

The Israeli-Palestinian talks: an agreed-on U.S. paper is still possible

By Yossi Beilin

■ Executive summary

The willingness of U.S. secretary of state John Kerry to settle for the minimal option – U.S. terms of reference (ToR) for the Israeli-Palestinian negotiations that will permit the parties to state their reservations – is a grave mistake. Such reservations would tie the hands of the negotiators because of the latter's need to be publicly committed to them. Similar moves failed in the past, like the Clinton parameters in 2000 and George W. Bush's road map in 2003.

Kerry should go back to the drawing board and prepare a U.S. paper that contains another set of ToR that would refer to UN resolutions on the Middle East and focus on issues agreed upon between the parties regarding the goals of the negotiations, such as the establishment of a non-militarised Palestinian state, the willingness of such a state to permit foreign security forces to remain on its soil, and the understanding that the peace agreement would end the conflict and be the last word on the two parties' claims. Such a document would not require the parties to express their reservations and would allow them to continue the negotiations in a much better environment.

U.S. secretary of state John Kerry surprised many – both in his own country and internationally – by his determination to help achieve an Israeli-Palestinian peace agreement. If initially his efforts were dismissed, today he finds himself under severe attack by hawks on both sides, which presumably means that he is guiding the parties towards a moment of truth.

But during the last six months Kerry has found himself reneging on the goals he set himself. It is clear that there is no chance of reaching a permanent agreement by April 2014. Indeed, even Kerry's plan to achieve a framework agreement by January 2014 that would have committed the parties to a more detailed agreement in the subsequent months did not materialise. Kerry recently raised the idea of a U.S. paper that would lay down the principles on which the negotiations would be based from now on. This would be a U.S.-designed set of terms of reference (ToR) for the talks, which is surely something that should have been suggested at the very beginning of the current talks. Currently this idea has turned into a U.S. paper that would allow the parties to present their detailed

reservations while continuing to negotiate until the end of 2014.

The problem is that a paper that is not agreed to by the parties and allows them to state their reservations is not a substitute for a set of ToR that are agreed to and therefore binding. The publication of reservations would likely make the parties feel publicly committed to them during the negotiations. Once the paper were published and the reservations made public, the political situation would likely deteriorate dramatically and the secret talks become a futile public debate.

The ToR could include three kinds of statements:

Firstly, there could be general statements that both sides would have no trouble agreeing with, because this has been done before, such as statements that the purpose of the negotiations is to establish a Palestinian state, end the Israeli-Palestinian conflict, ensure peaceful relations between the two nations and enable cooperation between them.

Secondly, there could be statements related to the final settlement that would irrevocably commit the parties once they are laid down. For example, if it is stated that the purpose of the agreement is to bring about a mutual recognition that Palestine is the homeland of the Palestinian people and Israel is the homeland of the Jewish people, this would reflect a de facto recognition of these principles, despite the Palestinian intention to keep them for a later stage of the negotiations. Similarly, if the document says that the purpose of the negotiations is to establish two capitals in Jerusalem, this would remain an Israeli commitment even if the current negotiations failed.

Thirdly, the paper could contain statements that would have an immediate impact on the current situation between the two parties, regardless of the progress – or lack of it – of the talks. For example, if the ToR were to say that if the negotiations succeeded all Palestinian prisoners would be released, this would encourage Palestinians who intended to take some sort of violent action against Israel, because even if they were caught, they would know that they would soon be released, no matter their sentence. Similarly, if the ToR were to mention that one of the objectives of the negotiations is to allow Israelis to live in a Palestinian state as Israeli citizens but as permanent residents of Palestine, this would likely encourage continued Israeli settlement in the West Bank, based on the claim that it had been agreed that all the settlers would remain in their homes – some under Israeli sovereignty and some under Palestinian sovereignty – and therefore there would be no reason to stop expanding the settlements.

The parties would be able to accept the first type of statement, but would have trouble accepting the second type and find it even harder to accept the third. This would mean that Kerry would arrive at a press conference and present a set of U.S. ToR as the basis for the negotiations between the parties from that moment on, while the sides could nullify this document with a long list of reservations. Even if the parties agreed to resume the negotiations and continued them until the end of 2014, as the U.S. secretary of state wishes, then every time they encountered one of the controversial issues they would refer to their official reservation rather than to the set of U.S. ToR.

The alternative to such a move would be to try to agree on a common position paper for the talks. The preamble to this paper would refer to a series of UN General Assembly and Security Council resolutions and determine that, when it is concluded, the peace agreement would implement these resolutions.

For example, it would be important to refer to UN General Assembly Resolution 181 of November 29th 1947, which called for the establishment of an Arab state alongside a Jewish state in the territory of the British Mandate. Another crucial document is General Assembly Resolution 194 of December 1948, which refers to the wish of the Palestinian refugees to return to their homes and the financial compensation due to them. Reference should also be made to Security Council Resolution 248 of November 1967, which calls for an Israeli withdrawal from the territories it occupied in the Six Day War in exchange for peace with its neighbours. Other important resolutions could be mentioned that would meet some of the major ideological requirements of the parties while leaving the exact means by which they would be implemented to the negotiations between the parties.

In this way a set of U.S. ToR could be drawn up that would be relevant to both sides and enable each of them to interpret them in the way in which they wish until a peace treaty is signed between them. This is therefore a way for Kerry to present his ToR without the need to include the damaging reservations of both sides. The body of the U.S. proposal would refer to the principles of the first category of statement mentioned above (an end to the conflict, an end to claims, etc.). It would determine that the new border would be different from the 1967 border and allow equal land swaps; that side by side with Jerusalem, the capital of Israel, would be Al Quds, the capital of Palestine (without at this point laying down specific boundaries); and that in terms of a future agreement's security arrangements the Palestinian state would be demilitarised and that a foreign security force whose composition would be agreed by the parties would stay in Palestine.

It is still possible to create such a set of ToR, to convince the two parties not only to refrain from presenting their reservations, but also to sign the U.S. paper – and to surprise the world. ■

■ THE AUTHOR

Yossi Beilin taught political science at Tel Aviv University, was a member of the Knesset for 20 years and has held ministerial positions in several Israeli governments. He initiated the secret talks that resulted in the 1993 Oslo Accords and in 1995 concluded the guidelines for a permanent peace agreement with Palestinian leader Abu Mazen. He headed the Israeli delegation to the multilateral peace process working groups between 1992 and 1995, was a negotiator at the 2001 Taba talks, and is a promoter of the Geneva Accords.

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