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Lessons from the Kerry Peace Initiative and the Need for a Constructive Approach

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Abstract

The failure of the most recent peace efforts in the Israeli Palestinian conflict, by Secretary of State Kerry, followed by the Palestinians' decision to pursue the unilateral track, underlines the need to examine the factors that led to this failure and to draw lessons that perhaps will provide a better understanding of what is possible to achieve in a future negotiation. The following analysis indicates that the failure of the process can be attributed to structural factors, substantive factors and the third party's conduct, including setting a goal that was unrealistic, asymmetrical conduct and a lack of understanding of the complex political and cultural factors on both sides. Any attempt to resume the peace talks between the parties will have to take these factors into consideration.

Keywords: *Israeli Palestinian conflict, game theory, mediation*

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Lessons from the Kerry Peace Initiative and the Need for a Constructive Approach

Amira Schiff

Introduction

In the 1994 Oslo Accords, Israel and the Palestine Liberation Organization (PLO), acting on behalf of the Palestinians, committed to signing a final status agreement by the end of a five-year transition period. The final status accord would resolve the core issues, bringing an end to the conflict and an end to the demands of both sides. In the framework of the final status agreement, six core issues were to be resolved: the borders of the Palestinian state, Israel's security arrangements, the future status of Jerusalem, the refugee issue and the Palestinian demand for the right of return, the status of the Jewish settlements, and the allocation of water resources in the West Bank.

Since then, there have been three significant efforts to reach a final status accord with American mediation. The first occurred under President Clinton during the years 1999-2000, when Ehud Barak was serving as prime minister of Israel and Yasser Arafat was Palestinian Authority (PA) president. The second was the Annapolis process during the Bush administration in 2007-2009, during Ehud Olmert's tenure as prime minister and with Mahmoud Abbas serving as president of the PA. The third effort occurred during the years 2013-2014, between Prime Minister Benjamin Netanyahu and Chairman Mahmoud Abbas, with mediation by John Kerry, Secretary of State in the Obama administration. In all of these initiatives, there was no lack of goodwill on the part of the mediators, and it seems that they did their best to bring the sides to the negotiating table and to help formulate an accord.

Despite the apparent progress achieved in each of these negotiation efforts, wide gaps remained between the sides on most of the issues. The failure of the most recent efforts by Secretary of State Kerry, followed by the Palestinians' decision to pursue the unilateral track, underlines the need to examine the factors that led to this failure and to draw lessons that perhaps will provide a better understanding of what is possible to achieve in a future negotiation. The following analysis indicates that the failure of the process can be attributed to structural factors, substantive factors and the third party's conduct, including setting a goal that was unrealistic, asymmetrical

conduct, and a lack of understanding of the complex political and cultural factors on both sides. Any attempt to resume the peace talks between the parties will have to take these factors into consideration.

This article has three parts: The first reviews the process between Israel and the Palestinians under Kerry's mediation; the second analyzes the structural and substantive factors pertaining to the third party's conduct that had a detrimental impact on the process; and in the third, I present a number of recommendations for facilitating a more constructive process in the future.

Background

A number of significant developments in Israeli-Palestinian relations characterized the early period of Obama's first term: In June 2009, Netanyahu delivered his "Bar-Ilan speech" in which he spoke for the first time about the need for a two-states-for-two-peoples solution and of his readiness to establish a demilitarized Palestinian state alongside the Jewish State of Israel (Becker, 2011; Ravid, 2013a). As a result of American pressure and preconditions the Palestinians set for renewing talks, Netanyahu agreed in November 2009 to freeze construction in settlements for a period of ten months (Birnbaum & Tibon, 2014).

The peace talks that commenced in a festive ceremony at the White House stopped after only three weeks, when the Palestinians claimed that Netanyahu was not negotiating seriously and refused to present clear positions on the question of the borders of the Palestinian state. In addition, the Palestinians demanded an indefinite construction freeze in the West Bank. During the years 2011-2012, several additional rounds of both covert and formal overt talks were held between senior Palestinians and Netanyahu and his emissaries. However, there was no breakthrough. Both sides were mainly engaged in blame games and in an effort to cast responsibility for the deadlock on the other side.

In the wake of the diplomatic deadlock, the Palestinians began taking unilateral steps. In September 2011, the Palestinians asked the UN Security Council to recognize the new state, but they were unable to mobilize the required majority. A year later, in November 2012, they turned to the UN again, this time to the General Assembly, requesting to upgrade their status in the organization to that of a non-member observer state. The Palestinian request was approved by a large majority.

Early in Obama's second term, the president appointed Secretary of State Kerry to oversee the Israel-Palestinian peace process. In late-March 2013, Kerry

initiated diplomatic efforts to renew direct negotiations between the sides following the three year hiatus. After about six rounds of shuttle diplomacy between Jerusalem and Ramallah, and dozens of meetings and telephone conversations with Netanyahu and Abbas, Kerry was able to formulate understandings for renewing the talks in July 2013.

Kerry set a very ambitious initial target for the talks: a comprehensive peace treaty for a two-state solution within about nine months. The Palestinians committed to enter into the talks and not to walk away from the negotiating table, and they promised to freeze all unilateral steps against Israel in the UN during the nine-month period slated for negotiations, including the campaign on war crime allegations at the International Criminal Court. The Palestinians demanded that Israel reciprocate with significant confidence-building measures: an indefinite freeze on construction over the 1967 “Green Line” and an additional release of 104 Palestinian prisoners imprisoned before the 1993 Oslo Accords. They also demanded that the talks be based on the 1967 lines as the international border (Birnbaum & Tibon, 2014). Israel agreed to a four-stage release of 104 Palestinian terrorists imprisoned for their involvement in murders of Israelis committed prior to the Oslo Accords and to significantly limit settlement construction during the months of negotiations (Birnbaum & Tibon, 2014). The sides agreed in advance to discuss all of the core issues during the negotiations and that the final accord would end the conflict and the demands of both sides.

In Israel, the agreement to release terrorists as a confidence building measure was met with intense protests, led by the families of the victims and subsequently, at each of the stages, the protests resumed. Among Palestinians, there was criticism of the agreement to return to negotiations in the absence of the construction freeze that had been demanded previously. Whether or not the American mediators understood this criticism and its intensity is unclear (Birnbaum & Tibon, 2014).

On the basis of the agreement to resume talks, Kerry sent a letter of guarantees to the sides in which he declared that the U.S. position is that the borders of the future Palestinian state should be based on the 1967 lines with land swaps (Birnbaum & Tibon, 2014). At the same time, Kerry sent Israel a letter of guarantees clarifying that the U.S. position was that the borders of the Palestinian state would not be identical to the 1967 lines; border adjustments would be made in accordance with the reality on the ground – implying recognition of the Sharon-Bush letter regarding the large

settlement blocs. The letter of guarantees to Israel also made clear the U.S. acceptance of the key Israeli demand to be recognized as a Jewish state (Ravid, 2013a). Former U.S. ambassador to Israel, Martin Indyk, was appointed to serve as special envoy for the peace process, responsible for facilitating the talks on behalf of the American administration. The U.S. intended to play an active role in the talks, to oversee their progress, to resolve crises and to offer bridging proposals if necessary.

From the outset, there were wide gaps between the sides on all of the core issues, as well as considerable skepticism on both sides (Ravid, 2013a; Birnbaum & Tibon, 2014). The Israelis and Palestinians were unable to agree at the beginning of the process on the agenda for the talks. The Palestinians demanded that the negotiations begin by discussing borders and security arrangements, while Israel demanded that all of the core issues be discussed in parallel, fearing an end to talks after the borders were drawn, but without concessions on refugee demands or other issues.

Israel also insisted on reaching understandings on its demands for security arrangements before discussing the borders of the Palestinian state, and that in any final agreement Israel would maintain a military presence for decades in the West Bank and along the Jordan River in particular. The Palestinians opposed any presence of Israeli soldiers or settlers in the territory in the framework of a final accord. On the subject of Jerusalem, the differences between the sides were even more profound. The Palestinians demanded a return to the situation that existed in the city prior to June 4, 1967, while the Israeli government rejected discussion of transferring sovereignty over parts of Jerusalem to the Palestinians.

On the key subject of refugees and historical responsibility, the Palestinians demanded that a number (to be determined by the two sides) of refugees and their descendants be allowed to return, as well as compensation for refugees and an Israeli declaration of responsibility. Israel refused to recognize any responsibility for 1948 refugees and rejected the Palestinian concept of a “right of return.”

In addition, in order to ensure the “end of conflict” and prevent future nationalist demands by Arab citizens of Israel, Israeli negotiators called for formal recognition of Israel as the nation-state of the Jewish people. The Palestinians countered that they had recognized Israel in the Oslo Accords and they refused to recognize Israel as a Jewish state for symbolic reasons pertaining to the Palestinian

narrative vis-à-vis the conflict and because they feared this would harm the rights of the Arab citizens of Israel (Ravid, 2013a).

Under American leadership, Justice Minister Tzipi Livni and Yitzhak Molcho (Netanyahu's representative) from the Israeli side and Saeb Erekat and Mohammad Shtayyeh from the Palestinian side met about 25 times between August and December of 2013. Indyk participated in some of the meetings, and some were conducted directly between the sides without mediation. These talks did not lead to a breakthrough. The two sides focused on presenting their basic positions, and reportedly did not include the "give and take" expected in any negotiation (Birnbaum & Tibon, 2014; Ravid, 2014c).

Following the second stage of the prisoner release, which was accompanied by major protests in Israel, led by the families of the terror victims, the Palestinian negotiating team resigned (again), alleging a massive wave of settlement construction (Birnbaum & Tibon, 2014).

Although Kerry had intended to mediate between the two sides, in direct talks, in order to reach a detailed final status accord already in mid-November 2013, he realized that in light of the vast disagreement between the sides, this goal was not realistic and that it would be better to focus on a framework agreement defining the borders of the two-state solution. At this stage, the Americans switched to indirect negotiations via proximity talks aimed at a more modest goal: the signing of a framework document by the end of March, outlining negotiations between the sides that would define the principles for resolving the core issues. Kerry and Indyk conducted intensive contacts on the document, shuttled between the two sides and tried to bridge the gaps (Ravid, 2014c). However, here too, after they reached some understandings with Netanyahu, the Americans discovered (in Kerry's meeting with Abbas in Paris on February 19) that these terms were very far from what Abbas was ready to accept; the gaps between the sides were too wide, making it impossible to reach an agreement on this sort of framework document (Ravid, 2014a; Ravid & Khouri, 2014).

Kerry adopted an even more modest goal in late-February 2014: an American document of principles that both sides could accept in principle, while expressing reservations about some of its content. The document of principles was designed to enable the continuation of the nine months of final status negotiations that were supposed to conclude in April 2014. The Americans understood that without reaching

understandings on the document, it would be very difficult for Netanyahu to carry out the fourth and last round of prisoner releases, which would lead to the collapse of the entire process. Consequently, they began a marathon of conversations with the sides in order to extend the negotiations (Brom, 2014). However, the gaps between the sides were still too big (Birnbaum & Tibon, 2014).

Under intense public pressure, Israel refused to release the fourth group of terrorists on the scheduled date without a Palestinian commitment not to quit the peace talks at the end of April, as well as a commitment to refrain from resuming unilateral action at the UN. Abbas, on his part, emphasized that if the prisoners were not released, he would not even consider extending the negotiations and would immediately resume unilateral action at the UN (Halevi, 2014). The Palestinians rejected proposed alternatives to the prison release and refused to discuss the American compromise proposals for continuing the process and preferred to seek acceptance into international institutions, contrary to their commitments (Birnbaum & Tibon, 2014; Yadlin, 2014).

In June, tensions increased rapidly. Three Israeli teenagers were kidnapped and killed, followed by a revenge killing of a Palestinian boy, and increased rocket fire from Hamas-controlled Gaza. This led to a seven-week war between Israel and Hamas.

In October 2014, after this war ended, Kerry tried to promote a new diplomatic initiative as an alternative to the unilateral Palestinian efforts at the Security Council. Kerry checked with Netanyahu if he would agree to an initiative that would include resuming negotiations on the borders of the Palestinian state based on the 1967 lines with land swaps. Netanyahu did not reject Kerry's ideas out of hand (Khoury, 2014). At the time, the Palestinians were trying to win the support of nine members of the Security Council for their request to define a timetable for ending the Israeli occupation of the West Bank in their quest to establish a state. The proposal was rejected by the Security Council in late-December 2014 (Khoury, 2014; Tibon, 2014b). In early January 2015, the Palestinian Authority submitted a request to join 22 international conventions, including the Rome Statute of the International Criminal Court (ICC) in The Hague. For many years, the Palestinians believed that

international institutions, including the ICC would serve as a powerful instrument for exerting international pressure on Israel.¹

Factors Behind the Failure of the Process

There are a number of reasons for the failure of the process, some of them stem from structural factors, some from substantive factors and some from factors directly pertaining to the third party's conduct.

At the beginning of the contacts, the conflict was not ripe for reaching an agreement. The lack of trust between the leaders was profound, and neither side believed there was a partner to an agreement on the other side. The gaps between the sides on all of the core issues were wide, there was great skepticism on both sides, their assessment of the likelihood of reaching a final accord within nine months was very low (Ravid, 2013a), and the unilateral track was an attractive alternative for the Palestinians (Birnbaum & Tibon, 2014).

These elements did not change during the course of the negotiations. The distrust between the sides became more acute in light of the way the process was conducted (Birnbaum & Tibon, 2014). Confidence-building measures only served to further erode confidence due to the inept way in which they were implemented and made it more difficult to generate public support for an agreement (Brom, 2014; Yadlin, 2014). For example, the prisoner release was designed to serve as a confidence-building measure, but instead turned into an issue that undermined trust. From the perspective of Israel's government, the release of terrorists meant that the talks would resume without freezing settlement construction (Birnbaum & Tibon, 2014). On this issue, at least, what was intended to strengthen Abbas actually ended up weakening him politically.

On the other hand, the Palestinians failed to understand that the release of murderers was a very sensitive issue in Israeli society. The celebrations in the

¹ This step was expected to be welcomed by the Palestinian public and to boost the standing of the PA and its leader, Abbas, whose popularity dropped after the conflict in Gaza. In a survey conducted by the Palestinian Center for Policy and Research, 80% of the respondents supported joining additional international bodies, and 75% supported joining the ICC. The New York Times (2015) "What is the significance of the PA's turn to the ICC?" Haaretz, January 3 .<http://www.haaretz.co.il/news/politics/1.2528610> (Hebrew).

Palestinian street for the released prisoners convicted of murdering Israelis had a very strong negative impact on public opinion in Israel. Moreover, from Israel's viewpoint, the reconciliation pact between Fatah and Hamas in late April 2014 and Fatah's agreement to form a unity government with Hamas and Islamic Jihad – despite the declarations by the leaders of these organizations that they do not recognize Israel and would not abandon the path of terrorism – struck a final, destructive chord vis-à-vis negotiations (Birnbaum & Tibon, 2014; Yadin, 2014)

The political atmosphere on both sides, from the outset, also did not encourage progress in the peace process. On the Palestinian side, Abbas was weak within his own political camp and lacked legitimacy among the Palestinian public at large. Elections were long overdue and internal conflict unrelated to Israel were increasing (Brom, 2014). Palestinian society was immersed in a deep political crisis, with a rift between the West Bank (ruled by Fatah) and the Gaza Strip (ruled by Hamas). Hamas fiercely opposed Abbas' diplomatic efforts. In Abbas' own Fatah party, there were also reservations about negotiating with the Netanyahu government (Birnbaum & Tibon, 2014). Throughout the process, many senior Palestinian figures favored returning to unilateral action at the UN and exerting international pressure on Israel (Birnbaum & Tibon, 2014; Halevi, 2014). As Rabbani argued,

“The fact of the matter is that Israeli-Palestinian negotiations, broadly supported by Palestinian opinion during the 1990s and largely tolerated during the previous decade, have lost any of their residual acceptability during the Obama-Netanyahu-Abbas era. This is true not only for Hamas and the camps in Lebanon, but also for the Fatah Central Committee (which rejected participation in the negotiations before Abbas had even embarked on them), and a growing proportion of Abbas's innermost circle.” (Rabbani, 2014).

Israelis were also very sensitive to what they saw as the continued incitement in the PA by officials close to Abbas, as well as in the education system and Palestinian media against the existence of Israel, denying the Jews' connection to the Holy Land, preaching that Israel would inevitably and soon disappear, that the Jews are subhuman creatures and should be treated as such, and that all forms of resistance, including terrorism, are legitimate for achieving the final goal. The ongoing incitement since the signing of the Declaration of Principles in 1993 undermined the legitimacy of the peace accord among the Palestinian public and eroded belief among

Israelis regarding the possibility of achieving a stable peace based on two states (Yaar & Hermann, 2014a).

On the other hand, Palestinian skepticism on reaching an accord with the Netanyahu government was increased due to the fragmented coalition that was liable to collapse if major concessions were made without the expected quid pro quo, particularly on the refugee claims. Most of the MKs in Netanyahu's coalition, including from the Israel Beitenu, Jewish Home and Likud parties were skeptical regarding the claim that the establishment of a Palestinian state would bring peace.

Three key elements in the conduct of the American mediation effort also contributed significantly to the failure of the process: setting a goal that was too ambitious and unrealistic; the appearance and perhaps the substance of asymmetrical conduct; and a lack of understanding of the complex political and cultural factors on both sides.

First, Kerry's initial goal of reaching a final agreement within nine months was clearly overly ambitious and disconnected from the political context and realities in a region that has known many failures. In light of the lack of readiness on both sides, the lack of trust between them, and the internal political limitations of each, it is hard to understand how Kerry ever thought he could resolve the conflict, especially in such a limited period of time. It seems that the American mediator was the only one who harbored any expectations of success – expectations that were not shared by either the Palestinian side or the Israeli side (Birnbaum & Tibon, 2014).

The failure of the negotiations can also be attributed to the mediator's asymmetrical conduct, as perceived by the two sides. The Americans saw the Palestinians as the weaker party, and their own position was often closer to that of the Palestinians, particularly on settlements (Ravid, 2014c). They also assumed that Abbas was already prepared to make far-reaching concessions (Birnbaum & Tibon, 2014). Consequently, the U.S. team invested most of their efforts vis-à-vis Netanyahu and Israel. Fearing that the Palestinians would lock into a recalcitrant position, the Americans decided not to present any proposal to them until they felt that the contacts with Israel were significantly productive. The result was marathon conversations focused on the Israeli side, including intensive discussions with Israel on the framework document – both with Minister Tzipi Livni, who led the effort to formulate the framework document, and through negotiations conducted directly between Netanyahu and Kerry in videoconferences held on almost a daily basis. Kerry exerted

heavy pressure on Israel to accept the framework agreement; he refrained from investing similar efforts vis-à-vis Abbas (Ravid, 2014c).

For example, to influence public opinion in Israel, the secretary of state made an exceptional public statement on the alleged danger Israel faced from boycotts and international isolation if it failed to reach an accord, and arguing that Israel would become an apartheid state if it did not achieve peace (Ravid, 2014b). This received extensive publicity in Israel, much of it highly critical (Yaar & Hermann, 2014b; Ravid, 2014b).

American and Israeli officials involved in the talks on the framework document noted that during the negotiations and the work on the framework document, Netanyahu indeed slowly but consistently softened his views and showed seriousness and readiness to move forward (Friedman, 2014; Birnbaum & Tibon, 2014). Martin Indyk is quoted as saying that after six months of direct negotiations between the parties, Netanyahu moved into the "zone of a possible agreement" and was prepared to make substantial concessions (Friedman, 2014).

The American pressure on the Netanyahu government to moderate its stance was perceived by the Israeli public as unfair and as a misguided effort aimed at pushing Israel toward unacceptable concessions (Yaar & Hermann, 2014b). On the other hand, the American pressure on Israel led the Palestinians to adopt a rigid stance; they understood that Israel would have to pay a heavy price if it refused to compromise on the core issues (Yadlin, 2014).

The asymmetry in mediation contributed to a hardening of the Palestinian position, as reflected in Abbas' refusal to discuss the American document of principles and compromise proposals for extending the process. As noted, the Americans did not want to present the Palestinians with an insignificant proposal, fearing that this might diminish the Palestinians' willingness to cooperate. Thus, the Americans refrained from discussing with the Palestinians the document it formulated with Netanyahu until the document was already in an advanced stage (Ravid, 2014c). However, the mediator's conduct led to precisely the situation they feared. When Kerry met Abbas in Paris on February 19, 2014, and presented to him orally the key points of the document he had formulated with Netanyahu, Abbas – who thought that Kerry was trying to sell him a finished product – refused to conduct talks on the framework document and insisted that Israel first release all of the prisoners included in the commitment ostensibly made at the beginning of the negotiations.

In efforts to negotiate with him a month later, including Abbas' meeting with Obama in mid-March 2014, the Palestinian president refused to discuss the framework agreement he saw as a conspiracy against him. He only agreed to give Obama a vague promise that he would get back to him within a few days with a response regarding the framework document (Ravid, 2014a; Friedman, 2014). But this never happened.

Generally, the Palestinians perceived the American proposals as a mirror of the Israeli position on all important issues (Khalidi, 2014). In light of the fact that drafts of the document of principles went back and forth between Washington and Jerusalem on a daily basis, the wariness of the Palestinians and their frustration with the Americans became even deeper, and they lost interest in the process (Birnbaum & Tibon, 2014).

Recommendations

Based on the unsuccessful attempts to reach a final agreement in the past, it should be recognized that both sides are unable at this stage to fully respond to the other side's needs and are not yet ready to reach a permanent accord. The goal should be a structured process of conflict management in which trust would gradually develop and the sides would become convinced that they can attain tangible achievements as a result of the process and an agreement. The question is how to move toward this goal.

Since one of the significant problems that characterized the recent process was a lack of trust between the sides, a confidence-building process should be developed in the form of a less ambitious goal of achieving transition agreements that would pave the way toward the final accord. A process should be created that combines continued negotiations on the final agreement with transition arrangements. Such arrangements would include a long and gradual process of significant confidence-building measures, with clear criteria for transitioning from one stage to the next. The objective would be to nurture a reality of two states without requiring the leaders to make historical concessions. This would enable the sides to gradually take risks and would demonstrate progress toward a two-state solution, while gradually building a Palestinian state on territory expanded at the expense of Area C. This would also include coordinated unilateral moves in support of this process (Brom, 2014).

Steps that are likely to contribute to the process would include Israel's transfer of additional areas to Palestinian control, cooperation in developing areas that are under Palestinian control, a halt to settlement construction in areas that clearly will not remain within Israeli territory in any future agreement, and the gradual transfer of parts of Area A to Palestinian sovereignty (the future of Area A is supposed to be determined in the final agreement. The gradual transfer of parts of Area A to Palestinian sovereignty already in the transition period would provide an opportunity to address permanent status issues in a way that builds trust). On the Palestinian side, such steps would include tightening security cooperation with Israel, leveraging internal Palestinian rapprochement and the joint government with Hamas to induce Hamas and the other Palestinian factions to recognize the Quartet's conditions: abandoning the path of terrorism, accepting previous agreements and recognizing the State of Israel. In addition, it is important to demand the implementation and oversight of a culture of peace and prevention of incitement in the PA. Without a cessation of incitement against Israel and an effort to instill education for peace, security arrangements – even if agreed upon – will not last for long and a stable peace will not be maintained.

The gradual process of building trust will in itself constitute a part of the process of preparing the sides for a final accord. Moreover, from the procedural aspect of negotiation, regular and frequent meetings of the leaders should be scheduled to try to bridge the distrust between them and to formulate decisions that can only be made at that level. There should be dialogue between working groups devoted to each of the core issues, aimed at identifying areas of agreement and points that would enable mutual concessions (Yadlin, 2014).

The American mediator should also conduct a strategic reevaluation of how to best pursue his role: Should the mediator continue to try to pressure Israel to soften its position, as was the case in the recent negotiations, or instead try to demand mutual concessions and exact a greater price for refusing to consider or respond to proposed compromise formulas? The Palestinians presented their decision to pursue the unilateral path of acceptance into international institutions and to submit a proposal to the Security Council to end the conflict as a response to the delay in carrying out the fourth round of the prisoner release and the announcement of Israeli construction. The latest in the series of unilateral steps was the Palestinian petition to the ICC. These moves can be seen as a result of a “cooperative game with binding threats”

strategy (Harsanyi, 1977, pp. 167-168). In this game, the players declare their threat strategies at the beginning of the game, and use promises or threats that have binding force. If the players are unable to reach an agreement compatible with their priorities, they must execute the threat they declared at the beginning of the game. The execution of the threat against the rival entails a certain cost for the executor of the threat. The negotiation framework defined in advance enabled the Palestinians to choose the unilateral path at the end of the nine months of negotiations. Already in October 2013, the Palestinians began drafting Plan B that would include resuming a UN campaign (Birnbaum & Tibon, 2014; Halevi, 2014) and were threatening to quit negotiations already during the talks that took place in November (Birnbaum & Tibon, 2014). What eventually transpired was that in March 2014 the Palestinians refused to discuss the American compromise proposals for continuing the process while still within the framework of their nine-month commitment², and preferred instead to seek acceptance into international institutions, contrary to their commitment (Birnbaum & Tibon, 2014).

According to the logic underlying the cooperation game with binding threats, in a conflict situation each player prefers to avoid the cost of executing a threat if possible, unless execution of this threat would yield some direct benefit for him (Harsanyi, 1977, p. 167). Thus, Palestinian Chairman Abbas insisted on using international institutions to pressure Israel, including addressing the UN Security Council and turning to the ICC. It appears that the Palestinian leadership determined that the cost of saying yes to the American proposal to continue the negotiations was higher than the cost of turning to the unilateral path. However, this move will likely be ruinous for the peace process, producing Palestinian charges and Israeli countercharges (Ross 2015) and will certainly lead to further conflict and less cooperation.

The Palestinian leadership's difficulty in considering concessions on the core issues (e.g., Camp David 2 in 2000, Annapolis in 2008, and in the negotiations

² It is reported that in March 2014, Saeb Erekat, a member of the PLO executive committee and head of the Palestinian negotiating team, prepared a 65-page document that surveyed the developments in the diplomatic process and offered a list of recommendations for the PA, some of which Abbas implemented in the beginning of April. See more at Jonathan D. Halevi, "The Crisis in the Peace Talks Was Pre-Planned by the Palestinians." Jerusalem Center for Public Affairs. April 10, 2014. <http://jcpa.org/article/crisis-peace-talks/>

mediated by Kerry) and in seriously weighing compromise proposals presented to them, as well as the challenge of making decisions on issues that entail high political costs, leads to the conclusion that the final resolution of the conflict – that is, a permanent agreement to be signed in the future by Israel and the Palestinians – must include a blanket of legitimacy provided by the *pragmatic camp* in the Arab world and Middle East. The Arab Peace Initiative of 2002 – the Arab League’s plan to end the Arab-Israeli conflict – could serve as a foundation in any future negotiation that would help build legitimacy for Abbas and for an agreement. In essence, the Arab Initiative grants legitimacy to Israel’s existence and to relations between Israel and the Arab states after the establishment of a Palestinian state. Subsequently, to ensure the stability of the agreement, it will be crucial to win international legitimacy for it, such as affirmation of the agreement by the UN Security Council.

Conclusions

Kriesberg (2015) refers to mediation as “a core component of the constructive conflict approach” that may contribute to conflict transformation, and asserts that “many mediating services can enhance constructive de-escalating processes” (p. 19). However, Kriesberg also notes that “mediating efforts are often ineffective and sometimes counterproductive, as when they are poorly done or undertaken with methods that are not appropriate for the circumstance of the conflict” (p. 21). In the recent process led by Secretary of State Kerry there is no doubt about the third-party’s good intentions to achieve a permanent accord to resolve the Israeli- Palestinian. However, this is not a sufficient condition for leading parties to an agreement in an intractable conflict, when the parties do not believe that there is someone to talk with on the other side or something to talk about, and when the alternative, unilateral, path appears to be more promising. My analysis indicates that the methods Kerry chose to apply in this difficult context (due to a lack of understanding or failure to internalize the complex political and cultural factors on both sides), while setting a goal that was too ambitious and unrealistic, and pressuring the parties for concessions – certainly did not lead to constructive transformation. Instead, his conduct as a mediator only increased distrust and adversarial thinking. In light of the difficulties discussed in this article, the goal of a future mediator in the Israeli-Palestinian conflict must be more modest and gradual, and should apply a constructive conflict approach (Kriesberg, 2015) in which the conflict is managed in mutually beneficial ways, thus paving the way for future resolution. It must be based on an understanding of the need to return

to a calculated format of a gradual and constructive process of conflict management, while creating a political horizon that is sufficiently attractive to both sides. In any future efforts, the mediator should carefully plan his moves, gauge his ability to maneuver and weigh his options in light of the internal political constraints and the way each side calculates costs and benefits.

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