POLICY BRIEF | POLITICS

How Sovereign a State?

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Summary Overview

Since the 1980s the Palestine Liberation Organization has aimed for a sovereign state in the West Bank and Gaza with East Jerusalem as its capital. Drawing on past Palestinian negotiating experience and the situation on the ground, this Policy Brief identifies some of the areas relating to sovereignty (e.g. armaments, alliances, crossings, borders, Israeli military posts in the West Bank) that Israel and the PLO would have to negotiate in the event that serious talks aimed at reaching a peace treaty are held. It develops a scenario that (1) compares a "moderate" Israeli position to a Palestinian stance guided by the objective of achieving a sovereign Palestinian state and (2) discusses whether the positions of the two sides are bridgeable. The aim of the exercise is to warn against pitfalls and to recommend positions and approaches, even with the knowledge that serious negotiations may not begin soon. The analysis reveals how unlikely it is that a truly sovereign Palestinian state can come about as a result of negotiations in the present circumstances.

Negotiations and Sovereignty

Sovereignty can be defined as a government's exclusive control over a territory and a people, including a monopoly over the use of force. Yet in the real world,

every state is bound by constraints originating in other states. Even a superpower such as the United States is subject to external – albeit minimal – constraints. States sometimes negotiate these constraints within the framework of a treaty under which they may accept what they consider to be reasonable restrictions on their sovereignty. In the realm of security, the nuclear non-proliferation treaty is a good example of agreed limitations by non-nuclear countries.

1. **Armaments**

Scenario positions

- *Israeli position: a demilitarized Palestinian state*
- *Palestinian position: self-defense capabilities*

The Palestinian side anticipated from the start that some restrictions would be placed on sovereignty that could be considered reasonable, for example restrictions on certain types of armaments, on an air force or submarines. Arguably, the Palestinians could accept such restrictions.[fref] See Walid Khalidi, "Thinking the Unthinkable: A Sovereign Palestinian State" *Foreign Affairs*, vol. 56, no. 4, July 1978.[/efn_note] However, the state would need certain types of armaments for self-defense and for border and coastline control. In addition, if it is established through negotiations and an official peace treaty, the State of Palestine would be bound by an obligation to maintain law and order within its territory (i.e., to prevent the formation of non-governmental armed groups and the violation of its own borders and those of its neighbors). Yet if Israel's concept is to prevent the possession by the Palestinian security services of any weapon capable of reaching its coastal urban centers and airport, then no agreement would be possible on the matter.

2. **Alliances**

Scenario positions

- *Israeli position: prohibition against the Palestinian State joining any alliance*
- *Palestinian position: no reference to alliances in the treaty*

Restrictions on the military aspects of sovereignty would also cover the question of alliances. Would a Palestinian state be free to conclude defensive military alliances with countries having normal relations with Israel such as Egypt, or countries that do not, such as Syria or Iran? In either case, such a position would be extremely difficult to defend in negotiations. However, given that the main security risk that a Palestinian state would face after a peace treaty would originate from Israel itself (e.g. hot pursuit, the closing of the passage between Gaza and the West Bank), the Palestinians would be well advised, in exchange for forfeiting their right to enter into military alliances, to make signing a peace treaty conditional upon obtaining an international guarantee of the territorial integrity of their State in the form of a Security Council Resolution under Chapter 7 of the Charter, a resolution that would also be solemnly endorsed by Israel, Egypt and Jordan. This guarantee could be accompanied by the deployment of international observers along the line between Israel and the Palestinian State.

3. **Borders and Crossings Between Israel and the Palestinian State**

Scenario positions

- *Israeli position: right of Israeli army and police to "hot pursuit" into Palestinian territory*
- *Palestinian position: right of Palestinians to freely visit Israeli territory*

Like all states, a Palestinian state must have control of its borders and crossings. The Palestinians have an additional interest, namely to be able to freely visit Palestinian towns and villages in Israel and also other locations of Palestinian memory (destroyed villages, cemeteries, religious sites). I am making this point independently of the Palestinian right of return (an issue outside the scope of this

Policy Brief). I am simply referring instead to the attachment of any Palestinian (for instance, a Palestinian whose roots belong to a village or a town in the West Bank) to his/her historical homeland. For their part, the Israelis will argue for their right to "hot pursuit" inside the Palestinian territory against would-be violators of Israel's sovereignty or security. The Palestinians must be aware that the principle of sovereignty is a two-way street: it creates rights, but also constraints. They should vehemently refuse the Israeli demand (hot pursuit) under the justification of the inviolability of their territory, but they will be faced by Israel's reciprocal position concerning its right to strictly control its border against the Palestinians' wish to cross freely to Israeli territory.

4. **Gaza – West Bank Link**

Scenario positions

- *Israeli position: link under Israeli sovereignty*
- *Palestinian position: physical link under Palestinian sovereignty*

The passage through Israeli territory linking the West Bank and Gaza should be a "physical" link and could take the form of a highway, a railway, a bridge, or a tunnel, or a combination thereof. It is essential for the Palestinian state to have sovereignty over this link and the argument that this would cut the Israeli territory in two in the circumstances is absurd. If the link constitutes a compensation for an Israeli acquisition of a corresponding piece of land in the West Bank, then a fair *quid pro quo* would require Palestinian sovereignty over the link in parallel to Israeli sovereignty of the portion of the West Bank that it will acquire. However, practical matters to be resolved before any agreement remain: nature of the physical link, measure of the fair *quid pro quo* in terms of surface-area, mechanisms of Palestinian exclusive control, handling of accidents and so on. Whatever these arrangements, international guarantees against Israeli interference or closure of the link must be an absolutely essential component of any peace treaty.

5. **Crossings with the Outside World**

Scenario positions

- *Israeli position: Israeli and/or third-party control of people and cargo at Palestinian land, sea and air terminals*
- *Palestinian position: exclusive Palestinian control*

Like all states, a Palestinian state must have control of its crossings with the outside world. Israel is likely to demand stringent forms of control at crossings under the pretext that unauthorized weapons, goods or people might flow into the Palestinian state. Israel's ideal model is the Israeli-Palestinian agreement of November 2005 on crossings between Gaza and Egypt, reached a few months after the Israeli military redeployed around the strip. The agreement provided for Israeli scrutiny of passenger travel documents of passengers (exclusively Gaza Palestinians) via an electronic network with no physical presence at the Rafah crossing. European monitors acted as Israeli proxies to check luggage at Rafah terminal. The agreement also provided that goods be searched by Israel at Kerem Shalom (Karam Abu Salem) before being shipped to Gaza. It is expected that in any future negotiations on Palestinian statehood, the Israelis would probably attach greater importance to seaports and airports than to land crossings (with Jordan and Egypt). Any acceptance of Israel's position regarding border arrangements would be a major infringement on Palestinian sovereignty, although Palestinian negotiators could conceivably accept some third-party presence in terminals for two or three years, on the condition that the Israeli side is not permitted to interfere in the implementation of the arrangements.

However, if this formula is agreed upon, the Palestinians must keep in mind the Oslo experience, which demonstrates that interim agreements can become permanent arrangements. Firm, irrevocable timetables have to be provided for in the treaty, but the problem is that no treaty can ever be clear on all matters and

the Palestinians must guard against international observers siding with the post-treaty interpretations of the stronger party. Let me open a parenthesis here. The Palestinian experience with international intervention is negative, even tragic: for example, the Sabra-Shatila massacres in September 1982 after the PLO withdrawal from Lebanon despite Philip Habib's U.S. promises to protect the refugee camps after the PLO withdrawal; and the U.S. permissiveness towards Israel's violation of the Oslo agreements (including settlement expansion). Should problems arise during the implementation period, they must be resolved by a binding recourse to arbitration if one of the two sides requests it.

6. **Borders with Jordan**

Scenario positions

- *Israeli position: Israeli observation posts along and dominating the Jordan valley*
- *Palestinian position: no Israeli presence in the West Bank*

As to the border between the West Bank and Jordan, which is about 100 kilometers long, Israel will insist on having observation posts along the Jordan valley and on hilltops dominating it.[1] The Israelis would insist that these posts will not only guard against smuggling and infiltration, but will also constitute a high-tech early warning system against any land or airborne military threat originating from the East. The implications of such demands are very grave indeed. From a political point of view, this would be a major infringement on the sovereignty of the Palestinian state and would even mean that the latter is, against its will, a partner to a military alliance with Israel against countries that do not threaten the Palestinian state. From a practical point of view, an observation presence on hilltops would give birth, before or after the peace treaty, to other demands such as securing roads (connecting Israeli territory to the posts) exclusive for the Israeli military which would in turn require checkpoints to control the roads, and so on.

It is imperative that Palestinian negotiators are aware of the short and long term implications of concessions that are made. For example, in the Oslo agreements, the Palestinians accepted that existing settlements remain under Israeli jurisdiction during the transitional period. This allowed Israel, later on, to close a number of Gaza and West Bank roads that connected Israel to the settlements to Palestinian traffic, to expropriate lands in order to build by-pass roads, and finally to expand settlements along the latter. In the tense balance between Israeli so-called security and Palestinian sovereignty, any Palestinian concession in a peace treaty could have far-reaching effects during the implementation stage. The only concession that Palestinian negotiators could make would be to accept international observers on locations along the border for the same period specified above for the crossings. Obviously, this implies that their tasks are limited to participating in the control of smuggling and infiltration. As to the strategic threats that Israel fears, its airborne and land warning systems North and South of the West Bank should be sufficient.

7. **Territorial Waters**

Scenario positions

- *Israeli position: Israeli interference on territorial waters*
- *Palestinian position: inviolability of territorial waters and exclusive Palestinian control*

Israeli negotiators would articulate their right to inspect suspicious ships approaching Gaza whether on the high sea or on the Palestinian territorial waters. Palestinian negotiators should strictly demand that the peace treaty provide for the respect of international law governing maritime navigation on the high sea. Concerning territorial waters, they should not agree to the principle of external interference, but should commit the Palestinian authorities to inspect approaching ships when it deems it necessary and when notified of the suspicion by any party.

8. **Airspace**

Scenario positions

- *Israeli position: total Israeli control of Palestinian airspace*
- *Palestinian position: no Israeli military sorties in Palestinian airspace; arrangements according to international civil aviation agreements*

There is no reason why Palestinian negotiators should agree to Israeli sorties in Palestinian airspace. Civilian air traffic should be accepted on a mutual basis and should include the possibility of air transportation between Gaza and the West Bank.

9. **Territory**

Scenario positions

- *Israeli position: Israeli use, in case of emergency, of Palestinian land roads or airspace to conduct military activities against countries in the region*
- *Palestinian position: absolute inviolability of Palestinian territory and airspace*

This is self-explanatory.

Conclusions and Recommendations

It is clear from the various issues addressed here that a moderate Israeli vision of a Palestinian state would make the latter a satellite state or a protectorate at best as far as sovereignty is concerned. It remains to be seen whether in the present circumstances a peace treaty satisfactory to Palestinian sovereignty requirements could be attained. This becomes even more doubtful if we consider other issues of the negotiations agenda, whether they are related to sovereignty or not: the question of Jerusalem, crossing between the two parts of Jerusalem,

dismantlement of settlements, exchange of territories between the two states, economic sovereignty, the refugees' right of return, Israel's insistence on being recognized as a Jewish state, etc.

In any case, this policy brief recommends that negotiators:

- Stick as closely as possible to international law and the usual implications of state sovereignty,
- Be aware that the principle of mutuality will face Palestinian sovereignty to Israeli sovereignty over the lands it controls and will consequently, require Palestinian tangible, ideological and moral sacrifices;
- Negotiate as detailed a treaty as possible, and not leave loopholes that would permit the stronger party to (mis)interpret the treaty during the implementation stage;
- Avoid contenting themselves with the provision of acceptable principles, and then agreeing to substantive derogations that annul the principles in practice (as was the case in the Oslo agreements as well as in the so-called 2003 "Geneva Accord: Draft Permanent Status Agreement");
- Refuse to agree to temporary arrangements unless unconditional timetables and deadlines are provided for in the treaty;
- Carefully involve selected third parties other than the U.S., because any third party (not only the U.S.) tends to side with the stronger party during implementation;
- Make sure that Egypt and Jordan are among the selected third parties;
- Obtain a provision in the peace treaty that any difference of interpretation during the implementation stage be submitted to arbitration by request of either party.

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See also Camille Mansour's "*Toward a New Palestinian Negotiation Paradigm*", *Journal of Palestine Studies,* Vol. 40, No. 3 (Spring 2011), pp. 38-58

1. *This discussion does not apply to the border between the Gaza Strip and Egypt since it measures only 12 km long and since the issue has been resolved de facto by the withdrawal of Israeli troops from along the border in August 2005.*

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