

~~SECRET/NODIS~~

April 23, 1980

SUBJECT: JURISDICTION OVER ISRAELI NATIONALS

Objectives:

- (A) To prevent the division of the West Bank and Gaza into different administrative districts, depending upon whether the inhabitants are Israeli or Arab.
- (B) To protect Israeli nationals from harassment by the SGA(AC).
- (C) To keep the agreement consistent with international law.

Explanation of Attached Draft:

A fundamental aspect of all of Begin's plans for the West Bank and Gaza has been the retention of Israeli jurisdiction over Israeli nationals, although Burg suggested that Begin was really talking about Israeli jurisdiction over settlements. Begin will assert that Camp David autonomy applies to "the inhabitants", which he limits to Arab inhabitants.

Egypt can oppose this position, on the grounds that it divides the territories into different administrative districts; that it prejudices final status talks, since even now Israeli law does not apply to the settlements; and that it is inconsistent with the prohibition in international law of the extension of the law of the occupant to the occupied territories. On the latter point, they will have the support of Israeli Attorney General Zamir, who recently opposed extension of Israeli law to the territories on exactly this ground when Begin sought to prevent challenges to Israeli settlements.

The attached draft proposes a compromise similar to the one reached in the Panama negotiations: the law in force in the territories would apply to all individuals in the territories; however, Israel would have primary jurisdiction over offenses by Israeli nationals which violated both Israeli law and the law in force in the territories. By adopting laws parallel to the SGA's, Israel could ordinarily preclude the exercise of SGA jurisdiction over Israelis. The approach is similar to our Status of Forces Agreements, although it applies as well to civilians.

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DECLASSIFIED
per 7/27/06 NSC Hr.
NLSC-06-070
BY BAE NARA, DATE 8/25/06

Paragraph (1) provides that all individuals in the territories have an obligation to obey the laws in force in the territories. This establishes the general principle that "SGA law" will be applicable to Israelis.

Paragraph (2) provides the manner in which SGA jurisdiction over Israelis would be exercised.

-- Israel would have exclusive jurisdiction concerning offenses by Israelis which are punishable solely under Israeli law;

-- There would be concurrent jurisdiction with respect to offenses by Israelis which are punishable under the laws of Israel and the law in force in the territories; however, Israel would have primary jurisdiction with respect to such offenses by Israeli nationals.

-- In all other cases, the SGA would have jurisdiction over Israeli nationals; however, it would be required to exercise this jurisdiction in conformity with certain procedural guarantees.

Paragraphs (3) and (4) mandate cooperation in the implementation of this Article.

Paragraph (5) is designed to prohibit the passage of new laws which might discriminate against Israelis or interfere with their presence in the territories.

This Article does not explicitly address politically motivated offenses, which might better be covered in the security Article.

JURISDICTION

- (1) All individuals in the territories shall respect the laws in force in the territories and shall refrain from any activity incompatible with those laws or with this agreement.
- (2) The SGA(AC) shall exercise its jurisdiction over Israeli nationals with respect to all offenses arising from acts or omissions committed by them in the manner indicated hereinafter:
 - (a) Concerning offenses committed by Israeli nationals that are punishable only under the laws of Israel, Israel shall have exclusive jurisdiction;
 - (b) Concerning offenses committed by Israeli nationals that are punishable under the laws of Israel and the laws in force in the territories, Israel shall have the primary right to exercise jurisdiction. The SGA(AC) shall have residual jurisdiction in cases where Israel chooses not to exercise this authority.
 - (c) Concerning offenses committed by Israeli nationals that are punishable only under the laws in force in the territories, the SGA(AC) shall have exclusive jurisdiction.
 - (d) In any case in which Israel exercises its jurisdiction under subparagraphs a or b, the accused Israeli national shall be tried outside the

territories.

- (e) In any case in which the SGA exercises its jurisdiction over an Israeli national, it shall accord the procedural rights to which Israelis are entitled in Israeli courts.
 - (f) When an accused Israeli national has been tried by the authorities of Israel in accordance with this paragraph, he shall not be tried again for the same offense by the SGA(AC).
- (3) (a) The authorities of the SGA shall notify the authorities of Israel as promptly as possible of the arrest of any Israeli national. The accused shall be handed over to the authorities of Israel on request, in whose custody he shall remain until completion of all judicial proceedings and thereafter, for the execution of the sentence.
- (b) The authorities of Israel shall, upon request, make the accused available to the authorities of the SGA for the purposes of investigation and trial, where jurisdiction is being exercised by the SGA(AC).
- (4) (a) The authorities of the SGA(AC) and Israel shall assist each other in carrying out all necessary investigations of offenses and in the collection and production of evidence, including the seizure

of and, in proper cases, the delivery of objects connected with an offense and the appearance of witnesses as necessary. Notwithstanding the provision, the authorities of the SGA(AC) shall not enter upon the premises included within Annex , without the permission of the authorities of Israel, which permission shall not be unreasonably withheld.

(b) The authorities of the SGA(AC) and Israel shall keep each other informed of the status of cases covered by the Article.

(c) A mechanism shall be established under the aegis of the Continuing Committee to provide liaison on matters addressed by the Article.

(5) The SGA(AC) shall not adopt any policy or issue any regulation or decree which interferes with the right of Israelis to remain in the territories as provided for in this Agreement.

April 22, 1980

SUBJECT: SIZE OF THE SGA (AC)

One of the key issues on which Israel and Egypt are far apart is the size of the self-governing authority (i.e., how many representatives will the West Bank and Gaza inhabitants elect).

Begin has been adamant that the authority have no more than eleven members. While the Israeli negotiating team acknowledges the irrationality of this position, Begin himself appears to have a psychological commitment to this number for fear that any greater number will resemble a legislative body. In his four-point paper that he presented to the President last week, Begin asserted the principle that the authority would have as many members as there were departments. While this statement of principle might enable us to get Begin to expand slightly from the proposed size of eleven, it will require more than department proliferation to get Begin to agree to a sizeable body.

For their part, the Egyptians have proposed a body of between 80 and 100 members. This appears to be substantially a bargaining position, and we could almost certainly persuade the Egyptians to compromise substantially from this figure. However, it might be difficult to obtain Egyptian approval of a size less than 50 to 60 members.

The United States has only a limited interest in the precise size of the authority. A good argument can be made, however, that the SGA should have at least 30 to 40 members in order to appear credible to the Palestinians. This argument is bolstered by the fact that before 1967, the West Bankers themselves elected 30-plus representatives to the Jordanian Parliament, and thus any smaller number for a combined West Bank/Gaza entity might well be as viewed unacceptable.

While we have talked to the Israelis, and Begin in particular, about the importance of flexibility on this size question, we do not intend to surface any U.S. proposal on this matter in the next few weeks. Rather, it appears to be tactically best to await substantial progress on substantive matters before pressing the size issue. Indeed, resolution of this issue should probably not be sought until very close to the end of the present stage of negotiations.

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DECLASSIFIED
per 7/27/06 NSC 14r
NLS-06-070
BY ~~BK~~ NARA, DATE 8/26/06

April 22, 1980

SUBJECT: LEGISLATIVE POWER

Objectives:

(A) To provide the SGA(AC) with the necessary power to carry out its responsibilities.

(B) To separate the question of type of power from the issue of the size of the SGA and Begin's concern about creating a legislature.

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Explanation of Attached Draft:

Both Israel and Egypt have seen the language we have proposed to define the SGA(AC) authority to issue decrees having the effect of legislation. Neither has really addressed this issue since both are more deeply concerned about the principle of establishing a legislature. Begin has rejected any legislative power but his aides believe his rejection is based on the larger issue. They believe that if it is clear the SGA will not have legislative type power in areas Israel believes must be shared or reserved to Israel then Begin will accept limited legislative type power in the areas fully transferred to the SGA.

The proposed language is designed to take Begin's concerns into account while giving the SGA powers it must have to do its job. Agreement on this issue may not be possible until the broader question of the nature of the SGA is resolved.

The SGA(AC) will have all powers which are necessary for the discharge of its responsibilities, including the power to issue decrees, regulations, or orders which may alter existing statutes. The SGA(AC) will not have the power to alter the terms of the Heads of Agreement or the Annexes.

4/21/80

April 22, 1980

SUBJECT: CONTINUING COMMITTEE

Objectives:

(A) To limit the role of the Continuing Committee to the extent possible.

(B) To establish the Continuing Committee as a mechanism to overcome some basic problems such as coordination, interpretation of the Agreement, negotiation of detailed agreements, and an answer to the residual powers problem.

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Explanation of Attached Draft:

Egypt and Israel have agreed to similar formulations on the Continuing Committee:

(A) EGYPT: "It is agreed that certain areas that require coordination or detailed negotiation, will be referred to the Continuing Committee provided for in the Camp David Accords consisting of Egypt, Israel, SGA, and Jordan with the addition of the United States. The Continuing Committee will operate on the basis of unanimity."

(B) ISRAEL: "In accordance with the provisions of the Camp David Framework, during the transitional period, representatives of Egypt, Israel, Jordan, and the self-governing authority will constitute a Continuing Committee to decide by agreement on the modalities of admission of persons displaced from the West Bank and Gaza in 1967, together with necessary measures to prevent disruption and disorder.

"The Committee may also deal with other matters of common concern; e.g., the development of water resources for the benefit of all concerned, economic cooperation, etc. The United States will be invited to participate in the Committee which will take its decisions on the basis of unanimity."

Neither Egypt nor Israel has accepted the concept of the Committee as allocator of residual powers or interpreter of the Agreement.

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DECLASSIFIED

per 7/27/06 NSC 14r
NCTC 101-070
BTE NARA DATE 9/25/06

In preparing the attached draft we have started with the language agreed to by the Israelis and incorporated the specific formulation on coordination and detailed negotiation from the Egyptian draft.

A change has been made in the description of the U.S. role, in order to leave open whether the U.S. will vote. The Legal Advisor has concluded that U.S. voting in a Committee which is administering responsibilities in the territories might require Congressional approval. The reference to other matters of common concern is designed to cover the residual powers problem. The formula in this draft allows Continuing Committee consideration of such questions only if all parties agree. It is designed to protect the SGA from unrestricted intervention by Israel in the fully transferred areas. This may be an impossible condition for Israel to accept depending on how the rest of the Agreement is formulated. The more difficult question of changes in or maintenance of the status quo on such issues as land and water pending further negotiations would be dealt with under the relevant portions of the Agreement rather than in the provision on the Continuing Committee.

It may ultimately become necessary to also give the Continuing Committee specific responsibility for the interpretation of the Agreement. However, there are disadvantages in placing this responsibility in a political, high-visibility forum, particularly since both Israel and the SGA will be under immediate pressure to demonstrate what they achieved in the Agreement. It would therefore seem preferable to explore initially with the parties alternative mechanism for the resolution of interpretive differences, such as third-party involvement or the creation of technical negotiating boards.

The precise wording of the paragraphs on the Continuing Committee will depend in large measure on the rest of the Agreement and the way it covers the Israeli model asterisks, shared powers and reserved powers. It may therefore be a wiser course to delay further consideration of the Continuing Committee until the outlines of other aspects of the Agreement become clearer.

CONTINUING COMMITTEE

- (1) In accordance with the provisions of the Camp David Framework, during the transitional period, representatives of Egypt, Israel, Jordan, and the self-governing authority will constitute a Continuing Committee to decide by agreement on the modalities of admission of persons displaced from the West Bank and Gaza in 1967, together with necessary measures to prevent disruption and disorder.
- (2) In addition the Committee will perform other functions specifically indicated by the provisions of this Agreement and consider such other matters of common concern as may be entrusted to it by agreement of the members of the Committee.
- (3) The Committee will take its substantive decisions on the basis of unanimity and will determine its rules of procedure within the spirit of this Agreement and may establish subcommittees and technical boards in order to fulfill its functions.
- (4) The Committee will be organized in such a matter that it may meet promptly and at any time upon the request of any of its members.

- (5) The United States will be invited to participate in the Committee.

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A Regional Approach to Bringing the Palestinians into the Autonomy Process

While Palestinian and Arab attitudes have hardened and grown more skeptical about the Camp David process over the past year, we believe there is still sufficient interest in influential Palestinian circles to ensure that the document produced by the autonomy talks will be scrutinized closely. How key issues are handled will be important in shaping Palestinian attitudes--who gets control over public land and whether there is a freeze on settlements, whether a way can be found to enable East Jerusalemites to participate in the SGA, what the mechanism is for handling unresolved issues.

Equally important, the Palestinians and Arabs will be evaluating the document for what it appears to tell them about U.S. intentions in the future: how serious is the U.S. in its commitment to push for further stages of progress? how close are our ideas about the terms of a final settlement to theirs? It is this reading of the autonomy tea leaves--and what it tells the Palestinians about longer-term prospects--that offers scope for us to shape a strategy that would address these longer-range concerns and in doing so supplement our basic approach of proceeding with the process laid out at Camp David.

The purpose of this paper is to make some suggestions as to what the elements of such a supplemental strategy might be--what we might do outside of the Camp David Framework to enhance Palestinian, and Arab, receptivity to the autonomy concept. We can frame our objective in the following terms. Ideally we would like the PLO to acquiesce in the West Bankers and Gazans joining the autonomy process, whether this is in the form of accepting the outcome reached in May, then holding elections and forming an SGA, or in the form of an interim period during which Palestinians would participate in further negotiations to resolve remaining issues. But if this is not possible, we would like the Palestinians to keep their options open--i.e., while perhaps not joining the process immediately, not rejecting the outcome either, so that at least a holding pattern might be achieved through the rest of this year.

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Some General Propositions

1. We face a basic conceptual problem in dealing with Arab attitudes towards the peace process. The Arabs are not particularly interested in details of the autonomy issues because they want to know where things will come out for them in terms of a final settlement. What will be the solution for Jerusalem? the Palestinian refugees? the final borders between the Palestinian entity and Israel? If they could get answers to these questions--or even an indication of what the U.S. would support--they would be prepared to consider a wide range of transitional arrangements as a means of getting there. Most understand the reasons why we are unable to indicate an outcome--or even our own position--on these final questions at this time, but this does not give them confidence in a transitional setup. Our strategy, therefore, must include the element of addressing--or appearing prepared to address--these "final" matters. In doing so, we have the delicate task of avoiding any step that the Israelis will regard as "outside the Camp David Framework" and therefore a pretext for toughening their stance on autonomy issues. This consideration establishes tight parameters around what we can do, but we believe there is nevertheless some scope for action.

2. At present we believe the key to Arab strategy on the peace process lies more in the hands of the Palestinians--and particularly the PLO--than in the hands of Arab governments. The conventional wisdom that because the Saudis, Iraqis, and Libyans etc., contribute the lion's share of the PLO's funds they possess the initiative and can exercise control over the PLO needs to be examined closely. In our judgment the Arab state that possesses most influence over the PLO is Syria, mainly because of the intricate relationship between Syria's presence in Lebanon and the ability of the PLO groups to maintain an armed presence there. In broad terms, however, we believe that if the Palestinians decide that they are willing to take a chance that the U.S. over time can deliver an acceptable outcome on the terms of a final peace settlement, and that to get the U.S. to play this role they must go along with an autonomy scheme as a transitional device, few of the Arab governments will actively attempt to block their decision. (Libya would be one exception; Iraq perhaps another.) On the other hand, if the Palestinians come to a negative decision about this, we should not expect much from the moderate Arabs such as Saudi Arabia in terms of willingness to use their persuasive powers to reverse the Palestinian decision.

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3. The Palestinian issue is a security issue for the Saudis and Gulf Arabs. The Saudis and Gulf Arabs are increasingly blunt in telling us that their ability to stand with us on security issues in Southwestern Asia will depend on our ability to deal honorably with the Palestinian issue. The same point will be increasingly heard about oil production and prices. The Arab point is not simple blackmail for an ideological political purpose. Some parts of the Palestinian movement have roots in radical political philosophies and movements dedicated to the overthrow of traditional regimes. The Palestinians in the traditional societies of the Peninsula and Gulf are one of their principal security problems. The regimes there feel unable to identify with us on security issues when we do not appear to their sources of political support to be dealing with one of their main security issues.

4. A significant part of persuading those Arabs will be persuading them that we take the Palestinians seriously. That brings us to one of the toughest propositions of all--the question of how to deal with the PLO. We do not believe that a direct dialogue with the PLO would by itself resolve our problems. Our preferred long-term strategy towards the PLO would be to try to win their support for the autonomy in the transitional period and then to use that period to bring forward moderate leadership in the West Bank and Gaza so that the moderates in the Palestinian movement would ultimately have the capacity to isolate the radical elements. The PLO will probably split in that process, and that could be all to the good. But there has to be a subtly designed strategy for giving the PLO a sense--one way or another--that we regard them as part of the picture.

5. We do not have to give the Arabs everything they want. Although the Arabs will continue to insist publicly on an independent Palestinian state and restoration of the pre-1967 Arab role in Jerusalem, we believe we can convince them of progress with less. Most moderate Arabs will tell you that they are prepared to go along with us in a transition to a Palestinian solution once they believe that our objectives are in the right ballpark and once they see again a U.S. ability to deliver.

6. Of the autonomy issues, the question of Israeli settlements is the most crucial in terms of shaping Palestinian attitudes toward the U.S. and what we are trying to do. This is precisely because the issue bears so critically in Palestinian minds on their longer-term prospects and their assessment of the U.S. ability to deliver on its stated policy objectives. They will be watching carefully to see how the U.S. positions itself on this issue as the autonomy

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talks go into their final phase.

Some Policy Avenues We Might Pursue

As we consider specific steps we might take as part of a supplemental strategy, we will wish to keep in mind that our efforts, to be effective, should be directed along two lines:

- On the one hand, we want to increase the confidence of the Palestinians that the continued commitment of the U.S. to a long-term peace process is of sufficient importance to the achievement of their objectives to make it desirable for them to go along with the autonomy concept;
- On the other, we need to keep before the Palestinians and their Arab supporters that there is no attractive alternative--specifically, if they reject autonomy out of hand, we will not cooperate with, or press Israel into, any alternative negotiating process.

The following are suggestions for specific steps we might consider. It is important to stress at the outset that none individually offers the answer to our problems. Our hope is rather that pursued collectively they could have an impact--albeit marginal--on Palestinian and Arab attitudes.

1. Co-opting the Europeans. The Europeans are increasingly skeptical we can come up with an autonomy scheme that will bring the Palestinians on board, and while they have agreed not to move before May 26, they are actively considering various ideas for an alternative negotiating process. Many Palestinians and Arabs see this as an attractive alternative and as a result some of the heat is taken off them in deciding on autonomy. We need to see if we cannot bring European purposes more closely into harmony with our own. The way to do this might be to open a dialogue with the three key EC members--Britain, France, and Germany--with the offer to coordinate our strategies for the post-May 26 period. The offer in itself would be flattering to the Europeans and would count for something in moderating their attitudes. To be convincing, however, we would have to be willing to level with them far more than we are at present about our problems in the autonomy negotiations and how we see the issues being resolved. The objective of the dialogue would be to see whether there are not some things we could support for the post-May 26 period (the possibility of a new effort for a Security Council resolution on Palestinian rights next

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fall, for example, or possibly an offer to open negotiations on the refugee problem under UN auspices) that would in turn get the Europeans to weigh in with the Palestinians and Arabs to accept autonomy as an essential step toward U.S. ability and willingness to move toward broader negotiating forums.

2. Work on the PLO Indirectly. We believe the PLO holds a major key to Palestinian attitudes and that it will therefore be important to find ways to work on the PLO indirectly to induce it to adopt a more open-minded attitude toward the autonomy concept. One approach that might be considered would be to propose to one of the EC states--the British are probably the best choice for this--that they engage the Palestinians in a serious dialogue about how they could see themselves being woven gradually into the negotiating process in the context of moderating their own attitudes toward the peace process. This could tie in well with the initiatives we ourselves might take with the Europeans as outlined above.

3. Intensify our Efforts With the Saudis and Jordanians. Although we have kept both the Saudi leadership and King Hussein informed in a general way about the autonomy negotiations, we have not conducted a frank exchange with them about what kind of agreement we see emerging in May and how we see various key issues being resolved. If we were to do this in a more systematic way than we have to date it would also give us an opportunity to examine frankly the contingencies we might need to deal with in the post-May period and how we jointly could manage the situation in a way that did not allow slack to set in and new opportunities for the Soviets and radicals to exploit it. The problem is that while we might gain something from real candor with these governments, that candor could also confirm these leaders' pessimistic views that the autonomy outcome we are headed for is not likely to be one that attracts the Palestinians. We would have to expect that these negative views would quickly get back to the Palestinians themselves.

4. Bear Down on Sadat to Improved His Posture Vis-a-Vis the Arabs. We have already made a major effort to bring about a cessation of Saudi-Egyptian media warfare, with no lasting results, largely because Sadat continues to break the U.S.-arranged ceasefires. He is carrying the typical Egyptian disdain for other Arabs a bit far considering that he is looking to us to solve his problems (no less than ours) on the Palestinian front. Particularly if we now embark on

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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.

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