

Regional Study RS86B : A two state solution: an Israeli view with Palestinian perspectives.**Beyond the Taba Promise by Professor Raphael Cohen-Almagor¹****Introduction**

To date, Taba was the nearest point to reach a peace agreement between Israel and the PLO. This paper analyses the major developments that took place between then and December 2012, arguing that both Israel and Palestine bear responsibility for the present situation where the fear of escalating the region into a comprehensive war is very much alive and real. It argues that the way to escape the deadlock is to rely on the Clinton parameters and the Geneva Accord. Both documents lay the foundations for resolving all contentious issues.

2001 Taba Peace Talks

On January 22-28, 2001 in Taba, an Egyptian town at the head of the Gulf of Aqaba, when Prime Minister Ehud Barak brought the experienced dove Minister of Justice Yossi Beilin to the negotiation team, he was willing to cede 94 percent of the West Bank to Palestinian control, and the two sides came very close to agreement: The Palestinians proposed that Israel annex 3.1 percent but consented that the annexation would consist three settlement blocs which amounted to four percent. Israel demanded to annex eight percent but two of them on lease. Thus the disagreement concerned two percent, approximately 110 square kilometers.²

In Taba, Israel was willing to negotiate issues that it declined to discuss in Camp David 2000. Regarding Palestinian right of return, repatriation and relocation, Israel proposed that each refugee may apply to one of the following programmes:

- a. To Israel - capped to an agreed limit of XX refugees, and with priority being accorded to those Palestinian refugees currently resident in Lebanon. The State of Israel noted its moral commitment to the swift resolution of the plight of the refugee population of the Sabra and Shatila camps.

- b. To Israeli swapped territory. For this purpose, the infrastructure shall be prepared for the absorption of refugees in the sovereign areas of the State of Israel that shall be turned over to Palestinian sovereignty in the context of an overall development program.
- c. To the State of Palestine: the Palestinian refugees may exercise their return in an unrestricted manner to the State of Palestine, as the homeland of the Palestinian people, in accordance with its sovereign laws and legislation.
- d. Rehabilitation within existing Host Countries. Immediate and extensive rehabilitation wherever possible.
- e. Relocation to third countries: voluntary relocation to third countries expressing the willingness and capacity to absorb Palestinian refugees.³

As for the Temple Mount, Israel agreed that it would remain under Palestinian control but the issue of sovereignty over the holy places remained open, contemplating internationalization as a possible solution.⁴

Taba was the closest point to reach an agreement between Israel and the Palestinian Authority but there were two major problems. Elections to the prime minister office were due in a few days, on February 6, 2001, so the timing was very wrong. Taba was a desperate last moment attempt to reach an agreement but it is hard to see how such an agreement could have been binding. And the compromises that both sides were willing to make were not enough. The Palestinians insisted on Israeli acceptance of the right of return and on having the sole sovereignty over the Temple Mount.⁵ Fundamentally, Arafat did not wish to go down in history as the first Palestinian leader who gave up on the Palestinian dream of one Palestine, at the destruction of Israel. And in the negotiation process, Barak and Arafat lost the people. Israel was swept by terror attacks, and the Israeli public was not willing to pay such a high price in return to an abstract peace that was never practiced. Indeed, terror and democratic processes cannot live together. A zero sum game exists between terror and democracy. One comes at the expense of the other.

Barak, who came to office as Mr. Security faded away. Things escalated rapidly when the Al Akza Intifada erupted in late September 2000, following the provocative visit of Ariel Sharon to the Plaza of the Mosques. Shootings became routine. When Arafat met French President Jacques Chirac on October 4, he told him that in four days the Palestinians lost 64 people while 2,300 others were wounded. Nine Israeli Arabs were killed as well.⁶ The Israelis were also horrified by the surge of violence, even more so following the lynching of two Israeli reserve soldiers at a police station in Ramallah on October 12, 2000. That was a bitter reminder of the real face of Israel's 'partners' for peace

Ariel Sharon won the February 6, 2001 elections with a significant majority of 62.4 percent of the vote (it was the first time that special elections were called only for the prime minister office; Barak received 37.6% of the vote) because the public lost trust. Barak's entire campaign was negative: There was hardly anything to say, in positive terms, about Barak's regime. Only the pulling out from Lebanon stood to Barak's credit.⁷ This was too little, and did not address the real issue : restoring security to daily lives. The Israeli public was not willing to pay such a high price for peace: everyday killings by snipers, bombs, cars driven into crowds, lynching.

The 2002 Arab Peace Initiative of the Council of Arab States could have been a positive step in the right direction. It called for full Israeli withdrawal from all the territories occupied since 1967, finding a just solution to the Palestinian refugee problem, the establishment of a sovereign independent Palestinian in the West Bank and Gaza Strip, with East Jerusalem as its capital, ending the Arab-Israeli conflict, providing security for all the states of the region, and establishing normal relations within the context of comprehensive peace with Israel.⁸ However, the initiative came at the worst possible time. It coincided with the Passover (Seder) suicide bombing at Park Hotel in Netanya on March 27, 2002 which further drew the parties apart. In the Passover Massacre thirty people were killed and 140 injured – 20 of them seriously. Hamas claimed responsibility for the attack.

The Seder massacre pushed the Israeli population to shift from peace yearning to security yearning. It was an awakening call for Israel. Peace was a dream that could not have been achieved at that time.⁹

Israel began construction of a barrier that would separate most of the West Bank from areas inside Israel. The fence (as Israel terms it; others call it a wall) was deemed necessary as the thought was that it would block terrorists from entering Israel. Indeed, the fence proved a security success. The facts are conclusive: Before the fence/wall was erected, the average number of terrorist attacks was 26 per year. Since its partial construction, the number has dropped to three-to-zero per year as Israel was able to foil every suicide bombing originating from the northern West Bank and specifically from the cities of Nablus and Jenin, areas that had previously been infamous for exporting suicide bombers. However, almost the entire fence/wall is inside Palestinian territory. Some 17,000 Palestinians are expected to live between the barrier and the Green Line. Upon the completion of the barrier 16.6% of the West Bank land will serve as a buffer between Israel and the fence/wall. These are the most fertile lands of the Bank. Some 160,000 Palestinians are expected to be locked in the buffer zones created by the fence/wall.

Because of the route of the barrier, which passes through Palestinian living space, 47 gates have been established that are supposed to enable daily movement of farmers to their lands, students and teachers to their schools, businessmen and merchants to their places of work, and more. As a result, freedom of movement for Palestinians, whose lives are now run against their will on both sides of the barrier, is drastically restricted.

The frustrated Palestinians moved to a new form of terror – rocket attack on Southern Israel. The fence/wall cannot stop this form of terrorism that was bound to happen. If you divorce, you need to ensure that both sides are happy with the settlement, otherwise the children will be miserable. The Palestinian and Israeli children continue to pay a high price.

On July 9, 2004, the International Court of Justice (ICJ) ruled in its Advisory Opinion that the West Bank separation barrier contravened international law, that it must be dismantled, and that compensation must be paid to the Palestinian owners of property confiscated for its construction. Fourteen justices supported the decision and the sole opponent was the American judge, Thomas Buergenthal.

In building the Wall, the court opined, Israel violated international humanitarian law, by infringing on Palestinians' freedom of movement, freedom to seek employment, education and health.

It also states that Israel violated international treaties it had signed which deal with these matters: "The construction of such a wall accordingly constitutes breaches by Israel of its various obligations under the applicable international humanitarian law and human rights instruments".¹⁰

The judges questioned the route of the wall determined by Israel, saying they were not convinced that the specific course Israel had chosen for the wall was necessary to attain its security objectives. The ruling said: "The wall, along the route chosen, and its associated regime, gravely infringe a number of rights of Palestinians residing in the territory occupied by Israel, and the infringements resulting from that route cannot be justified by military exigencies or by the requirements of national security or public order".¹¹

On the issue of compensating Palestinians harmed by construction of the wall, the court ruled that, "Israel is under an obligation to make reparation for all damage caused by the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem".¹²

In summary, for any sort of international legitimacy, the separation barrier should have been built along the 1967 Green Line, with some accommodations necessary to include large settlements in the Jerusalem area and Ariel inside the fence/wall, and compensating the Palestinians in other areas. The idea of using the barrier to create geographic facts that in effect make greater Israel and smaller Palestine was and is unfair, discriminatory, unwise and unjust.

The Hague decision is not binding. Israel immediately said that it would not honour the ICJ advisory opinion.

Sharon's Gaza Plan

On June 6, 2004, the Israeli Cabinet approved Prime Minister Ariel Sharon's revised disengagement plan by a 14-7 majority. However, Sharon lost the majority in the Knesset, with 59 Members out of 120. Labour assured that it would back him as long as he pursued the Gaza First Plan.

The key principles behind the four-stage disengagement plan were:

A. The stalemate was perceived as damaging; in order to break it, the government initiated a process that was not dependent on cooperation with the Palestinians. This infuriated the Palestinians.

B. The aim of the plan was to bring about for Israel a better security, diplomatic economic and demographic reality.

C. In any future permanent arrangement, there would be no Israeli presence in the Gaza Strip by the end of 2005.

D. The withdrawal from the Gaza Strip and from the northern part of Samaria would reduce interaction with the Palestinian population.

E. Completion of the four-stage disengagement plan will negate any claims on Israel regarding its responsibility for the Palestinian population of the Gaza Strip.

The “Gaza First” campaign I initiated in 2000 argued that the way to exit the futile cycle of violence and retaliation was by the evacuation of Gaza. The reasons were as follows: Gaza is not emotionally-fraught with religious significance as are Judea and Samaria. By evacuating major settlements, by acknowledging the right of the Palestinians to an independent state, by pulling back the military which lost so many lives to defend a few thousand settlers, Israel would be no longer seen as the occupier with the strongest army in the Middle East, but as a wise democracy which was willing to pay a price for a solution. It would suit Israel to initiate the Palestinian state’s establishment rather than succumb to international pressure to do so. If criticism of the plan were that it was a victory for the Palestinians, it could be shown that it was to Israel’s advantage. With Palestinian sovereignty would come the responsibility to the community of nations to overcome terrorism and prove that it is capable of statehood.

It was in Israel’s interest not to suffocate Gaza, but to enable the Gazans to develop independent economic resources. The settlers, who built their homes in Gaza and lived there for many years and played an historical role, would need to be compensated and resettled in other parts of Israel. Gaza would be a test case for the Palestinians’ willingness to resolve the conflict. It failed

miserably. From being a key to the solution, Gaza became a major impediment with the Hamas takeover and its unshaken confidence in its ability to destroy Israel.

Two major lessons should be learnt: First, implementation by agreement is preferable to unilateralism. President Abbas wanted to be involved in the steps leading to Israel's evacuation of Gaza. Prime Minister Sharon did not engage with him. The result was that the vacuum created by the Israeli evacuation was immediately filled by Hamas. It was in Israeli interests to see that the Palestinian Authority took control, not Hamas. Israeli decision-making process was short-sighted.

Second, when a body accumulates weapons, it is for a reason. It intends to use them when the time seems right. Dov Weisglass, Prime Minister Ariel Sharon's Chief of Staff, told me in 2008 : "We knew about the Hamas rocket power; we did not think that Hamas will terrorize Israel with the Kassams." This was a major mis-judgement.

On January 25, 2006, elections were held for the Palestinian Legislative Council (PLC), the legislature of the Palestinian National Authority (PNA). This was the first election to the PLC since 1996. The final results showed that Hamas won the election, with 74 seats to the ruling-Fatah's 45, providing Hamas with the majority of the 132 available seats and the ability to form a majority government on their own. In retrospect it might have been a mistake to allow Hamas to participate in the elections before it accepted the Oslo principles.

In June 2007, Hamas vanquished its Fatah rivals and effectively took control of the Gaza Strip. Rocket terrorist attacks on Israel intensified. When Hamas came to power, one would have hoped that with power comes responsibility; responsibility for economy, food, housing, welfare, health, education, agriculture, infrastructure; responsibility for the running of a daily life of society. Hamas until now has preferred to invest more in fighting Israel than in caring for its own people. The brutal results are inescapable.

The 2009 Israeli Elections

Elections for the 18th Knesset were held in Israel on February 10, 2009. These elections became necessary due to the resignation of Prime Minister Ehud Olmert as leader of the Kadima party, and the failure of his successor, Tzipi Livni, to form a coalition government.

Benjamin Netanyahu formed the arguably most hawkish government in the history of modern Israel. In the Bar Ilan University speech (June 14, 2009), Netanyahu, for the first time, endorsed the idea a Palestinian state. He started by describing the kind of Palestinian entity that would be acceptable to Israel in the framework of a peace agreement. That entity would have to be, according to Netanyahu, fully demilitarized, with iron-clad international supervision. He made it clear, albeit in a rather implicit manner, that the frontiers would have to be supervised to prevent smuggling of prohibited weaponry, and the freedom of its airspace would have to be partially curtailed to avert any possible aerial attack of Israeli targets. Netanyahu then went on to say that, if the aforementioned conditions were met, he would agree to the establishment of a Palestinian state.¹³

Netanyahu is not a pragmatist like Menachem Begin, who withdrew from Sinai and Ariel, or Sharon who withdrew from Gaza. He is not driven by a sense of history, as Begin was, and his realpolitik is based on different principles to Sharon's. Netanyahu's philosophy is based on the following principles:

- Israel should take care of itself. No other country will go out of its way for Israel. The world is busy. Countries have other priorities. We are the only people who understand our needs, appreciate our difficulties, and will be there for us in time of trouble.
- Therefore, Israel needs to be strong. Very strong. Our enemies will restrain themselves in the face of strong Israel.
- Strength is manifested also by a strong economy which is founded on capitalist interests, bringing wealth to the nation, and retaining it. This means keeping the economic elite happy, and bringing external investments.
- Israel is a very small country, surrounded by hostile neighbours. It should not be smaller than it already is. Therefore, we should retain our territory, build in it, settle it, and we need to help those pioneers, those wonderful people who are willing to conquer new lands, and establish facts in the land. These people truly care for Israel and its destiny.
- The Palestinians have severe problems. They should strive to solve them, possibly with the help of the Arab world, but not at the expense of Israel.

- Some of their problems are the result of Israel's presence in the occupied territories. This is granted. But these problems are the result of their terrorist behaviour. They should first prove to us that they had deserted terror. Once they do, Israel will be happy to relax the pressure. We don't enjoy pressurizing the Palestinians. We do it out of necessity to retain our strength and secure our people.
- The UN is not to be trusted. It is biased toward the Muslim and Arab world, with dozens of representatives in the Mission, against one tiny Israel.
- The European Union is biased. It is driven by economic interests, by its own concern vis-a-vis the growing Muslim presence in the continent, by geopolitical interests in which Israel features as a problem. Some argue that Europe is anti-Semitic. Europe should prove otherwise.
- Israel should retain its special relationship with the USA. We should be attentive to any American administration's demands, within reason, communication, and mutual understanding of the respective needs.

This set of principles allows very little scope for concessions and for pragmatism. The Palestinians will not be satisfied with what is offered. At best, the region is in a standstill as far as peace is concerned. At worse, things will escalate into yet another bloody confrontation. Iran, with its offshoots (Hezbollah in Lebanon, Hamas in Gaza and the West Bank), will make things messier and volatile.

In September 2010, President Barack Obama convened a peace summit in Washington. The opening statements of Prime Minister Netanyahu and President Abbas revealed the wide gaps between the two. Netanyahu said that Israel withdrew from Lebanon and in return received terror sponsored by Iran. Israel withdrew from Gaza and in return received yet again Iranian-sponsored terror. Israel must insist on preserving its security. This meant continuation of all the things that the Palestinian dread and wish to dismantle: the Fence; checkpoints; settlements; army presence.

President Abbas, in turn, spoke of borders, Jerusalem, water, the right of return, checkpoints, settlements -- the well-known bones of contention. President Obama delineated a one-year process which was never realistic.¹⁴

Conclusion

In Camp David, Prime Minister Barak was willing to confront history and mythology and to make hard concessions. However, his tactics were deficient, and he had no partner who was similarly willing to confront history and mythology and to make hard decisions. To resolve the Israeli-Palestinian conflict there is a need for courageous leaders on both sides who seize the opportunities presented before them and make the most for their peoples. There is also a need for balanced, unbiased and fair broker/s as intermediary, one or more parties perceived by *both* sides as honest, even-handed and reliable. During 1993-2010, the United States was not perceived as an honest broker by the Palestinians. On numerous occasions the USA cooperated and coordinated with Israel, drafting documents and initiating proposals in concert with the Israelis, without incorporating and consulting the Palestinians in the process.¹⁵

At present, many Israelis are quite content with satisfying security needs. They believe that the *status quo* is good for Israel. However, in reality there is no *status quo*, as Israel continues to build the settlements, thus is hampering the possibility of striking a deal with the Palestinians in the future. The situation on the ground keeps changing supposedly in favour of Israel. The Palestinians observe their future state shrinking in front of their eyes and there is very little that they can do about it. Furthermore, the occupation remains a reality and continues to undermine the vital ingredients needed for peace talks. Under occupation, Palestinians lack freedom and control over their lives. Their economic activities, the allocation and management of their natural resources, their health and well being, their ability to move are in the hands of Israel.¹⁶

To achieve peace, it is essential to have:

- ✓ Trust
- ✓ Good will
- ✓ Security.

which the author believes can be achieved by

- The end of all hostilities between Israel and Palestine;
- Zero tolerance of violence and terror. Israel should remain steadfast on its demand of the Palestinians to fight terrorism.

- Ceasing incitement on both sides of the Fence. Both sides need to clear the atmosphere: fight bigotry, racism, incitement and hate. Both sides should utilize the media to promote peaceful messages of reconciliation and mutual recognition.
- Overhauling the Israeli and Palestinian education curricula on all levels: Kindergarten, primary school, and high school on all issues that pertain to the Conflict;
- The evacuation of all, or almost all settlements situated in the West Bank (94-97% of territory);
- Compensating the Palestinians for the part that would remain in Israel;
- The end of Israeli occupation of the West Bank;
- The fence/wall, which creates political reality, should move to the pre 1967 War Green Line.
- The end of the all-encompassing, unjustified blockade of the Gaza Strip. There is a crucial difference between securing Israel's borders and assuring that no weapons are smuggled into the Gaza Strip and blockading Gaza *tout court*. Suffocating Gaza is contradictory to Israeli interests;
- The establishment of a Palestinian State alongside Israel. Palestine is sovereign to decide its capital, like all other sovereign states.
- Finally, international cooperation to lift the Iranian existential threat that is looming over Israel.

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² Yossi Beilin, *The Path to Geneva* (NY: RDV Books, 2004), pp. 246-247; Ron Pundak, "From Oslo to Taba: What Went Wrong?", *Survival*, Vol. 43, No. 3 (2001), p. 44.

³ Israeli Response RE Refugees, The Taba Proposals and the Refugee Problem, <http://www.mideastweb.org/tabah.htm>

⁴ Beilin, *The Path to Geneva*, p. 246. See also Israeli Position on Three Main Points at Taba Talks (January 21, 2001), http://www.mfa.gov.il/MFA/MFAArchive/2000_2009/2001/1/Israeli%20Position%20on%20Three%20Main%20Points%20at%20Taba%20Talk

⁵ Benny Morris, "An Interview with Ehud Barak", *New York Review of Books*, Vol. XLIX, 10 (June 13, 2002), <http://www.nybooks.com/articles/archives/2002/jun/13/camp-david-and-after-an-exchange-1-an-interview-wi/?pagination=false>

⁶ Charles Enderlin, *Shattered Dreams: The Failure of the Peace Process in the Middle East, 1995-2002* (NY: Other Press, 2003), p. 297.

⁷ On May 24, 2000, Israel withdrew its forces from south Lebanon unilaterally, ending the two decade long military presence inside its neighbour's territory.

⁸ The Arab Peace Initiative 2002, <http://www.al-bab.com/arab/docs/league/peace02.htm>

⁹ Between April 1993 and May 2005 there were 164 suicide attacks. They resulted in 670 people killed and 4255 people injured. I thank Arie Perliger for the information. See also Raphael Cohen-Almagor, "An Israeli's Shift from Peace Activist To War Backer", *The Washington Post* (March 31, 2002), p. B1.

¹⁰ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, <http://www.icj-cij.org/docket/index.php?p1=3&p2=4&k=5a&case=131&code=mwp&p3=6/>

¹¹ *Ibid.*

¹² *Ibid.*

¹³ *Address by PM Netanyahu at Bar-Ilan University*, http://www.mfa.gov.il/MFA/Government/Speeches+by+Israeli+leaders/2009/Address_PM_Netanyahu_Bar-Ilan_University_14-Jun-2009.htm

¹⁴ Comments by Obama, Netanyahu, Mubarak, Abdullah and Abbas at start of peace talks (September 1, 2010), <http://sdjewishworld.wordpress.com/2010/09/01/comments-by-obama-netanyahu-mubarak-abdullah-and-abbas-at-start-of-peace-talks/>

¹⁵ One example is the Sharm el-Sheik summit of October 2000, when the Palestinian delegation was presented an "American-Egyptian" working document which was, in fact, an Israeli document. The Israeli delegation examined and studied it prior the summit while the Palestinians saw it for the first time during the summit. Abed Rabbo, the Palestinian negotiator, complained to the Americans, saying this was not right, "don't play that game with us." See

Charles Enderlin, *Shattered Dreams: The Failure of the Peace Process in the Middle East, 1995-2002*, p. 314.

¹⁶ Omar M. Dajani, "Surviving Opportunities", in Tamara Cofman Wittes (ed.), *How Israelis and Palestinians Negotiate* (Washington DC.: US Institute of Peace Press, 2005), p. 46.