



## Mediating the Israeli-Palestinian Peace Process Current Prospects and Alternative Frameworks

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As one of the most intractable conflicts of our time, the Israeli-Palestinian conflict has invited more third party mediation than any other conflict since the end of the Cold War. The historic 1991 Madrid Peace Conference was followed by a wide range of mediation initiatives, summits, frameworks, and back channels by various third parties. Some of the most notable mediation efforts in this period include the 1993 Oslo Accord between Israel and the Palestine Liberation Organization (PLO); the Oslo II Agreement between Israel and Palestinian Authority; the 1997 Hebron Agreement; the 1998 Wye River Memorandum; the EU's 1999 Berlin Declaration; the Camp David Summit and the Clinton Parameters of 2000; the 2001 Taba Summit; the 2002 Arab Peace Initiative; the 2003 Quartet Roadmap; and the 2007 Annapolis Conference. Most recently, the indefatigable U.S. Secretary of State, John Kerry, has tried to revive the moth-balled peace process by proposing a new framework of negotiations for an Israeli-Palestinian settlement.

### Mediation and the Intricacies of the Israeli-Palestinian Conflict

None of these efforts have succeeded in resolving the core issues of the conflict: the status of Jerusalem, the Palestinian refugees, Jewish settlements, borders, and water rights. Nor has there been a cumulative record of mediation success over the years to bring about a positive change in reciprocal trust and empathy between Israelis and Palestinians. More than two decades after the initiation of the Oslo peace process, Israeli-Palestinian peace remains as elusive as it has ever been. One of the most disturbing consequences of this stalemate has been the growing disillusionment on both sides with the prospect of a peaceful settlement to the conflict, which ipso facto perpetuates the intractability of

the conflict itself. Accordingly in recent years the growing disenchantment with the notion of an America-mediated two state solution has led some, mostly in academic and activist circles, to campaign for a one state solution (a binational state) as a more desirable and feasible solution.

The record of two decades of Israeli-Palestinian negotiations suggests two striking lessons: the first is the dismal record of mediation success despite the enormous time and energy, as well as political and financial capital, which have been invested in the process by a multitude of third parties. The second feature is the ubiquitous role of the United States as the principal manager of the Israeli-Palestinian peace process. Notwithstanding the different tactics employed by the administrations of presidents Bush Sr., Clinton, Bush Jr., and Obama, the resolution of the Israeli-Palestinian conflict has remained throughout a strategic priority for American foreign policy.

### Outline of this POLICY BRIEF

Given the evidently inauspicious environment for a successfully mediated Israeli-Palestinian settlement, this POLICY BRIEF highlights the conditions which, at least theoretically, are deemed both necessary and essential to promote a peaceful resolution to the conflict. It then evaluates the key factors which determine the ongoing failure to arrive at the two state solution by emphasising the role of the disputants themselves as well as American mediation in propagating the stalemate. It concludes by suggesting alternative or complimentary methods to extract the parties out of this destructive deadlock.

Observing these alternative frameworks of conflict resolution is pertinent beyond the immediate confines of the Israeli-Palestinian

### Abstract

*This POLICY BRIEF examines the reasons for the continued stalemate of the Israeli-Palestinian peace process, which started more than two decades ago. In particular, it assesses the ubiquity of American mediation as an integral part of the peace process and its role in the evolution of the Israeli-Palestinian conflict since the early 1990s. By looking at the characters of third-party mediation in the conflict and the unique traits of past and present American diplomatic efforts, this POLICY BRIEF suggests that the current paradigm of American engagement, which has rarely been scrutinised in the past two decades, may not be conducive to the achievement of Israeli-Palestinian peace. The current efforts of Secretary of State, John Kerry, indicate that American mediation is no more likely to be successful in 2014 than it was ten or 20 years earlier.*

*Accordingly the POLICY BRIEF proposes alternative frameworks which may complement or supplant the current American approach to Israeli-Palestinian peacemaking. It thus provides essential conceptual and policy tools to facilitate a deeper understanding of the vagaries of the Israeli-Palestinian conflict and the ways in which mediation can be harnessed to mitigate some of its key intricacies. As a policy analysis of conflict resolution, the insights in this POLICY BRIEF also serve as important building blocks in the Helsinki process on establishing a WMD/DVs Free Zone in the Middle East. ■*

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conflict; a successful settlement to this conflict has the potential to stimulate a parallel process towards a zone free of weapons of mass destruction (WMD) and their delivery vehicles (DVs) in the Middle East. This is especially true since some conclude that any effort to make progress towards such a zone must first address Israel's long standing security concerns about its neighbors and the ongoing negotiations over Iran's nuclear program. Only then, and after the advancement of comprehensive Arab-Israeli peace, could the issues of Israel's nuclear disarmament and the broader reduction in the regional arms balance be advanced. However, these two processes (peace and disarmament) do not exclude each other and progress in one area may result in achievements in the other field. Therefore, getting it right in the context of mediating the Israeli-Palestinian peace process may prove to be an important step on the road envisaged in the Helsinki Conference.

### The Prerequisites of Successful Mediation

Mediation is a distinct method of conflict resolution, performed for the purpose of influencing or facilitating the settlement of a dispute. It is essentially non-violent, non-binding, and voluntary, which makes it far more attractive to the disputing parties as a conflict resolution tool than other methods such as arbitration, adjudication or military intervention. Perhaps the most distinctive quality of mediation is that the ultimate power lies with the disputants and not the third parties. Regardless of how powerful or well-intentioned the mediator is, the process of mediation can only be initiated, sustained, and indeed terminated, with the parties' consent.<sup>1</sup> Accordingly while it is tempting to lay the blame for the failed peace process on certain misconceived American mediation strategies, or the American failure to act as an 'honest broker' in the conflict, it is worth remembering that Israelis and Palestinians bear the ultimate responsibility for the failure.

### The Occurrence of Mediation

In order to assess the likelihood of any mediator to bring about this sea change in Israeli-Palestinian relations, it is first necessary to outline some key antecedent factors which characterise most mediation efforts:

1. The context of mediation: the nature of the conflict and the relationship between

the disputants and the mediator, the historical trajectory of mediation in the conflict, the timing of mediation in the life cycle of the conflict.

2. The mediator: the type of mediation offered (Track I/II, multiparty, etc.), the status, knowledge, expertise and interpersonal skills of the mediator, as well as the mediator's ability to exercise effective leverage on the parties (i.e., to affect their bargaining position), and the mediator's perceived impartiality.
3. The process of mediation: the objectives at the initiation of the process, the negotiation strategies which the parties bring to the table and the tactics which they employ at the table, the visibility and duration of the process, the handling of the media and peace spoilers.

In academic circles there is a propensity to portray an 'ideal' type of mediation or mediator to explain, always in retrospect, the success of an anecdotal mediation effort. For instance, Jacob Bercovitch, one of the leading scholars on mediation, states the obvious when he points that "[o]nly an appropriate mediator is likely to be effective.

An appropriate mediator should possess intelligence, tact, skills in drafting formal proposals, and a sense of humor, in addition to specific knowledge of the conflict at hand."<sup>2</sup> In reality, however, such formulations are redundant as policy tools. The history of Arab-Israeli diplomacy is littered with examples of appropriate mediators who ultimately failed in their mission (Bill Clinton is perhaps the most famous example). This point only reinforces the abovementioned key weakness of mediation as a conflict resolution tool: ultimately it is the good will of the disputants which determines the success of the mediator.

### The Conditions of Successful Mediation

The notion of 'success' in Israeli-Palestinian negotiations is neither readily apparent nor the only measurement of mediation efficacy. To achieve this ultimate success the mediator must first succeed in changing the parties' motivations to negotiate as well as their perceptions of each other and their cost-benefit calculations of their bargaining positions. In other words, a two state solution – or indeed any solution to the Israeli-Palestinian conflict – will not emerge until both Israelis and Palestinians reach certain milestones:

1. Entering negotiations for the 'right' reasons rather than treating the process

as a face-saving tool to buy time or deflect external pressures.

2. A grassroots/civil society-led change in how the parties perceive each other. Like in many other intractable conflicts, the greatest obstacle is psychological, and until visible signs of trust and empathy are developed on both sides, suspicion and belligerence will remain the key drivers of the parties' motivations to negotiate.
3. Until both parties realise that they are better off with a peaceful settlement than without one, they are unlikely to make headway at the negotiation table. This is a particular area where an able mediator can change the bargaining process between the parties and affect their calculations of alternative negotiation positions.

In light of these conditions, and based on the historic record of (successful and failed) third party mediation in the Arab-Israeli conflict, it is possible to identify certain scenarios where mediation is more likely to be successful.

### Timing

The timing of the mediation effort is intrinsically linked to its chances of success, but determining the most propitious time for mediation to take place is hard to do without the benefit of hindsight. To assess the 'ripeness' of the conflict for resolution, the notions of a conflict cycle and a mutually hurting stalemate are often used. A conflict cycle suggests that most conflicts are characterized by sequential phases of escalation and de-escalation. For example a cease-fire, armed confrontations, civil war, and interim agreements are phases in a conflict which the parties go through, and it is the task of the mediator to identify which of these phases has the most potential to be auspicious to mediation. The notion of a mutually hurting stalemate indicates a phase in the conflict cycle where both parties feel sufficiently burdened by the situation that they turn to external mediation. What matters is not that the parties hurt in equal measures or for the same reasons (for one party this may be the loss of lives while the trigger for the other may be intense international pressure), but that they both come to the conclusion at the same time that the ongoing costs are no longer justifiable. A mutually hurting stalemate can only be reached when both parties accept that a peaceful settlement is the only viable option left for them to pursue; this point was highlighted by Israel's



legendary Foreign Minister, Abba Eban, in the midst of the Six Day War, when he shared his conviction that “men and nations behave wisely once they have exhausted all other alternatives.”

### Impartiality

Mediator's impartiality is widely perceived to be an essential prerequisite for successful mediation; indeed observers and practitioners often view it as the single most quintessential quality of mediation. It implies an altruistic approach to the conflict and the issues to be mediated, as well as a balanced engagement with both parties. The notion of impartiality is very much a matter of perception: the parties' perception of the mediator as an 'honest broker' may breed trust and confidence in the process and even between the parties themselves. By the same token, if one party suspects that the mediator is overtly biased in favor of the other party's interests, then trust and confidence will naturally be affected. In reality however, truly impartial mediators are hard to find – it can be argued that only those third parties with an interest in the conflict or established relations with at least one of the parties will offer to mediate; third parties which possess neither will lack the required knowledge and expertise to do the job, and thus may be seen as less attractive mediators by the parties. Moreover, third-party impartiality may in fact be detrimental, rather than beneficial, to the effectiveness of the mediation process: the lack of 'special access' to one of the parties may hinder the mediator's ability to elicit information and gain insight into the inner circle of decision-making. Moreover, a third party that does not have an established interest in or knowledge of the conflict may struggle to assert its authority on the parties and formulate acceptable proposals. Ultimately, the demand for impartiality may be supplanted by the mediator's ability to deliver a mutually satisfying agreement. Therefore impartiality may be more relevant in cases where the mediator does not possess other relevant qualities, such as extensive leverage or experience. For mediators with more extensive list of virtues, impartiality (or the lack thereof) will certainly not be the most important factor determining the outcome of the process.

### Leverage

The mediator's power, or leverage, in the mediation process is derived from a range of legal/political and historical sources, and can be defined as the ability to move the



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parties from their initial positions towards an agreed middle way. Intuitively, the concept of power is negatively correlated to the notion of impartiality – the more sources of power, leverage, and influence the mediator has on the parties, the less likely it is to be perceived as impartial. The degree of mediator's power will determine the resources and strategies it can bring to the negotiation table and the means by which it can move the parties in a certain direction. Accordingly, a useful distinction can be made here between pure/low stake and power/high stake mediators. The first type is more likely to be perceived as impartial with low stakes in the outcome of the ultimate outcome of the conflict. Its choice of mediation strategies will hence be placed at the lower end of the spectrum, and will likely be limited to the provision of good office or the opening of indirect channels of communication between the disputing parties. The second group of mediators will likely be more directly invested in the outcome of the conflict and accordingly will enjoy a greater range of capabilities and strategies. These may include, beyond the facilitative services provided by pure/low stake mediators, additional tools such as the authority to set agendas for negotiations, dictate the location and environment of the talks, formulate proposals and drafting possible solutions, and in extreme cases, even the power to extract concessions from the parties and reward them for 'good behaviour' via the use of political and diplomatic carrots and sticks.

### The Reality of Third-party Mediation in the Israeli-Palestinian Conflict

The primacy of American diplomacy throughout the Israeli-Palestinian peace process has its historical roots in the aftermath of the 1973 October War, where American post-war diplomacy under the leadership of Henry Kissinger orchestrated an effective process of Arab-Israeli diplomacy. The starting point for a Middle East peace process can be traced back to the 1973 Geneva Conference, held two months

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after the October War. It set in motion the pattern of American-led Arab-Israeli negotiations which has remained largely unchallenged in the succeeding four decades. The conclusion of the Egyptian-Israeli Peace Treaty in 1979 under the auspices of President Jimmy Carter cemented the role of the United States as the indispensable mediator of the Arab-Israeli conflict, and effectively eliminated the prospect of other third parties acting as credible mediators.

A decade later, against the slow demise of the Soviet Union, a fragmented European policy towards the conflict and the historically ineffectual role of the United Nations, and America's diplomatic ascendancy in the region in the aftermath of the Gulf War added more clout to the axiomatic myth that American diplomacy is a necessary and essential ingredient in the advancement of the peace process. Testament to this ubiquity was the signing of the Declaration of Principles between Israel and the PLO in September 1993 at the White House lawn, even though the agreement was the result of the secret Oslo talks of which the Americans were not aware, while in October 1994 President Bill Clinton participated in the signing ceremony of the Israel-Jordan Peace Treaty near the countries' shared border, despite the fact that the agreement was the product of direct negotiations between the parties with minimal American assistance.

Notwithstanding these two episodes, every single mediation effort beyond the declaratory level (such as the EU's Berlin Declaration and the Arab Peace Initiative) was led by four successive American administrations. However, none of the very few limited Israeli-Palestinian agreements mediated by the U.S. in this period has moved the parties significantly towards the ultimate resolution of the conflict. Oslo II, the Hebron Protocol, and the Wye River Memorandum were aimed primarily at resuming stalled negotiations and resolving some sticking points which had not been implemented in previous agreements. The Camp David and Taba summits as well as the Clinton Parameters and the Annapolis conference took place in the context of 'final-status' negotiations – though all ended in failure.

### Some Policy Lessons

These failed and quasi-successful cases of mediation initiatives are not altogether comparable, for they encompass a diverse population of issues, personalities, and

geopolitical processes. Nevertheless, it is possible to draw some policy lessons from these episodes.

#### Don't Blame the Mediator

The most enduring reason for the failure of successive Israeli-Palestinian peace talks has not been American mediation (though in some cases it exacerbated inherent shortcomings), but the unwillingness or inability of Israeli and Palestinian leaderships to honor previous commitments and proceed according to schedule with the implementation of further phases towards the 'end game' of the two state solution. The reasons for this include ideological objection to the Oslo framework (e.g., during Netanyahu's first term in office), fierce domestic opposition (e.g., the rise of Hamas and Islamic Jihad in the Gaza Strip and anti-Oslo protests in Israel), reciprocal disenchantment with the negotiations during period of intense violence on both sides (especially during the second *Intifada* between 2000-2004), and unilateral actions by one party which undermined the very essence of the Oslo process (e.g., Israeli settlement activity and Palestinian moves in the United Nations).

#### Blame the Mediator

It is nevertheless possible to point to the ubiquity of American diplomacy, especially when viewed through a pro-Israeli bias prism, as a contributing factor to the inability of all parties concerned to 'think outside the box' and develop alternative mechanisms to move towards a final, peaceful settlement. As Aaron Miller, former Middle East advisor in the Bush Sr. and Clinton administration stated in a Washington Post op-ed in 2005, the almost-institutional bias towards Israel in certain circles in Washington had often clouded the judgment of American diplomats about the synchronicity of American and Israeli interests: "For far too long, many American officials involved in Arab-Israeli peacemaking, myself included, have acted as Israel's attorney, catering and coordinating with the Israelis at the expense of successful peace negotiations. If the United States wants to be an honest and effective broker on the Arab-Israeli issue, then surely it can have only one client: the pursuit of a solution that meets the needs and requirements of both sides."<sup>3</sup> Though such a poignant rebuke from a Washington insider should serve notice to future American mediators in the conflict, the existence of a decades-long special relationship between the

United States and Israel in its various manifestations is unlikely to produce the type of unbiased, 'pure' American mediation in the foreseeable future.

#### Wither American Mediation?

Given the omnipresence of American mediators in the Israeli-Palestinian conflict over the past two decades, it is worth contemplating whether such presence is still needed in its current form. As the long-standing chief Palestinian negotiator, Saeb Erekat, lamented to his American interlocutors in 2009, such conditions required decisions, not more mediation: "It is time for decisions. We have thousands of pages of minutes on each issue. We are 19 years into this peace process, and we don't know any more where we are going."<sup>4</sup> Not only has one of the primary functions of mediation – the facilitation of direct communication between the parties – has been achieved some time ago, but the rough contours of the final settlement of the core issues have also been common knowledge for at least a decade. Accordingly it could be argued that what is needed is not another round of American shuttling of negotiations about negotiations, but a firm commitment from both parties to abide by previous agreements and to negotiate the fine details of an acceptable compromise on issues such as Jerusalem, refugees, settlements, security, borders, and water. However, for such declaration of intent to be sincere, it must be the result of internal introspection on both sides rather than external pressures.

#### Despite the Challenges, the Two State Solution Remains the Only Solution

The cumulative result of the above trends is telling. Neither Israelis nor Palestinian display any faith in the process – show surveys. Against this reality, it is necessary to evaluate alternatives. As of January 2014, only 9 percent of Israelis polled in a survey have faith in Secretary of State, John Kerry's ongoing mediation effort, while a staggering 80 percent expect him to fail. The reasoning is obvious: "It seems that the public is tired, disappointed and doubtful after seeing scores of American envoys and mediators passing through and coming out with nothing."<sup>5</sup> Another telling finding from the survey suggest that 53 percent of the Israelis surveyed mistrusted Kerry, while less than 20 percent described him as an unbiased mediator – another testament that impartiality is matter of perception.<sup>5</sup> Such scepticism is mirrored on the Palestinian



side: a December 2013 opinion poll indicates that 58 percent of Palestinians expected the talks to fail within a matter of months, while only 20 percent have been declaring faith in the negotiations. In addition, more than 55 percent of Palestinians said that they were pessimistic about the success of the peace process, while less than 27 percent claimed to be optimistic.<sup>6</sup>

Importantly however, despite the pessimism shared by Israelis and Palestinians about the success of a mediated solution in the foreseeable future, there is solid and consistent support on both sides for the two state solution. Support for the one state solution, despite the high publicity it receives in some academic and activist circles, is not shared by the majority of both societies.<sup>7</sup> Recent opinion polls reveal that 63 percent of Israelis and 54 percent of Palestinians continue to support the two state solution, while an overwhelming majority of Israelis (63 percent) and Palestinians (69 percent) oppose the one state solution.<sup>8</sup> The conclusion from these and similar findings has important policy implications: for most Israelis and Palestinians the two state solution remains the most acceptable settlement, but they are disillusioned with the way their leaders go about achieving it. The recent trend to promote the one state solution is thus misconceived and misleading – attention should be focused on alternative ways to reach the two state solution rather than on securing the one state solution via the existing paradigm of principal U.S.-backed mediation.

### Assessing the Alternatives to the Current Framework of Mediation

The current diplomatic mission of Secretary of State, John Kerry, to reach a final settlement by the end of 2014 represents perhaps the most committed, comprehensive, and ambitious mediation effort ever undertaken by the Americans since the beginning of the Oslo peace process. Kerry has visited the region no less than eleven times between March 2013 and January 2014. His team includes up to a dozen experts – twice as large as previous teams – and it has managed so far to maintain an almost unprecedented degree of confidentiality and secrecy. Sources close to the negotiations maintain that Kerry’s team has “learned more, in greater depth, and with greater intellectual honesty what it will take to address the core grievances than any effort previously in the American government [...] but they still only have maybe 10% chance of success.”<sup>9</sup>

### Key Mediation Efforts in the Israeli-Palestinian Peace Process<sup>i</sup>

Sep 1993	Oslo I Accord (“Declaration of Principles”) – mutual recognition by Israel and the PLO
May 1994	‘Gaza and Jericho First’ Agreement – first partial Israeli withdrawal and transfer of limited powers to the Palestinian Authority
Sep 1995	Oslo II Accord – interim agreement on Palestinian self-government in the West Bank and Gaza Strip
Jan 1997	Hebron Protocol – agreement concerning the redeployment of Israeli forces in Hebron in accordance with Oslo II Accord
Oct 1998	Wye River Memorandum – agreement regarding the resumption of implementation of Oslo II Accord
Jul 2000	Camp David Summit – failure to reach an agreement on the final settlement of the Israeli-Palestinian conflict; the disenchantment which followed contributed to the eruption of the second Intifada a few months later.
Jan 2001	Taba Summit – failure to agree on final status negotiations.
Apr 2003	The Roadmap for Peace: a three-phase plan proposed by the Quartet (US, EU, UN, Russia) to end the Israeli-Palestinian conflict by 2005; the roadmap was deadlocked at the first phase and was never implemented.
Nov 2007	Annapolis Conference – attempted to revive the peace process, subsequent talks failed to reach an agreement.
Mar 2013	Current efforts by John Kerry to reach a final status agreement by the end of 2014.

i. All led by the U.S. with the exception of the Oslo I Accord, which was mediated by Norway.

This sentiment is in line with the above-mentioned disenchantment with the peace process shared by Israelis and Palestinian. Given the disillusionment with the process of American mediation against the broad support for the ultimate aim of a two state solution, what are the possible alternatives to the current efforts led by John Kerry?

### Extract, Don’t Interact

Intractable conflicts are by definition more resistant to successful external intervention. As a prime example of an intractable conflict which involves an enduring rivalry between two groups, the failure of diplomacy to resolve it may not be so surprising. Studies of such enduring conflicts suggest that they represent only 13 percent of all international conflicts, yet they account for more than half of all mediation efforts since 1945, and are ten times more likely to attract third party mediation. On average such conflicts last nearly 38 years and attract at least 14 attempts at managing them by third parties, though the rate of success is very low.<sup>10</sup>

In such an inhospitable environment, what may therefore be required is less, rather than more third party assistance. The two main problems with the saturation of American diplomacy in this conflict since 1993 are that



Israelis and Palestinians have grown more sceptical of its benefits after each failure, and at the same time, it has turned the United States into part of the problem rather than solution. It could further be argued that the conflict is not less ripe for resolution than it was two decades ago – both leaderships seemed content with negotiating about negotiations and avoiding tough decisions under the flexible and infinite umbrella of American mediation.

It may be in the interest of all the parties concerned if Israelis and Palestinians were weaned off this comfortable setting and forced to negotiate directly for an extended period. Should they fail to do so and genuinely seek third party assistance to overcome the deadlock, then the prospect of new and carefully-conceived mediation framework can have an invigorating effect on the process. Such period of abstention can also be useful for American diplomacy as an opportunity to reflect and think of different and imaginative ways to return the peace process back on track. John Kerry's self-imposed deadline of the end of 2014 as a target date for a final settlement (or at the very least an agreed framework of a comprehensive settlement) is unlikely to be followed immediately by another round of shuttling, not least because of the coming presidential elections in November 2015. This should give much impetus to Kerry's current efforts, however, in case they fail, a period of American detachment from Israeli-Palestinian diplomacy may be beneficial in the long-term to all parties concerned.

### Arbitrate, Don't Mediate

Mediation has achieved one of its main functions somewhere in the mid-1990s: it facilitated communication between the parties. Since then, security and intelligence coordination between Israeli and Palestinian forces has been developing steadily, and despite occasional violent incidents and domestic opposition on both sides, both governments are committed to peaceful negotiations within the two state solution framework. Nonetheless, in nearly two decades of direct negotiations and third-party mediation, there is not a single issue – including the core ones – which has not been discussed, dissected, and debated by the two sides. The pool of ingenious proposals to bring the parties towards settlement seems to be exhausted. Further American shuttling is unlikely to bridge the gaps in parties' positions. Therefore, in the absence of a viable mediation strategy or the willingness

of the disputants themselves to enter into 'endgame' negotiations, it may be useful to consider arbitration as an alternative method of resolving the conflict, or at the very least some of its core issues.

Arbitration has been used extensively in the past to settle territorial disputes, including the 1968 Rann of Kutch settlement between India and Pakistan, the 1978 Beagle Channel arbitration between Chile and Argentina, the 1999 arbitration over the boundary of Brcko in Bosnia and Herzegovina, the more recent Sudan-Abey case from 2008, and most pertinent to this conflict, the 1988 Taba arbitration between Egypt and Israel. Arbitration is a judicial method to settle conflicts, and like adjudication it presupposes a commitment on behalf of the parties to accept the arbitration settlement (award), which is usually based on international conventions and past binding agreements between the parties. However, whereas in adjudication the parties must refer the dispute to established international courts (such as the International Court of Justice), arbitration is more flexible and provides the parties more freedom in choosing the arbitrator or arbitration panel, as well as in defining the boundaries of the judicial proceedings.

Unlike mediation, which is often an open-ended process where the parties have the ultimate power to terminate it, arbitration is legally binding. The great advantage of arbitration over mediation is its relatively expeditious and binding nature. It allows the parties to focus on one area of contention and bring it to a peaceful settlement, which can then create impetus for effective negotiation on other issues either via third-party mediation or bilateral talks. On the contrary, successful arbitration depends on the good faith of the parties – they must accept the judgement of the arbitration panel and adhere to the award if they lose. However, this challenge is not unique to arbitration – it is for this reason that third parties are actively engaged in a range of peaceful and non-peaceful activities, from mediation and conciliation via arbitration and adjudication to the imposition of sanctions and military interventions.<sup>11</sup>

Arbitration may be particularly attractive as a means to bypass the territorial dispute over the extent of Israel's withdrawal from the West Bank and the fate of the largest settlement blocks. The gap between the Israeli and Palestinian positions on this point has never been fully bridged by previous rounds of mediation. At its narrowest it stood at only

4.4 percent – during the negotiations which followed the 2007 Annapolis conference, Israeli Prime Minister, Ehud Olmert, offered to relinquish 93.7 percent of the West Bank and swap the remaining 6.3 percent, while Palestinian President, Mahmud Abbas, demanded to control 98.1 percent of the West Bank. The gap in the current talks stands at least 10 percent. Referring the matter to an arbitration panel to decide the extent of Israeli withdrawal from the West Bank may be the most feasible way to extract the parties from this deadlock.

### Listen to the European Union

The EU is possibly the most suited third party to mediate between Israelis and Palestinians, not least due to its normative agenda, its favorable trading relations with Israel, and its generous aid to the Palestinian Authority. It has also been consistently ahead of the United States – and the parties themselves – in propagating a vision which has later become an international consensus. The first attempt at collective European position came in the aftermath of the 1973 October War. Recognizing their vulnerability to the emerging Arab oil embargo, the nine members of the European Council called for a resolution of the conflict based on UN Security Council Resolution 242, and, most significantly and in a clear departure from the American position, recognized the rights of the Palestinian people. The European Council's position on the conflict was later crystallized in the June 1980 Venice Declaration, which included an explicit call for Palestinian self-determination, the recognition of the PLO as the legitimate representative of the Palestinian people in future negotiations, and the denunciation of Israeli settlements in the Occupied Territories as illegal and not just illegitimate, as the American position had stated. In its 1999 Berlin Declaration the EU further advanced its support for Palestinian self-determination, calling for a viable and democratic Palestinian state alongside a secure Israeli state. In all three cases the European position was instantly rejected by Israel, the PLO, or the United States, only to be endorsed several years later.

Despite the EU's prescient vision and important financial support for the peace process, it nevertheless remains a marginal actor in the context of Israeli-Palestinian mediation. This modest involvement stems from external contexts (such as the primacy of the United States and Israel's anti-EU bias) as well inherent deficiencies in the



EU's working (structural and procedural constraints, fragmentation of views). The challenge for the EU remains how to leverage its declared commitments (mostly via support for institution-building in the Palestinian Territories and its democracy promotion rhetoric), over the high diplomacy of conflict management and peace negotiations, which remain largely an American prerogative.<sup>12</sup>

The EU is unlikely to supplant the U.S. role in Middle East diplomacy in the foreseeable future, but its recent decision to prohibit the funding of or cooperation with Israeli companies in the Occupied Territories provides a compelling case for the use of sticks as well as carrots in the peace process. In this respect John Kerry's recent reminder to Israel that international sanctions may follow a failure in the current talks signifies a break from tradition.<sup>13</sup> There seems to be a growing realization among some circles in Israeli society that such moves are somewhat inevitable in the current climate. In December 2013, Israeli Justice Minister Tzipi Livni said that the settlements were not part of Israel's security, but hurting it. Israeli business leaders too have pressed on the Netanyahu government that it was imperative to make progress in the peace process with the Palestinians for fear that further sanctions would cripple the Israeli economy. It is thus telling to note the recent statements by President Obama and Secretary Kerry to Israeli leaders that time is running out and that the United States may not be able to shield Israel from international sanctions if the current talks end in failure.<sup>14</sup> While the U.S. government will not follow the EU example in action, the use of EU-like rhetoric by Kerry against Israeli belligerence is all the same telling; judging by history, however, the United States may eventually toe the European line, just as it eventually did after the Venice and Berlin declarations.

## Conclusions and Recommendations

While the Helsinki Conference is concerned directly with the future of the Middle East as a WMD/DVs Free Zone, it seems unlikely that such an important goal could be realized without addressing the key source of tension, conflict, and insecurity in the region. Despite the many challenges and obstacles, mediation remains the most likely conflict resolution tool in the quest for Israeli-Palestinian peace. Understanding the benefits and limits of mediation, as well as the principal role of American mediation in the Israeli-Palestinian conflict, are therefore essential building

blocks in any policy aimed at reducing the security dilemma in the Middle East. The following key findings of this POLICY BRIEF are particularly pertinent to policy makers:

- Third-party mediation is by far the most popular method of conflict resolution. Its key benefits lie in its flexible, ad-hoc, non-violent, and non-binding nature. At the same time however, these very traits can also be seen as the key limitations of this approach. As more than two decades of failed Israeli-Palestinian negotiations suggest, the process of mediation may be so open-ended and protracted that it becomes an issue of conflict in itself. Understanding when mediation is likely

### Endnotes

1. For additional discussion of the themes presented in this section see for example Jacob Bercovitch (ed.) (2002) *Studies in International Mediation*, Basingstoke: Palgrave Macmillan; Asaf Siniver (2006) 'Power, Timing and Impartiality: Three Hypotheses on Third Party Mediation in the Middle East', *Political Studies*, 54(4): 806-826; Thomas Princen (1992) *Intermediaries in International Conflict*, Princeton, N.J.: Princeton University Press.
2. Bercovitch (2002).
3. Aaron Miller (2005) 'Israel's Lawyer', *Washington Post*, May 23. See also Asaf Siniver (2001) 'Change Nobody Believes in: Obama and the Israeli-Palestinian Conflict', *Diplomacy & Statecraft*, 22(4): 678-695.
4. 'Palestinians weak – and increasingly desperate', *The Guardian*, January 23, 2011. Online, available at <http://www.guardian.co.uk/world/2011/jan/23/palestine-papers-power-weakness-negotiations> (January 6, 2014).
5. 'Can John Kerry manage a Middle East miracle?', *BBC News*, January 10, 2014. Online, available at <http://www.bbc.co.uk/news/blogs-echochambers-25688569> (January 10, 2014).
6. 'Poll: 57.7% Anticipate the Failure of the Palestine-Israeli Negotiations', *Palestine News Network*, December 16, 2013. Online, available at <http://english.pnn.ps/index.php/politics/6388-poll-57-7-anticipate-the-failure-of-the-palestine-israeli-negotiations> (January 10, 2014).
7. A recent example is Professor Ian Lustick's op-ed in the *New York Times*: 'Two-State Illusion', September 14, 2013.
8. 'Kerry's efforts', *Jerusalem Post*, January 6, 2014; 'Poll: 54% of Palestinians support two-state solution', *Jerusalem Post*, May 11, 2013. Online, available at <http://www.jpost.com/Middle-East/Poll-54-percent-of-Palestinians-support-two-states-330637> (January 6, 2014); 'Joint Israeli Palestinian Poll, June 2013', *Palestinian Center for Policy and Survey Research*. Online, available at <http://www.pcpsr.org/survey/polls/2013/p48joint.html> (December 15, 2013).
9. 'Secretary of state and elite team of US diplomats return to Israel as goals shift for the US's once-ambitious peace plan', *The Guardian*, January 30, 2014.
10. Jacob Bercovitch and Paul Diehl (1997) 'Conflict Management of Enduring Rivalries: The Frequency, Timing, and Short-term Impact of Mediation', *International Interactions*, 22(3): 299–320; Gary Goertz and Paul Diehl (1993) 'Enduring Rivalries: Theoretical Constructs and Empirical Patterns', *International Studies Quarterly*, 37(1): 147-171.
11. For a comprehensive analysis of the potential of arbitration in the Israeli-Palestinian conflict, see: Asaf Siniver (2012) 'Arbitrating the Israeli–Palestinian Territorial Dispute', *International Politics*, 49(1): 117-129.
12. For a detailed study of the role the EU can play in the conflict, see: Asaf Siniver and Luis Cabrera (2013) "'Good Citizen Europe" and the Middle East Peace Process', *International Studies Perspectives*. Online, available at DOI: 10.1111/insp.12037, <http://onlinelibrary.wiley.com/doi/10.1111/insp.12037/full> (February 10, 2014).
13. Asaf Siniver (2013) 'EU ban on Israeli settlements could be a game changer', *The Conversation*, July 17. Online, available at <http://theconversation.com/eu-ban-on-israeli-settlements-could-be-a-game-changer-16158> (January 10, 2014); 'Israeli leaders cry foul over Kerry's boycott warning', *The Washington Post*, February 2, 2014.
14. 'Israeli leaders cry foul over Kerry's boycott warning', *The Washington Post*, February 2, 2014. See also 'Obama's message to Netanyahu on peace with Palestinians: Time is running out', *Haaretz*, March 2, 2014.

**Further Reading**

- *Jacob Bercovitch (ed.) (2002) Studies in International Mediation, Basingstoke: Palgrave Macmillan.*
- *Daniel Kurtzer and Scott Lasensky (2008) Negotiating Arab-Israeli Peace: American Leadership in the Middle East, Washington, D.C.: United States Institute of Peace.*
- *William B. Quandt (2007) Peace Process: American Diplomacy and the Arab-Israeli Conflict since 1967, Washington, D.C.: Brookings.*
- *Dennis Ross and David Makovsky (2009) Myths, Illusions, and Peace: Finding a New Direction for America in the Middle East, New York: Viking.*
- *Asaf Siniver (2006) 'Power, Timing and Impartiality: Three Hypotheses on Third Party Mediation in the Middle East', Political Studies, 54(4): 806-826.*

to be successful requires familiarity with key concepts such as timing, or ripeness of conflict, leverage, and impartiality. As mediation is a process of social interaction with temporal and spatial idiosyncrasies, it would be misleading to generalize about the prerequisites for successful mediation; nevertheless, the rich history of (failed) Israeli-Palestinian peacemaking provides perhaps the best testing ground for hypotheses about the conditions in which mediation is likely to succeed.

- American mediation is an integral fixture of the Israeli-Palestinian conflict and peace process. It may be conceived simultaneously as part of the problem as well as the key to its solution. At the same time however, it will be misplaced to lay the blame for the continuous diplomatic failure on the shoulders of American diplomats. Ultimately it is the disputants themselves who should be held accountable for their unwillingness or inability to work together towards resolving the conflict. While mediators can facilitate change in the perceptions and motivations to negotiate, they are unlikely to succeed unless the disputants enter the mediation process in earnest.

- The answer to the ongoing stalemate may be found not in an alternative endgame such as the one state solution, but rather in an alternative framework to the current paradigm of American mediation. Given the historical experience, American mediation may still represent the best chance for Israeli-Palestinian reconciliation; however, the record of two decades of American diplomacy and the current efforts of John Kerry may point to a need to reassess the mostly-unchallenged framework of American engagement with the peace process. As noted above, a period of extraction, the potentials of arbitration, and the experience of the EU, may represent three alternative prisms through which policy makers may wish to reassess the chances and constraints of Israeli-Palestinian peace.

As noted above, while this conflict may indeed be intractable and beyond resolution, the application of mediation may be most effective to manage the conflict, if not resolve it altogether – and as such, mediation is one step forward in view of the Helsinki process on the establishment of a WMD/DVs Free Zone in the Middle East. ■

**About the ACADEMIC PEACE ORCHESTRA MIDDLE EAST (APOME)**

The ORCHESTRA is the follow-up project of the “Multilateral Study Group on the Establishment of a Missile Free Zone in the Middle East”. The ACADEMIC PEACE ORCHESTRA MIDDLE EAST is a classical Track II initiative: it consists of some 100 experts – mainly from the Middle East/Gulf, one of the most conflict-ridden areas of the world. The ORCHESTRA is meeting regularly in working groups (CHAMBER ORCHESTRA UNITS) on specific topics in the context of a workshop cycle from 2011-2014. The main goal of this initiative is to shape the prospective Middle East Conference on the establishment of a zone free of weapons of mass destruction and their delivery vehicles agreed upon by the international community in May 2010.

For this reason, these experts develop ideas, concepts, and background information in a series of POLICY BRIEFS which are the results of intense discussions within the CHAMBER ORCHESTRA UNITS. In this framework, the broader normative Cooperative Security Concept will be further developed, embedded, and institutionalized in the region. At the same time, the ORCHESTRA meetings serve as venues for confidence building among the experts. The networking activities of PRIF's Project Group are documented by the ATLAS on Track II research activities in or about the Middle East/Gulf region.

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