

REFERENCE GUIDE
FOR
SECURITY

Negotiations Support Unit
Negotiations Affairs Department
Palestine Liberation Organization

Table of Contents

SECTION ONE: INTRODUCTION

SECTION TWO: NEGOTIATION PROCESS AND STRATEGY

- 2.1 Negotiation Approaches – General Description
- 2.2 Interests, Concerns, and Fears
- 2.3 Legal Principles and Other Legitimate Criteria
- 2.4 General Negotiation Strategy

SECTION THREE: SUMMARY OF DECIDABLE ISSUES

SECTION FOUR: ANALYSIS OF DECIDABLE ISSUES

A. Limitations on Palestinian Military Capacity

- A1 Demilitarisation and Demilitarised Zones
- A2 Restrictions on Alliances

B. Exceptions to Israeli Military Withdrawal from Palestinian Territory

- B1 Early Warning Stations
- B2 Military Presence in the Jordan Valley
- B3 Use of Palestinian Airspace (including civil aviation security issues)
- B4 Use of Palestinian Territorial Waters
- B5 Use of Electromagnetic Spectrum
- B6 Border and Perimeter Security Arrangements

C. Transition, Implementation, and Dispute Resolution

SECTION ONE

Introduction

The Goals of this Reference Guide

This Reference Guide is the confidential set of materials—general information, technical data and analysis—on security available for use by Palestinian negotiators before and during permanent status negotiations with Israel.

This Guide is confidential and available only to NSU staff and Palestinian negotiators at the Leadership and Technical levels. This Guide provides a comprehensive briefing on issues relevant to the permanent status security negotiations. In particular it aims to:

- Provide a structured analysis of Palestinian choices and decisions;
- Outline a consistent, understandable and workable process for negotiating the issues;
- Provide a simple, one-stop resource for negotiators in preparing for and conducting permanent status negotiations on security;
- Offer a useful method for focusing the attention of officials in various ministries and offices on thorough preparation for negotiation with Israel;
- Identify and highlight for negotiators the linkages between issues in different files;
- Build negotiator confidence in the quality and persuasiveness of Palestinian positions; and
- Bring consistency and consensus to Palestinian official positions on issues, especially where there are linkages.

How to use this Reference Guide

This Reference Guide can be valuable to different people for various purposes, including to:

- Help identify areas where actions taken now can improve results when negotiations begin;
- Provide negotiators with a simple, easily understood, and thorough briefing on the key aspects of each file;
- Guide negotiators in setting a specific agenda before each negotiating session;
- Serve as a step-by-step guide for negotiators as they negotiate;
- Structure Palestinian on-going investigation and data-gathering as negotiations progress;
- Help negotiators recognise linkages between files and evaluate resulting tradeoffs; and
- Give specific language for proposed agreements where necessary.

The purpose of the Guide is to serve as a resource for Palestinian negotiators in preparing for and conducting security negotiations with Israel. Therefore, the major issues to be decided at the negotiating table are a central organising theme for the entire guide.

The Reference Guide Approach to Security Decidable Issues

SECTION TWO

Negotiation Process and Strategy

Negotiation as a process is very flexible, adapting to different circumstances, conditions, needs or requirements as people, subject matter, or the context changes. This is its great strength, particularly for situations, like the current Palestinian-Israeli crisis, that demand innovative ways of addressing longstanding problems. This flexibility, however, is also its weakness, by not protecting negotiators from powerful or unscrupulous opposing negotiators.

The negotiator who is the most vulnerable is the one who enters the negotiation unprepared on substantive issues, or lacking in confidence, or consumed with a feeling of powerlessness, or uninformed about the strategies of using the negotiation process to achieve the desired results. The reference guide is intended to address each of these risks so that the Palestinian negotiator will be prepared on the substance, confident, persuasive and informed by the best possible strategies and approach.

Section II offers a description of the negotiation process and strategy that experience suggests can serve the Palestinian negotiator well. The section is divided into four parts.

Subsection 2.1 describes the different general approaches to negotiating resolution of conflict, and provides a detailed explanation of the interest-based or problem-solving approach, which is not only recognised as being especially effective for parties in situations similar to what the Palestinians are facing, but is also consistent with Palestinian actions in prior negotiations.

Subsection 2.2 explores the major Palestinian interests, concerns and fears, all of which are central to negotiating a fair long-lasting agreement. It also lists possible Israeli interests and concerns. Permanent status negotiations will be successful to the extent that the resulting Agreement satisfies Palestinian needs, values and interests well, and key Israeli interests acceptably. These Palestinian interests, therefore, serve as the principal test for whether or not potential solutions are acceptable.

Subsection 2.3 identifies the general legal principles and other legitimate criteria that support the preferred Palestinian positions, offer negotiators strong arguments to use during negotiation give-and-take, and provide useful standards for judging whether particular options on the table are fair and just.

Finally, **subsection 2.4** discusses possible negotiating strategies and processes that could be applied in the security sector to achieve a good outcome. It also includes an exploration of possible current initiatives and recommendations for actions the PLO or

the Palestinian Authority might take to position itself more favourably for formal permanent status talks.

2.1 Negotiation Approaches – General Description

Palestinian negotiators are faced with a formidable task: Negotiating an agreement for a viable independent state with an opposing party that not only continues to occupy Palestine and subject Palestinian people to repressive and humiliating restrictions, but also presses at the same time a claim to annex a large portion of Palestinian territory.

That task presents many SUBSTANTIVE challenges in the security area, as well as such other areas as Jerusalem, refugees, borders, settlements, economics, water, environment, etc. It also presents an important PROCESS challenge: *How does a weakened, relatively defenceless, and militarily powerless party negotiate successfully with a powerful, militarily overbearing, and wilful opponent in an often violent, ever-changing environment?*

The goal is to identify the negotiation strategies that Palestinians can adopt that will:

- emphasise their own strengths;
- strengthen their weaker points;
- take advantage of Israeli weaknesses; and
- respond effectively to Israeli strengths.

Framework for Thinking about Negotiations

Recent research and practical experience in the negotiation field suggest a general framework for thinking about negotiation situations. This framework includes seven basic elements, each one reflecting an important part of the negotiation process.

Relationships and the communication process among the parties form the environment within which negotiation occurs on substantive issues. The substantive issues to be decided by the parties are the central focus for the negotiation, and here the negotiators concentrate on the parties' interests (including needs, concerns and values), possible options, and legitimate standards as they relate to decidable issues. There are two possible outcomes to a negotiation – either the parties agree on a solution to their problems (a commitment), or they fail to agree and must look elsewhere to satisfy their interests (the alternative).

Every negotiation exhibits a pattern of these seven elements. However, the way negotiators balance their actions (or inaction) among the elements, perhaps stressing one over another, influences greatly the quality of the negotiation process and any resulting outcome. While there are many possible patterns a negotiator can choose, two primary patterns or approaches occur most frequently: the positional or competitive approach, and the interest-based or problem-solving approach.

Two Approaches: Positional/Competitive and Interest-Based Approaches

Several guiding principles are helpful when thinking about negotiation patterns:

- The two different negotiation approaches create very different environments:
 - A party using the positional/competitive approach asks for, indeed demands, acceptance by the other side of its unilaterally determined position and, as the method of persuasion, threatens harm or bad consequences if the other side says “No.” Positional negotiation, by stressing the elements of commitment and alternative to the exclusion of the other five elements, encourages antagonistic and highly competitive behaviour; and
 - A party using an interest-based or problem-solving approach, on the other hand, balances all seven elements more evenly by placing a priority on interests, legitimate standards, and relationships. This balance tends to generate a collaborative atmosphere, a sense of interdependence between the parties, and a focus on mutual gain.
- General approaches of the two principal parties:
 - Israeli negotiators generally use a highly effective positional and competitive approach to negotiating with the Palestinians (and most others); and
 - Palestinian negotiators use an interest-based approach, typically negotiating based on their own interests and needs, while trying to accommodate Israeli interests suitably, occasionally shifting to positional tactics only in response to Israeli methods.
- Research and experience show that when equally competent negotiators using the two different approaches negotiate against each other, the one using an interest-based approach controls the negotiation process over the long term, despite what may appear to be an imbalance in relative power in favour of the more competitive party.
- A central issue for Palestinians is therefore how to build their capability and confidence in negotiating effectively using the approach that is the most natural to them—an interest-based or problem-solving approach.

Attaining a Good Outcome

The goal of an effective interest-based negotiator is to arrive at good outcomes in all negotiations by balancing attention among all seven elements in the framework of the negotiation process. A good outcome is one that:

- Satisfies your **interests and needs** well, and those of the other side acceptably;

- Is an excellent solution that is the best of many **options**;
- Is **legitimate and fair** for all parties, with no party feeling unduly disadvantaged;
- Includes **commitments** that can be implemented and will be long lasting;
- Is better than the consequences of not coming to agreement (the **alternative**);
- Is attained by a process that is efficient, with effective **communication**; and
- Helps build **relationships** that support continued cooperation.

Interest-based negotiators can use these seven criteria systematically to prepare for complex negotiations, to plan strategically the process by which they might achieve a good outcome, and to identify tactically the criteria emphasized by the opponent and to design responses that increase the chances of consistently achieving a good outcome.

Negotiating Power

Power in negotiation is defined as the ability of one participant to influence another participant's choices or decisions in ways that make the other party do something they would not have otherwise done just to satisfy the wishes of the more powerful party. Perception has an important role to play in the evaluation of negotiating power. For example, Palestinian negotiating power depends as much on Israel's perception of Palestinian strengths, as it does on the strengths the Palestinians actually have.

Categories of Power

The following six categories of power can be used as useful evaluation tools in analyzing relative power within a negotiation situation. Each one refers to a resource or relationship that helps a negotiator influence the choices and decisions of the other side.

- The power of understanding interests and needs (yours and theirs)
- The power of developing a good working relationship
- The power of inventing an elegant solution (or many acceptable options)
- The power of using legitimate external standards
- The power of developing a good alternative to negotiating agreement with this party
- The power of making credible commitments.

Threats versus Positive Negotiating Power

Negotiators who follow a positional/competitive approach often use threats (negative commitment) early and often, and overlook the power that can come from a clear, firm positive commitment. A good strategy to maximize negotiating power emphasizes the many benefits that can come from negotiating a mutually favorable agreement (positive commitment), rather than continually to threaten to hurt the other side if they don't do as you say (negative commitment). Negotiators should focus on what they want to happen, not on what they fear might happen. Strengthening incentives for parties to agree helps to build good relationships, identify essential interests, generate innovative options for mutual gain, and encourage reliance on legitimate standards – a good balance of negotiating power.

2.2 Interests, Concerns and Fears

2.2.1 Palestinian Interests, Concerns and Fears

Palestinians have many interests, concerns and fears surrounding the issue of security. The aim of permanent status negotiations is to satisfy these interests and establish an environment in which the concerns and fears can be laid to rest.

The following core interests of the Palestinian people are recognised as essential to the resolution of security issues:

- To be acknowledged and respected as citizens of an independent, sovereign state recognised by the international community;
- To feel secure in their homes and in their homeland;
- To be able to participate freely in the legitimate activities of the international community, including full membership in international organisations, international alliances of military, economic, social and cultural nature, and peace operations;
- To have their own territory, governed fully and without arbitrary discrimination by laws and institutions designed and enforced by their own government;
- To have sovereign control over Palestine's physical and natural resources as a means of ensuring adequate supply for the present and future;
- To have freedom of unfettered movement throughout their own territory for purposes of family, social, economic and other legitimate activities;
- To achieve a just and fair result with regard to the inequalities and suffering of the past thirty-five years;
- To have internationally recognised legal principles and standards applied in determining what is just and fair in protecting the security of the Palestinian people;
- To ensure that the Israeli people have acknowledged the contributions their government has made to creating and maintaining a sense of insecurity among Palestinians;
- To contribute to and benefit from regional peace and security; and
- To provide for a fair and rapid transition from the current situation of mutual insecurity to a new environment of mutual security.

Palestinian concerns and fears are powerful forces that must be reduced or eliminated by the solution agreed upon and/or the process by which it is negotiated. The most prominent concerns and fears are that:

- The Israeli military will remain a continual threat and presence in the West Bank and Gaza, despite the creation of a Palestinian state;
- Permanent status negotiations will continue indefinitely for years without any positive results;
- Palestinian negotiators will have insufficient awareness of the implications and consequences of decisions in the negotiations and therefore will agree to solutions that ultimately restrict the viability or independence of a future state, all without obtaining sufficient benefits in return;
- Palestinians will be reluctant to engage in serious negotiations because of a perception of Israel's motives underlying its demands;
- Palestinian negotiators will agree or concede too quickly to Israeli proposals without requesting clarification or justification;
- Continued Israeli presence on Palestinian territory;
- Israel will fail to implement an Agreement, or delay or obstruct prompt implementation of an Agreement;
- Implementation of an Agreement which does not fully express the mutual the understandings of the Government of Israel and Palestine;
- Implementation of an Agreement which continues to negatively impact the Palestinian population; and
- Implementation of an Agreement with continued IDF presence on Palestinian territory;

Palestinian security interests relating specifically to Palestinian territory are to:

- secure and exercise sovereign powers over all Palestinian territories;
- ensure physical contiguity of Palestinian territories;
- ensure that Palestinian governing institutions exercise control over and use of Palestinian territory for military purposes;
- ensure that any security arrangements that affect control over and use of territory are applied in a fair and non-discriminatory manner consistent with international law and practice; and
- secure an explicit time frame and fair mechanism for determining an end to Israeli occupation of Palestinian territories.

Palestinian security interests relating to self-defence are to provide the:

- capacity to prevent, deter, or delay overt external threats or aggression;
- right to possess an effective security force to provide that capacity to defend against external threats or aggression;
- freedom to determine the structure, training, armament, deployment, etc. of such self-defence forces as are legitimately related to self-defence functions; and
- right to enter into bilateral or multilateral security arrangements with other sovereign states to support or supplement such self-defence capacity.

Palestinian security interests in internal and border arrangements involve the right to retain or acquire:

- credible ability to maintain internal security and public law and order by its own means;
- credible ability to prevent cross-border infiltration, whether criminal (smuggling) or hostile (anti-peace elements and terrorists) by its own means;
- full Palestinian control over all internal, border, and transit security arrangements in all sovereign territory and waters, including Jerusalem, West Bank-Gaza corridor, settlements, Gaza territorial waters, and the Palestinian Dead Sea waters;
- full partnership responsibility and powers where joint or shared internal security responsibility with Israel is necessary; and
- freedom from regulation or restrictions, proposed on security grounds, on the free exercise of Palestinian sovereign powers and the conduct of economic and trade activities.

Palestinian security interests in transitional arrangements and dispute resolution include fair, accessible and efficient forums and procedures to receive complaints, discover evidence, consider arguments and make decisions relating to claims that might arise out of the main Agreement or implementation activities.

2.2.2 Israeli Interests

Understanding Israeli security interests, concerns and fears is especially useful because Israel (and third parties) identify these factors as driving Israeli behaviour. If Israeli interests and concerns can be satisfied in this area, many suggest that Israel will most likely move promptly to permanent status negotiations.

Israeli interests, concerns and fears include:

- the ability and right to retain an independent and unfettered capability to defend and safeguard its external security by its own means;
- the ability to verify independently, by its own means, any security provisions that affect Israel, yet depend on Palestinian or third-party implementation;
- a desire to limit the ability of Palestinians to establish policies or take actions that threaten in any way the security of Israel as defined by Israel;

- the need to link issues of security to the location of borders, control over territory, restrictions on economic movement of people or trade in goods, existence of visible instruments or mechanisms of control over Palestinian life, or actions in other substantive areas; and
- concern and fear that Palestinian militant groups will continue to organize acts of violence against Israeli civilians within Israel.

2.3 Legal principles and other legitimate criteria

A fundamental Palestinian interest is to achieve a just and fair result. Internationally recognised legal principles, generally accepted standards of security, and other legitimate objective criteria are essential tools for assessing the justness and fairness of any proposed options as well as taking advantage of inherited wisdom embodied in those instruments. These principles, standards, and criteria help determine what is fair, just, workable and durable for protecting the personal freedoms, physical safety, and the rights of the citizens of both Palestine and Israel.

These principles, standards, and criteria are addressed in the analysis of each respective issue. The most important of these include:

- International rules and legal principles, such as
 - Article 2(4) and Article 2(7) of the United Nations Charter,
 - 4th Geneva Convention,
 - The Hague Conventions,
 - Universal Declaration of Human Rights and International Covenant on Civil and Political Rights,
 - Chicago Convention,
 - Agreements Israel has concluded with other nations (Egypt, Turkey, etc.), and
 - Equitable principles of reciprocity and equal protection of the laws.
- Standards of security, such as
 - Reports of international conferences discussing international security,
 - Good Friday Accords in Northern Ireland, and
 - 1977 British Counter Insurgency Manual.
- Other legitimate criteria, such as
 - scholarship describing models for promoting international security and international precedents governing the use of foreign military installations.

These legal principles and other legitimate criteria should provide guidance and stability for the Palestinian negotiator in the give-and-take dynamic of negotiation with Israelis.

Palestinian negotiators must insist that these principles and criteria be applied throughout the negotiation to evaluate options and determine what potential solutions are just, fair and therefore acceptable in satisfying legitimate Palestinian interests.

The Agreement ultimately reached by the Parties may be the result of the negotiators applying these standards flexibly to take account of the interests of both parties; yet the Palestinians should always assure themselves that the result is broadly consistent with recognised objective standards.

General Negotiating Principles

The Palestinian negotiating approach on security should be based on the following principles:

- security is a major interest of both parties and must be a central issue in the negotiations;
- security can be defined in positive terms, as the existence of a fair and just legal framework, effective security forces, sufficient financial resources, all backed up by reciprocal support and cooperation in achieving the goal of mutual security;
- negotiators of both parties must be interested in understanding the other's security concerns and needs as much as they are in stating clearly their own security interests and concerns;
- reciprocity is a basic negotiating principle, especially in considering the technical arrangements that can help assure mutual security; and
- the most effective process for negotiating security interests and concerns is a problem-solving process that focuses on understanding the separate interests involved and, by using relevant and legitimate standards, generating creative options to satisfy the interests of both sides.

2.4 Negotiation Strategies and Tactics

This subsection contains a discussion of general strategy that should guide the Palestinian negotiators in preparing for and negotiating security issues with Israel.

2.4.1 General Negotiating Strategy

2.4.2 Pre-Permanent Status Discussions

2.4.2.1 Jordan Valley initiative

2.4.2.2 Road Map obligations: strategy to move beyond Phase I

Strategic Context

Following the implementation of the disengagement plan, Israel is intensifying its efforts to demonstrate that the Palestinian Authority is not satisfying its commitments with respect to disarming and dismantling militant groups. Such a strategy allows Israel to prolong entry into “Phase I” of the Road Map indefinitely, thereby enabling it to consolidate ‘facts on the ground,’ in particular in relation to the large settlement blocs, the encirclement of East Jerusalem, the further fragmentation of the West Bank, and the completion and entrenchment of the Separation Wall.

It is therefore necessary for the PA to develop a strategy and a concrete stance with respect to its performance of Road Map obligations, in particular those that Israel is using, or is likely to use, to discredit Palestinian performance. The obligation to end violence and terrorism and to take action against those engaging in violent attacks against Israelis is one argument that Israel will use to undermine the Palestinian position in this respect.

The analysis in this section examines the language employed with respect to ending violence and terrorism in the Road Map text and suggests how it may be interpreted to suit Palestinian interests in moving beyond Phase I.

Road Map Text

Phase I obligations pertaining to disarming and dismantling all parties acting in a violent manner towards Israel are principally expressed in the following provisions:

“At the outset of Phase I: Palestinian leadership issues unequivocal statement ... calling for an immediate and unconditional ceasefire to end armed activity and all acts of violence against Israelis anywhere.”

“Palestinians ... undertake visible efforts on the ground to arrest, disrupt, and restrain individuals and groups conducting and planning violent attacks on Israelis anywhere.”

“Rebuilt and refocused Palestinian Authority security apparatus begins sustained, targeted, and effective operations aimed at confronting all those engaged in terror and dismantlement of terrorist capabilities and infrastructure. This includes commencing confiscation of illegal weapons and consolidation of security authority, free of association with terror and corruption.”

Road Map Analysis

The undertakings may be divided as follows:

a. Unequivocal statement ... calling for:

- Immediate and unconditional ceasefire;
- Immediate end to armed activity; and,
- Immediate end to all acts of violence against Israelis anywhere.

This is the least difficult obligation to perform as it only requires a statement. Indeed, this has been satisfied given the numerous statements made by the president and the leadership on the matter. President Abbas’ statement at the ‘Aqaba summit is a strong example :

Let me be very clear: There will be no military solution to this conflict, so we repeat our denunciation and renunciation of terrorism against Israelis, wherever they might be. ...We will exert all of our efforts using all of our resources to end the militarization of the intifada, and we will succeed. The armed intifada must end, and we must use and resort to peaceful means in our quest to end the occupation and the suffering of Palestinians and Israelis and to establish the Palestinian state. Our goal is clear, and we will implement it firmly and without compromise: a complete end to violence and terrorism.

The Road Map requirement is thus satisfied by the President’s statements:

- Denouncing and renouncing terrorism against all Israelis;
- Calling for an end to militarization of the Intifada; and,
- Affirming the choice of peaceful means to end the occupation.

b. Visible efforts on the ground to arrest, disrupt, and restrain ...

The obligations stated here are not obligations of result – i.e. the Road Map does not require clear outcomes to be achieved as a benchmark for successful performance. More precisely, the text does not require the full implementation of a program that would successfully dismantle all militants and militant groups as a benchmark for success.

The text does, however, require efforts that are “visible” and “on the ground” to be undertaken – i.e. concrete action and not just statements or theoretical plans. Thus, it would not suffice for the PA to simply lay down a plan and set up procedures for dismantlement. It must take action. The fact that the text states that efforts must be “visible” indicates that the action must have a public component.

The text further specifies that the effort must consist of arresting, disrupting and restraining those conducting or planning violent attacks. “Restraining” and “disrupting” are broad terms and may be carried out in a number of ways.

The PA should point out that it has undertaken visible efforts to restrain and disrupt violent attacks through the daily work of the security and police forces, as well as through arrests of suspects in accordance with the law.

c. Security apparatus begins sustained, targeted and effective operations ...

This obligation may either be read as a subset, and a further elaboration of the requirements in b, above, or it may be considered as a separate, independent obligation.

- **“Rebuilt and refocused”**. One potential problem for the Palestinians is that the wording of the provisions presupposes a “rebuilt and refocused” PA security apparatus. This may be interpreted as requiring security sector reform (SSR) to take place at the institutional level as a prerequisite to satisfaction of Phase I obligations. However, this interpretation is not logically sustainable in light of the overall Road Map vision, which envisages a dynamic, incremental process of SSR. The Road Map is clear that Palestinian obligations, **unlike those of Israel** (e.g., relating to settlement freeze), are intended to be incremental. Thus, the text reflects an understanding that functioning under Israeli occupation, the Palestinians cannot be expected to **complete** rebuilding and restructuring of the security sector within Phase I.
- **“Begins sustained, targeted and effective operations”**. As in b, above, the text does not impose an obligation of a specific result. It merely requires that concrete efforts be taken. These efforts must be sustained (that is, take place over an extended period of time – not a one-time raid, for instance), targeted (at the individuals and groups engaged in violent armed activity) – and effective (produce real results).
- **“Begins . . . operations aimed at . . . dismantlement of terrorist capabilities and infrastructure”**. This is clearly to be read in conjunction with “begins . . . operations aimed at,” such that, like all other obligations mentioned above, it is not one of specific result. The Road Map text refers to “terror” and “terrorist capabilities” which are different from legitimate popular resistance to military occupation by a civilian population. The Palestinians are not under an obligation to dismantle any legitimate non-terrorist resistance to the military occupation.
- **“Commencing confiscation of illegal weapons”**. This obligation merely requires commencing, and does not set any benchmarks, whether quantitative or qualitative, for compliance. It should be read in conjunction with the earlier reference to “visible” efforts.

- **“Consolidation of security authority ...”.** This phrase should also be read in conjunction with “commencing” (in the earlier part of the sentence). This commonsense interpretation strengthens the position that the PA does not need to undertake full SSR program as a prerequisite for fulfilling Phase I obligations.

Conclusion

The Road Map requires the Palestinians to initiate visible efforts dealing with militants and preventing attacks on Israelis. Fulfillment of Phase I obligations depends neither on completion nor major success of any efforts or actions. However, the text does require concrete, result-producing actions beyond theoretical plans or symbolic gestures.

2.4.2.3 Engaging the Third-Party Security Role: Rafah Crossing Point Agreements

SECTION THREE

Decidable Issues

[

A. Limitations on Palestinian Military Capacity

- A1 Demilitarisation and Demilitarised Zones
- A2 Restrictions on Alliances

B. Exceptions to Israeli Military Withdrawal from Palestinian Territory

Physical presence or deployment

- B1 Early warning stations
- B2 Military presence in the Jordan Valley

Control over “envelope”

- B3 Use of Palestinian airspace (including civil aviation security issues)
- B4 Use of Palestinian territorial water
- B5 Use of electromagnetic spectrum
- B6 Control over borders:
 - a. International crossing points
 - b. Perimeter
 - c. Jerusalem

C. Transition, Implementation, and Dispute Resolution

SECTION FOUR

Analysis of Decidable Issues

A. Limitations on Palestinian Military Capacity

Background

Israel has fears and concerns regarding future hostile acts by Palestine, directly, or along with other states. Therefore, Israel has a legitimate interest in being confident that Palestinian military capacity is not at a level that can pose a serious threat to the State of Israel.

In the past, Israel has had fears and concerns about being attacked by its neighbouring Arab states, including Egypt, Jordan, Syria, Lebanon, Iraq and Iran. In more recent years, it has established stable peaceful relations with both Egypt and Jordan, and since 2003 Iraq has posed no threat. Israel still suffers occasional attacks from Lebanon, and Syria remains an enemy state, if not an actual military threat. Based on this history, Israel has had a legitimate interest – at least up to the peace treaty with Jordan in 1993 – in ensuring that Palestine cannot impede Israeli forces from deploying in strategic locations within Palestinian territory for the purpose of defending against major external attack from the south (Egypt) or the east (Jordan). This is no longer the case.

Palestine is interested in being recognised as an independent state able to exercise its full rights and responsibilities as a sovereign nation, and in maintaining a responsible self-defence capability. It has no interest in developing an offensive military threat to Israel.

In previous negotiations, the Israeli position was that Palestine should be a “demilitarised state”. In particular, Israel demanded:

- No Palestinian army;
- Limits on Palestine procuring or manufacturing weapons other than those agreed to; and
- Commitment not to enter into military or security alliances with states hostile to Israel.

The analysis in this section examines all potential Israeli demands for limitations on Palestinian military capacity, along with the corresponding Palestinian interests, arguments and options, by considering the following categories of restrictions:

- I. Limits on size and structure of forces, and weapon types and quantities; restrictions on deployment (demilitarised zones)
- II. Restrictions on formal status, alliances and foreign relations

Standards and Criteria

No legal standards governing arms control. With the exception of certain aspects of the law of armed conflict, and such instruments as the Nuclear Non-Proliferation Treaty and the [insert convention on chemical biological weapons] there are no established legal standards or principles governing arms controls. A number of different terms are used in relation to arms controls and limitations, but there is no general definition of these terms under customary international law. These terms only acquire specific meanings in their operational contexts. Therefore, these terms must be given concrete meaning within the parameters of an Israeli-Palestinian peace agreement.

State sovereignty and arms limitations. The fact that a state is subject to arms limitations, including a discriminatory arms control regime, is not necessarily incompatible with that state's sovereignty. Whether this is the case or not depends on the context and the types and combinations of specific arms limitations applied.

Types of arms limitations

There is considerable historical precedent for arms limitations agreements between states. For the purposes of an Israeli-Palestinian peace treaty, the following arrangements are pertinent:

1. **Demilitarisation (demilitarised zones):** Demilitarisation is a prohibition on the deployment of military personnel, equipment, and facilities in particular zones or areas of a state. Demilitarisation has never been applied to entire states. The concept of demilitarised zones has been used in situations of armed conflict as a means to ensure special protection for civilians, as part of conflict termination arrangements and armistice agreements, as well as in peace treaties. (SOFA – annex ____)
2. **Arms controls:** These may include the prohibition or restriction on numbers of specific military equipment (tanks, aircraft, missiles, weapons of mass destruction), and quantitative or other limitations on the size and type of armed forces on land, sea, and air. Arms limitations may be contained in a peace treaty (as in the case of Germany after the First World War, or of Germany's allies after the Second World War). Alternatively, they may be incorporated in a state's constitution rather than in a peace treaty (as in the case of Japan after the Second World War). (Arms limitation agreements – annex ____)
3. **Prohibition on joining military alliances:** Arms limitations may include a prohibition on joining military alliances, but this is not automatic and there are few precedents for such prohibitions. The most extreme case of such prohibition is an international obligation to maintain **permanent neutrality**.

Note on neutrality:

[insert Bothe material]

Controls and third-party role

The success of arms control regimes depends to a large degree on the effectiveness of the controls, of which an important element is the involvement of a third party. Depending on context, such involvement may attenuate the discriminatory nature of an arms control regime, and consequently may be important in an Israeli-Palestinian peace agreement.

In the case of demilitarised zones, third party controls are common. This most often takes the form of international observation or inspection. Examples are:

1. Karachi Agreement 1949: UNMOGIP
2. Israeli-Syrian Disengagement Agreement 1974: UNDOF
3. Peace Treaty between Egypt and Israel, 1979: the text of the treaty provides for an interim buffer zone to be supervised by the United Nations while these tasks were finally assumed by an ad hoc international force, the "Multilateral Force and Observer" (MFO)

Right to unilateral termination of treaty provisions

A state subject to arms limitations by treaty may not terminate these limitations on the grounds that the treaty is "unequal". However, In the Israeli-Palestinian context, Palestine, having agreed to specific arms limitations may be entitled to unilaterally terminate on the following grounds:

1. **Self-defence:** Self-defence would be a circumstance precluding the wrongfulness of a failure to perform the obligations stipulated in the treaty (art. 31 of the ILC Articles on State Responsibility). Thus, if there were an armed attack against Palestine, the arms limitation obligations contained in the treaty would not prevent Palestine to acquire arms to defend itself.
2. **Fundamental change of circumstances:** [insert paragraph]
3. **Breach of the treaty by Israel:** In the case that a breach by Israel relates to "a provision essential to the accomplishment of the object or purpose of the treaty", i.e. a "material breach," the other party (Palestine) is entitled, according to art. 60 CLT, to terminate the treaty or to suspend its operation.

Given the uncertainty and lack of clarity with respect to the applicability of these grounds in international law, it is advisable to agree to specific provisions for termination included in the treaty, or alternatively, provisions for a regular periodic review process to address any needed modifications to arms limitations as a result of changes over time.

DI-A1 Demilitarisation

Background

Israel has repeatedly insisted that the State of Palestine be formally considered a “demilitarised state.” It has not sought the more limited objective of demilitarised zones, perhaps because of the limited size of Palestinian territory. Rather, it has sought a blanket demilitarisation of the entire state. Although it has not spelled out in detail what it means concretely by demilitarised state, it is evident that it seeks a prohibition on Palestine possessing regular armed forces and associated military capacities. This translates into limitations in the following areas:

- Formal status
- Army size
- Structure and organization
- weapons

Demilitarisation not a term of art. Negotiators should note that “demilitarisation” is an inappropriate term as it has universally been used to describe demilitarised zones and not entire states. What Israel actually seeks are sweeping limitations on armaments, force size, organisation and status.

Prior Experience

Israeli negotiation history and positions

At both the Camp David and Taba negotiations, Israelis negotiators demanded the following:

- No Palestinian “army” or the ability to have one.
- Palestine to be a “demilitarised state”, with a strong police force with ground and maritime contingent. The word “demilitarisation” may be mentioned only in an annex, but it must be clear that that is the status. The size, deployment, and activities of Palestinian forces will be specified in the agreement.
- Options for formal status: (1) Palestinian Armed Security Forces; (2) Palestinian National Security Force; (3) Palestinian National Guard
- Any flight requirements will be addressed in the context of civil aviation, i.e., no air force.
- During the Taba negotiations Israel proposed a list of weapons and equipment Palestine may not procure or manufacture (see below). The list includes almost all types of weapons except for small arms and light vehicles. The list also includes dual-use equipment. The Israeli List of Weapons at Taba included:

- Tanks and other military armoured vehicles used for combat
 - Military aircraft, military helicopters, and unmanned aerial vehicles
 - Artillery, mortars, and other high trajectory weapons
 - Any missiles or rockets, including launch systems
 - Air defence weapons systems
 - Anti-tank weapons systems
 - Electronic warfare and military-oriented intelligence capabilities
 - Military naval missiles
 - All kinds of mines—land and naval
 - Underwater weapons systems
 - Any equipment, systems material and capability, or dual use designed, adopted or used primarily for military purposes
- Under the Israeli proposal on weapons, Palestine would not be able to procure or manufacture weapons and equipment beyond what was agreed to during the Oslo Process, with minor variations.
 - Israel did not make any *specific* demands in past negotiations on force size, organisation, or structure, except for the demand that Palestine not have an air force.

Palestinian negotiation positions

At the Camp David and Taba negotiations, Palestinian negotiators took the following positions:

- Palestine does not seek to become a military state, but it does require a small army for internal and external self-defence.
- The Palestinian side rejected the label “demilitarised state”, though “state with limited arms” or “defensive arms” may be acceptable.
- The agreement may limit the types of armaments that Palestine will have, but there is no need to limit the numbers of forces, which in any event will be limited for economic reasons.
- Palestine will not seek jet fighters, but an air force is necessary for transportation, for protection of VIPs, and to address external and internal threats.
- **In previous negotiations, the Palestinian leadership had not defined or articulated a policy regarding the projected security needs of the state of Palestine, whether in terms of military size, structure or weapons.**

Proposed Process

Palestinian leadership should define and articulate the force size, structure and weapons requirements to meet the security interests of the State of Palestine before

entering negotiations on these issues. Without these requirements, it is impossible to propose detailed options or scenarios for negotiators (other than to suggest responses to Israeli proposals, which is an unacceptable negotiation strategy, especially for security issues).

Palestinian security negotiators should work closely with leadership in developing these requirements and articulating how they can be met while also satisfying legitimate Israeli interests. Palestinians should prepare a responsible proposal on this issue to offer the Israelis at the outset of negotiations and not wait for Israel to make its demands. The Palestinians need to “frame” the issue for the negotiations.

There are a number of sub-issues that need to be discussed separately with the Israelis. The negotiators may want to press Israel for agreement on each one as they are raised and discussed, or postpone any decisions until after discussing all four in some detail. In the end, however, there should be a package of agreements that touch all sub-issues and therefore respond fully to the issue of demilitarisation.

Options and Arguments

The Palestinian negotiators should be pro-active in negotiating this issue, always keeping the legitimate Palestinian interests clearly on the table for everyone (especially the Israelis) to see.

The following items contain a range of options and arguments that Palestinian negotiators will want to raise in the negotiation.

a. Demilitarisation vs. limits on arms. Demilitarisation is not a concept applicable to entire states. Negotiators should suggest various combinations of demilitarisation of limited zones and limitations on weapons in Palestine to satisfy legitimate Israeli interests, but they should be clear in separating these legitimate interests from the demands that Israel has made for a demilitarised state.

Palestinian Interests are:

- To protect and maintain the integrity of the borders of Palestine;
- To protect its citizens from crime at all levels and from both internal and external sources;
- To generally maintain public law and order (i.e., enforce and sustain the state monopoly on the use of force and the rule of law);
- To prevent terrorism and infiltration by terrorists; and,
- To defend its population against external acts of aggression.

The proposal that the Palestinian negotiators provide to Israel on this issue should be firmly based on a mutual understanding of the legitimacy of the above listed Palestinian interests. The Palestinian security requirements should flow naturally from those interests. The negotiators can ensure that any proposed combination of limitations

meets these security interests, thereby providing Palestine with a basic defensive capability.

[List of minimum requirements on force size, structure and equipment needed to satisfy interests should to be inserted once assessment and policy decision is made]

b. Sovereignty and viability. Concerning this issue, the Palestinians will want to emphasise the legitimacy of their interests and the common themes that run between Palestinian and Israeli interests.

Palestinian interests

- To be acknowledged and respected as an independent, sovereign state recognised by the international community;
- To live in peace and security with its neighbours, and to provide its citizens with the same;
- To be able to govern and exercise authority effectively.

Possible Israeli interests and concerns

- To live in peace and security with its neighbours, creating a stable and peaceful regional environment within which the Jewish Israeli state can exist;
- To be able to govern and exercise authority in its territory effectively;
- To protect its citizens and residents from potential external threats.

Arguments and Options:

The extent of past Israeli demands amount to eroding and fundamentally undermining the ability of Palestine to conduct its internal and external affairs effectively, thereby adversely affecting its sovereignty and viability. This is because the limitations Israel has sought would:

- Impair operational capacity to conduct external relations and honour basic international commitments (such as the prevention of terrorism)
- Tangibly erode domestic and regional legitimacy of Palestine as a state – both for domestic public and for others in the region – which will have negative implications for the credibility of the negotiated peace agreement.
- Provide ample grounds for opponents of peace to attack what they see as excessive and onerous provisions of the treaty, thus putting both Palestine and Israel under threat.
- Undermine sovereignty of Palestine by impeding its ability to control its borders, with Egypt and Jordan as well as with Israel.

c. Demilitarised zones

Palestinian interests:

Protect population in case of external aggression

Possible Israeli Interests and concerns:

Fear that Palestinian military capability will be used against the Israeli population

Argument and options

Given historical circumstances, Palestine, while not seeking offensive capacity, does seek a basic ability to defend itself against external aggression, by any state or armed group. It should be in Israel's interest that this agreement be stable and long-lasting. External threats change from decade to decade – viz. the current terrorist threat from al-Qaeda. Palestine must have the flexibility to meet those threats as conditions change.

However, In order to demonstrate to Israel that its defensive capacities will not be used offensively, and to meet legitimate Israeli concerns, Palestine may consider temporary arrangements for limited deployment zones such that its forces are kept at a distance from Israeli borders. These arrangements may be useful as confidence building measures (as long as they are temporary in nature), helping to further satisfy the interests of both parties.

d. “Dual Use” Equipment and Materials. Notwithstanding restrictions on unambiguously military items, dual use items should be clearly agreed to. There are international norms that regulate the movement and traffic in clearly defined types of materials and equipment. Palestine, like any sovereign state, will abide by international standards, but will not accept unreasonable restrictions on imports of goods that will adversely affect its economy and economic development. Objective international standards will be the test for any provisions in this area.

Prior Experience: *(Insert Israeli list for Rafah – update once there is agreement on customs annex)*

Palestinian interests:

- Economics
- Sovereignty
- Avoiding uncertainty

Argument:

Palestine is willing to abide by accepted international norms regulating the traffic in dual use equipment (see, e.g. the Wasenaar Agreements – Annex ____). It is acknowledged that there are numerous disputes and much uncertainty in this area of dual use

equipment. Any norms must therefore be accompanied by appropriate dispute settlement provisions that provide an accessible, fair and timely process for resolving differences of opinion.

Along with these positive commitments, the Palestinians should make it clear that it will not accept limitations that:

- Are more restrictive than international standards and practice
- Go beyond what Israel accepts for itself under these regimes (if applicable)

e. Formal status and designation.

Linkages

Economics: customs agreements

DI-A2 Alliances

Background

Israel may seek an explicit prohibition of Palestine from entering into alliances with third parties without its prior approval – this is in order to prevent Palestine from enlisting hostile third parties in military action against Israel, or from receiving military training, weapons, or other assistance from these parties. It may seek

Prior Experience

Negotiation positions at previous rounds

Israeli position: No alliances of a military or security character, except with Israel's agreement.

Palestinian position: Palestine will not enter into alliances of a military and security nature with states or entities hostile to Israel.

Interim Agreement and related practice

The Interim Agreement restricted the ability of the PA to conduct foreign relations. This restriction, of course, did not extend to the PLO. The restriction is understandable, given the continuing nature of the relationship of the parties (occupier and occupied).

Proposed Process

Analysis: Options and Arguments

Core Palestinian interests. The basic interest of Palestinians is that they have an independent, sovereign state with all the rights and responsibilities that it entails – including membership in the UN, obligations to refrain from violent acts against other states and to support treaty commitments in good faith. Palestine has an interest in being a constructive member of the international community

General Commitment not to violate terms of Agreement. Palestinian negotiators may propose that both parties undertake not to enter into alliances or commitments with third parties that would entail a violation of any obligation under the peace treaty, or that is incompatible with their commitments as a member of the United Nations.

Neutrality. One option that Israel may propose in the negotiations is for Palestine to declare status of “permanent neutrality.” If that option is taken, then Palestine cannot be “demilitarised” since neutral states have the legal obligation to defend their territory against foreign powers seeking to use it to mount an attack on a third state. It would

also seem that any provision that accepts the presence of Israel in Palestine, whether temporarily, regularly, or in emergency, would be a violation of neutrality.

Palestinian negotiators should assert that severe limitations on the ability to enter into alliances amounts to the same thing as neutrality – in which case Palestine cannot be expected to honour the restrictions without the ability to effectively defend its territory against external threats. It should then be entitled to establish armed forces to provide for defence of its territory – also to prevent use of its territory by ANY foreign power in aggression against a 3rd party (a violation of its neutral status).

B. Exceptions to Israeli Military Withdrawal

General Background

In order for Palestine to become a sovereign state, Israel must end its occupation of Palestinian territory. Consequently, it must withdraw its control, military forces, population, and infrastructure from Palestinian territory, including airspace and territorial waters.

Israel has demanded in the past, and is likely to demand in the future, that it retain some forms of presence in and control over Palestinian territory for purported security concerns.

Palestinian negotiators should be aware of, and prepared to respond to, all potential Israeli demands for continued presence and control. Palestinian negotiators should:

- discuss these issues only if raised by the Israelis first. At the time permanent status negotiations begin, conditions and technology are likely to be different than what they are now. Israeli negotiators may have decided that the “cost” of such continued presence in Palestine would be much higher than the relatively modest benefits that it would bring.
- consider limited and temporary arrangements only to accommodate legitimate Israeli security concerns arising from present conditions. Those concerns can only be a product of the current context, which of course reflects the harsh conditions imposed on Palestinians by the existing occupation. The permanent status agreement is intended to establish the basis for stable, peaceful interaction between two independent neighbouring states. Therefore, in drafting the provisions the parties should assume that such a normal peaceful relationship exists. Therefore, any measures required to deal with the security problems of the current situation should be limited and temporary.

DI-B1 Early Warning Stations (“EWS”)

Background

Israel has sought in past negotiations to “lease” a total of three early warning stations, all in the West Bank. Israel currently operates up to six stations in the West Bank. Three are located along the ridges overlooking the Jordan River Valley, one in East Jerusalem, one in the District of Ramallah, and one in the District of Hebron. It is unclear whether all stations have similar specifications or whether they all serve the same purpose. All stations, however, appear to have features of early warning and communications stations.

In dealing with this issue, it is essential that Palestinian negotiators keep in mind that all states bordering Palestine (Jordan & Egypt) have signed and implemented peace treaties with Israel. Moreover, with the technology that is now available, such installations do not enhance Israel’s capability to detect an imminent threat from the East. In case of Israeli intransigence, or as a trade-off,

Should the Palestinians agree to EWS in principle, there are ways to limit such installations by negotiating specific conditions, including location, fixed timeframe, limitations on use, number of personnel, third party or Palestinian access for inspection etc. There are various legal instruments that may be used to regulate and limit Israeli EWS installations, including leases and Status of Forces agreements (SOFA).

Prior Experience

Israeli demands / positions:

- At both Camp David and the King David talks, Israel demanded continued and indefinite operation of three early warning stations on high-ground in the West Bank.
- The Israeli proposal initially specified the location of two stations (Ba’al Ha’tzor and Mount ‘Ebal) but not the third. During the Taba round Israel specified the location of the third (Beit Yattir).

Palestinian positions:

- Agree to continued operation of two EWS sites subject to arrangements for the entry and passage of personnel and related matters, an “inspection regime” as well as a limit in duration.
- Proposed an international 3rd party to monitor compliance.

Standards and Criteria

Sovereignty. The newly independent state of Palestine will be sovereign in its territory, with all the rights and responsibilities that entails. It is customary international law that

states do not allow foreign military presence on their territory without specific approval and under carefully defined restrictions. Under normal conditions, states do not allow foreign military presence on their territory (e.g., Israel). Exceptions to this general rule include formal defensive alliances (NATO); temporary provision for defensive forces in the region (Saudi Arabia, Kuwait); special intervention to assist local enforcement of law and order (Lebanon, Congo); peacekeeping or observer forces under UN or regional organization command (Egypt, Lebanon, East Timor); etc.

Lease, SOFA, and other instruments. There are several instruments available for the design of a 'lease agreement' as the framework for allocating rights and duties between the two parties. Lease is preferable to other arrangements, as it is flexible, reliable and Israel has no valid reason to object to it. Furthermore, leases have been, and continue to be, of common use in interstate practice. [refer to annex for examples – out of Quigley paper]

Proposed Process

This issue should be addressed only if raised by Israel. Negotiations should be led by the technical security negotiators in regular consultation with leadership. In preparing for discussions, security negotiators should consult the telecommunications negotiators to identify the spectrum requirements of various possible EWS and the impact it will have, including possible fees or charges involved. Security negotiators should seek input from the Economics negotiators on economic costs including lost opportunity costs and possible lease charges. Trade-off issues on both sides may be part of the discussion, so security negotiators will need to work closely with leadership as discussions develop.

Options and Arguments

Threshold position: The onus is on Israel to raise this issue and justify why it needs to intrude on territory of a sovereign Palestinian state.

- A sovereign state normally does not accept foreign military presence on its soil, and as an independent state, it is entitled to refuse any such presence.
- Guided by this principle, Palestine will only consider the option of accepting Israeli EWS on its soil IF Israel is able to successfully demonstrate a legitimate security interest/concern for which EWS (in the numbers and locations stated) is the only option remaining to address it – all other less intrusive options do not achieve the desired results.
- Israel must therefore demonstrate legitimate security interests/concerns that cannot be satisfied by any other less intrusive means, and a *bona fide* purpose for requesting EWS.

Palestinian negotiators should therefore raise at the outset of negotiations the following issues and require clear responses for each. The order of raising these issues is important because having Israel commit to a particular set of purposes or functions for the EWS allows Palestinian negotiators to address Israeli interests by subsequently pointing out other ways of satisfying the same functions without impinging on Palestinian sovereignty.

1. Why does Israel need EWS on Palestinian Territory?

a. Purpose and function. Israel must explicitly explain the purposes for which it intends to use the EWS (i.e what targets would it detect and where, the types of threats anticipated). These purposes and functions must be related to legitimate Israeli interests and concerns, which they should describe in detail.

b. Location. Palestinian negotiators should then ask why the stations need to be placed on Palestinian territory, since there are similar, if not identical topographical sites with the same line of sight distances inside Israel proper. Israel has the burden to demonstrate that location on Palestinian territory performs the purposes (as explained by Israel itself) better or, indeed, any differently from placement a short distance away within Israel's borders, and that improvement or difference is necessary to satisfy the stated interests/concerns.

c. Alternatives. Israel must demonstrate that the products provided by EWS in Palestinian territory cannot be obtained from any other sources. This issue is particularly relevant given recent technological developments in satellite capability and the use of unmanned airborne "drones" that would fly over Israeli territory only. Palestinian negotiators should point out that Israel has treaties and alliances with several major military powers (notably the US) where such information is available.

[insert short note on US spy satellite capacity – currently live 24 hours global coverage – Israel's own satellites have less coverage – US will certainly share relevant information – viz. threat from the east with Israel – check with Yezid on the technical specs. Place in annex?]

Palestinian interests. Palestinian negotiators must identify legitimate Palestinian interests and determine what impact, if any, possible EWS will have on those interests. This discussion should be with the Israelis so everyone understands the "costs" to Palestinian interests that EWS generates. Those costs may quite easily offset the benefits to Israel that might come from EWS. This cost/benefit analysis is central to the decision whether EWS is justified. Legitimate Palestinian interests include:

- To have sovereign control over their own physical and natural resources;
- To feel secure in their homes and in their homeland;
- To ensure physical contiguity of Palestinian territory; and
- To have an environment that encourages growth and prosperity.

Along with these interests, Palestinians have legitimate and fundamental concerns relating to continued Israeli military presence on sovereign Palestinian territory after a peace treaty. Any visible presence of Israeli military in Palestine is a reminder of the occupation and may be seen as an indication that the occupation has not ended.

2. If Palestine agrees in principle to EWS on its territory, what arrangements must be made to minimise impact of their presence?

If, after considering the evidence under issue 1 above, the Palestinian negotiators accept on principle the siting of Israeli EWS in Palestine, the parties should proceed to negotiating specific terms and conditions, and restrictions on operation.

The outcome of this discussion should be a detailed agreement covering all relevant aspects of operations, including guarantees and measures to mitigate any harm or potential infringements of Palestinian sovereignty. (See Section XXX below)

Palestinian interests and concerns must be the recurring theme throughout this discussion. An agreement allowing for the placement of EWS must mitigate any harm to Palestinian interests and take full account of the concerns. The legitimate and fundamental Palestinian concern relating to continued Israeli military presence on sovereign Palestinian territory after a peace treaty is a “substantial cost” factor for EWS that should be taken into account in designing EWS and thus provides a strong justification for severe Palestinian restrictions on EWS number, location and operations.

Number and location of EWS. At the outset, Palestinian negotiators should require the number of EWS be determined by, or limited to narrowly meet, the purposes and functions Israel stated under issue 1. The fact that EWS is an exception to the general rule of sovereignty suggests that it should be “narrowly tailored” and not expansively interpreted. It is entirely possible that one EWS could be sufficient for the functions and purposes mentioned. Just because Palestinian negotiators agreed in principle on having EWS on their territory doesn’t mean that they have given Israel the unfettered right to determine number, location and other specifications of EWS.

In the process of determining number, the negotiators may have identified the likely locations for EWS. The Palestinian negotiators should use the following factors to assess the potential degree of harm the location of EWS could have on Palestinian interests:

- proximity of the station to centres of economic and social activity;
- proximity to major transportation arteries;
- access to natural minerals and water from existing groundwater and the ability to utilise rainwater;
- proximity to areas of urban growth and development,
- impact on employment opportunities;
- impact on electromagnetic spectrum allocations; and
- proximity to cultural and historical sites.

These factors speak to the need to define the land area for the EWS as narrowly as possible while still providing Israel with a usable EWS site.

Choice of Instrument. [*is this necessary? – choices: one lease / one sofa / combination lease for high level decisions and sofa for operational and technical matters – Yezid: agree to standard sofa terms for technical issues, and negotiate a lease agreement on contentious issues. Q: is this wise, since in our case, the technical matters have an important political dimension – this is not a standard NATO type situation.*]

SOFA/ Lease provisions must minimise harm to Palestinian interests

If Palestinian negotiators decide to agree in principle to Israel's demand to place and operate EWS within the territory of a future Palestinian state, this section lists and analyses the range of relevant provisions that should be raised to restrict and control Israeli activities. Given wide range of precedents of SOFAs and international leases [refer here to annex __ Quigley) and their flexibility, the Palestinian side should propose terms that simultaneously address:

- the fundamental Palestinian interest in minimizing (and ultimately eliminating) all Israeli presence and control over any Palestinian territory after the coming into effect of a peace agreement; and,
- Israeli security interest in monitoring and quickly apprehending potential military threats from the east.

The key issues that require agreement:

Nature of the transaction -- Not Cession. The agreement must clearly state that the transaction is a lease of land. It is preferable that it exclude cession explicitly. In the past, those international lease agreements that neglected to point out the exact nature of the instrument have at times resulted in the lessee state claiming title to the land as ceded territory under international law.

Consideration. The characterisation of the agreement as lease would be further reinforced by requiring the payment of consideration at fixed intervals by the lessee state. The amount, which may be described as a 'Base Rent,' may well be purely symbolic; it is, however, legitimate for the Palestinians to demand an amount that would reflect fair market value (if such an assessment is possible) or more.

Governing Law. Palestinian negotiators should at least consider and raise the innovative option of concluding the lease agreement as a private law instrument under the laws of a major jurisdiction. This is particularly useful if arbitration is chosen as a mechanism to settle disputes. [this section should be further investigated and developed in the long run]

However, the Israelis are likely to strongly oppose this proposal. The Palestinians may alternatively agree to incorporate the lease by reference within a SOFA.

Physical Demarcation of Leased Area (“LA”)

- **Clear Boundaries.** The Palestinian negotiators should insist on clearly demarcated zones for EWS installations. The boundaries should be drawn up on mutually agreed maps and incorporated into the lease or SOFA.
- **Excluded areas.** Below the ground / restrictions of airspace use within the LA.

Legal jurisdiction over LA

Sole jurisdiction of Palestine should be stressed, as the lease is a limited arrangement and should be treated to the greatest extent possible like a lease between private parties.

No broad rights should be accorded the Lessee, since that may be used as a claim for jurisdiction over territory of LA and persons in it. Instead, the Agreement should list specific Lessee rights, indicating that anything outside the scope of the enumerated rights is excluded (the ordinary rules of interpretation should be sufficient to allow for reasonable deviations).

The LA *must* remain under the jurisdiction of the Lessor; any Lessee powers or rights over the LA arise exclusively by reason of, and for the duration of, the Lease Agreement.

Caveat – SOFA: In case the agreement is in the form of a SOFA, it may be interpreted as providing for a limited form of jurisdiction to lessee. [See model in the Ukrainian Russian Black sea lease. How does one avoid that?]

Legal Status of Goods. Movement of goods into and out of LE needs to be consistent with relevant rules on customs / export and import duties and other agreements and laws. Since we wish to maintain Palestinian overall jurisdiction over territory and persons, the movement of goods from Israel into the LE should have the same legal consequences as movement from Israel to Palestine.

Legal Status of People. (residents; employees; other) Since jurisdiction remains in Palestinian hands, Israelis (indeed any foreigners) should comply with standard rules as they are agreed upon with respect to visas, restrictions etc.

Liability of persons.

Civil and criminal on leased estate (fugitives)
Linkage to Administration of Justice

Other restrictions.

Trespassing outside LA
No eavesdropping/ interception of communication

No interference with Palestinian communications
 Military activities
 Radar / spectrum allocation
 use of mineral and other underground resources

Third Parties.

Definition of Aggression

In case of third party aggression on LA

- responsibility for defence against outside attack

In case of Israeli aggression against third party involving LA

- Israel undertakes to take no action in LA in breach of international law [- this is too broad – is it useless to include?]

Termination of Lease

Conditions for termination: Options:

- i. Unilateral – conditions for lessee / lessor termination
- ii. Bilateral termination
- iii. At end of fixed term (x yrs)
- iv. Renewal by mutual consent – parties may renegotiate terms

Assessment of status of land and fixtures at termination:

Indemnity for damage arising from any breach of agreement and compensation for loss.

Dispute Resolution

Termination – deemed to terminate subject to final resolution

Dispute Resolution Mechanism: Arbitration?

Palestinian access to all EWS data. If there is agreement on EWS placement in principle, negotiators should raise at the outset the basic demand that Palestine should have access to all data collected by the EWS. This demand is based on legitimate Palestinian interests and does not negatively affect Israeli interests. Indeed, it may even enhance them, since:

- In case of a potential military threat, Palestine has an interest in early detection, which would enhance its ability to counter external threats. (This is also good for Israeli security interests.)
- Palestine has legitimate concerns, based on past Israeli actions, that EWS would be used by Israel to gather information within Palestine. Access to all data ensures that Israel will comply with the agreement and use the EWS solely for agreed upon purposes.

DI-B2 Military Presence in the Jordan Valley

Background

Throughout previous negotiations, Israel has indicated a requirement for up to six areas in the Jordan Valley to be used in several ways. First, Israel was seeking to pre-position combat equipment to be used in the event of an emergency emanating from the East, either by land or air. Second, Israel has in the past prepared deployment sites in designated areas, particularly in the northern sections of the Jordan Valley, for rapid troop deployment. Third, Israel has sought a physical presence in the Jordan Valley in order to protect these areas from theft and destruction, and to provide maintenance when necessary.

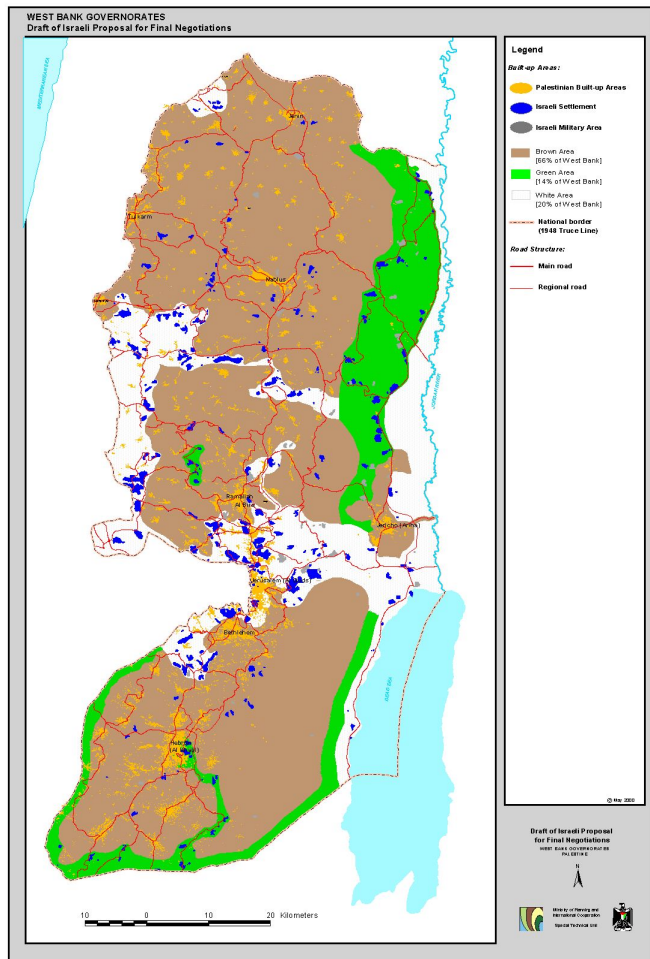
In the event of an emergency Israel wishes to quickly deploy to these areas using several designated West-East and North-South routes from Israel to the Jordan Valley (“emergency deployment”).

Prior Experience and Context

During the talks in Eilat and Stockholm, the Israeli side proposed to divide the West Bank into three zones. The contours of this proposal are relatively speculative: The description is based on statements and papers by Israelis as well as a map (displayed on this page) prepared by the Ministry of Planning, which is based on the recollections of two Palestinian negotiators.

The **first zone** (white) comprising 20% of the West Bank land area would be annexed to Israel. It includes the following areas:

- “metropolitan” Jerusalem, including the settlements of Maale Adumim, East Talpiot, and Gilo, and roads leading eastward to the Jordan Valley;
- settlement blocs along the Green Line border, from the Etzion bloc near Bethlehem to the Shomeron bloc near Qalqilya;
- the Bet El and Pesagot settlements, and
- Ba’al Hatzor monitoring station;
- the Umm al-Rihan area in the north near Jenin;



- the Ariel-Shilo corridor to the Jordan Valley;
- the full length of the border with Jordan, along the Jordan River;
- the full length of the Dead Sea coast;

The **second zone** (green), comprising 14% of the West Bank land area, would remain under Israeli control for an undefined transitional period. It includes the following areas:

- the Jordan Valley (excluding the Jordan border zone);
- a strip of land surrounding the southern portion of the West Bank;
- a corridor linking Hebron and nearby Jewish settlements with Israel; and
- the Talmon bloc, northwest of Ramallah.

The **third zone** (brown), comprising the remaining 66% of West Bank land area, would be under Palestinian sovereignty, except for certain Israeli settlements, which would be under Israeli sovereignty and linked to Israel by access roads, until they are dismantled.

This Israeli proposal was based on a number of old ideas and doctrines. It is based on previous “plans” proposed by Israeli officials and scholars in the past, including the Allon (1967), Sharon (1970s), Cohen (1986), and Alpher (1994) plans, all of which involve an Israeli military presence in the Jordan Valley.

Israeli negotiating positions

- Israel demanded a “low-key” military presence in fixed locations in the Jordan Valley as deterrence against ground attack from the East.
- This presence would remain there until Israel decided it was no longer needed (pending changes in the regional security and military postures of Arab states hostile to Israel).
- The locations would serve as staging areas in the event of a ground invasion from the East.
- In order to deploy to these locations during an emergency, Israel also sought the designation of 3 passageways (2 East-West and 1 North-South) from Israel proper through Palestinian territory. At Taba, Israel sought the right to deploy Israeli forces in the Jordan Valley in instances of a concrete and demonstrable threat sufficient in severity to warrant the declaration of a national state of emergency and the full enlistment of Israeli reserves.
- Israeli negotiators stated that the definition of “emergency” should be mutually agreed.

NB: Israel agreed in principle to two phases (transition and permanent), but they demanded an open-ended transitional period, which is unacceptable to Palestine

Palestinian negotiating positions

- Palestine should have full sovereignty over the entire West Bank.
- Agree to presence of a strong international force for an agreed period of time.
- As part of a phased withdrawal, Israeli forces can be replaced by the international force.

- Palestinian proposal on international forces:
 - Functions: monitor and verify Palestinian obligations; form an element of Palestinian national defence; conduct bilateral coordination with Israel.
- Palestine will have extensive formal relations with these forces.
- On the regional level, Egypt Jordan hold annual manoeuvres with US forces. Palestine is willing to involve all these parties in ways that can help regional security.

Clinton Parameters

In an attempt to bridge the competing positions of both sides expressed at Camp David and Jerusalem, President Clinton offered a bridging proposal. Regarding the Jordan Valley, President Clinton described what he thought at the time would be acceptable to both parties.

“The key lies in an international presence that can only be withdrawn by mutual consent. This presence will also monitor the implementation of the agreement.

My best judgment is that the Israeli withdrawal should be carried-out over 36 months while international forces are gradually introduced into the area.

At the end of this period, a small Israeli presence would remain in fixed locations in the Jordan Valley under the authority of the international force for another 36 months. This period could be reduced in the event of favorable regional developments that diminish the threats to Israel.”

Ultimately, the Palestinian side rejected Clinton’s proposal, but indicated its readiness to consider the withdrawal of Israeli forces from the West Bank over a 10 month period. Although the Palestinian side was ready to consider the presence of international forces in the West Bank for a longer period, it refused to accept the ongoing presence of Israeli forces.

Palestinian Interests

The Palestinian demand for sovereignty and exclusive control over the entire West Bank, including the Jordan Valley, lies primarily in an interest in achieving the basic element of sovereignty—full independent control of territory free of foreign military presence or influence, yet it is not driven solely by political and legal concerns.

It is also based on the fact that Israeli control over any portion of the Jordan Valley could have a significant negative effect on important Palestinian interests, including the following:

- It would diminish Palestine’s ability to control its own international borders with Jordan.
- It would severely constrain (or place undue restrictions on) free movement between Palestinian population centres, in particular between Jericho and the

northern parts of the West Bank, as areas north of Jericho would be off-limits or restricted.

- It would place undue burdens on Palestinian development, preventing the natural growth of Palestinian cities and towns, especially upwards towards the northern sections.
- It would significantly diminish the water and other natural resources to which the state of Palestine will have access under international legal standards. The Dead Sea is a rich resource. It may also diminish Palestinian ability to have access to parts of the River, for any given reason.
- It would cause the state of Palestine to lose significant amounts of highly valuable agricultural land.
- It would compromise Palestinian security, leaving Palestinians incapable of mounting a serious defence against any external threats.
- It would place burdens on Palestinian access to religious and other historical sites, especially in the Jericho area that remained under Israeli control during the Oslo Process.
- It would diminish tourism in Palestine by constraining movement and rendering certain sites inaccessible.

Standards and criteria

State sovereignty

SOFAs

International forces precedents

Proposed Process

At the outset, Palestinian negotiators should distinguish clearly between two phases in negotiations over this issue:

(1) long-term peaceful relations between two sovereign states, and

(2) a transitional period during which temporary Israeli presence may be an option, as long as it is part of a phased withdrawal.

The negotiations should proceed in the order indicated above. Once agreement is reached on final status of the Jordan Valley, then the issue of transitional withdrawal should be addressed, if requested by Israel. The presumption should be that withdrawal should take place immediately, unless otherwise agreed – with explicit deadlines subject to monitoring and verification.

Options & Arguments

1. **Threshold issue: Onus is on Israel to demonstrate why its legitimate interests and concerns require a presence in, or control over, the Jordan Valley**

Palestinian negotiators should point out that the Israeli demands to maintain control over parts of the Jordan Valley are unnecessary, and do not address both sides' interests and concerns. Israeli control of the Jordan Valley does not reflect the current security situation in the Middle East, nor current military and intelligence technology. Israel's strategic situation has changed: The rationale behind the Allon and the Sharon Plans (both decades old) is no longer applicable, since:

Israel is now at peace with Jordan.

Any potential risk or threat from Iraq no longer exists, eliminating the possibility of a ground invasion from the east.

The Arab League, by the adoption of the Saudi Arabian proposal in Beirut in 2002, signalled the intent of all Arab countries to recognise the right of the State of Israel to exist in peace once a final status agreement has been approved by Palestine and Israel. Therefore no threat of a war coalition

The methods of warfare have changed: new technology has made it possible to wage war from hundreds of miles away and to detect and defend against attacks from a great distance. Israel possesses sophisticated military capability in this area.

Arguments:

A ground invasion from the East is no longer a realistic threat to Israel.

The type of enemy war coalition necessary to launch an effective attack on Israel is: politically implausible in view of the history of present, and likely future, relations between potential members of a coalition; operationally impractical in terms of command, control and logistics, and unlikely given that the requisite element of surprise is impossible to maintain.

Israel is militarily superior to all of its neighbours combined.

Israel has the most developed capacity of any state in the region in training, technology, readiness, command and control capability, and sustainability of forces.

Israel has the most advanced mix of land-based air and ATBM defences in the region.

Israel employs modern, night and all-weather warfare technology and tactics not available elsewhere in the region.

Israel benefits from intelligence satellite systems that provide intelligence data to detect personnel and equipment movement in the region.

Syria, which Israel claims it poses a threat to its security, has weak and inadequate forces and equipment (and is even seeking to initiate a peace process with Israel). In particular:

Syria's air force is obsolete in organisation, training, and equipment, as a result of a lack of recent investments in new arms and military technology. With the collapse of the Soviet Union in 1989, Syria has lost its strategic ally and sole source of weapons. The US has placed Syria on its list of states sponsoring terrorism, which bars arms manufacturers in the US and the West from selling arms to it.

Syria and Iran have radically cut their defence expenditures over the last sixteen years, whereas Israel has increased its spending by an additional \$3,402,000,000 in 1998, after having signed peace agreements with both the PLO and Jordan.

Country	Spending in 1985	Spending in 1998	Spending in 2001
Iran	\$20,258m	\$5,651m	\$4,698m
Syria	\$4,961m	\$2,664	\$1,884m
Israel	7,638m	\$11,040m	\$10,375m

Israeli presence in the Jordan Valley does not protect Israel from a missile or air attack.

Israeli anti-missile defences are launched from inside Israel, not from the West Bank.

Israeli missile bunkers are currently located at the following locations, *all within Israel*: Kefar Zekharya (in the Judean hills), Be'er Yaakov (approximately 15km north of the Zekharya base), Eilabun (9km west of Lake Kinneret), and possibly Dimona (in the Negev desert).

Israeli missiles, whether launched from jets or batteries, can cross the entire West Bank in seconds. Control of Palestinian territory therefore would not do anything to increase Israel's defensive capacity.

The Israeli Air Force (IAF) took delivery of the first of three Israel Aircraft Industries (IAI) Arrow anti-tactical ballistic missile batteries. The battery, which launches surface-to-air missiles, will be deployed in central Israel. Such systems will provide Israel with defence against Scud-type surface-to-surface missiles from Syria and Iran. The fixed-site system destroys missiles in the upper atmosphere after launch. The Arrow system is also expected to protect parts of Jordan, as well. According to Israeli military experts, "the three Arrow II batteries, backed up by Patriot and 17 I-HAWK batteries, will be sufficient to cover Israel's population centres from any ballistic missiles launched by Iran or Syria."

In a study published recently by the Jaffee Centre, Israeli international relations expert Aharon Kleiman confirmed this point, observing: "It may not be essential for the IDF physically to occupy the Jordan Valley or even to maintain a standing military presence there." He explained: "With the velocity of missiles and the

speed of supersonic jet fighter planes, **holding onto the West Bank and/or Jordan Valley provides no real protection.**"

Israel's peace treaty with Jordan creates a significant buffer zone along Israel's eastern front.

The treaty

obliges Jordan to prevent acts or threats of hostility, subversion, or violence from originating from its soil. (Jordan-Israel Peace Treaty, Article 4(3)(c)).

prohibits Jordan from joining any hostile military or security alliances or coalitions with a third party. (Article 4(4)(a)).

prohibits Jordan from allowing the entry, stationing, or operation of third party military forces on Jordanian territory. (Article 4(4)(b)).

Effectively, Israel regards Jordan's borders—and not the Jordan Valley—as its actual red lines (e.g. invasion by Syrian through Jordan's northern borders). Longstanding Israeli military doctrine provides that any foreign military incursion into Jordan by hostile forces will be regarded as a *casus belli* justifying appropriate military countermeasures. Joseph Alpher, a leading Israeli security expert and former director of the Jaffee Centre for Strategic Studies, has acknowledged that Jordan's agreement not to allow foreign forces on its territory **enables Israel to withdraw all but trip wire units from the Jordan Valley. These functions could be carried out by a third party force.**

Israel's extensive security cooperation with Jordan bolsters Israel's defensive posture and "representatives of Israeli and Jordanian intelligence and security services around the world, were given the green light to co-operate."

Israel has been invited to observe Jordanian-Turkish joint exercises conducted in Jordan, signalling a potential trilateral security relationship. Incidentally, Israel's strategic alliance with Turkey strengthens Israel's military posture. Israel and Turkey signed a military training and cooperation agreement providing for the exchange of military information, experience, and personnel. Israel uses Turkey's airspace for flight training to gain experience flying long-range missions. Turkey provides Israel with intelligence information regarding military activity in Syria and Iran.

Israel's willingness to export light arms and ammunition to Jordan strengthens Israel's military posture and encourages trust. For the first time in history, Israel is selling and upgrading weapons of an Arab country. State owned defence manufacturer Israel Military Industries (IMI) has received a Ministry of Defence approval to export light arms and ammunition to Jordan.

2. Alternatives to physical presence and control: Functional arrangements to satisfy Israel's legitimate concerns

There is a range of options and proposals that can both satisfy legitimate Israeli interests without Israeli territorial control or presence, as well as Palestinian interests in an independent sovereign state. These include:

- International presence and guarantees.
 - Internationally-administered early warning systems
 - Deployment of a trip-wire force, e.g. US Forces.
 - Deployment of multinational observer force.
 - International peacekeepers
 - control zones, with regular spot checks by third party.

Permanent Neutrality

Arrangements for Israeli deployment in Palestinian territory during an emergency, possibly including pre-positioning of equipment.

Verification at Jordanian border using sensor technology in certain spots along the Jordan Valley, especially where infiltration is more likely (e.g. low-terrain, flat areas, and where the river has dried up).

Palestinian-Israeli joint patrols.

Discussion of Options:

International presence

As in Israel's peace treaty with Egypt and in southern Lebanon, a multinational force may be deployed in the Jordan Valley to serve a monitoring and stabilizing role as Israeli troops withdraw. These foreign forces could remain in specified locations in the Jordan Valley for a defined term or indefinitely.

Neutralization of Jordan Valley or entire state of Palestine

One option is for Palestine to commit that the Jordan Valley will not be used by one belligerent against another in times of conflict. To this end, Palestine will be obliged to engage in positive preparations for its defence, such as the maintenance of fortifications and the deployment of armed forces..

Palestine could also commit to neutralization of the entire State. This implies an obligation not to join a particular military alliance, the obligation not to cooperate militarily with a belligerent and the obligation to provide for the defence of the territory so as to be able to deny its use to belligerents.

Neutralization therefore cannot be accompanied by demilitarisation. It should be emphasised that under customary international law Palestine cannot allow its territory to be used to harm another state, which means that Palestine cannot be both neutral and demilitarised.

Early warning systems and perimeter security sensors [refer to border security DI]

Israeli presence in the Jordan Valley (for early warning, physical presence, or for pre-positioning of equipment) can instead be provided by a few, small forward sensor units that collect and feed back large amounts of data to rear stations inside Israel. Israel's security needs do not require the deployment of military forces. Information may be transmitted electronically, and technical personnel can be given regular access to these sites through fixed procedures and arrangements. These technical personnel may be Israeli or third-country nationals (e.g., EU or US). Alternatively, a joint team or verification commission may be established.

The sufficiency of these systems has been acknowledged by prominent Israeli scholars. For instance, in a study published by the Jaffee Centre for Strategic Studies, Israeli scholar Aharon Kleiman observed that "sophisticated RPV remotely controlled pilot-less vehicles, in addition to advanced sensors, whether ground-based or mounted on aircraft or from balloons, now make over-the-horizon surveillance of the future battlefield possible, and from a considerable distance. These electronic and computerized early warning systems are widely touted as offering real-time information that would enable defending forces to pre-empt or to prepare defensively to engage the invader."

Palestine may relay sensor data to Israel during a transitional period to give Israel some confidence that persons and weapons are not infiltrating Palestine via its border with Jordan.

These mechanisms could involve surveillance stations at different increments along the border, along with inexpensive sensor technology capable of monitoring the passage of persons and/or weapons across the border. Available technology includes acoustical/mechanical sensors, such as microphones, geophones, pressure sensors, scales for vehicles, and ultrasonic sensors, and electric/optical sensors such as induction loops, magnetic sensors, infrared sensors, photo cameras, TV cameras, break-beam devices, radar, laser radar, and X-ray devices.

An international verification management organization could be established to gather and analyze data obtained from the stations and sensors and to conduct liaison activities and dispute resolution. Palestinian and/or foreign peacekeeping forces could be deployed to address any unauthorized entries.

Israel has agreed to the use of sensors before. Ground sensors were used effectively by the United States along the Gidi and Mitla Pass areas in the Sinai during the Egypt-Israeli disengagement process.

At a more extreme level of intrusiveness, the parties—perhaps in coordination with third party peacekeeping forces—could agree to conduct joint patrols of the border.

Emergency access to the Jordan Valley by prior agreement and according to pre-set routes, locations, and force limitations

Israel often maintains that, while Jordan currently serves as a buffer zone, abrupt political change in Jordan—or an invasion of Jordan by another hostile force—could change the strategic equation. As a means of addressing this concern, Israel and Palestine could agree that under certain emergency situations Israel will be permitted to deploy specified types of combat units and weapons along specified access routes in the state of Palestine.

INSERT TOMORROW

Sub-issue: Pre-positioning of combat equipment

To the extent that Israel requires the ability to deploy quickly in emergencies, an agreement could provide for the pre-positioning of Israeli combat equipment in the Jordan Valley. The agreement would also specify the specific equipment involved, the situations under which it may be accessed, and the duration of the arrangement (e.g., a 25 year lease of the land on which the equipment is positioned.)

This option is very intrusive, given the probable Israeli demand for access, observation and maintenance. This intrusiveness could be lessened by third party forces and/or sensor technology, which could play a role in ensuring that the equipment is not destroyed or misused.

Linkages

Borders (a credible border regime and crossing points to strengthen the argument that Palestine is indeed implementing a strong system in place; the area of land swaps and maritime access in the Dead Sea may become further linkages)

Settlements (this is to inform the process of the transitional period, given the process of removing settlements and other infrastructures in the area and the introduction of PSF and/or international forces)

Water (access to water in Jordan River basin))

State-to-State (Transportation, Agriculture, Tourism, Electromagnetic Sphere)

DI-B3 Air Space Security (military and civilian)

Background

The management of Palestinian airspace once a sovereign state is established presents several issues that implicate Israeli security concerns. Israel has raised the following air security issues in permanent status negotiations:

The establishment of a framework for coordinating air traffic control between Palestine and Israel that permits timely responses to threatening situations (e.g., the appearance of unidentified aircraft headed towards the two states);

Israeli use of Palestinian airspace for military operational purposes (e.g., interdicting a threatening aircraft, or flying over Palestinian airspace from locations in southern Israel to locations in northern Israel);

Israeli use of Palestinian airspace for military training purposes (e.g., training pilots in navigation).

In addition, Palestine may itself seek access to Israeli airspace for its civilian and security aircraft. Additional issues that Palestine is likely to raise include the following:

Arrangements for privileged Palestinian access to Israeli airspace for civilian flights between the West Bank and Gaza Strip (as opposed to general air corridors available to aircraft from other States), which Israel may treat, in part, as a “security” issue; and

Arrangements for Palestinian access to Israeli airspace for security purposes (e.g., hot pursuit along border, presidential flights, etc.).

Prior experience

Interim arrangements. Palestinians and Israelis first addressed air security issues in the context of the Oslo agreements. The Palestinian-Israeli Interim Agreement granted specified Palestinian aircraft access to Israeli airspace, but provided for continuing Israeli control over Palestinian airspace. Key aspects of the interim arrangements include the following:

Israel retained “responsibility for defence against external threats, including [those] from the air.” (Interim Agreement, art. 12(1).) All aviation activity above the West Bank and Gaza Strip required Israel’s prior approval and was subject to Israeli air traffic control and Israeli regulations.

Israel was permitted to engage in “aviation activity” above the West Bank and Gaza Strip, though it committed to do so “with the same limitations applicable in Israel

regarding civil and military flights over densely-populated areas. (Interim Agreement, annex 1, art. 13(10).) Israel also agreed to notify the PA of “emergency rescue operations, searches, and investigation of aerial accidents” in WB/Gaza.

Palestinians were permitted to operate a fixed number of specified types of aircraft (helicopters, small airplanes) through Israeli airspace on routes between the West Bank and Gaza Strip and were authorized to establish international service from the Gaza airport. (Interim Agreement, Annex 1, art. 13.)

Special arrangements were defined to facilitate flights of President Arafat and his entourage between the WB and Gaza without prior inspection of persons by Israeli authorities. (*Id.*)

Detailed arrangements were defined and managed by a Joint Palestinian-Israeli Aviation subcommittee (JAC) (of the Joint Security Committee). (*Id.*)

Negotiation history.

Air security issues were first discussed in the context of permanent status at the Camp David talks, though the Palestinian negotiators at that point felt unprepared to negotiate the issues. Negotiations proceeded at the King David rounds and, subsequently, at the Taba rounds. The issues of airspace and aviation, more generally, were not addressed in the State-to-State context, though it was anticipated that eventually they would be. The two “Palestinian” issues noted above were not raised as requests by Palestinians in permanent status negotiations, though Israeli negotiators did offer privileged access to Israeli airspace as an incentive for Palestinians to accept Israeli use of Palestinian airspace.

The specific negotiating positions of the parties will be listed and discussed below under separately under each subissue.

Standards and Criteria

There is no current recorded case where any state has any kind of *automatic* access to the airspace of another state. There are, however, many cases where access is routinely granted by states for use of their airspace by military aircraft of other states, both for routine flight clearance and for training purposes.

There are well-established principles for the use of international airspace, governed in numerous international agreements. The principal agreement, from which most of the others flow, is the Convention on International Civil Aviation, Chicago, December 7 1944 (known as the Chicago Convention). But none of the agreements change the fundamental fact that **in the sovereign airspace, or in the territory of another State, an aircraft is subject to the laws, regulations and jurisdiction of that State.** This principle was firmly established in the multilateral Paris Convention of 1919 (Convention on the Regulation of Air Navigation, October 13 1919). Article 1 of the Chicago Convention states that the contracting states of the Chicago Convention recognise that **every State has complete and exclusive sovereignty over the airspace above its territory. The right to fly over the territory of a State and to land on its territory**

derives, therefore, from the grant of permission or from a contractual obligation by this State.

The Chicago Convention and its associated agreements are, of course, concerned largely with civil aviation. However, the principle established with respect to the sovereignty and use of airspace applies equally to military air activity.

It should also be noted that while the original intention of those negotiating the Chicago Convention was to conclude a multilateral agreement, particularly on the question of commercial aviation rights, this was not successful. No multilateral agreement was signed in Chicago. The result has been, therefore, that while the Chicago Convention sets the basic principles of international aviation, the actual details of aviation activity have largely been set by bilateral agreements.

It is clear, therefore, that while two states negotiating a bilateral aviation agreement can perfectly easily set their own mechanism for giving approval to each other for all forms of use of each other's airspace, no state is legally entitled to impose on another an automatic right of the use of their airspace by a foreign state

Proposed Process

Differentiating “Air Security” from “Airspace.” Like the management of the electromagnetic spectrum, airspace issues bridge the security and “state-to-state” files. **Most airspace and aviation issues should be addressed by technical experts in negotiations about aviation coordination – not in security talks.** The “air security” issues noted above, however, require a policy decision by the Palestinian leadership; accordingly, it may be necessary to negotiate these issues in the context of security talks – and to make trade-offs with respect to other security issues. Once the core principles are decided, however, these issues too should be directed to technical experts in aviation and airspace to flesh out detailed arrangements.

Options and Arguments

1. Air traffic control

Israeli positions. Israel has sought overriding control over and day-to-day coordination with respect to Palestinian-Israeli air traffic. Although Israel's position changed little during the negotiations, the Israeli team did elaborate on it at subsequent sessions. As described at Taba (23 January 2001, afternoon session):

Israel recognises *in principle* that Palestine will have sovereignty over its airspace. “All [Palestinian] rights according to the international agreements will be accepted and honored. We'll deal with it in the same way that we deal with air issues between Turkey and Israel.” Disputes will be resolved according to

international mechanisms. Pre-flight planning will be conducted in accordance with international regulations. This includes flight plans, agreed air corridors, agreed flight procedures.

There will be a **unified air control, run by Israel**. Palestinian air traffic controllers will coordinate their air traffic with Israeli air traffic controllers. For example, the Palestinian would contact his/her Israeli counterpart and say, "Tomorrow morning, between 10 a.m. and 12 pm, I have an Iraqi flight at 30,000 feet." However, only the Palestinian air traffic controller – not the Israeli – would communicate with the Iraqi (or Saudi or French) jet.

Israel will have "overriding security control." It alone will respond to emergency situations – i.e., the appearance of any unplanned, unidentified "blips on the radar." An Israeli controller would be the one to contact an unidentified aircraft. "Because we have small space and so much air activity, there must be one controller."

Israel submits that the parties should negotiate a **separate civil aviation treaty** after a "framework agreement" is concluded. Israel is prepared to offer a "specific, particular, privileged air corridor" for Palestinian flights over Israel (e.g., from the West Bank to the Gaza Strip).

Israeli interests and concerns

Israel's primary interest appears to be ensuring that it is capable of identifying and responding quickly to potential threats from the sky. Israelis submit that sharing ultimate authority over air traffic control with Palestinians would shorten response time. There may also be an element of distrust involved – an apprehension that Palestinians would not be able or willing to communicate threat information to Israel in a timely manner.

A secondary interest underlying Israel's demand for unified control over air traffic may also be efficiency: the combined airspace of the two countries *is* small – and idiosyncratic in shape.

A third potential interest – never articulated by Israelis – may be to control air traffic from enemy states into Palestine's territory: although Israelis claim they would not interfere with this traffic, the Palestinian experience during the Interim Period raises doubts.

Palestinian positions. At Camp David, Palestinian negotiators affirmed Palestine's sovereignty over its airspace but were unprepared to discuss the details about control, requesting that this discussion be deferred. After consultations with aviation experts, Palestinian negotiators articulated the following positions at subsequent negotiation sessions:

Palestine has an inalienable right to sovereignty over its airspace. That right is affirmed in international instruments such as the Chicago Convention.

Palestine rejects “overriding Israeli control” over air traffic. During the Interim Period, a number of planes coordinated with Israel were rejected by Israel’s air traffic control. Consequently, Palestinians are unwilling once again to surrender ultimate authority to Israel over air traffic.

Palestine is willing to consider **Palestinian-Israeli joint control over air traffic to and from the two states, so long as it is on the basis of equality**. Aviation experts on both sides should be brought together to devise such a solution.

Alternatively, Israeli security concerns may be accommodated within a framework of Palestinian sovereignty and control over Palestinian airspace.

Palestinian interests, needs, and concerns

Public perceptions. Because control over airspace is a fundamental attribute of sovereignty – and known to be so – the Palestinian public is unlikely to react favourably to a significant cession of control over Palestinian airspace to Israel.

Past experience. Israel’s abuse of its overriding control over Palestinian air traffic during the Interim Period makes Palestinians reluctant to cede to Israel their right to sovereign control over their airspace.

Options. [Insert options from CAA aviation study once completed]

2. Israeli military use of Palestinian airspace: operational purposes

Israeli positions. At Camp David, Israel asked that the agreement permit Israeli military aircraft to use Palestinian territory for a variety of operational purposes. At subsequent sessions, Israeli negotiators described these purposes in somewhat greater detail, giving the following examples:

- **Apprehending hostile aircraft.** Israel identifies a hostile aircraft flying toward Israel (and Palestine). In order to engage the aircraft before it is too late, Israeli fighters must enter Palestinian airspace (and perhaps even Jordanian airspace) and shoot the plane down there. (Taba Negotiations, January 23, 2001, morning session.)
- **Overflight between Israeli bases.** For efficiency (and due to lack of space), Israel requires passage over Palestinian airspace, e.g., from a location in Bir-Sheva to a location in Safad. Israel accepts that this passage would be coordinated with Palestine. (Taba Negotiations, 23 January 2001, morning session.)

Israeli interests, needs, and concerns

Israeli airspace is very limited, and it will become more limited as civil air traffic builds up. (According to one Israeli negotiator, Israeli-Palestinian airspace would be the best airspace for flights between Europe to Asia.) Israel claims it needs Palestinian airspace to exercise certain operational functions effectively.

In the context of a permanent settlement, the primary overland operational roles of the IAF are **reconnaissance, surveillance, and intelligence gathering**. (Presumably, the Palestinian government would not tolerate internal security or intelligence operations against the Palestinian people during peacetime.) Tactical aerial reconnaissance systems are generally line-of-sight, which means that the nearer an aerial surveillance platform can get to its potential adversary, the better its detection coverage. The IAF's Boeing 707s, with their *Phalcon* systems, would want to orbit as far east as possible over Palestinian airspace to enhance their coverage of nations to the east. To supplement radar sightings, IAF Electronic Intelligence (ELINT) aircraft would want to monitor early warning, height finding, and meteorological radars, while high-band analysts would monitor the airborne radars on interceptor fighters. In addition, Communications Intelligence (COMINT) operators would collect, analyze, and interpret speech traffic intercepted out of the ether. **According to one expert (Andrew Brookes, IISS), the ability to fly ELINT and COMINT missions over Palestinian airspace is not essential to the Israeli intelligence effort, but insofar as such missions would extend the listening and detection range of IAF systems, the ability to fly long-duration orbits over Palestinian airspace would be very desirable from an Israeli point of view.**

Israel also has an interest in overflight rights to take **air action against states that pose a clear and present danger to Israel**.

If Israel is permitted to maintain EWS or other military installations in Palestinian territory, it may need to use aircraft to **transport personnel or cargo** to and from those sites.

In the context of an **emergency**, Israel's military operational needs in Palestinian airspace increase. Any defence at the Jordan River would involve the possible use of close air support, observation aircraft, air defence aircraft, and armed helicopters, as well as reconnaissance by drones. The upper airspace may also be needed for mounting airborne early warning patrols, longer range surveillance and combat air patrols depending on the tactical position at any given time.

Palestinian positions. At Camp David, Palestinian negotiators affirmed Palestine's sovereignty over its airspace but were unprepared to discuss the details about Israeli military use of Palestinian airspace, requesting that this discussion be deferred. At the King David rounds, **Palestinians rejected the Israeli request, stating that Palestinian airspace would be neutral:** the IAF would not be allowed to use it to attack other Arab countries, and it would be off limits to the air forces of all other countries, as well.

Palestinian interests, needs, and concerns

- Overflight has a negative psychological impact on Palestinian civilians. During the second intifada, Israeli military aircraft (fighters, helicopters) became associated with the bombardment of Palestinian cities and the assassination of Palestinian citizens. The continuing use of Palestinian airspace by Israeli military aircraft could poison a new peace with memories of some of the worst manifestations of conflict.
- Palestine's proposed neutrality will be undermined by Israeli military operational use of Palestinian airspace. Palestine could become a target of reprisals against Israel.
- Palestinian territory becomes "the front line" in conflicts in which Israel is engaged. Debris from Israeli military engagements could rain down on Palestinian populated areas.
- Palestine suffers noise pollution and interference with radio communications.
- Palestine's capacity to monitor and respond to Israeli abuse of its airspace is likely to be fairly limited. A total ban on Israeli military aircraft may be easier to monitor – and will be less prone to abuse.

Options and Arguments

Palestine has a range of options for resolving this issue, including:

- Grant Israel access for all military operational purposes, subject to reasonable Palestinian regulation.
- Grant access for operational purposes on the basis of reciprocity.
- Grant access for only some operational purposes, subject to reasonable Palestinian regulation.
- Grant access provisionally, subject to approval on case-by-case basis.
- Grant access in context of regional collective security arrangements.
- Grant access only in defined emergency situations, subject to reasonable Palestinian regulation.
- Deny access at present; set date when talks (bilateral or multilateral) will resume on granting of access.
- Deny access entirely and indefinitely.

Prior to negotiations, Palestinian policymakers should undertake to answer three threshold questions:

- a. Access.** Are there *any* operational purposes for which, or circumstances in which, Palestine is prepared to offer Israeli military aircraft access to Palestinian airspace?
- b. Regulation.** If the answer to the first question is *yes*, what kinds of regulation might Palestine usefully and reasonably impose on Israeli military operational use of Palestinian airspace?
- c. Trade-offs.** If the answer to the first question is *no*, does the unavailability of access to Palestinian airspace create needs that Israel will seek to address in other ways, with potential negative consequences for Palestine?

a. Access. In determining whether to grant Israel access for military operational purposes, Palestinian policymakers should consider the following key points:

Under international law, Palestine has the sovereign right to refuse Israeli military aircraft access to its airspace.

Military aviation experts submit that, in normal (i.e., non-emergency) circumstances, Israel does not need access to Palestinian airspace for military operational purposes, though it may find such access convenient. Moreover, Israeli military operational access has the potential to threaten Palestine's proposed neutrality and public safety, as well as popular support for the agreement.

Israel's need for access increases in emergency situations. Moreover, Israel probably would not stand on ceremony and wait for authorisation to enter Palestinian airspace in the event of an emergency.

Israel's need for operational access also increases if Palestine agrees to permit Israel to maintain early warning stations and/or other military sites on Palestinian territory. (Israel may, for instance, desire helicopter transport to and from EWS.)

The decision whether to permit such access should turn on Palestinian policymakers' assessment of (1) the political implications of acceptance or refusal and (2) trade-offs that can be made with respect to other issues.

b. Regulation. If Palestine decides to grant Israel military operational access to its airspace, it will have the right to regulate that access. Palestine should resist the imposition of any constraints on that right in the agreement. In the alternative, Palestine should define with precision the conditions on the basis of which access to the airspace is granted. Potential forms of regulation include the following:

Limitations on the number of transits, definition of transit corridors, and requirement of prior booking and clearance by Palestinian authorities. In addition, minimum altitude requirements could be defined to keep aircraft out of the public's eye.

Restriction on types of weapons that may be carried by aircraft traveling through Palestinian airspace – e.g., no nuclear weapons. Requirement that all air-to-air and air-to-surface weaponry should be locked safe while flying over Palestinian airspace.

Restrictions on the types of operational missions that may be undertaken through Palestinian airspace – e.g., no offensive operations directed against Arab League members; no armed engagement over Palestinian airspace.

Definition of certain areas as prohibited for military use (to address safety, security, or disturbance issues) up to a certain altitude; e.g., no flights over Palestinian cities and towns.

Requirement that Israel obtain permission for operational access on a case-by-case basis; appointment of a high-level liaison who can evaluate requests in a timely fashion.

Requirement that Israel file a pre-notification request with Palestinian authorities, whose agreement to both route (and, if relevant, landing site) would be required. For emergency situations, a three-dimensional airspace box for Israeli military use could be established. It would allow free access above 10,000 agl feet over Palestinian airspace provided civil air traffic routes had been suspended for the emergency. Otherwise, civil controlled airspace would have to be respected. It would further allow free access down to ground level within 10km of the River Jordan, with the exception of the town of Jericho where the minimum height would be 2000 ft agl. In a combat situation, it is unlikely that the Israeli air force would feel constrained by such an agreement; however, it would be useful in terms of considering any future requests for training exercises. (Idea proposed by Timothy Garden, NSU consultant.)

Trade-offs. If Palestine declines to grant Israel operational access, Israel may seek other ways to address its operational needs – or it may deny Palestine benefits that it seeks. Accordingly, Palestinian policymakers may have to weigh the relative merits and liabilities of these trade-offs in determining whether to grant Israel access to Palestinian airspace. Some arguments that Israel might make are as follows:

If Israel is unable to conduct surveillance from the air, it has a greater need to establish early warning stations on Palestinian territory; Israel also may demand a more robust Israeli or international presence at Palestinian border crossings or on the border perimeter.

If Israel is denied access to Palestinian airspace, it will not grant Palestine a privileged air corridor to connect the West Bank and Gaza Strip. In particular, it will not allow Palestinian military aircraft (such as presidential helicopters) to fly over Israel.

Israel will not use its superior air power to defend Palestine from attacks from abroad if it is not granted access to Palestinian airspace to defend itself.

An alternative: collective security arrangements. Palestine will suffer less political fallout – and Israel will gain access to a much larger area of airspace – if these issues are addressed in the context of collective security arrangements, such as the establishment of a sub-regional open skies zone and mutual defence pact. [this needs to be developed in the long run]

3. Israeli military use of Palestinian airspace: training purposes

Israeli positions. From Camp David onwards, Israel sought Palestinian permission in a permanent status agreement to use Palestinian airspace for military training purposes. Israel was willing to designate a special air corridor through Israel for Palestinian civil use as one means of compensation.

Israeli interests and concerns

Air defence training. Israel has the world's second largest F-16 fleet, and all of these squadrons need a lot of airspace in which to keep proficient. Israeli

officials have argued that Israel's airspace is too small to permit necessary training.

Navigation training. Modern navigation procedures are centred around technology, such as the 24 satellites of the Global Positioning System. In the event that these systems become jammed or degraded, however, it remains vital for aircrews to practice navigating by visual reference to ground features. The airspace of Israel is too small for modern fast jet training.

Ground attack training. Like all air forces, the IAF requires live firing ranges, which must be unpopulated and take up a considerable area due to the danger posed by inaccurate bombing.

Palestinian positions. Palestine rejected Israel's request to use Palestinian airspace for training. As with respect to operational uses, Palestinian negotiators cited Palestine's intended neutrality, arguing that it would be politically impossible to deny use of Palestinian airspace to Arab states' air forces, while allowing the IAF to use it.

Palestinian interests and concerns

Palestinians have substantially the same concerns about IAF training as about IAF operational uses of Palestinian airspace.

Options

Grant Israel access for military training purposes, subject to reasonable Palestinian regulation.

Grant access for training purposes on the basis of reciprocity.

Grant access for only some training purposes, subject to reasonable Palestinian regulation.

Grant access provisionally, subject to approval on case-by-case basis.

Grant access in context of regional collective security arrangements.

Deny access at present; set date when talks (bilateral or multilateral) will resume on granting of access.

Deny access entirely and indefinitely.

Arguments

There is no IAF training activity for which Palestinian airspace is essential or offers a unique bonus.

All basic and advanced IAF flying training can be carried out in Israeli or international airspace. Much operational training within comparable air forces is now undertaken in simulators to minimize costs. Such training that has to be done for real – weapons release, combining aircraft into force packages to concentrate combat power and achieve force protection, etc. – are best undertaken over Israeli or international waters, or within the airspace of larger, cooperative nations.

Israel's specific training needs can be – and are – best satisfied in airspace other than Palestine's:

Air defence training. High and medium level air defence training (including “interception training” – i.e., techniques of intercepting and attacking hostile aircraft from the air) is not connected to the territory over which it is undertaken. Consequently, there are no circumstances in which Palestinian airspace would be vital for high and medium level IAF air defence training. In the UK, this training is generally carried out over the North Sea, well away from busy civil air traffic routes. Equivalent IAF air interception training is best carried out over the sea.

Navigation training. Although navigation practice needs to involve a wide variety of terrain, there is no particular feature of Palestinian territory that does not also exist in Israeli territory. The additional airspace provided by the Palestinian areas is not significant. The Gaza Strip is 400 sq. km, and the West Bank is 5,800 sq km. Moreover, Turkey signed a pact with Israel in 1996 that allows IAF aircraft to use Turkey's vast ranges, thereby relieving pressure on Israel's congested airspace. There have also been reciprocal arrangements with Italy; and in 2003 the Italian and German air forces took part in mock battles with the IAF over the air weapons range in Sardinia. Specialist training also takes place in the USA, and Israel recently signed an agreement with India that may allow the IAF to train in Indian airspace.

Ground attack training. Palestinian terrain is not any more varied than Israeli terrain – and is substantially smaller. Israel can make do with desert ranges in the Negev plus those off the Israeli coast.

Trade offs. As with respect to operational access, Palestinian policymakers should weigh the potential political, safety, and psychological costs of permitting IAF training in Palestinian airspace against the value of any concessions Israel may offer with respect to other issues. If Palestinian policymakers conclude that Israel should be granted access to Palestine's airspace, then the options outlined above for regulating access in the operational context should be considered.

Palestinian privileged access to Israeli airspace for civilian flights.

[insert CAA study on air corridor / Chicago Convention once completed]

DI-B4 Territorial Waters

DI-B5 Electromagnetic Spectrum

DI-B6 Border and Perimeter Security