

The Jewish Peace Lobby

Annual Report 2016

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JPL Program

Our overall goals remain unchanged from previous years. JPL seeks to:

1) Develop new ideas for a resolving the core issues that divide Israelis and Palestinians, and for establishing a more effective peace process.

2) Achieve support for those ideas from the key state and non-state actors.

JPL operates broadly. Where it is possible and seems useful, we seek present our ideas to representatives of: the PLO, the Israeli government, Israeli opposition parties, member states of the UN and the UNSC, the EU, and of the US government. From time to time we also seek to address the relevant publics by publishing op-ed pieces.

Our work in Washington is undertaken by Dr. Segal and is focused both on the US

Our work at the UN is carried out by Dr. Grob, occasionally supplemented by Dr. Segal.

From the above, it is clear that we seek to influence fundamentals and to engage significant policy makers. We have not produced miracles, and the current outlook for resolving the Israeli-Palestinian conflict is not particularly promising. That said, we are encouraged by the fact that our ideas have been well received by policy makers, and our reputation for high quality, policy relevant work has grown.

Program in 2016

Going into the year, we knew that 2016, as a Presidential-election year, would offer a complex policy environment. On the one hand actions by the Obama Administration, as it completed its second term, would be constrained by the Presidential campaign. On the other hand, after the November elections, the Obama Administration would, we expected, have considerable freedom of action in the 2 1/2 months before the new President takes office. This was the pattern with Reagan in 1988, and Bill Clinton in 2000.

As it turned out, with the defeat of Hilary Clinton and the election of Donald Trump in November, 2016 turned out even more complex than we had expected.

Throughout the year, we were in close contact with both the Obama Administration

and with European governments. With respect to policy development, we were highly productive. Our initiatives included:

- **Reactivating the Quartet (US, UN, EU and Russia)** - emphasizing a return to elements of the Quartet adopted Roadmap for Middle East Peace, from 2003, as well as a new Quartet function monitoring the fulfillment by Israel and the Palestinians of previously negotiated commitments. The new monitoring function was envisioned as a way to engage both the issue of settlements and incitement and to initiate indirect Israeli-Palestinian dialogue on these issues. We gained recommendations from Spanish officials in New York and in Jerusalem for a Spanish UNSC Resolution that would have called on the Quartet to undertake this role. After the US elections, the Spanish Foreign Minister decided to not pursue this, out of concern for how the incoming Trump Administration might view it. We discussed this proposal quite widely, including with the Israeli Ministry of Foreign Affairs. We found considerable support in many quarters including Russian diplomats and from EU Representative (to the Quartet) Gentilini.

- **A UN Security Council Resolution detailing parameters** to govern future final status negotiations to end the conflict. JPL developed specific formulations for such a Resolution. We discussed our ideas at senior levels within officials in the State Department and the White House. One structural idea we introduced was that the resolution would have a separate section dealing with Security Council affirmations. Here the Security Council itself would affirm the international legitimacy of Israel's continued existence as a Jewish State.

- **An International Commission, possibly established by the United Nations, to develop a fully detailed draft treaty document** that would end the conflict, and serve (rather than parameters) as the basis for renewed negotiations. One version of this would be modeled on the 1947 United Nations Special Commission on Palestine (UNSCOP). We envisioned an UNSCOP-2 Commission whose report would be "consistent with the terms of the Arab Peace Initiative."

- **A US proposal to the Palestinians of conditional recognition of the State of Palestine** in exchange for Palestinian acknowledgment that Israel exists as a Jewish state pursuant to "international legitimacy." This was the most "out of the box" of our proposals. It was proposed as something for President Obama to announce after the November elections, and viewed as setting the stage for new negotiations on a state-to-state basis.

(Texts of these and other proposals are attached)

All of these received serious attention by actors of importance, yet none of them came to fruition. The basic dynamic that prevailed was:

- Continued reluctance of European states to act independently of the US;
- Strong concern in the Administration that nothing be done that might adversely affect the Hilary Clinton campaign;
- After the elections, fear that any actions taken by Obama might be undone by President Trump and might trigger Trump to take a more extreme negative stance than he might otherwise;
- Concern by European actors that they not get crosswise with the new Administration.

Jewish State Issue

One area of important progress, one for which we can take some credit, is the approach to the Jewish State issue taken by the United States at the end of the Obama Administration. In late December, in his final speech on the conflict, Secretary of State Kerry laid out six general parameters as a suggested framework for future negotiations. Little new was offered here, with the exception of how Kerry framed the Jewish State issue.

Rather than calling on the Palestinians to recognize Israel as a Jewish state, which the Palestinians have refused, he proposed renewed negotiations that would take as their goal, "fulfilling" the vision of the 1947 Partition Resolution of two states, **one Arab and one Jewish**. In his speech Kerry twice pointed out that the Palestinian Declaration of Independence accepted the Partition Resolution. Dr. Segal, over a long period of time, repeatedly called the attention of the Administration to the possibility of using the Palestinian Declaration of Independence in this manner. (Our analysis of the Kerry formula is attached).

REPORT FROM NEW YORK: JPL AT THE UN - 2016

This year we continued and deepened our work at the UN. Our New York representative, Dr. Leonard Grob, maintained a regular JPL presence at the UN, something that to our knowledge, no other organization has undertaken. Here is his report:

During 2016, I met with UN diplomats 24 times; Jerome Segal joined me during a few of these visits. Meetings were focused on particular countries, including Angola, France, Germany, New Zealand, Norway, Russia, Senegal, Spain, United Kingdom, United States, and Venezuela; meetings were also held with representatives of the European Union. I met with some UN Ambassadors of these countries, and—most often—with their deputies who specialized in diplomatic matters pertinent to the Israeli-Palestinian conflict. When meeting with deputies, I requested, as before, that the proposals under discussion be sent to their Ambassadors and, ultimately, to representatives of their Foreign Ministries residing in the capitals of these nations. Follow-up meetings were scheduled as needed, especially those held with permanent members of the Security Council. I was frequently referred to members of the diplomatic corps in Israel and Palestine, many of whom I and/or Dr. Segal visited when traveling in the region. Dr. Segal accompanied me on several of these visits.

Diplomats with whom I had appointments were given JPL documents to be read prior to our face-to-face meetings. All meetings began with my request for an account of how that nation's representative saw where matters relating to the conflict stood at the time. The specific proposal(s) to be discussed at a given meeting was/were determined both by the nature of the relationship of the member state to the Israeli-Palestinian conflict and by what was occurring in the region at the time the meeting occurred. It should be noted that I was welcomed to share JPL ideas at every UN Mission that I approached; I was never refused a visit. Although the question of whether the ideas presented at these Missions will bear fruit is unanswerable at the moment, it is more than likely that future discussion of these ideas will take place in some diplomatic quarters. Meetings averaged one hour in duration.

Proposals for resolution of the conflict fell under several main categories: 1) Offering new ideas for a Security Council Resolution with comprehensive parameters for ending the conflict; 2) Building on the Arab Peace Initiative in the course of creating a UN Commission that would visit the region and develop the terms of a final peace treaty; and 3) Exploring how numerous JPL ideas could inform current peacemaking initiatives, e.g. an (enhanced) return to key elements of the 2003 Roadmap for Middle East Peace; and 4) calling on the Quartet to issue regular public reports on the fulfillment of previous commitments.

Discussion of many of these proposals follows:

- 1) Diplomats were given a draft of a Security Council Resolution that included expanded Preamble and Determinations sections. Rather than including highly sensitive and contentious narrative issues solely in the listing of the parameters themselves, these issues would be addressed up front in those initial sections of the proposed Resolution that did not require ratification by the two parties. Some additional innovative ideas included addressing the refugee issue in terms of avoiding demographic change and stressing the

importance of the 1988 Palestinian Declaration of Independence as a document resting on UN Resolution 181 that called for “a Jewish and an Arab state.”

- 2) Diplomats were asked for their responses to a revised document concerning the creation of a UN Commission composed of representatives of member states who would visit the region for an extended period of time, conduct interviews with key Israeli and Palestinian constituencies, and undertake professional polling; this would lead to a draft of a final status agreement that would serve as the basis for meaningful negotiations. A new and critically important emphasis was added in the revision: measures submitted by the Commission would, of necessity, not contradict any of the provisions of the Arab Peace Initiative. Representatives of the countries I visited responded with different degrees of enthusiasm to the Commission idea. However, the idea of building final status determinations on the API was received with substantial interest.
- 3) Diplomats from all the missions visited were invited to consider returning to key elements of the 2003 Road Map for Middle East Peace—the last agreement supported by both Israel and Palestine (albeit with numerous reservations from the Israeli side), and one that provided for a clear vision of two states. Such a return, in our view, would be enhanced: I spoke with Ambassadors and their deputies about the (optional) Road Map provision for the creation of a Palestinian state with “provisional borders and attributes of sovereignty; future return to the 1969 borders would be guaranteed. The U.S. would offer conditional recognition of such a provisional state. A partial land swap would be agreed upon between the parties, as well as a security protocol for the Gaza Strip. The process would be launched by an international conference. Return to the Road Map would thus guide new and meaningful “entrée negotiations” that, in turn, would eventuate in the resolution of all final status issues.
- 4) I suggested to representatives of the Quartet—the EU, Russia, the U.S. and the UN itself—that future reports include the monitoring of compliance with past agreements; this we deemed necessary if the integrity of future negotiations is to be preserved.

III. The Coming Period

We are now entering a period of remarkable uncertainty:

- In Washington we have a **new Administration** that has yet to formulate its approach to the conflict. In recent days, in a constructive development, General McMaster has been named the new National Security Advisor to the President.

- In Jerusalem Prime Minister Netanyahu's tenure is uncertain pending the results of three **police investigations**.

- In Palestine, the date of a change in leadership grows closer, as we move further into **the 50th anniversary of the occupation** and an unpredictable year to follow.

On policy specifics, President's Trump's statement that he "likes the option that the two parties like," is particularly revealing. His interest, and it seems a strong interest, is in **reaching a deal**. It is this goal, rather than any commitment on specific issues that will be the guiding light. And because of this, he is more likely, than any of the other 2016 contenders for the US Presidency, to again wade into the unrewarding swamp of Israeli-Palestinian peacemaking.

While there is no certainty of renewed negotiations, our expectation is that within the next two years, there will be a major **renewed negotiations** effort under US leadership. If that is correct, then an area of particular relevance for our work will be our new approaches for dealing with the core final status issues. This includes our work on:

- Refugees
- Jewish state/Narrative change
- Jerusalem
- Settlements/land swaps
- Alternative Models of the Two-state solution.

With respect to process, two of the policy proposals we have advanced remain of relevance:

- A new peace process that would start negotiations not with parameters, but with a fully developed peace treaty consistent with the API. On our recent trip to Jerusalem, we discussed this at length with **the Egyptian Ambassador to Israel** and we are seeking to arrange a visit to Cairo to explore this further with key policy makers.

- Our proposal for Quartet monitoring of previous commitments. On this, winning Trump Administration support is a necessary condition, and here attitudes of the Israeli government will play a role. On our recent trip we met with the Deputy Director of the Israeli Foreign Ministry and made the argument that under **UN Security Council Resolution 2334** Israel already faces a reporting process, one in

which it will be in an adversarial stance. Our proposal could, essentially, fold the Res. 2334 report into a larger more balanced reporting activity undertaken by the Quartet rather than the Secretary General. This would be a balanced effort, and offer Israel leverage on the issue of Palestinian incitement.

Thus both with respect to process and the substantive issues of future negotiations, we have much that remains relevant. In the short term, a key priority is to open strong lines of communication with the new Administration.

A second area in which we are concentrating is in our communications on the Palestinian side. Here we should note that on our recent trip to the region, Dr. Segal, at an event hosted by the Palestinian Academic Society for the Study of International Affairs (PASSIA), delivered a talk on "**Palestinian Strategic Opportunities in the Age of Trump.**" His lecture was covered in the Palestinian press and on Jordanian TV. In that talk, Dr. Segal placed central importance on the need for a Palestinian initiative that would demonstrate that they are indeed a potential partner for a comprehensive peace agreement.

In a very recent development, Dr. Segal and the largest Palestinian newspaper, Al-Quds, have agreed that he will, with some regularity, write a column for the paper. This will be a new avenue for reaching both the Palestinian public and the leadership.

Texts of JPL Proposals

#1: Building on the Arab Peace Initiative Through the United Nations or the Quartet

Executive Summary

This memo proposes United Nations or Quartet action that seeks to build on the **Arab Peace Initiative (API)** to revitalize the Middle East peace process.

There are **two phases** to the proposed process. Phase I centers on the establishment and work of a United Nations Special Commission on the Arab Peace Initiative (UNSCAPI). Phase II pertains to the response of the UN Security Council (or the Quartet) to the report of the Commission once it has finished its work.

Phase I would be initiated either by an UNSC Resolution or by a Quartet decision. The focus of the Commission would be **the two peoples**, (Israeli and Palestinian) rather than on the two governments (GOI, PLO). The Commission would travel to the region and undertake a public process lasting 6-8 weeks. It would be open to all points of view, hold open hearings, and be open to the media.

The mandate of the Commission would be to determine if there is solution to the Israeli-Palestinian conflict, consistent with the API, which would be acceptable to the two peoples. On the basis of its investigation, the UNSCAPI would make recommendations. Hopefully, the Commission would conclude that such a possible solution exists, and it would report back to the Security Council (or the Quartet) a recommended and **fully detailed peace proposal** to end the conflict.

Phase II starts with UNSC (or Quartet) action in response to the recommendation of the Commission. One possibility is that the UNSC would then call on Israel and the PLO to undertake six months of negotiations based on the proposal of the Commission to see if they can agree on any improvements. After six months, both Israel and the PLO would inform the UNSC whether they accept or reject the amended proposal, or whether they will submit it to a referendum.

This proposal has many advantages:

- It will give new life to the API without having to go back to the League of Arab States
- It offers a new model for negotiations, one that involves the international community but does not impose a solution.

- One result might be a clear and unambiguous Palestinian peace offer, backed by an offer of normal relations with the Arab States, being put forward to the Israeli people.

The memo discusses numerous options for how to create the Commission, and how it might do its work.

Introduction: Background on the Arab Peace Initiative

The Arab Peace Initiative was proposed by the League of Arab States in 2002, and was re-endorsed by the League in 2007. The proposal spells out a framework for ending the Arab-Israeli conflict and for normalizing relations between Israel and the entire Arab region. Its key provisions specified:

" I- Full Israeli withdrawal from all the territories occupied since 1967, including the Syrian Golan Heights, to the June 4, 1967 lines as well as the remaining occupied Lebanese territories in the south of Lebanon.

II- Achievement of a just solution to the Palestinian refugee problem to be agreed upon in accordance with U.N. General Assembly Resolution 194.

III- The acceptance of the establishment of a sovereign independent Palestinian state on the Palestinian territories occupied since June 4, 1967 in the West Bank and Gaza Strip, with East Jerusalem as its capital.

3. Consequently, the Arab countries affirm the following:

I- Consider the Arab-Israeli conflict ended, and enter into a peace agreement with Israel, and provide security for all the states of the region.

II- Establish normal relations with Israel in the context of this comprehensive peace."

Israeli Reactions

Over the years, Israeli governmental officials have reacted to the API in very different ways. Prime Ministers Sharon and Netanyahu were dismissive, rejecting Palestinian statehood, a return of refugees and compromise on Jerusalem. Shimon Peres reacted positively without agreeing to the specific concessions Israel would be asked to make. And former Prime Minister Olmert, responding to the offer of normal relations with the Arab states, characterized the API as a "revolutionary change," though he too, did not agree to all of the specifics.

One frequent Israeli objection focused on the refugee clause, which calls for "a just solution to the Palestinian refugee problem to be agreed upon in accordance with U.N. General Assembly Resolution 194." It has been said that mention of Resolution 194 is a code word for "the right of return," and thus the API implies the end of

Israel as a Jewish state. Defenders of the API counter that the refugee clause speaks of a solution "to be agree upon" and thus Israel is protected, and further, it is pointed out that the initiative is important precisely because it does not mention a Palestinian right of return.

In 2013 a poll of the Israeli public found that when the API was explained to them, some 55% of Jewish Israelis said they would support it to some degree. And when asked what their response would be if Prime Minister Netanyahu accepted the initiative and then negotiated a peace agreement with the Arab states, support rose to 69%. Most interestingly, **73.5% of Hebrew speaking Israelis said that they "had never heard of the Arab initiative, or knew of its existence, but were unfamiliar with its details."**¹

Re-invigorating the API?

Because the API offered Israel normalization of relations with the entire Arab world, it has been widely seen as having great potential to motivate difficult Israeli concessions that are necessary to end the Israeli-Palestinian conflict. From time to time, efforts have been made to make the API more directly relevant to the peace process. One recurrent idea is to have the API be the basis for renewed negotiations. Just recently, in February 2015, President Abbas, following a meeting with the PLO Central Committee expressed this view, saying that the API would be "the best basis" for renewed negotiations. In 2013 US Secretary Kerry explored the extent to which the API could be modified to accommodate Israeli concerns. As a result Qatar's Foreign Minister al Thani announced on a Washington visit that the call for Israel to return to the 1967 lines could accommodate minor land swaps.

Despite this recurrent interest, there is no likelihood that the API will in any significant way be revised, nor it is at all likely that any Israeli government would accept the API as the terms of reference for renewed negotiations. Moreover, even if it were identified as the partial basis for negotiations, its ambiguities would emerge as sharp differences in substance during the negotiations. Ideally what is needed is to translate the API into a detailed, "no-ambiguities allowed," peace treaty, offered by the Palestinians, and backed by the Arab world. Unfortunately, this too, does not seem likely.

Building on the API

What is proposed here is an alternative approach that **does not modify the API, nor does it require action by the League of Arab states.** Rather the idea is:

- To build on the API by seeking a full treaty document that is "**consistent with the API**"

¹ "Most Israelis back Arab Peace Initiative," Jerusalem Post, May 28, 2013.

- To have this treaty document prepared by a special Commission. It will not be a Palestinian or an Arab proposal. Rather, it will be put forward by either the UN or the Quartet to Israel and the PLO.
- In drafting the proposed treaty, the Commission will be concerned not only with achieving consistency with the API, but with finding and making explicit, an agreement that **majorities of both the Palestinian people and the Israeli people will support.**
- In the process of developing this proposed treaty, the Commission will maintain an open and sustained public process within Israel and Palestine, holding hearings (possibly televised), conducting polls, and seeking input from the entire spectrum of opinion, including from experts, and government officials. **This process will play an essential role in addressing the unfortunate fact mentioned above, that 73.5% of Israelis are not truly familiar with the API.**
- Once this treaty document is developed, the UN will call the government of Israel and the PLO, to take it as **the basis for renewed negotiations.**
- It will call on them, to determine, over a six month period, if there are any mutually acceptable improvements they can make. And then, as modified by negotiations, to accept the terms of the treaty proposal.

In short, what is proposed here, after two decades of failure, is **a new model of negotiations, one which involves the international community, but does not involve an imposed solution. One which respects the ultimate decision making role of governments, but more fully involves the peoples themselves. And one which does not seek to modify the API, but to build upon it, to get to the next stage.**

Who Would Be On The Commission?

There are a variety of alternatives. One possibility is to follow the model of UNSCOP and for the UN or the Quartet to name certain countries to the Commission. Then each named country would appoint its own representative. Alternatively, individual experts and statesmen might be appointed in their own right by the Secretary General or the members of the Quartet.

In exchange for US support, the SG might follow US recommendations in naming the Commission chair. **This need not be an American. It could be a significant figure from one of the Arab states. If from Saudi Arabia, the Commission's arrival in Israel would be a transformative event, a cousin of Sadat's visit.**

Advantages of the Special Commission on the Arab Peace Initiative (UNSCAPI)

1. As a new process, this initiative will fill the current void with a hope for renewed productive negotiations. In doing so, it offers an alternative to the resumption of violence.
2. Even if the Israeli government chooses not to cooperate with the Commission, the Commission will be given great attention by the Israeli public, and many distinguished individuals will testify at its hearings. As a process built upon the promise of normalization from the Arab states, this endeavor will restore a measure of hope to both peoples.
3. During the course of its work, the Commission's inquiry will re-center international and Israeli/Palestinian discourse on the final status issues themselves, rather than on issues of process and obstacles to renewed negotiations.
4. In searching for an agreement acceptable to both sides, UNSC-API will draw upon the most productive elements from previous negotiations efforts, including those between President Abbas and former Prime Minister Olmert, and those under the auspices of Secretary Kerry.
5. The UNSC-API process will be a vehicle for updating thinking about solutions to the conflict. Quite possible, new and constructive ideas that have not been part of past negotiation efforts will emerge.
6. As an initiative built on the API, a new UNSC-API plan may be a vehicle for the PLO to say "Yes" to a specific peace treaty proposal. Were this to happen, with a proposal broadly acceptable to the Israeli public, any Israeli government would face considerable pressure for a positive response as well.

Through the UNSC, the UNGA or the Quartet?

Arguably the Security Council is the best venue for undertaking this process as it represents the highest level of international authority. And the recommendations of a UNSC Commission are most likely to be accepted by the Palestinians who have long called for internationalization of the peace process. However, these very factors contribute to likely Israeli opposition to such UNSC action. This, especially in an election year, makes it unlikely that the required US support can be attained. Further, the US has considerable resistance to "turning over" the peace process to the UN.

These two problems might be overcome if a) the initial call for the UNSC to establish UNSC-API comes from one of the key Arab states and is thus seen as an important peace initiative designed to give new life to the API, and b) an understanding is reached that the US will support the initiative and will have the ability to determine who will be the Chair of the commission.

The UN General Assembly could serve as the alternative UN vehicle for establishing the Commission. But with likely US opposition, this would be firmly rejected by Israel, and its cooperation with the Commission is unlikely. Given the reputation of the UNGA among Israelis, the Israeli public would likely support this rejection. Possibly this could be overcome by the composition of the commission. Thus, were it possible to engage an internationally recognized statesman, like Bill Clinton, as the head of the Commission, the fact that it was established by the General Assembly could be overcome. Other than with someone of Clinton's stature at the head, this becomes quite difficult. Still the Commission could proceed even without Israeli governmental support and in the face of public skepticism on the belief that ultimately a concrete and realistic peace proposal to which the PLO and the Arab states say "Yes" would re-shape Israeli political discourse and open the way to an end-of-conflict agreement.

Action through the Quartet offers greater likelihood of American support, and still retains sufficient legitimacy to contribute to Palestinian participation. Here one should note that the Roadmap for Middle East Peace, developed by the United States but put forward by the Quartet, did succeed in gaining the support of both Israel and the PLO.

There is also a hybrid solution. As there will be two resolutions, one that establishes UNSCAPI and one that responds to the UNSCAPI report, it is possible to have UNSCAPI created by the General Assembly, but have the report forwarded by the General Assembly to the Security Council for its consideration.

Questions and Answers

Q1. Is there any precedent for an international Commission to play a role of this sort?

A: Yes, the closest precedent was the United Nations Special Committee on Palestine (UNSCOP) that was created in May of 1947 by the UN General Assembly. UNSCOP was quickly established, held hearings in the Middle East, receiving testimony from Ben Gurion and Chaim Weizmann. It was boycotted by the Palestinians. In September, UNSCOP reported back to the UNGA and in November 1947, its majority report was adopted as the Partition Resolution, UNGA Res. 181. This was a highly detailed proposal which provided maps detailing the partition of Palestine into two states and detailing a special international regime for Jerusalem.

Q. 2: How would the role of the proposed Special Commission on the Arab Peace Initiative (UNSCAPI) differ from UNSCOP?

A: UNSCAPI's mandate will be to find and detail an agreement acceptable to both peoples and consistent with the API. UNSCOP was charged far more loosely, with

finding a solution to the problem of Palestine. Further, the UNSCOP proposal, which became the Partition Resolution, was a take-it-or-leave-it plan. The proposal of the new Commission is intended as the basis for renewed negotiations by the parties.

Q 4: What happens if after UNSCAPI completes its work, Israel or the PLO refuses to negotiate on the basis of the proposed treaty?

A: If the proposed treaty fulfills UNSCAPI's mandate, and is acceptable to a majority of Israelis, and if it is consistent with the API, and accepted by the Palestinians, a refusal to negotiate by an Israeli government is highly unlikely. Were it to occur, this could result in the fall of the government.

Alternatively, if Israel agrees to negotiate on the basis of the proposed treaty, and it is broadly acceptable to the Palestinian public, it is very unlikely that the PLO would refuse to engage. If it did, it would undermine itself as a potential peace partner.

Q 5: What if there are negotiations but they do not reach agreement, and one side or both refuse to endorse the proposed or partially modified treaty?

A: There are, of course, no guarantees. The idea is to find a new and more promising approach to ending the conflict. This proposal should be weighed against other alternatives.

Q 6: What is the alternative? How does it match up against the Special Commission on the API idea?

A: One option under consideration is for the U.S. to put forward its own plan for ending the conflict and to then call on Israel and the PLO to use that as a basis for negotiations. The proposed Commission has several advantages over that approach: a) it builds on the historical offer to Israel of normalization from the Arab states; b) as an extended public process, (Listening Commission) it offers a way to break through the lack of awareness of the API among the Israeli public, c) as a process coming from either the UN or the Quartet, it is more likely to obtain Palestinian support, d) after so many failed US-led efforts at bilateral negotiations, only a new process will generate an atmosphere of hope, creativity and renewed energy.

Another option, one which foregoes the benefits of a public process that seeks to go directly to the two peoples, is for the Quartet (rather than the US) to simply formulate a detailed peace proposal and put it forward as the basis for renewed negotiations. This could be linked to the API, and could draw some of the Arab states

more fully into the work of the Quartet. This option is simpler, does not involve an independent Commission, and may be more acceptable to the US.

Q 7: Can the Special Commission on the API go forward, even if traditional bilateral negotiations are renewed under US auspices?

A: This doesn't make sense if the US is playing a strong role in the Commission process as it would if the Quartet or the UNSC were involved. However, if US support is not forthcoming, and the Commission is a vehicle of the General Assembly, then this dual track approach would be positive. Indeed, the existence of a UNGA Commission process would likely provide an impetus for more serious Israeli engagement in a new bilateral negotiations effort.

Q. 8: Does this proposal assume that the Arab League will embrace the proposed treaty?

A: Arab League action requires unanimity, which is not likely, especially since the proposed treaty will only address the conflict with the Palestinians, not the Golan Heights. What is expected, however, is that it will open the door to widespread steps towards normalization, and an expansion of the circle of countries with peace agreements with Israel beyond Jordan and Egypt.

Q. 9: What role would the Arab states have in this process?

A: The most important step would be for one or more of the key Arab states to formally propose such a process. Thus, if Egypt, Saudi Arabia and Jordan were to request that the Quartet develop a detailed peace proposal "consistent with the API," this would launch the effort and be seen as a serious effort by the Arab states to enter a new phase in their peace-making efforts.

Further, support from key Arab states for the proposal that emerges from the process is essential. To ensure this, the Commission will, of necessity, maintain close dialogue with the Arab states as it pursues its work.

Q 9: Can this go forward if the United States does not support it?

A: US support is enormously important. It is however possible to initiate this from the UN General Assembly as an alternative to the Security Council or the Quartet. The original UNSCOP was a General Assembly initiative.

Q 10: What about EU support?

A: Support of the European nations is key to establishing UNSCAPI's credibility. Preliminary discussions have been held with many of the European delegations at the UN and there is receptivity to this approach.

Q 11: What happens to the Palestinian cause if this is tried and is unsuccessful?

A: If the Palestinians go through this process and support a final status treaty that has been endorsed by much of the world, they will only be in a stronger position to galvanize international support for other actions.

Q 12: How does the UNSCAPI proposal connect to the issue of Palestinian unity?

A: The proposal has no direct connection to reconciliation efforts between the PLO and Hamas. It does, however, have several important connections to the deeper issue of Palestinian unity:

- UNSCAPI will undertake hearings in both the West Bank and Gaza. In its mandate to find a solution acceptable to a majority of the Palestinian people, it will be treating the two populations as a single people and bringing them into a common discourse.
- A variety of polls show that the views of Palestinians in the West Bank are not greatly different from those of Palestinians living in Gaza. Thus, a UNSCAPI peace proposal that has overall support of a majority of Palestinians will also be supported by majorities of both populations. This will contribute to moving both the PLO and Hamas in the direction of a common program.
- Hamas (e.g. the Mecca Accord) has taken the position that it would support any agreement approved in a referendum of the Palestinian people. Once UNSCAPI has produced its proposal, it could be the subject of a Palestinian referendum, and this in turn could contribute to a major evolution in the Hamas position.

#2 Text of Proposed UNSC Resolution on Parameters

1. The Security Council,

Preamble:

PP1: Reaffirming the vision expressed in Security Council Resolution 1397, "of a region where two States, Israel and Palestine, live side by side within secure and recognized borders,"

PP2: Reaffirming the two principles for the attainment of a just and lasting peace in the Middle East articulated in Security Council Resolution 242 of 1967, (i) "Withdrawal of Israeli armed forces from territories occupied" in the 1967 conflict, (ii) "Termination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or act of force";

PP3: Further reaffirming the call in UNSC Resolution 242 for "achieving a just settlement of the refugee problem;"

PP4: Observing the need for the international community to today go beyond UNSC Resolution 242 and provide fuller guidance on the principles on which Israeli-Palestinian peace should be based;

PP5: Noting that Israel was created as a Jewish State pursuant to international legitimacy as provided by UNGA Resolution 181, the Partition Resolution of 1947;

PP6: Noting that the application of the State of Palestine for membership in the United Nations of 23 September 2011, stated that the application is based on the Declaration of Independence of the State of Palestine of 15 November 1988;

PP7: Drawing attention to the fact that the Palestinian Declaration of Independence of 1988 acknowledged the international legitimacy of the Partition Resolution of 1947, and explicitly noted that the Partition Resolution called for "two states, one Arab and one Jewish,"

PP8: Reiterating the determination of the Security Council in UNSC Resolution 298, that "all legislative and administrative actions taken by Israel to change the status" of Jerusalem are "invalid and cannot change that status";

PP9: Reaffirming the importance of the call for immediate negotiations to achieve a just and durable peace in the Middle East as found in Security Council Resolution 338;

Determinations:

OP1: Determines that both the Jewish people and the Palestinian people possess a right to national self-determination, which right should be actualized within a comprehensive agreement that ends the Israeli-Palestinian conflict;

OP2: Further determines that after almost seventy years of population growth, and continued conflict between the two peoples, any substantial return of the over six million descendants of the original refugees from 1948, is not practicable;

OP3: Further determines that, whatever the explanation of why Palestinian refugees were beyond the borders of Palestine at the close of the 1948 War, on an individual basis, hundreds of thousands of refugees suffered a major injustice in not being allowed to return to their homes and in not receiving compensation for their properties;

OP4: Further determines that the hundreds of thousands of Jews, who prior to 1948, lived in the Arab countries of the region, and were forced to leave lands where substantial Jewish populations had lived for centuries, are entitled to compensation from the Arab states for those properties that were confiscated, and further that such compensation should not diminish the financial compensation due to the Palestinian refugees;

Parameters:

OP5: Accordingly, the Council identifies the following parameters as the basis for an agreement that will end the conflict and resolve all claims:

- 1) The agreement will provide for two states, Israel and Palestine, living side by side in peace and security. Both states will be democracies with full social and political equality for all of their citizens, with citizenship open to all religions.
- 2) The border between the two states will be based on the June 4, 1967 lines, modified by agreed land swaps of equal size and quality, with Jerusalem treated separately.
- 3) The State of Palestine will not maintain weaponry or foreign alliances that would endanger Israeli security, and will be subject to long-term measures to ensure Israeli security. If Israeli withdrawal to the permanent borders is

linked to performance-based measures to be taken by the Palestinians, there will be third-party arbitration of performance. Both sides will vigilantly oppose all forms of violence and incitement directed against the other.

4. With respect to the Temple Mount/al Haram al Sharif the two sides will agree to maintain the present status quo, including Jordan's role, which recognizes that the Haram is an on-going site of Muslim worship to which, subject to public security and respectful behavior, non-Muslims can visit.

5. Neither side will have exclusive sovereignty over all of the Old City of Jerusalem; municipal boundaries will be redrawn so that the heavily Palestinian-populated areas of East Jerusalem shall not be part of Israel, the heavily Jewish-populated areas of East Jerusalem will not be part of Palestine. Both sides will respect the right of any state to designate its capital within its sovereign territory.

6. Palestinian refugees will receive substantial and long-term compensation, but there will be no substantial return to Israel of the six million refugees.

7. The implementation of the permanent status agreement will mark the end of the conflict and no further claims based on the history of the conflict will be made or recognized by either side.

To Israel and the PLO:

2. The Security Council calls upon Israel and the PLO to announce their acceptance of these parameters as the basis for a permanent agreement to resolve the conflict.

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9/13/16

#3 Securing the Two-State Solution

Return to the 2003 Roadmap for Middle East Peace

Jerome M. Segal

March 1, 2016

I. The Current Challenge and Opportunity

With the new platform of the Labor Party putting off final status negotiations until some point in the indefinite future, with the Netanyahu government remaining in power, and given the exhaustion of US efforts under Secretary Kerry to achieve a comprehensive agreement, we have firmly moved away from any near term effort to end the conflict.

In the United States, President Obama's term is coming to an end, and while there may be some American initiative which establishes an Obama legacy, it will be limited in scope. No one knows who the next American President will be, and whether it be a Democratic or Republican, the next Administration will take its time in determining its policy towards the conflict, and given the Obama/Kerry experience, there is little reason to expect a bold and sustained initiative. Likely, we will see nothing until mid 2017, at the earliest.

This dangerous, extended, vacuum raises both an opportunity and a challenge for the international community. In the absence of strong American leadership, what useful efforts can the international community take during the next 18-24 months to:

- Preserve the two-state option;
- Sustain the moderate Palestinian leadership;
- Limit, and hopefully, end the current wave of violence;
- Enhance the likelihood of successful final status negotiations down the road;
- Start the negotiation of limited measures where progress may be possible.

II. The advantages of returning to the Roadmap

1. **The Roadmap has strong provenance:** It was developed by a **Republican Administration**, and agreed to by Ariel Sharon and Yasser Arafat. It was put forward by the Quartet (US, EU, UN, Russia); and was endorsed by the **UN Security Council**.
2. The Roadmap provided a **clear Israeli-Palestinian commitment to the two-state solution**, and identified three distinct phases for getting there, with specific steps to be taken by both sides.
3. The Roadmap is to be implemented **under the auspices of the Quartet**. It can move forward without a specific American initiative.
4. The Roadmap was **developed during a period of violence** and was designed to move from violence to successful diplomacy, thus it is particularly relevant to the present period.
5. Given that the plan is already in place and has received the highest level of international legitimacy, it offers the best opportunity to make **productive use of the current period, without going back to square one**.

III. Enhanced-Return to the Roadmap

In June 2016, the Quartet is schedule to come forth with a report on the current situation and to put forward recommendations. In its February 2016 statement the Quartet affirmed:

that significant steps, consistent with the transition contemplated by prior agreements, are urgently needed to stabilize the situation and to reverse negative trends on the ground.

The above text speaks of the need for "significant steps" and "prior agreements" but does not actually call for *taking those steps already agreed to in prior agreements*.

In its June 2016 report, it is important that the Quartet give strong emphasis to the importance for the integrity of the negotiations process that both sides implement previous agreements. This would include Oslo commitments that have not been fulfilled, as well as Roadmap commitments that have not been fulfilled. This could be accompanied by an explicit statement of a return to the framework of the 2003 Roadmap for Middle East peace, or this could be done implicitly.

Either way, some modifications in the implementation of the Roadmap, and some additions to it are needed. It is suggested that this include steps that would **facilitate all three phases of the Roadmap simultaneously**. Specifically:

1. A return to the **core Phase-1 commitments of both sides, this time within robust implementation monitoring by the Quartet**,

2. Simultaneous planning for Phase-2 that will begin with an **International Conference** with the option of the creation of a Palestinian state with "**provisional borders and attributes of sovereignty.**" As in Roadmap, admission to UN.
3. Approval by the UN Security Council of a **new 242-type resolution that will provide parameters for the Phase-3 permanent status talks.**
4. Immediate, simultaneous, and gradually enhanced **negotiation** of a set of issues that can be treated as free standing matters, not dependent upon agreement in other areas, and which **provide entree into the permanent status issues** of Phase-3.

IV. Phase-1

The Roadmap identifies a variety of steps and goals to be achieved in Phase-1, and it states that:

"The Quartet will meet regularly at senior levels to **evaluate the parties' performance on implementation of the plan.**"

This was never done in a sustained and robust manner. What is suggested is that the Quartet pursue this **Performance Monitoring** function much more forcefully and effectively:

- With the regular presentation of a **public report on Progress Towards Fulfillment of Israeli and Palestinian Roadmap Commitments.** A model for a professional, serious and public report might be the annual US Human Rights Report, though the Roadmap implementation report should be done on a quarterly basis.

- Such implementation report should focus on **evaluating progress towards fulfillment**, that is, on the direction of change, rather than whether full compliance has or has not been achieved. This is important, as some of the Roadmap commitments were framed in absolute terms, (e.g. "ending incitement," "freezing settlements"), and as such, their full attainment may be unrealistic, and the focus on failure to achieve full compliance can be used as an excuse for not taking needed action by the other side.

Central Phase-1 commitments included:

1. The end of **incitement** by both sides.
2. "Palestinians declare an unequivocal end to violence and terrorism and undertake **visible efforts on the ground to arrest, disrupt, and restrain individuals and groups conducting and planning violent attacks on Israelis** anywhere."

3. Sustained and effective action against terror and terrorist infrastructure by the **Palestinian security forces**.

4. **No Israeli actions that "undermine trust**, including deportations, attacks on civilians, confiscation and/or demolition of Palestinian homes and property, as a punitive measure . . ."

5. "GOI immediately **dismantles settlement outposts** erected since March 2001.

6. "GOI **freezes all settlement activity (including natural growth of settlements)**."

Emphasis on unmet commitments should be on incitement and settlements, and attention should be called to where considerable progress has been made, especially on security steps that the Palestinians have taken.

V. Phase-2

1. Phase-2 is supposed to open with an International Conference. Such conference should be scheduled for the summer or fall of 2016. And planning for it should begin immediately.

2. It is suggested that the conference be framed as a "Re-engagement Conference" whose objective is to facilitate substantial dialogue between Israel and the PLO on a host of issues. At this stage, it would be best to not speak of resuming negotiations. Moreover, the process of re-engagement would be what actually occurs at the conference, not some future outcome of the conference.

3. To achieve this re-engagement it is suggested that the conference be structured around a series of plenary discussions (perhaps nine over a three day period). Each session would be focused around a specific question (e.g. What attributes of sovereignty might a state with provisional borders have beyond those possessed by the Palestinian Authority?) The session might open with a presentation by one or two experts, and then turn to both Israeli and PLO speakers to respond/comment, then allow for response by the original speakers, followed by questions from a select audience. The entire process would be transcribed and subsequently reviewed to identify areas of potential negotiations down the road.

4. The core element of Phase-2 was identified in the Roadmap as "the option" of the creation of a Palestinian state with "provisional borders and attributes of sovereignty." The Roadmap calls for this state to be recognized by Quartet members and to assume membership in the United Nations. While this idea provides the shortest path to the beginning of real statehood, Palestinians have been extremely leery of accepting provisional borders, fearing that what is intended to be temporary will become permanent, and they will find themselves in a mini-state,

with Israel's continued occupation of much of the West Bank, now framed as a border dispute between two-states. Exploration by the Quartet should begin immediately to develop approaches and guarantees that would address this Palestinian concern.

5. Under the Oslo-2 agreement, the Palestinian Authority was to have full security authority in Area-A, which includes almost all of the West Bank cities. This was never fully implemented, and was completely undone during the second Intifada. In contemplating the "attributes of sovereignty" of a Phase-2 state, full security authority over Area-A would seem an essential element. This issue provides entree into the broader and very complex security issues of permanent status. In the context of a Phase-2 state with attributes of sovereignty, full security control over Area-A, offers Israel the opportunity of a test-case to judge whether a full blown Palestinian state would have the will and capacity to fulfill its security commitments. It offers the Palestinians the opportunity to demonstrate that they are up to the task. Negotiations over restoring this Oslo-2 element, should start immediately as part of the preparations for Phase-2.

6. Phase-2 is to start with an international conference according to the Roadmap and end with creation of State with Provisional borders (if this option is taken). It also speaks of admission of this state to UN. The international conference initiating Phase-2 could be held in the summer of 2016. The process which the Roadmap envisioned ("Israeli-Palestinian engagement") would ensue with respect to the State with provisional borders. Israel would want a quid pro quo and possibilities could be explored, especially with respect to Palestinian narrative issues (e.g. Jewish state). Palestinians would want Israeli agreement that permanent borders would be based on 1967 lines with equal swaps.

Possibly there would be agreement, but if not, perhaps in October there could be a USN Parameters resolution that deals with borders and narrative issues. And then in December, there could be a UNSC resolution that makes a conditional recommendation of admission to UN of Palestinian state (w or w/o) specified provisional borders and a UNSC commitment to 1967 and agreed swaps as basis for permanent, all conditional on Palestine reaffirming its Declaration of Independence acknowledgement that Israel was created as a Jewish state pursuant to "international legitimacy."

VI. Phase-3

A. Commencing Entree Negotiations

1. Phase-3 is the period during which negotiations of a comprehensive permanent status agreement take place. Such negotiations have, of course, occurred during the years since the adoption of the Roadmap, so we have, at various points been in

Phase-3. At present permanent status negotiations are not occurring and there is broad agreement that there is little possibility of successful negotiations, were they to occur at this point. The central objective of Phase-1 and Phase-2 is to create conditions that will enable a return to Phase-3, this time with negotiations-success.

2. At this point, it would be wise to not specify a date for the full resumption of Phase-3 negotiations. What can be done, however, is to immediately resume a set of negotiations that would provide entree to comprehensive permanent status negotiations. Unlike the approach that has been taken to permanent status negotiations, these "entree issues" should be viewed as free-standing, with their results not subject to the "nothing is agreed until everything is agreed" rule. And they could occur simultaneously, each with their own negotiations team.

3. One of these areas was identified above, negotiating the assumption of full Palestinian security authority in Area-A. This can be framed either as negotiating the implementation of an Oslo-2 element, or as negotiating an "attribute of sovereignty" element for the Phase-2 state.

4. Other entree issues should be identified, with a gradually expanding list of negotiations being undertaken. Three more areas that have promise are:

a) **Negotiation of a partial land swap between the two-states.** The principle of land swaps is accepted by both sides, and while the full extent of these may elude agreement, both sides agree that certain areas of Israeli settlement near the green line are to be swapped. Thus, in relatively short order a partial swap could be agreed upon, allowing upwards of 50% of the settlers to come under Israeli sovereignty and a similar area of territory coming under Palestinian sovereignty. Within these transferred areas, continued settlement activity would be solely up to Israel. This would help defuse the settlement issue, and make it more likely that Israel would agree to freeze settlement activity in the remaining settlements. Implementing even a partial land swap requires some exchange of territory; this is not possible unless there is a Palestinian state in place that actually takes sovereign control over the areas Israel gives up. **Thus, a Phase-2 state enables such an agreement to be implemented. However, negotiations on a partial land swap can begin immediately.**

b) **Negotiation of a security protocol for the Gaza Strip.** Despite the fact of continuing Hamas control of the Gaza Strip, the provisional borders of the State of Palestine will include all of the Gaza Strip. Israel and Palestine should open their security negotiations with a focus on Gaza. Here the issues are less complex than with respect to the West Bank, and Israel has already completed a full withdrawal, and has no security presence inside Gaza. The central issue has to do with effective demilitarization and the monitoring of potential weapons flows and production. Israel should agree to the full lifting of air, land and sea closures on Gaza when the agreed security regime goes into effect. This should be accompanied by a massive development program for Gaza. Once this is agreed to, continued Hamas control of Gaza will become untenable, in the face of State of Palestine claims. Essentially it will

be refusing to recognize Palestinian sovereignty over Palestinian territory, and will be standing in the way of finally ending Gaza's torment. To make a real transfer of power possible, Hamas will have to be offered the opportunity to participate in Palestinian political life and in the democratic competition for power within Palestine. Again, the negotiation of a security protocol for Gaza can begin immediately. Successful agreement in this area will facilitate its implementation once a Phase-2 state comes into being.

c) **Negotiations over the Temple Mount.** These are generally regarded as the hardest of the permanent status issues, and thus as the last on which agreement will be reached. However, with the prior establishment of the Palestinian state with provisional borders, there is an opportunity for a totally different approach, namely for the two states to conclude that neither will get the other state to accept its claim to sovereignty. This being the case, what is needed is some formalization of the status quo, perhaps with limited modifications. **Both states would retain their claim to sovereignty, and resolution would be either deferred indefinitely or for an agreed period (e.g. 25 years).** During that time an administrative agreement, including Jordan's role, would be in place. Such an agreement to defer resolution of the competing claims of sovereignty might be facilitating by an affirmation that "ultimate sovereignty belongs to God." This approach is in line with ideas suggested by the late King Hussein of Jordan. It requires no fundamental concessions from either side, but taking the Temple Mount out of the equation, even for 25 years, would generate an atmosphere conducive to fruitful pursuit of other issues. Again, such negotiations to codify the status quo could begin immediately.

B. Moving Towards a UN Security Council Parameters Resolution

A balanced but strongly worded parameters resolution from the UN Security Council can contribute importantly to the success of Phase-3 negotiations. The key contribution such a resolution makes is that, coming from the Security Council, it puts some of the "heavy lifting" on the shoulders of the international community, making it easier for political leaders to make difficult compromises because they have been mandated by the highest international body. Thus, while input from both the Israeli and Palestinian sides is necessary, in some sense, the parameters should be imposed. And of necessity, they must be balanced.

Given its intensive history of engagement on this issue, an American drafted resolution would be appropriate, and with a return to the Roadmap framework, discussions within the Quartet might trigger American action in this regard. But American initiation is not required.

V. Integrating the Approach With the French Initiative

France, to its great credit, has taken the lead in drawing international attention back to the Israeli-Palestinian conflict. The contours of the French initiative are still evolving, but with reference to an international conference, possible recognition of a Palestinian state, and resumed negotiations under international auspices, there is much overlap with the above plan.

Thought needs to be given to how to integrate the two. One possibility is that an early international conference might occur in Paris, with wide participation as multiple parties present positions, ideas and points of view. Then, still in Paris, immediately after its close, the Quartet would convene and would announce its adoption of this enhanced return to the Roadmap.

With respect to the key element of robust monitoring of fulfillment of Phase-1 commitments, France could take the lead as chair or co-chair of the Quartet's monitoring role.

VI. Preliminary Time Line for Renewed Peace Process

April 2016 -- Either Spanish/Egyptian Resolution passes establishing UN Study Commission on the Arab Peace Initiative (UNSCAPI) or Quartet establishes International Study Commission on the API (ISCAPI)

May -- Commission starts public hearing in Israel Palestine.

Jun-- QUARTET report focuses on a) Fulfillment of previously agreed commitments (e.g. Oslo-2, Roadmap). Calls for effort to transfer full security authority to PA over Area-A. b) Need to establish a single framework of governance that would encompass both Gaza and WB.

June -- Robust, public monitoring of commitment begins, with strong focus on incitement.

June -- Quartet refocuses Hamas conditions in "forward looking" manner, focusing on demand that Hamas agree to abide by a negotiated peace agreement, if it endorsed Palestinian referendum.

June -- Commission visits Palestinian refugee camps in the region.

July - International "Re-engagement Conference" opens under Quartet auspices, perhaps in Paris. Idea of Palestinian state with provisional borders is one of the topics for discussion.

July -- Commission deliberates, works on report.

August-- Discussions between GOI and PLO on provisional borders and attributes of sovereignty continues. US explores stances of both sides.

August -- Pre-negotiations discussions begin on issues such as: a) codifying status quo on Temple Mount, b) security protocol for Gaza, c) possible partial land swaps, d) other entree areas that might be identified.

Sept - Commission report released. Possible Commission meeting with President Obama.

Oct-- US puts forward a strong UNSC parameters resolution setting high bar for opening of Phase 3. UNSC passes resolution.

Oct -- First public report from Quartet on progress towards fulfillment of previous commitments.

Nov -- Further efforts to see if GOI and PLO can agree on state with provisional borders, (including fuller Israeli redeployment in WB, Palestinian security authority in Area A).

Dec -- UNSC resolution makes recommendation of UN admission for State of Palestine, with or without specified provisional borders. Such resolution would a) be conditional on Palestinian re-acknowledgement of Palestinian Declaration of Independence acknowledgment of Jewish State legitimacy, b) reaffirm territorial and Jerusalem parameters.

Dec- - If Palestinians meet terms of UNSC recommendation, UNGA votes admission of Palestine to UN.

Jan 2017 -- If possible, opening of state-to-state negotiations on partial land swaps, and other entree issues.

Jan 2017 - Second quarterly UNSCOP report on implementation of commitments.

Spring or Summer 2017 -- If both sides have accepted parameters resolution -- Phase 3 negotiations begin .

#4 Conditional US Recognition of Palestine as "a State With Provisional Borders [1967 lines] and Attributes of Sovereignty"

[For a Presidential Decision Memo on the Israeli-Palestinian Conflict]

Option 3 A powerful option open to the President (perhaps within a speech) is a **two-part** announcement that:

"Conditional on the PLO Executive Committee, acting as the Provisional Government of Palestine, acknowledging that Israel was created and exists as a Jewish state pursuant to international legitimacy,

1) The United States is prepared to recognize Palestine as a **"state with provisional borders and attributes of sovereignty;" and further,**

2) recognize the **June 4, 1967** line, subject to equal land swaps, with Jerusalem dealt with separately, **as the provisional border** of the Palestinian state."

Plus Parameters: Pursuing this option does not preclude a UN Security Council Resolution on parameters, whether an American resolution or **from another country** with which we work closely (e.g. New Zealand). **Combined with a parameters resolution,** this combination would be transformative.

Background

The specific phrase, "state with provisional borders and attributes of sovereignty," is taken from the 2003 Roadmap for Middle East Peace, developed by the **Bush Administration**, put forward by the Quartet, and endorsed by the UN Security Council, after its acceptance by Israel and the PLO.

In the Roadmap there were three phases, with the third phase being permanent status negotiation. However, there was an "optional" second phase, in which before permanent status negotiations, a Palestinian state "with provisional borders and attributes of sovereignty" would be created and recognized by the members of the Quartet.

The Roadmap **did not say** that the creation of this state would be through negotiations, or **require Israeli approval**. In its "comments" on the Roadmap, the Israeli government maintained that this should require agreement of Israel, but the Bush administration never endorsed this, saying only that the Israeli comments would be given full consideration.

The Palestinians never showed any interest in a State with provisional borders because it was assumed that such a state would be **very limited in size**, and feared that what was intended to be **provisional would become permanent**.

The idea, as proposed above, that the **provisional borders would be the June 4, 1967** borders, with swaps to be negotiated, never surfaced as an option.

Pros and Cons

Pro:

1. More than any other step, this would help to save the two-state solution, as it would give formal recognition to the State of Palestine and identify its provisional borders. U.S. recognition would be immediately followed by recognition by almost all of the nations in the world.
2. Recognition of the state and of the June 4, 1967 lines as its provisional borders would imply U.S. recognition of the West Bank as occupied territory, and not (as Israel maintains) "a disputed territory." This could lay the basis for a subsequent Security Council resolution on the illegality of settlement expansion.
3. More than any other step, US recognition of the June 4, 1967 lines as the provisional borders of Palestine would deal **an enormous blow** to the ideological proponents of Greater Israel. It would say to those settlers living in areas unlikely to be swapped: "In the eyes of the entire world, you are living in another country." It would make it more difficult to find Israelis willing to move to these areas, and **may contribute to a negative flow**, especially if there is compensation.
4. Taking this step would be a **major victory for Palestinian moderates**, and would give **security cooperation a new lease on life** as the charge that Palestinian security forces are "the police of the occupation" will be undercut and the belief in the future attainment of genuine statehood given renewed credibility.
5. **Inside Israel there will be a major debate** as to whether Israel should recognize the State as well. This would likely be supported by Isaac Herzog, head of the Labor Party, as he advanced an idea along these lines several years ago (as did former Minister of Defense Shaul Mofaz). If Israel does recognize the state, then this opens possibilities for a **new limited agenda** for the next Administration:
 - Adoption by the Palestinians of a **Constitution** for their state.
 - New openings for the evolution of Hamas and the **transfer of power in Gaza** (to the State of Palestine).
 - Important, but limited, accomplishments otherwise not possible, such as a **partial land swap** that transfers an agreed 2%, between the two states, as a first installment, helping to defuse the settlement issue.

- Transferring full security responsibility in **Area A** to the Palestinians.
- Extension of opportunity of Palestinian **citizenship to refugees in Lebanon and Syria.**

6. If the PLO meets the challenge, future negotiations will be on a state-to-state basis, and the Palestinians will come to the 50th anniversary of the occupation (June 2017) not with the failed Oslo process and no prospects for change, but with a new beginning that can be viewed as post-Oslo.

Cons:

1. U.S. recognition outside a negotiations process would be viewed by many as a complete **reversal** of previously stated Administration position which rejected the PLO bid for admission of Palestine to the United Nations.
2. It will be maintained that the United States has played havoc with future negotiations as it gave the Palestinians a "**big something for nothing**" thus disadvantaging Israel at the negotiations table.
3. If the U.S. pursues this recognition option, then it may be beyond carrying capacity to also advance a **parameters** resolution.
4. If there is no follow up once the Palestinian euphoria over U.S. **recognition** subsides, it may contribute to deeper hopelessness. Israel may resist agreeing to any attributes of sovereignty (e.g. full security control in Area A).
5. Potentially, this is an **explosive** step. It may trigger a desperate right-wing response from Israel, such as annexing Area C.
6. Both inside Israel and within the U.S., recognition will be portrayed as **anti-Israel.**

Discussion: The "something for nothing" objection, and the "anti-Israel" reaction are **undercut** if the U.S. recognition is made dependent upon PLO acknowledgement of the international legitimacy of Israel as a **Jewish state**. Prime Minister Netanyahu has maintained that Palestinian refusal to accept the legitimacy of Israel as a Jewish State is the central reason the conflict continues. Thus, requiring Palestinian acceptance of Jewish State legitimacy can be seen as requiring the most fundamental of concessions, one that can open the door to resolution of the conflict.

The US could explain the supposed "reversal" of its prior position by a) noting that the Roadmap option of statehood prior to permanent status negotiations was **always** within the US position, and b) explaining that the US opposition to the PLO's UN quest had been to an effort to achieve statehood **without giving anything in**

return. The US would further point out that the reality on the ground is unchanged, and that the "actual attributes of sovereignty" remain to be **negotiated** with Israel.

If the PLO does not immediately provide the required "Jewish State legitimacy statement" then the **furor will die down** quickly, as the US will be seen as having put the ball in the Palestinian court and essentially made acceptance of Jewish State legitimacy a necessary condition for statehood.

Alternatively, it is quite possible that the PLO will make the required statement, as it is similar to what is contained in their **Declaration of Independence** which explicitly invokes the "international legitimacy" of the 1947 Partition Resolution and notes that it provided for "**two states, one Arab and one Jewish.**" This is not widely known, and was 28 years ago. If they do this today, it will be viewed as a major breakthrough toward resolution of the conflict, one achieved by the **President.**

As precedent for this action, the President could call attention to what happened in the Reagan Administration, during its last months. For many years, over successive administrations, it had been **U.S. policy to not recognize the PLO as a legitimate representative of the Palestinian people unless the PLO recognized Israel's right to exist.** In December 1988, President Reagan accepted a statement made by Yasser Arafat as fulfilling this condition. The next day, the U.S. - PLO dialogue opened, leading, over time, to the Israeli-Palestinian negotiations that produced the Oslo Accords.

#5 Narrative Change Language

Jerome M. Segal

Proposed Language:

"The PLO and Israel both affirm that the land between the Jordan River and the Mediterranean Sea is the historic homeland of both the Jewish people and the Palestinian people. Both parties further affirm the necessity of dividing the common homeland into two independent states, Israel and Palestine."

Advantages For Israel:

The central **value judgment** of the classic Palestinian narrative's is the denial that the Jewish people have a **right** to a state of their own. This conclusion rests upon the claim that the Jewish people do not have a right of self-determination, which in turn is based on a fundamental building block: **There is no Jewish people.**

Thus the PLO Covenant states:

Article 20:

"The claim of an historical or spiritual tie between Jews and Palestine does not tally with historical realities nor with the constituents of statehood in their true sense. Judaism, in its character as a religion of revelation, is not a nationality with an independent existence. Likewise **the Jews are not one people with an independent personality.** Rather they are citizens of the states to which they belong."

In addition to denying that there is a Jewish people, this Article also denies the Jewish historical presence in Palestine:

"Claims of historical or religious ties of Jews with Palestine are incompatible with the facts of history."

The language proposed above focuses on **the underlying structure** of the narrative and provide three changes:

- It contains recognition of the **existence** of a Jewish people.

- It contains recognition of the existence of an historical connection of the Jewish people to Palestine; specifically that this land is the **historic homeland** of the Jewish people.

- It contains recognition that the homeland of the Jewish people is not just Israel proper, but the land between the River and the Sea.

For some Israelis, because this language challenges the core elements of the narrative, it may be more powerful than language that recognizes Israel as a Jewish state -- a step that is more of a capitulation than a change in the underlying narrative.

Acceptability to Palestinians:

Despite the power of this proposed language, it will be easier for the Palestinians to accept than language which directly deals with Jewish state, or nation state of the Jewish people. I say this for six reasons:

1. This new language has not been demanded by the Israeli government. Once put as a public Israeli demand, Palestinian responsiveness is more difficult to obtain.
2. The new language would be affirmed by **both** Israel and the PLO, and would recognize that the land is also the Palestinian homeland.
3. The language does not lend itself to future attacks on the rights of the Palestinian citizens in Israel; rather, it affirms that even living in Israel, they are living in their homeland.
4. The language does not put President Abbas in the position of "traitor" who betrayed the refugees.
5. The language does not put Abbas in the position of appearing to say that the Palestinians were wrong to oppose Zionism.
6. The assertions that the Jews are a people and that their homeland is in historic Palestine, are essentially **matters of fact**, that are well supported by reams of empirical evidence. The alternatives dealing with recognition of Israel as a Jewish state or recognition of Israel as the nation state of the Jewish people (e.g. belongs to the Jewish people) are essentially **value** judgments and thus far more difficult for the Palestinians to affirm.

#6 The Jewish State Issue and the Kerry Principles

When the Oslo peace process was inaugurated at the signing ceremony on the White House lawn in September 1993, Prime Minister Rabin and PLO Chairman Arafat exchanged two letters of fundamental importance. Arafat's letter stated, "The PLO recognizes the right of the State of Israel to exist in peace and security." Rabin's letter stated, "the Government of Israel has decided to recognize the PLO as the representative of the Palestinian people and to commence negotiations with the PLO within the Middle East peace process."

While this was wildly celebrated as a breakthrough for peace, there were some critics who noticed the imbalance. Here was the PLO conceding, in advance of negotiations, the most fundamental issue of the conflict. Up until May 1948, Palestinian nationalism had been about preventing a Jewish state from emerging in historic Palestine. After Israel's 1948 Declaration of Independence proclaiming a Jewish state, Palestinian nationalism was dedicated to eliminating that state. Now the PLO was recognizing Israel's right to exist. In exchange the Palestinians did not get Israeli recognition of the right of a Palestinian state to exist. All they got was Israeli acceptance of the PLO as a negotiating partner. To some, both inside the PLO and out, it seemed the PLO had given away its best card, just to get into negotiations.

Nonetheless, over the years, there were some Israelis who maintained that PLO recognition of Israel's right to exist was not enough, that Israel should have demanded PLO recognition of Israel's right to exist *as a Jewish state*. To other Israelis, this seemed superfluous. Israel had declared itself a Jewish state and its right to live in peace and security had been recognized. It did not need from the PLO some assent or validation of its character. To some it even seemed unseemly to ask for such a thing.

In recent years, Prime Minister Netanyahu has elevated this demand for Palestinian recognition of Israel as a Jewish State, or alternatively, "as the nation-state of the Jewish people," to a level of importance it has never had in the entire history of the conflict. With great regularity he maintains that the central reason the conflict continues is because of the Palestinian refusal to confer such recognition.

And on the Palestinian side, the more Prime Minister Netanyahu has demanded such recognition, the more forcefully the PLO has said "Never." In support of their refusal the Palestinians have offered multiple justifications. Palestinian President Abbas has said that Israel can name itself "The Jewish State of Israel," if it wishes; that that is an internal Israeli matter and will not affect Palestinian recognition. On the other hand, he refuses, himself, to confer this "Jewish-state" recognition. Three reasons have been given. First, that it would undercut the claims of the Palestinian refugees. Second, that it would be used against the Palestinian citizens of Israel. And third,

that it calls on the Palestinians to deny their own narrative of the conflict, their basic sense of the injustice of the establishment of a Jewish state on land that they quite reasonably experienced as their own.

All of these points have some merit, but there are also counter arguments to be made, and the matter can go back and forth indefinitely. Though they might not be correct, the cynics have the most straight-forward explanation: Prime Minister Netanyahu's demand is part of an effort to block a peace agreement, since he is certain the Palestinians will never accept this new claim, and President Abbas's refusal to accept it, is a way to re-establish a major end-of-negotiations card to replace what Arafat gave away in 1993.

In laying out a framework for permanent status negotiations, Secretary Kerry had three ways to approach the issue. One option was to take it as a legitimate demand, not as a pre-condition to negotiations, but rather as an identified outcome of successful negotiations. For instance, addressing the issue of Palestinian citizens of Israel as well, he might have proposed, "At the end of the negotiations, the Palestinians will recognize Israel as the nation state of the Jewish people and of all of its citizens, and the Israelis will recognize Palestine as the nation state of the Palestinian people, and of all of its citizens." It is uncertain that the Palestinians would have agreed to this as a basis for the negotiations, as it would depreciate the value of their final card if they committed in advance to ultimately playing it, and it may seem to them to be betraying the claim of injustice at the heart of the Palestinian narrative.

A second option would be to ignore the issue entirely. While this would have been unacceptable to Prime Minister Netanyahu, it would have been consistent with the underlying judgment of the Obama Administration that a permanent status agreement, in any event, is impossible so long as Mr. Netanyahu is Prime Minister. In support of this option, Secretary Kerry would have taken note of the fact that the Jewish state issue was not part of the understanding on terms of reference for negotiations secretly explored in 2014 by Palestinian President Abbas and the Israeli leader of the opposition, Isaac Herzog. If he had gone this route, Secretary Kerry would have been trying for a framework that would be agreed to by the PLO and the Israeli opposition, and thus would, hopefully, contribute to political change within Israel. Either because he believes in dealing only with present governments and not potential future ones, or because he did not believe it would work, (or both) he did not go this route.

The third approach is to try to square the circle. To try to find a way of characterizing the negotiations in relation to the Jewish state issue that would be acceptable to both Prime Minister Netanyahu and to President Abbas. And this is what he chose to do. The principle that was crafted is more complex than it seems. It is offered as an up-front way of characterizing what the negotiations should accomplish. It reads: "Fulfill the vision of UN General Assembly Resolution 181 of two states for two peoples, one Jewish and one Arab, with mutual recognition and full equal rights for all their respective citizens."

There are several elements here that are in need of explication.

1. The wording is that the negotiations would "Fulfill" the vision of Res. 181. By using the term "Fulfill" it speaks of what would be accomplished. It does not actually commit the parties to currently having this vision. Thus the Palestinians do not have to embrace the vision of "Two States for two people, one Jewish and one Arab." They have to accept that this is what the outcome will be. Since there already is a Jewish state, this is doable.

2. Along these lines, the principle says the fulfillment will be "with mutual recognition" but it does not say by whom, nor does it specify the exact form of recognition. One reasonable interpretation is that the two states would provide each other with mutual recognition. In that case, the Palestinians can argue that the Kerry Principles only committed them to providing the kind of recognition that Jordan and Egypt provided: recognition of Israel, but not necessarily of Israel as a Jewish state. At the same time, within the negotiations, Israel is free to seek from the Palestinians this unique form of recognition; but there is no advance commitment that it will get it. They will bargain over it.

3. The characterization of the vision of United Nations Resolution 181 (the Partition Resolution) is of "two states for two peoples, one Jewish and one Arab." This exact phrase is not itself in the Partition Resolution. Resolution 181 does focus on the creation of two states, one is identified as "Jewish" and one is identified as "Arab." On this there is no question. However, it does not speak of "two states for two peoples" even if this seems the implication. But because the PLO's original Charter, which rejected the Partition Resolution, also denied the existence of a Jewish people, this way of characterizing the Partition Resolution, gives it added significance to Israeli ears.

4. Finally, and this is the real innovation, in dealing with the current Jewish State issue, Kerry reached all the way back, some 69 years (almost to the day) to the November 1947 resolution. But why? The answer can be found in his speech, when he reminds the Palestinians (and informs the Israelis, who seem not to have ever noticed) that "both Israel and the PLO referenced Resolution 181 in their respective declarations of independence." Indeed, so important is this point that the Secretary said it a second time a few paragraphs' later: "And Resolution 181 is incorporated into the foundational documents of both the Israelis and Palestinians." Essentially the Secretary is saying to the Palestinians: "Look, I have structured this Jewish State issue in a way that conforms to an approach you have already taken in your Declaration of Independence. Own it!"

From a Palestinian point of view, one of the strengths of going back to their Declaration of Independence (written by Palestinian national-poet Mahmoud Darwish and proclaimed by Yasser Arafat) is that its authors found a way to, on the one hand, preserve the Palestinian sense of the injustice of the partition of Palestine and at the same time to affirm the legitimacy of that very partition. They did this,

essentially by distinguishing between moral discourse and legal discourse. Thus the Declaration stated:

Despite the historical injustice inflicted on the Palestinian Arab people resulting in their dispersion and depriving them of their right to self-determination, following upon U.N. General Assembly Resolution 181 (1947), which partitioned Palestine into two states, one Arab, one Jewish, yet it is this Resolution that still provides those conditions of international legitimacy that ensure the right of the Palestinian Arab people to sovereignty.

Thus, while partition was pronounced unjust, the creation of the Jewish state was done pursuant to what the Palestinians now accepted as international legitimacy, (Res. 181) and cited as their own basis for statehood, thus tying their own international legitimacy to that of Israel.

Secretary Kerry speech marked the first time, in the twenty-nine years since it was issued that a high ranking American official has ever spoken positively about the Palestinian Declaration of Independence. Because it was a unilateral declaration, it was largely unread, and assumed to have been one-sided. In fact it was a remarkable peace initiative. While both the Israeli Declaration and the Palestinian Declaration cited the Partition Resolution as a basis in international law for their announcement of statehood, it was only the Palestinian Declaration that mentioned the other state.

Also not mentioned in the Secretary's speech, but of considerable future relevance, is the fact that when the Palestinians applied for membership of Palestine in the United Nations, they identified the state seeking admission, as the state proclaimed by this very Declaration.

Nonetheless, it was a master-stroke. Secretary Kerry has reformulated the demand for recognition of Israel as a Jewish state in a way that cannot be dismissed by serious Israelis, and yet in a way that is eminently doable by the Palestinians. For future negotiations, this may be a critical breakthrough.

#7 Recommended Approach to the Quartet Report

Jerome M. Segal
March 18, 2016

1. Legitimize the concept of a recognized Palestinian state with provisional borders and attributes of sovereignty that would come into existence between now and the resumption of permanent status negotiations.

To do that:

- Call attention to this as a **Phase-2 "option" identified in the Roadmap, which itself was endorsed by the UN Security Council.**

- Praise the importance of the recent Israeli-Palestinian talks on fulfilling the Oslo-2 agreement **on Palestinian security authority in Area-A.** Note that this authority is at the core of the "attributes of sovereignty" discussion, and **urge that these talks be resumed.**

- Note that the actual establishment of a Palestinian state with provisional borders, would powerfully help to secure the two-state solution and **renew hope** among those who see no political horizon.

- Note that today, with broad agreement that the permanent borders of Palestine will be based on the 1967 lines with agreed swaps, it is possible to provide the Palestinians with **guarantees that the provisional will not become permanent.**

- Note that the Gaza Strip would be included within the provisional borders of a Phase-2 state, [see # 3 below] and that the transition to statehood offers the most promising framework to make progress towards relieving the suffering of Gaza, and towards the achievement of: **a transfer of power in Gaza,** the achievement of coherent Palestinian governance that would cover both the West Bank and Gaza, and a return to Palestinian democracy.

- Note that with the establishment of a Palestinian state with provisional borders, it may be possible to agree to **a partial land swap** [see # 4] that will defuse the settlement issue, pending achievement of a comprehensive agreement.

2. Takes steps to Restoring Integrity to the Negotiations Process

Do this by:

- Noting that failure to **implement agreed commitments** is far more damaging than not being able to reach agreement.

- Note, with specifics, the most important previous agreed steps that have not been fulfilled by one side or the other.

- Announce the establishment of a **robust Quartet monitoring system that will provide public reports on a quarterly basis** detailing positive and negative movement by either side in relation to these commitments.

3. Set the Stage for a More Fruitful Approach to Hamas and Gaza

Do this by:

- **Abandoning language** such as found in the Munich statement that talks of "genuine Palestinian unity, on the basis of democracy and the PLO principles."

- Instead of Palestinian unity based on PLO principles, envision a **coherent form of democratic governance, with strong opposition parties based on different principles.**

- Stress the minimal condition for Hamas being able to compete for power within such a democratic state: that if it won elections, **it would be bound by previously negotiated and ratified treaties**, including a comprehensive peace accord with Israel.

- Note the importance of **the 2006 Prisoners' Document** in this regard, and the subsequent Fatah/Hamas reformulation which affirmed "Administration of the negotiations is the jurisdiction of the PLO and the President of the PNA . . . on the condition that any final agreement must be presented to the new PNC for ratification or a general referendum to be held in the homeland and the Diaspora."

- **Call on Hamas to re-affirm this commitment.**

4. Act to Diminish the Impact Continued Settlement Activity Has on the Peace Process.

Do this by:

- Emphasizing the distinction between settlements that would come under Israeli sovereignty in a peace accord and those that would not.

- Call on Israel and supporting countries to formulate **programs to implement and fund setter-relocation-compensation programs. Note importance of doing this now to combat despair among Palestinian public.**

- Call on Israel and the PLO to open discussions on a partial land swap that could be enacted independent of other issues.

- In monitoring of settlement activity draw distinctions between acts that are most harmful to viability of two-state solution and those that are less so.

5. Give Support for an International Commission Built on the Arab Peace Initiative

Do this by:

- Calling attention to the distinction between a negotiated final-status treaty between Israel and the PLO, and achieving real and lasting peace.

- Note that very few Israelis believe that achieving a negotiated agreement will really bring lasting peace. Highlight this fact as central to the failure of previous negotiations.

- Note the singular importance of the API as an effort by the Arab states to address the Israeli public.

- Note the failure, thus far, of the API to be well known to the Israeli public and also, its problematic ambiguities (e.g. on refugees) and its failure to address Israeli concerns on security or narrative issues (e.g. Jewish people, Jewish state).

- Identify the need for an international commission on the API that would engage the Israeli and Palestinian publics in the search for solutions to the final status issues (consistent with the API) that would win the support of both peoples, and provide a basis for a lasting peace.

#8 Quartet Role: Regular Public Reports on Fulfillment of Previous Commitments:

Why It Is Important

Attached is a draft statement from the Quartet, announcing that on a regular basis, it will issue public reports on the fulfillment of previously agreed commitment by Israel and the PLO.

Why this is important:

1. The proposed text sets key issues including incitement and settlement construction within an unimpeachable frame: maintaining the integrity of the negotiations process by fulfilling commitments already made.
2. The proposed public reporting function can lead to an enhanced the role for the Quartet in the coming period.
3. Most importantly, the proposed report offers an opening for productive follow up with and between the PLO and the GOI in the coming period. For instance, this could evolve into a process in which each side submits to the Quartet:
 - Its understanding of the commitments to which it and the other side have agreed;
 - Its account of what it has done to fulfill its own commitments;
 - Its account of the most import failings of the other side with respect to previous commitments.
 - Its response to what it sees as misconceptions held by the other side.

Such a process can lead to a more nuanced understanding by both policy makers and the relevant publics of what has gone right and what has gone wrong in the process, and of the shared responsibility for the thus far unsuccessful peace process.

In principle, this can be constructive in gaining fuller compliance with previous commitments and in restoring a level of confidence that will contribute to future negotiations success.

The main point is that the proposed Quartet reports will give something to work with to those still committed to the two-state solution, in a period that looks to be increasingly barren.

Proposed Statement

The Quartet,

1. Keenly aware of the threat to the integrity of any negotiations process posed by the non-fulfillment of previously agreed upon commitments;
 2. Greatly distressed by the repeated failure of the parties to fulfill previously made commitments essential to the peace process;
 3. Convinced that a process of public monitoring of fulfillment of previous commitments can play a useful role in restoring confidence in the Israeli-Palestinian negotiations process;
 4. Will establish a monitoring process of fulfillment of commitments made by Israel and the PLO in previous agreements, including the Roadmap for Middle East Peace,
 5. And decides that such monitoring process will result in detailed, public reports to be issued on an established frequently, not less than twice annually.
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