# Israel and the Palestinians: Prospects for a Two-State Solution

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# Summary

Following leadership changes in the United States and Israel in early 2009 and the Israel-Hamas Gaza conflict in December 2008-January 2009, the inconclusive final-status peace negotiations that took place between Israel and the Palestine Liberation Organization (PLO) during the final year of the Bush Administration have not resumed. Nevertheless, President Barack Obama showed his commitment to a negotiated "two-state solution" just days after his January 2009 inauguration by appointing former Senator George Mitchell as his Special Envoy for Middle East Peace. In September 2009, Obama convened a trilateral meeting with Israeli Prime Minister Binyamin Netanyahu and PLO Chairman Mahmoud Abbas in New York and addressed the annual opening session of the United Nations General Assembly. He indicated that final-status negotiations should not be delayed further, despite the lack of resolution on preliminary issues such as the possible freeze of Israeli settlement building in the West Bank and East Jerusalem or the possible gradual normalization of ties between Israel and certain Arab states.

It has now been 16 years since Israel and the PLO agreed to the 1993 Oslo Accord. Yet, differences between the sides over core issues, such as borders, security, settlements, the status of Jerusalem, refugees, and water rights, have not been overcome, despite the third-party involvement of various international actors—the United States, in particular.

Previously when talks have faltered, the parties eventually returned to the negotiating table. Yet there are a number of key actors and observers expressing doubts that the very concept of a negotiated two-state solution can survive a process in which negotiations are put on hold and resumed an indefinite number of times without finality. These doubts have been exacerbated by geopolitical changes and by realities on the ground—including demographics, violence, Palestinian factionalism, Israeli settlements, and other impediments to Palestinian movement and territorial contiguity—that sustain tensions between Israelis and Palestinians.

Decreased hope in the viability of a two-state solution has led to a willingness among some policymakers and analysts to consider different pathways to get there—such as Palestinian statehood prior to a final-status agreement or a "borders first" deal. It also has led to openness among some Israelis and Palestinians to alternative solutions that are contrary to declared U.S. policy. These alternatives, each of which is the subject of considerable debate among and between Israelis and Palestinians, include a so-called "one-state solution," a "Jordanian" or "regional" option, or other, non-negotiated outcomes. Continued failure to reach a two-state solution, combined with lack of consensus on any of the alternatives, may also mean that the status quo in the West Bank and Gaza could continue indefinitely.

Debate continues over the proper U.S. approach to the peace process. Congress faces significant policy challenges both with its oversight of the Obama Administration's formulation and implementation of policy; and on matters such as foreign aid, security assistance, Israeli settlements, the role of Arab states, and the treatment of the militant Islamist group Hamas (a U.S.-designated Foreign Terrorist Organization). For more information on the Israeli-Palestinian conflict and peace process, see CRS Report RL33530, *Israeli-Arab Negotiations: Background, Conflicts, and U.S. Policy*, by Carol Migdalovitz.

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# Issue Overview

## Current Diplomacy

Following leadership changes in the United States and Israel in early 2009 and the Israel-Hamas Gaza conflict in December 2008-January 2009, the inconclusive final-status peace negotiations that took place between Israel and the Palestine Liberation Organization (PLO)[1] during the final year of the Bush Administration have not resumed. Nevertheless, President Barack Obama showed his commitment to a negotiated "two-state solution" just days after his January 2009 inauguration by appointing former Senator George Mitchell—who was successful as a mediator in the Northern Ireland conflict for the Clinton Administration in the 1990s—as his Special Envoy for Middle East Peace. Moreover, Obama's June 4, 2009 speech in Cairo, Egypt restated the U.S. policy goal of establishing a Palestinian state alongside Israel on the West Bank and the Gaza Strip pursuant to the "land for peace" principles of United Nations Security Council Resolutions 242 and 338:

> The only resolution is for the aspirations of both sides to be met through two states, where Israelis and Palestinians each live in peace and security. That is in Israel's interest, Palestine's interest, America's interest, and the world's interest. And that is why I intend to personally pursue this outcome with all the patience and dedication the task requires.[2]

Since then, much discussion has centered on whether other issues—such as Israeli settlements in the West Bank and East Jerusalem; Palestinian factional unity and progress on reform and development in security, political, and economic sectors; and possible steps by Arab states toward gradual normalization in relations with Israel—should be addressed before or after the resumption of final-status negotiations. Thus far, the Obama Administration has been unable to secure an Israeli agreement to freeze settlement building or an agreement by major Arab states to take steps toward greater normalization with Israel.

In September 2009, Obama convened a trilateral meeting with Netanyahu and Abbas in New York and addressed the annual opening session of the United Nations General Assembly. He indicated that negotiations should not be delayed further, despite the lack of resolution on preliminary issues:

> Simply put, it is past time to talk about starting negotiations. It is time to move forward. It is time to show the flexibility and common sense and sense of compromise that's necessary to achieve our goals.... Permanent status negotiations must begin and begin soon.... Despite all the obstacles, despite all the history, despite all the mistrust, we have to find a way

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[1] The PLO is the internationally recognized representative of the Palestinian people, empowered to negotiate and enter into international agreements, while the Palestinian Authority (PA) is the governing organ set up to administer Palestinian self-rule in the West Bank and the Gaza Strip under various agreements entered into between Israel and the PLO. Mahmoud Abbas is both President of the PA (since January 2005) and the Chairman of the PLO Executive Committee (since Yasser Arafat's death in 2004). He is also the leader of the Fatah movement, the most prominent group with membership in the PLO.

[2] See Transcript of remarks by Barack Obama, Cairo, Egypt, June 4, 2009, available at http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-at-Cairo-University-6-04-09/.

forward.... We cannot continue the same pattern of taking tentative steps forward and then stepping back.[3]

Two major reference points for the current diplomatic discourse are: (1) the Performance-Based Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict (the "Roadmap")[4] rolled out during 2002-2003 by the international Quartet (the United States, the European Union, the United Nations, and Russia) and based largely on a 2001 report prepared by the Sharm al-Sheikh Fact-Finding Committee chaired by former Senator Mitchell (commonly known as the "Mitchell Report");[5] and (2) the 2002 Arab Peace Initiative.[6] A key difference between the two documents is that Israel and the PLO have both agreed to abide by the Roadmap's requirements,[7] while most U.S. and Israeli officials view the Arab Peace Initiative as an "opening offer" that is subject to further negotiation.

Many observers expect the Obama Administration and/or the Quartet to present a new framework for resolving the conflict in the near future. Whether such a framework might supplant the Roadmap, establish a fixed timeline for negotiations (as did the Oslo Accord in 1993 and the Annapolis Declaration in November 2007), or set forth beginning parameters on the final-status issues themselves is unclear.

## The Two-State Debate in Context

It has now been 16 years since Israel and the PLO agreed to the 1993 Oslo Accord.[8] Yet, differences between the sides over core issues, such as borders, security, settlements, the status of Jerusalem, refugees, and water rights, have not been overcome, despite the third-party involvement of various international actors—the United States, in particular.

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[3] Transcript of remarks by Barack Obama, New York, NY, September 22, 2009, available at http://www.washingtonpost.com/wp-dyn/content/article/2009/09/22/AR2009092201872.html.

[4] The Roadmap contemplates the resolution of the Israeli-Palestinian conflict in three distinct phases: Phase 1 includes calls for progress on security and governance in the Palestinian territories and for an Israeli freeze on settlement building (including so-called "natural growth"). Phase 2 contemplates the establishment of a Palestinian state with provisional borders and the continuation of progress on Phase 1 objectives. Phase 3 contemplates a comprehensive final-status peace agreement between Israel and the PLO on all issues. The text of the published version of the Roadmap, dated April 30, 2003, is available at http://www.bitterlemons.org/docs/roadmap3.html.

[5] The text of the Mitchell Report, dated April 30, 2001, is available at http://www.bitterlemons.org/docs/mitchell.html.

[6] The Arab Peace Initiative was proposed by then-Crown Prince (now King) Abdullah of Saudi Arabia, adopted by the 22-member League of Arab States (which includes the PLO), and later accepted by the 56-member Organization of the Islamic Conference at its 2005 Mecca summit. It offers a comprehensive Arab peace with Israel if Israel were to withdraw fully from the territories it occupied in 1967, agree to the establishment of a Palestinian state with a capital in East Jerusalem, and provide for the "[a]chievement of a just solution to the Palestinian Refugee problem in accordance with UN General Assembly Resolution 194." It was most recently reaffirmed by the Arab League at its Doha, Qatar summit in 2009, but King Abdullah of Saudi Arabia and other Arab leaders have warned that the offer will not last indefinitely. The text of the initiative is available at http://www.bitterlemons.org/docs/summit.html.

[7] In May 2003, Israel accepted the Roadmap but with 14 reservations. Among the reservations is an Israeli insistence that the "first condition for progress will be the [Palestinians'] complete cessation of terror, violence and incitement." The text of the "primary themes" of Israel's acceptance of the Roadmap with reservations is available at http://www.bitterlemons.org/docs/14reservations.html.

[8] The Oslo Accord of 1993 is more formally known as the "Declaration of Principles on Interim Self-Government Arrangements." The text of the document, signed on September 30, 1993, is available at http://www.bitterlemons.org/docs/dop.html.

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Previously when talks have faltered, the parties eventually returned to the negotiating table, and some observers are convinced that this option is likely to remain viable so long as it is supported politically.[9] Yet there are a number of key actors and observers expressing doubts that the very concept of a negotiated two-state solution can survive a process in which negotiations are put on hold and resumed an indefinite number of times without finality.[10] These doubts have been exacerbated by geopolitical changes and by realities on the ground—including demographics, violence, Palestinian factionalism, Israeli settlements, and other impediments to Palestinian movement and territorial contiguity—that sustain tensions between Israelis and Palestinians. The Israeli daily *Ha'aretz* reported a "senior U.S. administration" source's account of what President Obama told Netanyahu and Abbas during the closed-door session of the September 2009 trilateral meeting in New York: "We've had enough talks. We need to end this conflict. There is a window of opportunity but it might shut."[11]

Decreased hope in the viability of a two-state solution has led to a willingness among some policymakers and analysts to consider different pathways to get there—such as Palestinian statehood prior to a final-status agreement or a "borders first" deal. It also has led to openness among some Israelis and Palestinians to alternative solutions that are contrary to declared U.S. policy. These alternatives, each of which is the subject of considerable debate among and between Israelis and Palestinians, include a so-called "one-state solution," a "Jordanian" or "regional" option, or other, non-negotiated outcomes. Continued failure to reach a two-state solution, combined with lack of consensus on any of the alternatives, may also mean that the status quo in the West Bank and Gaza could continue indefinitely. Polls indicate that significant majorities in various Arab states believe that a collapse in prospects for a two-state solution could lead to a "state of intense conflict for years to come."[12]

This report reviews the prospects of a two-state solution in the context of possible signs of progress and doubts raised in U.S., Israeli, Palestinian, and international circles. After outlining possible alternatives to a two-state solution, the report analyzes the policy challenges facing a U.S. approach to promoting a two-state solution—including implications for Congress—on matters such as foreign aid, security assistance, Israeli settlements, and the treatment of the militant Islamist group Hamas (a U.S.-designated Foreign Terrorist Organization, or "FTO").

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[9] Summary of remarks by Martin Indyk, "Rethinking the Two-State Solution," Washington Institute for Near East Policy, *PolicyWatch #1408*: Special Forum Report, October 3, 2008; Hussein Ibish, *What's Wrong with the One-State Agenda: Why Ending the Occupation and Peace with Israel Is Still the Palestinian National Goal* (Washington, DC: American Task Force on Palestine, 2009); Yossi Alpher, "A One-State Solution in Palestine Is Patently Unrealistic," *Daily Star* (Beirut), August 20, 2008.

[10] See Zbigniew Brzezinski, et al., "A Last Chance for a Two-State Israel-Palestine Agreement," U.S./Middle East Project, 2009, available at http://www.usmep.us/usmep/wp-content/uploads/official-a-last-chance-for-a-two-state-israel-palestine-agreement-11.pdf; Brian Katulis, Marc Lynch, and Robert C. Adler, *Window of Opportunity for the Two-State Solution*, Center for American Progress, July 2009; Scott MacLeod, "Olmert's Lame-Duck Epiphany About Palestinian Peace," *Time*, September 30, 2008. Reut Institute, "Fundamental Early Warning: The Final Act of the Two State Solution?" August 2008, available at http://reut-institute.org/data/uploads/PDFVer/20080820%20Two%20State%20Solution%20FEW%20final%20_3_.pdf.

[11] Barak Ravid and Natasha Mozgovaya, "Source: Obama Strongly Expressed His Impatience to Netanyahu and Abbas," *haaretz.com*, September 23, 2009.

[12] See 2009 Annual Arab Public Opinion Survey, University of Maryland with Zogby International, April-May 2009, available at http://www.brookings.edu/~/media/Files/events/2009/0519_arab_opinion/2009_arab_public_opinion_poll.pdf.

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**Figure 1. Map of Israel, the West Bank, and the Gaza Strip**



**Sources:** CRS, The RAND Corporation

# Recent Developments

## Obama's Cairo Speech and Subsequent Diplomacy

President Obama's June 2009 Cairo speech did not call for the immediate resumption of negotiations. Many observers believe that Obama wanted to set markers for evaluating the parties' readiness for negotiations before presenting a framework, and to draw from the parties' responses to shape the eventual U.S. approach to negotiations. That is why, some might say, his Cairo speech called for an Israeli settlement freeze while focusing on the reciprocal need for Palestinian progress on security and governance and constructive involvement by Arab states. In the speech, Obama also acknowledged that Hamas had support from some Palestinians and could potentially play a role fulfilling Palestinian national aspirations. Yet, he conditioned any Hamas involvement in the peace process on the so-called "Quartet Principles"—cessation and renunciation of violence, commitment to previous Israeli-Palestinian agreements, and recognition of Israel's right to exist.[13]

Some have been concerned that the Obama Administration's debates with Israel over a settlement freeze and with Arab states over the prospect of "gradual normalization" with Israel—which could include steps such as permitting civilian aircraft over-flight rights, establishing commercial ties, and making other low-level contacts[14]—could overshadow the overall goal of resuming final-status negotiations and drain the Administration of political capital that it might need if negotiations resume. Specifically, some worry that Obama may have painted himself into a corner on settlements—that if he accepts anything less than a total and permanent freeze, two things might result. His willingness to compromise could be interpreted as a sign of weakness with the potential to undermine U.S. leverage in a larger negotiating process; and he could lose the confidence of Arabs who believe that, historically, the United States has been biased toward Israel and had hoped Obama would be an "honest broker." Others believe that Obama should explain the reasoning behind his policies directly to an Israeli audience in much the same way that he intended the Cairo speech to allay concerns about the compatibility of U.S. interests with the interests of Arabs and Muslims in the region.[15]

At the September 2009 trilateral meeting in New York, Special Envoy for Middle East Peace George Mitchell said, in acknowledging that agreement had not yet been reached on halting Israeli settlement activity or securing major Arab normalization with Israel:

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[13] See Transcript of remarks by Barack Obama, Cairo, Egypt, op. cit.

[14] See Hilary Leila Krieger and Herb Keinon, "'US Does Not Expect Israel to Act Unilaterally,'" *jpost.com*, July 8, 2009. Some Gulf states and North African countries (Qatar, Oman, Morocco, Tunisia) had these types of ties with Israel during the Oslo era, and Qatar maintained discreet commercial ties with Israel until cutting them off during the Gaza conflict in January 2009. Sometime in early/mid-2009, Obama reportedly sent letters to the heads of seven Arab states (including Saudi Arabia, Jordan, Egypt, the United Arab Emirates, Bahrain, and Morocco) asking for their help. There are some indications that steps toward establishing contacts with small Gulf states on the level of previous contacts might be possible, but Saudi Arabia and larger Arab states have reportedly resisted Obama's entreaties. See Sheikh Salman bin Hamad al-Khalifa [Bahrain's ruler], "Arabs Need to Talk to Israelis," *Washington Post*, July 16, 2009; Prince Turki al-Faisal [a former Saudi intelligence chief and former ambassador to the United States], "Land First, Then Peace," September 12, 2009; Laura Rozen, "In Letters, Obama Asked Arab States for Confidence-Building Measures Toward Israel," *thecable.foreignpolicy.com*, July 26, 2009.

[15] See Aluf Benn, "Why Won't Obama Talk to Israel?" *New York Times*, July 27, 2009.

> We are not identifying any issue as being a precondition nor an impediment to negotiation....
> [W]e do not believe in preconditions. We do not impose them, and we urge others not to
> impose preconditions.[16]

Mitchell's statement and President Obama's admonition for final-status negotiations to begin
soon seem intended to blunt criticism of the Administration's earlier efforts and to prepare the
ground for potential changes of direction by the Administration and other parties on issues of
concern. It is less clear whether they (1) signal that the parties are progressing to a new phase of
the diplomatic approach the Administration envisioned would come regardless of the outcome of
earlier phases,[17] or (2) represent a conscious strategic choice by the Administration to
deemphasize preliminary steps and confidence-building measures in favor of a more endgame-
focused approach (see "U.S. Policy" below).

## Netanyahu's Speech and the PLO Reaction

After Obama's June speech, Israeli Prime Minister Netanyahu gave one of his own at Bar-Ilan
University in Tel Aviv. For the first time, Netanyahu publicly contemplated the possible
establishment of a Palestinian state, but he insisted that it would have to be demilitarized and that
Israel would retain a military presence in the West Bank and control over Palestinian airspace and
its communications spectrum. Netanyahu welcomed the resumption of negotiations with the PLO
without preconditions, but also insisted that in any peace agreement the PLO would need to
recognize unequivocally that Israel is "the nation state of the Jewish people"[18]—a difficult
demand for any Palestinian leader to accept because this would represent an implicit
abandonment of the "right of return" for millions of Palestinian refugees and a blow to the
roughly 20% of Israel's population composed of Arab Muslims and Christians. Many observers
assert that although Netanyahu accepted the two-state idea in principle, he did not move beyond
other traditional Israeli right-wing positions on the conditions necessary for peace in his speech.[19]

PLO Chairman and PA President Mahmoud Abbas rejected the conditions Netanyahu placed on a
two-state solution in his speech, and insisted that the PLO would only resume negotiations with
Israel in the event of a complete settlement freeze.[20] Following his September 2009 trilateral

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[16] Michael D. Shear and Glenn Kessler, "Obama Presses Mideast Leaders to Broaden Talks," *Washington Post*,
September 23, 2009.

[17] Ben Smith and Laura Rozen, "U.S. Officials: Middle East Talks on Track," *Politico*, September 24, 2009.

[18] See Transcript of translated remarks (from Hebrew) by Binyamin Netanyahu, Tel Aviv, Israel, June 14, 2009,
available at http://www.pmo.gov.il/PMOEng/Communication/PMSpeaks/speechbarilan140609.htm. "The simple truth
is that the root of the conflict has been—and remains—the refusal to recognize the right of the Jewish People to its own
state in its historical homeland…. Even the moderates among the Palestinians are not ready to say the most simplest
things: The State of Israel is the national homeland of the Jewish People and will remain so…. I told President Obama
in Washington, if we get a guarantee of demilitarization, and if the Palestinians recognize Israel as the Jewish state, we
are ready to agree to a real peace agreement, a demilitarized Palestinian state side by side with the Jewish state."
Requiring Palestinian recognition of Israel as a Jewish state was one of Israel's 14 reservations to the Roadmap (see
footnote 7).

[19] An Israeli TV news station interviewed Netanyahu's 100-year-old father, historian Benzion Netanyahu, about his
son's true convictions on the Palestinian question. Benzion indicated that his son "does not support a Palestinian state,"
but merely set conditions for Palestinian statehood that he knew would not be accepted. Aluf Benn, "Does Netanyahu
Back Two-State Solution or Not?" *Ha'aretz*, July 16, 2009.

[20] *Washington Post* columnist Jackson Diehl interviewed Abbas during his May visit to Washington, DC and wrote that
Abbas was content to sit back and wait for Israel to respond to U.S. pressure on settlements, perhaps even if it took
months or years and led to the collapse of the Netanyahu government. Jackson Diehl, "Abbas's Waiting Game," *The*
(continued...)

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meeting in New York with Obama and Netanyahu, Abbas continued to demand an Israeli settlement freeze, but there are reports that the PLO is, nonetheless, preparing to restart negotiations.[21]

## Fayyad's Plan – A *De Facto* Palestinian State

During summer 2009, PA Prime Minister Salam Fayyad unveiled a plan to advance the goal of Palestinian self-determination. The plan contemplates achieving *de facto* statehood within two years by developing self-reliant PA security, political, and economic infrastructure.[22] The PA's reform and development efforts have been backed by considerable donor help from the United States, the European Union, and other countries, especially since Abbas named Fayyad as prime minister of the caretaker government installed for the West Bank following Hamas's takeover of Gaza in June 2007. The plan does not discuss if and how Gaza can be involved absent a general opening of the border crossings and a political arrangement accommodating both Hamas and Fatah.

It is unclear whether Fayyad's plan is intended mainly to bolster Abbas's prospects in negotiations with Israel or whether it articulates a genuine alternative to ending Israeli occupation and achieving Palestinian statehood in the event negotiations fail (see "Palestinian Statehood Before a Final-Status Agreement?" below). It does not call for a Palestinian declaration of independence by a date certain. Because Fayyad has no significant domestic political base, doubts exist regarding his ability to leverage his main political assets—anti-corruption credentials and support from Western patrons—into a sustained push to rally Palestinians around his plan. Some Palestinians fear that the plan might play too closely into the hands of Netanyahu's concept of an "economic peace" in the West Bank—giving the PA greater responsibility for governance without a corresponding transfer in the perquisites of sovereignty or moves toward reversing factional and territorial division.

## Hamas's Political Positioning

Before and after Obama's Cairo speech, Damascus-based Hamas politburo chief Khaled Meshaal made statements that some analysts say demonstrate his interest in showing that Hamas is not an obstacle to the peace process. In an interview published in May by the *New York Times*, Meshaal

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*Washington Post*, May 29, 2009. A representative from an American Jewish organization said that, in his meeting with Abbas during the same Washington trip, Abbas explained that he was willing "to resume talks without pre-conditions, but added that he could not do so before the Netanyahu government agrees on the goal of such talks." Nathan Guttman, "Waiting Game: What Did Abbas Mean?" *Jewish Daily Forward*, June 12, 2009.

[21] See Smith and Rozen, op. cit.

[22] See Palestinian National Authority, *Ending the Occupation, Establishing the State*, Program of the Thirteenth Government, August 2009, available at http://www.palestine-pmc.com/details.asp?cat=2&id=2075. A key passage from the document reads: "Out of respect for our citizens, and in recognition of their desire to live free and peaceful lives under national independence, we must answer their demand to see the fruits of the state-building project. Against this background, the Palestinian government is struggling determinedly against a hostile occupation regime, employing all of its energies and available resources, most especially the capacities of our people, to complete the process of building institutions of the independent State of Palestine in order to establish a de facto state apparatus within the next two years. It is time now for the illegal occupation to end and for the Palestinian people to enjoy security, safety, freedom and independence." Some PLO and Fatah leaders have taken offense at Fayyad's injecting himself into diplomatic matters because the Palestinian Authority (as explained in footnote 1) has no formal authority in them.

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stated, "I promise the American administration and the international community that we will be part of the solution, period."[23] He proposed a "two-state solution" substantially similar to a proposal he reportedly made in 2008—full Israeli withdrawal to pre-1967 borders (including the dismantlement of Israeli settlements), right of return for Palestinian refugees, and a Palestinian capital in East Jerusalem. In exchange, Meshaal said that Hamas would be willing to declare a 10-year *hudna* ("truce"), but would not agree to a permanent peace arrangement or formal recognition of Israel and its right to exist. He urged his interviewers and audience to ignore the Hamas charter of 1988,[24] which calls for the destruction of Israel.[25] Later, in a July interview with the *Wall Street Journal*, Meshaal essentially restated his May proposal, and added that Hamas would cooperate with the United States in achieving a resolution to the Israeli-Palestinian conflict if Israel freezes settlement building and if the economic and military "blockade" of the Gaza Strip is lifted.[26]

Some observers have interpreted Meshaal's statements as betokening a new, conciliatory Hamas approach that, while falling short of accepting the Quartet Principles, connotes implicit recognition of Israel's right to exist. Some who see a new approach see it as an indication that Hamas may have "grown up" and that, in time, it could move toward formal recognition of Israel.[27] Others who acknowledge the appearance of a new approach claim that Hamas's conciliatory tone may be due to the movement's calculation that cultivating an image of reasonableness presently serves its interests in light of (1) the diplomatic climate following Obama's accession, (2) Israeli deterrence of Hamas-generated violence in the aftermath of the Gaza conflict, and/or (3) geopolitical changes affecting Hamas's principal allies in the region—Syria, Hezbollah, and Iran.[28]

Those who are more skeptical of Hamas's intentions have countered that Meshaal's statements did not change anything of substance in Hamas's existing positions, and are best explained as a

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[23] Taghreed El-Khodary and Ethan Bronner, "Addressing U.S., Hamas Says It Grounded Rockets," *New York Times*, May 4, 2009.

[24] See 1988 Hamas Charter (English translation from the original Arabic), available at http://www.thejerusalemfund.org/www.thejerusalemfund.org/carryover/documents/charter.html: "Israel will rise and will remain erect until Islam eliminates it as it had eliminated its predecessors.... There is no solution to the Palestinian problem except by Jihad. The initiatives, proposals and International Conferences are but a waste of time, an exercise in futility."

[25] Although Meshaal did not offer to revoke the charter, he implied that events of the past 20 years had led Hamas to doubt the prospect of Israel's destruction. However, on October 2, 2009, Meshaal said the following in a speech commemorating the anniversary of the liberation of Jerusalem from the Crusaders by 12th-Century Islamic leader Saladin (Salah al-Din): "As the Crusaders' occupation of Jerusalem ended, the occupation of the city by the Zionists will end.... [J]ust as the Crusaders failed over many decades to falsify the facts of history and geography, so too do the Zionists today fail to falsify their claim to history, the land, and geography. Palestine and Jerusalem will remain Arab and Islamic, God willing." Summary of translated remarks (from Arabic) by Khaled Meshaal, *Al-Aqsa Television* (Gaza, Hamas-controlled), Open Source Document GMP 20091003253001, October 2, 2009.

[26] Jay Solomon and Julien Barnes-Dacey, "Hamas Chief Outlines Terms for Talks on Arab-Israeli Peace," *Wall Street Journal*, July 31, 2009.

[27] See Michael Bröning, "Hamas 2.0," *foreignaffairs.com*, August 5, 2009.

[28] Some speculate that Syria may be encouraging Hamas, to whose exiled leadership it provides safe haven, to at least appear more reasonable while Syria pursues a possible improvement in ties with the United States. Elections in Lebanon and Iran in June may have—for the time being—turned the primary focus of both Hezbollah and the Iranian regime to jockeying for power internally. Hezbollah's coalition performed worse than expected in Lebanese national elections, leading to uncertainty over its influence in the new government, and Iran has experienced turmoil over allegations of fraud in its presidential elections and the repression of dissent by the regime and its allies in the election's aftermath.

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ploy to give the impression of moderation. They cite Hamas's continued efforts to build up its military capabilities and to plan attacks on Israelis, along with the reported rise in prominence of extremists (relative to other Hamas members) within the group's governing *shura* (or "consultative") councils, as evidence to support their claims.[29] These skeptics assert that "implicit recognition" is no recognition at all, and that a 10-year *hudna* would simply allow Hamas to consolidate its position and await a more propitious moment to mount a Palestinian/Islamic takeover of Israel.

For further discussion of Hamas's role, see the sections "The Rise of Hamas and Divided Palestinian Rule" and "The Role of Hamas" below.

## Evaluating Previous Negotiations: Signs of Progress or of Setbacks?

During Israel-PLO negotiations in 2008, Israel's then-Prime Minister Ehud Olmert proposed a "shelf agreement" for a Palestinian state to PLO Chairman Mahmoud Abbas.[30] According to Olmert's claims in a June 2009 *Newsweek* story, his proposal contemplated Palestinian sovereignty over the West Bank, Gaza Strip, and East Jerusalem, with modified borders from the 1949-1967 armistice lines based on land swaps (Israel would have given the Palestinians territory from Israel proper, including a safe-passage corridor between Gaza and the West Bank, in exchange for its incorporation of Israeli-settled areas of the West Bank); offered the symbolic return of a "very, very limited number" of Palestinian refugees as a "humanitarian gesture"; and contemplated putting the Holy Basin of Jerusalem under the administration of a group comprised of Israelis, Palestinians, Americans, Jordanians, and Saudis.[31] Olmert's interview did not indicate whether his offer included or presupposed limitations on Palestinian military capacities and allowances for continuing Israeli security prerogatives in the West Bank.

Abbas, in a *Washington Post* interview in May 2009, claimed he turned down Olmert's offer because "the gaps were wide," (possibly on issues such as Jerusalem and refugees, but the interview did not go into further detail).[32] Saeb Erekat, head of the PLO's negotiating team, said that he and Abbas "began to formulate a response, coordinating with the Americans," with time running out as conflict in Gaza broke out and Olmert left office.[33] The revelations on the Olmert-Abbas talks have led to debate over whether the offer met minimum standards of reasonableness—particularly given that it was a shelf agreement and not an "effective immediately" deal—and over whether Abbas's rejection was indicative of Palestinian unwillingness to make difficult compromises deemed necessary for peace.

Some believe that the diplomatic efforts begun at Annapolis demonstrate that robust international support still exists for a two-state solution, and that Olmert's offer to Abbas—though not accepted—was a sign that the parties are getting closer. Other observers believe that the Annapolis process did not generate significant progress, and may even represent a step backward

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[29] See Matthew Levitt, "Score One for 'Hamaswood,'" Middle East Strategy at Harvard, August 11, 2009, available at *http://blogs.law.harvard.edu/mesh/2009/08/score-one-for-hamaswood/*.

[30] The shelf agreement's effectiveness and implementation were to be contingent on (1) the parties' fulfillment of their Phase 1 obligations under the Roadmap and (2) the restoration of PLO/PA authority over Gaza. See Yossi Alpher, "Revelations Regarding the Abbas-Olmert Peace Talks," *bitterlemons.org*, June 29, 2009.

[31] Kevin Peraino, "Ehud Olmert's Lament," *Newsweek*, June 22, 2009.

[32] Diehl, op. cit. Abbas also complained that Olmert did not share a printed copy of the offer with him.

[33] Peraino, "Ehud Olmert's Lament," op. cit.

for chances at Israeli-Palestinian peace.[34] Some assert that the parties remain stalemated on the core issues of the conflict (particularly Jerusalem, settlements, and refugees), and that the situation on the ground with regard to these disputed issues has become more entrenched.[35] Several view the most recent round of talks—and the accompanying international pledges of support—as little or no different in substance from other failed negotiating cycles of the Oslo era. Another argument is that the Annapolis process may not have been primarily intended to facilitate Israeli-Palestinian peace, but to advance other U.S., Israeli, and Sunni Arab geopolitical goals—such as consolidating support for stability in Iraq[36] or possibly making diplomatic overtures to Syria in order to isolate Iran.[37]

Still others have asserted that the signal weakness of the Annapolis negotiations was the lack of third-party mechanisms within the negotiation process to bridge differences and rectify power imbalances between the Israelis and Palestinians, and to provide incentives for both parties to accept otherwise unappealing concessions.[38] These critics hope that any resumption of negotiations will replace the Annapolis model of bilateral Israeli-Palestinian talks with more direct involvement from the United States and possibly other actors such as the European Union, Arab states, and Turkey.

# Going Forward

Proponents of the two-state idea might argue that it would be better to strengthen existing political will for a two-state solution than to spend time and resources building a new consensus for one or more alternative solutions. A quest for alternatives might more accurately reflect a "grass is always greener" mentality than a qualitatively superior approach to resolving the conflict. On the other hand, opponents of the two-state idea might argue that recycling a framework that has fallen short for over a decade and a half is unwise and that something new should be tried instead of sinking more political capital into what could be an irredeemably failed idea.

In an August 2009 *New York Times* column, former U.S. Special Assistant to the President for Arab-Israeli Affairs (under President Clinton) Robert Malley—now the director of the Middle East program at the International Crisis Group—and Hussein Agha argued that rhetorical support for a two-state solution by Binyamin Netanyahu and Khaled Meshaal, with all their caveats and qualifications, may be more a sign that the term "two-state solution" has been drained of its explanatory value than that a peaceful resolution is any closer:

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[34] Despite having voiced general disdain for deadlines on the two-state solution, Israeli analyst Yossi Alpher voiced concern in June 2009 about the potential impact of failed negotiating cycles such as Annapolis: "How many more times will Israeli and Palestinian leaders agree to risk their political careers and perhaps their lives and reinvent the very same peace wheel, only to see it fall off its axle?" Yossi Alpher, "Revelations Regarding the Abbas-Olmert Peace Talks," *bitterlemons.org*, June 29, 2009.

[35] See Ashraf Khalil, "Uncertainty Over Future of Israeli-Palestinian Talks," *Los Angeles Times*, November 10, 2008.

[36] See Recommendations 13 and 14 of *The Iraq Study Group Report*, December 2006, available at http://media.usip.org/reports/iraq_study_group_report.pdf.

[37] See Robin Wright, "Iran: The Uninvited Wildcard in Mideast Talks," *Washington Post*, November 27, 2007; Herb Keinon, "Analysis: Syria Becomes the Annapolis Prize," *Jerusalem Post*, November 20, 2007.

[38] See Brzezinski, et al., op. cit.; Yariv Oppenheimer, "A Critical Absence of Urgency," *bitterlemons.org*, June 29, 2009.

This nearly unanimous consensus is the surest sign to date that the two-state solution has become void of meaning, a catchphrase divorced from the contentious issues it is supposed to resolve. Everyone can say yes because saying yes no longer says much, and saying no has become too costly. Acceptance of the two-state solution signals continuation of the Israeli-Palestinian struggle by other means....[39]

In the same column, Malley and Agha postulated that past attempts to resolve the conflict might have paid too little attention to the questions of identity and narrative that fuel Israeli-Palestinian disagreement on issues such as permanent security arrangements, the status of Jerusalem, Palestinian refugees, and the settlements.

That so many attempts to resolve the conflict have failed is reason to be wary.... It is hard today to imagine a resolution that does not entail two states. But two states may not be a true resolution if the roots of this clash are ignored. The ultimate territorial outcome almost certainly will be found within the borders of 1967. To be sustainable, it will need to grapple with matters left over since 1948....[40]

In the closed-door session of the September 2009 trilateral meeting in New York, President Obama reportedly laid out the following vision for negotiations to Netanyahu and Abbas:

There's an historical record of the entire past negotiations and there are principles. We won't start the negotiations from scratch, we will not take the historical record and toss it aside. Nor will we wait for the perfect formula.... It's difficult to disentangle ourselves from history but we must do so. The only reason to hold public office is to get things done. We all must take risks for peace.[41]

How the logistics of a land-for-peace compromise might be resolved at the same time the conflicting worldviews of Israelis and Palestinians are addressed or transcended remains unclear. Also unclear is whether calls for new ways to conceptualize and/or resolve the conflict might increase in frequency and intensity—compelling the Israelis, Palestinians, United States, and/or other international actors to respond—if future proposals advanced under the "two-state solution" heading are perceived to stretch the reasonable elasticity of the term to its breaking point.

# Changes Since Oslo

In addition to wavering confidence in the peace process, changes with respect to geopolitics, demographics, violence between Israelis and Palestinians, factionalism among Palestinians, Israeli settlements, and impediments to Palestinian movement and territorial contiguity may have altered the likelihood of reaching a two-state solution since the signing of the Oslo Accord in 1993.

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[39] Hussein Agha and Robert Malley, "The Two-State Solution Doesn't Solve Anything," *New York Times*, August 11, 2009.

[40] Ibid.

[41] Ravid and Mozgovaya, op. cit.

# Middle East Geopolitics

At the time of the 1993 Oslo Accord, geopolitical conditions seemed well-suited to support a resolution of the Israeli-Palestinian conflict. The Cold War had ended, the United States had assembled a broad regional and international coalition that defeated and confined Saddam Hussein in Iraq, and many significant actors in the Middle East and worldwide had accepted U.S. influence in the region as a stabilizing factor. The PLO and Jordan were both looking for opportunities to rehabilitate their images and regain influence within the region after having supported Saddam Hussein against the U.S.-led coalition in the Gulf War. Bill Clinton and Yitzhak Rabin, elected to power, respectively, in the United States and Israel in 1992, both indicated a willingness to move forward with the Arab-Israeli peace process that was formally restarted at the 1991 Madrid Conference by their predecessors George H.W. Bush and Yitzhak Shamir. While the Oslo process with the Palestinians proceeded, albeit with delays, Israel made peace with Jordan in 1994, negotiated with Syria, and made withdrawals from Lebanon in 2000.

Since then, things have changed considerably. After Oslo, Hamas has become a much more significant Palestinian actor—gradually throughout the 1990s with violence aimed at derailing the Oslo process, and then breaking to the fore during the second Palestinian *intifada* ("uprising"), also known as the al-Aqsa *intifada*, (which began in 2000 and lasted, by most accounts, until 2006) and with its victory in Palestinian Legislative Council elections in 2006. The militant Lebanese Shia (or Shiite) group Hezbollah similarly grew in influence during the 1990s.

Various developments since September 11, 2001 have challenged U.S. economic and geopolitical supremacy in the Middle East. Iran has been bolstered by the progress of its nuclear program, the U.S.-led removal of Saddam Hussein from power in Iraq, and perhaps, some might argue, by the attention it received from being so closely targeted as a member (along with Iraq and North Korea) of President George W. Bush's "axis of evil." Consequently, Iran's profile within the region—particularly with Hamas and in Iraq, Syria, and Lebanon—has grown, compelling the Sunni-led Arab states (Egypt, Jordan, Saudi Arabia, and the smaller Gulf states) to scramble to preserve their own regional prestige by countering Iranian military, political, economic, and ideological influence.

This changed Middle East environment makes the Israeli-Palestinian peace process less predictable and raises questions over whether the prospect of peace with the Sunni-led Arab world remains as powerful an incentive for Israel to engage in the peace process as it was at the time of the Madrid Conference. Some foreign policy analysts believe that the increased willingness of Sunni-led Arab states to support the two-state solution in recent years is reflective of an interest shared by these countries, the United States, and Israel in aligning to counter rising Iranian and Shia influence in the Middle East, rather than an interest in solving the Israeli-Palestinian conflict for its own sake. Whether these geopolitical motives can sustain the various parties' commitment to resolving the issues that divide Israel and the PLO remains uncertain.

# Demographic Concerns—Arabs to Outnumber Jews?

Led by the late Prime Minister Yitzhak Rabin, Israel agreed to the Oslo Accord in 1993 at least partly due to demographic considerations. Many projections conclude that the Arab population within the combined area of Israel, the West Bank, and the Gaza Strip will outnumber the Jewish

population in coming years.[42] According to September 2009 estimates from the U.S. Central Intelligence Agency's *World Factbook*, Arabs (approximately 5.3 to 5.6 million) might already outnumber Jews (approximately 5.4 to 5.5 million—including Jewish settlers in East Jerusalem, the West Bank, and the Golan Heights).[43] Rabin then, just as Ehud Olmert in 2008, wanted to come to an arrangement with the Palestinians on the West Bank and Gaza in order to avoid the situation of ruling as a numerical minority over a numerical majority, and thus the conundrum of having to choose between giving up Jewish primacy or facing accusations that Jewish rule in the combined area is undemocratic and contrary to the principle of self-determination. It is less clear to what extent these concerns drive Netanyahu.

# Violence and Palestinian Factionalism

## How Violence Has Complicated the Peace Process

The likelihood of a negotiated two-state solution appears to have been adversely affected by the violence that has jarred both sides' optimistic expectations of the Oslo process and has increased, rather than resolved, tensions between and among Israelis and Palestinians. After they committed to peaceful negotiations, the onset and upsurge of attacks on both sides increased resentment. The intensity of the violence peaked during the second *intifada*—which featured Palestinian suicide attacks against Israeli civilians and most recently surged with the December 2008-January 2009 Gaza conflict.

Security has, in the short term, been reestablished for most of Israel's civilian population through a combination of Israeli measures (including Israel Defense Forces (IDF) operations and the partial construction of a West Bank "separation barrier"), a greater PA focus on internal security, and Palestinian militants' decisions to limit rocket attacks from Gaza and other attacks for the time being. Paradoxically, this could work against the peace process. The Israelis might not want to risk upsetting the security equilibrium they have worked to achieve by taking diplomatic risks.

Even though law and order has improved in certain parts of the West Bank, many Palestinians— particularly those in Gaza—continue to be plagued by feelings of insecurity. Lingering resentment over what they view as unjustifiably oppressive Israeli security measures in the West Bank could lead to a future resumption of violence. Additionally, there are charges of factionally

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[42] See Steven A. Cook and Shibley Telhami, "Addressing the Arab-Israeli Conflict," *Restoring the Balance: A Middle East Strategy for the Next President*, Brookings Institution and Council on Foreign Relations, 2008. However, some projections carried out by parties associated with the right of the Israeli political spectrum have claimed that the population estimates and projections for Palestinians are vastly overstated. See Bennett Zimmerman, Roberta Seid, and Michael L. Wise, *The Million-Person Gap: The Arab Population in the West Bank and Gaza*, The Begin-Sadat Center for Strategic Studies, Bar-Ilan University, February 2006. This study claimed that, as of mid-2004, there were approximately 1.34 million fewer Arabs in the West Bank and Gaza than claimed by most estimates that rely on the Palestine Central Bureau of Statistics. Thus, the study estimated that there were approximately one million fewer Arabs than Jews in Israel, the West Bank, and Gaza.

[43] See Central Intelligence Agency, *The World Factbook*: "Israel," "West Bank," "Gaza Strip," available at https://www.cia.gov/library/publications/the-world-factbook/. According to figures provided by the *Factbook* as of September 2009, the Arab population breakdown is as follows: approximately 2.4 million in the West Bank, 1.6 million in Gaza, and 1.3 to 1.6 million in Israel. Israel's Central Bureau of Statistics reports that, as of the end of 2007, there were 5.48 million Jews and 1.45 million Arabs in Israel and that the Jewish birthrate was 1.9% and the Arab birthrate was 2.7%. Israeli Central Bureau of Statistics, *Israel in Figures 2008*, available at http://www1.cbs.gov.il/www/publications/isr_in_n08e.pdf.

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motivated violence in both Gaza and West Bank involving Hamas and PA authorities, respectively, and there are periodic outbreaks of violence in Gaza between Hamas and extreme jihadist movement—leading some to wonder if these movements could gain strength militarily or politically in coming years. There are also ongoing concerns over Israeli settler violence or potential settler violence against Palestinian civilians in Hebron and other places in the West Bank.[44]

## The Rise of Hamas and Divided Palestinian Rule

During the time of Oslo in the 1990s, a vast majority of Palestinians in both the West Bank and the Gaza Strip clearly accepted Yasser Arafat and the PLO as their legitimate representatives. Problems with internecine violence, divisiveness, and popular discouragement stemming from perceptions of widespread political corruption existed from the beginning of self-rule in the West Bank and Gaza Strip, but, with Arafat's death, the failure of the peace process until now, and the rise of Hamas, these problems have worsened. Although PA President Mahmoud Abbas has taken Arafat's place, his legitimacy as a leader of the Palestinian people is not comparable, and the Fatah party he leads is seen by many as too divided and dysfunctional to govern successfully.[45] In light of Hamas's rise, some wonder if the pragmatic secular nationalistic positions Fatah takes, including support for a two-state solution, have a political future.[46]

Hamas, despite and perhaps because of its role in perpetrating much of the violence on the Palestinian side, has greatly increased in power and influence since the 1990s. It now controls the entire Gaza Strip, maintains a majority in the currently sidelined Palestinian Legislative Council (PLC),[47] commands a well-organized and well-armed fighting force—despite the losses it

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[44] See Kevin Peraino, "A Piece of the Peace," *Newsweek*, October 13, 2008.

[45] In August 2009, Fatah held its Sixth Congress in Bethlehem. It was the first party congress held since 1989—the first of the post-Oslo, post-Arafat era. Although some exiled party members lamented that Abbas would hold the congress under Israeli occupation and thus sought to marginalize him, most analysts deemed the congress a success simply for being held. Interviews and polls indicate that it boosted Abbas's image as a leader both among and outside of the party faithful. The long-term consequences of the congress for Fatah's future in Palestinian politics are less clear. The congress held elections for both Fatah's 23-seat Central Committee (its executive board) and 128-seat Revolutionary Council, and observers believe that the resulting bodies are more representative of the movement's active membership and its power centers. Fatah loyalists hope that the party's leadership will remain cohesive and effectively mobilize people at the grassroots level when the next democratic test arises for Palestinians, but some observers warn not to underestimate Hamas's organization and political base.

[46] Marwan Barghouti, age 50, is a Fatah leader who, in polls, consistently garners the strongest support of any potential Palestinian presidential candidate, including Abbas. Barghouti comes out of the "young guard" of the Fatah movement (many of whose members are not PLO exiles like Arafat, Abbas, and their closest associates, but rather "insiders" from the West Bank and Gaza who became prominent for their roles in the first *intifada*). He ostensibly supports a two-state solution, but has also advocated violent resistance in some cases (he claims to condemn violence against Israeli civilians, but in some contexts has not completely ruled it out), including as a leader of the Fatah armed group Tanzim during the second *intifada*. Since 2004, Barghouti has been serving multiple life sentences in an Israeli prison for involvement in various killings during the second *intifada*, but speculation routinely arises that he might be freed in the future, often in connection with rumors of an Israeli prisoner exchange with Hamas. Even if he were released, Barghouti's ability to influence political developments after several years in prison, given the current political polarization among Palestinians and assertions from some quarters that the "young guard" is no longer young nor likely to generate momentum for significant change, is difficult to assess. Barghouti was elected to the Fatah Central Committee at the Sixth Fatah Congress in August 2009.

[47] The PLC is currently sidelined because several of its Hamas members were imprisoned by Israel in 2006 in response to Hamas's role in the capture of Israeli soldier Corporal Gilad Shalit, depriving the PLC of a quorum necessary under Palestinian law to transact legislative business. (The *de facto* Hamas regime in Gaza passes off its version of the PLC as legitimate by ignoring the law's provisions and allowing the jailed members to be represented by proxy.) See "Jailed (continued...)

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suffered during the Gaza conflict—that is supported by Iran,[48] runs several patronage networks, and has loyalists within certain parts of the West Bank and among the Palestinian diaspora. Without some sort of political arrangement incorporating both the West Bank and Gaza that either integrates Hamas into the governing Palestinian order or that Hamas agrees not to actively oppose, Abbas may be insufficiently legitimate—both in the eyes of the Palestinians and of Israel—to conclude and implement a negotiated agreement.[49] A Palestinian unity arrangement, however, could indefinitely delay the peace process because of Israeli and U.S. objections to recognizing the legitimacy of Hamas or any governing coalition including Hamas as long as Hamas withholds recognition of Israel's right to exist, insists on its right to perpetrate violence (what it deems resistance), and does not consider itself bound by previous Israeli-PLO agreements (see "The Role of Hamas" below).

## Impediments to Palestinian Territorial Contiguity and Movement

Changes in realities on the ground since the signing of the 1993 Oslo Accord—particularly in terms of their effect on Palestinian territorial contiguity, movement, and access—could affect the likelihood of a negotiated two-state solution. According to the U.N. Office for the Coordination of Humanitarian Affairs in Jerusalem, as of June 2009, there is a "complex system of access restrictions applicable to Palestinians [in the West Bank], which include, inter alia, restrictions on the use of main roads, the [separation] Barrier and its permit regime, closed military zones and nature reserves, and Israeli settlements and adjacent 'buffer zones.'"[50] Speaking to this issue at a September 25, 2008 hearing on the Israeli-Palestinian peace process he chaired for the Senate Foreign Relations Subcommittee on Near Eastern and South and Central Asian Affairs, Senator John Kerry said, in an exchange with then-U.S. Assistant Secretary of State for Near Eastern Affairs, C. David Welch:

> The debate now is over how Swiss cheesy is this state going to look. And what sort of rights and access are going to go with it, et cetera, and what happens to the settlements and so forth.[51]

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(...continued)

Hamas' PLC Speaker Entered Prison Hospital," *Xinhua*, November 3, 2008.

[48] According to the State Department, in 2008, "Iran remained a principal supporter of groups that are implacably opposed to the Middle East Peace Process. Iran provided weapons, training, and funding to HAMAS and other Palestinian terrorist groups, including Palestine Islamic Jihad (PIJ) and the Popular Front for the Liberation of Palestine-General Command (PFLP-GC). Iran's provision of training, weapons, and money to HAMAS since the 2006 Palestinian elections has bolstered the group's ability to strike Israel." U.S. Department of State, "Country Reports on Terrorism 2008," Chapter 3, available at http://www.state.gov/s/ct/rls/crt/2008/122436.htm. See also David C. Isby, "Iran Trains Hamas Rocket Producers," *Jane's Missiles & Rockets*, May 2, 2008.

[49] See John C. Hulsman, "Obama's Middle Eastern Dream on Trial," *Heartland: Eurasian Review of Geopolitics*, July 21, 2009, available at http://temi.repubblica.it/limes-heartland/obamas-middle-eastern-dream-on-trial/1363?h=0.

[50] United Nations - Office for the Coordination of Humanitarian Affairs (OCHA), "West Bank Movement and Access Update," June 2009, available at
http://www.ochaopt.org/documents/ocha_opt_movement_access_2009_june_english.pdf. This system includes 613 "closure obstacles" such as Israeli military checkpoints, roadblocks, earthmounds, and trenches.

[51] Remarks by John Kerry, Hearing of the Senate Foreign Relations Subcommittee on Near Eastern and South and Central Asian Affairs, September 25, 2008.

## Israeli Settlements and Infrastructure

Many observers assert that the existing division of the West Bank into separate enclaves by the presence of Israeli settlements, infrastructure, and other areas of control impedes the development of a future Palestinian state (see **Figure 2** below).[52]

**Figure 2. Map of Palestinian West Bank Enclaves Surrounded by Israeli Settlements, et al. (as of July 2007)**
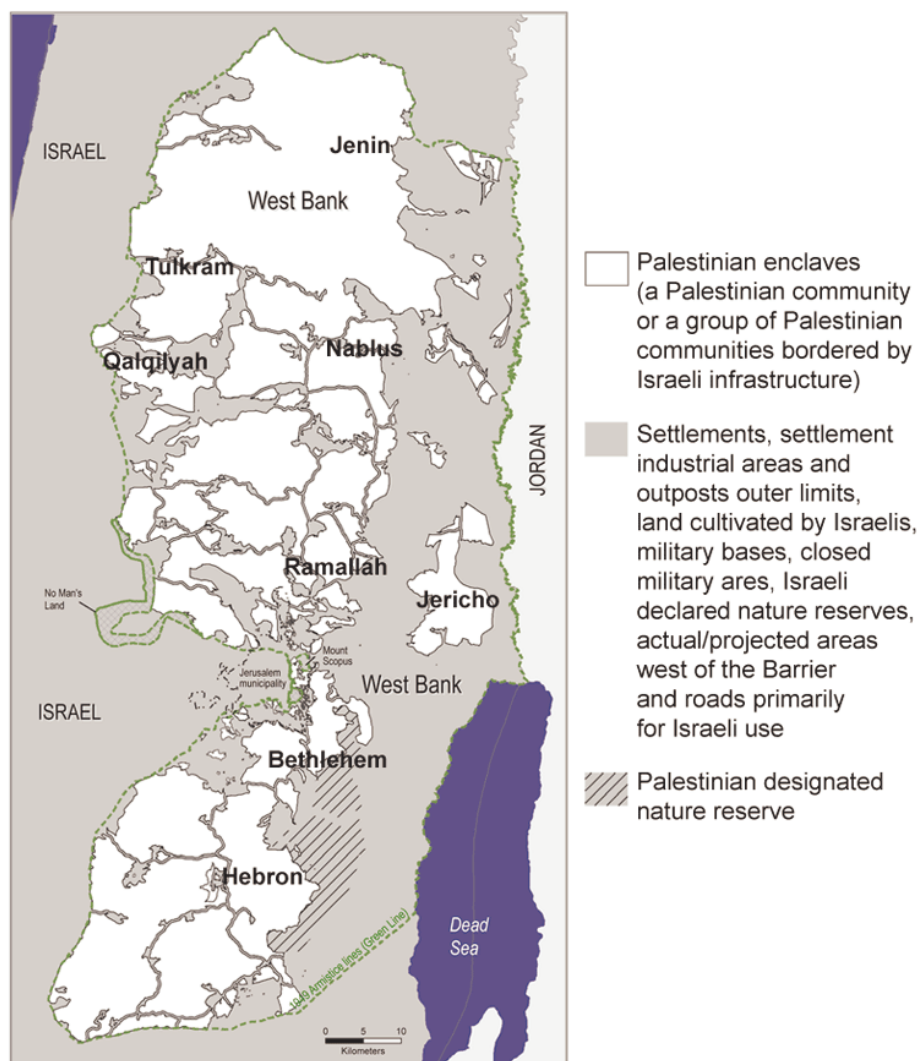


**Sources:** U.N.-OCHA and CRS

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[52] See U.N.-OCHA, *The Humanitarian Impact on Palestinians of Israeli Settlements and Other Infrastructure in the West Bank*, July 2007, available at http://www.ochaopt.org/documents/TheHumanitarianImpactOfIsraeliInfrastructureTheWestBank_full.pdf. According to the U.N.-OCHA report, as of July 2007 approximately 38% of the West Bank was off-limits or severely restricted to Palestinians because it consisted of settlements, outposts, military bases and closed military areas, Israeli-declared nature reserves, and related infrastructure.

The extensive Israeli construction of settlements and infrastructure in the West Bank and East Jerusalem, which started before the 1990s but continued rapidly after Oslo,[53] could be seen as an attempt to establish facts on the ground that increase Israeli bargaining leverage in negotiations with the Palestinians or as an attempt to establish an irreversible Israeli presence that could lessen Palestinian sovereign control of the West Bank under an eventual two-state solution. A major question that follows from the current realities on the ground is whether and to what extent these realities might remain a part of the West Bank following a final-status agreement. If most of the settlements and infrastructure were dismantled as a result of an agreement, then their current presence, while perhaps problematic under international law and for humanitarian reasons, might not necessarily harm prospects for a negotiated two-state solution.[54] One might counter, however, that existing Israeli settlements and infrastructure—even if only temporary—eats away at the sense of Palestinian political, economic, and cultural identity, as well as the morale and cohesion, seen by some as important to building a state.[55]

## Exacerbation of the West Bank/Gaza Divide

Concerns over a lack of contiguity within the West Bank are exacerbated by the fact that the Palestinians already face the challenge of governing two noncontiguous territorial entities—the West Bank and the Gaza Strip. Moreover, since June 2007, these two entities have been controlled by two different regimes (Abbas and the PA in the West Bank, and Hamas and a version of the PA it represents to be legitimate in Gaza). Without reconciliation between Hamas and Abbas's Fatah party, the different patterns of life and administration that are being consolidated in Gaza and the West Bank, respectively, could make it difficult to bring the two territories under a single governing structure in the future, even if Israel and the PLO reach a final-status agreement that provides a strip of land or transportation access rights linking the West Bank and Gaza.

## Economic Effect of Movement Restrictions on Palestinians

The imposition of significant restrictions on the crossing of people and goods between Israel, the West Bank, and Gaza (in addition to similar restrictions within the West Bank discussed above), is another major change from the time of Oslo. According to the World Bank, Palestinian per capita GDP in the West Bank and Gaza (calculated at real value to take inflation into account) is significantly lower than it was during the years immediately prior to the second *intifada*—from between $1,200 and $1,500 in 1997-2000 to just over $1,000 at the end of 2008.[56] Lacking a self-

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[53] See U.N.-OCHA, op. cit., which says, "Since the beginning of the Oslo Accords period in 1993, which left the issues of settlements to final-status negotiations, the total settler population has increased by 63% (an absolute increase of more than 163,000 settlers between 1993 and 2004)."

[54] See U.N.-OCHA, op. cit. Of the approximately 450,000 Jewish settlers in the West Bank (including East Jerusalem), between two thirds and three quarters live on the "Israeli" side of the current and proposed route of the separation barrier. The relatively low settler population on the "Palestinian" side of the barrier could ultimately lead to Israeli acceptance of the dismantlement of most or all of the settlements on that side that are scattered throughout the West Bank (as problematic as such a dismantlement might turn out to be), thus removing many of the impediments to Palestinian contiguity and movement (such as the so-called "bypass roads") in the event a final-status agreement is reached and implemented. See also Akiva Eldar, "Let Them Stay in Palestine," *Ha'aretz*, August 25, 2008.

[55] See Leslie Susser, "One Land: How Many States?" *The Jerusalem Report*, April 14, 2008.

[56] The World Bank, *Palestinian Economic Prospects: Gaza Recovery and West Bank Revival—Economic Monitoring Report to the Ad Hoc Liaison Committee*, June 8, 2009, available at http://siteresources.worldbank.org/INTWESTBANKGAZA/Resources/AHLCJune09Reportfinal.pdf.

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sufficient private sector, Palestinians have historically depended on easy entry into and exit out of Israel for their workers and goods. Following the outbreak of the second *intifada*, Israel began construction of the West Bank separation barrier, increased security scrutiny at crossing points, issued permits to control access, and, in many cases, halted the flow of people and goods altogether.[57] For most of the time since Hamas's forcible takeover of the Gaza Strip in June 2007, most of Gaza's border crossings—including the Rafah border crossing with Egypt—have been closed to everything but a minimum of goods deemed necessary to meet humanitarian needs. In this environment, the formal Gazan economy has been brought to a virtual standstill, and illicit smuggling from tunnels between Gaza and Egypt's Sinai Peninsula has thrived. The Palestinian Federation of Industries estimated in September 2008 that 98% of Gaza's industrial operations are inactive.[58]

Even if Israel agrees to Palestinian sovereignty over Gaza and the West Bank, there are no guarantees that Israel will allow Palestinians and their goods meaningful access to Israeli jobs and markets. Although in 2009 Israel significantly reduced post-second *intifada* obstacles to Palestinian movement within the West Bank, many of these obstacles remain, and controls on movement between Israel and the West Bank remain largely unchanged. The alternatives for the Palestinians to economic interdependence with Israel would likely be: to attract investment and build a self-sufficient economy, which is probably years if not decades away;[59] to look to neighboring Egypt and Jordan (which struggle with their own economic problems) for economic integration; or to depend indefinitely upon external assistance.

# Different Pathways to a Two-State Solution

Traditionally, the concept of a two-state solution has visualized a negotiated Israel-PLO final-status agreement on all core issues that, in a single stroke, ends the conflict between the parties and establishes a Palestinian state alongside Israel. In summer 2009, however, discussion of the possibility of at least two different pathways toward a two-state solution has intensified.[60] Both emphasize intermediate steps that could confer certain sovereign characteristics upon the PLO/PA. Skeptics question whether such steps would represent progress toward a two-state solution, or possibly work against a full final-status agreement by removing the motivation to act from one or both sides. Each proposed pathway faces at least one major unanswered question.

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[57] See U.N.-OCHA, op. cit.

[58] The World Bank, *Palestinian Economic Prospects: Aid, Access and Reform—Economic Monitoring Report to the Ad Hoc Liaison Committee*, September 22, 2008, available at http://siteresources.worldbank.org/INTWESTBANKGAZA/Resources/AHLCSept15,08.pdf.

[59] Many Israelis emphasize an International Monetary Fund projection of 7% growth for the West Bank in 2009 and the loosening of some Israel Defense Forces obstacles to Palestinian movement. Nonetheless, some Palestinians and international analysts assert that actual and prospective economic development should not be overstated because the Palestinian economy continues to be propped up by external aid, and uncertainty remains regarding movement and access and regarding progress in negotiations with Israel. See Zahi Khouri, "The West Bank's Deceptive Growth," *New York Times*, September 8, 2009.

[60] In December 2008, Uzi Arad, now Netanyahu's national security advisor, urged an "an end to 'endism,' i.e., to the notion that we are within reach of resolving everything in one fell swoop, thereby ending the conflict in a quick fix." Uzi Arad, "Essay: Doing What Is Doable," *Jerusalem Post*, December 4, 2008.

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# Palestinian Statehood Before a Final-Status Agreement?

## *De Facto* State

PA Prime Minister Salam Fayyad's plan to develop the PA's political, economic, and security infrastructure into a *de facto* state over the next two years (see "Fayyad's Plan – A *De Facto* Palestinian State" above) may appeal to those who question the likelihood of resuming serious negotiations while the West Bank and Gaza are under divided control and the right-wing Netanyahu government is in power. If Fayyad's pronouncements are not merely tactical devices aimed at prodding Israel to engage seriously in final-status negotiations with the PLO, his strategy appears to be to encourage a level of Palestinian compliance with the rules prescribed by the Roadmap such that Israel and the international community become compelled by justice to recognize the achievements and grant the Palestinians sovereign prerogatives.

Campaigning for statehood in this fashion is a departure from the norm. Usually independence is granted an occupied people because they make the task of the occupier harder, not easier—through violence or nonviolent resistance. Trusting that a Palestinian strategy of complying with its obligations to develop and reform society and its institutions could lead Israel and the international community to validate Fayyad's vision of a just outcome for Palestinians may strike many as naïve.

Many analysts, however, do not ascribe Fayyad's strategy primarily to trust of outside actors or even justice in the abstract, but rather to his conviction that the Palestinian national narrative needs to be recast. They think Fayyad perceives that neither the guerrilla nor the victimhood narrative has carried the Palestinians over the finish line of achieving statehood or is likely to do so. Therefore, he seeks to inculcate a more empowering Palestinian self-image that he hopes can create a positive dynamic of national pride and motivation carrying both internal and external rewards.

One interpretation of Fayyad's plan for *de facto* statehood is that outside characterizations of Palestinians' achievements are far less important than Palestinians' own view of their progress in self-governance, self-policing, and economic self-sufficiency. Under this view, political progress is most likely if the Palestinians work toward their own goals and patiently make their case to the world. Some Palestinian and Arab observers, however, are uncomfortable with and skeptical of a strategy that, in their estimation, facilitates the Israelis' occupation by taking more of the day-to-day burdens out of their hands.

## Declaring or Receiving Sovereign Status

Even under a long-range plan such as Fayyad's, progress would require scaling back the indicia of Israeli occupation and control to allow the Palestinians' greater freedom of action, and as Palestinians demonstrate the ability to take charge of their own affairs, the ultimate question of sovereignty resurfaces. Is a non-negotiated pathway to statehood possible if the Palestinians' good faith in complying with their obligations is not reciprocated? At the Sixth Fatah Congress held in Bethlehem in August 2009, PLO Chairman/PA President Mahmoud Abbas made the following statement:

> While we affirm that we have opted for peace and negotiations on the basis of international legitimacy, we reserve to ourselves the right to carry out legitimate resistance that is

acknowledged by international law. This right also depends on our understanding and national consensus for defining the appropriate forms of this resistance and its timing.... Through our leader and teacher Yasir Arafat who launched the declaration of Palestinian independence in 1988, we firmly rejected all forms of terrorism and we are determined to reject stigmatizing our legitimate struggle as terrorism. This will continue to be our firm and unswerving stand.[61]

The political program approved at the Sixth Fatah Congress explicitly cited "declaring the state on the 1967 borders" as a strategic alternative "if it is not possible to achieve progress through the current negotiations."[62]

Additionally, Javier Solana, the European Union High Representative for the Common Foreign and Security Policy, suggested in a July 2009 speech in London that the U.N. Security Council pass a resolution establishing a Palestinian state if negotiations do not produce one by a fixed deadline,[63] raising the possibility of international encouragement of or participation in a unilateral statehood strategy that some could liken to U.S. and European support for Kosovo's declaration of independence from Serbia in 2008.

The prospect of a unilateral declaration of Palestinian statehood is not new. As referenced in Abbas's statement above, in 1988, the Palestinian National Council, the legislative body of the PLO, declared Palestinian independence and statehood at the same time it moved toward recognizing Israel's right to exist. The declaration had no practical effect, however, because the PLO was in exile in Tunisia and did not define the territorial scope of its state.[64] After the establishment of limited Palestinian self-rule in the West Bank and Gaza Strip in the 1990s, Yasser Arafat periodically threatened to declare statehood unilaterally, but he never did, and his threats were widely seen as bargaining tactics.

Some high-profile, mainstream Israeli analysts are now at least open to the idea. The Reut Institute, in 2008 and 2009 position papers that advocate "upgrading the PA," does not propose a Palestinian unilateral declaration of statehood, but discusses *de facto* statehood and suggests that the Israeli government take the lead in pushing for greater Palestinian autonomy by conferring upon the PA certain perquisites of sovereignty:

> The logic of upgrading requires rescinding the restrictions imposed on the PA in its international political status while strengthening its political-judicial status so as to bring it closer to that of a sovereign state according to international law. Examples include Israel lifting its opposition to the issuing of Palestinian currency, creating a Palestinian tax

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[61] Translated transcript of remarks (from Arabic) by Mahmoud Abbas, Bethlehem, West Bank, August 4, 2009, Open Source Document GMP20090804745004.

[62] Translated text (from Arabic) of Fatah political program, August 11, 2009, available at http://www.imra.org.il/story.php3?id=45117.

[63] See Transcript of remarks by Javier Solana, London, England, July 11, 2009, available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/discours/109193.pdf. Solana's proposal suggested that a U.N. Security Council resolution, which has the force of international law, could end the conflict by addressing all of the core issues outstanding between Israel and the PLO. Even though Solana referred to encouraging implementation of a potential resolution through international monitoring, questions remain about the practicability of such a proposal, particularly in view of the international community's failure on many occasions to generate consensus between Israel and the Arabs on international proposals.

[64] The declaration included the phrase: "The State of Palestine is the state of Palestinians wherever they may be." The text is available at http://www.mideastweb.org/plc1988.htm.

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authority, establishing foreign embassies in the territory of the PA, and PA membership in international organizations.[65]

Israeli analysts who are open to the option of establishing a Palestinian state with "provisional borders and attributes of sovereignty" before a final-status agreement cite Phase 2 of the Roadmap as support for its further discussion.[66] Some assert that once the Palestinians obtain statehood, they would be able to finish final-status negotiations with the Israelis on a more equal footing.

Yet, it is unclear that limited sovereignty would substantially improve the negotiating dynamic. The characteristics of sovereignty that some might argue would most likely strengthen the Palestinians in a negotiating context—such as militarization and full control over territory and borders—are likely to remain out of their reach, whether Palestinians declare statehood unilaterally or have some sovereign characteristics conferred upon them. Although withdrawal of Israeli troops and settlers from the West Bank could be envisioned as part of the arrangement on sovereignty, there is no guarantee that it would happen. It is possible that Palestinians might feel even more slighted than under the status quo, and might suspect an Israeli strategy of "disguised unilateralism"—retaining security control in the West Bank while shedding formal responsibility.

On the other side, some Israelis fear Palestinian statehood before a formal end to conflict through a final-status agreement because of their concern that greater Palestinian assertiveness and freedom of action could endanger Israeli security,[67] regardless of paper or international guarantees against Palestinian militarization or aggression.

## Unanswered Question: Gaza

The major unanswered question in calculations of possibly creating a *de facto* state or something more in the West Bank is Gaza political status. The PA does not govern it; Hamas does. How would those who seek changes in the PLO/PA's status in the West Bank link such changes to the situation in Gaza? Some recommend encouraging further Fatah-Hamas negotiations aimed at reunifying PA control over the two territories. Others believe signs of progress in the West Bank might encourage greater opposition to Hamas among Gazans who seek opportunities similar to those of their fellow Palestinians in the West Bank. Still others advocate a "wait-and-see" approach, hoping that clear options may arise as time passes. Some even speculate about a possible "three-state solution,"[68] even though the Israeli, PLO, U.S., and even Hamas leaderships all publicly reject the idea of conferring permanent independent status upon the Gaza Strip. Most observers acknowledge that there is little consensus on the way forward politically. This is further

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[65] Reut Institute, "Upgrading the Palestinian Authority to the Status of a State with Provisional Borders," September 4, 2008, available at http://reut-institute.org/Data/Uploads/PDFVer/20080902%20Upgrading%20the%20PA%20to%20PSPB.pdf. See also Reut Institute, "Reassessment of Israeli-Palestinian Political Process: Build a Palestinian State in the West Bank," May 5, 2009, available at http://reut-institute.org/Data/Uploads/PDFVer/politicalprocess.pdf. The Reut Institute has been discussing the idea of upgrading the PA at least since shortly after Abbas's election as PA president in 2005.

[66] See Yossi Alpher, "Obama Is Deep into Phase II," *bitterlemons.org*, August 17, 2009.

[67] Dan Diker and Pinhas Inbari, "Prime Minister Salam Fayyad's Two-Year Path to Palestinian Statehood: Implications for the Palestinian Authority and Israel," Jerusalem Center for Public Affairs, October 2, 2009, available at http://www.jcpa.org/JCPA/Templates/ShowPage.asp?DRIT=1&DBID=1&LNGID=1&TMID=111&FID=442&PID=0&IID=3096&TTL=Prime_Minister_Salam_Fayyad%E2%80%99s_Two-Year_Path_to_Palestinian_Statehood.

[68] See Jacob Savage, "The Three-State Solution," *Los Angeles Times*, June 20, 2007.

complicated by the difficult humanitarian situation and dire economic circumstances that Gaza's 1.6 million residents face, and by the question of which parties are and should be responsible for addressing these matters.

# Borders First?

## In Lieu of or Following a Settlement Freeze

In summer 2009, several U.S. and Israeli analysts debated the merits of taking advantage of a potential freeze in settlement activity, or bypassing the issue of a settlement freeze altogether, by expeditiously and permanently resolving the issues of settlements and borders through negotiation—commonly known as a "borders first" deal. Agreement to and implementation of a borders first deal could give Israel assurances that it will keep some settled areas in the West Bank while the Palestinians are assured that they will receive territory to compensate for this and that the other settlements are permanently evacuated and/or dismantled. David Makovsky of the Washington Institute for Near East Policy, in a June *Wall Street Journal* column, opined that the borders issue is the least divisive of the outstanding core issues, and thus is the best one for the parties to address in preparation for addressing the others.[69] The Center for American Progress, while advocating that the borders first idea be seriously considered, articulated concerns that the proposal should only be pursued if the United States commits to making sure that "borders first" does not become "borders only," leaving other core issues unresolved.[70] Largely for this reason, the PLO is wary of straying from its traditional approach of "nothing is solved until everything is solved."[71]

## Unanswered Question: Jerusalem

Assuming that implementation of a borders and settlements agreement might be possible, most analysts acknowledge that the biggest problem with a borders first approach is Jerusalem. The Israelis claim and exercise sovereignty over the whole of it, and the Palestinians seek control over its predominantly Arab eastern half. Jerusalem's holy sites—including the walled Old City with its Temple Mount/Haram al-Sharif and Western Wall—are administered pursuant to delicate and complicated arrangements, yet remain a source of great tension (as evidenced by the September-October 2009 altercations stemming from an incident at the Temple Mount/Haram al-Sharif at the end of the Jewish high holiday season). The presence and expansion of Jewish settlements and other settler-developed heritage sites at the expense of Arab-inhabited areas or shared space in the "historic basin" make East Jerusalem an even more confusing microcosm of the wider territorial chaos in the West Bank.[72] As some analysts have pointed out, leaving Greater Jerusalem out of border negotiations would probably be a non-starter for Palestinians because existing or potential developments in Jerusalem have implications for the territorial contiguity of the West Bank and for access by Palestinians to and from East Jerusalem and between their other key population

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[69] See David Makovsky, "Mideast Peace Can Start with a Land Swap," *The Wall Street Journal*, June 15, 2009.

[70] See Katulis, Lynch, and Adler, op. cit.

[71] See Barak Ravid, et al., "Netanyahu Aide: PA Thwarted Mitchell Bid to Resume Peace Talks," *haaretz.com*, September 19, 2009.

[72] Perhaps the most comprehensive publicly available maps detailing construction are those produced by the Israeli non-governmental organization Ir Amim, which can be found at http://www.ir-amim.org.il/eng/?CategoryID=162.

centers.[73] Moreover, agreement on borders elsewhere could easily unravel if distrust over what the other side might try to take or foment in Jerusalem remains.

# Alternatives to a Two-State Solution

As warnings have grown more frequent and emphatic that the window of opportunity for a two-state solution might be closing, several proposals for other ways to address the future of the Palestinian territories have surfaced from both the Palestinian and the Israeli sides. Some of these proposals are not altogether new, but rather existed in some form before a two-state solution became the official Israeli and PLO line. Some analysts suggest that raising alternatives is a time-honored tactic employed to jumpstart or to galvanize negotiations. Others perceive that the advent of alternative proposals reflects a shift in fundamental realities underlying the public discourse on the peace process that makes a two-state solution less likely as time passes. Lack of Israeli-Palestinian consensus on any of these alternatives may mean that the status quo in the West Bank and Gaza could continue.

## "One-State Solution"

The "one-state solution" or "binational state" is a frequently mentioned alternative when Israel and Palestinian leaders and third-party observers speculate about the possible failure of the two-state solution. The predominant discourse surrounding the one-state outcome, which would bring Israelis and Palestinians in Israel, the West Bank, and the Gaza Strip under a single sovereign umbrella, operates on the governing principle of "one-person, one-vote."[74] Polls show that Palestinian support for a one-state solution remains in the minority (around 25%),[75] but leading Palestinian pollster Khalil Shikaki has stated that this support could balloon "overnight if a credible mainstream leader were to adopt the one-state approach. 'If [jailed Fatah leader] Marwan Barghouti or [Damascus-based Hamas leader] Khaled Mashaal was to come out in favor, the consequences could be dramatic.'"[76] If negotiations fail or do not resume, some have raised the possibility that Palestinians could abandon their governance responsibilities within the PA and instead demand a one-state outcome. The political platform adopted by the Sixth Fatah Congress in August 2009 preserved the idea of a "unified democratic state" as a strategic alternative.[77]

An August 2008 report produced by several current and former Palestinian leaders advocated "smart resistance"[78] on the part of the Palestinians to block Israel from imposing a solution

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[73] See Marc Lynch, "Borders First?" *lynch.foreignpolicy.com*, September 13, 2009; Gershon Baskin, "Encountering Peace: Drawing Borders Is the First Step," *Jerusalem Post*, September 18, 2009.

[74] See Interview with Eyad Sarraj, "Time to Change Strategy," *bitterlemons.org*, August 18, 2008

[75] See Poll by the Harry S. Truman Research Institute for the Advancement of Peace at the Hebrew University of Jerusalem and the Palestinian Center for Policy and Survey Research in Ramallah, May-June 2009, results available at http://truman.huji.ac.il/upload/truman_site_poll_28_June2009.pdf. The poll indicated that about 60% of both Israelis and Palestinians support a two-state solution.

[76] Susser, op. cit.

[77] Translated text (from Arabic) of Fatah political program, op. cit.

[78] See Palestine Strategy Study Group, *Regaining the Initiative: Palestinian Strategic Options to End Israeli Occupation*, August 2008, available at http://www.palestinestrategygroup.ps/Regaining_the_Initiative_FINAL_17082008_(English).pdf. This report was reportedly assisted by the Oxford Research Group and financed by a European Union grant.

unilaterally,[79] and potentially to shame Israel into accepting a one-state solution by threatening it with international political and economic isolation (e.g., suspension of diplomatic ties, economic sanctions and boycotts, divestment campaigns) for its supposed disregard of Palestinian rights. Additionally, during the Olmert-Abbas negotiations in August 2008, then-PLO negotiator and former PA Prime Minister Ahmed Qurei asserted that "if Israel continues to oppose making [a Palestinian state within the 1967 pre-war borders of the West Bank and Gaza] a reality, then the Palestinian demand for the Palestinian people and its leadership [would be] one state, a binational state."[80] In August 2009, the political platform adopted by the Sixth Fatah Congress preserved the option of posing "the idea of the unified democratic state that rejects racism, hegemony and occupation

Israeli Jews' strong objections to the one-state argument as a direct threat to the fundamental nature of Israel are the foundation for Israel's firm unwillingness to accept or even to entertain the notion of a one-state solution.[81] Many believe that the Jewish character of the state would be extinguished by Arab domination due to the group's numerical superiority. This, for many Israelis, is tantamount to the end of Israel. A single democratic state for Jews and Arabs that guarantees all citizens equal rights to civil liberties and political participation could theoretically come about through a peaceful overhaul of the governing mechanisms of the existing state of Israel. This makes the idea superficially different from the "one-state solution" generally advocated by Hamas, whose charter insists upon the elimination of the state of Israel and the establishment of Palestinian and Islamic primacy over all of pre-1948 historic Palestine.[82] Whether the two are different in real terms is open to debate. Given that Israelis are averse to a

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[79] Palestinian Strategy Study Group, op. cit. Although the PSSG report does not rule out violent resistance, it implies that violence, and particularly violence against civilians, is to be avoided if at all possible.

[80] "PA Negotiator: Israel May Make Two-State Solution Impossible," *Reuters*, August 11, 2008. Qurei's comment was hardly the first Palestinian reference to a possible one-state or binational outcome (nor for that matter, was it the first such public reference made by Qurei himself). In fact, the debate over partition and two- and one-state models dates back to the time of the British Mandate in Palestine. Prior to the adoption of the 1947 U.N. partition plan (General Assembly Resolution 181), the majority report for the U.N. Special Committee on Palestine supporting partition of the British Mandate into separate Jewish and Arab states was opposed by a minority report proposing a federation of Jews and Arabs. Palestinian calls for a "one-state solution" never completely subsided following the PLO's recognition of Israel's right to exist (which was formally declared by then-PLO Chairman Yasser Arafat pursuant to the "Letters of Mutual Recognition" of September 9, 1993, although controversy remains over whether the PLO charter has been amended to accommodate this recognition). These calls, some of which criticized the merits or the practicability of a two-state solution as well, became more frequent and less confined to Palestinians following the outbreak of the second Palestinian *intifada* in 2000, but were made even during the initial 1993-2000 Oslo period. See, e.g. Edward Said, "The One-State Solution," *New York Times*, January 10, 1999.

[81] See "Endless Occupation?" *The Nation*, June 17, 2007. "Put simply," Yossi Alpher has said, "the vast majority of Israeli Jews would not agree to live in a binational Israeli state." Alpher, "A One-State Solution in Palestine Is Patently Unrealistic," op. cit. Partly because the state of Israel does not have a formal written constitution, there is no single source that authoritatively defines the fundamental principles on which the state is based. Even though over 20% of Israel's citizens are Arabs, the historical core of Israeli Zionist society and the Jewish diaspora overwhelmingly agrees that historical, customary, and religious reasons dictate that Israel is and should remain a democratic state that is distinctly Jewish (although the characteristics of its Jewishness are not defined with precision and consequently are subject to wide interpretation—are the national Jewish characteristics ethnic, cultural, legal, political, religious, or some combination of these?). Perhaps this consensus reflects a shared conviction that Israel fulfills an important function by providing a homeland and safe space for Jews, and that this haven can only survive if it is led by Jews and guided by Jewish principles. Needless to say, an Arab-majority democratic state organized under the principle of "one-man, one-vote" would not be seen by most Israeli Jews as "Jewish." Many Jews and non-Jews struggle with the interrelated questions of whether Israel's Jewish nature can be reconciled with democratic principles in the face of demographic realities, and whether a choice might eventually need to be made between Jewishness and democracy, either on principle or in the face of outside pressure.

[82] See 1988 Hamas Charter, op. cit.

one-state outcome, and that Western governments may not be likely to embrace the Palestinian strategy of ascribing pariah status to Israel,[83] it is often unclear whether Palestinian arguments promoting this outcome are being forwarded because of a genuine strategic preference for this option, or are being used tactically—as a threat to prod Israel into agreeing to a two-state solution.[84]

Some proponents of a one-state solution claim that it could satisfactorily resolve all the core issues that currently divide Israel and the PLO because of their belief that problems on those issues—security, settlements, refugees, the status of Jerusalem, water rights—were created by the assumption that borders would eventually separate the two peoples.[85] Take away the borders, proponents might say, and the problems vanish too. Yet, many analysts doubt that the problems surrounding the core issues are likely to vanish inside a single state. Nathan Brown, who specializes in Palestinian politics at George Washington University and the Woodrow Wilson Center for International Scholars, has said, "The advocates of a binational state generally fall into the trap of holding out an admirable utopian solution without analyzing what such a state would be like in practice or how entrenched adversaries could ever construct such a state."[86] In August 2009, Hussein Ibish of the American Task Force on Palestine, a Washington, DC-based non-governmental organization generally aligned with the Abbas-led positions of the PLO, published an entire book aimed at refuting the one-state argument, entitled *What's Wrong with the One-State Agenda: Why Ending the Occupation and Peace with Israel Is Still the Palestinian National Goal.*

## "Jordanian" or "Regional" Option

A commonly articulated Israeli alternative to the two-state solution is the so-called "Jordanian option," sometimes also known as the regional option. The regional option is the idea that the Palestinian territories should not become an independent state, but rather should unite (or reunite, as the case may be) with Jordan and/or Egypt in some manner, for historical, cultural and geographical reasons.[87] Jordan administered the West Bank and East Jerusalem from 1948-1967, annexing them in 1950 (although only the United Kingdom and Pakistan recognized the annexation) and granting Jordanian citizenship to West Bank and East Jerusalem residents in 1954 (although the annexation claims and citizenship grants were rescinded in 1988 when Jordan

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[83] See Naomi Shepherd, "One State: A Solution for Israel/Palestine or a Threat?" *guardian.co.uk*, August 22, 2008. Shepherd wrote, "Israel may be unpopular in liberal [W]estern circles, but this has little practical impact. Even in countries overtly hostile to Israel, arms and other deals continue. So if the Palestinians, backed by a substantial number of UN members, were to press for a bi-national state, the US and Europe would certainly block any such resolution."

[84] In the event the PLO continues discussing a one-state solution, its efforts at maintaining and gaining further international public support could backfire significantly, particularly if the PLO is seen as unreasonable, manipulative, or deceptive in the methods or tactics it uses—for example, if the timing of its abandonment of the two-state solution could be portrayed as arbitrary or as having given insufficient notice or opportunity to the Israelis; or if the PLO and its leaders say one thing to English-speaking audiences, and another to Arabic-speaking audiences. Any resort to violence against Israel in support of a one-state solution is likely to erode international support for the Palestinians very quickly.

[85] See Joe DeVoir, "The Day After Annapolis: Policy Scenario and Options Facing the Palestinian Authority," Israel/Palestine Center for Research and Information (IPCRI), September 1, 2008.

[86] Nathan J. Brown, "Sunset for the Two-State Solution?" Carnegie Endowment for International Peace, May 2008.

[87] See Giora Eiland, *Rethinking the Two-State Solution*, Washington Institute for Near East Policy, *PolicyFocus #88*, September 2008. The idea of Jordan, instead of the PLO, ultimately having the primary governing role in the West Bank was a mainstream position in the United States and the international community until Jordan rescinded its annexation of the West Bank and acknowledged the PLO as the sole representative of the Palestinian people in 1988.

acknowledged the PLO as the sole representative of the Palestinian people). Egypt administered the Gaza Strip from 1948-1967 but did not annex it or make Gazans Egyptian citizens.

A major obstacle to the viability of the regional option is the stated opposition of Jordan and Egypt to assuming responsibility for the Palestinian territories, as well as the widespread aversion to this option among Palestinians who are committed to the principle of self-determination.[88] Both Jordan and Egypt have interests in helping stabilize the situations in the West Bank and Gaza, respectively, and in forwarding the peace process. Currently, Egypt is mediating both Hamas-Fatah and Hamas-Israel talks in hopes of improving overall prospects for the peace process, while Jordan helps train recruits for PA security forces. Yet, because they are concerned that Israel might have an agenda to foist ultimate responsibility for the Palestinian territories on them,[89] they are reluctant to take too direct a role or establish too direct a presence in the territories. In May 2009, members of Prime Minister Netanyahu's Likud party in the Israeli Knesset (parliament) introduced a bill that would have designated Jordan as the Palestinian homeland had it obtained majority support.[90] The Knesset bill may have motivated Jordan, during summer 2009, to raise the public profile of its ongoing efforts to differentiate between those Palestinian nationals who—by virtue of whether they resided in Jordan or in the West Bank at the time Jordan rescinded its annexation in 1988—are entitled to Jordanian citizenship (Arabs of Palestinian origin make up a majority of Jordan's population) and those who are not.

## Israeli Unilateralism

Another alternative to a two-state solution is unilateral Israeli imposition of a solution. The strategy of unilateral disengagement—popularized earlier this decade in the midst of the second *intifada*—acknowledged the futility of indefinite Israeli occupation of the Gaza Strip and most of the West Bank, but also held that a negotiated two-state solution was either not possible, not a priority, or not in line with Israeli interests. This stance led then-Prime Minister Ariel Sharon to order the complete withdrawal of all Israeli settlers and forces from the Gaza Strip in 2005. The Gaza withdrawal was a prelude to the declared aim of Sharon's successor Ehud Olmert— following Sharon's incapacitation by a stroke in January 2006—to withdraw from most of the West Bank after constructing a separation barrier to accommodate Israeli security concerns. The West Bank disengagement plans lost momentum in light of the rocket threat that emerged from Hamas and other Palestinian militants following the disengagement from Gaza, and in light of the threat that materialized during Israel's 2006 conflict with Hezbollah from the southern Lebanese buffer zone that Israeli forces left in 2000. Many Israelis feel that the separation barrier might be insufficient to guarantee security if an Israeli withdrawal led to a West Bank ruled by militants such as Hamas. Although unilateralism has lost favor in the past four years, it could make a comeback because it can be promoted to the Israeli public as a more efficient, less diplomatically arduous route to a two-state outcome.[91]

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[88] See Indyk, op. cit., saying, "In terms of the Jordanian option, ultimately no Jordanian government would be willing to take over from Israel the responsibility of policing Palestinians." Some leaders and analysts believe that a Jordan-Palestine confederation, or even a Jordan-Palestine-Israel confederation, could be possible *after* a Palestinian state has been established. See, e.g., Susser, op. cit.

[89] Ghassan Khatib, "Forcing the Neighbors Into Play," *bitterlemons.org*, August 18, 2008.

[90] Tom A. Peter, "A Homeland ... in Jordan?" *globalpost.com*, June 3, 2009.

[91] See Daniel Levy, "The Alternative to Paralysis," *Ha'aretz*, October 3, 2008.

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## "Status Quo"

The default option of *not* adopting a proactive alternative to a two-state solution, but rather leaving the current system of Israeli occupation and limited Palestinian self-rule in place, is in itself an alternative. It may be the preferred alternative for security-minded Israelis who feel that the risks of withdrawal from the West Bank outweigh the potential consequences of continued occupation.[92] Some Palestinians also might favor the status quo, at least for the time being, over idealistic options whose failure could result in renewed conflict. West Bank Palestinians may be less motivated to actively oppose continued political stalemate if they discern relative improvements in their quality of life (see "Aid to Palestinians" below). Reluctance shown by Israel, the PLO/PA, and the international community to address the situation in Gaza since the 2007 Hamas takeover is one of the strongest indicators of tacit support for the status quo.

The status quo could lead to a "one-state reality" (neither a formal two-state nor a formal one-state outcome) with far-reaching consequences—possibly (1) solidifying the domination of an Arab majority by a Jewish minority, (2) entangling Israelis and Palestinians to such a degree that future separation of the two peoples becomes significantly more difficult to achieve, and/or (3) making the West Bank/Gaza split permanent.[93] Others might say that such a scenario is less than certain, and that, in any event, it would take years or decades to materialize.

# U.S. Policy

## Debate Over the U.S. Approach

Because some analysts believe that prospects for a two-state solution could decrease as time wears on, some advocate vigorous U.S. engagement in pushing the peace process forward.[94] They tend to believe that an urgent approach is necessary to prevent Israelis and Palestinians from turning to other options. Others, however, believe that the United States should take a more incremental approach because current conditions—particularly the division among Palestinians between Fatah and Hamas—militate against pressuring the two sides to reach and implement a final-status agreement.[95] An "incrementalist" U.S. posture with respect to the peace process could—by buying time—increase the chances of a propitious alignment of U.S., Israeli, and Palestinian leaders and publics willing to conclude and implement a mutually beneficial final-status agreement, or it could squander opportunities and cede the initiative to other parties. In deciding whether to play a more proactive role in the peace process, the U.S. could face concerns

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[92] See Steven J. Rosen, "Stuck in the Middle East," *foreignpolicy.com*, September 17, 2009.

[93] See Susser, op. cit.

[94] Many from this school of thought believe that the incremental confidence-building measures of the Oslo paradigm have not worked and that a new approach, in which the United States offers "bridging proposals" and/or uses persuasion or diplomatic pressure to overcome differences between the two sides, is overdue. See Brzezinski, et al., op. cit.; Cook and Telhami, op. cit.; Hulsman, op. cit.

[95] According to Dennis Ross—former Special Middle East Coordinator and lead peace process negotiator under President Bill Clinton—"given Hamas' control of Gaza and other factors, there is currently no prospect for a permanent settlement and consequently the US should focus on improving the situation on the ground through more modest measures such as security cooperation." Jonathan Rynhold, "President Obama and the Middle East Challenge," Begin-Sadat Center for Strategic Studies, Bar-Ilan University, *BESA Center Perspectives Papers No. 50*, November 6, 2008, available at http://www.biu.ac.il/soc/besa/perspectives50.html.

over possible Israeli and Palestinian resistance against outside pressure, offset by concerns that peace might not be possible without considerable third-party intervention.

## The Obama Administration's First Steps

It is within this context that the Obama Administration seeks to chart a policy course. Obama and many of his close advisers came into office saying that solving the Israeli-Palestinian problem is critical to U.S. national security interests because it fuels other problems America faces in the Middle East,[96] and the Administration has insisted on these linkages in public disagreements with Israeli leaders. Nevertheless, some might question whether the peace process is or can remain a priority for the United States given its other pressing foreign and domestic policy problems.

Proponents of the Obama Administration's approach counter that Obama has given the peace process a far higher profile than his predecessors in the early stages of their presidencies. The appointment of Special Envoy for Middle East Peace George Mitchell during the first week of Obama's term could provide insight into Obama's intentions. Yossi Alpher, co-editor of the Israeli-Palestinian *bitterlemons.org* website,[97] has noted that the Administration's major points of emphasis thus far—freezing settlements, progress on security, restoring "pre-intifada" Arab-Israeli links, multilateral diplomacy—come directly from Phases 1 and 2 of the Roadmap, which was largely based on the 2001 Mitchell Report.[98] A common criticism of Bush Administration-era peace process diplomacy was that it ignored or bypassed key provisions of the Roadmap, thus undermining its legitimacy. Is it possible that in appointing Mitchell as his point man, Obama is less interested in a wholly new approach to the peace process than in giving the Roadmap a genuine chance to succeed by entrusting policy to one of its antecedents? If so, does that mean that the Roadmap might also be the best indicator of future policy proposals? Some might question whether the Roadmap's framework—conceptualized in 2001-2002—remains relevant for 2009-2010 in light of changes that have occurred in the meantime (see "Changes Since Oslo" above).

At a press conference following the September 2009 trilateral meeting in New York, Mitchell provided some insight into how he might plan to approach final-status negotiations:

> We're going to meet with the parties. We're going to seek to determine what is necessary to bridge their differences, to close the gaps. We will, where appropriate, suggest language, suggest decisions. And there will be a genuine back and forth....[99]

## Obama Administration Personnel

The Obama Administration has been staffing its peace process team to support the President, Secretary Clinton, and Special Envoy Mitchell. This support is available from several different

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[96] See Transcript of NBC interview with Barack Obama, "Meet the Press," July 27, 2008, available at http://www.msnbc.msn.com/id/25872804/.

[97] Alpher is also a former special advisor to Ehud Barak (during Barak's tenure as Israeli prime minister) and a former director of the Jaffee Center for Strategic Studies in Tel Aviv.

[98] See Alpher, "Obama Is Deep into Phase II," op. cit.

[99] Transcript of press briefing by George Mitchell, New York, NY, September 22, 2009, available at http://www.state.gov/p/nea/rls/rm/2009/129506.htm.

sources. Within the State Department, in addition to Mitchell and his team, there is the Bureau for Near Eastern Affairs (including the diplomats in residence at the U.S. embassy in Tel Aviv and the U.S. consulate general in Jerusalem), the U.S. Security Coordinator for Israel and the Palestinian Authority (or USSC, based in the Jerusalem consulate), and the Bureau of International Narcotics and Law Enforcement Affairs (commonly known as the INL bureau, it also maintains an office in the Jerusalem consulate). The National Security Council, Department of Defense, and U.S. Agency for International Development (USAID, which maintains an office in Tel Aviv) also play significant roles in the region.

Along with the changes in personnel owing to the change of presidential administration and to Mitchell's appointment as Special Envoy for Middle East Peace come a variety of questions. What lines of authority will reporting, decisionmaking, and implementation of programs follow? Will accountability be clearer or more muddled? To what extent will Mitchell and his deputies rely on officials from the Jerusalem consulate (including the USSC and the INL bureau), the embassy in Tel Aviv, and the Near East Affairs bureau? How involved will Obama, the White House/National Security Council staff, and Secretary Clinton be in diplomatic exchanges and in the day-to-day management of affairs? Who will be the primary actors in explaining Administration policy to Congress, and will those actors enjoy full access to and confidence of the key decisionmakers and implementers?

# Policy Challenges for Congress

The environment shaping prospects for Israeli-Palestinian negotiations and a two-state solution can influence and be influenced by many factors. Four particularly important aspects of the current situation with possible implications for Congress are: the role of Hamas, efforts to assist Palestinians, Israeli settlements in the West Bank and East Jerusalem, and possible constructive involvement by Arab states.

## The Role of Hamas

The role of Hamas may pose the biggest open question: could Hamas (with which U.S. government representatives are currently prohibited from having contact because it is an FTO) be included (either directly or indirectly) in U.S.-facilitated final-status negotiations—in the event it wanted to be included? Acquiescing to the inclusion of Hamas in the peace process in some manner could involve its integration or reintegration into existing Palestinian leadership structures such as the PA and the PLO. Among current U.S. restrictions on aid aimed at Hamas and its affiliates is a prohibition on direct aid to any PA government that includes members of Hamas unless all government ministers publicly agree to recognize Israel's right to exist and to be bound by previous Israeli-Palestinian agreements.[100] Prospects of Palestinian unity may also lead to calls for a redefinition of the mission of U.S.-assisted PA security forces in the West Bank, which target Hamas members and sympathizers for arrest under certain conditions.[101]

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[100] See CRS Report RS22967, *U.S. Foreign Aid to the Palestinians*, by Jim Zanotti.

[101] Hamas claims that its members are being targeted politically by PA security officials, and has used these claims repeatedly to justify its unwillingness to agree to a consensual governing arrangement with Fatah. On the other hand, PA Prime Minister Salam Fayyad and other PA officials insist that the security forces do not target and arrest people based on their political views or affiliation, but only to the extent that they engage in unlawful activities such as smuggling weapons or conspiring to commit violent acts against Israeli or Palestinian officials or civilians. See (continued...)

As demonstrated by Obama's Cairo speech, the Administration has not departed from the Bush Administration's stance on Hamas. It has conditioned Hamas's participation in the peace process on acceptance of the Quartet Principles. However, a June 2009 meeting by Thomas Pickering, a former U.S. ambassador to the United Nations and current co-chair of the International Crisis Group, with Mahmoud al-Zahar—one of Hamas's most senior leaders—has led some to wonder if the Administration might be open to indirect or secret talks with Hamas.[102] In August, *Washington Post* columnist David Ignatius speculated that the timing could be right to pursue secret talks—perhaps allowing the United States to take advantage of possible Hamas concerns occasioned by Iran's internal post-election turmoil:

> But Tehran's reliability as a patron is now open to question, and its friends may want to hedge their bets. It's an ideal time for the United States to explore alternatives—through a broad diplomatic opening with Syria and secret contacts (using Saudi, Egyptian and Syrian channels) with Hamas.[103]

Although the other Quartet members formally espouse the Quartet Principles, Russia has regular dealings with Hamas, legislators from various EU countries have met publicly with Khaled Meshaal and other Hamas leaders, and Hamas representatives claim that high-ranking European officials—including ambassadors—are talking regularly to them.[104] Some analysts believe that Khaled Meshaal's media overtures following Obama's speech were largely aimed at gaining EU (if not U.S.) acceptance of a Hamas role in Palestinian affairs and the peace process without having to commit to the Quartet Principles. Some might argue that European governments could be useful as go-betweens for Hamas and the United States, while others might counter that the go-between role may have limited utility—using Bush-era European diplomacy with Iran as a case in point.

Any possibility of U.S. policy shifts regarding Hamas's role could trigger heated debate. Those opposing policy shifts say dealing with Hamas would likely strengthen its political hand at the expense of Abbas and other more moderate Palestinians, allowing the movement to argue to Palestinians that its hardline tactics with Israel are more effective than Abbas's approach. They also might say that any move toward legitimizing Hamas could embolden it and other Palestinian militants to use the mechanisms of Palestinian leadership to mount attacks on Israel—either before or after the establishment of a Palestinian state.[105] Those favoring policy shifts might say

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"Officials Deny Bethlehem Sweep Will Target Hamas," *Agence France Presse*, November 12, 2008.

[102] Pickering was also one of the signatories to the 2009 U.S./Middle East Project report (see footnote 10) submitted to the Obama Administration that advocated taking a more "pragmatic approach" toward Hamas. The report acknowledged that direct U.S. engagement with Hamas might not now be practical, but recommended that the United States "offer [Hamas] inducements that will enable its more moderate elements to prevail, and cease discouraging third parties from engaging with Hamas in ways that might help clarify the movement's views and test its behavior." Brzezinksi, et al., op. cit. U.S. officials claimed that they did not ask Pickering to approach Hamas and that they did not know about his meeting with al-Zahar until after it occurred. However, Bassem Naim, another Hamas official present at the meeting, conveyed Hamas's impression that the meeting could lead to a future dialogue, saying, "This was a first meeting to investigate the positions in general terms of both parties without any commitment on any side." Howard Schneider and Glenn Kessler, "Ex-U.S. Diplomat Talks with Hamas," *Washington Post*, July 16, 2009.

[103] David Ignatius, "A Waiting Game with Iran," *The Washington Post*, August 2, 2009.

[104] Andrew Rettman, "EU Countries Practice 'Secret' Diplomacy, Hamas Says," *euobserver.com*, September 14, 2009.

[105] These opponents might assert that Hamas should be dealt with only after it is marginalized. Israel did not agree to formal negotiations with Yasser Arafat of the PLO or with other historical Arab adversaries of Israel—such as former Egyptian President Anwar Sadat and King Hussein of Jordan—until it had established a position of strength relative to each of them. Some might say that doing this helped lead to diplomatic breakthroughs in each case. However, at a (continued...)

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that Hamas is less likely to attack Israel if it is made a stakeholder that is accountable to revived Palestinian hopes of a Palestinian state.[106]

Leaving Hamas out of a negotiated outcome could lead the United States to pursue one of the following courses of action. One would be to trust that the Palestinian people would rally to Abbas's support in the event he reaches a final-status agreement with Israel, ratifying the agreement in a referendum or in some other manner regardless of Hamas's objections. Another would be to help the PA and/or Israel prepare for containment of Hamas or for further military action against it. It is possible that a combination of both courses of action could be used.

There are several risks involved with both courses of action. Entrusting the fate of a final-status peace agreement to a divided Palestinian public after so many years spent striving for resolution could lead to an unpredictable result (along the lines of the 2006 PLC elections that brought Hamas to power). Even if the Palestinian public backs Abbas, Hamas could seek to nullify the popular will through force. Containment of or military action against Hamas could backfire, as some believe it did for Israel during the December 2008-January 2009 conflict, leading Hamas to broaden and/or deepen its control of Gaza and possibly also giving it inroads into the West Bank. Even military success could come at great cost, given Hamas's entrenchment in Gaza and its attack capabilities (either with rockets or through direct attacks on Israelis). By supporting the use of force against Hamas, the United States could open itself up to charges that it is an aggressor, possibly eroding U.S. international credibility as an "honest broker" and guarantor with regard to the peace process. If any of these risks materialize, Congress could face requests for heightened economic and security assistance—as occurred in the aftermath of the most recent Gaza conflict—at a time when discerning if potential aid recipients and their actions are hospitable to U.S. interests might become increasingly difficult.

## Aid to Palestinians

The Obama Administration has expanded the amount of U.S. aid given to forward Palestinian reform and development priorities. U.S. economic assistance to the Palestinians began following the establishment of limited Palestinian self-rule in the mid-1990s. U.S. assistance levels have fluctuated in past years according to the composition of Palestinian leadership and other circumstances.[107] Current Palestinian priorities include the internationally and congressionally supported programs of PA security and economic reform and assistance that were relaunched in conjunction with the Annapolis process in 2007.[108] Since mid-2007, the United States has

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February 2009 hearing of the House Foreign Affairs Subcommittee on the Middle East and South Asia, Carnegie Endowment for International Peace analyst Michele Dunne provided an explanation for why the analogy may not apply to Hamas: "Regarding Hamas, I think that our problem as the United States is we want Hamas to walk the road that the PLO walked 20 years ago. And Hamas sees very well that the PLO walked that road, and it failed." See Transcript of Hearing, "Gaza After the War: What Can Be Built on the Wreckage," House Foreign Affairs Subcommittee on the Middle East and South Asia, February 12, 2009, available at http://foreignaffairs.house.gov/111/47420.pdf.

[106] See Joshua Mitnick, "As Peace Talks Sputter, Israelis and Palestinians Eye Plan B," *Christian Science Monitor*, September 15, 2008.

[107] Fluctuations have been particularly significant since 2006—due mainly to the on-again, off-again role of Hamas within the Palestinian Authority (PA).

[108] The overall program is articulated in the Palestinian Reform and Development Plan (PRDP) for 2008-2010 introduced by PA Prime Minister Salam Fayyad in December 2007. The text of the PRDP is available at http://www.mop-gov.ps/web_files/issues_file/PRDP-en.pdf.

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appropriated or reprogrammed nearly $1.5 billion in support of these programs, including $500 million obligated in direct budgetary assistance to the PA and $294 million (toward training, non-lethal equipment, facilities, strategic planning, and administration) appropriated to strengthen and reform PA security forces and criminal justice systems in the West Bank. The remainder is for USAID-administered programs implemented by non-governmental organizations in humanitarian assistance, economic development, democratic reform, improving water access and other infrastructure, health care, education, and vocational training. The Obama Administration has requested another $500 million in total assistance for FY2010. Many observers point to signs of progress with PA security capacities and West Bank economic development, along with greater Israeli cooperation. It is less clear whether the progress they cite can be made self-sustaining and can be useful in promoting a broader political solution, and whether the level of Israeli cooperation is sufficient.[109]

The effectiveness of U.S. assistance is challenged, logistically and strategically, not only by the Israelis, the PLO, the PA, Fatah, Hamas, and their shifting and often conflicting interests, but also by the U.S. interagency process and by the need to coordinate assistance from the European Union, European states, Russia, Japan, Canada, China, Turkey, and Arab states, among others. Ensuring that all international assistance complements U.S. objectives can be difficult or even untenable depending on the circumstances.

Presently, assisting Palestinian development and reform advances the stated interests of both Israel and the PA (see "Fayyad's Plan – A *De Facto* Palestinian State" above). Opponents of an emphasis on Palestinian development and reform might argue, however, that efforts to bolster Palestinian moderates in the 16 years since Oslo have made Hamas stronger, not weaker. If this trend continues, their argument might go, Hamas might even attempt a takeover of the West Bank, either through the PA electoral process (according to Palestinian law, both presidential and legislative elections are scheduled to take place in early 2010) or, eventually, through force (as it took over the Gaza Strip in 2007). In such a situation, the future existence and/or posture of the PA and its security forces (on which millions of dollars and thousands of man-hours have been spent through U.S.-sponsored programs) could be thrown into doubt.[110]

Another reason some might oppose an emphasis on Palestinian development and reform is that U.S. security and economic assistance to Palestinians could come to be seen as reinforcing the status quo. A peace process with no end in sight could erode momentum for a two-state solution and intensify the jockeying between and among Israelis and Palestinians for alternatives, perhaps leading ultimately to greater conflict. Also, the attention and resources devoted to reform and to strengthening anti-Hamas groups in the West Bank could widen divisions between the two Palestinian territories, given perceptions that residents of the Gaza Strip—almost totally dependent on humanitarian assistance and illicit economic activity under restrictive Hamas rule and the virtual Israeli/Egyptian shutdown of its borders—are being neglected, left behind, or perhaps even targeted. This could lead to heightened Palestinian resentment of all parties promoting the peace process.

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[109] For a more detailed discussion of the issues raised in this paragraph, see CRS Report RS22967, *U.S. Foreign Aid to the Palestinians*, by Jim Zanotti; and CRS Report R40664, *U.S. Security Assistance to the Palestinian Authority*, by Jim Zanotti. The Government Accountability Office (GAO) is currently conducting research for a report on U.S. assistance to PA security forces and the PA criminal justice system that is expected to be published in spring 2010.

[110] See CRS Report R40664, *U.S. Security Assistance to the Palestinian Authority*, by Jim Zanotti.

## Israeli Settlements in the West Bank and East Jerusalem

As discussed above (see "Israeli Settlements and Infrastructure"), extensive construction of Israeli settlements in the West Bank and East Jerusalem since Oslo may have complicated prospects for a two-state solution. The historical tendency for settlement construction to increase during negotiations has led to Palestinian and Arab complaints aimed not only at Israel, but also at the United States,[111] as Israel's ally and as both parties' designee as "monitor and judge" of the peace process's implementation.[112] Although longstanding official U.S. policy opposes the settlements as "obstacles to peace" and insists that existing settlement blocs should not prejudice final-status negotiations, Arab critics routinely charge that U.S. support of Israel indirectly supports settlement activity.[113]

The Obama Administration chose to make a settlement freeze (pursuant to the Roadmap) one of the cornerstones of its approach to restarting the peace process. Public U.S. and Israeli disagreement over the prospect of a settlement freeze lasted through summer 2009 and continued into the fall. Although the issue's centrality to the resumption of final-status negotiations was downgraded somewhat at the September 2009 trilateral meeting in New York, President Obama nevertheless reaffirmed the importance of "real action" on restraining settlement activity.[114]

Differences have surfaced over what constitutes the type of settlement construction that would be subject to a freeze. At various points Israel has sought to exclude the following from a potential freeze: (1) construction projects already contracted, (2) construction within the bounds of existing communities (building "up" but not "out"), (3) planning and permitting for construction that would begin following the end of a freeze, and (4) construction in East Jerusalem.[115] Israel also seeks to make an exception for so-called "natural growth,"[116] even though the Roadmap explicitly calls for including it in a freeze. Israel has claimed that during the Bush Administration, the United States and Israel reached an unwritten understanding that "Israel could add homes in settlements it expected to keep [once a final resolution was reached], as long as the construction was dictated by market demand, not subsidies."[117] The accounts of former Bush Administration

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[111] While serving as Secretary of State under President George H.W. Bush, James Baker observed, "Every time I have gone to Israel in connection with the peace process, on each of my four trips, I have been met with the announcement of new settlement activity. This does violate United States policy. It's the first thing that Arabs—Arab governments, the first thing that the Palestinians in the territories—whose situation is really quite desperate—the first thing they raise when we talk to them. I don't think there is any bigger obstacle to peace than the settlement activity that continues not only unabated but at an enhanced pace." Testimony before the House Committee on Appropriations, May 22, 1991.

[112] The Annapolis Declaration of November 27, 2007, text available at http://www.bitterlemons.org/docs/annapolis.html.

[113] Some of these charges stem from the letter President George W. Bush sent to Israeli Prime Minister Ariel Sharon dated April 14, 2004, which stated, "In light of new realities on the ground, including already existing major Israeli populations centers, it is unrealistic to expect that the outcome of final status negotiations will be a full and complete return to the armistice lines of 1949." The text of the letter is available at http://www.bitterlemons.org/docs/bushletter.html.

[114] Transcript of remarks by Barack Obama, New York, NY, op. cit.

[115] Because Israel annexed East Jerusalem shortly after the 1967 Six-Day War, it claims that Jewish neighborhoods there are not settlements. The United States, however, along with most other countries, has not recognized the annexation, and therefore considers these neighborhoods to be settlements.

[116] "Natural growth" is a vague term that, construed narrowly, could refer to building in settlements to accommodate the rate of expansion of settler families, and, construed broadly, could refer to building to accommodate anyone interested in moving to the settlements.

[117] Glenn Kessler and Howard Schneider, "U.S. Presses Israel to End Expansion," *Washington Post*, May 24, 2009. This article quotes former Bush Administration deputy national security advisor Elliott Abrams as saying that the (continued...)

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officials diverge in their characterization of U.S.-Israel talks on the subject,[118] but the Obama Administration has insisted that if understandings ever existed, it is not bound by them.

Some observers, particularly Arabs, assert that a settlement freeze should not be subject to negotiation. They believe that Israel is obligated to stop settlement construction because of its agreement to the terms of the Roadmap, if not on other moral and legal grounds, seeking to reinforce their point by asking whether Israel would countenance the Palestinians negotiating down their security obligations under the Roadmap.

Nevertheless, reports indicate that the United States might be willing to accept a temporary and/or partial freeze or "moratorium," perhaps at least partly due to concerns in Congress that the public debate over settlements has lasted too long and could damage U.S.-Israeli relations, and/or that the Administration's initial expectations were too drastic. In May 2009, a letter from 329 Members of Congress called on President Obama to work "closely and privately" with Israel on "areas of disagreement,"[119] and 76 Senators signed a different letter to the President urging continued close relations with Israel.[120] In June, *Politico* quoted Democratic Congressman Robert Wexler, a member of the House Foreign Affairs Subcommittee on the Middle East and South Asia, as saying that a freeze should apply "only to settlements outside Israel's security fence, or wall, and should exclude territory that appears likely to ultimately remain part of Israel."[121] In August, while leading a delegation of 29 Democratic Members of Congress in Jerusalem, the *Jerusalem Post* reported that House Majority Leader Steny Hoyer "felt that there was more acceptance [in Congress] of Jewish construction in east Jerusalem than in the settlements in the West Bank."[122]

Given the structure of Israeli society and politics, it may be difficult to maintain a settlement freeze or any other external restraint on settlement activity for an indefinite period of time. Settlers affect the political and diplomatic calculus through (1) influence over key voting blocs in Israel's coalition-based parliamentary system (although they do not all share the same ideology or interests, settlers constitute about 6% of the Israeli population—approximately 450,000 out of 7.2 million total); (2) renegade actions to foment public protest and even violence;[123] and (3) what they represent for some symbolically, emotionally, and even spiritually as guardians of the last frontier for a country whose founding and initial survival depended on pioneering spirit in the face of adversity.[124] During the public debate of summer 2009, the Netanyahu government's announcement of new plans for construction and repeated insistence that outside actors will not

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United States and Israel reached "something of an understanding."

[118] Ethan Bronner, "Israelis Say Bush Agreed to West Bank Growth," *New York Times*, June 3, 2009.

[119] "AIPAC-Backed Letter Gets 329 House Signatures," *Jewish Telegraphic Agency*, May 28, 2009.

[120] Eric Fingerhut, "More the Three-Quarters of Senate Sign AIPAC-Backed Letter (CORRECTED)," *Capital J - blogs.jta.org*, May 20, 2009.

[121] Ben Smith, "Democrats Pressure Barack Obama on Israel," *Politico*, June 2, 2009.

[122] Herb Keinon, "Hoyer: E. J'lem Not Same as W. Bank," *jpost.com*, August 11, 2009.

[123] See Mark Weiss, "Settlers Destroy Trees on West Bank," *Irish Times*, July 22, 2009: "Militant settlers, who often act independently, in defiance of the official settler leadership, confirmed that a 'price tag' policy exists under which revenge attacks will be carried out against Palestinians every time the government acts to remove outposts."

[124] For more information on the history of the settlements and their impact on Israeli society, see Idith Zertal and Akiva Eldar, *Lords of the Land: The War for Israel's Settlements in the Occupied Territories, 1967-2007* (New York: Nation Books, 2007); Gershom Gorenberg, *The Accidental Empire: Israel and the Birth of the Settlements, 1967-1977* (New York: Times Books, 2006).

dictate Israeli policy demonstrated the government's sensitivity to these domestic concerns, or, at least, its willingness to claim that these concerns are constraints on its ability to comply with U.S. demands for a freeze.

Some analysts have suggested that the Obama Administration and Congress consider going beyond rhetoric to apply various forms of pressure on Israel in order to compel it to restrain settlement activity.[125] Loan guarantees figured prominently in the last significant U.S.-Israeli diplomatic standoff over settlements—between President George H.W. Bush and Prime Minister Yitzhak Shamir in 1991.[126] Current legislation authorizing loan guarantees through FY2010 permits the U.S. government to make reductions in the guarantees equal in amount to Israeli expenditures on settlement activity. However, most analysts believe that any potential reductions are unlikely to have any practical financial effect on Israel.[127]

## Arab States—Gestures Toward Israel and Other Constructive Involvement?

Determining the proper role of Arab states in Israeli-Palestinian affairs can be a challenge. Many observers believe that Arab states are uniquely positioned to provide key incentives to Israel and support to the Palestinians. While most Arab states want to be seen as supporting a positive solution to the Palestinian question because it is an issue of deep concern for their populations, they often differ with the international community and with one another on what they should do and how they should do it.

As discussed above (see "Obama's Cairo Speech and Subsequent Diplomacy"), the Obama Administration has encouraged Arab states to take measures to gradually normalize their relations with Israel. Many Members of Congress support the Administration's efforts on this front, and believe that any Israeli efforts to reduce or halt settlement building should be met reciprocally by normalization measures from Arab states. Some small Gulf Arab and North African states that had ties with Israel in the 1990s are reportedly willing to renew them if Israel agrees to freeze settlement building, but other Arab states remain unwilling to consider normalization under these conditions.[128] Saudi Arabia has explained its position by insisting that because of past failures with incremental confidence-building measures, the "focus must be on the final settlement and on the final peace," as outlined in the Arab Peace Initiative.[129]

In addition to normalization with Israel, observers have proposed other ways in which Arab states could play a constructive role in the peace process, including:

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[125] Some of these suggestions focus on aid. See Cook and Telhami, op. cit. Others have proposed non-financial means of U.S. pressure, including possibly reducing U.S.-Israel military and intelligence cooperation and U.S.-Israel diplomatic cooperation on matters such as Iran and on United Nations resolutions related to Israel. See Pierre Razoux, "How to Put Pressure on Netanyahu," *New York Times*, September 15, 2009.

[126] Bush refused to provide Shamir with $10 billion in requested loan guarantees to absorb immigrants from the Soviet Union without assurances that Israel would stop settlement building. Many analysts believe that the disagreement led to Shamir's ouster from power in 1992. Bush eventually agreed to provide the guarantees to Shamir's successor, Yitzhak Rabin, while reserving the option to deduct from the loan guarantees any amounts Israel spent on settlements.

[127] Cliff Churgin, "How Hard Will Obama Press Israel on Settlements?" *McClatchy Online*, June 29, 2009.

[128] See footnote 14.

[129] See Letter from Saudi Ambassador to the United States Adel bin Ahmed al-Jubair to selected Members of Congress, dated September 13, 2009, available at http://www.saudiembassy.net/announcement/announcement09130901.aspx.

- Providing financial and political support to the Palestinian Authority and its leaders and to Palestinian refugees (through organizations such as the U.N. Relief and Works Agency for Palestine Refugees in the Near East, or UNRWA);

- Investing or encouraging investment by their companies and citizens in West Bank industry and infrastructure;

- Halting or reducing smuggling into Gaza;

- Facilitating talks aimed at ending Palestinian factional and territorial division;

- Encouraging the PLO to resume final-status negotiations without preconditions, and, if the negotiations resume, publicly supporting the PLO and its leaders if they decide to make difficult concessions on final-status issues (such as refugees and Jerusalem).

Many analysts believe that Arab states have played an inconsistent role thus far. Egypt has been active in brokering Palestinian unity talks, but with little concrete progress to show for its efforts. Arab states (especially Gulf states) provided large amounts of aid to the Hamas-led PA government in 2006-2007 after the United States and European Union withdrew their aid, but following the reinstitution of U.S. and EU aid in mid-2007, most of them reduced contributions.[130] Routinely, they make generous pledges (including over $1.8 billion dollars in the wake of the 2008-2009 Gaza conflict) of aid to the Palestinians, but often fulfill them only in part and after significant delay.[131] Their reluctance to fulfill pledges may stem from misgivings over "picking sides" in Palestinian factional disputes and from concerns that without imminent prospects either for domestic political unity or for progress on the peace process, any money contributed could be a waste. On the part of the Gulf states in particular, reluctance may also stem from a feeling that they are less responsible historically for the Palestinians' current situation than Israel, the United States, and Europe.

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[130] See Glenn Kessler, "Arab Aid to Palestinians Often Doesn't Fulfill Pledges," *Washington Post*, July 27, 2008; "Falling Short," *Washington Post*, July 27, 2008, available at http://www.washingtonpost.com/wp-dyn/content/graphic/2008/07/27/GR2008072700095.html?sid=ST2008072700226.

[131] Following international pressure, Saudi Arabia contributed $200 million to the PA's budget in summer 2009. See Press Briefing by Assistant Secretary of State for Near Eastern Affairs Jeffrey D. Feltman, New York, NY, September 26, 2009, available at http://www.state.gov/p/nea/rls/rm/2009/129669.htm. Smaller budget support contributions in 2009 have been made by the Saudis and other Arab states such as the United Arab Emirates, Algeria, and Oman. Information provided to CRS from State Department, June 2009.

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