

December 2005

## **Palestinian Elections - Towards Institutional Dysfunction**

### **Re'ut Institute – Fundamental Early Warning<sup>1</sup>**

#### **Essence of Warning**

The focus of this paper is the impact of the Palestinian political and constitutional structure on Israeli-Palestinian relations.

Elections for the Palestinian Legislative Council of the Palestinian Authority (hereinafter PLC) in January 2006, are likely to throw the Palestinian political system into a constitutional and political crisis and shift power towards the PLC.

Therefore, prospects for political progress along the lines of the Roadmap are compromised.

A primary reason for this crisis is the role of the PM, created in March 2003. The original logic of this position was to take power away from Yasser Arafat. *However*, at present, the PM is likely to undermine Abu-Mazen and weaken the executive powers of the Palestinian Authority.

#### **Acknowledgements**

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#### **Existing Mindset**

1. The mindset of the international community and the Government of Israel (GOI) that prevailed in the beginning of 2003, was based on the following premises:

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<sup>1</sup> A **Fundamental Early Warning** is a Re'ut Institute product whose aim is to reveal gaps between new trends and events, *on the one hand*, and primary assumptions of the Government of Israel (GOI), *on the other hand*. Failure to adjust to such gaps may lead Israel to a "**Fundamental Surprise**", which may expose its policy as not relevant.

This paper attempts to highlight the working assumptions behind the policies of the GOI, indicate new trends and recommend policy options to close the relevancy gap.

The concepts "Fundamental Early Warning" and "Fundamental Surprise" were coined by Dr. Zvi Lanir, founder of Praxis Institute. See: <http://www.praxis.co.il/>; Zvi Lanir. *Fundamental Surprise – Intelligence in Crisis*. 1983 (Hebrew).

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- a. **Arafat is a “black sheep”** – Israel and the US viewed Arafat as an obstacle to the political process and were determined to marginalize him;<sup>3</sup>
  - b. **Arafat's Authoritarianism** – Arafat held all key executive positions of the Palestinian national movement.<sup>4</sup> To preserve his power, he undermined due political and constitutional process and resisted institution building;
  - c. **PLO is the real address / PA has no powers** – The Palestinian Authority had no formal status vis-à-vis Israel, while the PLO was formally the interlocutor acting on behalf of the PA. Arafat was the source of power of both the PLO and the PA and kept the distinction between the two bodies ambiguous.<sup>5</sup>
  - d. **No Hamas / "Old-guard" Fatah PLC** – Elected in 1996, the PLC comprises of mostly Fatah members.<sup>6</sup> Hamas chose not to participate in the 1996 elections, rejecting the Oslo Accords, the legitimacy of the PA and the recognition of Israel.
  - e. **Weak PLC** – Hence, the PLC was weak,<sup>7</sup> and its legitimacy further compromised by overstaying its mandate.<sup>8</sup>
  - f. **Roadmap is the “only game in town”** – Despite reservations, all parties formally viewed the Roadmap as the platform for the political process.
2. These premises brought the international community to the conclusion that Arafat's power had to be constrained in order for the Roadmap to be implemented.
  3. As the removal of Arafat from power was impractical, the USA conditioned the release of the Roadmap upon constitutional reform on the Palestinian side in the form of a new PM position.<sup>9</sup> This demand was echoed by the EU and by internal pressure on the Palestinian side to reform the PA.<sup>10</sup>

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<sup>3</sup> See Rabinovich Itamar, **Waging Peace**, Princeton University Press; Princeton, 2004. pp. 189-191. “...chain of events leading President Bush to the conclusion that unless Arafat was removed from power, there would be no prospect for a political settlement.”

<sup>4</sup> Rubin Barry, **The Transformation of Palestinian Politics**, Harvard University Press; Cambridge, 1999. pp. 4-7 and 97-99.

<sup>5</sup> Israel and the "**PLO**" agreed that the "**PA**" would not have the authority to conduct foreign affairs. Moreover, the PLO retained the authority to represent the PA and sign agreements in its name (see "**Interim Agreement**", Article IX: "Powers and Responsibilities of the Council", Section 5, Paragraph A).

<sup>6</sup> Rubin, **Ibid.** p. 29: 62 of 88 members of the PLC were Fatah loyalists.

<sup>7</sup> **Ibid.** Arafat bypassed the PLC and disregarded "**The Basic Law**" and Standing Orders, (the PA's provisional Constitution and bylaws, respectively). pp. 27-31.

<sup>8</sup> Brown Nathan, **Third Draft Constitution for a Palestinian State – Translation and Commentary**, Palestinian Center for Policy and Survey Research, October 2003, p. 28.

<sup>9</sup> Myre Greg, “Palestinian Becomes Premier, Diminishing Arafat's Power”, **New York Times**, 20/3/2003.

<sup>10</sup> For details about the process that brought about the amendment to the Basic Law, see Nathan Brown, **Evaluating Palestinian Reform**, Carnegie Endowment, June 2005.

4. Hence, the PLC approved an amendment to "[The Basic Law](#)"<sup>11</sup> (3/03), which established the position of a Prime Minister (PM), and redefined the division of power within the executive branch.
5. According to the amendment, the PM and the Council of Ministers (COM) are "the highest executive tool"<sup>12</sup> of the PA, while the President's jurisdiction is substantially limited. However, the president still maintains significant executive jurisdictions and strong leverages on both the PM and the PLC.<sup>13</sup>

### **Diverging Reality**

6. In the aftermath of Arafat's death (11/04), this logic has been rendered irrelevant:
  - a. **Abu-Mazen is a darling** – Abu-Mazen enjoys the support of the international community due to his moderation and opposition to violence.<sup>14</sup>
  - b. **Abu-Mazen is a democrat** – Abu-Mazen consistently supports due-process and institution building.
  - c. **PA is the real address / PLO is a political "shell company"** – Although the PLO and the PA are still, formally, under the unified leadership of Abu-Mazen, power has been gravitating to the PA, in spite of opposition from certain PLO leaders. In the aftermath of Arafat's death, the distinction between the two bodies has become more evident.<sup>15</sup>

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<sup>11</sup> The Basic Law serves as the provisional constitution of the PA. It was ratified by the PLC (10/97) and by Arafat five years later (5/02). For further details see Re'ut concept: "[Palestinian Constitutional Structure](#)".

<sup>12</sup> See Article 63 of the Basic Law.

<sup>13</sup> According to the Basic Law, the executive authority is divided as follows:

- **The President:** (1) appoints and dismissed the PM (article 45); (2) Can veto legislation. A veto can be overturned by the PLC with a 2/3 majority (article 41); (3) Commander in Chief of the Palestinian Security Forces (article 39) and appoints diplomatic representatives (article 40).
- **The PM:** forms, manages and supervises the Cabinet , and has residual executive power i.e. all powers not explicitly assigned to the President (art. 63, 66, and 69)
- **Absolute majority of PLC members** holds the power to approve the formation of the Council of Ministers (COM) and terminate its term (articles 67 and 79 respectively)

<sup>14</sup> See "US Prods Israel for Hard Choices on Palestinians", **New York Times**, 2/7/05.

<sup>15</sup> The distinction between these two bodies manifested itself in conflicts over diplomatic representation:

In May 2005 there was a public disagreement between the PA and the PLO over which organization possessed the right to administer Palestinian diplomatic delegations. **Ha'aretz**, 5/1/05 (Hebrew).

Nasser al-Kidwa, as the **PA foreign minister** and not as a PLO official, appointed Raed Mansur to head the Palestinian Delegation at the UN. **Walla**, 9/17/05 (Hebrew).

As tension rose between PA president Abu-Mazen and Fatah leader Farouk Khadumi, the latter was cited as saying: "We chose Abu-Mazen as chairman in order for negotiations to be formal and recognized and for them to be conducted with an official

- d.  **Hamas and other newcomers will become major players** – Hamas, *Fatah* "young guard" and independent candidates will erode the power of the PLO and the *Fatah* "old guard" in the coming elections.<sup>16</sup>
- e.  **PLC within the PA is turning into the major political arena** – The elections for PA presidency (1/05), followed by the PA municipal elections (12/04, 1/05, 5/05 and 9/05) changed the reality in the PA. The entrance of Hamas in the upcoming elections gives the PLC more legitimacy and will contribute to the establishment of a much more active and influential PLC.
- f.  **Erosion of the status of the Roadmap** – The status of the Roadmap as "the only game in town" has been gradually eroded due to fundamental disagreements between Israel and the Palestinians regarding the entry point to all three stages of the Roadmap,<sup>17</sup> as well as the growing legitimacy of unilateral moves on the Israeli side.

Hence, many of the premises that brought about the constitutional reform and the creation of the position of the Palestinian premiership have been rendered irrelevant.

### **Implications**

7.  **Inversion regarding the Palestinian Premiership** – *Before* Arafat's death, the position of the PM served to **check the powers of an authoritative president**. *After* Abu-Mazen's election, **the position of the PM substantially detracts from the executive abilities of a democratic president**.
8.  **The constitutional structure of the PA renders its executive branch inherently weak**, due to:
  - a.  **Who's in charge?** – The President is elected for a 4-year tenure and may only be impeached in exceptional circumstances.<sup>18</sup> His executive authorities are very limited. The PM holds most of the executive power, but the threshold for his dismissal is much lower.<sup>19</sup>
  - b.  **Clash of powers and responsibilities** – There are overlaps and clashes of authority between the PM and the President on issues of security<sup>20</sup>, foreign affairs<sup>21</sup> and promoting<sup>22</sup> and enforcing legislation.<sup>23</sup>

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body. We didn't choose him to become the president of Palestine.” **Ha'aretz**, 4/1/05 (Hebrew).

<sup>16</sup> Regular Arnon, “Abbas says will honor Fatah primary election results,” **Ha'aretz** 11/29/05.

<sup>17</sup> See Re'ut Fundamental Early Warning: "[The Roadmap Leads to a Political Deadlock](#)".

<sup>18</sup> Elected in general and direct elections every 4 years (Article 2 of the Palestinian Elections Law), the only way to end the presidential term prematurely is through a Supreme Court ruling that the president is legally incompetent, approved by a vote of 2/3 of the PLC members (Article 37 of the Basic Law).

<sup>19</sup> The PM and COM may be dismissed both by the President (Article 45 of the Basic Law), and by the PLC in a Vote of No Confidence (Article 79 of the Basic Law).

<sup>20</sup> The President is the "Commander in Chief" of Palestinian Forces (Article 39 of the Basic Law). However, responsibility over internal security and public order resides with the

Hence, the Palestinian constitutional structure is a "hybrid" between presidential and parliamentary systems in which **the President and the PM are dependent on each other**.<sup>24</sup>

9. **Stronger PLC; Weaker Executive** – Post-election PLC is likely to become the center of gravity for Palestinian politics. For example, depending on PLC consent, President Abbas may have to nominate a PM that is not a member of his faction, hence compromising the prospect for effective executive authority.
10. **Increased legitimacy of the PA** – the legitimacy of the PLC as a legislature may increase following the elections. Hence, agreements with Israel approved by the PLC may enjoy greater public legitimacy.<sup>25</sup>
11. **Will Israel have a partner?** – The effects of the elections on the Israeli-Palestinian partnership are still unclear. *On the one hand*, following the elections the executive branch of the PA is likely to be weakened; *on the other hand* the PLC is likely to enjoy increased legitimacy.<sup>26</sup>

### **Policy-Options**

12. **Redefining the Zones of Possible Agreement (ZOPA)** – Post Palestinian elections, the GOI will have to reassess what are the possible areas for agreements with the PA. These areas are likely to include issues that affect the residents of the PA, e.g. economy, trade, or infrastructure.
13. **Prospects for agreements decrease and unilateralism rise** – The weakening of the Palestinian executive is likely to *decrease* prospects for complex agreements

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COM. (Article XIV of the Interim Agreement – the only Palestinian security forces allowed to act within the Palestinian territories are those in charge of internal security and public order).

<sup>21</sup> While the PM is in charge of all ministries, including the Ministry of Foreign Affairs, the President appoints diplomatic representatives abroad and accepts the credentials of foreign representatives to the PA (Article 40 of the Basic Law). Also see the Palestinian Authority Ministry of Foreign Affairs website at: <http://www.mofa.gov.ps/index.asp>.

However, according to the "[Interim Agreement](#)", the PLO is the official party to negotiations with Israel, and is authorized to reach agreements with other states and international organizations **on behalf of the PA**.

<sup>22</sup> The PM and COM are in charge of promoting governmental policies through legislation and implementing laws (Article 40 of the Basic Law).

<sup>23</sup> Only the President holds the authority to promulgate laws, which includes the power to dictate changes to laws passed by the PLC. (Article 70 of the Basic Law).

<sup>24</sup> "Unless the occupants of both offices happen to generally agree on the content and execution of their policies, the Palestinian political system will remain unstable and ineffective". Yaghi Mohammad, "Empowering Mahmoud Abbas after Disengagement", Washington Institute Peacewatch #517. September 15, 2005.

<sup>25</sup> Ali Jarbari, "Setting the Stage for Springtime Intifada", **BitterLemons**, edition 42,12/05/05.

<sup>26</sup> See Re'ut Concept: "[Delivery Capability](#)", which refers to a political entity that – in a particular objective and context – has both "[Carrying Capacity](#)", i.e. the ability to implement policies it wishes to pursue; and "[Responsibility](#)", i.e. formal duties.

between Israel and the Palestinians. Consequently, prospects for further unilateral moves by Israel rise (see "[Off-the-Table-Strategy](#)").

14. **Promoting constitutional reform in the PA** – There may be a need for constitutional reform, that would *either* transfer authority back to the hands of the President, *or* increase the stability of the PM and the government. *However*, Israel's position to influence these reforms is very limited and could be counter-productive.

End.