

The Future of Israel's Agreements with its Neighbors

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Introduction

The civil uprising in the Arab world, which has already caused deep political change and has the potential of transforming the region, has shaken many of the long held conventions that prevailed in the Middle East and North Africa. Among the key questions emerging are the impact on Arab-Israeli relations and the effect on existing formal agreements between Israel and its neighbors. These agreements, which have been upheld for years, have helped maintain a sense of relative stability and prevent the recurrence of major hostilities such as the 1948, 1967, and 1973 wars.

At present, four agreements between Israel and its neighbors are in place:

- a. The Separation of Forces Between Israel and Syria (1974)
- b. The Treaty of Peace between Israel and Egypt (1979)
- c. The Declaration of Principles on Interim Self-Government Arrangements (1993) with the Palestinians
- d. The Treaty of Peace with the Hashemite Kingdom of Jordan (1994).

However, the Arab uprisings have cast doubt as to the robustness of these agreements and their ability to withstand the pressures from political elements that opposed these agreements, and in fact refused to recognize the State of Israel. More specifically, implementation of the agreements was subject almost solely to the discretion of the Arab governments involved, and since the uprising a new element has joined the equation:

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the “street.” The attack in Cairo on the Israeli Embassy on September 9, 2011 was more than a break-in into the building, and formal relations will almost certainly cool more than before.

Israel's Treaty with Egypt

The case of the Egyptian-Israeli treaty, which may well be the first litmus test, is particularly important, as other Arab governments will likely follow the Egyptian example under the new Egyptian government.¹

The 1979 Egypt-Israel Treaty of Peace was signed in Washington in the presence of the President of the United States; it was approved by the parliaments of Egypt and Israel, ratified by both states, and registered with the UN. The treaty was an attempt to carefully balance the requirements and interests of both sides.

As an international agreement, the treaty is subject to the rules of international law concerning the interpretation and implementation of treaties. These rules stipulate that a change of regime in one or both parties does not affect the validity of a treaty; treaties are considered binding on the states involved and not only as regards particular regimes or governments. Furthermore, one near-immutable aspect of a peace treaty is the delimitation of borders. Once a border is agreed upon, it remains in force unless changed by agreement, even if the parties subsequently abrogate the peace treaty and go to war. A border remains valid even if the states involved change not only their regimes but their very existence; new states inherit the borders of the previous state. Hence the Egypt-Israel border will remain defined, whatever happens to the treaty.

The question arises as to what rules apply to changes to the treaty that are less dire than a reversion to the state of armed conflict. Parties to a treaty are at liberty to make agreed changes, but any unilateral act is liable to be seen as a violation of the treaty.

The treaty refers to “normal relations” between the parties,² including “diplomatic, economic and cultural relations.” An annex³ spells these out in greater detail, referring to “good neighborly relations” and “cooperation in promoting peace stability and development” and the duty to “abstain from hostile propaganda against each other.” Subsequent to the Treaty of Peace several implementation agreements were signed.

It is noteworthy that the operative clauses of the treaty make no reference to “friendly relations,” just to “normal relations.”⁴ It is

conceivable that a fundamentalist Islamic regime will attempt to further cool relations, but it does not need to change the treaty to do so. If and when Egypt requests a formal change to the Treaty of Peace, for example, eliminating diplomatic relations, Israel will no doubt refuse to consider it. A unilateral Egyptian step would be a clear violation of the treaty and there is a high possibility that the US Congress would take action against Egypt. The US made a formal commitment to Israel that in case of a violation or threat of violation it would “consult with the parties with regard to measures to halt or prevent the violation.”⁵ A similar undertaking was subsequently made to Egypt.

The stipulation regarding the limitation of forces in Sinai raises more complicated issues. It was a matter of vital importance for Israel that there be no Egyptian forces with an offensive capability stationed within striking distance of Israel’s border. The treaty incorporates this principle, while at the same time recognizing the need not to appear to be limiting Egyptian sovereignty in Sinai. It achieved this balance by allowing Egypt to maintain a sizable force in western Sinai, consisting of a full mechanized infantry division of 22,000 personnel with substantial elements of armor, artillery, and anti-aircraft missiles.⁶ In central Sinai Egypt could maintain a specified number of border units,⁷ and in the area adjacent to the Israeli border an unlimited number of “civil police.”⁸ Sinai was thus to be under full Egyptian sovereignty and not even designated a demilitarized area, but was subject to a voluntary regime of limitation of forces. The Multinational Force and Observers (MFO) in the Sinai was given the task of observing and monitoring the limitation of forces but was not granted any operative or executive powers. In order to provide reciprocity Israel agreed to a limitation of forces in a strip some 10 km wide on the Israeli side of the border, and for the first time in its history, Israel allowed an international force, the MFO, to monitor this Israeli territory.

The treaty explicitly stipulates that “the parties agree not to request withdrawal of the United Nations [MFO] personnel,”⁹ and thus a unilateral request by Egypt would be a serious violation of the treaty. These security arrangements, however, “may at the request of either party be reviewed and amended by mutual agreement of the parties.”¹⁰ Since parties to a treaty are always able to review any stipulation in a treaty between them “by mutual agreement,” this clause clearly points

out that the parties envisaged the possibility that future relations between Israel and Egypt could become so close and friendly that there would be no need for any security arrangements. That situation has not developed and the security arrangements of the treaty are now even more vital than they were in 1979. Furthermore, on the Israeli side any change in the security arrangements would require approval of the Knesset.¹¹ Any attempt to adjust the treaty's security arrangements could be politically volatile. Israel, however, has in the past shown flexibility in interpreting the phrase "civilian police" in Sinai and agreed to the posting of increasing numbers of semi military "border guards" in the Sinai area adjacent to Israel's border.¹²

The recent elections in Egypt resulted in an overwhelming victory for the two parties that represent the Muslim Brotherhood and the Salafist movement – the Freedom and Justice Party and the Nour Party, respectively. It is clear that the Muslim Brotherhood will form the new government, though it is not clear who it will choose as partners to the coalition. Nor is it clear what would be the division of powers in Egypt's new constitution and what would be the new parliament's role regarding, for example, the existing treaty between Israel and Egypt.

Statements made by Muslim Brotherhood leaders since the start of the uprising in January 2011 indicate tension between the ideological inclination to extricate Egypt from the treaty's obligations and the political and economic implications of such a move.¹³ Dr. Rashad al-Bayoumi, a leading Brotherhood figure, expressed his views on this issue in a long interview:

We respect international agreements and major political issues, whatever they may be. However, with regards to an objective and academic look [at this issue] it is the right of either side, or any one side, to review and discuss according to the circumstances and requirements. The Camp David Accords were never put to the people or even to the parliament in the proper manner, but rather these were enforced from above. One of the most important articles of this agreement was the establishment of a Palestinian State. Very well, but let us ask: where is this [Palestinian] State?

After accusing Israel of genocidal plans against the Palestinian people and castigating his country for selling gas to Israel at one fifteenth of its real price, he added: "All of this must be put to the people, and it is

the people's right to reconsider these conventions. Of course, we do not accept the Camp David Accords at all, but re-evaluating and dealing with this must be done according to the law."¹⁴

In the coming weeks the Muslim Brotherhood will find itself at the helm with new responsibilities. Egypt's enormous economic problems have multiplied and become exacerbated since al-Bayoumi gave his interview, reflected somewhat in the tone of more recent statements. American officials and journalists have visited Cairo more frequently than before, having realized the political earthquake that occurred in Egypt. Most met with Muslim Brotherhood officials and newly elected parliamentarians, and one told *Time* magazine, "The parliament has the right to revise whatever was passed without the public's consent. But to revise does not necessarily mean to eliminate."¹⁵ Reacting to journalists' questions during a daily news briefing about another statement by al-Bayoumi, that the treaty with Israel was not binding and that the Muslim Brotherhood did not sign it, US State Department spokesperson Victoria Nuland said: "We have had other assurances from the party with regard to their commitment not only to universal human rights but to the international obligation that the Government of Egypt has undertaken." Asked repeatedly on the issue of the treaty she said, "They have made commitments to us along those regards (sic). And as I said, we will judge those parties by what they do."¹⁶

The statement is evidence of the effort the US has invested in ascertaining the future of the main pillar of any peace process and certainly one in which the US would wish to play the central role. Whether the US efforts are successful remains to be seen when the new political framework in Egypt – the new constitution and the division of power – is established. Interviewed by the *New York Times*, the leader of the Freedom and Justice Party, Essam el-Erian, said that the Brotherhood would honor the Camp David Accords. "This is a commitment of the state, not a group or a party, and this we respect." In the *New York Times* report of the same interview there is an additional sentence: "Ultimately, he added, relations with Israel will be determined by how it treats the Palestinians."¹⁷ This last sentence is

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indeed the reflection of a long discussion el-Erian held with the BBC a month earlier, in which he avoided giving a clear answer on whether his party would respect the treaty with Israel, and he repeatedly blamed Israel for crimes against the Palestinians.¹⁸

While it is not clear whether the Nour Party representing the Salafi Call Society would be part of the Egyptian future government, its position on the treaty with Israel is important. An official statement on its website issued on December 25, 2011, "A declaration from the Nour Party on the treaty of peace and normalization with the Zionist entity," is a very vague and conditional statement. The statement puts Egypt's relations with the Arab and Muslim states as a first priority, along with relations with the Palestinians. It mentions that the treaty was signed by a dictatorial regime and requires a change, to be reached by legal means. It emphasizes that the party is strongly opposed to any normalization and dialogue with the Zionist entity.¹⁹

Amr Moussa, Egypt's former Minister of Foreign Affairs and former Secretary General of the Arab League and a leading candidate for president said,

And I believe that we should adhere to this treaty, as we do with all of our international commitments and treaties, as long as the other party adheres to it too. However, within a security context in Sinai, the treaty has to be revisited. Unfortunately, the treaty in its current form has led to the Egyptian government's inability to enforce the rule of law in Sinai and on the border. Egypt as a sovereign state should be able to fully secure its borders.²⁰

The unavoidable conclusion from these statements is that Israel should prepare itself for an Egyptian request to renegotiate the military annex of the 1979 treaty. If the Egyptian demands are reasonable, Israel would be wise to agree to them. Additional Egyptian forces might reduce the chaos in the Sinai. Furthermore, obtaining a renewed confirmation for the treaty from a Muslim Brotherhood government would include political dividends far beyond the Egyptian-Israeli relationship. It is imperative that the US continue the efforts to preserve the treaty and prevent its deterioration through excessive Egyptian demands.

The annual US military assistance to Egypt, the recent US injection of an additional \$2 million, and the US influential role in the international

financial institutions will most probably have an impact on the attitude of the new Egyptian government to the treaty with Israel.

The Peace Treaty with Jordan

The treaty with Jordan is in the same category as the treaty with Egypt – a comprehensive agreement signed between two states. While it has limitations on deployment of forces, it also has territorial arrangements in the Emek Ha'arava and Naharayim areas, which may be reviewed.²¹ The treaty has met strong opposition in Jordan ever since it was concluded. Opposition to the treaty is common to a large segment of the Palestinian population, especially the religious elements and the white collar professional associations. Like President Mubarak, King Hussein and his successor Abdullah II dismissed the calls for abrogation of the treaty and for sending the Israeli ambassador home, but did very little to counter the boycott imposed by the professional associations and their efforts to stifle normalization activities. For the time being, the organizations involved in the protests against the government in Jordan have not made the treaty with Israel a major cause beyond their pre-January 2011 levels. That may change, especially if there is a major deterioration in Israeli-Palestinian relations or a successful challenge to the Israeli-Egyptian treaty. The Islamic Action Front, the largest Islamic political force in Jordan, is closely linked to the Egyptian Muslim Brotherhood. As in the case with Egypt, Jordan's future attitude to the treaty with Israel will be dictated to a large extent by vital strategic interests.

Long term security perspectives, the water issue, relations with the US, and a perceived role in Jerusalem all command Jordan to maintain the treaty of peace with Israel, albeit at a bare minimum level. The success of the Jordanian monarch to fend off pressure to abrogate the treaty will depend on developments in the Israeli-Palestinian political process and Israel's contribution to the Jordanian economy. Water, energy, and infrastructure joint projects would serve to fortify the treaty. The recent Israeli government decision to construct a railway between the Mediterranean and the Red Sea may, if the project incorporates the Jordanian Aqaba port, increase economic activity and help silence some of the anti-Israeli elements in Jordan.

The Agreements with the Palestinians

The Oslo set of agreements represents a different category – agreements between a state (Israel) and an organization (the Palestine Liberation Organization). In an exchange of letters, the Chairman of the PLO recognized the right of Israel to exist in peace and security, and the Prime Minister of Israel affirmed Israel's recognition of the PLO as the representative of the Palestinian people. Subsequent agreements to the Declaration of Principles (September 13, 1993) such as the Gaza Strip and the Jericho Area (May 4, 1994) and the Interim Agreement between Israel and the Palestinians (September 28, 1995) have been only partially implemented. The five year period stipulated in these agreements for reaching a comprehensive solution has long passed. The two sides have unsuccessfully attempted to renew the negotiations, which are now stalled.

The uprisings in the Arab world have further complicated the situation. These uprisings have ushered in a long period of instability and unpredictability. This allows the Israeli government to claim that under these circumstances it is unable and cannot be expected to take decisions pertaining to its long term security. The Israeli government further claims that the Palestinian approach to the United Nations and other organizations to obtain recognition of its statehood and membership is a violation of the Oslo Accords, being unilateral actions and not agreed upon. The reconciliation attempts by Fatah and Hamas, the two major Palestinian movements, have been given a boost by the Arab uprising and are a serious threat to the Oslo Accords. It is quite possible that in an effort to reach common ground, the two movements will remove a reference to the agreements with Israel from any reconciliation agreement.

In the wake of the 2006 Palestinian elections and the Hamas takeover of Gaza, the Quartet (US, EU, Russia, and the UN) has conditioned its willingness to deal with Hamas on Hamas' recognition of Israel, renunciation of terror, and acceptance of the past agreements reached between Israel and the Palestinians. At the same time, the Arab uprising forces the US and the EU to conduct a dialogue with movements that adhere to systems of values not wholly commensurate with their own. It is possible that a declared rejection of the Oslo Accords by Hamas will not be tolerated by the international community, which in practice will ignore the three preconditions and substitute them with a vague formula.

It may be too late to salvage the Oslo Accords, but there is a need to preserve a legal basis and framework for the conduct of ongoing Israeli-Palestinian coexistence and *modus operandi*. This can be achieved by a new interim agreement that is accepted by Israel and the Palestinian Authority/PLO as a step in an agreed-on roadmap toward a two-state solution. The abandonment, even if only *de facto*, of the Oslo Accords by one of the two sides to the conflict can serve those in the Israeli and Palestinian camps who object to this solution and add further instability to a region already quite volatile.

In late March 2012 it was reported²² that under pressure by President Obama, Palestinian Authority President Mahmoud Abbas (Abu Mazen) dropped a threat in his intended letter to Prime Minister Netanyahu to dismantle the PA. The threat may have to do not only with Abu Mazen's protest against Israeli policies but with his frustration at not being able to attain reconciliation with Hamas. The consequence and implications of such a move could throw the immediate region into turmoil.

The Separation of Forces Agreement with Syria

The Separation of Forces agreement with Syria is the longest surviving bilateral agreement between Israel and any of its neighbors. It pertains to a single issue and lacks any framework or mechanism in which the two sides can conduct a dialogue, yet the 1974 agreement served its purpose and was scrupulously maintained. During all the tensions between Lebanon and Israel and the 1982 and 2006 Lebanon Wars, Syria and Israel have refrained from direct confrontations on the Golan Heights.

The Syrian regime is currently fighting the opposition, which in spite of more than close to 10,000 dead and even greater numbers of injured shows no signs of relenting. However, even if the Assad regime falls, it will take quite a long time for a new government to stabilize the country, which is ethnically and religiously heterogeneous (60 percent Sunnis and 40 percent Kurds, Christians, Druze, and Alawites). A new Syrian government will most likely loosen its links with Iran if not sever them altogether and take a similar attitude towards Hizbollah.

From Israel's point of view these positive though currently hypothetical developments present a dramatic strategic shift. Syrian detachment from Iran and Hizbollah would have been an Israeli demand if and when negotiations with Syria resumed. The Israeli government

ought to adopt a dynamic attitude towards the uprising in the Arab world and seek opportunities. The Syrian current situation presents an opportunity and the Israeli government should aim to establish a political dialogue with the Syrian opposition. The political and territorial price that Israel would have to pay for a peace treaty with Syria, which is complemented by Syria separating itself from Iran, has always been known. A new government in Damascus might be more open to ideas on special regimes in the Golan Heights concerning the uses of this area and the Syrian military deployment there following an agreement.

In light of the stalemate in the Israeli-Palestinian negotiations and the negative impact of a possible reconciliation between Hamas and Fatah on the prospects of renewing these talks, it may be worthwhile pursuing the Syrian track in advance of the Palestinian track.

Admittedly, this scenario is highly hypothetical. President Assad is under pressure, but the opposition is divided and cannot change the situation without major foreign intervention or a collapse from within the ruling power in the country. The rising influence of the Muslim Brotherhood across the Arab world may also be reflected in Syria and its new government, if one is established in Damascus. An Egyptian demand to reopen the military annex of the treaty with Israel may induce a government in Damascus to make a similar demand challenging the thinning of forces on the Golan Heights, offering no guarantees on dissociation from Iran and Hizbollah. In such a case Israel would have no reason to accept a Syrian demand risking, as it may be, the total collapse of the 1974 Separation of Forces agreement. Syria is in no position, militarily and economically, to wage a war against Israel, especially following a long period when its army is engaged in a painful civil war. It is therefore unlikely that it would venture a confrontation with Israel, starting with a unilateral abrogation of the 1974 agreement. The more plausible result of the current situation in Syria is therefore a status quo with no movement on the formal arrangements between Israel and Syria.

Notes

- 1 The legal chapter on Egypt was contributed by Prof. Robbie Sabel.
- 2 Article III(3) of the treaty.
- 3 Annex III to the treaty.
- 4 The preamble to the treaty refers, however, to "friendly relations and cooperation in accordance with the UN Charter."

- 5 Article 2, "Memorandum of Agreement between the Governments of the United States of America and the State of Israel," March 26, 1979.
- 6 Article II(1)(a) of Annex I of the Egypt-Israel Treaty of Peace.
- 7 Article II(1)(b) of Annex I of the Egypt-Israel Treaty of Peace.
- 8 Article II(1)(c) of Annex I of the Egypt-Israel Treaty of Peace.
- 9 Article IV(2) of the treaty. The original intention of the parties was that the monitoring be carried out by a UN force, but they later agreed that the functions be carried out by the MFO.
- 10 Article IV(4) of the treaty.
- 11 This was the opinion of the Legal Advisor to the Knesset when the issue of stationing 750 Egyptian border police arose in 2005. The Israeli government's position was that there was no change in the treaty, but nevertheless the issue was brought to the Knesset and approved by vote.
- 12 A written agreement on this issue was reached between Egyptian and Israeli security officials in 2005 but never officially published and there have been further understandings.
- 13 See an analysis by Jonathan D. Halevi, "Are Egyptian Islamic Parties Planning to Nullify the Peace Treaty with Israel?" Jerusalem Center for Public Affairs, Vol. 11, no. 22, December 26, 2011.
- 14 *A-sharq al-Awsat*, February 27, 2011. Speaking to a Japanese television on February 4, 2011, al-Bayoumi said, "After President Mubarak steps down and a provisional government is formed, there is a need to dissolve the peace treaty with Israel." See <http://www.jta.org/news/article/2011/02/04/2742851>.
- 15 *Time*, January 3, 2012.
- 16 US Department of State – daily Press Briefing for January 5, 2012.
- 17 As reported by David Kirkpatrick in the *International Herald Tribune* and by Thomas Friedman in the *New York Times* on January 10, 2012.
- 18 Interview on *Hardtalk*, December 11, 2011. On January 8, 2012 *Haaretz* reported that el-Erian's reaction to Ms. Nuland's statement was that no promise to honor the treaty was given; the treaty was not sacred and it was possible and desirable to make changes in it.
- 19 The Nour Party spokesman, Youssef Hamad, told Israel's Army Radio that his party was committed to the agreement but that there might be articles it would want to change in negotiations. See "An Islamist Talking to an Israeli!" *a-Sharq al-Awsat*, December 26, 2011.
- 20 Interview in *Foreign Policy*, February 15, 2012.
- 21 The Treaty of Peace between the State of Israel and the Hashemite Kingdom of Jordan, Annex I.
- 22 Avi Issacharoff and the Associated Press, "Abbas Drops Threat to Dismantle PA over Stalled Israel Talks, Foreign Diplomats Say," *Haaretz*, March 29, 2012.