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Palestinian Elections: Working Out the Modalities

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In early 1989, Israeli Defense Minister Yitzhak Rabin raised the idea of elections in the West Bank and Gaza Strip as a mechanism for stimulating negotiations between Israel and the Palestinians. Although many dismissed it as an Israeli ploy to buy time from the Palestinian uprising and to placate the United States, by April, when Prime Minister Yitzhak Shamir visited the United States, the elections idea had assumed center stage.

Elections are a key component of the Shamir government's peace initiative, approved by the Israeli cabinet on May 14, 1989. The United States has strongly endorsed the elections concept and the Palestinians, who initially expressed skepticism regarding the utility of elections, have acknowledged that, under the right circumstances, elections could serve positive purposes.

Throughout the summer of 1989, several developments threatened to derail the elections initiative, including internal political battles in Israel and the vacillation of the Palestine Liberation

EXECUTIVE SUMMARY

If implemented, Israel's proposal for elections in the West Bank and Gaza could create new opportunities to resolve the Israeli-Palestinian conflict. Elections could produce Palestinian representatives with whom Israel is willing to negotiate and, if conducted in a democratic manner, they could also bolster each side's confidence in the good faith of the other.

Elections in the territories pose many problems that are unique to the Israeli-Palestinian conflict. Still, certain lessons gleaned from other international efforts to use elections as a conflict resolution device could facilitate prospective Palestinian elections. A review of the successes and failures of past West Bank elections might also prove instructive.

A successful elections process will require major concessions from both Israel and the Palestinians. Both sides are concerned that the process could develop in a way that jeopardizes their basic interests. If the elections idea is to become a reality, it will probably require a leap of faith by both parties, along with considerable prodding and assurances from the United States.

If the elections concept is accepted in principle, negotiations will proceed on election modalities. While no blueprint exists for conducting free and fair elections, certain basic standards regarding political freedom, voter and candidate eligibility and campaign environment must be adhered to. In the case of elections in the territories, some form of international monitoring should also be viewed as critical to the success of the process.

Organization. Notwithstanding these obstacles, the elections idea remains the most promising approach for initiating negotiations between Israel and the Palestinians. Elections will provide Israel with Palestinian negotiating partners during the first phase of negotiations, thus circumventing the seemingly endless arguments over the merits of an international conference and the bona fides of the PLO. The implementation of the elections process may also help overcome the psychological obstacles that now impede a negotiated settlement.

Elections are seldom referred to explicitly as a device for conflict resolution, although they often have been used in this manner internationally. The reasons for doing so are manifold. First, initiating an electoral process brings the parties in conflict to the bargaining table, if only to negotiate the modalities of the process. Second, an elections process can help build confidence, providing both sides with clear bases for judging each other's performance. Third, a meaningful electoral process requires a reduction in violence, at least during the negotiations over modalities and during the elections campaign. Fourth, an electoral process offers the prospect for constructive international involvement as purveyors of technical assistance and as supervisors or observers. Finally, and perhaps most important, the decision to utilize an electoral process demonstrates a willingness to negotiate a political settlement, rather than to achieve a solution through other means.

Yet serious difficulties arise in trying to use elections to resolve the Israeli-Palestinian conflict. The immediate problem is who will negotiate with Israel over modalities? Israel will not deal directly with the PLO, while Palestinians will not engage in negotiations with Israel, absent PLO authorization.

There is a dispute over what constitutes a "free" election environment and who must take the first step to secure one. Palestinians have called on Israel to demonstrate good faith by

withdrawing the Israeli army from heavily-populated areas, releasing Palestinians held in administrative detention and lifting restrictions on political activity. Israel, meanwhile, wants at least a "calming" of the *intifadah* before negotiations on election modalities begin.

Assuming that a dialogue does commence, fundamental questions remain relating to the establishment of conditions for free elections: Will there be restrictions, *de facto* or *de jure*, on the formation of political parties and other organizations? Will there be restrictions on the media? Will rallies be allowed? How will complaints of intimidation from various quarters be handled?

As to the role of the international community, Israel cites its conduct during the 1972 and 1976 elections in the West Bank as evidence that an institutionalized, international role in the elections process is unnecessary. Palestinians want extensive international involvement, not necessarily to ensure the fairness of the balloting, but to monitor other aspects of the process and to ensure that Israel respects the results and negotiates the future of the territories following elections.

The issues of who can vote and who can compete in elections are also subjects of much controversy. Palestinians expect that residents of East Jerusalem will be allowed to participate. However, significant segments of the Israeli cabinet oppose this, fearing that the participation of Palestinians from East Jerusalem would undermine Israel's 1967 annexation of the area.

This leads to the major point of contention between the parties: what is the purpose of elections? Israel, as set forth in the cabinet initiative, has indicated that those elected would negotiate a transition phase, serve as a self-governing authority and, after no more than three years, would negotiate the final status of the territories. Palestinians, however, want an Israeli commitment to exchange "land for peace"

and a guarantee of an independent Palestinian state before agreeing to negotiations over election modalities.

Notwithstanding the above obstacles, the premise of this paper is that, with considerable prodding by interested intermediaries, particularly the United States, elections can play a role in helping resolve the conflict between Israel and the Palestinians.

The first section of this paper provides a brief review of the role elections have played in resolving conflicts in other regions of the world. The second examines the circumstances of prior elections in the occupied territories and the discussions conducted on elections during the 1979-1982 Camp David autonomy talks between Egypt and Israel. The third section delineates the current positions of the parties regarding elections, highlighting their respective interests and concerns. The fourth section addresses specific issues that would have to be considered if the elections idea is to develop into a meaningful and constructive reality. The environmental conditions necessary for the conduct of a free and fair electoral exercise, and the administrative details of a prospective elections process, are appraised. The concluding sections outline several models for international involvement and suggest how these models may be applied to elections in the territories.

Three caveats are in order: First, elections, even in well-established democracies, are a *means* for ensuring an individual's right to select his or her leaders and not an *end* in itself. In the territories, the means – elections – may seem a complicated and less than optimal way to achieve an end – a just and lasting settlement – purportedly sought by all sides.

Second, while there are certain minimal conditions that are internationally recognized as necessary for the conduct of free and fair elections, there is no ideal elections system.¹ Governments committed to democratic values are

constantly seeking to perfect their systems. Thus, any blueprint adopted for elections in the territories is likely to be imperfect.

Third, pursuing the elections idea may prove counterproductive. A free campaign could provide a platform for Palestinian extremists to express attitudes that would inflame the Israeli public, even if such attitudes are held by only a small proportion of those residing in the territories. Under such circumstances, a negotiated resolution to the conflict might become more difficult to achieve, as Israeli confidence in the good faith and reasonableness of the Palestinians diminishes further.

Elections: An International Phenomenon

It is not surprising that the idea of elections has become central in the search for peace between Israelis and Palestinians. This is, after all, the era of elections. In March 1989, there were multi-candidate elections in the Soviet Union with consequences that are only now being fully appreciated. Poland went through a similar exercise in early June, resulting in the election of Solidarity activists and the formation of the first non-Communist government in a Warsaw Pact country. In other regions, particularly Latin America and some areas of Asia, there has been a decade-long trend toward multi-party elections in countries that previously were subject to military or autocratic rule.

The promotion of free and fair elections has become a major theme of U.S. foreign policy. The Bush administration focused considerable attention on the May 1989 Panamanian elections and unequivocally denounced the fraud that occurred. Though the short-term outcome has not been what Panamanians sought, few Panamanians regret participating in the elections. Not only did their participation mobilize and organize those opposed to the regime of Gen. Manuel Noriega, but the elections also exposed the international community to the repressive nature of that regime.

In Panama, elections were used to resolve a crisis of legitimacy. More significant for this paper are examples of elections that have been used to resolve armed conflicts and/or to determine the future status of a territory. However, it must be noted at the outset that, while the examples described below offer possible solutions for some potential problems that will arise between Israel and the Palestinians, the idea of using elections in the West Bank and Gaza as a conflict resolution device is unique: *never before have elections been used to initiate a negotiating process whose outcome was not pre-determined.*

The 1979 Lancaster House agreement that led to the independence of Zimbabwe featured elections as a key element in the resolution of a bitter civil war between the white minority regime and several black nationalist groups. The elections were supervised by Great Britain – the colonial power – and observed by an extensive 11-nation Commonwealth team. The political party of Robert Mugabe, leader of one of the nationalist groups, was the overwhelming winner. During the nine years since independence, Mugabe's government has respected the principles and provisions of the Lancaster House Accords.

The process underway in Namibia offers a more current example. There, the parties have agreed to use the election of a constituent assembly as the vehicle for achieving a peaceful settlement of a conflict that has continued for almost 30 years. The elections are being administered by South Africa, with the United Nations playing a supervisory role.

In 1978, Western members of the U.N. Security Council highlighted the key elements of a fair electoral process in Namibia:

Every adult Namibian will be eligible, without discrimination or fear of intimidation from any source, to vote, campaign and stand for election to the Constituent Assembly. Voting will be by secret ballot, with provisions made for those who cannot read or write. The date for the beginning of the

electoral campaign, the date of elections, the preparation of voter rolls and other aspects of the electoral procedure will be promptly decided upon so as to give all political parties and interested persons, without regard to their political views, a full and fair opportunity to organize and participate in the electoral process. Full freedom of speech, assembly, movement and press shall be guaranteed.²

Other intergovernmental and nongovernmental organizations are also involved in the monitoring effort and are providing technical assistance to the participating parties in the hope that the Namibian elections, now scheduled for November 1989, will be free and fair and will lead to the establishment of an independent and democratic Namibia.

The cases of Zimbabwe and Namibia are fundamentally different from the situation in the occupied territories. In both Zimbabwe and Namibia, there were pre-election agreements that the ultimate outcome would be an independent nation. Also, there were agreements that exile leaders who had been living and fighting the colonial regime from the outside would be permitted to participate in the process as candidates and voters. The elections, therefore, served to determine who would lead these newly-independent nations and, in the case of Namibia, the nature of its constitution.

Not surprisingly, Palestinians want to apply these models in all their particulars to the West Bank and Gaza Strip. However, Israel will not accept an elections process where the assumed, or seemingly inevitable, outcome is an independent Palestinian state, notwithstanding statements by Israeli leaders that Palestinians will subsequently be free to introduce any proposal at the negotiating table.³

In contrast to the Zimbabwe/Namibia model, there are instances where elections have been used to elect representatives who then negotiated the final disposition of a territory. In the Sudan in the early 1950s, for example, Britain and Egypt – which had a long-standing condo-

minium over governance of the Sudan – agreed to a three-year transition period of self-government, following which Sudan would exercise its right of self-determination, choosing between federation with Egypt or independence. Elections were held in 1953 under the supervision of a seven-member elections commission comprised of three Sudanese and representatives from Egypt, Britain, India and the United States. Although a pro-Egyptian party won the elections, at the end of the transition period Sudan's leaders opted for independence rather than federation with Egypt.

Elections of legislatures that provided for a degree of self-government and that designated negotiating teams to discuss the future disposition of a territory were a familiar occurrence during the decolonization era. The existence of an elected self-governing body not only facilitated negotiations, but also increased – assuming the self-governing body behaved responsibly – the colonial power's confidence that peaceful coexistence was possible. Elections for self-governing bodies, as well as referenda in which the population had an opportunity to choose the future status of the territory, generally have been observed or supervised by U.N. representatives.⁴

Three points stand out from this brief historical review. First, elections have been used by the international community as a conflict resolution device. Second, in such instances, there has been considerable international involvement in the elections process. Third, in implementing these elections, compromises have been adopted on a variety of issues that may have relevance for elections in the West Bank and Gaza. Ultimately, however, elections in the territories will be based on a model specific to the immediate situation.

Palestinian Elections: A Brief History

Elections do not take place in a vacuum. Thus, it is important to understand previous

experiences with elections, particularly as they relate to the political culture and administrative practices of the residents under consideration.

From 1950 until 1967, the West Bank, including East Jerusalem, was governed as an integral part of the Kingdom of Jordan; Gaza was ruled by Egypt. While there were no elections during this period in Gaza, the West Bank experienced periodic elections for parliament, municipalities, village councils and chambers of commerce. These elections were characterized by competition, with the different Palestinian political strands – pro-Jordanian, Arab nationalist, communist and pan-Islamic – presenting candidates, albeit without formal political party organizations.

In reviewing these elections, one scholar has commented: "It is hard not to conclude that the [Jordanian] regime played a role in affecting municipal elections due to its legal monopoly of authority over local developments, its involvement in various domains of urban affairs and the pivotal position assumed by central officials in the registration of voters and the actual conduct of elections."⁵

The last Jordanian municipal elections before the 1967 war were in 1963, while the last parliamentary elections were held in April 1967. Following Israel's occupation of the territories in June 1967, the Israeli military authorities issued an order that all local bodies would continue to serve until further notice.

In 1972, as part of a policy of "normalization," Israel authorized municipal elections in the West Bank. Due to the restrictive nature of the Jordanian law that governed the elections process, only 30,000 people were registered to vote, representing less than 10 percent of the population. The preparation of voting lists, the overall administration of the process and the provision of police protection at the polls were supervised by local Arab courts and public figures, with minimal Israeli involvement.

Despite PLO pressure to boycott the elections, approximately 85 percent of registered voters participated, compared to 75 percent in the previous elections under Jordanian rule. Fifteen new mayors and several new council members were elected, although incumbent mayors in the larger cities retained their posts.

However, according to Emile Sahliyah, a Palestinian scholar, "the fact that more than half of the municipal seats were occupied by new members did not . . . indicate the emergence of a new brand of politician. Indeed, the majority of those elected were conservative and traditional . . ."⁶

For the 1976 municipal elections, Israel modified Jordanian law to enfranchise women and people who did not own property.⁷ As a result, the number of eligible voters increased to more than 88,000. Once again, the elections were administered by local residents.

After some initial hesitancy, the PLO authorized its supporters to participate in the elections, and a total of 577 candidates competed for 205 council positions. With a few exceptions, including two instances where Israel deported prospective candidates, Israel did not restrict the choices available to the electorate.

Although there was some pre-election violence and intimidation, the elections occurred as scheduled, with 72 percent of the eligible voters casting ballots. The most significant result of the elections was the success of nationalist-oriented candidates, including in the large cities of Hebron and Nablus. Compared to their predecessors, the new leaders were younger, better educated, from more professional backgrounds and more likely to identify openly with the PLO.⁸

In 1980, Israel began deposing, and in some cases deporting, mayors who had been elected in 1976. Refusal to cooperate with the Israeli military authorities and inciting unrest in the

territories were two of the justifications offered for the depositions. Menachem Milson, who served as Israel's civilian administrator of the West Bank from 1981 to 1982, justified the depositions on the grounds that the 1976 elections were undemocratic since they were "elections held under terrorism, intimidation and bribery."⁹ By 1988, only four elected mayors were still serving.

Elections for a self-governing council were an integral component of the Camp David Accords. In the immediate aftermath of the agreements, several Palestinian notables living in the territories were assassinated after they expressed a willingness to enter negotiations based on the Camp David framework.

During the 1979-1982 autonomy negotiations between Egypt, Israel and the United States, there were discussions regarding the nature of the self-governing council and how it would be elected. In a position paper presented during the negotiations, Israel set forth its understanding of what would constitute free elections:

All the rights pertaining to a peaceful assembly, freedom of expression, and secret balloting will be preserved and assured, and all necessary steps will be taken to prevent any interference with the election process. The holding of an absolutely free and unhampered election process will thus be assured in full, under the law, and in keeping with the traditions of free elections practiced in democratic societies. These elections will, in many respects, constitute a new departure in the region around us which in most of its parts is not too close to the ways of democracy, and of which free elections are a rare phenomenon. . . . The elections in the administrative council will be organized and supervised by a central elections committee whose composition has been agreed upon by the parties.¹⁰

Although there was substantial agreement on the modalities of elections, the question of East Jerusalem residents participating in them was, then as now, the most intractable issue. The autonomy talks were suspended in 1982 by Egypt, due to Israel's invasion of Lebanon.

In 1983, residents of several towns in the territories petitioned the Israeli High Court of Justice to order the military to hold elections. The petition was rejected. The court emphasized that it was justifiable for the Israeli government to postpone elections because the population and its leaders were involved in anti-Israeli activities.¹¹ The interest of the Palestinians in elections was reemphasized in January 1988, when they published a list of 14 points that sprang from the *intifadah*. Prominent on the list was a call for elections.

Intimidation has also had an impact on elections. In 1985, for example, Israel and Jordan tried to convince several West Bank notables to assume the position of mayor in their respective municipalities. With PLO approval, one such notable, Zafer al-Masri, became the mayor of Nablus in December 1985. Three months later he was assassinated by a Palestinian faction opposed to what it considered accommodation with the Israeli authorities.

Based on this brief review of past West Bank elections, several points deserve mention. First, elections are not alien to Palestinian political culture; not only have Palestinians participated in elections when afforded an opportunity, but they have sought to initiate elections several times. Second, multi-candidate elections were held for municipal positions in 1972 and 1976, but no regional elections – as called for in the Israeli initiative – have been held since 1967. Third, the administration of the elections has been accepted as fair, with no serious allegations of fraud in the balloting process having been reported. Fourth, intra-Palestinian intimidation has been a major problem in previous election campaigns and, more generally, as a fact of life in the territories. Fifth, Israel has demonstrated a willingness to abrogate results of elections when it felt elected leaders were not acting in a manner consistent with their positions. Finally, it should be noted that residents of the Gaza Strip – who account for 33 percent of the population in the territories – have not shared the

experience of the West Bank with respect to elections.

How The Two Sides View Elections

For both sides, elections are not as innocuous as they may seem. Both Israel and the Palestinians must make significant concessions if the idea is to become a reality. Thus, before examining questions relating to the modalities of the process, it is necessary to consider the interests and concerns of the parties.

The Shamir initiative, modeled on the Camp David agreements, talks of Palestinian representatives who would have three functions: first, they would negotiate with Israel the specific role of the interim regime; second, they would serve as the self-governing body established by the interim regime; and third, after a maximum three year period, they would begin negotiations with Israel regarding final arrangements for the territories. The initiative also calls for regional elections, in contrast both to municipal elections and to the strict proportional representation scheme that exists in Israel proper. The elections would be “free, democratic and secret.”

Notwithstanding the adoption by the Israeli cabinet of this initiative, there are deep divisions within the Israeli government regarding the purpose of the elections exercise. Some cabinet ministers, led by Defense Minister Rabin, support elections because they would provide Israel with a legitimate negotiating partner. These ministers urge the Palestinians to accept the idea of elections in principle, noting that once the post-elections negotiations begin, each party can place its specific demands on the bargaining table. At the same time, this group of ministers recognizes that for the elections to serve as a confidence-building device, Israel will have to create the conditions necessary to ensure that they are free and fair.

A second group of ministers, including For-

eign Minister Arens, questions whether the proposed initiative can achieve anything, but support the plan because it allows Israel to regain the diplomatic initiative. These ministers do not want the implementation of the elections idea to compromise their opposition to a Palestinian state, the redivision of Jerusalem or an Israeli withdrawal from the West Bank. Thus, they undoubtedly would be reluctant to allow Palestinian nationalist groups to operate openly in the territories, notwithstanding that such freedom is an inherent characteristic of a free election environment. They are also likely to staunchly oppose the participation of East Jerusalem Palestinians.

A third group of ministers, led by Ariel Sharon, opposes the initiative precisely because it views an elections process as inevitably leading to a Palestinian state, which it believes is a mortal threat to Israel's existence.

The interests and concerns of the Palestinian side are no less complicated. There are those in the PLO who oppose the elections idea because it could marginalize the PLO and compromise its claim to be the sole legitimate representative of the Palestinian people. Palestinians in the territories are concerned that they will have to end the *intifadah* based on a promise of negotiations, without Israel committing itself to a "land for peace" formula that results in a Palestinian state.

While there is a purposeful ambiguity to the Palestinian position, particularly on ending the *intifadah*, there are those who view elections as an opportunity to achieve concrete political and diplomatic benefits from the uprising. At the same time, these Palestinians want to be sure that elections are not used to divide the residents of the territories from the PLO, that Israel will respect the results even if it disapproves of those elected, and that the elections will lead to negotiations concerning final status.

With respect to the particulars of the elec-

tions, Palestinians have sought "ironclad guarantees that those nominated and elected will be free to travel, speak and express themselves without facing imprisonment, bodily harm or deportation."¹²

Also, while acknowledging that a complete Israeli military withdrawal from the territories may not be feasible before elections, Palestinians have spoken of a partial troop withdrawal, their replacement by multinational forces and assurances that Israeli troops and settlers will not hinder or endanger prospective voters.¹³

To determine the scope of possible benefits, Palestinians have asked the United States to clarify its position on several points. These include U.S. perceptions of the elections mechanism; its attitude toward international supervision and the participation of both East Jerusalem Arabs and Palestinians residing outside the territories; and how the Palestinians can be assured that following the elections there will be meaningful negotiations over the future of the territories.

The United States, for its part, has strongly endorsed the elections idea and has urged Palestinians to do the same. Although the United States has not presented a blueprint for implementing elections, Secretary of State James Baker has written to Israeli Foreign Minister Moshe Arens raising a series of points relating to prospective elections.¹⁴ They include: the release of some administrative detainees as a confidence-building measure; finding a way to permit residents of East Jerusalem and those who have left the territories between 1967 and the present to participate in the elections; allowing for free political activity; ensuring that elections occur in an environment free of intimidation; and establishing a role for the international community.

As to the environment in which elections occur, Dennis Ross, director of the State Department's Policy Planning Staff and a principal

Middle East policy-maker, set forth several basic principles:

An American view of elections is that elections, by definition, must meet the standards of being both free and fair. Now, that means not only that the conditions under which the elections are conducted must be . . . free from violence and intimidation, but it also means that . . . Palestinians have the right to campaign, the right to give speeches, have certain rights of assembly. All of these are political rights associated with free and fair elections.¹⁵

Given recent U.S. experiences, both in developing the U.N. plan for Namibia and in encouraging high-level observation efforts for controversial elections in Panama and elsewhere, the United States can be expected to support an international role – formal or informal – in Palestinian elections. In addition, having publicly agreed to the idea of using elections as a mechanism for initiating negotiations, the United States is not likely to look kindly on attempts by Israel or the Palestinians to disrupt the elections or to resist negotiations once the elections process is completed. Whether these U.S. positions will provide sufficient inducement for the Palestinians to accept the elections idea is still not clear.

Modalities

Assuming the parties agree in principle to proceed with elections, a series of negotiations regarding the modalities of the process will be necessary. The issues to be considered relate to the conditions under which elections will occur and the administrative procedures for the elections. This section suggests some parameters for the discussion of these issues.

Duration of the Elections Process. It is conceivable that an election could be organized in the territories in a relatively short period of time, such as three months. The most simple elections system would be utilized, registration of voters would not be required and the campaign period

would be quite short. Such an approach would be appropriate if the goal of the exercise is to have elected Palestinian representatives available for negotiations in the shortest possible time.

However, if confidence-building is a parallel goal, then an extended process would be essential. The parties would then have an opportunity to assess the good faith of the other side at each stage of the process. A six to 10-month period — from the adoption of the laws governing the elections to the announcement of the results — should be sufficient to serve both goals.

The Elections System. Every elections system reflects specific choices that have definite political consequences. This is also true of the Israeli initiative, which refers to “regional” elections and describes, in general terms, the roles of those elected. Accepting the plan as a starting point, several issues require further elaboration.

First, there is the number of representatives to be elected. A large number of representatives would give the suggestion of a legislative body, while a smaller number would facilitate those elected serving as a negotiating body. During the autonomy talks, for example, Egypt proposed a 100-member body while Israel sought a 15-member council with limited authority. Under the current proposal, Israel has spoken of a 10 to 20-member body.

Second, there is the type of elections system to be utilized. If the goal is to elect a negotiating body reflective of the population, then a proportional representation system would be preferable. The system would require candidates to join together as parties or lists. The voter would then select a list and the seats would be divided according to the proportion of votes the list received. The system could treat the entire territories as one constituency, as in Israel proper, or the territories could be divided into distinct constituencies with different lists competing in each. The latter system would make the elected

leadership responsible to a specific local constituency.

Whether through intimidation or other means, the above system may result in the presentation of a single list for each constituency, leaving voters with no real choices. Both the campaign and the balloting will then assume a purely ritualistic cast. The PLO, and Palestinians generally, would justify a single list by explaining that it reflects the different strands within the Palestinian national movement and that, given the objectives of the elections, unity is an important Palestinian concern.

The question then becomes how important is it to encourage choice for prospective voters. If the elections are merely a device for legitimizing negotiations between Israel and Palestinians, then the issue of choice is less important. On the other hand, if the elections are to serve as a confidence-building mechanism, and as a means to legitimize an independent leadership from the territories, a vibrant, but peaceful, political campaign is necessary. Such a campaign, by definition, requires that voters be given a choice.

An elections system could be devised that would force voters to make choices. For example, under a limited vote system, modeled after one used in Japan, a regional constituency could be assigned three representatives, but voters would be permitted to choose only one or two candidates. A preferential voting system, like the one used in Australia, could be developed whereby voters would be required to rank the candidates on a given list. A third option is the additional member system used in Germany and discussed in the context of election reform in Israel. Under this system, voters would choose half their representatives from a list and half using a "first-past-the-post" constituency system in which the person receiving the most votes in each district wins. A final option would have a certain number of those elected represent specific categories; for example, each Pakistani

minority group elects its own representatives to the national legislature, while in Jordan there are separate elections of Muslim and Christian candidates, although all voters participate in the elections of both groupings of candidates.

The elections system utilized also affects the type of political organization that is encouraged or permitted. A "first-past-the-post" constituency system, for example, is more likely to be contested on issues of personality and name recognition, especially if the constituencies are drawn to conform with municipal boundaries. Political parties, as such, are unnecessary under such a system. On the other hand, a proportional representation system requires that parties be recognized and allowed to organize, raising sensitive questions about restrictions on the formation and activities of political parties.

Political freedom. There is a general consensus today, at least among democratic governments, as to what constitutes a free and fair elections process. At a minimum it requires that various political rights – the right to express oneself freely, the right to form associations and parties and the right to assemble – be guaranteed "for a period adequate to allow political organizing and campaigning and to inform citizens about the candidates and issues."¹⁶ Limitations on such rights must be reasonable, given the totality of the circumstances. Thus, for example, in Israel and other countries, restrictions on the participation of parties that seek to undermine the democratic character of the state have been accepted as reasonable.¹⁷

In general, both Israelis and Palestinians are likely to agree with the above formulation. Debate will ensue over its specific meaning in the context of elections in the occupied territories. Israeli security concerns must be considered, while Israel must recognize that a free elections campaign will require changes in certain practices that have been utilized over the past two decades to maintain order and to frustrate the development of Palestinian political activity. At

the same time, a ban on parties, associations and candidates that advocate violence as a means for accomplishing political change would meet an international standard of reasonableness.

Israel's position on the types of organizations and associations that would be allowed to compete in an elections campaign has been ambiguous and, at times, contradictory. Although there is a desire to maintain a ban on open activities by the PLO in the territories, the realization exists that few Palestinians will be willing to compete without some mention of PLO primacy. Prime Minister Shamir has said that candidates cannot be members of the PLO, but they can "espouse PLO ideology."¹⁸

Assuming political parties are permitted, conditions for recognizing these parties and their rights should be established. The requisites should be minimal. They could include such formalities as presenting a party charter signed by a specific number of registered voters. As to the rights of political parties, they should include the designation of candidates, access to media and the ability to monitor all aspects of the electoral process. Of course, who decides whether a party has met the requisites for recognition and is acting in accordance with the applicable laws and regulations will be of major importance.

The above discussion also applies to freedom of expression and freedom of assembly. Since 1967, East Jerusalem-based Arab language newspapers have been permitted to publish subject to Israeli law. As is the case with Hebrew newspapers, East Jerusalem newspapers must submit their copy to the Israeli censor for review. In many instances, this has resulted in the suppression of articles, even when the same articles appeared in the Israeli press. Also, the military authorities have occasionally prevented the distribution of East Jerusalem newspapers in the West Bank and Gaza.¹⁹

During an elections campaign, the media's

role is to communicate the views of the candidates to the electorate through news coverage and advertisements. Notwithstanding that segments of the media often act in a partisan manner, a free elections environment requires that the media is allowed to operate without unreasonable constraint. Consistent with its international obligations, Israel could continue to ban material that incites violence, racial or religious hatred or that otherwise poses a threat to public order.²⁰ The same test could also be applied to requests for campaign rallies, which generally should be permitted.

Palestinians should be assured freedom of movement within the territories and between Israel and the Arab countries. The focus should be on the actions of those participating in the process and not on those with whom they choose to consult.

Intimidation of prospective voters and candidates is a very serious issue. In the past, both Israel and the Palestinians have engaged in such acts. Israel has harassed, detained and deported Palestinian political activists, while Palestinian mayors and political leaders have been assassinated by the PLO for adopting a moderate attitude or refusing to accept PLO primacy.

A willingness to acknowledge that Israel and the Palestinians have been guilty of intimidation in the past, to denounce publicly such acts in the future and to establish mechanisms for counteracting the negative effects of intimidation are all necessary to help overcome the years of hostilities. However, even if the PLO were convinced to support the elections initiative, the problem of dissident Palestinian groups operating in the territories would remain.

A Palestinian commission responsible for investigating acts of intimidation could be useful in ameliorating this problem. Those serving on the commission would have to overcome the fear that they too would become targets, especially as the commission's effectiveness would

depend on its interacting with the Israeli authorities. The presence of international monitors could provide a degree of security to those serving on such a commission and also may help deter more blatant forms of intimidation.

The problem of intimidation also should be addressed through civic education programs that stress the role of elections in a democratic society. Such programs should emphasize the secrecy of the ballot and its role in providing voters with a free choice. Palestinian willingness to encourage such programs may provide a basis for assessing the long-term impact of the elections initiative.

Elections Administration. The "elections administrator" is responsible for a host of tasks. These may include: registering voters, delineating constituencies, recognizing parties, supervising the campaign, appointing local elections officials, preparing elections paraphernalia, resolving challenges, and proclaiming the election winners. The administrator may be a single person, it may be a commission or the tasks described above may be divided among several individuals or bodies.

Israel has allowed local residents to administer previous municipal elections in the territories, with minimal Israeli administrative involvement. Each municipality administered the elections within its jurisdiction. For the proposed elections, designating a central administrative authority would ensure a degree of consistency in the elections procedures and in rulings on specific issues relating to the conduct of the campaign.

Moreover, given the difficult decisions that will have to be made, a multi-member elections commission, which permits a diffusion of responsibilities, may prove more effective than placing all responsibility in the hands of a single person.

The members of the commission should be

selected on the basis of experience, commitment to the process and acceptability to all sides. Equally important, however, is the degree of autonomy and control Israel is willing to provide the commission. By granting the commission a large degree of control, the onus will be on its members to make the difficult interpretations of the rules that have been agreed to by the parties. To ensure that the administrators do not act beyond the scope of their mandate, Israel could insist on reserving the right to review the administrator's actions, either in an Israeli court or in a body created exclusively for such matters.

Voter Eligibility. For previous elections in the territories, a prospective voter was required to be included on a registration list prepared by local authorities responsible for administering the elections. Following Israel's liberalization of Jordanian law, virtually all adults over age 20 were eligible to vote. For the proposed elections, some thought should be given to lowering the voting age to 18, if only to provide a channel for those who have been most active in the *intifadah*.

Preparation of registration rolls will be the first concrete step taken in the territories to implement the elections initiative. Although it is possible to conduct elections without such rolls, their use would enhance the integrity of the elections, notwithstanding the potential delays involved in preparing them. The rolls could either be developed by local officials responsible for ensuring that all eligible citizens are included or by requiring prospective voters to register. The former system would secure a more comprehensive voter roll and may encourage a higher turnout, whereas the latter system could provide an early indication of the significance of elections in residents' minds.

In some countries, those who have been convicted of certain crimes are disqualified from participating in elections. However, where an election is serving as a conflict resolution device, amnesty laws often have been adopted to permit

participation by those who had been involved with or convicted of anti-state activities. Although an amnesty for Palestinians in the territories may be premature, limitations on participation because of prior activities should be narrowly drawn. Certainly, those who have been subject to administrative detention or convicted of political crimes should be allowed to participate in the process.

It will be more difficult, however, to reach a consensus on two issues: participation by the 140,000 Arab residents of East Jerusalem and by those who have left the territories since 1967. The Israeli government is divided over whether to allow the residents of East Jerusalem to vote. According to the Likud, Jerusalem is no longer a divided city and its residents have been offered Israeli citizenship, entitling them to vote in Israeli elections. Most East Jerusalem residents, however, have declined Israeli citizenship and, in 1989, refused to participate in the municipal elections for which citizenship is not a prerequisite.

In insisting on the right of East Jerusalem residents to participate in elections, Palestinians can count on international support, including the United States. First, there are few countries that have recognized Israel's annexation of East Jerusalem. Second, the size of the East Jerusalem community, which accounts for approximately 10 percent of the West Bank/Gaza population, militates in favor of finding a mechanism to allow its residents to participate. Third, there is the political influence of the residents; virtually all the *intifadah* notables live in East Jerusalem and many Arab-language newspapers are published there. Fourth, the Israeli practice of allowing Jewish settlers in the territories to vote in Israeli elections, despite the fact that Israel has not annexed the territories, provides a precedent for treating voting rights as distinct from questions of sovereignty. On the other hand, those Israelis who oppose participation of East Jerusalemites may have been strengthened by South Africa's refusal to allow residents of Walvis

Bay, a deep-sea port located in Namibian territory but claimed by South Africa, to vote in the November 1989 elections.

Several solutions have been suggested for East Jerusalem. To calm Israeli concerns about Jewish sovereignty over all of Jerusalem, the United States could publicly state that, from its perspective, the city's final status would in no way be affected by permitting Palestinians to vote. Further, if Israel insists on not permitting polling sites in East Jerusalem, the residents could vote by absentee ballot or be assigned to vote at polling sites on the West Bank. The former solution introduces the always complicated matter of establishing a credible procedure for the casting of absentee ballots. The latter solution, however, imposes inconveniences on the residents of East Jerusalem that may deter them from casting ballots. Further, if a constituency system is used, then both options require that the residents be assigned to sites in a manner that does not skew the results.

Allowing Palestinians outside of the territories to vote is an equally difficult issue because of its implications. One study conservatively suggests that at least 120,000 people have left the territories since 1967.²¹ Israel will not allow the elections to be used as a device whereby Palestinians, who at some point resided in the West Bank and Gaza, enter the territories for the purpose of reestablishing residence. Further, permitting the participation of those who have left by means of absentee ballots, while technically feasible, is likely to skew the results.

There are two particular areas, however, where Israel should be encouraged to compromise. The first involves permitting participation by those who have been deported from the territories without having been convicted of a criminal act. The second involves those who have been outside the territories on temporary business or as students. If these individuals seek to return in time to be included in the registration lists, Israel should permit them to do so.

Even if Israel does not permit Palestinians living outside the territories to participate directly in the elections process, the PLO could still organize elections for those living outside the territories. These elections could occur simultaneously with the elections in the West Bank and Gaza. While Israel is unlikely to negotiate with those chosen in PLO-administered elections, the occurrence of such elections in a manner that demonstrated a PLO commitment to democratic values could facilitate subsequent negotiations.

Candidate Eligibility. Assuming a party list system is used, the parties would be responsible for designating candidates, subject to minimal requirements of age and residency, which may be somewhat more stringent than those for voter eligibility. Requiring candidates to affirm their adherence to certain principles, such as Israel's right to exist, seems pointless. Conversely, if candidates are elected based on a campaign stressing the illegitimacy of the "Zionist entity," then the elections will not advance the peace process. Palestinians must realize that Israel will not negotiate away its independence, regardless of who is elected by the residents of the territories. They must ensure that the conduct of the campaign and the positions of those elected are such that meaningful negotiations become a real possibility.

The principles discussed above regarding voter eligibility for Palestinians accused or convicted of violating some security regulation or proscription on political activity should also apply to the question of who can contest elections. While those who have been most antagonistic must be given an opportunity to demonstrate their willingness to participate in the negotiating process, those convicted of serious, specified crimes could be precluded from competing as candidates.

Campaign Issues. In discussing election modalities, two issues relating to the conduct of the campaign merit specific consideration: Will

there be restrictions on the sources of campaign financing? Will all competing parties and candidates be entitled to access, free or for a fee, to the media?

Many countries have laws limiting campaign expenditures or requiring a disclosure of campaign contributions. Some countries also restrict foreigners from providing financial support to particular parties and candidates.²² Enforcing these laws, however, can be difficult, as reflected in Israel's inability to stop the flow of PLO-controlled funds into the territories. In this regard, the approach recently adopted by Nicaragua should be examined: the law mandates that 50 percent of the money obtained by political parties from abroad for election-related activities will be used to finance the administration of the February 1990 Nicaraguan elections.

In most countries, the media, particularly radio and television, plays a critical role in increasing voter awareness of candidates and their positions. Several systems could be used to ensure media access. Candidates could be given a prescribed bloc of free media time, which could help inform voters and may also encourage candidate participation. Media outlets could also be required or encouraged to offer reduced rates for political advertising. Finally, the media could sponsor public forums at which the candidates would have an opportunity to debate the issues.

Election Day Monitoring. The proposed elections process could help create a democratic ethos among the population living in the territories. In recent years, this has been accomplished in several countries by the formation of nonpartisan groups that seek to involve the entire population in the effort to promote free and fair elections. These groups emphasize that everyone – elections officials, party activists, candidates and ordinary citizens – has a role to play.

The ordinary citizen, in addition to being an

informed voter, is encouraged to help monitor the elections process both before and on election day. Training sessions for election monitors who prefer not to identify with a particular candidate coupled with a general civic education effort are the tools used by these nonpartisan groups, the most famous of which is the Philippine National Movement for Free Elections. These local endeavors can also be bolstered by an international monitoring effort.

Models of International Involvement

One of the intriguing aspects of Defense Minister Rabin's original elections proposal was the suggestion that they be supervised by a "neutral body." Without calling into question Israel's ability to conduct free and democratic elections, Rabin appeared to understand that providing an institutional role for the international community would make his proposal more attractive to Palestinians. In more recent pronouncements, however, the Israeli government has seemingly retreated from this position. International supervision, it is suggested, would be insulting to Israel's democratic tradition and its experience administering elections in the territories. On the other hand, Palestinians have emphasized the importance of involving the international community in the elections process to ensure its fairness and to ensure that Israel negotiates in good faith the future of the territories following the elections.

International involvement in the elections process could take several forms and it is important that the differences between them be understood. The most extensive form involves **administering** an election. An administrative authority is responsible, among other things, for formulating the election laws, registering voters, recognizing political parties, designating local elections officials, preparing election paraphernalia, tabulating results, reviewing challenges and proclaiming the winners.

When these tasks are assigned to a body

other than the government exercising *de facto* control – whether that body is an uninterested country, a group of countries or an intergovernmental organization – there are obvious practical and political problems. Language and cultural barriers are the most perceptible hurdles. More important, almost all governments view such extensive involvement as an infringement on their sovereignty, even where there is a predisposition to relinquish the territory in which the elections are being held.

Not surprisingly, there are few precedents for allowing an international body the primary role in administering elections. The 1953 Sudanese elections is one example, although five of the seven members of the independent, multinational administering commission were from interested parties (Egypt, Great Britain and three from the Sudan).

A lesser form of involvement is to have an international body **supervise** an elections process. Supervision applies in situations where an international body is formally assigned the role of reviewing some or all aspects of the electoral process, while the government exercising effective control over the territory administers the elections.

The elections process in Namibia is an instance where an international body has been given a supervisory role. Under applicable U.N. resolutions, the U.N. special representative for Namibia must be satisfied "as to the fairness and appropriateness of all measures affecting the political process at all levels of administration before such measures take effect."²⁵ He can halt the process if he is unsatisfied with the measures adopted by the South African-appointed administrator-general, who is responsible for administering the elections.

In practice, this has meant that the administrator-general consults with the U.N. special representative before adopting laws or regulations. The special representative also monitors

the electoral environment, focusing particular attention on allegations of intimidation. Notwithstanding his explicit mandate, pressure to pursue the process to a denouement will make it difficult for the special representative to terminate the process, even if his advice is ignored by the administrator-general.

An international organization also supervised the 1980 elections in Zimbabwe. Under the Lancaster House Accords, a team comprising nationals from 11 Commonwealth countries was authorized to ascertain whether the elections were free and fair. Although denominated as an observer mission, the team performed in a manner that is better characterized as supervisory. The team was in Zimbabwe continuously for six weeks before, during and after the elections. It consulted frequently with the British administrator, often offering specific recommendations for ensuring the efficacy of the process. In its report, the team concluded that the elections were a valid and democratic expression of the people, thus providing the basis for the international community's sanction of the process.

An interesting example of a host government requesting that intergovernmental organizations observe an election is that extended by the government of Nicaragua in 1989 to the United Nations and the Organization of American States (OAS). The secretary-generals of both organizations have accepted the invitations and are planning an unprecedented monitoring effort in a sovereign state. Pursuant to the terms of reference agreed to by U.N. Secretary-General Javier Perez de Cuellar and the Nicaraguan government, the U.N. observer mission will seek to verify that all political parties "enjoy complete freedom of organization and mobilization, without hindrance or intimidation by anyone, [and] have equitable access to state television and radio."²⁴

The proposed OAS effort, in particular, is more akin to a quasi-supervisory role. It is being

undertaken in response to the explicit terms of the Central American peace plan adopted in February 1989. The monitoring operation will include the continuous presence of two-person teams dispersed in each of Nicaragua's nine provinces during an eight month period beginning in August 1989, thus affording a degree of security to candidates and voters during the campaign. The OAS observers will seek to resolve problems that develop through use of their "good offices," with recourse to the national authorities when necessary. For the registration of voters and the actual elections, the OAS expects to have observers in each of Nicaragua's 140 municipalities, with an overall total of more than 200 observers from different countries in the hemisphere. A \$1.5 million U.S. contribution is supporting the OAS effort.

Traditional observer missions represent a milder form of international involvement, but they are becoming more prevalent and, in several recent instances, have had considerable impact. These observer missions can be subdivided into different categories. A host government may invite observers to legitimize the elections process; in such circumstances, the host government often will facilitate the observers' activities, thus raising questions as to their independence and objectivity.

Where governments have been reluctant to invite observers, political parties and other institutional players have filled the gap. The observers are encouraged to perform one or more of the following functions: provide moral support for the participants; encourage reforms in the process; deter fraud by being present at polling and counting sites on election day; and, if fraud occurs, to denounce it to the international community. These missions, too, are often facilitated by a host organization, although some seek to be free-standing and self-sufficient.

Observer missions differ also in the scope of their efforts. Some operate only on election day. The trend, however, has been for a more com-

prehensive observation effort that includes monitoring the elections campaign and presenting recommendations on a variety of issues to the relevant authorities. Given the unofficial role of observers, these recommendations can be ignored, although they alert the international community to potential problems.

Because they have no official role, the composition of an observer delegation often determines its impact. The presence of former U.S. Presidents Jimmy Carter and Gerald Ford, for example, as leaders of an international delegation to the May 1989 Panamanian elections ensured that the delegation's denunciation of the process informed the international community as to the nature of the fraud perpetrated on the Panamanian people. Carter and Ford's participation also made it difficult for the Panamanian authorities, which were otherwise hostile to prospective observer efforts, to ignore the delegation's presence in Panama.

Such high-level attention ensures that the government is aware that the process is being observed and that attempts to manipulate it will be publicized. Ultimately, though, it is the host government that decides whether the risk of international disapprobation is worthwhile. The recent Panamanian elections demonstrate that, notwithstanding high-level international attention, governments have been willing to accept the risks of fraudulent and corrupt elections.

Police monitors are a fourth form of international involvement in an elections process. In Namibia, more than 500 police monitors have been deployed as part of the U.N. Transition Assistance Group for a seven-month period preceding elections. Although they lack the authority to order arrests or to initiate prosecutions, the presence of the UNTAG forces is viewed as essential to encouraging participation in the process by the population. Nonetheless, continued reports concerning intimidation in Namibia raise questions about the effectiveness of such police forces.

Technical assistance represents a fifth form of international involvement. Laws in some countries prohibit foreign financial support for partisan activities, while in other countries parties rely heavily on outside funding to support their activities. Foreign assistance can also include furnishing election paraphernalia, developing civic education programs, consulting on campaign techniques, conducting public opinion polls and consulting on the structure of campaign organizations. Governments, political parties and private foundations are often the source of funds and personnel for this type of assistance.

A final form of international involvement is reflected in the role that the **international media** plays in reporting elections. Coverage can be extensive, going well beyond election day events. Further, since communications are immediate, the media, and particularly the images presented by television, often will determine the international community's initial and predominant reaction to an electoral event.

An International Role in Palestinian Elections

The models described above afford a basis upon which Israel and the Palestinians can build a role for the international community in West Bank/Gaza elections. The following are points for the parties to consider as they formulate positions on this issue.

Providing for an international role, no matter how limited, should be viewed as critical to the success of the process. Although an international presence does not preclude abuses, it will assure that such abuses become a matter of international concern.

From the Israeli perspective, international involvement should not be viewed negatively nor as an insult to Israel's democratic achievements; rather it is an opportunity to demonstrate Israel's commitment to democratic prin-

ciples. The example of Costa Rica is worth noting. Despite its longstanding democratic record, Costa Rica regularly invites observers for its elections, both to demonstrate its achievements and to serve as a model for neighboring countries. More important, a significant international presence might help calm the *intifadah*, an Israeli goal.

Administration of the elections process by an international body seems unnecessary. Israel and the Palestinians in the territories have demonstrated their capabilities in administering elections. Moreover, negotiations over the specifics of the election law and the conditions under which elections occur are part of the confidence-building process, although a third party undoubtedly will be needed to prod Israel and the Palestinians to reach agreement on a number of technical points.

The parties should consider providing an international body with a supervisory or quasi-supervisory role. Given U.N. hostility toward Israel, reflected most pointedly by the "Zionism is racism" resolution, Israel is unlikely to accept the United Nations as an impartial arbiter.

However, designating an *ad hoc* body composed of nationals from countries with strong democratic traditions and good relations with both parties to supervise/observe the elections could advance the process significantly. Australia, Canada, Costa Rica, Denmark and the Netherlands are among the countries with the credibility and experience to fulfill this role.

The *ad hoc* body would establish a presence throughout the territories. It would receive complaints and, where necessary, conduct investigations of alleged intimidation and other curbs of political freedom. Upon completing an investigation, the *ad hoc* body would seek to raise the matter with the relevant authorities and offer its good offices to resolve it.

Police monitors could be helpful. By its

presence, such a force could discourage acts of intimidation. If the idea of an *ad hoc* observer body is accepted, then the countries participating in it also could detail members of their police forces for temporary service in the territories.

While such a formal role is preferable, even an unofficial monitoring effort could encourage a free and fair elections process. Such an effort could be initiated by nongovernmental organizations, many of which have considerable experience in this area. It would include maintaining a relatively continuous presence in the territories, forming committees to support free elections and sponsoring fact-finding delegations before and during the elections. The fact-finding delegations would investigate allegations of intimidation and abuse and report their findings to the international community. Given the high level of interest in the region, it should not be difficult to recruit prestigious and credible participants for such delegations. Their findings and recommendations would be influential particularly since neither side would want to accept the onus for the failure of the process.

It is unlikely that Israel would attempt to block public scrutiny of the process. Although the IDF could restrict travel in the territories, such a move would raise questions about the elections' credibility, particularly in the United States which criticized similar steps taken by the governments of Panama and Nicaragua. It is more likely that Israel would seek to retain its reputation as an open society by permitting liberal access to the territories for those interested in monitoring the process.

Finally, there is the matter of technical assistance. It has been stressed that the proposed elections are not an end in themselves, and that they can serve as a major source of confidence-building. The development and introduction of civic education programs that deal with the nature of a democratic society would be critical in this regard. Such programs, particularly if

they help create an orientation toward resolving disputes through peaceful means, could contribute to dismantling the barriers that currently divide Israeli and Palestinian societies.

Conclusion

Having addressed conditions for free and fair elections, some observers will undoubtedly remain skeptical as to their applicability to elections in the territories. Could agreeing to elections create such cosmic changes in the dynamics of the Israeli-Palestinian conflict that the parties will negotiate in a civil manner the technical details concerning the modalities of an elections process? And assuming elections occur, will that result in a willingness on both sides to make the compromises necessary for a real peace to evolve? After decades of conflict and unyielding positions, such optimism, even cautiously expressed, is hard to fathom.

Nonetheless, the elections idea is center stage.

The time and cost invested in the pre-negotiations, in the negotiations over modalities and in the actual conduct of elections, everyone agrees, will be worthwhile if it changes the psychological dynamic of the conflict. And once there is a changed dynamic, the prospects of reaching a permanent solution will be that much closer.

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The views expressed in this research memorandum are those of the author and should not be construed as representing those of The Washington Institute for Near East Policy, its Board of Trustees or Board of Advisors.

ENDNOTES

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