

Lessons for the Next US President

by Louis René Beres (October 2016)



Yasser Arafat, Shimon Peres and Yitzhak Rabin receiving the Nobel Peace Prize following the Oslo Accords

If anyone had thought that the core premises of Oslo might still be valid, and that there was still room for a meaningful “Two-State Solution,” Mahmoud Abbas recently offered a sobering response. According to the PA President, speaking at the U.N. General Assembly on September 22, 2016, the “conquered territories” and [ever since 1948](#), there have been many examples of U.S. presidential misunderstanding of such issues. For example, U.S. State Department policy never recognized Israel’s post-1948 settlement of Ashdod, Ashkelon, Beersheba, and certain areas of the Negev. In that context, the U.S. still funds UNRWA education that focuses on the Palestinian “right to return” to all villages lost in the 1948 war.

From Oslo’s formal beginnings, in 1993, the Arab Palestinian side sought to embrace the U.S.-brokered pact purely as an expedient means of improving its own

power position. Even then, in unhidden sentiments that have become even more explicit during the "Third Intifada," the Palestinians had been seeking only a One-State Solution. Never, not even for a moment, did a single Palestinian Arab faction display any authentic interest in living "side-by-side" with a Jewish State.

In other words, never did any such faction actually favor a "Two-State Solution."

There are other relevant elements of Palestinian Authority (PA) misrepresentation that cumulatively doomed the Oslo "peace process." Most obvious and incontestable is the undiminished commitment to incitement and terror, and, as a relentless corollary, to continuing Palestinian Arab insistence on a "right of return." On its face, this alleged "right" persists as a not-so-coded message calling for Israel's incremental destruction.

Prima facie, this seemingly "just" expectation actually represents the PA's complete rejection of Israel's physical continuance as a separately sovereign state. To wit, on all of its official maps, Israel is identified only as "Occupied Palestine." Where, then is the "Two State Solution?"

Extradition of terrorists

There is another important reason to explain incessant Palestinian Authority noncompliance with Oslo. This most widely overlooked explanation centers on the uniform and recurrent Palestinian Authority violations of international criminal law; here, the utterly "peremptory" obligation to *extradite* wanted terrorists to Israel. This incontrovertible obligation stems from: 1) the actual language of the codifying agreement; and 2) the always-binding principles of underlying international law.

From Oslo's formal beginnings, on September 13, 1993, the Palestinian Authority steadfastly refused to honor its express obligation to extradite Arab terrorists to Israel. Moreover, even if the Oslo Agreements had not contained unambiguous provisions for terrorist extradition, **the PA would still have been bound to "extradite or prosecute" terrorist murderers, according to the more general, customary, and pre-existing rules of international criminal law.** Ultimately, the basic and universally-binding requirement to extradite major criminals (*Hostes humani generis*, or "*Common enemies of humankind*") lies most enduringly in

"Natural Law," which also happens to be the indisputable foundation of all United States domestic and Constitutional law.

This "higher law" exists at the normative center of all civilized national and international legal systems, most prominently, of course, in the jurisprudential foundations of the United States of America. This general legal obligation to extradite, therefore, is far more than anecdotal. It even has a proper legal name. It is specifically referenced, in law, as *aut dedere, aut judicare*; "*extradite or prosecute.*"

Over the past twenty-three years, the PA did prosecute and imprison some Arab terrorists, but even this tiny handful of criminals was detained only for brief periods, and then, only for public relations purposes. A conspicuous example of such contrivance was the case of Wa'al Salah Nasr, who had then plotted to carry out a particularly brutal suicide bombing attack against Israeli children. Following his Palestinian "trial," which produced a sentence of five years in prison, Nasr was released after three weeks, during which time he had been treated as a celebrated Arab hero.

Not surprisingly, President George W. Bush, on December 5, 2001, had already warned presciently: "Arafat's jails have bars in the front, and revolving doors in the back."

Remember Arafat? *Plus ce change....* In Palestinian Arab leadership circles, nothing has really changed. In part, this is because successively misguided Israeli prime ministers were all willing, under varying levels of US presidential pressures, to release Arab terrorists in the search for Palestinian "good will." Also worth noting is that PA Presidents Yasser Arafat and Mahmoud Abbas both understood that there would never be tangible Israeli sanctions for any Palestinian instances of non-compliance.

The Palestinian police

It gets worse. Not only did the PA invariably fail to "extradite or prosecute" terrorists. It routinely hired these very same murderers into the Palestinian "police" or "security services." It continues to do this even today.

If this particular failure were not serious enough, these starkly anti-American Palestinian terrorists, *all of whom had openly celebrated 9/11 harms against the*

United States, were later given weapons training by certain American intelligence agencies, and by the Pentagon. It was General Keith Dayton, operating under authority of two American presidents, who led the incoherent and counter-productive American effort to train Fatah "security forces" in nearby Jordan.

In time, it is now plausible, these Palestinian forces will be supplanted by still another band of Arab terrorists, namely ISIS. Then, looking back, it will finally become evident that U.S. sponsorship of one murderous Palestinian Arab terror faction (Fatah) against another Palestinian Arab terror group (Hamas) had effectively been to the benefit of ISIS.

Credo quia absurdum. "I believe because it is absurd." Somehow, American presidents and European political leaders had earlier believed that "moderate" Fatah could be suitably employed as a useful sub-contractor against "extremist" Hamas. From any informed American or Israeli point of view, such thinking was always wrongheaded. As America's next president should finally understand, there had never existed an iota of consequential difference between Palestinian terror organizations.

For those who seek detail, there is a long history on this matter, a deeply humiliating narrative of error, one from which only the Arab side has seemingly learned anything important. For a start, Osama Abu Tayeh was arrested by the PA for March 1996 bombings in Jerusalem. Rejecting Israeli requests for extradition, the PA proudly hired Tayeh for the Palestinian Police, in October, 1996.

Yusuf Malahi, the murderer of two Israeli civilians in Ramle on August 26, 1994, was arrested by the PA, and then set free several weeks later to join the Palestinian Police. Other known Palestinian terrorists currently or recently serving in the PA Police include Bassam Issa; Atef Hamadan; Imad Abbas; Bassam Aram; Yasser Aram; Iyad Abu-Shakafa; Iyad Basheeti; Ibrahim Shaheed; Ahmed Samarah; and Jamal Abu-Rob.

Palestinian heroes, all.

Every country, our next American president should surely understand, has an overwhelming and irreversible obligation under international law to seek out and to prosecute terrorists. This obligation, which derives from ancient Jewish Law,

is known generally as *Nullum crimen sine poena*, "No crime without a punishment." It is codified directly in many different sources, and is also deducible from the universally binding *Nuremberg Principles* (1950).

Principle One, adopted by the UN International Law Commission on August 2, 1950, stipulates: "Any person who commits an act which constitutes a crime under international law is responsible therefore, and liable to punishment."

Terrorism is always an established crime under international law. An authoritative listing of constituent offenses that comprise this particular crime can be found in the 1977 *European Convention on the Suppression of Terrorism*. Moreover, many Palestinian terrorists had also been complicit in related *crimes of war* and *crimes against humanity*, crimes so serious that perpetrators are singled out in law as *Hostes humani generis* or "common enemies of mankind."

A clear and now completely forgotten example would be the active Palestinian Liberation Army (PLA) assistance extended to Saddam Hussein's torturers, during and after the 1991 Gulf War. As the world has already forgotten the irrepressible jubilation of Palestinian Arab celebrations on 9/11, so too has it pushed out of its accessible memory the intimate and mutually supporting ties that had existed earlier, between PA President Yasser Arafat, and Iraqi dictator Saddam Hussein. Today, as our next president will likely witness the complete collapse of civil order in Iraq and Syria, a vital lesson might still seem elusive. It is that any Palestinian state, soon after its *de jure* independence, would almost surely fall to even more vicious bands of Sunni terrorists, most plausibly, of course, ISIS or ISIS-affiliates.

Following *Operation Desert Storm* many years back, Amnesty International had identified at least thirty different methods of torture used by the Iraqis and their then-close Palestinian Arab allies. These methods ranged from burning alive, to electric shock, to gang rape, to forcible starvation. In one instance reported (2003) in *The New Yorker*, more than 2000 women and children were crammed into a single large room, and given nothing to eat or drink. When many began to die, the bodies were passed to the Iraqi and Palestinian guards, who then tossed them playfully onto a nearby field. One mother recalls pushing her way to a window to see what had become of her child's corpse. Immediately, she witnessed dozens of dogs roaming hungrily in the field.

"I looked outside and saw the legs and hands of my son in the mouths of the dogs. The dogs were eating my son."

The Palestinian Authority no longer comments on its earlier full support for Saddam Hussein, but it does continue to appoint Islamic clerics who systematically denounce the United States and Israel in their weekly sermons. A typical sermon on *PA Radio* proclaims: "Oh Allah, grant victory to the Muslim people over the hateful America." There is also regular and ecstatic praise of Palestinian Arab suicide bombers, both male and female. More than anything else, the PA promises its terrorists "martyrdom," or "power over death."

Shahid mothers and sons

Years ago, an issue of the *Hamas* magazine for children had featured the picture of a Palestinian girl, with her severed head lying nearby. The caption read: "Suicide bomber Zainab Abu Salem. Her head separated from her pure body, and her *Ra'ala* (Islamic head scarf) remains to decorate her face. Her place is now in Paradise."

The "new and improved" post-Arafat Palestinian authority still teaches children to aspire to *Shahada* – martyrdom – which it calls "sweet." Palestinian Arab mothers of suicide bombers now elicit special praise in their communities. "There goes the mother of a *Shahid*," is what they most yearn to hear.

Rejecting the normal mother's instinct to protect her own child, these women find ultimate solace not in life, but rather in the most hideous death cult of contemporary political life. For them, the simultaneous killing of their own children, and the children of specifically despised others ("the Jews"), is the undisguised source of their most palpable pride.

Back in mid-March, 2005, *PA TV* offered special promotions related to International Woman's Day. To help commemorate this day, Sheikh Yusuf Juma' Salamah, in a March 11 Friday sermon to an audience that included "President" Abbas, likened the ideal Palestinian woman to Al Khansah. This heroine of Islamic tradition celebrated her four sons' death in battle by thanking God for the honor. Salamah, the PA Minister of Waqf, quoted Al Khansah: "Praise Allah, who granted me honor with their deaths."

Today, Al Khansah has become the archetypal mother of all *Shahids*. From a very

early age, Palestinian girls are now urged to adopt this “mother” as a role model. A current music video for these children, broadcast again and again on Abbas’ PA TV, includes the farewell letter of a child Shahid: The farewell words....”Mother, don’t cry for me, be joyous over my blood.” Not surprisingly, the Palestinian Authority has named five girls schools “The Al Khansah School For Girls” (in Bethlehem, Jenin, Nablus, Han Yunis, and Rafah).

Illegal immunity

In refusing Israel’s proper and formal extradition requests for terrorists, the Palestinian Authority, still an aspiring sovereign state, and now already a UN “nonmember observer state,” (one with legal capacity to bring charges against Israelis in the International Criminal Court) has effectively elected to remove itself from the civilized community of nations. In law, however, such volitional removal is not a permissible act. In short, no government, and certainly no “Authority,” has any right to lawfully pardon or grant immunity to terrorists, with respect to criminally sanctionable violations of international law.

In the United States, our next president should hopefully understand, it is also evident from the Constitution, that the President’s power to pardon does not encompass violations of international law, and is strictly limited to “Offenses against the United States.”

This limitation stems from a broader prohibition that binds *all* states, namely, the persistently overriding claims of pertinent rules derived from *Higher Law*, or the *Law of Nature*. Although PA inaction on extradition is not, strictly speaking, a pardoning or immunizing action, it has exactly the same practical effect.

Are Palestinian insurgents “freedom fighters,” as they still insistently claim, not just common terrorists? Under explicit international law, the answer is “no.” Even if one were able to argue convincingly that homicidal Palestinian violence is somehow being generated by the legal principle of “*Just Cause*” or *jus ad bellum* (a problematic argument, on its face) it would still lack all necessary elements of “*Just Means*,” or *jus in bello*.

Because any insurgent violence that fails to meet the longstanding expectations of humanitarian international law is terrorism – that is, the expectations of “discrimination/distinction,” “proportionality,” and “military necessity” –

there can be no residual doubt that these killers are in fact terrorists.

Under law, freedom fighters do not intentionally murder infants sucking on pacifiers, in kibbutz nursery schools, or choose to run amok in cities with sharp knives, expressly and unapologetically seeking "Jewish blood." Freedom fighters, at least under law, do not plunge their knives into selected passerby, and then launch complaints that Israel's national authorities had responded with "excessive force."

Under formal international law, any willful refusal to extradite or prosecute terrorists is always inexcusable. The principle is well-established in law that, by virtue of any such refusal, the authority in question must assume legal responsibility for past criminal actions, and even for future ones. This means that ongoing PA refusals to extradite correspondingly implicate that "Authority" for a "denial of justice." Our next American president should be made aware of this legal conclusion.

Such legal wisdom could have substantial practical results. Although it is unclear that punishment, which is central to all justice, necessarily deters future crimes, the deliberate protection or exoneration of any terrorist necessarily undermines the universal obligation to incapacitate that particular criminal from committing further acts of murder. In the case of protected Palestinian terrorists, hundreds of Israelis who are alive today might still be murdered tomorrow as a direct result of the steady PA refusal to extradite or prosecute.

Naturally, the manifestly lethal consequences of such refusal could be enlarged by Israel's own sequential terrorist releases over the years. It has happened already, on too-many occasions.

The next American president must finally understand that terrorism must be combated at both operational and jurisprudential levels. More precisely, terrorism is a crime that can and must always be punished. After all, in the absence of a reliable expectation that terrorists will be extradited or prosecuted, international criminal law would simply fail to operate.

To ensure that any such expectation will be fulfilled, and that international criminal law will work somehow, the next American president should systematically demand that authoritative Israeli extradition requests be

honored, just as the law demands. In this connection, the president should recall that international law is part of U.S. law, largely by virtue of Article 6 of the *Constitution* (the “Supremacy Clause”), and of assorted U.S. Supreme Court decisions, most notably the *Paquete Habana* (1900).

The next president of the United States will need an abundantly clear vision of what the Palestinian Authority still seeks. In fashioning this vision, he or she will need merely to recall that the PLO was founded in 1964, three years before there were any “Israel Occupied Territories.” What, exactly, was the PLO – forerunner of the PA – trying to “liberate” before the Six-Day War? The answer, later reaffirmed in the PLO’s 1974 “Plan of Phases,”¹ remains sobering and inescapable.

It is the state of Israel.

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[1] This was the PLO’s now still “valid” 10-point program for incremental destruction of the Jewish State.

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