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Middle East Peace Talks at the End of the Road?

One-State Reality Consolidating

Muriel Asseburg

The nine months of negotiations agreed last summer by the US mediators and the two parties ended on 29 April 2014. US Secretary of State John Kerry has since announced a pause in US facilitation activities. Yet, a definitive breakdown or failure of the Middle East peace talks bears far-reaching risks. Even if the mediators were to succeed in effecting a restart of talks, there is scant hope of bridging the rifts within the year envisaged – at least if the previous approach were to be maintained. That will lead to a further consolidation of the one-state reality that has long since emerged between the Mediterranean and River Jordan. Germany and its partners in the European Union must face up to the alternatives: either a much more robust approach to propel the talks to a two-state solution, or insistence on equal political, economic and cultural rights for all in the territories controlled by Israel.

The timeframe scheduled for conclusion of an Israeli-Palestinian peace agreement expired at the end of April. Despite US Secretary of State John Kerry's intense efforts, the talks made so little progress that by the end of 2013 he was concentrating primarily on achieving a prolongation. He first hoped to negotiate a framework agreement binding both parties to core principles for a peace settlement. But that could not be achieved by the approach he chose, as Kerry neither formulated such principles nor made concrete proposals for bridging the gaps between the positions. Instead he concentrated on sounding out the needs and priorities of the parties and presenting

these to the respective other side. But that did not lead to rapprochement. Worse still, the parameters defined by President Bill Clinton at the end of 2000 (and largely accepted as a point of reference since) were watered down. In addition, the lack of clear parameters and demands allowed Israeli Prime Minister Benjamin Netanyahu to place his demand for recognition of Israel as a Jewish state at the centre of the talks and the public debate, rather than negotiating over the final status issues of the Oslo Accords (borders and legal status of Palestine, Jerusalem, settlements, refugees and security arrangements).

Talks in Crisis

The conflicts finally burst into the open at the end of March 2014. In the scope of confidence-building measures agreed at the beginning of the talks in July 2013, Israel was to release 104 Palestinian prisoners imprisoned since before the Oslo Accords (in four stages), while the Palestinians promised to undertake no further action towards joining international conventions and organisations. Israel should have released the fourth and last group of Palestinian prisoners on 29 March, but Netanyahu made this conditional on the Palestinians agreeing to a prolongation of the talks. A series of confrontational actions by both sides ensued: President Mahmoud Abbas signed fifteen international conventions and treaties, including the “State of Palestine” joining the four Geneva conventions that regulate rights and obligations in military conflict and under occupation regimes and are therefore of particular relevance to the Palestinian Territories. Israel announced the issuing of tenders for about seven hundred housing units in Gilo (East Jerusalem), suspended cooperation with Palestinian ministries (with the exception of the negotiations and security cooperation), and declared its intention to once again withhold the transfer payments due to the Palestinian Authority (PA) under the Oslo Accords. Ramallah responded with reconciliation with Hamas. At the same time both sides remained concerned to signal to the United States that they were still keen to continue the talks, to improve their own negotiating position and blame the other side for the crisis.

The negotiating process is indeed a tight-rope walk for both leaderships. It is easier for them to continue it (at least in form if not in substance) than to make the “painful compromises” evoked so often or to break it off altogether. On the one hand, it is questionable whether Netanyahu wants substantial progress at all, as that would break apart his governing coalition and possibly even the Likud Party itself, as it would be rejected out of hand by Likud’s

settler wing and Greater Israel ideologues and by some of its coalition partners (notably Naftali Bennett’s HaBayit HaYehudi). President Abbas also lacks the support he would require to relinquish the “Palestinian constants”: a state in the 1967 borders (or at least an equivalent), the right of return for refugees and a Palestinian capital in Jerusalem. Abbas’s mandate has long since expired (at the latest in 2010), and his engagement in the talks is eyed with great suspicion in the Palestinian population and in his own Fatah Party. Almost eighty years old, Abbas has been further weakened by political infighting within Fatah over the selection of a deputy and potential successor.

On the other hand, both leaderships fear that breaking off the talks could increase international pressure on them, for example by lending weight to the international boycott movement against Israel or by endangering the financial basis of the extremely donor-dependent PA. However, for both leaderships continuing the process is the least worst option only as long as they can persuade their respective base that it does not harm them. For the Palestinian leadership this is extremely difficult in the face of unabated settlement construction. It remains uncertain therefore whether the US mediators can offer enough to persuade both parties to return to the negotiation table.

Issues and Principles

Even if the talks were to be extended by another year, it is extremely unlikely that the opposing sides would reach a final status agreement within that period. Their positions are miles apart on all final status issues and other questions – much further than in earlier talks, for example under Prime Minister Ehud Olmert in 2008. In this situation, the American side has done even less than previous administrations to balance the power asymmetry between the parties by laying down firm principles. This has led to a blurring of the contours for a

two-state settlement as formulated by President Barack Obama in his first address to the UN General Assembly in September 2009 and presented to the UN Security Council in greater detail by the E3 (Germany, France, United Kingdom) in February 2011: a territorial solution on the basis of the 1967 borders with agreed land swaps, security arrangements that satisfy the needs of both sides, a just solution to the refugee question agreed by both sides as well as the main host states, and Jerusalem as the capital of both states. The principal points of disagreement are as follows:

Jerusalem: While the Palestinians claim East Jerusalem as their capital, the present Israeli government insists on a united Jerusalem under Israeli sovereignty. Under the Clinton parameters both capitals should be accommodated in Jerusalem, with the Arab quarters under Palestinian sovereignty, the Jewish under Israeli. According to press reports, Kerry favours a Palestinian capital in just one quarter of East Jerusalem.

Territory/settlements: While Netanyahu accepted a two-state solution in principle in a widely noted speech at Bar-Ilan University in 2009, he also promised during the last election campaign that no settlements would be dissolved under his government. He has accelerated settlement construction and refuses to accept the 1967 borders as the basis for negotiations. Netanyahu also sprung a surprise demand that even settlements far from the settlement blocks, such as Pesagot and Beit El on the outskirts of Ramallah, should remain part of Israel. According to press reports Kerry's negotiating team has not insisted on the 1967 borders as the starting point for the talks.

The Palestinians, on the other side, assume that their state will comprise all the Palestinian territories occupied in 1967: the West Bank, East Jerusalem and the Gaza Strip. Even these represent only about 22 percent of the former British Mandate's territory, whereas the 1947 UN Partition Plan proposed an Arab state accounting for about 43 percent of the territory. In that respect, the Palestinians assert, they have

already made their historical compromise. Nonetheless, the Palestinian negotiators have accepted that there could be limited land swaps of equivalent size and quality so that some of the settlements on the Palestinian side of the Green Line would go to Israel, while Palestine would receive land on the other side in return. But they make such swaps conditional on them not leading to further fragmentation of the Palestinian territory and on affected citizens agreeing to resettlement.

Security arrangements: In earlier talks the Palestinians had already accepted that their state would not possess heavy weaponry. It would also not have freedom to enter into military alliances and would tolerate Israeli forces in the Jordan Valley for a transitional period (three years under the Clinton parameters). But now Netanyahu has been insisting on a long-term Israeli military presence in the Jordan Valley, and has rejected Abbas's suggestion to replace them with NATO forces. Israel also insists on the right of hot pursuit into Palestine in specific cases. Both of these conditions would mean the continuation of the Israeli military presence and operations and leave Palestine unable to protect its citizens against assaults. That, however, is unacceptable to the Palestinian side.

Palestinian refugees: During the first Arab-Israeli war about three quarters of a million Palestinians fled or were displaced. Today the number of Palestinian refugees registered with the United Nations has grown to about five million. United Nations General Assembly Resolution 194 of December 1948 grants them the right to return to their homes. In earlier negotiations the sides had already agreed that this would be accomplished largely through return to the State of Palestine and permanent settlement in current host countries or in third countries (with the respective state's agreement), and only in exceptional cases through return to Israel. Additionally, Israel was to recognise its share of responsibility for the refugee problem and a fund was to be set up to pay compensation to refugees. While

Prime Minister Olmert agreed to limited returns to Israel for humanitarian reasons and family reunification, Netanyahu strictly rejects any return of refugees.

Recognition of Israel as a Jewish state:

In the course of the 1993 Oslo I Accord the PLO recognised the State of Israel and Israel recognised the PLO as the legitimate representative of the Palestinians. The demand that the PA should recognize Israel as a Jewish state has been raised prominently only by Netanyahu. He has also used the debate over this to sow doubts about whether Palestinian negotiators were really negotiating in good faith over a two-state settlement in the sense of one state for the Palestinians and one for the Jews. Leaving aside that the question of Jewish identity is also highly contested within Israel, the PA rejects the demand for several reasons. First, it is established practice under international law to recognise states as such, not their identity. Second, such a move could be interpreted as the PA approving the unequal treatment of the Palestinian Israelis (who make up about 20 percent of Israel's population). And third it could be taken as a sign that the PA had renounced the right of return. If at all, therefore, Palestinian negotiators signal that recognition of Israel as the nation-state of the Jews could come only after, rather than before, the conclusion of talks settling these issues.

Consequences of Failure

The hardening of positions and the widening of the gaps between the two sides means that failure of the talks, if they are to restart at all, is foreseeable sooner or later, at least if no new approach is adopted. The latter would have to involve concerted international pressure to bind the parties to the basic principles of a solution, followed by intense mediation to clarify the details between the parties. An oversight mechanism would have to be established to monitor steps leading to a solution (as provided for but not implemented in the Middle East Quartet's Roadmap of 2003), the role of the

international community in peacekeeping concretised and the consequences of failure spelled out. The latter could, for example, mean freeing the way for an International Court of Justice legal opinion outlining a solution compatible with international law and its implementation by the UN Security Council. Admittedly, such a move (or a comparable one) cannot currently be expected from the United States. Not only does Congress reject presenting binding principles and exerting greater pressure, with great unity across party lines in this question. Obama's Administration is also under growing domestic pressure to turn its attention to other crises and problems rather than wasting yet more time on what are perceived as futile talks. Accordingly, the US administration announced a pause in its efforts in early May.

After more than twenty years of Oslo negotiations, large majorities in both populations would interpret failure of this round of talks as the failure of a negotiated solution per se. That would especially undermine and indeed fundamentally call into question the legitimacy of the PA, which was originally established to administer the Palestinian Territories for a transitional period (1994–1999), in which negotiations were to lead to liberation from occupation. That would also make it harder for the PA to cooperate with Israel to the extent it does today, for example in the sphere of security.

A Third Intifada?

An end of the talks would not, however, automatically lead to a third Intifada, in the sense of a renewed outburst of violence. In 2000 the Palestinian population still held high expectations of independent statehood and successful negotiations at Camp David, and the failure of those talks did therefore contribute to spark the second Intifada. But the most recent negotiations are followed largely with resignation. Surveys show that Palestinians (like their Israeli counterparts) have abandoned any

hopes they may have placed in the talks. Failure is therefore likely to provoke no more than a shrugging of shoulder in most quarters.

Also, Palestinian readiness to support another uprising is likely to be much smaller than it was fourteen years ago. Not only is the second Intifada viewed much less as a success than the first one, but the Palestinians are still suffering its consequences. Most painful is the loss of jobs in Israel and the settlements, where about one fifth of the Palestinian workforce was employed before the second uprising. What is more, the separation barrier de facto annexes about 8 percent of the West Bank and cuts East Jerusalem off from its Palestinian hinterland. Many Palestinians also worry about losing all they possess in any new protracted conflict with Israel, especially as private indebtedness has risen noticeably in recent years.

Finally, the Palestinian leadership under President Abbas will also seek to prevent any renewed popular uprising. Abbas categorically rejects the use of violence and is hardly likely to call for mass protests. Although largely peaceful “popular resistance” has gained traction in the population, especially among the youth, the major movements of Hamas and Fatah have encouraged it only half-heartedly. In view of their falling popularity, both leaderships in Ramallah and Gaza City must fear that mass protests could quickly turn against them too.

The End of the Palestinian Authority?

Even the threat to disband the PA, voiced with increasing frequency by figures including the President, appears more a help-less warning than a seriously intended step. The Palestinian political and economic elites are hardly going to renounce the privileges associated with a VIP status rooted in the Oslo Accords. The PA is also the recipient of international donations and the biggest employer in the Palestinian territories. A considerable proportion of the

population depends directly or indirectly on income from the public sector. Furthermore, while the PA has adapted its tactics increasingly to the given situation by pursuing other paths to independence alongside (and in future possibly instead of) talks, there is no sign of it fundamentally abandoning the objective of independent statehood. Handing responsibility back to the occupying power would, however, contradict its efforts to achieve recognition of Palestine on the international stage.

Yet, the collapse of the PA or at least a serious erosion of its ability to govern can by no means be ruled out. Israel is likely to respond with reprisals as soon as the Palestinian side takes any action it regards as confrontative. That would include official support of the Boycott, Divestment and Sanctions (BDS) movement or any attempt to sign the statute of the International Criminal Court. Israel could then withhold transfer payments or completely seal off particular areas. Certain donors, first and foremost the United States, would probably also suspend their support, at least partially.

The rapprochement of the leaderships in Ramallah and Gaza and their 23 April 2014 power-sharing agreement could entail similar consequences. While it is questionable whether important elements of the reconciliation agreement, such as the holding of largely free elections including Hamas or the integration of the two security services, can actually be realised, the announcement itself was enough to cause Israel to threaten to quit the talks. If a technocratic consensus government is actually established, Israel is likely to stop its transfer payments. It is by no means clear either how the European Union and its member states would relate to and cooperate with such a government that included members of Hamas (which has been on the EU terrorist list since 2003) or refused to explicitly affirm the so-called Quartet criteria (recognition of Israel, recognition of earlier agreements signed between Israel and the PLO, renunciation of violence). This risks exacerbating the

PA's financial difficulties, stemming from growing donor fatigue, and thus further restricting its functioning and legitimacy.

A recent study edited by Khalil Shikaki (Director of the Palestinian Centre for Policy and Survey Research in Ramallah) convincingly details the grave consequence of a collapse of the PA: The security situation in the West Bank would escalate dramatically and local militias would be re-invigorated. There would also be a massive socio-economic slump and public services would deteriorate noticeably.

Consolidation of a One-State Reality

After the dissolution or collapse of the Palestinian Authority it would no longer be possible to ignore the fact that a one-state reality has long since emerged in the areas of the former British Mandate of Palestine. Although Israel actually annexed only part of the occupied Palestinian Territories, namely East Jerusalem, it exercises de facto far-reaching control over the entire territory and its population.

The basis for this state of affairs was created by the Oslo Accords of 1993 to 1995, with the consent of the Palestinian leadership, who at the time assumed that this was merely for a five-year transition period. The Accords basically restrict the competencies of the PA to self-administration and maintaining internal order in the largely discontinuous parts of Area A and Area B (enclaves representing today about 38 percent of the West Bank). For Area C (about 62 percent) the Accords provide far-reaching Israeli control, including public order, security, planning and approval for all construction. In this manner Israel divested itself of some of the responsibilities of an occupying power, while the international community took over funding. At the same time, the Oslo Accords also gave Israel interim control of land and sea borders and airspace (with the exception, since mid-2007, of the border between the Gaza Strip and Egypt). Not least, the Accords cemented Israeli

domination over Jerusalem and over the Palestinian economy.

Since Oslo, there has been a further entanglement of the populations – that must not be confused with a harmonious coexistence. Israel's continued settlement construction in the West Bank and East Jerusalem, in violation of the Oslo Accords, and its withdrawal of the settlers from the Gaza Strip in 2005, have produced a complex demographic pattern between the Mediterranean and the River Jordan, where inhabitants enjoy different rights (or are denied them) depending on citizenship, place of residence and ethnicity/religion. Already today there is no longer a Jewish majority in the region controlled by Israel, which is home to about 8 million Israelis (of whom some 6 million are Jewish, including roughly 550,000 Jewish settlers in the West Bank and East Jerusalem), about 4.4 million Palestinians and roughly 1.6 million Palestinian Israelis. Indeed, the Jewish share of the population is set to decline, due to higher fertility among the Palestinians and because the waves of immigration seen in the 1990s are unlikely to be repeated.

At the same time, since Oslo there has been no progress towards sustainable development in the Palestinian Territories, an end to the occupation and the establishment of two states. The considerable international investments in Palestinian government institutions and the private sector have thus remained as ineffective as the recognition of Palestine as a “non-member observer state” by the UN General Assembly in November 2012.

Instead the territory envisaged for a Palestinian state has become ever more fragmented through the construction of settlements, settlement infrastructure and the separation barrier, the blockade of the Gaza Strip, a complex system of checkpoints, separate roads and travel permits, and the internal Palestinian split. The everyday lives of the Palestinians remain dominated by the occupation.

Conflicts over Gaza and Jerusalem

Other festering conflicts threaten an already fragile stability. The cease-fire between the Hamas government and Israel, mediated by Egypt after the last round of fighting in 2012, has been increasingly eroded in recent months. There is an acute danger that a miscalculation by one or other side could set in motion a renewed military escalation. In fact since Oslo the periods between armed conflicts involving the Gaza Strip have been short (2002, 2006, 2008/09, 2012) and reprisal strikes have become routine.

Also, the situation in the Gaza Strip, which has been under Israeli blockade since 2006 (even if it has been slightly eased in the interim), has worsened further since the military coup in Egypt in July 2013. After the coup Hamas was declared a terror organisation in Egypt, the Rafah border crossing between the Gaza Strip and Egypt has been almost permanently closed, and most of the tunnels under the border have been destroyed. As a result, the humanitarian situation in Gaza has drastically worsened, the economy has collapsed and the population has lost its last physical connection to the outside world. The Hamas government has also lost its main source of revenue, which was the licensing and taxation of trade through the tunnels. As a consequence, it can no longer pay wages and salaries in full, making most of the Strip's population once more dependent on international humanitarian aid. The suffering is heightened by funding problems at the UN relief agency UNRWA, which has already had to scale down its services to refugees and poor families.

In an unpublished March 2014 report, EU member states' representatives paint a dramatic picture of the situation in East Jerusalem, warning urgently of an escalation of the dispute over the holy sites. Radical Jewish groups are attempting to alter the status quo at the al-Aqsa Compound or Temple Mount, where a demonstrative visit by opposition leader Ariel Sharon in 2000 triggered the second Inti-

fada. But the situation in East Jerusalem as a whole is explosive as Israel has massively expanded its settlement activities there since the resumption of negotiations in July 2013. Additionally, there is discrimination in provision of public services and construction permits, and Palestinian homes built without permits have increasingly been demolished.

Conclusions

Even if there were a return to negotiations, they cannot be expected to produce a two-state settlement – with the result of a further entrenchment of the one-state reality. Germany and its European partners should face up to the alternatives: Either there must be robust negotiations based on clear international principles to still achieve a two-state solution after all. Or ways must be found to deal with the one-state reality without tolerating violations of international law or accepting that “might is right”. There is no sense in speculating about the point of no return from when a two-state settlement would no longer be possible. After all, housing and infrastructure can be dismantled or used by other population groups. But the political and material costs for a change of course rise with every new settlement unit constructed in the occupied territories.

It would be sensible for the EU member-states to follow two guiding principles. *First* they should work to prevent crises such as the complete or partial collapse of the PA (for example as a consequence of Israeli reactions to the formation of a national consensus government) and renewed outbreaks of violence, for example in Gaza or Jerusalem. *Second* they should seriously consider whether they are willing and able to persuade the United States to adopt a considerably more robust approach to the negotiations. The alternative is unpalatable to all sides. With a vast majority of both populations, and Jewish Israelis in particular, rejecting a one-state settlement, that approach is unlikely to lead to a consensual

solution. Still, in the absence of progress towards two states, the division of responsibilities between Israel and the PA agreed in Oslo and the associated assumption of most of the costs by the international community will have to be questioned. And instead of continuing to pursue the support of Palestinian statehood, Europe will then have to demand equal political, economic and cultural rights for all inhabitants of the territory controlled by Israel.

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