
MEMORANDUM

To: Office of the Quartet Representative Tony Blair

From: Negotiations Support Unit

Subject: Areas of jurisdiction created by the Interim Agreements (Areas ‘A’, ‘B’ and ‘C’)

Date: 19 September 2007

INTERNATIONAL LEGAL CONTEXT

The Palestinian People enjoys a right of self-determination.¹ While the Palestinian People historically associated itself with the territorial unit formerly known as Historic Palestine (currently Gaza, the West Bank and Israel minus the Golan Heights), the Palestinian People, represented by the Palestine Liberation Organization, has concentrated its efforts, especially since 1988, on exercising its collective right through the establishment of a state within the territorial unit comprised of Gaza and the West Bank, including East Jerusalem (together, the “Occupied Palestinian Territory” or “OPT”). Frustrating the Palestinian People’s exercise of this right is the Israeli occupation of the OPT.

In June 1967, the Israeli military took control of the OPT. Since then, Israel has maintained actual and effective control over the OPT and the indigenous Palestinian population. Thus, Israel belligerently occupies the OPT as a matter of law. This has been the position of the United Nations (UN) Security Council, the UN General Assembly, the International Court of Justice (ICJ), the International Committee of the Red Cross and even the Israeli High Court of Justice.

As an occupant, Israel does not have sovereignty over, or title to, the OPT. Sovereignty remains vested with the indigenous Palestinian population. The customary rule against acquiring territory by force² underpins this fundamental premise of occupation law. Indeed, UNSC Res. 242 emphasizes the inadmissibility of acquiring territory by war and

¹ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion (9 July 2004), para. 118 (I.C.J.) [*ICJ Advisory Opinion*]. See also UNGA Res. 2649 (30 November 1970); UNGA Res. 2672 (XXV) (1970); UNGA Res. 2787 (XXVI) (1971); UNGA Res. 3098D (XXVIII) (7 December 1973); and UNGA Res. 48/158D (20 December 1993).

² Derived from *UN Charter*, Art. 2(4). See also *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations* (UN General Assembly Resolution 2625 (XXV) (1970)).

affirms that a resolution to the conflict should include “[w]ithdrawal of Israel armed forces from territories occupied in the [1967] conflict.”³

NEGOTIATIONS CONTEXT

In the early 1990s, Israel and the Palestine Liberation Organization entered a period of negotiations to “achieve a just, lasting and comprehensive peace settlement and historic reconciliation through the agreed political process”,⁴ “based on Security Council Resolutions 242 and 338”⁵.

The first in a series of agreements (“Interim Agreements”), the *Declaration of Principles*, called for a gradual transfer of power from Israel to the Palestinians in the OPT over a five-year period, with permanent status negotiations on the most difficult issues to begin two years after an initial Israeli withdrawal from Jericho and Gaza.⁶ Again, “it [was] understood that the interim arrangements are an integral part of the whole peace process and that the negotiations on the permanent status [would] lead to the implementation of Security Council Resolutions 242 and 338.”⁷

The *Gaza-Jericho Agreement*⁸ called on Israel to withdraw from Gaza and Jericho within a certain period of time. The *1995 Interim Agreement*⁹ contemplated four additional phases of Israeli ‘redeployments’ in the West Bank. The first phase was to be Israeli redeployment from “populated areas” of the West Bank, to be completed before the elections for the Palestinian Council.¹⁰ The remaining three phases would involve gradual redeployment to “specified military locations” over the next 18 months, to take place at 6-month intervals.¹¹

To ostensibly facilitate the transfer of authority to the Palestinians, the *1995 Interim Agreement* divided the West Bank into three Areas – Areas ‘A’, ‘B’, and ‘C’ – and provided that the parties would have varying degrees of authority in each. As with Areas A, the *1995 Interim Agreement* mandated a “complete redeployment of Israeli military forces from Area B.”¹² It further provided that Area C, “except for the issues that will be negotiated in the permanent status negotiations [Jerusalem, settlements, specified military

³ UNSC Res. 242 (1967) (adopted 22 November 1967). See also UNSC Res. 252 (1968) (adopted 21 May 1968); UNSC Res. 267 (1969) (adopted 3 July 1969); and UNSC Res. 478 (1980) (adopted 20 August 1980).

⁴ *Declaration of Principles on Interim Self-Government Arrangements* (13 September 1993), Preamble [*Declaration of Principles*].

⁵ *Ibid.*, Art. I.

⁶ *Ibid.*, Art. V(1) and (2).

⁷ *Ibid.*, Art. I.

⁸ *Agreement on the Gaza Strip and the Jericho Area* (4 May 1994).

⁹ *Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip* (28 September 1995) [*1995 Interim Agreement*].

¹⁰ *Ibid.*, Art. X(1); Art. XI(2)(a); Art. XVII(8); and Annex I, Art. 1(1).

¹¹ *Ibid.*, Art. X(2); Art. XI(2)(d); Art. XVII(8); Annex I, Art. I(9); and Annex I, Appendix I, para. B.

¹² *Ibid.*, Art. XIII(2)(a).

locations], will be gradually transferred to Palestinian jurisdiction”¹³ as part of the three-stage “further redeployments”.¹⁴

In fact, redeployment from Hebron, which was to be part of the first redeployment, and the first two of the three other phases of redeployment were delayed. Israel failed to carry out the third and final phase of redeployment. In the end, Israel withdrew from far less of the OPT than it was required to under the Interim Agreements.

NATURE OF THE JURISDICTIONAL AREAS

Territorial scope

Today, the territory and Palestinian population of the West Bank are divided among Areas A, B and C in the following way:

Area	West Bank territory (%) ¹⁵	Palestinian West Bank population (%) ¹⁶
A	18	46
B	21	36
C	61 ¹⁷	18 ¹⁸

Areas A include major Palestinian population centres in the OPT. Areas B consists of other Palestinian-populated regions of the OPT, including a number of small towns, villages and hamlets. Area C covers all remaining territory in the West Bank. Included in this category are all Jewish settlements, area that Israel considers to be of strategic importance, and unpopulated areas. Of the three jurisdictional areas, Area C is the only one that is contiguous. Areas A and B form islands of Palestinian jurisdiction in a sea of Israeli control. See the **attached** map for more details.

Note that East Jerusalem and the other parts of the West Bank falling within the boundaries of the Israeli-defined Jerusalem municipality, are not part of any of Areas A, B and C. Both the *Declaration of Principles* and the *1995 Interim Agreement* explicitly state that the jurisdiction and authority of the Palestinian Authority (PA) does not cover Jerusalem. However, neither the *Declaration of Principles* nor the *1995 Interim Agreement* specifies explicitly whether Israel continues to have jurisdiction over East Jerusalem in the interim period. Thus, the status quo ante which existed in East Jerusalem prior to the signing of the interim agreements, namely the status of Israel as an occupying power, continues to apply.

¹³ *Ibid.*, Art. XI(3)(c).

¹⁴ *Ibid.*, Art. XIII(2)(b)(8).

¹⁵ Palestinian Ministry of Planning.

¹⁶ Derived from Palestinian Central Bureau of Statistics statistics.

¹⁷ Includes East Jerusalem and other parts of the West Bank falling within the Israeli-defined Jerusalem municipality.

¹⁸ *Ibid.*

Note also that the city of Hebron is not a part of any of Areas A, B and C. Rather, the *Hebron Protocol*¹⁹ divided the city into two sections: H-1, which consisted of about 80% of the city, and H-2, which comprised the remaining 20%.

Functional scope

In Areas A, the PA has full authority over civil affairs,²⁰ and internal security and public order,²¹ while Israel retains responsibility over external security.²²

In Areas B, the PA exercises civil authority²³ and maintains a police force to protect “public order for Palestinians”,²⁴ while Israel retains “overriding responsibility for security for the purpose of protecting Israelis and confronting the threat of terrorism”,²⁵ as well as responsibility over external security.²⁶

In Area C, Israel retains complete territorial jurisdiction,²⁷ though the *1995 Interim Agreement* provides that the PA has “functional jurisdiction” in Area C²⁸ in matters “not related to territory”²⁹ and personal jurisdiction over Palestinians.³⁰ Furthermore, the PA’s functional jurisdiction does not apply to issues that will be negotiated in the permanent status negotiations (Jerusalem, settlements, specified military locations, Palestinian refugees, borders, foreign relations and Israelis).³¹ Moreover, “the transfer of powers and responsibilities in Area C shall not affect Israel’s continued authority to exercise its powers and responsibilities with regard to internal security and public order, as well as with regard to other powers and responsibilities not transferred.”³²

H-1 is essentially treated as Area B territory. The Palestinian police assumed responsibility in H-1 similar to those in other cities in the West Bank.³³

H-2 is treated similarly to Area C. Civil powers and responsibilities were transferred to the PA, except for those relating to Israelis and their property.³⁴ In addition, Israel retained “all powers and responsibilities for internal security and public order” as well as responsibility for overall security of Israelis.³⁵

¹⁹ *Protocol Concerning the Redeployment in Hebron* (15 January 1997) [*Hebron Protocol*].

²⁰ *1995 Interim Agreement*, Art. XI(2)(a) and (b).

²¹ *Ibid.*, Art. XIII(1).

²² *Ibid.*, Arts. X(4) and XII(1).

²³ *Ibid.*, Art. XI(2)(a) and (b).

²⁴ *Ibid.*, Art. XIII(2); Art. XIV; and Annex I, Art. IV.

²⁵ *Ibid.*, Art. XIII(2)(a).

²⁶ *Ibid.*, Art. XII(1).

²⁷ *Ibid.*, Arts. XI(2)(c) and XVII(2)(a) and (4).

²⁸ *Ibid.*, Art. XVII(2)(d).

²⁹ *Ibid.*, Art. XI(2)(c); Annex III, Art. IV(1); and Annex III, Appendix I.

³⁰ *Ibid.*, Arts. XVII(2)(c) and (4)(a).

³¹ *Ibid.*, Art. XI(2)(e); Art. XVII(1)(a); and Annex III, Art. IV(4)(3).

³² *Ibid.*, Annex III, Art. IV(4).

³³ *Hebron Protocol*, Art. 2(a)(1).

³⁴ *Ibid.*, Art. 10(b).

³⁵ *Ibid.*, Art. 2(a)(2).

PRACTICAL IMPLICATIONS

In practical terms, the interim division of jurisdiction confines the PA to issues that concern the Palestinian population exclusively. To the extent that they move beyond being local Palestinian concerns – implicating regional resource allocation, infrastructure development or international relations – they require Israeli consent or co-ordination.

Thus, for example, the interim division of jurisdiction severely circumscribes the PA's role in the management of OPT-wide infrastructures, establishing a system of required coordination with the Israeli that leaves ultimate authority over these issues to Israel. Any significant construction in Area C for any purpose can proceed only with Israeli approval, so the Palestinians' capacity to construct an independent infrastructure is severely constrained.

Furthermore, the division of the OPT into these jurisdictional areas and the maintenance of Israeli control over settlements, which are scattered between Palestinian population centres, ensure that the different areas under the territorial jurisdiction of the PA are largely non-contiguous. Palestinians residing within them consequently remain subject to Israeli controls on movement between towns and cities in the West Bank.

INTERSECTION OF INTERIM AGREEMENTS AND INTERNATIONAL LAW

As mentioned earlier, Israel has occupied all of Gaza and the West Bank, including East Jerusalem, since 1967. This did not change with the conclusion of the Interim Agreements or the creation of Areas A, B and C.³⁶

As an occupant, Israel must act for the benefit of the Palestinian civilian population. Because its status as occupant does not confer sovereignty over, or title to, the OPT, Israel cannot act in its own territorial, economic or other interests.

Consequently, the scope of powers that Israel retained under the Interim Agreements are *de jure* no broader than the powers Israel lawfully has as occupying power under international humanitarian law. Regrettably, Israel exceeds the lawful scope of its power in Area C (as well as in Areas A and B), as if the Interim Agreements somehow constitute PLO (or Palestinian) recognition or acknowledgement of Israeli sovereignty over all or part of the OPT.

³⁶ “The territories situated between the Green Line and the former eastern boundary of Palestine under the Mandate were occupied by Israel in 1967 during the armed conflict between Israel and Jordan. Under customary international law, these were therefore occupied territories in which Israel had the status of occupying Power. Subsequent events in these territories, [including the conclusion of the Interim Agreements], have done nothing to alter this situation. All these territories (including East Jerusalem) remain occupied territories and Israel has continued to have the status of occupying Power.” (*ICJ Advisory Opinion*, para. 77). This is also the position of the United Nations (UN) Security Council and the UN General Assembly.

This is simply not the case. The Interim Agreements were never intended to constitute acknowledgement of, or agreement on, Israel's claims to sovereignty within any part of the OPT, whether Area C or otherwise. And they were never intended to formalize Israel's residual control over Palestinians.³⁷ Quite the opposite is true: As mentioned earlier, the Interim Agreements were intended to formalize a transition from total Israeli control to partial Palestinian control. (They were to have been followed by the conclusion of a permanent status agreement that would have governed the transition from Israeli occupation to complete Palestinian freedom and sovereignty.)

Indeed, even if that *were* the intention of the PLO, it would have been acting outside its lawful powers under international humanitarian law.³⁸

³⁷ Indeed, “[i]t is ... difficult to characterize the Palestinian-Israeli relationship as a ‘delegation’ of pre-existing Palestinian rights to Israel.” (Geoffrey R. Watson, *The Oslo Accords: International Law and the Israeli-Palestinian Peace Agreements* (Oxford: Oxford University Press, 2000) at 71).

³⁸ “[T]he High Contracting Parties may conclude other special agreements for all matters concerning which they may deem it suitable to make separate provision. No special agreement shall adversely affect the situation of protected persons, as defined by the present Convention, nor restrict the rights which it confers upon them.” (*Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949*, 12 August 1949, 75 U.N.T.S. (1950) 287, Art. 7 [*Fourth Geneva Convention*]). “Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced ... by any agreement concluded between the authorities of the occupied territories and the Occupying Power” (*Fourth Geneva Convention*, Art. 47).