

ISSUES OF “TRUSTEESHIP” IN THE WEST BANK AND GAZA STRIP

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The invasion by Israeli Defence Forces (IDF) of Palestinian-controlled areas of the West Bank in March and April 2002 altered fundamentally the terms of debate about international intervention in the crisis. A variety of traditional options, including observers and peacekeepers, had been considered. But for the preceding year, talks between the parties had focused mainly on a minimal activity of monitoring in the event a ceasefire was concluded and held for any length of time. However, after so-called “Operation Defensive Shield,” the full range of peace operations and peacebuilding activities that have been launched since the end of the Cold War, collectively and multilaterally through the United Nations (UN) or cooperatively and multinationally through a coalition of the willing under the leadership of a single nation, were on the table.

The UN Secretary-General proposed to the Security Council a Chapter VII enforcement action by willing Member States, while international organizations and other governmental and non-governmental agencies provided humanitarian and development assistance. Specifically the idea of “trusteeship” began to gain currency. To date it has not been well-defined, other than broad comparisons with the transitional administrations in Kosovo and East Timor. Whether the notion of international governance over the West Bank and Gaza Strip has merit or not, it is critical to assess what it will mean in this context and to determine which requirements have the best chance of a successful outcome.

Following are ten principles drawn from the lessons of recent efforts at peace operations and peacebuilding activities followed by their application to the Palestinian context.

Ten Principles

1. *The Aim of International Political Authority:* The international exercise of executive and legislative powers in internal conflicts had aimed to address two prevailing problems. First, complex emergencies required a multifunctional response that was being conducted by a variety of intervenors that needed to be harmonized under a single authority, in order to achieve unity of effort. Second, to genuinely transform a factional environment and address the sources of conflict, and not merely the symptoms of violence, international intervenors began to assume administrative control over territories and their populations. Power could not be transferred from a loser to a winner of an election unless power had

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first been assumed by an international mission. As part of this, the idea was to take control of local political dynamics to produce a result that was different and somehow better than what would have happened from a self-evolving balance of power. The single event of a declared “free and fair” election could no longer constitute an exit strategy. Nor could the standard of measurement be a temporary reduction in violence that would again flair up after weak state institutions were left behind. **The justification and source of legitimacy of the international exercise of local power was to produce a truly new political environment, and this cannot be achieved in a short space of time.**

2. Degrees of Political Authority: There are four degrees of intrusiveness in the international exercise of political authority, or in doctrinal terms “peace-maintenance.” The decision on which degree to employ is ideally based on the amount of fragmentation of local authority. The escalating degrees of intrusiveness include *assistance* to weak local authorities (as now in Afghanistan); *partnership* with a coherent national liberation movement or withdrawing occupier (as in Namibia); *control* of divided factions (as in Cambodia); and finally the total but temporary *governorship*, or “transitional administration,” of territory and its population, either because the reigning polity had disintegrated (in places like Somalia) or the occupying power was ultimately transferring the territory to another sovereign (as in Eastern Slavonia or the Brcko Corridor) or the party exercising sovereignty had been forced out (as in Kosovo). In East Timor, disintegration resulted from a combination of the radical withdrawal of an occupying power and the comprehensive destruction of any semblance of a governing apparatus.

In Palestine, there had been a fully functioning Authority, requiring at most assistance. However, with the gradual destruction of the Palestinian Authority’s (PA) governing capacity, the more intrusive models of “peace-maintenance” become relevant. The aim of a transitional mission exercising any degree of power must be to make itself obsolete as quickly as possible, or transform itself from a governorship to an assistance operation. It can only achieve this by rebuilding the local authority as effectively as possible, with strong state institutions and the genuine participation of the population. Therefore, **rather than relying on a transitional administration as a coping mechanism for the inability to resolve the Israeli-Palestinian conflict, the aim now and throughout any intervention must be to reconstitute a functioning Palestinian Authority through robust assistance.** The more of this that is achieved, the lighter the international footprint can be in “trusteeship” terms.

3. Colonial Antecedents: Although there is now a discrete history of transitional administration in the last five years, many principles were drawn from the earlier experience of colonial administration. Lord Lugard’s *Dual Mandate in British Tropical Africa* was used in the planning for the East Timor mission, and provided the basis for the concept of district administration there. It will be equally necessary to appreciate the model of administration and overall experience of the British Mandate in consideration of a “trusteeship” over Palestine to **understand what we are really talking about.**

These colonial principles, however, had to be transformed for the new environment of peace operations and specifically distinguished from imperial intentions. There had been

extensive debate about why transitional administrations were not colonial manifestations. Arguments were made such as: “in transitional administrations the population has to be the master and not the international administrators”; and “in transitional administrations funds are channeled into a country, rather than resources extracted from it.” In practice, these arguments remained abstractions: UN officials in a colonial structure assumed the behaviour of colonial masters. Funds were overwhelmingly spent on the functioning of the international mission, and much less on the reconstruction of the country. Consequently, **transitional administrations have suffered both ineffectiveness and illegitimacy**. While this has been sustained amidst cultures of non-confrontation, such as in East Timor, in Palestine such a mission will lose the support of the population and quickly become targeted by violent acts.

4. Accountability: There has not yet been built into the doctrine of transitional administrations an effective means of accountability, other than periodic reporting to a mandating authority. Typically, international officials have immunity from prosecution, which is acceptable in an assistance mission. But if those officials constitute the government of the country, then two classes of legal persons result, with only the local population liable to prosecution. Incidents of crimes being committed by international forces may not make international headlines but, within the communities in which they operate, they can become destabilizing factors. The lesson imparted is that the future executive can also be above the law. The inclusion of an Ombudsman in a mission or turning over an alleged criminal to a military court of his own nationality outside the jurisdiction of where the alleged crime took place are insufficient responses to the problem.

Transitional administrations are extremely hierarchical and, as it turns out, authoritarian structures. The Transitional Administrator has legislative and executive power in his personal hands, and is comparable to a Roman prefect or the High Commissioners during the British Mandate in Palestine. What is needed in transitional administrations is a **separation of powers** during the transitional period, between institutions comparable to an executive, legislature and judiciary. Otherwise, the state institutions left behind will have been built in the image of the transitional administration, rendering intentions of a future democratic state hollow.

Similarly, there have been attempts at **decentralization**, with the regions in Kosovo and more thoroughly with the districts in East Timor. But the centralizing tendency of transitional administrations has proved too powerful. Authority within the mission has to be delegated, as in any state structure. In this manner, international governors can be personalized at the frontline of administration, with the bulk of the population in cities and villages. In turn, this can dilute the future centralization of power in a capital city. It can also avoid the total investment of the international exercise in national elites—who will be automatically empowered as interlocutors—and instead form state government at every level of administration.

Transitional Administrators have resisted dissent or forbidden and even punished criticism, certainly within the ranks of their staff, but also from local representatives or

from civil society. Unless peaceful forms of **opposition** are not only permitted but actively fostered, the future executive will similarly forbid freedom of expression. Under such circumstances, internationally-sponsored multi-party elections result in the exclusive consolidation of power in the form of a one-party state. Without space for peaceful opposition thereafter, opposition can only come in violent form.

5. Local Participation: Perhaps the most important feature of accountability is to be responsible downwards to the local population. This issue can make or break a mission. The loss of legitimacy fundamentally undermines the effectiveness sought from the centralization of authority. Transitional administrations have failed to adequately involve the local population during the transitional period. However, there is much to be learnt from projects that have experimented with **community empowerment** in the establishment of governing structures. Experiments in East Timor, and currently being developed for Afghanistan, may or may not succeed, but they provide useful principles to draw from. A model can be distinguished in which local, informal elections can create bodies that further elect other bodies up to each level of administration, including the national level. These elections are not comparable to large-scale, UN-style registered ballots, but they may be adequate for the transitional period as a means of guaranteeing some degree of participation. Otherwise, the international effort will empower elites at the national level to the exclusion of the population at large, reinforcing an authoritarian outcome and inevitably leading to further violence, if not violent opposition during the transitional period.

To accomplish the establishment both of local government, as well as integration of the population higher up in the transitional administration, an anthropological assessment, that is geared to operational planning, has to be conducted. Mistakes along these lines in the past have resulted in the irrelevance of what transitional administrations have left behind—in East Timor their shelf-life has been measured in months. The first issue to address concerns the **perceptions of the local population**. Who do they understand legitimately holds power locally? Who is the recognized power-holder and who really exercises it? To address this question in Palestine, a survey is needed of what indigenous structures used to exist in the area, of how they have been altered under Israeli occupation, and on what basis should a new local government be built, and how then can this be integrated in the inevitable attempts to build a Western-style state at the national level? If a transitional administration is to be seriously considered in the future, then this assessment needs to begin immediately.

Only through integration of the local population in the transitional administration structure can the mantra of **capacity-building** be given any meaning. If there is to be a genuine exit strategy for a transitional administration, it must be the establishment of a self-governing capacity. This issue is less acute in Palestine than in other areas where the skills base is much more fragile. However, there is a current brain-drain as a result of the conditions currently prevailing in the West Bank and Gaza Strip. This needs to be halted as soon as possible or it will cause an unnecessarily greater challenge for a transitional administration in the eventual transfer of power or in the sustainability of its efforts.

6. Leadership: The structure of transitional administrations has created a powerful position for the mission leader. But the need for good leadership should not be confused with merely strong leadership. In the confrontational environment of the Balkans, a bullyish style of international leadership developed. This style was all wrong in East Timor, and alienated both the international staff and the local population. There has to be the **“right” kind of leadership** for the context. Also, the choice of leader requires someone who is committed to the job and engaged in resolving every kind of challenge, and not someone preoccupied with getting his next posting. The nature of the job requires some of the better qualities of a politician, mixed with operational capability. The professional subculture of the leader will be a critical factor in his or her appointment. It is disastrous to deploy a diplomat who exercises extensive political powers asocially and apolitically. The result will be that the entire mission skids on the surface of social and political reality, without having a positive or meaningful effect. The intensity of the environment of the West Bank and Gaza Strip will quickly render a mission managed only diplomatically quite irrelevant.

7. UN v. Coalition: In the early 1990s, the UN proved incapable of commanding and controlling high-intensity military enforcement options. The task fell to coalitions of the willing. The same conclusion may be true of the UN with regards to intensive civilian operations like transitional administrations. From a functional perspective, **a single-nation led coalition may be the preferred option in Palestine.** Nevertheless, the mission would need to be authorized by a Security Council resolution under Chapter VII of the UN Charter. The established principles of military coalition-building will need to be adapted to civilian administration. However, the key question will be from where will the cadre of civilian administrators come? There is no international colonial service, as such. Therefore, **a much more professional form of staffing will be required.** In particular, Arabic and Hebrew-speaking individuals will be needed. In the past, individuals with local cultural, historical and particularly linguistic knowledge were far more effective in accomplishing their tasks, and were more often supported locally.

Transitional administrations are complex structures, and one source—whether the UN or a single nation—has proved incapable of deploying the necessary assets for the whole range of sectors that have to be addressed. The centralized structure of transitional administrations can afford to **draw from every relevant source**, whether an international organization, a national development agency, non-governmental agencies, private firms or individual experts. This is not a call for privatization, but a matter of practicality. The UN is less likely to do this than will a coalition.

8. Mandate: In the brief but mounting debate about “trusteeship” in Palestine, the mandate of such a transitional administration is increasingly becoming fragmented. Some seek separation of the Israeli and Palestinian infrastructures as the principal objective. Others are emphasizing the security tasks of a “trusteeship,” emphasizing the Israeli desire to extend the global “war on terror” to the Palestinian context, with US-led units fighting Palestinian militants. The **aim of a transitional administration must be to reestablish a Palestinian Authority**, to which executive and legislative powers can be transferred. If the international exercise is not a state-building one, then there can be no

justification for its assumption of political power. Otherwise it will be interpreted as a recipe for facilitating Israeli annexation and threatening Palestinian population transfers. If the aim is not to reestablish a Palestinian Authority, then it is questionable whether a transitional administration is required. For there are other models if the principal intention is to reach a permanent settlement between both sides, even if that can be an additional goal of a transitional administration.

9. Comprehensive Campaign Planning: National militaries tend not to deploy without a campaign or operational plan. Businesses do not get loans without a detailed business plan. Yet the UN dispatches complex operations with an organizational chart and a staffing table. A transitional administration requires a comprehensive campaign plan that details the assets needed (and available) and how they will be employed in the **accomplishment of each task along a concrete timetable** that is adhered to. It will also need to build in contingencies for the changing facts on the ground of a dynamic and highly politicized environment. This needs to start as early as possible. In the Palestinian context, this effort will be complicated by the lack of clarity that would be provided by the terms of a permanent settlement.

10. Financing: To avoid slow and ineffective deployments, a rapid means of funds disbursement will be required. This can be achieved by the establishment of a **Trust Fund** for the purpose of administering Palestine. There should not be a distinction drawn between the financing of the international mission and the local development activities of state-building or humanitarian assistance. Otherwise the bulk of funds will be spent on the maintenance of the mission in the theatre of operations, and only minimal reconstruction will occur, undermining the legitimacy of the mission as the population waits for results that never transpire. The population will expect physical evidence of houses and public buildings being rebuilt; they will expect jobs or the freedom of movement to return to their jobs; and an economy that is not distorted by the large-scale presence of international staff.

Application of Principles to the Palestinian-Israeli Context

A. Leading to Palestinian Independence and Israeli Security: Palestinian support of any trusteeship model would have as its bottom line a conditional requirement that the international administration is provided as a significant step towards the independence of the state of Palestine, whereas Israeli support would require that the model promote Israel's security. Any international administration which is perceived, rightly or wrongly, as a continuation of the Israeli occupation would eventually be challenged by Palestinians and become a source of instability, placing international personnel, Palestinians, and Israelis at risk. The Palestinian Authority's legitimacy in the eyes of some Palestinians suffered from being viewed as a continuation of Israeli occupation by other means.

For Israel, the goal would be to return to the security successes of the 1997-2000 period during which Palestinian-Israeli security cooperation was at its height and Palestinians believed that an end to the Israeli occupation was imminent. The international administration would have to replace the Israelis in security cooperation with the

Palestinians and the trusteeship model itself would be the guarantee for an eventual date for Palestinian independence.

This requires a specific mandate for any international administration specifying that its goal is to prepare the Palestinian Territories for independence, as the formal Mandate system under the League of Nations and later under the United Nations provided for in the case of Palestine.

This would also require a very clear timetable to full independence.

B. Area of Operation: The area of deployment will have to be the **geographical area of the West Bank and Gaza Strip**. Deployment on only a percentage of the West Bank, as has been proposed, for instance, will be interpreted as a means of either preventing the establishment of a viable Palestinian state, or the creation of one on an unacceptably small portion of the 1967 borders.

The area for which the trusteeship would be responsible would have to be based on the June 4, 1967 borders in accordance with U.N. Security Council resolutions as well as the already signed agreements between Palestinians and Israelis and the Quartet guidelines for resolution of the conflict. Palestinians and Israelis have agreed that they would consider modifications to those borders within the context of permanent status negotiations, however, the starting point for any modifications remains the 1967 borders. The trusteeship would be expected to begin the demarcation of the border during its tenure so that any modifications agreed to by the parties can be quantified and accurately measured.

Palestinians are well aware that Britain failed to fulfill the conditions of the Mandate in Palestine, instead ultimately supporting the division of the state into two ethnic states, only one of which was ultimately created. Thus, there will be a fear that there will be a further division of Palestinian Territories unless the Mandate clearly indicates the territory to become a Palestinian state as being based on the 1967 borders with modifications to the border to be agreed to by the parties in permanent status negotiations.

C. Replace the Israeli Occupation: Palestinians would expect any international administration to replace the Israeli occupation and therefore explicitly assume full responsibility for implementation of the 4th Geneva Convention obligations that Israel has been unwilling to implement. It would not be acceptable to Palestinians if Israeli forces remained deployed, while an international administration was layered on top of them. This would be seen as the international community reinforcing the occupation, and the mission will quickly be dismissed by the local population and **targeted** by armed factions.

Although all Israeli armed forces would need to be removed from the Palestinian Territories, it is conceivable that Israeli civilian or unarmed military personnel would be

allowed a presence at settlements until their evacuation (see below). This would require the international administration to be responsible for:

- a. providing security for Palestinians including security from political and criminal violence domestically and internationally,
- b. providing for the ending of all attempts to import nationals of Israel into Palestinian territories for purposes of colonizing the area, and
- c. providing for the withdrawal of current Israeli colonists in the Palestinian Territories according to a preset schedule that would ensure increasing Palestinian contiguity and viability.

D. *Ensure Territorial Integrity:* The international administration will need, independently and in conjunction with international guarantees, to ensure the territorial integrity and political independence of the Palestinian Territories as well as to provide guarantees of Israel's territorial integrity. In all previous permanent status negotiations, Palestinians have agreed to a state with limited arms or possibly to a non-militarized state, and it is expected that in permanent status negotiations Palestinians will seek full guarantees of the state's territorial integrity by third parties to compensate for the state's own refusal to arm itself. Unopposed incursions by other forces into Palestinian Territories during the tenure of the international forces would fatally comprise the mission.

E. *Permanent Status Negotiations:* The international administration will also need to be responsible for overseeing the permanent status negotiations between the Palestinians and the Israelis and should make every effort necessary to secure an agreement by the planned date for Palestinian independence. This will be the primary guarantee that violence against Israel directed from the Palestinian Territories comes to an end.

As permanent status talks proceed, the parties may agree to particular security and border control/regime protocols after independence. The trusteeship can begin prepositioning necessary human and physical resources as soon as the parties agree to the protocols.

Should permanent status negotiations lag behind the timetable for independence, the trusteeship should nevertheless proceed with independence implementing those elements already agreed to.

F. *Freedom of Movement:* Freedom of movement has been one of the most necessary elements required for economic and political development as well as social integration in the Palestinian Territories. The international administration will need to ensure the full freedom of movement of Palestinians throughout the Palestinian Territories as well as the ability of Israeli colonists to travel to and from their settlements until their scheduled evacuation.

G. *Entry and Exit Points:* The international administration will also need to be responsible for all entry and exit points into Jordan, Egypt, and other non-Israeli destinations through the Palestinian airport and port in Gaza, and the land routes to Jordan and Egypt. The international administration will be in charge of the border

regime in cooperation with Palestinian customs, immigration, and security officials. On the borders with Israel along the 1967 line, Israeli security, immigration, and customs officials will cooperate with the international forces and Palestinian agents. The international administration will be in charge of Palestinian airspace and seaways.

H. *East Jerusalem:* A special regime will need to be implemented for East Jerusalem by the international administration that will allow full freedom of movement for Israelis, Palestinians, and tourists into and out of that portion of the city until the arrangements in the permanent status agreement are decided upon and implemented. Israelis would be expected to have the ability to travel in east Jerusalem and into Israel and Palestinians would be expected to have the ability to travel in east Jerusalem and into the Palestinian Territories.

I. *Palestinian Development:* The international administration would be expected to assess the current capacity of Palestinian civilian and security institutions and implement a program for their rapid development so that they will be fully functioning on the date of Palestinian independence. The international administration should develop a clear line of hierarchy and oversight with the Palestinian institutions allowing the Palestinians to exercise maximum decision-making. Palestinian security services should be primarily responsible for ensuring domestic security although they will work in cooperation and under the oversight of the international administration.

J. *Constitution:* The international administration should promote a Palestinian process to create a Palestinian constitution that would go into effect upon Palestinian independence.

K. *Water Resources:* The international administration will join with Palestinian and Israeli officials to administer control over Palestinian water resources until conclusion of a permanent status agreement.

L. *Infrastructure Reconstruction:* The international administration should organize and implement a major infrastructure rebuilding campaign to repair the destruction of Palestinian infrastructure by the Israeli occupation. Costs for reconstruction can be charged to Israel when appropriate and to a fund for Palestinian development for new projects.

M. *Status of Forces Agreement:* Normally, Status of Forces Agreements provide for complete immunity from local prosecution by members of the international forces. However, the creation of a trusteeship is of a significantly more comprehensive level of involvement than peacekeeping operations alone. The nature of the trusteeship would have to be in accordance with the goals of creating a democratic Palestinian state with a transparent judiciary and accountable security officers. It would be expected by Palestinians that modifications to the standard SOFAs would allow for public trials of international forces in the Palestinian Territories, even if by the foreign military court system of the international involved and even if any convictions are served in the home country.

N. *Extradition:* In light of the complicated relation between Israel as an occupying power and Palestinians in the Occupied Territories, it is important that extradition of criminals be suspended until completion of a permanent status agreement and Palestinian independence, in accordance with whatever arrangements Palestine makes with other states. During the period of the international administration, criminals should serve their sentences in prison facilities in the Palestinian Territories administered by Palestinians and the international administration.

O. *Structure:* The international administration should be UN-mandated, but run by one particular nation working in cooperation with and responsible for the participation of other specific nations. It is important that there be a uniform command structure with responsibility for the entire operation.

The choice of lead nation for a Palestine mission will be a political issue. Israel would favour the US, if it was willing, which is so far unlikely. Israel would reject a UN operation. The US, UN, Israel and Palestinians would all possibly accept a **British-led mission**—despite the historical irony of it. Britain, and particularly its armed forces, would be well-acquainted with the political and military nature of such a mission. Despite the choice of lead nation, Palestinians would want the whole effort held accountable to a strategic-level contact group, such as the Quartet (UN, EU, US, Russia) combined with interested states (such as Norway), as well as the UN Security Council.

P. *Palestinian Relations to Administration:* There should be a clear relationship between the international administration and the Palestinian governing institutions to ensure maximum responsibility for Palestinians as their capacity grows.

Q. *Financial Costs:* The financial costs of a trusteeship would be considerable. A clear financial mechanism should be established and located in the Palestinian Territories with clear commitments for funding from international sources. Palestinians cannot be expected to contribute to the fund although Israel may wish to contribute to the costs of safeguarding Israeli citizens in the Territories until they are evacuated according to the pre-arranged schedule.

R. *“Governor”:* There should be one civilian in charge of the international administration. The person chosen should have the confidence of Palestinians and Israelis and should have sufficient international presence to rally support for the success of the mission.