

The Release of Palestinian Prisoners

Background

The first stage in the planned release of Palestinian prisoners, in compliance with the terms of the *Wye Memorandum*, left the Palestinian social and political leadership stunned. The release of 150 criminals, as well as 100 other prisoners —according to the Palestinians, the majority of these prisoners were not really held for security offences; furthermore, they included only a small number of the “Fatah fighters”, several of whom were scheduled to be released within a few months — represented a public insult.

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At the signing of the *Hebron Accords* in January 1997, which included an article concerning the freeing of Palestinian prisoners, the Israeli Government, headed by Binyamin Netanyahu, agreed to continue the process begun when Yitzchak Rabin signed the *Gaza-Jericho Agreement* in May 1994. The latter agreement stipulated that as part of the trust-building process, motivated by the desire to create a positive and supportive atmosphere surrounding implementation of the agreement, about 5,000 prisoners would be released within five weeks of that agreement. It was also decided that the parties would continue to negotiate over the release of additional categories of prisoners according to agreed-upon guidelines.

Those guidelines were not formally integrated within the written agreement even though, at the time, it was understood by all that a watershed in the relations between the two sides had been reached on 13 September 1993, with the signing of the *Oslo Agreement*. This realisation should have influenced the solution of the prisoners issue. It was also crystal clear to the Palestinians that terrorists belonging to the Hamas, the Islamic Jihad, or other organisations rejecting the

peace process, or those who had carried out terrorist acts after the inauguration of the era of peace and reconciliation, would remain in prison. In contrast, the fate of the others still in jail would be subject to negotiations between Israel and the PLO. Reaching an agreement on this issue, it was felt, would convey the message — to both communities — that the era of violence had ceased and that the era of peace had begun.

The Interim Agreement and the Wye Memorandum

Annex VII of the *Interim Agreement* (see attached) delineated precise categories and criteria for the release of prisoners, among them prisoners who had completed two-thirds of their sentences, had been imprisoned for more than 10 years, and had participated in attacks or incidents which had not resulted in fatalities or serious injuries. This annex also states that this phase of the prisoner release would be carried out in three stages.

While negotiating the *Interim Agreement*, it was decided, as stated, that the release of prisoners would be carried out in three stages, and that the third stage might be expanded to cover other categories of prisoners. In the course of the discussions at Wye Plantation, this issue was raised, as was the possibility of increasing the number of prisoners to be released. The Palestinian position was that Israel had not only reneged on her obligations as defined in the *Interim Agreement*, but that she was not abiding by her commitment to implement the third stage of the prisoner release: According to Annex VII, the release was to be carried during the permanent status negotiations (these had already begun in May 1996).

As the discussions at Wye progressed, it was obvious to the three sides that they were referring, first and foremost, to the release of PLO members who had been incarcerated for security offences. Concerning the number to be released, Israel proposed freeing only 250 prisoners, whereas the Palestinians demanded 1,000; in the end, they agreed upon the release of 750. Discussions over the criteria were suspended although it was agreed that a ministerial committee would continue to deliberate on the subject after the delegations' return home. What was meant to be a joint consideration of the issue was converted into an Israeli unilateral dictate issued by Israel's Prime Minister. That decision stipulated that 550 of the 750 prisoners to be released would be thieves and other criminals.

It should be recalled that during the Jibril deal, Israel released 1,150 prisoners — among them 800 “with blood on their hands.” Furthermore, in Wye, President Clinton took the position that these agreements should yield outcomes similar to those achieved in Ireland. Thus, he indicated that it was unthinkable that leaders who sent their people into the field to perform terrorist acts should enjoy

freedom while those who fulfilled their orders were denied that freedom. Nonetheless, the Americans accepted Israel's position that the first wave of released prisoners complied with the terms of the agreement.

Summary

According to Palestinian records (Israel's Prison Administration does not publicise such data), Israel is holding 2,400 security prisoners, including 1,100 members of the Hamas and the Islamic Jihad. Regarding the latter group, there is no disagreement over the impossibility of their release. Among the remaining 1,300 prisoners, about 400 belong to the Rejection Front and to other factions opposing the peace process. They committed acts of terrorism after September 1993; therefore, no question has been raised about their continued incarceration.

Of those remaining, about 900 prisoners are members of the PLO who, together with the Palestinian leadership and public, view themselves as freedom fighters who participated in a violent national struggle that ended with the signing of the *Oslo Agreement*. It is worth mentioning here that among those prisoners released since 1994, many have joined the Palestinian Authority's security and intelligence services (about 95% of the members of the Preventive Security Forces and about 65% of the General Intelligence Agency are former prisoners) and are now co-operating with Israel's Security Service in the struggle against terrorism.

In order to resolve the prison issue, the parties need to concentrate their efforts on the about 900 PLO members still jailed. Concerning prisoners with "blood on their hands" (less than 200 in number), that is, those who were implicated in terrorist acts that caused Israeli fatalities, the Palestinians are amenable to waiting until the permanent status negotiations to decide their fates. With respect to the others, at the first stage, prisoners are to be released according to the conditions already set out in Annex VII of the *Interim Agreement*. During the second stage, the relevant criteria are to be redefined in close co-ordination and with the mutual agreement of the two sides. It should be noted, though, that the *Oslo Agreement* created new realities which should eventually bring about the release, during the second and third stages, of prisoners who took part in acts of terrorism. This group of prisoners will include those accused of membership in "hostile" organisations, those who executed collaborators, those who illegally entered Israel from abroad, and those residing in East Jerusalem and Israel.

Attachment
Interim Agreement, Annex VII

Release of Palestinian Prisoners and Detainees

1. The release of detainees and prisoners, as agreed upon in Article XVI of this Agreement will be carried out in three stages.

2. The following categories of detainees and/or prisoners will be included in the abovementioned releases:
 - One.all female detainees and prisoners should be released in the first stage of release;
 - Two.persons who have served more than two-thirds of their sentence;
 - Three.detainees and/or prisoners charged with or imprisoned for security offences not involving fatality or serious injury;
 - Four.detainees and/or prisoners charged with or convicted of non-security criminal offences; and
 - Five.citizens of Arab countries being held in Israel pending implementation of orders for their deportation.

3. Detainees and prisoners from among the categories detailed in this paragraph, who meet the criteria set out in paragraph 2, above, are being considered by Israel to be eligible for release:
 - One.prisoners and/or detainees aged 50 years and above;
 - Two.prisoners and/or detainees under 18 years of age;
 - Three.Prisoners who have been imprisoned for 10 years or more; and
 - Four.sick and unhealthy prisoners and/or detainees.

4. The third stage of release will take place during the permanent status negotiations and will involve the categories set out above, and may explore further categories.