grounds. See generally, C. Klein, “The Defense of the State and the Democratic Regime in the Supreme Court”, 20 Israel L.Rev. 397 (1985) (analyzing the five opinions handed down in the Neiman I case.) In 1988, after the Basic Law was amended to include the current language, the Court was again asked to review a decision to reject the Kach list, in E.A.1/88, Neiman v. Chairman of the Central Elections Committee for the 12th Knesset, 42(4) P.D. 177 (Neiman II). Writing for the Court, Supreme Court President Shamgar found that Kach’s public statements and actions did in fact constitute incitement to racism as well as the rejection of the democratic nature of the State and held that the list had been properly disqualified under the law’s new language. On the general subject of Israeli legislation regarding racial incitement, see M. Tabory, “Legislation Against Incitement to Racism in Israel”, 17 Israel Yearbook on Human Rights 270 (1987); and E. Lederman & M.Tabory, “Criminalization of Racial Incitement in Israel”, 24 Stanford J. Int’l L. 55 (1988).

Interim Agreement, supra note 1, Annex II, Art. III. 2.
At this point in the negotiations, the PLO was negotiating with Hamas, in an attempt to convince Hamas to participate in the elections. When these negotiations eventually broke down, the hope of greater participation in the political process faded and Hamas did not officially put forward candidates for the election. Significantly, Hamas did not indicate that its refusal to participate in the elections stemmed from this qualification. Rather, the refusal ensued from Hamas’ over-all rejection of the Israeli-PLO agreements. While Hamas did not officially participate in the elections, its suggestion that the elections should be boycotted by the voters was completely disregarded.
6. Electoral Campaign

According to the Interim Agreement, the official campaign period was to last 22 days, ending 24 hours before the opening of the polls.\(^{173}\) During the negotiations, both sides were concerned with the possibility that various campaign activities, such as rallies and open-air meetings, would become disruptive and endanger public order or pose security risks. On the other hand, the parties did not wish to impose overly restrictive limitations on political campaigning. The Interim Agreement’s description of the CEC role in this regard was therefore intended to balance between these concerns and was to assist with the co-ordination of electoral campaign activities in publishing a list of those venues and facilities at which election-related rallies and meetings could legally be conducted.\(^{174}\) In regard to direct responsibility for prevention of disruptions, the Interim Agreement established that during the campaign period each side would be responsible for maintaining public order within the areas under its jurisdiction.\(^{175}\) Further, the Interim Agreement reflects the parties’ intention that Israel be involved in handling possible security problems but that the Palestinian authorities would ultimately be responsible for the conduct of an orderly campaign. It therefore provides that “[w]ithout derogating from the principle that the Palestinian Police will ensure public order during the Palestinian elections, . . . the two sides agree to deal with, and co-ordinate with regard to, security issues that may arise . . . “.\(^{176}\)

The Palestinian Elections Law includes some restrictions on campaigning, such as the prohibition of any electoral propaganda activity in mosques or churches and the prohibition of the use of the Palestinian Authority emblem in publications and advertisements.\(^{177}\)

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\(^{173}\) Annex II, Art. IV.1.b. As the elections were to be held on 20 January 1996, campaigning was to commence on 30 December 1995. However, due to the 26 December decision to add five extra seats in the Council, the CEC decided to extend the nomination period to 1 January 1996, and announced that the campaigning period would be shortened accordingly from 21 to 14 days. The heads of the international observer delegations sent by the European Union and the United States immediately protested against the irregularities in the electoral process culminating in the shortened campaign period. Pursuant to this complaint, the Palestinians decided to reverse this decision. The campaign period thus began on 2 January 1996 and was concluded (in accordance with the Interim Agreement) 24 hours before the polls opened, that is, 19 January 1996. Consequently, the campaign period lasted 18 days.

\(^{174}\) Interim Agreement, supra note 1, Annex II, Art. IV. 2.a.

\(^{175}\) Ibid., Art. IV.2.d.

\(^{176}\) Ibid., Art. IV.2.b.

\(^{177}\) Palestinian Elections Law, supra note 90, Art. 57.
7. Polling Arrangements

The voters cast ballots at 1,697 voting stations throughout the West Bank and the Gaza Strip. The Palestinian Elections Law set out the procedures for the election day itself, pursuant to which Polling Station Commissions (PSCs) at each polling station controlled the procedures at the various stations.\(^{178}\) These procedures included various mechanisms intended to ensure that only eligible voters cast their ballots, that voters voted only once, and that ballots were placed in the ballot boxes, only by the voters.\(^{179}\) The law also provided various procedures designed to guarantee a fair and proper counting of the vote.\(^{180}\) Finally, the law included a process which allowed for a public scrutiny to be conducted by the DECs and the CEC regarding any challenges and claims concerning results and other voting materials.\(^{181}\)

8. International Observation

The principle that the Palestinian elections would take place under international observation was set out in the DOP.\(^{182}\) In accordance with the DOP provisions, the Interim Agreement stated that all stages of the electoral process would be open to international observation to ensure that the process would be free and fair.\(^{183}\) The parties named the European Union (EU) as the coordinator of the international observer delegations in acknowledgment of the EU contribution to the peace process in general and to the Palestinian election agreements in particular.\(^{184}\)

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\(^{178}\) Palestinian Elections Law, supra note 90, Art. 30.

\(^{179}\) Palestinian Elections Law, supra note 90, Arts. 68-75. The Palestinian Elections Law provided for an extension of the polling hours if a particular polling station opened late due to the absence of the requisite number of PSC members. Ibid., Art. 68.5. In fact, several polling stations, as well as the post offices in Jerusalem in which related services were rendered, were kept open beyond 7 p.m., for a number of reasons. See text accompanying infra note 237.

\(^{180}\) Palestinian Elections Law, supra note 90, Arts. 77-78.

\(^{181}\) Palestinian Elections Law, supra note 90, Arts. 84-86.

\(^{182}\) See supra Chapter IV.C.

\(^{183}\) Interim Agreement, supra note 1, Annex II, Art. V.1 and 2.

\(^{184}\) Id., Annex II, Art. V.4. EU contributions funded the entire Palestinian electoral process. The Palestinian side originally proposed the United Nations as the coordinator of the observer delegations. However, the Palestinians eventually accepted an Israeli proposal to designate the EU for this function.
In addition to coordinating the work of all international observer delegations, the EU also sent approximately half of the 600 international observers who observed the elections. In accordance with the Interim Agreement, the observer delegations came from the United States, Russia, Canada, Egypt, Japan, Jordan, Norway, South Africa and from the following international organizations: the Organization of African Unity (OAU), the Movement of Non-Aligned Nations, and the Islamic Conference Organization. The United Nations was listed in the Interim Agreement as one of the organizations expected to send an observer delegation, but declined the invitation.

Following consultations between the EU, Israel and the CEC, it was agreed that several additional countries, i.e., Australia, Switzerland, Cyprus, China, Turkey, Malta and South Korea, would also send observer delegations. The EU Electoral Unit also co-ordinated the activities of approximately 60 other international observers sent by various non-governmental organizations (NGOs). In addition, the CEC also recognized a number of observers sent by two Israeli NGOs – “Be’Telem” and “Peace Watch” – which had been monitoring Israeli-Palestinian relations during recent years.

In accordance with the Interim Agreement, a trilateral co-ordination forum, comprised of representatives of the CEC, Israel and the EU, was established in order to deal with all issues of security and logistics relating to the observers. At its first meeting on 25 October 1995 in Brussels, the parties agreed on the operational modalities of the forum and established working groups to deal with the following fields: security of observers and the guarantee of their freedom of movement; communications; vehicle licensing; customs; accreditation of local personnel to enter Israel; and visas. The main body of the forum held ten weekly meetings. Most of

187 The United States delegation was organized by the National Democratic Institute for International Affairs (NDI) and the Carter Center and was headed by former US President Jimmy Carter and former Polish Prime Minister Hanna Suchocka. During the months prior to the elections, NDI, along with other NGOs, initiated a number of very successful civic education projects in the West Bank and the Gaza Strip.
189 *Id.*, Annex II, Article V.7.
190 The Israeli representative in the forum was the author of this article, the CEC representative was Dr. Saeb Erakat and the chairman was the head of the EU delegation and the EU Electoral Unit, Mr. Carl Lidborn, the former Swedish Minister of Justice.
191 *EU Report*, at 8.
the meetings took place at the headquarters of the EU\textsuperscript{192} situated in the West Bank city of Ramallah.\textsuperscript{193}

Observer delegations and members of the co-ordinating body were granted functional privileges and immunities in accordance with international standards.\textsuperscript{194} Members of the observer delegations wore distinctive clothing (dark blue caps and vests) carrying the words "International Observer" in Arabic and English and an appropriate national or institutional badge. Their cars were fitted with similar special stickers.\textsuperscript{195} Local Palestinian observers, some of whom received technical assistance from the NDI,\textsuperscript{196} also observed the full election process. These Palestinian observers were granted fewer privileges and immunities than those granted to the members of the international observer delegations.\textsuperscript{197}

In order to maintain a functioning liaison relationship between the international observers and the Israeli and Palestinian security forces, the three parties decided that the EU Electoral Unit would assign a representative to each one of the Israeli-Palestinian District Coordination Offices in the West Bank and Gaza Strip.\textsuperscript{198} As mandated by the Interim Agreement, the observers related to all aspects of the electoral process from the initial registration process through the final re-vote at the two polling stations in the North Gaza constituency. Their conclusions and reports, described in the following chapter, were published after the elections.

The Interim Agreement also guaranteed freedom of movement and access to all electoral facilities for domestic and international journalists to enable them to cover the electoral process.\textsuperscript{199} In addition, the agreement

\textsuperscript{192} The EU used the EU Electoral Unit to co-ordinate the entire international observers operation. \textit{EU Report}, at 6.
\textsuperscript{193} The EU also had Regional Offices in Jericho, Gaza, Bethlehem and in Nablus. \textit{Id}.
\textsuperscript{194} Interim Agreement, \textit{supra} note 1, Annex II, Art. V and Appendices 2 and 3. In Israel, the West Bank and the Gaza Strip orders were issued incorporating these privileges and immunities into the domestic law. The Israeli order was issued by the Minister of Foreign Affairs and published in [1995] \textit{Kovetz Hatakanot} (Regulations of the State of Israel) 5176, at 158, (November 1995) in accordance with his general authority under Section 4 of the Privileges and Immunities Law (International Organizations and Special Delegations)-1983, [1983] \textit{Sefer HaHukim} 1087; [1983] \textit{Sefer HaHukim} 124).
\textsuperscript{195} \textit{EU Report}, at 23.
\textsuperscript{196} NDI/Carter Center Press Release, 16 January 1996.
\textsuperscript{197} Interim Agreement, \textit{supra} note 1, Annex II, Appendix 3, Para. 8.a.
\textsuperscript{198} \textit{EU Report}, at 22.
\textsuperscript{199} Interim Agreement, \textit{supra} note 1, Annex I, Art. V, Para. 12.
allowed election pollsters working for parallel vote tabulation organizations to be registered as domestic observers.²⁰⁰

9. Implementation: Observers' Reports and Results of the Elections

The reaction of the international observers to the various stages of the electoral process was basically positive.²⁰¹ Regarding the compilation of the electoral register, the NDI observers noted that they "heard no complaints", although concerns had been raised regarding the limitation on time of the registration period.²⁰² The EU observers were impressed with the functioning of the PSCs and the DECs, although both the EU and the NDI observers were disturbed by the late appointment of the members of the CEC, and the EU was distressed by the apparent lack of independence of the members who had been appointed.²⁰³

As to the procedures on election day itself, both the EU and the NDI observers commented on the over-all smoothness of the process.²⁰⁴ Turnout in almost all areas (except Jerusalem and Hebron) was high.²⁰⁵ Delays in vote counting were noted at the Polling Station, DEO and CEO levels, but the EU observers believed that technical problems seemed to have caused most such delays.²⁰⁶ The international observer delegations also observed the complaint and appeal process at the various stages. As with the voting procedures, the observers were basically satisfied with the measures taken.²⁰⁷ The most serious complaints involved allegations of irregularities at two polling stations in the Gaza Strip constituency of

²⁰⁰ Interim Agreement, supra note 1, Annex I, Art. V, Para. 11. In this regard, the Center for Palestine Research and Studies ("CPRS") in Nablus has been actively polling the public opinion in the West Bank and the Gaza Strip and publishing its results. The preliminary findings of a CPRS project on the transition to democracy in the West Bank and the Gaza Strip is included in a paper written by the director of the center, Khalil Shikaki. See Shikaki, supra note 139.

²⁰¹ For one account of an NDI/Carter Center observer who notes that the technical preparation for the elections was excellent and its conduct very good, see Stein, "Democracy in Palestine: Arafat & Council Elected with Huge Voter Turn-Out", Middle East Insight 6-8 (January – February, 1996).


²⁰³ Id.; EU Report, at 33.


²⁰⁵ Jerusalem Post, at 1, cols. 1-2, 21 January 1996.


Jabalya, resulting in the CEC ordering of a re-vote at the stations. The re-vote was conducted, also under international observation, on 31 January 1996.\footnote{Jerusalem Post, 1 February 1996, at 2, cols. 4-7.}

The EU delegation concluded that the elections results “can reasonably be regarded as an accurate expression of the will of the voters on polling day”. The NDI/Carter Center observer delegation came to a similar conclusion stating that “[t]he Palestinian people had an historic opportunity to choose their leaders...and they did so with enthusiasm and a high degree of professionalism.”\footnote{NDI/Carter Center press release, 21 January 1996.}

The results gave Arafat 88.1% of the votes cast in the direct election of the Ra’ees, with 9.3% of the votes going to Samiha Khalil. The other 2.6% of the votes in the Ra’ees election were either blank or disqualified.\footnote{Jerusalem Post, at 1, cols. 5-7, 22 January 1996.} In the Council elections, Fatah candidates and independent candidates identified with Fatah received sixty-seven of the eighty-eight seats, independents received fifteen, the Islamists four and candidates identified with other parties received two seats.\footnote{Jerusalem Post, at 1, col. 1, 23 January 1996.} The final list of the elected members of the Council was completed by the CEC on 10 February 1996.\footnote{Jerusalem Post, at 1, cols. 6-7, 11 February 1996.} The newly elected Council was inaugurated when it held its first ceremonial meeting on 7 March 1996 in Gaza, at which time Ahmed Qurie (Abu Ala), who had headed the Palestinian delegation in the Interim Agreement negotiations, was elected as the Speaker of the Council.\footnote{Jerusalem Post, at 2, cols. 1-3, 8 March 1996.} The members of the Executive Authority were named on 9 May 1996.\footnote{Jerusalem Post, at 1, cols. 1-4, 10 May 1996.}

\section*{D. Participation in the Elections by Palestinians of Jerusalem}

\subsection*{1. General}

The DOP provided that “Palestinians of Jerusalem who live there will have the right to participate in the election process according to an agreement between the two sides”.\footnote{DOP, supra note 1, Annex I, Art. I.} In the course of the negotiations on the Interim Agreement, the Palestinian side insisted that this provision requires Jerusalem to be treated as identical to the West Bank and the Gaza Strip
for the purposes of electoral administration, that Palestinians of Jerusalem be entitled both to vote and to be elected in the elections, and that voting should take place within Jerusalem. Israel argued that participation for the purpose of this provision meant only that arrangements be made to enable Palestinians of Jerusalem to vote in the elections, but that the Jerusalem Palestinians would not stand as candidates. In addition, Israel argued that voting should take place outside Jerusalem.216

Even after the parties agreed to have some type of voting activity take place within Jerusalem itself at specified post offices,217 the two sides still had different concepts about the nature of this activity. The Israeli side viewed the post office solution as being similar to voting by absentee ballot so as to avoid any possible inference of Palestinian sovereignty over Jerusalem, while the Palestinian side sought to bring the procedures as close as possible to the regular voting procedures used in the polling stations in the West Bank and the Gaza Strip. As neither side wished to make the elections the occasion for a full-blown debate about the status of Jerusalem, they were able to reach compromises regarding these differing views with relative ease. The manner in which these fundamental differences were eventually resolved is described below.

Another compromise reached in the course of the Interim Agreement negotiations regarding the participation of Jerusalem residents involved the issue of the territorial reach of the Palestinian Elections Law. The Palestinian side had originally taken the position that the Palestinian Elections Law should apply equally in the West Bank, the Gaza Strip and Jerusalem, on the ground that Palestinians of Jerusalem would be participating in the elections. Israel could not accept the idea of a Palestinian law being applicable in Jerusalem, and the parties agreed instead to include a provision specifying that the law applied in personam.

216 While all Palestinian residents of Jerusalem possess Israeli identity cards, a large majority of the Palestinians of Jerusalem are not Israeli citizens, but rather are permanent residents. According to Israeli law, only citizens of the state, and not permanent residents, may vote in elections to the Knesset. See Knesset and Prime Ministerial Elections Law (Consolidated Version)-1969, Sec. 26, [1969] Sefer HaHukim 556, at 103, and Local Authorities (Elections) Law-1965, Sec. 13.2, [1965] Sefer HaHukim 465, at 245. Thus, Palestinian residents of Jerusalem who may not vote in the elections to the Knesset were able to vote in the elections for the Palestinian Council. There are several hundred Palestinian residents in Jerusalem who have received Israeli citizenship. These people may vote in elections to the Knesset, but could not vote in the elections for the Palestinian Council. See supra Chapter V.C.3.

217 See infra Chapter V.D.6.
only, i.e., it applied to the persons entitled to participate in the elections, rather than to the places in which those persons lived.\textsuperscript{218}

2. Electoral Administration in Jerusalem

During the course of the negotiations, the parties agreed that any campaign activities taking place in Jerusalem would be subject to the relevant provisions of Israeli law, rather than the Palestinian Elections Law. Candidates wishing to conduct such activities were to apply for the necessary Israeli permits from the Israel Police through the CEC. Representatives of this CEC, together with representatives of the Israel Police, formed a special committee to coordinate issues relating to election campaigning in Jerusalem.\textsuperscript{219}

The provisions of the Interim Agreement establishing the DEOs and DECs have been described above. One aspect of these provisions, of particular significance for Jerusalem, was that all offices of these bodies were to be situated only in “areas under the jurisdiction of the Council”, and that “[a]ll aspects of the electoral administration” could take place only in a relevant DEO office.\textsuperscript{220} These provisions thus had the following two significant implications regarding Jerusalem:

i. All offices of the CEC and its subordinate bodies were situated outside Jerusalem. While for the purposes of enabling Palestinians of Jerusalem to vote, Jerusalem was included within a larger constituency which also included parts of the West Bank, all the offices of the electoral administration, including the polling stations, were situated in the West Bank, that is, outside Jerusalem. This provision was consistent with the

\textsuperscript{218} Ibid., Annex II, Art. I.2. This sub-section concludes with the following sentence: “Unless otherwise specifically provided in this Annex, all persons voting or standing as candidates in the elections shall be uniformly subject to the provisions of the Election Law and the Election Regulations”. The proviso (“unless otherwise specifically provided in this Annex”) referred to the one issue regarding which Israel did have an interest in having its laws apply even to the persons involved in the elections – i.e., the conduct of campaign activities such as meetings, rallies and posting of campaign literature. For a discussion of the special treatment of these activities within Jerusalem, \textit{see infra} Chapters V.D.2 and V.D.5.

\textsuperscript{219} Interim Agreement, \textit{supra} note 1, Annex II, Art. VI.1. For a further discussion of the electoral campaigning in Jerusalem, \textit{see infra} Chapter V.D.5.

\textsuperscript{220} Interim Agreement, \textit{supra} note 1, Annex II, Art. 1.4.
general provision which required that all offices of the Palestinian Council be located in areas under its jurisdiction.\textsuperscript{221}

ii. In addition, all aspects of the electoral administration took place outside Jerusalem. Since the DEO for the Jerusalem constituency was situated in the West Bank town of Abu Dis, and since all aspects of electoral administration took place only in this office, it followed that no aspects of the electoral administration were conducted within Jerusalem.

3. Candidates

As noted above, the Interim Agreement established various requirements for candidates, including the requirement of having a valid address in an area under the jurisdiction of the Council. In the case of a candidate for the Council, this address was required to be in the constituency for which he/she was a candidate.\textsuperscript{222} As Jerusalem is not within the jurisdiction of the Council,\textsuperscript{223} Palestinians who lived only in Jerusalem could neither run for the position of the Ra’ees, nor for a seat in the Council. Only Palestinians with a valid address outside Jerusalem, in the West Bank or the Gaza Strip, could stand as candidates for election. For the purpose of this provision, the agreement defined a valid address as “that of a residential property which is owned or rented or otherwise legitimately occupied by the candidate”.\textsuperscript{224} That the candidate’s address must be his/her genuine residence was further emphasized by the agreement definition of “address” as “the specific abode in which a person actually lives” and of “abode” as a “main permanent fixed address”.\textsuperscript{225} A Palestinian who lived in the West Bank or the Gaza Strip, however, was not barred from standing as a candidate merely because he/she has a second address outside these areas, in Jerusalem or elsewhere.\textsuperscript{226} In all, fifty-two candidates ran for seven seats representing the Palestinians of the constituency of Jerusalem.

\textsuperscript{221} Interim Agreement, \textit{supra} note 1, Article 1.7. Jerusalem is not under the jurisdiction of Council. \textit{Ibid.}, Art. XVII.2 and DOP, \textit{supra} note 1, Art. IV and the Agreed Minute to Art. IV.

\textsuperscript{222} Interim Agreement, \textit{supra} note 1, Annex II, Art. III.1.b. All the requirements regarding candidates for the Council applied equally to candidates for the Jerusalem constituency. Art. XVII.2.

\textsuperscript{223} \textit{See supra} note 221.

\textsuperscript{224} Interim Agreement, \textit{supra} note 1, Annex II, Art. III.1.b.

\textsuperscript{225} Interim Agreement, \textit{supra} note 1, Annex II, Art. II.1.j.

\textsuperscript{226} \textit{Ibid.}, Annex II, Art. III.1.b.
4. Canvass of Voters in Jerusalem

In Jerusalem, a canvass of Palestinians residing in the eastern part of the city was conducted using Palestinian students resident in Jerusalem as canvassers at the same time that the Initial Registration Canvass was conducted in the West Bank and the Gaza Strip.\textsuperscript{227} The over-all response rate of the Palestinians of Jerusalem was much lower than the response rate in the West Bank and the Gaza Strip\textsuperscript{228} and when the canvass was checked against the Israeli Population Register, the response rate was 85%. Of the Palestinians canvassed in Jerusalem, 54,000 were confirmed as eligible for inclusion in the Electoral Register.

5. Campaign

As noted above, campaign activities in Jerusalem were subject to Israeli law and were co-ordinated in conjunction with the Israel Police. According to agreements reached in the special CEC subcommittee, the candidates in the Jerusalem constituency were permitted to hold parlor meetings and to hold rallies and meetings in enclosed public venues\textsuperscript{229} which had been approved by the Israel Police. Additionally, the Jerusalem municipality constructed special announcement boards, on which candidates could display their posters and announcements.

6. Polling Arrangements in Jerusalem

Most Palestinians of Jerusalem voted at approximately 170 polling stations situated outside Jerusalem in the West Bank, regarding which they had been notified by the CEC. At the same time, pursuant to a procedure agreed upon by the two sides, which resembled absentee voting, approximately 5,000 of Jerusalem’s Palestinians voted in the elections through services rendered in five specified post offices in Jerusalem.\textsuperscript{230}

\textsuperscript{227} See supra notes 159-64 and accompanying text.
\textsuperscript{228} EU Report, at 39.
\textsuperscript{229} This meant that open-air meetings could not be held – public venues could only be used for campaign activities if they were under a roof.
\textsuperscript{230} A week before polling day, three Israeli members of the Likud party submitted a petition to the Israeli Supreme Court sitting as the High Court of Justice seeking to prevent the use of post offices in Jerusalem in connection with the Palestinian elections. The Supreme Court dismissed the petition on 14 January 1996, finding that
The Interim Agreement provided that the number of such voters would be in accordance with the capacity of these post offices, and the Israeli Postal Authority and Israel Police determined this capacity to be capable of accommodating 5,000 persons. Those Palestinians who voted through these Israeli post offices were notified of the relevant post offices by means of an Electoral Registration Card provided by the CEC and by announcements they placed in Arabic language Jerusalem newspapers.

In contrast to the situation in the West Bank and Gaza Strip polling stations, there were no polling station commissions in the Israeli post offices. Any necessary procedures within such post offices were conducted by the Israeli post office employees, who were responsible for identifying the Palestinian voters and providing them with ballot papers and envelopes. In accordance with the Interim Agreement, international observers were present at all the Jerusalem post offices in which these services were rendered. All forms used in the post offices (except for the actual ballot papers) were different from those provided for in the Palestinian Elections Law.

In these post offices, voters marked ballot papers at the post office counters rather than in private booths and inserted the marked ballots into envelopes addressed to the relevant DEO in the West Bank. The envelopes were handed over to post office employees who put them into

the arrangements for use of the post offices did not conflict with the fact of Israeli sovereignty over Jerusalem or with the provisions of the Basic Law: Jerusalem, Capital of Israel. H.C. 298/96 and 317/96, Peleg, Shoval & Matza v. The State of Israel et. al., (not yet published.).

Interim Agreement, supra note 1, Annex II, Art. VI(2). The Law Implementing the Interim Agreement on the West Bank and the Gaza Strip (Legal Jurisdictions and Other Provisions) [Legislation Amendments] (1996), Para. 14 authorized the Minister of Communications to instruct the Israeli Postal Authority to render the services necessary for the implementation of the State's obligations under the Interim Agreement. This law was published in Sefer HaHukim on 17 January 1996, ([1996] Sefer HaHukim (No. 1556), at 34) and on the same day, the Minister of Communications issued the appropriate instructions to the Postal Authority.

Interim Agreement, supra note 1, Annex II, Art. VI.2.c.

At various stages of the Interim Agreement negotiations, the Palestinian side proposed that the Palestinian residents of Jerusalem should be able to vote in UN offices in Jerusalem, in Jerusalem Consulates or at a polling station to be constructed on the Temple Mount. Israel, however, opposed all of these suggestions.


The Israelis had suggested that ballots be mailed in advance to the voters using the post offices to allow them to mark the ballots in privacy before bringing them to the post offices, but the Palestinians requested that the voters be allowed to mark their ballots at the post offices.
post boxes marked with the logo of the Israeli Postal authority. The envelopes were then delivered to the DEO to which they had been addressed, where they were opened and where the enclosed ballot papers were counted and totalled along with all the other ballot papers cast in the West Bank.

7. Election Day in Jerusalem

On the eve of the elections, and on behalf of the Israeli government, the Legal Adviser of the Ministry of Foreign Affairs responded to a request from the CEC and the EU observers delegation to announce in the Arabic language newspapers in Jerusalem and in a broadcast on the Palestinian radio station, that the status and the rights of Palestinians of Jerusalem would not be affected as a result of their participation in the elections and that the Israel Police would ensure their safety.

On the day of the elections, in response to a request from the CEC and because of the low turn-out, Israel agreed to extend the hours of the five Jerusalem post offices in which the special services were rendered until eight o'clock in the evening. Nevertheless, less than 1,500 Palestinians (or 30% of those eligible) appeared in these post offices in order to use the services provided at these locations. Even in the 170 polling stations in the West Bank designated for Palestinians of Jerusalem, the voter turn-out was much lower than in the other polling stations. The low turn-out was attributed by some to the fact that so many of the Jerusalem Palestinians needed to travel to polling stations outside the city, although observers such as the NDI delegation noted that Israeli officials co-operated in resolving last minute disputes regarding the re-assignment of specific voters to the five Jerusalem post offices.

Another possible deterrent was the result of legitimate Israeli concerns that either Jewish or Arab extremists would attempt to interfere with or otherwise sabotage the activities in these five Jerusalem post offices. In response to these concerns, the Israel Police deployed relatively large police forces outside the post offices, and took various other measures intended to strengthen security at these locations. Nevertheless, both domestic and international observers complained that these security

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236 These boxes were referred to in the Interim Agreement as receptacles. Ibid., Annex II, Art. VI.1.c.

Aside from the Postal Authority logo, these receptacles differed in size and shape from the ballot boxes used in the polling stations on the West Bank and the Gaza Strip.

measures were deterring potential voters from approaching the post offices, and the Israel Police attempted to limit the negative impact of their presence at the sites.\textsuperscript{238}

VI. CONCLUSION

The establishment of a representative governing body, democratically elected by the Palestinians of the West Bank and the Gaza Strip, has been a central element of every proposal for Palestinian self-government arrangements in the past twenty-five years. With the election of the Palestinian Council on 20 January 1996, these plans have been realized for the first time. However, although the framers of the Interim Agreement provided a blueprint for a democratic Palestinian system of self-government, its full implementation is now in the hands of the Palestinians of the West Bank and the Gaza Strip. Only they can decide whether they want to develop the type of democracy that provides a truly representative government which fully protects all the rights of all its residents.\textsuperscript{239}

\textsuperscript{238} NDI Preliminary Statement, 21 January 1996, at 3.
\textsuperscript{239} In this regard, it should be emphasized that elections alone do not make a society democratic. Without respect for human rights and the rule of law there will be no Palestinian democracy. Under Art. XIX of the Interim Agreement, both sides undertook to exercise their powers and responsibilities with due regard to the principles of human rights and the rule of law. In addition, the Israeli security forces and the Palestinian Police were required to carry out their functions and responsibilities while adhering to these international norms, guided by the obligation to protect the public, respect human dignity and avoid harassment. Interim Agreement, supra note 1, Annex I, Art. XI.1. The same language had been included in Annex I, Art. VIII.1 of the Gaza-Jericho Agreement, supra note 1. Finally, the Interim Agreement also invoked internationally accepted human rights standards in connection with transfers of criminals from one jurisdiction to another. The two sides undertook to “take all necessary measures to ensure that the treatment of individuals transferred under this article (regarding transfer of criminal suspects and defendants) complies with the applicable legal arrangements in Israel and in the Territory and with internationally accepted norms of human rights law”. Interim Agreement supra note 1, Annex IV, Art. II.7(h)(1). For a discussion of similar provisions in the Gaza-Jericho Agreement, see E. Benvenisti, “Responsibility for the Protection of Human Rights under the Interim Israeli-Palestinian Agreements”, 28 Israel L. Rev. 297 (1994). Since the establishment of the Palestinian Authority, however, several domestic and international human rights organizations have noted various human rights violations committed by the Palestinian police.