Minding the Gaps

Territorial Issues in Israeli-Palestinian Peacemaking

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UPON LAUNCHING a recent unilateral bid for statehood at the United Nations, Palestinian president Mahmoud Abbas made two key references to borders. In his September 23 General Assembly speech, delivered in Arabic, he stated that his application for full UN membership called for a Palestinian state "on the 4 June 1967 borders." And the official application itself, written in English and submitted previously to the secretary-general, described a Palestinian state "on the basis of the 4 June 1967 borders." These references embody the innate, crucial connection that Palestinians make between statehood and territory. They also symbolize the sensitivity of territorial issues, to the point of triggering slightly different wording nuanced for domestic and foreign audiences. "Truth is found in nuances," said nineteenth-century French philosopher Ernest Renan, and his words resonate strongly in the Israeli-Palestinian territorial context.

The Palestinian initiative at the UN marks a sharp departure from nearly two decades of bilateral negotiations, and it is unclear when and under what circumstances the parties will resume negotiations on a permanent-status agreement. When they do, however, the territorial dimension will be one of the first and most important issues they have to tackle.

According to Palestinian leaders, one of the main reasons they despaired of negotiations and turned to the UN was Israel's rejection of their demand that the 1967 lines be recognized by Israel as the baseline for territorial talks. In a comprehensive Middle East policy speech on May 19, 2011, President Obama endorsed this demand by stipulating that "the borders between Israel and Palestine should be based on the 1967 lines with mutually agreed swaps," that is, territorial exchanges.[1] Since then, the Palestinians have conditioned their return to the negotiating table on Israel following the U.S. lead and publicly, rather than diplomatically, endorsing this formula.

The past two-and-a-half years have witnessed relentless failed efforts to launch substantive bilateral negotiations and, more recently, heated controversy surrounding President Obama's formula. This sad story reflects, among other things, the deep divide between Israelis and Palestinians on territory and borders. A close look at this division defies the perception that the territorial issue is relatively easy to resolve. Although the parties may not be far apart on defining the baseline for territorial negotiations, on the solution itself the chasm is wide.

This paper analyzes the parties' differing positions on territory and borders, particularly as expressed in bilateral negotiations over the years.[2] The author is careful not to suggest that these differences are unbridgeable or that a territorial deal is impossible; the gaps, however, will be very difficult to bridge, requiring strong resolve and leadership on both sides.

Major Bones of Contention

It is no coincidence that, unlike Abbas, President Obama referred to 1967 "lines," not to "borders." As discussed below, the boundaries in question were never recognized as borders. In essence, the 1967 lines essentially match the armistice lines reached with Jordan at the end of Israel's War of Independence and demarcated from 1949 to 1951.[3] The Armistice Agreement stipulated that the territorial delineation was to be made "without prejudice to future territorial settlements or boundary lines." But history is tricky, unfolding in a way that has made these politically elusive lines the epicenter of Palestinian claims regarding their future state's border. Current Israeli and Palestinian contentions about territory and borders epitomize these conflicting perspectives on historic rights, legal claims, security, Jerusalem, and other sensitive issues.

Baseline for negotiation. The first order of debate, while largely symbolic, is nevertheless crucial. Namely, should the baseline for territorial negotiations be premised on the full area encompassed by the 1967 lines, as Palestinians demand—a formula that would obligate Israel to provide territorial compensation for any deviations? Or should it be predicated on adjustments to these lines based on Israel's security needs and related post-1967 demographic developments—namely, the formation of Israeli settlement blocs? On the surface, this debate may appear purely semantical. In any "mutually agreed" territorial exchanges, the parties would have to reconcile their conflicting claims through bilateral negotiations in which each wields veto power. Once they do so, debate over the baseline formula becomes redundant. Nevertheless, one should not underestimate the huge symbolic and domestic significance that the baseline territorial formula carries for both parties.

In a May 22, 2011, speech to American Israel Public Affairs Committee, President Obama clarified his baseline formula by stating that "the parties themselves... will negotiate a border that is different than the one that existed on June 4, 1967...to account for the demographic realities on the ground and the needs of both sides."[4] Compared to his May 19 speech, this clarification could imply a significant territorial exchange. And this was not the first instance in which Washington slightly shifted emphasis on the ambiguous territorial formula. In his April 14, 2004, letter to Israeli prime minister Ariel Sharon, which was approved by both houses of Congress, President George W. Bush essentially embraced the Israeli position: "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," he wrote.[5] Yet on later occasions, Bush swung somewhat back toward the Palestinian interpretation: in 2005, he stated that "changes to the 1949 Armistice Lines must be agreed to," and in 2008, he defined the "point of departure for permanent negotiations" as "an end to the occupation that began in 1967."[6]

Entitlement. At the root of the historical debate lies the deeper question of territorial entitlement. Palestin-

ians contend that the entirety of the West Bank is occupied Palestinian land. From that perspective, their right to the land overrides any Israeli claim, especially since they were already forced to give up some 78% of historical Palestine upon formation of the state of Israel[7] (ignoring their responsibility for that outcome by rejecting the 1947 UN partition plan and launching a war). Most Israeli Jews trace their heritage to the biblical lands of Judea and Samaria, that is, the West Bank. Accordingly, they believe that their historical claim to these territories—whether one calls them occupied or disputed—carries no less weight than that of the Palestinians. Nevertheless, for strategic, demographic, and political reasons, the majority of Israelis are willing to cede the bulk of these lands to a Palestinian state in the context of a peace agreement that ends the conflict and satisfies Israel's essential security needs.

Legal argument. From a legal perspective, the official Israeli position has always been that the territory in question is disputed rather than occupied, since no internationally recognized sovereign state existed there when Israeli forces seized it in self-defense in June 1967. It should be noted that while most of the international community recognizes the validity of Israeli security concerns it rejects this legal argument and considers the territories occupied. As for borders, Israel claims that the armistice lines set by the arbitrary deployment of rival armies at the end of the 1948–1949 war have no legal significance. That is, because they were never formally established as borders, they cannot be legally considered as such. Moreover, UN Security Council Resolution 242 of November 1967—a document adopted only after much deliberation and that became the accepted guiding reference for all subsequent Arab-Israeli peacemaking—recognized Israeli security concerns by calling for "withdrawal from territories" (not "all" or "the" territories) to "secure, recognized boundaries free from threats or acts of force."

For their part, the Palestinians claim they are the legal heirs—from Jordan, which occupied the West Bank between 1949 and 1967—to the territories occupied by Israel in June 1967. And although they never liked Resolution 242 and did not formally accept

it until the late 1980s, they claim that its withdrawal clause is legally subject to the principle of "inadmissibility of the acquisition of territory by war," as stated in the document's (nonbinding) preamble. They also cite as precedents Israel's full withdrawal from Egyptian and Jordanian territories occupied in 1967 in return for bilateral peace agreements with those countries,[8] as well as its apparent willingness to do the same with Syria and Lebanon.

Yet every Israeli government has differentiated between these cases and the Palestinian situation, not only because of the historic affiliation to the West Bank and its lack of sovereign status when it was captured, but also because of Israel's strategic vulnerability from that territory. They have therefore interpreted Resolution 242's reference to "withdrawal from territories" as applying to the West Bank.

East Jerusalem. The fate of east Jerusalem is much entangled in the historical and legal debates. Palestinians (and most of the world) regard it as part of the territories occupied in 1967 and therefore as an integral part of the baseline for negotiations. Yet Israel has always maintained its entitlement to Jewish holy sites and historic quarters in east Jerusalem and thus basically rejects the idea that it owes territorial compensation to the Palestinians for retention of these sites. In practice, all Israeli governments have made a distinction between east Jerusalem and the West Bank. Israel annexed a wider east Jerusalem—some sixty-seven square kilometers—after the 1967 war, a measure that most of the world does not recognize. In addition, all Israeli governments have refrained from designating the Jews in that part of the city as "settlers" or, with the exception of Prime Minister Ehud Olmert's peace proposals in 2008, from counting east Jerusalem in its West Bank territorial calculations.

Israel's Essential Security Needs

Although no consensus exists among Israelis regarding the terms of reference for territorial negotiations, there is wide agreement that the country cannot return to the June 4, 1967, lines due to critical security considerations. In addition to being the product of a temporary armistice agreement, these lines deny Israel vital strategic depth in the face of potential military threats and are thus unsatisfactory as a permanent, defensible border.

Specifically, such lines would leave Israel with a dangerously narrow waist along its coastal plain—about nine miles at the thinnest point and overlooked by the West Bank's commanding hills. This strip includes Israel's largest cities, some 70% of its population, its only international airport, and vital infrastructure and industries that represent some 80% of its gross domestic product. Therefore, Israel could be seriously threatened and perhaps paralyzed if a military conflict were to erupt along these lines. For Israelis, this represents an existential vulnerability, one that could tempt enemies to aim for the country's narrow "jugular" in order to inflict a fatal blow. Even Israel's strong military would have difficulty defending against such a threat without paying a very heavy, perhaps intolerable, price.

In the three sets of permanent-status negotiations conducted over the past decade (2000, 2007–2008, and 2010), Israel presented a consistent concept of its required essential security arrangements. Although some of the emphasis and details varied from one government to another, they all based their security requirements on three main pillars:

- Significant territorial adjustments to the 1967 lines so as to establish secure, defensible boundaries.

- "Conditional strategic depth," a term that Israeli military planners use to describe partial compensation for Israel's lack of physical strategic depth through various security requirements, including demilitarization of any Palestinian state, the creation of mechanisms for monitoring that status, and a series of additional security requirements.[9] The idea is to ensure that a future Palestinian state could not seriously threaten Israel unilaterally or through a military alliance with a third party.

- A special security regime in the Jordan Valley, along the eastern perimeter of the Palestinian state. This regime would include an effective international

and Israeli military deployment capable of verifying the state's demilitarization, blocking terrorist threats, and serving as a tripwire for potential military threats from the east. The mass smuggling of rockets through Egypt to the Gaza Strip and from Syria to Hizballah in Lebanon—weapons that have been used extensively against Israel over the past decade—accentuates in Israeli eyes the need for a long-term effective Israeli military component along the Jordan River, possibly side by side with an international component, notwithstanding Palestinian sovereignty and security forces in that area. And even without the proliferation of rockets, Israel's security concept has always held that the defensive frontline against military and terrorist threats from the east cannot begin at the Israel-Palestine border. Appropriate international and regional roles in such a security regime would be welcomed; Jordan, for example, has given its tacit consent to such a regime along both sides of the Jordan River. Yet Israelis regard such roles as supplementary to their own because history has taught them that outside forces are impermanent and often unreliable (e.g., witness the ineffectiveness of international troops in halting Hizballah's rearmament in southern Lebanon).

Israeli military planners believe that these requirements complement one another, especially in light of the country's strategic vulnerability, historical experience, and surrounding hostility. To them, even significant border adjustments that allowed Israel to incorporate major settlement blocs would still leave the country with insufficient strategic depth.

This mindset merits a closer look. Israel adopted the term "defensible borders" as an improved version of Resolution 242's "secure boundaries," and various U.S. administrations have endorsed it.[10] Although precisely defining "defensible" can be thorny, the Israeli defense establishment has always incorporated the territorial and nonterritorial concerns described above in its interpretation of the term. Fundamental to this view is the reasoning that in a region rife with instability and uncertainty, and where so many are inherently hostile to the idea of a nation-state for the Jewish people, dangerous scenarios

that might seem unrealistic today could become quite real tomorrow even if a formal peace agreement were reached in the meantime. For example, what would happen if Hamas took over the West Bank following Israel's withdrawal, as it did in Gaza? As indicated above, the Israeli mindset toward existential threats prohibits experimentation with vital matters of national security. Israelis do not believe their neighborhood will afford them a second opportunity.

Palestinians have acknowledged certain Israeli security needs, but only reluctantly and after years of opposition. And they continue to reject the concessions on territory or sovereignty required by Israel to satisfy these needs. In past bilateral security negotiations, for example, Palestinians were amenable to the concept of demilitarization, but only if the other two Israeli pillars were not applied; they would accept only minor adjustments to the 1967 lines and rejected any Israeli military deployment on their soil, with the possible exception of a few early-warning sites. Indeed, Palestinians tend to adhere strictly to the formula of "land for peace" established in Resolution 242, maintaining that a peace agreement would provide security. Yet Israelis have always believed in "land for security and peace" because, however desirable peace may be, it cannot by itself guarantee security and must be fortified by solid security arrangements.

Settlement Blocs

Notwithstanding fierce public debate in Israel regarding settlements, there is relatively wide consensus that the major blocs adjacent to the 1967 lines would significantly contribute to Israel's security requirements and should therefore be annexed in any two-state agreement. Indeed, during his 1992 election campaign for premiership the late Prime Minister Yitzhak Rabin referred to these blocs as "security settlements," distinguishing them from "political" or "ideological" settlements.[11] And Prime Minister Binyamin Netanyahu recently spoke in the Knesset of the "widespread agreement that the settlement blocs must remain within the State of Israel," implying, for the first time in his tenure, that the remainder of the West Bank would be available for a territorial settlement.[12] Moreover, in

Israel's view, President Bush's statement that "existing major Israeli population centers" would guide expectations for a future territorial settlement signified U.S. recognition of that position.[13] Obama's May 22 statement created similar Israeli expectations.

Israelis regard three major blocs and about five smaller settlement areas, stretching from the 1967 lines into the West Bank, as important for beefing up the previously discussed "narrow waist," fortifying the security of Jerusalem, and allowing military deployment in times of emergency (see map, p. 14). These areas include several relatively large ultraorthodox cities with high population growth, such as Modiin Illit (45,000 inhabitants) and Beitar Illit (38,000). The three major blocs are Gush Etzion (located southwest of Jerusalem and, together with the adjacent Beitar Illit, holding well over 50,000 inhabitants), Maale Adumim (based on a city of close to 40,000 inhabitants located east of Jerusalem, considered important for that city's defense from the east), and Ariel (based on a city in the mid-northern part of the West Bank holding close to 20,000 people). Unlike the other settlements scattered individually throughout the West Bank, Israel planned, built, and regards these clusters of settlements, including the cities therein, as blocs, cohesive from a security standpoint and, in some cases, administratively. When Israel decided in 2002 to begin constructing a physical barrier in order to prevent suicide bomber penetration from the West Bank, it included all of these blocs and areas near the West Bank within the planned perimeter. In all past negotiations Israel included in its territorial proposals and maps all three major blocs and most (but not always all) of the smaller areas.

Indeed, the growth of these blocs in both size and population would make them difficult to dismantle in any agreement. About three-quarters of all Israeli settlers reside in these blocs and ultraorthodox cities near the 1967 lines. This reality may ultimately make a territorial solution easier if Israel is permitted to annex the blocs through land swaps. Beyond their security value, absorbing the blocs could facilitate the conclusion and implementation of a peace agreement because it would allow more than 200,000 settlers to remain in their homes and absolve the Israeli government of the need

to force them out.[14] Israel regards the forced evacuation of hundreds of thousands of settlers as both morally unjust and politically unrealistic; such a move would be tremendously painful for Israeli society, given its deep division over the future of the West Bank. Although the 2005 unilateral evacuation of some 8,000 settlers from Gaza was a unilateral step that lacked the context of a peace agreement, its domestic impact provides a striking example of how a full West Bank evacuation would tear into the soft tissue of Israeli society. In addition, annexing the blocs could help Israel more easily absorb some of the settlers that would have to be evacuated from the rest of the West Bank, allowing them to resettle in an environment similar to their old one.

In terms of size and composition, there is more than one way to delineate the major blocs in a permanent peace agreement. Beyond security and other considerations not within the scope of the paper (e.g., underground water aquifers and the electromagnetic spectrum), one must also consider the desire to ensure that as many Palestinian villages as possible remain on the Palestinian side of a future border in order to maximize demographic homogeneity on both sides. That is why the Olmert government decided in 2006 to split the Ariel bloc into two separate strips, leaving thousands of Palestinians outside the Israeli perimeter. Indeed, the balance between geography and demography is very tricky and not easily resolved; if inhabited points on either side are not moved, then leaving West Bank Palestinians out of Israel would necessitate a border line highly problematic from a tactical security point of view.

In territorial terms, the above-mentioned security barrier—parts of which are still under construction—demarcates blocs comprising somewhere between 8% and 8.5% of the West Bank territory. In comparison, Prime Minister Olmert's September 2008 proposal to Abbas called for Israeli annexation of approximately 6.5% of the territory. Thus there is some room for negotiation over the size of the blocs. Yet it is difficult to imagine any Israeli government drawing a map of the three major blocs that is significantly smaller than Olmert's.

In principle, the Palestinians view the settlement blocs as no different from the rest of the West Bank—Israeli possession of these lands is regarded as equally illegal. Given developments on the ground and the realization that no Israeli government is likely to conclude a deal without the blocs, however, the Palestinians have resigned themselves to a territorial agreement allocating some blocs to Israel, to be offset through land swaps. Nevertheless, they have consistently demanded that the exchanges be minimal.

Specifically, the handful of maps that Palestinians have presented in bilateral negotiations through the years would allow Israel to annex, at most, somewhere between 2% and 3% of the West Bank. The Palestinians have always objected to Israel absorbing Ariel, a bloc that extends about fourteen miles into the West Bank.[15] They have also expressed significant difficulty regarding Maale Adumim, which stretches to the east of their desired capital city in Jerusalem and is perceived as potentially disruptive to the Palestinian state's north-south contiguity.[16] Moreover, the small "blocs" they portrayed in past maps were connected to Israel only by a road—a notion that many Israeli negotiators privately called "a balloon tied with a shoelace."

Conceptual Gaps and Differing Territorial Calculations

The territorial percentage gap between the parties should not be underestimated; although it may appear narrow numerically, it is deep conceptually and remains difficult to bridge. (For the chronology and territorial details of each negotiation, see the appendix.) When territorial negotiations were launched in 2000, Israel demanded 17% of the West Bank so as to accommodate its security needs and include settlement blocs near the 1967 lines. As mentioned above, however, Olmert had reduced the demand to 6.5% by 2008, while still including Ariel and Maale Adumim. Yet the Palestinians went the opposite direction, initially agreeing to 4% as part of a territorial exchange[17] but later decreasing their offer to the longstanding benchmark of 1.9%,[18] arguing for a different balance between their "rights" and

Israel's "needs." Based on the experience of more than a decade of territorial negotiations coupled with analysis of political sensitivities and realities on the ground, it is difficult to envision the Palestinians agreeing to more than 5%, which would still leave them short of the current Israeli minimum.

Conceptual gaps also express themselves in disagreement between the parties on how to define "West Bank territory" for the purposes of territorial calculations. Palestinian calculations typically include east Jerusalem, the northern quadrant of the Dead Sea, and all of the "No Man's Land" and demilitarized zones established by the 1949 Armistice Agreement. Yet Israel has largely excluded these areas, counting only territory originally designated by the Israeli government as the "Military Administration of the West Bank" to which Israeli law was not applied. The result is that while Palestinians calculate every 1% of West Bank territory as equaling approximately 58 sq km, Israelis have mostly calculated it at around 55 sq km.[19] This is a significant difference. During the Annapolis process and especially in his September 2008 offer, Olmert became the first Israeli prime minister to accept the addition to the West Bank territorial denominator of some of these disputed areas, including those in east Jerusalem.[20]

On various occasions, the parties have played with numbers and terminology in an attempt to break the stalemate over percentages. The same square of land will appear as a smaller percentage of the West Bank when additional quantities of land are counted in the denominator for calculating the general territory negotiated. For example, although Gaza is not in any real dispute between the parties, its approximately 360 sq km of land have at times been added to the West Bank denominator in order to make proposed Israeli annexations appear as a smaller percentage of the whole. On various occasions, negotiators have suggested discussing territory in terms of the overall amount exchanged, despite the symbolic significance of percentages for both parties.[21] According to Israeli press reports, President Shimon Peres suggested a baseline formula for negotiations stipulating "territory similar to that seized by Israel in 1967," to be measured in square kilometers.[22] Looking ahead,

framing the territorial discussion in terms of square kilometers rather than percentages seems like a more productive approach.

Land Swaps

Israel first implemented the principle of territorial exchanges in its October 1994 peace treaty with Jordan.[23] In the Palestinian context, the idea first surfaced in the unofficial October 1995 draft agreement between Israeli left-wing leader Yossi Beilin and Mahmoud Abbas, both of them senior officials at the time. This "Beilin–Abu Mazen Agreement" included a map with similar land swaps involving around 250 sq km (or approximately 4.5%) of the West Bank. Neither side's leadership adopted this agreement, however.

The main premise behind land swaps has been to reconcile the Palestinian insistence on a state encompassing the entirety of the West Bank with Israel's insistence on accommodating security needs and allowing the majority of settlers to remain in their homes.

Israeli officials did not readily endorse the concept at first because they did not accept the basic Palestinian premise of entitlement to 100% of the West Bank. In their view, such a premise implicitly denied any Israeli claim to land seized in 1967. Even as late as 2000, Prime Minister Ehud Barak rejected the concept of swaps at the outset of the Camp David talks, accepting it only toward the summit's end upon President Clinton's insistence. Barak then proposed a land swap based on a 9:1 ratio in Israel's favor: that is, for 9% of the West Bank to be annexed to Israel, the Palestinian state would receive Israeli territory equivalent to 1% of the West Bank.

Subsequent Israeli offers have come considerably closer to Palestinian demands, yet no Israeli government to date has accepted the Palestinian stipulation that land swaps be fully equal in size and "quality."[24] From the Israeli perspective, equal swaps would deviate from the letter and spirit of UN Security Council Resolution 242, which calls for withdrawal "from territories" (not "the" or "all" territories) to "secure, recognized boundaries." Nevertheless, Ehud Olmert did approach a 1:1 ratio in his September 2008 proposal to Abbas, offering to exchange 5.8% of Israeli territory for 6.5% of the West Bank. He also suggested covering the 0.7% gap by giving the Palestinians control (though not sovereignty) over a land connection between the West Bank and Gaza (which never existed in 1967 or before). With such "compensation," he reasoned, his proposal would be tantamount to a 1:1 swap and, therefore, the equivalent of 100% of the West Bank. Olmert's plan was the most far-reaching Israeli proposal ever, yet he did not receive a Palestinian response. In any case, the Palestinians measure "100%" in terms of sovereignty, so Olmert's offer of a nonsovereign West Bank–Gaza connector would presumably have been deemed insufficient.

Olmert's proposal followed in the footsteps of the Clinton Parameters, the first official reference to Israeli-Palestinian swaps to include nonsovereign territorial compensation. These parameters, presented to the parties in December 2000 following the failed Camp David summit, formally endorsed the concept of swaps but refrained from calling for an equal exchange. Specifically, Clinton proposed Israeli annexation of 4% to 6% of the West Bank and swaps based on a 3:1 ratio in Israel's favor. To offset the difference, he also proposed measures such as exchanging leased land and establishing a permanent territorial safe passage between the West Bank and Gaza.

The Obama formula, which leaves questions of equality and percentages to the parties, differs from the European-supported Palestinian stipulation that the territorial exchange be "minor and equal." Here one can see the extent to which ambiguous formulas leave room for differing interpretations—while Netanyahu disliked Obama's baseline, fearing that it implied or could be interpreted as endorsing "minor and equal" swaps and the 1967 lines as default lines, the Palestinians were disappointed that it did not explicitly offer that very formulation.

In addition to the above challenges, determining which Israeli lands are actually eligible to be swapped is a complicated affair, requiring a thorough, on-the-ground examination of existing population centers, development plans, civilian/military infrastructure, ownership status, security issues, and other national

interests. Considering these factors, and assuming that no government would likely agree to evacuate populated areas inside Israel proper, perhaps with rare exceptions, the scope of Israeli land available for swaps is somewhat limited.[25] The swaps proposed by Olmert in 2008 broke new ground by including certain uninhabited agricultural lands belonging to Israeli villages. Yet how much territory can Israel realistically exchange?

This question is highly controversial among Israeli experts. One school of thought views Olmert's proposal as unrealistic, arguing that it ignored the logic of geography and domestic sensitivities; this school concludes that Israel cannot realistically offer more than 3%.[26] Other experts who were involved in preparing maps for negotiations disagree. Meanwhile, former prime minister Sharon seemingly moved toward closing the door on some options by fostering the establishment of new Israeli villages and communal centers in potential swap areas such as Chalutzah (adjacent to the Egyptian border) and Lakhish (southwest of the West Bank). Ultimately, the true-to-life answer to the question of swap viability will be clearer once the parties are actually close to a deal.[27]

'Borders First' and Terms of Reference?

Early on in its abortive bid to relaunch Israeli-Palestinian talks, the Obama administration opted to prioritize "borders first." It then adjusted this approach to "borders and security first"—a strategy reiterated in Obama's May 19, 2011, speech and adopted by the Quartet (i.e., the UN secretary-general, the EU, the United States, and Russia) in its September 23 statement following the Palestinian membership bid at the UN. Behind this approach lies a set of assumptions: First, it is assumed that the parties are currently incapable of resolving all core issues simultaneously—Palestinian territorial demands and Israeli security needs may balance each other and are easier to reconcile, and they should therefore be discussed before the thorny issues of Jerusalem and refugees, which touch on the deepest nerves and sense of identity of both parties.

According to this view, neither side's leaders have prepared their publics for the painful compromises required on the latter issues. This line of thinking concludes that tackling territorial and security matters first would also facilitate the resolution of issues related to West Bank settlements; Israel would be able to continue construction in areas that the Palestinians agreed to relinquish without inflaming sensitivities about such activity. The idea behind Washington's approach was not to dictate the format of talks, but rather to work around each party's difficulties; if Israelis and Palestinians agreed on a different approach, the United States would support it.

Palestinians much prefer the "borders first" approach because they regard acknowledgement of their claim to all West Bank territory as a primary prerequisite for a deal, seeking to condition discussion of all core issues on this acknowledgment. They agreed to discuss security with borders but, again, predicated any security arrangements on Israel meeting their territorial requisites. Specifically, in efforts to relaunch negotiations during the past two-and-a-half years, the Palestinians insisted that they would not come to the table until Israel accepted terms of reference stipulating the baseline for territorial negotiations as "the 1967 lines with swaps," alongside a freeze on settlement activity.

Therefore, President Obama's May 19 endorsement of that formula—which came after long U.S. equivocation on the subject—met an essential Palestinian condition. Previously, Washington had subscribed to Secretary of State Hillary Clinton's November 2009 formula: "We believe that through good-faith negotiations the parties can mutually agree on an outcome which ends the conflict and reconciles the Palestinian goal of an independent and viable state based on the 1967 lines, with agreed swaps, and the Israeli goal of a Jewish state with secure and recognized borders that reflect subsequent developments and meet Israeli security requirements."[28] In other words, the United States expressed belief that the parties could reconcile their respective goals but did not subscribe to any of them. In his May 19 and May 22 speeches, however, President Obama subscribed to all of them.

For its part, Israel objected to "borders first," both as a term of reference for resuming talks and as an

approach to the negotiations themselves. The Israeli government's concern was that setting the baseline as "1967 with swaps" would predetermine the outcome of territorial negotiations. More important, Israel was worried that discussing borders first would pressure it into exposing substantive flexibilities on its main tangible bargaining chip before gaining Palestinian concessions on key Israeli concerns: security, the settlement of Palestinian refugees outside Israel, and the recognition of Israel as the nation-state of the Jewish people. Although the guiding principle for negotiations has always been that "nothing is agreed until everything is agreed," Israel feared that Palestinians would merely pocket the territorial concessions and make them the starting point for future negotiations, as has happened in the past. Israel also argued that examining borders in the Jerusalem area—an extremely complicated issue—would necessarily entail a discussion of the city's eventual fate.

In deciding which core issue it wanted to balance against territory, the Netanyahu government vacillated at first. At one point it demanded equal weight for security and even considered pushing for "security first." Later it argued that accepting Israel as the nation-state of the Jewish people as an endgame (after all core issues are resolved) should be part of the terms of reference for negotiations. And after initially rejecting the White House's "1967 with swaps" formula, Netanyahu seemed willing to implicitly accept that baseline based on Obama's May 22 clarification, which called for a return not to the 1967 lines, but rather to a border that addressed both demographic realities on the ground and Israel's security needs. In his September 23 speech to the UN General Assembly responding to the unilateral Palestinian statehood bid, Netanyahu stated, "But [even] with all my reservations, I was willing to move forward on these American ideas."[29] Although his public rebuff of Obama's May 19 speech had focused on rejecting withdrawal to pre-1967 lines, he had also privately shied away from supporting the concept of swaps. Yet by signaling acceptance of Obama's May 22 formula, albeit with reservations, Netanyahu also implicitly endorsed swaps.

The ongoing debate surrounding these issues calls for rethinking the sequence and pairing of core issues in any future negotiations. Bearing in mind that many of Israel's security requirements do not carry a territorial dimension,[30] are borders and security a better pair than borders and refugees? Should borders, security, and refugees be discussed all at once? Or would simultaneous consideration of all core issues afford better tradeoffs and therefore flexibilities? Before resuming negotiations, the parties should thoroughly discuss whether to tackle all of these issues concurrently, establish a sequential approach, or even put some of them aside for now in favor of pursuing incremental, interim measures within the framework of agreed endgame parameters.[31]

Conclusion

In his 1979 book *White House Years*, Henry Kissinger recalled that when he first encountered UN Resolution 242 and its conflicting interpretations, he did not appreciate the extent to which it obscured rather than illuminated the parties' fundamentally clashing positions. The same can be said of the current U.S. baseline for territorial negotiations—it masks a deep divide. At the same time, however, its final interpretation is in the eye of the beholder. To borrow another Kissinger phrase, time will tell whether "the 1967 lines with mutually agreed swaps" proves to be constructive rather than destructive ambiguity.

As far as substance is concerned, the parties have come to agree on several important points throughout years of negotiations. Since 2000, Israel has essentially agreed to regard the 1967 lines as a reference point—even if not a "baseline"—for territorial deliberations without prejudice to its call for significant adjustments to these lines. The Palestinians have come to accept Israeli retention of some settlement blocs. And both sides have agreed to bridge gaps through territorial exchange. But the basic narratives guiding their territorial viewpoints are still deeply at odds, as are the practical implications of these views.

Clearly, bridging the gap between Israel's minimal territorial requirements and the Palestinians' maximal

flexibility will be difficult. And it remains to be seen whether Israel can practically offer the Palestinians a land swap that meets their requirements. To find a meeting point, the parties must make difficult decisions and revisit some of their very basic traditional assumptions and positions on issues such as the ratio of land swaps, additional territorial and nonterritorial measures to offset the gap, the delineation and fate of certain settlement blocs, the criteria for determining which lands may be exchanged, and whether inhabited points on either side be moved. Following the failure of three rounds of permanent status talks, reaching mutually satisfactory decisions on any of these issues has become increasingly difficult for the parties, requiring leaders who can bear the burden of responsibility for controversial choices, in both decision and implementation.

Indeed, territory and borders are make-or-break issues. A breakthrough in territorial negotiations could open the door to other core issues and catalyze progress, yet reaching such a breakthrough may require trade-offs on those very issues. And a deadlock in territorial talks would certainly block negotiations writ large.

Thus, adequately preparing the ground for such negotiations is crucial. Efforts to relaunch direct talks over the past two-and-a-half years have focused almost exclusively on how to get the parties to the table, sidestepping the question of how to proceed if and when they get there. Instead, talks should be preceded by serious preparatory work on territories and borders. In general, several key issues require much preliminary thought and discussion, including

- the nature, architecture, sequencing, and guiding principles of negotiations;

- efficacy-based trade-offs between the core issues;

- the convergence of the top-down negotiations process with bottom-up state-building efforts on the ground;

- incremental confidence-building measures;

- alternatives to deadlock;

- and the creation of a public atmosphere conducive to the historic compromises required from both parties.

As the unilateral statehood effort at the UN continues, it is unclear when and how the parties will resume talks. The Palestinians must realize that permanent borders can be set only through negotiations and compromises, not by international decisions. Ultimately, a territorial agreement requires an appropriate political landscape in which the parties genuinely seek agreement and are capable of implementing it rather than engaging in a blame game. Until such time, lessons from past failures must not be forgotten, and the parties must ensure—with the support and encouragement of the international community—that their diplomatic and on-the-ground activities do not close the door on future negotiations and peace options.

Appendix: Chronology of Israeli-Palestinian Territorial Negotiations

TO DATE, Israelis and Palestinians have held three rounds of official negotiations on core permanent-status issues, including territory and borders. The first of these took place in 2000, culminating in July with the Camp David summit. November 2007 saw the beginning of the Annapolis process, culminating in a Jerusalem summit between Prime Minister Olmert and President Abbas on September 16, 2008. And in September 2010, Prime Minister Netanyahu and Abbas launched short-lived direct talks under American auspices. All three rounds failed to produce an agreement on any of the core issues.

Some unofficial attempts at drawing a common border have also taken place throughout the years. Most noteworthy are the efforts carried out by former Israeli minister and left-wing leader Yossi Beilin. On October 30, 1995, Beilin drafted an unofficial permanent-status agreement with Mahmoud Abbas (then a senior Palestinian official). The territorial component of the "Beilin–Abu Mazen Agreement" introduced the concept of land swaps that would allow Israel to keep the major settlement blocs comprising around three-quarters of West Bank settlers. Its map incorporated approximately 4.5% (close to 250 sq km) of the West Bank into Israel in exchange for a similar amount of Israeli territory, mainly parts of the Chalutzah area near the Egyptian border and a corridor to Gaza. This draft agreement never received official approval; several days after its conclusion, Prime Minister Rabin was assassinated and the whole enterprise was shelved.

Years later, Beilin inspired a similar unofficial initiative to draw an agreed map. The resulting "Geneva Initiative" map of 2003 envisioned an equal land swap of some 2.2%.

On the official front, Israel has presented numerous territorial proposals and maps with a large degree of detail over the years, but the Palestinians have been reluctant to reciprocate. In their view, the Palestinian baseline—namely, all of the West Bank—was self-evident, and it was Israel's responsibility to propose deviations from it. As such, they have submitted maps on only five occasions, offering a single proposal each time: Camp David (July 2000), Taba (January 2001), the Tzipi Livni–Abu Ala negotiations during the Annapolis process (2008), and during talks with an American interlocutor in 2010 and to the Quartet in November 2011.

A detailed chronology of the significant official territorial proposals and counterproposals made since 2000 follows.

CAMP DAVID (2000–2001)

Eilat, May 2000
- Israel's first official schematic map (presented by the author) showed 66% of the West Bank as Palestinian territory (PT); 17% as Israeli territory (IT), and 17% as special status, i.e., lands that would remain under Israeli control for a period of time due to security reasons (mostly in the Jordan Valley) but ultimately become Palestinian territory.
- Palestinian counteroffer: 96% PT, 4% IT, equal land swaps.

Stockholm, late May 2000 (secret talks):
- Israeli map: 76.6% PT, 13.3% IT, and 10.1% special status, no land swaps.
- Palestinian offer: 96% PT, 4% IT, equal land swaps

Camp David, July 2000:
- Initial Israeli map: approximately 88.5% PT and special status, 11.5% IT, no land swaps.
- Final Israeli oral offer (Barak to Clinton): 91% PT, 9% IT, Israel swaps land equivalent to 1% of the West Bank.
- Palestinian leadership let Clinton understand that, in a nonbinding manner, they might accept an offer by him of: 92% PT, 8% IT, land swaps in a ratio favorable to Israel.
- Palestinian map: 97%–98% PT, 2%–3% IT, equal land swaps.

Clinton Parameters, December 23, 2000:
- President Clinton's proposal: 94%–96% PT, 4–6% IT, 1%–3% land swaps, territorial safe passage between the West Bank and Gaza, swaps of leased land to be considered. Guidelines for developing final maps: preserving territorial contiguity for each state, minimizing Israeli annexations and the number of Palestinians affected, and allowing Israel to incorporate territory containing 80% of bloc settlers.
- Israeli response: acceptance with reservations, including doubts that 4%–6% of the West Bank could meet the threshold of incorporating 80% of settlers.
- Palestinian response: informal rejection of essential components.
- President Clinton's response: withdrew parameters from the table upon leaving office.

Taba, January 2001 (bilateral):
- Israeli map: 92% PT, 8% IT.
- Palestinian map 97–98% PT, 2–3% IT.
- Unauthorized Israeli maps presented privately by some members of the delegation and pocketed by Palestinians: 94% PT, 6% IT.

ANNAPOLIS (2008)

Livni–Abu Ala negotiations, spring–summer 2008:
- Israeli map: 92.7% PT, 7.3% IT, no land swaps. Livni argued that discussion of swaps should be reserved for a later stage.
- Palestinian map: 98.1% PT, 1.9% IT, equal land swaps.

Olmert–Abbas negotiations, culminating September 16, 2008:
- Israeli proposal: 93.5% PT, 6.5% IT, 5.8% land swaps, and 0.7% "compensation," Olmert's term for a potential West Bank-Gaza corridor under nonsovereign Palestinian control.
- Palestinians: no response.

NETANYAHU–ABBAS (2009–present)

Netanyahu–Abbas discussions, 2009–present:
- No agreement on terms of reference for territorial negotiations.
- Palestinian baseline: 1967 lines with land swaps. During indirect, U.S.-facilitated "proximity talks" in late 2010, they presented a document and a map offering 98.1% PT, 1.9% IT equal land swaps.
- Israeli response: rejection on the basis that Israel will not engage in detailed territorial negotiations or present its map without assurances on core security requirements.
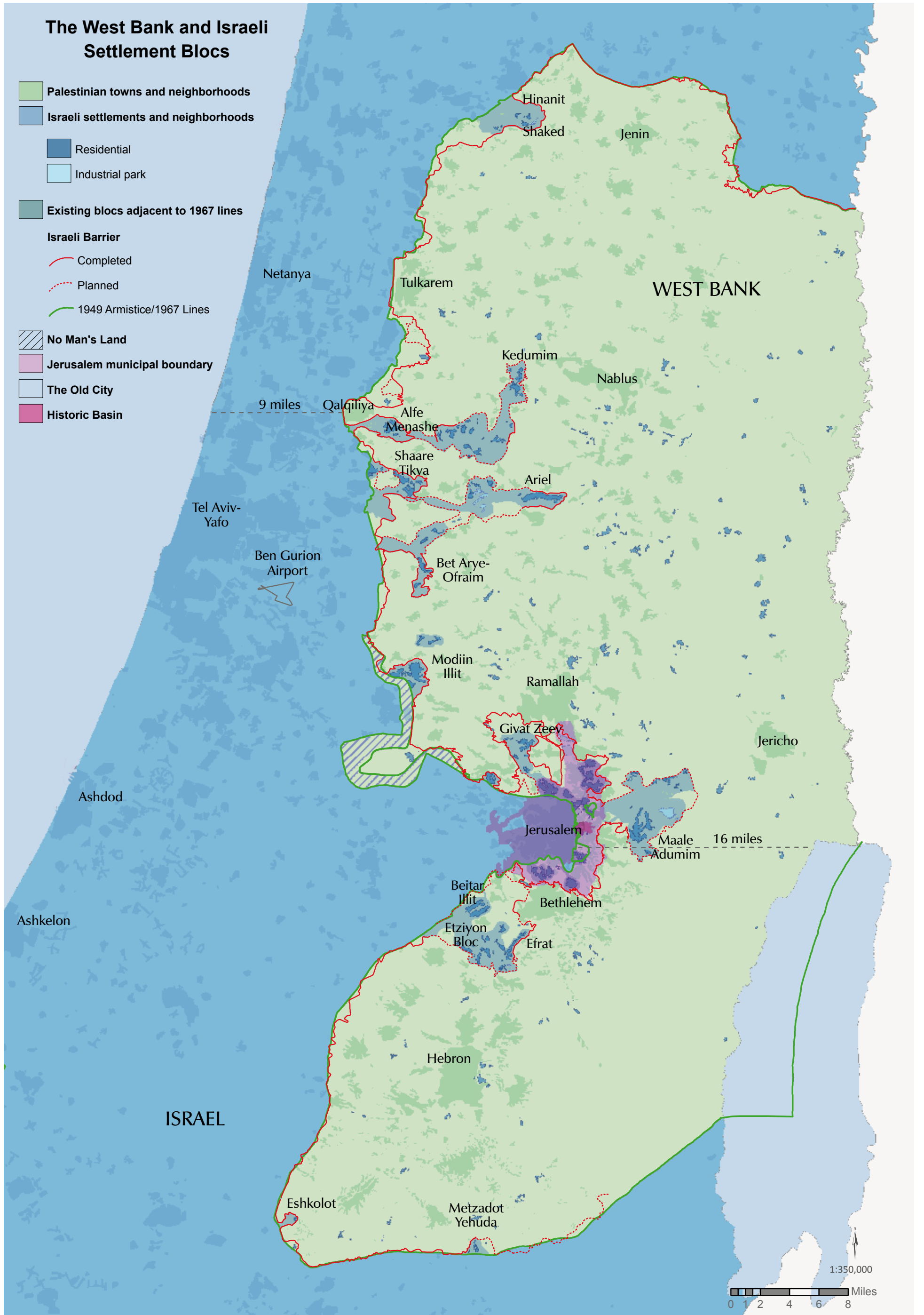
White House baseline formula, May 2011:
- On May 19, President Obama stipulated a baseline of "the 1967 lines with mutually agreed swaps."
- Israel initially objected, but Netanyahu appeared willing to reconsider if the baseline was clarified with excerpts from Obama's May 22 speech: namely, that the parties will negotiate a final border differing from the 1967 lines, taking into account demographic realities on the ground and both sides' security needs. Additionally, Netanyahu demanded a preliminary commitment that any agreement reached would include recognition of Israel as the nation-state of the Jewish people.

Quartet-led efforts , September 2011–present:
- November 2011: Palestinians presented essentially the same document and map of 2010 offering 98.1% PT, 1.9% IT equal land swaps.
- Israeli response: Will present territorial positions only after Palestinians revert to direct negotiations without preconditions.

The West Bank and Israeli Settlement Blocs

Palestinian towns and neighborhoods

Israeli settlements and neighborhoods

Residential

Industrial park

Existing blocs adjacent to 1967 lines

Israeli Barrier

Completed

Planned

1949 Armistice/1967 Lines

No Man's Land

Jerusalem municipal boundary

The Old City

Historic Basin

Netanya

Hinanit

Shaked

Jenin

Tulkarem

WEST BANK

Kedumim

Qalqiliya

9 miles

Alfe Menashe

Nablus

Shaare Tikva

Ariel

Tel Aviv-Yafo

Ben Gurion Airport

Bet Arye-Ofraim

Modiin Illit

Ramallah

Jericho

Givat Zeev

Ashdod

Jerusalem

Maale Adumim

16 miles

Beitar Illit

Bethlehem

Ashkelon

Etziyon Bloc

Efrat

Hebron

ISRAEL

Eshkolot

Metzadot Yehuda

1:350,000

Miles
0 1 2   4   6   8

Notes

1. The full speech is available at http://www. whitehouse.gov/the-press-office/2011/05/19/remarks-president-middle-east-and-north-africa.
2. During his tenure as a senior Israeli official, the author participated in most of these talks. Unless other sources are indicated, the assertions made in this paper regarding various negotiating points are based on his experience in that capacity, or on conversations with other officials.
3. The differences between the 1949 armistice lines and the June 4, 1967, lines are marginal and amount to some twenty-six square kilometers of "No Man's Land" divided between the parties after the 1949 Armistice Agreement.
4. The full speech is available at http://www.whitehouse.gov/the-press-office/2011/05/22/remarks-president-aipac-policy-conference-2011.
5. The full text of the letter is available on the Israeli Foreign Ministry website at http://www.mfa.gov.il/MFA/Peace+Process/Reference+Documents/Exchange+of+letters+Sharon-Bush+14-Apr-2004.htm.
6. Remarks made during a May 26, 2005, press conference with Abbas and a January 10, 2008, press conference in Jerusalem, respectively.
7. See for example the "Territory Non-Paper" issued by the Palestinian Authority's Negotiations Support Unit in May 2010, available at http://www.nad-plo.org/userfiles/file/Non-Peper/Territory Non-Paper 2010.pdf.
8. The Jordanian deal involved land swaps and excluded the West Bank, which was left for an Israeli-Palestinian deal.
9. Such as control of the airspace for military purposes or several strategic sites inside the Palestinian state for purposes of air control and early warning.
10. For example, Secretary of State Warren Christopher used the phrase "secure and defensible borders" in a 1997 letter to Prime Minister Binyamin Netanyahu; see A. M. Rosenthal, "Netanyahu's Peace Plan," *New York Times,* January 17, 1997, http://www.nytimes.com/1997/01/17/opinion/netanyahu-s-peace-plan.html. President Bush used the same formulation in his April 2004 letter to Sharon.
11. Interview with Yitzhak Rabin on Israel Television, 15 July 1992, http://www.mfa.gov.il/MFA/Foreign%20Relations/Israels%20Foreign%20Relations%20since%201947/1992-1994/3%20Interview%20with%20Prime%20Minister%20Rabin%20on%20Israel%20Te.
12. This speech was delivered on May 16, 2011, three days ahead of President Obama's speech referring to the "1967 lines with mutually agreed swaps." Controversy over Obama's remarks overshadowed Netanyahu's speech.
13. In his April 14, 2004, letter to Sharon, Bush wrote: "In light of new realities on the ground, including already existing major Israeli population 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." For those who claim that "major Israeli population centers" refers only to Jewish neighborhoods of east Jerusalem, the original intention behind this text—coordinated in advance between the two governments—was to also include settlement blocs without predetermining which blocs or with what delineation. In practice, during the Bush tenure the two governments developed oral understandings allowing for some flexibility regarding Israeli construction within the settlement blocs.
14. Israeli prime minister Ehud Olmert's far-reaching proposal to President Abbas, presented in September 2008, would have necessitated the removal of around 63,000 of the more than 300,000 Israeli settlers in the West Bank (not including Jerusalem).
15. During the talks that followed the 2007 Annapolis conference, the Israeli negotiating team took its Palestinian counterpart on a tour of Ariel. Afterward, Palestinians told then secretary of state Condoleezza Rice that they strongly objected to the Ariel bloc based on their impressions on the ground. Rice conveyed those impressions to Israeli leaders.
16. The Palestinians involved in the unofficial "Geneva Initiative" of 2003 agreed that Israel should receive some of Maale Adumim bloc, but only a relatively small portion. It is worth mentioning that Israel has

not completed the full separation barrier around the Ariel and Maale Adumim blocs due to strong U.S. reservations (beginning with the Bush administration) regarding their size and the political implications of fully enclosing them.

17. In a June 25, 2009, interview with the Jordanian daily A-Dustour (http://www.memri.org/report/en/0/0/0/0/0/0/0/3413.htm), Palestinian chief negotiator Saeb Eraqat said the following regarding the erosion in Israeli territorial positions over the years: "At Camp David they offered 90%, and [recently] they offered 100%. So why should we hurry?" The initial Palestinian offer—allocating 4% of the West Bank to Israel with equivalent land received in exchange—was made during the May 2000 talks in Eilat, about two months before the Camp David summit, in the presence of the American team. The author was present.

18. The Palestinians claim to have arrived at this figure by calculating the size of the built-up areas in the settlement blocs adjacent to the 1967 lines using satellite photography provided by the United States.

19. The Palestinian calculation for total West Bank territory is 5,860 sq km (together with Gaza's 360 sq km, they demand 6220 sq km for the Palestinian state), compared to Israel's baseline of approximately 5,500 sq km.

20. This addition had previously been reflected in minutes produced by Secretary Rice at the end of a July 2008 trilateral meeting, which listed areas to be part of negotiations, though not referring to territorial calculations.

21. Ehud Barak attempted this approach at the 2000 Camp David summit, arguing for Israeli annexation of 650 sq km of the West Bank.

22. See, for example, Ben Caspit's report in *Ma'ariv*, April 30, 2011, http://www.nrg.co.il/online/1/ART2/236/200.html.

23. The two countries swapped some 40 sq km in the Arava Valley—the southern part of their border—so as to enable continued cultivation of land by Israeli villages and kibbutzim in the area.

24. It should be noted that Israel has objected to the Palestinian demand of "equal land quality," arguing that this factor is impossible to measure with any precision.

25. Some Israeli political circles have proposed swapping land inhabited by Arab Israelis, but these ideas raise ethical and legal questions and appear unrealistic; both the Palestinian Authority and Arab Israelis strongly reject them.

26. See, for example, renowned geographer Gideon Biger, "Blueprint for Land Swaps," *Haaretz*, May 29, 2011, http://www.haaretz.com/print-edition/opinion/blueprint-for-land-swaps-1.364664.

27. For extensive brainstorming on potential land swaps, see David Makovsky, *Imagining the Border: Options for Resolving the Israeli-Palestinian Territorial Issue* (Washington, DC: Washington Institute for Near East Policy, 2011), http://www.washingtoninstitute.org/templateC04.php?CID=301.

28. This statement was first made on November 25, 2009, in a bid to restart negotiations, immediately after Israel announced a ten-month partial freeze on settlement activity (the U.S. and Israeli announcements are available on the State Department website at http://www.state.gov/secretary/rm/2009a/11/132434.htm). The Palestinians rejected the proposal out of hand.

29. The full speech is available at http://www.haaretz.com/news/diplomacy-defense/full-transcript-of-netanyahu-speech-at-un-general-assembly-1.386464.

30. For example, control of airspace against military threats.

31. In phase II of the Quartet's April 2003 "Roadmap," the parties were offered an option of a Palestinian state with provisional borders. The Palestinians rejected it for fear of being "trapped" in an interim phase and turning the conflict into a border dispute. It remains to be seen, especially after the UN statehood bid, whether they can agree to an incremental approach if the territorial endgame parameters are agreed in advance and guaranteed by the international community.

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