

Chapter 4

A Confederation

The model: Two states, the State of Israel and the Palestinian state, separated by a border based on the Green Line, no physical barrier, free movement, and a joint confederative government (see Figure 4).

The main idea: Each people will have its own state, in which its national identity is realized, while the settlements will be left in place with free movement between the two states. Israel will retain involvement in strategic issues at the confederation level.

Figure 4. Confederation



1. The territorial division

The border between the states will be based on the 1967 borders, although adjustments to the border may be agreed upon, such as including the settlement blocs within Israel and/or adding the Arab towns near the Green Line to the Palestinian state, subject to the wishes of the residents.

2. The status of the settlements

The settlements will be left in place and will become part of the Palestinian state. They will have a special arrangement that will allow their residents to maintain a connection to Israel and be subject to Israeli law and Israeli government institutions in most areas of life. Practical solutions will be required for those areas where Palestinian law will inevitably apply, such as infrastructure—including planning and zoning—especially in cases affecting the areas outside the boundaries of the settlements or involving Palestinian citizens.

The residents of the settlements will be permanent residents of the Palestinian state but will retain their Israeli citizenship (see discussion below).

In exchange for leaving the settlements in place, Israel may offer to absorb a certain number of Palestinians within the State of Israel.

3. Jerusalem

Jerusalem can serve as the joint capital of the two states, without any physical boundary between the parts of the city, although each state will have jurisdiction over parts of the city where its citizens are concentrated. In the area of the Temple Mount, or throughout the Old City, a mechanism for joint Israeli-Palestinian local administration will be needed. A mechanism for dealing with disputes between the two sides will be essential.

4. Aspects of citizenship and residency

According to the model, there will be a distinction between citizenship and permanent residency in each country. The Jews will be citizens of Israel, even if they live within the territory of the Palestinian state, and

the Palestinians will be citizens of the Palestinian state, even if they live within the territory of the State of Israel. The citizens of each state will have the right to vote in the general elections of their respective state. In local elections, permanent residents living within the jurisdiction of the local authority will have the right to vote, regardless of their citizenship.

5. Governmental authority

Each state will have a government, a parliament, and its own governing authorities. In addition, a joint confederative government will regulate domains that are shared by the two states.

The areas under the authority of the joint confederative government will be determined by the two sides upon the establishment of the confederation. According to one possible division, the confederative level will have authority in external security, macroeconomic policy, and shared resources such as water, environmental protection, airspace, and electromagnetic space, as well as economic and civil affairs of common interest. The rest will be under the control of the states, and each state will regulate those domains independently. The residual powers, which have not been explicitly assigned, will belong to the states.

Since the two states are meant to have equal status in the confederation, it is assumed that decisions at the confederative level will be made by consensus between them and that their relations will be reciprocal in nature. Nonetheless, Israel might insist on having overriding authority, at least for a limited period of time, on issues of strategic importance, such as external security and the economy. This arrangement, however, will require agreement between the sides.

Given the freedom of movement between the states, it will be necessary to ensure that external border policies are respected and implemented at all international border crossings. For this purpose, representatives of the one state may be positioned at crossings into the territory of the other state. Unless otherwise agreed, the implementation of these arrangements will be reciprocal.

The institutions and bodies that will operate at the confederative level could have various structures. One option is to establish a comprehensive confederative governing body that will include a permanent mechanism for decision making, an executive mechanism, and a judicial system,

which will operate directly within both states. However, a more limited structure is also conceivable, which focuses on having a forum for decision making with representatives from both states, while the implementation of decisions made at the confederative level in the territory of each state will be determined by the authorities of that state.

A mechanism for resolving conflicts between the states will be needed. Given the equal status of the two states, which is the basis for the model, the involvement of a third party may be necessary to overcome stalemates. Involving a third party means giving up some degree of freedom in making decisions related to the confederation and bringing an external actor into play.

The method of financing the confederative government will have to be determined. Israel presumably will have to contribute more to the budget than the Palestinian state, given the economic disparity between them.

6. Palestinian involvement in government

The Palestinians will elect the government in the Palestinian state and the Israelis will elect the government in the State of Israel. Therefore, the Palestinians will not be involved in decision making in Israel, apart from decisions that are under the authority of the confederative government, as described above.

7. Freedom of movement within the confederation

There will be a defined border between the two states but no physical boundary, and movement between the two states will be freely allowed.

If there are inspections at crossing points between the states, these will be applied equally to both sides, at both entry into Israel and into the Palestinian state. This will be a downgrade for Israelis who are accustomed to free passage between Israel and the West Bank, including to or from the settlements.

It may be possible to impose restrictions on moving one's residence between Israel and the Palestinian state, to ensure that the character of each state remains intact. If there is free passage between the states, enforcing these restrictions may be difficult.

Free movement of vehicles between the states will require proper regulations regarding licensing and insurance. The movement of goods between them will require compatible regulations, as specified below.

8. The refugee issue

Each state will independently decide its terms of citizenship. Accordingly, the Palestinian state will be able to determine who has the right to receive Palestinian citizenship, and it may be able to allow the return of refugees and their descendants from abroad to the Palestinian state, unless this is ruled out or limited in the agreement between the two sides. This could be considered part of the solution to the refugee issue.

Given the freedom of movement in the territory of the confederation, the descendants of the 1948 refugees may try to realize the “right of return” to their families’ places of origin and attempt to become permanent residents of the State of Israel.

9. Security aspects

Each state will be responsible for internal security within its borders and will have its own security forces.

The confederative model is based on the idea of equality between the states; however, it may be possible to agree that the Palestinian state will be demilitarized and have only limited security forces.

Retaining the right of Israel’s security forces to carry out operations in the territory of the Palestinian state is contrary to the Palestinian state’s sovereignty. Nonetheless, in a confederative regime, it may be easier for both sides to accept the possibility of such an arrangement in certain situations than in the reality of two separate states. Presumably, the Palestinians will give their consent to this right on a temporary basis, so that it is not a permanent arrangement.

The confederative government will have the responsibility for external security and could assign this task to Israel’s security forces, with the possible inclusion of Palestinian security forces. The control over the borders may serve to justify a permanent Israeli military presence in the Jordan Valley.

The nature of the mechanism within the confederative framework for deciding external security issues, including airspace, the electromagnetic domain, and the maritime domain, will need to be determined. Presumably, Israel will demand to have the overriding authority in these decisions. If Palestinian agreement is required, then the representatives of the Palestinian state will essentially be given veto power.

The formation of external military alliances and the entry of foreign armies into the territory of the confederation presumably will be restricted. Whether these restrictions will equally apply to both sides, meaning that the Palestinian state will have to give its consent should Israel wish to deploy foreign military forces (for example, American forces) in Israel, raises questions.

Security cooperation, including intelligence cooperation, between the sides—routinely and in real-time—will be necessary for addressing both internal and external threats. In addition, it will be vital to maintain close cooperation in fighting cross-border crime, which is expected to increase given the open borders.

The transition can be gradual, such that Israel retains its responsibility for security in the initial stages and until the situation is stabilized. The two sides will need to determine when to progress to the next stage. The idea of involving international oversight in this decision will introduce elements of internationalization to national security issues.

10. Social aspects

Since the confederative model is based on the existence of joint institutions and open borders, it is important that Israeli and Palestinian societies undergo a process of reconciliation.

11. Economic and civil aspects

As the confederative model retains a significant link between the two states, substantial economic disparities between the states could potentially undermine the stability of the confederation. Therefore, it is imperative to narrow these gaps.

The open border between the two states will necessitate a coordinated policy on import, trade, and rules of regulatory and indirect taxation and any other measures required in the absence of economic borders.

The maritime area off the coast of the Gaza Strip will be under the civilian control of the Palestinian state (assuming that Gaza will be part of the state), which includes the right to regulate the exploitation of marine resources, including gas fields, and to issue fishing and shipping licenses. Should Gaza not become part of the confederation, the Palestinian state could be given access to the sea and the use of ports in Israel.

12. Preserving the Jewish character of the state

The model preserves the Jewish character of the state, of Israel, whereas Palestinian identity will be given expression in the Palestinian state. The distinction between residency and citizenship will allow Arab citizens of the State of Israel to realize their national identity within the framework of the Palestinian state without giving up their residency in Israel, should that be their choice. This could also lead to an increase in the relative weight of Jews within the State of Israel.

13. Preserving the democratic and liberal character of the state

By enabling Israel to relinquish its control over the Palestinians, the model removes significant challenges faced by Israel's democracy.

The implementation of the model might require that the Palestinian state be a democracy in a fundamental sense, which means adopting democratic principles and respecting human rights. If this condition is not met, the confederation framework will face difficulties, as it will then be composed of one democratic state and a non-democratic one.

If the issue of human rights in the two states is anchored at the confederative level, then the confederative government and its institutions, including the courts, will have the power to act in this domain. If the issue is not grounded at the confederative level, these rights will have only limited protection based on the level of commitment of each state.

14. Implications for Israel’s Arab citizens

It makes sense to allow Israel’s Arab citizens to choose whether to remain Israeli citizens or to become citizens of the Palestinian state. In any case, they can remain in their places of residence as a result of the separation between residency and citizenship.

The model grants the Palestinian people fulfillment of national aspirations and is meant to end the conflict; therefore it allows the Arab citizens of Israel to reconcile their Israeli and Palestinian identities, even if they choose to remain citizens of Israel.

15. Implications for the Palestinian Authority

The model makes it possible for the PA to serve as the basis for the government of the Palestinian state and even to maintain its security forces and representatives abroad. However, for the stability of the Palestinian state, the Palestinian public will need to have confidence in its leadership; therefore the PA will need to make reforms to regain that confidence, including dealing with government corruption.

16. The Gaza Strip

In order to include Gaza in the confederation, the government of the Palestinian state will need to have effective control of the Gaza Strip so that the confederation can also function there. Thus, for example, to ensure the freedom of movement between the two states, terrorist or criminal elements from Gaza must be prevented from freely entering Israel.

It may be possible to maintain a physical barrier and checkpoints between Gaza and the State of Israel while still having open borders between the West Bank and Israel. If there is such a physical border, ensuring free and uninterrupted passage between the two parts of the Palestinian state must be guaranteed.

Gaza could join the confederation at a later stage, after the confederation is already up and running. Gaza could also become a its own separate state. In that case, the confederation would consist of three states. Of course, in such a situation, it must be ensured that the Palestinians do not

have two votes in the confederative government as opposed to Israel's one vote and that an appropriate formula be determined.

17. Creating the confederation

The confederation will be based on the establishment of a Palestinian state, and subsequently the two states will recognize each other as the nation-states of their respective peoples.

The confederation will be established by an international agreement between the two sides. A detailed agreement will be needed for the confederation to function.

To the extent that the agreement includes the transfer of territory that is now under Israeli law to the control of the Palestinian state, including parts of East Jerusalem, Israeli law requires a majority of 80 Knesset members or a referendum. Beyond this formal condition, it seems appropriate that the creation of the confederation be decided by a referendum or by elections, given the drastic change in regime that this model proposes.

The creation of the confederation will require internal legislation and legal modifications in Israel. The arrangements should be anchored at the constitutional level. Presumably, this process will be accompanied by a heated public debate.

The Palestinian side will also need to make substantial legal adjustments on their side for the creation of a confederation.

18. The feasibility of a confederation

The model gives the Palestinians a state of their own, and therefore they may agree to this model, even though it retains some degree of Israeli control through the confederative government and does not include the evacuation of settlements. From Israel's perspective, the model provides some solution to its national and territorial interests, even if it calls for the creation of a Palestinian state on the entire territory up to the Green Line and for the participation of the Palestinians in the decision-making process.

The model requires the demarcation of a border between the states, and despite the free passage between the two states, each side will have to concede demands of sovereignty over parts of the land.

This is problematic for many in the Israeli public who are unwilling to give up control of the Land of Israel and for many in the Palestinian public who demand control over all the 1948 territory, including that within the Green Line.

To create a confederation, Israel and the Palestinians will have to agree on numerous controversial issues at a highly detailed level. Agreement will be necessary on the following: conducting security activity within the territory of the Palestinian state; the method of decision making on strategic matters; the joint administration of Jerusalem; the special arrangements that will apply to the settlements; immigration policy; the refugee issue; economic policy; the division of shared natural resources; and other issues concerning the two states. This means that agreement will be necessary on the core issues that could not be resolved in previous rounds of peace negotiations. The two sides will also have to agree on other issues specific to the confederative model. Reaching such an agreement thus seems an insurmountable challenge.

The chances of success as a permanent solution to the conflict

1. For the confederation to function, the two states will need to cooperate over the long term. The two sides will need to overcome the hostility, the lack of trust, and the different worldviews that currently exist between them. Disputes between the states, serious violations of the agreement by one of the sides, and violent confrontations between the two states or their citizens will challenge the confederation's stability.
2. The management of affairs in the confederative model will require that the two states agree on many substantial issues, including the border regime, Jerusalem, economic policy, and exploitation of shared natural resources. Therefore, each state will have veto power over these issues. Disputes are liable to end up in deadlock, which will harm the confederation's ability to function. If the confederative government is given authority over issues that are disputed between the two sides, it will be more difficult to reach agreement during the stage of determining

the joint policy. However, if the authority in these domains is allocated to the states and each of them adopts a different policy, clashes will inevitably occur in the stage of implementation.

3. Free passage between the states could lead to tensions between Israelis and Palestinians. Furthermore, since the model does not envisage any effective control of people traveling between the states, there will be a risk of terrorist elements moving between the states, which is exacerbated by the fact that tourists and foreign visitors will also be able to move freely between them.
4. A situation in which Palestinians relocate to Israel and Israelis relocate to the Palestinian state—particularly if these groups are motivated by ideology—is liable to cause tension. Of particular concern is if descendants of the 1948 refugees, whether they are currently residing in the West Bank or in other countries, try to realize the “right of return” by settling in their family’s places of origin.
5. Free movement of goods between the states may harm the Israeli economy, especially if the Palestinian state does not effectively enforce licensing, official standards, taxation, and so forth. Furthermore, cross-border crime is prone to increase, particularly due to the economic disparity between the states.
6. Tension between the residents of the settlements remaining in the territory of the Palestinian state and the governing authorities of that state is almost inevitable, particularly in the case of disputes between them and Palestinian residents. To the extent that these confrontations have an ideological and religious component, the discord likely will become even greater.
7. The joint administration in the Old City in Jerusalem is likely to be a source of contention and disputes. The need to operate in concert may lead to paralysis and cause the sides to avoid necessary steps, while unilateral actions are likely to create confrontations between the two sides. One sensitive incident in Jerusalem can implicate the entire territory of the confederation and even affect relations with neighboring countries.

8. The confederative model makes it easier to accept Israel’s demand to maintain a certain degree of freedom of action for its security forces in the territory of the Palestinian state, at least during the initial stages and until the security situation stabilizes. However, security activity within the territory of the Palestinian state could lead to tensions that will undermine the stability of the confederation, particularly if it occurs frequently and over an extended period of time.
9. If Israel retains responsibility for external security, including the right to deploy along the external borders, then it will be possible to enforce the demilitarization of the Palestinian state and prevent the entry of elements that pose a security threat to the confederation. However, if certain domains, such as external security, are left exclusively under Israel’s control, this will become an ongoing source of frustration within the confederation.
10. The economic disparities between the states are liable to be a destabilizing factor. Although the connection between the states is expected to strengthen the economy of the Palestinian state, for the confederation to succeed, it will require significant and long-term investment to narrow existing gaps. Israel may have no choice but to support the Palestinian economy, which is likely to burden Israel’s economy.
11. The inclusion of Gaza Strip as part of the confederation poses considerable challenges to the stability of the confederation. First, to the extent that the government of the Palestinian state does not have full control over what is happening in Gaza, the free entry of people, vehicles, and goods from Gaza to Israel will raise concerns about security, crime, and economic issues. Furthermore, the inclusion of Gaza in the confederation will also require large investments, which will burden the confederation’s budget. However, if Gaza is not part of the confederation, it will remain a source of instability and the Israeli–Palestinian conflict will not be fully resolved.
12. It is doubtful if a stable confederation is possible given the great social, cultural, religious, and economic differences between the states that comprise the confederation. In particular, it is unclear whether a confederation is feasible unless both states have democratic regimes. It is doubtful that the Palestinian state will successfully maintain a

democratic character, particularly in the initial stages, given that it lacks a democratic tradition.

13. History indicates that confederations are not stable regimes. Some of them break up into separate states while others unite to form a single federal state.