

# BEYOND “LAND FOR PEACE”

UN General Assembly Resolution 181 Might Just Be a Better Place  
for the International Community to Start—or Rather Restart, the Pursuit  
of a Two-State Solution for the Peoples of Palestine

*By Allison Hodgkins*

In 2001, U.S. President Bill Clinton made the first “last-ditch” attempt to salvage the Israeli-Palestinian peace process by introducing parameters for a two-state solution within the territorial bounds of UN Security Resolution 242, passed in 1967. Although his guidelines offered detailed proposals on borders and security, as well as ideas for bridging the gaps on the thorny questions of Jerusalem and refugees, too many questions and reservations remained to culminate in a final status agreement before the clock ran out. Since then, both his immediate successors have held out the vision of two states, living side by side in peace and security, to coax the parties into a final status agreement. Yet despite repeated failures, the determination to breathe life back into the moribund Israeli-Palestinian peace process persists—even as the parties engage in unilateral acts and provocations that only accelerate the slide into the dreaded one-state reality.

The question is why, after more than twenty years of this debilitating cycle, the international community continues to uphold the belief that this process will culminate in a two-state solution? Not only has it been a decade since the parties last engaged on the substance of the dispute, they have shown no appetite for the painful compromises needed to bring the process to fruition. In the interim, the lines that are supposed to form the boundaries of the future Palestinian state have been all but erased. The size of the anticipated population transfer required to make such borders both secure and contiguous is forbidding. At this point, the vision of a viable and territorially contiguous Palestine, and a secure Israel, living on either side of the June 4, 1967 lines seems little more than a pleasing illusion.

▷ Israeli soldiers surround  
Palestinian women at a  
protest near the West Bank  
city of Ramallah, Jan. 8,  
2009. *Eric Gaillard/Reuters*

The determination of the international community to keep the moribund peace process on life support is less about hope that the parties will suddenly reach a final status agreement and more about fear of the



consequences of a vacuum in diplomacy. Better a process in a state of near-terminal stagnation than the one-state nightmare that is certain to follow. The irony behind this ingrained thinking, however, is that the current peace process was never designed to support the establishment of a two-state solution. On the contrary, it was designed to foster a just and lasting peace between the belligerent parties to the 1967 War through negotiated border adjustments, and mutual respect for the rights of existing sovereign states. While this framework was accepted by the parties and has enjoyed the endorsement of the international community for fifty years, it is poorly suited to a conflict between rival national groups with competing self-determination claims. Not only does this formula utterly fail to provide the parties with the assurances of protection and institutional guarantees necessary to carry out an exercise as traumatic and destabilizing as partition, it leaves them solely responsible for both making and accepting concessions on the most symbolic and intangible aspects of the dispute. As a result, the parties have squandered the last quarter century of negotiations resisting further compromise, and taking the very unilateral and provocative acts that are entrenching a one-state reality.

Although the current peace process is virtually synonymous with the pursuit of a two-state solution, it is often forgotten that none of the original, interim agreements reached between Israel and the Palestine Liberation Organization (PLO) make any mention of that outcome. In fact, the only outcome specified in the agreements is the establishment of a Palestinian self-governing authority and a permanent settlement based on and leading to an implementation of UN Security Council Resolutions 242 (1967) and 338 (1973). This ambiguity reflects an attempt to paper over the differences between the Israeli and Palestinian positions on the scope of the final status agreement when the Declaration of Principles on Interim Self-Government was negotiated in 1993. At that time, neither the Israeli public nor the Israeli government were prepared to accept a sovereign Palestinian state as part of the final status agreement. Instead, they were aiming for an expanded autonomy arrangement similar to the framework for Middle East peace accompanying the 1979 Israeli-Egyptian peace agreement. However, to reassure the Palestinians that the process would lead to an end of the occupation, which began in 1967, the first interim agreement included references to these historic UN resolutions and made provisions for a redeployment of Israeli forces outside of the populated areas of the West Bank and Gaza Strip in advance of elections for the self-governing authority.

The “constructive ambiguity” of the Declaration of Principles is one of the most consistent criticisms of the Oslo process. The absence of a well-defined endgame creates an uncertainty over the full extent of costs or the rewards of cooperation and continued compromise. As a result, the parties become increasingly resistant to making further

concessions during the interim phase while simultaneously demanding their counterpart take measures to demonstrate their peaceful intentions. This mistrustful dynamic is evident in the endless haggling over security arrangements and charges of incitement during the implementation of the first three Israeli-Palestinian interim agreements.

### **The Flawed Framework of Resolution 242**

Starting with President Bill Clinton at Camp David in 2000, successive attempts under U.S. sponsorship have sought to reach a final-status agreement resulting in a Palestinian state “based on the June 4 lines with mutually accepted land swaps.” However, as an international consensus has crystallized behind this endgame, the parties’ resistance to compromise has seemingly intensified. Not only did Arafat walk away from Ehud Barak’s offer of statehood at the infamous Camp David Summit, his successor, Palestinian Authority President Mahmoud Abbas, similarly balked at a 2008 proposal from Israeli Prime Minister Ehud Olmert that allegedly allowed for a Palestinian state in all but 6 percent of the West Bank with corresponding land-swaps. Even though President Barack Obama adopted the bulk of that 2008 proposal in his 2011 policy address, which called for the establishment of “two states, with permanent Palestinian borders with Israel, Jordan, and Egypt, and permanent Israeli borders with Palestine...based on the 1967 lines with mutually agreed swaps,” his Secretary of State John Kerry struggled just to get the parties to commit to a slate of interim confidence building measures before his 2014 initiative collapsed completely.

The standard explanation for the failure of the parties to reach an agreement that would implement the proposed vision of a two-state solution is their “unwillingness” to compromise on the remaining final status issues—in particular Jerusalem and the fate of Palestinian refugees. However, these critiques overlook the linkages between reaching an agreement on borders and the remaining items on the final status agenda. In its original context, the land part of the land for peace exchange meant Israeli withdrawals to secure and defensible boundaries, while peace meant Arab recognition of and respect for the boundaries and the sovereignty of the state behind them. This unambiguous and parsimonious formula is sufficient for an agreement between sovereign, UN member states whose rights and responsibilities are understood and mutually reinforcing. Although resolving the inherent tension between the inadmissibility of territory through conflict and the creation of defensible borders is challenging, as evidenced in the peace agreements between Israel and Egypt (1979) and Israel and Jordan (1994), it is possible and can serve as the basis for a stable, bilateral peace even if multilateral issues like refugees remain outstanding.

Yet, in a conflict between a state and a non-state actor, such as that between Israel and the Palestinian Authority, resolving the question of borders only leads to further

questions on the status of the vacated territories. The purpose of territorial withdrawal under Resolution 242 is to obtain recognition of Israel's borders, and Israel's right to live in peace within secure and recognized boundaries free from threats or acts of force. The resolution is silent on the status of the territories Israel would be expected to withdraw from because, in an agreement between sovereign states, their status is assumed. Or more directly, there was never a need for Israel to accept Egyptian sovereignty over the Sinai Peninsula as it was never in doubt. However, when the Israelis and Palestinians reach an accommodation on matters relating to borders, security, or even settlements, recognizing the territory behind those borders as another sovereign state entails a costly, Israeli concession made with the expectation of reciprocal Palestinian concessions in particular on the issues of Jerusalem and refugees, as was the case at Camp David in July 2000.

This in turn relates to another glaring defect of the framework embodied in Resolution 242. Just as that framework evades the issue of "sovereignty" following the withdrawal of Israeli forces from occupied territories, it is silent on the highly symbolic issues of the permanent status of Jerusalem and refugees. This is consistent with the principles outlined in the UN Charter regarding basic norms of sovereignty as decisions on these issues would fall under the domain of "affairs of state." The only guideline offered by Resolution 242 for the integral question of Palestinian refugees is that the parties achieve a settlement that is "just." While there is nothing to preclude a just settlement to the refugee problem being made on the basis of UN General Assembly Resolution 194, which includes references to a right of the refugees to return and seek compensation for lost property, there is absolutely nothing in the resolution to require the parties to consider, let alone adopt, that particular framework. Conversely, by folding the status of Jerusalem into the question of withdrawal from territory, there is no obligation to consider assurances for access or respect for the city's universal significance with the terms of settlement.

The problem with this studied deference to norms of non-interference in the internal affairs of politically independent states is that the parties are left singularly responsible for making or accepting the "painful compromises" which agreement on these issues would entail. The polarization in both societies and the ubiquity of maximalist slogans only amplifies the potential audience costs of putting such compromises on the table and encourages the parties to obfuscate points where they have shown flexibility. For example, Palestinian Authority President Mahmoud Abbas forcefully rejected reports in the Israeli press that he had ruled out the right of Palestinian refugees to return to their homes inside Israel during the talks following the 2007 Annapolis conference. In other words, by continually insisting the international community will not impose solutions for these issues on the parties, they are actually encouraging them to maintain

a hard line and calibrate their positions to the maximalist demands of their constituents. This stands in stark contrast to the flexibility shown by the parties on the territorial aspect of the conflict, reflected in the 2008 breakthrough on “land-swaps,” allowing Israel to retain key settlement blocks in exchange for territory on the other side of the proverbial June 4 lines of comparable size and quality.

Despite this flexibility, the focus on the preservation of the June 4, 1967, lines is itself a complicating factor in the culmination of a final status agreement. Although the June 4 lines have no special significance in the Israeli-Palestinian conflict beyond marking the 1949 armistice lines, under the terms of UN Security Council Resolution 242, they have acquired a sanctity that is utterly disconnected from prevailing realities on the ground. In addition, the zero-sum nature of the formula encourages one side to take unilateral actions to limit the scope of withdrawal in the final status agreement. As is well known, the settler population in the West Bank has more than doubled since 1993. Not only has this expansion reduced the scope of territory available for a future Palestinian state—as former UN Secretary General Ban Ki Moon and U.S. Secretary of State John Kerry were known to lament—it also raises the cost of implementing any agreement the parties actually reach on the territorial aspects. Predictably, the Palestinian reaction to these unilateral actions is further resistance to compromise. The irony is that the more the international community and the parties double down on these lines forming the basis of the two-state solution, the faster and more irreversible the slide into the one-state reality.

### **Reassessing the Historic Legacy of Partitioning Palestine**

The tragedy behind the continued fealty to this mismatched formula is that it obfuscates the possibility of alternative frameworks for creating a two-state solution, including those drawn from the longer legacy of international attempts to resolve the competition between the national aspirations of the rival communities within the borders of mandatory Palestine. In fact, the fixation with UN Security Council Resolutions 242 and 338 forgets that the international community first adopted the concept of partition less than twenty years after the British Mandate was established. In 1937, the Peel Commission determined that the “causes of the unrest” in Palestine were the “irrepressible conflict [which had] arisen between two national communities” within the borders of the mandate. The incompatibility between their rival aspirations for independence and statehood had rendered the terms of the British Mandate unworkable, and partition was recommended as the only viable solution. While the detailed plan for partition included in the report was shelved in the run-up to the Second World War, its principles were reaffirmed a few years later, when a war-exhausted Great Britain transferred responsibility for its mandate to the newly formed United Nations.

As is well known, the majority report submitted by the United Nations Special Commission on Palestine (UNSCOP) recommended the partition of Palestine into two independent states in November 1947. However, like the 1937 report of the Peel Commission, and unlike the five operative paragraphs of UN Security Council Resolution 242, the UNSCOP proposal contained lengthy provisions on how each state would be governed, including stipulations on the protection of minority rights, religious freedom, and guarantees for education in each community's respective language. Moreover, while the plan included a map with proposed frontiers, the borders were designed to ensure the viability of each state with respect to economic development, a reasonable tax base, and took care to minimize the need for population transfers. In addition, the proposal removed the sacred cities of Jerusalem and Bethlehem from the jurisdiction of either state, and it established specific parameters for how and when Jewish refugees from the Nazi persecution in Europe would be absorbed into the nascent Jewish state. Finally, the partition plan was unequivocal that the implementation would require extensive and extended international support, both in supporting economic development and in ensuring external armed forces monitored the transition process.

The rationale for these detailed, highly invasive proscriptions was the belief that without such intervention, partition would only result in further violence. While the Peel Commission focused more on population transfer and the UNSCOP plan more on minority rights, both recognized that polarization between societies was liable to produce further conflict if clear expectations were not set in advance and support provided to guarantee they were implemented. This was especially true with regards to "migration," which at that point meant Jewish refugees streaming in from the Nazi genocide in Europe. The Palestinian population saw unchecked Jewish migration in the 1930s and 1940s as diluting the Arab identity of the country, much in the way the return of Palestinian refugees to Israel is seen as a threat to the Jewish nature of the state today. The zero-sum nature of the demographic game became an existential line in the sand no leader could cross and hope to survive—politically or otherwise. Thus, the international community stepped in and imposed an unpopular, but existent compromise.

None of these plans were ever implemented, and indeed many argue that UNSCOP's *ultra-vires* adoption by the General Assembly in UN Resolution 181 actually precipitated the catastrophe of 1948 by sanctioning the partition of Palestine without the consent of both parties. However, from a conflict resolution perspective they have enduring merit. First, each of these plans included detailed policy prescriptions for the actual governance of the successor states, right down to provisions for minority rights, taxation, revenue sharing, and expectations for bilateral and international relations. In addition, the plans predicated the eventual success of partition on the management of external and internal migration, population exchange, and

authority over the holy cities within the territory. While these details may seem excessive—or at odds with the expectation partition would lead to sovereign, politically independent states—negotiated settlements with highly institutionalized formulas delineating how power will be shared and state resources allocated are more likely to succeed, and less likely to relapse into violence.

All these plans were unequivocal on the need for significant levels of support from the international community, including economic support, contributions, technical expertise, and boots on the ground during the transition. While such provisions would have been costly, especially for a world community emerging from a devastating war, it is widely accepted in the academic literature that such external support—especially the introduction of third-party forces—is essential to facilitating a successful transition and maintaining security on the borders. This raises an uncomfortable point in both the academic literature and the text of the different partition plans. Partition is regarded as the most durable solution to conflicts between identity groups because the ideational stakes and legacy of the conflict make it exceedingly difficult for members of either to trust the other with their security. Therefore, to avoid the potential for latent tensions to re-erupt into another round of strife, it is important not only to separate the rival groups, but separate them as completely as possible. Studies of the long-term impact of partition on the resumption of armed conflict have demonstrated that the more ethnically or nationally homogenous the successor state, the lower the likelihood of renewed violence.

This sentiment was clearly spelled out in the Peel Commission, which indicated a substantial population transfer would be necessary to facilitate the successful implementation of the partition plan. While the UNSCOP plan sought to avoid the need for large exchanges anticipated by the Peel Commission, the proposal also contained several provisions aimed at engineering a more homogenous population for each state. The expectation was that these provisions would reduce the size of the Arab minority in the Jewish state, which was roughly 40 percent of the population at the time of partition.

These same concerns were manifest when the parties engaged on the questions of borders and refugees during the different stabs at final status talks as well. Israel has long objected to allowing the return of Palestinian refugees from 1948 on the grounds it would upset the demographic balance and threaten their future as a Jewish state. This argument was also used as justification for drawing the borders around Jewish settlement blocs in the West Bank, as well as in proposals raised outside the context of the negotiations by Avigdor Lieberman, who suggested those land swaps include portions of the Galilee heavily populated by Palestinian citizens of Israel.

While Lieberman's proposal has been widely denounced, it raises another paradox of the current negotiating framework. By making the territories occupied by Israel in 1967 the focus of the settlement, the scope of the conflict is implicitly confined there

as well. However, not only has the violence permeated those boundaries through acts of terrorism, there are growing Arab-Jewish tensions within Israel's pre-1967 borders. Moreover, with the rightward drift in the Israeli government, there are signs these tensions are escalating—not only in the Galilee, but among the Bedouin communities in the southern Negev region. Even if by some miracle Israel and the Palestinian Authority concluded a negotiated settlement on a two-state solution tomorrow, it would not address these tensions. If anything, it is likely they would accelerate as Israel is forced to contend with unanswered questions about the rights and obligations of its non-Jewish citizens.

### **A New “Old” Framework for Peace**

When looking at the present situation in Israel and the occupied territories through the lens of the Peel Commission or the UNSCOP report, the striking and painful parallels are manifest. Despite a quarter-century of negotiations, the conflict between the competing national aspirations of the rival communities remains unresolved. Most importantly for the current negotiating framework, it remains unresolved in Nazareth, Beer Sheva, and Jaffa, as well as in Jerusalem, Hebron, and Ariel. Forcing a settlement on the basis of some arbitrary and objectively insecure armistice lines may uphold the norms of the UN Charter, but will do little to help the parties untangle their intertwined national narratives, or competing historical claims. Nor will it alleviate the potential for future conflict among and between the intermingled communities sure to remain on either side of the border wall. It is far more likely that the attempt to bring about such an arbitrary or self-enforcing partition will precipitate another civil or regional war.

There are only two viable formulas for the resolution of self-determination conflicts: partition or rigorously institutionalized power sharing arrangements that assure national minorities protection and a meaningful stake in the governance of their internal affairs. To be viable, however, both options depend on the vigorous and sustained support of the international community to enforce the terms of settlement, ensure a smooth and secure transition, support opportunities for economic development, and the absorption of returning refugees. UN Security Council Resolutions 242 and 338 retain a deep reservoir of international legitimacy, and the assent of all the parties to the conflict. However, they do not provide a blueprint for the partition of Palestine, nor offer guidelines for its successful implementation. UN General Assembly Resolution 181, on the other hand, has those guidelines as well as a comprehensive plan for implementation. While contentious and imperfect, it just might be a better place for the international community to start—or rather restart, the pursuit of a two-state solution for the peoples of Palestine.