

Draft  
MINUTES  
Land Working Group, Session 1, Round 10  
17 June 1993

Present on the Palestinian side: Dr. Suad Amiry (SA), Dr. Camille Mansour (CM), Dr. Rashid Khalidi (RK), Ali Safarini.  
Minute-taker: Penny Johnson

Present on the Israeli side: Rothschild, Zabel, Ben Ari, Mahjous, Rosenthal, Seguy.

(The meeting began at 12:40PM).

Rothschild: Well, Dr. Amiry. I would like to start by presenting some new people today. This is Professor Rosenthal, a water expert and participated in all the water deliberations with the Jordanians. I don't see your water expert. Mr. Rav Seguy represents what we said last time, that water issues involve nature and ecology, he is the head of our nature preserves. I think you know the other.

SA: Let me do the same thing. We have two advisors to the delegation, Professor Rashid Khalidi, a professor of Middle East history and the head of the Middle East Center in Chicago, who has also taught in Columbia and Georgetown universities. And we have Mr. Ali Safarini, who many of you probably know. He's a prominent lawyer and an advisor for the Palestinian delegation.

Rothschild: Ladies first.

SA: By Monday or early next week Dr. Haidar will be back with us on this committee. Maybe it would be better, since we have a little bit of time, to talk about the ninth round and review a little where we left, and perhaps the best way of doing it is to say that since we have agreed last time that this committee is a very important committee and any progress that is made in this committee would reflect itself positively on the total peace process, I think it's important for both of us not to lose time. In the ninth round, it was very unfortunate that time passed by without us knowing exactly what your position was on the land issue. There have been two approaches we talked about. I would like to reaffirm our position concerning land, which talks about what we feel the PISGA should have an authority or a jurisdiction over all the land that was occupied in 1967. I think that last time there were positive things in your presentation, and mainly I'm talking here about two concepts that you talked about, one which is the single territorial unit, which we thought had something positive and the other concept of preserving the integrity of the territories during the interim period. However, in spite of these two positive concepts that were introduced last time, we realized we have major difficulties with what came afterwards. I

mean by this the concept of dividing or sharing control over land. We expressed our disagreement with this concept. We said it contradicted these two concepts you yourself introduced. If we have enough time we can come back to explaining our position when we totally refuse the idea of sharing or dividing the land. I would like to hear if you have new positions or what you think we should be doing in this committee.

Rothschild: In the time left, there is not much we can do in the way of a thorough discussion. Having said that, yet there is very much importance in the subcommittee on land and water, because it's a very complicated issue, we agree it's one of the most complicated issues. Because of the complexity I said and I will reiterate that it forces us to deal with many details. There are no miracles with land. Yes, we spoke about the single territorial unit, we meant by it, as we said last time, that we deal with Gaza and the West Bank as the same thing. I'm sure that the interim self-government will deal with the same unit. And when dealing with integrity, we said that during the period of interim self-government arrangements, there is no division of land, the division is in functions. And yes, we do not agree on land jurisdiction, I would like to remind you we're speaking of interim arrangements. In interim arrangements we want to see land handling the same as you see the handling of all the other powers and responsibilities which are going to be transferred to the Palestinian Council, which will be elected. We are speaking about functions, land includes various functions. I suggest next week we define these functions and agree, not just define because there is disagreement on the functions themselves. What we are dealing with is how to see to it that functions involving land will be handled in the interim arrangements in a proper way not to preempt or prejudice the final status. On territoriality, sovereignty, it's an issue which we have to deal with in our discussion of the final status. Especially on land issues, but not only on land issues, let's not put the wagon before the horse. Nothing must be done in the interim period to preempt or prejudice the final status. We have to check every solution we speak about in the negotiations on the interim that it's not prejudging the final status. That's the test every decision will have to make. We have to take upon ourselves a commitment, yours and ours. Unless my colleagues want to add anything, that was going back to the positions we presented to you in the ninth round.

CM: I'd like to ask for a clarification, you spoke now, Mr. Rothschild, about territorial integrity. Whatever your view is of integrity, I, if I'm not mistaken, your document which you gave as a non-paper on May 6, doesn't refer anywhere to territorial integrity. Is there any meaning from that?

Rothschild: I don't understand the question. The meaning is what I said now. I don't know what paper.

CM: Your non-paper...

RK: Your informal draft...

Rothschild: There are issues that were not in that paper so I can count ten or twelve issues that were not in that paper. I suggest we work with what we said the last time, don't try to look for hidden agendas....

CM: No, no.

Rothschild: That statement of principles we proposed on May 6 was a trial to put on the table things we thought at that time were acceptable. Deliberately, there were some issues that were taken out.

CM: You thought we wouldn't agree to the territorial integrity of the territories?

Rothschild: No, but since land issues as a whole were in conflict and debate, we didn't find it useful to put them in. I can tell you other issues that were not in that paper. I suggest we don't look at that paper as something which puts everything, it's a declaration of principles.

RK: If I could just respond to one thing General Rothschild said. You mentioned that territoriality and sovereignty issues have to be dealt with in final status. And I, perhaps mistakenly, got the impression from you that you are in effect conflating between these two things. I of course agree that sovereignty can only be dealt with in final status, it has nothing to do with our deliberations for the interim accord. We have different positions and those have to be left till a later stage. But the idea of territoriality, or the idea of some territorial or geographic scope of jurisdiction does not necessarily have anything to do with sovereignty and doesn't necessarily have to be left to the final status.

Rothschild: I didn't say...

RK: So then I can take it that when you said territoriality has to be left to the final status, you only mean certain kinds of territoriality.

Rothschild: Territorial jurisdiction should be left to the final status, now we are dealing with functional jurisdiction. That's what I said last time, you weren't here.

SA: I would like to say something on this. Last time we did talk about jurisdiction and I think jurisdiction is not a characteristic of sovereignty. We feel strongly about this. We have said in the past that the civil administration and the military government has a jurisdiction in parts of the occupied territo-

ries and when you had that kind of jurisdiction, you certainly didn't have sovereignty. Why is it when you transfer all the powers and responsibilities related to issues of land, and when we have jurisdiction in the interim period, that is becomes an issue of sovereignty?

Rothschild: Let me say, on the contrary, what I'm saying...

SA: So why is the decision postponed? On what basis?

Rothschild: On the basis that even the civil administration and military government today is executing functional jurisdiction. Those functions are what we are leaving and we are dealing with functional jurisdiction. The question of territorial jurisdiction is not a question to be dealt with now. We are taking the functions of the military government and the civil administration and that's my suggestion of what to deal with, to define them, to put them on the table, to agree on them, agree on the way it is done and should be done in the future in the interim period, and decide upon them. The suggestion is to take the functions that include definitions of land, the divisions of land because the land is not one, with one characteristic, there are various characteristics, we must compare vis a vis the function to see which function shared or transferred. We agree there is a difference in handling private land and state land, different types of state land. Those are things that we should put on the table and define them, this is not easy, there is state lands of various types, you don't accept the definition, and then to negotiate on the various functions and how to handle them in the interim period, bearing in mind it is an interim period and not the final status.

SA: Even in the interim period, here we are talking about the scope of these functions. It cannot be that each function we are talking about, whether it's land, or education or health, if you have an authority, a Palestinian authority, should have an area, a scope, over which it exercises its authority. And here our position is that jurisdiction - you cannot have an authority without jurisdiction - and I don't see how we can address all issues of land without addressing the scope or the territorial jurisdiction that the Palestinian authority will have.

Rothschild: We are addressing functional jurisdiction. We are addressing it, we are not escaping jurisdiction. Jurisdiction as a whole will be dealt with in the concept issue. As far as land is concerned we are dealing with a function within the jurisdiction that will be agreed upon in the concept. What we hope to do here is to deal with the functions which in the end will be combined with the jurisdiction we agree upon in the concept.

CM: Let's put it in another way. If you are speaking about functions and we feel that functions concerning land and water have to be conserved, we don't see why some functions would have

to be divided or shared? What is the point in dividing and sharing? We are speaking about Palestinian self-government to whom functions concerning land would have to be transferred. How come you are introducing the idea of dividing and sharing?

Rothschild: That's exactly the answer, it lies in the agreement we have already not to preempt the final status, because easily one can by having all the authority on all the functions, pre-judge and preempt the final status. If the vision is that everything that should be done in those five years of interim government should not prejudice and preempt the final status by either side, then the vision of sharing means to see to it that none of the sides will preempt by using wrongly, deliberately or by mistake, their functions which are given to them, to preempt the final status. That's the logic.

CM: You're saying that the integrity of the territory will be preserved for the final status. You think that by dividing functions it would be easier to respect the integrity for the final status than by transferring all the functions? If you transfer all the functions, we are sure that the integrity will be preserved.

Rothschild: You are sure, we are not sure.

CM: If you are dividing functions, you are preempting; honestly, the integrity of the territories and the final status:

Rothschild: On the contrary. The logical consequence is that if powers, responsibilities and functions are shared, none of the sides will take upon themselves to preempt the final status. If functions are not shared, but transferred, than one side can - theoretically, if all the functions are transferred to you or left to us - that side that gets all the powers and responsibilities, can, by mistake or deliberately, prejudice or preempt the final status. If functions are shared, then none of the sides within the five years can preempt the final status.

RK: That also preempts or prejudices. The sharing, especially of authority over land, creates a precedent and it does prejudice.

Rothschild: How?

RK: It establishes, with our consent for the first time, a sharing, therefore a partial Israeli control, over land.

Rothschild: It doesn't say that we will not have in final status demands and requests from you and you will have to have demands and requests from us concerning land. The vision that you are trying to describe means that the situation that will exist within the ground during those five years will remain afterwards. No, that's not the situation. The situation is that we are going into a new set of discussions in which everything we agreed on

before is on the table in order to create the final status. I don't see how sharing prejudices. On the contrary, if one transfers all the authority to the other side, I'm speaking theoretically, it's much more difficult.

RK: It's not in a vacuum and some of the authorities which are transferred, for example those that create self-government, will represent something that we will not go back on and you will not go back on. We're not going back from interim self-government to occupation, or functions that have been devolved or transferred to return. It's obvious. In some respects, we are creating conditions that are prejudicial or determine the outcome by agreement. When you agree to hand over some authority, you understand that this is something you are not planning in the final status to take back.

Rothschild: That's exactly why we believe that some of the functions and responsibilities which in nature will not prejudice the final status will be completely transferred. Others, with by nature can prejudice or preempt the final status, will be shared to see to it that no side will not preempt the final status.

RK: Obviously the difference is that we see the number of areas where it is legitimate to leave such issues for final status has a certain circumscribed nature. There are obviously things where we agree with you, we don't want to prejudice. Other things in our understanding of self-government or autonomy or any of the terms that are used, would naturally be....

Rothschild: You're using the term autonomy?

RK: Even if we use your term, which we of course refuse.

Ben Ari: In your way of thinking, in what way does the transfer of all powers over land is not prejudicial to the final status?

RK: Some of them are a natural part of self-government. They have to be transferred.

Ben Ari: There is no written, universal model of self-government.

RK: True. The model reasonable people would agree upon.

Ben Ari: Our model is more functional. Of course we would like to come to better terms with you, but please could you answer my question, in what way does it not prejudice the final status?

RK: Very simply you have an authority which by agreement is going to be created. In our view there can be no such thing without some geographical scope. That's all. It's inconceivable. We will never be able to explain it. We don't think it exists. We believe it's not logical. There is a fundamental difference.

You seem to feel that functions can be transferred without any delineation on the ground of where those functions are. We feel that's impossible, illogical unworkable. It's not a matter of final status. We think if we have some scope, geographic, territorial, it does not prejudice, we're not drawing frontiers if that's what you're worried about, that's for final status. The extent of our authority has to have to have some geographical dimension. People won't understand it for one thing. I don't know if you tried to explain it to Israeli public opinion, but Palestinian public opinion will never understand.

Ben Ari: First of all it has, but we're not calling for the unique, you're not going to administer it solely, we're calling for some sort of power-sharing in this respect.

Rothschild: But I think that the geographic dimension that you are searching for has been explained by us very clearly. We once said that we are dealing with powers and responsibilities in the hands of the civil administration and the military government, those are the powers we are dealing with. That defines exactly the geographic area of which we are speaking.

RK: Maybe that should be spelled out.

Rothschild: That was said very clearly. Once logically we are dealing with all the functions, or a majority of the functions of the civil administration and the military government that by nature draws a geographical area. That's what you were saying. Within that geographic area, there are functions that concerns all the sphere of life, not only land. Those functions are to be either transferred or shared. The logic behind it is that we are able and willing to transfer functions which we believe, very sincerely, are not going to prejudice the final status. We think that those functions which by transferring them would by the nature have the possibility by mishandling, for various reasons, for the sake of being nice and polite by mistake, can preempt the final status, those are going to be shared. The logic is to see that both sides will not be tempted to put things around which by their nature can preempt the final status.

SA: I want to address this subject of pre-emptive measures. I think these are not in a vacuum. Here we have entered a process and this process has terms of reference and these terms of reference are very clear, they have to do with 242 and 338. When you talk about preemptive measures, there is a stick where we measure whether things are preemptive or not. I think it's very obvious that anything that contradicts the implementation of 242 and 338 at the end of the final status are the ones to be measured. I don't see how, when you say preemptive measures from both sides, only those that contradict the implementation of 242 are to be addressed. Let me ask you a very clear question: do you think the building or expansion of Palestinian towns and villages are preemptive measures in the interim period?

Rothschild: Dr. Suad. If you want to drag and define where we vary on 242 and 338, we can open it again, territories or the territories, especially when dealing with land. Because if you want to measure how it fits 242, the answer will be 242 deals with territories, not the territories, which provides you with an answer which will not be satisfactory as far as you're concerned. What we're suggesting, let's not try to measure, let's leave the final status option open. I know you want to do everything within those five years which will see to it that the final status has one solution. I have nothing against your point of view being put on the table, you have to respect my view that there are other solutions which we are not ready at the moment to discuss. We are not escaping, we'll discuss it in the final status. What we should both do is not to measure every step, but to see that both sides are not going to do unilateral acts on the ground within those five years that will preempt or prejudice options of a solution of the final status.

SA: Based on what? How do we decide what is preemptive or not? Is it a subjective judgment?

Rothschild: It's not a subjective, it's objective.

SA: Based on what? This is my question. If you're saying it's not based on the terms of reference then what?

Rothschild: I didn't say it was not based on the terms of reference. What I'm saying is, don't try to go back to where we were before on how to understand 242 and 338...

SA: I'm not interested in a discussion. You just said a minute ago that we have to judge in every decision, we have to see whether it preempts or prejudices. My question to you is based on what?

Rothschild: Based on the fact that on the ground in those five years nothing which will be done by both sides will close options to the final status. That's what I'm saying. I said more than that: I said we are ready to take upon ourselves things we ask you to take upon yourselves. It's very clear that there are some functions in the sense of prejudging or not the final status, can be transferred but others that should be shared in order see that nothing which will be done will prejudice the final status. And I said more than that, as far as Israelis and Israeli settlements in the territories are concerned, in the interim period the responsibilities will not be transferred or shared.

SA: So the sharing is on our side?

Rothschild: The sharing....

SA: The dividing is on our side.

Rothschild: But the majority, percentage wise the majority.

CM: To build on what Dr. Amiry said, obviously we have different interpretations on what preempts and prejudices the final status. That's obvious now. As Dr. Amiry says, one has to breach the gap on interpretation for you and ourselves to agree what prejudices the final status. The only way to do it is to go back to what is common to you and us, which is the terms of reference, the establishment of self-government and that 242 governs the process. If we disagree on something, the only arbiter is the terms of reference. This explains our position on sharing and dividing.

(The meeting adjourned)