

The U.S. Draft Treaty for Syria-Israel Peace:

A Textual Analysis

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Brief Analysis

After more than a week of negotiations in Shepherdstown, W.Va., the "working draft" of the Syria-Israel peace treaty reported in yesterday's Ha'aretz notes only one area of seemingly irreconcilable difference between the two parties--over the scope of the demilitarized zone separating the two sides. As currently worded, the text neither rules in nor rules out an Israeli withdrawal to the "June 4, 1967, lines." The draft reflects a document much more detailed than a Camp David-style framework accord or an Oslo-type Declaration of Principles but still far short of a full-blown peace treaty. In tone and wording, it is a throwback to the Egypt-Israel peace treaty, with few improvements and even several drawbacks from that two-decade-old document.

Context The U.S. "working draft" of the Syria-Israel peace treaty offers a prism through which to examine Syrian, Israeli, and U.S. approaches to the resolution of this longstanding conflict. As usual for such documents, it is important both for what it says and what it does not say. In addition, it is useful to place this document in the historical sequence of previous Arab-Israeli peace treaties, examining how it improves upon as well as how it falls short of the commitments and language embodied in the two previous bilateral peace treaties, between Egypt and Israel and between Jordan and Israel. At the outset, it is necessary to underscore that critical components of an eventual treaty are missing and either have not been drafted or were not reported. These include the proposed timeline of implementation and sequencing; the details of security arrangements (including specifics regarding "areas of limitation" and the "demilitarized zone"); and up to a dozen aspects of "normal peaceful relations" that an American parenthetical note states "require further discussion" or are "possible areas for consideration."*

Points of Agreement The Ha'aretz text purports to reflect a U.S. understanding of the two sides' positions, not necessarily language to which the two sides' have already agreed. Yet, because the text does reflect several key points of disagreement by "bracketing" Israeli and Syrian proposed formulations (see below), it is not unreasonable to

assume that Damascus and Jerusalem accept all nonbracketed paragraphs. By this reckoning, more than thirty paragraphs in this eight article draft treaty have no points in dispute. Most important among these is the article on "normal peaceful relations," in which the parties commit to "establish and develop friendly and good neighborly relations," including, inter alia, full diplomatic and consular relations, the exchange of resident ambassadors, the termination of economic boycotts, and the removal of "all discriminatory barriers to normal economic relations." (This language--marking an important step forward by Syria--is borrowed from the Egypt treaty and is, therefore, only new in the sense that Syria has accepted it.)

Points of Contention As is customary in drafting international accords, the proposed text offers a number of "bracketed" sections representing items in dispute. The major bones of contention are as follows:

-- Definition of the international border. Syria proposes that it be "based on the June 4, 1967, lines" whereas Israel wants it to "take into account security and other vital interests of the Parties as well as legal considerations of both sides." The Israeli position seems to be a holding pattern, not a final proposal, inasmuch as it is only a way to characterize some future border, not to define it. Indeed, the Israeli proposal does not rule out withdrawal to the June 4, 1967, lines.

-- Characterization and content of Israeli pullback. Syria wants Israel to "withdraw" all its armed forces "and civilians," whereas Israel wants to use the verb "relocate," and only in reference to armed forces. The idea that Israel wants civilians to retain the right to live on the Golan under Syrian rule is reinforced by an Israeli proposal to determine "arrangements concerning the Israelis and Israeli communities in areas from which Israeli forces will be relocated." (The Egypt treaty did commit Israel to "withdraw" all military and civilian presence.)

-- Extent of demilitarized zone. The text outlines the establishment of a single "demilitarized zone" within "areas of limitation of forces and capabilities." The parties disagree sharply on the location of the zone: Syria defines it as being "of equal scope on both sides of the border" whereas Israel describes it as "encompassing both the area from which Israeli forces will be relocated and the existing Area of Separation established under the Agreement of Disengagement between Israeli and Syrian Forces of 31 May 1974." The text offers no proposals on the location or geographic scope of the "areas of limitation," though the context suggest that these will be found on either side of the demilitarized zone. These proposals reflect a substantial disagreement: Israel wants the demilitarized zone to be completely on the Syrian side of the new border, without even a symbolic demilitarization on the Israeli side, whereas Syria evidently wants a 1:1 ratio on both sides of the border. If Israel were to accept Syria's ratio and keep its own demand on depth of demilitarization, that would require Israeli demilitarization deep into the Galilee and limitations on forces and capabilities even deeper.

-- Early-warning station. Interestingly, both parties seem to agree on the establishment of an "early-warning ground station on Mt. Hermon," though they disagree on the composition of personnel manning it. Israel demands it have "an effective Israeli presence," whereas Syria proposes it be "operated by the United States and France under their total auspices and responsibilities." The language of the latter proposal does not go as far toward accommodating a de facto Israeli presence as some participants in the abortive initiative proposed by former Israeli prime minister Binyamin Netanyahu and U.S. businessman Ronald Lauder claimed Syria once accepted, but it does not rule out third-country (i.e., Israeli) participation in an enterprise under U.S.-French control. If this is an accurate reflection of Syria's position, it would be the most forthcoming public characterization of this issue to date.

-- International monitoring. Similarly, the two sides agree in principle on the establishment of some multinational grouping as a "monitoring, inspection, and verification mechanism." They offer different, though not necessarily contradictory, proposals as to the composition of such a grouping, with Israel advocating that it be "composed of the two Parties and a multinational component" and Syria proposing merely "an international presence." The draft text offers no clue as to the size or military capacity of such a "mechanism"--that is, unarmed technicians or battle-ready

peacekeepers--though the context suggests the former. Details are left for an undisclosed annex.

-- Water. This paragraph raises as many questions as it answers. On one level, it is a major Israeli achievement to gain Syria's assent to the statement that "full resolution of all water issues . . . constitutes a fundamental element in ensuring a stable and lasting peace." After all, water is not mentioned in UN Security Council Resolution 242. At the same time, however, this paragraph implies that a number of water-related issues will arise between the two parties, regardless of where the border is drawn. The principal disagreement here is that Israel demands "arrangements that will ensure the continuation of Israel's current use in quantity and quality" of all waters from areas that it will hand over to the Syrians, whereas the Syrians propose the less definitive language of seeking "mutually agreeable arrangements with respect to water quantities and qualities," with the implication that Syria may make claims on water currently enjoyed by Israel to make usage more equitable. (Israel, interestingly, makes no demand for increasing its allotment of water over time, to reflect "natural growth" of demand.) Moreover, Israel wants the water arrangements to "include all necessary measures to prevent contamination, pollution, or depletion of the Kinneret/Tiberias and Upper Jordan River and their sources." (Also, there is no reference to expanding water resources for the two parties, either through desalination or agreements with third countries, such as Turkey.)

These proposals have significant territorial implication. For example, Israel's position suggests that the future border will be drawn in such a way as to make the Sea of Galilee vulnerable to contamination by Syria; hence the need for arrangements to prevent pollution. In other words, this paragraph does not necessarily exclude the possibility of Syria becoming a riparian of the Sea of Galilee, though there are other border lines to which these terms could also apply. (For example, even if Syria were not on the Galilee shoreline, Israel would be concerned about the pollution of groundwater on the Golan, or the possibility of upstream damming, which would, respectively, affect the quality and quantity of water flowing into Israel.)

Historical Precedents In general, the draft draws heavily from the text of the Egypt-Israel treaty (including annexes). Nevertheless, there are a number of important departures. Language found in the 1979 Egypt-Israel treaty, but not in the Syria-Israel draft, includes the following:

-- A pledge not to discriminate against Israeli means of transportation and Israeli passengers. Whereas the Syria draft includes a technical, legal formula promising "nondiscrimination" in the fields of communication and posts, it does not use this formula in terms of transportation, promising only to grant "normal" relations. Given what constitutes "normal" relations on Syria's many closed borders with other states, this formulation provides no specific guarantee that Israeli trucks and cars could transit Syria or that Israeli cargo vessels could dock in Syrian ports.

-- A commitment that "perpetrators of [belligerency, hostility, subversion, and violence] are brought to justice." Whereas the Syria draft commits the two sides to take "necessary and effective measures" to prevent such acts, there is no promise to punish violators.

-- Restrictions on "flights of combat aircraft and reconnaissance" airplanes. In the Egypt treaty, these flights were prohibited throughout most of the Sinai desert. In the Syria draft, Israel proposed that "both sides agree not to fly over the demilitarized zone without special arrangements." There is no Syrian counterproposal.

-- A commitment to "foster mutual understanding and tolerance" and to "abstain from hostile propaganda against each other." A parenthetical note in the Syria draft does state that "anti-incitement cooperation" is a "possible area for consideration."

-- Mechanisms for "conciliation and arbitration" to resolve disputes. The Syria draft says only that disputes "shall be settled by negotiation."

-- An Israeli commitment to the "withdrawal of Israeli armed forces and civilians" as well as an Israeli commitment

to "transfer . . . all agreed infrastructures, utilities, and installations intact." As noted above, Israel has so far not agreed to withdraw civilian communities from the Golan and has made no commitment to transfer to the Syrians either its civilian or its military assets on the Golan.

Conversely, some language in the Syria draft has no precedent in the Egypt-Israel treaty:

-- A commitment "to refrain from cooperating with any third party in a hostile alliance of a military character." Though impressive sounding, it is not clear that this formula adds to the separate provision, found with minor changes in both the Egypt treaty and the Syria draft, to "refrain from organizing, instigating, assisting, or participating in any acts or threats of belligerency, hostility, subversion, or violence against the other Party anywhere." In the Syria context, it is useful to note that the specific pledge regarding third countries would, most likely, not apply to the Syrian-Iranian relationship, which is not of a military character, but might open Israel to complaints about the Turkish-Israel relationship.

-- A stand-alone paragraph on terrorism. In this paragraph, the two parties "recognize that international terrorism in all its forms threatens the security of all nations and [that they] therefore have a common interest in the enhancement of international cooperative efforts to deal with this problem." Regrettably, however, this passage has no operational component.

No Jordan Model In contrast to the Egypt model, the authors of the Syria draft clearly drew much less inspiration and many fewer formulations from the more recent Jordan-Israel peace treaty (1994). Here, the key disconnect revolves around the theme of cooperation as opposed to the theme of reciprocity, which animated the Egypt treaty. The Jordan-Israel peace treaty makes twenty references to the concept of cooperation; the Syria draft uses the term in relevant fashion only five times.

Specifically, the Jordan treaty highlights the following points, which are not found in the Syria draft:

- A mutual commitment to refrain from the threat or use of unconventional as well as conventional weapons.
- A mutual commitment to the creation of a regional security organization, including the creation of a regional zone free from weapons of mass destruction.
- A mutual commitment to "take necessary and effective measures to prevent acts of terrorism."
- A mutual commitment to develop "new water resources" so as to "increase the water availability . . . on a regional basis."
- A mutual commitment to enter negotiations with an eye toward establishing a "free trade area."

Conclusion From the Ha'aretz text, the Syria-Israel draft treaty is a throwback to the Egypt-Israel treaty, with few--if any--substantive improvements on that two-decade-old agreement. Moreover, none of the warmth evident in the Jordan-Israel treaty was expected to be reflected in the Syria-Israel draft and it certainly lives up to those expectations. "Full peace"--in the Arab-Israeli context--is clearly a relative term, one that has different applications over time and from partner to partner.

As for items in dispute between Syria and Israel, the demarcation of the demilitarized zone is the only issue on which the two sides seem to have tabled irreconcilably different positions (i.e., will it be limited to Syrian territory or will it extend equally on both sides of the border). On all other disputed items, the parties offer competing but not mutually exclusive formulas.

This suggests that an agreement may be near. Here, however, the old adage "we don't know what we don't know" applies. The lack of information on the timeline for implementation, on details of security arrangements, and on up to a dozen elements of "normal peaceful relations" all point to considerable negotiating ahead. Moreover, the

absence of any reference to Lebanon means that the entire complex of Lebanon-related issues remains a black box. For the United States, the reversion to an Egypt-Israel model (perhaps even an Egypt-Israel-minus model) for Syria-Israel peacemaking underscores the substantial U.S. contribution--political, financial, military, and so forth--that Washington can be expected to offer to compensate Israel for what Syria itself will not provide bilaterally.

Note:

* A U.S. parenthetical note lists items "for further discussion" to include cultural relations, environment, interconnection of electricity grids, energy, health and medicine, and agriculture, and it further lists "other possible areas for consideration" to include combating drugs and crime, anti-incitement cooperation, human rights, places of historical and religious significance and memorials, and legal cooperation in the search for missing persons--almost all of which were addressed in previous Arab-Israeli peace treaties.

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