Terms of International Governing Arrangements

The minimal level of intervention required by a third party in the Israeli-Palestinian crisis may involve the international exercise of some degree of authority in transition. The possible range of third party intervention may include minimal monitoring activities, traditional tasks of observation and peacekeeping, robust policing and ultimately high-intensity military intervention. However, in the complex type of emergency that has unfolded in the West Bank and Gaza Strip, a number of sectors will have to be addressed, multiple dimensions of a mission may be mandated and the activities of a number of international actors will need to be harmonized. In the recent practice of peace operations, this has usually led to a centralization of political leadership, whereby the ‘transitional administrator’ is the most hierarchical and absolutist form with total powers vested in the control of a single individual.

The more the Palestinian infrastructure is regarded as intact, the smaller the international involvement will be perceived as necessary. However, in any debate about third party intervention, the Palestinian side needs to be clear about the implications of the terms being used. This memorandum will therefore shed light on the entire range of terms of international governing arrangements with an emphasis on origin and nature of control.

1. Mandate

Origin: Colonial or overseas territories belonging to the defeated powers in World War I were submitted to the Mandates System of the League of Nations. These territories were distributed amongst the victorious powers to be administered as “mandates” until such time the peoples of those territories were “ready” for and capable of independence. Therefore, with the defeat of the Ottoman Empire, Palestine was submitted to the overall Mandates System but administered directly by Great Britain.

Nature of Control: As a general rule, the administering nation exercised full executive, legislative and judicial powers over the territory. In so doing, the administering nation tended to approach the exercise of these powers in the manner that it did so in its own colonies, although more restrictively because of the oversight of the League. Also, the administering nation could not assume sovereignty over the territory on a permanent basis (as South Africa attempted in South West Africa/Namibia). The practice with regards to resources in the territory varied from one place to another. It is not possible to consider the West Bank and Gaza Strip becoming a Mandate because the Mandates System no longer exists.

2. Trusteeship

Origin: With the establishment of the United Nations, the Trusteeship System replaced the Mandates System. Strictly speaking, a “trusteeship” refers to a territory submitted to
the Trusteeship System under Chapter XII of the UN Charter. A “Trust Territory” is one that is administered by a colonial or major or medium-sized power authorized to do so.

Nature of Control: As in a Mandate, the administering nation exercised full executive, legislative and judicial powers over the Trust Territory. Because of the UN’s oversight, these powers were exercised more restrictively than in colonial possessions, but still according to the model of colonial administration. For the most part, the recent debates about “trusteeship” suggest an arrangement that resembles the UN Trusteeship System, but do not necessarily recommend resuscitating the Trusteeship Council and the machinery of the Trusteeship System. “Trusteeship” is usually shorthand for the “transitional administration” of a territory by the international community. It is highly unlikely that the West Bank and Gaza Strip will be submitted to a trusteeship arrangement according to the actual legal definition of one. Palestine is not a Member State of the UN – to which would apply the sovereign equality of states – and is therefore technically eligible as a Trust Territory (Article 78). Under Article 77(c) of the Charter, a territory may be voluntarily placed under the system by states responsible for their administration. In principle, the Security Council could designate an administering authority, or it could assume this responsibility itself through a multinational “transitional administration”, but it would do so outside the Trusteeship System that is not functioning.

3. Custodianship

Origin: Custodianship is not a legal ‘term-of-art’ like Mandate or Trusteeship, though it would have similar implications in this context. There is no formal international Custodianship mechanism as such, so the term has no particular history or fixed definition. It is being offered as a plain word to cover some of the same ideas as “Trusteeship” without the implications of the UN Trusteeship System, but it does not yet have a distinguishing context.

Nature of Control: The word Custodianship simply implies responsibility over something in trust for someone else. Custodianship has been applied to the Holy Sites in Jerusalem. The World Bank has used it to refer to indigenous rights over traditional lands. It has been used as shorthand for territorial arrangements that do not provide for the Custodian’s assumption of sovereignty. Custodianship over the West Bank and Gaza Strip would certainly imply the assumption of responsibility by the UN or a state or group of states over the area. This could and probably would include the international exercise of executive, legislative and judicial powers in the area. It would also certainly imply, at least, the responsibility of the Custodian over the exercise of those powers, in the role of a supervisor.

4. Supervision

Origin: Like Custodianship, Supervision was not really a legal ‘term-of-art’. However, there is now a concrete context in which to consider it in light of the case of Brcko. The Brcko Corridor (a municipality) was an unresolved question under the Dayton Accords of 1995. The dispute between Republika Srpska and the Federation of Bosnia and
Herzegovina was submitted to an Arbitral Tribunal. Instead of awarding the area to one side or the other, the decision was made to submit the area to international Supervision.

**Nature of Control:** The Supervisor had to implement the Dayton Accords and strengthen democratic institutions. The **Supervisor had full executive, legislative and judicial authority in the area.** The most difficult area of the Dayton process proved to be managed the most effectively, not least because of the unique commitment of the Supervisor. In Brcko, it was established pursuant both to an agreement and a judicial finding. A ‘Supervision’ arrangement could be **established pursuant to an agreement and/or a Security Council resolution passed under Chapter VII of the Charter.**

**5. Protectorate**

**Origin:** A Protectorate is a legal term that describes the relation between two states, one of which exercises control – great or small, direct or indirect – over the other. The term “Protectorate” has been used in the last decade as shorthand, like the word “Trusteeship” for “transitional administration” by the international community because of their similarities.

**Nature of Control:** When the practice was most common, no attempt was made to wholly annex land or to establish a colony. Powers were either directly exercised by the protecting state or the local powers were restricted in some way. The aim was to extend political or strategic influence, rather than administrative frontiers. A Protectorate, though, was often a forerunner of complete incorporation. Nevertheless, the negative implication of the term “Protectorate” – similar to the term “colony” – is enough to reject “Protectorate”.

**6. Military Government**

**Origin:** The practice of Military Government was standardized before World War I and formed as a part of the laws of war. During World War II, Germany administered occupied countries through their Military Government Headquarters in a hierarchy with duplicate civilian-economic agencies and Gestapo personnel. In France, Norway, Greece and Serbia, local ‘puppet’ governments were authorized to operate under German control. Belgium and NE France were under purely Military Government; and Eastern Europe was governed by the Ministry for Eastern Occupied Territories. As Axis Powers were driven from their areas of occupation, Allied Military Government began to function in Sicily and in Italy in 1943. It sought to utilize local civilian authorities to the widest possible extent. After the cessation of military operations, Germany and Austria were divided into occupied zones under Military Government. In Japan, Military Government was solely a US responsibility. In 1949, the practice of military occupation was recodified in the 1949 Geneva Conventions.

**Nature of Control:** Military Governments are established to rule enemy territory under military occupation. **Military officers exercise full executive, legislative and judicial powers.** The **US Army** establishment of civil control by military forces, until local civil
authorities could be reestablished, was codified from its own previous practice. For
instance, with the beginning of US control of Puerto Rico, a Military Governor was
appointed in charge of the Army of Occupation and administrator of civil affairs
with the power to issue orders with the force of law. The doctrine was
comprehensively articulated in the 1940 Field Manual on Military Government.

The West Bank and Gaza Strip is currently under the military occupation of Israeli
forces, which has had its own brand of “military government”. The US intends to
establish Military Government in Iraq in the wake of hostilities. However, it is not
very clear how the US Military Government in Iraq will make the transition to either an
international civilian authority or an Iraqi one. Furthermore, weak (and untested)
American plans and the lack of much practice in this area cannot indicate how well or
badly this may be done, though Afghanistan is clearly not a success. Any debate
regarding the establishment of “Military Government” is not recommended.

7. Post-Cold War “Peace-Maintenance”

Origin: Since the end of the 1991 Gulf War, the UN Security Council has authorized the
intervention of peace operations in situations deemed a threat to international peace and
security under Chapter VII of the UN Charter, even if a peace agreement between the
warring parties had been concluded. Throughout this period, increasing degrees of
political authority have been assumed in transition to address the sources of conflict and
to unify the efforts of multiple international actors on the ground, ultimately leading to
full transitional administrations. These experiences constitute the foundations of current
practice in an era that is distinct from the age of a “trusteeship” as conceived in the
Charter.

Nature of Control: Despite the constant evolution and change in form – particularly
from a single colonial power administering a territory on behalf of the UN to the
direct administration of territory multi-nationally by the UN – the nature of the
external exercise of domestic powers appear to be similar.

The general debate about third party intervention in the Israeli-Palestinian crisis should
be more rooted in the current practice and in recent experiments and experiences than in
shorthand use of terms that are sometimes used out of context, thereby creating much
confusion and many misconceptions. The Palestinian debate needs to consider what
level and degree of international authority is acceptable before a formal position is
adopted. In so doing, the Palestinian side should be fully aware and informed of the
likely range of options that the international community may ultimately consider.

In the universe of options for transitional arrangements, four degrees of intervention
can be discerned from past practice. These categories are not discrete, and the ultimate
working structure of a mission will likely comprise aspects of several of them. The types
of missions that aim to reestablish political authority in the aftermath of conflict can
range from a) assistance to or b) partnership with weak domestic authorities, to c)
selective control of functions in a factional environment and ultimately to d)
governorship or the transitional administration of territory. As the local structure weakens or disappears altogether, the nature of the international intervention that is required – and called upon – to reestablish political authority will increase in intensity and strength. Below is a description of the four degrees of intervention.

**Assistance:** This category entails a limited degree of intrusion by international actors, either as part of a single mission or as separate efforts and missions. Humanitarian and reconstruction assistance are provided by the international relief and development agencies, mostly in cooperation with local NGOs and local and national governmental agencies. An international political mission will maintain (or attempt to maintain) intensive negotiations in order to create or maintain a fragile ruling coalition and advises on strengthening weak governing structures. The presence of military forces, if any, would likely only be in an observer capacity, with very limited functions. This had been the nature of the international engagement in Afghanistan since 1992. This option implies the least external interference in its own exercise of powers. However, it might also reflect a minimalist commitment on the part of the international community that falls short of the kinds of tasks Palestinians would like a mission to accomplish.

**Partnership:** This kind of mission requires a greater degree of involvement in holding together the political authority. International forces, if they are present, provide security in the capital, and perhaps several other major population centers. The international political mission is drawn deeper into negotiations to strengthen Palestinian institutions, at times providing some coherence itself for that structure, ultimately becoming more of a partner than an advisor. International officers make some decisions regarding the development of governing institutions, and humanitarian agencies fulfill many of the country’s social service and economic functions in cooperation with local actors. The UN mission in Namibia was an example of partnership. This option is more intrusive, but it still preserves the effective equality of local structures. The mission may still be configured strongly enough to accomplish many of the tasks desired.

**Control:** This form of intervention places an international mission in the position of fulfilling numerous government functions. Military and policing forces will provide security where and when needed and will attempt to create comparable domestic authorities. In this scenario, a government does not exist as such. Instead, there could be a number of competing factions on the verge of open conflict, with occasional incidents of violence of varying intensity. The international political mission – while still trying to negotiate some kind of agreement and harmonize the international actors – is comparatively more coherent than any other actor in the environment. Expectations are being placed on the international mission to assume some responsibilities for basic services. Failure to do so will foster resentment from the local population. The UN mission in Cambodia exercised these powers of control. This option entails considerably intrusive acts in the exercise of powers, in which international officials have a veto power over actions and decisions. The mission will need to be a strong one in order to accomplish the tasks with which it is mandated, otherwise it will fail. If there is to be any sense of reciprocity then the mission may be in a good position to make a difference on the ground.
**Governorship:** A governorship mission is deployed to a territory where no semblance of a government exists. Factions are dissolving and reconstituting themselves in new forms on a regular basis. The international community is faced with a difficult dilemma: it will either **abandon** the country with only minimal involvement around the edges or **assume full** executive, legislative and judicial responsibilities in the transitional administration of the territory, which may elicit a violent reaction to a new kind of **occupier**. The transitional administrations in Kosovo and East Timor are examples of governorship. In this option, **international officials have full executive, legislative and judicial powers**. Such arrangements have suffered significantly from a lack of popular participation in them. Significant reforms are needed to make these arrangements acceptable, including separation of powers and submission of international officials to the rule of law.