

# The impact of Third-Party Mechanisms in conflict resolution

Lessons from the Temporary International Presence in Hebron



# Foreword

**Jan Egeland**  
Secretary General,  
Norwegian Refugee Council



Photo: Mohammed Masharawi/NRC

**NORCAP**  
Norwegian Refugee Council  
Prinsens gate 2  
0152 Oslo  
Norway

[www.nrc.no/norcap](http://www.nrc.no/norcap)  
[norcap@nrc.no](mailto:norcap@nrc.no)

Cover photo: NORCAP

A warm thank you to all NORCAP colleagues who have contributed to the report.

**As a young state secretary in the Norwegian Ministry of Foreign Affairs, I was one of the midwives at the birth of the Temporary International Presence in Hebron, which was set up in 1994 to salvage the stalled peace talks between Israel and the PLO.**

As its name indicated, TIPH was indeed an international endeavour, always a visible presence in the contested city. But it did not turn out to be temporary. Intended to last only while difficult talks resumed following the 1993 Oslo Agreement, it was not wound down until January 2019 after more than 20 years as a unique third-party involvement in the midst of the Israeli-Palestinian conflict.

The many hard-won lessons from two decades of TIPH observation work are relevant for conflict resolution elsewhere. The Institute for Strategic Studies' Armed Conflict Survey 2020 lists 33 ongoing worldwide, of which an increasing number, 21, involve non-state parties. The many prolonged conflicts make resolution more difficult, but the international community can still play an important role in preventing or limiting violent confrontations at the various stages of armed conflict.

It was my own experience as part of Norway's facilitation of the Oslo accords that the establishment of TIPH enabled peace talks that had

stalled after the 1994 massacre in Hebron to continue. It is important to reflect on the strengths, weaknesses and costs of TIPH. These are all well discussed in this report. It captures key lessons from TIPH and other third-party mechanisms as well as opportunities and limitations for third-party involvement in general.

First presented and discussed at the TIPH Symposium on 15 October 2020, we hope these papers will increase knowledge of how such mechanisms can be used to build confidence and trust between parties to conflicts and contribute to dialogue and reconciliation ■

# Introduction

## Benedicte Giæver

Director of Expert Deployment,  
NORCAP



Photo: Beate Simarud/NRC

**When the parties to the Oslo Accord agreed to establish the Temporary International Presence in Hebron (TIPH), the Norwegian government approached NORCAP to set up and manage Norway's contribution to the mission. We are proud to have strengthened TIPH's work over its 20 years in operation.**

In conflict management and resolution, third-party mechanisms tend to be ad-hoc missions set up to de-escalate conflict, prevent violent incidents and defuse tension. They are flexible tools that can be adapted to context. As with TIPH, they are intended to increase civilians' safety and ensure that any violations or breaches of agreements are registered. This is mainly done by monitoring the various aspects of a peace agreement or ceasefire, and sometimes also by monitoring human rights violations and facilitating grass-roots dialogue.

Third-party mechanisms are an important instrument in the toolbox of any conflict mediation or resolution effort. Even when they stop short of ending conflict, they also have an important role to play in preventing minor conflicts, which have a relatively limited impact on a society over time, from escalating into high-intensity confrontations. This is essential in reducing human suffering and the entrenchment of conflicts.

Over the last decades, we have been involved in setting up and contributing to the operation of numerous third-party mechanisms (see box). The conflicts, power relations and hence the mandates of these mechanisms has varied, but our experience yields some general lessons about their effectiveness in managing and resolving conflicts.

### Diversity in the mission's composition

The choice of countries to contribute staff and resources to a third-party mechanism is key to its legitimacy. Parties to a conflict perceive different nations as having different agendas, and finding the right composition of member states helps to defuse tensions and biases and strengthen trust in the mission. Norwegian TIPH staff also said the mix of nationalities gave a greater sense of working with an international mandate, and led to constructive discussions, increased learning and openness to new approaches to solving problems.

### Balancing the need for bespoke structures and quick deployment

Third-party mechanisms should be designed according to the specific peace process or conflict management objective they are to support, with maximum flexibility and scope for innovation. A successful set-up in one situation may be detrimental in another. Lessons need to be learned from previous missions without adopting a one-size-fits-all approach to the design phase.

At the same time, speed is of the essence in getting a mission up and running when conditions are right. There may only be a brief window of time when the parties to a conflict are welcoming and conditions allow for deployment.

This creates a dilemma because a mission set up with ad hoc structures to a tight deadline might well be unfit for the demands placed on it a year or two down the road. It may be difficult to change its structures once they

are set up, but the path from conflict towards resolution and peace is never linear, so the mission must adapt to the needs of the process. If possible, it should be continuously assessed and reconfigured as necessary.

### Human rights abuses should be part of the monitoring mandate

The mere existence of a monitoring mechanism creates expectations that human rights abuses will be reported and investigated. But ceasefire violations are often the first priority for the parties to a conflict and a potential chief negotiator, and less attention and fewer resources may be dedicating to investigating human rights abuses as a result.

The monitoring of such abuses and the publication of findings may complicate peace negotiations, but at the same time it may give the mission more legitimacy in the eyes of civilians. The inherent tension between the mission's different objectives cannot be resolved once and for all, but needs to be managed with skilled and experienced leadership.

One possibility is to separate the monitoring of ceasefire violations and human rights abuses, to avoid the former taking precedence over the latter. Another is to let the parties to a conflict take part in investigating human rights abuses. In Nepal, the parties were kept accountable by involving them in examining breaches of the peace agreement, which helped to increase trust between

them. Building on this experience of increased trust, the parties to a conflict might be involved in investigating human rights abuses.

These three main lessons are based on our experience in supporting many third-party mechanisms. In the following chapters, key Scandinavian researchers provide their own perspectives. Through their contributions, we seek to expand and share knowledge and experience about the effectiveness of third-party mechanisms in conflict resolution, their potential and their limitations. It is our goal that these insights and lessons inform their future development, set-up, implementation and adaptation ■

### We have contributed to numerous third-party mechanisms over the last decades:

- *The Ceasefire and Transitional Security Arrangement, the Monitoring and Verification Mechanism and the Reconstituted Joint Monitoring and Evaluation Commission in South Sudan*
- *The Joint Monitoring Mission in the Nuba Mountains in Sudan*
- *The Sri Lanka Monitoring Mission*
- *The Special Monitoring Mission in Ukraine*
- *The International Monitoring Team and the Independent Decommissioning Body in the Philippines*
- *UN-led verification missions in Colombia, the Democratic Republic of the Congo and other countries*



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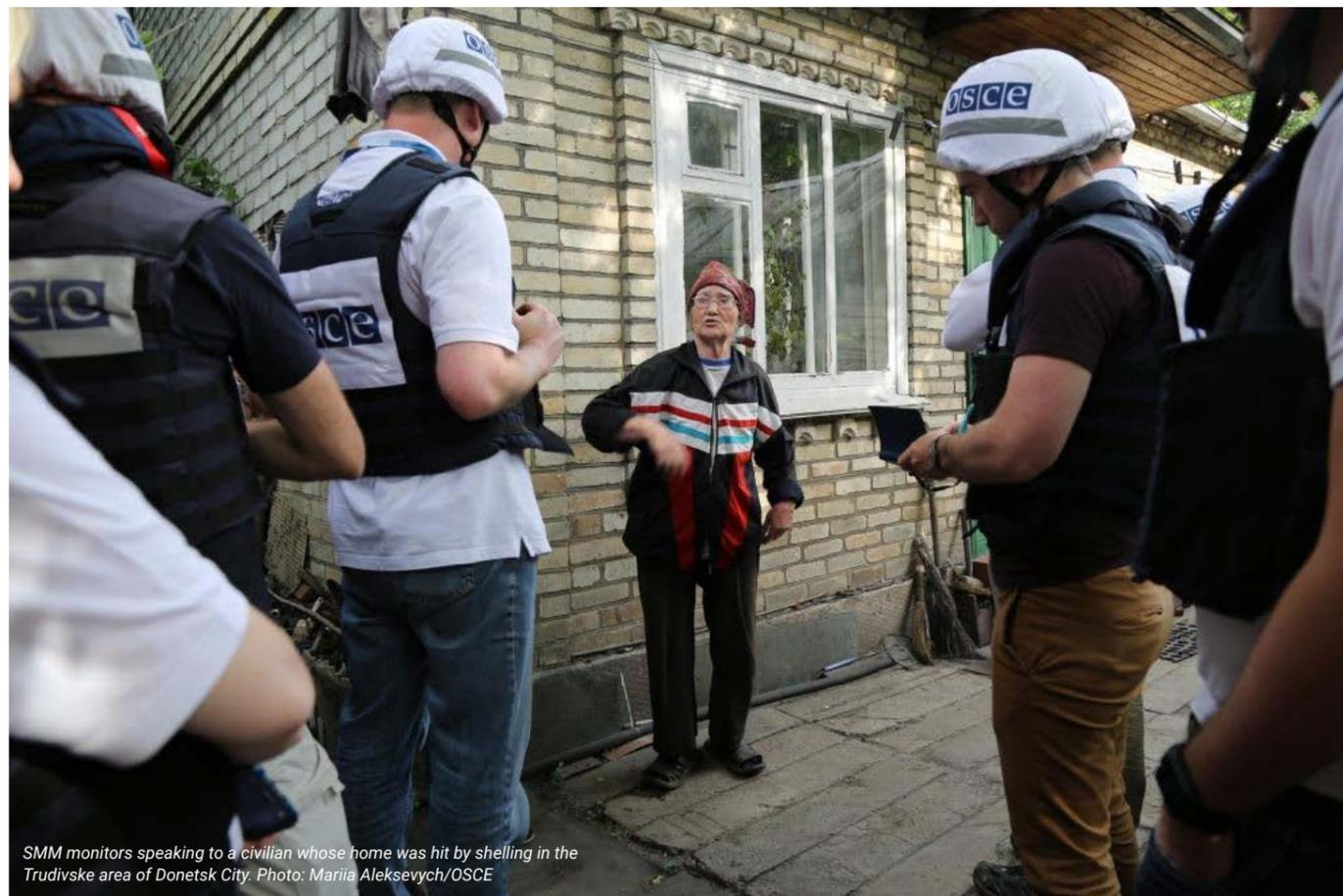
## 1

# Opportunities and limitations to Third-Party mechanisms in conflict resolution



## Arne Strand

Senior Researcher,  
Chr. Michelsen Institute (CMI)



SMM monitors speaking to a civilian whose home was hit by shelling in the Trudivske area of Donetsk City. Photo: Mariia Alekseyevych/OSCE

## Introduction

There are several options for non-military third-party mechanisms in conflict resolution. The choice will depend on the type of conflict to be resolved or mitigated, if there is an international and national acceptance for an external intervention and if local opportunities and actors are present and available. Options range from preventing new conflicts, use of civilian observers to monitor agreements reached and provide protection for vulnerable groups, active use of civil society and third-party mechanisms for dialogue and negotiations to end conflicts and secure post-conflict peace. Several mechanisms and approaches can be utilized at the same time, and in the same conflict, or different mechanisms might succeed each other as a country or region move from a violent conflict towards resolving it through negotiations and reaching a peace agreement.

This article will present definitions of conflict resolution and of a third-party intervention or mechanisms. It will examine the levels and potential types of interlocutors for different types of conflicts, and then present and discuss a potential range of conflict resolution interventions. Literature and case evidence from the use of civilian third-party mechanisms in different types of conflicts are drawn on to explore advantages or limitations of different types of mechanisms and actors in the given context. Many of the examples are drawn from opportunities seized by international humanitarian and development agencies or national civil-society groups. Their ability to engage depend on mandates provided to or negotiated by the third-party actors, the

degree of security and state fragility, the extent of human rights violations, gender roles and various conflict actor's perception of "the outsiders" in conflict resolution.<sup>1</sup>

## Factors and definitions

The joint office of the Norwegian Refugee Council and Norwegian Church Aid provided during the early 1990s humanitarian and recovery assistance inside Afghanistan during the Afghan civil war. We were then confronted with a choice of "working in a conflict" or, taking realities into account, expand our planning and practice to be "working on the conflict". As an international non-governmental organisation (NGO) we concluded that we could not limit ourselves to just provide lifesaving assistance to victims of what emerged as an endless conflict, especially when the assistance was competed over by the warring factions. We rather chose to utilize aid and our presence and networks to generate space for dialogue and support local initiatives that aimed to address and reduce local conflicts. The experiences eventually feed into the "Do no Harm" process and concept, allowing a critical reflection over how aid and development assistance might hold a positive or negative influence over conflicts and their victims.<sup>2</sup> In hindsight might the targeted capacity building of Afghan staff and organisations be the largest achievements, despite the fact that Afghanistan remain a fragile state and peace negotiations only recently started.<sup>3</sup>

Many fragile states are made priority countries for Norwegian, European and international humanitarian aid

and development interventions. Such a priority is understandable given the World Bank (2020, p.2) forecast that "...by 2030 will more than half of the world's extreme poor live in countries characterized by fragility, conflict, and violence and pose a major challenge to meeting the Sustainable Development Goals and efforts to promote peace and prosperity."<sup>4</sup> This points to the need for more coherent and successive efforts to reduce conflicts with non-military means.

How should we then define conflict resolution and delineate it from other types of interventions and negotiations. Peace researcher Wallensteen (2015, p.57) provide the following definition:

*Conflict resolution is a social situation where the armed conflicting parties in a (voluntarily) agreement resolve to live peacefully with – and/or dissolve – their basic incompatibilities and henceforth cease to use arms against one another.<sup>5</sup>*

A third-party conflict resolution according to Study.com ... involves the use of a neutral third party to either help in the resolution of a dispute or to resolve the dispute.<sup>6</sup>

Neutrality is difficult to define, as actors to a conflict might have different opinions on what it constitutes. A third party's ability to generate and maintain trust with conflict actors, over time, might be an equally important asset for successful conflict resolution.

There is an increasing recognition of a gender dimension to violence, and thus to conflict prevention and resolution (Herbert, 2014). Research

1 The author draws on research literature and own practitioner experiences and research conducted in Afghanistan, the Aceh province of Indonesia and Cyprus.

2 Anderson (1999) Do No Harm: How Aid Can Support Peace - Or War. Boulder: Lynne Rienner Publishers.

3 See i.e. the Fragile states Index, <https://fragilestatesindex.org>, visited 05.11.2020

4 World Bank Group (2020) Strategy for Fragility Conflict and Violence, 2020-2025. Washington DC: World Bank Group

5 Wallensteen (2015) Understanding Conflict Resolution. Fourth edition. London: Sage

6 Study.com: Third Party Conflict Resolution: Strategies & Explanation available at <https://study.com/academy/lesson/third-party-conflict-resolution-strategies-lesson-quiz.html>, visited on 10.10.2020

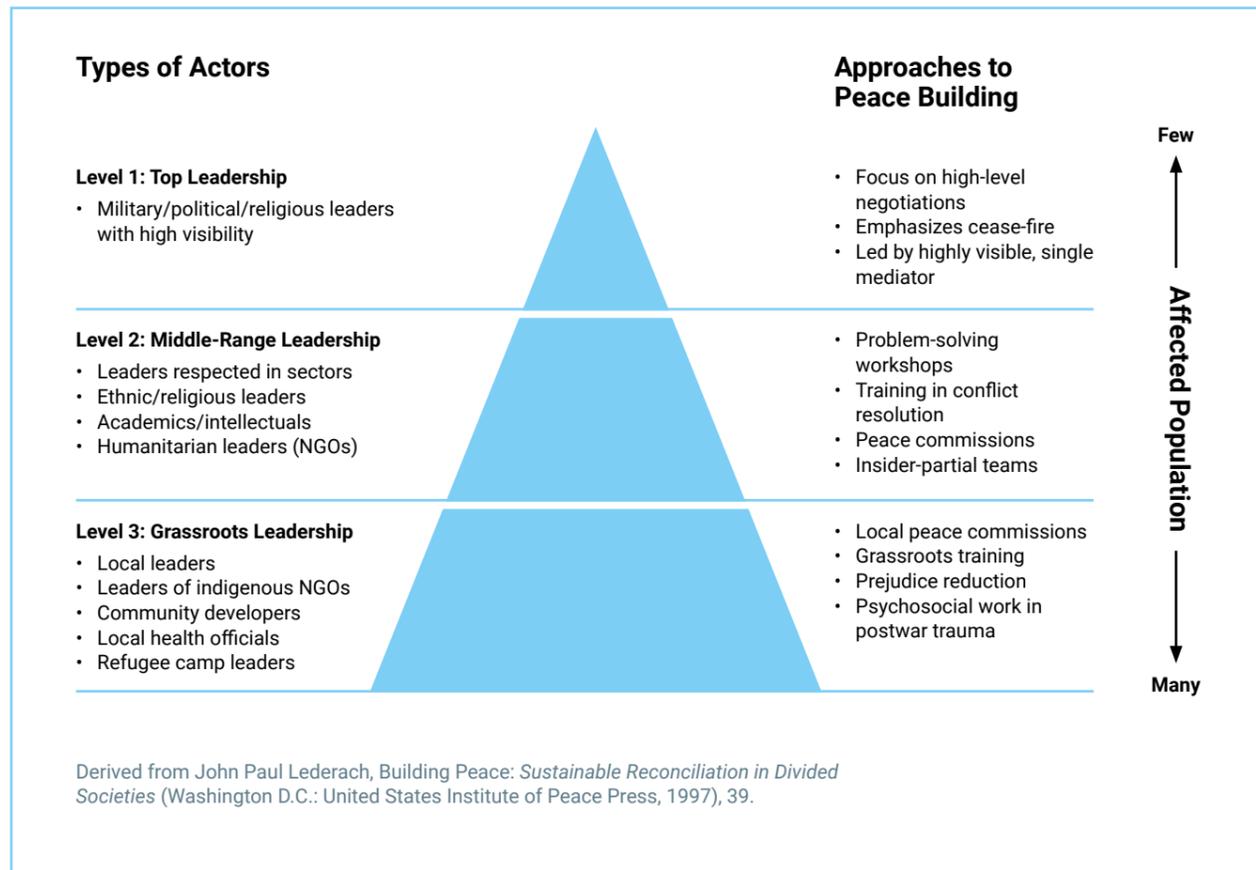


Figure 1: Lederach's Pyramid Model (Lederach 1997)

has documented that countries with high levels of violence against women and girls are more likely to experience conflict. The larger the gender gap is in a country, the more likely it is to be involved in inter and intra state conflict, and to use violence first in a conflict. While higher levels of women's representation in parliament, and parity in education, may reduce the likelihood of inter-state war.<sup>7</sup> Leading to the conclusion that the interests and voices of both genders need to be recognised and included in conflict prevention and resolution, despite the fact that the majority of those involved in the direct armed conflicts are men.

**Engagement levels**

Violent conflicts range from local ones, possibly confined to a neighbourhood or a village, to involving several groups and larger regions, to civil wars in a country, larger regional conflicts, or international warfare. Some conflicts can be confined locally, others require engagement with political or military leaders at the national level. Lederach (1997) developed a pyramid model (see below) to illustrate the different levels of conflict, what types of leadership to engage with and possible types of interventions.<sup>8</sup> More recent research places increased emphasis

on "bottom up" peacebuilding and the importance of local initiatives.<sup>9</sup> A caution here is the level of violence in a given conflict, and the risk this might pose to those that mobilize against powerful and armed individuals and groups.

**Actors and activity options**

During an intense military intervention or a civil war there is limited space for a third-party mechanism to be present or gain influence, beyond monitoring the use of force and documenting loss of civilian lives and violations of

**Potential roles of third-party conflict resolution actors**

	NGOs	Multi-laterals	Military
Stay neutral, deliver	✓	✓	✓
Data collection & analysis	✓	✓	
Conflict sensitive approach	✓	✓	
Protection by presence	✓	✓	✓
Capacity & knowledge building	✓	✓	
Reunite	✓	✓	
Facilitate dialogue	✓	✓	
Negotiate	✓	✓	
Peacekeeping		✓	✓

Figure 2: Categorisation of potential roles of third-party conflict resolution actors (Author)

human rights. However, when a military intervention is coming to an end, or civil wars goes into a stalemate, there are more openings for third party and civilian mechanisms. A range of factors will influence on opportunities for engagement, and if best undertaken by international or national civil society/third party actors, and if such efforts can lead to a permanent resolution of the conflict or merely set it on hold.

Above is a categorisation of potential roles of third-party conflict resolution actors, here broadly defined under civil society/ non-governmental organisations (NGOs) as multilateral organisations, as UN organisations. Potential roles of national and international military forces are listed, but not discussed in this article. These roles can further be divided into three main approaches: 1) Informed neutrality and remains conflict sensitive; 2) protection and capacity building; and 3) active dialogue and negotiations.

**Informed neutrality and remains conflict sensitive**

The starting point is for the external actors to remain neutral, and not sign up to or provide assistance to only one party to a conflict. This is a dilemma many humanitarian agencies are negotiating on a daily basis, where they are requested to make concessions to the warring parties to be allowed to provide lifesaving assistance to a civilian population. Not blindly giving in to the parties and use aid to bribe their way through is a major step forward as it demonstrates a more principled approach to aid delivery. It is the need of and the protection of victims of conflict that must inform the aid delivery strategy, not that of the conflict parties.

When wars are raging external actors' access can be limited, gross violations of human rights can go unrecognised and basic needs might remain unnoticed. It should be a priority to collect and analyse data to allow for

analysis of the scale of violence used, documentation of actors involved and violations of human rights, and to keep track of and foresee internal displacement and migration. The Syrian Observatory for Human Rights is an example of an organisation that with local networks and active use of social media, map and publish updated information.<sup>10</sup> Such operations might constitute major risks to staff or observers venturing into high-risk areas, even if clearly marking themselves as an external actor. They can be regarded as spies or information obtained can be used to hold parties and individuals responsible for human rights violations when the conflict comes to an end. New technology, as drones, and use of mobile phones to take pictures and set locations help reduce such risks. Actors intending to engage in conflict resolution and negotiations will benefit on fine grained and historical knowledge of the conflict and actors involved to help separate between what might be allegations and what can constitute facts.

7 Herbert (2014) Links between gender-based violence and outbreaks of violent conflict. GSDRC Helpdesk report 1169. GSDRC, University of Birmingham

8 Lederach (1997) *Building Peace: Sustainable Reconciliation in Divided Societies*. United States Institute of Peace Press, Washington, DC

9 See i.e. Mac Ginty (2014). *Everyday Peace: Bottom-up and local agency in conflict-affected societies*. Security Dialogue 45(6): 548-564.

10 For details and reports see <https://www.syriahr.com/en/>, visited 8.12.2020

A conflict sensitive approach is associated with the Do No Harm concept, where conflict sensitivity refers to “...the practice of understanding how aid interacts with conflict in a particular context, to mitigate unintended negative effects, and to influence conflict positively wherever possible, through humanitarian, development and/or peacebuilding interventions.”<sup>11</sup> This can be easier said than done. It requires a thorough analysis of the conflict(s), and parties to it, and more so a willingness and ability to reflect on what positive or negative consequences aid and interventions might hold on a conflict or a population. Involvement off and capacity building of national staff, including field-staff, will be a requirement to select interventions that avoid negative effects. Unintended consequences are difficult to identify beforehand, though there might be hard won experiences to draw on from similar situations or from other aid providers. Ability to adjust interventions underway might be equally important as lessons starts to emerge.

It might be as simple as not making oneself dependent on one source of information or partner in a given area but establish broader set of contacts and utilize different channels for aid delivery. This came as a hard-won experience in Afghanistan in the 1990s where many NGOs had made themselves dependent on military commanders to protect aid delivery and staff. Many experienced security threats from their “protectors” when attempting to gain themselves more independence.<sup>12</sup>

## Protection and capacity building

Protection by presence can be exercised by all types of actors. The Temporary International Presence in Hebron (TIPH) is one example where external observers protected vulnerable groups and individuals by their presence and constant dialogue with authorities. Such observers remain in a vulnerable position as they depend on acceptance for their presence. That might require information on violations to be channelled inwards rather than exposed in public. International presence can in itself provide protection if it leads conflict actors to refrain from using violence in fear of being exposed or held accountable for their actions. A reduced conflict level will be an advantage and can provide space for organisations facilitation dialogue or who aim to negotiate the conflict(s).

The International Committee of the Red Cross (ICRC) assume such a role in many conflict areas and fragile states, with a presence and dialogue with the parties mandated in the Geneva Conventions of 1949. ICRC offer humanitarian protection and assistance for victims of armed conflict and other situations of violence and promotes respect for international humanitarian law. Their neutrality allows their white cars to cross frontlines and engage in a rights-based dialogue with the parties to the conflict. It can be labelled “silent diplomacy”, and less documentation is available of impact on protection and contributions to conflict resolution. However, anecdotal evidence points to opening of channels to and between

armed actors that has “limiting the barbarity of war” as stated in the Geneva Convention.<sup>13</sup>

One can argue that ICRC and their national Red Cross or Red Crescent societies contributes to capacity and knowledge building through informing the public and parties to the conflict on humanitarian law and the principles of protecting civilians, avoiding civilian hospitals and schools to be targeted. There are, however, a multitude of other organisations and activities more directly engaging with and increasing the capacity for conflict resolution and building knowledge and skills in communities affected by conflicts. Such activities can be support for establishment and training of national or local civil society groups aiming to address and reduce the harmful impacts of violent conflicts. One example is the Afghan Peace Training and Research Organisation (PTRO) that for more than two decades have provided “training and networking to local shuras, provincial peace councils, local civil society organisations, women’s assemblies, youth groups, religious scholars and national and sub-national authorities”, aimed of empowering them to address and prevent conflicts in their communities.<sup>14</sup>

Other organisations aim in shaping opinions and attitudes with peace education programmes, targeting pupils and university students. The US Institute of Peace (USIP) is one example. They have since 2014 worked with universities across Afghanistan to develop a curriculum-based peacebuilding and conflict resolution course, where the students are

encouraged to establish “Peace Clubs” to utilize their knowledge. There were moreover developed a peace education curriculum for grades 7-12, aimed to be applied in all schools, where until now 1 800 teachers have undergone training.<sup>15</sup>

Another strategy, often with a low profile, is to work towards and with groups that hold influence and shapes opinions and attitudes in their communities, as religious leaders, and informal community leaders. Other organisations provide training and mentoring of highly respected professionals with access to both women and men in their communities, as midwives and other health professionals.

These different types of conflict prevention and resolution activities can address all leadership levels identified in Lederarch’s pyramid model, but are typically uncoordinated on a national level, with different initiatives remaining unaware of each other or in competition over external funding. In a violent conflict such engagements, and those of investigative journalism, might come at a high cost and result in threats or even assassinations of those speaking up against conflicting parties or powerful individuals.

Generation of conflicts and provoking divisions among groups within a country or a community is a frequently used strategy applied by conflict entrepreneurs to mobilise for their own course and identify “the others” as the collective enemy. Nationality, religion, ethnicity, gender, sexual orientations are frequently used to divide and set communities and groups up against each other. Utilizing a thorough conflict analysis can help detect such intended divides and how they are narrated and maintained over time. Such intended divisions must be taking into account when planning aid interventions or initiatives to negotiate a conflict as

it provides opportunities to utilize external presence and aid to reunite divided communities and re-establish a degree of trust and possibly build resilience against further divisions.

During the early 1990s Afghanistan was in the middle of a civil war, Kabul was divided by the mujahedeen parties fighting for power along ethnic and religious lines forcing “their” populations to relocate to areas under their control. A massacre of the Shia minority, the *hazaras*, had demonstrated the militant parties’ willingness to use blunt violence to force others out. The Kabul population remained divided and confined in their locations, with a fear of each other and for themselves being targeted as a revenge. In such situations aid agencies might end up accepting such artificial divides when selecting areas for aid distribution, often due to security concern for their own staff and operations, but thereby maintaining conflict generated divisions.

But there are alternatives. One example was how Kabul based staff of the United Nations Centre for Human Settlements (UNCHS - Habitat) designed their aid delivery to help reunite and rebuild trust. Planning for distribution of emergency assistance to a displaced population they selected a neutral location where populations from different groups had access. On the date announced for aid delivery UNCHS staff was in place on the site and excused themselves to the different groups that some logistical challenges might cause a slight delay in distribution. But they encouraged them to remain on site. It dragged on, UNCHS staff prepared tea and served the former neighbours that had gathered to receive aid. These gradually set aside their mistrust and reengaged across the forced conflict lines, checking out what had happened to old friends and gradually re-established a degree of communal

trust. When aid finally was distributed the forced separation and conflict narrative had been challenged and a degree of communal trust had been rebuilt.

While repeated in other locations the strategy was not announced to avoid revenge from the militant groups that wished to maintain their control of the population. It was as such a very effective “bottom up” approach, with an emphasis on challenging the conflict narrative set by the parties to the conflict.<sup>16</sup>

## Active dialogue and negotiations

Conflicts can prevent opposing armed groups from making contact, enter dialogue and formal negotiations, even with the examples mentioned above or where third parties attempt to bring parties together. Governments might be reluctant to engage in talks, as it can be regarded as acknowledging an opposing party, or in fear of losing their ability to set the terms of the negotiations. Even with such restraints there are usually opportunities for third party actors to help establish and facilitate dialogue.

One example is from the Aceh province of Indonesia, where the Free Ached Movement (GAM) since 1975 had fought the Indonesian government to establish an independent state. Different attempts for negotiations had failed, but with a new Indonesian President in 1999 came signals of political willingness to engage despite significant opposition from the Indonesian army. This required a necessity to generate a space and opportunity for the parties to establish formal contact. The Swiss based Centre for Humanitarian Dialogue (CHD)<sup>17</sup> had engaged themselves in the conflict and paired in early 2000 up with the University of York, UK, to

11 See <https://www.cdacollaborative.org/what-we-do/conflict-sensitivity/> , visited 8.12.2020

12 Barakat et.al. (1994) NGOs and Peace-building in Afghanistan: Workshop Report, 3-7 April 1994. University of York, York

13 For details see <https://www.icrc.org/en/doc/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm> , visited 8.12.2020

14 For details see <http://www.ptro.org.af/home.html> , visited 9.12.2020

15 For details see <https://www.usip.org/programs/peace-education-afghanistan> , visited 9.12.2020

16 Barakat et.a. (1996) Urban Rehabilitation in Kabul. Bridging between Communities and Institutions. University of York, York

17 For more details see <https://www.hdcentre.org/activities/aceh-indonesia/> , visited 9.12.2020

undertake a field-study of the war displaced populations in Aceh and their need for humanitarian assistance.

The report, despite the rather low number of displaced persons, led on 12 May 2000 to the signing of a “Joint Understanding for a Humanitarian Pause” in hostilities to ensure aid delivery. This included establishment of a joint committee between the Government of Indonesia and GAM, facilitated by CHD, to oversee the agreement.<sup>18</sup> In reality, this set the stage for direct negotiations in Switzerland between the two parties, leading to a Cessation of Hostilities Agreement (COHA) in 2002. The negotiated peace-agreement remained short-lived as both sides reengaged in military operations. However, after a devastating tsunami hit the region and destroyed the Aceh capitol, Banda Aceh declared GAM a ceasefire on 28 December 2004 to allow aid in. The Indonesian Government followed by lifting their restrictions on aid delivery. The concessions from both sides led to resumption of the peace negotiations, now led by the former Finnish president Martti Ahtisaari and his Crisis Management Initiative (CMI). The initial humanitarian pause and establishment of a space for dialogue led to the signing of a (lasting) peace agreement on 16 July 2005, thereby ending more than 30 years of violent conflict.

The example above illustrates the point that third party actors can directly engage with and facilitate peace negotiations, though often starting as a “track II” activity to initiate and complement peace negotiations. Cyprus can stand as one such example, where the Peace Research Institute in Oslo (PRIO) through research and facilitation added to UN led peace negotiations between the internationally recognised Republic of Cyprus and the Turkish

only recognised Turkish Republic of Northern Cyprus. The starting point was a PRIO facilitated dialogue forum with politicians and civil society representatives from the two sides, hosted at the UN administrated Ledra Palace Hotel located in a UN monitored buffer zone. Although informal, these talks included influential individuals that later came to play significant roles in the formal negotiation teams and in political position on both sides. With the establishment of the PRIO Cyprus Centre, the research on the Cyprus conflict, activities and engagement with bi-communal organisations and initiatives could increase.<sup>19</sup> One such organisation was the Association for Historical Dialogue and Research (AHDR). They established in 2011 a “House of Cooperation” in the buffer zone to maintain a permanent and creative education centre and meeting place for the divided communities.<sup>20</sup>

The UN peace keeping force UNFICYP continue to monitor the buffer zone and UN have restarted their negotiations for a United Cyprus Republic several times after a majority of Greek Cypriots rejected the Annan Plan through a referendum in April 2004. The latest initiative to resume talks might be hampered by a recent call from Turkish President Erdogan for a two-state solution rather than unification. This might again shift dialogues and negotiations from the UN and back to third party actors, while the UN peace keeping operation continue to separate the two communities.

### Lessons learnt

The above cited examples demonstrate how different types of third-party actors can initiate or get involved in conflict resolution. However, insecurity, violence and human rights violations will influence on their ability to engage

and the type of activity they – at a given time – engage in. Some types of dialogue and negotiations are better catered for by external and international organisations and individuals, often the more high-level ones identified by Lederach. While in local conflicts national or local mediators might hold larger trust and can therefore better secure a buy-in for negotiation processes. In either case the negotiating party must be able to gain trust among the parties and establish a degree of authority and mandate for the negotiation process.

The cases illustrate moreover that conflicts and negotiations may last for decades, some aren’t resolved by one actor alone and it is evident that signing of a peace agreement won’t end all violent conflicts in a given country or region. This underlines the need from the very start to build and develop local capacities for conflict resolution and negotiations, which in itself is an investment in preventing the emerge of new conflicts. We must keep in mind that conflict actors make deliberate and to them rational choices. Many will resist a solution where they lose (too much) power and influence.

Although the majority of leaders and soldiers are men, they cannot have exclusivity to the negotiations and the preferred solutions. Conflicts are gendered, which must be reflected when planning for who to include in the different levels of discussions and in selection of topics for negotiations.

The major lesson though, is that there is seldom a “quick peace”. Ending violent conflicts requires investments, building of knowledge and skills and maintaining a long-time horizon. That, however, needs to be paired with the ability to seize opportunities arising from changes in political leaderships, shifts in regional or international power balances or, even, a natural disaster ■

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18 The full agreement is available here <https://www.hdcentre.org/wp-content/uploads/2016/10/Joint-Understanding-for-a-Humanitarian-Pause-12-May-2000.pdf>, visited 9.12.2020

19 For details on publications and activities see <https://cyprus.prio.org>, visited 10.12.2020

20 For details about the house and the activities see <http://www.home4cooperation.info>, visited 10.12.2020

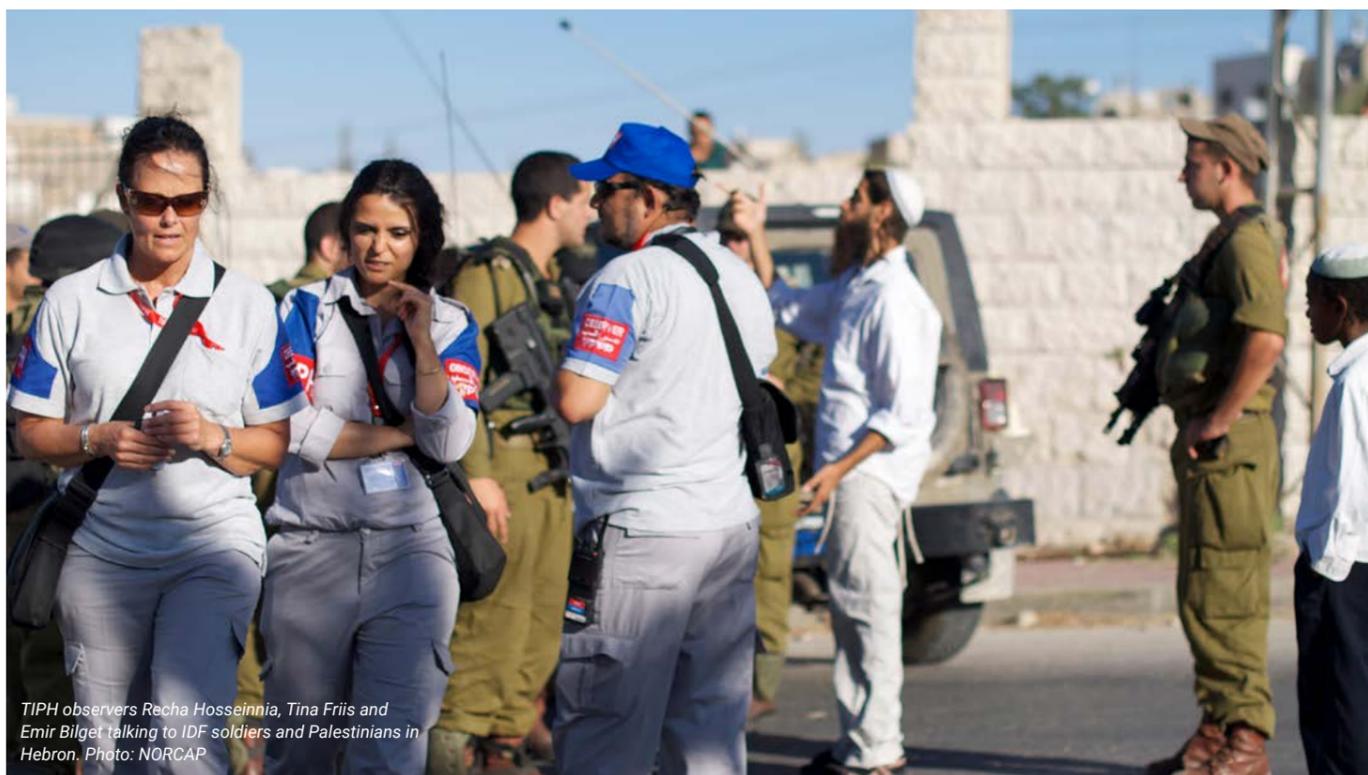
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## The Impact of Third-Party Mechanisms

### Lessons Learned from the Establishment of the Temporary International Presence in Hebron (TIPH)



**Hilde Henriksen Waage**  
Professor of History, UiO, and  
Research Professor, PRIO



TIPH observers Recha Hosseinnia, Tina Friis and Emir Bilget talking to IDF soldiers and Palestinians in Hebron. Photo: NORCAP

On 13 September 1993, the Oslo agreement was signed on the White House lawn in Washington, DC. The world witnessed an extraordinary breakthrough in the apparently insoluble Middle East conflict. Through a series of secret talks held in and around Oslo, representatives of the Israeli and Palestinian leaderships had managed to agree on a Declaration of Principles that paved the way for the establishment of the Palestinian Authority (PA) and mutual recognition between Israel and the PLO. A major turning point seemed to have been reached in Israeli-Palestinian relations.<sup>1</sup>

Norway had made a decisive contribution to this, one of the most serious attempts at making peace in the strife-torn Middle Eastern region since May 1948, when the state of Israel was born. Countless previous efforts by individuals, organizations, and large and small states to open up direct contacts between Israel and the PLO had all failed. And then, through secret diplomacy and by playing a role far out of proportion to the country's size, Norway had succeeded where all others had failed, managing to get the old enemies to agree both to a gradual Israeli withdrawal from some of the Occupied Territories and to local Palestinian self-determination.

However, implementing the Oslo Accord – an interim agreement for

an interim period – turned out to be a difficult task indeed. Further negotiations were approaching, negotiations that would determine the fate of the agreement. As so often before, the devil was in the details. The agreement was to initiate a productive political process, but nothing was said about the final outcome. The Norwegians continued to work tirelessly backstage to keep up the momentum and prevent the process from stagnating. What kind of third-party role did Norway play in this implementing phase? What lessons can be learned from the establishment of the two TIPH missions? What had been Norway's contribution? And had it been important?

The rifts between the Israelis and the Palestinians could not always be healed by the Oslo spirit, creative formulations and cosy settings. Hard facts and realities had to be sorted out and difficult problems solved. In principle, after the signing of the Oslo Agreement, the Israelis and the Palestinians could freely communicate directly with each other and do their negotiations themselves. But the Norwegians were still at hand, ready to help if the Israelis and Palestinians wanted them to. Over and over again, the peace process ran into trouble. Over and over again, the Norwegians were needed to work backstage in order to 'navigate through ... crisis'.<sup>2</sup> The Norwegians used every

opportunity to get things moving and to clear as many obstacles out of the way as possible. Within the Norwegian peace team, there was a firm belief that there was no alternative to the Oslo process. No doubt, Norway still had a role to play.<sup>3</sup>

#### TIPH I

In 25 February 1994, the most serious crisis of the Oslo process at that stage occurred: Dr Baruch Goldstein – a US-born Israeli settler and a member of the racist party Kach – opened fire on Palestinians praying at the Tomb of the Patriarchs in Hebron. Twenty-nine people were killed before Goldstein himself was beaten to death.<sup>4</sup>

International condemnation was strong. The peace process was rudely shaken. The PLO angrily suspended its participation in the negotiations and demanded a removal of the militant settlers from Hebron.<sup>5</sup> Israeli negotiators, the US peace team and the main Norwegian negotiator Terje Rød-Larsen tried to persuade PLO leader Yasir Arafat to resume the talks. They discovered that he wanted to, but that he was under tremendous pressure from most Palestinians to take firm action. This time, 'business as usual' was no alternative. Therefore, 'Egypt, the United States and Norway tried to "give" something to Arafat in order to get him back to the negotiating table'.<sup>6</sup>

1 This chapter is based on extensive research, see Hilde Henriksen Waage, *Peacemaking Is a Risky Business: Norway's role in the Peace Process in the Middle East, 1993–96* (Oslo: International Peace Research Institute Oslo, 2004); see also *Norwegians? Who needs Norwegians? Explaining the Oslo Back Channel: Norway's Political Past in the Middle East* (Oslo: Utenriksdepartementet, evalueringsrapport nr. 9, 2000); 'Between a Strong State and a Weak Belligerent', *Journal of Palestine Studies*, 34: 4, 2000; 'The "Minnow" and the "Whale": Norway and the United States in the Peace Process in the Middle East', *British Journal of Middle Eastern Studies*, 34: 2, 2007; 'Et norsk mysterium: De forsvunne dokumentene fra fredsprosessen i Midtøsten', *Historisk tidsskrift*, 87:2, 2007; 'Postscript to Oslo: the Mystery of Norway's Missing Files', *Journal of Palestine Studies*, 38:1, 2008; 'Fredspolitik i Midtøsten' i Even Lange, Helge Ø. Pharo & Øyvind Østerud (red.): *Vendepunkter i norsk utenrikspolitikk. Nye internasjonale vilkår etter den kalde krigen* (Oslo: UniPub, 2009); *Konflikt og stormaktspolitikk i Midtøsten* (Kristiansand: Cappelen Damm Akademisk, 2013).

2 Uri Savir, *The Process: 1,100 Days That Changed the Middle East* (New York: Random House, 1998), 123.

3 UD 25. 11/19å, 6, memorandum of 13 January 1994, Ræder: 'Ønske fra partene om at det permanent opprettholdes en norsk "bak-kanal"; see also 25.11/19å, 6, Cairo to Foreign Ministry, 14 January 1994; *Aftenposten*, 27 and 28 February 1994; *Arbeiderbladet*, 26 February 1994.

4 Avi Shlaim, *The Iron Wall: Israel and the Arab World* (New York: Norton, 2001), 524–525; Mohamed Heikal, *Secret Channels: The Inside Story of Arab-Israeli Peace Negotiations* (London: HarperCollins, 1996), 492–507; Hanan Ashrawi, *This Side of Peace: A Personal Account* (New York: Shimon & Schuster, 1995), 282–286; Savir, *The Process*, 121–143.

5 Shlaim, *The Iron Wall*, 524–525; Heikal, *Secret Channels*, 492–507; Ashrawi, *This Side of Peace*, 282–286; Savir, *The Process*, 121–134.

6 UD 25.11/19å, 7, memorandum of 5 March 1994, Ræder: 'Egypt, USA og Norge jobber for å "gi" Arafat noe som fører til at PLO

'[D]etermined to salvage what he could', Terje Rød-Larsen – with his usual optimism – stayed put and continued to discuss ways out of the crisis.<sup>7</sup> He worked with Abu Mazen (Mahmoud Abbas), Arafat's second-in-command; he stayed in touch with Israel's chief negotiator Uri Savir and the other Israelis; and he composed a working paper addressing the problems in Hebron. 'Larsen 1' – basically containing the demands of the Palestinians – suggested moving the Jewish settlers from Hebron to a nearby settlement, which was completely unfeasible for Israel. Arafat also demanded a large and armed observer force, representing as many participating countries as possible. 'Larsen 2' – the views of the Israelis – was more or less business as usual: no evacuation of the settlers, but with an opening for a limited international presence and an unarmed municipal Palestinian police force. To accept any kind of international presence in Hebron was seen as very controversial in Israel. However, when a 'frazzled' Terje Rød-Larsen wanted to continue to mediate and to write up a compromise document entitled 'Larsen 3', Uri Savir intervened. Savir told him frankly that '[f]rom day one in Oslo, we had been firmly against any third-party intervention in the substantive side of the negotiations ... Thus Terje, who always honoured the wishes of the sides, abandoned his attempt to compose a "Larsen 3" document as a compromise'.<sup>8</sup>

On this occasion, Terje Rød-Larsen was by no means acting in accordance

with the wishes of both sides. He was honouring the wishes of Israel. The Palestinians wanted and needed help to solve the Hebron crisis.<sup>9</sup> But they did not get this help from Norway. Foreign Minister Bjørn Tore Godal agreed with Rød-Larsen. Norway could only intervene if both parties wanted Norway to do so, and Israel did not.<sup>10</sup>

The idea of a temporary international presence was not new. In fact, the Declaration of Principles had stated that such a presence could be established – if the Israelis and the Palestinians agreed on this.<sup>11</sup> Already in November 1993, then Foreign Minister Johan Jørgen Holst had called for Norwegian preparations for such an operation. He had assumed that Israel would accept no UN involvement, and that Norway might be requested to contribute at some stage. The PLO had no familiarity with this type of task. Norway could use its experience with peacekeeping operations to brief and consult with the PLO. However, a temporary international presence had by no means been a 'hot issue' during the negotiations in the late autumn of 1993 and the beginning of winter 1994. Israel was opposed to such a presence, and for both parties there were other, far more pressing issues on the agenda. It was up to the Israelis and the Palestinians to agree and decide on this matter. Norway should be careful not to intrude, but should be prepared, concluded Holst.<sup>12</sup>

The Hebron massacre brutally reintroduced the issue. An international presence, as permitted under the

Declaration of Principles, would be essential to achieve security for the population, argued the Palestinians. However, an international presence required a joint understanding between the parties, Godal argued. Norway would respond positively if the parties agreed to such a presence, and it was also willing to participate. But, probably to the disappointment of the Palestinians, Norway would not put any pressure on the Israeli government. The two parties had to reach an agreement themselves, nothing would or could be done unless the Israelis changed their minds. This was also how the United States judged the situation, Godal pointed out. Once again, Norway would do nothing against the wishes of Israel and the United States.<sup>13</sup>

On 18 March 1994, the UN Security Council passed Resolution 904, condemning the Hebron massacre and calling for the presence of international observers in the occupied territories on a temporary basis. The PLO wanted a hundred Palestinian policemen in Hebron as well as Norwegian observers. On 31 March 1994, the Israeli and Palestinian delegations agreed that the international presence in Hebron should consist of 90 Norwegians, 35 Danes and 35 Italians, acting solely as observers.<sup>14</sup>

Norway was asked to field the operation. Clearly, Norway was not only called upon to navigate through political crisis, but was also the trusted country, the one that could be given complicated and difficult tasks –

such as being in charge of stabilizing the tense situation in Hebron. Such missions required trust from Israelis as well as Palestinians. Norway had been secretly informed before the joint Israeli–Palestinian approach was received and had immediately started preparations.<sup>15</sup>

But trust was not all that was required. In order to accomplish such an operation speedily, willingness and capability were just as important. There could be no delays and no slow-moving bureaucracies. Decisions had to be taken more or less on the spot, and money had to be provided instantly. There were few small, rich, eager, trusted and non-bureaucratic countries in the world. For this particular context, Norway seemed to be the only one.<sup>16</sup> The Norwegian government immediately allocated NOK 20 million to cover Norway's contribution. On 8 May 1994, the Temporary International Presence in Hebron (TIPH) was established on the ground.<sup>17</sup>

Unfortunately, peacemaking activities are not always as successful as the goodwill behind them might merit. In the case of TIPH, the results were at best meagre. TIPH's mandate was to monitor and report on the situation in Hebron. Its presence was meant to promote stability and to increase the security of the Palestinian population. The aim was to restore normal life in the city, including reopening the central part of the city, the wholesale market

and the Ibrahim mosque, as well as dismantling obstacles and closures. The observers were unarmed and had no powers of arrest or prosecution.<sup>18</sup>

This mandate was the product of tough negotiations. Israel had vetoed all but very limited powers for the observer force. As a consequence of TIPH's vague and powerless mandate, there was considerable uncertainty over what the observers should actually do. On the Palestinian side, expectations were unrealistically high. It was therefore almost inevitable that both Palestinian and foreign analysts came to judge the TIPH operation as a farce: 'TIPH was empowered, as one Palestinian put it, "to observe occupation".'<sup>19</sup>

After only one and a half months, halfway through the three-month engagement, the three TIPH countries agreed that TIPH's mandate had not been fulfilled. The Israeli authorities and the IDF had shown little interest in normalizing the situation. Norway, Denmark and Italy were seriously concerned about the 'significant restrictions on the freedom of movement for the Palestinian inhabitants'. In an approach to the Israeli government, they urged 'Israel to take the necessary steps to normalize the situation in Hebron so that the TIPH can withdraw after "mission completed" rather than after "mission terminated, but not fulfilled"'.<sup>20</sup> However, this demarche had little or

no impact on the Israeli assessment of the situation. According to the Israeli Ministry of Foreign Affairs, 'the Israeli judgement of TIPH was positive, although such international presence was of no interest to Israel'.<sup>21</sup>

After three months, the TIPH mission was over. Norway, Denmark and Italy were prepared to continue, but this would have required a new, joint request from the parties. Only the Palestinians made such a request.<sup>22</sup> The Israelis – and the Israel Defence Forces (IDF) in particular – were completely uninterested in the TIPH mission. They insisted on getting rid of the observer force.<sup>23</sup> TIPH, for its part, felt undermined by the IDF and frustrated about its inability to get the Israeli authorities to change their attitude. Israel had never asked for the TIPH mission and behaved accordingly. The IDF in Hebron displayed a complete lack of understanding and acknowledgement of the agreement that Israel had signed. All the same, one positive result of the TIPH mission was a partial improvement in the behaviour of IDF soldiers. Little violence occurred during the TIPH I period. In fact, not one single Israeli or Palestinian had been killed inside TIPH's area during May–August 1994. The TIPH observers 'in their white coats and their notebooks have contributed to a calmer atmosphere'. The mission at least had had 'an impact on "the feeling of security" among the Palestinians in Hebron

kan gjenoppta forhandlingene i Washington.'

7 Savir, *The Process*, 128.

8 Savir, *The Process*, 129; see also Brynjar Lia, *Implementing the Oslo Peace Accords: A Case Study of the Palestinian–Israeli Peace Process and International Assistance for the Enhancement of Security* (Oslo: FFI, 1998), 52–54.

9 UD 25.11/19å, 7, Foreign Ministry to various embassies, 7 March 1994.

10 Savir, *The Process*, 128–129; see also Lia *Implementing the Oslo Peace Accords*, 52–54.

11 *Declarations of Principles*, Annex II, 3d.

12 UD 25.11/19æ, 1, memorandum of 16 November 1993, Holst to Political Department; memorandum of 3 December 1993, Skogmo.

13 UD 25.11/19ø, 11, UN delegation to Foreign Ministry, 3 March 1994; 25.11/19å, 7, Foreign Ministry to various embassies, 7 March 1994; *Aftenposten*, 7 March 1994.

14 Shlaim, *The Iron Wall*, 524–525; Heikal, *Secret Channels*, 504–505; Ashrawi, *This Side of Peace*, 283–284; Savir, *The Process*, 121–143.

15 UD 25.11/19æ, 1, memorandum of 24 March 1994, Arne Gjermundsen (Higher Executive Officer); Foreign Ministry to Tel Aviv, 29 March 1994; memorandum of 29 March 1994, Ræder; Savir/Shaaht to Rød-Larsen 31 March 1994.

16 UD 25. 11/19æ, 1, memorandum of 29 March 1994, Ræder.

17 UD 25.11/19æ, 1, Foreign Ministry to Cairo, Tel Aviv, Copenhagen and Rome, 1 April 1994; Rød-Larsen (AHL) to Savir/Shaaht, 2 April 1994; memorandum of 28 April 1994, Lehne; 25.11/19æ, 2, Tel Aviv to Foreign Ministry, 9 May 1994; memorandum of 11 May 1994, Odd Wibe (Ambassador, TIPH coordinator); 25.11/19ø, 11, memorandum of 2 May 1994, Ræder; 308.882-1, 1, Foreign Ministry to Tel Aviv, 1 July 1994.

18 UD 25. 11/19æ, 1, Savir/Shaaht to Rød-Larsen, 31 March 1994; 308.882-1, 2, memorandum of 24 August 1995, Hansen.

19 Lia, *Implementing the Oslo Peace Accords*, 60; see also 54–60.

20 UD 308.882-1, 1, Foreign Ministry to Tel Aviv, 1 July 1994.

21 UD 308.882-1, 1, Tel Aviv to Foreign Ministry 12 July 1994: '[Israel] vurderte TIPHs tilstedeværelse positivt, selv i lys av at man i utgangspunktet ikke var interessert i en slik tilstedeværelse.'

22 UD 308.882-1, 1, Mission of PLO in Norway to Foreign Ministry, 15 July 1994; see also 308.882-1, 2, Mission of PLO in Norway to Foreign Ministry, 17 August 1994.

23 Quoted after Lia, *Implementing the Oslo Peace Accords*, 60.

city'.<sup>24</sup> On the other hand, efforts at reconciliation had been unsuccessful. The main issues such as roadblocks and the closure and reopening of the central part of the city, the wholesale market and the Ibrahim mosque had not been solved.<sup>25</sup>

Within the Norwegian foreign ministry, the short TIPH operation was regarded as a success. The meagre results, which had cost NOK 12 million, could not properly justify such an assessment.<sup>26</sup> But the TIPH mission had been a useful instrument. For the Palestinian leaders, the TIPH agreement had been a face-saving gesture that helped bring the mired peace process back on track. This was the result that mattered. The Israelis and the Palestinians had resumed their places at the negotiating table, and Norway had helped navigate a course out of the Hebron crisis. Once again, though, the TIPH operation had started and ended on Israel's premises. Norway could not or would not put pressure on Israel.

## TIPH II

On 28 September 1995, once again on the White House lawn, Israeli Prime Minister Yitzhak Rabin and Arafat signed the Interim Agreement, also called Oslo II. The negotiating process

that led to this had been long, hard and complex. Israel agreed to withdraw from six Palestinian cities on the West Bank (except Hebron, which was later divided into Palestinian-controlled and Israeli-controlled areas). The cities of Ramallah, Bethlehem, Qalqilya, Jenin, Tulkarem and Nablus were to be handed over to the PA. These cities constituted Area A, approximately 2.7 percent of the West Bank, with around 36 percent of its population.<sup>27</sup> Israel also agreed to redeploy from 465 villages. In these parts – designated Area B – the Palestinian police would be responsible for public order, while Israel would retain 'overriding responsibility for security'.<sup>28</sup> Area B represented approximately 25 percent of the West Bank, with around 60 percent of the Palestinian population. The remaining area – the largely undefined Area C, consisting of Jewish settlements, military locations and roads – remained under exclusive Israeli control.<sup>29</sup>

There was little doubt that the Interim Agreement changed the situation on the ground to a significant degree and made the fruits of the peace process more concretely visible to Palestinians and Israelis alike. In particular, the hated Israeli Army would no longer be present inside several Palestinian cities, reducing the daily frictions between the population and the

occupying forces.

The Interim Agreement also stated that there 'will be a Temporary International Presence in Hebron (TIPH)'. The details were not fully worked out, but both sides were to 'agree on the modalities of the TIPH, including the number of its members and its area of operation'.<sup>30</sup> This agreement, reached on 9 May 1996, asked 'Norway to provide 50–60 persons, citizens of Norway, as TIPH personnel'. The modalities of the operation were to be 'established by Norway with the agreement of the two sides'.<sup>31</sup>

The TIPH was to have no military or police functions. The mission should 'assist in promoting stability and in monitoring and reporting the efforts to maintain normal life in the city of Hebron', thereby 'creating a feeling of security among Palestinians'. However, unlike the previous operation in 1994, the new TIPH mission was linked directly to the pending Israeli withdrawal from Hebron. Already in late August 1995 – before the Oslo II agreement had been signed – Norwegian Foreign Minister Godal had agreed that Norway would participate if such a request was received. Already then, the ministry set in motion administrative and technical preparations in order to be ready for such a task.<sup>32</sup>

However, the TIPH issue failed to move forward. Negotiations proceeded slowly. Israel suspended all negotiations owing to a wave of terrorist attacks carried out by Hamas in February and March 1996.<sup>33</sup> On 19 April, Norway was asked to assume responsibility as leader and coordinator of a new TIPH. The Norwegians agreed, but stressed that 'Norway could not agree to remain alone in Hebron indefinitely without a redeployment of the Israeli forces'.<sup>34</sup>

Negotiations between the Israelis and the Palestinians regarding a new TIPH began in late May, before the upcoming election in Israel, but quickly ran into trouble.<sup>35</sup> And to make matters worse, 29 May 1996, the Israeli Labour Party lost the election. The Likud Party under the lead of Benjamin Netanyahu formed a new government on an anti-Oslo platform. With regard to Hebron, the new Likud government insisted on renegotiating the agreement with the PA. It was clear that no new TIPH would be in place in the near future.<sup>36</sup>

Since no substantial negotiations took place between Israelis and

Palestinians, Norway stayed in Hebron alone. The Hebron agreement of 9 May 1996 had committed Norway 'to function for a period of three months or until such earlier date on which this agreement is superseded by a new agreement'.<sup>37</sup> However, there were no negotiations pointing towards a new TIPH, and thus Norway was prepared to end the operation on 12 August 1996 when the original mandate expired.<sup>38</sup>

On 11 August 1996, Norway accepted an extension of one month.<sup>39</sup> Negotiations between the parties took place occasionally through the autumn of 1996, in close cooperation with the United States. Norway emphasized time and again that the 'Norwegian TIPH' was supposed to be an advance team, preparing for a multinational operation to be led by Norway. A continued 'Norwegian TIPH' was problematic. In addition, a solution to the Hebron redeployment was a decisive issue for the peace process as a whole.<sup>40</sup>

The three weeks or so estimated in May 1996 finally came to an end in

January 1997, when Israel and the PA finally signed the Hebron Protocol. According to the agreement, Hebron was divided into two types of areas – H1 and H2 – similar to Areas A and B in the Interim Agreement. Israel retained control over the approximately 400 Israeli settlers in the heart of the city, while some 15,000 Palestinians remained under Israeli security control. Nevertheless, the Hebron Protocol was seen as a major breakthrough in the peace process, although it was not. In addition, a new and expanded TIPH mission was set up, including 120–140 observers from Italy, Switzerland, Turkey, Denmark, Sweden and Norway. These TIPH observers were to serve as a 'low-profile conflict-moderator in one of the potentially most volatile places in the Occupied Territories'.<sup>41</sup> The establishment of the two TIPH missions had contributed to moving the difficult peace process forward.<sup>42</sup>

By January 1997, the TIPH agreement of May 1996 had been extended five times. In the end, the extension letters were practically copied from one month to the next.<sup>43</sup> Before it was even properly established, the

24 Ibid.

25 UD 308.882-1, 2, memorandum of 24 August 1995, Hansen; see also 308.882-1, 2, memorandum of 9 August 1994, Ræder.

26 UD 308.80, 2, Tel Aviv to Foreign Ministry, 26 August 1994, minutes from meeting between Godal and Arafat, 19 August 1994; 308.882-1, 2, Press release, 8 August 1994; memorandum of 9 August 1994, Ræder; *Aftenposten*, 9 and 10 August 1994.

27 Haim Gvirtzman, 'Maps of Israeli Interests in Judea and Samaria: Determining the Extent of the Additional Withdrawals', Mideast Security and Policy Studies no. 34 (Ramat Gan: Begin-Sadat Center for Strategic Studies, Bar-Ilan University, 1997).

28 *Interim Agreement*, Article XIII, 2a.

29 Rex Brynen, *A Very Political Economy: Peacebuilding and Foreign Aid in the West Bank and Gaza* (Washington, DC: United States Institute of Peace Press, 2000), 57–63; Shlaim, *The Iron Wall*, 527–530; William B. Quandt, *Peace Process: American Diplomacy and the Arab–Israeli Conflict Since 1967* (Washington, DC: Brookings Institution/Berkeley, CA: University of California Press, 2000), 333–338; Savir, *The Process*, 239–244; Lia, *Implementing the Oslo Peace Accords*, 33–37.

30 *Interim Agreement*, Annex 1, Article VII.

31 See 'Agreement on the Temporary International Presence in the City of Hebron 9 May 1996', see also UD 308.882, 96/00265-52, Foreign Ministry to Tel Aviv, 13 May 1996, Egeland to Singer/Erakat, 13 May 1996, enclosed. This exchange of letters confirmed the Norwegian participation in the TIPH.

32 UD 308.87, 9, Tel Aviv to Foreign Ministry, 21 July 1995; memorandum of 11 August 1995, Hansen; Tel Aviv to Foreign Ministry, 11, 12, 20, 25 and 28 August 1995; 308.882-1, 2, memorandum of 24 August 1995, Hansen; 308.881, 95/06781-4, memorandum of 20 October 1995, Hansen; 308.80, 95/00915-105, minutes from meeting between Godal and Arafat, 29 September 1995; see also 302.77/416-1, UN delegation to Foreign Ministry, 2 October 1995, minutes from meeting between Godal and Peres, 29 September 1995.

33 UD 308.882, 96/00265-2, Gaza to Foreign Ministry, 4 March 1996.

34 UD 308.882, 96/00265-26, Wibe to Foreign Ministry, 10 May 1996: 'Norge [kan vanskelig] akseptere å bli stående alene i Hebron på ubestemt tid uten at en redeploiering av IDF finner sted.' See also 308.882, 96/00265-3, Tel Aviv to Foreign Ministry, 20 April 1996; 308.882, 96/00265-4, Gaza to Foreign Ministry, 21 April 1996; 308.882, 96/00265-5-8, Foreign Ministry to Canberra, Ankara, Rome and Ottawa, 22 April 1996; 308.882, 96/00265-13, Tel Aviv to Foreign Ministry, 24 April 1996; 308.882, 96/00265-16, Tel Aviv to Foreign Ministry, 26 April 1996.

35 UD 308.882, 96/00265-34, Wibe to Foreign Ministry, 21 May 1996; 308.882, 96/00265-59, Tel Aviv to Foreign Ministry, 20 May 1996.

36 UD 307.30/416, 96/05664-20, Tel Aviv to Foreign Ministry, 2 June 1996; 307.30/416, 96/04405-8, Tel Aviv to Foreign Ministry, 15 June 1996; 96/04405-9, Tel Aviv to Foreign Ministry, 18 June 1996; 96/04405-11, Tel Aviv to Foreign Ministry, 19 June 1996; Shlaim, *The Iron Wall*, 551–563; Savir, *The Process*, 265–313; Quandt, *Peace Process*, 336–338.

37 UD 308.882, 96/00265-26, TIPH to Foreign Ministry, 10 May 1996, 'Agreement on the Temporary International Presence in the City of Hebron', signed by Singer/Erakat, 9 May 1996, paragraph 11.

38 UD 308.881, 96/10179-69-71, Foreign Ministry to Tel Aviv, TIPH and the Norwegian Refugee Council, 23 July 1996.

39 UD 308.882, 96/00265-131-133, Foreign Ministry to Damascus, Cairo and Amman, 13 August 1996, Bentsur/Erakat to Egeland, 11 August 1996, with the reply from Egeland to Bentsur/Erakat, 12 August 1996, enclosed.

40 UD 308.80, 96/12679-564, Tel Aviv to Foreign Ministry, 16 October 1996; 96/12679-569, Tel Aviv to Foreign Ministry, 21 October 1996; 96/12679-573, Tel Aviv to Foreign Ministry, 24 October 1996; 96/12679-579, Tel Aviv to Foreign Ministry, 28 October 1996; 96/12679-606, Tel Aviv to Foreign Ministry, 5 November 1996; 96/12679-621, Tel Aviv to Foreign Ministry, 8 November 1996; 96/12679-735, Tel Aviv to Foreign Ministry, 2 December 1996; 96/12679-737, Gaza to Foreign Ministry, 2 December 1996; 96/12679-738, Tel Aviv to Foreign Ministry, 3 December 1996; 96/12679-911, Tel Aviv to Foreign Ministry, 24 December 1996; 96/12679-992, memorandum of 17 December 1996, Hansen.

41 Lia, *Implementing the Oslo Peace Accords*, 65.

42 Lia, *Implementing the Oslo Peace Accords*, 62–66; Brynen, *A Very Political Economy*, 62–63.

43 See, for example, UD 308.882, 96/00265-131-133, Foreign Ministry to Damascus, Cairo and Amman 13, August 1996, Bentsur/Erakat to Egeland 11 August 1996, with reply from Egeland to Bentsur/Erakat, 12 August 1996, enclosed; 96/00265-137, Egeland to Erakat, 12 September 1996; 96/00265-164, Gaza to Foreign Ministry, 10 October 1996; 96/00265-178, Tel Aviv to Foreign Ministry, 11

TIPH operation had cost Norway approximately NOK 25 million. The 9 May agreement had stated clearly that the expenses of the TIPH would be borne by Norway.<sup>44</sup> Once more, Norway showed its genuine commitment to keeping the peace process on track, no matter what. Few, if any ultimatums were given. No serious plans for withdrawing the TIPH observers were drawn up. The Palestinians and the Israelis knew that Norway would not let them down. Norway agreed to station TIPH personnel in Hebron and to bear all the expenses itself, while having no control over the situation. Of course, Norway could have withdrawn the observers, but such an option did not seem feasible – it would definitely ‘send the wrong signals to the parties’.<sup>45</sup>

The state of affairs in 1996 – with closures, terrorist attacks, fighting in Lebanon, upcoming Israeli elections and the new Likud government that had won an election on an anti-Oslo platform – did not seem the best time to pull out, especially if there was to be any hope of peace in the Middle East. Although everything seemed to be on a slippery slope, Norway was not willing to give in.

## Lessons Learned

What lessons can be learned from the establishment of the two TIPH missions? What had been Norway’s contribution? Had it been important? What kind of role did the Norwegians play? There are four important lessons learned:

### **The Role of Norway as Facilitator Cemented**

Norway had played an important role in the negotiations between Israel and the Palestinians, resulting in the Oslo Accords. However, implementing the

agreement – an interim agreement for an interim period – turned out to be a difficult task indeed. The devil was in the details. Norway continued to work tirelessly backstage to keep up the momentum and prevent the process from stagnating. The Norwegians used every opportunity to get things moving and to clear as many obstacles out of the way as possible. Norway still had a role to play. And this was important: Peacemaking was after all ‘one of Norway’s most important export articles’, according to then State Secretary Jan Egeland.

### **The Stronger Party Israel Deciding the Rules of the Game**

The Hebron massacre led to the most serious crisis up until then in the Oslo peace process. The Palestinians wanted and needed help. But they did not get this help from Norway. Norway could only intervene if both parties wanted Norway to do so, and Israel did not. Norway would not put any pressure on the Israeli government, and nothing would or could be done unless the Israelis changed their minds. Why? Norway had to be acceptable not to both parties equally, but primarily to the strongest party, Israel. Norway had no muscles. Norway was small and powerless. The role Norway played was the only role Norway could play in this setting, taking the asymmetry of power into consideration. Israel decided the conditions and the rules of the game. Norway could like this or not, but there was nothing it could do about it.

### **Facilitation and the Asymmetry of Power**

Is facilitation at all a feasible method to use when huge asymmetries exist between two parties? What role and what room for manoeuvre does such a situation provide for the facilitator? Norway had no opportunity to force solutions on unwilling parties. Norway

could do nothing about the asymmetry of power on the ground in the Middle East. In cases of great asymmetry of power, the results that can be achieved by a powerless facilitator are no more than the stronger party will allow. Any other outcome could only be achieved by a superpower, someone with both strong muscles and willingness to use them to achieve a sustainable peace between Israel and the Palestinians.

### **What Was Achieved?**

Within the Norwegian Foreign Ministry, the TIPH operation was regarded as a success. In order to accomplish such an operation speedily, willingness and capability were important. There could be no delays and no slow-moving bureaucracies. Decisions had to be taken more or less on the spot, and money had to be provided instantly. There were few small, rich, eager, trusted and non-bureaucratic countries in the world. For this particular context, Norway seemed to be the most suitable. In both cases, the Norwegian government immediately allocated millions of kroner to cover Norway’s contribution. For the Palestinian leaders, the TIPH agreement had been a face-saving gesture that helped bring the mired peace process back on track. This was the result that mattered for Norway. The Israelis and the Palestinians had resumed their places at the negotiating table, and Norway had helped navigate a course out of the Hebron crisis. However, efforts at reconciliation had been unsuccessful. The main issues such as roadblocks, the closure and reopening of the central part of the city, the wholesale market and the Ibrahim mosque and not least, the Israeli settlers, had not been solved. And unfortunately, there was no peace in sight ■

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## 3

# Third-Party Intervention and International Monitoring in the City of Hebron



## Karin Aggestam

Professor of Political Science, Lund University, and Director for the Centre of Advanced Middle Eastern Studies, Lund University



A TIPH observer looking out over the city of Hebron. Hebron is often described as one of the most volatile places in the West Bank, making TIPH's mission and mandate highly debated throughout its existence. Photo: NORCAP

## Introduction

For over two decades, an international mission, TIPH (Temporary International Presence in Hebron) has been operating in the city. However, the mission ended after the Israeli government refused to renew the agreement in 2019 as it was perceived as acting against Israeli interests (*Times of Israel*, 28 January 2019). The TIPH mission has been based on a bilateral approval of the Israeli government and the Palestinian Authority (PA) since 1997. In fact, TIPH constituted the first ever Israeli-sanctioned mission to the occupied territories. Yet relatively little is known about it and there is nearly no academic scholarship about TIPH (for exception, see Aggestam 2001; 2003).

The city of Hebron is a recurring “hotspot” in the Israeli-Palestinian conflict. The patriarchs Abraham, Jacob and Isaac are said to be buried here with their families. Since Jews and Muslims refer to Abraham as their ancestral father, the site has historically been a contested place and claimed by various religious groups and leaders. The Ibrahimi Mosque, also referred to as the Tomb of the Patriarchs, was built on the site in the 7th century. Today, there are approximately 165 000 Palestinians residing in Hebron while 7 000 Israeli Jews live at the border of the city in the settlement of Kiryat Arba (Btzelem 2020). Historically, there has always been a Jewish presence in Hebron until the 1929 massacre of 67 Jews by Palestinian Muslims during the British Mandate in Palestine. Between 1948-67 Hebron and the rest of the West Bank was under Jordanian rule. After the Israeli occupation in 1967, small groups of Israelis illegally began to settle in Hebron. By 1971, the Israeli settlement of Kiryat Arba was established on a hilltop overlooking the city. Four settlements (Avraham Avinu, Beit Hadassah, Beit Romano, Tel Rumeida) have since been established in the old part of Hebron where approximately 500 Israeli settlers live today (Btzelem 2020). For the Palestinians, the Israeli occupation and the settlements are

seen as illegal entities, contradicting international law and undermining Palestinian aspirations for national self-determination. Because of its religious significance for both Muslims and Jews, as well as for being the only city where Israelis live in the midst of the Palestinian community, Hebron is often described as one of the most volatile places in the West Bank. Hence, it is in this precarious area of responsibility that the TIPH mission has been operating.

This article analyses to what extent an international presence in Hebron has been able to deliver on its mandate to prevent conflict escalation and contribute to the normalisation of everyday life of the Palestinian population. The analysis draws on academic articles and press material but is also based on my personal experience of having served in TIPH. During the year of 2000, I was the senior Swedish national representative and Head of Staff Division responsible for facilitating negotiations between the Israeli and Palestinian counterparts as well as managing community relations with the Palestinian population in Hebron. During this time, we experienced some calmer periods in Hebron whereas the latter half was extremely volatile with a dramatic escalation of violence due to the outbreak of the second intifada in September 2000.

The article is structured as follows: The first part draws on conflict theory and identifies challenging conditions of third-party intervention in asymmetrical conflicts. The analysis highlights the unique features of TIPHs mandate and how it mirrors in practice through direct and structural conflict prevention. By way of conclusion, three remarks are made. First, although difficult to measure I would argue that TIPH's physical presence had in some everyday incidents a dampening effects; yet overall TIPH became increasingly marginalised and less relevant. Second, TIPH suffered from a vague mandate, which lacked enough power to generate and enforce compliance by the parties. Third, TIPH failed to gain confidence and credibility

among the parties over time partly due to striking power asymmetry in the Israeli-Palestinian conflicts.

## Challenges of third-party intervention in protracted conflict

In the last decades, third-party intervention has been going through a major transition. It refers to a transformative set of practices and encompasses a whole range of activities, such as observing, monitoring, negotiating, communicating, humanitarian reliefs, development assistance, etc (see, for example, Fisher 2001). Third-party intervention is often described as multifunctional, which engages a multitude of military and civilian actors. In most cases, international missions are set to monitor and observe adherence to comprehensive agreements where consent and cooperation of the local parties are essential to the missions' success. As such, third-party intervention is highly context dependent and the meanings of impartiality, consent and mandate can vary greatly. This makes it extremely challenging to intervene in contemporary conflicts. This is also why such multifunctional set-up and mixture can at times generate unintended consequences and internal inconsistencies, such as inadequate planning, untrained personnel, and insufficient financial resources (Crocker, Hamson, Aall 2015).

A distinguishing feature in contemporary conflicts, which has negative repercussion for conflict resolution, is the presence of asymmetrical power relations between disputing parties (Aggestam 2002). In such conflicts, adversaries tend to frame disputes as zero-sum games, which increase the likelihood of destructive strategies and enduring unilateral actions. Stronger parties are inclined to determine the “rules of the game”; thus, they have weaker incentives to negotiate and compromise. Asymmetrical relations are striking characteristics of the Israeli-Palestinian conflict where Israel

acts as a regional power in the Middle East. For weaker parties, they tend to use international law and agreements as a way to compensate for their weakness and rally global support and alliances. For instance, the Palestinian Authority (PA) has repeatedly stressed the applicability of the fourth Geneva Convention regarding Israel's military occupation of the West Bank and called for an international presence in Hebron. Moreover, contemporary conflicts tend to involve strongly held enemy images, which are related to identity and ethnicity. Therefore these conflicts rarely result in stalemate situations, which favour negotiations. Instead, the conflicting parties tend to defy negotiated and mediated settlements. As such, third-party intervention is often viewed as an intrusion and therefore extremely difficult to justify and legitimise (Aggestam 2002).

In cases where agreements are reached through negotiations, many of them collapse in the implementation phase (Molloy and Bell 2019). Consequently, the continuation of a structural asymmetry of power, whether military, economic or political, increases risks of renewed warfare in the implementation phase. Intentionally ambiguous agreements, originally constructed to overcome obstacles during the negotiation process may in a post-agreement phase create new grounds for hostilities as these ambiguities need to be addressed, interpreted and agreed upon. The Middle East peace process provides several examples of such difficulties of implementing signed agreements. The parties have consistently disputed the interpretations of the Declaration of Principles (DOP) signed between Israel and the PLO in 1993. Since then, the parties have tried to negotiate and re-negotiate several agreements (Gaza-Jericho 1994, Oslo II 1995, Hebron Protocol 1997, Wye River 1998 and Sharm Al-Sheikh agreement in 1999) on how to implement the DOP but failed in the end to fully implement them. It is important to keep in mind that it has been within this challenging context that TIPH has been operating during over two decades. Hence, the

major challenge for TIPH has been how to nurture trust and build confidence between the parties and enforce compliance to signed agreements on Hebron in an impartial way.

### Ambiguities and contradictions in the mandate

Although the international presence was limited to the city of Hebron, it was the first time ever that Israel gave consent to an international observer mission in the occupied territories. TIPH was largely a product of the Middle East peace process launched in the early 1990 and should therefore be assessed as part of that context. As we can note in retrospect, this provided an extremely challenging environment as the Middle East peace process was an incremental ongoing process while the Israeli occupation of the West Bank and the city of Hebron continued.

With the secret back-channel negotiations in Oslo, the parties agreed to a Declaration of Principles in 1993. Since then, the challenge was to translate these overarching principles into concrete and detailed steps of implementation. The parties first began negotiations on an Israeli territorial withdrawal from the Gaza Strip and the city of Jericho in the West Bank in 1994. From the outset, the parties held complete divergent positions. Israel adopted a minimalist approach, primarily focused on transferring civil and administrative power, while the Palestinians emphasised a maximalist approach with territorial withdrawal of Israeli military (Aggestam 1999).

In February 1994, a Jewish settler, Baruch Goldstein, from the nearby settlement of Kiryat Arba entered the Ibrahimi Mosque and murdered 29 and wounded over 100 Palestinian Muslims who were praying. Intense clashes between Israeli troops and Palestinians soon erupted. Consequently, the negotiations entered a complete deadlock. The PLO insisted that as a pre-condition before resuming any negotiations the Israeli settlers had to be evacuated from the old city.

Furthermore, the Palestinian delegation maintained that there was a need for an international presence in the West Bank. At first, Israel rejected the idea of an international presence even though the DOP calls for a "temporary international or foreign presence, as agreed upon". In addition, UN Security Council Resolution 904, which was issued after the Hebron massacre in 1994, called "for measures to be taken to guarantee the safety and protection of the Palestinian civilians throughout the occupied territory, inter alia a temporary international or foreign presence". At the same time, the Israeli government became increasingly aware of the wider international repercussions of the Hebron massacre. Consequently, to resume the negotiations Israel did in the end reluctantly agree to a temporary international presence, which was signed on 31 March 1994. However, there was no mention of the United Nations since the Israeli government wanted to prevent any precedence of such missions elsewhere in the occupied territories. The deadlock was finally broken and shortly afterwards, the first mission of TIPH was set up on 8 May 1994, consisting of Norwegian, Italian and Danish observers. However, the mission lasted only until 8 August since the parties were unable to agree to an extension.

However, after a year the Israeli and Palestinian negotiators reached another significant agreement (the Interim Agreement, also called Oslo II) in September 1995, containing arrangements for major Israeli territorial withdrawal from the West Bank. Israel swiftly withdrew its troops from all the large cities in the West Bank, but it was delayed in Hebron because of the upcoming Israeli elections and by the presence of Israeli settlers in the midst of the city. Yet, Israeli and Palestinian negotiators agreed to set up a second TIPH mission in May 1996, with only Norwegian members, awaiting an Israeli withdrawal after the elections. A new right-wing government was formed with Benjamin Netanyahu as prime minister, a fierce critic of the ongoing peace process. Hence,

it was only on 17 January 1997, and after active intervention by the American administration, that Israel and the PLO concluded a "Protocol on Israeli Redeployment in Hebron". Subsequently, a third TIPH mission was set up in early 1997, consisting of Swedish, Swiss, Turkish, Danish and Italian members under Norwegian leadership.

The Hebron Protocol stated that Israel was to redeploy from 80 per cent of Hebron (H1) where the PA was to resume control over internal security and public order. Hence, Israel was to retain full security control of 20 per cent of Hebron (H2), that is, the old city and the Tomb of the Patriarchs/Ibrahimi mosque. The mandate for TIPH was outlined in the "Agreement on Temporary International Presence in the City of Hebron" (1997). The main task of TIPH was to observe and promote a feeling of security, stability and "an appropriate environment conducive to the enhancement of the well-being of the Palestinians and their economic development". TIPH was also to assist in the promotion and execution of projects initiated by the donor countries and to encourage economic development and growth in Hebron. TIPH was to provide observation reports and coordinate its activities with Israeli and Palestinian authorities (see below). Yet, it did not have any military or police function and could not interfere in any disputes, incidents or activities of the Israeli security forces or the Palestinian Police. However, TIPH personnel was still to enjoy freedom of movement to perform its mission in Hebron. To fulfil the mandate, the agreement contained a request to Norway, Italy, Denmark, Sweden, Switzerland and Turkey to provide 180 members for the mission, with Norway tasked with establishing and coordinating TIPH activities. The mandate emphasised that TIPH related to Hebron as one city despite the division of H1 and H2. Finally, the mandate was to be renewed by the parties every three months though in practice it was made every six months (Agreement on Temporary International Presence, 1997)

Shortly afterwards, the contributing countries signed a "Memorandum of Understanding on the Establishment of a Temporary International Presence in Hebron" (1997) which outlined the operational guidelines for the mission in accordance with the bilateral agreement signed between Israel and the PLO. In that Memorandum, TIPH accordingly should "elaborate on daily situation reports based on internationally recognised human rights standards" and coordinate its activities closely with the parties. It underlined that these situation reports were not for public dissemination. Furthermore, the memorandum clarified that TIPH would enjoy freedom of movement, but would not enter privately held premises, military camps and security installations without specific permission from the appropriate authority.

As can be noted, the mandate contained several ambiguities and restrictions. First, the mandate stipulated that one of TIPH's tasks was to promote economic development and prosperity among the Palestinians, which may seem like a contradiction because the mandate was only granted for six months. This required frequent rotations of personnel with negative repercussions for planning and institutional memory of the mission. At the same time, economic development assistance was a point often encouraged by the Israeli side since it was seen as less controversial than the task of monitoring the conduct of the Israel Defence Forces (IDF). Still, the main activities of the TIPH centred around observation and reporting on incidents primarily in the Israeli-controlled area of H2 in Hebron.

Second, despite the reference in the agreements to TIPH's freedom of movement in Hebron, its members frequently were not allowed access, even when wearing uniforms and on duty, to the area in and around the Tomb of the Patriarchs/Ibrahimi mosque since Israel defined it as out of TIPH's area of responsibility. There were also other locations in the old city of Hebron where TIPH was denied access. One such place was the area

surrounding what the Palestinians refer to as the Mosque of Al-Arbain but what the Israeli settlers label the Tomb of Yishai and Ruth. Hence, this constituted yet another disputed area between Jews and Muslims. The site is close to the Israeli settlement of Tel Rumeida and several attempts had been made by settlers to convert the existing mosque into a Jewish national shrine (for example, the door has been painted blue and at the entrance one can read Hebrew inscriptions, referring to the tomb of Yishai and Ruth). Such changes contradict the Protocol Concerning Redeployment in Hebron (1997), which states that, "[t]he two parties are committed to preserve and protect the historic character of the city in a way which does not harm or change that character in any part of the city". Moreover, Palestinians are not allowed access to the site while the Hebron settlers visit and organise regular tours for Israeli tourists.

Third, TIPH lacked any power of enforcement and often struggled with issues of legitimacy. TIPH was frequently accused by the Israeli authorities and the settlers in particular of a Palestinian bias. However, TIPH's mandate was constructed precisely to compensate for the Palestinian weakness due to the asymmetrical power relations between Israel and the Palestinian Authority. At the same time, TIPH operated on the basis of an interim agreement, which accepted the status quo of a continued Israeli occupation of Hebron. This contradictory situation posed a major challenge for TIPH and had some moral implications in practice. How was normalisation of life to take place while the Palestinians continued to live under Israeli occupation?

### Direct prevention: averting conflict escalation?

Direct prevention refers to strategies that focus on a limited and pragmatic agenda of prevention (see, for example, Bellamy 2008). Hence, direct prevention does not aim for a comprehensive formula to resolve all outstanding issues, but efforts are

centred on controlling and removing the imminent causes of conflict. Frequently used strategies are derived from traditional tools of diplomacy, such as negotiation and mediation. Most of TIPH's activities can be depicted as direct prevention. First, reporting and observing were the main and most important tasks. TIPH was to monitor the situation in Hebron daily in order to report on various incidents that lead to conflict escalation. Consequently, the majority of its members were serving as observers. TIPH was a civil and unarmed mission but recruited members from civilian life as well as from the police and the military. This variety of backgrounds enabled TIPH to have mixed patrols of Arabic/Hebrew speaking civil and police/military observers. This was seen as a security as well as a cultural advantage when operating in such a sensitive environment as Hebron. The daily incident reports were oftentimes supported with video clips or photos. Since TIPH primarily operated in the Israeli-controlled area of H2, most of the reports concerned incidents related to the conduct of the Israeli Defence Forces (IDF), which included arrests, detention of minors and the use of force against the Palestinian population. Some reports concerned the behaviour of the Israeli settlers residing in the old city of Hebron, which mostly were related to harassment of Palestinians, trespassing and material damage to Palestinian property. Most reports about the Palestinians concerned demonstrations, Molotov cocktail-throwing and stone-throwing but also restrictions in freedom of movements. All the reports were assessed by an internal Report Assessment Group, which evaluated them based on TIPH's mandate and international human rights. These incident reports were then forwarded to the IDF and the Palestinian Police Forces (PPF) for clarification and information. This was made daily through the liaison system, which was one of the most important communication channels in which relations with both sides were nurtured. However, there were ongoing discussions within TIPH about the appropriate interpretation of

the mandate and the applicability of human rights where some argued for a wider interpretation of the mandate to include monitoring more closely human rights abuses also by the PA in the HI area.

In addition, TIPH compiled several assessment reports. First, the six member countries were provided with a *bi-weekly report*. Second, the *periodic reports* covered three months and were written and sent to the Israeli Foreign Ministry and the PA. All these reports were confidential and not accessible to the public. However, the restrictions regarding the bi-weekly reports to the six contributing countries to the TIPH mission were voluntarily imposed. The overarching argument was that confidential reports benefitted constructive engagements between the Israeli and Palestinian side and enhanced the credibility of TIPH. To make TIPH reports public was seen as a risky strategy since such information could be misused by other groups and cause damage to TIPH's reputation and integrity as a third party.

Moreover, TIPH facilitated negotiations and communication between the Israeli and Palestinian counterparts in two different forums. In the *Joint Hebron Committee* (JHC) daily incidents and military and security problems were addressed whereas policy and diplomatic issues were negotiated in the *Monitoring and Steering Committee* (MSC). There were also other subjects regarding implementation of signed agreements, such as Wye River and the Sharm Al-Sheikh, that TIPH closely monitored and raised during these meetings as they concerned the normalisation of life for the Palestinians in Hebron. For instance, the wholesale market had not yet been opened as a retail market and was an ongoing flashpoint of tension between Israeli settlers and the Palestinians. Al-Shuhada Street, the main road in the old city, was still not open for traffic in both directions since it passed by the Israeli settlements. The status of the site of the Tomb of the Patriarchs/Ibrahimi mosque had not yet been settled between the parties.

The *Joint Hebron Committee* met regularly and TIPH chaired the meeting and set the agenda based on TIPH's daily reports and assessment. In this forum, TIPH tried to encourage the parties to find ways to resolve tensions and ease daily life for the Palestinians living under the Israeli occupation. The success of the JHC varied greatly over time, depending partly on the situation in Hebron as well as how relations between TIPH and the parties were nurtured. As TIPH operated mainly in the Israeli-controlled area, most issues in the JHC concerned the conduct of the IDF. As a result, the IDF felt at times scrutinised in its military operations and had on several occasions questioned TIPH's activities and impartiality. However, this recurrent problem was generated from the mandate, which stipulated that TIPH was to enhance the security of the Palestinians only. The Israeli perception was also derived from a pre-conceived assumption that a third party, such as TIPH, was to act in a strictly neutral manner without any preferences and intentions to influence processes and events. However, since TIPH's mandate was focused on the wellbeing of the Palestinians, its task was precisely to act impartially according to the mission's mandate. As Israel continued to occupy parts of Hebron, the critic was unavoidable. After the second intifada JHC stopped meeting. TIPH worked hard to revive the meeting forum but to no long-term avail.

One of the more important documents that TIPH produced was the *Periodic Report*, which compiled analysis and assessment over three months. It included policy-recommendations on how to resolve the most disturbing incidents and obstacles to the security and well-being of the Palestinians. Based on the *Periodic Report*, Israeli and Palestinian diplomats met in the *Monitoring and Steering Committee*, which was chaired by Norwegian diplomats. Also present at this meeting was diplomats from the six member states. In contrast to the JHC that dealt with ongoing daily tensions, this forum tried to address policy-relevant questions. Again, the success of the

MSC meetings very much reflected the present stage and progress in the wider peace process. Usually, the Palestinian side received the report more positively whereas the Israeli responses varied over time. On numerous occasions the Israeli MFA criticised TIPH's reports for being too harsh in the analysis of IDF's conduct and the Israeli settlers whereas it was seen as too lenient on Palestinian violence. Furthermore, the Israeli MFA often criticised TIPH's choice of terminology, which unfortunately had not been consistent in the reports over time (e.g., if to mention the Israeli occupation, if to use the term "Israeli settlers", "Jewish settlers" or only "Israeli citizens in Hebron"). This confusion was partly triggered by the lack of institutional memory in TIPH and at times of qualified expertise in the mission.

To sum up, TIPH had several strategies to influence events in Hebron, but operated mostly under harsh conditions and restrictions as outlined above. The Israeli government consistently tried to limit TIPH's impact and leverage as it rejected in principle the idea of an internationalisation of the conflict. The Israeli government feared that the TIPH-model would be replicated elsewhere in the occupied territories. It was therefore an Israeli interest to frame TIPH as a "local" phenomenon, relatively unknown to most outsiders. Moreover, it was not clear in what ways the six member countries actually utilised information collected by TIPH in other diplomatic arenas.

### Structural prevention: peace and well-being in the city of Hebron

In contrast to direct prevention, structural prevention attempts to resolve deep-rooted causes of conflict. In the theoretical literature on peacebuilding, structural prevention is often described as aiming towards reconstruction of conflict-ridden societies by addressing economic, social and political structures (McLoughlin, 2014). Obviously,

such a comprehensive approach requires a long-term engagement of a third party. Although TIPH was a temporary mission, the TIPHs mandate also included some aspects of structural prevention. As stated above, one of the tasks of TIPH was "to help promote stability and an appropriate environment conducive to the enhancement of the well-being of the Palestinians of Hebron and their economic development". TIPH therefore had a sub-division, which nurtured community relations with the Palestinian population. Through a variety of local projects TIPH tried to elevate some of the social and economic problems that the Palestinians were facing in Hebron. Most of the projects were relatively small, easy and quick to implement, ranging from financial support to cultural institutions, schoolbooks, summer camps, sport and education events to building sun/rain shelters in Palestinian schools. Priority groups were women, youth, and poor neighbourhoods.

TIPH also reinvested its tax breaks into the local Palestinian community in some larger development projects, such as the purchase of advanced medical equipment for Palestinian hospitals and supporting reconstruction and preservation work in the old city of Hebron. TIPH cooperated with local organisations such as the Palestinian Red Crescent Society and the Hebron Rehabilitation Committee on various projects. The six contributing countries had several other donor projects in Hebron; yet few of them coordinated formally their wider development assistance aid to Hebron with TIPH, which curtailed the impact of TIPH.

The importance of these community-related activities has been debated within TIPH as well as between the six member countries. Consequently, staff and financing has been reduced over the years. To make the claim that TIPH contributed in any substantial way to Palestinian economic development in Hebron is an exaggeration. Yet, these community-related activities fulfilled other functions such as generating

goodwill and confidence for TIPH among the Palestinian population. Still, some Palestinians expressed disappointment that TIPH did not interfere in incidents but only observed them in a non-reactive fashion. An important task of the community related activities was therefore to disseminate information about TIPH in general and its mandate in particular.

While peace was mentioned in general terms in the mandate it was vague on co-existence between Israeli settlers and Palestinians. This may seem like a paradox considering that some 500 Israeli settlers reside in the old city of Hebron and that the environment is extremely volatile as Palestinian neighbourhoods are surrounding all the Israeli settlements. In addition, the Israeli settlers belong to the most extreme and ultra-nationalist part of the Israeli settler movement and rejected the presence of TIPH in Hebron as it has been seen as an infringement on their legitimacy to reside in Hebron. Even though the Israeli settlers were not covered by the mandate they often accused TIPH of "one-sided racism" and of being completely biased in favour of the Palestinians. They frequently drew historical analogies to the Holocaust and compared TIPH members with Nazi soldiers (Wilder 2018). As a consequence, a lot of anger was directed towards TIPH members on patrol, who frequently experienced harassment, verbal as well as physical, by settler youth in particular. Despite IDF soldiers being present during these incidents they remained passive without intervening on behalf of TIPH. Several efforts were made over time to build confidence and improve relations with the Hebron settlers, but without achieving any significant progress. It is important to highlight that these recurring tensions between TIPH observers and Israeli settlers were one major reason why the Israeli government in 2019 refused to renew TIPH's mandate. Another contributing factor was the leaked TIPH report to the media.

With the outbreak of the second intifada many of these activities

mentioned above were reduced. Efforts were now made to provide emergency relief to the Palestinians, such as delivering food and medicine during curfews. The large-scale violence posed a major challenge to TIPH and its operations. The parties also become increasingly uneasy with TIPH. The IDF viewed TIPH's presence more as a burden and many Palestinians were upset that TIPH did not intervene more forcefully and thus questioned the impartiality of the mission. There were also shootings close to the TIPH bases. The most severe incident took place in the end of March 2002 when two observers were shot dead and one wounded while driving on a bypass road (which is primarily used by Israelis) in a clearly marked TIPH car. Due to the security situation, TIPH was reduced in size and number of its members and had now to monitor from a distance.

### Conclusion: A generic model for international observer missions?

Since TIPH is the first mission ever that Israel has sanctioned in the occupied territories, its experience is crucial. One may argue that there is an inherent paradox between TIPH's operational activities and its mandate. On the one hand, the agreement of establishing

TIPH stipulated ambitious long-term goals, such as peace enhancement, and promoting security and economic development in the city of Hebron. On the other hand, its operational activities remained limited to observing and monitoring without any power or mechanisms of enforcement. One of several reasons that Israel all along was concerned with was the risk that TIPH might become a model for other types of international intervention in the occupied territories, that is, an internationalisation of the conflict that would curtail Israel's freedom of action. Moreover, the deeply felt misgivings that the Israeli government expressed about an international presence partly emanates from the negative experience of the UN in general and international peacekeeping in particular, such as UNIFIL in Lebanon. The Palestinians, on the other hand, have for a long time appealed for international intervention,

Several important lessons can be drawn from its experience. First, even though it is difficult to measure TIPH's physical presence had in some everyday incidents a dampening effect, but overall TIPH became increasingly marginalised and less relevant. Second, TIPH suffered from a vague mandate which lacked enough power, and it was both ambitious, vague

and limited. Thus, a mandate needs to be clearly and realistically defined and goals must be matched with consistent strategies and resources to achieve them. Most importantly, the mandate must stipulate enough power for the mission to generate and enforce compliance by the parties. Third, no international intervention will be effective if a third party is unable to gain confidence and credibility among the parties. To intervene impartially in an asymmetrical conflict, such as the Israeli-Palestinian conflict is extremely challenging since the stronger party will do what it can to minimise the role and influence of the third party whereas the weaker party will constantly appeal for more powerful involvement ■

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## 4

## Two decades with the mandate of the Temporary International Presence in Hebron



### Anna Andersson

Lecturer at the School of Law, Örebro University, and PhD research candidate at the Norwegian Centre for Human Rights, University of Oslo



Hans Petter Nøst Hansen, observer at TIPH.  
Photo: Nina Hansen/NORCAP

Over the 22 yearlong observation mission of the Temporary International Presence in Hebron (TIPH), the relationship between Israel and Palestine came to evolve in a different direction than what was foreseen in the Oslo process. Nevertheless, TIPH's legal framework and tasks remained the same. This paper aims to examine, through the perspective of TIPH's legal advisors, challenges met and experiences made during two decades of interpretation and implementation of the TIPH mandate.

The paper builds mainly on experiences made by legal advisors deployed to TIPH. The legal advisor, having worked closely with legal issues relating to the mandate, had a relevant role in evaluating issues relating to mandate interpretation and implementation. The position as legal advisor in TIPH was a so called 'flag position', deployed by either Switzerland or Sweden. 15 persons deployed as legal advisors to TIPH have participated in the study. They form nearly half of the total number of legal advisors deployed to TIPH over the years, as Switzerland deployed 21 and Sweden around 10 legal advisors in total.<sup>1</sup> A couple of persons were deployed two times. The legal advisors participating in this study include women and men from both countries. They were deployed for periods of various length (frequently one year but ranging from six to 18 months), with the majority of participants being deployed during the second half of TIPH's period of operation.

### The nature and scope of TIPH's mandate

The Agreement on Temporary International Presence in the City of Hebron of 1997 (the TIPH Agreement)<sup>2</sup> states the mission's main objective in paragraph 1; TIPH was to assist in monitoring and reporting on the efforts to maintain normal life in the City of Hebron, thus creating a feeling of security among Palestinians in Hebron. The TIPH Agreement and the Memorandum of Understanding (MoU) between the parties, Israel and PLO, and the six states funding TIPH,<sup>3</sup> formed the TIPH's mandate. This established TIPH's nature as a civilian observer mission. Its personnel did not have military or police functions and could not interfere in disputes, incidents or the activities of Israeli security forces (ISF) or the Palestinian police force (PPF). The observers were to report incidents to the TIPH Head of Mission.<sup>4</sup> While the TIPH Agreement set out that the observers may carry pistols for self-defense,<sup>5</sup> the MoU does not mention weapons nor self-defense, and in fact TIPH personnel were unarmed.<sup>6</sup>

TIPH's tasks are set out in paragraph 5 of the TIPH Agreement:

- to promote by their presence a feeling of security to the Palestinians of Hebron;
- to help promote stability and an appropriate environment conducive to the enhancement of the well-

being of the Palestinians of Hebron and their economic development;

- to observe the enhancement of peace and prosperity among Palestinians;
- to assist in the promotion and execution of projects initiated by the donor countries;
- to encourage economic development and growth in Hebron;
- to provide reports as set out in paragraph 7 below; and
- to coordinate its activities with the Israeli and Palestinian authorities in accordance with paragraph 7 below.

For these purposes, TIPH personnel were to enjoy freedom of movement within Hebron.<sup>7</sup>

Accordingly, TIPH's tools for promoting Palestinians' feelings of security was to observe and report to the joint committees and the TIPH member states. The responsibility for providing actual security and take steps towards normalization remained with Israel and Palestine, as regulated under bilateral agreements such as the Hebron Protocol and the law of occupation. The Hebron Protocol had divided Hebron in two areas, H1 and H2, where the PPF were responsible for H1 and Israeli authorities for H2. Israel maintained the overall security responsibility for Israeli citizens

1 Information provided upon request to the author by EDA, September 2020; FBA, October 2020; and the Swedish International Development Cooperation Agency (SIDA), October 2020.

2 Agreement on Temporary International Presence in the City of Hebron, 21 January 1997 (the TIPH Agreement of 1997).

3 Memorandum of Understanding between Denmark, Italy, Norway, Sweden, Switzerland and Turkey on the Establishment of TIPH, 30 January 1997 (MoU).

4 Para. 3 TIPH Agreement of 1997 and part B para. 6 MoU.

5 Para. 8 TIPH Agreement of 1997.

6 Justus Reid Weiner, Avinoam Sharon, Michelle Morrison, Peacekeepers: Will They Advance Any Prospective Arab-Israeli Peace Agreement?, *Fordham Int. Law J.*, vol. 34, issue 1, 2010, p. 20.

7 Para. 9 TIPH Agreement of 1997.

in Hebron non-depending on the geographical division with two areas. TIPH's area of responsibility was the whole city of Hebron,<sup>8</sup> and the mission was also stationed in Hebron city (with the exception of a temporary evacuation in 2006).<sup>9</sup>

### Nature and consequences of a non-UN third party mechanism

Mission mandates negotiated by the parties, as the TIPH Agreement, drafted primarily by the PLO and Israel, have the advantage that they need not generate consensus from as many stakeholders as for example UN-mandated missions need to do. More stakeholders often require more compromises, which may lead to ambiguous mandates. Lessons learned from international peacekeeping demonstrate that if a mandate is too vague, too limited or too broad it will be challenging for the mission to operate effectively.<sup>10</sup> The Brahimi-report found that ambiguous mandates can lead to divergent interpretations within the mission and encourage spoilers, which together hampers the effectiveness of the mission. The report recommended that it was better to refrain from establishing a mission than to set it up with an unclear mandate, especially in unsafe contexts, and advanced specificity in mandate formulation.<sup>11</sup>

Mandates negotiated by a smaller group of stakeholders may be more tailored to the parties and the realities on the ground. Weiner, Sharon and

Morrison explain that a mandate drafted primarily by the parties is likely to "more accurately address their concerns, and may be expected to provide mechanisms that the parties themselves deem necessary and adequate for the effective achievement of the peacekeeping goals that they have established".<sup>12</sup> The TIPH Agreement of 1997 is essentially identical to the agreements of its predecessors (TIPH I of 1994<sup>13</sup> and TIPH II of 1996<sup>14</sup>) in respect of the nature, objectives and tasks, and all explicitly address core issues in Hebron, namely Palestinians' feelings of insecurity, and lack of well-being and economic growth. The objectives in the TIPH Agreement(s) thus reflect the PLO's concern for insecurity and violence, originally due to the 1994 massacre in the Mosque of Ibrahimi/Cave of Makhpela which triggered the first TIPH, but also to the occupation more generally, as well as the occupation's negative socio-economic impact on Palestinians' daily life. Similarly, the nature as a civilian non-UN mission and the fact that TIPH was to report merely to the parties, reflect Israel's reluctance to international involvement and review. The TIPH Agreement addresses and balances the parties' respective core interests as TIPH's tasks are specifically linked to the concerns for Palestinians and involvement of an international organization and a military component was excluded. The clear focus on monitoring and reporting provided the basis for TIPH's prioritized work and was not called into question by the parties. However, agreements as

clearly linked to the parties' respective interests may also be a disadvantage if it results in a compromise that involves ambitious and distinctly worded objectives but limited tools to achieve them.

Other consequences of TIPH's nature as a third party mechanism not set up or headed by an international organization, but by a small number of member states, were that it lacked organisational support. It also initially lacked the internal infrastructure and operational guidelines that missions headed by international organisations have from start. TIPH needed to develop these instruments from scratch and the TIPH member states had to agree to key internal instruments at the start and continually during its operation. This appear to have posed a challenge for a longer period than what should have been necessary. Two TIPH legal advisors explain that it was clear to them that colleagues deployed around the mid of TIPH's period of operation who had experience from other international missions had done significant work, as late as halfway into the mission, to fill gaps in operational guidelines.

### Overall interpretation of the mandate

TIPH's mandate was operationalized in a complex legal framework consisting of agreements binding between the parties, of which some were directly relevant for TIPH's operational function (i.e. the Protocol concerning the

Redeployment in Hebron (the Hebron Protocol)<sup>15</sup>), other parts of international law applicable to the situation, including international humanitarian law (IHL) and human rights law (IHRL), relevant UNSC resolutions, domestic law and military orders applicable to the inhabitants of Hebron.

The main objective of the TIPH Agreement is a subjective one, *a feeling of security*. They who shall benefit the feeling of security are *the Palestinians of Hebron*. Two legal advisors point out that this means that the mandate is not neutral. It is a purposively inherent characteristic of the mandate that the mission is aimed at achieving benefits for one identified group, the Palestinians.<sup>16</sup> "The mandate was in its wording not neutral since it was stated that TIPH by its presence was to promote a feeling of security to the Palestinians of Hebron."<sup>17</sup> A challenge in the implementation of the mandate was "to observe and report in an impartial way."<sup>18</sup> Several legal advisors emphasizes that it was crucial for TIPH to report objectively and be impartial in relation to the parties. Yet, that the mission's neutrality and objectivity was regularly subject to internal discussions within TIPH and sometimes questioned by Israeli authorities.

The tools TIPH had at its disposal to achieve the main objective were observations and reporting. Some TIPH legal advisors express that the objective may have created expectations among Palestinians which TIPH did not have the mandate to meet. An independent evaluation

of TIPH's work undertaken in 2015 support this, as it found that the Palestinian authorities were supportive of TIPH but wished that TIPH would do more to ensure security for Palestinians in Hebron.<sup>19</sup>

Legal advisers describe the mandate as "relatively clear from a legal standpoint".<sup>20</sup> One legal advisor, deployed about halfway into TIPH's operation, explains that their interpretation of the mandate followed their predecessors and considered that TIPH "appeared to be fairly static and inflexible but also reliable and predictable for our stakeholders."<sup>21</sup> Several other legal advisors support this view. It is, however, clear that internal efforts undertaken over the years to formalize and improve working methods facilitated the legal advisor's work and ensured coherent legal analysis. One legal advisor deployed at TIPH's last few years explain that at the time of their deployment "the mandate had undoubtedly been tried and tested and everyone knew how to interpret it".<sup>22</sup> Based on legal advisors' accounts, there appear to have been relatively little variation over the 22 years in how the legal advisors interpreted the mandate, with the exception of TIPH's understanding of its area of responsibility. Legal advisors from different periods give different accounts for whether TIPH interpreted its mandate so that it could only report on incidents that occurred inside Hebron city or also on incidents that occurred outside Hebron city but which created effects within the city as well as incidents that were initiated within Hebron city and continued (e.g.,

through judicial proceedings) outside the city. On other issues, legal advisors provide similar understandings.

Nevertheless, there were continuous internal discussions on the mandate and how TIPH could interpret it. One legal advisor expresses that during their deployment there were long-going internal efforts to advance an interpretation allowing for a more proactive role of TIPH. Accordingly, while the understanding of the mandate was continually subject to internal debate, most legal advisors considered that the mission interpreted, applied and referred to its mandate in a relatively consistent manner in performing its core tasks and in its contacts with the parties. However, more research, including on the material TIPH produced, is needed to establish this.

### TIPH's understanding of the applicable international law

TIPH were to report on efforts to maintain normal life in Hebron and on incidents and periodic issues based on internationally recognized human rights standards.<sup>23</sup> To establish the applicable international law against which incidents were to be measured was thus fundamental for TIPH's core tasks. Applicable law is to be determined based on law and facts but has been a contested issue in the Israel/Palestine situation. The Israeli government has consistently disputed that the law of occupation, in particular the Geneva Convention IV of 1949, is applicable *de jure* to the Occupied

8 TIPH's area of responsibility is delineated on map No. 9 Hebron attached to the Israeli-Palestinian Interim Agreement for the West Bank and the Gaza Strip, 28 September 1995 (the Interim Agreement).

9 Para. 4 TIPH Agreement of 1997 and part A para. 9 MoU.

10 Weiner, Sharon, and Morrison, 2010, p. 24. See also Report of the Panel on United Nations Peace Operations, UN Doc. A/55/305, S/2000/809, UN GAOR, 55th Session, 21 August 2000 (the Brahimi report).

11 The Brahimi report, para. 56.

12 Weiner, Sharon, and Morrison, 2010, p. 25.

13 Agreement on Security Arrangements in Hebron and the Renewal of Negotiations on the Gaza Strip and Jericho, 31 March 1994.

14 Agreement on Temporary International Presence in the City of Hebron, 9 May 1996.

15 Protocol concerning the Redeployment in Hebron, 17 January 1997 (Hebron Protocol).

16 See also Aggestam, 2001.

17 Interview with legal advisor deployed in the early part of TIPH's second decade.

18 Interview with legal advisor deployed in the early part of TIPH's second decade.

19 ITAD, *Final Report: Independent Evaluation of the Temporary International Presence in Hebron (TIPH)*, 2015, p. 7.

20 Interview with legal advisor deployed in the early part of TIPH's second decade. Other legal advisors express a similar view.

21 Interview with legal advisor deployed around the mid of TIPH's operation.

22 Interview with legal advisor deployed in the late part of TIPH's second decade.

23 Para. 1 TIPH Agreement of 1997 and part. B para. 2 MoU.

Palestinian Territories, while holding that it *de facto* applies the Convention to the situation.<sup>24</sup> It has also disputed that IHRL applies in regard to its activities on the Occupied Palestinian Territories.<sup>25</sup>

Legal advisors deployed throughout TIPH's operation express that TIPH considered in its legal analysis of incidents that customary IHL and the Geneva Conventions I-IV of 1949 applied to the situation, entailing legal obligations for both Israel and Palestine. This understanding has convincing legal basis in the relevant treaties, finds support in the ICJ's Advisory Opinion on *the Wall*, which found the Geneva Convention IV applicable *de jure*,<sup>26</sup> and it also corresponds to the predominant understanding in the legal literature,<sup>27</sup> and that of the ICRC.<sup>28</sup> Moreover, the UNSC has also repeatedly recognized the applicability of Geneva Convention IV to the Occupied Palestinian Territories and called upon Israel to respect its obligations thereunder, including in resolution 904 (1994), which called for the establishment of

an international presence.<sup>29</sup>

Legal advisors also express that TIPH considered customary IHRL and global human rights conventions as applicable, e.g. the Convention on the Rights of the Child of 1989, the International Covenant on Civil and Political Rights of 1966 and the International Covenant on Economic, Social and Cultural Rights of 1966. General Comments of relevant treaty bodies were used as means of interpretation to establish human rights standards. Similarly, to its position on IHL, this has convincing legal basis and corresponds to the findings of the ICJ in *the Wall*,<sup>30</sup> statements of human rights treaty bodies,<sup>31</sup> as well as to the predominant understanding in the legal literature, although opinion differ on the precise scope of obligations that applies extra-territorially.<sup>32</sup>

TIPH's understanding of the applicable law and Israel's diverting position do not appear to have been an operationally problematic issue in this relation or a hurdle to TIPH's work. While several legal advisors address

Israel's contestation of the applicability of GC IV and IHRL as a legal challenge in their work, they also explain that in practice it did not constitute an obstacle to TIPH's operation. A couple of legal advisors state that Israeli authorities would routinely refer to its position on non-applicability when they responded to reports, but that Israel did not question TIPH's mandate to report on human rights or counterargued TIPH's reports on this basis and position. No legal advisor held that this was an operational challenge to the implementation of the mandate.

Besides international law, the domestic legal environment of the West Bank is highly complex. Legislation adopted by the Palestinian Authority apply along with remaining influences of previous rulers from different legal traditions, ranging from the Jordanian rule, the British mandate and to the Ottoman Empire. Further, Israeli military law and orders from 1967 and to present day apply to Palestinians, while Israeli domestic law apply to Israeli citizens. Moreover, Israeli and Palestinian courts respective case law further develop

the law. This legal complexity has been described in the legal literature as "a swamp of legal multiplicity".<sup>33</sup> One legal advisor refers to the legal system of the West Bank as "extreme" and describes the position of the TIPH legal advisor as being "one of the most difficult international positions to hold".<sup>34</sup>

Hence, TIPH interpreted the mandate to include the following as the legal basis for analysing observed incidents: the Hebron Protocol, the Interim Agreement and other relevant agreements between the parties, customary and treaty IHRL and customary and treaty IHL binding for the respective parties. It also observed relevant domestic civil and military law and regulations.

### Implementing TIPH's core tasks

Of the tasks listed in paragraph 5 of the TIPH Agreement, most legal advisors consider "to promote by their presence a feeling of security to the Palestinians of Hebron" and "to provide reports" as TIPH's key duties. These tasks were considered as the core of the mission. Several legal advisors mention that TIPH did not place the same focus on its mandated tasks related to economic development. While observation and reporting were continuous priorities, assistance to economic development projects appear to have been given varied focus over the years. Some legal advisors highlight specific small and large projects that TIPH worked with and which they considered contributed

effectively to ameliorate Palestinian life in Hebron, some of which created results that remained after TIPH's withdrawal. Other legal advisors express that TIPH lacked financial resources and expertise to have a real impact on economic development.

### Observation and restrictions of TIPH's freedom of movement

TIPH implemented its observation task through the regular physical presence by its observers in the city, in order to promote a feeling of security among the Palestinians. TIPH had observers on the ground or on call at all times and there was a free telephone number Palestinians could call to reach TIPH if they were involved in or witnessed an incident. One legal advisor holds: "Lessons learned is to be present during all hours of the day in a conflict area and have sufficient enough mission members to uphold or fulfill the mandate."<sup>35</sup> The TIPH Agreement provided for 180 persons as TIPH personnel,<sup>36</sup> but was soon reduced to approximately 65 persons. This meant that TIPH had limited personnel resources and needed to prioritise which areas to observe. It focused its presence to sensitive parts of Hebron. This concerned primarily the H2 area, e.g. at checkpoints that Palestinians living in H2 must pass through to reach their homes, and Palestinian homes located in close vicinity to Israeli settlements. Due to the limited personnel TIPH was not able to be present in all sensitive areas and to "react to incidents in real time".<sup>37</sup>

An observer mission needs unimpeded access to its area of responsibility and TIPH personnel were to enjoy freedom of movement within the city,<sup>38</sup> with the exception of exceptional and temporal measures, and could not enter privately held areas or military camps and security installations without permission.<sup>39</sup> Any restrictions to TIPH's freedom of movement were thus to be exceptional and temporary. However, several legal advisors hold that several of the IDF's restrictions to TIPH's freedom of movement were prolonged or permanent, resulting in that some areas were in practice exempt from TIPH's observations. One legal advisor explains: "In reality, there were a number of public areas, which belonged to the AoR [area of responsibility] /.../ where TIPH observers were not allowed to enter."<sup>40</sup> Security reasons and past security incidents, including settlers attacking TIPH observers, were mentioned as justifications given by the IDF for the restrictions. Since the purpose of an observer mission is to be present and observe the parties' behavior and its impact on the local population, access to and freedom of movement within the area that is to be observed is essential. Thus, the prolonged security restrictions formed an operational challenge for TIPH's capacity to fulfill its mandate.

The context of the occupation involves that Israel is the party having most impact on Palestinians' feeling of security and on the process of normalization. Observation therefore focused on locations where Palestinians came in contact with the IDF, other Israeli authorities and

24 See e.g. International Court of Justice (ICJ), *Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, p. 136 (*the Wall*), paras. 89-90 and 93; Meir Shamgar, *The Observance of International Law in the Administered Territories*, Isr YHR, vol. 1, 1971; Yehuda Blum, *The Missing Reversioner: Reflections on the Status of Judea and Samaria*, Isr. L. Rev., vol 3., 1968; Alan Baker, *International humanitarian law, ICRC and Israel's status in the Territories*, IRR, vol. 94, no. 888, 2012. Maayan Geva, *Military Lawyers Making Law: Israel's Governance of the West Bank and Gaza*, Law & Social Inquiry, vol. 44, issue 3, 2019. See also Ardi Imseis, *On the Fourth Geneva Convention and the Occupied Palestinian Territories*, Harvard Int. Law J., vol. 44, no.1, 2003, p. 69.

25 ICJ, *the Wall*, para. 40.

26 The Court also found the Hague Regulations applicable as customary international law. ICJ, *the Wall*, paras. 89 and 101.

27 See e.g., Adam Roberts, *Prolonged military occupation: the Israeli-Occupied Territories since 1967*, AJIL, vol. 84, no. 1, 1990, p. 64; Yoram Dinstein, *The International Law of Belligerent Occupation*, CUP, Cambridge, 2009; David Kretzmer, *The law of belligerent occupation in the Supreme Court of Israel*, IRR, vol. 94, no. 885, 2012, pp. 207-236; Hanne Cuyckens, *Revisiting the Law of Occupation*, Brill, Leiden, 2018.

28 Peter Maurer, *Challenges to international humanitarian law: Israel's occupation policy*, IRR, vol. 94, no. 888, 2012, p. 1506.

29 UNSC res. 904 (1994); UNSC res. 672 (1990); UNSC res. 237 (1967).

30 ICJ, *the Wall*, paras. 104-114. See also ICJ, *Application of the International Convention on the Elimination of all Forms of Racial Discrimination (Georgia v. Russian Federation)*, Provisional Measures, Order of 15 October 2008, ICJ Reports 2008, p. 353, para. 109.

31 HRC, General Comment no. 29, 31 August 2001, para. 3; HRC, General Comment no. 31, 26 May 2004, para. 11; HRC, General Comment no. 36, 3 September 2019, para. 63; HRC, General Comments no. 35, 16 December 2014, para. 64. See also HRC, *Concluding Observations of the Human Rights Committee: Israel*, UN doc. CCPR/CO/78/ISR, 21 August 2003; CESCR, *Concluding Observations on Israel*, 4 December, 1998, UN doc. E/C.12/1/Add.27.

32 See e.g., Marko Milanovic, *Extraterritorial Application of Human Rightst Treaties: Principles and Policy*, OUP, Oxford, 2011; Philip Spoerri, *The Law of Occupation*, in Andrew Clapham and Paola Gaeta, *The Oxford Handbook of International Law*, OUP, Oxford, 2014; Noam Lubell, *Extraterritorial Use of Force Against Non-State Actors*, OUP, Oxford, 2010, pp. 232-5; Fons Coomans, *Some Remarks on the Extraterritorial Application of the International Covenant on Economic, Social and Cultural Rights*, in Fons Coomans and Menno T. Kamminga (eds.), *Extraterritorial Application of Human Rights Treaties*, Intersentia, Antwerp, 2004, p. 183; Marco Longobardo, *The Use of Armed Force in Occupied Territory*, CUP, Cambridge, 2018, p. 69.

33 Mais A.M. Qandeel, *Enforcing Human Rights of Palestinians in the Occupied Territory*, Carl Grossmann Verlag, Berlin, 2018, p. 380.

34 Interview with legal advisor deployed in the second part of TIPH's second decade.

35 Interview with legal advisor deployed in the early part of TIPH's second decade.

36 Para. 2 TIPH Agreement of 1997.

37 Interview with legal advisor deployed in the early part of TIPH's second decade.

38 Para. 9 TIPH Agreement of 1997.

39 Part. B para. 3 MoU.

40 Interview with legal advisor deployed in the late part of TIPH's second decade.

settlers. While this focus follows logically from the mandate to promote feelings of security for the Palestinians, one legal advisor suggests that the mandate was not at all implemented against the Palestinian party, and two legal advisors hold that TIPH should have observed more issues within the Palestinian authorities and internal conflicts within the Palestinian community in Hebron which had a negative impact on some Palestinian families' feelings of security and rights.

TIPH took internal implementation measures to train observers on the mandate and on relevant rules and standards of IHL and IHRL, including how different rights may interrelate and with a focus on reoccurring incidents in Hebron. These trainings are described by several legal advisors as beneficial for the whole mission and its core tasks. It enabled observers to better identify what to observe and provided a basis for documentation of adequate information in incident reports. If an incident had been documented by an observer, it became part of TIPH's internal assessment process before it was decided if it was to be reported on to the parties.

The observers' regular presence and contact with Palestinians in Hebron provided TIPH with detailed material for its reports, including e.g. own observations, photos, videos and statements. TIPH appear to at times have had a constructive relationship with the lower-level IDF liaison officer which could have a positive effect in specific situations. A couple of legal advisors take the example that when TIPH observers made the IDF liaison officer aware of an ordinary access issue the IDF liaison officer could take relevant contacts and clarify issues so that the issue was unblocked in the specific case, resulting in that incidents and tensions was avoided. This was,

however, dependent on the IDF liaison officer and varied significantly over the years. It illustrates the need and value of a regular presence in the area, and of engagement by the parties also on a lower level. Observation is per definition instant and timely response to observed concerns may, if the responsible party is engaged and willing, solve individual problems and reduce tensions.

### Legal analysis of incidents

TIPH had a structured system for assessing incidents and producing reports. The assessment of incidents to be reported was conducted by an internal report assessment group (RAG). This included an analysis on how the incident corresponded to international agreements in force between the parties and other applicable international law. A couple of legal advisors express that it could be challenging to convince their colleagues in the RAG of their legal assessment of the relevant situation, one describe it as "convincing a jury".<sup>41</sup> One legal advisor explains that the analysis of most incidents "were legally fairly straight forward", but that there were "tougher cases where the definition and ambit of 'military necessity' played a decisive role."<sup>42</sup> The latter reflects the inherently complex nature of external assessment of situations regulated by, primarily, IHL where information held by the responsible actor plays a substantial role.

For the main part of TIPH's operation the legal assessment of observed incidents appears to have been guided primarily by the legal advisor's own expertise and a set of questions that related to commonly reported incidents. While legal advisors explain that they followed their predecessors'

legal positions on similar incidents, it was also pointed out that institutional memory was weak and TIPH's legal position on similar issues was challenging to locate among the rapidly growing documentation. This was particularly the case during TIPH's first period of operation. In the later part of TIPH's operation, detailed legal guidance was developed based on the internal TIPH practice, which provided guidance for the legal analysis of incidents. One legal advisor deployed in the later stage explains: "Legal advisers were building on a long-standing practice /.../ pertaining to what type of violations were typically reported on, hence leaving no big scope for interpretation. If there were reasonable grounds to believe that an IHL and/or IHRL violation had been committed by a party, then it became subject to a report. This also allowed for the possibility to ask the party at stake about its version of the events, and to possibly close the case should there not be enough information allowing to conclude that a violation may have been committed."<sup>43</sup> While there appear to have been some periods when some legal advisors aimed at formulating reports in terms of breaches of international law, most legal advisors hold that reports were formulated in terms of questions to how the recipient party considered the incident to stand in relation to relevant standards of international law, since the legal advisors considered that the mandate did not provide a basis for establishing that breaches had occurred.

When asked which type of issues of IHL or IHRL were most frequently reported on, the vast majority of legal advisors mention the same type of situations and rights or protections. Hence, there is a strong indication that the type of problems observed by TIPH was consistent over TIPH's 22

yearlong operation. The main issues concerned: freedom of movement and subsequently related rights such as the right to education and the right to health; several rights of the child; the right to life and the protection of civilians from direct attack; the right not to be arbitrarily deprived of liberty; the right to a fair trial, including judicial guarantees; the right to private and family life, the right to property, protection of civilian objects and the prohibition to transfer the Occupying Power's own population into occupied territory.<sup>44</sup> Several legal advisors also hold that restrictions to TIPH's freedom of movement within its area of responsibility was one of the main issues TIPH reported on.<sup>45</sup>

The addressees of TIPH's reports were the parties, Israel and Palestine, and the TIPH member states. The reports were not shared publicly. Legal advisors explain that the bulk of TIPH's reports were concerning and addressed to the Israeli authorities.

### Measures improving coherent legal analysis and follow up

The vast majority of legal advisors describe that TIPH observed and reported on an extremely high number of incidents negatively affecting Palestinian's security or rights. Eventually, the number of reports became a challenge in itself, in that serious issues risked going unnoticed with the parties and in the internal work at TIPH, including hampering the use of previous legal analysis. Several legal advisors identified weak institutional memory as a core internal challenge for TIPH, which negatively affected

efficiency, workload and the mission's capacity to follow up on reports. For legal advisors, this meant that they at times "needed to start all over again to try to grasp and understand certain issues, for example land and property rights in Hebron."<sup>46</sup> Given the complex legal environment TIPH operated in, this was time consuming. It also presented a challenge in the process of follow up on previous reports.

Legal advisors explain that halfway through its period of operation TIPH therefore developed a plan to concentrate its efforts to a number of strategic key objectives based on its mandate to sharpen its focus, ensure coherence in its analyses, but primarily, to avoid that particularly serious issues risked drowning in the sheer amount of reports. TIPH then started accumulating recurring incidents over longer time periods and reported on them collectively to demonstrate their ongoing nature as continuous issues of international law, separately from other incidents. This allowed TIPH to highlight issues that were considered as more serious. With this work, documentation on legal analysis also appear to have improved, which facilitated the analysis of typical incidents and improved coherency further.

However, challenges of tracing and processing reports to follow up remained. For more than half of TIPH's period of operation, there was no digital system for processing incident reports. Two legal advisor holds that this constituted one of the main challenges for TIPH's internal work. "The lack of a user-friendly, efficient and comprehensive case database made it more difficult to follow and

analyze patterns and trends of HR violations in the context of Hebron, to link different cases and to follow-up on them with the parties".<sup>47</sup> During its last few years, TIPH implemented such a system, financed by the TIPH member states. Legal advisors highlight this system as highly beneficial to TIPH's work, describing it as "tremendously useful in identifying exactly where in the process the incident report was located and who was responsible for the report."<sup>48</sup> Most legal advisors deployed during the later phase of TIPH's period of operation reflect the impact of these internal developments. One describes TIPH as "a very well established organisation" with extensive operational procedures and guidelines "for almost anything and any situation that could arise subject to the mandate of the TIPH", including on how reports and legal references should be made, and that "the TIPH Observers and the Legal Advisors were reporting accordingly."<sup>49</sup>

Although legal advisors across the operational period stress the huge amount of backlog of reports and the heavy workload, it is clear that the improvement of the digital infrastructure built a better basis for an institutional memory and that investment made a significant contribution to TIPH's capacity to follow up issues with the parties and ensure coherent legal analysis of incidents. The weak institutional memory and longtime lack of a strategic plan are identified as core challenge to TIPH's efficiency which also future third party mechanisms may face. Refined operational guidelines and priorities as well as digital resources that provide overview and builds institutional memory

41 Interview with legal advisor deployed in the later part of TIPH's second decade.

42 Interview with legal advisor deployed in the early part of TIPH's second decade.

43 Interview with legal advisor deployed during the later part of TIPH's second decade.

44 The majority of the legal advisors mentioned these as the main issues reported on during their deployment.

45 Eight legal advisors deployed during TIPH's second decade mentions restrictions of TIPH's freedom of movement as a core issue frequently reported on.

46 Interview with legal advisor deployed in the later part of TIPH's second decade.

47 Interview with legal advisor deployed in the later part of TIPH's second decade.

48 Interview with legal advisor deployed in the later part of TIPH's second decade.

49 Interview with legal advisor deployed in the later part of TIPH's second decade.

may facilitate the interpretation and implementation of a third party mechanism's mandate. In particular if the mechanism become as long-lived as TIPH and produces this high number of reports.

### The main challenges: the parties' lack of engagement with TIPH

Over the years it became clear that the peace process did not develop as envisaged and TIPH came therefore not to report on substantive steps towards normalisation. Directly and indirectly, the relationship between the parties formed a challenge to the operationalisation of the TIPH mandate and the fulfillment of its objectives. Legal advisors hold that TIPH's main operational challenge was the parties' lack of engagement with its reporting. This challenge was twofold; the joint committees did not function as provided for in the mandate and there was low bilateral engagement with TIPH.

A Joint Hebron Committee (JHC) was established under the TIPH Agreement, consisting of the Israeli Military Commander and the Palestinian Police Commander of the Hebron District, the Israel and Palestinian heads of the Hebron District Civil Liaison Office, and a TIPH representative,<sup>50</sup> and a Monitoring and Steering Committee (MSC) was to be established under the Interim Agreement.<sup>51</sup> TIPH were to provide reports on specific events to the JHC, periodic reports to the MSC,<sup>52</sup> and coordinate its activities with Israel and the Palestinian authorities, in

particular in the District Coordination Office (DCO).<sup>53</sup> Moreover, TIPH was to elaborate daily situation reports based on internationally recognised human rights standards to the joint committees, and forward summaries of the reports to the governments of the TIPH member states.<sup>54</sup> The TIPH Agreement did in this regard not only establish tasks for TIPH but also responsibilities for the Israeli and Palestinian authorities to work together and engage with TIPH in the joint committees. The parties renewed their respective responsibility in this regard with every renewal of the TIPH mandate, that is every six months during the 22 years TIPH was operational.

Engagement between representatives of TIPH and the two parties to the TIPH Agreement were to take place on three levels; in the DCO, in order to coordinate TIPH activity with the parties;<sup>55</sup> weekly (or upon request) in the JHC, in order to deal with any issues relating to TIPH's presence and activity which could not be dealt with by the DCO;<sup>56</sup> and on a bi-weekly basis (or upon request) in the MSC, in order to discuss policy matters.<sup>57</sup> The committees form the parties' institutional platforms for discussing issues observed by TIPH and were intended to function as the formal and direct channel for dialogue between the parties and TIPH on issues relating to Hebron. As such, they were a key component for the observer mission's ability to fulfill its objective.

Legal advisors deployed throughout TIPH's period of operation hold that these committees did not function as

provided for in the TIPH Agreement and were periodically not meeting at all. This is identified as the main operational challenge and had a significant impact on TIPH's work, influence and contact with the parties as well as the overall success of the mission.

TIPH sought to remedy the lack of functioning joint committees by building informal and formal contacts within Israeli and Palestinian authorities, and had regular and, at times, constructive contacts with lower-level officials (see above) and regular formal contacts with higher levels. However, it lacked a substantial dialogue on higher level. Some legal advisors experienced that this created an uncoordinated situation with sometimes contradictory responses. Whereas timely response to ongoing incidents may have a positive effect for an individual, e.g. by ensuring a Palestinian child access through a checkpoint to go to school, lasting effect on normalisation, security and wellbeing for Palestinians as a group requires structural efforts and that higher levels are committed to this goal.

As mentioned, the main bulk of reports were referring to the Israeli military system. However, legal advisors explain that the Israeli authorities received TIPH's reports but did not respond, responded late or responded without addressing the issues raised by TIPH, with the exception of certain particularly serious incidents. One legal advisor explained that the main challenge for TIPH was that "one of the parties (Israel) showed no respect

to the TIPH and did seldom bother to even respond to the reports that were forwarded to them (the Legal Advisors of the IDF/ISF)."<sup>58</sup> Another expressed: "The signatories of the Hebron Protocol, i.e. the Israeli Government and the Palestinian Authority, did not pay attention, or respected, the TIPH's reporting about violations of the Hebron Protocol, or breaches of IHL and IHRL, and in particular the Convention on the Rights of the Child."<sup>59</sup> Several other legal advisors express similar views.

Through its reporting, TIPH provided the parties with substantial information on issues of concern. Israeli authorities had the responsibility to engage with this material and the capacity to affect e.g. issues relating to security in H2, issues related to lack of access, and issues related to settlers that had a negative effect on Palestinians' feelings of security. Palestinian authorities had the same responsibility to engage with this material and the capacity to affect issues in H1, issues regarding the PPF and internal issues within the Palestinian community in Hebron that had a negative effect on their feelings of security. The lack of regular joint work between the parties coupled with the lack of genuine unilateral work (that resulted in visible effects on the ground), on issues TIPH reported on, meant that the TIPH Agreement was only partly fulfilled.

Hence, and notwithstanding legal advisors experienced positive contribution of TIPH's presence on the ground, the overall effect and impact of TIPH's observations and reporting is described as "limited", because of

"the lack of exchange with concerned authorities and the lack of high-level diplomatic pressure on the parties to effectively follow-up on the reports."<sup>60</sup>

Any international mission needs a strong backup. For a mission set up by a number of states collectively this may be more sensitive to politics compared to missions set up by an international organisation, which have a headquarter who can provide support to the mission. A challenge for TIPH was that it "did not have a weight on the political level".<sup>61</sup> Several legal advisors experienced that TIPH lacked political leverage and had needed further diplomatic backing from the TIPH member states. Otherwise, "you are just a player that can be ignored."<sup>62</sup>

Since TIPH observed and reported on incidents raising issues of international law over 22 years, the TIPH member states had a globally unique knowledge of and insight to the situation in Hebron during these 22 years as well as a formal and special relationship with the parties. Several legal advisors recognise the contact that "the capitals" had with TIPH and the parties but express that the member states should have put further pressure on the parties to implement the TIPH Agreement by meeting in the joint committees and/or actively engage bilaterally with TIPH's reporting.<sup>63</sup> It is considered that the "lack of effective diplomatic follow-up, including at high-level" was one of the main challenges to the implementation of the TIPH mandate.<sup>64</sup>

One legal advisor considers that after the Oslo process had collapsed, TIPH

had outlived its mandate and that the TIPH Agreement was no longer connected to the realities on the ground. A couple of legal advisors suggest that the member states should have sought to renegotiate TIPH's mandate or terminated it after an extended period of low commitment from the parties coupled with continuous breaches of international law. While TIPH's establishment may be considered as a significant achievement, and the prolongation of its mandate over 22 years is remarkable, it is questionable which lasting effect an observer mission may have after its withdrawal if the parties have not taken serious note of monitored issues and implemented systems to address them. Thus, the question arises whether the TIPH member states, who funded and staffed TIPH over 22 years, could have increased their political and diplomatic leverage to encourage Israel and Palestine to participate efficiently in the JHC and the MSC in accordance with the TIPH Agreement, in order to fulfill the TIPH mandate.

### TIPH's contributions through TIPH's legal advisors

Whether TIPH did succeed in promoting feelings of security is hard to measure but the 2015 independent evaluation concluded that there were unverified signs that Palestinians considered that TIPH had a positive impact in reducing tensions in Hebron.<sup>65</sup> The experiences described in this study highlight the value on the ground of observer missions with clear monitoring tasks with observers being

50 Para. 7(b) TIPH Agreement of 1997.

51 Art. XXVI(5) the Interim Agreement. (The MSC was to be established by the Joint Israeli-Palestinian Liaison Committee as a subcommittee.)

52 Paras. 5(f) and 7(b)-(c) TIPH Agreement of 1997.

53 Paras. 5(g) and 7(a) TIPH Agreement of 1997.

54 Part B para 2 MoU.

55 Para. 7(a) TIPH Agreement of 1997.

56 Para. 7(b) TIPH Agreement of 1997.

57 Para. 7(c) TIPH Agreement of 1997.

58 Interview with legal advisor deployed in the later part of TIPH's second decade.

59 Interview with legal advisor deployed in the later part of TIPH's second decade.

60 Interview with legal advisor deployed in the later part of TIPH's second decade.

61 Interview with legal advisor deployed in the early part of TIPH's second decade.

62 Interview with legal advisor deployed in the early part of TIPH's second decade.

63 Legal advisors also hold that the Contributing States should also have taken steps to ensure respect by the parties for the Geneva Conventions I-IV, based on their own obligations under article 1 GC I-IV and UNSC res. 681 (1990), para. 5.

64 Interview with legal advisor deployed in the later part of TIPH's second decade.

65 ITAD, Final Report, 2015, pp. 8–9.

physically present, regularly, at the right times and at the right places. Moreover, most legal advisors consider that TIPH, during its operation, promoted and contributed to some feelings of security among Palestinians in sensitive areas of Hebron through the physical presence of its observers.

A number of legal advisors suggest that TIPH, with its frequent and targeted observations, internal training and (at the last few years) a tailored digital system for processing, systematise and follow up incidents, could be a model for future third party mechanisms with observation mandates. Practical suggestions for improvements of such missions include longer rotations, regular assessment of the mission's work, and most importantly, strong institutional or political backing to encourage the parties to engage genuinely with the mission.

The majority of the legal advisors emphasise the historic and continued value of TIPH's enormous number of detailed reports as one of its main contributions. One legal advisor holds: "The mission's main outputs are its comprehensive research and its detailed reports on the human rights situation in Hebron over a prolonged period of time. It is of central importance to preserve these documents, digitalise them in a systematic manner and to enable access to them, based on justified requests in connection with: potential [future] legal investigations /.../, potential /.../ transitional justice

processes, academic research."<sup>66</sup> Other legal advisors make similar recommendations, in particular that the archive of TIPH's reports should be opened for academic research because, as one legal advisor puts it, "otherwise, TIPH just produced paper."<sup>67</sup>

## Conclusions

When the TIPH Agreement was adopted, a different way forward was envisioned than what did eventually occur. The situation in Hebron and between the parties transformed drastically during TIPH's period of operation and during the later part it was clear that no improvement was in sight. The fact that the peace process did not advance had considerable negative impact for the situation for the Palestinians in Hebron and for the fulfillment of the TIPH mandate. TIPH was established to report on steps of normalisation, which did not occur. Instead, it reported on the cementation of occupation and continuous breaches of international law.

The parties did not merely mandate TIPH certain functions with the TIPH Agreement, they also undertook responsibility to engage with TIPH in the two joint committees. This responsibility was renewed every six months during the 22 years TIPH was operational and yet it never materialised as provided for in the Agreement. The mission produced a tremendous number of reports but the envisioned work based on these

reports did not materialise as intended. This study finds that the low level of engagement and cooperation between the parties relating to its reports provided the main challenge for TIPH. Hence, insufficient engagement by the parties, and the Israeli authorities in particular, as to whom the bulk of TIPH's reports related, with the joint committees and lack of bilateral engagement with TIPH's reporting constituted the main obstacle for the achievement of the objectives under the TIPH Agreement.

This paper finds that TIPH, through its observers' presence in sensitive areas, likely provided some feelings of security to the Palestinians of Hebron during its 22 yearlong operation, and that its reports were the main output of the mission and constitute TIPH's primary legacy. It also finds that these positive effects and outputs was limited because of the parties' lack of engagement with TIPH and with the problems its reports disclosed, and because of the insufficient diplomatic pressure on the parties to fulfill their responsibilities under the Agreement. To conclude, there is much that indicates that TIPH through its physical presence with regular observation in sensitive areas had some direct positive impact on Palestinian's daily life in Hebron, during its observation. However, since no structural improvements of a lasting nature materialised in Hebron, it is questionable if the positive effect of TIPH's presence had a lasting effect after its withdrawal ■

<sup>66</sup> Interview with legal advisor deployed in the early part of TIPH's second decade.

<sup>67</sup> Interview with legal advisor deployed in the early part of TIPH's second decade.

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## 5

## TIPH – The internal organisation



### Ellen Marie Hansteensen

Ellen Marie Hansteensen has a specialisation in Middle Eastern studies and has worked in TIPH three times (1996–1997, 2004–2006, 2017–2018)



### Martin Reksten

Martin Reksten has extensive experience with Human Rights work from NGOs working in the Middle East and is currently finishing his Master's degree at the Theory and Practice of Human Rights programme at the University of Oslo



Two TIPH observers chatting to local school boys in Hebron. The observers reported on breaches to the Hebron Agreement, as well as breaches of human rights and humanitarian law. Photo: NORCAP

### Introduction

Hebron has a complex history linked to the story of Abraham and what is regarded as his tomb in heart of the Old City. Over the centuries a huge stone edifice was built over the site, which has been holy to Christians, Jews and Muslims. The latter still worship there today, at what they respectively call the Ibrahimi Mosque and Cave of Machpelah/Cave of the Patriarchs.

During the peace process between the Israelis and Palestinians in the 1990s, a American-Israeli extremist entered the building and shot 29 Muslim worshippers dead during Ramadan. The 1994 massacre triggered a crisis in the negotiations and the Palestinian leader, Yasser Arafat, requested the deployment of UN observers in Hebron. The establishment of the Temporary International Presence in Hebron (TIPH) turned out to be a solution that both sides could accept.

### The Survey

This report is based on a small-scale survey of carefully selected respondents about TIPH's internal organisation and structure. A questionnaire was sent out to its former heads of mission and heads of research and analysis between 1997 and 2019. Of 43 potential respondents, 28 – or 65 per cent – replied. The survey included 37 open-ended questions that gave the respondents significant freedom to define their answers. What follows is based on an analysis of their contributions. The questions are included as an addendum to the report, but answers have been withheld in the interests of anonymity. Quotes and statistics from the survey are presented in the analysis.

### TIPH - The organisation

#### Personnel

A TIPH team made up solely of Norwegians was deployed in Hebron early in 1996 to prepare the ground, and when the Israeli government and the Palestinian authorities signed the Hebron protocol in January 1997, the temporary presence in Hebron was expanded to include other nationalities.<sup>1</sup> By the following month, TIPH had six member states: Denmark, Italy, Norway, Sweden, Switzerland and Turkey.

#### Decreasing observer numbers

The protocol allowed for as many as 180 observers, but the highest number deployed was 142 during TIPH's first year of operation. By the following year the figure had already dropped to 110.

During the second intifada, which started in September 2000, patrolling the streets of Hebron became more difficult and the number of observers was reduced to around 85. After the lethal shooting of two TIPH observers in March 2002 and a further deterioration in the security situation related to Israeli incursions into the city Hebron the following year, the number fell further to around 65.

When the second Intifada was over and the security situation improved, TIPH's member states decided not to increase the number of observers to its previous level, and it remained at between 65 and 70 from 2003 to 2019. Around 40 per cent of the survey respondents mentioned the low number of observers and the challenge it represented in fulfilling the mission's mandate.

#### National Contingencies

Each member state covered the costs of deploying their respective

numbers of personnel. As of 1997 Norway provided 40 people, Italy 31, Denmark and Sweden 20 each, Turkey 18 and Switzerland 10. When the number of personnel was reduced, the proportionality between the contingents was maintained until Denmark withdrew from TIPH in 2016. Italy and Turkey then deployed more people to make up the numbers.

#### Observers' background

Norway sent police officers, and civilians who were specialised in the Middle East and spoke either Arabic or Hebrew.<sup>2</sup> Denmark also primarily sent police officers and civilians. Sweden and Switzerland sent civilians only.<sup>3</sup> Italy sent Carabinieri police officers and Turkey military personnel whom it later replaced with police officers.

Personnel with police or military backgrounds strongly outnumbered the civilians, making up around 90 observers in TIPH's first year of operation. Thirty people were either Arabic or Hebrew speakers, but their number fell to between 10 and 15 after 2002. There were always more Arabic than Hebrew speakers, the latter numbering only one or two. Over the year the mission's leadership realised that more Arabic speakers were needed, but resources were not available for their recruitment.

Despite the large number of personnel with police or military backgrounds, it was strongly emphasised that TIPH was a civilian mission. The founding agreement clearly states: "TIPH personnel shall have no military or police functions, nor will they interfere in disputes, incidents or the activities of Israeli security forces or the Palestinian police."<sup>4</sup> It was also decided early on that TIPH personnel should not carry weapons, even though the agreement envisaged the

1 The official title of the Hebron protocol is "Agreement on the Temporary International Presence in the City of Hebron", § 2

2 The National Police Directorate, or Politidirektoratet, recruited the police officers and the Norwegian Refugee Council the civilians

3 The Swiss Ministry of Foreign Affairs recruited all Swiss personnel

4 Agreement on the Temporary International Presence in the City of Hebron, § 3

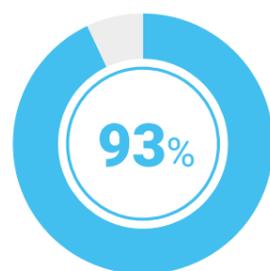
possibility of handguns for “self-defence purposes”<sup>5</sup>.

### Organisational structure

When asked to comment on TIPH’s structure, 93 per cent of the respondents said at least parts of it were efficient, and that the organisation of its three divisions worked well. Some, however, thought the lines between the operations and research divisions, and the research division and the head of mission’s office, were too artificial.

Each country appointed a senior official, who represented their contingent and participated in the weekly senior management meeting. The senior officials also had rotating roles as heads of division. Under the original structure, the head of operations alternated between Denmark and Turkey, and the head of research and analysis between Switzerland and Sweden. Turkey also headed the logistics division. Norway provided in addition the head of mission (HOM), while its senior official was project manager for the community relations section, which was part of the research and analysis division. Italy provided the deputy head of mission (DHOM) in addition to its senior official.

Some changes were made along the way. At some point it was decided that the Turkish and Swedish senior officials should alternate as head logistics, and their Swiss and Norwegian counterparts as head of research and analysis. When the Danish contingent decreased and then withdrew from TIPH in 2016, the Italian and Turkish senior officials alternated as head of operations.



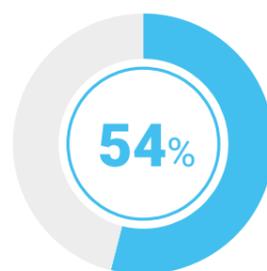
93% of the respondents commented that at least parts of the structure were efficient, and that the organisation of the divisions worked well

### Top-heavy structure

Fifty-four per cent of the respondents said aspects of the organisational structure were inappropriate.

After the downsizing associated with the second intifada, TIPH was generally top-heavy. Of 65 personnel, eight were part of the senior management group.<sup>6</sup> The main reason was that all participating countries had to have at least one leadership position. About half of TIPH’s staff were also office-based.<sup>7</sup>

The community relation officers were often out in the field visiting schools and giving briefings about TIPH and human rights, but there was a continuous lack of observers in the operations division. For several years, all TIPH personnel had to do a monthly share of observation shifts with the operations division to get more personnel on the streets. Some office jobs were cut in the final years of the mission and replaced with Arabic-speaking observers.



54% of the respondents answered that there were aspects of the organisational structure that were inappropriate

### HOM’s office

For many years HOM’s office consisted of just three people: HOM, DHOM and HOM’s secretary. The mission’s spokesperson also reported directly to HOM. A need to expand HOM’s office was gradually established, and after 2007 it was enlarged with several key personnel. Some, such as the political adviser and press and information officer, were new positions. Others, such as the liaison officers, legal advisers and security officer, were moved from other divisions. The gender adviser was at times part of HOM’s office and at times part of research and analysis. Many of these roles continued to have their physical desks in their original divisions but reported directly to HOM.

### Criticism

Some survey respondents criticised what they considered the overstaffing of HOM’s office. One wrote: “Over time, TIPH Head Office became overburdened by moving positions from the divisional level ... These changes hampered TIPH-wide

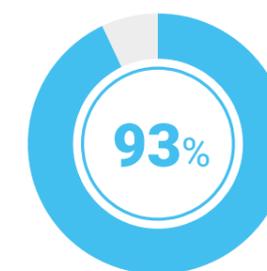


96% of the respondents commented on the positive results produced by the mixture of professional backgrounds

transparency, increased duplication, and instead of strengthening the operational work at TIPH Head Office, it increased insecurity and disconnected the office from the divisions.”<sup>8</sup> Several respondents expressed similar concerns.

Some also criticised what they felt was an authoritarian approach and failure to establish an inclusive and democratic culture. When asked to describe issues with TIPH’s structure, one respondent wrote: “Management culture led by a senior military commander.”<sup>9</sup>

This answer reflects a friction apparent throughout the survey, that military and police personnel tended to view an organisation as a hierarchically structured unit while their civilian counterparts were used to a more egalitarian, bottom-up approach. This point comes up across various time periods, meaning it is not linked to a particular HOM but rather to the authority the office was given, or possibly the structure around it. As one



93% of the respondents viewed the mixture of different nationalities as positive

respondent put it: “The HOM position was invested with too much power.”

It might also be linked to the professional culture HOM represented, given the position was always filled by a high-ranking police or military officer inexperienced in the management of civilian organisations. Several respondents suggested that either HOM or DHOM should have had an academic background and knowledge of the region in order to balance the two perspectives at the top of the organisation.

### The work - staff competencies

TIPH’s main task was to patrol the streets of Hebron and report on breaches of internationally recognised human rights and the Hebron protocol.<sup>10</sup> The idea was that the observers’ presence should promote a feeling of security for Palestinians in the city.

### The patrols

Equipped with pen and paper, camera and video camera, the TIPH observers monitored Hebron by car and on foot every day of the week. Their patrols were divided into morning and evening shifts, and mainly took place between 07:00 and 22:00. There were originally also night patrols, but after the start of the second intifada they were put on standby and only went out if need be.

Vehicles carried security equipment such as bulletproof vests, helmets and gasmasks for use when observing clashes or other dangerous situations. The patrols were also equipped with VHF radios to keep them in regular contact with TIPH headquarters. Each patrol was made up of a minimum of two observers: one with a police or military background and another with local language skills and experience of the region’s culture.

### The advantages of diversity

All but one of the 28 survey respondents said the varied work experience of TIPH’s personnel had a positive effect on the mission, and that different skillsets complemented each other to produce a more professional overall approach.

Some said the diversity was also beneficial from a security point of view. While police and military personnel were trained in “hard security” based on enforcement, civilians were versed in “soft security” methods, using language and culture to understand the situation better and defuse tensions by talking to people.

Ninety-three per cent of respondents also viewed the mixture of different nationalities as positive and many pointed out the beneficial effects

5 MoU on TIPH 30 January 1997, § 8

6 HOM, DHOM, and the heads and deputy-heads of operations, research and analysis, and logistics

7 Overall staffing. HOM’s office: 12 people – HOM, DHOM, four liaison officers, two legal advisers, one security officer, one political adviser, one press and information officer and one secretary/assistant; R&A: Nine people – head, deputy, three community relation officers, three researchers and one project manager; Logistics: 11 people – head, deputy, two medics, two building and transport officers, two finance officers, two IT/radio officers and one procurement officer; Operations: around 35 people – including head, deputy, duty and radio officers.

8 TIPH survey 2020

9 Ibid

10 The mandate for TIPH’s work was drawn from the Protocol Concerning the Redeployment in Hebron, signed on 17 January 1997; the Agreement on the Temporary International Presence in the City of Hebron, signed on 21 January 1997; and the Memorandum of Understanding on the Establishment of TIPH, signed on 30 January 1997

of cultural exchange on the work environment. Several said staff from varied backgrounds helped to consider issues from different viewpoints.

### Challenges

The respondents also raised some challenges associated with TIPH's cultural and professional make-up. They said it took time to understand other professions' methods and respect their way of working. Induction courses were held for new personnel from the outset in an effort to overcome such issues and establish a common approach to the work to be done. Internal training was developed and improved throughout TIPH's years of operation. Overall, respondents felt the challenges posed by TIPH's cultural and professional diversity were outweighed by the advantages.

Writing skills varied significantly between civilians with academic backgrounds and police officers with more practical experience, as did competency in English. Several respondents mentioned such issues as a source of frustration and friction between colleagues on patrol, and more widely between professions and national contingents. One wrote: "The quality of the reports sometimes varied, depending on the assessment of the incident by the observer, his/her persistence to follow-up on the case, his/her ability to write reports and English language knowledge."<sup>11</sup>

Social groups also tended to form around nationality to the exclusion of others and there was friction over different views on women's rights, but most respondents downplayed these issues and said that overall the diversity among TIPH personnel was positive.

### Different professional luggage

Survey respondents with a military background commented on their civilian counterparts' lack of respect for hierarchy, their at times lax attitude towards direct orders in high-risk situations and their lack of objectivity when analysing the conflict in Hebron.

Respondents with a civilian background commented on their military counterparts' lack of critical analysis of different situations. One wrote: "The main challenge in my view was the lack of context/cultural awareness of military/police people, and the cultural chasm between the military's 'we do as we are told' approach linked to clear hierarchies, and the civilian's 'let's see what we can get done here approach'."

They were also frustrated by the military structure of what they perceived as a civilian mission. One respondent commented on "a lack of realization by police/military that TIPH was a civilian mission".<sup>12</sup> Another wrote: "Overall, the mission was structured in a very military manner."<sup>13</sup>

### High turnover of personnel

Some respondents mentioned high staff turnover as a challenge that training struggled to compensate for. One noted: "High staff turnover and resulting lack of institutional memory did not facilitate implementing the mandate."<sup>14</sup>

Observers were initially deployed on very short contracts, in some cases for just a month with the possibility of extension. As it became clear the mission would be long-lasting, three and then six-month contracts were offered.<sup>15</sup> Later still, some personnel were deployed on 18 and

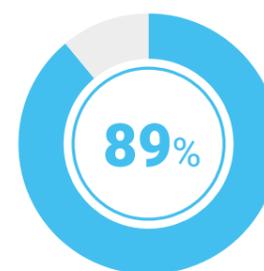
even 24-month contracts, but this was not done consistently across TIPH's member states. The extensions created valuable continuity, but short deployments remained an issue for TIPH throughout its years of operation.

### Geographical considerations

Some respondents commented on the artificial limits established by TIPH's area of responsibility (AOR), which meant they were unable to report on events outside it even if they affected Hebron. AOR was clearly defined by Hebron's city limits, which excluded Kiryat Arba, the biggest Israeli settlement in the region and home to around 6,000 settlers, just beyond.

The Hebron protocol divided the city itself into two zones, H1 and H2. The Palestinian authorities were responsible for civilian matters and security in H1, and Israel for internal security and public order in H2, and for the Israeli settlers living there.<sup>16</sup> This was the core of the protocol, because Israeli politicians had chosen not to evacuate around 400 settlers who had gradually occupied houses in the Old City since 1979.

H1 and H2 were initially demarcated with square concrete blocks, but over the years several were replaced by manned Israeli checkpoints that grew in size and structure. This despite the protocol stating that both sides should commit to the Hebron's unity and the maintenance of normal life across the city.<sup>17</sup> Such breaches of the protocol were one of the things TIPH's observers were meant to report on, as well as violations of human rights and humanitarian law.<sup>18</sup>



89% of the respondents expressed that there were discussions related to the interpretation of the mandate

### Human Rights

Human rights and humanitarian law are vast fields in which TIPH initially had no competencies, which meant debate about what constituted violations was common. As one respondent noted: "From the first year there were discussions about ... how to interpret breaches of human rights and the Hebron protocol."<sup>19</sup>

In fact, 89 per cent of the survey respondents said there had been discussions about the interpretation of TIPH's mandate, a sign of significant disagreement about what its mission was and how it was to be carried out.

Given such disagreements, and the fact that TIPH personnel came from various cultures and professional backgrounds, it was decided early on to develop guidelines for observers on reporting and human rights. The guidelines were improved and routinely revisited over the years, and it became an important task of TIPH's legal adviser to help observers and people working in other departments understand and refer to human rights

and humanitarian law correctly when writing their reports.

The matter was complicated by the fact that personnel from different professional backgrounds understood and identified more readily with one side in the conflict or the other. Observers from police and military backgrounds related more easily to those in similar roles, primarily the Israel's occupying forces, while civilians who spoke Arabic and had lived in the region gravitated toward the Palestinian population.

Detailed responses to the survey put this issue in sharp relief. Military and police respondents emphasised a lack of neutrality among the civilian observers, with one noting: "Many of the Arabic-speaking observers were, sometimes, impacted by their own background and were therefore not always objective."<sup>20</sup> The civilian observers, meanwhile, highlighted a lack of insight and understanding of the conflict and human rights violations among their military and police counterparts.

While the analysis of the survey is kept anonymous, most of the former HOMs and heads of research and analysis volunteered information about their TIPH roles. This made clear the extent to which different professions mirror different understandings of the situation on the ground in terms of observation and report writing, and the interpretation and implementation of TIPH's mandate.

### Freedom of movement issues

To perform their task TIPH's observers were provided with certain privileges and immunities, including freedom of movement across the whole city.<sup>21</sup> From the early days, however, they were confronted with Israeli

soldiers hindering their access to certain areas, particularly Palestinian neighbourhoods where Israeli settlements had grown so large that Palestinians' homes were squeezed in between settlers' larger buildings.<sup>22</sup>

The Israeli army set up checkpoints at the entrance to these areas, and soldiers generally denied observers access, even if the Palestinians living there had requested their presence. This phenomenon became more widespread over the years as the checkpoints and barriers grew in size and number, causing frustration among the observers and reports to be written about TIPH being impeded in its work rather than matters directly related to its mandate.

TIPH's leadership raised this issue repeatedly in meetings with Israeli officials, but as one survey respondent noted: "Over time one can see that TIPH complied with more and more limitations from the Israeli side regarding which areas they were allowed to patrol."<sup>23</sup>

### Joint Hebron Committee

TIPH produced weekly reports for presentation to the two parties and periodic reports that were sent to its six member states. The Hebron protocol established a Joint Hebron Committee, made up of the Israeli military commander, the Palestinian police commander for Hebron district, a TIPH representative and others. The mission's weekly reports were initially presented to the committee and discussed by it, which worked relatively well until the outbreak of the second intifada when the committee stopped meeting. It was never reactivated, and the rest of TIPH's reports were discussed separately with the two parties.

11 TIPH survey 2020

12 Ibid

13 Ibid

14 Ibid

15 The TIPH mandate was at first extended every third month, later every six months

16 Protocol Concerning the Redeployment in Hebron, 17 January 1997; §2

17 Ibid, §7 and §9

18 Agreement on the Temporary International Presence in the City of Hebron, §1

19 TIPH survey 2020

20 Ibid

21 Agreement on the Temporary International Presence in the City of Hebron, § 9

22 As, for example, in the Tel Rumeida neighbourhood

23 MoU §B.4 "As a basis for its reporting activities, the TIPH may use necessary equipment such as photo and video equipment (the TIPH reports are not for public use)."

## Implementation of TIPH's mandate

### **Neutrality misunderstood**

Some survey respondents said there was a general misconception within TIPH about its mandate, which clearly stated that it should “give a feeling of security to the Palestinians”. Many leaders and observers over the years talked about neutrality, even though the mandate took a clear side in trying to protect and strengthen Hebron’s Palestinian population.

### **Contact with media**

The issue of not revealing reports to the media was often discussed over the years, and it was treated somewhat differently depending on who was HOM. The participating countries also had different approaches. The Memorandum of Understanding on TIPH states in parenthesis that its reports “are not for public use”.<sup>24</sup> This was sometimes interpreted narrowly to mean no contact whatsoever with the media, and there were times when there was no spokesperson’s role. At others it was interpreted more generously, meaning that TIPH gave general statements to the media about trends, but without mentioning or referring to specific reports.

### **Economic development**

Other aspects of TIPH’s mandate received significantly less attention than its media relations, including its directive “to assist in the promotion and execution of projects initiated by the donor countries” and “encourage economic development and growth in Hebron”.<sup>25</sup>

The survey makes this neglect clear. According to one respondent, TIPH “generally had too few resources to engage with the economic development aspect of the mandate”.<sup>26</sup> There were no donations from TIPH’s member states to spur economic

growth in Hebron, apart from the relatively small sums channelled through its community relations section in support of only modest projects. The mission occasionally used its VAT reimbursements to fund larger projects, but its member states never engaged in large-scale donor activity to encourage economic growth.

### **A lesson learned**

TIPH was affected by a degree of confusion about the key concepts of its mandate throughout its history. It was often the subject of discussion in periodic reports and when dealing with the Israeli and Palestinian authorities. One suggestion to arise from the survey is that TIPH would have gained a lot from a thorough analysis of its mandate at the outset of the mission, conducted by senior professionals who could have made clear recommendations about implementation.

### **Disillusionment**

Several respondents complained about TIPH’s lack of influence. The situation of Palestinians living in H2 deteriorated rather than improved over the years, and reports increasingly mentioned the attacks and freedom of movement restrictions that observers faced. The patrols were few and capacity limited. Regular reports were sent to the two parties and TIPH’s member states, but there was a widespread feeling among observers that their efforts were to no avail.

Many observers arrived inspired to make a difference, but their motivation did not last. Survey respondents said their work seemed to be made for the archives. Given the limitations on working with the media and the demise of the Joint Hebron Committee, TIPH ended up as a silent observer for the diplomatic corridors of its member states, where several respondents said

there seemed to be little willingness to use its reports to make a difference.

### **Conclusions**

In general, the survey respondents were positive about TIPH’s mix of professions and cultures, the way they complemented each other and its impacts on the mission’s work.

Closer analysis of their responses, however, reveals some clear divisions and challenges. Those with military and police backgrounds emphasised a lack of objectivity and neutrality among their civilian counterparts, and the latter a lack of understanding of the conflict and human rights violations among the former.

While the analysis of the survey is kept anonymous, most of the former HOMs and heads of research and analysis volunteered information about their TIPH roles. This made clear the extent to which different professions mirror different understandings of the situation on the ground in terms of observation and report writing, aspects of TIPH’s organisational structure and the interpretation and implementation of its mandate.

It was apparent throughout the survey that personnel with a military or police background tended to view the organisation as a hierarchically structured unit, while their civilian counterparts were used to a more egalitarian, bottom-up approach. This caused some friction across the two decades of TIPH’s operation. A relatively high staff turnover was also highlighted as causing a lack of institutional memory.

A general feeling of low impact on the ground, in the diplomatic channels of TIPH’s member states and with the two parties to the conflict also emerged as a clear message ■

<sup>24</sup> MoU §B.4 “As a basis for its reporting activities, the TIPH may use necessary equipment such as photo and video equipment (the TIPH reports are not for public use).”

<sup>25</sup> Agreement on the Temporary International Presence in the City of Hebron, § 5d and 5e

<sup>26</sup> TIPH survey 2020

## Methodology and limitations

### Survey design

The survey questionnaire was sent out to TIPH's former HOMs and heads of research and analysis between 1997 and 2019. Of 43 potential respondents, 28 – or 65 per cent – replied. The survey included 37 open-ended questions and required significant effort to complete, reflected in an average response time of 177 minutes. We contacted each recipient of the questionnaire in advance to inform them of the extent of the input sought and engage them in the work. This preparation, combined with the survey's comprehensiveness, formed part of a strategic effort to encourage thorough responses and collect robust data.

The questions were written by a previous TIPH member and another person with no background in the mission. They were designed to offer respondents flexibility in answering freely about their experiences during their time in Hebron. Each question was carefully discussed to ensure they did not lead the respondents towards specific answers. This effort appeared successful, given the diversity of responses. Those from respondents who were deployed to TIPH two or three times were given added weight, but were not considered two or three times more important than other responses.

As with the survey design, the responses were carefully analysed and presented in this report by a team of two authors, one who was deployed to TIPH three times and the other with no experience of the operation. This way of working offered a balanced approach that helped to offset any inherent biases the authors may have had. Significant efforts were also made to ensure the analysis uncovered trends that extend across TIPH's two decades in operation

and were mentioned by a significant number of respondents.

Although the response rate was good and answers were extensive and well-thought through, the small number of participants and the long period of time the survey covered presented several potential sources of error:

1. *The survey does not represent the entirety of the TIPH organisation because it only targeted former senior managers. This means that rather than reflecting the organisational culture of the mission, it sheds light on the leadership's view of the matters concerned. As such it should be read as a subjective analysis from a top-down perspective.*
2. *Some survey participants were deployed to TIPH many years ago, meaning they were required to answer questions about distant experiences. As many themselves noted, this meant they had to rely on recollections that inevitably become less clear over time. Given this consideration, the analysis weighted general trends over time and put less emphasis on detailed accounts of specific issues in a particular period.*
3. *The survey was not followed up with interviews or any other form of consolidation, to avoid that the responses were influenced by how much time the participants felt they could dedicate voluntarily. In an attempt to address this issue, the survey questions were all structured in a similar way and contained similar themes to avoid respondents overlooking or missing out on the intent of specific questions.*

### Structure of the survey

The questionnaire was divided into the following themes:

1. *Structure of the organisation*
2. *Structure of the work – observation and report writing*
3. *The observers' and leaders' professional backgrounds*
4. *The observers' and leaders' nationalities*
5. *Interpretation and implementation of the mandate*

### Questions of the survey

1. *Could you please specify the time of your engagement with TIPH?*
2. *Were there any parts of the organisational structure you found highly relevant and efficient?*
3. *If yes, please detail which parts and how they were relevant and efficient*
4. *Were there any parts of the organisational structure you found challenging?*
5. *If yes, please detail which parts and how you found them challenging*
6. *Were there any parts of the organisational structure you found inappropriate for its tasks?*
7. *If yes, please specify which parts and how you found them inappropriate*
8. *Were there any discussions of changing the structure of the organisation while you were working in TIPH?*
9. *If yes, could you please briefly outline these discussions?*

10. *Did you initiate any changes in the structure of the organisation?*

11. *If yes, could you please briefly outline your initiatives?*

12. *Please comment on how the observation work was organised in relation to the mandate*

13. *Please comment on how the report writing by the observers was organised in relation to the mandate*

14. *Please comment on how the work within the RAI-division was organised in relation to the mandate*

15. *Were there any discussions related to the interpretation and practical implementation of the mandate while you were in TIPH?*

16. *If yes, could you briefly describe which issues were concerned and why they were discussed?*

17. *In your opinion, were there positive consequences derived from the mixture of civilians, police officers and military personnel in TIPH?*

18. *If yes, what were the positive consequences?*

19. *Were there any challenges linked to the mixture of civilians, police officers and military personnel in TIPH?*

20. *If yes, what were the challenges?*

21. *Were there positive outcomes due to the mixture of nationalities among the personnel in TIPH?*

22. *If yes, please elaborate on the positive outcomes*

23. *Were there any challenges linked to the mixture of nationalities among the personnel in TIPH?*

24. *If yes, please elaborate on these challenges*

25. *During your time, were there any diplomatic challenges between the contingencies from the TIPH member countries?*

26. *If yes, please detail what these challenges were*

27. *During your time were there any cultural challenges between the TIPH contingencies?*

28. *If yes, please detail what these challenges were*

29. *Were there any discussions around the implementation of the mandate during your time in TIPH?*

30. *If yes, please briefly outline these discussions*

31. *Were there any issues related to the mandate which challenged the report writing for the observers?*

32. *If yes, please briefly detail these issues*

33. *Were there any issues related to the mandate which challenged the report writing for the RAI division?*

34. *If yes, please briefly detail these issues*

35. *Were there any other challenges related to the mandate which influenced the daily work of the TIPH in your period there?*

36. *Are there any other experiences or comments you would like to add?*



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