

Why Oslo Failed: Confronting “Peace Now”

by **Louis René Beres** (November 2015)

Notwithstanding the latest “Peace Now” demonstrations in Tel-Aviv, Oslo Agreements between Israel and the Palestinian Authority remain destined to fail. This is not because of any Israeli “right-wing government intransigence,” but on account of an immutably corrupted Palestinian doctrine.

From Oslo’s beginnings, in 1993, the Arab side sought only to embrace the U.S.-brokered pact as a promising means of improving its own relative power position. Even then, in unhidden sentiments that have become still more explicit during the so-called “Third Intifada,” the Palestinians had been seeking only a One-State Solution.

Never, even for a moment, did a single Palestinian faction display any authentic interest in living “side-by-side” with any Jewish State.

Never did any such faction actually favor a “Two-State Solution.”

Never.

There are, of course, other elements of Palestinian misrepresentation and contrivance, that have cumulatively doomed the “peace process.” Most obvious is the ongoing and plainly-undiminished Palestinian commitment to incitement and terror, and, as an inevitable corollary, the continuing Palestinian insistence on a “right of return.” On its face, this alleged “right” remains a not-so-coded message for accelerating Israel’s incremental destruction. *Prima facie*, this seemingly-benign and “just” expectation clearly represents complete rejection of Israel’s physical continuance as a sovereign state.

For any “peace process,” even ones currently favored by Israel’s “Peace Now,” this particular sort of rejection is not merely problematic. It is, rather, replacement-centered, or openly annihilatory.

There is yet another important reason to explain incessant Palestinian noncompliance with Oslo. This most widely overlooked explanation centers on the

uniform and persistent Palestinian Authority violations of international criminal law, here, the “peremptory” obligation to extradite wanted terrorists to Israel. This incontrovertible obligation stems from both: 1) the actual language of the codifying agreement; and 2) the always-binding principles of underlying international law. Such jurisprudential principles do not depend for their implementation upon any specific treaties or pacts. Sometimes, they are even binding perpetually, as “*jus cogens*” norms, to introduce specific legal terminology of the 1969 Vienna Convention on the Law of Treaties.

From Oslo’s beginnings, on September 13, 1993, the Palestinian Authority, *inter alia*, absolutely refused to honor its expressly core obligation to extradite Arab terrorists to Israel. Significantly, even if the Oslo Agreements had not themselves 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.”

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

Over the past twenty-two plus 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 blatantly concocted public relations purposes. A conspicuous example of such contrivance, some years back, was the case of Wa’al Salah Nasr, who then plotted to carry out a particularly egregious suicide bombing attack against Israeli children – egregious even by the manifestly grotesque standards of the current “Third Intifada.” 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 very great Arab hero.

Not surprisingly, President George W. Bush, on December 5, 2001, had warned

presciently: "Arafat's jails have bars in the front, and revolving doors in the back."

Remember Arafat? *Plus ce change...* Nothing has ever really changed. In part, this is because successively misguided Israeli prime ministers were all prepared to release Arab terrorists in an oddly vain search for Palestinian "good will," and because PA Presidents Yasser Arafat and Mahmoud Abbas both knew that there would likely never be any sufficiently tangible Israeli sanctions for Palestinian non-compliance.

None at all.

Not only did the PA invariably fail to "extradite or prosecute" terrorists; it routinely hired these same murderers into the Palestinian "police" or "security services." It does this even today. And why not? There is no discernible difference here, between the Palestinian authorities, and the Palestinian criminals.

If this 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 subsequently trained by American intelligence agencies, and later, by the Pentagon. For easy corroboration, the reader need only search the internet for a program headed by U.S. General Keith Dayton. It was General Dayton, under two American presidents, who led the incoherent and expensive 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 President Barack Obama's "junior varsity," or ISIS. Then, looking back, it will finally be evident that U.S. sponsorship of one murderous Palestinian terror faction (Fatah) against another Palestinian terror group (Hammas) had ultimately 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 an effective sub-contractor against more "extremist" Hammas. From any informed American or Israeli point of view, such thinking was always incomprehensible. As everyone in the region should readily understand, there had never existed an iota of consequential difference between the two core Palestinian terror organizations.

There is a long and detailed early history here, a deeply humiliating narrative of error, from which only the Arab side has seemingly learned anything important. To begin, 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 has an overwhelming and irreversible obligation under international law to seek out and to prosecute terrorists. This obligation, which derives (ironically) 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, *inter alia*, 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 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 celebrations on 9/11, so too has it pushed out of its memory the intimate and mutually supporting ties that had

existed earlier, between PA President Yasser Arafat, and Iraqi dictator Saddam Hussein.

Today, as the world must witness the complete collapse of civil order in Iraq and Syria, a vital lesson still seems elusive. It is that any Palestinian state, soon after *de jure* independence, would almost surely fall to even more vicious bands of Sunni terrorists, most plausibly, ISIS or ISIS-affiliates. Then, a once predictive mantra will have become retrospective:

If you like Syria, you'll love Palestine.

Following Operation Desert Storm many years back, Amnesty International identified at least thirty different methods of torture used by the Iraqis and their close Palestinian 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."

If you liked Iraq, you will love Palestine.

The Palestinian Authority no longer comments on its earlier support for Saddam Hussein, but it does continue to appoint Islamic clerics who feverishly 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 suicide bombers, both male and female. More than anything else, the PA promises its terrorists "martyrdom," or "power over death."

More than anything else, this is the promise that now animates the "Third Intifada."

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 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 Palestinian 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 certain despised others ("the Jews"), is the undisguised source of their most conspicuously palpable pride.

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."

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 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).

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," has effectively elected to remove itself from the civilized community of nations. Still, in law, such removal is not a permissible act. 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, it is also evident from the Constitution, that the President's power to pardon does not encompass violations of international law, and is limited to "Offenses against the United States."

Once again, 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 the Palestinian Arab insurgents "freedom fighters," as they still claim, rather than mere terrorists? Under explicit international law, the answer is plainly "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 still lacks all necessary elements of "Just Means," or *jus in bello*. Because any insurgent violence that fails to meet the expectations of humanitarian international law – the expectations of "discrimination/distinction," "proportionality," and "military necessity" – is terrorism, there can be no residual doubt that these killers are terrorists.

Under law, at least, true freedom fighters do not gleefully murder infants sucking on pacifiers, in kibbutz nursery schools, or choose to run amok in cities with sharp knives, specifically and unapologetically seeking "Jewish blood." True freedom fighters, at least under law, do not plunge their knives into selected passersby, and then launch complaints that the national authorities had wrongfully responded with "excessive force." It is also worth noting that foreign news media have contributed mightily to such distortions of law.

To wit, in mid-October 2015, a CBS TV news program dealing with the so-called "Third Intifada" focused a segment on a Palestinian Arab youth who had been left wounded, briefly, in the street, after stabbing a nearby Jewish child, and was then shot in reprisal. In this twisted segment, the CBS news team interviewed only the terrorist's father, who lamented his murderous son's

"mistreatment," but ignored altogether the family of the assaulted Jewish victim. *CBS* also conspicuously ignored that the knife-wielding Palestinian had soon been taken to a nearby hospital in Israel, where (according to standard protocol in Israel) he was given the very best possible medical treatment. As a result, the terrorist murderer's life was saved by Jewish doctors, who would then have to fear for their own lives, on the perilous "Third Intifada" commute back home.

Always, under formal international law, any willful refusal to extradite or prosecute terrorists is inexcusable. The principle is well-established in law that, by virtue of any such refusal, the authority in question must assume responsibility for past criminal actions, and even for future ones. This means that ongoing PA refusals to extradite, implicate that "Authority" for what is called a "denial of justice."

Such an implication 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 any further acts of murder. In the case of protected Palestinian terrorists, hundreds of Israelis who are alive today may still be murdered tomorrow as a direct result of the steady PA refusal to extradite or prosecute.

Moreover, the manifestly lethal consequences of this refusal could be enlarged by Israel's own sequential terrorist releases over the years.

Terrorism is a crime that can and must be punished. 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 such any such expectation will be fulfilled, and that international criminal law will work somehow, all states should finally and insistently demand that pertinent Israeli extradition requests be honored, precisely as the law demands.

Even today, PA textbooks instruct young Palestinians that their country exists "from the river to the sea." Integral to all such indoctrination, is the revealing position that Israel has already been eliminated cartographically, and that what "the Jews" stubbornly and annoyingly refer to as Israel, is, in

reality, “Occupied Palestine.”

Considered together with the PA’s historic unwillingness to extradite Palestinian terrorists to Israel, or even to ensure the serious prosecution of these murderers in their own “domestic courts,” this relentless falsification exposes a primary but still overlooked reason for Oslo Agreement failure.

In its latest rallies in Tel-Aviv, “Peace Now” ought to be looking beyond its stubbornly long-favored world of banalities and clichés, and toward a critically frank acknowledgement of what its Palestinian “peace partners” truly seek. Should they still have any doubts about this “Third Intifada” objective, they 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, which was later reaffirmed in the PLO’s 1974 “Plan of Phases,” [INN](#).

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