

THE KERRY LEGACY

## Inside the Black Box of Israeli-Palestinian Talks

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*All sides failed in the most recent round of negotiations—but there was an opportunity for real progress. Take it from someone who was there.*

Tuesday, April 22, 2014. We are one week from the end of the nine-month period set for negotiations. Israeli, Palestinian, and American negotiating teams meet at a Jerusalem hotel in a last-ditch effort to salvage the talks. After long, sleepless weeks of tough negotiations, all are visibly exhausted, yet appear to appreciate the urgency of the moment as the sun sets over Jerusalem and on one more attempt to resolve the perpetual Israeli-Palestinian conflict.

For weeks the parties have struggled to produce a formula to extend negotiations and buy much-needed time. Such a bargain would include the release of Palestinian prisoners, as well as the curtailment of settlement activity by Israel, and no further push by the Palestinian Authority (PA) to advance Palestinian statehood outside bilateral negotiations. It was an uphill struggle.

But today feels somewhat different. To break the logjam, Israel suggests transferring to the PA the responsibility for planning and zoning in Palestinian-populated parts of Area C in the West Bank that are adjacent to Palestinian cities.<sup>1</sup> The new proposal seems to capture the Palestinian negotiator's attention. "We may be in business," Palestinian chief negotiator Saeb Erekat signals, careful as always to remain non-committal. As we are about to adjourn, he asks to meet tomorrow to continue our discussions. The clock is ticking. Palestinian President Mahmoud Abbas (whom we all refer to by his familiar moniker, Abu Mazen) has already called for a formal leadership meeting in Ramallah that coming Saturday to decide the fate of negotiations. Yet, for the first time in weeks, we feel a sense of cautious optimism—a feeling shared by our American counterparts.

The events of the next day would shatter these nascent hopes. Gathering at the Prime Minister's office to prepare for the crucial meeting with our counterparts, we (and separately, our American colleagues) are surprised to watch the signing ceremony of a reconciliation deal between Abu Mazen's Fatah movement and the Islamist Hamas in Gaza. On the Israeli side, there is a volley of questions. Abu Mazen is well aware of Israeli and U.S. sensitivities regarding Hamas—which is strongly opposed to peace and the recognition of Israel, and designated by the U.S. government and the European Union as a terror organization—so why did he not at

least alert us to the imminent deal? Why would he sign it the day after he seemed to promise a meeting with us and just a few days ahead of the nine-month deadline? Is he no longer interested in extending negotiations?

One thing is clear: We are witnessing the collapse of yet another gallant effort at Israeli-Palestinian peace-making. But was failure foreordained? Was our task a quixotic charge at windmills all along?

Both participants and journalists have offered several accounts of this latest round of failed Israeli-Palestinian negotiations.<sup>2</sup> Ambassador Martin Indyk, the U.S. Special Envoy to the negotiations, suggested that Abu Mazen “shut down” and “checked out of negotiations” as the end of the negotiating period drew closer, and he placed most of the blame for this on Israeli settlement activity during negotiations.<sup>3</sup> Abu Mazen blamed the Americans for not delivering the Israelis,<sup>4</sup> and both he and Erekat claimed that the Obama Administration refused to submit a written proposal to the Palestinians, thereby undermining their ability to substantively engage.<sup>5</sup> Israeli officials blamed Abu Mazen for not really wanting a deal in the first place. Notwithstanding these accounts, the full story remains mostly untold.

This essay tells that story based on my experience as a member of the Israeli negotiating team for the better part of this round, as well as what I learned from partaking in a long-running informal back channel that preceded these talks. I have been an active participant in nearly all of Israel’s peace negotiations with the Palestinians since the launching of the Oslo process in 1993. Naturally, I offer an Israeli perspective, yet not a governmental one: the views expressed here are mine alone. I joined these negotiations not as a government official, but on a voluntary basis at my government’s request, and have always been careful to remain apolitical and non-partisan. It is my sincere hope that this analysis will inform a meaningful policy debate on the Israeli-Palestinian conflict, removed from a politicized blame game.

This round of talks was the third attempt to reach an Israeli-Palestinian permanent status agreement. Running from the end of July 2013 to the end of April 2014, it differed markedly from the two preceding rounds—the 2000 process that culminated in the Camp David Summit, and the 2008 Annapolis process, which yielded a far-reaching peace proposal from Israeli Prime Minister Ehud Olmert to President Abbas. This time, the leaders did not negotiate directly, meet, or speak throughout the entire process, ultimately negotiating the core issues through the United States.

The negotiations were comprised of four distinct chapters. The first, spanning approximately four months, was devoted to direct negotiations—with partial and passive U.S. involvement—aiming at an agreement on all core issues. While the parties worked on mapping the issues, exchanging questions, and identifying gaps, it was mostly futile. They talked past each other, entrenched themselves in opening positions, and shied away from flexibility.

Reaching a dead-end, the parties agreed to shift to a new chapter with a more modest goal of designing a framework to guide the resolution of the core issues, and to negotiate it through U.S. mediation. This phase lasted more than three months, ending with Abu Mazen “checking out,” as Indyk put it. At least from the Israeli and U.S. perspectives, this was a significant chapter characterized by hard labor invested in substantive discussions, and one that built on previous efforts.

With the end of the negotiating period in sight, the last two chapters—comprising less than two months altogether—focused on reaching a formula to extend negotiations by an additional nine months. At first we continued to talk through the Americans and then reverted to direct, bilateral, and trilateral talks—until the “bitter end.”

The entire process bore the mark of U.S. Secretary of State John Kerry. Kerry played a key role in getting the parties onto a formal negotiating track; he set the initial goal of reaching a comprehensive agreement on the core issues within nine months and established the ground rules for negotiations.<sup>6</sup> Moreover, he personally managed the substantive discussions, going between the parties. While this format stemmed from the mutual lack of trust between Israeli and Palestinian leaders, it placed a heavy burden of responsibility on the U.S. Administration in general and on Secretary Kerry in particular.

Reaching a deal in nine months was clearly unrealistic, given the very significant gaps and mistrust between the parties. This should have been realized from the outset. After all, it was not for want of trying that past efforts had failed. The Palestinians, highly skeptical of the talks, insisted on straightjacketing them within a limited timeframe, since they wanted to keep in sight the alternative option of unilaterally advancing their aspirations for statehood through the United Nations. Kerry not only acceded to the tight framework but also loaded it down with the titanic goal of reaching agreement on all core issues. The result was a waste of precious time and energy in the first phase of talks. The parties should have first aimed to agree upon guidelines for negotiating and resolving the core issues. Such a strategy was not only logical, but also in line with the back-channel deliberations that the parties had already been engaged in for quite some time, as elaborated below.

Erekat would later say that “nine months is too much time,”<sup>7</sup> explaining that the issue was substance, not time. His statement succinctly reflects the Palestinian mindset I have witnessed for years. It is as if negotiations are simply about exacting what Palestinians perceive to be their rights, rather than engaging in a two-way give-and-take. But whoever knows the issues in-depth realizes how crucial they are to *both* sides’ future. And those of us who have spent years at the negotiating table know how arduous and excruciating a journey is required of *both* sides if they are to find a sustainable balance encompassing all core issues.

Drawing lessons from past rounds, Kerry correctly insisted on laying down ground rules for the process. He established them with each of the parties separately. Both committed not to leave the table for the duration of negotiations.<sup>8</sup> Israel agreed to release four tranches<sup>9</sup> of Palestinian prisoners convicted of terror activities in the pre-Oslo era. In return, the PA promised not to seek to upgrade its status through

accession to any UN or other international body, treaty, or convention—in other words, not to advance statehood outside the context of a negotiated agreement.<sup>10</sup> Finally, the parties agreed not to publicly air the contents of the negotiations, except through Kerry, the lone authorized spokesman of the talks.

As the parties delved into the process, the very ground rules that were designed to keep it from unraveling turned into a source of serious misunderstanding, clouding the atmosphere of the negotiations and making their extension extremely difficult. On top of the controversial nature of some of the ground rules, each of the parties understood different things from the U.S. mediator.

For Israelis, the idea of “paying” the Palestinians merely to get them to sit down and negotiate was problematic from the start. But Israel ultimately accepted the argument that this could help Abbas garner much-needed Palestinian public support for the process and fend off domestic pressure to further internationalize the conflict. Israel was faced with three alternatives to help jump-start the process. The first was to accept the 1967 lines with agreed-upon land-swaps as the baseline for territorial negotiations. A much-debated topic, it was rejected on the grounds that it would predetermine a core issue—one that constitutes Israel’s most valuable bargaining chip—ahead of negotiations.<sup>11</sup>

The second option was freezing settlement activity. This was also rejected on the grounds that it would deny Israel’s government the domestic political support essential for the process. This position was enhanced by the 2010 experience, when Abbas came to the negotiating table only in the last month of a ten-month unilateral Israeli moratorium on settlement activity in the West Bank—and left soon after. Israelis also noted that, in previous negotiating rounds, the Palestinians never demanded a settlement freeze, despite the increased settlement activity at the time.<sup>12</sup>

Under the heavy weight of domestic considerations, Israel’s leadership ultimately selected the third option: to release the pre-Oslo prisoners. While the government publicly explained that these people had already spent some twenty years in Israeli prison for crimes committed before there was an Israeli-Palestinian peace process, it wasn’t an easy sell. These were terrorists, convicted of heinous acts against Israelis—including murder.

There evolved a series of misunderstandings between the parties around this sensitive issue. First, although Israel was to select the prisoners, Abbas insisted on including Arab Israelis and produced his own list. The Israelis were unwilling to bargain over its own citizens convicted under its own laws, and conveyed this position to the U.S. side early on. They were soon surprised to find out that Kerry had nonetheless promised this to Abbas, later claiming a misunderstanding with Israel. This is how the possible release of Jonathan Pollard<sup>13</sup> (who in any case was nearing his parole date)<sup>14</sup> came into the picture as a game changer that could help Israeli leadership overcome domestic opposition to the release of Israeli citizens.<sup>15</sup>

Furthermore, under the ground rules, the terms of the prisoners' release were also to be determined by Israel. The head of Israel's General Security Services, Yoram Cohen, warned all along that some of these prisoners were still dangerous and would likely go back to murdering Israelis if released to their homes in the West Bank. In his professional judgment, conveyed to the U.S. side early on, neither the PA nor Israel could guarantee the prevention of recidivist terrorist activities. Cohen held his ground adamantly, and it was clear that the cabinet would not dare vote against his position and bear responsibility for putting Israeli lives at risk. The Prime Minister postponed the release of these high-risk prisoners until the fourth and final tranche, but Israel ultimately insisted that ten of them (out of the total of 108 prisoners)<sup>16</sup> remain outside the West Bank for a number of years—in Gaza or Jordan, or overseas. Yet the Palestinians claimed there was an agreement between Abbas and Kerry that all prisoners would be released "to their homes"—a claim later affirmed to us by the U.S. team. One of Kerry's aides apologetically explained that in his meeting with Abbas, "the Secretary was not aware of this nuance."

Finally, there was the thorny issue of settlement activity. Since Israel's government did not commit to a settlement freeze in the West Bank and, like all its predecessors, never committed to stopping construction in East Jerusalem (where a huge religious Jewish community resides), it felt it could compensate for the bitter pill of releasing convicted terrorists, guarantee the support of its right-leaning political base, and keep its coalition intact by approving housing construction in the West Bank and East Jerusalem as each tranche of prisoners was released. Kerry was informed that alongside each tranche, Israel would approve the construction of 1,200-1,500 housing units in both the West Bank and East Jerusalem, as well as long-term planning for an unspecified number of units. Kerry was careful not to provide a formal stamp of approval to a policy that the U.S. government officially objected to, but in reality he went along given the context of conflict-ending negotiations. He conveyed the picture to the Palestinian side; however, it is not clear what exact language and tone he used.

In his post-mortem analysis of the talks, Indyk implied regret that the U.S. side did not insist on a settlement freeze during negotiations. Kerry seemed to feel similarly following Israel's approval of significant settlement activity accompanying the release of the second tranche of prisoners in late October 2013.<sup>17</sup> The U.S. side complained about the volume of approvals, claiming it was undermining Palestinian trust in the process and noting that the distinction between construction and long-term planning does not exist in Palestinian eyes. Kerry began to press for significant restraint in the future.

Israel fended off criticism of its settlement activity during negotiations by citing its understanding with the U.S. government, stating that the U.S. side had been informed in advance of tenders and plans, and that all approved housing tenders were in the settlement blocs adjacent to the 1967 lines (which make up roughly 8 percent of the West Bank) and in the Jewish neighborhoods of East Jerusalem.<sup>18</sup> Furthermore, about two-thirds of these approvals fell in areas that even Palestinian maps in previous negotiations indicated would be part of Israel. Finally, Israel was ready for significant restraint in settlement activity during the next nine months of negotiations.

Nevertheless, in my opinion Israel should not have preferred prisoner release to a meaningful restraint—"a major slowdown" in Kerry's language—of settlement activity in the West Bank (a total freeze was unrealistic considering the Israeli political scene). In addition to the misunderstandings noted above, the Israeli public's trust in the process eroded when the released convicted terrorists received heroes' welcomes from the PA and the Palestinian public. Meanwhile, on the Palestinian side settlement approvals eroded the already-low level of trust in the peace process, while public claims by Israeli officials that Abu Mazen had agreed to a deal of settlements-for-prisoners undermined his credibility. Ultimately, extensive settlement activity, especially outside the major settlement blocs adjacent to the pre-'67 lines—which retain security significance, enjoy wide consensus in Israel, and are generally understood (including by Palestinians) to be part of Israel in any future deal—erodes Israel's command of the moral high ground. In the eyes of much of the world, it overshadows whatever investment, however significant, Israel actually makes in the peace process.

That being said, I do not agree with Indyk that settlement approvals were the main reason behind the failure of the talks. He singles out one element, and not the most important one, in a complicated picture. I doubt that even a full settlement freeze would have salvaged these talks; more compelling causes determined their outcome.

Meanwhile, Kerry's last ground rule—that the United States would generate synchronized positive messaging—simply failed, with both sides contributing. For Israelis, the line was crossed when Erekat blamed Netanyahu for plotting to assassinate Abu Mazen—a false, incendiary allegation that went without public rebuke from the United States.

Entering into a negotiation process with all these glaring obstacles and constraints was like running with heavy weights. Ultimately, however, the fate of this round was decided not by any one of the ill-conceived ground rules; rather, it owed its demise far more to the realm of substance.

There is no way to fully appreciate what occurred in the substantive phase of the formal negotiations without the essential context of what preceded them. For a number of years, Israelis, Palestinians, and Americans conducted quiet, informal substantive talks. These were what might be characterized as "Track 1.5"—carried out by non-governmental people but with the knowledge of their leaders, who blessed them and awaited their outcome. These discussions were conducted away from the public eye, in a deniable manner, with only a select few in each camp aware of them.<sup>19</sup>

Israelis in these discussions included Isaac Molho, Netanyahu's experienced emissary and close confidant, whom I joined in early 2012. Representing the Palestinian side was Hussein Agha, a bright academic from London with longstanding close ties to Abu Mazen. Though not a Palestinian, Agha had been heavily involved in Palestinian affairs since he joined the Fatah movement in Beirut as a teenager, including negotiating the Beilin-Abu Mazen permanent status draft agreement in 1995.<sup>20</sup> Finally, Dennis Ross represented the Americans. While most

participants were not in government (except for Ross in the first part), the group commanded extensive experience in Israeli-Palestinian negotiations, as well as the ability to communicate with the respective leaderships.

The goal was to design a framework of principles on the core issues. It was reasoned that this was the only door through which the parties could enter full-scale negotiations on a comprehensive deal, while retaining some necessary flexibility in implementing whatever was agreed. The work-product of this channel was designed as a U.S. proposal that would be presented to the leaders, who would decide whether to accept it as a framework for negotiations, if with reservations. This channel was unique in its focus on brainstorming about the issues in order to understand what was practically and psychologically important to both sides. Drafting always came last, so as not to hinder the brainstorming process and to accurately capture its conclusions. It was a painstaking effort, constantly molding substance in a very careful manner.

When President Obama visited Jerusalem and Ramallah in March 2013, he discussed this channel with both leaders. Defining it as “the only game in town,” he asked that the effort be sped up to conclude within weeks. However, as we were making slow progress, newly appointed Secretary of State John Kerry increasingly pressed for launching a front channel of negotiations. Having made Israeli-Palestinian negotiations his priority, Kerry believed a public process was necessary in order to revive hope among the publics and block potentially damaging alternative initiatives. His position triggered a debate within the Obama Administration: Should it invest political capital in a parallel public channel, which many thought carried low chances of success, or should it just wait and give the back channel a chance? Kerry insisted and had his way.

For several months, from July to December, the two tracks ran parallel courses (which also helps explain the futility of the first months of the formal track). What emerged was a predictable competition. As expected, once participants in the public channel became aware of the back channel and its contents,<sup>21</sup> they objected to being a side-show or serving as cover. With time, I formed the impression that Kerry quietly fostered the competition, as if splitting his investment and waiting to see which of the tracks would yield more. I warned him that this approach would ultimately destroy the unprecedented progress made over more than two years of meticulous efforts. It did.

In December 2013, the informal channel came close to fruition (the issue of Jerusalem was left open with several options). At that point, due to U.S. insistence, both channels were merged into a U.S.-led formal channel. The product of the back channel was significantly adjusted to serve as the basis for front-channel negotiations on the core issues. The back channel was doomed.

To this day, I strongly believe that it was a major mistake to forsake the back channel in favor of the public one, rather than let it run its course. To be candid, there were those on both the American and Israeli sides who did not believe it could deliver. Some wrongly questioned the extent to which Agha could authoritatively represent Abu Mazen’s thinking. Some doubted whether the leaders would ultimately adopt its outcome. I wasn’t sure myself. However, from my perspective as

a veteran of Israeli-Palestinian negotiations, this process was the most serious and promising attempt of its kind in many years to usher the parties into negotiations on a solid basis. It made slow progress, true—but such a sensitive process, with so much at stake, demands a proper incubation time. In blurring the lines between the channels and then merging them, we lost the unique character of the informal track, the space afforded by its total secrecy, and the ability to quietly ensure that it surfaced when the moment was ripe. Also lost were some of its important substantive elements and creative ideas. While most new ground in the front channel negotiations emanated from progress made in the quiet dialogue, the front channel replaced direct engagement between the parties, however informal, with U.S. maneuvering between them with an overemphasis on drafting solutions.

The formal channel borrowed from the back channel not only substantive materials but also the idea of crafting guiding principles on the core issues for future bilateral negotiations. In it, we were not discussing a bilateral framework agreement, but rather a U.S. document that would reflect the best U.S. judgment, based on extensive dialogue with the parties, on where the meeting point on each core issue should be. Once accepted by both as a sufficient basis for detailed follow-up bilateral negotiations, the parties could still air reservations at the negotiating table.

The framework was meant to present the leaders with tough decisions, while shaping a new and meaningful context for peacemaking. At the same time, by allowing the leaders to subscribe to a U.S. document without fully owning it, the framework was designed to afford them sufficient political space to ease their crossing into the new realm and keep from losing their respective domestic bases.

Week after long week, we engaged in intensive deliberations with the U.S. team. Secure video conferencing allowed for near-daily marathon sessions. It was amazing to watch the truly indefatigable Kerry conduct these long conference calls during odd hours and from a host of cities across the globe—from Indonesia (under mosquito netting), China, the UAE, European capitals, and more.

Meanwhile, we had no clear picture of what was going on between the U.S. team and the Palestinian side. When a U.S. negotiator presented a certain position in contrast to ours, we could not always tell whether it was the articulation of a Palestinian position delivered to the U.S. side, a U.S. assumption of a Palestinian position or, in fact, a U.S. position. Months later we learned from our Palestinian counterparts that they faced the same challenge and were specifically asked by the American team not to discuss with us the contents of the framework. I assume it was intended to allow the U.S. side more maneuvering space between the parties, but instead each developed suspicions that the U.S. side did not necessarily share identical content with both parties.

Several weeks into this phase we were astonished to learn that the U.S. side had not engaged Abu Mazen (having generally spent little time with the Palestinian side in this phase). While Netanyahu was heavily invested in daily discussions of nuances, there was no parallel track with his counterpart. There were some technical explanations for this, such as the lack of secure video lines with Ramallah—



alongside the fact that Abu Mazen, by nature, is not disposed to engage in long, detailed, nuanced conversations. On the substantive level, according to a U.S. official cited by the media, since the U.S. side felt closer to the Palestinians on most issues, it believed greater effort was required to move Netanyahu.<sup>22</sup> To be fair to the American side, Israelis preferred to make progress in the Israel-U.S. deliberations before the U.S. side engaged the Palestinians on specific texts, while the Palestinians expected the U.S. side to extract Israeli concessions before coming to them. The Palestinians may have also enjoyed sitting back and watching the Israeli and U.S. governments argue heatedly over the issue of security.<sup>23</sup> But there was an unintended consequence of not engaging Abu Mazen at this critical phase, as I later learned. When Kerry finally presented him with the full U.S. proposal on February 19, 2014, Abu Mazen already had his suspicions that much of it was pre-cooked with the Israelis, and out of line with his initial expectations.

Mr. Netanyahu, by contrast, was immersed in the process. Every call with Kerry was preceded by a thorough preparatory meeting that he himself led, and was followed by one as well. It was evidently not an easy journey for him. He came under tremendous and conflicting pressures, yet he stayed the course. Despite his criticisms, Indyk testified that “. . . we had him [Netanyahu], I think, by the end of that process, in the zone of a possible agreement.” Indyk is right. No matter what one may think of Netanyahu, he showed seriousness, far more so than public accounts attest. He did not move easily and was tough on Israeli security and other requirements, yet he made progress.<sup>24</sup>

Netanyahu’s willingness to venture outside his natural comfort zone was predicated on the framework maintaining a certain balance between what each of the parties would give and take. He objected to the constant Palestinian attempt to erode that balance, at one point telling Kerry: “It has to be equally bad for *both* of us.”

The framework document has still not been made public. This is because the interested parties realize that exposing its contents will likely invite pressure and pushback, which may in turn undermine its potential as a useful tool in the future. For this reason, I will avoid discussing its specific contents and formulations. I will, however, provide a glimpse into some of the concepts discussed in efforts to shape the “zone of a possible agreement.”

The basic accepted goal was ending the conflict and all outstanding claims. Israel insisted—with essential U.S. support—on explicitly stating that the final outcome of negotiations must be mutual recognition between two nation-states, including recognition of Israel as the nation-state of the Jewish people. The Palestinians pushed back, though their related concerns were addressed (for example, the rights of Israel’s non-Jewish citizens, implications regarding their historical narrative, and so on) and though the U.S. side reminded them of the public record of their historic leader, Yasser Arafat, having accepted a “Jewish state.”<sup>25</sup> While Palestinian objections over this issue gave the impression of bargaining, these objections intensified with time to the point of them calling it a red line and publicly announcing their refusal even to discuss the matter in future negotiations. Israel may have made the issue too high profile, driven by the enormous significance it

holds for the Israeli public (for many Israelis, this is *the* core issue), yet the hard-nosed Palestinian rejection of this most fundamental Israeli demand still raises basic questions.

On territory, the U.S. side presented its well-known positions as articulated by President Obama in his two policy speeches relating to the conflict in May 2011.<sup>26</sup> It remained to be seen whether Netanyahu would raise any reservations about this guideline during the follow-up negotiations, in accordance with his stated position.

Security arrangements occupied a great deal of our time. Israel's demand that the Palestinian state be fully and effectively de-militarized did not encounter much debate. Not so the requirement to leave a long-term Israeli military presence along the Jordan River as part of a special security regime in that area.<sup>27</sup> To Kerry's credit, he appointed General John Allen, a former commander of the U.S. forces in Afghanistan and a highly respected professional, to head an interagency team tasked with looking into Israel's security requirements in a two-state reality. Allen led a thorough and meticulous process, maintaining an ongoing dialogue (never concluded) with Israel's defense establishment. Kerry and Allen presented their initial ideas and conclusions to Israel in early December 2013.

The U.S. side agreed in principle that there should be an Israeli military presence in that area for a significant period. But for how long exactly? Abu Mazen unequivocally demanded a fixed, limited timeframe for Israel's withdrawal from the territory of the Palestinian state. He offered five years as the period after which foreign forces might be deployed indefinitely in the area. It should be noted that his invitation of U.S. forces was bluntly rejected by Netanyahu, who regarded it as a sure recipe for unwarranted U.S.-Israel friction. Netanyahu thought in terms of decades.<sup>28</sup> Israel argued that long-term simmering regional challenges—including the emergence of extreme Islamists and jihadists near Israel's borders—demanded an effective, long-term Israeli military presence. Regardless, experience has taught Israel not to rely on external forces when it comes to its national security. Ultimately, the U.S. and Israeli sides agreed that the timeframe should be based on specific criteria. The debate over which criteria and who would judge them was never fully resolved in this phase. While Kerry fell back on Allen's professional solutions to potential tactical and operational challenges, the Israeli side was primarily concerned with the broader strategic challenges emerging in this highly volatile and hostile region.

On refugees, talks focused on meeting Israel's demand that the issue of the "right of return" of Palestinian refugees to Israeli land be essentially taken off the table—closing the historical file with the establishment of the Palestinian state. On this basis, a host of practical solutions for refugees were addressed (though the discussion was not fully concluded), including the option of admitting some Palestinians to Israel on an individual, humanitarian basis and at Israel's sole discretion. Israel also insisted, with a positive U.S. response, that the regional context of a future deal include the recognition of the plight of Jews who were forced to leave Arab countries as a result of the conflict, and the establishment of an appropriate mechanism for compensation.<sup>29</sup>

The issue of Jerusalem yet again proved a major stumbling block and was left unresolved. The Palestinians demanded that Israel explicitly recognize that there would be a Palestinian capital in East Jerusalem. Objecting to the division of the city, the Israeli side would not go beyond leaving the issue open and postponing its resolution until the permanent status agreement could be made. The U.S. side essentially supported the Palestinian position, believing that the framework would achieve balance by including both Israeli acceptance of a Palestinian capital in Jerusalem and the Palestinians' recognition of Israel as the nation-state of the Jewish people.

Finally, a new section initiated by Tzipi Livni on the "Culture of Peace" was introduced.<sup>30</sup>

Things came to a head on February 19, 2014, when Kerry met Abu Mazen in Paris. By then, the U.S.-Israel talks were progressing, but Abu Mazen had "shut down." He rejected out of hand the proposed U.S. framework. The U.S. side now focused most of its efforts on moving Abbas. It was too little too late. Abbas appeared no longer interested or invested in the process.

On March 17, Abbas came to the White House to meet President Obama. He was presented with new ideas and formulations that departed from traditional official U.S. positions and tilted toward his positions (including an explicit confirmation of a Palestinian capital in Jerusalem and equivalent land swaps),<sup>31</sup> and that were never shared with Israel. He avoided answering and pleaded for time to ponder. He was given until March 25. To this day (as with his still-pending response to Olmert's offer of 2008), he has not provided a response.

So why did Abu Mazen shut down? There is probably more than one explanation. However, everything I know, including from several people with intimate knowledge of Abu Mazen's thinking, indicates that the main reason lies in his unmet expectations that the U.S. side would deliver him an acceptable deal by pressuring Israel. Abbas entered the process with low expectations of Netanyahu, yet he expected or was led to believe that the U.S. side would produce a well-designed process, including significant Israeli flexibility, which would fall within his zone of a possible agreement (which is still extremely hard to reconcile with Israel's, as manifested in the long history of bilateral negotiations). It seems Abbas ultimately expected to receive a deal he could subscribe to and defend internally. He believed that the Palestinian side had already exhausted its ability to be flexible in past years and therefore that the main onus was not on him. He was increasingly disappointed when, after the U.S. side assumed active leadership of the substantive talks through the formal channel, discrepancies (described throughout this article) emerged between what each of the parties was told by and expected from the U.S. mediators. When Israel delayed the release of the fourth tranche of prisoners, he told those around him: "If the U.S. can't get Israel to release them, how can they get me Jerusalem?"<sup>32</sup> Abbas could now add one more item to the long list of "no's" he delivered to President Obama, about which he apparently prides himself.<sup>33</sup>

In laying the blame on the United States, the Palestinian senior leadership publicly claimed that the former refused to submit a written proposal.<sup>34</sup> Americans who were directly involved in the negotiations tell a very different story. According to them, when Abu Mazen came to see Obama on March 17, 2014, Erakat specifically asked *not* to be handed a written document, lest he be required to share and debate it with some Palestinian colleagues. Instead, the framework document was dictated to him verbatim, so as to afford him a degree of deniability.

Already in early March, sensing deadlock, the U.S. side began gravitating toward extending negotiations for an additional nine months. Even though the Palestinians did not respond to their substantive proposals, U.S. negotiators put great pressure on the Israeli side to feed the extension of negotiations with gestures. On the table now was a formula under which Israel would implement the release of the fourth tranche of prisoners (scheduled for the end of March), but this time without the accompanying settlement approvals in the West Bank. On top of this, Israel was to release an additional 400 Palestinian prisoners with no “blood on their hands,” significantly restrain settlement activity in the West Bank during the next negotiating period, transfer some powers and responsibilities to the PA in Area C (adjacent to Palestinian cities in Area A)—and more. It soon felt like a bazaar, with the Palestinians adding more and more to their cart of insatiable demands.

Here again, major complications appeared. First, Israel insisted on releasing the upcoming fourth tranche of prisoners in the context of extending negotiations; it did not want to find itself dragged by the PA to the International Criminal Court (ICC), as the latter threatened to do if negotiations failed, soon after releasing terrorists. Second, the Prime Minister demanded to know that the PA was on board with the specific extension deal under discussion before fighting for it in his cabinet. Yet all the U.S. side could get from Abu Mazen were general promises that he “will do his best” to approve the deal within his leadership. Third, in order to get the cabinet’s approval Netanyahu needed to know that Pollard would be released as part of the deal, which necessitated complicated deliberations with the U.S. Administration (naturally, with heavy White House involvement). The Palestinians couldn’t have cared less about any of this. For them, everything now hinged on strict Israeli adherence to the target date for prisoner release: March 29, 2014. When Kerry visited on March 31, Abu Mazen avoided meeting him, claiming that he was tired and went to sleep. We were stuck in a typical catch-22 situation.

The very next day, April 1, it all blew up in our faces. In the evening, as Netanyahu was toiling to secure a cabinet majority for the deal, Abbas ceremoniously signed letters seeking accession in 15 UN and international bodies. The formal pretext was that Israel failed to implement its commitment on time, so the PA was freed of its own commitments to the process. Yet it was abundantly clear that the PA was using the delay as an excuse to advance a strategic goal of promoting statehood outside negotiations—13 of the 15 conventions could only be joined by states. Erakat had long been preparing that option and only awaited the right moment.<sup>35</sup>

Notwithstanding the comic relief of watching the PA asking to join the anti-corruption convention, the Palestinians evaded our questions as to why they had never enacted legislation to address any of the noble goals covered by the conventions. Of course, it did not help that on the same day a “hidden hand”—all eyes were fixed on Israel’s right-wing Minister of Housing—re-issued existing

tenders for 708 housing units in a Jewish neighborhood in East Jerusalem. Yet Kerry's famous "poof" comment, which framed the announcement as the reason for the crisis, was way out of proportion.<sup>36</sup>

With one month left and a crisis on our hands, we decided to return to face-to-face meetings with the Palestinians. Believing it was in both sides' interests to extend negotiations and avert escalation, we felt increasingly uneasy about the scarcity of direct engagement. Israeli and Palestinian teams therefore met on April 2, asking Indyk to join later. It was a meeting to remember.

While comparing notes, we were told by the Palestinians how on nine separate occasions in recent days the U.S. side had given them specific hours at which Israel's cabinet would meet to vote on the prisoner release. Our jaws dropped. Nobody on our side ever determined a specific hour for the cabinet meeting, as it was contingent on first fulfilling the above-mentioned Israeli requirements. To this day, I am bewildered by this episode.

But whatever happened still didn't justify the Palestinian move in our eyes. They suggested we simply continue "business as usual." We could not. We asked that they at least not activate the 15 conventions and to agree to a pause in the accession process brought about by the U.S. side—to no avail. They would not budge from their path and the White House refused to stop them. Since the extension deal was undermined by the Palestinian move, we now put a significantly limited version of a deal on the table.

Erekat demanded that Israel commit to a total freeze of settlement activities in the West Bank and East Jerusalem for the first three of the nine-month extension, during which the parties would focus on drawing the map of future borders. Israel would not agree to such demands in the context of extending negotiations. It consistently has rejected the logic of a "borders-first" approach, which would play its most valuable negotiating card—territory—before knowing what, specifically, it would get in return on the other core issues. Israel was, however, willing to negotiate using maps, on condition that all core issues be discussed and resolved simultaneously. As the door shut on our efforts, it remained a major issue between the parties.<sup>37</sup>

Achieving a breakthrough leading to an Israeli-Palestinian final agreement is an enormous challenge. Unlike some simplistic notions out there, the gaps are significant and widened by the weight of history, religion, emotions, and domestic politics.<sup>38</sup> Majorities on both sides want peace, yet neither believes the other side is ready. There are also strong domestic pressures constraining the leaders' room to maneuver and to make the necessary historic compromises. And there are the spoilers, some of whom (like Iran and Hamas) are extremely violent. Overcoming these challenges requires exceptional leadership on all sides, determination, a sense of urgency, a well-prepared and orchestrated process, and an effective third-party role. Many of these elements were missing in the process, and the real gaps were exacerbated by psychological ones and by the inability to bridge them through direct engagement between the leaders.

In addition, we may have missed an opportunity at least to shape, for the first time, the guidelines for conflict-resolution negotiations through our back channel. That would have been an especially important achievement given the backdrop of dramatic turmoil in our region, which is tearing apart the old order and emboldening extreme forces that threaten both Israelis and Palestinians.

All parties made mistakes, each exacerbating the others' and contributing to a negative dynamic. On the U.S. side, which played a dominant role in all aspects of the process, Kerry should be lauded for his commitment, determination, and intelligence, and for his indispensable role in propelling the process. He definitely does not deserve the slander directed at him by some Israelis. His mission was unenviable in that he was struggling to negotiate simultaneously with Israelis, Palestinians, and the White House. Still, he did not fully grasp the psychology of the parties or the delicate nuances of their relations. At times he appeared more eager than they were, pushed them beyond their limits, set unrealistic goals and timeframes, and shouldered some burdens better left alone or to the parties—in the belief that his own powers of personal persuasion could overcome any obstacle. He also lacked a credible Plan B.

To be sure, I do not criticize the United States in order to absolve the core parties of their responsibilities. After all, it is *they* who own the conflict; it is they who must live with its consequences. Any failure in a peace process is first and foremost their failure.

On Israel's side, the heavy weight of domestic political pressure took its toll on the Prime Minister's room to maneuver. I am convinced that Netanyahu understands the strategic need to avoid sliding into a bi-national reality, and wants to end the conflict. Yet for him to make the "great leap forward" and risk his own political position, he would require a level of confidence that his counterpart—Abu Mazen—would be willing and capable of doing the same. That confidence is not there. It would also require a U.S. safety net supporting Israel's essential requirements in any eventuality. While the Obama Administration provided solid and consistent support for Israel's security, the negotiation process exposed some political differences and tensions. Unfortunately, since the latest round of negotiations Netanyahu is even more constrained by his far-Right coalition partners, who are now openly pushing for the annexation of parts of the West Bank outside of a two-state solution.

As far as Abbas is concerned, deep into the process he was still oscillating between three strategies at the same time: negotiating with Israel and the United States, promoting statehood through the international community, and reconciling with Hamas. In his mind, they were not mutually exclusive. But in Israeli eyes, they were totally incompatible. Switching off between them cast doubt on his seriousness. Unfortunately, the U.S. did not put its full weight behind stopping this game, with one exception that proved the rule for Israel: When threatening to dissolve the PA (a fourth strategy raised in April), the Palestinians were confronted with a strong *public* rebuke from the U.S. side. The next day, four senior Palestinian officials denied they ever considered it.

Much as many ask whether Netanyahu possesses the will or the capacity to make the bold decisions necessary for peace, I have serious doubts about Abbas. They are supported by his record (including the way he avoided responding to Olmert's offer in 2008) and his demeanor. Aging, losing domestic legitimacy and focused on his legacy, he is even less prone to taking such risks.

Following the failure of the latest round of peace negotiations, the two-state solution seems ever more elusive to more and more Israelis and Palestinians. This low point in their political relations after so many years of peace efforts demands fresh thinking.

My first conclusion from these nine months is that the two leaderships cannot, at this stage, bridge the gaps to reach a full, comprehensive, conflict-ending deal. This does not mean doing nothing or abandoning the vision of a conflict-ending political separation within the framework of a two-state solution; quite the contrary. There is much to be done short of chasing quixotically after a catch-all solution.

My second conclusion is that we should shy away from the traditional trap of singling out one specific issue and arguing that if *only* that *one* issue was successfully dealt with, everything else would fall into place. This is a complex, multi-dimensional challenge with interconnected components, and should be addressed as such.<sup>39</sup>

No one really knows when the window for a two-state solution will close, but one day it will. Continued stalemate after three failed attempts to reach a deal accelerates the closing of this window and endangers Israel's future as a Jewish, democratic state. We need to keep the window open, even if peace is not around the corner. With the region around us in turmoil and uncertainty abounding about the role of the new U.S. Administration, it is time Israel moves to shape its own destiny rather than wait for others to do it. In moments like these, we should heed the ancient wisdom of our sages who taught: If we are not for ourselves, who is for us?

Israel should define its strategy and basic parameters for a solution and move actively to advance them. Lacking a willing and capable Palestinian partner, it should nevertheless seek regional and international partners (which it is likely to find), and apply some constructive unilateral measures in coordination with these partners (including ceasing settlement activity beyond the blocs)—all the while leaving the door open to a future negotiated settlement. Much as the Chinese term for crisis encompasses the concept of opportunity, so should Israel seize the opportunities inherent in the often-tragic upheavals in its environs—which result in sea changes in the relations between major Arab states and Israel—to place its strategy in a broader regional context.

We failed bilaterally and trilaterally to bring about the long-overdue historic breakthrough. Yet none of us can do it unilaterally. As an Israeli patriot and a veteran of this endeavor, I pray to see the day when Israelis and Palestinians will find the path toward a better future for their peoples.

<sup>1</sup>Area C, a designation created by the Israeli-Palestinian Interim Agreement signed in the 1990s, is controlled by Israel for most purposes and encompasses about 60 percent of the West Bank.

<sup>2</sup>For journalistic summaries see Barak Ravid, “The Secret Fruits of the Peace Talks, a Future Point of Departure?” *Haaretz*, July 5, 2014; Ben Birnbaum & Amir Tibon, “The Explosive Inside Story of How John Kerry Built an Israel-Palestine Peace Plan—and Watched it Crumble,” *New Republic*, July 21, 2014. See also an analytical report by Ilan Goldenberg, who served at the time as Chief of Staff to the Special Envoy for Israeli-Palestinian Negotiations at the U.S Department of State: “Lessons From The 2013-2014 Israeli-Palestinian Final Status Negotiations,” Center for a New American Security, March 2015.

<sup>3</sup>Indyk presented this version in a speech at a Washington Institute conference in May 2014, and repeated it to the *Atlantic’s* Jeffrey Goldberg at the Aspen Ideas Festival in July 2014 (though at Aspen he divided the blame “fifty-fifty” between Netanyahu and Abbas). An earlier, almost identical version citing “senior U.S. administration officials” and delivered by prominent Israeli columnist Nahum Barnea is widely attributed to Indyk.

<sup>4</sup>Abu Mazen’s narrative was related to Zack Beauchamp as reported in: “It’s Over: Why the Palestinians Are Finally Giving Up on Obama and the US Peace Process,” *Vox*, January 22, 2015.

<sup>5</sup>Saeb Erekat in an interview with Aaron Magid. Magid, “Erekat Hits Back at Indyk’s ‘Unfair’ Criticism,” *Al-Monitor*, August 18, 2014.

<sup>6</sup>Kerry also launched an international economic initiative to improve the Palestinians’ economy and infrastructure. In a separate but related initiative, Israelis and Palestinians launched a quiet bilateral economic track, which functioned alongside the political one throughout the process.

<sup>7</sup>Magid, “Erekat Hits Back at Indyk’s ‘Unfair’ Criticism.”

<sup>8</sup>This element was introduced at Israel’s behest following the 2010 episode in which Abbas abandoned U.S.-mediated direct talks shortly after finally getting together with Netanyahu.

<sup>9</sup>The release of prisoners was spread over four tranches so as to dis-incentivize the Palestinians from leaving the table before the end of the period.

<sup>10</sup>The Palestinians embarked on this course in 2011, gaining the status of a non-member observer state at the UN in 2012.

<sup>11</sup>Instead, Kerry provided Abbas with a letter reiterating that this was the U.S. position. See Birnbaum & Tibon, “The Explosive Inside Story of How John Kerry Built an Israel-Palestine Peace Plan—and Watched it Crumble.”

<sup>12</sup>While Palestinians claim that this demand is a result of accumulated Israeli settlement activity over the years, both Israeli and Palestinian officials blame the fact that the Obama Administration launched its peace efforts in 2009 by demanding of Netanyahu a total settlement freeze. Naturally, the Palestinians felt they could not lag behind the United States on this sensitive issue.

<sup>13</sup>Pollard is a Jewish U.S. citizen sentenced in 1987 to life in prison for spying on the United States for Israel. His release has been very controversial within the U.S. intelligence community. Its objection caused President Clinton to renege on a promise he had given Netanyahu to release Pollard in the context of the Israeli-Palestinian Wye River Memorandum in October 1998.

<sup>14</sup>Pollard was ultimately paroled in November 2015.

<sup>15</sup>The possible inclusion of Pollard in the deal was publicized only months later.

<sup>16</sup>The original number of pre-Oslo prisoners, including Israeli citizens, was 104. But to satisfy specific Palestinian requests, Israel released four prisoners in the first three tranches who were not on its original list, and later made the gesture of counting them in addition to the original 104.

<sup>17</sup>The Palestinians had already objected loudly when the first tranche was released in mid-August, but at that time the United States affirmed that Israel was acting in accordance with their mutual understanding.

<sup>18</sup>According to Israeli governmental data, which contradict the numbers given by Indyk (13,000 approvals in all), during the nine months the Israeli government approved tenders for and construction of some 4,100 housing units in the blocs and East Jerusalem, and the advancement of plans for nearly 6,000 housing units, three quarters of which were in the blocs.

<sup>19</sup>In December 2013, Israeli columnist Nahum Barnea hit the headlines with reports on a secret back channel, the London Track. While onto something, he got key elements wrong. An accurate description of this back channel was later provided by the U.S. participant, Dennis Ross, in his book *Doomed to Succeed: The U.S.-Israel Relationship from Truman to Obama* (Farrar, Straus and Giroux, 2015), pp. 385-87.

<sup>20</sup>Agha’s role in these negotiations is described in detail in Yair Hirschfeld, *Track-Two Diplomacy, Toward an Israeli-Palestinian Solution 1978-2014* (Woodrow Wilson Center Press and John Hopkins University Press, 2014).

<sup>21</sup>The only exception was the Palestinian negotiating team headed by Erakat, which was kept in the dark.

<sup>22</sup>Ravid, “The Secret Fruits of the Peace Talks, a Future Point of Departure?”

<sup>23</sup>Including the damage after the Israeli press reported that Israel’s Minister of Defense, Moshe Yaalon, had slighted Kerry personally.

<sup>24</sup>Netanyahu was supported by a close team working in relative harmony, notwithstanding different worldviews and opinions. On the negotiating team, Tzipi Livni, Israel’s Minister of Justice and chief negotiator, relentlessly pushed forward. Netanyahu’s special envoy and close confidant, Isaac Molho, played an indispensable role in the Prime Minister’s decision-making process and in behind-the-scenes deliberations. Some Americans reportedly dubbed him “Dr. No.” This does him an injustice. His tough posture in negotiations was that of a conservative, careful, experienced lawyer fighting for the best deal for his client, not that of an ideologue or a deal-scuttler. His closeness to Netanyahu should have been regarded by interested parties as an asset.

<sup>25</sup>Televised press conference (probably in 1988). See also an interview with Akiva Eldar & David Landau, “A Jewish state? ‘Definitely,’” *Haaretz*, June 18, 2004.

<sup>26</sup>Obama’s second speech included an implicit recognition of the need to factor into the new border the major Israeli settlement blocs adjacent to the 1967 lines.



<sup>27</sup>This highly complicated issue deserves a thorough discussion beyond the scope of this article.

<sup>28</sup>Hillary Clinton, in an interview with Jeffrey Goldberg of the *Atlantic*, asserted that in her 2010 round of talks with both leaders she got Abbas to agree to “six, seven, eight years” and got Netanyahu to go down from “forever” to “2025.” I was unable to substantiate these assertions. Goldberg, “[Hillary Clinton: ‘Failure’ to Help Syrian Rebels Led to the Rise of ISIS](#),” *Atlantic*, August 10, 2014.

<sup>29</sup>Estimated at about 850,000, most of whom settled in Israel.

<sup>30</sup>See Livni’s [interview](#) with the *Times of Israel*: David Horowitz, “Surrounded by Islamist Brutality, Says Tzipi Livni, Israel Can’t Just ‘Huddle into Itself,’” *Times of Israel*, September 23, 2014.

<sup>31</sup>Birnbaum & Tibon, “The Explosive Inside Story of How John Kerry Built an Israel-Palestine Peace Plan—and Watched it Crumble.” Kerry included these new U.S. formulations in his parting shot as Secretary of State, in his December 28, 2016 speech offering parameters on the core issues. His speech was rejected by both parties and left no mark anyway.

<sup>32</sup>Cited in Birnbaum & Tibon, “The Explosive Inside Story of How John Kerry Built an Israel-Palestine Peace Plan—and Watched it Crumble.” It was also relayed to me, almost immediately after it happened, by people who had heard it from Abu Mazen.

<sup>33</sup>See, for example, twelve such “no”s in recent years proudly listed by Erekat in an [interview](#) on Mayadeen TV. Ma’an News Agency, February 2, 2013 (Arabic).

<sup>34</sup>See Beauchamp, “It’s Over, Why the Palestinians Are Finally Giving Up on Obama and the US Peace Process,” and Magid, “Erekat Hits Back at Indyk’s ‘Unfair’ Criticism.”

<sup>35</sup>He had a list of 63 UN and international bodies and conventions, prepared by his negotiating department, and some of them were presented to the Palestinian leadership and discussed publicly during the preceding months.

<sup>36</sup>U.S. Senate Committee on Foreign Relations, “[National Security and Foreign Policy Priorities in the Fiscal Year 2015 International Affairs Budget](#),” 113<sup>th</sup> Congress, 2<sup>nd</sup> session, U.S. Government Printing Office, April 8, 2014. Abbas didn’t mention these tenders in his speech at the signing ceremony of the 15 accession letters.

<sup>37</sup>Erekat highlighted it as a precondition of future negotiations in his interview with Al-Monitor.

<sup>38</sup>See, for example, on the seemingly easy issue of territory: Michael Herzog, “Minding the Gaps: Territorial Issues in Israeli-Palestinian Peacemaking,” Washington Institute for Near East Policy, December 2011.

<sup>39</sup>Michael Herzog, “[The Israeli-Palestinian Arena—What Could Be Done Short of an Agreement](#),” *Fathom* (Autumn 2016). These dimensions include mutual recognition, political horizon, settlement activity, security, economic development, Palestinian governance, Gaza, the regional dimension, and the long-term culture of peace.

Appeared in: [Volume 12, Number 5](#) | Published on: February 27, 2017

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