

Negotiating Issues

April 23, 1980



~~SECRET/NODIS~~
DEPARTMENT OF STATE
Washington, D.C. 20520

April 23, 1980

SUBJECT: Negotiating Issues

The attached papers address some of the most important issues we will face over the next few weeks. They set forth some objectives and propose draft language for a Heads of Agreement which might accomplish these objectives. The draft language is only illustrative, but in each case they establish the parameters within which we believe a solution might be found, and it is in this general sense that we hope the policy group will focus on them. In doing so it is important to remember that while these drafts might be used as a vehicle to talk through the issues with the parties they would not be tabled initially. As we talk through the issues the language will probably undergo continuous revision consistent with our objectives to take into account the reasonable positions and linguistic preferences of each party.

Attachments

~~SECRET/NODIS~~

DECLASSIFIED
per 7/27/06 NSC 14v.
NLK-06-070
BY BMS NARA DATE 8/15/06

April 22, 1980

SUBJECT: EAST JERUSALEM VOTING RIGHTS

Objectives:

- (A) To secure the vote for East Jerusalem's Arabs.
- (B) To avoid the implication that the City should be divided.
- (C) To avoid any implication that we are prejudging the final status of Jerusalem.

* * * * *

Explanation of Attached Drafts:

Begin has refused to consider voting rights for East Jerusalem's Arabs under any guise for fear of implicitly recognizing redivision of the City and prejudging Israel's claim to sovereignty. The attached drafts attempt to take the question completely out of the territorial context and eliminate any implied position for the status of East Jerusalem.

Draft No. I is based on the preambular language of the Camp David Framework which provides that all those who have been most deeply affected by the conflict must be involved in the search for peace. The East Jerusalemites clearly fit in this category. The draft is based on the fact that East Jerusalemites hold Jordanian nationality and that few if any such Jordanians live in Israel. To accept this formula, Israel would have to accept the premise that neither Israel nor Jordan can adequately represent these people and that their voices should be heard regardless of the fact they happen to live in territory Israel considers to be under its law. The clause on allegiance circumvents the problem of the status of former Jordanian citizens who may now live in Israel but who have adopted Israeli citizenship.

Draft No. II reflects the same principles, but does not specifically raise the question of Jordanians living under Israeli law. Instead, it presumes careful management of the bridges by Israel, so that Jordanians residing on the East Bank are not able to get entry permits to cross the bridges

DECLASSIFIED

7/27/04 NSC H-
NLJ -04-070
BY *BM* NARA DATE 8/25/06

into the West Bank and Gaza on two separate occasions to register and to vote. Thus, only Jordanian nationals present on the West Bank (excluding East Jerusalem), would be permitted to vote. This is a less precise formula and open to many more questions. Most importantly, since it requires the Arabs of East Jerusalem to leave the City in order to vote, it may be unacceptable to the Egyptians.

Draft No. III makes use of the short period in June 1967 when Israel occupied East Jerusalem but before it extended its law to that area. By thus focusing on East Jerusalem, though it doesn't use those words, this approach might well be unacceptable to Begin, who would see it as calling into question Israel's unilateral action in annexing East Jerusalem.

In addition to the problem of how to describe the East Jerusalemites, the problem of the place and method of voting must be confronted. If East Jerusalemites must leave the City, these issues do not arise; however, such an approach may be unacceptable to the Egyptians. One possibility is to allow polling in Jerusalem, but Israeli acceptance of this is unlikely. On the other hand, limiting the vote of East Jerusalemites to vote by mail (or leaving the City) may distinguish between them and the rest of the West Bank in a manner which is unacceptable to the Egyptians. An alternative is to permit all voting to be by mail or in person without distinction.

I. "The parties are fully aware, as they recognized in the Framework, that for peace to endure it must involve all those who have been most deeply affected by the conflict. The parties therefore agree that in addition to Palestinian Arab inhabitants of Gaza, Jordanian nationals who have never voluntarily adopted another allegiance and are currently subject to Israeli's authority, should have the right to have their voices heard in the transitional arrangements which constitute a stage in the process toward negotiations on comprehensive peace. Accordingly, such individuals who otherwise qualify will be eligible to vote in the elections for the SGA(AC), either by mail or in person at authorized polling places."

II. "The parties are fully aware, as they recognized in the Framework, that for peace to endure it must involve all those who have been most deeply affected by the conflict. The parties therefore agree that in addition to Palestinian Arab inhabitants of Gaza, Jordanian nationals who are otherwise qualified and who appear for registration and subsequent balloting in the territories should have the right to have their voices heard in the transitional arrangements which constitute a stage in the process toward negotiations on comprehensive peace. Accordingly, such individuals will be eligible to vote in the elections for the SGA(AC)."

III. "The parties are fully aware, as they recognized in the Framework, that for peace to endure it must involve all those who have been most deeply affected by the conflict. The parties therefore agree that individuals who reside in areas which came under Israeli military control at any time in June 1967 exclusive of the Sinai and Golan, regardless of the subsequent or eventual status of those areas, should have the right to have their voices heard in the transitional arrangements which constitute a stage in the process toward negotiations on comprehensive peace. Accordingly, such individuals who are otherwise qualified will be eligible to vote."

April 22, 1980

SUBJECT: LAND

Objectives:

(A) Avoid prejudging the final status of public land as defined by applicable Jordanian law and practice pending "final status negotiations."

(B) Disconnect the questions of sovereignty and routine land administration.

(C) Seek to freeze future Israeli settlement activity, unless SGA approval is obtained.

(D) Protect the existing settlements against possible SGA attempts to "dismantle" them, or to "strangle" them with a ring of Arab "settlements."

(E) Protect the SGA against possible Israeli attempts to use its powers relating to land to block municipal expansion, economic development, or refugee resettlement.

(F) Protect the right of individuals to claim land which is disputed, seek redress of previous decisions which may have violated still applicable Jordanian law or practice, and seek compensation for private land used for security or settlements.

(G) Give to the SGA administrative control over land insofar as possible.

(H) Outlaw discrimination in private land transactions because of race, religion, etc.

* * * * *

Explanation of Attached Draft:

Paragraph (1) establishes the principle that claims of sovereignty should be deferred to final status negotiations, and in the interim, neither party can alienate public land. This in and of itself does not effectuate a settlements freeze since current settlements rely on leases or licenses, not ownership.

Paragraph (2) recognizes that, given the complexities of land laws in the area, a mechanism is needed to hear individual claims to land which has been previously classified as public land or is under dispute. This paragraph leaves it to the Continuing Committee to establish a mechanism for hearing claims for private registration of public land. Since Israel holds a veto on the Committee, it could prevent wholesale alienation of public land. The mechanism established could be judicial or technical which might remove the Continuing Committee from day-to-day legal review of the claims; but it would probably be a mistake to spell out a particular mechanism before eliciting the ideas of the parties, since anything we suggest could be read by one party or the other as prejudging the final status. This paragraph also establishes SGA(AC) responsibility for approval of and control over private land transactions and includes a nondiscrimination clause, although this might better be accomplished by a general clause elsewhere in the agreement.

Paragraph (3) addresses the practical problem of who administers one important aspect of the land question. So called Israeli "Green Patrols" currently keep the Bedouins on the move and prevent their herds from overgrazing. This Israeli role is resented in the territories and it would be preferable if the SGA assumed this administrative function. However, the Israelis might object to giving the SGA sole authority over protecting public land from illegal encroachment (what happens if the Gush establishes an illegal settlement), and we may have to suggest a mechanism through the Continuing Committee.

Paragraphs (4) and (5) establish some principles for the use of public land with which Israel has already expressed approval. Israel may object that no provision is made for future Israeli settlements. Paragraph (5) also protects existing settlements and would put a freeze on new settlements from the point of signature of the agreement. The paragraph could specify in further detail how administration of this land regime would be handled, e.g., the SGA could be given administrative authority and sole right to propose new uses of land assets with the right of challenge, and thereby veto, given to the members of Continuing Committee. This approach would place fewer administrative burdens on the Continuing Committee and would further objective (G); however, it would be difficult for Israel to accept.

Paragraph (6) refers the problem of administration of absentee property to the Continuing Committee. It may be possible to have the SGA assume this responsibility, although this would likely depend on whether existing settlements or specified IDF locations encompass any absentee property. The Continuing Committee would have to address the problem of whether an absentee owner would have to be physically present to claim his property, as Israel now requires, or whether he could give power of attorney to a representative to make his claim, as the Palestinians would prefer.

LAND

- (1) The Framework calls for negotiations during the transitional period to determine the final status of the West Bank and Gaza and the location of boundaries. Consistent with this provision, the parties agree that, pending completion of the final status negotiations, public land must not be alienated.
- (2) Recognizing, however, that an absolute prohibition concerning the registration of land currently administered by the Assets Unit of the Military Government (hereinafter "land assets") might result in personal hardship, the parties agree that claims to such land should be addressed and a mechanism created under the aegis of the Continuing Committee to hear these claims in accordance with the provisions of applicable law. Pending establishment of such a mechanism, claims for registration of land assets will be held in abeyance. Registration of transactions which do not relate to land assets or absentee property are the responsibility of the SGA(AC) which will not discriminate on the basis of race, religion or national origin.
- (3) The parties agree that the land assets must be preserved and, therefore, functions relating to protecting the land from misuse or illegal encroachment, for control

and preservation of all parks and nature preserves, and for protecting the ecology, will be carried out by _____.

- (4) The parties also recall the express objective in the Framework of promoting economic development, maintaining stability and assuring security and intend that land assets will be used in a way that is consistent with these objectives.
- (5) Supervision of existing uses of land assets, and permission to alter existing uses or to establish a new use of land assets, will be the responsibility of the Continuing Committee or a board appointed by and responsible to it. Pending creation of this mechanism, and subject to the provisions of this Agreement and its Annexes, new uses of land assets will not be initiated and existing uses will be respected without prejudice to the claims of any party. In making its determinations, the Continuing Committee or its subordinate board will give priority to use of land assets for the development of infrastructure, the expansion of municipalities, the rehabilitation of person- displaced from the territories in 1967, and the exploitation of natural resources.
- (6) In conjunction with its responsibility for the return of persons displaced in 1967, the Continuing Committee will establish procedures for the administration of absentee property.

April 22, 1980

SUBJECT: WATER

Objectives:

(A) Confirm to the SGA the primary right to administer water resources the utilization of which does not affect anyone outside the territories.

(B) Assure adequate supplies to the settlements and IDF without giving them a claim to large additional quantities;

(C) Establish machinery for managing shared or contested water resources pending negotiation of a detailed agreement and set some basic principles to govern that sharing process.

* * * * *

Explanation of Attached Draft:

The Egyptians have so far refused to "prejudge" any detailed negotiations on water by establishing principles for distribution of water between the SGA and Israel. This has prevented us both from establishing that SGA inhabitants should be the beneficiaries of strictly local sources and from setting principles for guiding distribution of shared resources. This paper proposes detailed negotiations between Israel and the SGA after inauguration of the SGA. In the interim, the problem would be supervised by the Continuing Committee pursuant to agreed principles. We hope that this formulation will help the Egyptians to move from their untenable and harmful opposition to serious discussions of the water problem. The Israelis are likely to pose serious objections to the principles established for the Continuing Committee, however, unless the principles pin down in more detail what happens to the shared aquifer.

Paragraph (1) defines water as a matter of "common concern" which falls within the purview of the Continuing Committee. It establishes a fundamental principle that water should be considered on technical and humanitarian grounds rather than political grounds.

Paragraph (2) meets the Egyptian concern that the SGA(AC) carry the main burden of detailed negotiations on

water, but leaves it to the parties to decide to enter such negotiations.

Paragraph (3) delegates interim authority over the issue to the Continuing Committee and provides basic guidelines for the Committee. It is our expectation that the Egyptians may agree to establish principles pursuant to which the Committee will operate even though they would not agree to establish principles to guide, and thereby arguably "prejudice," the final detailed negotiations.

The guidelines ensure maintenance of the status quo through clause (A), yet leave some flexibility for modification of the status quo under clause (B).

The paper leaves open the question of who actually administers water in the interim pending decision on modalities by the Continuing Committee. Paragraph (4), however, suggests that a technical board could be established to supervise at least the initial phase of the interim period and remove the greater portion of this burden from the Continuing Committee.

Paragraph (5) establishes the SGA(AC) as the administrator of water resources contained solely within the territories, with the exception of settlements water, which will probably be "contested" and under the purview of the Continuing Committee.

WATER

- (1) Use of scarce water resources is a fundamental and common concern of all parties in the area and consequently is an issue appropriate for the Continuing Committee. Given the overriding importance of water for sustenance of life and economic development, the parties agree that water distribution must be scrutinized at the technical level by the parties directly concerned and that the distribution of water must be considered on the basis of human needs and availability.
- (2) Accordingly, the parties agree that negotiation of detailed arrangements for water usage should take place with the participation of the representatives of the inhabitants of the territories after the inauguration of the SGA (AC).
- (3) Pending completion of such negotiations, the parties agree that the distribution of interconnected or contested water sources shall be coordinated under the aegis of the Continuing Committee pursuant to modalities established by the Committee and in accordance with the following:
 - (A) Water will be made available to present users from sources within the Committee's purview at current relative rates of flow according to established needs; and

(B) Committee decisions to modify the distribution called for in (A) above will take into account the following criteria:

(i) Protection of source integrity regarding both water quality and annual yield;

(ii) Established lawful and beneficial use, with preference given to domestic requirements on an equitable per capita basis as opposed to agricultural and industrial uses;

(iii) Compatibility with established rules and standards, including environmental considerations.

(iv) Demonstrated need and availability of alternative sources.

(v) Recharge contributions.

(4) The Committee will consider establishing a technical board of interested parties to supervise distribution and to resolve disputes pending negotiation of a formal agreement.

- (5) Water resources which are not used to supply needs outside of the territories and are not subject to the aegis of the Continuing Committee, will be controlled by the SGA(AC).

4/22/80

April 22, 1980

SUBJECT: SECURITY

Objectives:

(A) Reassure Israel that the arrangements that will prevail during the transitional period will satisfy perceived Israeli security requirements.

(B) Pin down these arrangements as specifically as possible so as to minimize the adverse impact of IDF and security services activities on daily life in the territories.

(C) Gain for the SGA(AC) a role, initially perhaps small but increasing over time, in anti-terrorism and public order such that the inhabitants and the Arab parties will perceive a change that lessens the control of Israeli security services over daily life in the territories. Specifically, the SGA(AC) police should from the start be given an active and visible role in those areas where the security services interface with the public, e.g., exit and entry controls, detention and arrests of suspected terrorists, etc.

(D) Confirm SGA control over ordinary police powers.

(E) Establish a mechanism for coordination among the SGA(AC) police and the security services of the parties.

* * * * *

Explanation of Attached Draft:

An Israeli presentation on defense requirements and plans is necessary to demonstrate to the Egyptians and us their reasonableness. Continued hesitancy only serves to fuel Egyptian suspicions that the Israelis may indeed want "a battalion in Hebron."

A demonstration of reasonableness could pin down full acquiescence in Israel's claim to sole responsibility for defense. At the same time, we may be able to pin down Israeli acquiescence in full SGA(AC) execution of ordinary police powers.

DECLASSIFIED

per 7/27/06 NSC Hm
NSC JC-06-070
BY BPS NARA, DATE 8/25/06

Defense against terrorism and public order remain the most complex issues on which agreed allocation of powers and responsibilities is necessary. Prime Minister Begin's Fourth Point seems to preclude any role for the SGA(AC) but his security advisors' formulations permit it and we are unlikely to get a satisfactory arrangement without it.

Paragraph (1) reaffirms the comprehensive nature of the security arrangements envisioned in the CDA.

Paragraph (2) confirms that Israel will define the specified security locations and have the powers necessary to execute its responsibility for defense while underscoring the need to reduce the adverse impact of IDF activities on the inhabitants. The reference to emergency procedures is designed to reassure the Israelis that they will not be hamstrung in any way in the event of an external attack.

Paragraph (3) reaffirms the CDA provision concerning Israeli-Jordanian cooperation in preventing infiltration across the Jordan River and retains for Israel the sole responsibility in this field until Israel and Jordan can conclude agreed arrangements for this responsibility. Unstated in the draft language but highly desirable would be to arrange for SGA(AC) police to accompany IDF border patrols in the event Jordan declines its designated role.

Paragraph (4) while not contesting Israel's claim of full responsibility reaffirms the CDA sense that the SGA(AC) police will participate in anti-terrorism and be responsible for public order and police powers. It allows for a phased turnover of powers and responsibilities and commits the parties to assisting the SGA(AC) in developing the capabilities of its police force. It establishes that the liaison activities mandated by the CDA in the internal security field will be conducted through a specific entity, a Joint Liaison Office. Our intent is to provide for Palestinians to be "up front" in the highly visible functions of the security process: travel documents will be handled over in the first instance at the bridges to a Palestinian, even though Israeli intelligence will be in the next room; a Palestinian will knock on the door when a security-related arrest is made, even though he may be backed up by Israeli commandos. As the SGA(AC) police capabilities and Israeli perceptions of their bona fides improve some of the Israeli participation will be eliminated. The paragraph also leaves room for insertion of a clause which could allow unilateral Israeli action, with simultaneous or ex post facto information to the SGA(AC), in emergencies, such as a hostage seizure situation, an ambush of an IDF convoy, etc.

Paragraph (5) establishes that, except for the residual Israeli forces, the strong local police force and whatever Israeli security forces are introduced by agreement while the phased transfer of powers is effected, the West Bank and Gaza will be effectively demilitarized. The formulation, it should be stressed, precludes not only foreign armed forces or Palestinian guerrilla bands but also "popular militias," whether Arabs or Israeli settlers.

An aspect of this problem which we have not addressed at this time in the draft pending discussion by the parties concerns our belief that the Palestinians will find it odious to have Israelis solely in control of security offenses while the Israelis may not trust a Palestinian-controlled system to protect their interests. Since Israeli-Palestinian interests are probably closer than either side, but especially the Israeli, now perceives, a special security court, whose composition could vary or be mixed, should satisfy the sensitivities of both sides.

SECURITY

- (1) The parties reaffirm the requirement of the Framework that all necessary measures will be taken and provisions made to assure the security of Israel and its neighbors during the transitional period and beyond. They further intend that the transitional arrangements to be instituted in the West Bank and Gaza will assure internal and external security and public order.
- (2) To these ends a withdrawal will take place of Israeli Armed Forces and there will be a redeployment of the remaining Israeli forces into specified security locations that will enable Israel to assure security against external attack. The modalities of withdrawal and the areas to which the residual forces will redeploy are detailed in Annex I and its attachments. Israeli air forces will have unrestricted overflight rights in West Bank and Gaza airspace and Israeli naval forces will have unrestricted rights of passage in the territorial waters off Gaza. Unrestricted access to the security locations for ordinary resupply, support, rotation and medical evacuation between Israel and the security locations and among the security locations will be by adequate and specified access

routes. Israel will undertake all reasonable precautions to reduce the impact of such activities on the inhabitants. Emergency procedures to meet an actual or imminent external attack will also be specified.

- (3) The parties further reaffirm that Israeli and Jordanian forces will participate in joint patrols and in the manning of control posts to assure the security of the borders, in accordance with an agreement to be concluded between them. Until conclusion of this agreement, Israel shall retain this responsibility.
- (4) During the transitional period, a strong local police force composed of inhabitants of the West Bank and Gaza, and including Jordanian citizens, will be constituted by the SGA(AC). The SGA(AC) police force will assist Israel in the defense against terrorism and subversion and will maintain public order. The parties shall render such assistance as may be necessary to assure that the local police force will develop the capabilities necessary to participate effectively in anti-terrorism, control of exit and entry of persons and goods at points of entry into the West Bank and Gaza and in the preservation of public order. The parties anticipate that SGA(AC) police participation in these activities will be initiated when and as their

capabilities to do so are developed and will be increased over time as their capabilities improve. To assure effective cooperation in this sphere a Joint Liaison Office, through which the police will maintain continuing liaison on internal security matters with the designated Israeli, Jordanian and Egyptian officers, will be established. Ordinary police functions, as commonly understood, will be executed by the SGA(AC) police.

- (5) The parties further agree that other than those provided for under this Agreement, no security, defense, military or paramilitary forces of any type, size or origin will be maintained, raised, deployed or stationed in the West Bank and Gaza.

4/22/80

~~SECRET~~

-6-

a strategy to try to narrow the gap between the adherents of the peace process and those opposed, it is time for Sadat to cooperate by adopting a more diplomatic and intelligent approach to his relations with the other Arabs as a way of lessening to some degree Egypt's isolation. He could be making an intelligent play for some of the moderate Arabs and in the context of other moves we make we should insist that he sit down and discuss with us steps he could be taking.

5. Approach to the Chinese. Chinese influence is limited, but the Chinese are nevertheless regarded by the Middle Easterners as a force in the distant future. Their influence in various capitals is of course in inverse ratio to that of the Soviets; they would presently be out of it in Damascus or Tripoli, for example. But their influence might be somewhat more useful in other quarters such as in Baghdad and with the Palestinians. We believe the Chinese, if for no other reason than that they would see a breakdown in the peace process as providing the Soviets with new opportunities in the area, might be willing to play a constructive if cautious role on behalf of the peace process. It would in any case be worth our while engaging the Chinese in a more intensive dialogue to ascertain what they might be prepared to do.

6. Using the Peace Process/Regional Security Linkage More Effectively. Most of the Arab governments are keenly aware of the connection between the two and do not hesitate to remind us that unless we can do something of consequence on the Palestinian issue we will not be able to develop an effective strategy to shore up regional security. While we accept this thesis as a valid reason for us to get on with the job in the peace process, we could also be using the same argument more aggressively with the Arab states to make it clear that our ability to play the role they want from us in regional security depends on their willingness to see that the autonomy outcome is not unreasonably rejected by the Palestinians. The tone of our diplomatic exchanges could take on a bit more edge in this respect, and the theme could also begin to appear in our public statements.

~~SECRET~~



MINNESOTA HISTORICAL SOCIETY

Copyright in the Walter F. Mondale Papers belongs to the Minnesota Historical Society and its content may not be copied without the copyright holder's express written permission. Users may print, download, link to, or email content, however, for individual use.

To request permission for commercial or educational use, please contact the Minnesota Historical Society.



www.mnhs.org