

LESSONS FROM THE 2013-2014 ISRAELI-PALESTINIAN FINAL STATUS NEGOTIATIONS

By Ilan Goldenberg



About the Author

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The author alone is responsible for any errors of fact, analysis, or omission.

The ***Voices from the Field*** series is designed to feature timely analysis gleaned from current or former U.S. government practitioners who have recently served either overseas in strategic areas of the world or who have participated in critical policy deliberations. This series also highlights observations and current assessments based on field research conducted across the globe by CNAS experts.

Cover Images

Palestinian President Mahmoud Abbas chairs a session of the Palestinian cabinet in the West Bank city of Ramallah, July 28, 2013.

ASSOCIATED PRESS/ Xinhua, Issam Rimawi, Pool (adapted)

Israeli Prime Minister Benjamin Netanyahu attends the weekly cabinet meeting in his Jerusalem office, Sunday, Feb. 8, 2015.

ASSOCIATED PRESS/Sebastian Scheiner, Pool (adapted)

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For 18 months I had the good fortune to work at the State Department as part of the small U.S. team supporting the 2013-2014 final status negotiations between Israelis and Palestinians. For me this was a dream job: an opportunity to work on the issue that had first sparked my interest in Middle East policy for a Secretary of State who was deeply committed to solving it.

Throughout the process the Israeli and Palestinian publics, as well as close watchers of these issues, remained highly skeptical that President Mahmud Abbas and Prime Minister Benjamin Netanyahu, even with the help of Secretary John Kerry and President Barack Obama, could forge a major breakthrough where so many others had failed. Unfortunately, they were proven right: the talks collapsed in April of 2014. Soon after the collapse, three Jewish teens in the West Bank were kidnapped and murdered; a Palestinian teenager was killed in an act of revenge; a two-month war in Gaza killed approximately 2,000 Palestinians and 70 Israelis; months of tension began in Jerusalem, a city that continues to simmer; and the Palestinians chose to join the International Criminal Court and began to threaten Israel's leaders with war crime charges.¹

Although this latest round ended the same way as the two previous attempts — the 2000–2001 negotiations at Camp David and Taba and the 2007–2008 Annapolis process— these negotiations deserve further examination. They represent only the third time that Israelis and Palestinians sat down for extended formal negotiations to seriously try to address the gaps that remained between them on the toughest issues: borders, security, refugees, Jerusalem, and mutual recognition. Although right-wing Likud governments have led Israel for 27 of the past 35 years, this was the first time that an Israeli leader from a Likud government had participated in final status negotiations.² Certain issues were addressed more deeply and comprehensively in this round than ever before,

particularly on the critical matter of security, where retired General John Allen led an unprecedented American effort.

For these reasons, I felt it was important to share some of the lessons of this year in attempted Israeli-Palestinian peacemaking. What follows is not a comprehensive account of the negotiations. As a staffer who supported the talks, but did not participate in many of the sessions, I would not claim that authoritative knowledge. Moreover, I have omitted some elements because they are, in my view, better kept out of the public domain for the good of future negotiations. I hope with this analysis to add some value to the debate and to shed light on what the American negotiating team was contending with.

This report begins with a brief history of the negotiations. It next summarizes the final status issues that have been so intractable over the past twenty years. It then offers a more detailed analysis of the lessons and recommendations that I took away from my experiences. These are:

1. Twenty years of inconclusive talks have poisoned the environment in the negotiating room, creating an atmosphere equivalent to a nasty and prolonged divorce.
2. President Abbas and Prime Minister Netanyahu are a highly incompatible pair of potential peacemakers; it is unclear whether or not either would ever be able to strike a deal, but it is very unlikely that these two leaders could ever strike a deal with one another.
3. A final deal is nearly impossible without an agreement on initial political parameters to guide technical negotiations, but paradoxically, agreeing on parameters puts all of the political sacrifice up front before any political benefits of a final deal.



U.S. Secretary of State John Kerry hosts Israeli Justice Minister Tzipi Livni and Palestinian Authority chief negotiator Saeb Erekat at a July 2013 Iftar dinner that kicked off the negotiations. Credit: U.S. Department of State

4. The parties tend to default into spending most of their time negotiating minutiae, and thus the mediators must try to keep them focused on the substance of the final status issues.
 5. Israeli and Palestinian negotiating styles are highly incompatible, adding further obstacles to an already complex negotiation.
 6. The parties' tendency to use brinksmanship leads to last-minute, complex deals under extreme time pressure. This is a recipe for misunderstandings and also makes it very difficult to pursue alternative "Plan B" courses of action until the very end.
 7. Ongoing Israeli settlement activity during a negotiation is toxic for the negotiating environment.
 8. While trying hard to remain unbiased, the United States is an imperfect facilitator: it simply has a far better understanding of the Israeli perspective than of that of the Palestinians. Nevertheless, there is no credible alternative, because of the vital role it must play in reassuring Israel and getting it to make concessions.
 9. Although perpetual negotiations are not realistic, because they reinforce the Palestinians' view that Israel is not serious about giving them their state, every opportunity should be taken to resume negotiations, because in their absence the vacuum is filled by violence, which is worse for all involved.
- Hopefully, President Obama and Secretary Kerry will have another opportunity to reengage on the Middle East Peace Process over the next two years and to bring Israelis and Palestinians together for constructive negotiations. In the meantime, I hope that some of the lessons and observations that I drew from my experiences can be useful for those who continue to tackle these perplexing and important matters.

BACKGROUND

On March 20, 2013, accompanied by Secretary Kerry, President Obama traveled to Israel and the West Bank, meeting with Israeli Prime Minister Netanyahu and Palestinian President Abbas. The mood between Israelis and Palestinians at the time was grim. Only four months prior, Israel and Hamas had fought their second conflict in four years, called by the Israelis Operation Pillar of Defense. Soon after, the Palestinians had won a UN General Assembly vote according them non-member Observer-State status in the United Nations. Israel then retaliated by withholding tax revenue that it normally transfers each month to the Palestinian Authority, and announced new settlements in the West Bank and East Jerusalem.³

Coming out of the meetings in Jerusalem and Ramallah, the president authorized Secretary Kerry to take the lead in exploring how to rekindle a new round of final status negotiations to try to reverse the deteriorating situation.⁴ For the next four months, Secretary Kerry undertook a vigorous shuttle diplomacy effort. He visited Israel and the West Bank five times, held numerous meetings with regional leaders and tried to negotiate terms for a restart of the final status talks. Restarting talks was highly unpopular among the Palestinian public, which viewed it as simply an American and Israeli stalling tactic.⁵ President Abbas, seeking political cover to restart negotiations and to test Prime Minister Netanyahu's seriousness, demanded some combination of three conditions from the Israeli leader: acknowledgement that the negotiations would be based on the lines of June 4, 1967; release of the 104 remaining pre-Oslo Palestinian security prisoners (those imprisoned since before the 1993 Oslo accords); and a freeze on all settlement activity including planning, tenders, and construction in both the West Bank and East Jerusalem.⁶

In Amman, Jordan, on July 19, 2013, Secretary Kerry was able to announce, to the surprise of many, that the parties had agreed to resume negotiations for a period of nine months. Prime Minister Netanyahu had taken the highly unpopular step of agreeing to release the pre-Oslo prisoners in four rounds over the negotiations period, first in mid-August 2013, then at the end of October 2013, the end of December 2013 and the end of March 2014.⁷ President Abbas had taken the equally unpopular step of agreeing to return to negotiations and to take no further steps to upgrade Palestinian status in international institutions. The restart agreement included no settlement freeze, although the American team believed – wrongly, as it turned out – that the U.S. government had an informal understanding with the Israeli government that Israel would show restraint during the negotiations.⁸ It only became apparent after the deal was announced that there had also been a misunderstanding regarding precisely which prisoners would be released.⁹ On July 31 and August 1, 2013, Israeli lead negotiator Tzipi Livni and Palestinian lead negotiator Saeb Erekat and their teams met in Washington with President Obama, Secretary Kerry and the newly appointed Special Envoy for Israeli-Palestinian Negotiations, Ambassador Martin Indyk, to formally launch the negotiations.

Within two weeks, the difficulties of the initial agreement had become apparent. The decision to release the first 26 pre-Oslo prisoners met strong opposition across Israeli society, particularly from the right wing.¹⁰ At the same time, Israel's announcement of planning advancements and construction tenders for approximately 3,000 settlement housing units caused extreme bitterness on the Palestinian side and undercut the political benefits to President Abbas from the release of the prisoners.¹¹ Abbas was accused of having paid for the release of the prisoners by agreeing to new settlements.¹² This same sour scenario was played



U.S. Secretary of State John Kerry meets Palestinian Authority President Mahmud Abbas in Amman in November 2013. Credit: U.S. Department of State

out again with the second and third releases of prisoners in October 2013 and December 2013, undermining trust amongst the leaders and negotiators and leading to a negative atmosphere in both publics.¹³

Yet, despite these challenges, the negotiations continued. Between August and November 2013, the negotiations were primarily held bilaterally between the lead negotiators, with the United States playing a facilitating role.¹⁴ The U.S. Special Envoy sometimes joined the discussions, and at other times met with the parties to identify issues and offer suggestions for ways to bridge the gaps.¹⁵ At the same time, Secretary Kerry continued to meet separately with President Abbas and Prime Minister Netanyahu on a regular basis to discuss items that ultimately would have to be agreed at the leadership level.¹⁶

In December 2013, after six months of negotiations, the parties acknowledged that a full comprehensive agreement would not be attainable by April 2014, the specified end of the nine-month negotiating period, and that instead they should pursue a Framework agreement that would lay out



U.S. Secretary of State John Kerry meets Israeli Prime Minister Benjamin Netanyahu in Jerusalem in December 2013. Credit: U.S. Department of State

the key parameters necessary for a final agreement. At that point the parties agreed that the United States should take a much more active role in negotiating the Framework, which would be, in effect, an American document that both parties would accept with reservations.¹⁷ Between January and mid-February of 2014, the American team engaged intensively with both sides, particularly with the Israelis, on a draft.

On February 19, 2014, Secretary Kerry met with President Abbas in Paris to present a set of ideas to Abbas and his team. The Palestinians had strong objections to the presentation. Even more importantly, it was apparent that the Palestinians were souring on the entire process. For the next month, the U.S. negotiators worked with both sides to improve the content.¹⁸ On March 3, Prime Minister Netanyahu met with President Obama in Washington to review the status of the talks.

The most important visit was when, on March 17, 2014, President Abbas came to Washington. In that meeting, the United States proposed a new set of ideas that would be the basis for a potential Framework document.¹⁹ President Abbas did

not, however, respond to the ideas that the United States presented, and instead declared that he would be willing to discuss them only after the fourth round of prisoner releases at the end of March. He did not want to negotiate while the prisoners that had already been promised to him could be used as leverage.²⁰ It is important to note that even if President Abbas had responded positively to the ideas presented to him, there is no guarantee that the parties would have been able to agree on a framework document.

Prime Minister Netanyahu was in no mood to release the last group of prisoners just to have Abbas walk away a month later when the negotiating deadline expired.²¹ Thus, he would only agree to release the fourth group within the context of an extension of the negotiations. For the next two weeks, negotiators — U.S., Israeli and Palestinian — worked furiously to try to get an agreement that would extend the negotiations and result in the release of the prisoners even in the absence of a breakthrough on the Framework. Unfortunately, they were unable to do so. The March 29 deadline came and went without release of the fourth group of prisoners. On April 1, President Abbas formally acceded on behalf of the Palestinian people to fifteen international treaties and conventions.

reconciliation agreement to form a technocratic government of independents and to begin a process to hold elections in the West Bank and Gaza. Israel responded by officially calling off the negotiations. The negotiations had, however, died long before that moment. The parties were too far apart on the terms of an extension to make it realistic to continue the talks.²²

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Throughout April, the parties continued to negotiate on a potential extension, but the lack of trust and the increasingly difficult political environment made it impossible to bridge the gap. On April 23, Fatah and Hamas announced a new

TIMELINE FOR THE NEGOTIATIONS

2013

2014

MARCH - JULY

AUGUST - NOVEMBER

DECEMBER - MID MARCH

MARCH - APRIL

Secretary Kerry makes multiple trips to the region, shuttling between the two sides as he attempts to restart negotiations.

Parties lay out positions and negotiate between themselves, with U.S. playing role of facilitator. Secretary Kerry holds numerous meetings separately with President Abbas and with Prime Minister Netanyahu.

United States conducts separate negotiations with each side in an attempt to reach agreement on a Framework.

United States and the parties attempt to negotiate an extension without a Framework, but fail to come to an agreement.

MAR
20th-22nd

President Obama and Secretary Kerry travel to Israel, the Palestinian Territories, and Jordan, launching a renewed effort to start negotiations.

JUL
19th

After months of haggling and to the surprise of many, from Amman Jordan Secretary Kerry announces an agreement to resume Israeli-Palestinian final status negotiations.

JUL
29th-30th

In Washington DC, Secretary Kerry introduces Ambassador Martin Indyk as U.S. Special Envoy and holds the first official meeting with the Israeli and Palestinian negotiators to kick off the process.

AUG
13th

First round of release of prisoners by Israel, and Israeli settlement announcements, create significant tensions among the negotiators.

OCT
29th

Second round of agreed prisoner releases and more Israeli settlement announcements further sour the mood.

DEC
7th

Announcement by President Obama and Secretary Kerry at the Saban Forum in Washington DC that the United States is working on a Framework with the parties signals a pivot away from a comprehensive final status agreement.

DEC-JAN
30th - 10th

Third round of pre-Oslo prisoner releases and Israeli settlement announcements.

FEB
19th

In Paris, Secretary Kerry presents initial set of framework ideas to President Abbas, who objects strongly to them.

MAR
16th-17th

President Obama and Secretary Kerry meet in Washington DC with President Abbas. Abbas does not respond to the ideas that the United States puts on the table; it becomes apparent a framework agreement is not possible by the end of March.

MAR
29th

Israel does not carry out fourth release of Palestinian prisoners; parties continue to attempt to negotiate an extension.

APR
1st

On Palestinian television, President Abbas publicly signs letters of accession to 15 international conventions; negotiations continue, but an extension of the talks appears increasingly unlikely.

APR
23rd

President Abbas announces a reconciliation agreement between Fatah and Hamas. Prime Minister Netanyahu officially suspends the negotiations.

THE FINAL STATUS ISSUES

To understand the context and lessons of the negotiations, it is important to understand the issues that were on the table. The Declaration of Principles that launched the Oslo process was signed on September 13, 1993; it outlined two phases for further negotiations between Israel and the Palestine Liberation Organization (PLO). The first phase, meant to last no longer than five years, involved incremental arrangements as Israel withdrew from parts of the West Bank and the Palestinians gradually assumed greater responsibility for self-rule. The second phase would involve a final agreement on all outstanding issues, leading to a permanent resolution of the conflict. These negotiations on the so-called “final status issues” — the most sensitive matters that remain contested between the parties — were to start no later than the beginning of the third year of the interim period.²³

Three times the parties have come together to negotiate in a sustained way on these matters: the Camp David–Taba process in 2000–2001, the Annapolis process in 2007–2008, and the negotiations of 2013–2014. Unfortunately, the parties have not yet been able to agree on these final status issues, which thus are still the main points of contention.

What follows is a brief summary of the key final status issues that remain unresolved, which touch upon territory, security, Jerusalem, refugees, and the Jewish State. It describes both the traditional Israeli and Palestinian views on these matters. It is important to note that these positions are fluid; they change from one Israeli or Palestinian government to the next, and they also evolve as the situation on the ground changes. Thus, what follows is simply a “best estimate” of where the parties stand. Also described are some of the bridging proposals put forward by the United States or other outsiders in the past. Most notable of these are the Clinton Parameters, proposed by

President Bill Clinton to both parties in 2000 prior to leaving office. The Clinton Parameters remain the most detailed public articulation by a U.S. president of what a final agreement might include. More recently, President Obama publicly laid out positions on the issues of security and borders in two speeches at the State Department and at AIPAC in May 2011.

Territory

The Palestinian position is that the new Palestinian state should be based on the territory controlled by Egypt and Jordan prior to June 4, 1967, when war began and Israel took control of the West Bank and Gaza. Palestinians argue that there should be only very minor swaps of territory, through which Israel would receive some land that lies on the Palestinian side of the 1967 lines and is now inhabited by Israelis. In exchange for this, the new state of Palestine would receive uninhabited territory of equal size and value on the Israeli side of the 1967 lines. Palestinians put the highest premium on maximizing their land and ensuring contiguity.²⁴

Representatives of Israel’s center and left parties have in the past engaged in negotiations based on the 1967 lines, but there is strong opposition from



Activists raising Palestinian flags outside an Israeli settlement in the West Bank in September 2011. Credit: Palestine Solidarity Project

Likud and other right-wing Israeli parties to such a formulation.²⁵ Israeli negotiators generally seek to minimize the number of settlers that would have to be displaced in any agreement and they take a more expansive view of the territory that Israel needs to annex in the West Bank. They argue that the Israeli need for defensible borders requires greater territorial concessions on the part of the Palestinians.

The Clinton Parameters outlined in December 2000 suggested that the Palestinians should get 94–96 percent of the West Bank. The remaining West Bank territory would remain part of Israel and be swapped for territory beyond the 1967 lines, and for additional land that would be used to create a safe passage between Gaza and the West Bank. Under the Parameters, 80 percent of Israeli settlers in the West Bank should be able to stay in place, while both the amount of territory annexed by Israel and the disruption to Palestinian life should be minimized and contiguity in the West Bank maximized.²⁶ In 2011 President Obama laid out his position on territory: “The United States believes that negotiations should result in two states, with permanent Palestinian borders with Israel, Jordan, and Egypt, and permanent Israeli borders with Palestine. We believe the borders of Israel and Palestine should be based on the 1967 lines with mutually agreed swaps, so that secure and recognized borders are established for both states.”²⁷

Security

Israeli politicians have consistently and publicly reiterated the concern that a complete Israeli withdrawal from the West Bank could lead to its decline into an ungoverned space that could be used to attack Israel. Israel’s experiences after the withdrawal from southern Lebanon in 2000 and from Gaza in 2005, when these areas were taken over by Hezbollah and Hamas, reinforce this fear.²⁸ Prime Minister Netanyahu made clear in a June 29, 2014 speech at the Institute for National Security



The border between the West Bank and Jordan. Credit: Moti Kimchi

Studies in Tel Aviv, that the Israelis desire to keep their forces almost indefinitely in the Jordan River Valley to seal their border against terrorist infiltration. They remain concerned about internal security and whether the Palestinian Security Forces can maintain stability in the West Bank in the aftermath of an Israeli withdrawal.²⁹

In contrast, the Palestinian priority is focused on ending the Israeli occupation. They believe that Israeli concerns can be assuaged by an international force led by NATO, the United States, or some other party that could replace the role currently played in the West Bank by the Israeli Defense Force. Over a long period of time, such an international force could train Palestinian security forces to take over necessary security functions. They insist on a date certain for a full withdrawal of Israeli forces.³⁰ In the December 2014 resolution that the Palestinians proposed to the United Nations Security Council (UNSC), they asked for a two-year timeframe, although in the past they have been more flexible, asking for 3–5 years.³¹

The Clinton Parameters propose a third-party force. They recommend that Israeli forces withdraw over a span of three years and then

maintain positions in the Jordan River Valley for an additional three years. They also call for the establishment of three early warning radar stations on the West Bank that would be manned by Israel with a Palestinian liaison.³² The Parameters propose a “non-militarized” Palestinian state, which would limit its capabilities to threaten Israel.

In a May 19, 2011, speech President Obama laid out the U.S. position:

*Israel must be able to defend itself – by itself – against any threat. Provisions must also be robust enough to prevent a resurgence of terrorism, to stop the infiltration of weapons, and to provide effective border security. The full and phased withdrawal of Israeli military forces should be coordinated with the assumption of Palestinian security responsibility in a sovereign, non-militarized state. And the duration of this transition period must be agreed, and the effectiveness of security arrangements must be demonstrated.*³³

Jerusalem

Israelis lay claim to the entirety of Jerusalem as their capital, defining it as an area of 125 square kilometers that encompasses both East and West Jerusalem. The Palestinians insist that all of East Jerusalem is their capital, an area that they define as 6.5 square kilometers that were part of East Jerusalem in 1967.³⁴ They also claim all additional Arab neighborhoods, many of which were not part of Jerusalem prior to 1967, that are now considered by Israel to be part of Jerusalem because of significant adjustments by Israel to the municipal borders.³⁵

The majority of the neighborhoods in Jerusalem could be divided based on the concept that Jewish neighborhoods will be part of Israel and Arab neighborhoods will be part of the Palestinian state.³⁶ This concept was laid out in the Clinton Parameters. Extensive studies by SAYA, an architecture firm that focuses on “Resolution Planning Architecture” demonstrate that such an arrangement is feasible. Given that the Jewish and Arab populations of the city are increasingly separated anyway, it need not cause major disruptions to the patterns of daily life.³⁷

The greater challenge is the Old City, a tiny area of one square kilometer that cannot be physically divided and which holds great religious importance not only to the two parties, but to three major world religions and their countless sub-denominations.³⁸ Indeed, Islam’s third holiest site – the Haram al Sharif – and Judaism’s holiest site, referred to as the Temple Mount, partly occupy the same physical space. The question of administration is extremely complex, but it is ultimately solvable if the parties can agree on the most sensitive question of all, that of sovereignty. There are numerous proposals on the table, none of which have ever been embraced by the parties. The Clinton Parameters and negotiations at Camp David focused on a division of sovereignty in which territory within the Old City would not be physically divided, but a line would run through it to mark the sovereign territory of each state.³⁹ Another proposal would be for a special regime, where both parties would agree essentially to forgo sovereignty and to have the Old City jointly managed by a body that would include Palestinian and Israeli as well as other international representatives.⁴⁰ Other options incorporate both elements, with sovereignty divided through most of the Old City, and with a special status for the area around the Temple Mount and Haram al Sharif.



A view of the Dome of the Rock and the Old City of Jerusalem. Credit: Berthold Werner



A child stands in a typical alleyway in the Burj al-Barajneh Palestinian refugee camp in Beirut. Credit: Al-Jazeera

Refugees

The Palestinians argue for a fair and just solution for the Palestinian refugees who lost their homes during the war of 1948 and were ejected from Israel. They demand financial compensation and for Israel to acknowledge and accept some responsibility for the historical wrong done to the Palestinian refugees.⁴¹ They argue that the Palestinian refugees should have a number of choices as to where they would be resettled as part of a final agreement, and that at least some of those refugees would have the right to go back to Israel.

The Israelis base their position on an entirely different narrative: that most Palestinians left of their own volition and that the return of 5–6 million Palestinians who have been living in Lebanon, Jordan, Syria, and across the globe would threaten the Jewish nature of the state of Israel.⁴²

The Clinton Parameters suggest that the Israelis “acknowledge the moral and material suffering

caused to the Palestinian people as a result of the 1948 war and the need to assist the international community in addressing the problem.” They suggest that an international mechanism be established to deal with compensation, resettlement, and all other questions that come out of the agreement, and that the United States would be willing to help lead such an effort.⁴³

The Clinton Parameters also suggest that all Palestinians should have a right of return to their “homeland” or to “historic Palestine.”⁴⁴ That would mean the right to return to the new state of Palestine, to remain where they are, to resettle in a third country, or to be admitted to Israel.⁴⁵ Other than returning to the new state of Palestine, all of the other options — including a return to Israel — would be subject to the discretion of the destination governments. This would effectively limit the numbers able to return to Israel. As part of an agreement, Israel would agree to let in a certain

number, although what that number might be is inevitably highly contentious.⁴⁶

This type of solution is probably the only realistic option. However, it comes with two tremendous challenges. First, it would likely require billions of dollars from the international community and a prolonged implementation process.⁴⁷ Second, the refugee community, which has grown to approximately 5 million, has outsized expectations on this matter that probably cannot be realistically met by an agreement.⁴⁸

Jewish State

The demand that the Palestinians recognize Israel as a Jewish state was not a major issue of discussion at Camp David⁴⁹ However, in recent years it has become a litmus test for both sides. The Israelis argue that unless the Palestinians recognize Israel as a Jewish state, they will not give up the narrative that any peace agreement is only a temporary way station toward eventually ejecting the Jewish people from the land of Israel. Israeli officials insist that they cannot end the conflict through concessions unless the Palestinian movement accepts that the state in which they will exercise their right to self-determination and fulfill their aspirations is Palestine, not Israel. In the context of increased international efforts to question Israel's legitimacy, this matter has become highly sensitive for the Israelis.⁵⁰

The Palestinians argue that recognition of Israel as a Jewish state would force them to disregard their own history as inhabitants of the same land.⁵¹ They are also concerned that it could make them complicit with steps to relegate Arab-Israelis to second-class citizens, and that acknowledging the Jewish nature of the state of Israel would foreclose any right of return for Palestinian refugees.⁵²

The U.S. position on this matter has been that Israel is the Jewish State.⁵³ The United States and others have suggested numerous formulations that

would make it clear that all citizens in Israel would have equal rights and that Israel's Arab community would not be discriminated against. There have also been attempts to develop language that clarifies that accepting the concept of the Jewish State does not mean that Palestinians are repudiating their own narrative regarding refugees and the 1948 war. However, thus far none of these options have been accepted by the Palestinians.

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LESSONS FROM THE NEGOTIATIONS

The following section outlines a series of lessons that I took from my experiences supporting the negotiations. They include a combination of recommendations for action and a number of observations that, while not necessarily actionable, could help inform future mediators.

20 Years of Perpetual Negotiations have Created a Very Negative Environment

A critical component of conflict resolution is building trust and improving relationship dynamics, but after 20 years of negotiating without an agreement, the opposite is true of the Israeli-Palestinian conflict. Sadly, the negotiation dynamic by now resembles a difficult divorce negotiation where the parties will no longer live together, but coexist side by side. The Israelis and the Palestinians are trying to negotiate a separation agreement to share a limited amount of assets, and to go their separate ways as two separate states. The problem is that divorce negotiations often bring out the worst in people, and this one has been going on for more than 20 years, since the Oslo Accords of 1993. Any negotiator who walks into the room with these parties must understand that they are not starting from

scratch; instead, one is dealing with two injured parties who have, after years of adversarial negotiations, developed deep suspicions of one another.

Like any divorce negotiation, the two parties know each other all too well. They know one another much better than the mediators know either of them. Each tends to use that knowledge to “press buttons” on the other side to provoke and annoy. With little mutual trust, each often takes the view that the other side is not seeking a solution but is out to take advantage at every step. Every request is examined for its potential as a means of additional leverage in the negotiation.

The nastiest fight in any divorce tends to be over custody of the children; in this case, the “child” is Jerusalem. It is the most emotionally charged issue, and any solution will be extremely challenging.⁵⁴ During every final status negotiation, the issue of Jerusalem has been the most sensitive even to discuss. Ultimately, the only solution that might possibly work would be some kind of shared custody arrangement; it would not be ideal for either of the parties and would be cumbersome for the residents of the city, but it would have to be tolerated by all sides.

The divorce dynamic also helps describe the disagreements over the question of recognizing Israel as a Jewish state. This might be compared to an issue that, in the beginning, only one side cared about, but which negotiating dynamics and distrust have made into a very contentious issue. Although the issue did come up at Camp David in 2000, it was never a major Palestinian concern; indeed in earlier years, Yasser Arafat on numerous occasions referred to Israel as the Jewish State.⁵⁵ However, as Israel’s legitimacy in the international arena came increasingly under threat over the past few years, the issue grew in importance for Israelis. During the Annapolis process of 2007–2008, Israeli negotiators asked that Palestinian recognition of Israel as the Jewish State become a central



Artwork on a section of the Israel-built Separation Barrier around Bethlehem.
Credit: Troicare Ireland

requirement. Their Palestinian counterparts were suspicious, and saw this request as an opportunity to pick up negotiating leverage. As a result, they adopted a hard line on the issue.⁵⁶

The Israelis then began to use the issue as a test of Palestinian willingness to accept a permanent agreement and the continued existence of Israel. The more Israeli politicians talked about it, the more suspicious the Palestinians became. They felt that, as part the Oslo Accords, they had already recognized Israel's right to exist, and that this was all that was necessary. They began to view Israel's insistence on the Jewish state issue as a backdoor tactic to force Palestinians to acknowledge the Israeli narrative, requiring disregard of their own family history in places such as Jaffa and Haifa, and thus predetermining negotiations on Palestinian refugees. They also suspected that Israeli leaders would use recognition of Israel as the Jewish State to relegate Israeli Arabs formally to second-class citizenship. Their strong and public objections to it made it more difficult for them to ever accept it as part of an agreement. Thus, an issue that was not, in 2000, a major point of contention had by 2014 become a major stumbling block on the way to an agreement.⁵⁷

President Abbas and Prime Minister Netanyahu are Not a Compatible Pair of Peacemakers

Prime Minister Netanyahu and President Abbas are two incompatible leaders who are unlikely ever to reach an agreement. This is not to say that one of them could not come to agreement with a different partner; however, these two are unlikely ever to achieve a deal. The problem is that these leaders do not trust each other, and both are also very politically cautious.

As Ambassador Martin Indyk explained after the collapse of the negotiations: "It's the distrust between the leaders and between the people that holds us up and makes it difficult."⁵⁸ Coming to

an agreement would ask these two leaders to make some of the most politically controversial decisions in their nations' histories. Each needs to know that if he secretly agrees to something, it will not end up in the press the next day. Both need to know that if they agree to a major breakthrough they can shake hands and each can expect that the other side will implement the agreement in good faith, and that his counterpart will not publicly come out the next day and repudiate his side of the deal. But that trust between Abbas and Netanyahu simply does not exist.



U.S. Secretary of State John Kerry and chief negotiator Ambassador Martin Indyk land in Tel Aviv in December 2013. Credit: U.S. Department of State

The lack of trust undermines everything. It can be seen in the collapse of the negotiations. Abbas did not trust that Netanyahu would release the fourth group of prisoners and therefore did not engage with the ideas proposed to him during his March 17, 2014, meeting with President Obama or in the days afterwards. Instead, he insisted that the prisoners must first be released before any further discussion on the Framework. Netanyahu did not trust that Abbas would remain in the negotiations after April 30, 2014, and therefore refused to release the fourth group of prisoners. He believed

that if he did, he would pay a high political price only to have Abbas walk away a month later. Lack of trust meant that neither side was willing to take the crucial next step.

The lack of trust is further exacerbated by the politically cautious nature of both leaders. Caution is not always a bad thing; it can sometimes be a very good thing in the context of the Israeli-Palestinian conflict. For example, during the conflict in Gaza during the summer of 2014, Prime Minister Netanyahu decided to buck public opinion in deciding, wisely, against launching a full ground invasion of all of Gaza.⁵⁹ President Abbas also showed admirable restraint as he took steps to keep the situation calm in the West Bank and East Jerusalem during the conflict.⁶⁰

However, to make peace needs leaders who are risk takers – leaders who are willing to take bold steps that go beyond what conventional wisdom says their constituents might be willing to accept. During the negotiations, Prime Minister Netanyahu’s consistent refusal to risk alienating his right-wing base repeatedly limited his options, most notably when it came to Israel’s continued settlement policies. For his part, President Abbas’s aversion to risk was another reason that, when he was in Washington in March 2014, he never responded to the ideas the United States put forward.

Even if there were different leaders who had a better relationship and greater trust, it is not clear that any Likud prime minister would have been able to find enough common substantive ground to reach agreement with any Palestinian president. The lack of trust combined with political caution meant that this proposition would never be fully tested.

The Chicken-and-Egg Challenge: Parameters or a Full Agreement?

The goal of a final agreement between Israelis and Palestinians still enjoys majority support with

both populations, but all of the intermediate steps are extremely unpopular. If a survey of Israelis and Palestinians presents a packaged final agreement that involves sacrifices for all sides on the key final status issues and – most importantly – tells the survey participants on each side that the other side has already agreed to this deal, more than 60 percent of Israelis and Palestinians will support it.⁶¹ However, if the individual elements – Jerusalem, refugees, borders, Jewish State, or security – are presented individually, or if the survey does not assert that the other side has accepted the deal, support drops dramatically.⁶²



A checkpoint at a gate on the West Bank Barrier separating Palestinian villagers from their farmland near the village of Bil'in. Credit: Harry Pockets

Given this data, the ideal option for any political leader is to drive to a complete and final agreement on the key issues with no intermediate steps. However, such an agreement – with all of the details specified – would require consultation with hundreds of experts to work out the details such as how to draw maps, administer a border security system, or manage the municipality of Jerusalem. Conducting negotiations on such politically explosive matters in a room with dozens of technical experts would be a major political risk for any Israeli or Palestinian leader. Before any

actual agreement was reached, it would likely leak to the press, with major political consequences. But without such detailed negotiations, there can never be a final agreement.

Therefore, the only solution is an agreement on parameters, which lays out the key elements of the final deal. As polling has made clear, the challenge with this approach is that initial concessions are very unpopular. They can and will be picked apart by opponents on all sides in the absence of a detailed finalized agreement. Thus, the leaders are stuck: unwilling to open up the negotiations to go all the way to a final deal but also reluctant to agree to parameters which come with a huge political cost and not much immediate benefit.

One approach to this problem would be for outsiders to publicize these types of detailed ideas so that both publics could become accustomed to them, thus giving more space for political leaders. There is no question that many track-two (nongovernmental) efforts over the past 15 years have tried to fill this gap. The most notable attempt was the Geneva Initiative, which in 2003 laid out a comprehensive final agreement negotiated by Israelis and Palestinians who had been part of the Taba and Camp David processes. The problem with such efforts is that most do not reflect political reality, because the Israelis and Palestinians who negotiate them do not necessarily represent the mainstream in their societies. A better approach might be for outsiders from the United States or Europe, in close consultation with Israeli and Palestinian participants, to put forward complete and comprehensive pragmatic solutions that they judge could be politically acceptable to both sides, and to try to socialize the Israeli and Palestinian publics to become accustomed to such solutions.

The Details Matter but They are Neglected

The conventional wisdom about Israeli-Palestinian negotiations is that all parties know the outlines of the final agreement – the basic contours were laid

out initially in the Clinton Parameters and have not changed dramatically since – and all it would take to get there is political will.⁶³

This assertion, although largely correct, is incomplete. The broad contours of a final deal are known, but the negotiation is not just about those big ideas: much of the conflict is about the crucial details that have never been worked out. A lot of painstaking work since Camp David has been done by outside organizations that dove into these details; in addition, the American team involved in the 2013–2014 negotiations undertook perhaps the most rigorous examination of these matters ever.⁶⁴ But there is still no agreement between the parties on such issues as how to compensate the millions of Palestinian refugees who are unlikely ever to return to Israel, and where the resources would be found to pay them. Similarly, despite the existence of many creative proposals for the ins and outs of managing and governing Jerusalem, no one has yet advanced a proposal that anyone is confident could genuinely work for both sides.

In fact, although the parties have been negotiating for 20 years, they have spent remarkably little time dealing with the details of the most intractable final status issues. Throughout the entire Oslo process, they have actually sat down for formal and extended negotiations on the final status issues just three times. Instead, they have spent most of their time dealing with crisis management and negotiating minutiae: what quantities of what sorts of goods can come into Gaza? which Israeli checkpoints will be removed from the West Bank? how many Palestinian prisoners will be released, and which ones? These relatively minor (although important) issues have repeatedly consumed most of the time and attention during negotiations. Good will is eroded and political capital burned while precious little time remains in which to address the core underlying challenges.

Mediators must try harder to avert such distractions and instead keep the parties focused on the main issues. This is extremely difficult since, after twenty years of negotiating, both sides default into the comfort of arguing about minor details rather than dealing with the real substance.

Contrasting Styles Make Things More Difficult

The contrasting styles of the parties add another level of complexity. The Israelis want everything on paper and they negotiate every detail. This tendency leads to intensive, lawyerly sessions in which hours are spent discussing a few words. In contrast, the Palestinians find broader principles documents to be much more to their liking, and they are sometimes inclined to pursue verbal agreements that incorporate greater flexibility.

Neither side is necessarily right or wrong: both styles can be useful for productive negotiations. However, these differences in their approaches add another layer of complexity: the two sides rarely seem to have a common vision of what the ultimate written result of a negotiation should be.

The two sides also have varying styles in terms of how they make concessions, making it very difficult for mediators to truly understand the bottom lines for both sides. The Israelis often start with hard-line positions from which they slowly make concessions. The Palestinians start by laying out a more generous bottom line, but then will not move off of that initial position. The Palestinians view initial hard-line Israeli offers as acts of bad faith. The Israelis have an equally negative view of the Palestinians' refusal to move from their opening positions during the negotiations.

The Parties Always Wait until the Last Minute

The Israelis and the Palestinians do not come to agreement until they absolutely have to. An extreme example was seen in the July 2013

agreement to restart the latest round of negotiations. Secretary Kerry spent four months going back and forth between the two sides; an agreement only came together at the last moment as it became clear to both sides that this was their last chance to resume the negotiations. Both sides made concessions only when they realized that the U.S. secretary of state was not going to spend any more time on the issue unless they demonstrated some seriousness. The Palestinians had, all along, emphasized three conditions for reopening the talks: the pre-Oslo prisoner releases; an agreement to negotiate based on the 1967 lines; and a settlement freeze. They did not insist on all three, but it was unclear precisely what combination of these conditions they might accept. They ultimately agreed to resume negotiations with only one of those three conditions met. Having said repeatedly that he would not meet any of those conditions, Netanyahu at the last moment agreed to the prisoner releases.

Such an approach brings its own difficulties. First, it means that when an agreement is reached, it is often forged under significant time pressure that makes it difficult to work out all of the details sufficiently. This can lead to misunderstandings. Indeed, time pressure played a significant role in the misunderstanding regarding precisely which prisoners would be released, which created problems nine months later when the parties tried to extend the talks.

Time pressure also means that mediators have to wait until the last possible moment to test the seriousness of the parties in order to know for sure whether a proposal under discussion will yield an agreement. Thus, the mediators cannot offer "exit ramps" to either party or begin negotiating an alternative Plan B without undermining Plan A. It creates a tremendous challenge for the mediators. Thus, when it became clear in the middle of March 2014 that a Framework was not achievable, insufficient time remained to negotiate an extension

of the talks prior to the scheduled release of the fourth group of prisoners on March 29. That deadline passed without a release, and the Palestinians chose on April 1 to join fifteen international conventions; at that point, the likelihood of getting an extension dropped dramatically.

The Settlements Will Remain a Huge Stumbling Block

Israeli settlement activity in the West Bank will continue to undermine confidence between the two sides until there is a final status agreement. It is highly problematic, and toxic for any negotiation. A significant settler constituency is determined to undermine any negotiation. Many see the source of this problem as arising from the unwillingness of the Netanyahu government to stand up to its right-wing base; indeed, this was the critical factor preventing resolution of the differences over settlements in the 2013–2014 negotiations.

The issue is, however, more complicated. Israelis and Palestinians have very different views on this matter, and even centrist and left-wing Israelis differ. Most Israelis oppose settlements that are deep in the West Bank at places such as Kiryat Arba (Hebron), but support construction in Jerusalem neighborhoods that are beyond the Green line, such as Gilo or Ramot that they expect to be a part of Israel. Even the Israeli center bristles when Israel is criticized for pursuing construction in neighborhoods that, by virtually all accounts, will be part of Israel.⁶⁵

Palestinians do not recognize any such distinction. Palestinian negotiators recognize that the major Jewish neighborhoods in East Jerusalem and some parts of the West Bank are likely to remain part of Israel and will have to be part of the land swaps. However, they view any Israeli construction east of the 1967 lines as changing the negotiating position on the ground. It is politically impossible for them to accept any such action, given how the Palestinian population sees it.



An armed Israeli settler patrols Shuhada Street in the city of Hebron in the West Bank in June 2014. Credit: Nayef Hashlamoun

The issue is further complicated by the arcane Israeli bureaucracy, which requires a six-step process for approving settlement construction.⁶⁶ If every one of these steps is publicly announced separately, each project generates numerous political crises before a settlement is actually built.

In an ideal world, the parties would solve this problem by agreeing early in the negotiations on the final borders, including land swaps. Once those borders were agreed, Israel could build as much as it wanted on its side, while also removing any restrictions on Palestinian building on the territory of their future state.

Unfortunately this is very difficult to achieve, because agreeing on a map would be a significant concession for the Israelis; it would need to be coupled with a major concession from the Palestinians, such as acknowledging that very few if any Palestinian refugees will be able to return to the areas that will be part of Israel. It would also likely be impossible to agree on a map of Jerusalem until the very end.

Perhaps a more realistic solution would be an early agreement on some of the less controversial blocs that would remain part of Israel. This would need to be combined with equivalent land swaps for the Palestinians. Israelis could then keep building in those limited areas, and Palestinians could declare

that this construction did not prejudice future negotiations and that they have been compensated appropriately for the territory.

SETTLEMENT ANNOUNCEMENTS DURING THE NEGOTIATIONS

Israeli settlement construction in the West Bank and East Jerusalem remains an explosive issue between Israelis and Palestinians; it played a significant role in souring the mood during the negotiations. Although no freeze on Israeli settlement announcements or construction during the negotiations was specified, there was a U.S. expectation of Israeli restraint; it was not met.

Prior to the construction of new settlement units, Israel requires a multistep approval and planning process that goes through numerous government ministries. The processes for East Jerusalem and the West Bank are different; there are also differences between the approval processes for private development and those for public development. Adding to this complex web is that the numbers involved in announcements do not necessarily indicate actual construction. The final step in the process usually, but not always, involves tenders, that is, calls for construction bids.

The Israeli prime minister's office does not have complete knowledge or control of every step of this complicated process. There have certainly been times during the negotiations when opponents of the talks tried to sabotage the negotiations through settlement announcements. However, the prime minister's office is ultimately responsible for these steps, and can pull them back if it has the political will to do so (as in 2010, when it orchestrated a settlement freeze in the West Bank).

The non-governmental organization Peace Now maintains the most comprehensive publicly available data on the settlements; according to their data, during the nine months of negotiations, a total of 13,851 housing units were moved forward in the planning process or were brought through its final step so that construction could begin. This represented a four-fold increase compared to the number of units announced in 2012, which itself had been an unusually high year. Peace Now counted 4,868 units that were "tendered" or passed through the final step (2,248 in the West Bank and 2,620 in East Jerusalem). The number of additional units advanced but not brought to conclusion totaled 8,983 (6,561 in the West Bank and 2,422 in East Jerusalem). Nearly all of the public announcements about settlement activity were made in three batches around the same time as the pre-Oslo prisoner releases in August 2013, October 2013, and January 2014.

Most of the units that were "tendered" (brought to the final step so that construction could begin) were in areas that are likely to remain part of Israel in any final agreement. However, many of the nearly 9,000 other units that made progress through earlier stages of the planning process were in areas likely to be part of the Palestinian state. From a political perspective, this makes very little difference to the Palestinians, who view any settlement activity as intolerable regardless of location.

The United States Is an Imperfect Facilitator but There Is No Credible Substitute

There has been significant criticism of every American negotiating team, charging each with bias towards Israel. Some have argued that this has to do with American domestic politics and the pressure of Jewish groups. During the last round of the negotiations, however, the American Jewish community was highly supportive of the Obama administration's efforts. They deferred to the judgment of Israel's leadership to make the decisions on these tough questions.

The real source of the issue has less to do with political pressure or purposeful bias and more to do with the fact that the United States understands the Israeli perspective better than it does the Palestinian perspective. This is natural, since the United States has a deep partnership with Israel that extends far beyond the Israeli-Palestinian issue; it includes collaboration on matters of defense and intelligence as well as regional issues such as Iran, Syria, and Egypt. The U.S. government as a whole has many more interactions with the Israelis across this broader spectrum of issues, and as a result, American policymakers have gained a better understanding of Israeli positions and are more sensitive to Israeli concerns. Even as a well-meaning negotiating team does its best, it is very difficult to avoid this trap.

There is also a "Catch-22" problem with the Palestinians, since they have now come to expect that the United States will negotiate each item with Israel before taking it to the Palestinians. This works in two ways. First, if the United States presents ideas to the Palestinians that they do not like, they will simply charge U.S. bias favoring Israel. If the Americans present ideas to the Palestinians that have not been previously cleared by the Israelis, the Palestinians again tend to respond negatively, this time declaring that they will only seriously entertain an idea if the United States has first run it by Israel. This can create a highly

frustrating dynamic for American negotiators; it limits their ability to brainstorm creatively with the Palestinian team.

Despite its shortcomings, there is simply no alternative to the United States as a facilitator of negotiations. If there is ever to be a two-state solution, Israel will need strong guarantees that its security needs will be met. This has become more pronounced since the Israeli pullouts from Gaza and southern Lebanon were followed by Hamas and Hezbollah takeovers. These events have reinforced Israeli concerns that in the aftermath of an Israeli pullout, the West Bank would become a failed state. The rise of the Islamic State in Iraq and Syria has only further exacerbated this concern. Given the depth and breadth of the security relationship, only the United States has the capacity to provide the type of reassurance that Israel will need. This is a question of more than just capacity: it is also a question of trust. Israel is unlikely to trust any party other than the United States to work with it to solve this question. Indeed, Israel's security requirements and its sense of insecurity might be such that even the United States could never provide the necessary reassurance.

Other states, too, will have important roles to play. European states are critical to encouraging both sides to move forward. They should try to make as clear as possible the tremendous benefits that could be associated with getting a final agreement, as well as the costs of failing to do so. During last year's negotiations the European Foreign Affairs Council did just that, laying out an unprecedented set of incentives for Israel if it were to come to an agreement with the Palestinians.⁷⁰ Representatives of a number of European states also made clear at various points that Israel would be increasingly isolated politically and economically if it were unable to come to an agreed solution with the Palestinians.

The Arab States also have an important role to play. Secretary Kerry met numerous times during the negotiations with the Arab League Peace Initiative Follow Up Committee, consisting of a number of Arab foreign ministers. Their support is critical; among other benefits, it provides President Abbas with political cover to pursue an agreement. Despite expressing their support for the talks, they were never willing to go far enough to push Abbas forward and embolden him to go for a deal. Instead, at the end of the process, they deferred to his wishes; they passed a resolution on March 25, 2014, that rejected any acceptance of Israel as a Jewish state, and thus removed any flexibility for negotiations on this point.⁷¹ Their failure to provide sufficient financial support to the Palestinian Authority during the negotiations also weakened the Palestinian position.

Negotiating Keeps the Peace, but Perpetual Negotiations are Not Realistic

It is always better to have the parties negotiating than not negotiating, as the process itself significantly dampens the potential escalations that spoilers might try to cause. This does not mean that the parties should negotiate just for the sake of negotiations. There needs to be a good-faith effort to try to come to an agreement. It also does not mean that the United States should spend tremendous amounts of time or national prestige on this issue if a breakthrough is not possible. However, criticism that somehow negotiations make things worse by raising expectations is unwarranted (especially given how low expectations were with both publics while this process unfolded).⁷²

During the 2013–14 process, there was a year and a half of calm. Critics have looked at the aftermath and the subsequent Gaza war and argued that, if the United States had not tried in the first place, both Israelis and Palestinians would now be better off. This ignores the fact that 2012 was a terrible year for the Israeli-Palestinian conflict and things were on a downward trajectory:

Israelis and Palestinians fought a second war in Gaza; President Abbas went to the UN General Assembly and won a vote for Observer State status; Israel retaliated by taking planning steps on a settlement project in the highly problematic area called E-1 which, if constructed, would threaten the contiguity of the West Bank and the two-state solution. The West Bank also experienced significant instability as the Israelis retaliated to the move at the UN by withholding tax revenues from the Palestinian Authority.

The negotiations temporarily stabilized this situation and bought the parties fifteen months of relative calm. The beneficial effects began in the run-up to President Obama's visit in March 2013; they lasted until the kidnapping in June of 2014 of the three Israeli teens. Until then, both parties were able to show restraint in response to provocative actions by the other side because they had the political cover of negotiations. Spoilers sought to undermine the negotiations but, for a time, did not resort to extreme efforts such as terrorist attacks.

The challenge, however, is that keeping negotiations going just to keep the peace is not realistic. After 20 years of talks without a breakthrough, perpetual negotiation would just feed Palestinian suspicions that the Israelis are not serious about the two-state solution. American negotiators should recognize that when the parties are sitting at the table the situation on the ground will be more manageable. But they must also, always, seek to make progress. Even if negotiations are not sustainable in the long run, whenever there is an opportunity to restart negotiations, the opportunity must be seized and breakthroughs must be attempted.



Israeli kindergartners take part in a rocket drill in central Israel during the Summer 2014 conflict in Gaza. Credit: Siven Besa/Israel Defense Forces



Destruction caused by Israel Defense Force raids in Beit Hanoun in Gaza during the summer 2014 conflict. Credit: Muhammad Sabah/B'Tselem

*There are real-life consequences
when people give up on the
process of negotiations, however
interminable, frustrating, and
mundane they seem, and turn
instead to violence.*

In March of 2014, I was highly skeptical that extending the talks without a breakthrough on the Framework Document had any usefulness. But by the end of the summer of 2014, after two months of war in Gaza with thousands of deaths and wide destruction, I understood how wrong my skepticism had been. It was a sobering lesson in trying to make peace: one must never forget what happens in the absence of a political process. There are real-life consequences when people give up on the process

of negotiations, however interminable, frustrating, and mundane they might seem, and turn instead to violence.

CONCLUSION

On March 17, 2015 – one year to the day after President Abbas met with President Obama at the White House – Israel will hold elections for a new Knesset. As of the writing of this paper the outcome remains in doubt. The pundits say that a harder right-wing coalition or a national unity government are the most likely scenarios. But Israeli elections are unpredictable: it is also possible that a center-left government, more open to negotiations with the Palestinians, may emerge and reinvigorate the peace process. Either way, many of the challenges described in this report are likely to remain. But that should not dissuade future negotiators from trying to advance the cause of peace. The horrific violence of the Gaza War in the summer of 2014 should stand as a constant reminder of why this work is so important and why, despite the frustrations and long odds, the United States must try and try again.

ENDNOTES

- 1 Ray Dolphin and Katleen Maes, "Occupied Palestinian Territory: Gaza Emergency," Special Report, United Nations Office for the Coordination of Humanitarian Affairs, August 28, 2014, http://www.ochaopt.org/documents/ocha_opt_sitrep_28_08_2014.pdf.
- 2 Natan B. Sachs, "Israeli Elections: Labors Challenge," *Brookings Institution*, January 16, 2015, <http://www.brookings.edu/blogs/markaz/posts/2015/01/14-israel-elections-primaries-labor-bennett>.
- 3 Since the agreement on the 1994 Paris Protocol, Israel has administered the collection of import taxes on behalf of the Palestinian Authority (PA) and distributed them to the PA, whose budget is highly dependent on these transfers. See "Annex IV: Protocol on Economic Relations between the Government of the State of Israel and the P.L.O., Representing the Palestinian People," April 29, 1994, israelipalestinian.procon.org/view.answers.php?questionID=
- 4 Ben Birnbaum and Amir Tibon, "The Explosive Inside Story of How John Kerry Built an Israel-Palestine Peace Plan — and Watched it Crumble," *The New Republic*, July 2014, <http://www.newrepublic.com/article/118751/how-israel-palestine-peace-deal-died>.
- 5 Walid Ladadweh and Khalil Shikaki, "Palestinian Public Opinion," Poll No. 49, *Palestinian Center for Policy and Survey Research*, September 2013, <http://www.pcpsr.org/en/node/191>.
- 6 Birnbaum and Tibon, "The Explosive Inside Story of How John Kerry Built an Israel-Palestine Peace Plan."
- 7 Jonathan Ferziger and Ann Edgerton, "Kerry Has 'Frank' Talk with Netanyahu on Settlements," *Bloomberg*, August 13, 2013, <http://www.bloomberg.com/news/2013-08-13/kerry-has-frank-talk-with-netanyahu-on-settlements.html>.
- 8 Birnbaum and Tibon, "The Explosive Inside Story of How John Kerry Built and Israel-Palestine Peace Plan. Isabel Kershner and Jodi Rudoren, "Arc of a Failed Deal: How Nine Months of Mideast Talks Ended in Disarray," *The New York Times*, April 28, 2014, <http://www.nytimes.com/2014/04/29/world/middleeast/arc-of-a-failed-deal-how-nine-months-of-mideast-talks-ended-in-dissarray.html>.
- 9 Ibid.
- 10 John Reed, "Palestinian Prisoner Release Stirs Controversy in Israel," *Financial Times*, August 12, 2013, <http://www.ft.com/intl/cms/s/0/7c274158-032b-11e3-9a46-00144feab7de.html>.
- 11 A "settlement unit" refers to one single-family housing unit. Planning advancements are steps in the Israeli government's bureaucratic process that precede settlement construction. Requests for tenders of construction bids (referred to as "tenders") are usually, but not always, the final step in the government process. A more detailed explanation of the settlements process is in Text Box 2 below.
- 12 Mohammed Daraghmeh and Karin Laub, "Israel Approves New Settlement Homes, Readies to Free Prisoners," *The Washington Post*, August 11, 2013, http://www.washingtonpost.com/world/middle_east/israel-approves-nearly-1200-more-settlement-homes/2013/08/11/f5b74218-02a7-11e3-a07f-49ddc7417125_story.html.
- 13 AFP, "Israel to Free Palestinian Prisoners and Build More Settlements," *Business Insider*, December 26, 2013, <http://www.businessinsider.com/israel-to-free-palestinian-prisoners-and-build-more-settlements-2013-12>.
- 14 Department of State, Office of Press Relations, "Jen Psaki, Spokesperson, Daily Press Briefing," Washington DC, December 2, 2013, <http://www.state.gov/r/pa/prs/dpb/2013/12/218178.htm>.
- 15 Department of Defense, Office of Press Relations, "Background Briefing on Israeli-Palestinian Peace Talks," Washington DC, July 30, 2013, <http://www.state.gov/r/pa/prs/ps/2013/07/212564.htm>.
- 16 Between August and December 2013, Secretary Kerry met with Prime Minister Netanyahu eleven times and with President Abbas six times.
- 17 The White House, Office of the Press Secretary, "Remarks by the President in a Conversation with the Saban Forum," Willard Hotel, Washington DC, December 7, 2013, <http://www.whitehouse.gov/the-press-office/2013/12/07/remarks-president-conversation-saban-forum>.
- 18 Birnbaum and Tibon, "The Explosive Inside Story of How John Kerry Built and Israel-Palestine Peace Plan."
- 19 Margaret Talev, "Mideast Peace Framework on Life Support as Obama Meets Abbas," *Bloomberg Businessweek*, March 17, 2014, <http://www.bloomberg.com/news/articles/2014-03-17/mideast-peace-framework-on-life-support-as-obama-meets-abbas>.
- 20 Robert Satloff, "Decision Time on the Israeli-Palestinian Peace Process: U.S. Strategy Hits a Critical Juncture," *Policy Watch* 2251, Washington Institute Policy Watch 2251, May 12, 2014, <http://www.washingtoninstitute.org/policy-analysis/view/decision-time-on-the-israeli-palestinian-peace-process-u.s.-strategy-hits-a>.
- 21 Birnbaum and Tibon, "The Explosive Inside Story of How John Kerry Built an Israel-Palestine Peace Plan."
- 22 Roger Cohen, "Why Israeli-Palestinian Peace Failed," *The New York Times*, December 23, 2014, <http://www.nytimes.com/2014/12/24/opinion/roger-cohen-why-israeli-palestinian-peace-failed.html>.
- 23 Government of the State of Israel and the Palestinian Liberation Organization, Declaration of Principles on Interim Self-Government Arrangements (September 13, 1993), http://www.knesset.gov.il/process/docs/oslo_eng.htm.
- 24 Shazia Arshad, "The Palestine Papers — a Matter of Public Interest," *Middle East Monitor*, February 15, 2011, <https://www.middleeastmonitor.com/resources/briefing-papers/2057-the-palestine-papers-a-matter-of-public-interest>.

25 Jonathan Lis, "Bennett Threatens to Leave Netanyahu Government Over Peace Talks on '67 Lines," *Haaretz*, July 18, 2013, <http://www.haaretz.com/news/diplomacy-defense/premium-1.536688>.

26 White House, "The Clinton Parameters: Clinton Proposal on Israeli-Palestinian Peace," Washington DC, December 23, 2000, http://www.peacelobby.org/clinton_parameters.htm (hereafter cited as "Clinton Parameters").

27 White House, Office of the Press Secretary, "Remarks by the President on the Middle East and North Africa," State Department, May 19, 2011, <http://www.whitehouse.gov/the-press-office/2011/05/19/remarks-president-middle-east-and-north-africa%20>.

28 David Horowitz, "Netanyahu Finally Speaks His Mind," *The Times of Israel*, July 13, 2014, <http://www.timesofisrael.com/netanyahu-finally-speaks-his-mind>.

29 Dan Diker, ed., "Israel's Critical Security Requirements for Defensible Borders: The Foundation for a Viable Peace," Jerusalem Center for Public Affairs, 2011, <http://www.jcpa.org/text/security/fullstudy.pdf>; Prime Minister's Office, "Address by Prime Minister Netanyahu at the Institute for National Security Studies," Tel Aviv, June 29, 2014, <http://www.pmo.gov.il/English/MediaCenter/Speeches/Pages/speechINSS290614.aspx>.

30 Arshad, "The Palestine Papers – a Matter of Public Interest."

31 Allison Deger, "Updated Security Council Resolution Calls for East Jerusalem as Palestinian Capital, Israel Says UN Creating 'Second Hamastan,'" *Mondoweiss*, December 30, 2014, <http://mondoweiss.net/2014/12/resolution-jerusalem-palestinian>.

32 "Clinton Parameters."

33 "Remarks by the President on the Middle East and North Africa," May 19, 2011.

34 B'Tselem, Israeli Information Center for Human Rights in the Occupied Territories, "Legal Status of East Jerusalem and Its Residents" (May 9, 2010), http://www.btselem.org/jerusalem/legal_status.

35 These borders are highly contested and not recognized by the United States or the international community.

36 Daniel Seidemann, "The Myth of an Undivided Jerusalem is Collapsing Under Its Own Weight," *The Guardian*, January 8, 2014, <http://www.theguardian.com/commentisfree/2014/jan/08/myth-undivided-jerusalem-israel-palestine-binyamin-netanyahu>.

37 Yehuda Greenfield-Gilat, Karen Lee Brachah, Chen Farkas, and Kobi Ruthenberg, with Amer Kaysi, Hanna Ghawi, and Michel Salameh, "A City Border in Jerusalem: Road 60, City Center" (SAYA Resolution Planning Architecture, December 2007), <http://www.sayarch.com/staticFiles/Road60.pdf>.

38 Erica Chernofsky, "What makes Jerusalem so holy," BBC, October 14, 2014, <http://www.bbc.com/news/world-middle-east-26934435>.

39 "Clinton Parameters."

40 Governance Working Group, "Governance Discussion Document: A Special Regime for the Old City of Jerusalem," November 2008, Jerusalem Old City Initiative, <http://www1.uwindsor.ca/joci/system/files/governance-discussion.pdf>.

41 Elliott Abrams, "Abbas and the 'Right of Return' Will Defeat John Kerry," Pressure Points blog on CFR.org, March 13, 2014, <http://blogs.cfr.org/abrams/2014/03/13/abbas-and-the-right-of-return-will-defeat-john-kerry/>; and "Mahmoud Abbas: Referendum on Any Agreement among Palestinians Worldwide, No to Jewish State," Middle East Media Research Institute, March 10, 2014, <http://www.memri.org/report/en/0/0/0/0/0/7874.htm>.

42 Times of Israel Staff, "PM Slams Abbas's 'Impossible Fantasies' on 'Return' of 6 Million Refugees," *Times of Israel*, December 8, 2014, <http://www.timesofisrael.com/pm-slams-abbas-for-cultivating-impossible-fantasies-over-return-of-6-million-refugees/>.

43 "Clinton Parameters."

44 Ibid.

45 Ibid.

46 Ibid.

47 Alon Ben-Meir, "Negotiating Under the Shadow of Palestinian Refugees," *The Huffington Post*, October 3, 2013, http://www.huffingtonpost.com/alon-benmeir/negotiating-under-the-sha_b_4037200.html; Nazmi Ju'beh, "The Palestinian Refugee Problem and the Final Status Negotiations: A Review of Positions," *Palestine-Israel Journal of Politics, Economics, and Culture*, 9 no. 2 (2002), <http://www.pij.org/details.php?id=143>.

48 Ju'beh, "The Palestinian Refugee Problem and the Final Status Negotiations: A Review of Positions."

49 Tal Becker, "The Claim for Recognition of Israel as a Jewish State: A Reassessment," Policy Focus no. 108 (Washington Institute for Near East Policy, February 2011), <http://www.washingtoninstitute.org/uploads/Documents/pubs/PolicyFocus108.pdf>.

50 Becker, "The Claim for Recognition of Israel as a Jewish State: A Reassessment."

51 Noah Browning and Ali Sawaf (Alistair Lyon, ed.), "Arab League, Abbas Reject Recognizing Israel as 'Jewish State,'" *Reuters*, March 9, 2014, <http://www.reuters.com/article/2014/03/09/us-israel-palestinians-arabs-idUSBREA280J920140309>.

52 Becker, "The Claim for Recognition of Israel as a Jewish State: A Reassessment."

53 "Remarks by the President on the Middle East and North Africa," May 19, 2011.

54 Shibley Telhami and Steven Kull (principal investigators), with Clay Ramsay and Evan Lewis (staff), "Israeli and Palestinian Public Opinion on

Negotiating a Final Status Peace Agreement” (Saban Center at the Brookings Institution, December 6, 2013), <http://www.brookings.edu/~media/events/2013/12/06%20public%20opinion%20israel%20palestine/israel%20palestine%20public%20opinion%20poll.pdf>.

55 Chris McGreal, “Arafat Recognizes Jewish State and Limit to Return of Refugees,” *The Guardian*, June 18, 2004, <http://www.theguardian.com/world/2004/jun/19/israel>; Steve Lohr, “Arafat Says P.L.O. Accepted Israel,” *The New York Times*, December 8, 1988, <http://www.nytimes.com/1988/12/08/world/arafat-says-plo-accepted-israel.html>.

56 For a more comprehensive discussion of this issue, see Becker, “The Claim for Recognition of Israel as a Jewish State: A Reassessment.”

57 Browning and Sawafta, “Arab League, Abbas Reject Recognizing Israel as ‘Jewish State’.”

58 Mark Landler, “A ‘Battered’ Mideast Envoy Steps Down, but Keeps a Bag Packed: Martin Indyk Cites Israeli-Palestinian Distrust,” *The New York Times*, July 3, 2014, <http://www.nytimes.com/2014/07/04/world/middleeast/martin-indyk-mideast-peace-talks.html>.

59 Nidal al-Mughrabi and Jeffrey Heller, “Gaza Truce Holding, but Israel’s Netanyahu under Fire at Home,” *Reuters*, August 27, 2014, <http://www.reuters.com/article/2014/08/27/us-mideast-gaza-idUSKBN0GM11320140827>.

60 Aron Donzis, “Abbas: Kidnapped Youths ‘Must Be Returned’,” *The Times of Israel*, June 18, 2014, <http://www.timesofisrael.com/abbas-kidnapped-youths-must-be-returned/>; “Abbas Condemns Gaza Rockets, Urges Militants to Halt Fire Against Israel,” *Haaretz*, June 11, 2014, <http://www.haaretz.com/news/diplomacy-defense/1.598194>.

61 According to Palestinian polls, approximately 63 percent of Israelis and Palestinians support the two-state solution that would be the product of a final comprehensive agreement. See “Joint Israeli-Palestinian Poll,” Poll no. 50, *Palestinian Center for Policy Survey and Research*, December 2013, <http://www.pcpsr.org/en/node/378>.

62 When asked about an agreement broken down into its component parts, support drops dramatically. See Telhami and Kull, “Israeli and Palestinian Public Opinion on Negotiating a Final Status Peace Agreement,” 14–19.

63 Ambassador Martin Indyk, “Remarks at J-Street Gala” (J-Street, Washington DC, September 30, 2013), <http://www.state.gov/p/nea/rls/rm/214969.htm>.

64 For some good examples of outside work, see “Jerusalem Annex to the Geneva Accord,” SAYA Resolution Planning Architecture, <http://www.sayarch.com/jerusalem-annex-to-the-geneva-accord-2/690/>; and David Makovsky with Sheli Chabon and Jennifer Logan, “Imagining the Border: Options for Resolving the Israeli-Palestinian Territorial Issue,” *Washington Institute for Near East Policy*, January 2011, <http://www.washingtoninstitute.org/policy-analysis/view/imagining-the-border-options-for-resolving-the-israeli-palestinian-territor>.

65 Shmuel Rosner, “So Why is Israel Enraging the World by Building in Jerusalem? 4 Answers,” *Jewish Journal*, October 24, 2014, http://www.jewishjournal.com/rosnersdomain/item/so_why_is_israel_enraging_the_world_by_building_1000_new_homes_in_jerusalem.

66 See Text Box 2 on Israeli settlement activity during the negotiations for greater detail.

67 Jodi Rudoren, “Israeli Move Over Housing Poses a Threat to Peace Talks,” *The New York Times*, November 12, 2013, <http://www.nytimes.com/2013/11/13/world/middleeast/netanyahu-halts-some-settlement-plans-but-others-to-proceed.html>.

68 “Settlements & the Netanyahu Government: A Deliberate Policy of Undermining the Two-State Solution” (Peace Now, January 16, 2013), <http://peacenow.org.il/eng/sites/default/files/summary-of-4-years-of-netanyahu-government.pdf>.

69 Settlement Watch, “Summary of the 9-Months Talks: Unprecedented Settlement Development” (Peace Now, April 29, 2014), <http://peacenow.org.il/eng/sites/default/files/9%20months%20settlements%20summary%20280414.pdf>.

70 The Council of the European Union, “Council Conclusions on the Middle East Peace Process,” December 16, 2013, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/140097.pdf.

71 “Arab League Summit Opens with Row Over Palestinian Support,” *Ynet News*, March 25, 2014, <http://www.ynetnews.com/articles/0,7340,L-4503006,00.html>.

72 Michele Chabin, “Israeli-Palestinian Peace Talks Had No Chance, Analysts Say,” *USA Today*, April 13, 2014, <http://www.usatoday.com/story/news/world/2014/04/11/israel-palestinian-peace-talks/7588703/>; and Telhami and Kull, “Israeli and Palestinian Public Opinion on Negotiating a Final Status Peace Agreement.”

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