

Next Meeting 10:00am

June 15, 04

## Decidable Issues for Borders:

### Territorial link between the West Bank and the Gaza Strip:

#### a. *Summary of issue:*

- i. In order for Palestine to be a contiguous state properly able to exercise its sovereignty, there must be some freedom of movement between the West Bank and the Gaza Strip. A territorial link has been discussed as the most feasible way to achieve this aim. The nature of the link has yet to be decided.

#### b. *Decisions to be made:*

- i. Sovereignty:
  1. Palestinian sovereignty
  2. Servitude option (everything but sovereignty)
  3. International administration
- ii. Usage:
  1. Transport of persons (question remains as to whom the link would be open)
  2. Transport of goods
  3. Transport of natural resources: Gas, Electricity, Water (to or from Gaza)
- iii. Nature of the link:
  1. Structure (Roads, Tunnels, Bridges, Trains)
  2. Number of parts
- iv. Construction burdens/costs:
  1. Israel
    - as part of an agreement
    - as a part of a compensation regime
    - in exchange for Palestinians bearing the burden of another cost
    - International Community / International Organizations
    - Palestine
- v. Security arrangements
- vi. Rights as to use
  1. Palestinians
    - All Palestinians
    - Palestinians who pass Palestinian security requirements
    - Palestinians who pass Israeli security requirements
  2. Third party security vehicles
  3. Israeli security vehicles
  4. Palestinian maintenance vehicles and crews.
  5. Israeli civilians
  6. Internationals
- vii. Potential of future growth
  1. buffer areas for growth
  2. other growth possibilities

#### c. *Summary of linkages:*

- i. *Security:*
  1. interests:

- A significant area of concern regarding the issue of territorial link is security to the link, including to the people using the link and to the resources transferred by the link.
  - Another area of concern is security to Israel, and ensuring that a Palestinian having access to the link does not give him or her open access to Israel.
  - Access to the link is also a security concern.
2. specific implications of linkage:
- Safe Passage Arrangement:
    - i. Not preferred from a security perspective.
    - ii. Risks:
      1. Not open consistently.
      2. Arrangements cumbersome (movement of people, transfer of weapons, ability to conduct trade and engage in commerce, transfer of utilities, etc.)
      3. Used as a trap to arrest Palestinians.
  - Territorial Link (Sovereignty is Palestinian):
    - i. Preferred from security perspective.
    - ii. Can take multiple forms, such as:
      1. Ground-level corridor (best option);
      2. Overland bridge (high-security risk, and very costly);
      3. Underground route (could be insufficient, and costly); or
      4. Combination of two or more (could be considered).
  - Types of security considerations:
    1. *Security Functions* (physical protection of the corridor, its facilities and traffic from attack from persons emanating from Israeli territory or persons using the corridor):
      - a. Raises question of who will provide security.
      - b. Without Palestinian sovereignty, it is likely that Israel will be responsible.
      - c. If Palestinian sovereignty is considered this implies that the territorial link is either leased or swapped.
      - d. A 'lease' option is not recommended, for the same reasons outlined in the 'safe passage' arrangement.
      - e. As for a 'swap' deal, this option can (and perhaps should) be considered. It implies total Palestinian control and jurisdiction, without Israeli interference. It is recommended however that some sort of a "priority index" is created in order to

determine whether the “territorial link swap” is the number one priority in comparison to other territory that may be otherwise considered in a swap.

f. If there is no swap and the link is not leased, the third option is Israeli sovereignty but Palestinian control and responsibility of security over the link. In turn, Israel has responsibility of security outside the link itself in order to ensure no Israelis have access (in order to commit hostile acts, for example) and no Israelis cause damage to the link (live ammunition firing at the traffic from a distance, for example) and to ensure no Palestinians escape the link to infiltrate (to commit acts of violence against Israelis, for example). This is the next best option (after the swap option)—the political cost is little, and operationally speaking is a low-risk option.

g. [YASER – is Israeli security control something that we absolutely do not want? What are the pros and cons and implications?]

ii. *Policing Functions* (traffic control, regulation and enforcement – can be dealt with through sufficient reserve and backup and with adequate technology):

1. Recommendation is that Palestinians take responsibility for this and that Palestinian laws and enforcement mechanisms apply, regardless of sovereignty.

iii. [ASSESSMENT NEEDS TO BE DONE IN ORDER TO ANSWER/MAKE RECOMMENDATIONS REGARDING MANY QUESTIONS SUCH AS “Will Israelis be allowed to use the dedicated corridor? If so, which party governs and regulates access? Which laws will apply? And who has the overriding jurisdiction and responsibility for protection and security?” - PRELIMINARY RESPONSES ARE THAT: This raises yet another category altogether. It depends on who has sovereignty. If Israeli, Israel may ask for this (especially since the link dissects Israel into two parts—north and south). Operationally speaking, if Israelis are allowed to use the link then this entails there are entry/exit points throughout the corridor. This only complicates the matter even more, and entails a much broader regime. The merits of this have to be considered

Subject to  
Israeli limitations  
& constraints  
- no longer a  
territorial link

before more analysis can be given. But, in short, it should not be considered as an option because the operational assumptions are now no longer the same. It is raised here in preparation for the eventuality that Israel asks for it.]

- *Securing the link*: [YASER – do you have any recommendations regarding how to secure the link itself? I.e., specific paths it cannot take because security is too risky? The advantages of a fenced in link vs. a heavily policed link? Other suggestions re: security?] You are now getting into the actual design of the link—which I can not do at this point without further guidance regarding: i) type of corridor and ii) who has overriding control and responsibility (not necessarily sovereignty). [YASER – the idea is that your answers will help to determine the answers to these questions...]
- *Air Corridor*: Palestinians should press for an “air corridor”, the terms of which should be determined in accord with Palestinian-Israeli aviation regulations (which regulations are to be addressed in the civil aviation sub-issue of the security file).
- *Weapons*: Palestinians should NOT allow special arrangements for the transfer of weapons and equipment through the corridor. Same regime as is applied to the rest of Palestine should be applied to the corridor. This is very important—the territorial link implies that the WB and GS are one, single geographic entity—there should be no restrictions on movement, nor are we obliged to seek approval. However, this issue will become more urgent if the link is under Israeli security control.
- *Entry & Exit points*: becomes more important if sovereignty is with Israel, or if Israelis are allowed to use the link. Preferred option is Palestinian sovereignty/control, with no checkpoints at entry/exit points. [QUESTION RAISED – do you have specific recommendations on how to deal with these issues? Also, do you have thoughts on whether or not it would be possible to have entry/exit points throughout the link? PRELIMINARY ANSWERS - *Yes, this is possible. This is part of the broader border regime question. This issue has to be treated the same way one would treat the issue of how many exit/entry points do we seek to have along the entire length of the border between Israel and Palestine. From a purely operational perspective, if we begin to overload what the link can and can not do we begin to complicate the arrangement so much that designing and ensuring security become difficult to achieve, losing sight of what the link is supposed to serve first and foremost. I would hold on to this until we have further clarity, and then if we decide that we do want entry/exit points then we can look into merits and liabilities by seeking expert advice on this. Perhaps this question and presumably many others can be folded into a ToR for a more comprehensive analysis, which I am happy*

*to do in conjunction with you. I know several experts. What about just for emergency personnel? Absolutely. This has to be addressed. For civilians? What does it mean for there to be “control and oversight” vis a vis the entry/exit points? This means that there is a dedicated border police force entrusted with the responsibility of entry/exit. Oversight implies that the arrangements agreed to are implemented—third party oversight is instrumental.]*

- *Review mechanism/dispute resolution mechanism:* Recommended highly.
- *Third party role:* Can help with disputes and security. [QUESTION RAISED – any thoughts on appropriate roles for third parties? Are you talking about a permanent force? Transitional presence? PRELIMINARY ANSWER - *Depends. This is part of a much larger picture. I am working on this now myself, but will keep updating you with ideas. But it’s an area worth flagging early on.*]

3. nature of the linkage:

- symbiotic

ii. **Water:**

1. interests:

- A potentially crucial usage for a link is the transport of water between the West Bank and Gaza Strip.
- It is envisaged that water will initially be gravity-fed to Gaza from the West Bank, in significant volume (probably using two 36-inch diameter pipes – this is to be confirmed). Thereafter, it is **conceivable** that desalinated water would be pumped back in the other direction, although this appears unlikely even in the long term and is in any event dependent on the agreement to be reached between the parties on the precise allocation of the West Bank aquifer resources. If the pumping of desalinated water from Gaza to the West Bank **is** required in the long term, there would be a need for pumping stations somewhere along the length of the link (probably two or three in number, in total). This could be problematic in terms of demands for space within the link.

2. specific implications of linkage:

- Pipes must accommodate at least 60<sup>MCM</sup>/yr.
- At least two pipes. Somewhere around 36 inches in diameter each.
- Flow is likely to be from West Bank to Gaza Strip (downhill), but may conceivably be used to pump desalinated water in the other direction at some point in the future. WB to GS direction would not require pumping stations within the link (i.e. just one in GS and rely on gravity). GS to WB direction would require additional 2-3 pumping stations within the link. A pumping station is likely to be wider than a link.

- Infrastructure can be below road, but preference is for it to be on the shoulder of a road or transportation structure in order to facilitate maintenance.
  - Must accommodate maintenance crews.
  - Common trench technology may be considered to combine underground infrastructure proposals (i.e. electricity, gas, data cables and water in same trench).
  - Note: In addition to link infrastructure, water file may also try to negotiate usage of the Israeli national water carrier.
3. nature of the linkage:
- symbiotic
- iii. *State to State:*
1. interests:
- Other resources besides water, such as electricity, communication lines etc., may need to be transferred between the West Bank and Gaza Strip using the link.
  - Electricity –
    - i. Link allows unused electricity to be transferred from the Gaza Strip to the West Bank.
    - ii. In long term, allows for efficient provision of electricity to all of Palestine. It is cheaper to produce electricity in the Gaza Strip than in the West Bank, and transferring such electricity is cheaper than acquiring electricity through other means.
  - Gas –
    - i. Link allows gas to be transferred to the West Bank and Jordan.
  - Transportation –
    - i. Link is key as the port and airport for Palestine are expected to be located in the Gaza Strip.
  - Telecommunications –
    - i. Currently, the only possible link is through a Microwave link. Territorial link is essential for a fiber optic link to provide a second means for fixed and cellular communication.
2. specific implications of linkage:
- Electricity-
    - i. Land wires and enhancing towers are three times cheaper than use of underground cables.
  - Gas –
    - i. Land pipelines are considered for the transmission of natural gas.
  - Transportation –
    - i. May implicate a railway.
    - ii. Should accommodate a highway.
  - Telecommunications –

- i. Requires fiber optic infrastructure.
    - 3. nature of the linkage:
      - symbiotic
- iv. **Economics:**
  - 1. interests:
    - The major economic interest is the contiguity of the Palestinian territories.
    - This means that the West Bank and the Gaza Strip become one market with no restrictions on movement of people, goods and capital.
    - This also means that the West Bank population can easily use the airport and port of the Gaza Strip, access Rafah to Egypt and transit through Egypt. At the same time the Gaza population can easily access and use the Allenby Bridge and transit through Jordan.
    - To enhance economic ties between the Gaza Strip and the West Bank, the Palestinian interest is for *free* movement of goods, people, and services i.e. not taxed.
    - The Palestinian interest is for *feasible* movement between the West Bank and the Gaza strip i.e. procedures introduced to the territorial link do not have additional cost including cost of dual transportation companies/vehicles, security checking fees, or loading and unloading fees.
    - The Palestinian interest is for *guaranteed* movement to all i.e. never interrupted or suspended collectively or individually and open and operational at all times.
    - The Palestinian interest is for the private sector to be compensated for any delay or interruption or extra costs faced when using the territorial link.
  - 2. specific implications of linkage:
    - General requirements:
      - i. It is preferable to have more than one route between the West Bank and Gaza Strip (one in the north and one in the south)
      - ii. Israeli goods, people and services should not be allowed to enter/access the route, because that may lead to smuggling.
      - iii. The system/nature/management of the route should ensure
        - 1. free access
        - 2. feasible movement
        - 3. guaranteed to all
 at all times to all people, goods, or services.
      - iv. If any one of the above principles is infringed, then the party encountering loss or damage becomes eligible for compensation.
    - Control/Sovereignty:

- i. If the Palestinians have sovereignty, the risk of Israel imposing any restrictions on the free, feasible and guaranteed movement of the West Bank and Gaza strip is diminished.
        - ii. If the Palestinians have control, then the risk of Israel hindering the free or feasible system of movement is diminished; the only risk that remains is that Israel can legally interrupt or suspend movement, because it retains sovereignty.
      - No control/No sovereignty:
        - i. Even without Palestinian control or sovereignty, the **nature** of the territorial link can ensure that the possibility of Israel's interference with feasible, free and guaranteed movement is limited. One example of such a nature would be a railroad system that would be sealed electronically, fenced or elevated.
        - ii. Even without Palestinian control or sovereignty, the **management** of the territorial link can ensure that the possibility of Israel's interference with feasible, free and guaranteed movement is limited. One example of such a type of management would be third-party management of a system of territorial link that is guaranteed, feasible and free, and provides for compensation in case of problems or interruptions.
    - 3. nature of the linkage:
      - Symbiotic.
- v. **Compensation**:
- 1. interests:
    - If the value of link (or construction of the link, costs for maintenance, etc.) will be considered compensation from Israel to Palestine, then the compensation file will be heavily implicated herein.
  - 2. specific implications of linkage:
    - Instead of treating the construction of the link as strictly compensation, we would benefit more from framing it as a joint development project, through which we could propose ways to make the link work, economically, for everyone. With regards to funding, our goal should be to get Israel to fund it, rather than diverting much needed international financing. We could frame it as an offset against the larger compensation package, or frame it in the context of land swaps and compensation for expropriated land, and then offset the value against that. So there are two conclusions:
      - i. The construction and management of a territorial link would be most successful if the approach with Israel were cooperative.



- ii. We must have a strategy for costs that brings in compensation concerns.
        - The strategy of our compensation demands is to use each file to satisfy a good chunk of our public claims through cooperative development programs, training services and underwriting initiatives. To the extent that it is possible to create in-kind programs or initiatives, discussion of which should be included in negotiations. The territorial link is one good area to put that strategy into place.
        - More specifically, we need to come up with a cost analysis for the construction of the link and then propose a financing package in our negotiations.
    - 3. nature of the linkage:
      - symbiotic - contingent
- vi. **Refugees:**
  - 1. interests:
    - Viability of a Palestinian state that satisfies self-determination claims. This applies to all Palestinians but particularly to refugees to the extent that a final status arrangement should provide refugees with a real option to settle in the Palestinian state.
  - 2. specific implications of linkage:
    - Territorial link should allow for safe, unfettered access for the residents of the Palestinian state between West Bank and Gaza.
  - 3. nature of the linkage:
    - information
- vii. **Jerusalem:**
  - 1. interests:
    - It is unclear if issues concerning Jerusalem would affect the design of the territorial link, unless the link would actually connect to Jerusalem.
    - If so, there is a clear interest ensuring that the link leading to the city of Jerusalem is direct, efficient and speedy.
    - A strong economic, symbolic, political and religious relationship is expected and planned between the capitol city of Jerusalem and all Palestinian areas including the southern districts. Jerusalem area is the geographical center of the West Bank and can be a gateway to Jordan and Israel. The more direct the link from the Gaza Strip to Jerusalem, the stronger the relationship is. An indirect link to Jerusalem would weaken the relationship between the central capitol and the southern district.
    - Access to Jerusalem is important to reinforce the status of the city, particularly because it is the capitol of Palestine.
  - 2. specific implications of linkage:
    - Demanding a direct link to Jerusalem to ensure territorial contiguity between the Gaza Strip and the West Bank strengthens the position of Jerusalem as the capitol of Palestine.

- Importance depends on the vision of the city of Jerusalem:
    - i. In a decentralized system where the capitol has a minimum central role the linkage is less significant.
    - ii. If industries and trade centers are not in or around Jerusalem the linkage is weakened.
  - [KHALID/ANWAR/FOUAD – Does this mean that the:
  - Link can take the form of a safe passage or other non-sovereign form. Precise nature of link is not important to satisfy interests, as long as allows for transportation contiguity.
  - The only implication for this issue is that a link somehow connects to Jerusalem.?)
3. nature of the linkage:
- informational – contingent
- viii. **Settlements:**
1. interests:
    - None noted.
  2. specific implications of linkage:
    - None.
  3. nature of the linkage:
    - N/A
- d. **Recommendations:**
- i. [TO BE DETERMINED]