

ISRAELI END-GAME

by Joel Singer

After Israel and the PLO missed their May 1999 target for concluding a permanent status agreement—one which will determine that the status of the West Bank and Gaza in a final manner—Israeli Prime Minister Ehud Barak and PLO Chairman Yasser Arafat determined this settlement would be reached in the year 2000. Seeking to jump-start the permanent status talks, negotiators most likely searched the voluminous compilation of 10 existing Israeli-Palestinian agreements—600 pages of text—looking for clues as to what has already been decided regarding the critical final status issues. This search was an exercise in futility.

Oslo Silent on Permanent Status

Whenever I speak about the negotiations that led to the original Oslo agreement of 1993, I explain that it established a two-stage process, that it concentrated almost exclusively on the implementation of a five-year interim period of autonomy while deferring the resolution of the “hardest nuts to crack,” or the permanent status issues, until the end of the process. I am often asked about “secret promises” made by Israel and the PLO in Oslo—but there were no secret promises. The Oslo documents reflect everything that was agreed upon. People assume that during the many months of negotiations in Oslo views must have been exchanged

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(l.-r.) Israeli Foreign Minister Shimon Peres, Gen. Uzi Dayan, Prime Minister Yitzhak Rabin, Joel Singer, and Gen. Ulan Biran with members of the Palestinian negotiating team: “We deliberately avoided any discussion, whether formal or informal, of the permanent status issues.”

regarding Jerusalem, refugees, and sovereignty—but they were not. We deliberately avoided discussion, whether formal or informal, of any of the permanent status issues. Indeed, this unique feature of the Oslo Accord deviated so sharply from one of the most basic tenets of diplomatic negotiations as to make this simple reality utterly implausible.

Accepted International Practice

The accepted diplomatic norm is that negotiations over a detailed treaty of peace never begin before the parties have first agreed on the rudimentary bargain—the fundamental tradeoffs that govern the negotiations. Traditionally, in Middle East negotiations, before the parties got bogged down in the minuscule details of a treaty, the Arab side sought to ensure that there was enough Israeli territorial with-

drawal to compensate it for renouncing the use of force, accepting Israel’s existence, and agreeing to good neighborly relations. The Israeli side sought to ensure that the bargain included enough security and normalization to compensate it for relinquishing strategic territories that could be used in an attack against Israel.

Following this principle, before Egypt and Israel even signed their 1979 treaty of peace, they first concluded the 1978 Camp David Framework, which included the formula of full withdrawal from the Sinai in return for full peace. Conversely, following the same logic, Syria and Israel have failed to reach an agreement, because, for various reasons, a formula has not yet been found that would satisfy both parties.

The Oslo Accord uniquely avoided addressing the fundamental bargain for resolving of the Israeli-Palestinian dispute. This is especially astonishing



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Joel Singer (far left): The Oslo expression “relations and cooperation with other neighbors” is the only remaining reference to a possible role for Jordan—and perhaps Egypt, as well—in the Permanent Status Agreement.

since the implementation of this accord, notwithstanding its self-characterization as an interim agreement, effectively pre-determined some of the issues that are normally part of a final deal. Can anyone imagine Egypt in 1979 entering into a peace treaty with Israel that would require exchanging ambassadors and otherwise normalizing relations between the two countries while allowing Israel to retain complete discretion regarding the size of its withdrawal from the Sinai? Yet, this is exactly what the PLO agreed to in Oslo with regard to the West Bank and Gaza.

Similarly, can anyone imagine Israel entering into a peace treaty with Syria which does not specify the agreed boundary between the two countries, but requires Israel to begin withdrawing from the strategic Golan Heights while Syria threatens that if Israel does not accept its position regarding boundary location, Syria will revoke the treaty after Israel has completed most of its withdrawal? Yet, this is exactly what Israel agreed to do in Oslo with regard to the West Bank and Gaza.

Oslo Agreement Unique

The reason for this unprecedented approach was that, in 1993, Israel and the PLO understood that the gap between their positions on fundamental

issues was so huge that if they insisted on deciding these issues first, there would not have been any agreement. They also believed that some of the issues that appeared to be insoluble in 1993 would be easier to deal with if addressed incrementally over the following five years. The process of “narrowing the gap” not only involved Israel and the PLO, but also referred to the gap between the leaders of Israel and the Israeli public, and between the PLO leadership and the Palestinian public.

In 1993, both Israeli and Palestinian leaders grasped the contours of a possible Israeli-Palestinian agreement, and were much closer to coming to terms with the concessions that peace would require than their respective constituencies. As statesmen, they understood that a historic compromise was necessary, but as politicians they recognized that it was impossible to sell these concessions to their peoples in one fell swoop. Incrementalism, therefore, was needed in order to permit both constituencies to gradually absorb the new situation created on the ground as a result of Oslo.

For example, Arafat understood in 1993, perhaps earlier, that in the context of an agreement with Israel he would have to abandon the Palestinian refugees “right of return.” The unique nature of the Oslo deal permitted Arafat to defer making this

concession, and to continue to insist on the right of return for another five years, thereby postponing a split between himself and more than half the Palestinian population.

Similarly, in 1993, Israeli Prime Minister Rabin and Foreign Minister Peres understood that Israel would have to give up the majority of the West Bank and Gaza. Yet, they preferred to postpone addressing questions relating to sovereignty, location of boundaries, and the necessity to relocate Israeli settlements, to a later stage. This allowed them to present Oslo, at least initially, as an agreement that did not require the making of significant territorial concessions. The Oslo Accord indeed gained a high percentage of support, both in the Knesset and Israeli public opinion, when it was first presented for approval. This support subsequently eroded when the price that Israel would be required to pay became more apparent and when, with implementation, the inevitable “bumps in the road” began to surface.

Thus, the Oslo Accord deliberately omits discussion concerning the ultimate resolution of permanent status issues. However, the agreement does include important provisions that support a framework for final negotiations.

Issues To Be Negotiated

Article V(3) of the 1993 Oslo Accord specified six issues on which permanent status negotiations should focus: Jerusalem, refugees, settlements, security arrangements, borders, and relations and cooperation with other neighbors. The agreement also makes clear that these issues were, by no means, intended to be exclusive. Rather, while these issues *must* be addressed in the permanent status negotiations, numerous *other* final status issues were to be addressed, even though they are not specifically noted. The Israeli-Palestinian Interim Agreement of 1995, “Oslo II,” added three additional items to the list of permanent status issues: water rights, specified military locations, and foreign relations. Even this expanded list was not meant to be exclusive.

Most of the permanent status issues referred to in the Oslo agreements are self-explanatory. The issue of "relations and cooperation with other neighbors," however, requires some elaboration.

The 1978 Camp David Agreement, which was in many respects the blueprint for the Oslo Accord, provided Jordan and Egypt with a significant role in running the five year autonomy—through their participation in the Israeli-Palestinian-Egyptian-Jordanian Continuing Committee—and formally participating in the permanent status negotiations. In those days, Jordanians and Palestinians were discussing a possible federation or confederation between Jordan and the West Bank and Gaza. When negotiators at Camp David agreed to give Jordan a role in the permanent status negotiations, it was assumed that the resultant agreement would combine resolution of West Bank and Gaza permanent status *as well as* the relationship between those areas and Jordan.

In 1988, however, Jordan renounced any rights or claims to the West Bank and Gaza, and, as a result, the Oslo Accord essentially eliminated the Jordanian—and Egyptian—roles as envisioned in Camp David.

The Oslo expression "relations and cooperation with other neighbors" is the only remaining reference to a possible role for Jordan—and perhaps Egypt, as well—in the Permanent Status Agreement. This possible role has been left deliberately vague. For example, it could be limited to economic relations between Jordan and the entity to be created in the West Bank and Gaza. However, it also could also be expanded to cover federal or confederate relations.

The word "other" in the expression "other neighbors" stems from the fact that the relationship between the West Bank/Gaza and Israel—which is the immediate neighbor of these areas—is, no doubt, encompassed within the permanent status negotiations. This phrase, therefore, is essentially stating that not only the relationship between the West Bank/Gaza and Israel should be covered by the permanent status negotiations, but also the relationship between the West



Milner Moshe

(l.-r.) Israeli Prime Minister Menachem Begin, President Jimmy Carter, and Egyptian President Anwar Sadat at Camp David: The 1978 Camp David Agreement was in many respects the blueprint for the Oslo Agreement.

Bank/Gaza and its other neighbors: Jordan and Egypt.

Issues Beyond the Scope of the Negotiations

Naturally, by agreement, the two parties may expand the permanent status agenda to cover additional matters. But, if no such agreement is achieved, what is the legitimate scope of the negotiations? That is to say, what is the borderline between issues that no party may *refuse* to discuss and issues that no party may be *forced* to discuss?

The expression "permanent status" was brought to the Oslo Accord from the 1978 Camp David Agreement. Back then, the term was created as a euphemism for sovereignty, to make it easier for Israeli Prime Minister Begin to accept the formula that, after a five-year autonomy period, the future of the West Bank and Gaza would not be unilaterally determined by Israel, but rather through negotiations between Israel and its neighbors. Accordingly, all issues relating to sovereignty in the West Bank and Gaza, as well as the relations between these areas and Israel, are legitimate agenda items. Certainly, all issues specifically referenced in the Oslo Accords are also legitimate.

However, the permanent status

agenda cannot legitimately include issues relating to Israeli sovereignty within the pre-June 1967 borders. Thus, the suggestion made repeatedly during the last year that the PLO should demand that the future border between Israel and a future state of Palestine be the one proposed in UN Resolution 181's Partition Plan of 1947 is inconsistent with the Oslo agreement regarding the permanent status negotiations. It would open for discussion the status of areas that, in 1993, the PLO recognized to be under Israeli sovereignty—clearly an issue outside the Oslo mandate.

Relevance of UN Resolution 242

Palestinian negotiators declared that UN Resolution 242 forms part of the Oslo Accord and requires full Israeli withdrawal from the West Bank and Gaza. While it is true that the Oslo agreement provides that the permanent status negotiations should lead to the implementation of Security Council Resolutions 242 and 338, this provision merely repeats the statement included in the U.S.-Soviet Letter of Invitation to the Madrid Peace Talks of 1991. The U.S. Letter of Assurances, which was sent to Israel on the same

day in which the Letter of Invitation was sent, explained, however, that the United States is aware of the fact that "there were various interpretations of Security Council Resolution 242 and they will be presented during the negotiations."

The main difference in interpretation stems from Resolution 242's omission of the word "the" in its statement calling for "withdrawal of Israel's armed forces from territories rather than from *"the"* territories occupied in the recent conflict," which Israel interprets as requiring withdrawal from *some*, but not *all*, of the territories.

Interestingly, in the 1993 Oslo negotiations, Israeli and Palestinian negotiators agreed to define the jurisdiction of the Palestinian Council as covering "West Bank and Gaza territory," rather than *"the* West Bank and Gaza territory," to reflect our agreement that the Council's jurisdiction will not cover all of the West Bank and Gaza. In the 1998 negotiations that I held with PLO representatives in Oslo over this language, they specifically recognized that this language was intended to mimic Resolution 242 and to accomplish an identical goal: to preclude coverage of *all* West Bank and Gaza territory.

Who Should Sign The Permanent Status Agreement?

As envisioned in the 1993 Accords, and consistent with the practice employed in all 10 existing Israeli-Palestinian agreements, the permanent status settlement should be signed by the PLO, and not by the Palestinian Authority (PA) established in the West Bank and Gaza following Oslo. This is not only a legal requirement of the agreement reached in Oslo, but also the only logical conclusion, given the fact that Oslo specifically excluded from the PA's jurisdiction all permanent status issues. Moreover, only the PLO, whom Israel recognized in 1993 as the representative of all the Palestinian people, can negotiate with Israel on the future of the Palestinian refugees living outside the West Bank and Gaza. The PA, which was elected by the Palestinians of the West Bank and Gaza, represents only these Palestinians and cannot negotiate with Israel on behalf of the refugees.

There is, however, a more fundamental question: What if Israel and the PLO agree that a Palestinian state be formed in the West Bank and Gaza, or part thereof, and, upon the formation of

this state, the PLO terminates its existence and the newly-formed Palestinian state refuses to recognize the obligations undertaken by the PLO in the permanent status agreement?

While, politically, this situation may be highly unlikely, Israel may still want to protect itself against such a possibility. To this end, Israel may require, among other options, that the formal creation of such a state be coordinated so as to occur a few days in advance of the signing of a permanent status agreement. Thus, this state could be required to co-sign the agreement before its implementation begins.

Conclusion

The jury is still out on whether Rabin, Peres, and Arafat were correct in assuming in 1993 that the time was ripe for an Israeli-Palestinian agreement, and on whether their unique, two-stage approach to dealing with the huge gaps between their positions can actually work. If the determination displayed in 1993 is still shared by the two parties, however, the absence of concrete permanent solutions in the text of the Oslo Accord should not be an obstacle to achieving a permanent status agreement. ■



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Peres and Clinton sign a cooperation agreement against terrorism as Joel Singer looks on.