

Why Camp David II Failed: a Negotiation Theory Perspective

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“I don’t think they will ever reinvent the wheel. And the difference between this moment until the moment of reaching an agreement will be how many names--Palestinians and Israelis--will be added to the lists of death and agony. At the end of the day, there will be peace.”--Saeb Erekat

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On July 24, 2000, after fourteen straight days of negotiations at the Camp David II presidential retreat, President Bill Clinton, Israeli Prime Minister Ehud Barak, and Palestinian Authority (PA) Chairman Yasir Arafat returned to their respective countries unable to reach a deal. Despite the summit's failure to produce a final settlement of the Israeli-Palestinian conflict in accordance with the 1993 Oslo Agreements, Arafat requested another meeting. Nearly five months later, the parties reconvened at the White House on December 19, 2000, and following separate meetings with both parties, Clinton offered his last proposal. Barak, who had wagered his political career on the potential deal, endorsed it. Arafat made no counteroffer and gave no explanation. Instead, he simply walked away.

Arafat's exit shocked the world: "Arafat's decision to walk away from these offers, effectively ending the Oslo peace process and inflaming the burgeoning second intifada . . . stunned the U.S. and Israeli leaders."¹ Shortly after, in his *New York Times* column "Foreign Affairs; Yasir Arafat's Moment," Thomas Friedman explained to the American public that Arafat "played rope-a-dope. He came with no compromise ideas of his own on Jerusalem. He simply absorbed Mr. Barak's proposals and repeated Palestinian mantras about recovering all of East Jerusalem."² Even Arab leaders admitted that they were caught off guard when Arafat cut off negotiations.³ In his autobiography, *MY LIFE*, Clinton reflected on an exchange he had with Arafat upon his abrupt departure. "You are a great man," Arafat told Clinton after Camp David II. Clinton responded, "I am not a great man. I am a failure, and you have made me one."⁴

This paper examines the failure of Camp David II from a negotiation perspective. For the

¹ Russell Korobkin & Jonathan Zasloff, *Roadblocks to the Roadmap: A Negotiation Theory Perspective on the Israeli-Palestinian Conflict After Yasser Arafat*, 30 *YALE J. INT'L L.* 1, 24 (2005).

² Thomas L. Friedman, *Foreign Affairs; Yasir Arafat's moment*, *N.Y. TIMES*, July 28, 2000, www.nytimes.com/2000/07/28/opinion/foreign-affairs-yasir-arafat-s-moment.html?pagewanted=all&src=pm.

³ Elsa Walsh, *The Prince: How the Saudi Ambassador Became Washington's Indispensable Operator*, *NEW YORKER*, Mar. 24, 2003, at 48.

⁴ *BILL CLINTON, MY LIFE* 633 (Knopf Publishing Group, 2004).

purposes of this paper, Barak and Arafat represent the nations of Israel and Palestine, theoretically unified entities. It should also be noted that due to the complexity of the Israeli-Palestinian conflict, this paper takes a simplistic view of the hypothetical unified parties' primary interests at a single point in time. It begins with a sketch of each party's primary interest. It then evaluates why the Clinton proposal did not offer a Zone of Possible Agreement (ZOPA).⁵ The paper concludes with suggestions for use in future negotiations between the Israelis and Palestinians in the hope that one day a "final settlement" will be reached.

II. The Offer

At the outset, it is critical to note that Clinton's offer was never written down.⁶ Nonetheless, Ambassador Dennis Ross, the chief US negotiator, detailed the proposal in his book, *THE MISSING PEACE*. According to his account, Clinton offered a plan that would primarily have given the Palestinians: 1) over 90% of the West Bank, and complete control over the Gaza Strip with a land-link connecting the two, 2) Palestinian control over the Muslim holy sites on Jerusalem's Temple Mount, and 3) significant financial compensation to Palestinian refugees.⁷ Variations to this skeletal offer were also on the table. For example, Clinton allegedly offered Arafat 96% of the West Bank and 1% of Israel proper, *or* 94% of the West Bank and 3% of Israel proper.⁸

Ultimately, "there simply [was] no specific version of a land-for-peace agreement that both Israel and the Palestinians would prefer to continued warfare."⁹ To this day, dozens of theories circulate trying to make sense of why Arafat walked away. Middle East scholars,

⁵ ROBERT H. MNOOKIN, SCOTT R. PEPPET, & ANDREW S. TULUMELLO, *BEYOND WINNING: NEGOTIATING TO CREATE VALUE IN DEALS AND DISPUTES* 19 (Library of Congress-Cataloging-in-Publication-Data, 2000).

⁶ David Shyovitz, *Camp David 2000*, <http://www.jewishvirtuallibrary.org/jsourc/Peace/cd2000art.html> (last visited Apr. 12, 2011).

⁷ DENNIS ROSS, *THE MISSING PEACE: THE INSIDE STORY OF THE FIGHT FOR MIDDLE EAST PEACE* 712-58 (Farrar, Straus and Giroux, 2004).

⁸ Shyovitz, *Supra* note 6.

⁹ Korobkin, *supra* note 1, at 11 .

diplomats, and politicians alike remain confounded, suggesting anything from Arafat's psychological inability to let go of the conflict to the influence of a fractured Palestinian society. Yet, analyzing Camp David II through a negotiation framework provides a straightforward answer: no ZOPA existed between the two parties. Whether it contains many possible deals or just a single option, a ZOPA within which the parties can reach a mutually beneficial agreement is a necessary condition to reaching *an* agreement. Without a ZOPA, *any* deal will be intolerable for at least one party. In this case, the Palestinian's interests were outside of the Clinton proposal. Arafat preferred his Best Alternative to a Negotiated Agreement (BATNA)¹⁰: "the nation of Palestine, as a hypothetical single entity, was better off living with the status quo than agreeing to the concessions implicit in a land-for-peace agreement, and the actions of Palestine's leader reflected this calculation."¹¹ While the Israelis allegedly backed Clinton's Camp David II proposal, any alternative deal that Clinton would have proposed to meet the Palestinian's interests would no longer be feasible vis-à-vis Israeli interests.

III. The Palestinians' Primary Interest

Practically every day in the Western world, newspapers flash headlines about Palestinians living in squalor and subjected to Israeli brutality. Thus, at first glance, it is difficult to understand why Arafat preferred this BATNA—conditions of intense poverty and constant warfare with the most powerful military in the Middle East—to Clinton's proposal and a resultant Palestinian state. Acceptance of the proposal would have immediately improved Palestinian living conditions. However, this narrow view overlooks the Palestinians' key interest.

The Palestinians' primary interest was to acquire the "right of return" (*haq al-'awda*).¹² With the establishment of Israel in 1948, Arab countries unleashed their anger on Jews living in

¹⁰ *Id.* at 20.

¹¹ *Id.* at 10.

¹² Rashid I. Khalidi, *Observations on the Right of Return*, 21 J. OF PALESTINE STUDIES 29, 29 (1992).

the Middle East. In some cases, Jews were forcefully expelled, while others left because their lives were no longer sustainable in Arab dominated countries. Although the exact numbers, timeline, and reasons for leaving are disputed, approximately 580,000 Jews lived in Arab lands in 1945, 560,000 of whom immigrated to Israel in the wake of the Arab-Israeli War of 1948. Israelis consider this war a miracle, while the Palestinians refer to it as “the catastrophe” (*al-Nakba*).¹³ Again, while the statistics, timeline, and reasons for leaving are widely disputed, the United Nations suggests that between 1947 and 1949, 656,000 Arab inhabitants of Mandatory Palestine (now Israel) were either forced to leave or fled.¹⁴ Upon entrance to Israel, Jews are granted Israeli citizenship¹⁵. Arab countries, however, set up refugee camps for Palestinian refugees in anticipation of a re-conquest of Mandatory Palestine that never came to pass.¹⁶ After the Six Day War in 1967, Arab countries experienced an additional influx of 300,000 Palestinians.¹⁷ Today, there are approximately 4.8 million *registered* Palestinian refugees.¹⁸

Over time, the Palestinian longing to return has strengthened: “what began as a displaced population of three quarters of a million people in 1949 has now reached more than six million [people], most of who are *consumed with* the objective of returning to their homeland.”¹⁹ The fact that an official Palestinian state has never existed is irrelevant to the Palestinians. They view themselves as victims who have been denied the self-determination that their Arab brethren were granted only to serve as a political pawn. All other Palestinian interests pale in comparison to the

¹³ Avram S. Bornstein, *CROSSING THE GREEN LINE BETWEEN THE WEST BANK AND ISRAEL* 39-40 (University of Pennsylvania Press 2002).

¹⁴ Charles k. Rowley & Jennis Taylor, *The Israel and Palestine Settlement Problem, 1948-2005: An Analytical History*, 128 P. CHOICE 77, 87 (2006).

¹⁵ *Law of Return 5710-1950*, Israeli Ministry of Foreign Affairs, http://www.mfa.gov.il/MFA/MFAArchive/1950_1959/Law%20of%20Return%205710-1950, last visited April 15.

¹⁶ Rowley, *supra* note 14, at 87.

¹⁷ *Id.*

¹⁸ U.N. Palestine Refugees, *Who are Palestinian Refugees?*, <http://www.unrwa.org/etemplate.php?id=86> (last visited Apr. 12).

¹⁹ Rowley, *supra* note 14, at 83 (emphasis added).

right of return: “as far as the Palestinians are concerned, the wrong done to them can only be righted, and the disasters ended, through a return to the homeland.”²⁰

IV. The Israelis’ Primary Interest

Israel’s most fundamental interest was to preserve its Jewish character. In just sixty years, the state of Israel has fought seven wars, and in the interim periods, Israel has experienced violent terrorist attacks. Palestinians perpetrated many of these bus bombings, attacks on Israeli soldiers, and other similar travesties that were commonplace in Israeli society at the time of Camp David II. While Barak clearly had an interest in establishing peace and security in Israel, and in improving its press coverage and public relations throughout the world,²¹ maintaining Israel’s Jewish identity trumped other interests. Founded in the aftermath of the Holocaust, Israel is a Jewish state—home to the Jewish people. Barak jumped on the opportunity to accept the Clinton proposal because it met his key interest, dominating the Israeli BATNA of perpetual warfare.

V. Why the Clinton Proposal did not provide a ZOPA

Arab citizens of Israel will overwhelm the Jewish population unless Jewish procreation rates increase. In its early years and even lasting until the fall of the Soviet Union, Israel experienced an “ingathering of the exiles” in the form of various population waves (*Aliyahs*), where Jews from the Diaspora *returned* to their homeland. Currently, Israel is home to 42.5% of world Jewry. The US follows with 39.3%.²² Unless unprecedented numbers of American Jews decide to make *Aliyah* and establish citizenship and a home in Israel, Israel will not see another population influx like those it experienced in its early years. Additionally, not all Arab residents

²⁰ Khalidi *supra* note 12 at 30.

²¹ Hussein Agha and Robert Malley, *The Last Negotiation, How to End the Middle East Peace Process*, 81:3 FOREIGN AFFAIRS 10, 13 (2002).

²² *The Jewish Population of the World*, <http://www.jewishvirtuallibrary.org/jsource/Judaism/jewpop.html> (last visited Apr. 11, 2011).

of Mandatory Palestine fled in 1948. Today, roughly 20% of Israel's population (1.57 million) consists of Palestinians who have Israeli citizenship.²³ On average, compared to their Arab counterparts, Israelis demonstrate a low procreation rate. The annual rate of Israelis' natural increase is 2.5% while Palestinians' is 3.5%.²⁴

A. Palestinian perspective

Palestinian leaders have consistently demanded the right of return for Palestinian refugees and their descendants to their former homes inside of Israel, as a precondition for a peace deal.²⁵ At this time, Palestinians will only accept a settlement proposal that resolves the Palestinian refugee situation in some way. From a Western perspective, this is difficult to understand because the Palestinian demand appears impracticable. Additionally, abandoning this demand would not leave the Palestinians perceptibly worse off because Palestinians currently lack the ability to return to their homes and have no realistic chance of achieving the ability to return through the force of arms. Yet accepting a peace deal would vastly improve Palestinian welfare in other regards, including but not limited to health, education, and socioeconomic status. Therefore, conceding the right of return seems far superior to the Palestinian BATNA. Still, this conclusion underestimates the legitimate Palestinian emotion of homelessness—a longing to return to their ancestral homes akin to the Jewish people's yearning to return to Israel for 2000 years. Since the establishment of Israel, "the idea of 'return' has been central to the Palestinian national narrative of struggle against overwhelming odds, of expulsion from their ancestral homeland, of dispersion, and of national reconstruction."²⁶ This hunger to return has

²³ Population, Israeli Central Bureau of Statistics, http://www.cbs.gov.il/www/yarhon/b1_e.htm (last visited Apr. 10, 2011).

²⁴ Rowley, *supra* note 13, at 87.

²⁵ Justus R. Weiner, *The Palestinian Refugees' "Right to Return" and the Peace Process*, 20 B.C. INT'L & COMP. L. REV. 1, 22-23 (1997).

²⁶ Khalidi *supra* note 12.

been passed down even to the youngest generation of Palestinians, many of whom have never set foot in Israel proper. A Palestinian Camp David II representative referenced the refugee issue as “the moment of truth,” bemoaning the Israeli position as “the greatest failure of the summit.”²⁷

Although reaching a peace deal at Camp David II would have improved Palestinian life in the immediate future, the Palestinian people might have had a long-term interest in holding out. Taking demographics and the Palestinian birthrate into account, the Palestinians could achieve their goal of regaining control of Israel proper *without* the right of return. Projections of when this will occur are disputed, but the ultimate result is undeniable. Israeli leaders’ overt concern about this demographic threat evinces that it is a realistic possibility.²⁸ Under these circumstances, it was rational for Arafat to sacrifice his people’s present welfare to meet their collective interests in the future. If Arafat were to have reached an agreement at Camp David II, he would have recognized the establishment and continuing existence of the Jewish state. An agreement would also have likely resulted in Palestinian emigration from Israel, making a natural re-conquest unlikely. Given that Arab citizens of Israel have the right to vote and currently 14 of 120 members of the Israeli parliament are Arab citizens, it is eminently reasonable to think that the Palestinians will control the electoral system with the passage of time.²⁹

When viewed through a negotiation apparatus, it becomes clear that Arafat’s decision to walk away was neither an accident nor an aberration. But most analyses of Arafat’s decision fail to take into account, or even consider, such a perspective. For example, Friedman’s infamous article challenged Arafat:

What should Mr. Arafat have said? He should have told Mr. Barak that his ideas for

²⁷ Akram Hanieh, *The Camp David Papers*, J. PALESTINE STUD. 75, 82 (2001).

²⁸ Gideon Alon & Aluf Benn, *Netanyahu: Israel’s Arabs are the Real Demographic Threat*, HA’ARETZ, Dec. 18, 03, <http://www.haaretz.com/print-edition/news/netanyahu-israel-s-arabs-are-the-real-demographic-threat-1.109045>.

²⁹ Current Knesset Members: Knesset Members by Parliamentary Group, The Knesset, http://knesset.gov.il/mk/eng/MKIndex_Current_eng.asp?view=1 (last visited Apr. 29, 2011).

granting Palestinians an administrative presence in East Jerusalem, autonomous control over the Arab neighborhoods there and religious control over the Temple Mount were a huge leap forward for an Israeli leader. But, he should have added, *they didn't go far enough . . .*³⁰

Friedman was not analyzing the failure at Camp David II through a negotiation framework. By stating that “they didn’t go far enough,” he is essentially saying that there was no ZOPA. It is possible that Arafat preferred his BATNA to Clinton’s final proposal because “the Palestinians might believe that the psychological cost of renouncing the right of return would be greater than the physical and economic deprivations that they suffer under Israeli occupation.”³¹ It is also equally possible that Arafat preferred his BATNA because he perceived it as a short-term forfeiture of the Palestinian interest, in exchange for long-term fulfillment of Palestinian interests. After all, “[i]f, as Zionists claim, the Jews of the earth nourished a dream of a reconstituted Israel in Palestine through eighteen hundred years, is it not unrealistic to believe that Palestinian Arabs would hope for a return to their own land just beyond a river bank or just across an imaginary line?”³²

B. Israeli Perspective

Israel’s primary interest, retaining its Jewish character, is in direct opposition to the Palestinians’ primary interest (the right of return). If all Palestinians whose ancestors lived in what is now Israel were given a right of return, and in fact returned, they would become the majority and the Jews would become the minority in Israel. But as established above, regardless of whether or not the Palestinians are granted this right of return, this Israeli nightmare will eventually ensue. Viewed in this light, Israel’s BATNA looks even worse. This reality makes the Israeli interest much stronger, and much more time sensitive. Achieving a peace deal with the

³⁰ Friedman, *supra* note 6 (emphasis added).

³¹ Korobkin, *supra* note 2, at 14.

³² EUGENE M. FISHER AND M. CHERIF BASSIOUNI, *STORM OVER THE ARAB WORLD* 12 (Follet, 1972).

Palestinians would solidify Israel's existence in the Middle East. With the Palestinian emigration outside of Israel that would likely result, eventual Palestinian control of the polls would no longer exist as an issue, or at least become less probable. In this light, Arafat's decision to walk away appears more attractive and rational.

VI. What could increase the likelihood of developing a ZOPA, making it feasible to reach a resolution to the Israeli-Palestinian conflict?

In concrete terms, from the negotiator's standpoint, the existence of a ZOPA depends on the quality of his/her BATNA relative to the proposal's quality. It follows that if no ZOPA exists, one might evolve if the parties respective BATNA's are worsened, or if the proposal becomes more attractive.

Warring countries have immense power to worsen their enemy's BATNA. In the Middle East, this precept could also explain the past sixty-three years of continual warfare between the Israelis and Palestinians. Specifically, "[o]ne plausible explanation for . . . bloodshed in the Holy Land is that each side is engaged in a constant effort to convince the other that its BATNA is worse—in fact, much worse—than previously believed."³³ It is plausible that the Palestinians instigated the first and second intifadas for precisely this reason. Arafat might have believed that if the Israelis suffered enough, their BATNA would decline. Arafat might have further determined that with time, the Israeli BATNA will decline so much that Israel will be coerced to support a less attractive peace deal than that offered at Camp David II or even that the Palestinians will have no need for a peace agreement. It is equally plausible that Israeli occupation and disproportionate responses to Palestinian violence are attempts to increase Palestinian suffering. From the Israeli point of view, making Palestinian life miserable increases the likelihood that the Palestinians will accept a peace deal on par with Camp David II.

³³ Korobkin, *supra* note 1, at 18.

Since Arafat walked away from Camp David II, the Israelis' and Palestinians' strategies to degrade each others' BATNAS has worked, at least to some extent. Negotiation experts believe that from an interests-based outlook, a two-state solution would best serve the interests of the majority of both Palestinians and Israelis.³⁴ Partitioning the land between the Mediterranean and present day Jordan would provide a homeland for both peoples: the Israelis would maintain the Jewish character of their state and the Palestinians would no longer be refugees. At one time, neither Israelis nor Palestinians envisioned a two state solution, but it has now become the mainstream, favored resolution on both sides.³⁵ As a result of living amid constant warfare, this shift likely indicates both sides' exhaustion and thus recognition of a very poor and arguably worsening BATNA. Professor William Zartman's theory of ripeness lends some insight here: there are points within a conflict's life cycle that are particularly *ripe* for agreement. A conflict may be ripe for resolution in the presence of a *mutually hurting stalemate*, or "perceptions of increasingly painful conditions which will yield only further pain and ultimate catastrophe for the conflicting parties if they are left to fester."³⁶

In time, the Israelis' BATNA will likely worsen while the Palestinians' BATNA will likely improve. Projections regarding the changeability of each party's BATNA are inconsistent. On one hand, it is possible that as life in the region deteriorates, each side will continue to become more fatigued and more flexible; concessions on one side will lead to concessions on the other side. Alternatively, in his book *COPING WITH INTERNATIONAL CONFLICT*, Roger Fisher suggests that the application of the Golden Rule—one should treat others as one wishes to be

³⁴ Robert H. Mnookin, Ehud Eiran, & Sreemati Mitter, *Barriers to Peace in the Middle East: Barriers to Progress at the Negotiation Table: Internal Conflicts Among Israelis and Among Palestinians*, 6 NEV. L.J., 299, 299 (2005).

³⁵ *Poll: Most Palestinians, Israelis favor two-state solution*, HA'ARETZ, May 5, 2004, www.haaretz.com/news/poll-most-palestinians-israelis-favor-two-state-solution-1.123540.

³⁶ TERRENCE LYONS, GILBERT M. KHADIAGALA, *CONFLICT MANAGEMENT AND AFRICAN POLITICS: RIPENESS, BARGAINING, AND MEDIATION* 27 (Routledge, 2008).

treated—could create an ever more hostile environment where each party will treat the other as badly as they perceive they have been treated.³⁷ Ultimately, however, “[n]o nation is an island, and the BATNAs of both Israel and Palestine also depend on the actions of third parties. As the world’s sole superpower, the [US] enjoys substantial influence on both Israel and Palestine.”³⁸

The US plays a critical role not only in influencing the parties’ BATNAs but also in making the proposal on the table more palatable for both sides. In fact, “given the nature of this conflict, it appears that only a third party has any chance of making progress toward conflict management.”³⁹ In accordance with Zartman’s ripeness theory, many believe that Camp David II was *the* ripe moment for peace in the Israeli-Palestinian conflict.⁴⁰ But others believe that the US still has the power to create another ripe moment.⁴¹ Here, it is crucial that as the US attempts to make a deal more attractive to one party, its efforts do not simultaneously make the other party less inclined to agree. If the US tries to broaden the ZOPA so as to make it feasible for Palestinian agreement, the US does not want to meddle with the terms of the Camp David II proposal so much that it makes it impossible for Israel to make a deal (i.e. shift the bargaining range such that Israel’s BATNA becomes *more* attractive than any possible deal).

The US has muscles it can flex. First and foremost, as exemplified in Camp David II, the US has succeeded in bringing the Israelis and Palestinians to the negotiation table. The US, however, is not an impartial mediator. Rather, the US becomes a third party at the negotiation table with its own interests. For example, after Camp David II, the US was faulted for trying to appear as an “honest broker” to both sides when Clinton really favored Israel. And while Clinton

³⁷ ROGER FISHER, ANDREA KUPFER SCHNEIDER, & ELIZABETH BORGWARDT, *COPING WITH INTERNATIONAL CONFLICT: A SYSTEMATIC APPROACH TO INFLUENCE IN INTERNATIONAL NEGOTIATION* 118 (Prentice-Hall, 1997).

³⁸ Korobkin, *supra* note 1, at 21.

³⁹ LYONS, *supra* note 36 at 126.

⁴⁰ Jacob Bercovitch & S. Ayse Kadayifci, *Conflict Management and Israeli-Palestinian Conflict: The Importance of Capturing the “Right Moment”* 9 *Asia-Pacific Review* 113, 123 (2002).

⁴¹ LYONS, *supra* note 36 at 124.

allegedly pressured Barak to soften the Israeli position, his efforts as an ally were fruitless because they were not enough to create a ZOPA, leaving the Palestinians' interests unfulfilled.

There are many different ways in which an acceptable ZOPA could be established. Subsidies in the form of direct cash transfers to the Palestinians provide the most obvious mechanism to increase the respective parties' satisfaction with a prospective proposal. The Palestinians have seen little on-the-ground support from their Arab brethren, but their cause is becoming increasingly popular throughout the larger world. If the Palestinians had the means to lead better lives, they might be less focused on their right of return. And there might be other ways to provide non-cash assistance to increase the appeal of a peace agreement. The US could make side agreements with one or both of the parties and induce other countries to do so as well to increase the attractiveness of peace. Amongst various possibilities, these agreements could include arms, law enforcement training, infrastructure (for health, education, medicine, etc), or food. The US has the unique ability to create a new ripe moment for peace. But in light of the recent volatility in the Middle East region, the US must navigate the situation carefully, making sure not to shift the parties' BATNAs farther from a ZOPA.

VII. Conclusion

From a negotiation standpoint, Arafat's decision to walk away seems less anomalous and more cogent. A decade after Camp David II, extensive proposals as to how to resolve the Israeli-Palestinian conflict continue to circulate. Potential resolutions range from a bi-national state to a three state solution to the expected declaration of Palestinian statehood at the UN this fall. The success of such proposals remains to be seen. Looking forward, a negotiation framework is a useful lens for evaluating potential proposals because it will provide clarity and insight into what will actually work, since any proposal remains futile in the absence of a ZOPA.