

STATUS OF FORCES: KEY LEGAL ISSUES

This memorandum answers key questions related to the status of foreign forces in Palestinian territory in the context of a permanent status agreement with Israel.

What is meant by “status of forces”?

The presence of foreign forces in a sovereign State is typically regulated by a “status of forces” agreement (“SOFA”) between the State or organization sending the forces and the State receiving the forces. The agreement may address a broad range of issues, from jurisdiction to movement to the settlement of disputes.

In the context of a permanent status agreement, the SOFA should cover the presence, if any, of both Israeli forces and third party forces in Palestinian territory.

What is the current status of Israeli and other foreign forces in Palestinian territory?

Israeli forces: The Interim Agreement gives the PA exceptionally limited jurisdiction over Israelis in Palestinian territory. Israel retains sole criminal jurisdiction over offenses committed by Israelis. (Annex 4, Article 1(2)(2).) The most Palestinians can do is to detain an Israeli suspect in place until Israeli authorities have arrived. (Annex 4, Article 2(2)(c).) Civil actions against Israelis may be brought in Palestinian courts only if they involve real property or a business in Areas A or B – or if the Israeli has given consent to the jurisdiction. (Annex 4: Article 3 (2).)

Other foreign forces: Although no non-Israeli foreign “forces” are currently deployed in Palestine, a “temporary international presence” is charged with promoting stability in Hebron. The presence is governed by the Agreement on Temporary International Presence in the City of Hebron (January 21, 1997), which requires members of the presence to wear uniforms, permits them to carry pistols for self-defense, guarantees their freedom of movement for the performance of their tasks, and provides privileges and immunities “as are necessary for the fulfillment of their tasks.”

How is the status of foreign forces expected to change in the context of a peace agreement with Israel?

The primary difference between the position of visiting forces in a foreign country and the position of occupying forces is the existence of **consent** – i.e., the admittance of visiting forces is dependent on the approval of the receiving State. Accordingly, unlike Israeli forces under current arrangements, the visiting forces would not necessarily be entirely immune from local law; there may be some form of **concurrent jurisdiction**.

What should be the key elements of a status of forces agreement in the Palestinian context?

It should define **the criminal and civil jurisdiction of the foreign forces and of the territorial sovereign**. Jurisdictional arrangements may be structured in several different ways:

- Under the NATO SOFA, the sending state has primary right of jurisdiction over offenses committed by its personnel on duty or offenses against only the persons or property of the sending state; and the receiving state has the primary right of jurisdiction in all other cases – though certain guarantees for a fair trial are provided.
- Under the UN SOFA, the sending State is given exclusive jurisdiction both in criminal cases and in civil cases arising out of the on-duty activities of the force.

It should make clear the **obligations of the foreign forces while on Palestinian soil**, such as:

- the obligation to respect the law of the receiving state
- the obligation to wear uniform while on duty

It should define **any special rights given to the foreign forces and accompanying civilians**, such as:

- exemption from the receiving state's immigration regulations (showing passports, obtaining visas, etc.)
- the right to possess and carry arms, if so authorized by their orders
- exemption from taxation by the receiving state
- the right to import supplies and the personal possessions of foreign force personnel duty-free

It should **regulate the use by foreign forces of roads, railways, rivers, canals, bridges, tunnels, ports, and airports**.

It should establish a clear **dispute resolution mechanism**.

- The NATO SOFA provides that disputes should be settled by negotiation or, if negotiation fails, referred to the North Atlantic Council.
- UN SOFA agreements provide a number of different dispute settlement mechanisms.
 - Disputes between citizens of the receiving State and members of the force may be resolved by a claims commission.
 - Disputes between the receiving State and the UN are resolved in accordance with Section 30 of the Convention on the Privileges and Immunities of the United Nations.
 - Other disputes may be referred to arbitration – the arbitrators to be selected by the receiving State and the UN Secretary General. (If an umpire fails to be selected, one is chosen by the President of the International Court of Justice.)

Should the status of forces issues be addressed in the permanent status agreement with Israel?

Israeli forces: To the extent that the agreement permits some continuing Israeli military presence – other than as part of an international force – it should at minimum define new jurisdictional arrangements to govern the force’s presence in Palestine – i.e., precisely which types of claims or offenses will fall under Palestinian jurisdiction and which will fall under the jurisdiction of the Israeli force. Defining the new jurisdictional arrangements is especially important because, as noted above, current arrangements under the Interim Agreement radically limit the PA’s jurisdiction over Israelis.

Other foreign forces: As for other foreign forces, it will depend on whether the forces are sent as part of a general peacekeeping operation under the auspices of the United Nations or are sent independently by individual States. UN forces will be deployed only if UN model SOFA is accepted, although modifications may be adopted if necessary.

Sources:

- Convention on the Rights and Obligations of Foreign Forces and their Members in the Federal Republic of Germany, Bonn, 26 May 1952.
- Status of Forces of parties to the North Atlantic Treaty 1951, TS No. 3 (1955); UNTS, 199, p. 67.
- Supplementary Agreement on the Status of Foreign Forces in the Federal Republic of Germany 1959: TS No. 73 (1963); UNTS, 481, p. 262.
- General Convention on the Privileges and Immunities of the United Nations, 1946, UK Treaty Series No. 10 (1950).
- Technical Arrangements between the Government of Croatia and NATO, 1 March 1996.
- Regulations governing UN forces

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