

## Progress Report on Territory Negotiations 29 October 2008

### Overview:

Since technical committees were activated in February 2008, the Territory Committee has held a total of 10 face-to-face meetings, including one review meeting headed by Dr. Erakat and Mr. Udi Dekel. In addition, the Committee conducted four joint field visits to various parts of the West Bank. At the same time, the Plenary Committee has taken up the issue of Territory on at least six occasions, three of which were with the participation of Territory Committee members (committee head plus one NSU advisor). The issue has also been addressed in several tri-lateral meetings convened by Secretary Rice.

### Agenda:

No agreement was ever reached on a common agenda for the Territory Committee, mainly due to the protracted discussions and absence of agreement on the terms of reference (1967 line, 1:1 swaps, etc.). Moreover, the issue of an agreed agenda for the committee was not explicitly tabled until the last meeting (Sep. 8<sup>th</sup>), after it had become impossible to proceed any further. At that time, the Israeli side tried to move the discussion away from the actual border by proposing instead that we focus on the other ancillary issues related to territory, as delineated in the Palestinian draft FAPS (e.g., border demarcation, maritime boundaries, evacuation modalities, private property, settlement assets/infrastructures), to which the Israelis added the issue of "holy sites". However, the Palestinian side did not view this as a constructive or practical way to proceed, while insisting that the best way forward was to agree on the borders first.

### Achievements:

Very little progress has been made at the technical committee level thus far, mainly due to the Israeli side's refusal to work on the basis of the 1967 line and its insistence on a piecemeal and partial approach to borders/territory (e.g., by attempting to exclude the Jerusalem area, the Jordan Valley, etc.), as well as practical problems arising from the lack of agreement on certain fundamental issues at the political level.

Nevertheless, there have been some achievements made on the issue of Territory overall, at both the technical and political levels, as summarized below. (A more detailed description of Palestinian and Israeli positions/arguments communicated thus far is attached in the table below).

1. At the **political level** (Plenary/Leadership), most of the fundamental principles and basic terms of reference regarding territory/borders have now largely been established (with U.S. backing):
  - *1967 Line (baseline)*: Though they will not say so explicitly or publicly, the Israeli side has accepted Secretary Rice's formula that Territory negotiations are to deal

with all areas occupied in 1967, including East Jerusalem (although there remains disagreement on the No-Mans-Lands, which both sides have indicated in one way or another a willingness to split equally). It remains to be seen what practical impact this tacit acceptance of the 1967 baseline by Israeli political-level negotiators will have on the Territory Committee at the technical level.

- *Landswaps*: After initially resisting the idea, the Israeli technical team eventually agreed to discuss the issue of landswaps (or at least some form of territorial compensation), but only after Livni agreed to the principle at the political level. (It should be noted that Israel had already accepted the principle of landswaps in *previous* rounds of negotiations.) Nevertheless, the Israelis have not yet agreed to a 1:1 exchange in size or quality.
  - *Territorial Link*: The Israelis have agreed to the creation of a territorial link between Gaza and the West Bank, but have not yet accepted Palestinian sovereignty over the link or proposed a formula for the status of the link. In addition, they argue that the area encompassed by the link should be accounted for in the landswaps.
2. Modest achievements were also made at the **technical level** (Territory Committee), mostly related to *process*:
- *Presenting Proposals/Maps*: Each side has presented maps of its respective territorial proposals to the other side.
    - The Palestinian Territory team presented a map to their technical committee counterparts, as well as to the Plenary Committee, proposing a swap of 120 km<sup>2</sup> (1.9% of the total area of the West Bank and Gaza Strip), and showing areas to be swapped on both sides of the 1967 line.
    - The Israeli side presented a map of Olmert’s original “7.3%” proposal<sup>1</sup> (albeit only a part one, as it excluded Jerusalem and other areas, and did not identify lands to be swapped from Israel) in the Territory Committee.
    - Olmert has since shown, but did not give, Abu Mazen a revised “6.8%” map<sup>2</sup>, which the Israeli side has not yet presented at the technical committee level despite our request that they do so. Furthermore, the Israeli team made clear that latter proposal is to be considered as part of a “package” deal covering all permanent status issues and not a stand-alone proposal on borders.
  - *Joint Field Visits*: The two sides conducted four joint field visits to different parts of the West Bank, including Ariel (including Bet Aryeh-Barqan), Gush Etzion, Ma’ale Adumim and the Latrun area.

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<sup>1</sup> The “7.3%” figure is put between quotes to indicate that it is in fact incorrect and misleading. The Israeli calculation excludes East Jerusalem and surrounding areas that were illegally annexed by Israel in 1967, as well as the Latrun No-Mans-Land. The total area in their proposal is roughly 520 km<sup>2</sup>, which amounts to 9.2% of the West Bank. (NOTE: the Palestinian 1.9% proposal is calculated over the area of the West Bank *and* Gaza Strip.)

<sup>2</sup> Similarly, the “6.8%” proposal is about 490 km<sup>2</sup>, which if calculated correctly amounts to 8.7% of the West Bank.

- *Identifying Interests & Criteria:* The process of presenting map proposals and conducting joint field visits allowed the two sides to identify and better explain their respective territorial interests, as well as their specific swap criteria. While there was never any formal agreement either on a common set of criteria or on the basic parameters of possible landswaps, the Israeli side did express at least rhetorical support for certain key principles, albeit unofficially and somewhat equivocally (indeed, Israeli proposals often directly contravened their stated criteria), including that:
  - No Palestinians are to be included in the swap (while for Palestinians, this meant on *either* side of the 1967, the Israelis continued to raise the prospect of including Palestinian citizens of Israel).
  - No Palestinians are to be displaced or relocated; only Israeli settlers will be relocated. (Although, during a joint visit to Ma'ale Adumim, the Israeli side was non-committal as to what would happen to the bedouin who found themselves on the Israeli side of the border).
  - The term “contiguity” refers to *territorial contiguity*, not “transportation contiguity”. (However, this was clearly not reflected in Israeli proposals).
- *Informing the Political Track:* Despite having little agreement on how to engage or what to engage on, the fact that the Territory Committee continued to engage anyway allowed it to isolate certain key issues that required political guidance and accentuated the need for such guidance, as well as to help inform those decisions. For example, the work of the Technical Committee helped to focus on the need for a decision by the leadership on the baseline of 1967. Similarly, the Technical Committee’s focus on *objective criteria* has helped focus even the political discussion on territory on interests, and not just numbers and percentages.

### Main Problems:

The Territory Committee has been faced with a number of significant problems, in terms of both substance and process.

1. From the outset, the Israeli side has steadfastly refused to accept the basic terms of reference for territory negotiations, namely the **1967 line** as the only legitimate baseline. While this has been remedied somewhat by Secretary Rice’s formula (see above), the fact the Israelis refuse to accept this principle explicitly suggests that they may not view themselves to be bound by it in the future, particularly once a new administration is in place in Washington. This is significant not just for territory, but for other permanent status issues as well (*e.g.*, the basis for compensation for the illegal acts of occupation will be the 1967 line, and *not* the agreed final border).
2. While the Israeli side did eventually agree to some sort of **landswap**, there remain fundamental and substantial gaps between the two sides with regard to the nature of the swap. For example:

- The Israeli side has not yet accepted the principle of a *1:1 swap*, equal in both size and value. Moreover, while the Israeli side could argue that they came close to 1:1 in terms of size, they have never addressed the issue of *value*.
  - Whereas Palestinians are prepared to accommodate certain Israeli settlements only on an *individual* basis, the Israelis continue to push for annexing all the major settlement “blocs”, along with all of the settlements inside Israeli municipal Jerusalem, more or less in their entirety. The most problematic of these in terms of Palestinian interests are **Ariel**, **Giv’at Zeev** and **Ma’ale Adumim** “blocs”, along with **Har Homa** and **Efrat** settlements.
  - The fact that Secretary Rice has expressly supported Israeli demands for the most harmful of these, Ariel and Ma’ale Adumim, is also very problematic (though it is not clear whether Rice has acquiesced to them as “blocs”, as the Israelis intend, or as individual settlements).
3. In terms of approach, the Israelis have consistently pushed for a **piecemeal and partial approach** to territory, which, of course, increases the likelihood of fragmentation between the issues. In particular:
- They rejected the notion of dealing with the *entire* border as a whole, insisting instead on excluding **Jerusalem** from the discussion (and hence, from the swap calculation, percentages, etc.) and on delaying discussion of the **Jordan Valley** until after security arrangements are agreed.
  - Similarly, they have pushed for agreement on certain areas or parts of the border in isolation of the rest, or in a sequential manner. For example, the Israeli side has repeatedly suggested that we agree on and finalize the border around Gush Etzion “bloc” before moving on to other parts of the West Bank.
  - The Israeli piecemeal approach applies not only to geography but *thematically* as well. For example, in our most recent meeting (8 Sep.), having reached a deadlock on the border itself, the Israelis proposed that we turn our attention to the ancillary issues instead (demarcation, maritime boundaries, evacuation modalities, private property, etc.).

#### **Issues Requiring Political Decision:**

In terms of future/additional Territory negotiations, it is important for the technical team to understand the range of flexibility and/or options that the leadership envisions with regard to Territory negotiations. In particular:

1. Do the current operating assumptions remain valid, namely that: (a) Palestinians cannot reasonably offer more than 1.9%, and (b) Ariel, Giv’at Zeev, Ma’ale Adumim, Har Homa and Efrat are red line settlements?
2. If yes to 1(a), would the leadership consider other possible permutations of the 1.9% map (e.g., by increasing the number of settlers to be annexed while staying within the 1.9% ceiling)?

3. If yes to 1(b), would the leadership consider the possibility of allowing an extended evacuation period for any or all of the five red-line settlements, as a way of making their evacuation more acceptable to Israel?
4. At what point should the technical committee take up the ancillary issues related to territory (border demarcation, maritime boundaries, evacuation modalities, private property, settlement assets/infrastructures), and in what order should they be addressed?

### **Recommendations:**

Given the lack of significant progress and the various problems described above, we believe the Territory Committee should continue to meet, **however only as needed and based on progress made at the political level**. Any decision to accelerate the technical committee discussions *artificially* is likely to (falsely) raise expectations and increase the likelihood of fragmentation, partial agreements, bridging proposals, and other negative outcomes. In particular, with regard to the Territory Committee, we recommend the following:

1. The leadership should continue to insist on explicit agreement by Israel on the 1967 line as the **baseline**, as well as on **1:1 swaps** and on the status of the territorial link.
2. The leadership should continue to insist that territory negotiations proceed on the basis of **comprehensive proposals** that address the entire border, including the Jerusalem area, and that identify swap areas on both sides of the 1967 line.
3. The Territory Committee should not agree to meet until the Israeli side agrees to present their **latest map proposal** (*i.e.*, Olmert's "6.8%" map), including Jerusalem and swap areas on both sides, in sufficient detail.
4. Notwithstanding, the Territory Committee should proceed on the basis of an **agreed agenda**, which should be developed in consultation with the political leadership.
5. More generally, the Territory Committee should not agree to discuss **ancillary issues** (demarcation, maritime, evacuation modalities, etc.) until *after* there is agreement on the actual border and landswaps.
6. If there is a need to demonstrate engagement at the technical level, it might be more constructive to explore each side's thinking/interests on territorial issues in greater depth, for example by organizing **additional field visits** to potential swap areas in the West Bank or in Israel.

**Summary of Palestinian / Israeli Positions on Territory to Date (Oct. 2008)**

		Palestinian Position	Israeli Position
<b>1967 Border</b>	<i>Baseline</i>	<ul style="list-style-type: none"> <li>• 1967 is only basis for two-state solution and defines sovereign Palestinian area.</li> <li>• Accept US formula, which includes EJ but keeps NML unresolved.</li> <li>• Discuss baseline in entirety (cannot delay Jerusalem).</li> </ul>	<ul style="list-style-type: none"> <li>• 1967 is only “symbolic”.</li> <li>• Accept US formula, which includes EJ but keeps NML unresolved.</li> <li>• Discuss baseline piecemeal, delay Jerusalem for now.</li> </ul>
	<i>East Jerusalem</i>	<ul style="list-style-type: none"> <li>• Included in baseline (as per US formula).</li> <li>• Defined as 1967 municipal boundary (i.e., 6 km<sup>2</sup>).</li> <li>• Part of whole border; cannot be delayed.</li> <li>• Borders determined same as rest of WB (1967 border, with possible agreed 1:1 swaps, etc.).</li> <li>• Sovereignty and modalities/arrangements are two different issues.</li> </ul>	<ul style="list-style-type: none"> <li>• Included in baseline (as per US formula).</li> <li>• Defined as Israeli municipal boundary (+).</li> <li>• Unwilling/unable to comment on areas inside Israeli-defined municipal Jerusalem at this time.</li> <li>• Issue of Holy Basin/Old City should be postponed.</li> </ul>
	<i>No Mans Land</i>	<ul style="list-style-type: none"> <li>• Part and parcel of 1967 and is occupied territory.</li> <li>• Have proposed to split evenly.</li> </ul>	<ul style="list-style-type: none"> <li>• Not up for discussion; “not occupied from anyone”</li> <li>• Have proposed to split evenly.</li> </ul>
	<i>Jordan Valley</i>	<ul style="list-style-type: none"> <li>• Not up for discussion, as it’s part of West Bank and Pal. border w/Jordan.</li> </ul>	<ul style="list-style-type: none"> <li>• Should be discussed, but only <i>after</i> security arrangements are agreed.</li> </ul>
<b>Landswaps</b>	<i>General</i>	<ul style="list-style-type: none"> <li>• Must be 1:1 in both size and value.</li> <li>• Any modification to 1967 is a Palestinian concession.</li> </ul>	<ul style="list-style-type: none"> <li>• Willing to discuss swaps, but not necessarily 1:1.</li> <li>• Palestinians do not have ‘rights’ to the land; Israel not under any obligation to ‘return’ land.</li> </ul>
	<i>Criteria/Interests</i>	<ul style="list-style-type: none"> <li>• Contiguity, viability, Jerusalem, security, water, etc.</li> <li>• No Palestinians from either side of 1967 to be swapped.</li> <li>• Palestinian interests outweigh Israeli or settlers’ interests as per legal rights; also Israeli state already existing and viable.</li> </ul>	<ul style="list-style-type: none"> <li>• Primarily “facts on the ground”, minimizing number of settlers evacuated, “security needs” and contiguity of settlements with Israel.</li> <li>• No West Bank Palestinians to be annexed (but want to consider swapping Pal. areas inside Israel).</li> </ul>
	<i>Settlements</i>	<ul style="list-style-type: none"> <li>• Settlements to be considered on an <i>individual</i> basis (i.e., built-up areas).</li> <li>• Cannot include Ariel, Ma’ale Adumim, Giv’at Zeev “blocs”, or Efrat and Har Homa settlements in swap.</li> <li>• Substantial majority of settler population can remain</li> </ul>	<ul style="list-style-type: none"> <li>• Want to annex all major “blocs” (esp. Etzion, Adumim, Modi’in, Ariel/Shomron) and other settlements “close to the line” (not specified).</li> <li>• Keep 80% of Israeli settlers (i.e., 89% with EJ &amp; NML)</li> <li>• May have additional claims in Hebron/Qiryat Arba’ and</li> </ul>

		under Israeli sovereignty (62% under Pal. proposal).	Jordan Valley, depending on security arrangements.
<i>Territorial Link</i>		<ul style="list-style-type: none"> <li>• Necessary for a viable state.</li> <li>• Permanent land corridor, under Pal. sovereignty, control, and jurisdiction; sufficient width to allow for multiple lanes, rail connection and utilities/water infrastructure.</li> </ul>	<ul style="list-style-type: none"> <li>• Agree to “safe passage”/link in principle (but no clear position stated as to nature or sovereignty of link).</li> <li>• Proposed link under full Palestinian control but under Israeli sovereignty (cannot be confirmed).</li> </ul>
<i>Maritime</i>		<ul style="list-style-type: none"> <li>• Maritime boundaries should be agreed as part of Territory negotiations.</li> <li>• Palestine will have full share of maritime zones to which it is entitled as coastal state under international law (including UN Convention on Law of the Sea).</li> </ul>	<ul style="list-style-type: none"> <li>• No need for bilateral agreement, as the issue is governed by international law.</li> </ul>
<i>Map/Proposal</i>		<ul style="list-style-type: none"> <li>• Presented proposal to swap 1.9% of total WBGs area (3 May 08).</li> <li>• Proposed swaps on <i>both</i> sides of 1967 line.</li> </ul>	<ul style="list-style-type: none"> <li>• Presented Olmert’s proposal to AM of “7.3%” of WB (<i>i.e.</i>, 9.2% of WB with EJ &amp; NML), in exchange for equivalent of 5% from Israel (7 Apr. 2008).</li> <li>• Unwilling to present Olmert’s proposal to AM of “6.8%” (31 Aug. 08) to technical committee. <ul style="list-style-type: none"> <li>– In exchange for equivalent of 5.5% from Israel (in Bisan and areas adjacent to Hebron and Gaza);</li> <li>– Issue of Holy Basin/Old City (comprising 0.04% or 2.2 km<sup>2</sup> of WB) to be postponed;</li> <li>– Part of “package” deal on all PS issues.</li> </ul> </li> <li>• Technical team not allowed to present GoI position on specific areas in Israel to be swapped.</li> <li>• Maps presented are similar to the Wall.</li> </ul>