

The West Bank and Gaza Strip: Phase Two

Joel Singer



On September 28, 1995, Israel and the PLO signed the Interim Agreement on the West Bank and the Gaza Strip in Washington, DC ("the Interim Agreement"). Broadly, this agreement sets out to extend Palestinian self-government arrangements, which formerly covered only the Gaza Strip and the Jericho Area, throughout the West Bank. The Interim Agreement contains detailed arrangements for the election of a self-governing authority - the Palestinian Council, and provides for the transfer of powers and responsibilities to the Council from the Israeli military government and its Civil Administration. The Interim Agreement also contains extensive security arrangements, including arrangements for the redeployment of Israeli military forces in the West Bank. In addition, the agreement regulates the relations between Israel and the Palestinian Council in legal and economic matters, and establishes a framework for encouraging programs of cooperation between the two sides.

The Interim Agreement constitutes the third out of four stages of implementation established by the Declaration of Principles on Interim Self-Government Arrangements signed in Washington, DC on September 13, 1993 ("the DOP"). The DOP sets out the framework and principles to govern Israeli-

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Palestinian relations during a five year transitional period until the implementation of permanent status arrangements. This framework seeks to bring about a permanent change in the relations between Israel and the Palestinians. In the words of the preamble to the Interim Agreement, Israel and the PLO (which signed the agreement as the representative of the Palestinian people) are determined "to put an end to decades of confrontation and to live in peaceful coexistence, mutual dignity and security". They also reaffirm "their desire to achieve a just, lasting and comprehensive peace settlement and historic reconciliation". Finally, they recognize that "the peace process ... as well as the new relationship established between the two Parties ... are irreversible". As detailed below, the DOP envisages the development of this process in four stages, of increasing complexity and sensitivity:

1. Gaza-Jericho Arrangements

The first stage of implementation of the DOP was the Agreement on the Gaza Strip and the Jericho Area, signed in Cairo on May 4, 1994 ("the Gaza-Jericho Agreement"). This agreement gave effect to the "Gaza first" approach of the DOP by implementing the DOP's provisions dealing with the withdrawal of Israeli military forces from the Gaza Strip and the Jericho Area and the transfer of powers from the Israeli military government and its Civil Administration to a Palestinian Authority. Significantly, because this first stage occurred before the Palestinian elections, the members of the Authority were not elected but rather appointed by the PLO with Israeli approval.

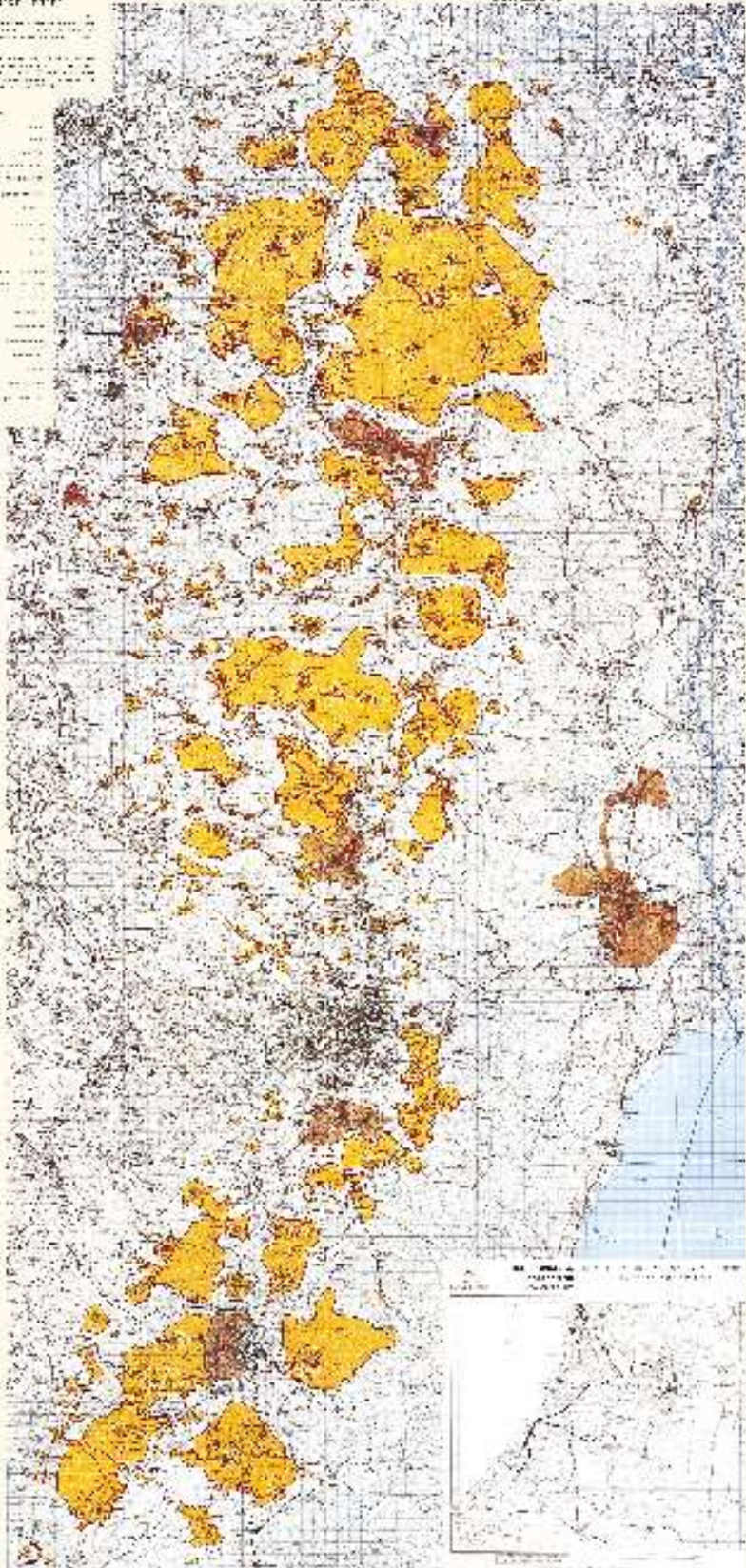


ISRAELI PALESTINIAN
INTERIM AGREEMENT 28.9.95

מפת הסכם הביניים
בין ישראל והפלסטינים

מפת הסכם הביניים

שם היישוב	מספר היישוב	מספר התושבים
א. אזור המזרח	1. ירושלים	2.500.000
ב. אזור המערב	3. רמת הגולן	150.000
ג. אזור הנגב	4. הנגב	1.000.000
ד. אזור הצפון	5. הצפון	1.500.000
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2. Preparatory Transfer of Powers and Responsibilities.

With a view to avoiding an unbalanced situation in which self-government arrangements were in effect in the Gaza Strip and the Jericho Area, while the rest of the West Bank continued to be placed under military government in its fullest scope, the DOP called for "Early Empowerment" arrangements in the West Bank as the second stage of implementation of the DOP. In other words, the DOP provided that some civil powers and responsibilities would be transferred to the Palestinians throughout the West Bank, before the entry of the Interim Agreement into force. Accordingly, on August 29, 1994, Israel and the PLO signed the Agreement on the Preparatory Transfer of Powers and Responsibilities, which provided for the transfer of six civil spheres to the Palestinian Authority. A second agreement of a similar nature - the Protocol on Further Transfer of Powers and Responsibilities, signed on August 27, 1995 - provided for the transfer of an additional eight spheres.

3. The Interim Agreement

As noted above, the Interim Agreement, being the third stage of implementation of the DOP, provides for the establishment of an elected Palestinian Council and for the redeployment of Israeli forces throughout the West Bank. The arrangements contained in this agreement are to remain in force throughout the five year transitional period which began on the date of entry into force of the Gaza-Jericho Agreement (*i.e.*, on May 4, 1994) and which will be completed by May 4, 1999. These arrangements incorporate or supersede all of the provisions contained in the three earlier agreements described above. Under the Interim Agreement, the arrangements established for the Gaza Strip by the Gaza-Jericho Agreement were generally left unchanged, except for the modifications dictated by the experience gained in the implementation of the Gaza-Jericho Agreement. By contrast, the arrangements pertaining to the Jericho Area were replaced by the new arrangements to be implemented throughout the West Bank. Authority with regard to the civil spheres transferred to the Palestinians under the preparatory transfer arrangements is assumed by the Council as part of its assumption of powers and responsibilities under the Interim Agreement.

4. Permanent Status Arrangements

Article V of the DOP provided that negotiations on permanent status issues are to commence not later than the third year of the interim period. The Interim Agreement concretizes this date as

May 4, 1996 (Article XXXI(5)). The permanent status arrangements to be concluded through these negotiations are to be implemented at the conclusion of the five year transitional period. A list of some of the issues to be addressed in the permanent status negotiations is provided in Article V(3) of the DOP ("Jerusalem, refugees, settlements, security arrangements, borders, relations and cooperation with other neighbors and other issues of common interest"). The DOP envisioned the permanent status agreement to be the fourth (and last) stage of implementation, bringing about full peace and reconciliation between Israelis and Palestinians.

General Structure of the Agreement

The Interim Agreement comprises over 300 pages and consists of the main body of the agreement and seven annexes, which deal with the following matters: redeployment and security arrangements, elections, civil affairs (transfer of civil authority), legal matters, economic relations, Israeli-Palestinian cooperation, and release of Palestinian prisoners and detainees. Attached to the agreement are nine maps delineating such matters as the areas of redeployment of the Israel Defense Forces, the deployment of Palestinian Police, the security arrangements, *etc.*

The agreement was witnessed and countersigned by the heads of states, foreign ministers or representatives of the United States, the Russian Federation, Egypt, Jordan, Norway and the European Union.

Nature of the Interim Arrangements

A. Source of Authority

The nature of the regime established in the West Bank and the Gaza Strip for the duration of the transitional period is that of a Palestinian autonomy under the supreme authority of the Israeli military government. As detailed below, in line with these fundamental principles, Israel will continue to be responsible, among other things, for the external security as well as the external relations of the West Bank and the Gaza Strip. Significantly, lack of authority in these two spheres is a well-established indication of autonomous regimes. That the Israeli military government will continue to exist is stated in Article I(5) of the Interim Agreement, which provides:

After the inauguration of the Council, the Civil Administration in the West Bank will be dissolved, and the Israeli military govern-

ment shall be withdrawn. The withdrawal of the military government shall not prevent it from exercising the powers and responsibilities not transferred to the Council.

It follows that, unlike the Civil Administration, the military government does not dissolve. Instead, it simply withdraws physically from its former location, but continues to exist elsewhere as the source of authority for the Palestinian Council and the powers and responsibilities exercised in the West Bank and the Gaza Strip.

The fact that the military government continues in existence, and retains all necessary authority to exercise powers and responsibilities not transferred to the Council, is stated explicitly in the Interim Agreement (Article XVII(4)):

a. Israel, through its military government, has the authority over areas that are not under the territorial jurisdiction of the Council, powers and responsibilities not transferred to the Council and Israelis.

b. To this end, the Israeli military government shall retain the necessary legislative, judicial and executive powers and responsibilities, in accordance with international law. This provision shall not derogate from Israel's applicable legislation over Israelis *in personam*.

Since the military government remains the source of authority in the areas, as with the previous agreements reached between Israel and the Palestinians, the military commanders of the Israel Defense Forces in the West Bank and the Gaza Strip issued proclamations concerning the implementation of the Interim Agreement, whereby they incorporated the provisions of the agreement into the domestic law.

B. Residual Powers

The provisions of the Interim Agreement quoted above also resolve the issue of where residual powers are vested, *i.e.*, they are retained by Israel. In addition, Article I(1) of the Interim Agreement states that "Israel shall continue to exercise powers and responsibilities not so transferred [to the Council]". It follows that, if the agreement is silent on the question of where a

particular power vests, then that power is retained by Israel. It is noteworthy that the possession of residual powers is, normally, an *indicia* of being the source of authority.

C. The Status of the West Bank and the Gaza Strip

The Interim Agreement states that the "status of [the West Bank and the Gaza Strip] will be preserved during the interim period" (Article XXXI(8)). Moreover, the agreement contains a clear undertaking that "[n]either side shall initiate or take any step that will change the status of the West Bank and the Gaza Strip pending the outcome of the permanent status negotiations" (*Ibid.*, para. 7).

These provisions prohibit both sides from taking any unilateral step designed to change the status of the West Bank and the Gaza Strip which, as elaborated above, is a status of Palestinian autonomous areas under the supreme authority of an Israeli military government.

Since the status of the West Bank and the Gaza Strip is one of the fundamental elements of the Interim Agreement, one implication of this prohibition is that any attempt made by either party to change this status (such as by declaring an independent Palestinian state or by annexing the areas to Israel) may be considered a material breach and a ground for terminating the agreement.

In the upcoming permanent status negotiations, no party may be barred from raising a claim or argument regarding the permanent status merely because that party has agreed in the Interim Agreement that a different arrangement be implemented during the interim period.

D. Interim Arrangements do not Prejudice Permanent Status

The arrangements included in the Interim Agreement are, as the name of the agreement suggests, interim arrangements only; they are not in any way intended to influence the outcome of the permanent status negotiations. In other words, in the upcoming permanent status negotiations, no party may be barred from raising a claim or argument regarding the permanent status merely because that party has agreed in the Interim Agreement that a different arrangement be implemented during the interim period. This principle is stated clearly in the DOP, and is restated in Article XXXI(6) of the Interim Agreement, which provides:

Nothing in this Agreement shall prejudice or preempt the

outcome of the negotiations on the permanent status to be conducted pursuant to the DOP. Neither Party shall be deemed, by virtue of having entered into this Agreement, to have renounced or waived any of its existing rights, claims or positions.

Elections

A. The Electoral Process

Unlike the Palestinian Authority appointed under the Gaza-Jericho Agreement, the Palestinian Council established pursuant to the Interim Agreement is an elected body. Israel recognized the importance of establishing a democratic and accountable system of self-government in the West Bank and the Gaza Strip. Accordingly, the provisions of Article III of the DOP, which call for "direct, free and general political elections" in order that the Palestinians of the West Bank and the Gaza Strip may govern themselves "according to democratic principles", are in Annex II of the Interim Agreement translated into detailed provisions ensuring a free and democratic process. In addition, going beyond the requirements of the provisions of the DOP, Israel agreed to the holding of separate and simultaneous elections for the Council and for the position of the Chairman (or "*Ra'ees*" in Arabic) of the Executive Authority of the Council (Annex II, Article III).

Throughout the negotiations on the elections, Israel was mindful of the fact that the elections are **Palestinian** elections. Accordingly, Israel was prepared to leave all issues relating exclusively to the conduct of the electoral process to be decided by the Palestinian side, expressing its concerns only with regard to such fundamental issues as the maintenance of security during the electoral process. A further expression of Israel's willingness to be seen not to interfere with the electoral process are the provisions of the agreement calling for a redeployment of Israeli forces from the Palestinian populated areas of the West Bank on the eve of the elections (*see* Section VII (c) below).

B. The Right to Vote and Be a Candidate

The Interim Agreement provides that the right to vote will be universal, regardless of sex, race, religion, opinion, social origin, education or property status. Accordingly, all Palestinians of the West Bank and the Gaza Strip who are registered in the population register as residents of these areas and are over the age of 18 on the date of the elections are entitled to vote, unless disqualified by a Palestinian judicial decision (Annex II, Article II).

Any person registered to vote in the elections, and who meets the age criteria as set by the Palestinian Elections Law, may also stand as a candidate. Candidates for the Council must live in the constituency for which they wish to be elected. A candidacy shall only be rejected if the candidate professes racist views or acts in an illegal or undemocratic manner (Annex II, Article III).

C. International Observation

All stages of the election process will be open to international observation, to ensure that they are free and fair (Annex II, Article V). The observers will include representatives from a large number of countries, including the United States, Russia, Egypt and Jordan, and international organizations, including the Organization of African Unity and the Islamic Conference Organization. At the request of Israel and the PLO, the European Union agreed to coordinate the election observation. The Interim Agreement provides for the establishment of a trilateral coordination forum, comprising the Palestinian Election Commission, Israel and the European Union to deal with all issues of security and logistics relating to the observers.

D. Participation of Palestinians of Jerusalem in the Elections

The DOP provided that Palestinians of Jerusalem who live there "will have the right to participate in the election process according to an agreement between the two sides" (Annex I, Article I). In the course of the negotiations on the Interim Agreement, the Palestinian side insisted that this provision required that Jerusalem be treated as identical to the West Bank and the Gaza Strip for the purposes of electoral administration, that Palestinians of Jerusalem be entitled both to vote and to be elected in the elections, and that voting should take place within Jerusalem. Israel argued that participation for the purpose of this provision required only that arrangements be made to enable Palestinians of Jerusalem to vote in the elections, and that voting should take place outside Jerusalem. Eventually, the following arrangements were agreed:

1. Electoral Administration

Article I(4) of Annex II of the Interim Agreement contains the following general provisions:

- a. All of the offices of the Central Election Commission and its subordinate bodies, including the offices of the District Electoral Commission (hereinafter "the DECs") and the District Election Offices (hereinafter "the

DEOs") shall be situated in constituencies set out in the Palestinian Election Law in areas under the jurisdiction of the Council.

- b. All aspects of the electoral administration (such as publication of lists of electors or candidates, and other information concerning the conduct of the elections, appeals, counting votes, and publication of results) shall take place only in the offices of the relevant DEO.

These provisions have two significant implications with regard to election arrangements regarding Palestinians of Jerusalem:

- i. All offices of the Central Election Commission must be situated outside Jerusalem. While for the purposes of enabling Palestinians of Jerusalem to vote, Jerusalem may be included within a larger constituency which also includes parts of the West Bank, all the offices of the electoral administration, including the polling stations, must be situated in the West Bank, that is, outside Jerusalem. This provision is consistent with the general provision (Article I(7) of the agreement) requiring that all offices of the Palestinian Council be located in areas under its jurisdiction (*see* discussion in Section V(f) below).
- ii. In addition, all aspects of the electoral administration must take place outside Jerusalem. Since the District Election Offices must be situated in the West Bank or the Gaza Strip and all aspects of electoral administration are to take place only in these offices, it follows that no aspects of the electoral administration may be conducted within Jerusalem.

2. Candidates

Article III(1)(b) of Annex II to the Interim Agreement provides that every candidate for election for the Council or the position of the *Ra'ees* must have a valid address in an area under the jurisdiction of the Council. In the case of a candidate for the Council this address must also be in the constituency for which he or she is a candidate. Accordingly, a Palestinian who lives only in Jerusalem may neither be a candidate for the position of the *Ra'ees* nor for membership in the Council. Only Palestinians with a valid address outside Jerusalem, in the West Bank or the Gaza Strip, may be candidates for election. For the purpose of this provision, the agreement defines a valid address as "that of a residential property which is owned or rented or otherwise legitimately

occupied by the candidate". That the candidate's address must be his or her genuine residence is further emphasized by the agreement's definition of "address" as "the specific abode in which a person actually lives" and of "abode" as a "main permanent fixed address" (Annex II, Article II(1)(j)). A Palestinian who lives in the West Bank or the Gaza Strip, however, will not be barred from standing as candidate merely because he or she has a **second** address outside these areas, in Jerusalem or elsewhere (Annex II, Article III(1)(b)).

3. Election Campaigning

Any campaign activities which take place in Jerusalem will be subject to the relevant provisions of Israeli law. Candidates wishing to conduct such activities shall apply for the necessary Israeli permits from the Israel Police through the Central Election Commission. Representatives of this Commission, together with representatives of the Israel Police, will form a special committee to coordinate issues relating to election campaigning in Jerusalem (Annex II, Article VI(1)).

4. Polling Arrangements

Most Palestinians of Jerusalem will vote at approximately 170 polling stations situated outside Jerusalem in the West Bank. They will be notified by the Palestinian Central Elections Commission of the relevant polling station at which they are to cast their vote.

At the same time, a number of Palestinians of Jerusalem will vote in the elections through services rendered in five specified post offices in Jerusalem, in accordance with the capacity of these post offices (Annex II, Article VI(2)). In discussions between the two sides it was suggested that these postal facilities be made available to enable the elderly and infirm to participate in the elections. Those Palestinians who will vote through these Israeli post offices will be notified of the relevant post office by means of an Electoral Registration Card provided by the Central Election Commission.

In contrast to the situation in the West Bank and Gaza Strip polling stations, there will be no polling station commissions in the Israeli post offices. Any necessary procedures within such post offices will be conducted by the Israeli post office employees, who will be responsible for identifying the Palestinian electors and providing them with ballot papers and envelopes.

In these post offices, electors shall mark ballot papers at the post office counter and insert them in the envelopes

addressed to the relevant District Election Office in the West Bank. Thereafter, such envelopes will be delivered to this Office where they will be opened, and the enclosed ballot papers counted and totaled along with all the other ballot papers cast in the West Bank.

The Palestinian Council

A. Structure of the Council

According to the agreement, the Palestinian Council will comprise 82 elected representatives and the Chairman (*"Ra'ees"*) of the Executive Authority of the Council who, as noted above, is to be elected in separate and simultaneous elections (Article IV). After the conclusion of the Interim Agreement, Israel approved a Palestinian request to add one additional seat on the Council, which will be reserved for the Samaritan community of the Nablus district. Once elected, the Council will replace the Palestinian Authority appointed pursuant to the Gaza-Jericho Agreement.

The elected Council possesses both executive and legislative powers (Article III(2)). According to the DOP, these functions were to be performed by one organ (Article VII(2)). During the course of negotiations on the Interim Agreement, however, driven by its desire to see a fully democratic Palestinian society, Israel agreed to permit a separation between the legislative body - the Council itself - and a smaller executive committee of the Council (the "Executive Authority")(Article V(1)). Such a division would ensure the existence of oversight and accountability, two prerequisites for a democratic regime.

While there is no specified number of members which are to compose the Executive Authority, the Palestinian Authority, which is performing similar functions in the Gaza Strip and the Jericho Area pending the inauguration of the Council, consists of 24 members. The Interim Agreement stipulates that the members of the Executive Authority must be drawn primarily from the Palestinian Council. However, the *Ra'ees* of the Executive Committee, with the Council's approval, may appoint persons who are not members of the Council, the number of which can comprise up to 20 percent of the total membership of the Executive Authority (Article V(4)(c)). Israel agreed to such an arrangement, realizing that certain individuals who would be very suitable as members of the administrative body might not be able to be elected because they would be present outside the territories on the day of the elections, or might simply not desire to run as candidates in the elections. The agreement permits the

Council to establish other committees in order to assist in controlling the activity of the Executive Authority and to simplify the Council proceedings.

B. Jurisdiction of the Council

The jurisdiction of the Palestinian Council in the West Bank and the Gaza Strip is defined in Article XVII of the Interim Agreement by three cumulative criteria: territorial jurisdiction, personal jurisdiction, and functional jurisdiction.

1) Territorial Jurisdiction

The territorial jurisdiction of the Council is confined to those parts of the West Bank and the Gaza Strip in which powers and responsibilities have been transferred. As described below (*see* Section VII(c)), while the transfer of territorial authority in the Gaza Strip and the Jericho Area was completed in May 1994, immediately after the signing of the Gaza-Jericho Agreement, the transfer of such authority to the Palestinian Council with regard to the rest of the West Bank is to be effected in a series of stages consistent with the phased redeployment of Israeli forces. It follows that the territorial jurisdiction of the Council is not static, but will continue to expand throughout the process. At the conclusion of the process, the territorial jurisdiction of the Council will cover the territory of the West Bank and the Gaza Strip with the exception of "permanent status issues", *i.e.*, Israeli settlements and military locations (Article XVII(8)). Israel retains territorial jurisdiction with regard to all West Bank and Gaza Strip lands not placed under Palestinian territorial jurisdiction (Article XVII(4)(a)).

2) Functional Jurisdiction

With regard to the functional jurisdiction of the Council, Article XVII(2)(b) provides that this extends to all the "powers and responsibilities transferred to the Council, as specified in this Agreement or in any future agreement that may be reached between the parties". Annex III of the Interim Agreement (Civil Affairs) deals with 40 spheres of civil authority. As noted above, since Israel has residual powers, unless Annex III specifically transfers particular powers and responsibilities to the Palestinian Council, such powers and responsibilities are retained by Israel. Indeed, with regard to some spheres, Israel declined to transfer authority, especially in matters pertaining to security (*see* Section VI(a) below).

The functional jurisdiction of the Council generally only applies in areas that are placed under the territorial jurisdiction of the Council. Thus, the Council's functional jurisdiction does not apply in Israeli settlements or in military locations. As an exception, however, with regard to a few thousand Palestinians that live in isolated houses in the non-populated areas of the West Bank who will continue initially to be under Israeli jurisdiction, the Council will have functional jurisdiction pertaining to non-territorial spheres of authority. Israel will retain the functional jurisdiction pertaining to territorial spheres of authority in these non-populated areas (*see* Section VII(b) below).

3) *Personal Jurisdiction*

The personal jurisdiction of the Council covers all persons present within its territorial jurisdiction, except for Israelis, "unless provided otherwise in the agreement" (Article XVII(2)(c)). Thus, the jurisdiction of Council in each of the spheres transferred is largely confined to non-Israelis, situated outside Israeli settlements and military locations. The proviso refers to the fact that, under the agreement, Israelis conducting ongoing business within the territorial jurisdiction of the Council are subject to the Council's civil jurisdiction (Annex IV, Article III(2)(a)). This jurisdiction, however, does not cover criminal matters. Thus, an Israeli who conducts business in an area under the territorial jurisdiction of the Council, must obtain all necessary business permits from the Palestinian Council and may be sued (e.g., for breach of contract) in a Palestinian court. However, such an Israeli may not be tried in a Palestinian court if he or she commits a criminal offense, in which case the personal jurisdiction remains with the Israeli authorities.

The reference to "Israelis" is defined in Article XX as including Israeli statutory agencies and corporations registered in Israel. No distinction is made between Israelis resident in the West Bank and the Gaza Strip or visiting Israelis resident outside these territories. Nor is any distinction made between Israeli soldiers and civilians. Rather, all

Israeli citizens remain under Israeli jurisdiction, save for the above-noted exception.

C. **Legislative Powers of the Council**

As mentioned above, the Council has legislative as well as executive powers. According to the Gaza-Jericho Agreement, the legislative powers of the appointed Palestinian Authority were subject to an effective Israeli veto. During the Interim Agreement negotiations, it was decided not to constrain the elected Council with such a veto as the Gaza-Jericho arrangements have shown this restraint to be impractical for both sides. The Palestinians were burdened by having to submit for prior Israeli approval every law or regulation. Likewise, the Israelis were burdened by the monumental task of continuously monitoring, translating into Hebrew and reviewing all primary and secondary Palestinian legislation. Accordingly, the Interim Agreement does not maintain the requirement that all Palestinian legislation be submitted for Israeli approval, but simply provides that the Council's legislative powers may only be exercised within its jurisdiction (Article XVIII). The agreement goes on to provide that any legislation which exceeds this jurisdiction, or which is otherwise inconsistent with the DOP, the Interim Agreement or any other agreement between the two sides, "shall have no

The personal jurisdiction of the Council covers all persons present within its territorial jurisdiction, except for Israelis, "unless provided otherwise in the agreement"

effect and be void *ab initio*" (Article XVIII(4)(a)). In addition, it should be noted that Article XVIII(4)(b) places a specific obligation upon the *Ra'ees*, who has a discretionary power to refuse to promulgate legislation approved by the Council, not to promulgate any legislation which fails to satisfy the requirements of this Article.

D. **Judicial Organs**

The Interim Agreement provides that the Council, within its jurisdiction, will have an independent judicial system composed of independent Palestinian courts and tribunals (Article IX) (6). The agreement also provides for the establishment of a Palestinian Court of Justice with powers of judicial review. This court, similar in nature to the Israeli High Court of Justice, may

review any act or decision of the Chairman or any member of the Executive Authority of the Council and decide whether such act or decision is *ultra vires*, or otherwise incorrect in law or procedure (Article VIII).

The establishment of Palestinian courts does not mean that the existing courts of the Israeli military government will cease to function. As noted above, the military government will continue in existence, retaining, *inter alia*, all judicial powers and responsibilities not transferred to the Council (Article XVII(4)). It follows that Israeli military courts may continue to function in the West Bank and the Gaza Strip with jurisdiction over all offenses that are retained under the authority of the military government (primarily security offenses).

E. The Conduct of Foreign Affairs

Article IX(5)(a) of the Interim Agreement provides:

In accordance with the DOP, the Council will not have powers and responsibilities in the sphere of foreign relations, which sphere includes the establishment abroad of embassies, consulates, or other types of foreign missions and posts or permitting their establishment in the West Bank or the Gaza Strip, the appointment of or admission of diplomatic and consular staff, and the exercise of diplomatic functions.

Since under international law full capacity to conduct foreign relations is one of the accepted *indicia* of sovereignty and statehood, the Council's lack of authority in the sphere of foreign relations is a clear indication of the fact that it is an autonomous and not an independent entity. However, as in the Gaza-Jericho Agreement, Israel understood that in order for the Palestinian Council to function effectively, a mechanism had to be established to enable some dealings with regard to specific matters between the Palestinian side and foreign states or international organizations.

Accordingly, the Interim Agreement permits the PLO (but not the Palestinian Council) to conduct negotiations and sign agreements with states or international organizations "for the benefit of the Council" in four specific categories (Article IX(5)(b)). These categories are: (i) specified economic agreements; (ii) agreements with donor countries for the purpose of implementing arrangements for the provision of assistance to the Council; (iii) certain agreements for the implementation of regional development plans; and finally (iv) cultural, scientific and educational agreements.

In the same vein, where the PLO has entered into an agreement under this paragraph, the Interim Agreement permits the Palestinian Council to deal with representatives of the relevant foreign state or the international organization in order to implement this agreement. Furthermore, the Interim Agreement permits the establishment in the West Bank and the Gaza Strip of non-diplomatic "representative offices" for the purposes of implementing such an agreement. These activities by the Council are not considered foreign relations. Such a grant of limited authority to have dealings on the international plane is in accordance with international practice regarding autonomous regimes.

F. Location of Council Offices

The Interim Agreement provides that the offices of the Council, its various committees and of the *Ra'ees* may only be established in areas under the territorial jurisdiction of the Council in the West Bank or the Gaza Strip (Article I(7)). The significance of this provision is that the Council is not only prohibited from establishing offices within Israel, including in Jerusalem, but that, even within the West Bank and the Gaza Strip these offices may not be located outside those areas in which powers and responsibilities have been transferred to the Council on a territorial basis.

Transfer of Civil Authority to the Council

A. General

The Interim Agreement provides for the transfer of agreed civil powers and responsibilities from the Israeli Civil Administration to the Palestinian Council. Specific arrangements for the transfer of 40 separate spheres of civil authority are set out in Annex III (Civil Affairs) of the agreement. With respect to each sphere, this Annex specifies (1) whether powers and responsibilities are transferred without any restrictions; (2) whether any specific powers and responsibilities, especially those with a bearing on security (such as telecommunications or aerial traffic), are retained by Israel; or (3) whether powers and responsibilities are transferred subject to particular restrictions. The treatment accorded to some of the more important civil spheres is reviewed below.

B. Public Lands

The Interim Agreement provides that in those areas from which Israeli forces are redeployed, civil powers and responsibil-

ities will be transferred to the Palestinian Council concurrently with the stages of redeployment. In this context, the authority to administer all public lands that are included within these areas will also be transferred (Annex III, Appendix 1, Article 16). Administration of public lands outside these areas will be retained by Israel. This includes all powers and responsibilities relating to territory, such as planning and zoning, quarries and mines, and public works and housing.

C. Water

Another highly sensitive issue dealt with in Annex III is the issue of authority over the water resources. Annex III sets out agreed principles and arrangements for the transfer of authority in this sphere (Appendix 1, Article 40). Among these principles, Israel recognizes Palestinian water rights in the West Bank. However, negotiations on the water rights, including the allocation of water resources and ownership of water related infrastructure, will take place only during the permanent status discussions. During the interim period, Israel undertakes to increase the amount of water allocated to the Palestinians by 28.6 million cu.m. per year. Any additional supplies to either side will be based on an increase in available water resources to be developed through international funding, as well as mutual cooperation within the framework of the tripartite American-Israeli-Palestinian forum, which is to convene following the signing of the Interim Agreement.

This Article also provides for the establishment of a permanent joint water committee that will coordinate management of water resources and enforce water policies, protecting the interests of both parties by, *inter alia*, preventing uncontrolled drilling and enforcing standards.

D. Religious Sites

One of the most sensitive spheres dealt with in Annex III is that of religious sites (Appendix 1, Article 32). Under the arrangements set out for this sphere, responsibility over sites of religious significance in the West Bank and the Gaza Strip will be transferred to the Palestinian side in those areas from which Israeli forces are redeployed. Outside these areas responsibility will be transferred gradually during the "further redeployment phase", except for religious sites located in Israeli settlements and military locations. Both sides are required to respect and protect religious rights of Jews, Christians, Moslems and Samaritans, protect holy sites under their respective jurisdiction,

allow free access to them and permit freedom of worship and practice at the sites.

With regard to Rachel's Tomb in Bethlehem, Joseph's Tomb in Nablus and the Shalom Al Israel Synagogue in Jericho, special arrangements are set out in the agreement to guarantee security, freedom of access and freedom of worship at these sites (Annex I, Article V). With regard to the Tomb of the Patriarchs in Hebron, the parties agreed that the present situation at the tomb will be maintained and will be reviewed three months after the redeployment (Annex I, Article VII(8)).

Security and Redevelopment

A. External Security and Security of Israelis and Settlements

Notwithstanding the transfer of powers and responsibilities relating to internal security and public order to the Palestinian Council in certain areas, the Interim Agreement provides that Israel will continue to have the responsibility for defense against external threats. This responsibility is defined as including responsibility for protecting the Egyptian and Jordanian borders and for defense against external threats from the sea and the air. Israel also retains the responsibility for the overall security of Israelis and Israeli settlements. Furthermore, the agreement states that Israel shall have "all the powers to take the steps necessary to meet this responsibility" (Article XII(1)).

B. Internal Security and Public Order

With regard to internal security and public order in the West Bank, the agreement establishes initially three different types of arrangements:

i. Area A

Area "A" comprises the Jericho Area and the main Palestinian cities of the West Bank, namely Jenin, Nablus, Tulkarem, Kalkilya, Ramallah, Bethlehem and Hebron (except for the Old City of Hebron, the Jewish Quarter, and everything that is linked from there to Kiryat Arba and the Tomb of the Patriarchs). In Area "A", the Palestinian Council will have full responsibility for internal security and public order, as well as full responsibility for civil affairs.

ii. Area B

Area "B" comprises all of the other Palestinian populated areas in the West Bank (around 450 towns, villages, refugee camps and hamlets). In these areas, the Council will be

granted full civil authority, as in Area "A". The Council will also be charged with maintaining public order of Palestinians, while Israel will have the overriding security authority for the purpose of protecting Israelis and confronting the threat of terrorism. The use of the word "overriding" indicates that this Israeli responsibility shall take precedence over the Palestinian responsibility for public order.

Twenty five Palestinian police stations will be established in specified towns and villages in Area "B" to enable the Palestinian Police to exercise its responsibility for public order. The agreement contains provisions requiring that the movement of Palestinian Police be coordinated with and confirmed by Israel.

iii. Area C

Area "C" comprises the unpopulated areas of the West Bank, and includes areas of strategic importance to Israel and the Israeli settlements. In Area "C", Israel will retain full responsibility for security and public order. The Palestinian Council will assume powers and responsibilities for civil affairs spheres not related to territory, such as economics, health and education, on a personal basis with regard to a few thousand Palestinians residing in isolated houses in Area "C". Israel will retain authority over all civil affairs spheres related to territory.

C. Redeployment and Further Redeployments

It will be recalled that, under the Gaza-Jericho Agreement, the withdrawal of Israeli military forces from all areas of the Gaza Strip other than settlements and military locations took place as a one-time operation. In contrast to the Gaza-Jericho approach, the security arrangements for the West Bank included in the Interim Agreement provide for a gradual redeployment of Israeli military forces to take place in a number of stages:

i. First phase of redeployment

The first phase of redeployment, designed to facilitate the holding of elections, involves the redeployment of Israeli forces from all of the populated areas of the West Bank. Special arrangements also provide for a partial redeployment in the city of Hebron. At the end of this first phase of redeployment, there will be no permanent Israeli military presence in any Palestinian population center. The agreement provides that the first phase of redeployment itself will be carried out in stages on a district-by-district basis.

ii. Further Redeployments

In addition to the initial redeployment of Israeli military forces described above, the Interim Agreement provides that further stages of redeployment are to take place at six month intervals to be completed 18 months after the inauguration of the Council (Article XI). In the course of these further redeployments, additional parts of Area "C" will be transferred to the territorial jurisdiction of the Council, becoming either Area "A" or Area "B", while parts of Area "B" may become Area "A" (Article XI(2)(b)). By the completion of the three stages of further redeployment in July 1997, the territorial jurisdiction of the Council will cover West Bank territory, except for Israeli settlements and military locations. Significantly, the military locations are referred to in Article XVII(1) as "specified military locations" and not "agreed military locations" as suggested by the Palestinian side. The use of the word "specified", rather than "agreed", indicates that the number, extent and location of these areas is not a subject for negotiations between the parties, but rather will be decided unilaterally by Israel.

D. Palestinian Police and Security Policy

The agreement, in Article XIV and Annex I, provides for the establishment of a strong Palestinian Police that will constitute the only Palestinian security force in the West Bank and the Gaza Strip. This force will incorporate the Palestinian Police already deployed in the Gaza Strip and the Jericho Area, and will number up to 30,000 policemen, up to 12,000 of whom will be deployed in the West Bank and up to 18,000 in the Gaza Strip. The Security Annex specifies the deployment of the Palestinian Police, its weapons and equipment and its rules of conduct.

The DOP envisioned that the Palestinian elections would take place nine months after the entry into force of the DOP, *i.e.*, in July 1994. This required that the Interim Agreement be concluded prior to this date. In fact, the Interim Agreement was signed 14 months later. This delay was in large part due to problems encountered in the implementation by the Palestinian Authority of the security provisions of the Gaza-Jericho Agreement. These problems were alleviated to some extent by the beginning of implementation of a declaration made by the Palestinian Authority on March 9, 1995, in which, for the first time, it clearly stated its security policy. This policy, which shall continue to bind the Palestinian Council throughout areas under

its jurisdiction, is restated in Annex I , Article II(1) of the Interim Agreement:

- a) The Palestinian Police is the only Palestinian security authority.
- b) The Palestinian Police will act systematically against all expressions of violence and terror.
- c) The Council will issue permits in order to legalize the possession and carrying of arms by civilians. Any illegal arms will be confiscated by the Palestinian Police.
- d) The Palestinian Police will arrest and prosecute individuals suspected of perpetrating acts of violence and terror.

E. Coordination in Security Matters

The complex allocation of security and public order responsibilities throughout the various areas of the West Bank, as described above, necessitates close coordination between the two sides on all issues relating to security. For this purpose, the agreement establishes a Joint Coordination and Cooperation Committee for Mutual Security Purposes. This committee has two joint regional subcommittees, one for the West Bank and the other for the Gaza Strip, and District Coordination Offices throughout these areas. The agreement also includes arrangements for Joint Patrols to ensure free and safe movement along key roads, Joint Mobile Units to provide rapid response in the event of incidents and emergency situations, and Joint Liaison Bureaus to coordinate activity at crossing points and terminals.

Legal Relations Between Israel and the Palestinian Council

Annex IV of the agreement sets out arrangements governing the legal relations between Israel and the Palestinian Council. These provisions define the criminal and civil jurisdiction of the Palestinian courts and include detailed arrangements for legal assistance in criminal and civil matters, including cooperation with regard to police investigations.

Economic Relations and Cooperation

The Economic Annex attached as Annex IV to the Gaza-Jericho Agreement has been incorporated into the Interim Agreement as Annex V. Its articles and appendices, cover a variety of economic, monetary and financial issues. These include the application in Israel, the West Bank and the Gaza Strip of uniform customs and import policies so as to effectively convert Israel, the West Bank and the Gaza Strip into a single economic union.

In addition, an entire annex of the Agreement, Annex VI, deals with cooperation between Israel and the Palestinian Council. Under this Annex the parties undertake to cooperate on a number of programs involving their respective officials, institutions and the private sector in various fields, such as economics, science, culture and society.

A Standing Cooperation Committee is established under this Annex to consider and decide the methods and modalities for the implementation of the various areas of cooperation.

Human Rights and the Rule of Law

Under Article XIX of the Interim Agreement, both sides undertake to exercise their powers and responsibilities with due regard to the principles of human rights and the rule of law. In addition, the Israeli security forces and the

Palestinian Police are required to carry out their functions and responsibilities while adhering to these international norms, guided by the obligation to protect the public, respect human dignity and avoid harassment.

The agreement is ambitious in that it attempts to lay the groundwork for an all-encompassing resolution of the bitter, long-standing Israeli-Palestinian dispute.

Settlement of Differences And Disputes

As in previous Israel-PLO agreements, the Interim Agreement provides that negotiations through the Joint Liaison Committee will be the primary dispute settlement mechanism between the parties as to the application and interpretation of the Interim Agreement (Article XXI). Where the Joint Liaison Committee is unsuccessful in resolving the dispute, there is no mandatory next step, but the agreement provides that such disputes "may be resolved by a mechanism of conciliation to be agreed between

the parties". The use of the words "may" and "to be agreed" indicate that this is a voluntary proceeding in which both parties must agree on the need for and manner of conciliation. Where conciliation fails, the parties "may agree to submit to arbitration" the outstanding dispute. Again, the wording indicates that this is a voluntary procedure.

Revocation of the Palestinian Covenant

The Interim Agreement contains a Palestinian undertaking that, within two months from the date of the inauguration of the Palestinian Council, the necessary changes will be made to the Palestinian Covenant with regard to those articles which deny Israel's right to exist or are otherwise inconsistent with the commitments included in Chairman Arafat's letter to Prime Minister Rabin of September 9, 1993 (Article XXXI(9)). This marks the first agreement in which a definite date has been specified for the amendment of the Covenant. In the original letter of September 9, 1993, Yasser Arafat only undertook that the Covenant was to be amended, but no particular date was set. In the Gaza-Jericho Agreement, it was provided that the Covenant would be amended in the next meeting of the Palestinian National Council, without setting a date for the meeting. The omission of a specific date for the revocation in the prior agreements was not accidental, but was meant to accommodate Yasser Arafat's continued contention that he would find it difficult to meet this obligation prior to the date of the Palestinian elections. As the Interim Agreement provides for the holding of these elections, the agreement provides a date for the revocation of the Covenant contingent on the inauguration of the Council.

Additionally, unlike previous agreements which simply requested that the Palestinian side present the necessary changes to the Palestinian Covenant to the Palestinian National Council, the Interim Agreement goes a step further and stipulates that the necessary changes be implemented. The obligatory language is stronger and mandates compliance.

Release of Prisoners

In an effort to foster a positive atmosphere in the Palestinian public to accompany the implementation of the Interim Agreement, the agreement contains arrangements for the release of Palestinian detainees and prisoners who are residents of the West Bank and the Gaza Strip (Article XVI (1)). A similar provision was included in the Gaza-Jericho Agreement, pursuant to which 5,000 prisoners and detainees were released.

Detainees and prisoners from categories listed in Annex VII of

the Interim Agreement are to be released in three stages. The first stage of the release took place on the signing of the agreement. To date, close to 900 prisoners and detainees have been released pursuant to the Interim Agreement. The second stage is to take place prior to the date of the elections. A third stage of release of detainees and prisoners will take place during the permanent status negotiations. At that time, the parties may explore further categories for release.

Coordination Mechanisms

As noted above, a number of joint committees are established in the agreement to coordinate various fields of activity - the Joint Security Committee, the Civil Affairs Committee, the Legal Committee, the Joint Economic Committee and the Standing Cooperation Committee. At the highest level, the Joint Israeli-Palestinian Liaison Committee established pursuant to the DOP will continue to be responsible for ensuring the smooth implementation of the agreement. At the same time, in the light of the parties' experience in implementing the previous agreements, the parties also agreed to establish a subcommittee of the joint Liaison Committee - the Monitoring and Steering Committee - to be responsible on an ongoing basis for monitoring the implementation of the agreement and steering the various joint committees (Article XXVI).

Conclusion

The Interim Agreement is one of the most complicated agreements that Israel has ever concluded. It may well be one of the most complex autonomy arrangements ever to have been negotiated.

The agreement is ambitious in that it attempts to lay the groundwork for an all-encompassing resolution of the bitter, long-standing Israeli-Palestinian dispute. At the same time, it is fragile, due to the multitude of explosive issues that require constant attention, such as the conflicting national and religious claims and the ever present security threats.

While, the implementation of previous stages of the DOP was accompanied at the outset by numerous misunderstandings, violations and incriminations, it appears that, with the experience gained, the parties are increasingly successful in finding a common language in which to discuss and resolve their differences. It is to be hoped that this trend will continue as the parties face negotiations over even more sensitive issues, and that it will assist them in realizing their desire, as expressed in the preamble to the Interim Agreement, "to achieve a just, lasting and comprehensive peace settlement and historic reconciliation".