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**PALESTINIAN LEGISLATIVE COUNCIL
ELECTIONS—CHALLENGES
OF HAMAS' VICTORY**

STAFF TRIP REPORT
TO THE
COMMITTEE ON FOREIGN RELATIONS
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LETTER OF TRANSMITTAL

January 31, 2006.

DEAR COLLEAGUES:

The Palestinian elections held on January 25, 2006, resulted in a disconcerting victory for Hamas, a group designated by United States law as a Foreign Terrorist Organization (FTO). The Hamas-sponsored Coalition for Change and Reform party won 74 of 132 seats in the Palestinian Legislative Council, taking control from the Palestinian Authority's ruling Fatah party. The United States and others in the international community are assessing the challenges presented by Hamas' victory for our national interests and policies.

Ms. Kim Savit, a Senior Professional Staff Member of the Senate Foreign Relations Committee witnessed the election as an official Palestinian Election Observer with the National Democratic Institute and The Carter Center (NDI/CC). I extend the Committee on Foreign Relations' thanks to NDI/CC for inviting Ms. Savit to join the extraordinary Observer Delegation of experts and officials led by former President Jimmy Carter. I am pleased to share with you her trip report and her recommendations which may be helpful as the Committee on Foreign Relations considers the serious foreign policy issues raised by the election results.

I look forward to continuing to work with you on these issues and to any comments you might have on this report.

Sincerely,

RICHARD G. LUGAR,
Chairman.

PALESTINIAN LEGISLATIVE COUNCIL ELECTIONS—CHALLENGES OF HAMAS' VICTORY

The Palestinian elections on January 25, 2006, have been described as a “political tsunami,” an enormous, unpredictable, destructive wave which will change the political landscape of the Middle East forever. No one, it seems—except, possibly, Hamas—was prepared for the stunning victory of the Hamas Coalition for Change and Reform, which won 74 of 132 seats in the Palestinian Legislative Council, taking control from the ruling Fatah party. The United States, Israel, and the international community are now struggling to assess the impact of this profound change in the Palestinian Authority on their national interests and policies.

As an official Palestinian Election Observer with the National Democratic Institute and Carter Center (NDI/CC) from January 20–27, 2006, Ms. Kim Savit, Senior Professional Staff Member of the Senate Foreign Relations Committee, witnessed the elections process first hand, talked with delegation experts, and met with United States, Palestinian, and Israeli officials before, during and after the elections. An NDI/CC Preliminary Statement on the elections results published January 26, 2006, (attached at Annex I) reflects the International Observer Delegation’s relatively positive assessment of the election administration, voting and counting process. The political, economic, and security challenges presented by Hamas’ victory, however, are being hotly debated around the globe.

The new realities in the region require rethinking assumptions about a wide range of issues and giving careful consideration to how to best influence the future of the Palestinians, the Israelis and the Middle East peace process. United States policymakers face difficult choices within this new Middle East landscape, but may also find unexpected new opportunities.

The following report outlines some of the challenges resulting from Hamas’ victory in the Palestinian elections and provides recommendations for congressional consideration as legislation is proposed to address these issues.

KEY CHALLENGES

POLITICAL CHALLENGE—COUNTERTERRORISM VS. PROMOTING DEMOCRACY

The United States administration has pursued two primary policy priorities in the Middle East—fighting terrorism and promoting democracy. The success of Hamas, a U.S.-designated terrorist organization, in a free and fair democratic election against the more nationalist and secular Fatah, challenges these U.S. policies. What

should be our objectives and strategy for dealing with a Hamas-led Palestinian Authority? Do we want Hamas to moderate and change its position as the Palestinian Liberation Organization did years ago, and become a legitimate governing party of a new Palestinian Authority? Or, do we want Hamas to fail, hoping that in the process, its extremist positions and the violence it has perpetuated will be discredited? Would either path lead to peace negotiations with Israel and a new era of Palestinian democracy? And which path is the best in terms of United States national security interests related to the Israeli-Palestinian conflict and the entire Middle East?

Democratic Elections

The Palestinian Legislative Elections were an extraordinary example of democracy in practice, as over 1 million people exercised their right to choose their leaders in a process described by international observers as “free, fair, and secure.” The overwhelming victory of the Hamas Coalition for Change and Reform Party has been characterized by most observers as a “protest” vote against the corruption and incompetence of the long ruling Fatah party, not as a mandate for the Hamas platform of armed resistance against Israel. This assessment may be a comfort to those who viewed the Palestinians’ choice as one between “murderers or thieves,” one side directed at external events, the other hitting voters at home. But, even if the Palestinians’ choice was for the lesser of two evils, the Hamas platform, calling for armed struggle, including the slogan “one hand resists, while the other builds” cannot be discounted.

The prevailing assumption that Hamas never expected nor wanted to have full control of the Palestinian Legislative Council or the Cabinet seems to ignore the reality on the ground. Hamas’ success resulted from a very sophisticated, well-calculated strategy and plan for taking over the Palestinian Authority.

- At nearly every polling station, Change and Reform party observers were present, well prepared with voter lists, disciplined, well-trained and professional in getting their voters to the polls. Hamas presented a unified, consolidated list in each district while Fatah and other parties had multiple candidates, which divided voter support among the different groups.¹
- Hamas’ success was more than just a well-run campaign. According to one Palestinian Authority official, the Change and Reform party had calculated well in advance of the election that it would win at least 72 seats, far in excess of the 67 needed for a majority in the Palestinian Legislative Council. After the election Hamas quickly called for formation of a national unity government.

¹Baskin, Gershon; “OPTICAL ILLUSION, The Hidden Results of the Palestinian Elections” Tuesday, January 31, 2006; *IPCR1-News—Views@googlegroups.com*. “In the final outcome of the Palestinian elections the Hamas party took 74 seats of the 132 available seats. This equals 56%. On the district lists Hamas gained 68.18% of the seats with non-Hamas candidates taking on 31.82% of the seats. But in reality, in the districts Hamas candidates received only 36.45% of the votes while non-Hamas candidates received 63.54% of the votes. In reality, a clear majority of Palestinians voted against the Hamas.”

These actions suggest that while there may be some who were unprepared for the magnitude of the Change and Reform party's success, Hamas was much less surprised by its own victory than the rest of the world.



Election officials displaying ballot to observers to verify vote.



Hamis campaign poster "one hand resists, while the other builds."



Hamas was less surprised by its own victory than the rest of the world.



Fatah campaign posters included Arafat and Abbas.

Policy Response

Secretary of State Condoleezza Rice acknowledged that the United States failed to anticipate the Hamas victory in the elections.² Promoting democracy has been a cornerstone of the Bush administration's policy in the Middle East, but the United States apparently had no plan for reacting to the democratic choice of the Palestinians if Hamas won a majority in the election. Initially, the U.S. response to the Hamas victory was to reiterate existing counterterrorism policy. President Bush and other administration officials indicated that the United States would not deal with an elected Hamas-led Palestinian Authority government if it did not renounce terrorism, disarm and accept Israel's right to exist. The Quartet, (the United States, the United Nations, the European Union, and Russia) issued a similar statement that "all members of a future Palestinian government must be committed to non-violence, recognition of Israel, and acceptance of previous agreements and obligations, including the Roadmap."³ Israel similarly took a cautious position, reminding Palestinian Authority President Abbas that Hamas was allowed to participate in the elections based on his commitment that, after the elections, the Palestinian Authority would work to disarm Hamas and seek to turn it from a terrorist to a political organization.

Isolation, Engagement or Containment?

The United States, the Quartet, and the Israelis appear to have tried to leave the door open to engage with the new Palestinian leading party if Hamas changes or moderates its positions.

Some consider that under a democratic process, Hamas will be co-opted over the long run merely by undertaking the burdens of

²Weisman, Steven R., "Rice Admits U.S. Underestimated Hamas Strength," NYT, January 3, 2006.

³Quartet Statement, U.S. Department of State, January 30, 2006.

governance and responsibilities to respond to the public. Budding Palestinian democratic institutions and a free press could eventually result in greater accountability and transparency in governance by the Palestinian Authority. Such institutions might pressure Hamas representatives, in order to stay in power, to respond to the estimated 60–70 percent of the Palestinian population who reportedly support reaching a peaceful settlement with Israel in a two-state solution. The need to respond to constituent demands relating to unemployment, personal security, and social services might force Hamas to set aside any Islamic or extremist agenda, at least in the short and medium term.

But, a strategy that relies solely on isolating Hamas and expecting internal pressures from weak Palestinian democratic institutions and civil society to succeed in co-opting or moderating Hamas positions could well backfire. Politically isolating and punishing the Palestinian people for voting for Hamas could lead to further radicalization and might push the new leadership to seek even greater support from Iran, Syria, and other supporters of terrorism. There is little understanding of what the newly elected Hamas leadership intends to do and few, if any, channels of communication open to try to influence their decision making. It is not even clear who is making decisions.

- Are Hamas members who won the election inside the West Bank and Gaza in the lead? Are the exiled leaders in Syria calling the shots? Is Iran already involved?

The fact that the elections were held at all, and that Hamas participated willingly after boycotting the Palestinian Authority Presidential elections last year, are good signs that the organization can shift gears. The Israeli Defense Ministry has even acknowledged that Hamas has kept the “calm” or informal truce, arranged over the past year. This holds promise that pragmatists among Hamas’ ranks may prevail and be open to engagement and dialogue. Some suggest that eventually, like “Nixon in China,” the Hamas election could represent an unprecedented opportunity for the peace process. They argue that precisely because Hamas has been extremist, it will have the credibility among Palestinians that permits it to moderate its charter, renounce violence and agree to engage with the Israelis, the United States and others, and ultimately achieve a negotiations breakthrough that the corrupt and inept Fatah party could not.

It would be naive to assume, however, that Hamas will reverse its extremist positions without significant pressure, particularly if the Iranians and Syrians rush to fill any vacuum created by punitive policies of the United States and European Union. Engagement and dialogue with a wholly unrepentant, unchanged Hamas could legitimize its extremist policies and embolden its leaders. There are already fears among the Palestinians, particularly Christian and secularist elements, that Hamas intends to impose strict Islamism as it gains control over the instruments of government. The more control of the Palestinian Authority Hamas gains, including control over Cabinet positions and ministries, the more confident Hamas also will be to continue to reject the right of Israel to exist and support continued violent, armed terrorist attacks.



Palestinian women preparing to vote. Two wear green Hamas scurves; two wear black and white Fatah scurves.

Such fears have led some to propose a policy of containment of Hamas' power within the Palestinian Authority. Proponents of a policy of containment seek to limit Hamas' control of specific ministries and would support Palestinian Authority President Abbas in naming a technocratic rather than a Hamas or Fatah party dominated Cabinet. However, while this approach may maintain a temporary illusion of limited Hamas control, it risks giving Hamas acceptability and legitimacy without requiring it to take responsibility for governing decisions. It also risks undermining efforts to press Hamas to reform its own political agenda and renounce the use of violence and terror.

Even if Hamas gains control over the Palestinian Authority and ministries, it is not clear how much influence Hamas would have over other factions such as Palestinian Islamic Jihad. The limited violence during the elections could reflect some form of agreement among the various militant Palestinian factions, but the relationship between Hamas and other terrorist organizations remains unclear. A Hamas-led government may allow Palestinian Islamic Jihad or others to continue to operate against Israel, particularly to garner or maintain Iranian support. The difference would be that once Hamas is in power, such attacks may no longer be considered merely terrorism, but could be considered open acts of war bringing the wrath of Israel down on the Palestinian people.

The stakes are high. Costs and benefits of pursuing a strategy of isolation, engagement or containment of Hamas must be carefully weighed and objectives clearly defined.

RECOMMENDATION

The United States, the European Union, and the Quartet urgently need to unify their message to maximize pressure on Hamas for reform and moderation. They also need to develop channels of communication with the newly elected Palestinian legislators and establish a framework for constructive Palestinian response. Continuation of the role of the Quartet Special Coordinator, James Wolfensohn, might appropriately be used to fill this need in the short term. Alternatively, a new special envoy might be designated to work with the Palestinians. For the longer term, a cohesive, strategic action plan must be developed which clarifies our short-term and long-term objectives, and outlines steps necessary to protect and promote United States national interests in the Middle East.

ECONOMIC CHALLENGE—CUT OFF AID VS. STABILITY

The United States, Israel, and many others in the international community will be tempted to react quickly and decisively to cut off all aid and all funding flows to a Palestinian Government led by Hamas, a designated terrorist organization. The challenge will be to temper this reaction through an assessment of the likely consequences for our national interests. What is envisioned will happen to the Palestinians after all aid is cut off? And how will this be expected to impact the Israelis?

Palestinian Dependence on Aid

As a member of NDI/CC Team Bethlehem, Ms. Savit observed the elections in nine polling stations across the Bethlehem area of the West Bank. Most polling stations were in schools with little or no heat. The Bethlehem Team observed the vote count in a small classroom where for 5 hours into the night, they sat freezing with six election officials and five official candidate observers. But they had lights. One of the NDI/CC teams reported that electricity went out at their polling station as the vote count started. This was a quick reminder that in many parts of the West Bank and Gaza, the Palestinians are not in control of the flow of electricity and water. Their economic life is largely dependent on Israel and the international community.

International donors provided over \$1 billion in aid to the Palestinian Authority in 2005, with about one-third going toward salaries, and the rest to humanitarian and reconstruction assistance. The United States provided an estimated \$70 million in direct assistance, \$225 million for humanitarian projects through the U.S. Agency for International Development, and about \$88 million for refugee assistance.⁴ The Palestinians have, in fact, been the largest aid recipients per capita in the world for years. A cut in donor aid would result in devastation of the Palestinian economy, adding tens of thousands of government workers to the estimated 30–60

⁴Barzak, Ibrahim, "Palestinians appeal for continued aid as key donors say Hamas must recognize Israel," Associated Press, January 31, 2006.

percent existing unemployment, and adding to the already overwhelming Palestinian budget deficit. In fact, reports indicate that the Palestinian budget crisis is immediate and that the Palestinian Authority will be bankrupt within weeks of the election, particularly if Israel withholds the transfer of taxes and customs fees collected on the Palestinian's behalf.



Observing the ballot count in Bethlehem school room.

Cutting-Off All Assistance

Cutting assistance is one of the few levers available to the international community to try to curb Hamas' extremist positions in a timely manner. The international community is beginning to consider use of this tool to put pressure on Hamas, but the efforts appear ad hoc and uncoordinated.

Some argue that the Palestinian people must face the consequences of their choice and all aid should be cut. Others consider it immoral to cut off all aid, particularly humanitarian assistance, in order to punish the Palestinians for exercising their democratic right to vote. Still others view any aid cuts as counterproductive—likely to increase radicalization of the Palestinians, decrease support for the two-state solution, and strengthen support for Hamas.

Currently, by law, the United States cannot provide direct cash assistance from Economic Support Funds to the Palestinian Authority unless the President certifies that such aid is important to the national security interests of the United States.⁵ The President

⁵Section 550 of Public Law 109-102: Sec. 550. (a) Prohibition of Funds.—None of the funds appropriated by this Act to carry out the provisions of chapter 4 of part II of the Foreign Assistance Act of 1961 may be obligated or expended with respect to providing funds to the Palestinian Authority. (b) NOTE: President. Certification. Waiver.—The prohibition included in sub-

Continued

has used this waiver authority sparingly as he did last year after the election of Palestinian Authority President Abbas. However, it is an important tool, giving him a degree of flexibility in dealing with a vital and often volatile foreign policy issue and permitting, under exceptional circumstances, injection of direct assistance at key moments when such aid can have significant positive impact for U.S. national interests. If there is to be any direct United States aid to the Palestinian Authority in the future—regardless of the political composition of the Palestinian Authority—this existing Presidential waiver authority for assistance must be maintained.

While United States law has long barred direct cash assistance to the Palestinian Authority, United States assistance for the West Bank and Gaza via nongovernmental organizations (NGOs) and private voluntary organizations (PVOs) is permitted. Organizations and individuals receiving such aid are required to meet stringent vetting conditions designed to ensure that no aid goes to “groups or individuals who are or have been involved in terror.”⁶ In addition, as a legally designated foreign terrorist organization, Hamas is ineligible to receive funds or other material support.⁷ The United States could, in principle, continue indirect aid to the Palestinians even with Hamas’ success in the election. However, United States law puts the onus on United States aid providers to judge if Palestinian aid recipients are terrorists or have been involved in terrorism. In practice, many aid providers will likely cut off even indirect aid to the Palestinians, including humanitarian assistance, rather than take a risk that they will break the law.⁸

section (a) shall not apply if the President certifies in writing to the Speaker of the House of Representatives and the President pro tempore of the Senate that waiving such prohibition is important to the national security interests of the United States. (c) NOTE: Termination date. Period of Application of Waiver.—Any waiver pursuant to subsection (b) shall be effective for no more than a period of 6 months at a time and shall not apply beyond 12 months after the enactment of this Act.(d) NOTE: President. limitation on assistance to security forces Report.—Whenever the waiver authority pursuant to subsection (b) is exercised, the President shall submit a report to the Committees on Appropriations detailing the steps the Palestinian Authority has taken to arrest terrorists, confiscate weapons and dismantle the terrorist infrastructure. The report shall also include a description of how funds will be spent and the accounting procedures in place to ensure that they are properly disbursed.

⁶Section 559. of (P.L. 109–102) NOTE: Deadline. Certification. Procedures. (a) Oversight.—For fiscal year 2006, 30 days prior to the initial obligation of funds for the bilateral West Bank and Gaza Program, the Secretary of State shall certify to the appropriate committees of Congress that procedures have been established to assure the Comptroller General of the United States will have access to appropriate United States financial information in order to review the uses of United States assistance for the Program funded under the heading “Economic Support Fund” for the West Bank and Gaza. (b) Vetting.—Prior to the obligation of funds appropriated by this Act under the heading “Economic Support Fund” for assistance for the West Bank and Gaza, the Secretary of State shall take all appropriate steps to ensure that such assistance is not provided to or through any individual, private or government entity, or educational institution that the Secretary knows or has reason to believe advocates, plans, sponsors, engages in, or has engaged in, terrorist activity. The Secretary of State shall, as appropriate, establish procedures specifying the steps to be taken in carrying out this subsection and shall terminate assistance to any individual, entity, or educational institution which he has determined to be involved in or advocating terrorist activity. (c) Prohibition.—None of the funds appropriated by this Act for assistance under the West Bank and Gaza program may be made available for the purpose of recognizing or otherwise honoring individuals who commit, or have committed, acts of terrorism.

⁷Hamas is on the list of groups designated by the Secretary of State as Foreign Terrorist Organizations (FTOs), pursuant to section 219 of the Immigration and Nationality Act, as amended by the Antiterrorism and Effective Death Penalty Act of 1996. The designations carry legal consequences: It is unlawful to provide funds or other material support to a designated FTO. Representatives and certain members of a designated FTO can be denied visas or excluded from the United States. U.S. financial institutions must block funds of designated FTOs and their agents and must report the blockage to the U.S. Department of the Treasury. U.S. State Department.

⁸Senate Foreign Relations Committee, Staff Trip Report: “Israel’s Disengagement from Gaza and Several West Bank Settlements,” October 2005.

The European Union, too, has indicated that its member nations would cut off aid to the Palestinian Authority in the event that Hamas does not recognize Israel, renounce violence and disarm.

Finally, Israeli Acting Prime Minister Olmert stated after the election that “We are not ready in any way to allow a situation in which money transferred by the Government of Israel will somehow end up in the control of murderous elements who want to harm Israeli citizens.”⁹ Israel initially said, “for the time being,” that it would stop the monthly transfer of an estimated \$55 million in taxes and customs it collects from Palestinian workers and merchants to the Palestinian Authority if a Hamas government is installed.¹⁰ It went forward with the first payment after the election, as Hamas had not yet formed a new Palestinian Authority government, but Israeli officials indicated future payments were under review.

Consequences

The loss of financial assistance from the United States, the European Union and other Western donors could push Hamas closer to Iran and Syria and further radicalize the Palestinian people. This threat will undoubtedly be used by Hamas to counter pressures for the United States and others for moderation and for changes to its charter. The Iranian President’s visit to Syria before the Palestinian elections as well as statements in support of Hamas’ victory give some credibility to this threat.

However, Iran and Syria face their own political and economic constraints. They may be unwilling or unable to fill the enormous needs of the Palestinians if United States and other donor aid sources are cut off. Moreover, as some experts estimate, the Sunni dominated Hamas has received less than 10 percent of its funding from the Shi’ite dominated Iran and has many other sources of funding.

The primary economic challenge is how to use the leverage of aid to put pressure on Hamas without alienating or radicalizing the majority of the Palestinians. The key will be obtaining support of the moderate Arab states, particularly the Saudis and others who have been the primary financiers of the Palestinians. For the moment, the Saudis and other Gulf states are hesitating to continue or increase funding for a Hamas-led Palestinian Authority. Saudi Arabia, as well as Egypt and Jordan, may fear that the success of Hamas, which grew out of the extremist Muslim Brotherhood, could result in a growing threat to their own regimes. There has been some indication that both Egypt and Jordan will insist that Hamas renounce violence, but it is not yet clear what the other moderate Arab states will do. The United States, Europeans, and other members of the Quartet, particularly the Russians, will need to consult early and work closely with these Arab nations to gain maximum leverage over aid resources.

There is no guarantee, however, even with the loss of financial aid, that Hamas will moderate its positions. Yet, with limited op-

⁹Daily Star staff, “Hamas seeks to reassure stock market investors, Palestinian Financial Markets Plummet in Wake of threats to cut aid,” Tuesday, January 31, 2006.

¹⁰Entous, Adam; “Israel expects to halt tax payment to Palestinians,” Jerusalem, Reuters, Tuesday, January 31, 2006, 7:18 AM ET

tions, how and when such leverage is used may make a difference. Time is of the essence.

RECOMMENDATION

Our policy should seek to take maximum advantage of the leverage provided by assistance, and should condition any direct aid to the Palestinian Authority on Hamas taking action to meet specific conditions or benchmarks. But flexibility is required to respond to realities on the ground. Conditions on direct United States aid to the Palestinian Authority should be tough, to provide clear pressure on Hamas, but should not be so onerous as to further radicalize the Palestinian population and foreclose any possible future efforts to re-energize the Road Map and two-state solution. At a minimum, the United States should continue to provide humanitarian assistance vetted appropriately.

United States laws governing aid to the Palestinians should be reassessed to take into account the new political realities. The goal of any changes to these laws should be to ensure that United States aid to the Palestinians—direct or via nongovernmental organizations (NGOs)—is an effective tool of United States national interests.

- **Aid provided through NGOs originating from USAID should continue to be distinguished from aid provided directly to the Palestinian Authority.**
- **Benchmarks should set realistic goals which would provide a foundation for assessing progress.**

SECURITY CHALLENGE—INTEGRATION, INSTABILITY, OR WAR?

With Hamas' victory, it is unclear what direction the Fatah dominated security forces will take. Ironically, any new Palestinian Authority government that is formed with Hamas in the leadership could immediately have to deal with a vast array of security threats. Palestinian Authority President Abbas committed to disarm the militias after the elections, but it is not clear, given Hamas' victory, whether he will seek to integrate Hamas armed militias into the existing Fatah dominated security forces or find a means to disarm them. Moreover, the Palestinian security forces require daily interaction with Israeli Defense Forces (IDF) at border crossings and on other critical issues such as water and electricity. How will the Hamas-led Palestinian leadership deal with the IDF on a daily basis? How will its leaders cross between Gaza and the West Bank? With 15 of its members in Israeli jails, how will the majority of the new Hamas-led Palestinian legislators actually vote?

During the January 25 election, the Palestinian Authority Police and Security Forces were visible everywhere, in new uniforms outside every polling site and on street corners confronting the traffic jams. They appeared well prepared for their role of ensuring that

the elections were nonviolent—“free, fair, and safe” as described by the Palestinian Civil Police. The crowds of Fatah, Hamas Change and Reform, and Independent candidate supporters outside each of the polling stations visited were friendly and obviously excited about the election. There was a feeling of national unity and celebration.



Fatah, Hamas, and Independent candidates supporters.



Each polling station displayed signs including this “no guns.”

Consolidation and Integration

After the election, Hamas reportedly offered to form a coalition, national unity government and indicated it expects to build a Palestinian national army, integrating Hamas’ armed militants into the existing security forces. Fatah leaders reportedly rejected the offer and chose instead to become an “opposition” party. Integration of the Hamas militias with the remaining 3–4 different Palestinian Security Force organizations that grew initially under Arafat’s control is expected to be strongly resisted by the existing Fatah leadership.

For the past year, the United States and the European Union have been providing technical assistance to facilitate reform and consolidation of the Palestinian Authority Security Forces. Approximately \$3 million was allocated for support of the European Union Cops training program. United States Security Coordinator, GEN William Ward, replaced in December 2005 by GEN Keith Dayton, has been developing a performance-based strategic framework to promote the restructuring of the Palestinian Security Forces, to promote law and order and to prevent factional and political violence. These efforts have had minimal success. Beyond the leadership levels, Palestinian Security Forces remain in serious disarray.

Civil War?

As the Palestinian budget hits rock bottom in the aftermath of the elections, the estimated 68,000 existing Security Forces on the government payroll may be among the first to grow angry over lack of salary payments. Armed and under competing and divided leaders within Fatah, these forces may be unwilling to accept Hamas

direction and control. The existing Palestinian security forces could become the primary source of instability and violence within Gaza and the West Bank. Some experts have even raised the specter of civil war between Hamas, Fatah, and other armed militias. Although civil war may seem improbable, as the economy deteriorates, Palestinian internal violence and instability is likely to grow and could quickly spread and be redirected toward Israel.

Impact on Israeli Elections

Any increasing instability among the Palestinian factions will have an impact on the upcoming Israeli elections scheduled for March 28, 2006, and thus, will have the potential to impact any future negotiations. Current polls indicate that the Kadima (centrist) party, established last year by Prime Minister Sharon and led by Acting Prime Minister Olmert, remains the preference of the majority of Israelis. Increasing violence and instability may work to the advantage of the right wing Likud party of Netanyahu. Moreover, further unilateral actions by Israel to consolidate settlements in the West Bank and declare its own borders may become major issues within the Israeli election campaigns.

RECOMMENDATION

Return to the Road Map appears unlikely, but plans should be developed to facilitate the disarmament of Hamas militias as a condition of aid and establish criteria for possible integration into the Palestinian security forces. Efforts should be explored to extend the informal cease fire and establish confidence building measures towards a possible interim peace. United States efforts to help reform and consolidate the Palestinian security forces should be frozen, re-assessed, and adjusted as the situation evolves.

CONCLUSION

We were not prepared for the magnitude of Hamas' victory in the Palestinian Legislative Council elections. The new political, economic, and security challenges in the region require rethinking our strategy, policies, and plans.

Given the existing Palestinian financial crisis, there probably will never be as much leverage by aid donors on a new Hamas-led Palestinian Authority as there is now. Effective United States policy will require sticks, in the form of denying direct aid to the Palestinian Authority and setting tough requirements for action by Hamas; and carrots, in the form of realistic benchmarks for Hamas performance, and the continuation of assistance to the Palestinian people. Such a strategy—especially if coordinated with the Europeans, others in the Quartet and even moderate Arab States—could effectively pressure and isolate Hamas, while making clear that the United States is not seeking to punish the entire Palestinian people for holding free and fair democratic elections.

It is critical that the United States not “act” precipitously. The Palestinian Authority is in an unprecedented period of transition and the United States must maintain flexibility to respond constructively as the situation evolves. If we develop a strategic plan

now and clearly define our national interests and objectives, we may have greater influence in the short term and open up some opportunities for the future.

ANNEX I

PRELIMINARY STATEMENT OF THE NDI/CARTER CENTER INTERNATIONAL OBSERVER DELEGATION TO THE PALESTINIAN LEGISLATIVE COUNCIL ELECTIONS

This preliminary statement on the January 25, 2006 Palestinian Legislative Council (PLC) elections is offered by the international observer delegation organized by the National Democratic Institute (NDI) in partnership with The Carter Center. The delegation was led by former United States President Jimmy Carter, former Albanian President Rexhep Meidani, former Swedish Prime Minister Carl Bildt, and former Spanish Foreign Minister Ana Palacio. It included current and former legislators, former ambassadors, elections and human rights experts, civic leaders and regional specialists from 22 countries in Asia, Europe, the Middle East, North Africa, and North America. The delegation visited the Palestinian territories from January 21–26 and deployed 85 observers to the West Bank, Gaza, and East Jerusalem.

This delegation is part of NDI's 2-year comprehensive observation of Palestinian election processes, which is supported by USAID and which began with the 2004 voter registration process and included all five rounds of the 2004–2005 municipal elections, the joint NDI/Carter Center observation of the 2005 Presidential election, and the placement of long-term observers in Jerusalem, the West Bank, and Gaza in the lead up to these elections. The Institute issued a series of statements on the voter registration and municipal election processes, and NDI and The Carter Center issued statements on the Presidential election and on the preelection environment, all of which are available on NDI's Web site at www.ndi.org. The Carter Center also jointly organized an international election observation mission for the 1996 Palestinian Presidential and legislative elections.

The purposes of the delegation were twofold: To demonstrate the international community's continued interest in and support for the development of viable democratic institutions that will enable Palestinians to freely choose their leaders and representatives; and to provide Palestinians and the international community with an impartial and accurate assessment of the election process and the political environment surrounding the elections to date. The delegation conducted its assessment on the basis of the Declaration of Principles for International Election Observation, comparative practices for democratic elections and Palestinian law. For more than a decade, NDI has conducted, on an impartial basis and across the political spectrum, programs to support the development of democratic Palestinian institutions and processes.

Under the difficult circumstances of the ongoing conflict and occupation, Palestinian voters turned out in large numbers in a strong expression of their desire to choose representatives through open and competitive elections. The obvious pride and enthusiasm of Palestinians about the election process was evident throughout the voting districts. This was reinforced by the professional and impartial performance of election officials. Through the high turnout in these elections and in the 2005 Presidential election, as well as the notable participation in five rounds of municipal elections over the last year, Palestinians have clearly demonstrated a commitment to democratic elections. It is now up to the elected leaders and representatives to construct genuinely democratic institutions and processes that will bring the peace and prosperity that the Palestinian people deserve, within a free and independent state.

The January 25 elections can be an important step on the road to greater democracy for the Palestinian people. They present a unique challenge in that they included a group that advocated the use of violence as a means of achieving a political end and refuse to give up arms. Also, it has been committed to the destruction of a United Nations member state. It is universally accepted that democratic elections and democratic governance are about employing peaceful means to achieve political goals. We hope that the elections will mark a decisive move toward the renunciation of violence by all groups and toward addressing corruption and other issues that are central to improving the lives of Palestinians.

The elections were characterized by the following positive developments.

- Within the bounds of an occupied territory, the legal framework for the elections generally compared favorably to international standards.
- The adoption of a voluntary code of conduct by all political parties set an important precedent, though not all points were consistently implemented.
- The Central Election Commission (CEC) operated with a high level of confidence among the political contestants and the Palestinian population.
- The election campaign proceeded relatively peacefully and allowed voters to obtain abundant information about the contestants.
- Except for restraints in East Jerusalem, the election process was open and highly competitive.
- Election day was generally peaceful, and the elections thus far appear to be well administered under the difficult circumstances of ongoing conflict and occupation.
- A large number of Palestinians turned out to vote and were able to exercise their franchise without major difficulties. Voting procedures for illiterate persons generally curbed problems noted in prior elections.
- Israeli authorities generally eased travel through checkpoints to facilitate freedom of movement for election day processes.
- A significant number of political party and candidate agents and a significant number of nonpartisan Palestinian election observers were present in the polls, providing transparency to the process and helping to ensure its integrity.

- Women played a large role in the election process as election officials, party and candidate agents and nonpartisan observers. The legal framework required 20 percent of the names on the party lists for proportional representation seats be women, though few women appeared as candidates for district-based majoritarian seats.

The elections, however, were not without problems, including the following developments.

- Arrangements for voting in East Jerusalem were agreed to late in the process by Israeli authorities, while possibilities for voting in their neighborhoods remained inadequate for Palestinian voters in East Jerusalem. Conditions in East Jerusalem post offices did not provide voting privacy, as voters marked ballots on counters in view of postal workers.
- Campaigning by virtually all parties and many independent candidates was widespread on election day in violation of the election law, and, though in most instances such campaigning was peaceful, it contributed to tensions and scattered incidents of violence, particularly in Gaza and some localities in the Hebron governorate (Beit Awwa and Ash Shuyuk).
- Though freedom of movement was generally unobstructed on election day, there were numerous confirmed reports that political candidates, campaign workers, and election workers were unable to move satisfactorily through checkpoints during the campaign period that began on January 3.
- While parties and candidates were able to get out their messages, and they received free access to public media through regulated spots, news coverage documented by professional Palestinian and international media monitors noted significant bias, and paid political advertisements were not offered at the same price to all candidates by certain media outlets.
- There were credible reports of use of Palestinian Authority resources for the benefit of Fateh candidates and numerous reports of campaigning in many mosques on behalf of Islamic Resistance Movement (Hamas) candidates.

The vote tabulation process is still underway. Election complaints may be lodged by political parties and/or candidates. NDI and The Carter Center will continue to monitor these developments until the election process is completed and may issue additional statements. A final report will be issued soon after completion of the election process.

The 2006 PLC elections present a unique challenge with the participation of the Islamic Resistance Movement, or Hamas, which has advocated violence, including the killing of civilians, as a means to achieving a political end. It is also committed to the destruction of a United Nations member state. While it is in the long-term interest of Palestinian democratic development, and likely in the long-term security interests of Israel, that a wide spectrum of groups participate in lawful and peaceful political processes. Hamas' current political participation, while simultaneously advocating violence, is not consistent with a fundamental principle of democratic elections.

In an August 2002 preelection assessment, NDI, the International Republican Institute (IRI), and the International Foundation for Election Systems (IFES), recommended the adoption of candidacy requirements for the expected 2003 PLC elections. The 2002 report also suggested that a code of conduct be developed and enforced, which committed all parties to transparent and democratic principles, disallowed election-related violence and restricted individuals engaged in, or advocating violence from becoming candidates.

A voluntary code of conduct was developed by the Arab Thought Forum with support from NDI in late 2005, which went some way toward this goal. While stopping short of disallowing certain candidates, the code contains important undertakings geared to help enforce peaceful and fair campaigning and to promote a peaceful acceptance of election results. All political parties and movements, including Hamas, signed on to the code. The Palestinian Authority, in successful efforts led by President Mahmoud Abbas, engaged different factions in dialogue over the last year, including Hamas, to consolidate the "State of Calm" initiated by the Cairo Agreement signed in 2005.

Such steps related to the elections could help set the stage for renunciation of violence by all parties beyond the elections in order to achieve the peace and prosperity that are goals of democratic governance. The new PLC also has an opportunity to address this issue with the adoption of a political party law. Now that it has entered the political arena, Hamas has the chance to accept and adhere to recognized democratic norms.

There are an estimated 120,000 eligible voters in East Jerusalem, accounting for about 9 percent of the Palestinian electorate. Given the long-standing dispute over the status of Jerusalem, these voters have yet to obtain a reasonable opportunity to exercise their franchise.

A compromise was reached in 1995 (the Israeli-Palestinian Interim Agreement Elections Protocol, Annex II, Article IV) that, as implemented, provided an opportunity for approximately 5,000 Palestinian residents of East Jerusalem (approximately 6,300 in these elections) to vote inside the city. The agreement, employed during the 1996 PLC elections and the 2005 Presidential election, designated Israeli post offices in East Jerusalem as locations for that number of Palestinians to cast ballots. Palestinian Jerusalemites not voting in post offices were provided an opportunity to vote in special voting centers outside the city's boundaries. Under this arrangement, voting in East Jerusalem could be considered by Israelis as a form of "absentee" balloting, since ballot boxes were transported to counting centers in the West Bank, while Palestinians could consider the ballots as regular votes. This compromise, though inadequate, allowed the elections to proceed.

The ability to vote within the municipal boundaries of East Jerusalem remains important to both Palestinian rights and the fair conduct of elections. The PLC is to have six representatives from Jerusalem, and Jerusalemites vote for national lists in the proportional representation system. Until approximately 2 weeks before the January 26 PLC elections, however, Israeli authorities refused to agree to the prior compromise for East Jerusalem voting. Israel's

ambiguous stance was explained by its reluctance to facilitate Hamas participation in the elections. While the compromise was again eventually implemented, the delay hindered electoral preparations in Jerusalem and made it difficult to mount adequate related voter education efforts.

Some administrative procedures were modified in these elections to avoid the large-scale confusion that was evident in the 2005 Presidential election. However, secrecy of the ballot remained a serious problem, with voting at counters in view of postal workers. In these and the 2005 election, the areas in East Jerusalem had the lowest turnout of any Palestinian electoral district. An often stated reason for this is the potential loss of certain social and state benefits if Jerusalemites vote, though no evidence of such losses have been presented to NDI or The Carter Center. NDI and The Carter Center have urged that Israeli officials publish express assurances that there will be no retribution against Palestinian Jerusalemites who vote.

The legal framework for the PLC elections was provided by the Basic Law and the Election Law. Though incomplete and not without shortcomings, they provide a foundation for democratic elections and compare favorably to international standards. The legal framework provides for 132 seats in the PLC, 66 of which are determined by proportional representation. Eleven parties and independents groups competed for those seats with closed national lists of candidates. The other 66 seats are divided into electoral districts corresponding to the 16 Palestinian governorates, with seats allocated to each district based on population, providing at least one seat per governorate. Voters then selected up to the number of individual candidates on the ballot corresponding to the number of seats allocated to their respective governorate. Six seats were set aside for Christians, with the Christian candidates receiving the highest number of votes in designated governorates being awarded the allocated seats and the remaining seats in the governorate going to the highest vote winners that are not Christian. National party lists for the proportional seats must contain one woman in the first three names on the list, one woman in the next four names and one woman in every five names thereafter, thus approximating 20 percent of each list. There were no requirements for including women as candidates for the district-based majoritarian seats.

The CEC and its staff operated with a high level of confidence among the political contestants and the Palestinian population. Despite uncertainties in the timing of the elections, the difficult circumstances of the ongoing conflict and occupation and some political pressures, the CEC operated as an independent, effective, and professional administrative body. The PLC accepted a recommendation of the NDI/Carter Center and European Union observer missions to the 2005 Presidential election to cease using the civil registry as a source for the voter lists. This change to the law allowed the CEC to prepare, with the exception of Jerusalem, a sound voters list. The voters list was developed based on voters going to registration centers, and the process was marked by extensive voter education and registration drives organized by the CEC that provided a genuine opportunity for all voters outside East Jerusalem to register.

The CEC also addressed a problem in the Presidential election by requiring closer scrutiny of those claiming assistance as illiterate voters and of those seeking to assist voters, thus better ensuring against undue influence and compromising ballot secrecy. The CEC provided for voting by security forces during the 3 days preceding January 25. Such voting took place in 17 special polling centers located in home governorate capitals of security force personnel. This allowed the forces to be on duty on election day without their disenfranchisement and avoided voting in barracks, which poses significant potentials for undue influence on voting choices. In addition, recruitment and training of polling station workers and logistical preparations were completed successfully in advance of the elections. Maintaining political impartiality, developing effective administrative capacities, and successfully organizing for election day is an enormous and difficult undertaking in any environment and is particularly commendable in the circumstances of these elections.

The election campaign was vigorously contested and generally peaceful. These were the first parliamentary elections where all major Palestinian political movements competed, and they provided the first opportunity in 10 years for Palestinians to hold their representatives accountable. Some 738 candidates stood for the 132 seats, including on 11 national lists of candidates.

Public opinion polling indicated that the major issues of voter concern were eliminating corruption, providing essential government services and establishing and maintaining law and order. The campaign provided a genuine opportunity for the contestants to present their views on these and other issues and allowed voters to obtain information upon which to make an informed choice.

A voluntary code of conduct, developed by the Arab Thought Forum with support from NDI, was signed by all political parties. Compliance with the code's provisions concerning peaceful and fair campaigning was monitored by nonpartisan Palestinian observers, including the Higher National Committee to Follow up The Code of Conduct. The process leading to acceptance of the code and its monitoring may have contributed to the relative peacefulness of the campaign.

Significant issues were noted by international and Palestinian nonpartisan election observers concerning use of Palestinian Authority resources for the benefit of Fateh and campaigning in a significant number of mosques for Hamas candidates. Public resources, including government funds, vehicles, communications equipment, materials and work hours of government officials and employees belong to the Palestinian people and should not be used for the benefit of individual parties or candidates. The lack of a clear and enforceable regulatory framework for campaign activities and financing undermines public trust. At the same time, use of religious facilities to benefit individual parties and candidates runs counter to standards for democratic elections and is counter to Palestinian law and the political party code of conduct.

There were numerous confirmed reports that political candidates and campaign workers, as well as in some cases election workers, were unable to move satisfactorily through checkpoints during the campaign period that began officially on January 3. On the first

day of the official campaign, candidates in the Jerusalem district were prevented from campaigning near the gates of the old city. Israeli police detained some candidates and dispersed the crowd.

Incidents of violence and disorder in the Gaza Strip during the campaign period, especially those near the Rafah border crossing, had distinct political overtones. In addition, the CEC offices were raided and closed by gunmen, and one party's campaign worker was shot and killed by a rival activist. There was, at least, one politically motivated threat that mentioned international observers, though all factions announced publicly that they disavowed any such threats. Police forces in Gaza appealed to the Palestinian political leadership for more support, refusing in some cases to intervene to stop violent incidents on the streets, due to lack of resources to impose law and order. These conditions added to the problems of organizing successful elections.

The Palestinian mass media present a plurality of views. Palestinians also have ready access to regional and international new media, which provided significant coverage of the elections. Parties and candidates, by law, were provided free access to public broadcast media to offer messages to the electorate. The media carried paid political advertisements, and political posters were present throughout the Palestinian territories.

The political contestants therefore were able to present their views to the population, and voters received information upon which to make informed political choices in the elections. However, professional international and Palestinian media monitors, including monitoring by the Pavia Institute for the European Union Election Observation Mission and the Palestinian NGO "Filastiniyat," noted significant bias in the broadcast media, with the public media favoring Fateh and privately owned media favoring candidates who owned certain media outlets. Media monitors also noted that some media outlets discriminated by charging candidates different prices for political advertisements. The lack of regulations to ensure fairness and prevent discrimination remain a weakness in the electoral framework.

Election day was orderly, well administered, and generally peaceful. This was a particularly significant accomplishment in light of the ongoing conflict and occupation, as well as the tensions and incidents in the Gaza Strip during the leadup to the elections. There were, however, limited instances of disturbances and violence in Gaza and Hebron governorate (Beit Awwa and Ash Shuyuk).

Palestinian voters turned out in large numbers in a clear expression of their desire to choose their representatives in open and competitive elections. Through the high turnout in these and the 2005 Presidential election, and notable participation in five rounds of municipal elections over the last year, Palestinians have demonstrated a strong commitment to democratic elections.

As with the 2005 Presidential election, the delegation was impressed by the dedication and professionalism of the vast majority of polling officials, members of the District Election Commissions and CEC members and staff, who worked diligently for long hours and under difficult conditions. Large numbers of political party and candidate agents and Palestinian nonpartisan election observers were present in polling stations and worked cooperatively with

each other and election officials, thus adding to the transparency and credibility of the process. International election observers were granted unhindered access to the polls.

Election monitoring by large numbers of party and candidate agents and the strong presence of nonpartisan Palestinian election observers, who monitored preelection events as well as election day developments, is a substantial achievement that represents the growing strength of Palestinian society to safeguard electoral integrity. These efforts by political competitors and by civil society groups, such as the Arab Thought Forum, the Palestinian Center for Human Rights (Gaza), the Palestinian Election Monitoring Committee, Filastiniyat, and others, made important contributions to a generally peaceful election day and the development of public confidence in Palestinian election processes.

The high participation of women in the election process as election officials, political party and candidate agents, nonpartisan election monitors and as voters illustrates the commitment of Palestinians to the democratic elections and citizen participation in public affairs. The requirement that 20 percent of the political party lists be women candidates was also a positive development, though the small number of women candidates for constituency majoritarian seats was disappointing (e.g., there was only one woman on the ballot in Hebron, and reportedly she unofficially withdrew from the election). The generally high level of women's participation in other aspects of the process was nonetheless a positive feature of these elections.

NDI and the Carter Center are independent, nongovernmental organizations that have conducted more than 100 impartial preelection, election-day and post-election observation missions around the world. Both organizations recognize that elections cannot be separated from the broader political process of which they are part. NDI's and The Carter Center's methodologies for assessing elections are based on the premise that all aspects of the election process must be considered to accurately understand the nature of an election. Considerable weight must be given to the preelection period as well the resolution of complaints and disputes following the initial proclamation of results.

The delegation held meetings with Palestinian Authority President Mahmoud Abbas; the Chairman and officials of the Central Election Commission (CEC); representatives of the major competing political parties/candidate lists that have renounced violence; civic leaders; news media; political analysts; the heads of the European Union, European Parliament and Canadian Observation Missions; other representatives of the international community who are concerned with supporting a democratic Palestinian election process; and senior Israeli Government officials and analysts. The delegation worked in close cooperation with Palestinian nonpartisan election monitoring organizations and with the European Union's International Observation Mission.

Delegates divided into teams and deployed to 14 electoral districts in the Palestinian Territories for meetings with governmental, electoral, political, and civic leaders in their respective localities. On election day, the teams observed the voting, counting and tabulation processes in over 300 polling centers selected on the

basis of a scientific statistical sample and at District Election Commissions. Delegates then reconvened in Jerusalem to debrief and develop this statement. The delegation expresses its gratitude to all with whom it met.

