

ISSUES RELATING TO THE OSLO II AGREEMENT THAT REQUIRE IMMEDIATE ATTENTION

Prepared by Ziv Hellman and Bob Lang

- **Obligations That Should Have Been Implemented To Date** **Page 2**
 - 1. Hebron
 - 2. Safe Passage

- **Obligations Whose Deadlines Are in the Future** **Page 4**
 - 1. Further Redeployments
 - 2. Release of Prisoners
 - 3. The Issue of the Closure

- **Final Status Negotiations** **Page 7**

- **Dealing With Existing Violations on the Palestinian Side** **Page 8**

- **Obligations That Should Have Been Implemented To Date**

Redeployment in Hebron

Originally scheduled: 28 March 1996

Tentatively scheduled: sometime in June 1996

General Overview: The city of Hebron, due to its special nature, received special attention in the Oslo 2 agreement. The redeployment of Israeli forces in the city, originally scheduled for 28 March 1996, is to cover only the mainly Arab-populated area, termed Area H-1, with the mainly Jewish-populated section, Area H-2, to remain under Israeli security control. Area H-1 is to be similar to the other cities of the West Bank in all respects, including Palestinian Police control.

Although the original deadline for redeployment in Hebron has passed, there was an understanding reached on 12 May 1996 between Uri Savir and Abu Mazen which would delay redeployment for approximately one month, during which security arrangements were to be prepared by Israeli and Palestinian officers.

A Temporary International Presence in Hebron (TIPH) was agreed upon by the two sides in the agreement, with no time limit established as to its duration of deployment. An at least partial deployment of TIPH has already occurred, and there are scheduled to be negotiations regarding its expansion. Its area of operation is subject to negotiations between the two sides.

As for arrangements regarding the Tomb of the Patriarchs (Ma'arat Hamachpela), the two sides were "unable to reach agreement" and the present situation there remains. A "review" of this situation is scheduled to take place three months after the redeployment of Israeli forces in Hebron.

Comments:

- Although the Savir-Abu Mazen understanding does require redeployment about a month from its signing, the terms were written in a vague manner that does not establish an ironclad deadline. The actual date of redeployment is subject to negotiations between the two sides. The redeployment is to take place only after officers representing each of the two sides have jointly met to prepare proper security arrangements. In the absence of satisfactory security arrangements, the Savir-Abu Mazen agreement can be interpreted as permitting further delays in the redeployment in Hebron.

- Even though Israeli forces are to remain in Area H-2, civil powers and responsibilities will be transferred to the PA in H-2 as well, "except for those relating to Israelis and their property". Unarmed Palestinian municipal inspectors will be permitted to monitor and enforce laws vis-a-vis Palestinians in Area H-2.

- Even after redeployment, a Joint Mobile Unit, which includes Palestinians and Israelis, will operate throughout the city of Hebron, including Area H-1.

Safe Passage

Originally scheduled: May 1994

General Overview: Israel has been committed to instituting safe passage routes between the Gaza Strip and the West Bank since the signing of the Gaza-Jericho agreement in May 1994. These routes were to enable PA civilians to travel freely between the two parts of the PA, without having to apply for special permission as before. Under the Gaza-Jericho agreement these routes were to connect the Gaza Strip to Jericho; the Interim Agreement expanded the definition of these routes to include safe passage between the Gaza Strip and the West Bank.

The Oslo II agreement states that persons who are denied entry into Israel can use the safe passage only by means of shuttle buses escorted by the Israel Police and operated two days per week. In addition, Israel may deny certain individuals the use even of this shuttle bus, and requests to make such use of this provision are to be submitted and agreed upon by Israel at least five days prior to the planned journey. Israel may for security reasons temporarily halt the operation of a safe passage route while ensuring that one of the routes is open for safe passage.

The four routes in Israel through which Palestinians were to be granted safe passage were established in the agreements and the attached maps, and road signs identifying these routes have long been placed along those routes, but in practice safe passage has never been instituted. Palestinians who are not VIPs and intend to travel between the Gaza Strip and West Bank must apply for permission from Israel, which they do through the offices of the PA, for each such trip.

Comments:

- Despite much negotiation on this subject, the two sides have not yet reached full agreement on the modalities of implementing safe passage, which has prevented its commencement. It appears that most of the delays have been the result of Palestinian demands that Israel has not accepted, those being: a) that the passage of persons denied entry to Israel be permitted in a more flexible manner than shuttle buses; b) that the Mevo Horon check-point be moved from its present position, which is relatively deep within the West Bank—Israel is concerned that moving the check-point closer to "the Green Line" might set precedents regarding permanent status borders; c) that Israel commit not to arrest Palestinians travelling along the safe passage route, even if they are considered wanted by Israel, as long as they are observing Israeli law during their trip.

- There have been indications that some elements within the PA are interested in maintaining the current situation and not opening the safe passage routes, because the current situation grants them a large measure of control and authority over travel between the West Bank and the Gaza Strip—since those wanting to travel must apply first to the PA, it obtains information on who is travelling and also retains the right to deny such applications even before they are submitted to Israel.

• Obligations Whose Deadlines Are in the Future

Further Redeployments

Scheduled to be initiated: 7 September 1996

Scheduled to be completed: 7 September 1997.

General Overview: According to Oslo 2, "further redeployments of Israeli military forces to specified military locations will commence" within six months of the inauguration of the Palestinian Council—since the inauguration formally occurred on 7 March 1996, the date for the first "further redeployment" is set at

7 September 1996. These further redeployments are to be gradually implemented in three phases, to be completed within 18 months of the Council's inauguration—meaning that the completion date is 7 September 1997.

Along with this further redeployment, "West Bank and Gaza Strip territory" will come under the jurisdiction of the Palestinian Council "in a phased manner". The exceptions to this transfer of jurisdiction are twofold:

First, "issues that will be negotiated in the permanent status negotiations"— Jerusalem, refugees, settlements, security arrangements, borders, relations and cooperation with other neighbours, and other issues of common interest—will remain within Israel's jurisdiction¹.

Second, "Israel shall continue to carry the responsibility for external security, as well as the responsibility for overall security of Israeli for the purpose of safeguarding their internal security and public order".

Comments:

Extent of Further Redeployments: The extent of the further redeployments was purposefully written in vague terms and explicitly dependent on negotiations between the two parties to the agreement:

- Jerusalem and settlements are automatically excluded from redeployments.

- Regardless of what the final extent of further redeployments may be, the extent of redeployment in each individual phase is also open to negotiation, so that the bulk of the final redeployment can be delayed to the last phase, if desired.

- Although the phrase "redeployment to specified military locations" may seem to severely limit the eventual Israeli territorial jurisdiction, there is a clause in the agreement which explicitly connects the negotiations on further redeployment to the permanent status negotiations. The issues listed as open for discussion in permanent status negotiations make use of the phrase "security arrangements". In off-the-record discussions in the past, members of the Foreign Ministry's negotiating teams have stated that this enables Israel to interpret its necessary security arrangements and attendant "military locations" in as broad a manner as possible—i.e., the entire Jordan Valley, for example, could be defined as a "military location" pursuant to Israel's "security arrangements".

- Although the agreement states that "West Bank and Gaza Strip territory... will come under the jurisdiction of the Palestinian Council" as part of the further redeployments, this phrase is also open to interpretation. Indeed, as Joel Singer has publicly stated on record, the omission of the

¹ The Oslo agreements contain two different versions of "the issues to be negotiated in the permanent status negotiations", in different places. One version speaks of "specified military locations" while another uses the broader term "security arrangements".

definite article in the phrase "West Bank and Gaza Strip territory"—i.e., not "the West Bank and Gaza Strip"—was done deliberately in order to maintain Israel's option not to redeploy from all parts of the West Bank and Gaza Strip.

Transfer of Jurisdiction:

- Overall security will not be included in the civil powers and responsibilities to be transferred to the PA along with the further redeployments, so that those areas in which further redeployment occurs will have the security status of Area B, in which Israeli forces may operate, and do in practice.

- Territorial civil powers and responsibilities in Area C will not be an issue until the final phase of the further redeployments. However, those not related to territory, including the transfer of responsibility for internal security to the Palestinian Police, are to be transferred in Area C during the first phase, subject to the extent of Israeli redeployment.

Release of Prisoners

No current deadline exists

General Overview: The Oslo 2 agreement established that there would be three stages of release of Palestinian detainees and prisoners. Two of those stages have already been effected; the third is yet to take place, but there is no date by which this need be done—the agreement simply states that "there will be a third stage of release of detainees and prisoners". There is an annex to the agreement that details the categories of prisoners who are to be released.

Comment:

- Despite the previous government's general implementation of the first two stages of prisoner release, there are a number of prisoners who were to have been released according to the agreement but were not. These were prisoners whose release was not approved by President Ezer Weizman or by the IDF Central Command.

A case can be made that the President's decision not to release prisoners was not a violation of the agreement, because the President has jurisdiction over pardons solely involving residents of the State of Israel. Even though the agreement states "all female detainees and prisoners shall be released", this is subject to the explicit limitation stating that the released prisoners will

be "residents of the West Bank and the Gaza Strip". The prisoners whose pardon was rejected by the President are residents of Jerusalem.

The issue of the prisoners not released by the IDF Central Command is a violation of the agreement.

The Issue of the Closure

Although the Palestinian side repeatedly claims that the Israeli closure of the PA territories, there is no basis for this in the agreement itself. The Oslo II agreement states: "The provisions of this Agreement shall not prejudice Israel's right, for security and safety considerations, to close the crossing points to Israel and to prohibit or limit the entry into Israel of persons and of vehicles from the West Bank and the Gaza Strip".

This implies that as long as the existence of a closure and its extent is implemented in good faith in response to security and safety considerations, it is not a violation of the agreement.

• Permanent Status Negotiations

Commencement: Have formally commenced
Scheduled completion: 4 May 1999

General Overview: The permanent status negotiations are to cover remaining issues, including Jerusalem, refugees, settlements, security arrangements, borders, relations and cooperation with other neighbours, and other issues of common interest. The permanent status negotiations formally began in May 1996, with one meeting that contained no substantive negotiations. No substantive public negotiations on permanent status issues have yet been conducted. They are to be completed within five years of the signing of the Gaza-Jericho Agreement, which means by 4 May 1999.

Comments:

- Since the permanent status negotiations are scheduled to continue for as long as three years, as long as the two parties maintain "good faith" in negotiations, the pace of these negotiations can be flexibly decided, in accordance with developments.

- The issue of refugees is at least partially being dealt with within the framework of what is called the Continuing Committee, composed of

838 P27 MAY 38 04 21733

representatives of Israel, the Palestinians, Jordan and Egypt. This committee is discussing the issue of the refugees of 1967, as opposed to those of 1948. The Continuing Committee has conducted some meetings but to date very little has been agreed upon and the meetings have been conducted sporadically and not according to a fixed time-table.

- **Dealing With Existing Violations on the Palestinian Side**

Gaza Airport

The recent construction of the Gaza Airport was conducted mostly against Israel's wishes, due to fears that the airport could be used by wanted individuals to by-pass Israeli controls over the entry and exit of individuals to the PA. Although Israeli and Palestinian negotiators reportedly came to an agreement ending the dispute, the issue is still a sensitive one and there are indications that the Palestinian Authority is not fully operating according to the agreed principles.

It should be noted that according to the agreement all aviation activity in the West Bank and Gaza Strip requires prior Israeli approval and is subject to Israeli air traffic control.

Mechanism for Dealing With Violations of the Agreement by the Palestinian Side

The incoming government will have to immediately decide how it will deal with already existing and long-standing violations by the Palestinian side, such as the refusal to extradite wanted individuals or PA activity in Jerusalem.

The Oslo II agreement establishes a mechanism which enables the two sides to discuss matters of dispute, such as claims of violations. The mechanism as detailed in the agreement is: a) calling for a meeting of the Joint Liaison Committee to discuss the matters; b) establishing other mechanisms of conciliation; c) if both parties agree, disputes may be submitted to arbitration. In practice, these steps have not been taken.