

# Why Kerry failed

By Yossi Alpher

## ■ Executive summary

The nine-month attempt by U.S. secretary of state Kerry to bring about a two-state solution to the Israeli-Palestinian conflict has failed. The reasons can be traced to an insistence on adopting the Oslo final-status format that had already failed twice in the course of 20 years as the foundation for ending the conflict, rather than learning and applying lessons from these failures.

These lessons fall into four categories.

Firstly, Oslo's menu of final-status issues does not distinguish between pre-1967 and post-1967 issues. The former are anchored in Israelis' and Palestinians' opposing narratives and have proven unsolvable. The latter focus on more "routine" state-to-state issues like borders and security – topics where differences have been narrowed in previous rounds of talks.

Secondly, Oslo brought together a sovereign state, Israel, and a national liberation movement, the Palestine Liberation Organisation (PLO), whose primary constituency is in the Palestinian refugee diaspora. This dichotomy tends to render final-status negotiations on pre-1967 issues like the right of return dysfunctional.

Thirdly, Kerry engaged two leaders, the PLO's Mahmoud Abbas and Israel's Binyamin Netanyahu, whose ideological and political concerns and regional preoccupations were antithetical to a process based on trust and compromise. Under these circumstances, heavy U.S. and other international pressure would have been necessary to induce progress, but it was not forthcoming.

Finally – and given the challenges Kerry encountered – the objective of ending the conflict in nine months was unrealistic. He should have limited his negotiating objectives and involvement to more attainable goals that fall short of an end-of-conflict solution, such as adopting unilateral ideas associated with the parties themselves. Without such a readiness on the part of the U.S. and given the certainty of failure, it would probably have been preferable not to try at all.

For several weeks after the failure of U.S. secretary of State John Kerry's 2013-14 mission to bring about a two-state solution to the Israeli-Palestinian conflict we witnessed a flood of learned diagnoses of the reasons for this failure. Nearly all these analyses are topical, focusing on what appear to be the immediate catalysts of failure.

Thus, Palestinians blame continued Israeli settlement-building initiatives and Israel's refusal to release a fourth and final cohort of veteran Palestinian prisoners. A U.S. assessment published by a senior Israeli journalist, Nahum Barnea, and unofficially attributed to Martin Indyk, who administered the peace project on Kerry's behalf, also

points to the settlements as the primary obstacle to progress. Both Kerry and Indyk have emphasised that they were motivated by a sense of urgency to avert the catastrophe of a binational state, but that urgency was not evident in Jerusalem and Ramallah.

In contrast, sources close to the government of Israel accuse Palestinian leader Mahmoud Abbas of repeatedly inventing justifications to delay negotiating or to provoke Israeli delays, e.g. new conditions and demands regarding territory and prisoners, applications to join UN conventions, unity talks with Hamas, threats to dismantle the Palestinian Authority, etc. A document of uncertain authenticity being circulated by the Israel Prime Minister's Office and allegedly drafted by chief Palestinian negotiator Saeb Erekat purports to lay out a deliberate Palestinian plan for delays and obfuscation during the closing stages of the talks.

Particularly disturbing is the fact that by the time of its collapse the "process" that has now ended or been suspended was little more than a framework for maintaining largely unproductive proximity talks between the U.S. and each of the two negotiating sides, Israel and the Palestine Liberation Organisation (PLO). By the end of April, when the nine months allotted for the process elapsed, the continuation or extension of the talks appeared to be little more than a formula for ensuring relative quiet and stability on the Israeli-Palestinian scene for a few more months rather than progress toward two states.

Indeed, all three relevant parties may still be interested in achieving such stability. The Obama administration wishes to boast of an ongoing process as it approaches midterm elections in November. Israeli prime minister Binyamin Netanyahu seeks to leverage the mere existence of a "peace process" into relative success in blunting international efforts to impose a political and economic boycott on Israel. And for Abbas, the complete absence of talks could, particularly if blamed convincingly on him, result in catastrophic financial penalties for the Palestinian Authority.

Thus, even if talks are somehow renewed, this will happen for the wrong reasons and they will not lead anywhere. The real question that should preoccupy those who seek a more viable two-state process is: Beyond the superficial level reflected in most post-mortems, can factors of real substance be identified that, because they were ignored, caused this latest initiative to end so ingloriously?

The most glaring lacuna evident in the Kerry team's preparations for this latest round of talks is an apparent failure to analyse the reasons why the Oslo formula had failed to produce a two-state solution prior to 2013-14. The formula laid out by the Oslo Declaration of Principles (DOP) in September 1993 – at negotiations between Israel and the PLO over a set "menu" of all final-status issues – failed to produce the desired outcome in 2000 (Camp David) and 2008 (the Olmert-Abbas negotiations). So dispiriting were these failures for both sides that from late 2008 until

July 2013 no serious talks were even enjoined. Indeed, repeated collapses of the Oslo final-status process are in some ways worse than no negotiations at all, since failure empowers extremists and discredits the idea of a negotiated solution in the eyes of both Israelis and Palestinians.

Yet Kerry and his team proceeded uncritically to adopt the very same Oslo paradigm for yet another try. It is difficult to comprehend why he adopted this approach. How, for example, could the senior U.S. official cited in Barnea's publication express surprise that persistent settlement construction by the Netanyahu government (which Kerry agreed in advance could continue) sabotaged the talks, when this has been a key negative factor in the eyes of all peace-minded parties for years?

An analysis of the Oslo final-status formula and its repeated failure points to several lessons that the Kerry team ignored at its peril.

### Lessons of Oslo 1: avoid pre-1967 issues

One lesson concerns the menu of final-status issues. The Oslo DOP calls on Israel and the PLO to discuss "Jerusalem, refugees, settlements, security arrangements, borders, relations and cooperation with other neighbors, and other issues of common interest". Although never mentioned in Oslo, the mantra "nothing is agreed until everything is agreed" was applied to this list by all parties from the moment final-status talks began in earnest in 1999. This combination of mandatory negotiating topics and a need to agree on everything soon presented problems that have proven insurmountable ever since and can clearly be seen to have dogged Kerry's effort.

The DOP failed to distinguish between two very different sorts of topics for negotiations: pre-1967 or narrative issues and post-1967 issues. The former refer to refugees and the right of return (a 1948 issue), holy places, and anything touching on Israel's "substance" and the status of Israel's Palestinian Arab population. The latter refer to the issues created by Israel's occupation since the 1967 Six-Day War: borders, sovereignty, security and a Palestinian capital in Jerusalem. Relatively speaking, these last are mundane state-to-state negotiating topics.

The narrative issues derive from the circumstances of Israel's origins as a state and the parallel Palestinian dispersal. The huge and seemingly immovable abyss separating the positions of Israelis and Palestinians on these issues is unique to their conflict – and their conflict alone. Israelis understand the "right of return" of 1948 refugees as a demand to undermine their country as a Jewish state and understand the Arab world's nurturing of successive generations of refugees, now numbering over five million, as support for the Palestinian position. Palestinians understand the right of return as the ultimate affirmation of their narrative that holds that Israel is a foreign entity that was "created in sin" by outside forces.

Regarding the Temple Mount/Haram al-Sharif, Palestinians, in a dramatic reversal of classic Muslim historiography, deny there is a Hebrew legacy there at all. Again, Israelis view this denial as a negation of Jewish national and religious roots in the Holy Land. The Israeli demand to be recognised as a Jewish state (using the terminology of UN General Assembly Resolution 181 of 1947 that created the state of Israel) is very much a response to these Palestinian positions.

A survey of the attempts to produce an agreed two-state solution since 2000 (Camp David, the Clinton parameters, Taba, the informal Geneva accords, Olmert-Abbas, etc.) indicates that discussions of the pre-1967 issues have produced virtually no narrowing of differences. Indeed, these issues are not even clearly defined in the Oslo DOP, and it was only in the course of final-status talks that the two sides became fully aware of each other's narrative stories and the differences separating them, e.g. by Yasser Arafat and Abbas declaring at Camp David that "there never was a temple on the Temple Mount" and Israel demanding recognition as a Jewish state. As far as it is known, negotiations sponsored by Kerry over the past nine months also failed to narrow the pre-1967 differences.

In contrast, all published accounts indicate that progress was registered on the post-1967 issues in earlier final-status talks, as differences over border adjustments, Jerusalem as a Palestinian capital, and security were defined and narrowed considerably in 2000 and 2008. In a similar vein, Kerry's team argues that it made progress in closing the territorial gap and in persuading Abbas to accept an Israeli security presence in the Jordan Valley for at least five years. But these achievements could hardly be trumpeted in real time by Kerry, or even implemented, because they were held hostage to total non-agreement on narrative issues some of which, according to the Barnea publication, were apparently never even engaged.

This striking dichotomy suggests that a viable two-state effort based on lessons learned would separate out pre- and post-1967 issues and concentrate only on the latter by insisting that the non-narrative issues be discussed and agreed as a separate package. Such an approach seemed to have been hinted at in remarks made by President Obama several years ago when he suggested dealing first with borders and security. While agreement on these issues would not end the conflict or end all claims, it would, if successful, place the conflict on a far more manageable state-to-state basis in terms of which the intractable narrative issues could be temporarily or even indefinitely postponed.

Yet Kerry's team, echoed by chief Israeli negotiator Tzipi Livni, insisted that all final-status issues would be on the table simultaneously and all would have to be agreed. Worse, Kerry himself appears to have mixed up the issues and allowed the two sides to do so as well in ways that guaranteed deadlock. Thus, Kerry placed Netanyahu's

"Jewish state" demand front and centre on the list of issues the U.S. agreed to and that Abbas would have to accept, ignoring the fact that for Abbas this would be political suicide, if not a death warrant: no one in the Arab world is prepared to acquiesce to this self-definition of Israel, and Abbas would be denying the most fundamental Palestinian narrative if he did.

Simultaneously, Kerry and Netanyahu accepted a list of Palestinian prisoners to be released by Israel that included, in the fourth and final tranche scheduled for the end of the nine-month period, 14 Arab citizens of Israel. Their inclusion implied that Abbas somehow had jurisdiction over Palestinians inside Israel, thereby calling into question the Palestinian commitment to accept the state of Israel as constituted in 1948. In April, when Netanyahu very belatedly realised the meaning of this apparent concession on his part, he balked at fulfilling his commitment.

It is striking to note, incidentally, that declarations to the effect that "all the components of a two-state solution are known to everyone; all we need is leadership" – heard for years from a broad variety of Western and Arab statesmen – essentially ignore the fact that on the narrative issues the parties have never narrowed their differences, and the "components" necessary for solving them remain as elusive as ever. Even the Arab Peace Initiative proposal to resolve the refugee issue based on a "just solution to the Palestinian Refugee problem to be agreed upon in accordance with [UN General Assembly Resolution] 194" essentially offers nothing by way of innovation. Is there such a thing as a non-agreed solution? Do the parties even come close to agreeing on the meaning of Resolution 194?

## Lessons of Oslo 2: state vs. liberation movement

The Oslo DOP was an agreement between a sovereign state, Israel, and a 1960s-style Third-World liberation movement, the PLO. Obviously, in 1993 there was no alternative formula for launching an Israeli-Palestinian peace process. This approach worked well enough as a paradigm for creating an autonomous Palestinian entity in the West Bank and Gaza Strip insofar as the issues in question – a finite Palestinian territory and population – touched only on the Palestinian population of those territories.

But when negotiations turned to the issue of final status, Israel confronted an organisation that represented not merely the population of the Palestinian Authority, but all Palestinians everywhere, meaning principally the five-million-strong refugee diaspora, but also, as we have seen, even aspiring to represent Palestinian citizens of Israel. This imbalance has proven crucial in thwarting progress. Here again, had a new negotiating paradigm insisted on first concluding a separate deal on the outlines of a state and set aside the narrative issues like the right of return that understandably dominate Palestinian diaspora thinking, it might have been possible to reposition the

conflict on a more productive state-to-state basis in terms of which Abbas would approach talks with Israel as president of the state of Palestine rather than as head of a diaspora-heavy liberation movement.

### Lessons of Oslo 3: who are the Israeli and Palestinian leaders?

One of the striking characteristics of the Kerry-led process was the degree of optimism that the U.S. secretary of state managed to generate in the early stages. It was infectious: the many Israelis and Palestinians that the Kerry team contacted to commission detailed opinion polls and discuss issues like Jordan Valley security came away convinced of progress, even when in fact the mediators had little to show for their efforts.

This may have been a calculated tactic for improving the atmosphere, but Kerry may also have been carried away by the encouraging feedback he received from Abbas and Netanyahu. Obviously, neither leader wished to be accused of sabotaging a U.S.-led initiative. Yet the most superficial observation regarding not what the leaders say, but what they do and what ideologies they represent should readily have deflated this American balloon.

Netanyahu, while ostensibly pledged to a two-state solution, established a coalition in March 2013 that leaned heavily on settler and pro-settler elements, including many in his own Likud party, who were awarded the necessary portfolios for advancing their cause. A large liberal party brought into the coalition, Yesh Atid, had little interest in the Palestinian issue. The small HaTnua party, led by Livni, was the only active advocate of a two-state solution in the coalition. Thus, this was by definition not a peace government. Nor was there throughout the nine months of negotiations any indication whatsoever that Netanyahu would disband his coalition in favour of an alternative – and achievable – centre-left coalition. Indeed, virtually unimpeded by the prime minister, the settler elements in the government proceeded to launch provocative new construction initiatives at every critical juncture in the talks. (For the ideological-messianic settler hard core, incidentally, even territories and Jerusalem are “narrative” issues. But this sentiment is not shared by two-thirds of Israelis.)

If Netanyahu, backed by a coalition of his choosing, was not a partner, neither was Abbas. He had generally avoided committing to serious negotiations ever since walking away from his talks with Prime Minister Ehud Olmert in September 2008. Even when the first Obama administration delivered an Israeli settlement freeze, Abbas stalled until the last minute. One obvious reason is that he knew that Netanyahu would never come close to the far-reaching proposals tabled then by Olmert, which he (Abbas) had rejected, albeit under mitigating circumstances (Olmert’s lame-duck status). Further, from a domestic Palestinian standpoint, Abbas did not rule the Gaza Strip, even though that territory was on the negotiating table. His

electoral mandate had long since expired, while his leadership of Fatah was being challenged energetically by former security chief Mohammed Dahlan. Incidentally, Netanyahu and Abbas never once met during the nine-month negotiation process.

Both Netanyahu and Abbas, it must be added, were also dealing with a problematic regional situation. When the process began the Arab world had been in chaos for more than two years. Islamist elements that reject Israel’s existence outright were becoming an increasingly powerful factor in the region, even as Israel-Arab cooperation on ways to deal with the Islamists was also expanding, regardless of the passage of several years without any peace process at all. While Kerry could argue that the absence of war threats against Israel provided a congenial setting for both leaders to offer concessions at a relatively low cost, the Israeli and Palestinian leaders could be forgiven for adopting a less innovative “keep your powder dry”, sit-tight attitude. Not surprisingly, Kerry proved unable to recruit any sort of serious and sustained regional Arab support for his end-of-conflict efforts. After all, he confronted an Arab world preoccupied by severe internal strife that was clearly unrelated to the Palestinian issue and, on some vital security issues, in need of close coordination with Israel, regardless of the status of the peace process (Egypt concerning Sinai and Gaza; Jordan concerning southern Syria).

Arguably, the overall fabric of differences separating the positions of Netanyahu and Abbas was – and remains – unbridgeable. Certainly, a U.S. mediator who nevertheless aspires to register progress had best be prepared to twist arms and exercise heavy pressure on either or both sides, with the active backing of the White House. Yet, with the exception of European Union threats to impose economic punishment on both sides that never reached fruition (cutting off support for the Palestinian Authority if the Palestinian side caused the process to fail; tightening sanctions regarding Israel’s settlements), no such pressure was apparently forthcoming.

Further, Netanyahu and presumably Abbas both recognised that President Obama was less enthusiastic about Kerry’s process than Kerry himself and that the White House and the State Department were not always fully coordinated. Indeed, within two months of the commencement of the process, the administration’s decision to back away from its “red line” threat to respond with force to Syria’s use of chemical weapons – following on changing U.S. attitudes toward Egypt, the impending withdrawal from Afghanistan and nuclear negotiations with Iran – sent a signal throughout the Middle East that, however compelling in domestic U.S. terms were Washington’s reasons for lowering its Middle East profile, in regional terms its capacity to compel compliance was reduced. The Crimea/Ukraine crisis that ensued toward the end of the nine-month negotiating period almost certainly increased Israeli and Palestinian readiness to effectively torpedo what was left of Kerry’s

initiative without fear of U.S. sanctions.

### Lessons of Oslo 4: realistic objectives

Kerry launched the process in July 2013 with the announcement that his objective was an end-of-conflict, end-of-claims agreement within nine months. Seen against the course of previous final-status negotiations held in 2000 and 2008 under far more favourable circumstances, this was a highly unrealistic timetable. Even a more limited and constructive “post-1967” two-state agreement probably could not have been achieved in this time frame.

Once this became clear to Kerry, he began publicly hedging his bets, almost by the month: firstly, he allowed that only a framework agreement would be reached in the time allotted and not an end-of-conflict agreement; then he proposed a framework non-agreement; and, finally, spoke of a mere agreement to keep talking. With every step backward, U.S. credibility was further disabled.

### Conclusion: were there alternatives?

A careful preliminary analysis of these and possible additional lessons of 20 years of trying to implement the Oslo DOP might have pointed Kerry and his team, with their admirable energies and dedication, to more modest goals. Conceivably, these could have been more feasible, given the constraints of limited presidential backing, a fading U.S. regional profile, and recalcitrant Israeli and Palestinian partners who were committed to uncompromising ideological positions and preoccupied with the chaos currently visiting large portions of the Middle East.

Kerry’s team might have begun by examining unilateral approaches associated with both sides. For example, Abbas’s initiative for the UN Security Council to recognise a Palestinian state, which is based solely on the post-1967 parameters of sovereignty, borders and a capital, and essentially invites the UN to ignore the narrative issues, could be coopted by the international community led by Washington into a new and more balanced, 242-type resolution presentable to both sides as a win-win proposi-

tion that would also offer a sense of restored international law to the conflict.

Alternatively, or in parallel, Israeli proposals for a unilateral, but coordinated withdrawal from parts of Area C in the West Bank and for incentives to settlers living outside the border blocs to leave even before a final-status deal is reached – ideas Netanyahu is known to have looked at and that factor in lessons learned from the problematic 2005 Gaza withdrawal – could be managed by Washington with the objective of at least gaining time and extending the life of the two-state solution.

Yet another alternative might seek to isolate the “narrative” holy places issue and – assuming that the parties insist on discussing it forthwith – render it more manageable by inviting Jordan into a separate negotiating track dedicated to it alone. The Jordan-Israel peace treaty of 1994 and a 2013 Jordan-PLO agreement recognise Jordan’s pre-eminent role on the Arab side regarding Jerusalem holy sites.

Any or all of these less ambitious – but arguably more feasible – approaches would have reflected lessons learned from Oslo’s final-status failures. Seen in this context, a decision in Washington to publish the administration’s own framework proposal would not be helpful at this juncture, particularly in view of the apparent lack of understanding it would reflect as to the identity of “doable” as opposed to unsolvable issues.

If we accept the argument that the Oslo final-status paradigm has exhausted itself and a new and innovative framework is now required, then conceivably a more limited U.S. initiative was called for. Without such an initiative, both Israeli-Palestinian relations and Washington’s capacity to wield influence in the region might have been better off had Kerry refrained from any involvement at all.

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