MEMORANDUM

To: Prime Minister's Office

From: NSU

Re: Comments on EU Memorandum of Understanding ("MOU") on the Establishment of the European Co-ordinating Office for Palestinian Police Support ("COPPS")

Date: April 7, 2005

Introduction

This memorandum comments on a number of legal and policy concerns raised by the EU COPPS proposal, which was presented in the form of a draft MOU.

According to an EC Secretariat Fact Sheet dated February 25, 2005,[1] COPPS provides both expertise and logistical support and consists of four EU Police experts deployed since the start of 2005. Complementing them is a local team of administrative staff.[2] By February 25, COPPS had provided the PA with 54 equipped vehicles and communications equipments.[3]

The MOU proposes a twin track approach to the role of COPPS in two plans, distinguishing between transformational and operational plans. The former deals with medium- to long-term organisational restructuring and capacity building, whereas the latter relates to short-term improvements in capacity and performance. For purposes of discussion and comment, the proposed undertakings (hereinafter "EUU" for EU undertakings, and "PAU for PA undertakings) centre around four main issues requiring bilateral agreement:

1. Communication
2. Development of Plans
3. Funding / Donor Co-ordination
4. Practical and Technical Matters

1. Communication

The EU requests that the PA appoint empowered interlocutors, one at the strategic level (Ministry of Interior and National Security) and one at the Ministry of Finance. These should

[1] Available online at http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/declarations/83884.pdf, (pp.5-7)
[2] While the Fact Sheet states that the unit is based in East Jerusalem and Ramallah, with a satellite office in Gaza, the proposed MOU states that the four experts are based in the Ministry of Interior building in Ramallah.
[3] With respect to future plans the Fact Sheet states: "Public order equipments and other police vehicles (including specialist vehicles and personal protective equipment) will be provided soon for a total amount of €10M, in addition to a Police small projects scheme. An audit of the communications infrastructure in Gaza and the West Bank will also be carried out by the end of April. EU COPPS is also co-ordinating the refurbishment of Jericho Police Training Centre."

hold regular meetings with COPPS. The EU agrees to act transparently, to update the PA regularly, and to respond to requests for information in a timely manner.[4]

Comments:

a. It should be explicitly stated that this MOU does not create a new office of interlocutor, and that the PA interlocutor is so designated merely for purposes of implementing the COPPS project. Hence, the powers of the interlocutor are exercised *ex officio*, and not by virtue of his position as interlocutor.

- Add to PAU(a): "The position of interlocutor shall not constitute a public office. The interlocutor shall exercise his powers *ex officio*, in his capacity as PA minister."

b. EUU(d) states that the PA will be "regularly informed" of all "Small Projects Scheme" operations. For purposes of clarity, it is preferable to avoid the passive voice.

- Substitute: "The EU COPPS agrees to regularly and fully inform the PA, through both PA interlocutors (Ministry of Finance, Interior Ministry) of all such projects."

c. It is important to indicate that the Ministry of Finance interlocutor's management of financial matters related to COPPS ought to follow the requirements of the Ministry of Interior and National Security.

- Add to PAU(b): "Appoint a single interlocutor at the Ministry of Finance to manage financial transactions with EU COPPS **in co-ordination with the requirements of the interlocutor for the Ministry of Interior appointed in PA undertaking (a)**."

2. Development of Plans

The EU demands mutual agreement on the nomination of a group of Palestinian professionals to work for five days in April on the development of a transformational plan. There should be agreement on transformational and operational plans by the end of May.[5]

Comments:

a. The five day meeting limit in PAU(c) is a result of the scheduling of a five day workshop in Jericho for plan development. It might be prudent to draft this undertaking with greater flexibility, allowing for one follow-up meeting if needed to complete the plan, as it makes no sense to leave the work unfinished on purely formalistic grounds.

- Add: "If needed, the group may choose to conduct similar meetings at any time thereafter to complete its work."

b. The "end of May" deadline in PAU(d) refers to both transformational and operational plans. While in the case of the former the May deadline makes sense (in that it follows the

[4] EUU: (a),(b),(d),(e),(f) ; PAU: (a),(b),(g)
[5] EUU(c); PAU(c),(d)

meeting in April) it is unclear how, or whether, the same deadline applies to the operational plan. The undertakings require more careful drafting.

c. The reference in PAU (c) to agreeing "in the future" to appropriate arrangements respecting engagement with civil society actors needs clarification, and perhaps limitation. It is in the interests of the PA not to risk placing itself under future pressure to accept the intervention of other actors in the conduct of its security policies.

- Add as EUU: "Ensure that no third party participates in any way in COPPS without prior and explicit approval of the PA."

3. Funding and Donors

The EU agrees to channel funds into the MoF unified treasury account (excluding "Small Projects Scheme" funding). The PA should designate COPPS as co-ordinator for EU Member State donors; it should encourage international donors to consult COPPS prior to initiatives. The PA should inform COPPS of all offers[6] of assistance to the civil police. Where appropriate, it should co-chair with COPPS donor co-ordination meetings.[7]

Comments:

a. PAU(d): The plans do not, and should not, constitute the **entire** framework for donor support and civil police development, since future developments may alter security requirements. Some flexibility is needed.

- Change PAU(d) to: "Agree … as **informing** the framework for donor support …"

b. PAU(e): It makes sense for the EU to ask the PA to designate COPPS as co-ordinator for EU Member State activities. With respect to 'international donors' the term 'encourage' is applied. This choice of language has both advantages and disadvantages. On the one hand, it appears to give the PA leeway since there is no standard by which to measure or ascertain encouragement. On the other hand, ambiguity could lead to future problems, particularly since other undertakings give COPPS significant co-ordination functions. It should also be noted that Paragraph 2 of the "General" Section describes the COPPS' function as an "implementing agent on behalf of donors." It is important to important to emphasise that COPPS may not engage with the international community on its own with respect to potential projects.

- Substitute: "implementing co-ordinator" for "implementing agent."

The term 'consult' is difficult to measure as well. Overall, the language in PAU(e) seems to be intentionally ambiguous. If that is the case, the PA should be aware that given sections (e) and (f) it is potentially possible for it to be in breach of the MOU in case it decides to initiate a new project with an international donor without involving COPPS in the process.

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[6] The use of the term "bilateral offers" in PAU(f) is improper. An offer is bilateral if made by two parties.
[7] EUU(d); PAU(d),(e),(f),(h)

In short, the requirement to inform, coupled with the requirement to encourage consultation, places the COPPS in a imposing position vis-à-vis the PA. In order to remedy that, the following EUU should be requested:

- Add: "Ensure that, other than EU Member States, no international donor state or other third party participates in any way in the activities of COPPS without prior and explicit approval of the PA."

In order to further insure that the PA is not restricted in its interactions with other security bodies, the following should be added as a PAU:

- Add: "Discuss developments with other security bodies to ensure effective co-ordination, especially with respect to the transformational plan as this may affect the overall development of the security sector."

c. PAU(f): The PA should not be required to inform the COPPS of every offer. This undertaking should be taken out of the MOU.

4. Technical arrangements: Offices; staff access and security arrangements; use of donated equipment; car parking.[8]

Comments: The PA should insure that these arrangements are both feasible and acceptable given available resources and services.

[8] PAU (i),(j),(k)