

2015

# Peace talks and two-level games

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# **Peace Talks and Two-Level Games**

by

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A thesis submitted to the graduate faculty  
in partial fulfillment of the requirements for the degree of

MASTER OF ARTS

Major: Political Science

Program of Study Committee:

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Ames, Iowa

2015

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## TABLE OF CONTENTS

	Page
LIST OF FIGURES .....	iii
NOMENCLATURE .....	iv
ABSTRACT.....	v
CHAPTER 1 THE PALESTINIAN – ISRAELI CASE .....	1
a. Obama’s Second Term and Kerry’s Shuttle Diplomacy .....	18
CHAPTER 2 THEORY AND METHOD .....	26
CHAPTER 3 DIPLOMATIC GAME BOARD – LEVEL I.....	36
a. Territory .....	37
b. Security .....	41
c. Jerusalem .....	43
d. Refugees .....	45
e. Jewish State .....	47
CHAPTER 4 CONSTITUENTS MATTER – LEVEL II .....	49
a. United States 113 <sup>th</sup> Congress .....	49
b. Netanyahu’s Coalition and Role of Knesset .....	54
c. Fatah and Public Opinion .....	59
CHAPTER 5 ANALYSIS AND CONCLUSION.....	63

## LIST OF FIGURES

	Page
Figure 1	
Graph of Settlements in the Occupied Territories.....	41
Figure 2	
UN Partition Plan for Palestine and Rhodes Armistice Line .....	66
Figure 3	
Palestinian Territory Occupied by Israel in 1967 War.....	67
Figure 4	
Settlements Across the Occupied Territories .....	68

## NOMENCLATURE

AIPAC	American Israeli Public Affairs Committee
EU	European Union
GDP	Gross Domestic Product
ICC	International Criminal Court
IDF	Israeli Defense Forces
PLO	Palestinian Liberation Organization
UN	United Nations
UNGA	United Nations General Assembly
UNHRC	United Nations Human Rights Council
UNOCHA	UN Office of the Coordination of Humanitarian Affairs in the Occupied Palestinian Territory
UNSC	United Nations' Security Council

## ABSTRACT

This paper analyzes the peace negotiations between Israel and Palestine that lasted over the period of nine-months (29 July 2013 – 29 April 2014), under the theoretical framework of Robert Putnam's two-level games model. The model does not offer a solution to the decades-old conflict, however, it draws our attention to different actors that influenced the negotiations. Thus, the model identifies the factors that possibly caused failure to the peace-process.

# CHAPTER 1

## THE PALESTINIAN – ISRAELI CASE

*“It will be the policy of my administration to actively and aggressively seek a lasting peace between Israel and the Palestinians, as well as Israel and its Arab neighbors.”*

*(President Obama, 23 Jan 2009)*

Various U.S. administrations have been involved in crafting a peace plan<sup>1</sup> that would effectively address the territorial dispute that emerged following the 1967 Arab-Israeli War<sup>2</sup>. Multiple rounds of negotiations have taken place since then but the major conflict remains unresolved. The significance of these diplomatic negotiations cannot be underestimated, whatever minor successes they may have achieved. Thus far, President Barack Obama, like his predecessors, has not succeeded in achieving the resolution of the Palestinian-Israeli conflict, although peace in the Middle East was one of Obama’s principal foreign policy objectives. He took few major initiatives that conveyed the seriousness of his intentions in seeking a two-state solution, while raising hopes among Arab Palestinians. Palestinian President Mahmoud Abbas was the first leader to receive Obama’s telephone call after being sworn in as President, amongst

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<sup>1</sup> The main peace proposals were guided by UNSC Resolution 242 passed on 22 November 1967. These included; A Framework for Peace in the Middle East and The Camp David Accord brokered by U.S. President Jimmy Carter between Israel’s Prime Minister Menachem Begin and Egypt’s President Anwar Sadat in 1978, The Madrid Conference co-sponsored by the U.S. and the Soviet Union, the Oslo Accords of 1991, the Oslo Agreement (first direct agreement between Israeli and Palestinians represented by the PLO) signed between Yasir Arafat and Yitzhak Rabin, the Camp David Accords of 2000 that sought to address the final status issue, the Taba talks 2001, the Arab Peace Initiative in 2002 that had been presented by Saudi King Abdullah, the Roadmap 2003 - a plan drawn up by the Quartet, the Geneva Accords 2003, and the Annapolis 2007.

<sup>2</sup> In six days of war, Israel had seized the Gaza Strip, the Sinai Peninsula, the West Bank including East Jerusalem, and the Golan Heights.

other Israeli and Arab leaders. Both leaders discussed the conditions that had previously been advocated by the two parties. For Abbas, the only viable way of achieving peace is to work towards implementing the international resolutions which Israel has been avoiding since 1967. The preliminary communication between the two leaders laid the groundwork for future peace talks and set the rules of engagement with Palestinians that would involve the government based in Ramallah, not with Hamas' representatives in Gaza. Obama adopted the same policy towards Hamas as George W. Bush's administration did in 2006 along with Israel and other countries partnered in Roadmap plan<sup>3</sup> – that there would be no negotiations with Hamas unless it renounced violence, recognized Israel, and agreed to all the agreements that had been entered into by the Palestinian Liberation Organization (PLO). The United States had same policy position towards the PLO until 1988 even though it had gained international recognition as the sole legitimate representative of the Palestinian people and had been accorded observer status in the UN in November 1974.<sup>4</sup>

The second important initiative of Obama's first week in office was the designation of George Mitchell<sup>5</sup> as his peace envoy to the Middle East. The situation in the Arab region was still precarious after the recent cease-fire achieved on 18 January 2009 following three weeks of

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<sup>3</sup> Countries partnered in the Roadmap plan were; European Union, Russia, the United Nations, and the United States.

<sup>4</sup> U.S. response was less positive even after dozens of countries including Soviet Union and China had recognized the newly created state under PLO after it issued a Declaration of Independence. U.S had denied Arafat's request for a visa to address UNGA. The General Assembly voted to move its session to Geneva to enable Arafat to attend it. U.S. also went ahead to prevent PLO from gaining full membership in UN agencies as it would exceed the PLO's status as a UN observer.

<sup>5</sup> He was the Senator and had headed the Mitchell Commission to investigate the causes of Al-Aqsa Intifada. It recommended an end to settlement activities, a halt to terrorism, and renewed peace discussions. The report was published on 30 April 2001.

Israeli blitz on Gaza that left more than 1,330 Palestinians and 13 Israelis dead.<sup>6</sup> Mitchell embarked on his peace mission to the Middle East, making a first stop in Cairo to meet President Hosni Mubarak.<sup>7</sup> Egypt and Jordan have always been key partners in peace negotiations and Cairo was at the center of efforts to strike the latest cease fire. The peace envoy's mission restrained him from reaching out to Hamas – a political party that had won majority of electoral seats in 2006 elections.<sup>8</sup>

Obama's third significant initiative regarding the Israeli-Palestinian conflict was that he sent a conciliatory message to the Arabs through an interview that he gave to an Arab television. This was the first interview he gave as the President of the United States. He intended to reach out to Muslims in general to correct the damage that Bush's post-9/11 policies caused to United States relations with the Muslim world. Obama conveyed to his Muslim audience that America was not their enemy and that he wanted to start a new partnership based on mutual respect and mutual interest.<sup>9</sup> He reiterated the same sentiments while addressing the Turkish parliament in April 2009, that is, he wished broader engagement and intended to bridge misunderstandings.<sup>10</sup>

Initially Obama's foreign policy team refrained from giving policy statements that might antagonize Israel. Part of the reason was the on-going parliamentary elections in Israel.

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<sup>6</sup> "Obama shapes Mideast Policy, Names Top Envoys," *Al-Arabiya*, January 23, 2009, <http://www.alarabiya.net/articles/2009/01/23/64823.html>.

<sup>7</sup> Egypt was then receiving \$2 billion a year in American aid, second to Israel.

<sup>8</sup> State Department spokesman Robert Wood had already announced that the Peace envoy will not be contacting Hamas.

<sup>9</sup> "Obama Tells Al Arabiya Peace Talks Should Resume," *Al Arabiya*, Jan 27, 2009, <http://www.alarabiya.net/articles/2009/01/27/65087.html>.

<sup>10</sup> "Remarks by President Obama to Turkish Parliament," *The White House*, April 6, 2009, [https://www.whitehouse.gov/the\\_press\\_office/Remarks-By-President-Obama-To-The-Turkish-Parliament/](https://www.whitehouse.gov/the_press_office/Remarks-By-President-Obama-To-The-Turkish-Parliament/).

Nonetheless, Obama and his team unequivocally supported the two-state solution based on the Roadmap plan and the Arab Peace Initiative. To avoid any misconceptions about America's relationship with Israel, Obama suggested no major policy shift from that of previous administrations. Overall, his policy statements were well received by Muslims, and his peace envoy was warmly welcomed by the Arabs. But the president's silence about Israel's military offensive in Gaza in end 2008 and the consequent deaths of many Palestinians did not go unnoticed in the Arab world.<sup>11</sup>

The main goal of Obama's Middle East policy team was to resume negotiations between Israeli Prime Minister Netanyahu and Palestinian President Abbas. The framework of peace talks was to be based on the Arab Peace Plan which had been put forth by King Abdullah of Saudi Arabia in 2002 with the consent of Palestinians and which was acceptable to the other Muslim countries. In essence Obama supported a two-state solution based on pre-1967 borders with East Jerusalem as capital of the State of Palestine. In return the Muslim countries would recognize and establish normal diplomatic relations with Israel. Obama wanted to address the conflict in a more holistic manner by involving other regional players essentially to address Israel's security concerns. His policy position conformed to the Palestinians' and the Quartet's<sup>12</sup> principles, but it was not well received by Netanyahu and his new coalition government.

President Abbas had clearly stated his position during his first meeting with Secretary of State Hillary Clinton. He wanted to put all final status issues on the negotiating table in order to

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<sup>11</sup> Liz Sly, "Barack Obama's Silence on Gaza Bombings is Galling to Arabs," *Chicago Tribune*, January 4, 2009, [http://articles.chicagotribune.com/2009-01-04/news/0901040079\\_1\\_face-unrealistically-high-expectations-gaza-or-palestinian-rocket-jordanian-analyst-labib-kamhawi](http://articles.chicagotribune.com/2009-01-04/news/0901040079_1_face-unrealistically-high-expectations-gaza-or-palestinian-rocket-jordanian-analyst-labib-kamhawi).

<sup>12</sup> Middle East Quartet includes United Nations, European Union, Russian Federation, and the United States.

reach a final resolution, which would deal with; territory, security, water, Jerusalem, and refugees. He demanded that the government of Israel release all Palestinian prisoners, end settlement activity, and lift checkpoints. By this time Benjamin Netanyahu had been elected Prime Minister and was in the process of forming his government. Thus, Secretary Clinton refrained from offering any policy statements about the issues raised by Abbas. The same day that Secretary Clinton arrived, Israel approved the demolishing of another fifty-five Palestinian homes. The week before Israel had given its approval to the destruction of eighty-eight Palestinian homes. Secretary Clinton condemned the action diplomatically, declaring that “this kind of activity is unhelpful and not in keeping with the obligations entered into under the Roadmap.”<sup>13</sup>

Obama gave his first unequivocal policy statement on the Israel-Palestine conflict following his meeting with Prime Minister Netanyahu in the Oval office on March 2009. This was Netanyahu’s first official visit to the United States after his election. Obama asked both Israel and Palestine to embrace the obligations that they had accepted under the Roadmap plan, including a halt on settlement construction.<sup>14</sup> Netanyahu expressed his willingness to begin peace negotiations immediately, but he remained silent about the issue of settlements. This would remain a sore point with Netanyahu throughout Obama’s years in office. Some Israeli officials notably Dov Weissglas, former chief of staff to PM Ariel Sharon, had publicly referred to the understanding reached with the Bush’s administration that permitted ‘natural growth’ of

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<sup>13</sup> “Remarks with Palestinian President Mahmoud Abbas,” *U.S. Department of State*, March 4, 2009, <http://www.state.gov/secretary/20092013clinton/rm/2009a/03/119991.htm>.

<sup>14</sup> “Remarks by President Obama and Prime Minister Netanyahu of Israel in Press Availability,” *The White House*, May 18, 2009, [https://www.whitehouse.gov/the\\_press\\_office/Remarks-by-President-Obama-and-Israeli-Prime-Minister-Netanyahu-in-press-availability/](https://www.whitehouse.gov/the_press_office/Remarks-by-President-Obama-and-Israeli-Prime-Minister-Netanyahu-in-press-availability/).

settlements. Regarding this claim, Secretary Clinton noted that there was “no memorialization of any informal and oral agreements” so that the obligations that Israel undertook pursuant to the Roadmap remained clear.<sup>15</sup>

Obama’s signature speech in Cairo entitled a “new beginning” between United States and Muslims alarmed Israelis. On his first official trip to the Middle East, Obama also met with the Saudi King Abdullah and reaffirmed his resolve to push for the establishment of a Palestinian state. However, Obama’s speech also sent a clear message to Muslim countries that the United States’ bond with Israel was unbreakable and that he regarded its security to be paramount. At the same time, he asked Israel to stop settlement construction in the occupied territories. In addition, he asked Hamas to abjure violence, to recognize past agreements, and Israel’s right to exist. He bluntly stated that the continuing crisis in Gaza threatened Israel’s security.<sup>16</sup>

Netanyahu responded with his “vision of peace.” In this major policy speech Netanyahu endorsed for the first time the principle of Palestinian statehood, but on condition that United States and the international community guarantee the demilitarization of Palestine. He abandoned his longstanding opposition to Palestinian statehood but declared that united Jerusalem would remain the capital of Israel. He declared his commitment to international agreements but at the same time proposed to solve the Palestinian refugee issue *outside* of borders of Israel, which effectively meant denying the right of return. He also implicitly refused to withdraw from the settlements but agreed to halt *new* settlements or designate *new* land for

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<sup>15</sup> “Remarks With Turkish Foreign Minister Ahmet Davutoglu,” *U.S. Department of State*, June 5, 2009, <http://www.state.gov/secretary/20092013clinton/rm/2009a/06/124409.htm>.

<sup>16</sup> “Remarks by the President on a New Beginning,” *The White House*, June 4, 2009, [https://www.whitehouse.gov/the\\_press\\_office/Remarks-by-the-President-at-Cairo-University-6-04-09](https://www.whitehouse.gov/the_press_office/Remarks-by-the-President-at-Cairo-University-6-04-09).

additional construction.<sup>17</sup> The Palestinians were adamant that they will not accede to more than that has been offered in the Arab Peace Plan. Saudi Foreign Minister Prince Saud Al-Faisal objected to Israel's settlement activity, claiming that Israel was merely being asked to surrender that had never been theirs.<sup>18</sup> One could anticipate the near impossibility of getting all the stakeholders on the same page, owing to their divergent policy preferences.

The Arab League and the Middle East Quartet unanimously welcomed the U.S. peace initiative. Both believed that the only viable solution to the conflict was to end the occupation that had begun in 1967. They also urged the government of Israel to freeze all settlement activity, including natural growth, to dismantle outposts erected after March 2001, and to end provocative actions in East Jerusalem, including home demolitions and evictions.<sup>19</sup> Such confidence building measures, they believed, were important for substantive peace talks.

The recent release of the Goldstone Report by a UN commission in September on Israel's assault on Gaza<sup>20</sup> in 2008 further undermined the diplomatic efforts aimed at resuming the peace talks. Although the report held both sides responsible for committing "serious war crimes and breaches for humanitarian law, which may amount to crimes against humanity," it directly accused the Israeli Defense Force (IDF) of applying disproportionate military force and

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<sup>17</sup> "Full text of Netanyahu's foreign policy speech at Bar Ilan," *Haaretz*, Jun 14, 2009, <http://www.haaretz.com/news/full-text-of-netanyahu-s-foreign-policy-speech-at-bar-ilan-1.277922>.

<sup>18</sup> "Remarks With Saudi Arabian Foreign Minister Prince Saud Al-Faisal," *U.S. Department of State*, July 31, 2009, <http://www.state.gov/secretary/20092013clinton/rm/2009a/july/126829.htm>.

<sup>19</sup> "Quartet Statement from the June 26, 2009 Meeting in Trieste," *U.S. Department of State*, June 26, 2009, <http://www.state.gov/r/pa/prs/ps/2009/06a/125433.htm>.

<sup>20</sup> According to the Goldstone report, more than 1,400 Gazans and 13 Israelis were killed in the Gaza war from 27 December to 18 January 2009.

committing “grave breaches of the Fourth Geneva Convention in respect of willful killings and willfully causing great suffering to protected persons.”<sup>21</sup> Netanyahu warned the Palestinians and the international powers that any action to advance the report would be a denial of Israel’s right to self-defense and would “strike a fatal blow to the peace process, because Israel will no longer be able to take additional steps and take risks for peace if its right to self-defense is denied.”<sup>22</sup> The Palestinians were warned by the U.S. that forwarding the report to the United Nations Security Council (UNSC) would impede the peace effort. However, Abbas could not resist U.S. pressure any further. He was being criticized by his followers and the human rights groups for capitulating to U.S. demands. In a late night televised national address he called for the special hearing of United Nations Human Rights Council (UNHRC) to vote on the Goldstone report. Meanwhile, Netanyahu told Knesset that he would never allow any Israeli to face war crimes trial. The UNHRC endorsed findings of the report and pressed Israel and Palestine to conduct a credible investigation. The U.S. along with five European nations voted against the resolution, condemning it for singling out Israel.

The day before the UN General Assembly was supposed to debate the report and endorse its findings, the U.S. House of Representatives voted to reject the report, calling it biased and flawed. Josh Block, the spokesman of major Israeli lobbying group, American Israeli Public Affairs Committee (AIPAC), supported the House resolution because it sent a strong message

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<sup>21</sup> United Nations News Center, “UN Mission Finds Evidence of War Crimes by Both Sides in Gaza Conflict,” *The United Nations*, September 15, 2009, <http://www.un.org/apps/news/story.asp?NewsID=32057#>.

<sup>22</sup> Neil MacFarquhar, “Palestinians Halt Push on War Report,” *The New York Times*, October 1, 2009, <http://www.nytimes.com/2009/10/02/world/middleeast/02mideast.html>.

that “United States will not stand for turning the victim into the perpetrator.”<sup>23</sup> However the United Nations General Assembly (UNGA) adopted the resolution that gave Israel and Palestine “three months to undertake independent, credible investigations into serious violations of international humanitarian and human rights law committed during the conflict in Gaza that broke in late December 2008.”<sup>24</sup> The UN Secretary General transmitted the report to the Security Council but to date its members have not taken further action. Any call for investigation by International Criminal Court would almost certainly be vetoed by the U.S.

Eight months of diplomatic efforts failed to bring the two rivals to negotiating table. Eventually President Obama had to give in to Netanyahu and he dropped his precondition of halting settlements to start negotiations. He also asked Abbas to compromise and show flexibility.<sup>25</sup> The compromise was made at the expense of the Palestinians since Netanyahu had repeatedly refused to agree to any preconditions. Obama laid down new terms of reference for peace talks in a speech to the UNGA. He called for the parties to re-launch negotiations “without any preconditions” with regard to the permanent status issues. Favoring the 1967 borders, he once again reaffirmed that U.S. “does not accept the legitimacy of continued Israeli

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<sup>23</sup> Glenn Kessler, “House Set to Pass Resolution denouncing U.N.'s Gaza Report,” *The Washington Post*, October 31, 2009, <http://www.washingtonpost.com/wp-dyn/content/article/2009/10/30/AR2009103003610.html>.

<sup>24</sup> General Assembly, “By Recorded Vote, General Assembly Urges Israel, Palestinians to Conduct Credible, Independent Investigations into Alleged War Crimes in Gaza,” *The United Nations*, November 5, 2009, <http://www.un.org/press/en/2009/ga10883.doc.htm>.

<sup>25</sup> Elise Labott, “Obama Drops Demand That Israel Freeze Settlements,” *CNN*, September 22, 2009, <http://www.cnn.com/2009/POLITICS/09/22/us.mideast/#cnnSTCText>.

settlements.”<sup>26</sup> Palestinians and Arabs felt that Obama was backtracking from his earlier strong commitment on settlements, which cast doubt on his ability to influence Israel. Secretary Clinton tried to convince the world that no previous administration in past forty years ever called the settlements as illegitimate and hers was the first to do so.<sup>27</sup>

Netanyahu did announce his government’s moratorium on ‘new’ settlement buildings in November 2009 for a period of ten months. Peace envoy George Mitchell welcomed Netanyahu’s statement, suggesting that it is “more than any Israeli government has done before.”<sup>28</sup> The moratorium however, excluded East Jerusalem and allowed for the completion of up to 3,000 under construction homes and for a limited number of new public buildings.<sup>29</sup> The Palestinians reacted strongly for excluding East Jerusalem. The United States distanced itself from Netanyahu by stating that the partial moratorium is Israel’s unilateral decision. Washington changed its past policy position and claimed that a settlement freeze had never been a precondition for talks in the past. Abbas however, thought that the demand for a halt in settlement construction was required by the Roadmap plan agreed to by Israel in 2003. He was so disappointed by the situation that he announced that he would not run for reelection were he

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<sup>26</sup> “Remarks by the President to the United Nations General Assembly,” *The White House*, September 23, 2009, [https://www.whitehouse.gov/the\\_press\\_office/Remarks-by-the-President-to-the-United-Nations-General-Assembly/](https://www.whitehouse.gov/the_press_office/Remarks-by-the-President-to-the-United-Nations-General-Assembly/).

<sup>27</sup> “Interview With Jackie Northam of NPR,” *U.S. Department of State*, November 4, 2009, <http://www.state.gov/secretary/20092013clinton/rm/2009a/11/131328.htm>.

<sup>28</sup> “Briefing by Special Envoy for Middle East Peace George Mitchell,” *U.S. Department of State*, November 25, 2009, <http://www.state.gov/r/pa/prs/ps/2009/nov/132447.htm>.

<sup>29</sup> Isabel Kershner, “P.L.O. Extends President Mahmoud Abbas’s Term,” *The New York Times*, December 16, 2009, [http://www.nytimes.com/2009/12/17/world/middleeast/17mideast.html?\\_r=1&](http://www.nytimes.com/2009/12/17/world/middleeast/17mideast.html?_r=1&).

not able to achieve his goals for peace.<sup>30</sup> An editorial in the *New York Times* criticized President Obama and George Mitchell for lacking peacemaking strategic skills and having publicly asked Netanyahu for a settlement freeze without a plan B in case he refused. Clearly Obama had diminished his credibility not only among Arabs and Palestinians but also with Israelis. His approval rating in Israel was reduced to only four percent.<sup>31</sup> The U.S. and the Arab states pressed Abbas to remain in office to avoid a power vacuum and the possibility that Hamas might take advantage of the situation. Even Israeli President Shimon Peres urged Abbas to rescind his decision considering him a genuinely moderate Palestinian leader.<sup>32</sup>

The U.S. Vice President Joseph Biden had to visit Jerusalem to restore Israel's confidence in President Obama and to assure them of Washington's commitment to Israel's security and convince Netanyahu to restart peace talks. Only a few hours after Biden had vowed his country's unyielding support for Israel, the host government announced the construction of 1,600 new housing units in East Jerusalem. Biden condemned the move as the "step that undermines the trust we need right now."<sup>33</sup> The announcement not only embarrassed the Americans but also undermined the confidence building measures with the Palestinians. The announcement came just after Mitchell had announced that Israel and the Palestinians had agreed to four months of

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<sup>30</sup> Avi Issacharoff, "Abbas to Haaretz: Peace Possible in 6 Months if Israel Freezes All Settlements," *Haaretz*, December 6, 2009, <http://www.haaretz.com/print-edition/news/abbas-to-haaretz-peace-possible-in-6-months-if-israel-freezes-all-settlements-1.2041>.

<sup>31</sup> "Diplomacy 101," *The New York Times*, November 27, 2009, <http://www.nytimes.com/2009/11/28/opinion/28sat1.html>.

<sup>32</sup> "Israeli Asks Abbas Not to Step Down," *The New York Times*, November 7, 2009, <http://www.nytimes.com/2009/11/08/world/middleeast/08israel.html>.

<sup>33</sup> "As Biden Visits, Israel Unveils Plan for New Settlements," *The New York Times*, March 9, 2010, <http://www.nytimes.com/2010/03/10/world/middleeast/10biden.html>.

indirect peace talks. Nabil Abu Rudeineh, a spokesman for the Palestinian government, called the settlement announcement “a dangerous decision that will torpedo the negotiations and sentence the American efforts to complete failure.”<sup>34</sup> Clinton found Israel’s decision “insulting” to the United States, especially since it was announced while the Vice President was in Israel. She held Netanyahu responsible for the statement even though it had been made by interior ministry.<sup>35</sup> Netanyahu offered an apology but gave no indication that the project would be cancelled.<sup>36</sup> To complicate the matter further, Netanyahu in a speech before a Jewish audience at the annual conference of the AIPAC, refused to give in to Obama’s demand to freeze housing construction in East Jerusalem, declaring that “Jerusalem is not a settlement; It’s our capital.”<sup>37</sup>

After much bickering the Americans could only get the two parties to agree to *indirect* talks involving designated negotiators from each side. Mitchell, the mediator of the so-called *proximity talks*, was to forge an outline along with the Israeli and Palestinian negotiators before direct talks started between Abbas and Netanyahu. With Arab League’s firm support, Abbas demanded written assurances either from Netanyahu or Obama on borders and settlements before resuming the direct talks. Ultimately Abbas agreed to the talks under immense international

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<sup>34</sup> Nabil Abu Rudeineh, a spokesman for the Palestinian government, called the new housing announcement “a dangerous decision that will torpedo the negotiations and sentence the American efforts to complete failure.”

<sup>35</sup> “Interview with CNN’s Jill Dougherty,” *U.S. Department of State*, March 12, 2010, <http://www.state.gov/secretary/20092013clinton/rm/2010/03/138322.htm>.

<sup>36</sup> Isabel Kershner, “Netanyahu Offers Apology, but No Shift in Policy,” *The New York Times*, March 14, 2010, <http://www.nytimes.com/2010/03/15/world/middleeast/15mideast.html>.

<sup>37</sup> Mark Landler, “Netanyahu Takes Hard Line on Jerusalem Housing,” *The New York Times*, March 22, 2010, <http://www.nytimes.com/2010/03/23/world/middleeast/23diplo.html>.

pressure without acquiring written assurance from either side.<sup>38</sup> The Saudis for instance, had pressed Abbas to agree to direct talks, exploiting the financial leverage over the PLO. Nevertheless, the Arabs were unhappy with the situation and Saudi Arabia and other Arab countries refused Obama's request to allow Israeli aircraft to fly over their countries.<sup>39</sup>

The talks finally resumed on 2 September 2010 between Netanyahu and Abbas in White House flanked by President Hosni Mubarak of Egypt and King Abdullah II of Jordan. President Obama got a chance to open the historic talks in a positive atmosphere just like his last two predecessors, and vowed to do everything within his power to achieve comprehensive agreement. Netanyahu called Abbas his "partner in peace" and said that he had come in order to find an "historic compromise," but he warned that any deal must ensure Israel's security.<sup>40</sup> Abbas repeated his demand for a freeze in settlement activity in the West Bank but Netanyahu<sup>41</sup> did not commit himself to doing so and did not indicate whether he would extend the moratorium on settlement activity which was set to expire in three weeks on 26 September. The two agreed

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<sup>38</sup> Edmund Sanders, "Palestinian President Mahmoud Abbas Risks Political Future with Peace Talks: Analysis," *The Los Angeles Times*, August 30, 2010, [http://www.cleveland.com/world/index.ssf/2010/08/palestinian\\_president\\_mahmoud.html](http://www.cleveland.com/world/index.ssf/2010/08/palestinian_president_mahmoud.html).

<sup>39</sup> Helene Cooper and Mark Landler, "Leaders Call for Peace as Mideast Talks Begin," *The New York Times*, September 1, 2010, [http://www.nytimes.com/2010/09/02/world/middleeast/02diplo.html?\\_r=0](http://www.nytimes.com/2010/09/02/world/middleeast/02diplo.html?_r=0).

<sup>40</sup> Helene Cooper and Mark Landler, "Settlements in West Bank Are Clouding Peace Talks," *The New York Times*, September 2, 2010, <http://www.nytimes.com/2010/09/03/world/middleeast/03diplo.html>.

<sup>41</sup> "The Jewish people are not strangers in our homeland, the land of our forefathers," he said. The closest indication that he could give was that he said that "But we recognize that another people share this land with us. And I came here today to find an historic compromise that will enable both peoples to live in peace, security and dignity."

to work towards a “framework agreement” that would resolve the core issues in establishing a Palestinian state from the Israeli-occupied territory on the West Bank.<sup>42</sup>

The major concern of the United States and the Palestinians was the potential lapse of the moratorium a few weeks later. Obama knew that Abbas would not agree to continue the talks without a halt in settlement activity, a position also backed by the Arab League. Obama asked Netanyahu to extend the moratorium for at least three months, although the PM’s rightwing coalition was against the settlement halt.<sup>43</sup> The Israeli and Palestinian leaders met just once more, at Sharm el-Sheikh, before Israel's settlement construction freeze expired and the talks were suspended. It was another setback for Obama because Netanyahu would not agree even to a temporary halt in settlement activity. The Arab League gave the Americans another month to resolve the impasse before the second round of talks started. The talks were once again stalled.

Netanyahu’s announcement of additional construction in East Jerusalem prompted Abbas to seek Palestinian statehood unilaterally. Obama publicly criticized Netanyahu, prompting a quick rebuttal from PM’s office stating that “Jerusalem is not a settlement; Jerusalem is the capital of the State of Israel.”<sup>44</sup> To make matters more complicated Israel’s right-wing coalition approved legislation to require that any deal ceding of East Jerusalem and the Golan Heights had to be put to a national referendum. Saeb Erekat, the chief Palestinian negotiator, denounced the

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<sup>42</sup> Cooper and Landler, “Settlements in West Bank Are Clouding Peace Talks.”

<sup>43</sup> “Press Conference by President Obama,” *The White House*, September 10, 2010, <https://www.whitehouse.gov/the-press-office/2010/09/10/press-conference-president-obama>.

<sup>44</sup> Mark Landler and Ethan Bronner, “In Curt Exchange, U.S. Faults Israel on Housing,” *The New York Times*, November 9, 2010, <http://www.nytimes.com/2010/11/10/world/middleeast/10jerusalem.html>.

legislation calling it a mockery of international law, which was not subject to the whims of Israeli public opinion.

Before taking any unilateral steps Abbas called on the international community to draft a new formula for peace talks with Israel since the current process was just “managing the conflict but not solving it.”<sup>45</sup> Abbas’ position was strengthened by the visit of Russian President Dmitri A. Medvedev in January 2011 to West Bank. Russian president reaffirmed his country’s support for a Palestinian state with East Jerusalem as its capital, recalling Soviet Union’s historic support for the Palestinian declaration of independence of 1988 which had been issued by Yasir Arafat in Algiers. It was the first time that such a high-profile international figure had gone to Palestinian territory without visiting Israel.<sup>46</sup>

To the consternation of the United States and Israel, the Ambassador of Lebanon, Nawaf Salam introduced the resolution in UNSC to address the issue of settlements in the occupied territories which had been expanding at an accelerated rate. The European Union also supported the resolution stating that continued settlement building threatened the realization of a two-state solution that had been a goal of the peace process for many years. The U.S. administration vetoed a UNSC resolution on 18 Feb 2011 condemning Israeli settlement building in the occupied territories as illegal. Of the 15 members of the UNSC only the United States cast a negative vote. The Palestinians and Arabs considered American action as encouraging Israel to

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<sup>45</sup> “West Bank: Calling for New Peace Talks,” *The New York Times*, December 31, 2010, <http://www.nytimes.com/2011/01/01/world/middleeast/01briefs-JERUSALEM.html>.

<sup>46</sup> Isabel Kershner, “Medvedev Visits West Bank, Lifting Palestinian Spirits,” *The New York Times*, January 18, 2011, <http://www.nytimes.com/2011/01/19/world/middleeast/19mideast.html>.

continue with the settlement activity and avoid complying with past agreements.<sup>47</sup> The U.S. Ambassador to the UN, Susan Rice, called the resolution unbalanced and one-sided, which she argued would harden positions and discourage both parties to return to direct negotiations that the U.S. believed was the only viable way to achieve a two-state solution.<sup>48</sup>

Any chance of restarting direct talks was further diminished with the signing of an historic reconciliation accord between Abbas and Hamas in May 2011 to form a joint caretaker government before the elections the following year. The deal was brokered by Egypt then governed by the Supreme Council of the Armed Forces<sup>49</sup> following Mubarak's ouster and signed in the intelligence headquarters in Cairo. Hamas' leader, Khaled Meshaal agreed to a two-state solution, which in fact involved indirect recognition of Israel. Netanyahu denounced the pact as "a tremendous blow to peace and a great victory for terrorism."<sup>50</sup> Secretary Clinton did not slam the deal directly and instead had a measured response that the U.S. would carefully assess the deal. The reconciliation was backed by the Arab countries and the signing ceremony was

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<sup>47</sup> Neil MacFarquhar, "U.S. Blocks Security Council Censure of Israeli Settlements," *The New York Times*, February 18, 2011, <http://www.nytimes.com/2011/02/19/world/middleeast/19nations.html>.

<sup>48</sup> "Explanation of Vote by Ambassador Susan E. Rice, U.S. Permanent Representative to the United Nations, on the Resolution on the Situation in the Middle East, including the question of Palestine, in the Security Council Chamber," *United States Mission to the United Nations*, February 18, 2011, <http://usun.state.gov/briefing/statements/2011/156816.htm>.

<sup>49</sup> The Supreme Council of the Armed Forces is a statutory body of senior Egyptian military officers. It is held only in case of war or great internal emergencies. It took over following the Egyptian revolution in 2011, and relinquished power on 30 June 2012 upon the start of Mohamed Morsi's term as President.

<sup>50</sup> "Palestinian Rivals Hamas and Fatah Sign Reconciliation Deal," *The Guardian*, May 4, 2011, <http://www.theguardian.com/world/2011/may/04/palestinian-rivals-hamas-fatah-deal>.

attended by the representatives of Arab League, Oman, Qatar, and Arab members of the Israeli parliament. It was celebrated by Palestinians in Gaza and West Bank.<sup>51</sup>

Only six months after the Arab Spring had begun, shifting political dynamics in the Middle East, Obama gave a policy speech calling it a “new chapter in American diplomacy,” reiterating his support for a two-state solution based on 1967 borders but without mentioning East Jerusalem as the capital of Palestine. Obama’s new approach to the conflict was based on “mutually agreed swaps” and the “full and phased withdrawal of Israeli military forces” coordinated with the assumption of “Palestinian security responsibility in a sovereign, non-militarized state.”<sup>52</sup> The duration of the transition period would not be indefinite. He left the future of Jerusalem and the fate of Palestinian refugees for future negotiations. A week before Obama’s policy speech, his envoy George Mitchell resigned apparently out of frustration being unable to restart the direct peace talks, although he cited personal reasons.

By that time the Palestinians were seeking to have their status upgraded to *full membership* which would require the support of the nine of the fifteen UNSC member countries including the permanent members. Obama had already declared his opposition to this effort in an address in UNGA that “peace will not come through statements and resolutions at the UN.”<sup>53</sup> After two days President Mahmoud Abbas formally submitted his request to the UN for recognition of a Palestinian state. He was greeted with numerous standing ovations at the UN. His move was met

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<sup>51</sup> Ibid.

<sup>52</sup> “Remarks by the President on the Middle East and North Africa,” *The White House*, May 19, 2011, <https://www.whitehouse.gov/the-press-office/2011/05/19/remarks-president-middle-east-and-north-africa%20>

<sup>53</sup> “Remarks by President Obama in Address to the United Nations General Assembly,” *The White House*, September 21, 2011, <https://www.whitehouse.gov/the-press-office/2011/09/21/remarks-president-obama-address-united-nations-general-assembly>.

with celebration in Palestine. Cheers erupted from the enthralled crowds watching their President wave the four pages of the UN application letter. His speech was also a test for other countries that had expressed support for independent Palestinian state. Israel responded by announcing 1,100 new housing units in an area of South Jerusalem.

Palestinian membership request was vetoed by the U.S. in the UNSC session in December 2014. Nevertheless Palestine did get a *non-member observer state* status in November 2011 with 138 member countries voting in favor. The status fell short of full independence but afforded limited privileges to join international bodies. With its new status the Palestinians would be able to challenge Israel at international legal forums regarding its occupation of the West Bank, including settlement-building. The major concern for the Americans and Israelis was that the Palestinians might try to join the International Criminal Court (ICC), which they did three years later in April 2015.<sup>54</sup>

### **a. Obama's Second Term and Kerry's Shuttle Diplomacy**

Obama's friendly overtures towards the Muslim world during his first term in office were detested by Israeli government, public and its ardent supporters in United States. Thus, in his second term, Obama shifted the focus to repairing relations with Israel. Accompanied by his new Secretary of State John Kerry, Obama embarked on his first ever presidential trip to Israel, emphasizing Jewish historical roots in the state of Israel. Obama presented his case directly to the Israeli public in an address at a university. He urged young Israelis to recognize that the only way for Israel to thrive as a Jewish and democratic state was through the realization of an

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<sup>54</sup> Palestine officially became the 123<sup>rd</sup> member of ICC on 1 April 2015.

independent and viable Palestine.<sup>55</sup> He then travelled to Ramallah, and tried to convince President Abbas to cooperate in reviving the peace talks.

The renewed engagement towards the conflict was based on a three-pronged strategy - promoting economic development in the West Bank and removing barriers to commerce, addressing the insecurity of Israel in the region, and achieving permanent resolution to the conflict. General John Allen<sup>56</sup>, Special Advisor to the Secretary of Defense was given the task of addressing the security component while coordinating with the Defense Department, Israeli forces, and West Bank Palestinians. He would assess the nature of future threats to Israel, which could then be addressed during the negotiations. The economic component was aimed at developing Palestinian areas in the West Bank in order to build support for a new set of peace negotiations. Kerry announced a plan to invest as much as \$4 billion to develop the economy of the West Bank with the intention of increasing the Gross Domestic Product (GDP) by fifty percent over three years and consequently reduce Palestinian unemployment.

The most important component of the strategy was to engage the two parties in a dialogue without any pre-conditions in order to achieve a final status agreement based on the guidelines outlined in Obama's policy speech termed as "new chapter in American diplomacy." Recognizing that demanding a halt in settlement construction would be in vain, the U.S. gave up this condition while maintaining that additional construction activity in the occupied territories was illegitimate and unhelpful to the peace process. The goal of the negotiations was to establish

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<sup>55</sup> "Remarks of President Barack Obama to the People of Israel," *The White House*, March 21, 2013, <https://www.whitehouse.gov/the-press-office/2013/03/21/remarks-president-barack-obama-people-israel>.

<sup>56</sup> Former commander of NATO ISAF forces in Afghanistan.

a Palestinian state alongside Israel with agreed-upon borders and security arrangements.<sup>57</sup> Obama essentially backtracked from the past position: a sovereign Palestinian state based on pre-1967 borders with East Jerusalem as the capital. Instead Obama's peace-team reverted to the idea of land swaps originally introduced by President Bill Clinton. Secretary Kerry was handed the task to persuade the Arab League to reaffirm its commitment to the Arab Peace Plan and endorse the idea of "comparable and mutually agreed minor swaps of the land."<sup>58</sup> He also convinced Israel to slow down approval of new settlements, and he asked the Palestinians to avoid pressing for recognition at the United Nations including membership in the ICC and other international agencies that would underscore their claim to statehood. President Abbas agreed on a condition that Israel will release 104 Palestinian prisoners convicted before the Oslo peace accords. Most of them had served at least twenty years for deadly attacks on Israelis. Palestinians warned that they would not participate in peace talks without firm guarantees. The Palestinian leadership was anxious to secure a tangible gain for returning to the negotiations process amid deep public skepticism.<sup>59</sup>

Netanyahu had a hard time convincing his coalition government that resumption of the peace process was a vital Israeli interest and that a prisoner release was the least damaging concession he could make. After six hours of deliberations on the evening of 28 July, 13

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<sup>57</sup> Michael R. Gordon and Isabel Kershner, "Israel and Palestinians Set to Resume Peace Talks, U.S. Announces," *The New York Times*, July 28, 2013, <http://www.nytimes.com/2013/07/29/world/middleeast/israel-agrees-to-prisoner-release-clearing-way-for-talks.html? r=0>.

<sup>58</sup> "Arab states back Israel-Palestine land swaps," *Aljazeera*, April 30, 2013, <http://www.aljazeera.com/news/middleeast/2013/04/20134306544952976.html>.

<sup>59</sup> Maayan Lubell, "Israel agrees Palestinian prisoner release to resume peace talks," *Reuters*, July 20, 2013, <http://uk.reuters.com/article/2013/07/20/uk-palestinians-israel-idUKBRE96J02I20130720>.

ministers voted in favor of the release, 7 opposed it and 2 abstained. It was decided that the prisoners would be released in groups depending on progress in the talks.<sup>60</sup> For Palestinians it was an overdue commitment under the Sharm el-Sheikh Memorandum of September 1999 signed by Israeli PM Ehud Barak and PLO Chairman Yasser Arafat. In addition, the Palestinians sought a written assurance from Kerry that U.S. supported pre-1967 borders as the basis for territorial negotiations.

The talks were formally launched on 29 July 2013 between the Israeli justice minister, Tzipi Livni, and Palestinian chief negotiator, Saeb Erekat in Washington DC. On the same day Kerry announced the appointment of former U.S. Ambassador to Israel Martin Indyk as facilitator for the peace negotiations. The two days of preliminary talks between Livni and Erekat concluded with an agreement to seek a final status agreement within nine months. They agreed to begin “sustained, continuous, substantive negotiations on the core issues”<sup>61</sup> in the next two weeks in either Israel or Palestine. It was Kerry’s major accomplishment as secretary of state for having revived the moribund peace talks after a hiatus of three years. He had flown to the region six times since February in search of a deal.<sup>62</sup>

After two weeks the second round of talks successfully took place in Jerusalem despite the vehement protests by the Palestinians after Israel's announcement of the construction of over 12,000 housing units in the West Bank and East Jerusalem. Israel did however release the first

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<sup>60</sup> Gordon and Kershner, “Israel and Palestinians Set to Resume Peace Talks, U.S. Announces.”

<sup>61</sup> Paul Lewis and Harriet Sherwood, “Middle East Peace Talk Negotiators Agree that 'All Issues are on the Table,’” *The Guardian*, July 30, 2013, <http://www.theguardian.com/world/2013/jul/30/middle-east-peace-talks-livni-erekat-final-agreement>.

<sup>62</sup> Ibid.

group of 26 Palestinian prisoners as part of the deal which met strong opposition across Israel.<sup>63</sup> Israeli analysts reflected on the contradictory actions of the Israeli government which they viewed as a balancing act by Netanyahu to pacify the public and politicians opposed to the release of prisoners. The second and third release of prisoners in October and December 2013 invited the same reaction in Israel. The released prisoners were publicly embraced as heroes by Abbas, thereby placing Netanyahu in a further complicated position. Nevertheless the bilateral negotiations continued. Martin Indyk sometimes joined the discussions, and at other times met with the parties to identify issues and offer suggestions. At the same time, Secretary Kerry continued to meet separately with President Abbas and Prime Minister Netanyahu on a regular basis.

Continued settlement activity remained a contentious issue, and the Arab League continued to raise serious concerns. They wanted Kerry to have strong personal involvement in the talks. Netanyahu accused the Palestinians of creating artificial crises as an excuse to avoid talks. The foreign minister of Jordan Nasser Judeh also communicated the Kingdom's concern to United States, denouncing the settlements as illegal and as impeding the peace process. Without demanding Israel to halt the construction, Kerry continued warning Netanyahu that Israel would face increasing isolation and de-legitimization in the absence of peace. The United States realized that Israel might have to face a difficult situation, surrounded by a rapidly changing neighborhood, and risking a third *intifada* if the peace process failed.

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<sup>63</sup> Barak Ravid, "Palestinians, Israelis Keep Low Profile at Second Round of Peace Talks in Jerusalem," *Haaretz*, August 14, 2013, <http://www.haaretz.com/news/diplomacy-defense/.premium-1.541532>.

When United States realized that the bilateral negotiations were not moving forward on final status issues despite multiple rounds of talks, it shifted the goalposts toward achieving a *framework agreement* by April 2014. The framework, as expressed by President Obama, did “not address every single detail but gets us to a point where everybody recognizes it’s better to move forward than go backwards.”<sup>64</sup> It was a face-saving document in case the two sides do not conclude an agreement by the due date. The framework document laid out parameters on all core issues that could possibly meet the needs of both sides.<sup>65</sup>

The framework addressed Israel’s security concerns. To this end, General Allen crafted a plan that would guarantee Israel’s security around the contentious Jordan Valley after peace deal. Netanyahu wanted to keep a long-term Israeli force in the area to prevent the smuggling of terrorists and weapons, while Abbas was demanding a full Israeli withdrawal within three years. Obama supported the transition to Palestinian security forces within a ‘definite’ time period. The security plan was presented to the Israelis in early December 2013 without specifying when exactly Israeli forces would withdraw from Jordan Valley. According to the plan, “the future Palestinian-Jordanian border would include new early warning infrastructure, an invisible Israeli presence (via cameras) at border crossings, and top-shelf American gadgetry.”<sup>66</sup>

Livni liked the package as did most of Israel’s defense officials. Even hard-line foreign minister Avigdor Lieberman did not reject the plan. He publicly said that “Israel will not get

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<sup>64</sup> “Remarks by the President in a Conversation with the Saban Forum,” *The White House*, December 7, 2013, <https://www.whitehouse.gov/the-press-office/2013/12/07/remarks-president-conversation-saban-forum>.

<sup>65</sup> Ilan Goldenberg, *Lessons from the 2013–2014 Israeli-Palestinian Final Status Negotiations* (Washington DC: Center for New American Security State of Failure, March 2015), p. 4.

<sup>66</sup> *Ibid.*, pp. 9-10.

more than it is getting from Kerry.” Even Netanyahu could see it as “a basis for discussion.”<sup>67</sup> But Netanyahu’s right-wing coalition was giving him a difficult time for agreeing to the idea of 1967-borders with mutually acceptable swaps.

On the issue of refugees, it was suggested by the Americans in the framework document that monetary compensation would be given to “Palestinians displaced in Israel’s War of Independence (and, separately, to Jews who left their homes in the Arab world).”<sup>68</sup> It also stated that “the Palestinian refugee problem would be solved within” the new Palestinian state, and Israel at its sole discretion would admit some refugees on a humanitarian basis.<sup>69</sup>

Netanyahu also rejected the formula for Jerusalem accepted by the former Israeli prime ministers, Ehud Barak and Ehud Olmert: Jewish neighborhoods for Israel, and Arab neighborhoods for Palestine. He did not want to be signatory to any peace deal that might entail abjuring Israel’s right on East Jerusalem. Over Netanyahu’s insistence, Americans inserted the phrase that Israel should be acknowledged as the nation-state of the Jewish people. Abbas had always strongly objected to this proposition fearing that the right of Israel’s Arab citizens will be compromised.<sup>70</sup>

In Paris, Secretary Kerry presented an initial set of framework ideas to President Abbas in a meeting on 19 February 2014. It did not impress Palestinian President since Israel was not

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<sup>67</sup> Ben Birnbaum and Amir Tibon, “The Explosive, Inside Story of How John Kerry Built an Israel-Palestine Peace Plan—and Watched It Crumble,” *New Republic*, July 20, 2014, <http://www.newrepublic.com/article/118751/how-israel-palestine-peace-deal-died>

<sup>68</sup> Ibid.

<sup>69</sup> Ibid.

<sup>70</sup> Ibid.

ready to release the fourth batch of prisoners as promised. Palestinians again doubted American's influence on Netanyahu. If Washington could not make him freeze the settlements and release prisoners, then it probably would not be able to get them East Jerusalem which had not even been mentioned in the framework document. Obama and Kerry failed to convince Abbas to agree to the framework in the meeting in Washington DC on 16<sup>th</sup> March. The chances that Abbas would agree to the framework seemed grim with the approaching deadline of 29<sup>th</sup> March for the release of last group of prisoners.<sup>71</sup> Instead, Israel's Housing Ministry announced the approval of 708 new housing units in East Jerusalem on the day the prisoners were supposed to be released. Abbas issued ultimatum that if Israel did not release the prisoners by 7 o'clock on the evening of 1<sup>st</sup> April, he would resume the process at UN to gain recognition of Palestinian statehood. Abbas then surprised the U.S. and Israel by signing letters of accession to fifteen UN conventions and international treaties in a televised ceremony. Extension of the talks appeared increasingly unlikely and the talks officially collapsed on 23<sup>rd</sup> April when Fatah and Hamas agreed to form a unity government. The next day Netanyahu's cabinet voted to suspend the talks, and with that the Kerry's peace process died the natural death. Thereby Martin Indyk resigned and returned to his original positions at Brookings Institute.

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<sup>71</sup> Goldenberg, *Lessons from the 2013–2014 Israeli-Palestinian Final Status Negotiations*, p. 8.

## CHAPTER 2

### THEORY AND METHOD

Robert Putnam's theory of *diplomacy and domestic politics: the logic of two level games*<sup>72</sup> recognizes that the lead negotiators in any diplomatic talks "strive to reconcile domestic and international imperatives simultaneously."<sup>73</sup> The theory presents a conceptual framework to understand how diplomacy and domestic politics interact. It helps us analyze the games being played at domestic and international level that lead either to success or failure of the talks. This paper is an effort to understand the failure of U.S. sponsored nine-month (29 July 2013 – 23 April 2014) peace talks between Israel and Palestine, under the framework of Putnam's two-level games. We will be able to test the theory that to what extent the two-level games model explains the failure of these talks.

Putnam stressed on the domestic *politics* as more adequate determinant of foreign policy and international relations, than just the executive as generally believed. By *politics*, he means political parties, social classes, interest groups, legislators, public opinion, and elections that determine the direction of negotiations.<sup>74</sup> Thus, Putnam refutes validity of the Realist assumption that state tries to maximize national interest as a unitary actor, while ruling out the existence of political cleavages between leaders and their constituents.

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<sup>72</sup> Robert D. Putnam, "Diplomacy and Domestic Politics: The Logic of Two-Level Games," *International Organization* 42:3 (Summer 1988), pp. 427-460.

<sup>73</sup> James Rosenau, "Toward the Study of National-International Linkages," *Linkage Politics: Essays on the Convergence of National and International Systems* (New York: Free Press, 1969).

<sup>74</sup> *Ibid.*, p. 432.

Putnam propounds that “the politics of many international negotiations can usefully be conceived as a two-level game. At the national level, domestic groups pursue their interests by pressuring the government to adopt favorable policies, and politicians seek power by constructing coalitions among those groups. At the international level, national governments seek to maximize their own ability to satisfy domestic pressures, while minimizing the adverse consequences of foreign developments. Neither of the two games can be ignored by central decision-makers, so long as their countries remain interdependent, yet sovereign.”<sup>75</sup>

The games are played at two levels; Level I and Level II. The diplomatic table is Level I where bargaining between negotiators can lead to tentative agreement. While Level II is the domestic game board where constituents exercise their political power to manipulate the possible agreement reached at Level I. The word ‘constituents’ broadly refer to domestic actors that hold political power to sway the government’s decisions. They can be voters, lobbyists, activists political parties, or simply the public. For the purpose of our research, the Level I players are governments of Israel, Palestine, and United States; and the chief negotiators who participated in the diplomatic peace talks on behalf of their respective head of state. Each player strives to build a package that will be acceptable to other players at the diplomatic table, as well as to his constituents, assuming that the chief negotiator has no independent policy preferences. The move that seems ‘rational’ at one game-board may seem ‘impolitic’ for the same player at the other board. At Level II, we will be analyzing role of the legislature as a constituent influencing the

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<sup>75</sup> Ibid., p. 434.

talks. Palestine is different than the other two players as its 132-member parliament<sup>76</sup> has not functioned since Hamas and Fatah conflict in 2007. Therefore, we will analyze the role of Fatah's leadership and public opinion on final status issues.

Putnam's model requires that any Level I agreement must, in the end, be ratified at Level II. The process of ratification varies in case of each player involved. It can be at the formal level such as a legislature or informal level by political actors and public opinion. Israel requires that any peace deal reached with Palestine be ratified in the end by its unicameral legislature but it passes through many political layers before it gets to the Knesset. While forming a coalition government in 2013, Benjamin Netanyahu signed individual coalition agreements with each partner, which also outlined the guidelines for the peace process. It required that the ministerial committee for peace include three members from different coalition partners, representing different constituencies. Any peace deal reached with the Palestinians must be subject to the approval of the government and Knesset, and if deemed necessary would be put to a referendum. Palestine does not have a functioning parliament and any peace deal must be ratified by the cabinet and Fatah's leadership. It need not require Hamas' formal approval but in order to be implemented in Gaza, Hamas will have to be in agreement.

The United States would not be a signatory to any peace treaty, it is merely playing a facilitator. Therefore, a treaty need not be ratified by two-thirds vote of the Senate. Congress however, does play a major role in facilitating or cutting international aid and demonstrating support for Israel. It is important to get the sense of the Congress to evaluate its foreign policy

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<sup>76</sup> As a result of last elections in 2006, Hamas won 76 seats and Fatah 45 seats in Palestinian Legislative Council. The next election was scheduled for Jan 2010 but never took place. Abbas's mandate as Palestinian Authority president theoretically expired in January 2009, but constitution gives him the right to remain in office until new elections are held – for both parliament and president – for which no date has yet been set.

preferences which indirectly influence decision-making of the executive. Here we will be analyzing role of the United States 113<sup>th</sup> Congress as a source of international pressure that can influence the domestic politics of the players.

Generally there are prior consultations and bargaining at Level II to hammer out an initial position for the Level I negotiators in order to prevent rejection at Level II. Otherwise negotiations would have to be reopened provided the international actors agree. Fear or expectation of rejection at Level II may abort negotiations at level I. Putnam cites the arms-for-hostages deal between United States and Iran, when both governments may have favored the deal, but negotiations collapsed as soon as they became public.

Success of the negotiations depend on the size of “win-set”. It is the set of all possible Level I agreements that will gain necessary majority among the constituents. Larger win-set increase the chances of success of negotiation. Any successful agreement must fall within the Level II win-sets of each of the parties to the accord, which is only possible if the win-set of each party overlaps. Conversely, the smaller the win-set, the greater the risk that negotiations will break down owing to “involuntary defection” of either negotiator. With a large win-set, a negotiator can be pushed around by other Level I negotiators. While a small domestic win-set can be a bargaining advantage at Level I because negotiators can cite domestic constraints.<sup>77</sup> Any key player at the international level who is dissatisfied with the outcome may upset the game board, and conversely, any leader who fails to satisfy his fellow players at the domestic table risks being evicted from his seat.

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<sup>77</sup> Ibid., p. 438.

Putnam lays out several factors that affect the size of win-set. Generally if the cost of no-agreement to constituents is low then the size of win-set is small. No-agreement often represents the status quo, and in some cases no-agreement may lead to a worsening situation. We will be able to observe that in case of Palestine and Israel, where the Level II constituents' preferences are relatively homogenous: the public opinion on the issue at hand does not fluctuate across the country, therefore dividing the public in two opposing groups. In such a situation the cleavage within Level II constituents is between *hawks* and *doves*. The negotiator can use the implicit threat from domestic hawks to maximize his gains at Level I. At the same time, hawks also raise the risk of involuntary defection and thus impede agreement at Level I. When the constituents' interests are homogenous, then neither negotiator is likely to find much sympathy for the other party's demands among each other's constituents. In the case of Israel and Palestine, we may be able to see such a situation where we are dealing with homogenous interests on both sides. At this stage we can identify Hamas and Likud as *hawks* and Fatah and Labor as *doves*.

Since we are dealing with multi-issue negotiation, therefore, the constituents will have different take on different issues. Thus, the chief negotiator will trade-off across different issues. In order to avoid complexity we will also be assuming as Putnam has that the negotiator does not have independent policy preferences but seeks to achieve an agreement that will be attractive to his constituents.<sup>78</sup> But it is certainly possible that a negotiator may have preferences opposed to his constituents, and that could be a limitation of Putnam's theory.<sup>79</sup>

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<sup>78</sup> Ibid., p. 436.

<sup>79</sup> Jongryn Mo, "The Logic of Two-Level Games with Endogenous Domestic Coalitions," *The Journal of Conflict Resolution* 38:3 (September 1994), pp. 402-422.

The size of win-set also depends on Level II political institutions. Greater autonomy of central decision-makers from their Level II constituents increase the win-set size and likelihood of achieving international agreement.<sup>80</sup> Many institutional arrangements require several levels of ratification, thus, multiplying the complexity. Size of the win-set also depends on the strategies of Level I negotiators which can vary from exploiting “conventional side-payments” to “generic goodwill.” Putnam cites Panama Canal Treaty when Carter’s White House offered many inducements to individual senators to persuade them to ratify the treaty.

Putnam also talks about international pressure that “reverberates” within domestic politics, and can tip the domestic balance and thus influence the international negotiations. Thus, in a complex interdependent relationship, it may be better for a country “to get along, go along” with a foreign country than to offend it. “Given the pervasive uncertainty that surrounds many international issues, messages from abroad can change minds, move the undecided, and hearten those in the domestic minority.”<sup>81</sup> He is also mindful of the negative “reverberations” that may cause backlash by the citizens. United States as a facilitator enjoys such power to pressurize either player but it has to be wary of the interests of the various stakeholders who are indirectly involved in the conflict.

Mark Boyer developed Putnam’s theory further, assuming that “there is no single foreign policy process, but rather a set of processes that vary according to situation and issues.”<sup>82</sup> He illustrates this assumption with four American foreign policy process models. The domestic level

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<sup>80</sup> Putnam, “Diplomacy and Domestic Politics: The Logic of Two-Level Games,” p. 449.

<sup>81</sup> *Ibid.*, p. 436.

<sup>82</sup> Mark Boyer, “Issue Definition and Two-Level Negotiations: An Application to the American Foreign Policy Process,” *Diplomacy and Statecraft* 11:2 (2000), pp. 183-210.

win-sets also vary according to the issue at hand, and they hinder or facilitate the success of international negotiations depending on the model at play. From Boyer's perspective, the Israel-Palestine conflict is a non-crisis foreign policy situation for the U.S., which involves congress, interest groups, bureaucracies, and elements of the public. The emotional involvement of Arab and Jewish Americans not only makes it a high-intensity issue, but also continues to make American Middle East policy controversial. Thus it affects the policy making autonomy of the political actors in the decision making process.

Per Boyer's theory, the Israel-Palestine conflict is *intermestic* issue for the United States: it overlaps domestic and foreign policy. He distinguishes *intermestic* issues as those when a president loses much of his traditional foreign policy authority. This happens when the interests of the Congress or of any public group are at stake. Their active interest moves the issue into *intermestic* realm.<sup>83</sup> Based on such characteristics of the issue, the Israel-Palestine conflict is placed in the "Political Model" of American foreign policy. This model helps explain how the level II win-set is structured and how that structure limits or enhances the negotiators' autonomy. The win-set in this model is generally small, as many emotionally charged groups are involved at Level I and Level II. The struggle is "between those who believe they have something to gain in policy change and those who believe they have something to lose."<sup>84</sup> Therefore the overlapping of win-sets is difficult to attain. In this case, President Obama and his negotiators face the challenge of offering a peace proposal that would satisfy domestic constituents as well as

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<sup>83</sup> Boyer, "Issue Definition and Two-Level Negotiations: An Application to the American Foreign Policy Process," p. 185.

<sup>84</sup> *Ibid.*, p. 197.

international partners. Boyer has developed his four models of U.S. foreign policy in response to the inadequacies of the realist paradigm in explaining why states do not always pursue international agreements that would maximize their interests. Goal maximization is limited by which policy model is involved at a given time.<sup>85</sup>

Putnam's two-level games model has been applied by many researchers to different situations. Kristina Varga examined United States relations with Israel and how this relationship affects Palestine. Her research aimed at identifying the domestic and foreign groups, interests and events that affected U.S. relations with Israel. She concludes that President Truman's policies at the end of World War II and the events of 9/11 were deciding factors in developing the relations between the two countries. She further believes that the U.S. is frequently unsuccessful in double-edge negotiations - not being able to protect its interests at both the foreign and domestic level.<sup>86</sup>

Jacob Shamir and Khalil Shikaki studied the influence of public opinion on two of the most challenging issues in the Israel-Palestine dispute: recognition of the Palestinian refugees' right of return by Israelis, and recognition of the national identity of Israelis and Palestinians by each other. The researchers assumed that both publics enjoy a ratification power over any agreement particularly one that involves those two issues. Thus on the basis of public opinion, negotiators can exploit the situation to their favor, and develop their win-sets. The study identifies the two important characteristics of public opinion that, if ignored, can present distorted results and thus mislead negotiating teams. These are the "multifaceted nature" of public opinion and the

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<sup>85</sup> Ibid., pp. 185-212.

<sup>86</sup> Kristina Varga, "U.S., Israel, Palestine - A Reflection Over the Importance of Negotiation," *Linnaeus University*, 2012.

“susceptibility to framing efforts.” The researchers received different results from two surveys conducted within the space of a few months when the question of refugee issue was framed in a different way while the context remained the same. The “multifaceted nature” of public opinion on the issue of national identity revealed that “plural ignorance” existed on both sides. Majorities of Israelis and Palestinians supported mutual recognition of national identity but each misperceives other public’s level of support. The ambiguity of public opinion can be exploited by informed negotiators “to expand the other side’s win-set by modifying its public’s erroneous perceptions without risking too much their own domestic standing.”<sup>87</sup>

Robert Pahre examined the parliamentary oversight institutions of EU countries and their ability to constrain the government in international negotiations with other member states. Based on the observation of fifteen EU countries, he shows that parliamentary systems exert their constraining power in a variety of ways. He developed a model of parliamentary politics to explain the variation in the pattern of parliamentary constraints, contending that the existing theories of divided government are unable to explain this variation. Based on American institutions, theories of divided governments fail to explain the oversight patterns in EU parliamentary democracies. Divided governments, as in the U.S., treat the executive preferences as exogenous to the legislature. On the contrary, parliamentary institutions are endogenous to the international negotiations.<sup>88</sup>

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<sup>87</sup> Jacob Shamir and Khalil Shikaki, “Public Opinion in the Israeli–Palestinian Two-Level Game,” *Journal of Peace Research* 42:3 (May 2005), pp. 311–328.

<sup>88</sup> Robert Pahre, “Endogenous Domestic Institutions in Two-Level Games and Parliamentary Oversight of the European Union,” *Journal of Conflict Resolution* 41:1 (February 1997), pp. 147–174.

James Sebenius applied Putnam's two-level games model to the end-of-Cold-War negotiations over German reunification in which American Secretary of State James Baker played a key role. His case study concluded that a successful agreement is possible only if each side helps the other in overcoming their constituency barriers. It is important that each side be cognizant of the challenges and sensitivities their counterparts face on the domestic front. Even statements for mere "domestic consumption" while the negotiations are still going on can generate suspicion among constituents of the other side, thereby halting the negotiations.<sup>89</sup>

Neophytos Loizides studied the significance of referendums as a potential ratification instrument, in addition to the parliamentary voting identified by Putnam. He argues that referendums can create positive opportunities during peace process negotiations or post-conflict transitions. They can be used as a tool to gauge public opinion of one's domestic constituencies, thereby enabling leaders to preempt ethnic challenges while concluding peace agreements. His findings are based on two contrasting episodes of referendums in South Africa (1992) and Cyprus (2004).<sup>90</sup>

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<sup>89</sup> James K. Sebenius, "Level Two Negotiations: Helping the Other Side Meet Its "Behind-the-Table" Challenges," *Negotiation Journal* 29:1 (January 2013), pp. 7–21.

<sup>90</sup> Neophytos Loizides, "Negotiated Settlements and Peace Referendums," *European Journal of Political Research*, 53:2 (May 2014), pp. 234-249.

## CHAPTER 3

### DIPLOMATIC GAME BOARD – LEVEL I

*“Our objective will be to achieve a final status agreement over the course of the next nine months.” (John Kerry, 30 July 2013)*

As described in previous chapter, Level I is where issues are discussed with international counterparts at the diplomatic table. As reflected in the above quote, the objective of the peace process was to achieve a final status agreement. In this chapter we will discuss the final status issues and the negotiators’ policy positions. At the diplomatic game board Israel was represented by Tzipi Livni, Palestine by Saeb Erekat and United States by John Kerry and his Special Envoy Martin Indyk. This was the third time that the parties came together to negotiate the final status issues which include territory, security, Jerusalem, refugees, and the Jewish State. They gathered twice before - during the Camp David–Taba in 2000–2001, and Annapolis in 2007–2008. It was decided in the Declaration of Principles that launched the Oslo process that the permanent status negotiations would start no later than May 1996 following partial Israeli withdrawal from Gaza and Jericho. The final status issues are the most sensitive matters that remain contested between the parties. Positions on these issues have changed from one Israeli or Palestinian government to the next, and they have evolved as situation on the ground changed. Clinton Parameters in 2000 are considered to be the most detailed public articulation by a U.S. president of what a final agreement might include. It was the Clinton Parameters that proposed an alternative of “land swaps” for the first time, which was accepted by Arab League and Palestinians. It was then incorporated in the Arab Peace Plan of King Abdullah of Saudi Arabia. More recently, President

Obama publicly laid out his positions on the issues of security and borders in two speeches at the State Department and at AIPAC in May 2011.<sup>91</sup>

### **a. Territory**

Palestinians want their new state to be based on the territory controlled by Egypt and Jordan prior to 4 June 1967, when war began and Israel took control of the West Bank and Gaza along with Sinai Peninsula and Golan Heights. Their position is in line with Arab Peace Plan and the United Nations' resolutions. Israel's continuous settlement activity in the occupied territories of the West Bank and East Jerusalem has further complicated this process. Generally Israel's more hard-line political parties do not acknowledge the pre-1967 borders and have supported rampant construction beyond those borders. In order to accommodate these settlements within future borders, a more flexible approach was proposed by President Clinton, that of allowing the land swaps. John Kerry reiterated this position and asked Arab League to endorse it, and it has been accepted by Palestine.

The establishment of settlements in the occupied territories started immediately after the 1967 war with the group of young Israelis first settled in the Golan, followed by a settlement near the city of Hebron in West Bank. The first official support to settlement construction by the government of Israel came in June 1967, "when 160 Arab houses were demolished in the old city of Jerusalem in order to open a court in front of the Western Wall. Immediately, 600 buildings were expropriated and approximately 6,500 Arabs, both tenants and land owners, were removed.

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<sup>91</sup> Goldenberg, *Lessons from the 2013–2014 Israeli-Palestinian Final Status Negotiations*, p. 15.

New buildings were later occupied by Israeli residents.”<sup>92</sup> Although Article 49 of the Geneva Convention states that “the Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.” The UN Security Council, during the 1970s and 1980s issued some 13 resolutions not only condemning settlements, but also demanding that the activity should be stopped and the settlements removed.

The Clinton Parameters outlined in December 2000 suggested that 94–96 percent of the West Bank should be annexed by the Palestinians without interrupting contiguity, and rest of the West Bank territory should remain with Israel. The Parameters ensured that 80 percent of Israeli settlers will remain in West Bank, safe passage between Gaza and the West Bank would be created, and disruption to Palestinian life would be minimized.<sup>93</sup>

The PLO aims to allow very minor swaps of territory by which Israel would receive some land from the inhabited occupied territory, and in exchange Palestine would receive uninhabited territory of equal size and value on the Israeli side of the 1967 lines. Palestinians want to gain hold of maximum land that would ensure contiguity. In the past Israel’s center and left parties had engaged in negotiations based on the 1967 lines, but there is strong opposition from Likud and other right-wing Israeli parties. Israeli negotiators seek to minimize the number of settlers

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<sup>92</sup> “Israeli Settlements in Gaza and the West Bank (including Jerusalem) Their Nature and Purpose,” *The United Nations*, 1982, <http://unispal.un.org/UNISPAL.NSF/0/B795B2D7FE86DA4885256B5A00666D70>.

<sup>93</sup> “The Clinton Peace Plan- 23 December 2000,” *Israel Ministry of Foreign Affairs*, 1999–2001, <http://www.mfa.gov.il/mfa/foreignpolicy/mfadocuments/yearbook13/pages/226%20%20the%20clinton%20peace%20plan-%2023%20december%202000.aspx>.

that would have to be displaced and aim at annexing large parts of West Bank to ensure defensible borders.<sup>94</sup>

Historically United States' official policy has considered the settlements to be illegal and against international law but it has not been able to discourage Israel from building in the occupied territories. In April 1968 President Lyndon Johnson's administration had objected to "setting up civilian or quasi-civilian outposts in the occupied areas" that could seriously complicate the task of drawing up a peace settlement, and prohibited Israel from doing anything in the occupied areas "which might prejudice the search for a peace settlement."<sup>95</sup> Strangely, U.S. abstained from voting when UNSC resolution (252) was presented the following month that reaffirmed the "acquisition of territory by military conquest is inadmissible" and warned Israel against seizing any property that could "tend to change the legal status of Jerusalem," which Israel claimed as its undivided capital.<sup>96</sup>

Former Secretary of State James A. Baker went to the extent of bluntly speaking before the large gathering of AIPAC asking them to "lay aside, once and for all, the unrealistic vision of a greater Israel... Forswear annexation. Stop settlement activity. Allow schools to reopen. Reach

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<sup>94</sup> Goldenberg, *Lessons from the 2013–2014 Israeli-Palestinian Final Status Negotiations*, p. 20.

<sup>95</sup> "137. Airgram from the Department of State to the Embassy in Israel," *U.S. Department of State Archive*, 8 April, 1968, <http://2001-2009.state.gov/r/pa/ho/frus/johnsonlb/xx/2667.htm>.

<sup>96</sup> UNSC Resolution 252 (1968) of 21 May 1968. The UN Security Council voted 13-0 with 2 abstentions to adopt Resolution 252.

out to Palestinians as neighbors who deserve political rights.”<sup>97</sup>Obama followed the same policy position and repeatedly condemned the activity as counterproductive to the peace process.

In 2011 President Obama laid out his position on territory: “The United States believes that negotiations should result in two states, with permanent Palestinian borders with Israel, Jordan, and Egypt, and permanent Israeli borders with Palestine. We believe the borders of Israel and Palestine should be based on the 1967 lines with mutually agreed swaps, so that secure and recognized borders are established for both states.”<sup>98</sup>

The official record of UN Office of the Coordination of Humanitarian Affairs in the Occupied Palestinian Territory (UNOCHA) suggests that between 1967 and December 2012, Israel established around 150 settlements in the West Bank, including East Jerusalem; 18 of them were established after 1993. In addition, some 100 so-called outposts were erected by settlers, most of them after the signing of the Oslo Accords. Estimations of the current settlement population in the West Bank, including East Jerusalem, range between 500,000 and 650,000. Since the signature of the Oslo Accords, there has been an increase of approximately 270,000 settlers in the West Bank, including East Jerusalem.

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<sup>97</sup> “Baker Emphasizes Israeli Role in Peace with Arabs,” *Los Angeles Times*, May 22, 1989, [http://articles.latimes.com/1989-05-22/news/mn-543\\_1\\_baker-emphasizes-israeli-role-israel-and-palestinians-intifada-f7](http://articles.latimes.com/1989-05-22/news/mn-543_1_baker-emphasizes-israeli-role-israel-and-palestinians-intifada-f7).

<sup>98</sup> Goldenberg, *Lessons from the 2013–2014 Israeli-Palestinian Final Status Negotiations*, p. 22.

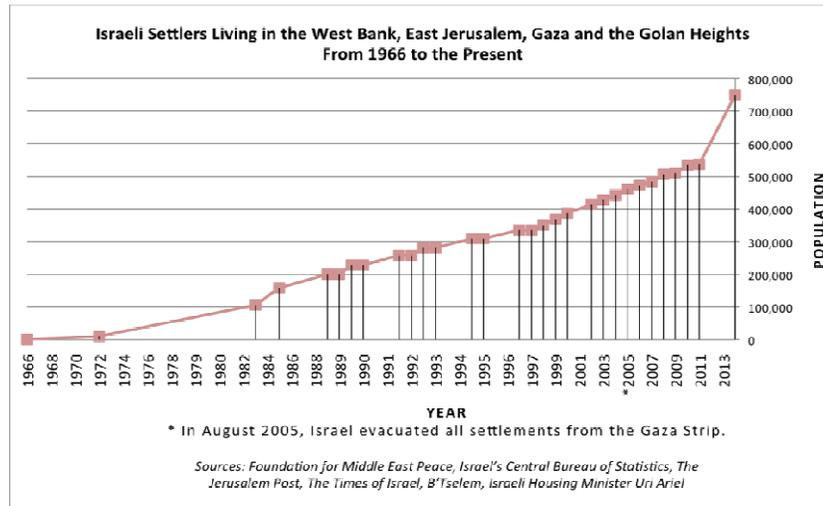


Figure 1: Graph of settlements in the occupied territories.

## b. Security

One of the major concerns of Israeli government has been that the complete withdrawal of IDF from the occupied territories would pose threat to the security of Israel. Its concern is reinforced by the fact that southern Lebanon in 2000 and Gaza in 2005 was taken over by Hezbollah and Hamas respectively after the withdrawal of Israeli forces. PM Netanyahu expressed his intention to keep the Israeli forces for an indefinite period of time to safeguard their border against terrorist infiltration. Israelis do not trust the capability of Palestinian Security Forces to be able to maintain stability in the West Bank in the aftermath of an Israeli withdrawal. Whereas Palestinians want an end to the Israeli occupation and suggested that NATO or U.S. led international force can take over for a definite period of time. Such a force can train Palestinian security forces to take over necessary security functions. Palestinians suggested a two-year time

frame for an international force in the December 2014 resolution that they submitted to the UNSC. During this time Israeli force would withdraw gradually.<sup>99</sup>

The Clinton Parameters recommended that Israeli forces withdraw over a span of three years and then maintain positions in the Jordan River Valley for an additional three years. They also proposed a demilitarized Palestinian state, and called for the establishment of three early warning radar stations on the West Bank that would be manned by Israel with a Palestinian liaison.<sup>100</sup>

President Obama laid out the U.S. position in a speech on 19 May 2011: “Israel must be able to defend itself – by itself – against any threat. Provisions must also be robust enough to prevent a resurgence of terrorism, to stop the infiltration of weapons, and to provide effective border security. The full and phased withdrawal of Israeli military forces should be coordinated with the assumption of Palestinian security responsibility in a sovereign, non-militarized state. And the duration of this transition period must be agreed, and the effectiveness of security arrangements must be demonstrated.”<sup>101</sup>

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<sup>99</sup> “Abbas Agrees to Temporary Israeli Military Presence after Peace,” *Haaretz*, Jan 28, 2014, <http://www.haaretz.com/news/diplomacy-defense/1.571063>. It can be watched at <https://www.youtube.com/watch?v=Cx9tY8JU1kQ&list=PLCapdZwzDpNlwSoHcbkXL9sMVbQcQMaQ->.

<sup>100</sup> “The Clinton Peace Plan- 23 December 2000,” *Israel Ministry of Foreign Affairs*, <http://www.mfa.gov.il/mfa/foreignpolicy/mfadocuments/yearbook13/pages/226%20%20the%20clinton%20peace%20plan-%2023%20december%202000.aspx>.

<sup>101</sup> “Remarks by the President on the Middle East and North Africa,” *The White House*, May 19, 2011, <https://www.whitehouse.gov/the-press-office/2011/05/19/remarks-president-middle-east-and-north-africa%20>.

Obama has repeatedly stated that “America’s commitment to the security of the State of Israel is a solemn obligation, and the security of Israel is non-negotiable.”<sup>102</sup> It has been U.S. policy to assist Israel preserve its qualitative military edge over other regional countries to defend itself. During Obama’s administration, more security assistance and advanced technology has been given to Israel than ever before, including support for Iron Dome, and future funding for the defense system. Iron Dome Support Act authorizes the president to provide assistance to the government of Israel “for the procurement, maintenance, enhancement, and sustainment of the Iron Dome anti-missile defense system for purposes of intercepting short- and medium-range rockets, missiles, and projectiles launched against Israel.”<sup>103</sup> The president is authorized to provide assistance to Israel without the approval of Congress but not to Palestine.

### **c. Jerusalem**

In July 1980, the Knesset adopted a law stating that Jerusalem “complete and united, is the capital of Israel.” The law allowed people from all the religions to visit the holy places in Jerusalem.<sup>104</sup> Whereas Palestinians want Israel to cease its claim on East Jerusalem occupied in 1967 war. Israelis also claim “additional Arab neighborhoods, many of which were not part of Jerusalem prior to 1967, that are now considered by Israel to be part of Jerusalem because of

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<sup>102</sup> “Remarks by President Obama and Prime Minister Netanyahu of Israel in Joint Press Conference,” *The White House*, March 20, 2013, <https://www.whitehouse.gov/the-press-office/2013/03/20/remarks-president-obama-and-prime-minister-netanyahu-israel-joint-press->

<sup>103</sup> “H.R. 2701 - 113th Congress: United States-Israel Missile Defense Cooperation Act of 2013.” *GovTrack.us*, July 16, 2013, <https://www.govtrack.us/congress/bills/113/hr2701>.

<sup>104</sup> “Basic Law: Jerusalem, Capital of Israel,” *The Knesset*, [https://www.knesset.gov.il/laws/special/eng/basic10\\_eng.htm](https://www.knesset.gov.il/laws/special/eng/basic10_eng.htm).

significant adjustments by Israel to the municipal borders.”<sup>105</sup> Clinton Parameters had suggested dividing these neighborhoods based on the idea that Jewish neighborhoods as part of Israel and Arab neighborhoods as part of the Palestinian state. “Given that the Jewish and Arab populations of the city are increasingly separated anyway, it need not cause major disruptions to the patterns of daily life.”<sup>106</sup>

“The greater challenge is the Old City, a tiny area of one square kilometer that cannot be physically divided and which holds great religious importance not only to the two parties, but to three major world religions and their countless sub-denominations. Indeed, Islam’s third holiest site – the Haram al Sharif – and Judaism’s holiest site, referred to as the Temple Mount, partly occupy the same physical space.”<sup>107</sup> The Clinton Parameters and negotiations at Camp David suggested that the territory within the Old City would not be physically divided, but a line would run through it to mark the sovereign territory of each state.<sup>108</sup>

During his first term Obama publicly supported East Jerusalem as the capital of the new Palestinian state but finding it too sensitive, he did not stress it publicly during his second term. Even Kerry’s framework left it to be dealt in the future. In the last meeting with Obama before the peace talks formally collapsed, Abbas reiterated the Palestinian demand that East Jerusalem be the capital of a Palestinian state.

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<sup>105</sup> Goldenberg, *Lessons from the 2013–2014 Israeli-Palestinian Final Status Negotiations*, p. 25.

<sup>106</sup> *Ibid.*, p.26

<sup>107</sup> *Ibid.*, p.27

<sup>108</sup> *Ibid.*, p.29

#### d. Refugees

There are some five million Palestinian refugees registered with the UN who were living in Palestine during the period of 1 June 1946 to 15 May 1948, and who lost homes and means of livelihood as a result of 1948 conflict. More than 1.5 million Palestinians are living in refugee camps in Jordan, Lebanon, Syria, the Gaza Strip and the West Bank, including East Jerusalem.<sup>109</sup> President Abbas while speaking to Fatah youth activists on March 6, 2014 gave a rather broad definition of refugee that the offspring of those five million will also be considered 1948 refugees. President Abbas is himself a refugee displaced from the city of Safed<sup>110</sup> during the 1948 war. He made his position very clear that any peace agreement reached between Israel and Palestine will guarantee the right of return and compensation for the loss. It will give them a choice to either retain their current places of residence, to emigrate to any other country as a Palestinian including Israel, or return to the Palestinian state. But it will be a personal right of the Palestinian refugee and they can chose to relinquish that right.<sup>111</sup>

The first UN mediator to the Arab-Israeli conflict, Lord Folke Bernadotte had stated in 1948 that, "It would be an offence against the principles of elemental justice if these innocent

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<sup>109</sup> "Palestine Refugees," *United Nations Relief and Works Agency for Palestine Refugees in the Near East*, <http://www.unrwa.org/palestine-refugees>.

<sup>110</sup> A city in the Northern District of Israel.

<sup>111</sup> "Mahmoud Abbas: Referendum on Any Agreement among Palestinians Worldwide, No to Jewish State," *Middle East Media Research Institute*, March 10, 2014, <http://www.memri.org/report/en/0/0/0/0/0/7874.htm>.

[Palestinian] victims of the conflict were denied the right to return to their homes, while Jewish immigrants flow into Palestine."<sup>112</sup>

On the other hand, Israel's condition to peace is that Palestinians end all claims including the right of return.<sup>113</sup> They "base their position on an entirely different narrative: that most Palestinians left of their own volition and that the return of 5-6 million Palestinians ... would threaten the Jewish nature of the state of Israel."<sup>114</sup>

Clinton Parameters suggest that Israel "acknowledge the moral and material suffering caused to the Palestinian people as a result of the 1948 war and the need to assist the international community in addressing the problem."<sup>115</sup> It stresses on the return of *some* of the refugees to Israel while focal point would be the Palestinian state for those who want to return. It would be highly contentious to decide on the specific number. What that number might be is highly contentious. The parameters also offer the same possibilities to the refugees as sought by the Palestinian leadership but "rehabilitation in host countries, resettlement in third countries and absorption into Israel will depend upon the policies of those countries."<sup>116</sup> It further

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<sup>112</sup> Saeb Erekat, "The Returning Issue of Palestine's Refugees," *The Guardian*, December 10, 2010, <http://www.theguardian.com/commentisfree/2010/dec/10/israel-palestine-refugee-rights>.

<sup>113</sup> "PM Slams Abbas' 'Impossible Fantasies' on 'Return' of 6 Million Refugees," *The Times of Israel*, December 8, 2014, <http://www.timesofisrael.com/pm-slams-abbas-for-cultivating-impossible-fantasies-over-return-of-6-million-refugees/>.

<sup>114</sup> Goldenberg, *Lessons from the 2013–2014 Israeli-Palestinian Final Status Negotiations*, p. 11.

<sup>115</sup> "The Clinton Peace Plan- 23 December 2000," *Israel Ministry of Foreign Affairs*.

<sup>116</sup> *Ibid.*

recommended that Israel indicates its intention of absorbing some of the refugees by declaring in the agreement that it would establish a policy that would support such a decision.<sup>117</sup>

The Clinton Parameters are considered to be the only realistic option that Palestinians may accept but they certainly don't reflect the ideology of Israeli right. The implementation of a long tedious process would require billions of dollars of contribution from the international community. The solution may not even satisfy the expectations of over 5 million refugees.<sup>118</sup>

### **e. Jewish State**

Recognition of Israel as a Jewish state has never been the precondition to a peace process, and has never been a major issue of discussion in previous peace negotiations. It has lately become a fundamental element to any peace agreement. Netanyahu deems it to be the root of the conflict which will remain so until Palestinians "recognize the right of the Jewish people to a state of their own in their historic homeland."<sup>119</sup> Palestinians believe that recognizing Israel as a Jewish state would not only undermine the rights of non-Jews living in Israel, but it will preempt future negotiations on the fate of 5 million Palestinian refugees. For Israelis, any peace agreement without recognizing Israel as a Jewish state is just an arrangement to eventually drive

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<sup>117</sup> Ibid.

<sup>118</sup> Goldenberg, *Lessons from the 2013–2014 Israeli-Palestinian Final Status Negotiations*, p. 12.

<sup>119</sup> "Netanyahu's Foreign Policy Speech at Bar Ilan," *Haaretz*, July 14, 2009, <http://www.haaretz.com/news/full-text-of-netanyahu-s-foreign-policy-speech-at-bar-ilan-1.277922>.

them out from the land of Israel. This recognition, Israel believes will guarantee that Palestinians right to self-determination is restricted to their own state of Palestine and not Israel.<sup>120</sup>

Secretary Kerry laid down the U.S. position before the House in March 2014, a week before President Abbas met Obama in the Oval office. He noted, the fact that Israel is the Jewish State has already been recognized by United Nations and the former leader of PLO, Yasir Arafat, and “it’s a mistake for some people to be raising it again and again as the critical decider of their attitude toward the possibility of a state and peace.”<sup>121</sup> Nevertheless, President Obama attempted to pressurize visiting Abbas to take a tough political decision to be able to move forward. Instead, Abbas was unequivocal in his position that Palestine is not ready to compromise further and accept Netanyahu’s demand to accept Israel as a Jewish state in order to get a peace deal. He said that Palestine has recognized international legitimacy resolutions since 1988 which was “a very courageous step on the part of the Palestinian leadership,” and later in 1993, they recognized the state of Israel.<sup>122</sup>

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<sup>120</sup> Goldenberg, *Lessons from the 2013–2014 Israeli-Palestinian Final Status Negotiations*, p. 12.

<sup>121</sup> Mark Landler, “Jewish State Declaration Is Unyielding Block to a Deal,” *The New York Times*, March 17, 2014, <http://www.nytimes.com/2014/03/18/world/middleeast/obama-abbas-palestinians-israel.html>.

<sup>122</sup> “Remarks by President Obama and President Abbas of the Palestinian Authority.” *The White House*, March 17, 2014, <https://www.whitehouse.gov/the-press-office/2014/03/17/remarks-president-obama-and-president-abbas-palestinian-authority>.

## CHAPTER 4

### CONSTITUENTS MATTER – LEVEL II

In this chapter we will analyze preferences of the constituents of each player and how they restrict the decision-making process at the diplomatic level. It is believed that the foreign policy decisions are the result of political processes within nation-states.<sup>123</sup> Recognizing the crucial role that constituents play, President Obama addressed the Israeli public directly on his trip to Israel in March 2013. He asked the Israeli youth to support and guide their decision-makers in making decisions that would lead to a two-state solution eventually, since political leaders will not take risks if it doesn't involve people's will. It is difficult for any leader to "get too far ahead" of their constituencies.<sup>124</sup>

#### **a. United States 113<sup>th</sup> Congress**

I have analyzed the 113<sup>th</sup> U.S. Congress (2013-2015) in order to observe activities of the members meant to influence the executive and form a public opinion. The members of Congress demonstrate their opinion through speeches and more intensely by tabling bills and resolutions. These bills or resolutions give a sense of the legislators on different issues and generally represent views of their constituents. Congress has showed its unwavering support to Israel at every moment when other countries took measures to pressurize Israel. Most congressional activity favors the Israeli position in peace talks.

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<sup>123</sup> Keisuka Lida, "When and How do Domestic Constraints Matter? Two-Level Games with Uncertainty," *The Journal of Conflict Resolution*, 37:3 (September 1993), pp. 403-426.

<sup>124</sup> "Remarks of President Barack Obama to the People of Israel," *The White House*, March 21, 2013, <https://www.whitehouse.gov/the-press-office/2013/03/21/remarks-president-barack-obama-people-israel>.

The day peace talks formally collapsed on 29 April 2014, A bill was tabled in the Senate by a current presidential candidate Rand Paul, along with fourteen other members asking the President to halt monetary assistance to Palestinian Authority unless it agreed to certain conditions stated in the bill. The most critical of those conditions was recognition of Israel as a Jewish state. Arabs and Palestinians have strongly reacted to this position in the past since it jeopardizes the ‘right of return’ of the Palestinian refugees in the future. President Abbas might not even agree to this condition even at the cost of losing monetary assistance which is a major contribution to the Palestinian Authority’s budget.<sup>125</sup> A similar bill was introduced in September by another Republican member of the House of Representative, Steve Stockman.<sup>126</sup>

The same day two other bills were tabled by Republican congressmen to prohibit discrimination against Israel – meant to counter the European countries that had been placing sanctions on Israeli organizations that are established in the occupied territories. In 2013, the European Union forbade member countries from cooperating, transferring funds, and giving scholarships or research grants to organizations established beyond the 1949 armistice lines. Earlier, in 2010, the European Court of Justice issued a ruling that prohibited those industries from labeling their products as “Made in Israel” that are located in contested territories. In the same year, the United Kingdom banned Israeli tourism advertisements showing Jerusalem as part of Israel. The bill asked the government to cease funding those international projects that

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<sup>125</sup> “S. 2265 - 113th Congress: Stand with Israel Act of 2014,” *GovTrack.us*, May 17, 2015, <https://www.govtrack.us/congress/bills/113/s2265>. The bill was not enacted.

<sup>126</sup> “H.R. 5433 (113<sup>th</sup>): Stop Funding Terrorism Act,” *GovTrack.us*, September 10, 2014, <https://www.govtrack.us/congress/bills/113/hr5433>. It was not enacted.

prohibit participation of such Israeli companies, claiming that the settlements are not a threat to peace.

Over the most sensitive component of peace talks, the status of Jerusalem, Trent Franks, a Republican House representative introduced a bill on 26 July 2013 to recognize undivided Jerusalem as the capital of the state of Israel based on the argument that Jerusalem has been the eternal and undivided capital of the state of Israel for past 3,000 years. The bill was proposed at a time when Secretary Kerry was trying hard to get negotiations started, and Jerusalem was one of the major sticking points.<sup>127</sup>

When Palestine successfully achieved its non-member status in UN, a Republican House representative, Ilean Ros-Lehtinen, introduced a bill asking the president among other things to withhold U.S. contributions to those UN entities that granted Palestinian Authority a non-member status before achieving final peace agreement with Israel. It also sought to withhold the U.S. contribution to the regular budget of the UN, an amount that has been spent by the UN on any part of the Goldstone Report.<sup>128</sup> The report was considered biased by Congress and lobbied to revoke it. No congressional resolution or bill demanded similar action against Israel for violating various international agreements. Although the Interim Agreement on the West Bank and the Gaza Strip signed by Israel and PLO in September 1995 forbids both sides from any action that will change the status of the West Bank and the Gaza Strip until the outcome of the permanent status negotiations.

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<sup>127</sup> "H.R. 2846 — 113th Congress: Recognition of Jerusalem as the Capital of the State of Israel Act," *GovTrack.us*, May 17, 2015, <https://www.govtrack.us/congress/bills/113/hr2846>.

<sup>128</sup> "H.R. 3155 — 113th Congress: United Nations Transparency, Accountability, and Reform Act of 2013," *GovTrack.us*, September 19, 2013, <https://www.govtrack.us/congress/bills/113/hr3155>.

A bill presented by a Republican Senator Marco Rubio after President Abbas announced a unity government with Hamas as a result of the reconciliation between the two in April 2014, asked the president to restrict aid to the Palestinian authority or certify before the Congress. The Foreign Assistance Act of 1961<sup>129</sup> requires that “any Palestinian government that includes Hamas as a member, or over which Hamas exercises undue influence, only receive United States assistance if certain certifications are made to Congress.”<sup>130</sup> Congress has the power to disapprove of Presidential certification. The bill also condemned the United Nations Human Rights Council (UNHRC) for adopting a “one sided resolution” on 23 July 2014 condemning Israel’s military operation in Gaza and accusing UNHRC of having “long history of taking anti-Israel actions.”<sup>131</sup> The bill also required the U.S. government to reduce its contribution to the regular budget of the UN, part of which is allocated to support the UNHRC unless the Secretary of State certifies to Congress that UNHRC’s agenda will not include a permanent item related to Israel-Palestine conflict.<sup>132</sup>

When American educational institutions, including the American Studies Association joined a growing movement in December 2013<sup>133</sup> to boycott Israel over its treatment of

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<sup>129</sup> “22 U.S. Code § 2378b - Limitation on assistance to the Palestinian authority,” *Legal Information Institute*, Cornell University Law School, <https://www.law.cornell.edu/uscode/text/22/2378b>.

<sup>130</sup> “U.S. Foreign Assistance Act of 1961,” *Council on Foreign Relations*, <http://www.cfr.org/foreign-aid/us-foreign-assistance-act-1961/p27046>.

<sup>131</sup> *Ibid.*

<sup>132</sup> “S. 2766 - 113th Congress: Palestinian and United Nations Anti-Terrorism Act of 2014,” *GovTrack.us*, July 31, 2014, <https://www.govtrack.us/congress/bills/113/s2766>. It was not enacted.

<sup>133</sup> Harriet Sherwood, “Major US academic body backs boycott of Israeli educational institutions,” *The Guardian*, December 17, 2013, <http://www.theguardian.com/world/2013/dec/17/us-american-studies-association-boycott-israel>.

Palestinians – Congress countered the move by asking the government to cease cooperation with such institutions. The bill was introduced by a Democrat member of the House.<sup>134</sup>

In support of Israel's general objection of Palestinian's inciting rhetoric toward Israel, a Republican House member, Edward "Ed" Royce introduced a bill that funds should be provided to the PA only on condition if it ceases incitement against the U.S. and Israel, and the PA should do more to prepare Palestinian people for peace.<sup>135</sup>

Another bill introduced by Republican House member, Doug Collins directed the president to carry out an assessment of the extent to which Israel possesses a qualitative military edge over other countries in the region every two years instead of four years as in the current law. It also directed the Secretary of State to report to the Congress on the range of cyber and asymmetric threats posed to Israel by state and non-state actors, and about joint U.S.-Israel efforts to address such threats.<sup>136</sup>

A resolution was introduced by Republican House representative in July 2014 in support of Israel over its conflict with Hamas that killed over 2,000 Palestinians. It was passed by both chambers of Congress jointly recognizing that Hamas uses civilian populations as human shields, while Israel took extraordinary measure to minimize collateral damage," It also condemned the

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<sup>134</sup> "H.R. 4776 - 113th Congress: To prohibit an institution of higher education that participates in a boycott of the Israeli government, economy, or .....", *GovTrack.us*, May 30, 2014, <https://www.govtrack.us/congress/bills/113/hr4776>. It was not enacted.

<sup>135</sup> "H.R. 3868 - 113th Congress: Palestinian Peace Promotion and Anti-Incitement Act," *GovTrack.us*, January 14, 2014, <https://www.govtrack.us/congress/bills/113/hr3868>. It was not enacted.

<sup>136</sup> "H.R. 1992 - 113th Congress: Israel QME Enhancement Act," *GovTrack.us*, May 15, 2013, <https://www.govtrack.us/congress/bills/113/hr1992>. It was passed by the House on December 11, 2013, but Senate never passed the Act.

46-member UNHRC for forming a commission over Israel's operations in Gaza and not condemning Hamas.<sup>137</sup>

After the strong international reaction and various campaigns to boycott Israel to protest against its assault on Gaza, a “simple resolution” introduced by a Democratic representative was passed by the House. It condemned anti-Semitism in all forms and called on the world leaders to do so, and urged the Secretary of State to “maintain fighting anti-Semitism as a U.S. foreign policy priority” and urged governments to punish anti-Semitic violence against persons and property.<sup>138</sup>

## **b. Netanyahu's Coalition and Role of Knesset**

It was the first time that a Likud government had participated in final status negotiations, despite being in government for 27 of the past 35 years. Likud Party came into power for the first time in 1977 advocating territorial maximalism and called for retention of West Bank and Gaza. By contrast, labor party had championed the principle of territorial compromise with the exception of Jerusalem.

Prime Minister Benjamin Netanyahu's dilemma has been that he belongs to a right-wing party and was asked to make decisions that ideologically conflicted with his party and its followers. He built his political career opposing those ideas. Moreover, he had to form electoral

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<sup>137</sup> “H.Con.Res. 107 - 113th Congress: A concurrent resolution denouncing the use of civilians as human shields by Hamas and other ....,” *GovTrack.us*, July 16, 2014, <https://www.govtrack.us/congress/bills/113/hconres107>. It was passed by both chambers of Congress on 10 Dec 2014.

<sup>138</sup> “H.Res. 707 - 113th Congress: Condemning all forms of anti-Semitism and rejecting attempts to justify anti-Jewish hatred or violent attacks ....,” *GovTrack.us*, July 31, 2014, <https://www.govtrack.us/congress/bills/113/hres707>. This simple resolution was agreed to on September 18, 2014.

alliances with another right-wing party Yisrael Beiteinu to contest the 2013 elections. But the Likud-Yisrael Beiteinu alliance did not win enough seats to form a government<sup>139</sup> without forming a coalition with other political parties elected to the Knesset.

In addition to the Likud-Yisrael Beiteinu<sup>140</sup> parliamentary faction, three additional partners - Hatnua, Yesh Atid, and Jewish Home formed a sixty-seven member coalition of the 120 Knesset members. This coalition was third since 1977 not to include Israel's ultra-orthodox parties, which were in opposition. As head of a coalition government Netanyahu was obligated to consult his coalition partners before taking any decision especially when it involved peace with the Palestinians. He signed individual coalition agreements with each partner that outlined the guidelines for the adoption of governmental policies, as well as general commitments. All the political partners agreed to strive for a peace agreement with the Palestinians through a political process.

As per these agreements a ministerial committee for peace was formed, which was headed by the Prime Minister and included Minister of Justice, Ministers of Defense, and Minister of Foreign Affairs. Prime Minister Netanyahu held two additional portfolios of Foreign Affairs, and Public Diplomacy and Diaspora. Tzipi Livni, the Minister of Justice and head of the center-left Hatnua party was the chief negotiator representing Israel in peace talks. The third member of the peace committee was Moshe Ya'alon, the Minister of Defense who belonged to Netanyahu's ring-wing party. He had been a Chief of General Staff of the Israeli Defense Forces (IDF) before

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<sup>139</sup> The government consisted of ministers and 8 deputy ministers. Hatnua is a centrist party led by Tzipi Livni, Yesh Atid led by Yair Lapid, Far-right Jewish Home led by Naftali Bennet obtained eleven seats

<sup>140</sup> An electoral alliance formed in 2012 by the center-right Likud and the right-wing Yisrael Beiteinu to contest the January 2013 Knesset elections.

he joined Likud in 2008. During the 2013 election campaign he stated to have regretted supporting Oslo Agreements since he realized later that “the more land we concede, the more we put people at risk.”<sup>141</sup> He opposed any curbs on settlement-building and construction in the occupied West Bank, which had to be signed off by the Defense Ministry. Ya’alon’s predecessor, Ehud Barak was often accused by settlers of impeding settlement projects.

Netanyahu’s coalition partner Yesh Atid, runner-up in the election with nineteen Knesset seats, is a centrist and pro-settler party that ideologically objected going back to 1967 borders. Similarly the right-leaning Jewish Home Party, popular with Jewish settlers, advocates annexing large sections of the West Bank during its campaign. It was believed that Netanyahu would not survive politically if he gave up occupied land and returned to 1967 borders. While center-left Hatnua supported the establishment of Palestinian state in that territory and called for a swift return to the negotiations. Netanyahu officially backed a two-state solution but his electoral partner, Avigdor Lieberman of ultranationalist Yisrael Beiteinu was among the harshest critics of President Abbas. The housing and construction minister, Uri Ariel from Jewish Home was a settler himself. Even in the Knesset, a Jewish Home member served as head of the finance committee, a powerful body that could influence Israel's budget. He was not expected to block or reduce settlement funding.<sup>142</sup>

It was already believed that it would be difficult for Netanyahu to reach a peace agreement that was in accord with the political ideology of his partners and did not upset their constituents.

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<sup>141</sup> Mazal Mualem, “New Israeli Defense Minister No Threat to Netanyahu's Policies,” March 13, 2013, *Al Monitor*, <http://www.al-monitor.com/pulse/ar/originals/2013/03/who-is-the-new-defense-minister-moshe-yaalon.html#>.

<sup>142</sup> Maayan Lubell, “Backers of Israeli Settlers Stake Claim in Netanyahu Cabinet,” Mar 18, 2013, Reuters, <http://www.reuters.com/article/2013/03/18/palestinians-israel-government-idUSL6N0CA6HG20130318>.

In addition, the agreement that he signed with his coalition partners also required that any peace deal reached with the Palestinians would be subjected to approval of the government and parliament, and if deemed necessary could be put to referendum. It was speculated from beginning that this partnership could complicate the peace process and might aggravate already tense relations with the United States on the issue of settlements.

Netanyahu had to be wary of his coalition partners as well as the ultra-orthodox opposition in the parliament that consisted of five factions that had vowed to play strong opposition. While peace talks were going on, Netanyahu met most opposition from his own party and coalition partners. He already had a bitter experience in 1999 when right-wing parties had toppled his government because of his pragmatic approach to peace process. One of the trouble-makers was the hawkish defense minister Moshe Ya'alon from Likud. No peace deal could be approved without his support. Ya'alon was not impressed with Kerry's security proposals for Jordan Valley, which satisfied the chief negotiator Livni, and hard-line foreign minister Avigdor Lieberman. Even Netanyahu could see it moving forward. Ya'alon called Kerry 'obsessive and messianic.' He publicly commented that, "the only thing that can save us is for John Kerry to win his Nobel Prize and leave us alone."<sup>143</sup>

"The primary source of Netanyahu's heartburn was Naftali Bennet, the ambitious leader of the Jewish Home party."<sup>144</sup> He did not miss out on criticizing Netanyahu for having abandoned his values and tried to supplant him as leader of the right. When Netanyahu seemed to agree to a

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<sup>143</sup> Barak Ravid, "Ya'alon raises U.S. ire calling Kerry 'Obsessive and messianic'," *Haaretz*, Jan 14, 2014, <http://www.haaretz.com/news/diplomacy-defense/1.568577>.

<sup>144</sup> Birnbaum and Tibon, "The Explosive, Inside Story of How John Kerry Built an Israel-Palestine Peace Plan—and Watched It Crumble."

U.S. proposal that the Israeli settlers will be permitted to remain in West Bank, Bennet publicly retorted that “two thousand years of longing for the land of Israel did not pass so we could live under the rule of Abu Mazen.”<sup>145</sup> The housing minister, Uri Ariel, the second-ranking member of Bennett’s bloc was pro-settler. Jewish Home had twelve seats in the Knesset. Evidently Netanyahu preferred them over the 15 member-Labor party, the third runner-up in Knesset. With Labor party he would also have had feared losing the government if he were not flexible in talks along with Livni’s party. Netanyahu remembered assassination of Prime Minister Yitzhak Rabin by a Jewish settler for ceding part of the West Bank. Although he dared to make a rare confession to domestic audiences, that some Jewish settlements in the West Bank would not be part of Israel if an agreement was reached, and he would make sure that it is very limited.<sup>146</sup>

On the issue of releasing the final tranche of prisoners, Netanyahu was under tremendous domestic pressure from his right-wing coalition. His own party officials as well as the Jewish Home party threatened to leave the government if the fourth tranche were released. There were protests in the streets by the families who had lost their relatives in the attacks at the hands of these Palestinian prisoners. Even before taking this decision, Netanyahu had to write a letter to the Israeli people clarifying his position in an effort to gain support, while a few miles across in Palestine there were celebrations welcoming the prisoners and portraying them as their heroes. As for Abbas, his credibility rested on gaining freedom for all 104 Palestinian prisoners.

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<sup>145</sup> Ibid. President Mahmood Abbas is also known as Abu Mazen.

<sup>146</sup>Jodi Rudoren and Michael R. Gordon, “As Kerry Visits Jordan, Abbas Holds His Ground,” *The New York Times*, March 7, 2014, <http://www.nytimes.com/2014/03/08/world/middleeast/secretary-of-state-john-kerry.html>.

Netanyahu could not keep the opposition calm any further after the Palestinians signed a deal with Hamas to form a coalition government. Israel canceled the next negotiating session stating that “whoever chooses Hamas does not want peace,” describing the group as “a murderous terrorist organization that calls for the destruction of Israel.”<sup>147</sup> following a meeting of top ministers that lasted nearly all day, Israel announced that it would freeze the negotiations until the Palestinians’ reconciliation agreement was reversed or collapsed.

### **c. Fatah and Public Opinion**

The Palestinian public was not optimistic about the result of peace talks, and neither was the leadership that did not see an honest partner in Netanyahu. Forty-nine percent of the Palestinians opposed resuming talks while sixty-seven percent favored seeking membership of international organizations especially the International Criminal Court (ICC) to pressure Israel to halt settlement activity in the occupied territories. Nevertheless, Palestinian negotiators trusted their constituents that whatever the agreement would be it will need public approval in a referendum. Despite public confidence, Abbas was not able to take unilateral decision, instead, he took the party’s leadership in confidence. They feared that resuming talks without a settlement freeze would come at great political cost and “the street won’t stand it.”<sup>148</sup> Even his chief negotiator Saeb Erekat feared that he would have to pay political price if the talks collapsed.

Abbas had to take his party leadership into confidence about his position on various components of the talks. He also gathered student activists of the Fatah and reiterated his

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<sup>147</sup> Ibid.

<sup>148</sup> Birnbaum and Tibon, “The Explosive, Inside Story of How John Kerry Built an Israel-Palestine Peace Plan—and Watched It Crumble.”

conditions to any peace deal: PA will not recognize Israel as a Jewish state despite international pressure, the settlements are illegal, East Jerusalem is the capital of Palestinian state, and PA will not surrender a single neighborhood (Beit Hanina or Abu Dis) in East Jerusalem.

Mahmoud Abbas is a man known to have taken unpopular steps. He pushed for secret talks with Israel in the 1970s, advocated to recognize Israel and renounce violence in the 1980s, and he questioned the wisdom of second intifada. Yet he needed substantive guarantees that Palestinian people would have some tangible gains no matter how futile the talks would be. He agreed to return to the talks on condition that were also based on the aspirations of the Palestinian people and in line with his party's ideology: complete settlement freeze in West Bank and East Jerusalem before heading to the negotiating table, talks based on 1967 borders, and release of Palestinians imprisoned before the Oslo accords. Knowing that a settlement freeze had been a contested demand, Abbas insisted on the release of prisoners. "For Abbas the release was a tangible success after years of pressing for freedom for prisoners jailed before the Oslo accords were signed in 1993. It was also aimed at warming skeptical Palestinian public opinion towards the resumption of talks."<sup>149</sup> He had long demanded the release of prisoners who had been convicted of crimes committed before the Oslo peace accord of 1993. They were widely viewed in Palestinian society as political prisoners, but most Israelis see them as terrorists.

Abbas could not agree to any Israeli demand outside the Arab Peace Plan, without taking Arab countries into confidence. Their support was critical to President Abbas. It provided him the political cover to pursue an agreement. Kerry also had to ask the Arab League to once again

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<sup>149</sup> Harriet Sherwood "Palestinians Celebrate Prisoner Release," *The Guardian*, August 14, 2013, <http://www.theguardian.com/world/2013/aug/14/palestinians-celebrate-prisoner-release>.

endorse the Arab Peace Plan with the amended idea of land swaps. And he met with the Arab League Peace Initiative Follow Up Committee, consisting of a number of Arab foreign ministers, numerous times during the nine-month period of peace talks.<sup>150</sup>

Abbas' Arab alliance also restricted his ability to act individually and at the same time it gave him strength to stand up to American pressure. The United States wanted Abbas to make a major concession by recognizing Israel as a Jewish state in order to reach a framework agreement. He could not accept this condition despite American pressure because "58% of the Palestinians opposed a mutual recognition of Israel as the state for the Jewish people and Palestine as the state for the Palestinian people."<sup>151</sup> The Arab League also passed a resolution on 25 March 2014 that refused to recognize Israel as a Jewish state, and thus removed any flexibility for negotiations on this point.<sup>152</sup> The Palestinian people suspect the intention of Israelis that recognizing it as a Jewish State would relegate Israeli Arabs formally to second-class citizenship. Strong public backlash made it more difficult for Palestinian leadership to ever accept it as part of an agreement. Thus, an issue that was not, in 2000, a major point of contention had by 2014 become a major stumbling block on the way to an agreement.<sup>153</sup>

When Israel kept building settlements in the occupied territories, the Palestinian chief negotiator Saeb Erekat was frustrated that this was making him a pariah among his own people

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<sup>150</sup> Goldenberg, *Lessons from the 2013–2014 Israeli-Palestinian Final Status Negotiations*, p. 26.

<sup>151</sup> "Joint Israeli Palestinian Poll - 54," *Palestinian Center for Policy and Survey Research*, December 2014, <http://www.pcpsr.org/en/node/596>.

<sup>152</sup> "Arab League Summit Opens with Row over Palestinian Support," *Ynetnews*, March 25, 2014, <http://www.ynetnews.com/articles/0,7340,L-4503006,00.html>.

<sup>153</sup> Goldenberg, *Lessons from the 2013–2014 Israeli-Palestinian Final Status Negotiations*, p. 29.

while it was a bargain for Israel over releasing the prisoners.<sup>154</sup> Rumors were spread that Abbas had taken money for making this compromise.

It was the Fatah Central Committee that was the driving force behind the UN bid to gain non-member statehood. This powerful group reiterated its support for President Abbas to seek upgraded status for the Palestine at the UN in November 2012, despite strong opposition from the U.S.<sup>155</sup> They waited only until the US presidential elections took place. Erakat said, “we did him (Obama) a favor (delaying the UN bid until after U.S. elections) and we hope he will remember that.”<sup>156</sup>

Even later Abbas was under pressure from his party and the public to leverage the nonmember observer-state status and join international bodies. He resisted the pressure during the nine-month talks period and eventually went ahead when Israel didn't seem to release the last batch of prisoners, and instead reissued bids for the construction of more than 700 housing units in East Jerusalem. He went ahead with the decision after 50 members of the Palestinian top leadership voted unanimously to take immediate steps to join the 15 conventions and treaties including the Four Geneva Conventions of 1949, the Hague Convention respecting the Laws and Customs of War on Land and the Vienna Convention on the Law of Treaties.

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<sup>154</sup> Birnbaum and Tibon, “The Explosive, Inside Story of How John Kerry Built an Israel-Palestine Peace Plan—and Watched It Crumble.”

<sup>155</sup> Jonathan Schanzer, *State of Failure* (New York: St. Martin's Press, 2013), p.183.

<sup>156</sup> *Ibid.*, p. 188.

## CHAPTER 5

### ANALYSIS AND CONCLUSION

Robert Putnam's two-level games model does not offer a solution to the decades-old conflict, however, it draws our attention to different actors that influenced the negotiations. Thus, the model identifies the factors that possibly caused failure to the peace-process. One of the factors is that the Level I actors representing Israel and Palestine at the diplomatic table hold small win-sets, thus, lacking the freedom to maneuver an agreement that would be acceptable to the constituents as well. Putnam has defined 'win-set' as the set of all possible Level I agreements that will gain necessary majority among the constituents. Level I proposals to resolve the intractable issues: territory, security, Jerusalem, refugees, and Jewish state - produce small win-sets unacceptable to either negotiator. Each side is aware of the ground realities that any proposal against the wishes of their constituents will be voted out by the Level II actors either through legislative process, party leadership or public opinion. Thus, ensued involuntary defections as noted at the close of nine-months of peace talks. The Palestinian negotiator Saeed Erekat withdrew from the negotiations after Netanyahu showed reluctance to release last batch of the Palestinian prisoners. It was a significant confidence-building measure for President Abbas to fortify public support for the peace talk. Similarly, Netanyahu had agreed to release the prisoners against tremendous public pressure. Both leaders were risking their popularity among their constituents and they could not risk it further. At that point, no-agreement was politically viable than prolonging the talks without any foreseeable solution. In any case, Israel would prefer status-quo than implementing the international agreements, foremost is the recognition of 1967 borders with East Jerusalem as Palestinian capital. Mark Boyer's assertion on foreign policy

processes aptly depict the Arab-Israeli conflict, that the struggle is between those who believe they have something to gain in policy change and those who believe they have something to lose. Thus, Putnam's model elucidates that a successful peace process is unexpected with small win-sets.

The theory also helps us identify this conflict as *homogenous*, where the constituents' opinion does not vary much on the final status issues. Homogenous public opinion exists across Israel and Palestine, generating very rigid views on final status issues, thus dividing the public in two opposing groups. In such a situation the cleavage within Level II constituents is between *hawks* ( Hamas and Likud) and *doves* (Fatah and Labor). Hamas has been irrelevant during the period of nine-months, nevertheless it is an important player that notably directs the Israel-Palestine relations. Although Israel will not find a better alternative in Hamas than Fatah, at least Palestinians can hope for some progress in peace-talks with the Labor in power. Israel should remember that Palestine is not asking for a solution outside the international agreements, therefore it should not expect any Palestinian leader to agree to anything less than that had already been conceded at UN forums. Problem with such homogenous conflict is that neither negotiator is likely to find much sympathy for the other party's demands among each other's constituents. Thus, any Israeli leader will have to rise above their constituents and might have to pay a heavy price. The former Israeli prime minister Yitzhak Rabin was assassinated by a young Jewish student for giving up on the occupied territory. Changing the public opinion over a period of time might help the Israeli negotiators. President Obama in his second term had reached out to the Israeli public to sought their support in aiding the government to find a two-state solution.

The two-level games model does explain the failure of nine-month peace talks led by Secretary Kerry. However, in order to avoid complexity, we also assumed that the negotiators

did not have independent policy preferences but rather sought to achieve an agreement that would be attractive to its constituents. It is certainly possible that a negotiator may have preferences opposed to the constituents, and that can be a limitation of Putnam's theory.

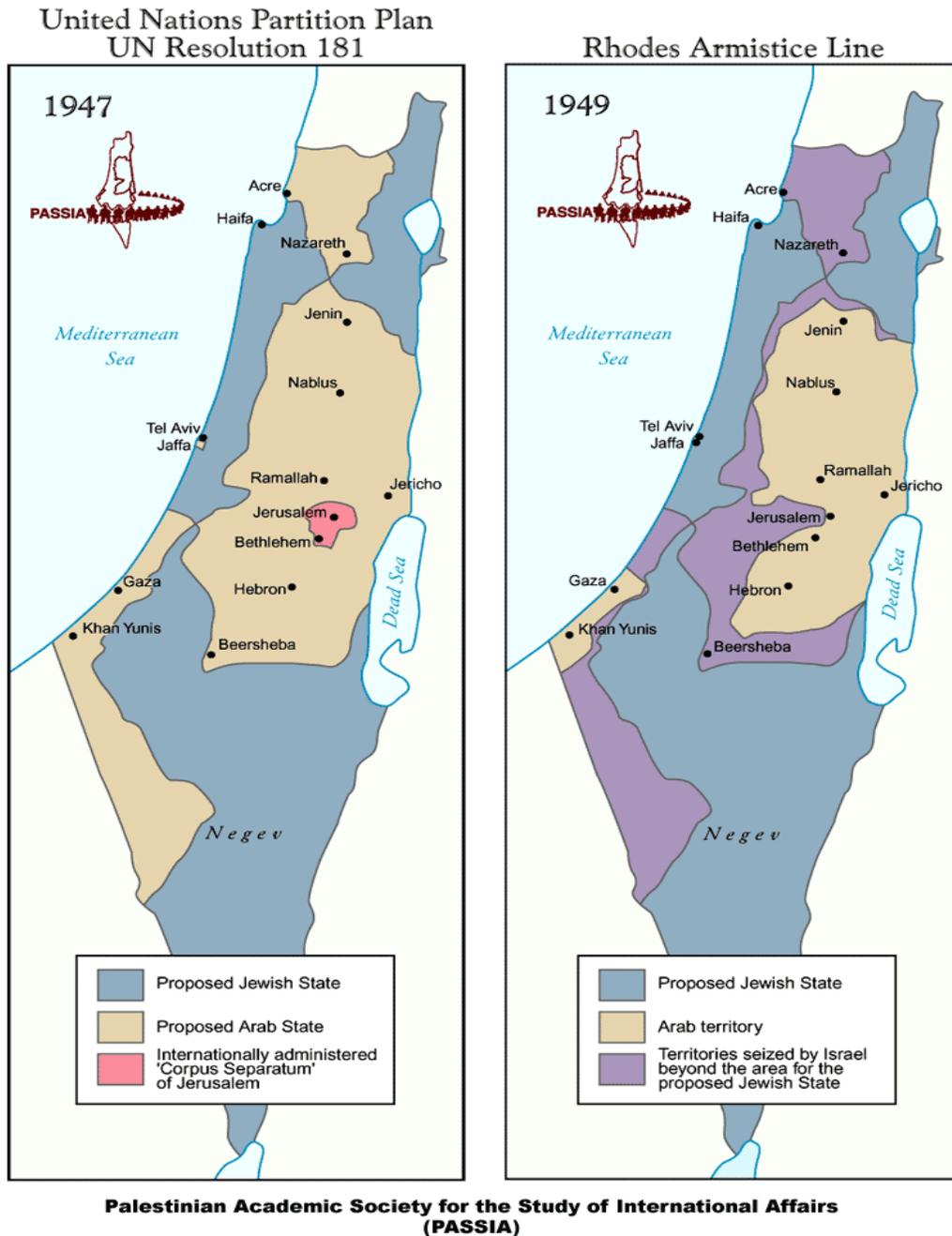


Figure 2: UN Partition Plan for Palestine and Rhodes Armistice Line. Figure on the left is the plan adopted on 29 November 1947. Map on the right shows the territory occupied by Israel as a result of 1948 Arab-Israeli war.

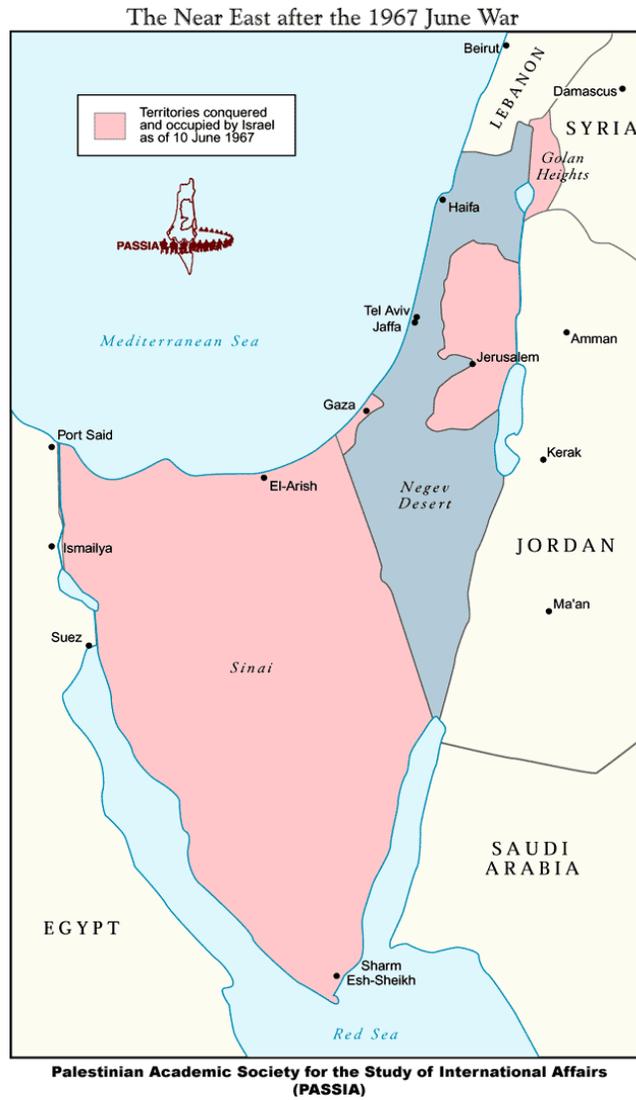


Figure 3: Palestinian territory occupied by Israel in 1967 war.

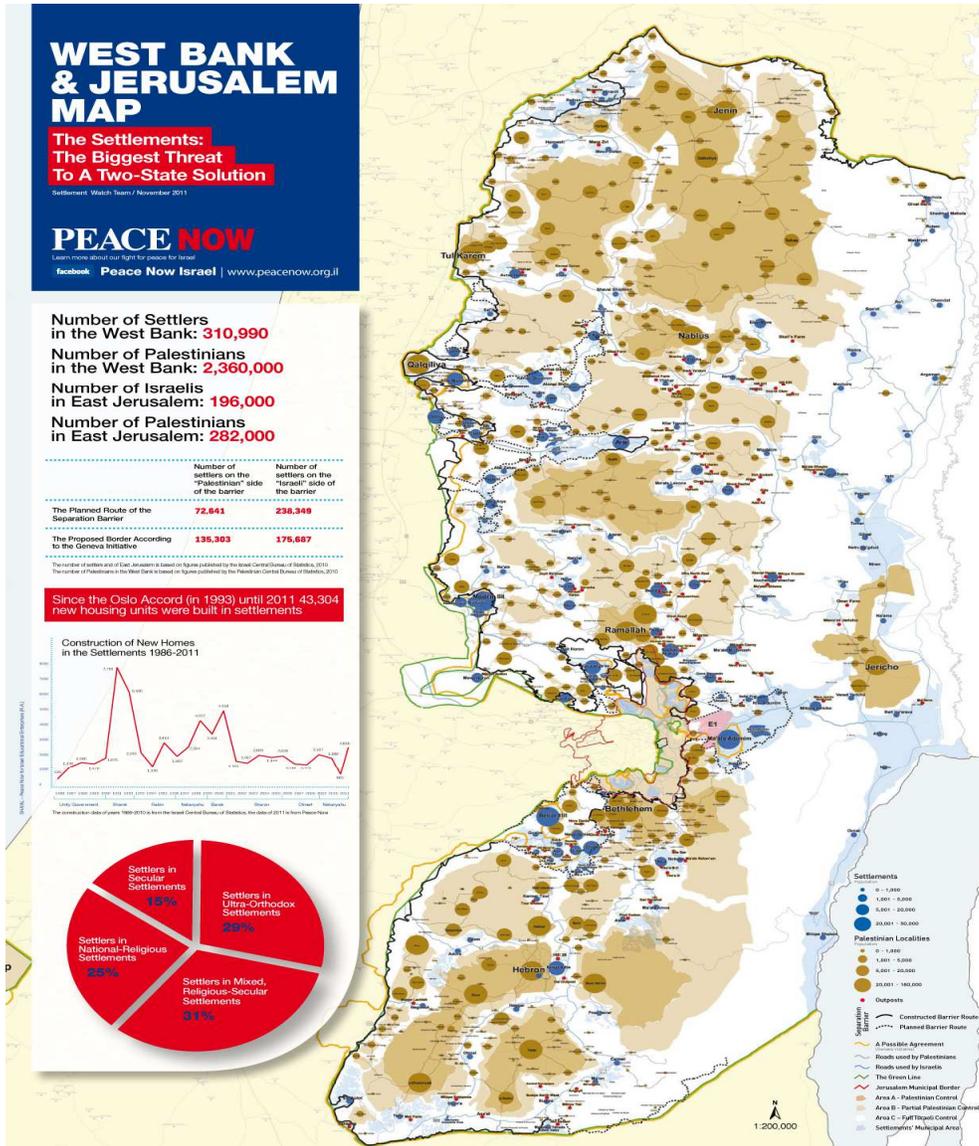


Figure 4: Settlements across the occupied territories.  
 Source: Peace Now.