

## **The Unsafe Road**

### A Special Report on the Safe Passage

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#### **Introduction**

On 25 October 1999 a safe passage between Gaza Strip and Tarkumya in Hebron was opened. The opening of the safe passage followed the signing of a Special Protocol on the Safe Passage between the West Bank and the Gaza Strip between the PLO and the government of Israel on 5 October 1999. The protocol set out the detailed practical measures for the usage of the passage, including: the mechanisms for issuing permits, the usage of the safe passage by visitors from abroad, and use of the passage by vehicles, as well as other issues. In fact the safe passage was opened after a delay of more than four years since it was agreed upon in the Israeli-Palestinian Interim Agreements on the West Bank and Gaza Strip signed in Washington on 28 September 1995. The issue of the safe passage had gained local attention, formally and informally, and the attention of the international community due to the role that it could play in achieving the goal of territorial integrity between the West Bank and the Gaza Strip as a basic condition for the anticipated Palestinian state in these territories.

The Palestinian Centre for Human Rights is particularly concerned with the right to freedom of movement as it is considered a basic human right. During the last four years the Centre has carefully followed Israeli measures that obstruct the right of Palestinians to move freely. In

particular PCHR has been deeply concerned at the Israeli closure policy in the West Bank and the Gaza Strip and the disastrous impact of this policy on the Palestinian people. Also, the Centre has followed the Israeli-Palestinian negotiations concerning the safe passage, negotiations which have been stalled in recent years, until the safe passage protocol was signed on 5 October 1999.

PCHR has prepared this report to detail the reality of the safe passage by outlining the practical measures adopted by Israel concerning Palestinian use of the passage. The aim of the report is to determine to what extent such measures secure the right of Palestinians to move freely, and to what extent they are in harmony with the relevant international law and with the terms of the agreements signed between the Israeli and Palestinian sides.

The importance of this report derives from the fact that it is considered the first report which attempts to explain in detail the implementation and implications of the safe passage. This is intended to confront the media campaign in which Israel has tried to show the international community that the right of Palestinians for free movement is being guaranteed and that Israel has ended its obstruction of the movement of

Palestinians between the West Bank and the Gaza Strip. The aim of the Israeli government in this process has been to mislead the international community, and particularly international human rights organisations, who during recent years have strongly condemned the obstacles imposed by the Israeli government on Palestinians right to freedom of movement.

### **The Right to Freedom of Movement in International Law**

The right of individuals to freedom of movement is considered one of the basic human rights which must be guaranteed and protected. This right is affirmed in international agreements and conventions which also affirm the right of individuals to enjoy the practice of their right. Article 13 of the Universal Declaration of Human Rights provides that:

1. Everyone has the right to freedom of movement and residence within the borders of each State.
2. Everyone has the right to leave any country, including his own, and to return to his country.”

Moreover, Article 12 of the International Covenant on Civil and Political Rights provides:

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.”

The United Nations Convention on the Elimination of All Forms of Racial Discrimination provides in Article 5 (d)(i) and (ii) that State parties undertake to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, equality before the law, notably in the enjoyment of the right to freedom of movement and residence within the borders of the State, and the right to leave any country, including one’s own, and to return to one’s country.

### **The Safe Passage in the Interim Agreements**

The Interim Agreements signed between the Israeli government and the PLO affirmed the territorial integrity between the West Bank and the Gaza Strip and the right of Palestinians to free movement between these territories. Article IV of the Declaration of Principles on the Interim Self-Government Arrangement signed in Washington on 13 September 1993 affirmed that “the two sides view the West Bank and the Gaza Strip as a single territorial unit, whose integrity will be preserved during the interim period.” Moreover Article IX (a)(1) of Annex I

(Protocol Concerning Withdrawal of Israeli Military Forces and Security Arrangements) of the Agreement on the Gaza Strip and the Jericho Area signed in Cairo on 5 May 1994, affirms that “there should be safe passage between the Gaza Strip and the Jericho Area for the residents of the Gaza Strip and the Jericho Area and visitors to these areas from abroad, as detailed in this agreement.” In addition,

paragraph (b) of this Article asserts that “Israel will ensure safe passage during daylight hours (from sunrise to sunset) for persons and transportation.”

Furthermore, the Israeli-Palestinian Interim Agreements on the West Bank and Gaza Strip signed in Washington, DC on 28 September 1995 asserted the right of Palestinians to free movement between the West Bank and Gaza Strip. Article X (a) from the Protocol Concerning Redeployment and Security Arrangements annexed to this Agreement asserts that “there shall be a safe passage connecting the West Banks with the Gaza Strip for movement of persons, vehicles and goods, as detailed in this Article.” Paragraph (c) of this Article details the crossing points between the West Bank and Gaza Strip as follows:

“Safe passage through Israel between the West Bank and the Gaza Strip will be effected via the following designated crossing points:

1. the Erez crossing point (for persons and vehicles only);
2. the Karni (commercial) crossing point (for goods only);
3. the Tarkumya crossing point;
4. an additional crossing point around Mevo Horon.”

Although the above mentioned Agreement affirmed the right of Palestinians to have a safe passage between the West Bank and the Gaza Strip as a means to secure their right to free movement between these two territories, Israel has not met its commitments in this regard and did not opened the passage on the agreed dates. The Israeli refusal to carry out its commitments in the political agreements, particularly those concerning the opening of the safe passage, has contributed significantly to blocking the negotiations between the Israeli government and the PLO. This was particularly clear after Netanyahu took power. These

negotiations were reactivated when the Wye River Memorandum between the Israeli government and the PLO was concluded on 23 October 1998 at Wye River in the U.S.A.

The Wye River Memorandum detailed the second phase of the Israeli redeployment from the West Bank, and affirmed, amongst other things, the two sides commitment to resume the negotiations concerning the safe passage within one week from the date the Memorandum entered into force. Despite the Memorandum’s provisions, Israel was not committed to this date, and the issue of the safe passage remained unsolved.

The Sharm El Sheik Memorandum concerns the timetable for implementing the Wye River Memorandum, reactivating the committees established by the Interim Agreements and resuming the final status negotiations on 4 September 1999. This Memorandum reaffirms in Article 5 (a) the territorial unity between the West Bank and the Gaza Strip, and Palestinians right to free movement between these two territories through its affirmation of the Israeli commitment to “reactivate the southern safe passage to move persons, vehicles and goods, beginning from 1 October 1999 (Annex I, paragraph 10, the Interim Agreements), according to implementation details, as detailed in the Safe Passage Protocol which is to be concluded no later than 30 September 1999.”. In fact Israel was not committed to this and did not open the safe passage by the specified date.

On 5 October 1999 the two sides concluded a protocol concerning the safe passage. On 25 October 1999, the safe passage opened after a prolonged delay of more than four years since it was agreed upon in the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (Washington D.C., 28 September 1995).

### **The Safe Passage Protocol**

The protocol for the safe passage is made up of 11 articles setting out the detailed measures agreed upon between the two sides concerning the mechanisms for safe passage usage. These include safe passage usage by citizens, visitors from abroad, vehicles, persons prohibited from entering Israel, Palestinian police, safe passage usage for commercial trade, safe passage usage by PNA President Yasser Arafat and arrangements for future meetings between the two sides to improve the operating of the passage. The protocol determined four crossing points for the safe passage, the Erez crossing point (for persons and vehicles only); the Karni (commercial) crossing point (for goods only); the Tarkumya crossing point; and an additional crossing point around Mevo Horon.

Given the articles of the protocol, it can be noted that Israel retained the right to determine the time of operating and closing the safe passage. Article 2 provides that “Israel may temporarily close the passage for reasons of safety and security, and may change the arrangements for passage for the same reasons, while keeping one of the crossing points open.” Surprising, in this article, is the absence of the precise definition for “safety or security reasons”. According to the laws of interpretation of such agreements, the definition of such terms should be determined between the parties in accordance with the overall intention of the agreement. However, in practice, this lack of precise definition will allow Israel absolute power to determine the essence of these terms in a way that will enable it to have the full authority in deciding which of the safe passage crossing points may be used at any given time.

Israel also has the full authority to determine which people will be allowed to use the passage. The same article (in paragraph d) provides that “Israel may prevent individuals who have violated in a grave and repeated way the provisions of this protocol, from entering Israeli territory in order to use the safe passage.” The question now is what is the exact meaning of “grave and repeated violations of the provisions of the protocol”. For example, does Israel

consider the adoption of a stance opposing this protocol and the whole peace process in general a grave or simple violation of the protocol? Assuming that the adoption of such a stance, whatever its form, is considered a violation at all, which we refute in principle. Accordingly, the absence of the precise meaning of the terms will give a chance for Israel to provide its own meaning to these terms, thereby having the full authority to decide which individuals may use the safe passage.

Article 3(e)(1) reaffirms the above mentioned fact, when it states that “the Palestinian

side will transfer all applications concerning usage of the safe passage after its primary security approval to the Israeli side.” The Israeli side will decide which of these applications will be approved according to its own criteria, without any intervention from the Palestinian side. Article 3(e)(2) provides that “the Israeli side will answer all the applications during two working days. It is understood that in the case of all applications containing information which conflicts with the Israeli database, and all those in which the photo of the individual does not appear in the Israeli database, the application will be rejected and sent back to the Palestinian side.” This means simply, once again, that Israel has the full authority that Israel has the full authority to determine which individuals will be allowed to use the safe passage.

Most importantly, Israel will have the full power, without any participation from the Palestinian side, to carry out searches at the entrance crossing point of the safe passage. Article 2(p) provides that “nothing in this agreement denies the right of Israel to carry out the necessary searches at the safe passage entrance crossing points in order to protect safety and security.” In fact this raises some uncertainty and concern regarding the possibility that Israel might use the opportunity provided by the usage of the safe passage to arrest some individuals. Given that there is nothing in the protocol preventing Israel from doing so. The fact that the Palestinian side agreed not to participate in the searches implies approval and acceptance of Israel being given an opportunity to achieve its security goals at the expense of the right of Palestinians for free movement between the West Bank and the Gaza Strip.

On this basis, one can say that the measures agreed upon in this protocol do not secure and guarantee the necessary conditions to make this a “safe” passage. Security, in its simple

meaning requires that the individual feels safe, and feels no threat to his freedom. However, through analysis of some of the provisions of the protocol, it can be seen that these provisions do not work to secure the necessary practical and psychological conditions for a situation which can be described as “safe” for individuals during their use of the passage. On the contrary, these provisions create uncertainty for individuals regarding the possibility of arrest by the Israeli forces during their use of the passage. To elaborate this further, the next part of the report will consider the steps which must be followed to gain the safe passage card, and the practical measures adopted by Israel against Palestinians during their use of the passage in order to determine to what extent such measures comply with the provisions of the protocol.

### **The Procedure for Obtaining a Safe Passage Card**

The procedure to obtain a safe passage cards begins by the applicant filling out a special form including personal data. The form must be completed in Arabic and Hebrew. The applicant then forwards the form to the Palestinian Civil Liaison Office, in the area in which he resides. The form must be accompanied by two photographs

of the applicant. The Civil Liaison Office sends the application to the Civil Affairs Ministry which, through its Safe Passage Department, sends the application to the Israeli side in order for a safe passage card to be issued.

In this regard, it must be mentioned that the protocol distinguishes between the use of the safe passage by individuals who are allowed to enter Israel and those who are not permitted to enter Israel. The first group can use the safe passage during all weekdays, and may use public and private transport. These people are granted yellow safe passage cards and 90 minutes to pass the passage.

The second group are allowed to use the safe passage, but only on buses driven by Palestinians and accompanied both ways by Israeli security force vehicles. This group can only use the safe passage on Monday and Wednesday each week, from 7am until sunset. The buses which carry this group are granted two hours to cross the passage. Usually the approval of the Israeli side of applications from this group is called "approval with accompaniment". Successful applicants from this group are granted pink cards. In order to get the card, individuals from this group must coordinate with the Civil Liaison Office in his area five days before the date of their trip. The Israeli side checks every application separately and decides which of those applications will be approved, approved with accompaniment, or rejected. A decision based on Israeli security criteria, without any intervention from the Palestinian side. After that, the Israeli side submits a list to the Palestinian side of applicants and the outcomes of the applications.

In its turn, the Palestinian side announces in the Civil Liaison Offices the outcomes of the applications. The individuals whose applications are approved (or approved with accompaniment) receive the cards from the Israeli side in the Israeli Area District Coordination Offices, attended by an unarmed Palestinian Civil Liaison Force Officer. Usually the safe passage card is valid for one year of return travel. The total number of applications submitted since the date of the passage's opening on 25 October 1999, until the end of November 1999 reached about 18 000. Israel approved 15 000 of these applications (about 83%), including 1300 which were approved with accompaniment (7%), and rejected 2900 (16%), 300 applications have not been answered (1.6 %). It is worth mentioning that

the group of people whose applications were rejected were people who are absolutely forbidden to enter Israel.

### **Safe Passage Usage**

After obtaining the safe passage card the individual goes to the entrance crossing point for individuals (Erez Checkpoint). At Erez Checkpoint there are three routes for individuals. At the end of each road there is a room for checking the safe passage card. The individual passes their card to a Israeli female soldier. These soldiers check

When the individual passes their card to a border control officer, these officers check the card's validity and then checks the data on the card against the data held in the Israeli database about the cardholder. Two copies of a slip or safe passage ticket are issued to the cardholder. These tickets include the following, the name of the person, his identity card number and a stamp determining the date of issuing the ticket and the expected time for the trips departure. The following instructions are also written on the back of the ticket:

1. This ticket is personal and nontransferable
2. This ticket is valid for movement along the safe passage designated
3. This ticket is valid only with the following documents
  1. Personal Identity card and safe passage card,
  2. Passport, or any other travel documents.
- (4) This ticket must be kept with you for inspection until you arrive to your destination,
- (5) No deviations are allowed from the route designated on the ticket.

After receiving the ticket the cardholder goes through a gate designated at the end of each row for security checks. After the security check, if the passage card designates approval with accompaniment, he goes to the designated buses. If the card is a normal passage he can go to a private or public vehicle. The buses carry the travellers from Erez Checkpoint to Askelon

Junction, and then to Tarkumya in Hebron, via the Kiryat Gat "Al Faluja – Beit Jibreel road". The trip from Erez to Tarkumya usually takes about 45 minutes.

At the Tarkumya crossing point, the Israeli soldiers receive the passage tickets from the individual, along with the safe passage card and identity card for checking. People wishing to return to Gaza on the same day can do so under the condition that they must return no later than 3pm.

The total number of people who have used the safe passage from the date of its opening on 25 October 1999 until the end of November 1999 has reached about 16 000. The number of taxis which use the safe passage is about 20 taxis per day.

One of PCHR's fieldworkers used the safe passage in order to investigate the most important difficulties and problems encountered by Palestinians in their use of the passage. He reported that the security searches at Erez Checkpoint take between two to three hours, and the time of the trip from Erez Checkpoint to Tarkumya takes about 45 minutes. Someone wishing to travel, for example to Ramallah, must continue from Hebron through what is called the *Wadi El Nar*. This route is a very long and dangerous route for the Palestinians due to the Israeli refusal to allow passage

dangerous route used by Palestinians due to the Israeli refusal to allow passage through Jerusalem. Usually it takes about one and a half hours to pass this road. The time of the trip between Gaza and Ramallah therefore takes about 5 hours, while in normal conditions (before the closure policy) it took only between 75 to 90 minutes. Accordingly, the average time for a return trip from Gaza to Ramallah takes about 10 hours. Considering that the safe passage is open only 10 hours each day, and people wanting to return to Gaza in the same day must do so before 3pm, it is difficult, if not impossible, to travel to and from the West Bank in one day. This means that people are forced to spend the night in the West Bank, with obvious financial implications.

### **Conclusion: The Passage is Unsafe**

This report attempts to outline the reality of the safe passage between the West Bank and the Gaza Strip, with the aim of determining to what extent the passage secures and guarantees the rights of Palestinians to free movement between these two territories, and the territorial unity of the West Bank and Gaza Strip. To achieve this goal the report analyses the relevant international law, the relevant provisions of the Israeli-Palestinian Agreements, provisions affirming the territorial unity of the West Bank and the Gaza Strip. The report then analyses the Protocol Concerning the Safe Passage Between the West Bank and the Gaza Strip, and the measures adopted by Israel against Palestinians using the passage, in order to discover to what extent the rights of Palestinians to free movement between the West Bank and the Gaza Strip is secured.

Based on this, the report notes that alongside the affirmation of the relevant international law of the right to freedom of movement as a basic human right, and affirmation of the Israeli-Palestinian Interim Agreements of the territorial unity of the West Bank and the Gaza Strip and of the right of Palestinians to move freely between them, the Protocol Concerning the Safe Passage and the measures adopted in the implementation of the protocol have limited the ability of Palestinians to enjoy this right, and made it difficult to have territorial unity between the West Bank and Gaza Strip.

What is notable from analysing both the protocol and the measures adopted by Israel to implement it, is that Israel has retained the full authority to decide the number and the nature of the persons who will be allowed to use the safe passage. Moreover, Israel retains full authority to open and close the crossing points according to its own interests, particularly its security interests. Israel also retains full authority to make searches at the crossing points without any participation by Palestinian officials. This implies acceptance from the Palestinian side of the right of Israel to arrest whomever it suspects of being a threat to Israel's security, based on its own interpretation of "security". Although Israel has not, until now, arrested anyone at the crossing point (according to PCHR fieldwork reports), it is expected that Israel will do so if it sees the need.

Based on the above mentioned conclusions, one can say that the provisions of the protocol concerning the safe passage between the West Bank and Gaza Strip from a clear violation of the relevant international standards and the articles of the Israeli-Palestinian Interim Agreements. The practical measures adopted by Israel against Palestinians using the safe passage have proven this fact. Accordingly the question of the right of Palestinians to freedom of movement between the West Bank and the Gaza Strip comes under the control of Israel, decided by Israeli security interests without any other considerations.

Note: Annexed with this report a copy of the Safe Passage's card.

*“The End”*