

How to Bring a Unified Palestinian State into Existence

**Jerome M. Segal
University of Maryland**

[Published in Al-Quds in Arabic 9/27/07]

In Israel today there is a growing sense of vulnerability. This new vulnerability has produced an enormous shift in how the Israeli public views peace talks with the Palestinians, in particular, how it views withdrawing from the West Bank. While today's Qassams from Gaza have done relatively little damage, future Qassams from the West Bank that land on the runways of Ben Gurion airport are an entirely different story. This could immobilize Israel. No Israeli leader will withdraw from the West Bank unless he is confident that there is little danger of that sort.

Just prior to the Lebanon War, Kadima came to power on the basis of a plan to unilaterally withdraw from much of the West Bank. At that time, it was felt that Israel could simply place a wall where it wished and walk away, indifferent to who was in power on the other side. Today, the unilateral withdrawal concept is dead. The lesson of Gaza, the lesson of the Qassams, is that for Israeli security, it matters a great deal who is power in Palestine and what kind of relations they have with Israel.

The extent of this shift was captured recently in an article by Benyamin Netanyahu when he wrote against negotiating with Abu Mazen on the grounds that turning territory over to a weak government was the functional equivalent of unilateral withdrawal.

The implication for the peace process of this transformation is that in the future the issue of implementation will be much more

important than it was in previous negotiations. Regardless of what is agreed to in a peace treaty, implementation will be slow and performance-based. For Palestinians this creates a significant problem. A process that is performance-based is open ended, and an open-ended process runs the risk of never ending. Thus PLO negotiators are calling for a fixed timetable for ending the occupation. From an Israeli point of view, this is asking them to end the occupation by a specific date, whether or not the Palestinian partner has the will and capability of controlling the evacuated territory. And this they will not do.

To Israelis, it all seems reasonable. All they are asking for is a process which tests Palestinian intentions and capabilities in the area that Israelis call “security cooperation.” The problem, however, is that in the context of an on-going occupation, what the Israelis call “security cooperation” is what many Palestinians, reasonably skeptical of Israeli intentions, call “becoming the police of the occupation.” Especially in the context of the intense rivalry between Fatah and Hamas, it is highly unlikely that a Fatah-led government would actually meet any security cooperation test, as defined by Israel. Indeed, to do so over any extended period of time in which the occupation continues, would be to participate in its own de-legitimization in the eyes of most Palestinians.

So this is the dilemma: Even if there is a genuine Israeli commitment to ending the occupation, Israel will insist on an implementation process filled with tests that no Palestinian government can pass.

There is a solution to this problem, and interestingly it is a solution that offers a path through which Palestinians can re-establish the West Bank and Gaza as a single political entity, under a single Palestinian government. Here’s how it might work:

1. Agreement is reached between Israel and the PLO on a set of parameters for final status negotiations. Presumably these will resemble those proposed by President Clinton in Dec. 2000. One

important modification would be that any land swaps be on an equitable 1 to 1 basis, thus ensuring that the future Palestinian state would have a territory equivalent in size to 100% of the West Bank and all of the Gaza Strip.

2. Final status negotiations would then begin on all of the issues. If agreement can be reached on all of the issues, then a comprehensive end of conflict/end-of-claims treaty is signed by Abu Mazen as head of the PLO and brought to a referendum by ratification by the Palestinian people. However, if agreement on Jerusalem and refugees cannot be reached, but an agreement on the permanent boundaries of the Palestinian state can be reached, then this limited agreement on permanent boundaries is separated from the other issues and brought to a referendum. If Jerusalem remains under negotiations, the final status map would show a dotted line running through Jerusalem signifying that the city will be divided but putting off the exact line until the conclusion of the Jerusalem negotiations track. The treaty on Permanent Borders would provide for the establishment of a Palestinian State and mutual recognition between the two states. However, it would not be an end of conflict/end of claims treaty. Rather it would be “more than a Hudna, but less than end of conflict.” Because the Jerusalem and refugee issues would remain for further state-to-state negotiations, enactment of the treaty on Statehood and Permanent Borders would not satisfy the “normalization of relations” clause of the Arab Peace Initiative. This would remain as an incentive for Israel to remain engaged on Jerusalem and refugees.

3. The treaty on Statehood and Permanent Borders would utilize the distinction between “de facto” sovereignty (which means that a government actually functions on the ground as a sovereign), and “de jure” sovereignty, (which means that a government is recognized as the rightful sovereign over a territory, whether or not it actually controls it). The treaty would have the following implementation features:

a. As soon as the treaty was ratified by a referendum, Israel would withdraw from an identified portion of the West Bank. This would be a region where the PLO actually exercises a monopoly of power on the ground.

b. As soon as Israel withdraws from this initial area, the PLO would announce that the State of Palestine, proclaimed by the 1988 Declaration of Independence, now for the first time exercises de facto sovereignty over part of Palestine.

c. Acting as interim President of the State of Palestine, Abu Mazen would dissolve the PA, and the draft Constitution of the Palestinian state would become an interim Constitution, replacing the Basic Law of the PA.

d. The State of Palestine would affirm as the area of its de jure sovereignty, all of the Gaza Strip and all of the territory within the agreed permanent boundaries.

e. Israel would recognize the State of Palestine as the de jure sovereign of all of the agreed territory.

f. Israel would immediately begin the process of dismantling settlements within all of the area of de jure Palestinian sovereignty. This process would have to be completed within a fixed time period, and would not be subject to performance-based tests.

g. Israel would be committed to withdrawing militarily from all areas of the State of Palestine, where the government of the Palestinian state was able to actually exercise de facto sovereignty. The key mark of sovereignty being a monopoly of force, Israel would be committed to withdrawing from any area in which the Interim Government of the State of Palestine was the sole Palestinian entity with weapons.

h. A third party from the international community would be established to adjudicate disputes and to assess whether or not the State of Palestine had gained the required monopoly of force.

i. With respect to the Gaza Strip, Israel would be committed to lifting the air, land and sea blockade of Gaza, as soon as the State of Palestine exercised control over Gaza.

4. Hamas, Fatah and the Palestinian State

- With respect to the referendum on the treaty, Abu Mazen would call on Hamas to permit the referendum to be held within Gaza, under the supervision of the Palestinian Elections Commission. Further, it would call on Hamas to affirm that if the referendum is approved (treating the West Bank and Gaza as a single entity) that this would constitute ratification of the treaty, and it would become binding law which all individuals and organizations must obey. In the Prisoners' Document as well as in the Mecca Accord, Hamas accepted that negotiations would be conducted by the PLO and that such treaty would be binding if ratified through a referendum. Thus, Hamas might permit the referendum in Gaza. Because Hamas could urge that the treaty be rejected, it would have an indirect way of influencing the terms of the treaty even though it was not participating in the formal negotiations.

- If the referendum passes, Abu Mazen would appoint an interim government of the State of Palestine. This government would be in power only until election of both the President and Legislature of the State of Palestine could be held. Participation in the Interim Government would be open to Hamas members provided that they accepted the Treaty on Statehood and Permanent Borders as binding, and recognized the State of Palestine as the de jure sovereign over Gaza and the West Bank.

-- Once the Interim Government is established, it would call on Hamas to turn over power in Gaza to the State of Palestine.

This would mean that Hamas would relinquish its role as an armed faction. Individuals could be incorporated into the army of the State of Palestine, but this would be under control of the State. If Hamas turned over power in Gaza, Hamas would be recognized as a legitimate political party, and it could compete for all offices in the elections of the State of Palestine.

-- Once the State of Palestine establishes itself as the de facto sovereign over Gaza, Israel would, by terms of the treaty, be required to lift the air, sea and land blockade. Failure to do so would be an act of war under international law. Israel, in signing the treaty, would be fully aware that the immediate lifting of the blockade of Gaza would be required as soon as the State exercises de facto sovereignty in Gaza.

-- Because Israel has no settlements in Gaza and no military personnel or bases in Gaza, and because Palestinian sovereignty over Gaza poses fewer risks to Israel than Palestinian sovereignty over the West Bank, a truly liberated Gaza could emerge within a relatively short period of time.

-- If the State of Palestine proved itself effective in governing Gaza and exercising a monopoly of power (e.g. eliminating armed groups, Qassam attacks) this would in fact be a strong demonstration that it could similarly control all the territory of the West Bank, and thus would play an important role in speeding up the full Israeli military withdrawal from the West Bank.

-- If contrary to the above scenario, Hamas initially refuses to recognize sovereignty of the State of Palestine, and refuses to relinquish control of Gaza, and refuses to disarm, then the State would expand its sovereign control only in the West Bank. Once Israel has fully withdrawn from West Bank territory, the credibility of the Treaty on Permanent Borders will have been established, as well as the credibility of the new State. Under those circumstances, when the State renews its call on Hamas to recognize the State as the sovereign over Gaza, relinquish

power in Gaza, and allow for the real liberation of Gaza, it is inconceivable that Hamas will say “No.”

Jerome M. Segal is the Director of the Peace Consultancy Project of the Center for International and Security Studies, University of Maryland.