

Human Rights Watch

1630 Connecticut Ave. NW #500

Washington, DC 20009

Phone: 202-612-4321

Fax: 202-612-4333

E-mail: hrwdc@hrw.org

Website: <http://www.hrw.org/mideast/is-ot-pa.php>

The “Roadmap”: Repeating Oslo’s Human Rights Mistakes

The publication of the latest plan to end Israeli-Palestinian violence, the “Roadmap” may be an important step in achieving a negotiated settlement in the Israeli-Palestinian conflict. Sponsored by the United States, Russia, the European Union, and the United Nations (the “Quartet”), it may have the potential to end the violence that has wrecked Palestinian and Israeli civilian lives.

However, Human Rights Watch is concerned by the failure of the roadmap to incorporate into its provisions internationally recognized human rights and international humanitarian law (IHL) principles, such as the need to bring to justice persons responsible for grave abuses. Other human rights and international humanitarian law standards are incorporated not as binding obligations but as political benchmarks subject to negotiation, political expediency, and performance by other parties.

Failure to incorporate such standards is not new. Almost all Israeli-Palestinian agreements have ignored human rights protections and IHL standards and failed to guard against rampant abuse. It is crucial not to repeat these mistakes. Recent experience in the former Yugoslavia, East Timor, Guatemala and elsewhere has shown that the legitimacy and sustainability of political processes are strengthened, not weakened, by including IHL and human rights standards. All conflict-related agreements should include and uphold these standards. In the words of the U.N. Secretary General’s latest [report](#) on the Protection of Civilians in Armed Conflict (S/2002/1300), “The effective protection of civilians is a critical element in laying the foundations of the peace process. The durability of peace is dependent on a commitment to the protection of civilians from its very inception.”

Human Rights Watch does not take a position on the territorial disputes that lie at the heart of the Israeli-Palestinian conflict. We are dismayed, however, by the consistent failure of the U.N. and its members states to enforce U.N. security council resolutions aimed at implementation of obligations under the Fourth Geneva Convention to protect civilians on the ground, including an end to attacks against civilians and the cessation of Israeli settlement activity. While Human Rights Watch does not take a position in support of any specific negotiating framework, any meaningful peace must contain guarantees of the rights and protections for the civilian population in the West Bank and Gaza as well as Israel.

Human rights and humanitarian law standards can assist monitoring of peace accords by providing impartial definitions of behavior, benchmarks of good practice, and well-documented comparative experience – for example, on issues such as the right to freedom of movement, or in cases of incitement to commit acts of violence against civilians. By using these internationally recognized standards, Quartet members would foster a process that contained clear and well-established benchmarks, and monitoring indicators – and might overcome the Oslo legacy of bitterness and human rights abuse.

Human Rights Watch has long urged the parties to the conflict to observe their IHL and human rights obligations. It now urges Quartet members to ensure that the implementation and monitoring of the roadmap’s provisions comply with international humanitarian and human

rights law. As lead sponsor and key monitor of the roadmap process, the U.S. has a special duty to ensure that this takes place. Incorporating and adhering to IHL and human rights protections is the best means of reducing civilian suffering, assessing progress impartially, and ensuring a durable negotiating process. Specific recommendations to roadmap monitors are presented at the end of this document.

1. Basic Roadmap Facts

The roadmap is not a treaty. Its sponsors describe it as a “performance-based and goal-driven” plan. It requires action by the Palestinian Authority (PA) and Government of Israel (GOI) on a wide range of security-related, humanitarian, and policy matters. International donors, quartet members, and neighboring states also have obligations – to fund Palestinian reforms, to provide international political support, and to end any public or private financing of armed Palestinian groups.

The roadmap envisages a three-phased process towards a set of goals that include the establishment of an independent Palestinian state, an end to occupation, and the resolution of the Israel-Palestinian conflict. Whether it will succeed is an open question. The first phase emphasizes immediate PA security action, confidence-building measures, and PA reform, including the appointment of a Palestinian prime minister. Among other things, it also calls on Israel to dismantle settlement outposts erected since March 2001, and to freeze all settlement activity. The second phase envisages the creation of an independent Palestinian state with some attributes of sovereignty; the third, the negotiation of a final, comprehensive peace settlement. Progress between the phases will be monitored by what is reported to be a U.S.-led monitoring mechanism, made up of four committees (security, humanitarian, PA reform, and other political-related), relying on resources already in place.

Both Israelis and Palestinians have engaged in intense political maneuvering prior to the roadmap’s release, particularly over whether steps should be phased or reciprocal. The Palestinian Legislative Council (PLC) has approved the creation of a prime ministerial position and begun other reform-related steps. The Israeli government has called for numerous modifications to the plan, reportedly insisting that all Israeli steps be contingent on PA fulfilment of security benchmarks, that any settlement freeze take place only after a complete end to all armed Palestinian activity; and that the Palestinian side give up in advance any claim to a right of return to Israel by Palestinian refugees. Both U.S. and U.K. officials have publicly stated that the document is to be implemented “as is.” Mechanisms for enforcement, if any, remain unclear.

The roadmap proposes a variety of institution- and confidence-building measures intended to create the right atmosphere and, on the PA side, institutional capacity, to lead to renewed negotiations. It offers not one but multiple potential negotiating frameworks. The opening paragraphs refer extensively to U.N. and other instruments that have traditionally been used as the basis for Middle East peace negotiations, including U.N. Security Council Resolutions [242](#), [338](#), and [1397](#), and the principle of land for peace. The document links itself to the agreements made between Israel and the PLO during the 1990s, known collectively as the Oslo accords, although the extent to which Oslo principles might apply is left deliberately vague: the roadmap itself speaks only of “agreements previously reached between the parties.” The roadmap also refers to plans formulated since the outbreak of the current intifada in September 2000, such as the Tenet Work Plan, the Mitchell report, President Bush’s [speech](#) of June 24, 2002, and the

[initiative](#) of Crown Prince Abdullah of Saudi Arabia at the Beirut Arab League Summit Meeting of 2002.

2. Past Negotiations: the price of disregarding human rights

The history of the Israeli-Palestinian conflict is replete with serious human rights violations—including unlawful killings, arbitrary arrest, torture, and unfair trials—that the parties have tried to justify by invoking security concerns.

Attempts to end the conflict, however, have rarely incorporated human rights or IHL standards that might reduce such violations or provide a broad framework for negotiated solution. Instead, these have been bargained away, supposedly in the interests of advancing an as-yet elusive political solution. For example, the 1993 [Declaration of Principles on Interim Self-Government Arrangements](#), the first Oslo agreement, contained no operative language on human rights protections or international humanitarian law. Instead, it referred in its preamble only to the parties “mutual legitimate and political rights.” Yet public support for these processes, and the relevance of their content, has been crucially undermined by continuing violations of fundamental rights on the ground.

The emphasis of the Oslo accords on security and policing, and the absence of any provisions for protection of basic human rights, meant that parties – including the U.S. -- found it all too easy to ignore serious abuses committed in the name of promoting “security.”

For example, the 165 pages of the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip contained only three references to human rights. The first was a weakly formulated commitment by the parties to exercise powers with “due regard to internationally-accepted norms and principles of human rights and the rule of law” (Art. XIX). The second was similar wording in Annex I Art. XI (7), which says Israeli forces and Palestinian security personnel will again give “due regard” to human rights norms. The third was in Annex IV Art. 11 (7) (h) (1), which says that extradition proceedings should be in accordance with human rights norms. The 1998 Wye River Memorandum similarly presented human right as an afterthought, confining itself to [ambiguous and incomplete language on the need for Palestinian police to respect human rights norms in Article II \(C\)\(4\)](#), and failed to address Israeli obligations altogether.

The lack of explicit, detailed human rights guarantees in the Oslo agreements had a clear impact. Both Israel and the PA downplayed IHL and human rights commitments in their conduct on the ground. Israeli abuses included severe restrictions on the freedom of movement, use of [torture](#) and ill-treatment in [detention](#), hostage-taking, and other violations. [Abuses by Palestinian security forces](#) included [torture, suspicious deaths in custody, and incommunicado detention for long periods without charge or trial](#). Many of these abuses have continued or expanded. Current abuses include [unlawful killings and the indiscriminate or excessive use of lethal force by Israeli security forces, collective punishments, severe and widespread restrictions on freedom of movement, and the PA’s consistent failure to prevent or punish intentional attacks on civilians by Palestinian armed groups](#).

The need for negotiated agreements to incorporate human rights standards is shown all too clearly by the agenda of the current roadmap: had the Oslo agreements specified human rights limitations on the power of security forces and emphasized the rule of law, there would be much

less need today for a comprehensive agenda to reform of Palestinian security forces and government. Both sides continue to have strong incentives to downplay IHL and human rights commitments. Human Rights Watch is concerned that, without reference to clear IHL and human rights standards incorporated into the roadmap and subsequent documents, they too will disregard ongoing human rights violations, and ultimately fail.

3. Obligations, not Options

HRW fears that several elements in the roadmap framework could further undermine parties' commitments to their basic obligations under human rights and humanitarian law, as well as the international community's own duty to uphold key provisions of international humanitarian law. These obligations cannot be made subject to negotiation or political expediency. By failing to distinguish between these obligations and benchmarks that are properly subject to political negotiation, the roadmap and its sponsors run the risk of further undermining existing protections for the civilian population.

Members of the international community have a particular duty to meet their own IHL obligations in the Israeli-Palestinian conflict. Israel has particular responsibilities as occupying power, but E.U. member states, Russia, and the U.S., as high contracting parties to the Geneva Conventions, have responsibility to ensure that the protections specified in the convention are upheld.

Several benchmarks in Phase I of the roadmap potentially fail to meet basic IHL obligations. These are addressed below.

Security Obligations: No Israeli Actions Undermining Trust.
Under the Phase I heading of "Security" the roadmap states:

GOI takes no actions undermining trust, including deportations, attacks on civilians; confiscation and/or demolition of Palestinian homes and property, as a punitive measure or to facilitate Israeli construction; destruction of Palestinian institutions and infrastructure, and other measures specified in the [Tenet Work Plan](#).

The language of this paragraph misstates the gravity of the offences it describes. All of these actions violate international humanitarian law: some are war crimes. Their inclusion in the roadmap text is a necessary (and overdue) step towards promoting IHL standards. But the Israeli authorities and Quartet members must be clear that such actions are prohibited regardless of circumstances. They represent prohibitions that exist independently from the roadmap process – they cannot be negotiated away or made contingent on steps taken by another party. The Quartet should explicitly state that the actions it is urging Israel to take in this section are in fact existing obligations under international humanitarian law.

For example, punitive house demolitions and deportations violate multiple provisions of IHL, including prohibitions against collective punishment and the destruction of property. Israel's responsibility to cease such practices exists independently from any political framework, and Quartet members – like the rest of the international community – should exert pressure on Israel to end such practices regardless of roadmap progress.

Omitted entirely from this paragraph is reference to systematic house demolitions and extensive property destruction for alleged security-related purposes, the most frequently-invoked reason for house demolition and land clearance in the Gaza Strip and the West Bank. According to U.N. statistics, at least 8000 persons have been made homeless as a result of house demolitions in Gaza alone between September 2000 and the end of March 2003. Human Rights Watch strongly urges Quartet members to include such demolitions in their monitoring activities. In doing so, Quartet members should apply the standard of article 53 of the Fourth Geneva Convention, in which the destruction of civilian property is prohibited except when rendered “absolutely necessary by military operations,” a standard that Israeli military forces have consistently failed to apply.

Humanitarian Obligations: Implementation of the Bertini Report.

In Phase I, under the heading of “Humanitarian Response,” the roadmap states “Israel takes measures to improve the humanitarian situation. Israel and Palestinians implement in full all recommendations of the [Bertini report](#). . .”

The personal Humanitarian Envoy of the U.N. Secretary General, Catherine Bertini, visited Israel and the Occupied Territories in August 2002. In her report she noted previous Israeli commitments to improve access to urgent medical services and water; to fully facilitate the work of international aid agencies; improve checkpoint procedures; and other issues. She also listed a series of recommendations to Israel and the PA to improve the humanitarian situation and civilian protections.

Under the Fourth Geneva Convention, Israel has an active duty to respect and protect the sick, injured, and others in need of medical services, as well as hospitals and emergency medical personnel. It must allow the free passage of all consignments of medical and hospital stores (Articles 16-18, 20- 21, 23, and Art. 63), and ensure the operation of medical and hospital services (Art. 56), It is obliged “to the fullest extent of the means available” to ensure the food and medical supplies of the population; and facilitate relief efforts. (Articles. 55 and 59).

The Quartet should make clear that its recommendation on this point is a pre-existing obligation deriving from Israel’s status as the Occupying Power, and not contingent on Palestinian compliance with roadmap benchmarks. These obligations, in other words, should not be subject to negotiation or bargaining over reciprocal steps. Nor should they wait for some yet-to-be announced timeline of implementation. Recent statements by Israeli officials, in which they said they would ease closure after the confirmation of a PA prime minister, confirm that Israel can improve such conditions at its discretion, for political reasons.¹ Quartet members and others should apply pressure now for Israel to implement its Geneva IV obligations, including relevant recommendations of the Bertini report. Ambulance passage, access to drinking water, and the provision of humanitarian relief should not be subject to political negotiation. Likewise, PA steps to prevent any unlawful use of protected premises and emergency medical vehicles should not be contingent on roadmap progress.

Security Obligations: Impunity

At some point every peace negotiation must address the question of impunity. Those who commit severe violations of international humanitarian and human rights law should be brought

¹ See, for example, “Israel Ready to Ease Blockade on Territories With New Palestinian Cabinet” AFP, April 18, 2003.

to justice. In the case of the Israeli-Palestinian conflict, Israeli military and security forces enjoy effective impunity for their actions. For security forces to obey their superiors, there must be effective discipline and punishment for wrongdoing. For armed groups to stop attacking civilians, those responsible for such attacks must consistently be investigated, arrested, and prosecuted by a strong, unhindered Palestinian Authority. Any effort to end the civilian killings and suffering associated with the intifada needs concrete steps to end impunity.

Yet nowhere does the roadmap text mention the obligation to investigate and bring to justice individuals responsible for criminal violations of international humanitarian law. Israel is obliged to discipline or punish individuals that have committed wilful killings, torture, or other acts defined as grave breaches in Article 147 of the Fourth Geneva Convention because it is a High Contracting Party to the Geneva Conventions. E.U. member states, Russia, and the U.S. are also High Contracting Parties to the Geneva Conventions – and are also obliged to ensure that such individuals are identified, arrested, and brought to justice (Articles. 146 and 148). The PA’s obligation to bring to justice those responsible for planning or carrying out attacks against civilians derives from its law enforcement responsibilities in those areas of the West Bank and Gaza under its control and from its duty to prevent crimes against humanity.

Human Rights Watch and other organizations have documented extensive, ongoing violations of the laws of war by Israeli military forces. These include unlawful killings, indiscriminate or excessive use of force, damage and looting, hostage-taking, and the use of civilians to shield Israeli forces from enemy fire. Swift and impartial investigations, and meaningful discipline or punishment, are essential steps in tackling the problem of impunity in a credible manner. The Quartet members must hold Israeli authorities to international standards of transparency and fairness in their investigation of violations by Israeli soldiers and members of the border police. According to statistics of the Association of Civil Rights in Israel (ACRI), from September 2000 to December 29, 2002, only thirty cases involving the unlawful use of lethal force have been fully investigated by the Israel Defense Forces (IDF), and only five resulted in prosecutions before military courts.²

As part of their monitoring activities, Quartet members should pressure the Judge Advocate-General’s office of the Israeli Defense Forces to resume its previous practice of investigating all incidents of civilian killings, and all instances where credible allegations of wrongdoing exist. They should monitor the investigation caseload of both the IDF Judge Advocate-General’s Office, and the Office of Investigation of Police Misconduct in the Ministry of Justice. They should require regular updates on the numbers and nature of investigative cases opened, their progress, and their results. Donors should condition financial assistance to Israel on the basis of changes in investigative policy, and provide any necessary technical assistance to such offices to ensure that these changes are carried out.

To date the PA has lacked the political will, and most recently the functioning infrastructure, to undertake good faith investigations and to bring to justice those responsible for attacking

² Charles M. Sennott, “Israeli Troops Face Criticism On Civilian Toll”, Boston Globe December 29, 2002. According to a similar article on December 30, 2002. “A total of 281 cases had been opened by late this month; 20 involved the killing of Palestinians. In most of the rest, soldiers were accused of stealing, vandalism and improper use of firearms that did not result in injury.” Tracy Wilkinson, “Israeli Army Probes Slaying of Palestinian Grandmother,” Los Angeles Times December 30, 2002. Human Rights Watch asked the IDF for updated statistics on military investigations on four separate occasions during 2002. No reply was received.

civilians. This obligation exists regardless of the progress of political negotiations. As PA security forces re-acquire the ability to function effectively and the PA judicial structure is rebuilt, their efforts to prevent and disrupt armed groups must include steps, in accordance with international human rights standards, to bring to justice those who incite, plan, or attempt to carry out suicide bombings or other attacks against civilians. Human Rights Watch considers the scale and systematic nature of suicide attacks against civilians to amount to crimes against humanity. International donor efforts should provide the technical and material support to strengthen the investigative capacity of the PA's law enforcement agencies. Benchmarks of the International Task Force on Palestinian Reform should ensure that deliberate attacks on civilians are made criminal offences in Palestinian domestic law, in accordance with IHL standards, as well as other measures to provide the legislative and investigative framework through which to prosecute those who planned, ordered, or committed such attacks,³ including review of the 1979 PLO (Military) Revolutionary Penal Code, the basis of the military judicial system.

Settlement Activity

Phase I of the roadmap text contains two settlement-related benchmarks, placed at the end of the text. The first is the dismantling of all settlement outposts created since March 2001. The second is the freezing of all settlement activity, “consistent with the [Mitchell Report](#).”

In the inevitable debate over these two benchmarks, the parties, roadmap monitors and Quartet members must be absolutely clear; Israeli settlement activity in the Occupied Territories is prohibited by customary international humanitarian law, and the Fourth Geneva Convention.

In this respect a freeze on all settlement activities and the dismantling of all settlement outposts created since March 2001 are initial steps in achieving compliance with international law. Such steps would certainly go a long way in easing the tensions that lead to frequent human rights violations. However, in dealing with the issue of settlements the Quartet should not limit itself to being “consistent with the Mitchell Report.” First and foremost it should aim to be guided by the international legal obligations set out above.

4. Security “Reform” – New Forces, Old Dangers

As with the Oslo accords, the roadmap's security provisions are likely to be deal-breakers. But the roadmap, like the Oslo accords, fails to incorporate essential human rights protections into its security recommendations. By doing so, it risks encouraging abuse.

The common assumption in international political circles is that observing international human rights or humanitarian law standards inhibits security. This assumption ignores the reality that ongoing human rights violations sharpen community tensions, undermine trust in negotiated agreements, and weaken the credibility of leaders responsible for negotiating with the other side. The use of IHL and international human rights standards to define benchmarks and assess progress would provide much-needed clarity to the roadmap's most important provisions. It

³ The International Task Force on Palestinian Reform is made up of representatives from the E.U. U.S., U.N., Russia (the Quartet); Norway, Japan, the IMF and the World Bank. It describes its role as “to monitor and support implementation of Palestinian civil reforms, and guide the international donor community in its support for the Palestinians' reform agenda.” See “Statement of the Task Force on Palestinian Reform”, August 23, 2002, available online at <http://www.europa-web.de/europa/03euinf/01GASP/palesttf.htm>

would also help lessen the divergence in expectations that the Mitchell report defined as a major factor in the outbreak of violence in September 2000.⁴

Phase I of the roadmap calls for the consolidation of Palestinian security forces from some ten to three services, under the supervision of a single security chief reporting to the PA interior minister. The U.S., in association with an external oversight board including Egypt and Jordan, will rebuild and re-train the security forces, including a new leadership. The security forces will then be required to: “undertake visible efforts on the ground to arrest, disrupt and restrain individuals and groups conducting and planning violent attacks on Israelis anywhere,” as well as to engage in “sustained, targeted, and effective operations aimed at confronting all those engaged in terror.” There is no reference in this language to internationally recognized human rights standards that might limit their power or means of operation. Nor does the text suggest a legislative basis under which such security forces would be created and controlled.

Human Rights Watch and Palestinian human rights organizations have documented extensive and severe human rights violations by the PA security forces, which operated above the law. These violations including torture, ill-treatment, deaths in custody of alleged collaborators, flouting of high court orders for the release of prisoners, and incommunicado detention of persons for long periods without charge or trial. U.S. and Israeli pressure on the PA also led to the creation of the State Security Courts in 1995, which expanded to handle basic civilian and criminal cases. [Trials in these courts were often secret, over in minutes, and virtually guaranteed to be unfair.](#)

The provisions of the roadmap unfortunately contain no protections against the sorts of systematic human rights abuses that undermined past efforts to promote a negotiated end to the Palestinian-Israeli conflict. While consolidation may help to limit violations arising from the proliferation and competition of security forces, it will do little to improve the prevailing disregard for international standards regarding arrest, detention, and interrogation. The opportunistic arrest of individuals for political reasons, including non-violent opposition to PA policies, will remain an attractive and viable option, and the killing of alleged collaborators all too easy. Indeed, two and a half years of militarized conflict, disappointed expectations, and fragmented PA authority may mean that any eventual crackdown is more violent and more arbitrary than before. In the absence of explicit human rights protections, and their incorporation into the monitoring mechanism, U.S. training or an external security oversight board will provide little guarantee against violations. The U.S. was extensively involved in the training of PA security forces responsible for abusive practices during the 1990s, and the security forces of Jordan and Egypt themselves have long histories of abuse.

⁴ “We are struck by the divergent expectations expressed by the parties relating to the implementation of the Oslo process. . . The step-by-step process agreed to by the parties was based on the assumption that each step in the negotiating process would lead to enhanced trust and confidence. To achieve this, each party would have to implement agreed-upon commitments and abstain from actions that would be seen by the other as attempts to abuse the process in order to predetermine the shape of the final outcome. If this requirement is not met, the Oslo road map cannot successfully lead to its agreed destination. Today, each side blames the other for having ignored this fundamental aspect, resulting in a crisis in confidence. This problem became even more pressing with the opening of permanent status talks.” *Report Of The Sharm El-Sheikh Fact-Finding Committee*, April 30, 2001. Available online at <http://usinfo.state.gov/regional/nea/mitchell.htm>

The legal reforms envisioned under the heading “Palestinian Institution-Building” may serve to protect against security-force abuses in the medium and long term. These reforms must be given greater emphasis in roadmap political activities and donor coordination. Without them there will be no sustainable PA governmental institutions, no effective judicial or commercial system, and no civil society support for any political process. In the short term, Quartet members should insist, in all public and private communications, that PA security forces and their Israeli counterparts operate according to internationally recognized judicial and legal standards, including guarantees against torture and arbitrary detention, the right to be charged with a recognizable criminal offence, and the right to a fair trial. Although the PA interior minister recently said that the State Security Courts have ceased functioning, they should be formally abolished, and under no circumstances should they be revived. If there is to be any break from the patterns of violations of the past, Quartet members must include as monitoring benchmarks compliance by security forces with internationally recognized standards, including the [U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the Code of Conduct for Law Enforcement Officials](#).

5. The Benefits of Human Rights Standards: Clarity and Protection

International humanitarian and human rights law provides important guidance in defining benchmarks in peace negotiations, and in assessing the progress required to achieve them. An excellent example of the value that international human rights and humanitarian law standards can add to the roadmap monitoring process is that of freedom of movement.

Freedom of Movement

Israeli-imposed closures and curfews in Palestinian areas have created great hardship, and crippled Palestinian civilian life. Both international humanitarian and human rights law protect the right to freedom of movement, but allow states to restrict certain aspects for reasons of military necessity or public security. Israel’s obligations as Occupying Power to ensure the passage of foodstuffs, medical personnel, and other civilian necessities are summarized in the earlier section “Humanitarian Obligations: Implementation of the Bertini Report.”

The right to freedom of movement is set out in Article 12 of the International Covenant on Civil and Political Rights (ICCPR). The U.N. Human Rights Committee, which monitors the compliance of states parties to the ICCPR, has determined that, where this right is restricted, the burden is on the state party (in this case, Israel), to demonstrate that its restrictions “are based on clear legal grounds and meet the test of necessity and requirements of proportionality.”⁵

Commenting on the standard of necessity, the Committee wrote:

It is not sufficient that the restrictions serve the permissible purposes; they must also be necessary to protect them. Restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve the desired result; and they must be proportionate to the interest to be protected.⁶

⁵ Human Rights Committee, General Comment 27, Freedom of Movement (Art.12), U.N. Doc CCPR/C/21/Rev.1/Add.9 (1999). Available online at <http://www1.umn.edu/humanrts/gencomm/hrcom27.htm>

⁶ Ibid, paragraph 14. Emphasis added.

Israel is a party to the ICCPR, and has not derogated from its provisions. Monitors assessing Israeli compliance with the Phase I benchmark “easing restrictions on movement of persons and goods” may find the Committee’s comments useful for assessing Israel’s progress in easing movement restrictions in the West Bank and Gaza Strip. What is crucial is that the relation between right and restriction, between norm and exception, not be reversed.

Movement restrictions should also be evaluated in terms of compliance with the Fourth Geneva Convention provisions protecting civilian life and medical and humanitarian access (as outlined in the Bertini Report), and the prohibition of collective punishment. The International Committee of the Red Cross (ICRC) stated in February 2001 that Israel, in addressing its legitimate security concerns, “must allow for a quick return to normal civilian life. This, in essence, is the meaning of the fourth Geneva Convention which is applicable to the Occupied Territories.”⁷

Incitement

A second example of the value that human rights standards can bring to the monitoring process is the question of incitement to crimes under international humanitarian law. Under the Oslo accords, Israel and the PA agreed to end incitement and hostile propaganda against each other, and to take legal measures to prevent incitement by individuals and groups in their jurisdiction (Interim Agreement, Art. XXII). The roadmap states that, at the outset of Phase I, all official Palestinian and Israeli institutions should [“end incitement”](#) against the other party.

Accusations of incitement proliferated on both sides, yet there was little agreement on what constitutes incitement. Although measures were to be taken “without derogating from the principle of free expression,” the term has been used to delegitimize political speech, including non-violent expression of opposition to Israeli military occupation, but has been almost useless in identifying or preventing actual incitement on either side.

Different approaches in international humanitarian and human rights law can provide valuable meaning and context when discussing the meaning and content of incitement to crimes and restrictions on freedom of expression, including jurisprudence of the International Criminal Tribunals of Rwanda and Yugoslavia,⁸ the work of the International Law Commission,⁹ and the negotiation of the International Criminal Court (ICC) statute.

Incitement is frequently defined in terms of a public call to individuals, groups, or the public at large to commit a criminal act. The crimes most pertinent to roadmap monitors should be crimes that are violations of international humanitarian law or human rights law, including attacks on civilians, unlawful killings, violence or discrimination against persons on the basis of race or religious background, expulsion or forced transfer of civilians, and the transfer of civilians into occupied territory. Rights protected under freedom of opinion and association – including non-violent expressions of opposition to negotiated agreements – should under no circumstances be criminalized.

⁷ ICRC, “Israel and Occupied/Autonomous Territories: The ICRC Starts its ‘Closure Relief Programme’,” February 26, 2001.

⁸ See, for example, *Prosecutor vs. Jean-Paul Akayesu*, ICTR-94-6-T, September 2, 1998.

⁹ See, for example, Draft Code of Crimes Against the Peace and Security of Mankind, art.2(3)(f); Report of the International Law Commission to the General Assembly, 51 U.N. ORGA Supp. (No. 10), at 26, U.N. Doc. A/51/10(1996).

6. Palestinian Institution-Building

The roadmap includes an ambitious agenda for reform of Palestinian governmental and legislative institutions, including the appointment of a new prime minister, an “empowered” interior minister, elections, and the drafting and adoption of a new Palestinian constitution based on “strong parliamentary democracy.” Many of these are potentially positive, but the steps for achieving them are left undefined. Instead, the documents speaks of “further steps to achieve genuine separation of powers, including any necessary Palestinian legal reforms for this purpose;” and also “Palestinian performance on judicial, administrative and economic benchmarks as established by the International Task Force on Palestinian Reform.”

Reform of the Palestinian legal system is too important to be presented as an afterthought. It is essential if the wider changes envisioned in the roadmap are to take hold. The basic legal framework has improved with the entry into force of the [Basic Law](#) and the [Judicial Authority Law](#) in mid-2002, but the system continues to be in disarray. Even after so-called reform, the composition of the Supreme Judicial Council violates the Judicial Authority Law. The re-appointment by presidential decree of Khaled al-Qidra as attorney-general in December 2002 violated both the Basic Law and the Judicial Authority Law. The decree establishing the State Security Courts is still in force. Infrastructure is destroyed, budgets are weak, judicial selection is not transparent, and the executive branch continues to meddle routinely in judicial affairs. While some civil society representatives have participated in some task force meetings, public understanding of the process remains weak.

To date, the International Task Force on Palestinian Reform and the PA itself have been responsible for legal reforms. Roadmap monitors, and members of the International Taskforce, should prioritize – and champion -- legal and judicial reforms, including the need for an impartial and effective Palestinian judiciary. Without a functioning judicial system there can be no check on executive authority, no fully functional commercial system, and no meaningful resort against corruption. The first and most important steps to improving the strength of the legal system should be included in the content of the roadmap benchmark and can be taken immediately: re-formation of the Supreme Judicial Council in accordance with the Judicial Authority law; re-appointment of an attorney general in conformity with the Basic Law and the Judicial Authority Law; and the official abolition of the State Security Courts. The clear delineation of responsibilities between the Supreme Judicial Council and the Ministry of Justice is also essential. Without these steps, there will be no strong legal system, no separation of powers, and no long-term viability to the reform process. Donors should also prioritize long-term training for Palestinian civilian police in standards governing the use of force, riot control, and investigation techniques.

7. Monitoring mechanisms

In Phase I of the roadmap, Quartet representatives are to begin informal monitoring “relying on existing mechanisms and on-the-ground resources”. They are also to consult on, and establish, a formal monitoring mechanism.

As in every negotiated agreement, monitoring will play a crucial role in the progress of the agreement. Monitors will evaluate all parties’ compliance with the text – and play a key role in the consensual decision-making that is required for Quartet members to agree on movement to the next stage. While all Quartet members are likely to be involved in the monitoring process, it is likely that the U.S. will take the leading role, based on previous experience and strong Israeli

government preferences for a pre-eminent U.S. role. Reports suggest that four monitoring committees will be established: security, special issues (including settlement –related issues), both led by the U.S.; PA reform, led by Norway; and humanitarian affairs, led by the E.U. Monitors are meant to be supplied from existing resources – presumably including current humanitarian or donor coordination and existing diplomatic/military representatives.

Initial media reports indicate that the Central Intelligence Agency (CIA) will play a major role in U.S. monitoring, with a special department set up for this purpose. The CIA has previously assisted security coordination between Israeli and Palestinian authorities, and also trained many of the PA security forces. While its record on security coordination is often considered positive, its history of tolerance of PA security abuses is disturbing. In the past, the CIA has frequently tolerated gross human rights violations by other security forces and groups it monitored or aided, as in Honduras, and has itself been implicated in human rights violations, as in Haiti. Intelligence agencies by their nature are poor choices for ensuring that human rights are not sacrificed in the quest for security—particularly when their functions include secret military and security operations as well as information gathering and analysis.

The committee structure, as currently formulated, has one gaping hole. There is no mechanism for the monitoring of compliance by the parties with international human rights and humanitarian law, or to verify alleged violations. This means there is no champion for the protection of human rights in this process, and no source of the specialized knowledge required to accurately assess parties' compliance with multiple roadmap benchmarks. Nor is there any means of monitoring and defusing human rights violations as they occur during the two-year, three-phase roadmap process – despite their potential to undermine other confidence-building measures, and to erode fragile public confidence in the value of negotiations. A human rights mechanism charged with receiving, investigating, and reporting on alleged violations of IHL or human rights law would provide a vital counterbalance against the roadmap's inbuilt incentives to commit human rights abuses in the name of security. Such mechanisms have played strong, positive roles in ending violations and assisting peace processes in countries such as El Salvador, Guatemala, East Timor, Sierra Leone, Haiti, and Rwanda.

In order to be effective, such a mechanism should be staffed and funded. It should have a mandate to gather information on human rights abuses taking place during the three phases of the roadmap process, as well as to evaluate parties' compliance with relevant roadmap benchmarks. It should be able to move freely; conduct confidential interviews; access persons in detention; and undertake other measures necessary to monitor key human rights violations at play during the confidence-building and negotiating process. As in Guatemala, it should ensure that competent national institutions are carrying out the necessary investigations autonomously. It should be able to report publicly on its findings, including to Quartet members, make recommendations to all parties to promote full observance of human rights and faithful implementation of agreements. It should also have a mandate to carry out public human rights advocacy, including human rights promotion and education.

There are multiple models of such mechanisms. Their positive role in peacemaking is well known. The creation of a human rights committee or other monitoring mechanism is a matter of political will, not lack of positive examples. To maximize the chances of a durable roadmap process, Quartet members should remedy the current gap and create a separate monitoring body to monitor, investigate, and promote human rights.

A second, but less preferable option is for each monitoring committee to include in its membership individuals trained in relevant international human rights and IHL law. Their role would be to advise committee members on relevant international humanitarian and human rights standards, and ensure they are used to assess benchmark progress. Monitors should report violations of IHL and human rights standards to their respective governmental or intergovernmental bodies for inclusion in public human-rights reporting mechanisms, such the U.S. Department of State's annual Human Rights report. Unless human rights and international humanitarian law standards are built into the roadmap's benchmarks and monitoring process, serious abuses are more likely to proliferate than to end, with dire consequences for the roadmap's goal of a negotiated political settlement.

Human Rights Watch Recommendations to Quartet Members and Roadmap Monitors

- Clarify immediately and publicly that obligations under international human rights and humanitarian law are not subject to negotiation or reciprocal action by the other party.
- Establish a separate mechanism to advise on and monitor violations of international humanitarian (IHL) or human rights law, and assist in assessing benchmark progress. The mechanism should have a mandate and resources to monitor abuses, investigate complaints, report findings, and promote adherence to IHL and human rights law.
- In the absence of such a mechanism, to include in all monitoring committees, including the security committee, members trained in standards of international humanitarian and human rights law, whose function must be to ensure that actions taken by the relevant parties do not breach relevant IHL or human rights obligations.
- Report violations by all parties publicly, as well as to respective governments and intergovernmental agencies. Reporting should also include steps taken by Quartet members and others bring about compliance with international human rights and international humanitarian law standards.
- Use standards from relevant IHL and human rights obligations to define reasoned benchmarks and impartially assess their fulfilment. For example, evaluation of permissible restrictions on the freedom of movement should be guided by General Comment No. 27 of the U.N. Human Rights Committee.
- Require that all parties investigate and bring to justice those who have committed war crimes or other breaches of IHL. Where necessary, this should include
 - Provision of necessary technical and financial assistance;
 - Ongoing monitoring of the caseloads, timelines, and outcomes of investigations of the Judge Advocate-General's Office of the Israel Defense Forces and the Department of Investigation of Police Misconduct of the Ministry of Justice.
- Assess PA and Israeli adherence to international human rights and IHL protection regimes in assessing security performance in Phase I, including standards relating to unlawful use of lethal force, arrest, arbitrary detention, interrogation, and ill-treatment.
 - PA security forces should be established on a legislative basis, with powers clearly defined by law.
 - Legislation governing the PA's military judicial system, including the 1979 PLO (Military) Revolutionary Penal Code should be revised to conform with relevant IHL and human standards
- Prioritize meaningful PA legal reform to ensure separation of powers, good governance, and an effective legal system. Define as benchmarks:
 - Complete abolition of the State Security Courts;

- Re-formation of the Supreme Judicial Council in accordance with the Judicial Authority Law;
 - Re-appointment of the Attorney-General in conformity with the Basic Law and the Judicial Authority Law; and
 - Clear delineation of responsibility between the Ministry of Justice and the Supreme Judicial Council.
- In allocating future support for Palestinian legal reform, donors and PA officials should ensure sufficient budgetary resources to cover judicial salaries and effective administration. International donors should provide support for training for PA civilian police forces in investigation techniques, riot control, and standards governing the use of force. Staff in the office of the Attorney-General should likewise receive training in investigative techniques.