

# The Declaration of Principles on Interim Self-Government Arrangements

## Some legal aspects

Joel Singer

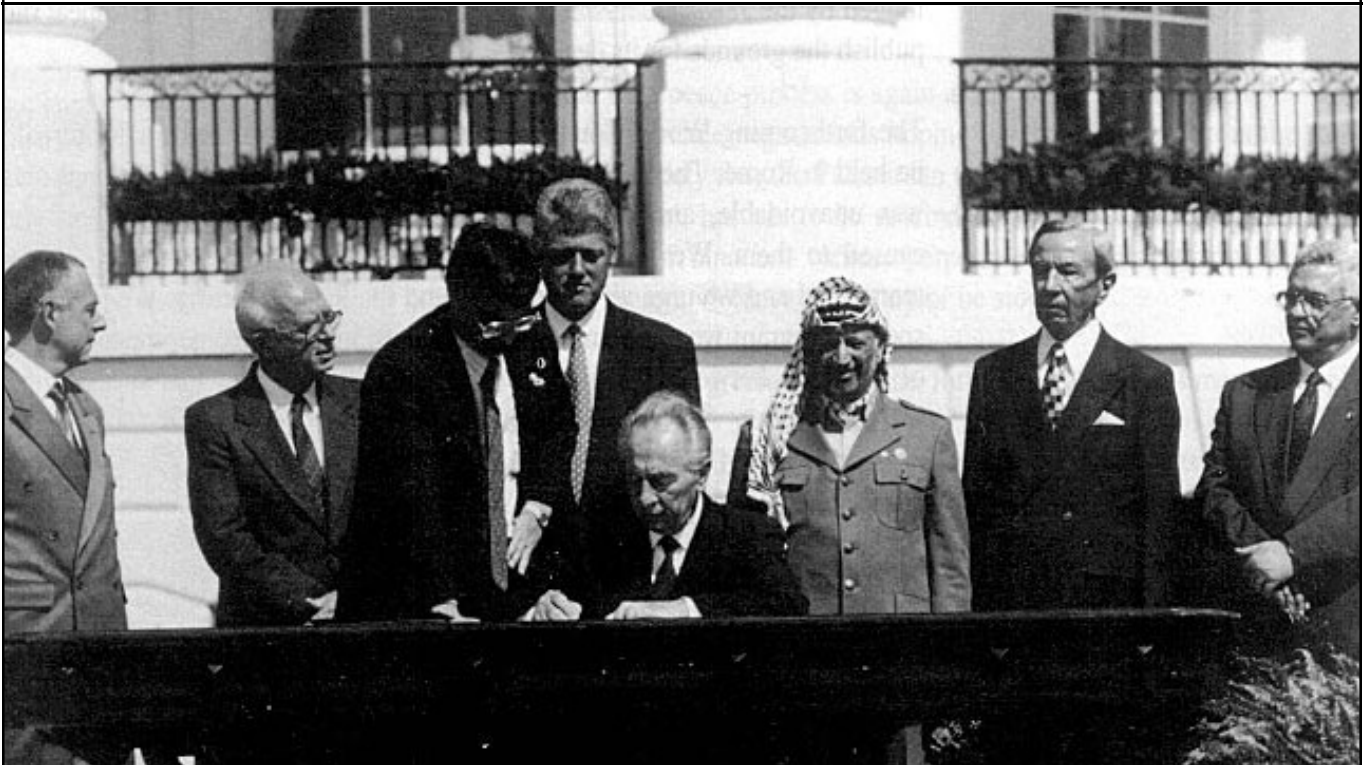
Adv. Joel Singer is the Legal Adviser of the Israel Ministry of Foreign Affairs.

He was closely involved in the Oslo negotiations leading up to the signing of the Declaration of Principles with the PLO and is a member of the

Israeli negotiating team in the autonomy talks.

The views expressed in this article are his own, and do not necessarily reflect those of the Israeli Government.

Joel Singer is seen here, third from left.



**T**he Declaration of Principles on Interim Self-Government Arrangements signed in Washington on September 13, 1993 ("the DOP"), comprises the following documents: (1) the text of the Declaration itself; (2) four annexes dealing, in turn, with elections, early withdrawal from the Gaza Strip and Jericho area, Israeli-Palestinian economic cooperation, and Israeli-Palestinian cooperation at the regional level; and (3) a series of Agreed Minutes amplifying various articles in the Declaration. These Agreed Minutes were separately signed by the parties, and, according to Article XVII of the DOP, they constitute an "integral part" of the DOP.

The DOP is supplemented by an exchange of correspondence dated September 9, 1993, confirming, among other things, the PLO's recognition of Israel's right to exist, renunciation of terror, an undertaking to amend the Palestinian Covenant, and Israel's recognition of the PLO as the representative of the Palestinians.

Between them, these documents set out a framework for the arrangements to apply in the West Bank and Gaza Strip during a transitional period of five years until the implementation of permanent status arrangements.

The timetable envisaged by the DOP for the transitional period is based on that included in the Camp David Accords and subsequently adopted as a basis for the Madrid peace process. In Article V, the DOP provides that a five year "interim" or "transitional" period will commence on the withdrawal of Israeli forces from the Gaza Strip and Jericho area. By the start of the third year of this five year period, negotiations will commence on the final status of the West Bank and Gaza.

The principles set out in the DOP cover a wide range of issues, which broadly fall into the following categories:

1. Arrangements to apply throughout the West Bank and Gaza Strip during the interim period, including arrangements for the holding of elections for a Palestinian Council.
2. Arrangements to apply in the Gaza Strip and Jericho area subsequent to an early withdrawal of Israeli forces implementing the "Gaza first" plan.
3. Arrangements for early empowerment, which constitutes a preparatory transfer of powers and responsibilities in agreed spheres to be implemented in the rest of the West Bank, concurrently with the early withdrawal from the Gaza Strip and Jericho area.
4. Permanent status arrangements.

As its title suggests, the DOP is not a comprehensive agreement,

but rather a statement of agreed principles. In other words, it is not a self-executing document which purports to set out practical arrangements, but rather an "agreement to reach agreement", which leaves the details to be negotiated between the parties. Thus, the DOP provides that separate agreements are to be negotiated between the parties with respect to the special arrangements for the Gaza Strip and Jericho area (Annex II, Article 1), the elections for the Council (Article III and Annex I), and the interim period arrangements (Article VII). In relation to a number of other areas, such as economic and regional cooperation, the DOP provides that special liaison committees will be established in order to develop joint programs (see, e.g., Articles XI and XVI).

Although the practical details are left to be negotiated, the DOP nevertheless provides significant guidelines for these arrangements. The purpose of this article is to consider the main implications of the DOP in each of the areas outlined above.

### The Interim Period



The DOP provides, in Article VII, that the agreement on the interim period to be negotiated by the parties ("the Interim Agreement") will specify, among other things, the structure of the elected Council, and the powers and responsibilities to be transferred by Israel to the Council.

Pursuant to Article III and Annex I, the parties will negotiate an agreement on the exact mode and conditions of the elections. While the details of the elections and the Council will be negotiated in these agreements, the DOP sets out a number of principles to apply to these, as well as to other aspects of the interim period:

**a) Elections:** The DOP sets out the guiding principle that "direct, free and general political elections will be held for the Council under agreed supervision and international observation" (Article III (1)).

Among the issues of contention in this regard is the extent to which Palestinians resident in East Jerusalem will be permitted to participate in the elections. During the negotiations, Israel agreed that such Palestinians would have the right to vote, but a Palestinian proposal that would have permitted these Palestinians to stand as candidates in the elections was not adopted.

The adopted text, in Annex I, Article 1, provides 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."

Thus, the exact extent to which Palestinians from East Jerusalem will be able to participate in the elections is left to be resolved by the parties in the negotiations on the election agreement. In these negotiations Israel will continue to oppose any participation of Palestinians of East Jerusalem as candidates in the elections. Participation in the election process does not require that Palestinians will be able to cast their vote in Jerusalem itself; their votes may be cast at polling stations situated within the territories. Indeed, during the negotiations on the DOP, a Palestinian proposal stating that Palestinians of East Jerusalem would cast their votes in East Jerusalem was not adopted.

**b) Source of Authority:** on the establishment of the Council, in accordance with Article VII (5), the Israeli Civil Administration will be dissolved; the Israeli military government, on the other hand, will not be dissolved, but will simply withdraw from the West Bank and Gaza Strip to Israel. In fact, the headquarters of the Regional Commanders of the West Bank and Gaza Strip are already situated within Israel, while only district offices are currently maintained in the areas.

The dissolution of the Israeli Civil Administration will have no impact on the status of the West Bank and Gaza Strip. The Civil Administration was created in the early 1980's as an organ of the Israeli military government in order to discharge the powers and responsibilities of the military government in civilian matters. It should be noted that prior to the establishment of the Civil Administration, the military government itself had been performing both civilian and non-civilian functions. Thus, with the dissolution of the Civil Administration, the military government will simply resume all the powers and responsibilities of the Civil Administration not transferred to the Palestinian Council. In this context, the fact that the military government in the West Bank and Gaza Strip will continue to exist is very significant. It emphasizes that, notwithstanding the transfer of a large portion of the powers and responsibilities currently exercised by Israel to Palestinian hands, the status of the West Bank and Gaza Strip will not be changed during the interim period. These areas will continue to be subject to military government. Similarly, this fact suggests that the Palestinian Council will not be independent or sovereign in nature, but rather will be legally

subordinate to the authority of the military government. In other words, operating within Israel, the military government will continue to be the source of authority for the Palestinian Council and the powers and responsibilities exercised by it in the West Bank and Gaza Strip.

This provision resolves one of the ambiguities left open by the autonomy arrangements contained in the Camp David Accords. In these accords, which spoke of the military government being "replaced" by the Palestinian self-governing authority, it was left unclear as to where the source of authority lay, and in whom any residual powers would vest. The provisions of the DOP ensure that Israel, through its military government, shall continue to be the source of authority and, as discussed below, to retain any powers and responsibilities not specifically transferred to the Council.

**c) Jurisdiction of the Council:** Article IV of the DOP provides that the jurisdiction of the Council will not cover "issues that will be negotiated in the permanent status negotiations". A list of such permanent status issues is provided in the Agreed Minute to Article IV, which lists: Jerusalem, settlements, military locations and Israelis.

Article IV's formulation for excluding these issues from the Palestinian jurisdiction ("except for issues that will be negotiated in the permanent status negotiations") was adopted because it effectively enabled the Palestinian delegation to agree to put aside their demands in relation to these issues during the transitional period and to claim that discussion of these issues has simply been postponed until a later date.

In addition, the Agreed Minute to Article IV states that jurisdiction of the Council "will only apply with regard to the agreed powers, responsibilities, spheres and authorities transferred to it". In other words, the Council will have no jurisdiction in relation to powers and responsibilities retained by Israel.

In this context it should be noted that the wording proposed by the Palestinian side in the DOP negotiations, referring to the transfer to the Council of **all** the powers and responsibilities currently exercised by the Israel military government and the Civil Administration, was not adopted in the text. Instead, the DOP provides in Article VII that the Council will only have specified powers and responsibilities to be detailed in the Interim Agreement. This provision represents, from Israel's viewpoint, an advance on the Camp David arrangements, which left open the question whether or not all of the powers and responsibilities

of the military government and Civil Administration would be transferred to the Palestinians.

This functional limitation is only one of the factors defining the jurisdiction of the Council. In fact, as described in the DOP, the jurisdiction of the Council is limited by three cumulative criteria:

1) Territorial Jurisdiction: Article IV provides that "the jurisdiction of the Council will cover West Bank and Gaza Strip territory". Significantly, by declining to adopt Palestinian proposals to include the word "all" or "the" before the phrase "West Bank and Gaza Strip", the parties made it clear that they intended that the territorial jurisdiction of the Council will not necessarily cover the entire West Bank and Gaza Strip. The language of Article IV thus follows the wording of U.N. Security Council Resolution 242 which deliberately omitted the word "the" or "all" before the word "territories" in the phrase: "withdrawal of Israeli armed forces from territories occupied in the recent conflict". In both cases, the omission of the word "the" or "all" was deliberate and meant to leave for negotiation between the parties the extent to which the withdrawal (in the case of Resolution 242) or the Council's jurisdiction (in the case of the DOP) would apply to the West Bank and Gaza Strip. On the basis of this provision, during the Interim Agreement negotiations Israel may seek to exclude from the Council's territorial jurisdiction such areas as state lands or land privately owned by Jews which are located outside the Israeli settlements.

In addition, it is clear that the jurisdiction of the Council will not cover Israeli settlements and military locations which, as noted above, are defined by the Agreed Minute to Article IV as permanent status issues. This list of exceptions is not necessarily exhaustive; indeed, the text of the Agreed Minute to Article IV suggests that they come in addition to the requirement that the extent of West Bank and Gaza Strip territory over which the Council has jurisdiction be defined through negotiations.

2) Personal Jurisdiction: The Council's jurisdiction shall not include Israelis, who are excluded from the jurisdiction of the Council in the Agreed Minute to Article IV. Thus, Israelis will not be subject to laws legislated by the Council, to arrest or detention by Palestinian police or to the jurisdiction of the Palestinian courts.

In this regard, the DOP makes no distinction between Israeli civilians and soldiers, or between Israeli residents of the West Bank and Gaza Strip and Israelis visiting from Israel. Israelis, without distinction, shall remain under exclusive Israeli jurisdic-

tion whether they are in the settlements or military locations or anywhere else in the West Bank and Gaza.

3) Functional Jurisdiction: As noted above, the Agreed Minute to Article IV limits the Council's jurisdiction to those powers, responsibilities, spheres and authorities transferred to it. As a result, the Council's jurisdiction shall not cover any powers and responsibilities not transferred to it. The DOP contains a number of specific issues in this category: external security, internal security and public order of Israelis and foreign relations. The parties may also agree on other matters to be excluded from the Council's jurisdiction. Thus, for example, if the parties agree that powers and responsibilities relating to the electromagnetic sphere in the West Bank and Gaza Strip shall not be transferred to the Council, then the issuing of broadcasting licences to Palestinians shall continue to be an Israeli responsibility, even where the application relates to broadcasting stations to be located within areas under Palestinian territorial jurisdiction. Similarly, if it is agreed that the administration of Jewish Holy Places, or of state lands, is not to be transferred, then although they may fall within Palestinian territorial jurisdiction, the administration of such places will continue to be an Israeli responsibility.

The DOP thus resolves one of the key issues left open by the Camp David accords, the question of whether, as the Palestinians claimed, their jurisdiction would be territorial, covering the entire West Bank and Gaza area, or, as Israel claimed, personal, covering only the Palestinian residents of the territory. The DOP resolves this conflict by providing that the jurisdiction of the Council shall be limited to a specific territory. Within that territory its jurisdiction shall only extend to non-Israelis, situated outside the Israeli settlements and military locations, and will apply only in spheres which have been specifically transferred to the Council.

**d) Israeli Jurisdiction:** As noted above, on the inauguration of the Council, the Civil Administration will be dissolved and the military government shall be withdrawn (Article VII(5)).

The Agreed Minute to this Article provides that the "withdrawal of the military government will not prevent Israel from exercising the powers and responsibilities not transferred to the Council". This provision has three important implications:

First, it emphasizes the principle that not all of the powers and responsibilities currently exercised by Israel will be transferred to the Council.

Second, it stresses that powers and responsibilities not trans-

ferred to the Council shall be exercised by Israel. In this context, it renders untenable the suggestion that powers not transferred to the Palestinian Council will not necessarily rest with Israel, but may be suspended for the duration of the interim period.

Third, it indicates that Israel retains the residual powers in the West Bank and Gaza Strip. Thus, where no provision has been made in relation to a specific area of authority - that area shall be retained by Israel.

Accordingly, Israel's jurisdiction in the West Bank and Gaza Strip shall encompass the following:

1. Israelis, wherever they may be;
2. the Israeli settlements;
3. military locations; and
4. any functional issue which has not been transferred to the Palestinians.

**e) Legislative Powers:** The same general principles outlined above in relation to the jurisdiction of the Council will apply in relation to its legislative powers. Article IX provides that the Council will be empowered to legislate "within all authorities transferred to it". Accordingly, the Council shall not be authorized to legislate in fields which have not been transferred to its authority. Legislative powers in such areas will, as explained above, remain with Israel.

Moreover, even within the spheres of authority transferred to the Council, the power to legislate must be exercised "in accordance with the Interim Agreement". Thus, the Interim Agreement may limit the exercise of this power by, for example, requiring Israeli affirmation for legislation promulgated by the Council in order to enter into force.

It should also be noted that the power to legislate is vested in the Council itself. Israel rejected the proposal that legislative powers be vested in an independent legislator, to avoid the possibility that such a separation of powers might be construed as an attribute of independence.

As regards existing legislation, Article IX (2) provides that laws and military orders in spheres not transferred to the Council, shall be reviewed jointly by the parties. The provision emphasizes that the legislation promulgated by the military government shall remain in force in the territories in relation to areas of authority that it retains, although Israel is prepared to review such legislation together with the Council and to consider its suggestions.

**f) Security in the Interim Period:** The security principles contained in the DOP provide more clarity than those included

in the Camp David Accords, which provided only that the parties would negotiate an agreement including "arrangements for assuring internal and external security and public order", but which gave no indication of which party would be responsible for these spheres.

The DOP (in Article VIII) establishes the following principles in relation to security and public order:

1. The Council will be responsible, by means of a strong police force, for guaranteeing "public order and internal security for the Palestinians of the West Bank and Gaza Strip".

From the mandate of the Palestinian police force as expressed in Article VIII it is clear that it is only intended to be responsible for the protection of Palestinians, and not of Israelis, who will remain under Israeli responsibility.

Furthermore, from the Agreed Minute to Article VIII, which speaks of the transfer of powers and responsibilities to the Palestinian police being "accomplished in a phased manner", it is evident that this police force will not receive all of its powers immediately on the implementation of the Interim Agreement, but rather that the transfer of powers to the force will take place in stages. The number of stages, the scope of powers and responsibilities to be transferred at each stage, and the extent of the intervals between these stages, are matters to be negotiated and agreed by the parties.

2. Israel shall remain responsible for defense against external threats.

The DOP does not place any restrictions on Israel's responsibility for defense against external threats, nor is the phrase "external threat" limited in any way. The phrase thus covers both strategic threats and low-intensity threats such as terrorist infiltrations. Israel shall be entitled to take all necessary measures to prevent and defend against such hostile acts coming from outside the borders of the West Bank and Gaza Strip, as well as from the sea or the air.

The phrase used in Article VIII that "Israel will continue to carry..." is significant in that it implies a continuation of the current arrangements while the words "... the responsibility" indicate that the responsibility is indivisible and rests with Israel alone.

3. Israel shall remain responsible for "the overall security of Israelis for the purpose of safeguarding their internal security and public order".

Again in this context, the phrase "Israel will continue to carry..." indicates a continuation of the current arrangements.

Additionally, the word "overall" underlines the fact that the security of Israelis is to be understood in the widest possible sense.

These principles will obviously need significant amplification in the Interim Agreement. Among the most sensitive of the security issues which need to be addressed in this Agreement is the treatment of criminal offenders, Israeli and Palestinian, from the moment of their arrest until the completion of legal proceedings against them. Broadly, there are four main scenarios:

1. An Israeli commits an offense against an Israeli.
2. A Palestinian commits an offense against a Palestinian.
3. An Israeli commits an offense against a Palestinian.
4. A Palestinian commits an offense against an Israeli.

The DOP indicates that where any criminal or security incident occurs in an Israeli settlement or military location, it will fall within Israeli responsibility, even if both the offender and the victim are Palestinian. Where the above scenarios take place in areas under Palestinian territorial jurisdiction some further thought is required.

With regard to the first two scenarios, no particular difficulty arises; it seems clear that where an Israeli commits an offense against an Israeli, the handling of the matter will be an exclusively Israeli responsibility. Similarly, where the offense is committed by and against a Palestinian, the responsibility will be

exclusively that of the Council.

The third scenario, where an Israeli commits an offense against a Palestinian, is more complex. The Palestinian police is responsible for the security and public order of Palestinians and it may therefore be argued that the incident should fall within its responsibility. However, the DOP makes it clear that the jurisdiction of the Council does not extend to Israelis, and therefore the handling of the matter - at least as far as the Israeli offender is concerned - remains an Israeli responsibility.

The fourth scenario, where a Palestinian commits an offense against an Israeli, raises the question whether Israel has authority, in relation to an event which took place in territory under Palestinian jurisdiction, to arrest a Palestinian offender, or investigate him and bring him to trial before an Israeli court.

The DOP would seem to indicate that, where the victim of the offense is an Israeli, Israel does have this authority. Israel is entrusted with responsibility in relation to the security of Israelis by Article VIII, which states that Israel will "continue to carry... the responsibility for overall security of Israelis". As noted above, the phrase "continue to carry" implies a continuation of the current arrangements in this regard, while the word "overall" indicates that the responsibility is to be understood in the broadest sense. Moreover, as we have seen, the Agreed Minute to Article IV limits the Council's jurisdiction to those powers and responsibilities specifically transferred to it. Since the

The meeting of hands  
at the Taba talks.  
Na'bil Sha'ath (PLO) and  
Amnon Shahak (Israel)



responsibility for internal security and public order of Israelis remains with Israel, the Council has no jurisdiction in the matter.

**g) Redeployment of Israeli Forces:** Article XIII provides that:

"after the entry into force of the Declaration of Principles, and not later than the eve of the elections for the Council, a redeployment of Israeli military forces in the West Bank and Gaza Strip will take place".

This redeployment is different in nature from the "withdrawal" from the Gaza Strip and Jericho area referred to in Article XIV and described below. Rather than requiring a removal of any forces from the territories, redeployment is intended to ensure a redistribution of forces within the territories, having regard to the general principle stated in Article XIII(2) that "military forces should be redeployed outside populated areas". That the redeployment is not intended to involve the transfer of forces outside the territories is also underscored by Article XIII(3) which speaks of redeployments "to specified locations". Locations within Israel itself would not need to be specified.

While Article XIII provides that a redeployment of forces is due to take place prior to the eve of elections for the Council, the DOP does not suggest that the process of redeployment be completed by that date. Rather, Article XIII(3) provides that "further redeployments to specified locations will be gradually implemented commensurate with the assumption of responsibility for public order and internal security by the Palestinian police". Thus, the process of redeployment is intended to continue through the interim period, its pace being dictated by the extent to which the assumption of security responsibilities by the Palestinian police makes such redeployment possible.

**h) Displaced Persons:** Article XII, dealing with arrangements for liaison and cooperation between Israel, the Council, Jordan and Egypt, provides that these arrangements will include the constitution of "a Continuing Committee that will decide by agreement on the modalities of admission of persons displaced from the West Bank and Gaza Strip in 1967, together with necessary measures to prevent disruption and disorder".

This wording, taken directly from the Camp David Accords, is significant in that it indicates that the modalities for the admission of displaced persons can only be implemented along with those measures necessary to prevent disruption and disorder.

It should also be noted that the Continuing Committee is only intended to deal with those persons displaced from the West Bank and Gaza Strip in 1967. The question of the refugees arising in 1948 is not to be considered by this committee, but

rather is designated by Article V as an issue to be included in the permanent status negotiations. In that context, it should be noted that Article V does not limit the issue to be discussed to Arab refugees; the permanent status negotiations may equally focus on the large number of Jews who were forced to flee to Israel from neighbouring Arab states. Nor does Article V give any indication as to the manner in which the refugee issue should be resolved. As with all issues to be included in the permanent status negotiations, all options remain open.

**i) Resolution of Disputes:** Article XV deals with the procedure to be followed in order to resolve disputes arising out of the application or implementation of agreements during the interim period.

Article XV(1) provides that such disputes "shall be resolved by negotiations through the Joint Liaison Committee". This committee, established under Article X, is intended "to deal with issues requiring coordination, other issues of common interest, and disputes".

Where the Joint Liaison Committee is unsuccessful in resolving the dispute, there is no mandatory next step. Article XV(2) provides that "disputes which cannot be settled by negotiation may be resolved by a mechanism of conciliation to be agreed between the parties". The use of the phrase "may be resolved" clearly indicates that this is a voluntary proceeding, while the fact that the method of conciliation is "to be agreed between the parties" indicates that there must be agreement between the parties both as to the need for conciliation and as to the appropriate forum and procedures.

Where conciliation fails, Article XV provides that "the parties may agree to submit to arbitration" the outstanding dispute. Once again, the word "may" indicates a voluntary proceeding. Similarly, from the second part of the sub-article, which provides for the establishment of an Arbitration Committee "upon the agreement of both parties", it is clear that there must be agreement between the parties both as to the need for arbitration and as to the appropriate forum and procedures.

Finally, it should be noted that the mechanisms proposed by Article XV relate only to disputes "relating to the interim period". Disputes relating to the permanent status arrangements shall be resolved only through negotiations. This principle is stated in the letter of the Chairman of the PLO to the Prime Minister of Israel, dated September 9, 1993, which states that "...all outstanding issues relating to permanent status will be resolved through negotiations".

## The Gaza-Jericho Arrangements



It appears that the idea that separate arrangements should be instituted in the Gaza Strip and Jericho area is based on the common belief that an agreement in these areas might be easier to reach than in the rest of the West Bank. This, because problems relating to such issues as security, water resources, Jewish population and

holy places in these areas are less complex.

The agreement of the Palestinians to discuss a transfer of powers in a specified part of the territories represents a significant change from their previous stance of "all or nothing". It seems that they agreed to such an arrangement because Israel agreed to transfer more powers in these areas, and transfer them more quickly, than in the rest of the territories.

Negotiations on the special arrangements to apply in the Gaza Strip and Jericho area, including the early withdrawal of Israeli forces from these areas, began immediately on the entry into force of the DOP. As indicated in Annex II, the aim of these negotiations was to conclude and sign an agreement on the Gaza-Jericho arrangements within two months of the entry into force of the DOP (*i.e.*, by October 13, 1993), with the early withdrawal of Israeli forces being completed within four months from the signing of this agreement (*i.e.*, by April 13, 1994). However, the two month target for concluding an agreement was not accomplished, and the four month period for completing the withdrawal will therefore not end on April 13, 1994, but rather four months from the date such an agreement is signed.

The DOP addresses the Gaza-Jericho agreement in Article XIV and in Annex II, together with the Agreed Minute to that Annex. Among the subjects to be covered in the Gaza-Jericho agreement are the following:

**a) Withdrawal of Israeli Forces:** Article XIV provides that "Israel will withdraw from the Gaza Strip and Jericho area, as detailed in... Annex II". Annex II provides that the withdrawal of Israeli forces is due to commence immediately with the signing of the Gaza-Jericho agreement. Unlike the "redeployment" due to take place in the rest of the territories, this withdrawal will involve the removal of forces from these areas, though not all of the Israeli forces will be withdrawn. Indeed, a Palestinian proposal to use the phrase "withdrawal of **all** Israeli military forces" in Annex II(2) was rejected. Moreover, that some Israeli forces will continue to be present in the Gaza Strip and Jericho

area is clear from a number of other provisions of the DOP:

1. The Agreed Minute to Annex II provides that even after the withdrawal of Israeli military forces, "Israel will continue to be responsible for external security, and for internal security and public order of settlements and Israelis". It is evident therefore that those Israeli forces required to fulfill this responsibility will remain in the Gaza Strip and Jericho area.
2. The Agreed Minute to Annex II also provides that "Israeli military forces ... may continue to use roads freely within the Gaza Strip and the Jericho area". Clearly, those military forces making free use of the roads in these areas will not have been withdrawn.
3. Article XIII, dealing with the redeployment of forces in the West Bank and Gaza Strip on the eve of the elections, states that this redeployment is to take place "in addition to withdrawal of forces carried out in accordance with Article XIV". Since the withdrawal of Israeli forces from the Gaza Strip and Jericho area is due to take place before the elections, it follows that the DOP envisages, that subsequent to the withdrawal, there must be some remaining forces in those areas and it is these which will be redeployed. As noted above, the principle guiding this redeployment is not that military forces be removed from these areas, but rather that they "should be redeployed outside populated areas" (Article XIII(2)).

**b) Jericho Area:** While there is little difficulty ascertaining the extent of the area known as the Gaza Strip, the size of the Jericho area has been the subject of some debate. In this context, it should be noted that in the negotiations leading to the signing of the DOP, Jericho was always regarded by the parties as a limited and symbolic addition to the "Gaza first" plan. Moreover, the reason why Jericho in particular was found acceptable was precisely because no Jewish settlements were located in the immediate area of the city. In line with the above, a Palestinian suggestion to refer to the former Jordanian province of Jericho was rejected. In the course of negotiations on the DOP, however, Israel agreed to consider the inclusion of two adjacent refugee camps - Aquabat Jabber and Ein El Sultan - which led to the use of the term "Jericho area" instead of "Jericho city".

**c) Establishment of a Palestinian Authority:** Annex II of the DOP provides that the powers and responsibilities transferred by Israel in these areas will be exercised by a Palestinian authority. This will be an appointed body. Since the early withdrawal from



the Gaza Strip and Jericho area will take place before the elections, the offices of the Palestinian authority will be located in the Gaza Strip and Jericho area (Annex II, Article 5).

A number of limitations are placed on the scope of the powers and responsibilities of this Palestinian authority. In particular, Annex II, Article 3(b) provides that it will have no powers or responsibilities in relation to "external security, settlements, Israelis, foreign relations, and other mutually agreed matters". Moreover, unlike the elected Council, there is no reference in the DOP to the Palestinian authority in the Gaza Strip and Jericho area having legislative powers. In practice, however, Israel has indicated its willingness to transfer legislative powers to the Palestinian authority within its jurisdiction, in order to enable it to fulfill its functions effectively.

In exercising these functions, the jurisdiction of the Palestinian authority shall also be subject to the same limitations on territorial, personal and functional jurisdiction as the Council, contained in the Agreed Minute to Article IV and described above. This principle is explicitly stated in Section A of the Agreed Minutes, which provides:

"Any powers and responsibilities transferred to the Palestinians... prior to the inauguration of the Council will be subject to the same principles pertaining to Article IV, as set out in these Agreed Minutes below."

**d) Security and Public Order:** In order to fulfill the Palestinian responsibility for internal security and public order, Annex II provides for the establishment of a Palestinian police force. At the same time, Annex II and the Agreed Minute to this Annex make it clear that this police force will have no authority in relation to external security, nor in relation to internal security and public order of settlements and Israelis. All of these will remain areas of Israeli responsibility. As noted above, the withdrawal of Israeli forces from the Gaza Strip and Jericho area cannot derogate from these responsibilities.

The existence of concurrent Israeli and Palestinian security responsibilities will, no doubt, give rise to many practical complexities. Thus, Annex II provides that a joint Coordination and Cooperation Committee for mutual security purposes will be established (Article 3(e)). This committee will coordinate the allocation of security responsibilities, and serve as the mechanism for cooperation in matters of mutual security concern.

**e) Safe Passage:** Article 3(g) of Annex II provides that the Gaza-Jericho agreement will contain arrangements for "a safe

passage for persons and transportation between the Gaza Strip and Jericho area". The use of the words "safe passage" (as opposed to the Palestinian proposal "free passage") is significant, since it indicates that Israel's obligation is limited to ensuring the security of the passage.

There is nothing in the DOP to support the suggestion that an "extra-territorial corridor" is envisaged. In fact, the phrase "safe passage for persons and transportation" indicates that a personal rather than territorial right is envisaged. In addition, it would be hard to sustain an argument for Palestinian jurisdiction when such jurisdiction, under Article IV, only extends to "West Bank and Gaza territory". Indeed, Israel has proposed that the implementation of its obligation to ensure safe passage be carried out through the use of not one, but a number of roads crossing Israel.

**f) Passages between Gaza and Egypt and between Jericho and Jordan:** The Gaza-Jericho agreement will also include arrangements for coordination regarding passages between Gaza and Egypt and between Jericho and Jordan, as provided in Annex II, Article 4. The arrangements to be agreed in this regard must be consistent with Israel's responsibilities for foreign relations and external security. Such issues as entry of foreign nationals, visas, passports, *etc.* are essential aspects of foreign relations, while control of border crossings is an integral part of the control of the borders, which, in turn, is an integral part of external security. It would make no sense for Israel to retain control along the length of the borders for security purposes, while at the same time not having control over persons passing through the border crossings.

It should also be noted that in Article V of the DOP the issue of borders is listed among the issues to be included in the final status negotiations, and that the issue is not to be determined in the interim period.

**g) Status of Gaza Strip and Jericho Area:** During the interim period, the status of the Gaza Strip and Jericho area, will be identical to that of the West Bank. This principle is emphasized in Article IV, which states:

"The two sides view the West Bank and the Gaza Strip as a single territorial unit, whose integrity will be preserved during the interim period."

In addition, Annex II provides that the status of the Gaza Strip and Jericho area will "continue to be an integral part of the West Bank and Gaza Strip, and will not be changed in the interim

period" (Annex II, Article 6). It follows that, as in the case of the West Bank, the status of the Gaza Strip and Jericho area will continue to be that of areas subject to military government, with Israel remaining the source of authority therein (see Section 1(b) of this Article, above).

Two additional important principles are enshrined in Article 6 of Annex II: First, any attempt made by the parties to change the status of the Gaza Strip and Jericho area during the interim period will have no effect. Second, any such attempt would be a clear breach of the terms of the DOP, which may be considered a material breach and a ground for terminating the agreement.

### Early Empowerment



Alongside the implementation of special arrangements in the Gaza Strip and Jericho area, Article VI provides for a preparatory transfer of powers and responsibilities with regard to five specific spheres in the rest of the West Bank. These powers and responsibilities will be transferred from the Israeli military government and the

Civil Administration to "the authorised Palestinians for this task". The Agreed Minute to this Article indicates that these individuals are to be appointed by the Palestinian side, and their names notified to Israel.

The transfer of powers and responsibilities is due to commence on the completion of the withdrawal from the Gaza Strip and Jericho area. In particular, Article VI(2) provides that, immediately after the withdrawal, authority will be transferred to the Palestinians in the spheres of education and culture, health, social welfare, direct taxation, and tourism.

Other than these transferred areas of authority, the Israeli military government and the Civil Administration will continue to fulfill all of their existing functions pending the inauguration of the Council, though, as Article VI(2) notes, the transfer of additional powers and responsibilities may be negotiated between the parties.

### The Permanent Status Negotiations

Article V(2) provides that permanent status negotiations are to commence "as soon as possible, but not later than the beginning of the third year of the interim period". This is with a view to implementing the permanent status arrangements at the conclusion of the five year transitional period.



Unlike the interim arrangements, for which the DOP gives extensive guidelines, the DOP is conspicuously silent about the form the permanent status arrangements will take. The list of issues provided in Article V(3) to be included in the permanent status negotiations ("Jerusalem, refugees, settlements, security arrange-

ments, borders, relations and cooperation with other neighbors, and other issues of common interest") is not inclusive. Neither the inclusion of an issue in the list contained in Article V(3), nor its non-inclusion, should be taken as any indication of the outcome of the permanent status negotiations. In fact, the principle that all options should be left open is explicitly stated in Article V(4):

"The two parties agree that the outcome of the permanent status negotiations should not be prejudiced or preempted by agreements reached for the interim period."

While the permanent status negotiations are not to be influenced by agreements for the interim period, they will still be subject to the principles which form the basis of the current peace process. Thus, Article I restates the fact that the permanent status settlement shall be based on Security Council Resolutions 242 and 338 (although Resolution 242, as noted above, is subject to differing interpretations), and the preamble reflects the letter of invitation to the Madrid peace conference in speaking of the attempt to "achieve a just, lasting and comprehensive peace settlement."

### Conclusion



In conclusion, the DOP does not underestimate the practical complexities involved in negotiating and implementing the arrangements it envisages. But, as it states in its preamble, it is predicated on the conviction that "it is time to put an end to decades of confrontation and conflict".

It is to be hoped that this conviction expressed in the DOP will distill the principles into practicalities and help bring to the people of the region, in President Clinton's words: "the quiet miracle of a normal life".