

# “GETTING TO NO”

AN ANALYSIS OF FAILED MEDIATION  
IN THE ISRAELI-PALESTINIAN CONFLICT  
(1993-2000)

Master of Arts in Law and Diplomacy Thesis

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## ABSTRACT

This paper will attempt this difficult but important task with the humble understanding that “the full story” is impossible to know and tell— even for the very participants of the process. Nevertheless, in this investigation, the author will explore **four main questions**. The first three questions are: 1) *did the OPP set the Israelis and Palestinians on a trajectory that “doomed” CD2 from the start?*; 2) *were there problems inherent to the process and structure of CD2 that led to its failure?*; and, 3) *how should future mediation attempts of the Israeli-Palestinian conflict be structured in order to meet with more success?*

The fourth question, however, requires further introduction. The forthcoming study of CD2 will be guided by a “**Provisional Framework (PF)**” of seven criteria that I believe are necessary ingredients to successful peacemaking processes. I devised this framework after consulting existing literature and scholars in the field of mediation and negotiation in general, as well as after reviewing scholarly pieces focusing on the Israel-Palestinian peace process in particular. Thus, after using this framework to analyze CD2, conclusions will thus be drawn with regard to a fourth and final question: *is this prioritized framework an accurate and/ or useful tool for understanding peacemaking processes?*

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# CHAPTER 1

## *INTRODUCTION*

For over three thousand years, two peoples have been fighting over the same small sliver of land between the Mediterranean Sea and the Jordan River. Whether driven by nationalist or religious sentiment, both Israelis and Palestinians believe in the righteousness of their own cause— a cause that is seemingly irreconcilable with the other. What would an Israel be were it not united— despite all internal schisms— against a Palestinian people and movement that they believed threatened its very existence? What would a Palestinian people be were they not strengthened and unified by the undying belief in their own just and holy struggle? What would life be were newspapers and news programs no longer covering the latest Middle East violence? In essence, what would a world be if Palestinians and Israelis came to live peacefully, side-by-side? Throughout the Oslo peace process (OPP) and particularly during the brief two weeks (July 11-25) of Camp David 2000 (CD2), such was a world that some negotiators and citizens attempted to envision and create. And such is a world that continues to elude us to this day.

### **Section 1- Research Questions**

In examining why CD2 failed, there is no dearth of finger pointing. Ask former U.S. President William Clinton, and one will learn that it is Palestinian leader Yasser Arafat to blame. Ask former Middle East expert of Clinton’s Security Council, Robert Malley, and one will learn that Clinton and former Israeli Prime Minister Ehud Barak are largely to blame. Ask Palestinian negotiator Saeb Erekat, and one will learn that Barak and the Israelis are largely to blame. Most likely, all of these explanations are correct— and simultaneously they all fail to tell the full story. Yet the full story beckons to be told.

This paper will attempt this difficult but important task with the humble understanding that “the full story” is impossible to know and tell— even for the very participants of the process. Nevertheless, in this investigation, the author will explore **four**

**main questions.** The first three questions are: 1) *did the OPP set the Israelis and Palestinians on a trajectory that “doomed” CD2 from the start?*; 2) *were there problems inherent to the process and structure of CD2 that led to its failure?*; and, 3) *how should future mediation attempts of the Israeli-Palestinian conflict be structured in order to meet with more success?*

The fourth question, however, requires further introduction. The forthcoming study of CD2 will be guided by a “**Provisional Framework (PF)**” of seven criteria that I believe are necessary ingredients to successful peacemaking processes. I devised this framework after consulting existing literature and scholars in the field of mediation and negotiation in general, as well as after reviewing scholarly pieces focusing on the Israel-Palestinian peace process in particular. Thus, after using this framework to analyze CD2, conclusions will thus be drawn with regard to a fourth and final question: *is this prioritized framework an accurate and/ or useful tool for understanding peacemaking processes?*

This paper is comprised of five chapters. **Chapter 1** will continue by further outlining this study and presenting a brief introduction to the mediation theory and literature that is relevant to understanding the processes of the OPP and CD2. Stemming from this discussion, the PF will be presented with appropriate citation of scholars who contributed to the development of this framework of analysis. Next, **chapter 2** will attempt to answer *question #1* by contextualizing CD2 within a larger trajectory of failing relations and trust between Palestinians and Israelis vis-à-vis the OPP during the Clinton era (1993 – 2001). In an attempt to address *question #2*, **Chapter 3** will describe the processes and structure of negotiation and mediation at CD2, and **Chapter 4** will analyze reasons for CD2’s failure according to the PF. Finally, in addressing *questions #3 and #4*, **Chapter 5** will analyze the usefulness and validity of the PF, present a *revised framework* (RF) for analysis of peacemaking processes, as well as offer recommendations for future diplomacy efforts in the Israeli-Palestinian conflict that may lead both parties to break out of this cycle of “getting to no”— especially in terms of implementation and enforcement of agreements, not just in terms of reaching an agreement itself.

## **Section 2- Parameters and Rationale of Study**

It is important to explicitly mention the parameters and limitations within which this paper will function. In sifting through the literature on CD2 in particular, it is apparent that no one truly knows what transpired in those sheltered hills of Maryland save the negotiators themselves. In fact, even these negotiators hold different perceptions of what occurred despite, perhaps, having been in the same room or participated in the same conversation with one another. Such is the complexity of this world, of cultural difference, of personal identity/ subjectivity/ understanding, and of verbal/ non-verbal communication and miscommunication.

Given that the content of these CD2 negotiations were intended to be confidential, that the negotiating was conducted through oral (rather than written) exchange, and that memory, personal biases, and reporting often distort, it is difficult to receive an accurate, objective, and complete account of the actual structure and processes of CD2. Further, because these negotiations occurred so recently, many of the participants, themselves, have yet to publish their personal memoirs or interview statements. However, it is precisely because these negotiations occurred so recently that I have chosen it as the object of study, for it makes the lessons learned from this summit so relevant to the present political context and future choices of peacemaking in this region. In addition, though the participants, themselves, have not yet published their personal memoirs, I have made every attempt to conduct personal interviews, attend public lectures, and secure unpublished documents from these participants whenever possible.

To this end, I was able to conduct personal interviews with Aaron Miller (U.S. mediation team), Yair Hirschfeld and Gidi Greenstein (Israeli negotiating team), Rashid Khalidi (advisor to the Palestinian negotiating team), Charles Enderlin (journalist with considerable access to interviews with Palestinian, Israeli, and American teams at CD2), and David Matz (academic expert on the Israeli-Palestinian peacemaking process and CD2, in particular). Further, I engaged in e-mail correspondence with Robert Malley (U.S. mediation team) and attended two public lectures by Dennis Ross (U.S. mediation team).<sup>1</sup>

Finally, I secured a copy of Enderlin's unpublished book, *Shattered Dreams: The Failure of the Peace Process in the Middle East (1995 – 2002)*, which contained extensive

personal interviews and direct quotes from most of the leaders and actors in the Israeli-Palestinian peacemaking process throughout the OPP and CD2. From the Palestinian side, Enderlin spoke to Yasir Arafat, Saeb Erekat, Yasir Abed Rabbo, Abu Ala, Hassan Asfur, Mohammed Dahlan, Jibril Rajoub, and Marwan Barghouti. From the Israeli side, he interviewed Ehud Barak, Benjamin Netanyahu, Shimon Peres, Gilead Sher, Yossi Beilin, Yitzhak Mordechai, Amnon Lipkin-Shahak, Uri Savir, Oded Eran, Israel Hasson, and Gidi Greenstein. From the American side, he received firsthand accounts from Madeleine Albright, Samuel (Sandy) Berger, Dennis Ross, Martin Indyk, and Robert Malley. Finally, from the international community, he interviewed Miguel Angel Maratinos (the European Union (EU) envoy to the Middle East) and Terje Larsen (the United Nations (UN) representative to the Middle East). I consulted all available documentation of these interviews and, thus, was further able to receive a more detailed account of CD2 than would have been available to the general public.

From these personal interviews and testimonials, as well as publicly available literature on CD2, I then pieced together the existing accounts and made personal judgments (or simply raised questions and points of contradiction) in an attempt to form a cohesive, holistic picture of this summit. From such a “picture,” analyses were then derived as to the process-, structure-, and personal-related reasons for the summit’s failure. Ultimately, this paper will not attempt to place blame on one structure, one side, or one person, but rather to analyze the numerous and varied contributing factors to the OPP and CD2’s failure—particularly as they can be understood vis-à-vis the PF.

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CD2 was chosen as the focus of this study for five main reasons in addition to its aforementioned present-day relevance. First, the Middle East in general has long been a critical location and focus of U.S. foreign policy and diplomacy. The reasons for this interest is several-fold: a) its strategic location; b) our alliance with Israel; and, c) our economic reliance on the oil of the region. Second, the Israeli-Palestinian conflict in particular has remained a focal point of international attention and diplomatic activity since the end of World War II (WWII), when the state of Israel was formed. Third, the author

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<sup>1</sup> Note that the professional identity and precise role of each of the aforementioned persons within the Israeli-

believes that CD2, specifically, was a critical moment in the entire Israeli-Palestinian peacemaking process. After all, shortly following its failure, the second *intifada* broke out and, since then, violence has ravaged the region and mistrust has characterized relations between the leaderships and peoples of both sides. Fourth, not only did many of the past structure- and process-oriented flaws of prior OPP negotiations come to a head at the CD2 summit, but also CD2 itself is illustrative of many of these failures. And fifth, the author believes that sustainable, lasting, and fundamental change in this region can only occur through formal negotiated agreements at the highest political levels, providing even further rationale for the study of CD2. Thus, for all of these reasons, the summit can serve as a useful learning tool for future mediation and negotiation in this region.

That said, “governments negotiate treaties; people make peace;” therefore, the necessity and power of successful and concurrent Track 2 and civil society work should not be underestimated.<sup>2</sup> By focusing on CD2, I do not mean to imply that Track 1 summit diplomacy is the *only* important level of peacemaking, but rather just to recognize that CD2 can and does serve as an important and useful case-study for understanding why peace remains out of reach to the people of this region to this day.<sup>3</sup> Certainly, however, concurrent Track 2 and grassroots-level work is necessary for any peace process to meet with sustainable success in Israel and Palestine.

### **Section 3- Definitions of CD2 & OPP**

Given the multiple ways in which the CD2 negotiations have been defined, it is important to articulate the parameters of this paper’s definition of CD2. Here, **CD2** strictly refers to the negotiations in Camp David, Maryland from July 11 – 25, 2000. This summit, mediated by the U.S. (namely, Clinton and his top Middle East staff), brought together Israeli and Palestinian negotiating teams. The immediate **pre-negotiation phase** of CD2 will be defined as the back channel preparatory talks— also known as the Stockholm

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Palestinian peacemaking process will be further detailed, as appropriate, throughout this paper.

<sup>2</sup> Aaron Miller. *Personal Interview with former U.S. State Department Advisor for Middle East negotiations on November 15, 2002 (Washington, D.C.)*.

<sup>3</sup> Track 1, Track 2, and grassroots-levels of diplomacy will be explicitly defined in section 3 of this chapter.

track—which began as early as May 10, 2000.<sup>4</sup> The Stockholm track, occurring in Sweden, consisted of secret, unmediated meetings between top Israeli and Palestinian negotiators wherein progress was made on the substantive issues that any peace agreement would have to address. Meanwhile, the **post-negotiation phase** will refer to the meetings and proposals subsequent to CD2’s collapse—namely the “December 23 package” and the Taba talks. The “December 23 package” is the common term of reference for the peace proposal that Clinton presented to the two parties on this date, following his hosting of renewed talks between Israeli and Palestinian teams in Washington, D.C. The Taba talks describe the informal, marathon meetings between Palestinian and Israeli negotiators that took place in Taba, Egypt from January 21 – 27, 2001—again, without the presence of a mediator (i.e. the U.S.).

For the purpose of this discussion, only the parties that were present at CD2—namely Israel, Palestine, and the U.S.— will be discussed in full. Because CD2 addressed the Israeli-Palestinian conflict specifically, without necessarily being linked to issues within the larger Middle East, this paper focuses only on these issues and parties. However, there are numerous stakeholders involved in this conflict from within the Arab world and the larger international community that play an important role in this conflict. In fact, as will be later discussed, it is the author’s belief that this failure to involve some of these other stakeholders in the CD2 summit was partially responsible for its failure.

Though CD2 is the primary focus of this paper, it did not occur in a “bubble.” Rather, it should be viewed within the context of the larger Israeli-Palestinian peace process— a process that the author will argue was traveling along a trajectory towards failure as implementation of the OPP faltered time and again. Thus, in order to reach a more thorough, in-depth understanding of CD2’s failure, chapter 2 will analyze the major negotiation and mediation attempts of the OPP. The **OPP** abbreviation will be used to refer to the entire process of negotiations and agreements— at all levels—from 1993 to 2000, preceding the summit).

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<sup>4</sup> Note that a more broad interpretation of CD2’s pre-negotiation phase might place the entire OPP in this category. Through such an interpretation, then, the OPP could be understood as an inadequate or unsuccessful pre-negotiation phase for CD2.

As was just done for CD2, however, it is important to explicitly define the terms of reference that will be used to describe various phases within the OPP. **Madrid** will be used to describe the Track 1, highly publicized negotiation process that began at the October 1991 multilateral conference in Madrid, Spain—sponsored by the U.S. and U.S.S.R—which involved delegations from Israel, the U.S., Europe, and various Arab countries (including Lebanon, Syria, Egypt, and one joint Jordanian/ Palestinian team). As these official-level negotiations continued beyond the three-day conference in Madrid, a concurrent back channel, Track 2, unmediated set of meetings between Israeli and Palestinian negotiators began in 1993. It is from these unofficial, secret meetings that the formal Declaration of Principles (DOP) was derived and ultimately signed by Arafat and Yitzhak Rabin on September 13, 1993 in Washington, D.C. The abbreviation **DOP** will be used to refer to these 1993 written Oslo Accords. **Oslo I** will refer to the Gaza-Jericho Autonomy Agreement, signed on May 4, 1994, which outlined the first stage of Palestinian autonomy (in Gaza and Jericho), including Israeli redeployment and the establishment of a Palestinian self-governing authority. **Oslo II** will refer to the subsequent interim agreement on the West Bank and Gaza—signed between Israel and the PLO on September 28, 1995. These agreements incorporated, superseded, and further outlined earlier agreements between Israelis and Palestinians over security and the transfer of powers and responsibilities in the West Bank from Israel to an elected Palestinian Council.<sup>5</sup>

## **Section 4- Methods and Processes of Mediation**

In recent decades, with the development of modern technologies and the increasing destructive capability of weapons, the violent pursuit of conflict has become both costly and irrational for modern societies to pursue. Further, in the present international system, there is no generally accepted set of rules for engagement between states, nor is there a central authority that has the power or mechanisms to regulate international behavior. Thus, mediation can be seen as an ideal way of dealing with differences and settling

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<sup>5</sup> *British Embassy Tel Aviv- Middle East Peace Process* website. (<http://www.britemb.org.il/news/mepp.html>).

conflicts between fiercely independent or antagonistic states.<sup>6</sup> Mediation can be practiced in numerous arenas and involves the non-coercive intervention of a third party (who may be an individual, an ad hoc group, an organization, or a state) seeking to influence or resolve a particular conflict.<sup>7</sup> According to Jacob Bercovitch, in many ways this mediation process is merely a continuation of the parties' own conflict-management efforts. The end-result of this process may be a changed behavior or an agreement/ resolution to the problem wherein there is no resorting to physical force or invoking the authority of the law. This latter end-result is what has long been sought after between Israel and Palestine through the OPP and CD2.<sup>8</sup>

Generally speaking, international mediation is an entirely voluntary process that occurs when: a) a conflict has continued for some time; b) efforts of the involved actors have reached an impasse; c) neither actor is willing to endure further costs or escalation; and thus, d) these actors invite a mediator to aid them in formulating some type of solution. The inclusion of a mediator, in any arena, turns a dyadic conflict into a triadic relationship.<sup>9</sup> Because of the investment of political, moral, and material resources required of the mediator, as well as the risks inherent to any mediation process, it is important to note that no mediator enters such a system for altruistic reasons alone.<sup>10</sup> Rather, a mediator is largely motivated to involvement by domestic and international self-interest, as well as humanitarian concern, which will be further described in proceeding chapters with regard to reasons for the U.S. involvement in the Israeli-Palestinian conflict.<sup>11</sup>

A mediator may come in various forms, including large states (i.e. the U.S.), small states (i.e. Norway), a coalition of states (e.g. the U.S., Great Britain, and Russia), international organizations (i.e. the UN), eminent persons (i.e. Jimmy Carter), faith-based non-governmental organizations, (NGOs, i.e. Community of San d'Egidio), and conflict resolution NGOs (i.e. Israel-Palestine Center for Research and Information, IPCRI). Given

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<sup>6</sup> Jacob Bercovitch (1996). *The Study of International Mediation: Theoretical Issues and Empirical Evidence in Resolving International Conflicts: The Theory and Practice of Mediation*. Boulder, CO: Lynne Rienner Publishers, at 2.

<sup>7</sup> *Ibid*, at 3.

<sup>8</sup> *Ibid*, at 3.

<sup>9</sup> *Ibid*, at 4.

<sup>10</sup> *Ibid*, at 4.

<sup>11</sup> William I. Zartman and Saadia Touval (1996). *International Mediation in the Post-Cold War Era in Managing Global Chaos: Sources of and Responses to International Conflict*. Washington, D.C.: United States Institute of Peace.

the varying existing forms of mediators, it follows that there are various levels, or “tracks,” at which mediation can and does occur. For the purposes of discussions in this study, **Track 1** diplomacy refers to negotiation and mediation processes occurring at the official government level (i.e. between heads of state). **Track 2** diplomacy describes negotiation and mediation processes occurring through persons who do not officially represent any government and, thus, have no decision-making capacities (i.e. former heads of state, respected academics, prominent community leaders). Finally, **grassroots-level (GR)** diplomacy describes peacemaking work that occurs within civil society, meaning that it is comprised of people-to-people work that is led by and comprised of the average citizens of the conflict region.<sup>12</sup>

The three aforementioned levels of diplomacy and multiple forms of mediators can and do play an important role and purpose in working to resolve conflicts depending upon the particular conflict scenario. Because this paper focuses on a case of mediation by a large state (i.e. the U.S. involvement in the Israeli-Palestinian conflict), it is worth discussing when this particular type of third-party intervention is most appropriate. Often, large states are motivated to mediate large-scale, protracted conflicts that threaten to escalate and draw in additional parties—such as the Israeli-Palestinian conflict. In such a scenario, a large state is often the only mediator choice that is powerful enough to impose negative consequences (i.e. “sticks”) or to offer positive rewards (i.e. “carrots”) to both parties in order to move them towards an agreement. Beyond this basic reason for a large state mediator, however, the large state is often drawn to mediate because its involvement might: a) ensure future internal and international security; b) deny their rivals an opportunity to intervene; c) earn them the gratitude of the parties; or, d) allow them to exert their influence in the region.<sup>13</sup>

The U.S., in particular, has been the most active large state mediator of international conflicts since the end of WWII in 1945. Initially, it was especially motivated to action by the fear of communist Soviet expansion throughout the Cold War. However, its economic

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<sup>12</sup> John Paul Lederach (1997). *Building Peace: Sustainable Reconciliation in Divided Societies* (pp. 37 – 61). Washington, D.C.: United States Institute of Peace Press.

<sup>13</sup> William P. Smith (1999). *Effectiveness of the Biased Mediator* (pp. 419 – 428), in Negotiation Theory and Practice. J. William Breslin and Jeffrey Z. Rubin (eds.). Cambridge, MA: Program on Negotiation Books; and, Bercovitch, *supra* note 5, at 4.

interests in the oil of the region have largely motivated America's continuous involvement in conflicts in the Middle East.

The success of international mediation attempts has been largely dependent on: a) the characteristics of the parties involved; b) the nature of the dispute; and, c) the nature of the mediator.<sup>14</sup> To elaborate on the *parties' characteristics*, research has shown that mediation is more likely to succeed when two parties are of similar political structure (i.e. both are democratic states), exhibit power symmetry, and have had an amiable historical relationship.<sup>15</sup> Note that Israel and Palestine do not meet any of these three conditions.

In terms of the *nature of the dispute*, again research has shown that mediation is more effective when it follows— rather than precedes— some “test of strength” by both parties that then creates a sense of urgency to settle the dispute by peaceful means. For example, mediation is likely to succeed if it follows months or years of conflict wherein involved parties have entered a “mutually hurting stalemate” (meaning that both parties are “hurting”—in terms of military, political, and economic losses—and neither side is prevailing through violence).<sup>16</sup> Additionally, the research points to a greater likelihood of mediation success in lower-intensity disputes (as measured by fatalities), as well as in disputes over *ideological* (rather than *security*) issues. Again, note that the Israeli-Palestinian conflict fails to meet these aforementioned conditions of being a lower-intensity, strictly ideological dispute, for this high-intensity conflict also has many serious security concerns at stake. Further, Israeli and Palestinian negotiating teams did not enter CD2 with a *shared* sense of urgency; rather, Barak (and the U.S.) were more desperate for an agreement at that time due to Barak's declining political popularity and the impending end of Clinton's presidential term.

Finally, with regard to the particular mediator(s) themselves, successful mediation attempts are largely dependent on their personal characteristics, prestige, authority, and past relationship with the involved parties moreso than it is dependent on the mediator's general knowledge. Also, the mediator need not be impartial. Rather, it is more important that both parties perceive its use of resources, leverage, and influence as ultimately serving to

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<sup>14</sup> Bercovitch, *supra* note 6 at 24.

<sup>15</sup> *Ibid*, at 24.

<sup>16</sup> William Zartman first coined the term “mutually hurting stalemate”. (Bercovitch, *supra* note 4, at 454).

enhance the overall fairness of the negotiation.<sup>17</sup> Note that America's past relationship with Israel and Palestine is long and complex (to be discussed in more detail in subsequent chapters). Suffice to say that the U.S. is certainly not an impartial mediator in this dispute; rather, it aligns itself with the fellow democracy, Israel. Following from this, it should be noted that the aforementioned condition that both parties perceive the mediator as ultimately working "to enhance the overall fairness of the negotiation" (in order to increase the likelihood of mediation success) was not met at the start of CD2. Instead, as will be later detailed, the Palestinians entered CD2 reluctantly, fearful that the entire summit was a "trap" set up by the chummy Israeli and American teams.<sup>18</sup>

Typically, a mediation process flows through the five stages of pre-negotiation, preparation, initiation, negotiation, and implementation.<sup>19</sup> *Pre-negotiation* is comprised of intra-party and inter-party meetings wherein the parties open channels of communication, explore options, and build trust before the two sides have even necessarily agreed to enter negotiations with one another.<sup>20</sup> *Preparation* mainly comprises agenda-setting by both the mediator(s) and parties. The *initiation* stage follows, which is based on strategic choices about the appropriate parties, issues, and format to include. Next, the *negotiation* stage is a mediator-facilitated process that involves the adversaries providing offers and options to one another for an agreement. Finally, if an agreement is reached, the *implementation* stage involves the mediator helping to provide legitimacy and credibility to such agreements so that they may be enacted in full.<sup>21</sup> This basic five-stage structure was

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<sup>17</sup> Bercovitch, *supra* note 4, at 25.

<sup>18</sup> Prior to CD2, on June 12, 2000, the Israeli delegation was briefed by the American mediating team, including Dennis Ross (U.S. State Department's special coordinator for the Middle East), his assistant Aaron Miller (U.S. State Department advisor for the Middle East negotiations), and Robert Malley (Clinton's special assistant for Arab-Israeli affairs). Ross described to them that, "The Palestinians are afraid that Barak and the president [Clinton] are going to form a unified front and present them with a take-it-or-leave-it proposition" (173). Later, it was described that "Yasser Arafat is convinced that he has been brought to Camp David to have an agreement imposed on him, one that will force him to make concessions on East Jerusalem and the Haram al-Sharif" (192). Quotes are taken from Charles Enderlin's unpublished manuscript, Shattered Dreams: The Failure of the Peace Process in the Middle East, 1995 – 2002.

Translated by Susan Fairfield.

<sup>19</sup> Louis Kreisberg (1996). *Varieties of Mediating Activities and Mediators in International Relations*, in Resolving International Conflicts: The Theory and Practice of Mediation. Boulder, CO: Lynne Rienner Publishers (227).

<sup>20</sup> Harold Saunders (1991). *We Need a Larger Theory of Negotiation: The Importance of Pre-Negotiation Phases* (pp. 57 – 70), in Bercovitch and Rubin, *supra* note 12.

<sup>21</sup> Kreisberg, *supra* note 19, at 230.

generally exhibited in the mediation processes of the OPP and CD2, though each stage met with varying levels of success.

Historically, mediators have employed different personal strategies and approaches in their mediation attempts. For example, a mediator may exhibit an *orchestrator* role, meaning that he or she has a more passive, facilitative role wherein the parties themselves are responsible for devising an agreement or solution. In this case, the mediator serves as a conduit of communication, reflecting back to the parties their own needs, interests, and positions.<sup>22</sup> Alternatively, a mediator may take on the *dealmaker* role, displaying a more direct, hands-on involvement in the negotiation process. In this case, the mediator often thinks of ways to break an impasse between the two parties, formulates his or her own ideas of a just and sustainable solution, and manipulates parties to see the attractiveness of such solutions.<sup>23</sup> According to Bercovitch, the latter, more directive dealmaker role is more likely to be successful in international mediations—and such is the role that the U.S. has played as it mediates the Israeli-Palestinian conflict.

Despite all other options, the U.S., poised as dealmaker, has traditionally been the mediator choice for the Israeli-Palestinian conflict. This is largely because, in addition to America's *own* interests in establishing stability in the region, it alone possesses the necessary strength and power (i.e. “carrots” and “sticks”) to move the parties along towards making the difficult decisions and concessions necessary for a just and enduring agreement. Furthermore, given this strength and power, the U.S. influence can even aid in establishing an initial situation of *ripeness* within which negotiation processes can begin to occur.<sup>24</sup>

The term “ripeness” was first coined by William Zartman to describe the stage in which the timing is ideal for mediation of a conflict (a.k.a. the conflict is “ripe” for mediation). One example of how this stage can be reached is when the parties are caught in the earlier described “mutually hurting stalemate.”<sup>25</sup> However, ripeness for mediation in a conflict scenario might also be attained through the powers of politics and diplomacy, such as through leaders' successfully preparing their publics for negotiations and concessions,

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<sup>22</sup> Deborah Kolb (1985). *Roles Mediators Play: Orchestrators and Dealmakers*, in The Mediators. Cambridge, MA: The MIT Press.

<sup>23</sup> Bercovitch, *supra* note 6, at 30.

<sup>24</sup> For a detailed discussion of “ripeness,” see Richard N. Haass (1991). *Thinking About Negotiations*, in Conflicts Unending: The United States and Regional Disputes. New Haven: Yale University Press, at 27-9.

<sup>25</sup> Zartman and Touval, *supra* note 11, at 455.

prime negotiators engaging in back channel talks between, or the international community prodding the two parties towards negotiations. In such scenarios, the parties in conflict often open themselves up to an outside mediator who may be able to intervene and facilitate reaching a mutually agreed-upon solution.

## **Section 5- Provisional Framework (PF) for Successful Peacemaking Processes**

The forthcoming PF was developed from my extensive study and review of mediation processes in the Israeli-Palestinian conflict, as well as of mediation attempts, successes, and failures in international conflicts at large. From such study, I compiled criteria that I believe the research and practice had demonstrated were important, if not essential, components to a successful mediation process leading to a sustainable agreement . . . not only in the Israeli-Palestinian conflict, but also in inter- and intra-state conflicts worldwide.<sup>26</sup> Each criterion will be footnoted with the appropriate scholars and literary work that contributed to my thinking on that issue.

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<sup>26</sup> Note that a mediation process is being defined as “successful” if it ultimately leads to a curtailment of state-sanctioned or state-led violence between two parties, in addition to some sort of mutual understanding and/ or agreement between the two parties.

# **Provisional Framework (PF) for Successful Peacemaking**

## ***Criterion 1- Strong Pre-Negotiation and Preparation Phases***

Develop sufficient Pre-Negotiation and Preparation Phases in order to enhance a conflict's "ripeness" for mediation or negotiation<sup>27</sup>

- *Intra-party*: to build trust and establish internal cohesion on party's interests, vision, and strategy for future
- *Inter-party*: to build trust and overcome psychological barriers or cultural misunderstanding/ misperceptions

## ***Criterion 2- Establishment of Clear Track 1 Agenda***

Establish clear, prioritized, consistently understood, and agreed upon **agenda** for Track 1 summit (highly publicized to exert pressure)<sup>28</sup>

- Establish understanding of short-term costs (sacrifices/ concessions) necessary to receive long-term benefits (i.e. security, political rights, economic gains, stability in the region)
- Establish agreements on negotiation sequence, timing, linkages, degree of incrementalization, and involved parties (i.e. international summits vs. closed summits)
- Note: Once the agenda has been followed and agreements reached, also verify that both parties have a consistent understanding/ perception of such agreements

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<sup>27</sup> Kreisberg, *supra* note 19; Saunders, *supra* note 20; Haass, *supra* note 24. Michael Watkins (2000). *Diagnosing and Overcoming Barriers to Agreement*. Boston, MA: Harvard Business School Publishing; Michael Watkins (2000). *Negotiations Analysis: A Synthesis*. Boston, MA: Harvard Business School Publishing; Roger Fisher and William Ury (1991). *Getting to Yes: Negotiating Agreement Without Giving In*. New York: Penguin Books U.S.A., Inc.; Robert Malley and Hussein Agha (2001). *Camp David: The Tragedy of Errors*, in *The New York Review of Books*, v. 48 i13, p. 59 (6); Deborah Sontag (2001). *Quest for Middle East Peace: How and Why it Failed*, in *New York Times*. July 26, 2001; Larry Susskind and Eileen Babbitt (1992). *Overcoming the Obstacles to Effective Mediation of International Disputes* (pp. 30 – 51), in Bercovitch and Rubin, *supra* note 12; Jeffrey Z. Rubin (1981). *Introduction* (pp. 3 - 43), in *Dynamics of Third Party Intervention: Kissinger in the Middle East*. Rubin, Jeffrey Z. (ed.). New York: Praeger Publishers; Roger Fisher (1981). *Playing the Wrong Game?*, in *Dynamics of Third Party Intervention: Kissinger in the Middle East*. Rubin, Jeffrey Z. (ed.). New York: Praeger Publishers; Herbert C. Kelman (1993). *Coalitions Across Conflict Lines: The Interplay of Conflicts Within and Between the Israeli and Palestinian Communities* (pp. 236 – 258), in Worchel, S. And J. Simpson (eds.) *Conflict Between People and Groups*. Chicago: Nelson-Hall; R.J. Lewicki, and J.A. Litterer (1985). *Planning and Preparation* (pp. 45 – 73), in *Negotiation*. Homewood, IL: Irwin; Jeswald W. Salacuse (1993). *Implications for Practitioners* (pp. 199 – 208), in G.O. Faure and J.Z. Rubin (eds.). *Culture and Negotiation*. Newbury Park: Sage; Raymond Cohen (1997). *Negotiation: The Cultural Roots* (pp. 215 – 226), in *Negotiating Across Cultures* (2<sup>nd</sup> ed.). Washington, D.C.: U.S. Institute of Peace.

<sup>28</sup> Watkins, *supra* note 27 (*Diagnosing and Overcoming Barriers to an Agreement and Negotiations Analysis: A Synthesis*). Fisher, *supra* note 27. Kelman, *supra* note 27.

### **Criterion 3- Pursuit of Track 2 Diplomacy and Preparation of Publics**

Establish concurrent Track 2 inter-party negotiations & preparation of publics (i.e. through institution- and nation-building vis-à-vis media, education, grassroots-level initiatives, interfaith encounters, coordinated security efforts)<sup>29</sup>

- Relieve internal, domestic constraints as tough decisions must be made
- Aim to dissolve the disconnect between the leaders and the peoples' concerns, ideas, expectations
- Establish realistic expectations, an understanding and trust of the peace process, and a sense of safety/ security within civil society

### **Criterion 4- Preparation for Shocks**

Prepare for internal and external shocks<sup>30</sup>

- Facilitate moderates from both sides to meet with one another so that the extremists from each side do not come to typify 'the Other' for the parties themselves, or for the larger world
- Expect and be ready for unstable leaderships and leadership transitions
- Work to prevent and effectively respond to extremist violence so that such acts do not successfully sabotage the peace process

### **Criterion 5- Mediator Neutrality**

Attempted and perceived neutrality of mediator<sup>31</sup>

- Mediator establishes relationship of trust with each side
- Mediator genuinely works in the best interest of both parties

### **Criterion 6- Establishment of Mutual Sense of Legitimacy Among Negotiating Parties**

Attempted and perceived legitimacy and credibility of negotiating parties<sup>32</sup>

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<sup>29</sup> Lederach, *supra* note 12. Malley and Agha, *supra* note 27; Sontag, *supra* note 27; Dennis Ross. *Public Lecture* on March 18, 2001. *Chief-negotiator to the Israeli-Palestinian peace process*, including at Camp David 2000, under President Clinton. Boston, MA: Harvard University; Kirsten Lundberg (1996). *The Oslo Channel: Getting to the Negotiating Table*. John F. Kennedy School of Government, Harvard University.

<sup>30</sup> Lawrence Susskind and Patrick Field (1996). *Dealing with an Angry Public: The Mutual Gains Approach to Resolving Disputes*. New York: The Free Press; Edward E. Azar (1986). *Protracted International Conflict: Ten Proposals* (pp. 145 – 155), in Azar, Edward E. and John Burton (eds.). *International Conflict Resolution: Theory and Practice*. Boulder, CO: Lynne Rienner Publishers.

<sup>31</sup> Malley and Agha, *supra* note 27; Zartman and Touval, *supra* note 11; Susskind and Babbitt, *supra* note 27; Rubin, *supra* note 27; Jerome Slater (2001). *What Went Wrong? The Collapse of the Israeli-Palestinian Peace Process* in *Political Science Quarterly*, v. 116; Eileen Babbitt (1994). *The Power of Moral Suasion in International Mediation: A Profile of Jimmy Carter* (pp. 375 – 393), in When Talk Works: Profiles of Mediators. Kolb, Deborah M. and Associates. San Francisco: Jossey-Bass Publishers. Douglas Brinkley (1995). "Jimmy Carter's Modest Quest for Global Peace," in *Foreign Affairs*, vol. 74, no. 6, pp. 91 – 100.

<sup>32</sup> Malley and Agha, *supra* note 27; Kelman, *supra* note 27; Donald B. Straus. *Kissinger and the Management of Complexity: An Attempt that Failed* (pp. 253 – 270), in Dynamics of Third Party Intervention: Kissinger in the Middle East, *supra* note 26; Jeffrey Z. Rubin and I.W. Zartman (1995). "Asymmetrical Negotiations: Some Survey Results That May Surprise" (pp. 349 – 364), in *Negotiation Journal*.

- Each party believes that the other is signing agreements in good faith
- Each party believes that the other will likely deliver on their promises (a.k.a. agreements will be implemented)

### ***Criterion 7- Establishment of Consequences and/ or Monitoring Mechanisms***

Establish solid monitoring and mechanisms to aid in implementation phase<sup>33</sup>

- Establish externally-imposed consequences (i.e. a transparent system of incentives/ disincentives; outside guarantors) for non-adherence or missed deadlines
- Establish internally-imposed consequences vis-à-vis a fully developed legal and political framework (i.e. Constitution, verification regimes)

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With regard to this PF, I hypothesized that the PF's seven criteria are listed in order of their importance in contributing towards a successful mediation process. It is this hypothesis that I will test through the forthcoming study of CD2. At the conclusion of this paper, I will ultimately provide a **Revised Framework (RF)** based on lessons learned through this study's analyses. Additionally, based on my findings, I will offer *provisional recommendations* for future peacemaking attempts between Israelis and Palestinians.

Before moving forward, it should also be noted that I hold a second hypothesis with regard to this PF; however, it cannot be tested at this point given the parameters of this study. To elaborate, I hypothesized that the likelihood of arriving at a successful mediation process is greatly enhanced if each of the PF's seven criteria is met; however, that is not to say or assume that successful peacemaking requires that all seven criteria necessarily be met, nor that each of the seven criteria need be met in full, nor that—even if each of these seven criteria were met— a successful peacemaking process would necessarily result. Because I am only studying one failed case of mediation—namely the collapse of CD2— this second hypothesis cannot be explored within the confines of this paper. Rather, future comparative research must be

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<sup>33</sup> Watkins, *supra* note 27 (*Negotiation Analysis: A Synthesis*), at 54. Susan Rosengrant with Michael Watkins (1995). *Carrots Sticks, and Question Marks: Negotiating the North Korean Nuclear Crisis (Parts A and B)*. Cambridge: John F. Kennedy School of Government Case Program; Jeffrey Z. Rubin and Jeswald W. Salacuse (1990). "The Problem of Power in Negotiation" (pp. 24 – 34), in *International Affairs*, April 1990.

conducted that includes an analysis of both failed and *successful* mediation cases against the PF.

Finally, I must be explicit about my understanding of summit diplomacy as an art, not a science, wherein the “intangibles”—such as personal chemistry between the involved leaders and negotiators— play just as crucial a role as do the overall pre-negotiation phase or negotiation structure. In essence, any approach to peacemaking can only be derived from a sophisticated understanding of the entire situation, combined with a personal touch and chemistry that is not teachable, tangible, or reproducible— yet is of utmost importance. Indeed, mediation is a messy process.

In fact, the notion that there is no generic negotiation formula that can be applied to conflicts is well exemplified in the comparison between CD2 and the original CD1 convened by President Jimmy Carter in 1978. Even though there were arguably more similarities than differences between the two, the former failed while the latter succeeded. Yes, they differed in that CD1 used a single negotiating text (SNT), while CD2 was comprised only of oral communications.<sup>34</sup> Further, CD1 sought compromise on an inter-state conflict, whereas CD2 covered an intra-state conflict. However, structurally speaking, the summits were nearly identical. For example, negotiating teams convened for roughly two weeks in the sequestered presidential retreat; there was an attempt at news blackout; the president was deeply involved; and, the promise of substantial American aid was expected to pry loose compromise positions.<sup>35</sup> In many ways, both negotiation settings were also similarly flawed. For example, the personal chemistry between Sadat and Begin was allegedly horrible, while Carter was clearly not flexible or neutral (i.e. he and Begin supposedly did not get along). However, no one focuses on the flaws in CD1 because,

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<sup>34</sup> More specifically, recall that the SNT strategy involves a working written document, covering the conflict issues being contended. This document is shuttled back-and-forth between the two parties. Each party writes its own version of the text, as they would like to see it, and then this document is brought to the other party for further changes and revision. The process continues until, ideally, an agreement is reached on the acceptability of a final text. It should be noted that one distinguishing feature of the SNT strategy implemented in CD1 was that the parties knew and trusted that they would not be bound to the text-in-progress; rather, it was framed simply as an exploratory process that was meant to induce creative thinking and problem-solving. The mediator stressed that this process may (but would not necessarily) lead to an acceptable, mutually agreed upon solution. It is likely that this non-binding, non-threatening negotiating strategy framed by the mediator encouraged the CD1 participants to negotiate more freely and with more trust in their negotiating partner. (Fisher, *supra* note 27, at 107).

<sup>35</sup> William Quandt (2001). *Clinton and the Arab-Israeli Conflict: The Limits of Incrementalism*, at 8.

ultimately, the conflict was “ripe” for negotiation and, therefore, it was a success.<sup>36</sup> Thus, this example proves just how case-specific is each negotiation given the ever-changing outside “currents” within which such processes take place, as well as the ever-changing participants and dynamics of the negotiation, itself.

Following from this point, I do *not* believe that a specific, uniform set of ingredients can ever just be generically included in any mediation process in order to ensure guaranteed mediation “success.” After all, each global conflict— large or small— carries with it so many variables that require unique attention and specific treatment. Rather, I am interested in determining whether any weight can be placed on the *level of importance* of the seven PF criteria that various scholars and expert practitioners have already corroborated are valuable components to peacemaking processes.<sup>37</sup> Thus, by using the PF in a deductive way to assess the CD2 mediation process, I will be able to make *provisional conclusions* as to its usefulness in understanding peace-making processes in general. Further, these analyses will allow me to make *provisional recommendations* regarding how to move forward with future mediation attempts in the Israeli-Palestinian conflict in particular.

Perhaps then, if such a prioritized framework is able to be developed and utilized, it will further our understanding of *why* this painfully intractable conflict— between two peoples who share a small slice of land, a common Abrahimic faith, and a common ancestry— continues to brew. And just maybe, such an understanding will be able to guide a more informed action and third-party intervention in future mediation of the Israeli-Palestinian conflict . . . a conflict that is still claiming the lives of real, thinking, feeling human beings with each new day.

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<sup>36</sup> In fact, it would be interesting to analyze CD1 according to the PF or RF.

<sup>37</sup> As will be later described, the level of importance of each criterion will be judged by the frequency with which each one was *not* adhered according to each of the four major analytical categories that I use to describe CD2’s failure.

## CHAPTER 2

### *ANATOMY OF A CONFLICT: Review and Analysis of U.S. Mediation Attempts During Clinton Era (1993 – 2000)*

Ever since the creation of Israel and the subsequent fleeing of over 650,000 Palestinian refugees in 1948 (post-WWII), the Israeli and Palestinian peoples have been embroiled in a bitter conflict over their shared homeland.<sup>38</sup> They have been divided on such difficult issues as sovereignty over Jerusalem, recognition of the other's legitimacy, establishment of borders and security, the right of return of refugees, and the distribution of water. Numerous conflicts have spawned in the region— including the war of 1967 and 1973— and have directly involved not only Israel and Palestine, but also the greater Arab world (i.e. Egypt, Jordan, Lebanon, and Syria).

From 1993 to 2000, the U.S. played a role throughout the forging of seven interim agreements between Israelis and Palestinians that were intended to resolve such differences on the aforementioned issues and arrive at a just and lasting peace. Though the U.S. was less involved in the initial stages of the OPP (i.e. the DOP, Oslo I, Oslo II)<sup>39</sup>, it became a central mediating force in 1997— only months after Benjamin Netanyahu of the Likud party had been elected into office— as it facilitated negotiations over subsequent interim agreements (i.e. the Hebron Agreement, the Wye River Memorandum, the Sharm el-Sheikh

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<sup>38</sup> Though statistics vary as to the number of Palestinians who became refugees in 1948 (with the creation of the state of Israel), according to official census counts, it is roughly 650,000. This number is derived from the difference between the last official census taken before the creation of Israel (in 1945), reporting 756,000 permanent Arab residents in Israel, and the first official census taken by the government of Israel (in 1949), reporting 160,000 Arabs to be living in the country. (Mitchell Bard's article, *The Palestinian Refugees*, on the Jewish Virtual Library website, at <http://www.us-israel.org/jsource/History/refugees.html>).

<sup>39</sup> Refer to chapter 1, section 2, to see how these phases of the OPP are being defined.

Memorandum).<sup>40</sup> Agreements were reached through various means, such as public, back channel, official, and non-official efforts.

The OPP made a marked contribution to the Israeli-Palestinian peace process. First, it succeeded in transforming the conflict from a struggle over identity (which is an existential and intractable one) to a struggle over concrete, and potentially resolvable issues (i.e. Jerusalem, refugees, settlements, security).<sup>41</sup> Second, the fact that secret, back channel, Track 2 negotiations were able to reach an agreement at all (vis-à-vis the construction of the 1993 DOP), while their respective, official leaders only arrived at impasse after impasse, was a true testament to the talent and courage of these unofficial negotiators. And third, in 1993, it appears that incrementalism was the only feasible way of reviving the Israeli-Palestinian peace process; a comprehensive agreement would have been out of the question at that time.

That said, over the course of the OPP, it slowly became evident that this “piecemeal approach” to the peace process was not working, as each side pointed to the failed adherence of the other side. For instance, many Israeli leaders believed that the Palestinian leadership was in violation of several provisions of the Oslo I, Oslo II, and Wye River agreements. Such violations included the Palestinians’ failure to mandate the collection of illegal weaponry, to act to prohibit incitement against Israel, to limit the size of the Palestinian police force, and to educate its people for peace.<sup>42</sup>

Likewise, the Palestinians pointed to failed adherence on the part of the Israelis. Israeli land transfers were routinely delayed and as the West Bank and Gaza were sliced up by Israeli bypass roads and the expansion of Jewish settlements, thus causing the Palestinians to become increasingly disillusioned with the peace process.<sup>43</sup> Palestinians still controlled only 13.1 percent of the West Bank and none of East Jerusalem, wherein the Old City is situated (including the major religious sites central to Judaism, Islam, and

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<sup>40</sup> Some argue that one of the OPP’s major flaws was that it lacked a strong third-party intervention earlier in the process, which led to its failed implementation. As Miller described, “Oslo needed a third party—not necessarily a ‘monitor,’ but a well-intentioned friend that could facilitate incrementalism.” Incrementalism meant the interim process involving Israeli redeployments and curtailment of settlement building, and Palestinian weapons confiscation and an ending of incitement, among other promises (Miller, *supra* note 2).

<sup>41</sup> Miller, *supra* note 2.

<sup>42</sup> David Weinstein (2001), *The Fallacy of Camp David Revisionism (Robert Malley and Deborah Sontag’s Accounts of Camp David)*, at 6.

Christianity). Further, since the signing of the DOP, new Jewish settlements had been built in the Palestinian territories under both Likud and Labor party governments, violating both international law and the Oslo principles.<sup>44</sup> For example, even Barak—who was elected on a peace platform in 1999— continued to increase the rate of settlement building on key strategic settlements, like Har Homa on Jabel Abu Ghneim (which would close the ring of settlements in the southeast of the Old City, Jerusalem) and Ras al Amoud (which would help to segregate the Old City from the eastern Palestinian neighborhoods).<sup>45</sup>

Finally, the expected economic dividends of the OPP peace path never materialized for the Palestinians as they watched their standard of living drop by roughly twenty percent between 1993 and 2001.<sup>46</sup> This deteriorating economy is largely explained by the Israeli military blockades that came as a response to Palestinian suicide bombings and violence (which threatened the very security that had been guaranteed to the Israelis vis-à-vis the DOP). Such military blockades, for example, resulted in the loss of 73 days of work in 1995, and roughly 82 days of work in 1996, for the Palestinians. Further, unemployment—which had affected roughly 6 percent of the able-bodied Palestinian population in 1993— was reported to have reached 29 percent by 1996, while the average Palestinian private income was reported to have declined.<sup>47</sup>

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In this chapter, the interim agreements of the OPP will be examined from a negotiation and mediation “lens” in order to glean a better understanding of why they failed in their implementation. Despite the break-through nature of the DOP agreement, itself (as well as subsequent OPP interim agreements), I will argue that its implementation phase (or lack thereof) set the Israeli-Palestinian peace process on a trajectory towards failure—a context that cannot be forgotten or overlooked if one is to truly understand why CD2 collapsed.

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<sup>43</sup> Enderlin cites that Jewish settlement expansion grew from 105,940 settlers in 1992, to 151,324 settlers in 1996, to circa 200,000 settlers in 2000 (Enderlin, *supra* note 18, at 52).

<sup>44</sup> Glenn Robinson (2001). *Israel and the Palestinians: The Bitter Fruits of Hegemonic Peace*, at 2.

<sup>45</sup> *Friends of al-Aqsa* website, at <http://www.aqsa.org.uk/books/barak.html>.

<sup>46</sup> Sontag, *supra* note 27, at 25- 26.

<sup>47</sup> Statistics taken from UNSCO reports, at <http://www.arts.mcgill.ca/mepp/unsco/>. [To present the full picture, however, it should be noted that there was also a marked increase in the private rate of Palestinian income from 1998 – 2000. Enderlin, *supra* note 18, at 151).

## Section 1- DOP: A Peace Process Begins

In January 1993, secret talks began in Oslo, Norway between Israel and the Palestine Liberation Organization (PLO) due to each side's disenchantment with the progress made through Madrid.<sup>48</sup> To contextualize these talks, the Cold War and Gulf War had both ended and the 1987 *intifada* had been a clear example to many that violence by Israelis or Palestinians was not productive. In a sense, the time was "ripe" for the parties to begin negotiating.

At the start of the Oslo talks, Israel's prime strategic aims appeared to be three-fold: a) to achieve an optimal land partition<sup>49</sup>; b) to build security cooperation with the Palestinians instead of focusing solely on strengthening Israel's unilateral security enforcement; and, c) to enhance Israel's global and regional relations.<sup>50</sup> Meanwhile, the Palestinians' primary objective was to achieve self-determination through an internationally recognized and economically-viable Palestinian state.

According to chief Israeli Track 2 negotiator and academic, Yair Hirschfeld, initially there were problems in establishing a framework upon which to begin the Track 2 Oslo negotiations. Mainly, these problems related to the ambiguous role of the PLO and the Palestinian mistrust of Israel due to its failure to follow prescriptions of the 1978 Camp David Accords (i.e. the withdrawal of Israel's military government and civil administration from Palestinian territories, as well as its prevention of further building of settlements).<sup>51</sup> Ultimately, however, Israel responded to these respective problems by recognizing the PLO as legitimate negotiating partners and by adopting the method of incrementalism. Thus began the Oslo back channel negotiations, which primarily occurred over a four-month period of time (January 20 - May 20, 1993). These talks involved Palestinian negotiators,

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<sup>48</sup> Madrid was earlier defined as the Track 1 negotiations between Israelis and Palestinians that began at the 1991 Madrid conference (see chapter 1, section 2).

<sup>49</sup> This meant that the Palestinians would receive their long sought-after homeland and right to self-determination, while the Israelis would receive the promise of security (as well as residual respect of the international community) in return. (Yair Hirschfeld. *Public Lecture and Personal Interview at the Kennedy School of Government, Harvard University*. October 9, 2002).

<sup>50</sup> Hirschfeld, *supra* note 49.

<sup>51</sup> *Ibid.*

Abu Ala Maher El Kurd and Hassan Asfour, and Israeli negotiators, Hirschfeld and Ron Pundik.

Ultimately, these initial back-channel negotiations of the OPP led to the construction of the DOP. Arafat and Rabin signed this DOP on September 13, 1993 on the White House lawn in Washington D.C., under the hopeful eyes of Clinton and much of the world. Through the DOP, Israel and the PLO agreed to recognize the legitimacy of the other and to enter a transitional period during which time a permanent peace would be negotiated. Guidelines for future negotiations were established, as well as guidelines for a Palestinian five-year interim autonomy in the West Bank and Gaza Strip.<sup>52</sup> During this five-year period, Israel was to gradually transfer land in the West Bank and Gaza Strip to a new, self-governing Palestinian National Authority (PNA), but was to defer more difficult, final-status issues—i.e. the fate of Jerusalem, Palestinian refugees, Jewish settlements, and future borders to a later date.<sup>53</sup> Ultimately, this interim period was to be followed by a permanent agreement based on the United Nations Security Council (UNSC) Resolutions 242 and 338.<sup>54</sup>

One main strength of this agreement was the emphasis that it placed on the pre-negotiation phase, achieved through the back channel talks, wherein inter-party trust was able to develop. Such talks permitted free interplay between unofficial negotiators and decision-makers because it was occurring in secrecy, maintaining full deniability, and allowing for the “wastepaper basket principle” of being able to put an offer on the table that could later be removed or changed, if need be.<sup>55</sup> Ultimately, this process inspired creative innovation and development of trust between the Israeli and Palestinian back channel negotiators, both prior and concurrent to Madrid. In other words, with no media, no protocol, and no “history talk” permitted in this pre-negotiation phase, these back channel

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<sup>52</sup> *British Embassy Tel Aviv- Middle East Peace Process* website, *supra* note 5, at 1.

<sup>53</sup> Sontag, *supra* note 27, at 25.

<sup>54</sup> **The UNSC Resolution 242** (issued on November 22, 1967 following the Six-Day War of June 1967) has become the cornerstone of Middle East diplomatic efforts. It calls for working towards a just and lasting peace that includes an end to the Israeli occupation, an outlawing of settlements in the occupied territory, a call for Israeli withdrawal to the 1976 borders, and a just resolution to the refugee problem. **The UNSC Resolution 338** (issued in the later stages of the Yom Kippur War on October 22, 1973) calls upon all involved parties to terminate fighting and to begin implementing all parts of the UNSC Resolution 242 (1967). (Courtesy of *Israel Ministry of Foreign Affairs* website, at <http://www.mfa.gov.il/mfa/go.asp?MFAH00p50>).

communications were able to occur in an atmosphere of trust and openness that allowed for forward- (rather than backward-) looking, justice-oriented solutions to be developed.

As inter-party trust developed at the Track 2 level, however, this did not necessarily transfer to inter-party trust at the Track 1 level (i.e. Madrid). Thus, in understanding Madrid as part of the OPP's pre-negotiation phase, this stage was not sufficiently successful in nurturing trust between the Israeli and Palestinian leaders. This trust was necessary to develop, especially in light of the major socio-cultural differences and long history of failed relations between the two parties.<sup>56</sup>

Further, it should be noted that, even if Madrid had sufficiently nurtured inter-party trust between Israeli and Palestinian leaders at the Track 1 level, this would not have diminished the difficulties posed by the continual change in Israeli leadership throughout the OPP.<sup>57</sup> For example, after Netanyahu was elected in 1996, it is reported that Abu Mazen (Palestinian negotiator) and Mohammed Dahlan (head of Palestinian security forces) traveled secretly to the Tel Aviv office of UN Special Envoy to Israel/ Palestine, Terje Larsen, requesting: "You have to help us. We don't know anybody in this new regime. We have to start a dialogue with them, and we should start immediately."<sup>58</sup> Further, by the time Barak came to power, his principal negotiator, Gilead Sher, represented the fourth Israeli administration that head Palestinian negotiator, Saeb Erekat, had had to work with since the OPP began.<sup>59</sup> Given this situation of continual Israeli leadership transitions, it is no wonder that establishing inter-party trust came to be such a difficult task. After all, each time the Israeli public elected a new prime minister, it also resulted in an entirely new negotiating staff and set of political viewpoints.

In addition to Madrid's insufficient pre-negotiation phase, there were other weaknesses inherent to the negotiations and signing of the DOP. One major flaw was that

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<sup>55</sup> Hirschfeld, *supra* note 49.

<sup>56</sup> In cross-cultural conflicts, Raymond Cohen discusses the importance of paying special attention to cultural differences in order to facilitate successful negotiations (Cohen, *supra* note 27).

<sup>57</sup> Though no one could have predicted Rabin's assassination, given the nature and design of the Israeli government and parliament, the leaders in Madrid could have better prepared for the likelihood of leadership transitions—transitions that would potentially add a degree of instability to the OPP.

<sup>58</sup> Dan Setton, Tor Ben Mayor, and Zvi Dor-Ner (2002). Transcript of PBS Production, *Shattered Dreams of Peace: The Road from Oslo*, at 8. (<http://www.pbs.org/wgbh/pages/frontline/shows/oslo/>).

the DOP failed to establish externally-imposed consequences/ “sticks” for missed deadlines or failed implementation. This meant that there was less pressure on Israelis and Palestinians to adhere to the difficult concessions made. Such external mechanisms for verification of implementation and insurance of compliance are generally needed in protracted conflicts in which there is little or no trust and confidence between the two parties.<sup>60</sup> Additionally, because both Israelis and Palestinians lacked fully formulated legal and political frameworks, there were no *internally*-imposed monitoring and punitive mechanisms already in place.<sup>61</sup>

Only the precarious Joint Liaison Committee (JLC), newly established through the DOP, existed to resolve by negotiations any “disputes arising out of the application or interpretation of this Declaration of Principles, or any subsequent agreements pertaining to the interim period . . . Disputes which cannot be settled by negotiations may be resolved by a mechanism of conciliation to be agreed upon by the parties.”<sup>62</sup> However, rather than serving to ensure adherence to DOP agreements, the JLC reportedly became a forum for each side to raise its claims against the other— “not for the purpose of resolving the dispute, but for the aim of ‘scoring points’ against the other side.”<sup>63</sup> In fact, once the breaches “piled up” so high, the JLC ceased to function— as did most of the joint bodies formed through the DOP.

Perhaps most importantly, there was insufficient grassroots-level work connected to the political process, both within and between Israeli and Palestinian publics prior to the delivery of the DOP in September 1993. This created a situation wherein the average citizen on each side was unable to formulate realistic expectations of the types of benefits and sacrifices that the DOP could reap.<sup>64</sup> In part, this could be attributed to the fact that the Oslo channel of negotiations largely occurred in secrecy, thereby necessarily leaving the Israeli and Palestinian publics uninformed. Thus by the time the DOP was signed and

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<sup>59</sup> Setton, Mayor, and Dor-Ner, *supra* note 58, at 19.

<sup>60</sup> Gershon Baskin (December 2002). *The Oslo Peace Process—Lessons Learned*. (Unpublished), at 3.

<sup>61</sup> *Israel-Palestinian Negotiations: Diagram* from The M.F.A. Peace Process Guide ([www.mfa.gov.il/mfa/go.asp](http://www.mfa.gov.il/mfa/go.asp)).

<sup>62</sup> Excerpt from the DOP, as quoted in Baskin, *supra* note 60, at 3.

<sup>63</sup> Baskin, *supra* note 60, at 3.

<sup>64</sup> Savir's major critique from Michael Rubner (1998). “Review Essay: The Oslo Peace Process through Three Lenses” in *Middle East Policy Council Journal*. Volume VI, Number 2.

released to the public, it was easily misrepresented or misunderstood as people adopted overly-rosy or overly-cynical expectations of what it might deliver to them.

Unfortunately, this scenario did not get better over time. In fact, because many of the leaders and negotiators believed that negotiations would be more successful if they did not “expose” themselves too much in public, public debate and public involvement in the issues came to be negatively viewed (and even feared) by both sides throughout the OPP.<sup>65</sup> The result was that there were “great gaps created between where the process was or needed to go and where the public was and thought it should stay.”<sup>66</sup>

There are several examples of unrealistic expectations that developed, or were encouraged, in the aftermath of the DOP. For instance, Oslo’s initial popularity with the Israeli public was based on the premise that future disputes could be resolved peacefully because Arafat would be able to control Palestinian extremists. Rabin sold the DOP to the Israeli public by claiming that Arafat could combat terrorism, especially Hamas, more effectively than even Israel could. His reasoning was that, in the absence of well-established legal and constitutional frameworks, Arafat could work to counter these Palestinian terrorists without being bound by particular rules, strict regulations, or intricate laws (as was the IDF).<sup>67</sup> Like Rabin, Israeli negotiators at Oslo wrongly believed and accepted that Arafat could control extremist Palestinian terrorists without any proof that he actually could.

In the meantime, Arafat, too, was encouraging unrealistic expectations among the Palestinian people, for he assured them that the OPP guaranteed a return to the 1967 lines and that the Palestinians would not be expected to compromise on these boundaries.<sup>68</sup> Finally, in the aftermath of the DOP signing, the general media attention to new agreements fostered the belief in both Israeli and Palestinian publics that a significant amount had already been conceded to the other side. The composite result was heightened domestic pressure on both negotiating teams to stake out tough positions on behalf of their respective constituencies.

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<sup>65</sup> Baskin, *supra* note 60, at 7.

<sup>66</sup> *Ibid.*

<sup>67</sup> David Makovsky (September 27, 2001). *A Year of Middle East Violence: Balance Sheet and Prospects in the Aftermath of September 11*. Peacewatch Number 344. (page 149).

<sup>68</sup> *Ibid.*, at 37.

Finally, because the DOP was a declaration of *principles*, it was not meant to be detailed. Thus, there were no specifications on, i.e., the proposed interim Palestinian self-governance, which left open the opportunity for misinterpretation and loss of trust by each side as it failed to inspire common and clear understanding of these original terms.<sup>69</sup> For example, though Annex III and IV of the DOP called for Israeli-Palestinian cooperation in economic and development programs, and in regional development programs, respectively, it was never explicitly specified what such “cooperation” implied. In fact, the Mitchell report, issued in October 2000, later revealed that there were differing Palestinian and Israeli interpretations of this “cooperation,” as well as of other aspects of the DOP from the very beginning. Ultimately, the DOP’s skeletal outline of an incremental Israeli-Palestinian peace process was not, in an of itself, a problem. In fact, its lack of specificity on each minute point or issue likely contributed to both parties being able to reach an agreement in the first place. However, when this lack of detail was coupled with the lack of inter-party trust between the two sides, it eventually caused great difficulty in the future, for it led each party to use their differing *interpretations* of the DOP in order to defend or explain away their own non-adherence to certain stipulations.<sup>70</sup>

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In summary, Arafat and Rabin’s signing of the DOP— which transformed a seemingly irreconcilable existential conflict over identity to one over concrete issues that could be resolved incrementally— was a monumental break-through in the Israeli-Palestinian peace process. Particularly noteworthy was the Track 2, back channel negotiations wherein Palestinian and Israeli negotiators were able to jointly construct the DOP against all odds and in the absence of a directive mediator. That said, the DOP negotiating process was flawed given its insufficient pre-negotiation phase, as well as its failure to establish consequences, prepare the publics, and establish a clear, consistently understood Track 1 agenda. Though such flaws in the DOP’s structure did not have an initial, drastically negative consequence, it did establish a process and negotiating dynamic that affected the failure of the OPP in the long-run.

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<sup>69</sup> Some of these specifications were later reported in Oslo II.

## **Section 2- Oslo I and Oslo II Interim Agreements**

The Oslo I and Oslo II Interim Agreements—signed on May 4, 1994 and September 28, 1995, respectively— further outlined the implementation of negotiated agreements from the DOP. These agreements included: a) security arrangements; b) the withdrawal of Israeli administration and forces from areas of the West Bank and Gaza; c) the transfer of civil affairs/ powers to the PLO; d) the establishment of a political, legal, and economic framework in the Palestinian territories; e) the establishment of a Palestinian police force; f) the release of Palestinian prisoners; and, g) the future of Israeli-Palestinian cooperation.

Unlike the DOP, these two interim agreements established a much more clear, detailed agenda, including a deadline schedule for the implementation of agreements originally made in the DOP. This level of detail would have been an asset to the OPP had sufficient inter-party trust been developed and had provisions been articulated for how to handle cases of parties’ non-adherence or of major situational change in the region (i.e. leadership transition, assassination, suicide bombing, etc.). However, in the absence of these two components, the rich detail of Oslo I and Oslo II actually became a nemesis to the process. This is because, as both sides failed to adhere, time and again, to these clear agreements over the course of the OPP, nothing was done to effectively respond to and/ or curtail such breaches of agreement.

To elaborate, though the author believes in the importance of, and advantage to, establishing a clear, prioritized, consistently understood, and agreed upon agenda and guidelines for summit diplomacy and its implementation, it can backfire in certain situations. Such a “backfiring” is likely to occur if this detailed agenda is not in touch with realities “on the ground” that might impede or make it unfeasible for both parties to meet these guidelines (i.e. unforeseen extremist acts of violence, leadership transition, or domestic constraints). In such a case, as promises are broken, so, too, is the sanctity of the OPP. In other words, as Oslo I and Oslo II continued to create a series of ever-more complex and detailed interim guidelines— hundreds of pages long, with carefully drafted annexes and maps that could be clearly cited by each party— this level of detail also created a greater possibility for failed adherence by both sides. Further, as mentioned

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<sup>70</sup> Examples will be provided in forthcoming discussion of the OPP’s interim negotiations and agreements.

earlier, Oslo I and Oslo II did not include provisions for *revising* the agreements if the circumstances in the region changed. In addition, this detailed, highly legalistic approach— meaning that it was written meticulously in legal language and terms— allegedly reflected more the Israeli or American, rather than the Arab, style of negotiated agreements.<sup>71</sup>

In the end, I believe that it was the failure of each side to *implement* the broadest strokes of the Oslo I and Oslo II interim agreements— not the inclusion of a highly detailed Track 1 agenda— that led to the eventual collapse of the OPP. After all, Israel failed to uphold its end of the bargain by continuing to expand settlements and delay land transfers, while the weak PLO government failed to end terrorism. And for this non-adherence, neither party ever had to face difficult consequences, either internally- or externally-imposed.

This aforementioned PLO failure to curtail acts of terrorism is linked to another weakness or omission in the Oslo I and Oslo II interim agreements— namely, the OPP’s failure to include solid and effective preparation for external “shocks” to the OPP. In effect, these interim agreements did not address the extent to which Israeli and Palestinian leaders lacked control over their domestic constituents vis-à-vis its false assumption that each government had the power to prevent extremist acts of terrorism or violence. For example, despite prior commitments to combat terror, Arafat arguably could not have prevented the deaths of fifteen Israelis at the hands of Palestinian militants shortly following the opening of the underground passageway at the Wailing Wall in Jerusalem (between September 23 and October 1, 1996).<sup>72</sup> Thus, by placing the responsibility to prevent terrorism entirely on these leaders, rather than placing comparable attention and energy towards developing *joint* mechanisms for dealing with extremist acts of violence

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<sup>71</sup> It is said that, throughout the OPP, the Palestinians were uncomfortable with setting such detailed, comprehensive terms of agreement so far into the future. Rather, they wanted long-term, future agreements or concessions to be based on present or short-term results. (Gerald M. Steinberg (December 6, 2000). *Beyond the Oslo Process: Comparing Direct and Indirect Negotiations*, at 2). Note that the implications of these Arab versus Israeli cultural differences will be explained in more detail in chapters 3 and 4.

<sup>72</sup> The author does not intend to vindicate Arafat through this comment, especially in light of subsequent suicide bombings in 1997. In fact, Arafat’s “sometimes-silence” (i.e. his refrain from loudly and consistently condemning such acts of terrorism) may have sent a “go ahead” message to the Palestinian people with regard to suicide bombings, particularly because Israelis were failing to uphold their end of the

once they occurred, the safety of the Israeli and Palestinian populations and the sanctity of the Oslo interim agreements were risked.

Still, as they had done prior to the signing of the DOP, Track 1 negotiators and leaders did not sufficiently value or emphasize concurrent preparing of publics vis-à-vis media, education, or grassroots-level initiatives. The leaders failed to build the OPP as a legitimate, practical, feasible, and beneficial process to the Palestinian and Israeli publics—i.e. through leadership campaigns, public announcements, or the support of civil society work.

Despite this lack of appropriate support for civil society work, it should be noted that, indeed, there was no dearth of “pro-peace,” grassroots-level work occurring throughout the OPP. Such work was led and fueled by committed and courageous Israeli and Palestinian citizens—often thriving in spite of, not because of, Israeli and Palestinian leadership. [See **Appendix 1** for a list and small description of the most prominent of these civil society organizations (CSOs)].

However, it is also worth mentioning that, without the financial and/ or political support of their respective governments, most of the Israeli and Palestinian peacemaking CSOs were never able to become truly “bipartisan” in nature.<sup>73</sup> [Note that “bipartisan” organizations are being defined as those that are jointly led by Israelis and Palestinians, involve cooperative activities between both peoples, and may even have offices in both Israel and Palestine.] Thus, by existing as exclusively Israeli, or exclusively Palestinian, organizations, such CSOs did not truly represent the change towards co-existence that the OPP sought to create. In other words, because the OPP had intended to bring both Israelis and Palestinians to a point of bipartisan strategic cooperation, it required bipartisan, grassroots ventures to create a concrete vision and proof for the Israeli and Palestinian

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OPP agreements. That said, Arafat’s ultimate strength and power over the Palestinian people—particularly given the strength and popularity of Islamic militant groups, such as Hamas and Fatah—is questionable.

<sup>73</sup> Furthermore, the few CSOs that *were* bipartisan in nature had difficulty establishing acceptable means of cooperating equally in the organization given the power asymmetry in the larger Israeli-Palestinian political relationship. Also, coordination between these bipartisan CSOs was made difficult by the communication and/ or transportation barriers that often resulted from military blockades at the Palestinian borders to Israel. [Note that, to fully describe the problems inherent to forming such cooperative relations between Israelis and Palestinians would be a massive undertaking unto itself and would stray from the central focus of this study. Suffice to say, the author acknowledges the difficult and complicated nature that any bipartisan civil society work between Israelis and Palestinians implies.]

publics of its feasibility and long-term benefits. If such a scenario had been enabled vis-à-vis greater Track 1 support, perhaps the OPP's "blue-print" for future joint, strategic government, infrastructure, and security cooperation between Israelis and Palestinians would no longer have appeared as such a far-fetched dream to its people (for it would have been tried and tested at the level of civil society).<sup>74</sup>

Ultimately, the OPP became vulnerable as Israeli and Palestinian leaderships were unable to respond to public accusations and critiques by more right-wing or radical elements. For example, on October 6, 1995—only several days after Israel and the PLO had signed Oslo II—Likud leader Netanyahu proclaimed, at a large protest demonstration in Jerusalem, that the Oslo agreement was an "act of surrender" and constituted a "danger to the existence of the state of Israel."<sup>75</sup> The Israeli and Palestinian leaderships were not able to effectively respond to such public statements because they had never established a strong and credible channel of communication and cooperation between themselves and their people. Thus, public support for the OPP deteriorated in the face of such criticism, and particularly in response to (inevitable) acts of violent extremism. In the end, it made sense that the logical Israeli or Palestinian citizen was only left to conclude that peace and cooperation with the other side was impossible, ultimately contributing to the OPP's collapse.

The asymmetrical bargaining roles of Israelis and Palestinians throughout Oslo I and Oslo II (as well as other) interim agreements further positioned the OPP to fail. Israel, the more powerful party, was in control of the critical bargaining chips at the expense of the considerably weaker party, the PLO. In other words, the importance of Israel's security concerns was prioritized above the importance of the Palestinian right to self-determination in that it was agreed that Palestinian autonomy and statehood would not come until Israel's security was first established.<sup>76</sup> This asymmetrical relationship is exemplified in the following statement by Netanyahu: "The Palestinians should have all the powers to run their lives and none of the powers to threaten Israel's life . . . Thus, the Palestinian entity

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<sup>74</sup> Such joint, strategic cooperation of civil society from two sides of a conflict has had proven success in South Africa between the African National Congress (ANC) and the National Party. Lessons could be learned from this case.

<sup>75</sup> Rubner, *supra* note 64.

<sup>76</sup> Weinstein, *supra* note 42, at 9.

should not be able to form military pacts with sovereign states, or build and arm a standing army without Israel’s consent . . . That is why when I am asked whether I will support a Palestinian state, I answer in the negative.”<sup>77</sup> [Note: Many Israeli leaders before and since Netanyahu have publicly supported the formation of a Palestinian state]. In this way, Netanyahu situated Israel in the “driver seat,” responsible for deciding when, how, and if the process should be moving forward.

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To summarize, Oslo I and Oslo II Agreements’ failings can be attributed to the following: a) its omission of provisions for how to handle situations of non-adherence or major situational change (i.e. internal or external shocks) in the region; b) its failure to prepare the publics; and, c) its inability to establish a sense of perceived mutual legitimacy among negotiators. Of special interest is the fact that, though Oslo I and Oslo II established a clear and detailed Track 1 agenda, it did not necessarily follow that there was also a *consistent understanding* of this agenda by both parties. In the end, this is just one of the many reasons for the failed implementation of these agreements. Thus, the growing rumble of violence and diminishing public faith in the OPP that developed shortly following Oslo II is more easily understood in light of the aforementioned failings of these agreements.<sup>78</sup>

### **Section 3- Intermittent Violence and the Hebron Agreement**

Before continuing to analyze the strengths and weaknesses of the Oslo interim agreements, it is useful to temporarily step outside of the negotiated agreements for a moment in order to discuss what was occurring “on the ground” in Israel and the Palestinian territories. Such incidents are related to the Oslo agreements in that analyses can be made with regard to how well or poorly the DOP, Oslo I, Oslo II— and even future Hebron and Wye River Agreements— had created provisions that prepared both sides and their respective publics to respond to such realities. Specifically, reference is being made

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<sup>77</sup> Netanyahu, Benjamin (at 347-8). From Mandell’s notes (beginning with *Traps for Progress*, page 4).

<sup>78</sup> In an effort to portray the most balanced picture of the OPP, it is worth noting that, by this point in the process, Israel *had* withdrawn from Jenin, Tulkaarem, Nablus, Qalquilya, Ramallah, Bethlehem, and the Church of Nativity (the place of Jesus’ birth). Thus, there were mini-successes throughout the OPP. (Setton, Ben Mayor, Dor-Ner, *supra* note 46, at 4).

to Rabin's assassination on November 4, 1995 and the series of Hamas suicide bombings in Jerusalem and Tel Aviv from February to March 1996, as well as the violence that occurred subsequent to Israel's opening of the Hasmonean Tunnel in September 1996.

A fellow Israeli Jew, Yigal Amir, assassinated Rabin. This national tragedy revealed the disconnect between the reality that the Israeli officials were attempting to lead their country towards (*vis-à-vis* the OPP) and the reality towards which some Israelis were ready to be led. Further, the fact that Rabin's assassination came from *within* revealed that each side had failed to appropriately focus on developing and enhancing security mechanisms to counter such *internal* shocks, coming in the form of extremist violence. To clarify, Rabin's assassination was largely perceived as a failure of the Israeli intelligence, Shin Bet, as evidenced by the subsequent decision of Carmi Gilon (head of Shin Bet and specialist on Jewish extremism) to resign—a gesture that was ultimately refused by then Prime Minister Shimon Peres.<sup>79</sup> In retrospect, it can be argued that, if appropriate attention had been paid to developing security mechanisms to prevent *internal* acts of extremist violence, there may have been a greater likelihood of preventing Rabin's assassination—an incident whose impact on dooming the OPP to eventual failure cannot be emphasized enough.

There was also insufficient preparation for other shocks, such as the suicide bombings of 1996 and 1997. Some have argued that these terrorist bombings that ravaged the nation essentially doomed the OPP as early as 1996, for it stripped the Israelis of any faith in their partner's promise of security to them *vis-à-vis* the OPP.<sup>80</sup> Assuming that Arafat had only limited control over such activity, Israeli and Palestinian leaders and representatives could have focused more seriously on warning their peoples of the likely possibility of extremist violence.<sup>81</sup> Further, rather than expecting and demanding that Arafat and the PNA “crack-down” on terrorism *alone*, Israel could have viewed it as a *joint* problem. In so doing, it could have explored creative options for joining and aiding the Palestinians in the fight against terror. Through such joint infrastructure- and institution-

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<sup>79</sup> Enderlin, *supra* note 18, at 27.

<sup>80</sup> Miller, *supra* note 2.

building processes, perhaps extremism and/ or “extreme responses to such actions” may have slightly diminished.<sup>82</sup> This is because, as earlier described, a more concrete vision of the OPP’s feasibility could have garnered public “buy in,” thus strengthening the voice of the moderates and weakening the cases made by the radicals and extremists.

The importance of mitigating the public’s “extreme responses to extremism”—vis-à-vis effective shock-absorbing mechanisms— cannot be left unmentioned, for these responses have had long-lasting ramifications on the region.<sup>83</sup> One example of this phenomenon is when Peres, a Left-leaning supporter of the OPP, was favored to win the 1996 election for prime minister according to the polls.<sup>84</sup> However, both the Israeli Arab and the left-leaning Israeli communities exhibited an “extreme response to extremism” just prior to elections. First, in response to the series of Palestinian suicide bombings earlier that year, a significant number of the left-leaning Israeli public swayed from supporting the pro-peace Labor candidate to supporting the pro-security Likud candidate just prior to the elections. Second, on April 18, 1996, Israeli shellfire accidentally fell on a base of the UN Interim Force in Lebanon at Kfar Kana, where many Lebanese civilians had taken refuge.<sup>85</sup> Pictures of the resulting 102 victims disgusted the Israeli Arab community—who were long-time supporters of the Labor party— which led to their decision to boycott the elections. Ultimately, vis-à-vis changed political affiliations or abstention, hard-lined Netanyahu was elected into office as the country’s next prime minister, posing even greater hurdles for the OPP to overcome if it were to ever succeed.

Finally, with regard to the opening of the Hasmonean Tunnel, the need for joint security mechanisms to prevent against, or withstand, external shock was again revealed. The tunnel— running along the Western Wall of the Old City, which is situated just below Al-Aqsa Mosque on the Temple Mount— is located in a highly contested and important

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<sup>81</sup> It should be noted that the author believes it to be a misnomer to call victims of terrorism “casualties of peace.” Rather, she believes them to be “casualties of war,” just as is any death by violence.

<sup>82</sup> Note that “extreme responses to terrorism” are further described in the paragraph below.

<sup>83</sup> One shock-absorbing mechanism may be in the form of the two leaderships making joint and separate public addresses to their constituencies wherein they openly acknowledge the unfortunate possibilities of such shocks of violence plaguing the peacemaking process. Having addressed this realistic possibility, they could then explicitly tell their publics what the individual and joint responses will be to such circumstances. In so doing, the leaders would probably succeed in instilling more public confidence in the process— particularly in the event that violent shocks rock the region— ultimately mitigating the likelihood of these “extreme responses to terrorism.”

<sup>84</sup> Enderlin, *supra* note 18, at 50.

<sup>85</sup> *Ibid*, at 47.

spot for Jews and Muslims alike. Thus, the Palestinians perceived Netanyahu’s decision to open the tunnel as highly provocative. Exploiting the situation, Palestinian radicals led demonstrations at Bir Zeit University in Ramallah and the situation soon turned violent. As Israeli soldiers across the road began shooting rubber bullets at the Palestinians, the Palestinian police felt as if their authority had been undermined.<sup>86</sup> As a result, they began shooting at the Israeli army with their Kalashnikov guns for the first time since the OPP. In the end, however, “only active cooperation between Palestinian and Israeli security forces [brought] an end to the fighting,” demonstrating the power and effectiveness of joint-security forces as a mechanism for enhancing overall security among Israelis and Palestinians in the region.<sup>87</sup>

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Four months of U.S.-mediated negotiations in Washington led to the Hebron Agreement on January 17, 1997. Ultimately, this agreement was two-fold, further incrementalizing substantive issues originally addressed—and, indeed, broken— through Oslo I. First, Israel agreed to hand over eighty percent of Hebron to Palestinian rule— an area that was inhabited by several hundred Jewish settlers and 20,000 Palestinians.<sup>88</sup> Second, the Palestinians “guaranteed” security for Israel.

Again, note that prior to the formulation of the Hebron Agreement, Israelis and Palestinians had begun to increasingly turn to the U.S. as a trusted and respected mediator with sufficient power to act as an outside guarantor of agreements. Perhaps this was because both parties were moving towards a heightened sense of urgency wherein mediation made more sense to them than continuing along with the status quo. Thus, on a positive note, it appears that the U.S. must have been perceived to be a relatively fair mediator at the time given that both sides felt comfortable soliciting its involvement as a third-party.

However, there continued to be obvious problems inherent in the Hebron Agreement and in the OPP in general. As in prior interim agreements, Hebron failed to

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<sup>86</sup> Israel Hasson Interview. (Setton, Mayor, and Dor-Ner, *supra* note 58, at 10).

<sup>87</sup> Setton, Mayor, and Dor-Ner, *supra* note 58, at 10.

<sup>88</sup> *The Israel-Palestinian Negotiations: Background* from *The M.F.A. Peace Process Guide* website, *supra* note 61.

establish consequences or provisions in the case that Israelis and/ or Palestinians did not adhere to Hebron's two main substantive agreements.

Additionally, Hebron (and the larger OPP) was still failing to sufficiently prepare for shocks, i.e. extremist acts of violence, as did its predecessor agreements (the DOP, Oslo I, and Oslo II). First, shortly following the Hebron Agreement, Israel defied world opinion by allowing the construction of the Har Homa settlement to begin on March 18, 1997. Construction of this settlement would complete the circle of Jewish settlements around occupied East Jerusalem. Palestinian negotiator, Erekat, well describes the drastically negative effect that this decision had on the OPP through the following metaphor: "Settlements to Palestinians is the equivalent to buses exploding in Tel Aviv to Israelis."<sup>89</sup> In fact, three days later on March 21, a Palestinian suicide-bomber attacked in Tel Aviv. Several months later, on September 4, 1997, there was the earlier mentioned triple-suicide bombing in Jerusalem, killing five Israelis.<sup>90</sup>

In the end, similar to Oslo I and Oslo II, the Hebron Agreement never actually reaped results, for Israel did not receive its promised security and the Palestinians did not receive their promised territorial control.

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Thus, with regard to the Hebron Agreement, specifically, it failed to establish consequences and prepare for external shocks. Interestingly, it should be noted that the failed implementation of the Hebron Agreement, itself, had little ripple effect on the already-diminishing momentum of the OPP. By this point, people were paying less and less attention to these Track 1 meetings and agreements that failed to create any tangible regional change. Thus, by now, it appeared as if the majority of Israeli and Palestinian peoples were in a state of steadily growing detachment to the OPP rather than holding onto their prior belief in its potential to effect change.

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<sup>89</sup> Setton, Mayor, and Dor-Ner, *supra* note 58, at 11.

<sup>90</sup> *Ibid.*

## **Section 4- Wye River Memorandum and Sharm el-Sheikh Memorandum**

The Wye River Memorandum and Sharm el-Sheikh Memoranda are further interim agreements between Israelis and Palestinians, brought into being by the U.S. mediating team, but again failing to create any “on the ground” change for either party. The Wye River Memorandum outlined Israeli withdrawal from the West Bank. It was completed on October 23, 1998 after an eighteen-month stagnation in the Israeli-Palestinian peace process. Through monetary incentives, the U.S. was able to bring Netanyahu and Arafat to the negotiating table in Washington D.C. in January 1998; however, an agreement was not reached until the nine-day summit hosted by Clinton in Wye Plantation, Maryland in October 1998. The memorandum was an unwritten agreement from Israel to engage in final-status talks and from Arafat to defer declaration of statehood (from his established impending deadline of May 4, 1999 till as long as talks progressed).<sup>91</sup>

This memorandum was, again, written and passed without preparing the publics. Israeli and Palestinian leaderships had not learned their lesson and were still failing to communicate to their peoples why *final-status* talks might work at this point despite prior failures of the interim Oslo agreements. Further, the Palestinian leadership did not address its citizens about why it would not be a sign of weakness if they were to defer a unilateral declaration of Palestinian statehood. Thus, it is no wonder that Wye indirectly established a framework for an escalation of violence through further erosion of the Israeli-Palestinian co-existence dream. Again, the OPP may have taken a different course if the leaders had better handled the press and media, as well as encouraged government-, institutional-, and grassroots-level joint initiatives and cooperation.

Additionally, the Wye River Memorandum not only failed to establish consequences or provisions for non-adherence, but it also created a process by which each party’s failure to adhere to certain agreements (i.e. Israelis’ missed deadlines for the declaration of Palestinians’ self-autonomy or Palestinian failure to prevent terrorism) was actually supported. This is because, just like the previous Oslo interim agreements, Wye

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<sup>91</sup>*Israel-Palestinian Negotiations: Diagram* from *The M.F.A. Peace Process Guide* website, *supra* note 61.

failed to build in a system whereby an external body (i.e. the U.S.) could exert pressure, or “sticks,” on both parties in order to ensure that they made the necessary difficult concessions by the agreed upon deadlines.<sup>92</sup> Considering that the Israelis and Palestinians had consistently failed to implement such agreements in the past in accordance with previously agreed upon deadlines, there was no reason for either party to expect differently in the future with the Wye River Memorandum. In other words, in the absence of any structural modification to the OPP— e.g. through the establishment of some type of external monitoring mechanism— Wye could be perceived as simply a farce to the Israeli and Palestinian publics.

Given that Arafat likely did not have control over some (if any) of the extremist acts of violence, the U.S. also missed an opportunity to mediate or facilitate a process wherein Arafat and his representatives could have worked with Israel to develop joint security mechanisms that would have helped to prepare the region for these inevitable shocks. It should be noted that, prior to the summit, Israeli and Palestinian security officials had begun to work towards this end in preliminary talks covering several issues, including how to cooperate to fight terrorism, collect illegal weapons, and prevent the financing of terrorist cells.<sup>93</sup> As Ross described, “the security people could talk to each other the way that nobody else could.” However, when the security agreement was presented to the leadership for final approval, Netanyahu reopened the package in order to “put real meat on this [security agreement]” by fleshing everything out in very great detail.<sup>94</sup> The result was disastrous, for it was the trust that had developed between security officials negotiating at the Track 2 level that largely enabled them to come to the difficult agreements contained in that final package. Because this trust did not carry over to the leaders negotiating at the Track 1 level, they were never able to revise an agreed upon version of this package that could be implemented for the benefit of their peoples.

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<sup>92</sup> Note that unforeseen “shocks” are expected in any peace process implementation. Given this reality, however, the author believes that the OPP should have explicitly addressed this likelihood and, even still, made the OPP deadlines firm and binding, almost wholly regardless of such violence, or “shocks.”

<sup>93</sup> Setton, Mayor, and Dor-Ner, *supra* note 58, at 14.

<sup>94</sup> *Ibid.*

The signing of the Sharm el-Sheikh Memorandum on September 4, 1999 essentially attempted to revive the Middle East peace process by revising the aforementioned stalled Wye River Memorandum and re-stating Israeli and Palestinians' commitment to full implementation of all interim agreements reached since September 1993. The stages of Sharm el-Sheikh's implementation was also stipulated, including: 1) Release of prisoners [September 9, 1999/ October 15, 1999] and additional prisoners released for Ramadan [December 1999/ January 2000]; 2) Further redeployments<sup>95</sup>; 3) Safe passage: southern route [October 25, 1999]; 4) Shuhada Street opened [October 31, 1999]; 5) Displaced persons committee convenes [February 6, 2000]; and, 6) Agreement signed implementing economic issues [June 7, 2000].

Like most of the interim agreements, the Sharm el-Sheikh Memorandum succeeded in establishing a clear agenda vis-à-vis the chronological stipulation of the aforementioned phases. However, as commented upon earlier, doing so in the absence of establishing consequences for failed adherence to this agenda proved to be a tragic combination. Like the Wye River Memorandum and all of its Oslo "predecessor" agreements, Sharm el-Sheikh (with its specific agenda) failed to establish firm consequences in the event that such specific agreements were not adhered. Thus it appeared that Israeli and Palestinian leadership were using the process to "drag their feet" and "buy time." In essence, parties had learned that if they did not meet deadlines or deliver on other promises, their "punishment" would simply be to return to (or to continue talks at) the negotiating table in order to reach another agreement that could somehow be fit to how the process was going at that time. Given that the U.S. mediation team was permitting promises and agreements to be treated so lightly, without offering any real "carrots" and/ or "sticks" (i.e. incentives and disincentives), it is not surprising that the OPP was losing support.

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<sup>95</sup> The Israelis agreed to the following redeployments on the West Bank: on September 5, 1999, seven percent of Zone C (the set of territories that is under total Israeli control) would be transferred to Zone B (the set of territories placed under Palestinian responsibility for all matters except security). On November 5, 1999, two percent of Zone B would become part of Zone A (the set of territories under total control of the PNA), and three percent of Zone C would become part of Zone B. On January 20, 2000, one percent of Zone C would become Zone A, as would 5.1 percent of Zone B. Thus, on this date, assuming that all redeployments had occurred, exclusive Israeli control over the West Bank would be reduced from 72

In sum, the Wye River Memorandum failed to prepare the publics, to establish consequences or provisions for agreement revision, and to prepare for shocks. Meanwhile, the Sharm el-Sheikh Memorandum's most glaring weakness was its inability to establish consequences— particularly given its ordering within the larger OPP which gave the negotiators at this summit a larger degree of hindsight than had been enjoyed by negotiators at previous interim agreement summits. Ultimately, the Wye River Memorandum and the Sharm el-Sheikh Memorandum had little ripple effect, themselves, on the already-diminishing momentum of the OPP (similar to the Hebron agreement). By this point, the Israeli and Palestinian publics had been too disappointed by the failed implementation of the DOP, Oslo I, Oslo II, and Hebron agreements to continue holding high hopes for the OPP. And though there was little public or explicit admission to this effect, based on their rescinding of (or non-adherence to) previous agreements, it appeared that many of the leaders even believed and saw the trajectory of failure along which the OPP had brought them.<sup>96</sup>

## Section 5- Dwindling OPP and Events Leading to CD2

Perhaps Israeli leadership turned its attention from the Palestinian to the Syrian negotiating track because it had lost hope in the diminishing momentum of the OPP. No matter the reason, from December 15, 1999 to March 26, 2000, the Israelis pursued

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percent to 59 percent of territory, while the PNA would control an additional 11 percent of the territories at this time. (Enderlin, *supra* note 18, at 129).

<sup>96</sup> For example, both Palestinian and Israeli leaderships faced internal pressure that constrained the freedom with which they could negotiate. Thus, though Barak had finally agreed to include three Palestinian suburbs of Jerusalem in the upcoming May 2000 redeployment of the Israeli army, he ultimately rescinded this offer. This came as a response to an angry Knesset (comprised of members from opposing parties such as Shas, the National Religious Party (NRP), and Likud), and will be further described in chapter 3. In the meantime, violence was breaking out throughout the West Bank and Gaza. On May 15, 2000, the day that the Palestinians mourn the anniversary of the “catastrophe of 1948,” or “al-Nakbah” (referring to the Israeli defeat of the Arabs and the creation of Israel), demonstrations got out of hand in Ramallah. Hundreds of young people come to the intersection at the City Inn Hotel to throw stones at Israeli soldiers guarding a barricade. The soldiers responded with rubber bullets, and Barak threatened Arafat that he would suspend negotiations unless Arafat got his people under control. Arafat replied that he was doing all that he could—but that in the face of Israeli non-adherence to promises vis-à-vis the OPP—he described that “the patience of the Palestinian street [was] at an end” (Enderlin, *supra* note 18, at 162).

negotiations with Syria through talks in Geneva. This pursuit of the Syrian track occurred shortly following Barak's election into office on a platform of peace in May 1999. Interestingly, as the successor to the more hard-lined Likud Prime Minister Netanyahu, Barak's entrance into office had had the potential to "ripen" the timing for reviving a choked OPP. Instead, however, as Israel focused on Syria, the final-status talks that had been occurring between Israelis and Palestinians (through the Sharm el-Sheikh Memorandum meetings) disintegrated on February 3, 2000 due to a disagreement over promised Israeli withdrawal from the West Bank. With talks deadlocked, the deadline of February 13, 2000 was missed for the signing of a final framework accord for the OPP.

On March 21-28, 2000, however, parallel talks between the Israeli and Palestinian negotiating teams, headed by Oded Eran and Yasser Abed Rabbo (respectively) at Bolling Air Force Base in Washington D.C., aimed to re-start final status talks and to complete the implementation of interim agreements that had already been signed. Perhaps this week-long attempt to re-start final status negotiations would have met with more success had Israel not been concurrently pursuing the Syrian track with such vigor, thereby signaling to the Palestinians that they might be putting more faith (and therefore effort) into the possibility of reaching an agreement with Syria. By this time, however, Prime Minister Barak, Clinton, and Hafiz al-Asad had already been seriously negotiating since February 2000.

Though these Syrian-Israeli talks ultimately disintegrated, failing to break the deadlock on this track, the repercussions were far greater.<sup>97</sup> As witness to Israel's vigorous pursuit of the Syrian track, the Palestinians interpreted this as an Israeli delaying tactic. The Palestinians believed that Israel was attempting to instill fear and exert increasing pressure on the Palestinians by attaining a newfound stability and (even cold) alliance with Syria. They believed that this potential Syrian alliance, in effect, would increase pressure on them to reach an agreement with Israel as soon as possible, no matter the terms.<sup>98</sup> To add insult to injury, the Palestinians believed Syria to be a uninterested and uninvested peace partner to the Israelis; thus, the Palestinians' public humiliation and private distrust of Israel was further enhanced by Israel's pursuit of the Syria track early in Barak's term.

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<sup>97</sup> The one tangible result of the failed Syrian-Israeli discussions was Israel's unilateral withdrawal from Lebanon in April 2000.

<sup>98</sup> Malley and Agha, *supra* note 27, at 5.

Ultimately, Israel's motion to pursue this track made it increasingly difficult for the Palestinian left-wing pro-peace population justify their support— let alone rally further support for the faltering OPP and the pursuit of normalized relations with Israel. In fact, it was reported that the Palestinian street “could not care less about reaching an agreement” with Israelis.<sup>99</sup> Meanwhile, the OPP and existing leadership had done a similarly poor job of achieving Israeli public “buy in” to the possibility of reaching peace with their Palestinian neighbors. The Israeli public opinion reportedly maintained that “the Palestinians [were] making undue demands.”<sup>100</sup> Thus, by this point, it seemed to be too late for Israeli and Palestinian leaders to prepare their respective publics for belief in the possible benefits from, or likely success of, the OPP.

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In retrospect, it appears that the Israelis could have better structured the timing, sequence, and linkage of these Syrian talks, saving such negotiations until *after* their negotiations with Palestinians were at a more stable and promising point. Instead, by pursuing the Syrian track in the midst of delicate and faltering relations with Palestinians through the OPP, the Israelis managed to offend and lose a large degree of trust from their Palestinian negotiating counterparts. In addition, they “sealed the deal” with respect to ensuring that there would no longer be significant public support for the OPP.

Thus, it is within the context of this trajectory towards failed peacemaking between Israelis and Palestinians that the curtains opened on the Camp David 2000 summit.

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<sup>99</sup> Enderlin, *supra* note 18, at 155.

<sup>100</sup> *Ibid.*

## CHAPTER 3

### *CAMP DAVID 2000: The Deal That Never Was . . .*

In the wake of the choked OPP, the CD2 summit was born— appearing to be a “last ditch” effort by its American, Palestinian, and Israeli participants to resolve the Israeli-Palestinian conflict once and for all. This chapter will mainly be descriptive, focusing on an in-depth coverage of the processes and structure of CD2. Analyses of CD2’s successes and failures, according to the PF, will primarily be reserved for chapter 4.

This chapter is comprised of five sections. **Section 1** will briefly re-visit and elaborate on the status of the Israeli-Palestinian relationship at the start of the CD2 summit. **Section 2** will discuss the pre-negotiation phase preceding CD2. **Section 3** will detail the major players, positions, and interests for the Israelis, the Palestinians, and the Americans (as mediator). **Section 4** will delineate the issues-at-stake, the ZOPA (Zone of Possible Agreement), and each party’s BATNA (Best Alternative To a Negotiated Agreement). Finally, **section 5** will describe the setting and structure of CD2, as well as the negotiation strategies/ tactics employed by Israelis, Palestinians, and the U.S. (as mediator).

#### **Section 1- Status of Relations at Start of CD2**

Given the unfulfilled promises of the Oslo Accords discussed in chapter 2, it was no wonder that the Israeli and Palestinian parties had difficulty trusting one another. More importantly, Barak and Arafat’s relationship was particularly cold given their personal histories, and the Israeli and Palestinian governing bodies suffered from internal schisms, politicking, and a lack of communication.<sup>101</sup> When Barak had taken power, the Palestinians were looking for “early reassuring signs” that they had a new and promising peace partner. Instead, Barak’s action managed to create an early atmosphere of distrust by: a) establishing a broad government coalition that included peace advocates and hard-

liners, alike; b) adopting uncompromising positions on issues like Jerusalem; and c) failing to confront and pressure the withdrawal of the settlers.<sup>102</sup> In fact, Barak brought the settlers' representatives, the National Religious Party (NRP), into his coalition and appointed them control over the Housing Ministry (leading to the aforementioned expansion of the settlement enterprise).<sup>103</sup> Additionally, as previously mentioned, Arafat had done little to crack down on Palestinian violence directed against Israel. Thus, he, too, had failed to demonstrate to Israel that it had a trusted partner in the peace process.

Deterioration of the Israeli-Palestinian relationship and communication channels continued as Barak broke his earlier commitment to transfer three Jerusalem area villages to the Palestinians.<sup>104</sup> This came as a response to pressure from the opposition and from some of the members of his government, including the ministers of the NRP, Shas, and Yisrael Be'aliya. Additionally, as mentioned in chapter 2, Barak's decision early in his term to first concentrate on reaching a deal with the Syrians, rather than to focus on the Palestinians, furthered Palestinian distrust and skepticism of his (and Israel's) intentions. As the Palestinians saw it, Syria had done nothing to address Israeli concerns, whereas the PLO believed that it had recognized Israel and had engaged in countless face-to-face negotiations over the years.<sup>105</sup>

Once the Syrian track had failed by March 2000, Barak chose to devote his full energy towards reaching a permanent agreement with the Palestinians, setting a deadline of only a few months. However, by this time, it is reported that Arafat and the Palestinians did not trust Barak's motives. Arafat believed that Barak wanted to force the Palestinians to accept an unjust deal and, if they refused it, he wanted to weaken the Palestinians until they agreed. It is alleged that Arafat resented the heightened pressure that was being placed on him through such statements as Barak's warning that the alternative to an agreement

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<sup>101</sup> David Matz. Personal Interview. Founder and Director of the Graduate Program in Dispute Resolution at University of Massachusetts, in Boston, Massachusetts [re: Klein's unpublished works, at 104], (April 10, 2001).

<sup>102</sup> Glenn E. Robinson (2001). "Israel and the Palsetinians: The Bitter Fruits of Hegemonic Peace," in *Current History*, v. 100, at 4.

<sup>103</sup> It is likely that Barak made this NRP appointment in order to build a solid coalition with opposing parties that were most skeptical of the peace platform on which he had been elected in May 1999. (Sontag, *supra* note 27, at 27).

<sup>104</sup> On March 20, 2000, the Barak government approved a withdrawal from 6.1 % of the West Bank territory of the West Bank, including three former villages outside of the Jerusalem municipal boundaries set by Israel in 1967 (which have effectively become a suburb of East Jerusalem)—Abu-Dis, al-Izzariyya, and Sawahreh al-Sharqiyya.

<sup>105</sup> Malley and Agha, *supra* note 27, at 5.

would be far grimmer than the status quo.<sup>106</sup> As his resentment mounted, Arafat supposedly became more stubborn in the belief that Barak was trying to dupe the Palestinians, thus prematurely closing himself off to the recognition of just how far Barak and Clinton were possibly willing to go in order to reach an agreement with the Palestinians.<sup>107</sup>

In addition, because CD2 appeared to be a Clinton-Barak idea in both concept and timing, Arafat perceived it to be a U.S.-Israeli conspiracy. After all, Arafat wondered what other explanation there could be for pursuing it in light of Israel's refusal to carry out its earlier commitments (re: land transfers and settlement control) and the Palestinians' plea for additional time.<sup>108</sup> At this point in the early pre-negotiation phase of CD2, it should be noted that Clinton and Barak failed to understand Arafat's perspective—a critical “blind spot” and determinant of the subsequent unfolding of events.

Finally, public opinion follows leadership and leadership follows public opinion. In light of the former phenomenon, one can surmise that the Israeli and Palestinian publics were quite skeptical about the possibility of achieving a just and meaningful peace agreement with the other side. As revealed through chapter 2, the Oslo legacy had left a bitter taste in their mouths, and the mutual distrust and coldness between their respective leaders did not go unnoticed. In the absence of such visionary leadership, it became impossible for these publics to be confidently led into a future Israel and Palestine that was acceptable to both parties alike.

Clearly, CD2 negotiations would attempt to create a “culture of peace” in the woods of Maryland when a “culture of distrust” existed in the streets. Yossi Beilin, an Israeli architect of the peace effort, and Robert Malley, the Middle East expert of Clinton's National Security Council, both believed that the existing environment within which CD2 was built foreshadowed its failure. As Malley stated, in retrospect, during a public forum in Washington, D.C.: “If the fundamental equation had to be land for peace, how can it have any meaning and relevance when, on the one hand, land was being taken away on a

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<sup>106</sup> Malley and Agha, *supra* note 27, at 6.

<sup>107</sup> *Ibid.*

<sup>108</sup> *Ibid.*, at 7.

daily basis [by the Israelis] and, on the other hand, the peace was being maligned on a daily basis [by the Palestinians].”<sup>109</sup>

## Section 2- Pre-Negotiation Phase

Perhaps it is a bit “artificial” to consider the negotiations occurring immediately prior to CD2 as a discreet “pre-negotiation phase.” After all, this summit was essentially a continuation of all prior negotiations that had been occurring vis-à-vis the OPP since 1993. That said, the CD2 summit was distinct from its “predecessor” summits and negotiations in that it would attempt to solve the Israeli-Palestinian conflict through a comprehensive deal. Though it was bold, indeed, to believe that the parties’ differences over “core” issues—such as security, land, borders, and refugees, and Jerusalem—could be tackled in one fell swoop, it did not appear too far-fetched to some people given that the incremental approach had failed to reap benefits for the region vis-à-vis the OPP.<sup>110</sup>

Thus began CD2’s pre-negotiation phase on May 10, 2000 through secret negotiations between the two parties in what became known as the “Stockholm track.” These back channel talks— comprised of fifteen substantive sessions and culminating in three long weekends (two in Sweden and one in Israel)— were attended by Palestinian negotiators Abu Ala’ and Hassan Asfour, as well as Israeli negotiators Shlomo Ben-Ami and Gilead Sher.<sup>111</sup> The Stockholm track was the most productive development in Israeli-Palestinian relations shortly prior to CD2. Participants claimed that the mood was positive and the discussions groundbreaking as they made progress on the issues of territory, borders, security, and even refugees.<sup>112</sup>

In May, however, the substance of these talks was leaked to Israeli newspapers. Ever bound by their constituencies, political problems arose for both Barak and Arafat based on what had been printed about potential concessions each was willing to make.<sup>113</sup> According to Martin Indyk, former American ambassador to Israel, the Stockholm track

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<sup>109</sup> *Home From Camp David* in The Economist, at 43 (2000).

<sup>110</sup> Note that herein lies the dilemma: incremental approaches left the Israeli-Palestinian peacemaking process vulnerable to the mobilizing of extremists, while a comprehensive approach necessitated a shift in the relationship between the two parties (which had not yet occurred).

<sup>111</sup> Enderlin, *supra* note 18, at 158.

<sup>112</sup> Sontag, *supra* note 27, at 27.

had the *potential* to lay a solid foundation for CD2 negotiations, but it was immediately (and prematurely) aborted following the media leakage.<sup>114</sup> Israel's prime negotiator for Barak, Ben-Ami, believed this to be a tragedy because, according to him, Abu ala' and the Palestinian negotiating team had made private and far-reaching agreements over the Temple Mount (and other issues) that did not even carry over to the negotiations at CD2.<sup>115</sup>

In Ben-Ami's estimation, the Palestinian negotiator Abu ala' (whose given name is Ahmad Qurai), was extraordinarily talented, able, and had the full trust of Arafat in his efforts at Stockholm. However, Abu ala' preferred discreet channels to public negotiation processes or high-profile summits (which he believed to be nothing more than a show). Thus, the moment that the Stockholm process collapsed, Abu Ala' supposedly became "an enemy of the process." Shortly after these Stockholm preparatory sessions ended, Abu Ala' and Arafat met with Clinton in order to inform him that they needed more time before beginning a high profile, bilateral, U.S.-mediated peace summit with the Israelis. Clinton, however, told them to "come try your best. If it fails, I will not blame you."<sup>116</sup>

If the Stockholm track had not been prematurely aborted, it is impossible to know whether negotiators would have actually seized the opportunity for wider-ranging discussion on how to address various obstacles to agreement, such as building inter-party trust (**criterion 1**) or reaching agreements on the upcoming summit agenda and structure (**criterion 2**). Furthermore, it is unclear whether these negotiators would have been able to avoid the problem that they had created through the OPP wherein the negotiators were very far ahead of their respective publics in terms of willingness to agree or concede on vital issues, such as refugees or territorial borders (**criterion 3**). In other words, like the OPP, it appeared that the ability of leaders to reach agreements was again far greater than the capacity to ensure their implementation.

A successful pre-negotiation strategy (or negotiator) would likely have preserved this ability for the negotiators to explore new ideas quietly— i.e. through back channel diplomacy or private talks— while simultaneously preparing the Israeli and Palestinian

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<sup>113</sup> *Ibid*, at 27.

<sup>114</sup> *Ibid*, at 28.

<sup>115</sup> Sontag, *supra* note 27, at 28.

<sup>116</sup> Interestingly, it should be noted that, when Ben-Ami and Sher traveled to Nablus to see Arafat shortly before CD2 began, they were reportedly stunned to discover that Arafat did not even know precisely what had been discussed at Stockholm (Matz, *supra* note 101).

publics (vis-à-vis speeches, press releases, education initiatives, etc.). In this way, these leaders may have been able to simultaneously inform and involve their constituents in these important motions towards peace in ways that have been earlier described in chapter 2. Granted, one must be wary of the “catch-22” of educating/ preparing the publics, for too much preparation may give spoilers an opportunity to spoil, but too little preparation may make the public too susceptible to extreme views. If the leaders had successfully managed these two dangers while preparing their respective constituencies for the upcoming summit, it would have been a remarkable feat, indeed.<sup>117</sup>

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Given that Barak was anxious for a peace agreement (whereas Arafat told Clinton that he was not ready for CD2 to take place in July 2000), it makes sense that the Israeli prime minister had sufficiently prepared and presented a vision of a comprehensive peace to Clinton as early as July 1999. Barak had provided details regarding his strategy, a timetable, required U.S. funding, Palestinian and Syrian economic assistance, and refugee resettlement.<sup>118</sup> While he was attempting to convince Clinton to initiate and mediate a peace summit with the Palestinians as soon as possible, ironically, Arafat was attempting just the opposite as late as his final pre-CD2 meeting with Clinton on June 15, 2000. Arafat reminded Clinton that Barak had not implemented prior OPP interim agreements and argued that “no negotiation can succeed without total adherence to the agreements already concluded.”<sup>119</sup> Further, he contested that there had not been sufficient progress in the Stockholm negotiations, stating that “Saeb’s and Abu Ala’s negotiations haven’t gotten anywhere.”<sup>120</sup> And finally, he believed that the prime minister held all of the cards, so to speak, which would inevitably lead to an unstable, hegemonic peace at best.<sup>121</sup>

Once Arafat realized that he could not very well delay CD2 because of Israeli and American desires and time-line, he instead aimed to enter CD2 “more intent on surviving

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<sup>117</sup> However, many would argue that, by this stage, it was too late to prepare the publics for CD2 because they were already so disillusioned with the peace process after all of the failed implementations of OPP agreements.

<sup>118</sup> Sontag, *supra* note 27, at 8.

<sup>119</sup> Enderlin, *supra* note 18, at 175.

<sup>120</sup> *Ibid.*

<sup>121</sup> Perhaps this was because Arafat was feeling weak and wanted to level the playing field. (Robinson, *supra* note 102, at 5).

[rather] than benefiting from it.”<sup>122</sup> Just prior to the negotiations, he posed several conditions for agreeing to go to a summit. First, he again sought additional preparatory talks to ensure that CD2 would not fail. Second, he requested that the presently stalled, third Israeli territorial withdrawal— from the villages of Abu-Dis, al-Izzariyya, and Sawahreh al-Sharqiyya— be implemented before CD2 began. And third—a request volunteered by Clinton rather than demanded by Arafat— he was promised that the U.S. would remain neutral and would not blame the Palestinians in the event that the summit failed.<sup>123</sup> Ultimately, however, none of these conditions were met.

According to Malley and Agha’s personal account of the process, there was a lack of *intra*-party cohesion at this point in time, particularly within the Palestinian negotiating team (**criterion 1**). As they explained in relatively general terms, “domestic hostility toward the summit . . . exacerbated the tensions among the dozen or so Palestinian negotiators,” causing them to “act disparately and without a central purpose, each . . . [giving] preeminence to a particular issue, making virtually impossible the kinds of trade-offs that, inevitably, a compromise would entail.”<sup>124</sup> Therefore, given that different members of the Palestinian and Israeli negotiating teams understood and articulated their party’s interests, position, priorities, goals, and tactics differently, it is no wonder that they ultimately failed to reach an acceptable agreement with one another. Additionally, this lack of internal cohesion prevented each side from leading an adequate effort to prepare their respective publics for the difficult compromises to-be-made at CD2.<sup>125</sup>

The U.S., as mediator, evidently faced a formidable challenge given the mistrust and tactical clumsiness characterizing the two sides. On the one hand, with Barak’s intense

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<sup>122</sup> *Ibid.*, at 7.

<sup>123</sup> Clinton’s failure to uphold this promise jeopardized future relations and trust between the U.S. and the Palestinians.

<sup>124</sup> Malley and Agha, *supra* note 27, at 15.

<sup>125</sup> Note that some scholars, including Harvard Business School professor James K. Sebenius, argue that it is sometimes more appropriate and feasible to work towards developing *inter-party* trust first in a negotiation or mediation process. Then, after establishing a degree of understanding and stability in this relationship, parties can turn within towards developing *intra-party* trust, i.e., in the peace process. The logic for this sequencing is that, in the event that some semblance of relations is established between the two parties, concrete evidence can be presented to one’s own *intra-party* opponents that venturing down the negotiating path towards peace may not be such a bad idea, after all. (David Lax and James Sebenius (1991). *The Power of Alternatives or the Limits to Negotiations*, in Negotiation Theory and Practice, (eds.) J. William Breslin and Jeffrey Z. Rubin, (Cambridge: The Program on Negotiation at Harvard Law School, pp. 97 – 114.)

desire to strike an agreement, Arafat's personal relationship with Clinton, and Clinton's strong commitment to the cause, it appeared to be a travesty to *not seize* the opportunity. However, on the other hand, given the broken promises leading up to CD2, the lack of internal cohesion, the status of relations between the Israelis and Palestinians, and the rushed time-frame to begin the summit, to *seize* the opportunity appeared equally problematic.

### **Section 3- Parties**

#### ***A) Israeli:***

**1. Leadership-** The Israeli team was led by Prime Minister Ehud Barak of the Labor Party, a veteran decorated general who was determined, stiff, and notoriously “deaf to cultural nuance.”<sup>126</sup> Unlike the charming and politically-savvy Clinton, he was reportedly politically clumsy and lacking in personal touch . . . qualities that seriously affected his negotiating style. From his days of strategic planning in the army, Barak's negotiation tactics were said to be clear and inflexible—conceived and then frozen in his mind. However, in other ways Barak was a desirable negotiating partner, for his “stiff” strategy simultaneously accounted for the risks necessary in order to reach a final deal—risks that he was ready to take in the spirit of compromise. That said, unlike Rabin, Barak was never able to create a working relationship with Arafat.<sup>127</sup>

Though Barak was joined at CD2 by such talented and skilled negotiators as Ben-Ami, Gilad Sher, Dan Meridor, Amnon Lipkin-Shahak, Gidi Greenstein, and Joseph Alpher, not only were there internal schisms among them, but also it was *he* who had the final word. Thus, in the end, it was Barak's personality, language, and negotiating tactics that ultimately characterized the Israeli negotiating team. Specifically, it is said that Barak's language tended to isolate the Palestinians further in that it revealed his ideological predisposition. He supposedly made repeated references to the West Bank as “Judea and Samaria” and commented on “the struggle of the State of Israel to rule over Greater

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<sup>126</sup> Sontag, *supra* note 27, at 23.

<sup>127</sup> Malley and Agha, *supra* note 27, at 7.

Israel.”<sup>128</sup> Moreover, Barak’s negotiations with Arafat were undermined by his prejudice towards Arabs, as revealed through statements like: “Israel is a villa in the middle of a jungle,” a “protective wall” for the West, or a “vanguard of culture against barbarism.”<sup>129</sup>

**2. Interests-** Israel’s short-term interest was to stop the violence and terror to which it was subject by the Palestinians. In the long-term, Israel had security and economic concerns, a desire for regional acceptance, as well as an investment in acquiring a positive reputation in the international arena. To elaborate, Barak’s pragmatic, realistic side was convinced that Israel had to settle with the Palestinians and the rest of the Arab world for two reasons. First, he had come to believe that it was no longer possible for Israel to rule over another people without continued violence and the eventual destruction of Israeli democracy itself (i.e. Israel’s BATNA was too costly). Second, Barak had publicly acknowledged the intolerable dangers to Israel of war with an Arab world that was increasingly likely to acquire weapons of mass destruction.

**3. Position-** Barak was guided by three principles. First, unlike the U.S. and the PNA, he was an anti-incrementalist; thus, he despised the approach of taking gradual steps, which he believed lay at the heart of the failed OPP. Second, Barak believed that the Palestinian leadership would only make a historic compromise—if at all—once it had explored and found unappealing all other possibilities.<sup>130</sup> Third, Barak’s team was confident that the Israeli public would ratify an agreement with the Palestinians— even one that entailed far-reaching concessions—so long as it was final and brought the promise of quiet and normalcy to the country.

Though there are varying accounts of the main lines of Barak and the Israelis’ verbal proposals—especially considering that the position shifted over the course of the CD2 negotiations—an attempt at delineating the basic Israeli “package” follows.

1) **Palestinian statehood-** Israel would agree to a demilitarized Palestinian state in the entire Gaza Strip and in 82-92 % of the West Bank.

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<sup>128</sup> Slater, *supra* note 31, at 10 (2001).

<sup>129</sup> *Ibid*, at 10. Also, note that Robert Kelman’s work on “problem-solving workshops” reveals how alienating such language can be for negotiating participants.

<sup>130</sup> Malley and Agha, *supra* note 27, at 2.

- 2) **Boundaries-** Israel would return to its pre-1967 borders with what was portrayed as minor exceptions [See **Appendix 2**]. This would include a small part of the West Bank being annexed to Israel in areas immediately contiguous to Jerusalem or pre-1967 Israeli lines (within which eighty percent of the Israeli settlers were located) in exchange for territories in the Negev desert (adjacent to the Gaza Strip) being annexed to Palestine.
- 3) **Settlements-** Barak did not clearly articulate what exactly would be done with current settlements; however, there was a promise that there would be no expansion or creation of new settlements.
- 4) **Jerusalem**<sup>131</sup>- Israel presented three basic proposals for handling this complex issue. In the first option, Palestinians would be given sovereignty over the Muslim and Christian quarters of the Old City, while Israel would retain sovereignty over the Jewish and Armenian quarters. Additionally, some type of *mixed sovereignty* would be established over what the Israelis call the Temple Mount and the Arabs call Haram al-Sharif—an area and structure in the Old City that holds religious significance in both Judaism and Islam. Under this arrangement, Jerusalem would ultimately become the shared capital of both states.<sup>132</sup> In the second option, Palestinian sovereignty over several Arab neighborhoods surrounding the Old City would be established, while only *administrative autonomy* would be granted within the walls of the Old City. Finally, in the third option, the issue of Jerusalem would be *deferred* until later. [Note that, as an anti-incrementalist, Barak viewed this third option as a last resort.]
- 5) **Refugees-** According to most accounts, Barak would not acknowledge that Israel bore any moral or historical responsibility for the creation of the refugee problem, nor would he consider distinguishing between the principle and the practical implementation of any Palestinian refugee rights.<sup>133</sup> It was reported that, of the estimated 3.7 million refugees, Barak would allow roughly ten thousand to return to Israel as part of a reunification program—not because of an acknowledged Palestinian *right*, but rather as an Israeli *gesture*.<sup>134</sup>
- 6) **Security-** To maintain Israel's security, Barak was committed to continue Israeli settlements, early warning stations, military bases, and patrols in designated areas of the Jordan River Valley (i.e. West Bank territory). Barak specified that this would be maintained for a period of six to twelve years, after which time it would be re-evaluated.<sup>135</sup>

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<sup>131</sup> To preface this sensitive issue, East Jerusalem (including the Old City) had been annexed by Israel immediately after the 1967 war and settlements had been built all around the eastern part of the city with the purpose of cutting it off from the rest of the West Bank.

<sup>132</sup> Quandt, *supra* note 35, at 8.

<sup>133</sup> Slater, *supra* note 31, at 14 (2001).

<sup>134</sup> Jane Perlez and Elaine Sciolino, *High Drama and Hard Talks at Camp David, Against Backdrop of History*, at 5 (2000). [Note: According to UN sources, there are currently 3, 737,494 Palestinian refugees registered with UNRWA, as well as an estimated additional one million who are not registered.]

<sup>135</sup> Slater, *supra* note 31, at 14.

- 7) **Water-** Barak proposed that Israel and the Palestinians cooperate on expanding the water resources for both states, principally through desalination. It should be noted, however, that most of the existing water aquifers were located within the six to eight percent of the West Bank that was to be annexed by Israel.

## ***B) Palestinian:***

**1. Leadership-** The Palestinian team was led by Yasser Arafat, the chairman of the PLO since 1968, as well as the recognized president of the PNA since January 1996. Though Arafat is known to have adopted a relatively moderate stance compared to the radical ideology with which he began, he maintains the reputation of being a decision-avoider rather than a decision-maker. In addition, many people question his leverage over the Palestinians even *if* a decision were made given the numerous internal and ideological divisions among PNA groups, such as Hamas and Islamic Jihad. However, though Arafat may not have full control over his people, Arafat did have ultimate leverage and authority over his negotiating team, which included Abu Ala', Saeb Erekat, Muhammad Rashid, Muhammad Dahlan, and Abu Mazen (also known as Mahmud Abbas).

As previously mentioned, there were obvious differences—both cultural and personal—that led to difficulty in the negotiating process. Although Arafat and Barak, themselves, had minimal contact, Arafat did interact with other members of the Israeli negotiating team. Many of these Israeli negotiators were allegedly suspicious of Arafat's typically Arab, circuitous way of stating things. The important role that such cultural differences played—in fueling distrust between the two parties and thwarting progress at CD2—cannot be overstated. Arafat also allegedly made commitments and then retracted them (i.e. on the issue of Jerusalem), for he was bound not only by his domestic constituency, but also by the larger Arab world. Such actions elicited further distrust from the Israeli negotiators, in general, and Barak, in particular.

**2. Interests-** The Palestinians' enduring interest has been to establish a homeland with East Jerusalem as their capital—a viable state over which they would have sole sovereignty. Additionally, they hoped for security on their borders, which included the removal of Israeli settlements. The PNA also desired to be free from Israeli intervention

and to receive a fair split of resources, such as water. Finally, Palestinians sought their civil liberties in full, including freedom of travel and the right of return for refugees.

**3. Position-** Though the Palestinians were reportedly the ones who came to CD2 without any position or counter-proposal, according to David Weinstein and other scholars, they apparently considered themselves to be the ones who had devised creative ideas and solutions in order to address Israeli concerns. Again, depending upon the source, one will find a different account of the “package” offered by the Palestinians. Provided below is the most commonly reported Palestinian stance on the major issues discussed at CD2.

- 1) **Palestinian statehood-** The PNA is alleged to have entered the negotiations stating that it would accept nothing less than 95 % of the West Bank.<sup>136</sup>
- 2) **Boundaries-** The PNA wanted Israel to return to the pre-1967 borders, which included Israeli withdrawal from East Jerusalem, contiguous to the West Bank territory [See **Appendix 2**].
- 3) **Settlements-** The Palestinians denounced the settlements as illegal; however, they reportedly would accept the principle that Israel annex some of the West Bank settlements in exchange for an equivalent amount of Israeli land being transferred to the Palestinians.
- 4) **Jerusalem-** There are differing accounts as to how willing the Palestinians were to share Jerusalem. According to Lee Hockstader, Palestinians demanded “full sovereignty” over all of pre-1967 East Jerusalem. Meanwhile, Robert Malley and Hussein Agha reported that the Palestinians insisted only on Israeli “military withdrawal” from all lands occupied in 1967, yet were open to a division of East Jerusalem that would allow Israel sovereignty over its Jewish areas—such as the Jewish Quarter, the Wailing Wall, and the Jewish neighborhoods of East Jerusalem.<sup>137</sup> Almost all accounts reported that the Palestinians would not accept Jewish sovereignty over any part of Haram al-Sharif (a.k.a. the Temple Mount). Though it will never be certain what the Palestinians actually communicated in the closed negotiation sessions of CD2, in his official, post-CD2 Washington statement, Erekat reported that the Palestinians were willing to share Jerusalem as part of the Israeli and Palestinian capital and that, “It should be open, as a city of peace.”<sup>138</sup>
- 5) **Refugees-** Arafat insisted on the Palestinian refugees’ right to return to homes lost in 1948. However, the Palestinians were also prepared to tie this right to a mechanism of

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<sup>136</sup> Ross, *supra* note 29.

<sup>137</sup> Slater, *supra* note 31, at 13.

<sup>138</sup> Saeb Erekat. Official Statement in Rose Garden at the White House, in Washington, D.C. (July 26, 2000).

implementation that provided for alternative choices for the refugees and limited the numbers returning to Israel proper.<sup>139</sup>

**Note:** No specific accounts were retrieved on the Palestinians' opening position, re: their acceptance of Israeli security measures to remain in the Jordan River Valley *and* the specific division of scarce water resources between Israel and the PNA.

### ***C) American Mediator:***

**1. Leadership-** U.S. President William Jefferson Clinton had taken an active role in the Israeli-Palestinian peace process ever since he stepped into office in 1992. Early in his presidency, he had led then-prime minister of Israel, Yitzhak Rabin, and Arafat to the historic handshake and signing of the DOP on the White House lawn in the summer of 1993. In 2000, he continued to enjoy a healthy relationship with both Arafat and the current Israeli Prime Minister Barak. A charismatic leader, gifted statesman, and intelligent, informed politician, Clinton was anxious to capture a legacy in the Middle East before leaving office in January 2001. At CD2, he was at the center of the American mediation team, led by U.S. envoy to the Middle East, Dennis Ross. Other members included Secretary of State Madeline Albright, Ambassador to Israel Martin Indyk, National Security Advisor Sandy Berger, U.S. State Department Advisor to Middle East Negotiations Aaron Miller, and Senior Middle East official at the National Security Council, Bruce Riedel.<sup>140</sup>

The U.S. served in several different (often contradictory) roles in the negotiations: as principal broker of the peace deal, as guardian of the peace process, as Israel's strategic ally, and as Israel's cultural and political partner.<sup>141</sup> Serving in the former two capacities, the president was expected to shepherd Barak in presenting a final deal that Arafat could not refuse. However, his latter two roles likely prevented him from facilitating the negotiation process in a just, let alone objective, manner.

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<sup>139</sup> In his article, David Weinstein challenged this vague statement, positing that the Palestinians displayed no willingness to compromise on this issue and certainly never displayed an inclination to arrive at an agreement that would even remotely safeguard the most limited Israeli security interests. Furthermore, Weinstein provided quotes on the refugee question from Abu Ala' and Nabil Sha'ath, both of whom said that the starting point of all discussion was the absolute and sacred right of return: "[The Israelis] must recognize the refugees' right to return, and when this recognition takes place, there will be many details to discuss, such as the mechanism and programs for [the implementation of the Return], and then the refugees' right to receive compensations . . ." (Abu Ala' quoted in Weinstein, *supra* note 42, at 4).

<sup>140</sup> Matz, *supra* note 101, at 113

<sup>141</sup> Slater, *supra* note 31, at 15.

**2. Interests-** Aside from Clinton’s personal aspiration to secure the legacy of having finally “sealed a deal” between the ever-embittered Israelis and Palestinians, the American nation, itself, had several reasons for being involved as a mediator in CD2. First, it was in America’s national and economic security interests to establish stability in the region—a region upon which the U.S. relies heavily for the country’s oil supply. Second, the U.S. could enhance its reputation in northwest Asia and around the world if it succeeded in forging a just and sustainable peace agreement between Israelis and Palestinians. Finally, the U.S. had a long-standing allegiance with Israel—fueled by the Jewish congressional lobby—and, therefore, a vested interest and unique leverage in helping to forge an agreement.

**3. Position-** Contrary to popular belief, the U.S./ Clinton “package” is not synonymous with the Israeli one. Unlike Barak, Clinton *was* a subscriber to the philosophy of incrementalism; thus, the U.S./ Clinton package was not a comprehensive deal. Clinton only sought to find agreement on two issues at CD2—borders and Jerusalem—rather than to also settle the aforementioned issues of security, refugees, water, etc.

- 1) **Borders-** The U.S. proposed that the Palestinians would have sovereignty over 91 % of the West Bank and all of Gaza Strip. Israel would then annex 9 % of the West Bank territories and, in exchange, Palestine would have sovereignty over parts of pre-1967 Israel that would be equivalent to 1 % of the West Bank (but with no precise indication of which specific land areas would be transferred).<sup>142</sup>
- 2) **Jerusalem-** Nine outer neighborhoods of Arab East Jerusalem would be granted to the Palestinians and 7 to 8 neighborhoods would be granted to Israelis. Israel would retain *official* sovereignty over the inner neighborhoods of Arab East Jerusalem; however, Palestinians would have planning, zoning, and governance responsibility in these areas. Additionally, Palestinians would have sovereignty over the Christian and Muslim quarters in the Old City (including the Church of the Holy Sepulcher, built on the site where Christians believe Jesus was crucified). Meanwhile, the Israelis would have sovereignty over the Jewish and Armenian quarters. Palestinians would have control—but not sovereignty—over the above-ground portion of the Temple Mount, which includes the Dome of the Rock and the al-Aqsa mosque.<sup>143</sup> This arrangement would

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<sup>142</sup> Ross, *supra* note 29.

<sup>143</sup> The Temple Mount is known to Muslims as the Haram al-Sharif. It is the third holiest site in Islam, after the holy cities of Mecca and Medina in Saudi Arabia.

ensure unfettered access to this area for all Palestinians.<sup>144</sup> The Israelis would retain formal sovereignty over the Temple Mount, but would only control the Western Wall (often called the Wailing Wall).<sup>145</sup> Finally, Jerusalem would be established as a shared capital for both the PNA and Israel. [Note: Subsequent to CD2's collapse, the Americans modified their CD2 package further in their more comprehensive December 23, 2000 proposal. This package was presented to Israelis and Palestinians in Washington, D.C. during the December 21-23, 2000 meeting that was convened. See **Appendix 3** for details on this later proposal.]

#### **Section 4- Issues-At-Stake, ZOPAs, and BATNAs**

Ultimately, Barak and Arafat had the final word on which issues would be negotiated at CD2. Thus, in addition to the U.S.-suggested issues of borders and Jerusalem, the issues of security and refugees were also placed on the table. On many of these issues, there were obvious gaps in the initial positions of each party (as mentioned in section 3). For example, Palestinians would accept no less than 95 % of the West Bank, whereas the Israelis were at first only prepared to give between 82-92 % of these territories to the Palestinians. Second, Palestinians wanted full sovereignty over pre-1967 borders, while Israelis wanted to grant sovereignty over *modified* pre-1967 borders. Third, Palestinians wanted *full sovereignty* over the Temple Mount, but Israelis were only prepared to grant them practical, *administrative control* of this area. Fourth, Palestinians wanted Israel to take responsibility for the refugee problem and to allow more (than only the few thousand that Israel said it would) to return to the PNA. And fifth, Palestinians and Israelis faced intra-party and inter-party contention over the issue of Jerusalem.

It is difficult to determine the ZOPA between the Israelis and Palestinians given that the Israelis were continuously changing their offer and the Palestinians were reluctant to articulate a counter-offer in the first place. That said, despite these aforementioned gaps in the Israeli and Palestinian initial positions, there was overlap on *declared* settlement and Jerusalem issues—mainly because these issues were so vaguely articulated by both parties. Both parties, at different points, were willing to consider the removal of Israeli settlements from the West Bank territories, as well as the establishment of joint sovereignty over

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<sup>144</sup> Lee Hockstader, 'Unique Opportunity' Lost at Camp David; Arafat Unmoved by Jerusalem Concessions, at 7 (July 29, 2000).

<sup>145</sup> In Judaism, the Western Wall is believed to be the closest place to the heavens on this earth, as well as the site of the ancient Jewish temple.

Jerusalem (allowing it to become the shared capital of Israel and the PNA). As the negotiations continued, however, the ZOPA continuously expanded and contracted as each party strived to narrow the ZOPA in their favor. This posed a dilemma, for such competing desires and domestic pressures prevented Israeli and Palestinian negotiating teams from demonstrating the creativity and cooperation necessary to reach an agreement. Additionally, though negotiators of both parties were reported to have made far-reaching concessions at various points in CD2, media leakage resulted in pressure from their domestic constituencies that, in turn, allegedly caused them to retract on prior compromises.<sup>146</sup>

To understand the extent to which each party was willing to compromise on the contentious issues mentioned above, it is necessary to consider their alternatives to a negotiated settlement (i.e. BATNA). Israel appeared to have two options. First, it could have maintained the status-quo of tight control of Palestinian borders, anticipating and responding to the next potential wave of Palestinian violence. Second, it could have waged an all-out war on the Palestinians given that it was and is militarily stronger. However, in light of Israel's security interests and concern for its international reputation, neither of these options seemed more appealing than reaching an agreement at CD2.

The Palestinians seemed to have one main BATNA, though relatively more desirable than were those of Israel. They could continue the struggle against Israel—a struggle that had international legitimacy vis-à-vis the UNSC Resolutions 242, 338, and 194. Together, these resolutions called for an end to the Israeli occupation by withdrawing to pre-1967 borders, an outlawing of Israeli settlement expansion, and a just resolution to the refugee problem.<sup>147</sup> In actuality, the Palestinians considered the international legality of their cause to be their most valuable “currency;” thus, they did not want to trade it in for

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<sup>146</sup> For example, it is reported that Barak pulled back on his proposal to have shared sovereignty over Jerusalem. (*Analysis, U.S. optimism alone could not create CD2* (July 26, 2000), at 3).

<sup>147</sup> **UNSC Resolutions 242 and 338** were detailed in chapter 2. **UNSC Resolution 194** states that an agreement on the sharing of water resources must be reached between Israelis and their neighbors on the basis of the principle that each nation has the right to control its natural resources. (Enderlin, *supra* note 18, at 133).

guarantees granted them by Israel—particularly based on its precedent of failure to follow-through on agreements made.<sup>148</sup>

Though Arafat and the Palestinians appeared to have only one main desirable BATNA, they did have a choice of carrying out their struggle in two different ways—nonviolently or violently.<sup>149</sup> Many have argued that to expect the Palestinians to engage in the former would be unlikely given that they harbor such a deep sense of grievance and injustice.<sup>150</sup> This “camp” further argues that, even if a Gandhi, Tutu, or Mandela-type figure were to arise among the Palestinian people— a Palestinian nonviolent struggle would be unlikely to succeed given that they lack economic power/ leverage. Thus, they would be unable to adopt a strategy similar to black Americans during the Civil Rights’ Movement in the U.S, who refused to ride the bus until they were no longer required to sit in the back of the bus or give up their seat to whites. By crippling this business, they ultimately won their cause.

However, the opposing “camp” (in favor of the ultimate effectiveness of a Palestinian nonviolent struggle) contests that the moral cause of this struggle would counter-balance the lack of economic power, particularly because of the international legitimacy that the Palestinians would likely garner through such nonviolent strategic resistance.

Either way, the Palestinians’ BATNA seemed preferable for them when compared to a potentially vague and unenforceable CD2 agreement. It is likely that Arafat and the Palestinians felt more comfortable negotiating under the umbrella of the widely-recognized and largely-supported international resolutions rather than under the “protection” of Israel and America’s uncertain proposals. After all, even if an agreement was reached at the CD2 summit, there was no good track record in terms of accountability to, and implementation of, such agreements considering the OPP discussed in chapter 2.

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<sup>148</sup> The strength and impact of these international resolutions are evident, albeit erratically, in the region. For example, in compliance with the UNSC resolutions that applied to Lebanon, Israel unilaterally withdrew its forces from that country in the months preceding CD2.

<sup>149</sup> Slater, *supra* note 31, at 23.

<sup>150</sup> Miller, *supra* note 2.

## Section 5- Setting and Structure of CD2

It is important to preface the description of negotiation processes at CD2 by reiterating the difficulty in determining what actually transpired given that all communications were conducted verbally and confidentially. That said, Enderlin's unpublished TV and book manuscript, *Shattered Dreams*, contain interviews with key CD2 participants from all sides, which lend a unique insight into the failed summit.<sup>151</sup>

CD2 took place over the course of fifteen days, from July 11-25, in the private, secluded, natural setting of Camp David, Maryland. Though many remarked on the closeness between the Israeli and Palestinian negotiating teams, there was an extreme coldness between Barak and Arafat, themselves.<sup>152</sup> Situated in separate cabins, the two leaders were described to have exhibited a “bunker mentality;” each unable to easily face the other. In fact, aside from the two joint sessions convened by Clinton, they reportedly had only one face-to-face interaction over tea during the two weeks of living on the same grounds.<sup>153</sup>

Because of this distrust and discomfort between negotiating partners at CD2, ideas and proposals were conveyed orally, via the U.S. mediator. In this way, parties were not bound to position statements or compromises made.<sup>154</sup> Additionally, Barak believed that this would prevent Arafat from “pocketing” an Israeli *written* offer in order to use as a starting-point for future negotiation. Given the prominent role of the U.S. as mediator, supposedly the Palestinians perceived each CD2 proposal as an American (not an Israeli) concept that was being put forward to them to either accept or reject. It is reported that the Palestinians commonly rejected these proposals without offering counter-proposals of their own—either because they believed them to be lacking in detail or simply to be part of the whole “U.S.-Israel conspiracy” noted in section 1.<sup>155</sup>

During the CD2 negotiations, there was domestic hostility toward the summit in both Israel and Palestine. This situation caused the negotiators to continually “look over their shoulders,” fearful of adopting positions that might undermine their support back

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<sup>151</sup> Enderlin, *supra* notes 18; Setton, Ben Mayor, Dor-Ner, *supra* note 58.

<sup>152</sup> Ross, *supra* note 29.

<sup>153</sup> Sontag, *supra* note 27, at 29.

<sup>154</sup> Note that this tactic sharply contrasts to the SNT strategy utilized in CD1. This strategy was discussed in chapter 1 and will be elaborated on in chapter 4.

home. Further, internal schisms and a lack of cohesion— particularly on the Palestinian side— made communication and negotiations between Israeli and Palestinian negotiators even more difficult.<sup>156</sup> Finally (and ironically), Arafat, ‘the Autocrat,’ was alleged to have had far less freedom than his counterpart, Barak, ‘the Democrat,’ in negotiating terms for a viable agreement.<sup>157</sup> In other words, given the Palestinian public’s hostility towards the CD2 process, Arafat was “unable to treat Camp David as a decisive, let alone a historic, gathering,” for fear of the consequences that he might ultimately have to face back home (i.e. he reportedly mentioned the possibility of his own assassination were he to deliver a mediocre agreement to his constituents).<sup>158</sup>

**A) Israeli Strategy:** Ultimately, Barak’s strategy was predicated on the belief that Israel ought not to reveal its final positions, not even to the U.S., unless the endgame was in sight.<sup>159</sup> In terms of actual negotiating tactics, Barak decided to open with less concessions to the Palestinians than he ultimately was willing to make.<sup>160</sup> Also, contrary to the incremental approach of the OPP, Barak adopted an “all-or-nothing” approach wherein there was no “third way,” but rather a road leading either to an agreement or to a confrontation.<sup>161</sup> Thus, Barak intended for the negotiations to be conducted within the framework of a comprehensive package that, once agreed to by the Palestinians, the Israeli public would be asked to accept in a national referendum.<sup>162</sup> Presumably, this comprehensive package would consist of Palestinian concessions that made the agreement

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<sup>155</sup> The extent to which the Palestinians would have been able to present a counter-proposal with such detail, however, is doubtful. (Malley and Agha, *supra* note 27, at 12).

<sup>156</sup> This exemplified the failure of Israelis and Palestinians to meet **criterion 1**.

<sup>157</sup> Malley and Agha, *supra* note 27, at 15.

<sup>158</sup> *Ibid*, at 15.

<sup>159</sup> *Ibid*, at 11.

<sup>160</sup> Barak supposed that such a strategy would be beneficial to his standing among Palestinians because, by opening with a “low offer” and then conceding more, he predicted that they would consequently perceive him to be a reasonable and generous compromiser. However, his strategy backfired on several levels. First, everything that Barak saw as evidence that he was serious (i.e. elimination of interim agreements in the pursuit of a comprehensive deal), the Palestinians considered to be evidence that he was not. Additionally, in presenting early positions as bottom lines and then shifting them, the Israelis reportedly provoked the Palestinians’ mistrust rather than their admiration at being such generous compromisers. Finally, this strategy reportedly just whetted the Palestinians’ appetite for receiving a better package, for in the end, it appeared to them as if there really were no Israeli “bottom lines”—and, consequently, they could keep pressing the Israelis to concede more (Malley and Agha, *supra* note 27, at 6).

<sup>161</sup> In fact, it is reported that Barak repeatedly urged the U.S. to avoid mentioning any fall-back options in the event that the summit failed (i.e. a second or third summit to follow up on CD2) (Malley and Agha, *supra* note 27, at 5).

more palatable to the Israeli public and, thus, acceptance of the agreement more likely. Interestingly, this “all-or-nothing” tactic that Barak expected would improve Israel’s BATNA simultaneously (and likely unintentionally) would have served to worsen the PNA’s BATNA, as will be elaborated in the proceeding section.

Barak insisted on this single, high-level summit because, in his opinion, it would contain all of the necessary ingredients in order to reach success. It had the drama of a stark, all-or-nothing proposal, the prospect that Arafat might lose U.S. support, the exposure of the ineffectiveness of Palestinian “salami-tactics” (i.e. pocketing Israeli concessions that become the starting point at the next round) and, ultimately, the capacity to unveil to the Israeli people all of the achievements and concessions of the deal at once (thereby avoiding the type of domestic constituency constraints that was experienced by Israeli leaders over the course of the OPP).<sup>163</sup>

***B) Palestinian Strategy:*** Because Arafat and the Palestinians entered CD2 reluctantly, believing that the timing was not right to “strike a deal,” they did not have a defined negotiation strategy. Arafat reportedly believed that Israel would neither sign a fair agreement nor implement what it signed; thus, the Palestinians acted with more caution than creativity.<sup>164</sup> As a result, the Palestinians acted quite passively during the negotiations—awaiting and responding to Israeli proposals (which they ultimately deemed to be too ambiguous) rather than initiating proposals of their own.

Despite Arafat’s lack of initiative or active negotiation tactics and strategy, he was guided by a strong belief that the interim obligations of the OPP should not be eliminated. He believed interim issues and permanent issues to be inextricably intertwined. This is because he saw that unfulfilled interim obligations (i.e. from the DOP) cast doubt on Israel’s intent to deliver on future commitments. Furthermore, these unfulfilled obligations directly affected the balance of power that would consequently prevail once permanent status was reached. Ultimately, Arafat resented Barak’s “take-it-or-leave-it” approach because it applied extreme pressure on the Palestinians. As he saw it, if the Palestinians chose to leave this new Israeli proposition, it meant not only forsaking this comprehensive

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<sup>162</sup> Malley and Agha, *supra* note 27, at 4.

<sup>163</sup> *Ibid.*, at 11.

<sup>164</sup> *Ibid.*, at 14.

“package,” but also forsaking gains that they had theoretically made from the previous OPP interim agreements with Israelis that had not yet been implemented.<sup>165</sup> In other words, Arafat believed himself to be in an “all-or-nothing” position wherein a failed summit would result in Israel’s decision to forsake the peace process with Palestinians entirely, meaning that it would no longer follow-through on any of its *past* promises to the Palestinians.

**C) U.S. Mediation Strategy:** Clinton was known to have occupied a central, active role at CD2—which perhaps was more a consequence of Clinton’s personality than of American strategic diplomacy. In fact, Clinton was such a strong director of CD2 that all activity allegedly stopped when presidential duties called him off to Japan for the annual summit meeting of the Group of Eight major industrialized nations.

Before the negotiations, the U.S. had agreed with Arafat on the need for action on the OPP interim issues; however, in the end, Clinton did not push this position to Israelis. Thus, though the U.S. originally favored an incremental approach to handling the Israeli-Palestinian conflict, ultimately they began to subscribe to the Israeli position that sought to reach a comprehensive deal. The U.S. came to believe that the Palestinian anger with the failed OPP would evaporate in the face of an appealing final deal.<sup>166</sup> However, this attitude failed to fully take into account the powerful effects and implications of the OPP’s collapse on the Israeli-Palestinian relationship and on their ability to trust one another. In the end, the U.S. officials used their leverage with the Israelis in order to push them to “soften” their positions on the issues, thereby hoping to increase the ZOPA between Israelis and Palestinians. Specifically, Clinton was reported to have employed the “Lyndon B. Johnson style of persuasion” in his separate dealings with both Arafat and Barak.<sup>167</sup>

One major flaw in America’s mediating strategy is that its own investment in the CD2 negotiation process led it to indulge each side’s whims and destructive behavior for the sake of salvaging the summit.<sup>168</sup> The Israelis and Palestinians knew this and, thus,

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<sup>165</sup> These interim agreements included further withdrawal of Israeli forces, annexation of various Jerusalem villages to the West Bank, the release of Palestinian prisoners, and the end to settlement expansion.

<sup>166</sup> *Ibid.*, at 9.

<sup>167</sup> This physical “style” of negotiation, which utilizes the power of the human touch, basically consisted of Clinton holding the arms of these leaders and placing his forehead to theirs as he attempted to speak with passion and sincerity. (Perlez and Sciolino, *supra* note 134, at 4).

<sup>168</sup> For example, CD2 participants were divided into small working groups that focused on one of the “core” issues, including Jerusalem, borders, refugees, and security. In response to the parties’ strong and

regularly ignored the U.S. threats and deadlines. Though Clinton succeeded in establishing the contours of a proposal that were acceptable to the Israelis, the Palestinians ultimately believed it to be too vague.<sup>169</sup> In the end, the American strategy—to get a position close to Israel’s genuine bottom line, present it to the Palestinians, get a counterproposal from them, and bring it back to the Israelis—backfired. America started without a real bottom line from the Israelis, continued without any counterproposals from Arafat, and ultimately ended without a deal.<sup>170</sup>

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repeated requests, the U.S. finally agreed to draft working documents that would serve as the basis of discussions for, e.g., the border working group. However, the American mediation team’s decision to do this work for the parties made the parties, themselves, less eager to take responsibility for the difficult task of drafting initial position statements and then working from there to expand the ZPA. Ross stated at an interview with Charles Enderlin during CD2: “Both parties know that we’re going to present a working document, and this isn’t making them eager to reveal their margin of flexibility . . .” (Enderlin, *supra* note 18, at 199).

<sup>169</sup> This proposal included: 1) a sizable transfer of West Bank territories to the Palestinians, 2) evacuation of various settlements, 3) land swaps between Israel and the PNA, 4) a small resettlement plan for Palestinian refugees, and 5) the granting of sovereignty over some Jerusalem neighborhoods to the Palestinians (Ross, *supra* note 29).

<sup>170</sup> Malley and Agha, *supra* note 27, at 18.

## CHAPTER 4

### *ANALYSIS*

On July 25, 2000, from the White House Rose Garden— not far from the site of the historic signing of the DOP seven years earlier— Clinton told the world that CD2 had failed. Along with that, Clinton, too, had failed in his commitment to leave behind a legacy of establishing peace in the Middle East . . . or at least peace in Israel and Palestine. Because no agreement was reached during those two weeks in Camp David and the second Palestinian *intifada* erupted several months later, CD2 is most commonly viewed as a failure.

This chapter will present an in-depth analysis of the failures of CD2, guided by the PF’s seven criteria. Recall that an argument was made in chapter 2 that the CD2 failure is more accurately understood within the larger trajectory of failing relations between Israelis and Palestinians through the choked OPP. That said, this chapter will focus specifically on the problems inherent to the CD2 summit. I believe that there are four types of problems that resulted from the failed summit, which are covered in full detail in the following four sections of this chapter. **Section 1** discusses the problems with the summit timing, pointing to various reasons why the Israeli-Palestinian conflict was ultimately not “ripe” for negotiation. **Section 2** covers the cultural differences between the parties, examining how this affected the summit negotiations and its outcome. **Section 3** focuses on mistakes made by the U.S. in its role as mediator. Finally, **section 4** describes the failure to include consequences or means of enforcement in the event that an agreement *had* been reached at CD2 (be they internally- or externally-imposed).

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To preface the forthcoming discussion, three points are worth mentioning. First, in these analyses, every effort was made to first determine CD2’s flaws irrespective of the PF. In this way, the hope was to avoid simply going down the check-list of seven criteria,

looking for evidence of how each criterion was not met in this summit when (or if) this really was not the case. Instead, the aforementioned four categories of problems emerged by using this “fresh eye” and, ultimately, I believe that they reflect the major flaws of the summit. That said, an analysis of each of these flaws revealed that they relate to— and can be better understood by using— the PF. Thus, the relevance of the PF was confirmed

Following from this, the second point is that the forthcoming discussion of CD2's failures will include reference to *when* and *how* each of the criterion were not met. By keeping count of the number of times to which each criterion was *not* adhered within each of the four major categorical problems of CD2, I will ultimately compile this evidence in a summary table at the end of this chapter. Furthermore, in chapter 5, I will use this information in order to derive analyses with regard to the PF and my initial hypothesis that these seven criteria were listed in order of their importance.

Finally, the third point pertains to the fact that this chapter does not only present analyses of CD2's failures, but also when appropriate, it offers some prescriptions or recommendations for how the summit could have been better handled. This is because the recommendation section of chapter 5 will primarily focus on overall recommendations for the future handling of the Israeli-Palestinian conflict based on the overall analyses of this study. Therefore, these specific ideas and recommendations for CD2 would have been lost were they not included alongside the analyses of this chapter. Thus, this chapter will not only be an analysis in the pure sense of the word, but will also include some prescriptions— when it is appropriate and to varying degrees of specificity— for how CD2 could have been better handled.<sup>171</sup>

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A final note before delving into discussion of CD2's failures. One would not be telling the full story without acknowledging that lessons were learned and that progress was made through this summit. I will simply mention two very basic lessons learned from the negotiation collapse and its aftermath. First, through the summit, it became clear that both parties must be ready and willing to find a solution to the conflict if an enduring agreement

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<sup>171</sup> Note that the author believes that the bulk of CD2's flaws stemmed from an insufficient pre-negotiation phase (**criterion 1**). It follows that many of the recommendations focus on how this portion of the summit

will ever be reached. In other words, a solution cannot be imposed from the outside if either party is not invested (as is argued was the case with the Palestinians at CD2). Furthermore, a unilateral outcome is also not likely to produce stability. For instance, an Israeli decision for unilateral separation, or a Palestinian decision for the unilateral declaration of a Palestinian state, will likely fail to bring stability to the region. Second, it became quite evident that Israelis cannot extinguish the Palestinians' aspirations, nor can the Palestinians diminish the Israelis' undying resolve, for a stable and secure state in the region. Thus, in the end, CD2 ultimately revealed to the world that some type of agreement and situation of co-existence will inevitably have to be reached because neither side is going anywhere soon.

In terms of basic progress made, by the end of CD2, progress was made in terms of shattering taboos. For example, the possibilities of dividing Jerusalem and establishing shared sovereignty over the city were explored. Second, post-CD2, the fact that the Israeli and Palestinian negotiating teams continued to meet in secret sessions in Taba, Egypt (a.k.a. the "Taba talks") further demonstrated that CD2 was not all for naught. This is especially true if one considers that this two-week long summit was only one part of a larger process of secret talks that began in Stockholm in May 2000 and continue to carry on to this day.

Thus, though it is clear that CD2— as well as the talks immediately prior and subsequent to it— allowed for some small advances between the Israeli and Palestinian negotiating teams, I will now return to the focus of this chapter: its failures.

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## **Section 1- Issues of Timing (Criteria 1, 2, 3, 4, and 6)**

The concept of "ripeness"— a term described by Zartman and Haass, as well as covered in chapter 1— is used to describe a conflict's readiness to be resolved vis-à-vis negotiation or mediation attempts. An analysis of the data reveals that the CD2 negotiations occurred prematurely, i.e. at a point when the conflict was not "ripe." The entire negotiation process would likely have been very different if the Palestinian request for more time had been respected rather than simply prioritizing the American and Israeli

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could have been strengthened. Therefore, the author humbly asks for the reader's patience in the case of

time-line above it. By pushing CD2 to occur at a time when the Palestinians were not ready or invested, the U.S. and the Israeli mediating and negotiating teams had failed to establish a condition wherein the Palestinians could feel as if they were being treated and perceived as legitimate negotiating parties who were equally deserving of respect (**criterion 6**). Further, rushing the timing of the summit reportedly caused Arafat to enter the negotiation process never even prepared to “strike a deal,” for he was suspicious that the summit was being convened in the interest of rescuing Barak and Clinton’s respective political careers and legacies rather than being convened in the interest of peace.<sup>172</sup>

But what about the use and abuse of “delaying tactics” by negotiating partners who, for the sake of their peoples, must begin negotiations with urgency? Here it should be mentioned that, even *if* one believed that Arafat was unnecessarily delaying the talks, the U.S. and Israel still could have handled the situation more skillfully and sensitively. For example, the summit may still have occurred in late July 2000, but only after the Americans and Israelis had clearly and explicitly developed and conveyed an empathy and understanding for the Palestinians’ concerns and constraints during the pre-negotiation phase and discussions (**criterion 1**).<sup>173</sup> Ideally, such a phase would not only have occurred (to completion) at the unofficial, Track 2 level vis-à-vis the Stockholm track, but also at the official Track 1 level to some modified (likely shortened) extent.<sup>174</sup> In doing so, again it would probably have fostered a perception among the Palestinians of being treated as equal and legitimate partners (**criterion 6**). This, in turn, could have then affected their consequent negotiation behavior so as to allow a greater probability of having a successful outcome to the summit at CD2.

Ultimately, this major flaw of premature timing of CD2 prevented the development of four “ingredients” that I believe are important to a negotiation’s success. First, the

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repetitiveness of earlier OPP critiques made with regard to **criterion 1**.

<sup>172</sup> Interestingly, even if an agreement had been reached that met Palestinian interests, the delivery of this agreement was still likely doomed because the *process*, itself, was coercive, thus ignoring a basic Palestinian need for voice and respect.

<sup>173</sup> This idea will be further elaborated in this section.

<sup>174</sup> In other words, it would have been impossible to expect and facilitate participation by Barak, Arafat, and/ or the top, official Palestinian and Israeli negotiating teams in a pre-negotiation phase that was comprised of a series of fifteen separate meetings (as occurred through the Stockholm track). However, even just several meetings (in Israel, Palestine, or the U.S.) wherein parties were able to communicate their needs, concerns, interests, and positions—as well as be part of the structuring of the negotiation process itself—would have likely built some degree of interpersonal relations, if not trust. This would have likely enabled more smooth, open, trustful CD2 summit talks.

premature *timing* meant that there was no chance to establish a relationship of trust between the participants—especially between Arafat and Barak, themselves (**critterion 1**). Second, the premature timing did not allow for a development of *internal cohesion* within each party over their respective side’s strategy, entry position, and objectives at the start of CD2 (**critterion 1**).<sup>175</sup> Third and related to this lack of internal cohesion, the premature timing did not allow for a communication to the other side of their own party’s interests, priorities and ultimate objectives in order to establish a *clear, cohesive, consistent understanding of each party’s interests and end-goals* (**critterion 2**). Fourth and finally, as earlier mentioned, the premature timing meant that neither Palestinian nor Israeli leadership had engaged in sufficient *preparation of their respective publics* in order to promote their belief in the benefits that a CD2 agreement would likely reap (**critterion 3**). Overlooking the importance of creating such public “buy in” proved to be a fatal flaw— particularly in light of the context within which CD2 was taking place (i.e. the failed OPP implementation and Israel’s “Syria first” strategy that had been pursued by Barak).

Thus, in this section, I will elaborate below on each of these four aforementioned “missing ingredients” that stemmed from the first major categorical problem of CD2’s premature timing.

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**1. No Relationship or Trust (Criterion 1)-** CD2’s premature timing was evident by the fact that inter-party trust that had been developed at Stockholm did not transfer to inter-party trust at the level of leadership. In fact, at the time of the negotiations, because Barak and Arafat did not trust one another, each one’s actions and behavior became immediately suspect to the other. Without any good chemistry or understanding between the main negotiating partners, Barak ultimately felt that Israeli generosity was being rebuffed, while Arafat felt that the Palestinians were never being offered a state that could be viable. Mutual and deeply entrenched suspicion led to a vicious catch-22 wherein Barak wanted to

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<sup>175</sup> Note that “entry position” is being defined as a set of prioritized interests on “core issues” that each party understands is likely to change throughout the negotiation process, but nevertheless will facilitate the *initiation* of such talks.

conceal his final proposals (the “endgame”) until Arafat had moved, and Arafat would not move until he could see the “endgame”.<sup>176</sup>

To elaborate on this difference in negotiating strategies, Israel wanted to “build the base of a pyramid first,” meaning that it wanted to receive specific agreements and Palestinian concessions on such issues as the refugees, settlements, and internal security. From there, it would then be ready to discuss the bigger principle of creating a Palestinian state at the end.<sup>177</sup> Meanwhile, the Palestinians wanted to “start from the top of the pyramid and work downwards,” meaning that they wanted to first get an agreement from the Israelis on the establishment of a Palestinian state—including agreements to territorial concessions, an acceptance of the principle of Israeli withdrawal, and an acknowledgment of a Palestinian state that included East Jerusalem as its capital. Then, from there, the Palestinians would be ready to negotiate on the “nitty-gritty,” such as refugees, settlements, and internal security.<sup>178</sup>

Some have argued that such differences in negotiating style were cultural. This argument seems plausible given earlier descriptions regarding Palestinians’ disdain for highly legalistic (a.k.a. “nitty-gritty”) approaches to negotiation, as well as given their historical yearning for recognized legitimacy and a right to national- and self-determination, in principle.<sup>179</sup> Regardless of the reason, this mismatch in the parties’ approaches to the summit ultimately led to very distributive, rather than integrative, negotiating tactics.<sup>180</sup>

Thus, Arafat and Barak’s lack of faith in one another shaded all subsequent negotiations and seemed to eliminate any ZOPA that might have otherwise existed between the two parties, objectively speaking. Arafat believed that Barak’s “all-or-nothing” approach to a comprehensive deal precluded confidence-building measures from occurring incrementally over time between the Palestinians and Israelis. Though this philosophy of incrementalism bore only bitter fruit in the OPP, Arafat allegedly did not think that this

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<sup>176</sup> Malley and Agha, *supra* note 27, at 16.

<sup>177</sup> Charles Enderlin. Telephone Interview on November 27, 2002.

<sup>178</sup> *Ibid.* Further, recall that this is a reflection of a major cultural difference between Arabs and Israelis that was earlier described: namely, Israeli focus on a highly “legalistic” approach to negotiations, versus a Palestinian aversion to such a detailed approach in its preference for dealing at the general level of principles.

<sup>179</sup> Refer back to chapter 2 for further explanations.

meant that the strategy should, therefore, be forsaken. In fact, Palestinian negotiators have reported Arafat's maintained belief that a stable, comprehensive agreement must be *predicated* on successfully implemented and enforced incremental agreements that have built trust between the two negotiating partners.<sup>181</sup>

In contrast, Barak was allegedly convinced that, because Arafat was rejecting an Israeli comprehensive deal, he merely wanted to continue extracting concessions incrementally from the Israelis to no end. Moreover, Barak allegedly believed that the Palestinian rejection of his take-it-or-leave-it approach was proof that “the Palestinians [were] still clinging to the ‘phased theory’ as a practical plan”—that is, the strategy of destroying Israel in stages.<sup>182</sup> This paranoia mirrored Arafat's perception, earlier mentioned, that Barak's insistence on an “all-or-nothing” deal was a power-play to destroy gains that had been made by the Palestinians through the OPP.

Thus, the personal lack of faith existing between Barak and Arafat led to an overriding fear that appeared to plague the Palestinian and Israeli negotiating teams, as a whole. There was evidence that the Palestinians were terrified of what they might be forced to agree to, thus providing a possible explanation for their inability to engage in counter-proposals or problem-solving that may have led to an agreement. However, by failing to initiate any counter-proposals, the Palestinians never gave the U.S. the necessary leverage to test Barak's stated willingness to “go the extra mile.”<sup>183</sup>

There was substantial evidence that the Israelis, too, were extremely fearful of being taken advantage of by the Palestinians, perhaps explaining why they were reluctant to put anything down in writing over the course of the negotiation process. In fact, no written maps were even exchanged over the course of negotiations over territorial swapping and

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<sup>180</sup> Fisher and Ury, *supra* note 27.

<sup>181</sup> Matz, *supra* note 101, at 103.

<sup>182</sup> Interview with Ari Shavit, *Ha'aretz* (February 2, 2001) in Slater, *supra* note 31, at 12.

<sup>183</sup> This behavior on the part of the Palestinians reportedly frustrated Clinton to no end. Clinton is said to have yelled at Arafat: “Don't simply say to the Israelis that their map is no good. Give me something better!” (Malley and Agha, *supra* note 27, at 14). Interestingly, Ben-Ami described a similar frustration with the Palestinians: “Never, in the negotiations between us and the Palestinians, was there a Palestinian counterproposal. There never was and there never will be. So the Israeli negotiator always finds himself in a dilemma: Either I get up and walk out because these guys aren't ready to put forward proposals of their own, or I make another concession. In the end, even the most moderate negotiator reaches a point where he understands that there is no end to it” (Weinstein, *supra* note 42, at 3). Note, however, that the Palestinians ultimately did devise a map—though rarely reported—that was similar to the one that the Americans put forth in their December 23 “package.” This will be later discussed.

borders! This meant that even though the Israelis had actually entered CD2 with more willingness to make a deal, they often failed to clearly and effectively communicate their offers to the Palestinians. Furthermore, in the absence of any exchanged, written documents, maps, or other materials, the Israeli team reportedly had no realistic understanding of what the Palestinians would likely accept— and, therefore, roughly what they needed to offer. With such a vague notion of their negotiating partner’s interests and/or position, it is no wonder that the Israelis were not comfortable making anything more than oral commitments at CD2. One major and likely reason for this lack of inter-party understanding was the premature abortion of the Stockholm talks.

It should be mentioned that the aforementioned “single negotiating text” (SNT) strategy used at CD1 largely avoided these “guessing games,” delaying tactics, and fears of commitment.<sup>184</sup> CD1’s SNT was able to avoid ambiguities and change the negotiation dynamic, not only because it was written, but also because of the process it required. It was not a process of committing and de-committing because it never asked for a commitment until the end. Rather, it allowed for free interplay between negotiators and decision-makers, creative innovation, constructive ambiguity, and an ability to later change their positions. CD1 bypassed the information-divulging dilemma of “how much should I offer?” by not even having that conversation in the first place. Instead, it focused the conversation around interests, thus moving parties away from a competitive, power-based dynamic— a dynamic that the CD2 mediation process unfortunately fed into.<sup>185</sup>

In addition, the miscommunications, misperceptions, and lack of trust at the summit would have likely diminished vis-à-vis stronger, more developed pre-negotiation and preparation phases (**criterion 1**). To elaborate, this might have meant finding a way to complete the highly productive and successful Stockholm track rather than simply prematurely aborting it once it had been leaked to the press. Second, it may have also meant that the participants of these back channel talks be made explicitly responsible for communicating, in full, to their respective leaders all progress made and challenges

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<sup>184</sup> Recall footnote 34 for a rich explanation of the SNT strategy. (Fisher, *supra* note 26, at 107).

<sup>185</sup> It should be noted, as well, that another distinguishing feature of CD1 as compared to CD2 is that Jimmy Carter of the U.S., Menachem Begin of Israel, and Anwar Sadat of Egypt were all men of deep faith. Though it is difficult to make an assessment on exactly how this affected or contributed to the negotiating dynamic at CD1, it is also hard to contest that this shared quality among all three leaders did not have some intangible influence on the outcome of the summit.

confronted during such talks.<sup>186</sup> Third, as earlier footnoted in this chapter, it may have meant that the U.S. mediation team structure a pre-negotiation phase (i.e. a condensed version of the Stockholm “track”) for the Track 1 official Palestinian and Israeli leaders—especially for Arafat and Barak. Had these two leaders been able to meet prior to the start of this high-stake, high-profile, high-pressure summit, perhaps even a small understanding of (and comfort with) the other would have been reached, thereby likely affecting the nature of their relations throughout CD2.

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**2. No Internal Cohesion (Criterion 1)-** Along with the aforementioned lack of relationship and trust between Israeli and Palestinian negotiating teams, there was also substantial politicking and fragmentation *within* these parties, further demonstrating CD2’s premature timing. For example, at the beginning of July 2000, several prominent Palestinian religious figures—with the backing of various radical constituencies in the larger Arab world—signed the Covenant of Jerusalem (*Ahad al-Quds*), establishing that “Jerusalem is Arab, Palestinian, Islamic, and Christian, the eternal capital of the State of Palestine.”<sup>187</sup> Furthermore, this covenant warned that no Palestinian right in Jerusalem was to be ceded to Israel. It is reported that several senior Palestinian negotiators backed this covenant, thereby demonstrating an obvious divergence from other members of the negotiating team (i.e. Erekat) who supported the idea of a shared sovereignty over Jerusalem. Such disparities, to which the Israelis were surely privy, undermined Israeli trust in the idea that their Palestinian counterparts were negotiating in good faith, let alone could deliver on these promises or concessions. Yet if the negotiators from each side had known one another better, perhaps they would have been able to avoid the trap of seeing “the enemy” side as monolithic, thus differentiating those with decision-making power from the radicals who may simply be monopolizing the media or public arena at the time.

Similar internal divisions reportedly existed within the Israeli negotiating team as well. Though official reports of Israel’s entry position included its motion to share sovereignty over Jerusalem and to extend administrative control over the Temple Mount to

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<sup>186</sup> Note that the need for improved communication channels between Track 1 and Track 2 negotiators is also implicitly addressed in **critterion 3**.

<sup>187</sup> Matz, *supra* note 101, at 111.

the Palestinians, various Israeli negotiators were allegedly against this position (reflecting the sentiment of the religious and ultra-orthodox publics). In fact, following statements made in a July 2000 meeting of the Chief Rabbinical Council (the highest forum in the state-sponsored rabbinate), members of Barak's negotiating team were reported to be in favor of changing the status quo of the Temple Mount so as to grant Israelis more freedom and access to this area.<sup>188</sup> In the meantime, Israeli negotiators were allegedly offering complete sovereignty over the Temple Mount to the Palestinians at CD2, again casting doubt on the authenticity of these offers, as well as the Israeli ability to bring them to fruition.<sup>189</sup>

In sum, the lack of a consistently clear and cohesive Palestinian or Israeli entry position and strategy further served to negatively impact the CD2 summit (**criterion 1**).<sup>190</sup> Strategies on how internal cohesion could have been better developed within each of the two parties is discussed in the proceeding sub-section (# 3) below.

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**3. No Clear, Cohesive, Consistent Understanding of Interests and End-Goals (Criteria 1 and 2)**- Given the lack of sufficient preparation for the summit, as well as the lack of internal cohesion, it is not surprising that each side began CD2 without a clear and cohesive sense of their own prioritized interests and ideal end-goals (**criterion 2**). Likely, this third flaw reflected in the overarching problem of CD2's premature timing was largely due to the aforementioned, insufficient pre-negotiation phase that failed to encourage and develop real inter-party trust (**criterion 1**). However, this lack of a consistent understanding among each party can also be attributed to the lack of intra-party communication channels. For example, Arafat was allegedly ignorant of what had been discussed and the precise progress that had been made between negotiators in the Stockholm track.<sup>191</sup>

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<sup>188</sup> At this July meeting, in fact, the Chief Rabbinical Council decided to form a committee "to examine all the ways of realizing our rights and our sovereignty on the Temple Mount," including the right to erect a synagogue and the grant of permission for Jews to enter defined places within the area (*Ha'aretz*, August 8, 2000).

<sup>189</sup> Enderlin, *supra* note 18, at 213.

<sup>190</sup> Recall the definition of "entry position" provided in footnote 175.

<sup>191</sup> This was earlier described in a chapter 3 footnote.

A better developed pre-negotiation phase may have been comprised of intra-party preparatory meetings so as to ameliorate the problems of weak internal communication channels that plagued each side. In other words, in a more “safe” setting of *intra-party* meetings, each party could have openly communicated and brainstormed their side’s main interests (**critterion 1**). From these discussions, a prioritized list of interests, entry positions, and intended end-goals may have been agreed upon— at least on some issues— despite deep divergence of opinion. In the end, this would have likely led each side to be prepared to articulate more clear, concrete entry positions to the other side at the start of CD2, as well as to proceed through the summit with a more clear vision of the end-goals towards which they were working.<sup>192</sup>

Further, the pre-negotiation phase could have also consisted of *inter-party* meetings as a means of conveying this official entry position (or aspects of it) to the other side. In so doing, this would have likely diminished the number of “guessing games” and misinterpreted tactics that plagued the CD2 summit. Note, however, that the author is not suggesting that each party reveal their “bottom lines” to the other, but rather their interests and priorities only.<sup>193</sup>

For example, take the cases of the aforementioned extreme positions on the Temple Mount or Jerusalem being conveyed by religious constituents of Israel and Palestine. These public statements wildly diverged from the positions being communicated by the Israeli and Palestinian negotiators, themselves, at CD2. This made each negotiating party

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<sup>192</sup> As earlier footnoted, scholars such as Sebenius warn against this common belief to focus on building intra-party cohesion before marked progress on inter-party relations. This is because the latter can sometimes facilitate the former. The author certainly believes this recommendation to be valid, particularly in cases such as the Israeli-Palestinian conflict wherein both sides are fraught with extremist groups that would do anything to sabotage the peace process (i.e. suicide bombings and other terrorist acts of violence).

However, in the intra-party meetings that the author suggests should have occurred in the pre-negotiation phase of CD2, the author is not implying that these discussions should have included and attempted to build consistent understanding and visions with extremist groups, such as the Palestinians’ Hamas group or the Israelis’ Shas party. In fact, the author believes that to build this type of internal cohesion is an impossibility at present.

But, it is also her belief that CD2 could have benefited from intra-party discussions among the moderates in power—those who were involved members of their respective negotiating teams at the Track 1 or Track 2 levels and represented various constituents. This would have likely facilitated the development of intra-party cohesion, as well as a consistent understanding of the party’s interests and goals.

<sup>193</sup> It is unrealistic to expect any party to be willing to reveal its bottom line to the other party prior to negotiations. That said, the mediator should solicit a more clear understanding of these bottom lines prior to mediating any summit (i.e. in the pre-negotiation phase). As Miller described, “one of our major failings

more wary of the other— and rightfully so. However, the U.S. could have worked to prevent such a scenario from developing had it guided pre-negotiation meetings wherein inter-party trust was cultivated. Following from this, perhaps both negotiating teams could have been led to articulated to the other side their own side’s official entry position, set of interests, and end-goals (**critterion 1**). In this exchange, each side could have made clear to the other that such entry positions were authentic, existing irregardless of extreme positions declared by members of their respective domestic constituencies. Such an exchange, alone, would have likely quelled some of the heightened distrust and speculation experienced by both parties throughout the CD2 negotiations.

In addition, with this heightened clarity and cohesion regarding their own and the other side’s interests, entry positions, and ideal end-goals, each party may likely have been better positioned to address their respective publics regarding the progress and outcome of negotiations. In other words, if understanding had been reached within and between both sides (regarding the purpose and structure of the summit), this would have enabled each party to demonstrate to its people how and why certain deals, demands, and concessions may have been made. Ultimately, each party’s leadership could have strived to portray how this process was leading them towards a positive-sum, rather than a zero-sum, solution wherein concessions were being made, but were far outweighed by the benefits gained.

Having formulated and communicated a clearly and consistently understood set of prioritized interests and end-goals, the parties would have paved the way for the fourth and most difficult task— preparation of publics.

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**4. Inadequate Preparation of Publics (Criteria 3 and 4)-** Given that CD2 could only have succeeded with constituency support for the difficult concessions necessary to be made, it was again premature timing that the Israelis and Palestinians failed to adequately prepare their publics for these negotiations. This blunder caused the purpose and environment of the negotiation processes to become too disconnected from the reality “on the ground.” This was particularly true in light of the fact that the failed implementation of the OPP interim agreements had left a bitter taste in the mouths of the average Palestinians

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as mediator was that we did not fully test the Israeli and Palestinian bottom lines prior to negotiations,

and Israelis. Given this context, it is no wonder that the Palestinian and Israeli people were skeptical of any further peace process initiatives. Therefore, in the absence of sufficient attention by the governments (i.e. Track 1) to the difficult task of building shared constituency support and faith for CD2 at the grassroots level, the timing was not “ripe” for a summit to reap success. Again, this work could have ideally occurred within the summit’s pre-negotiation and preparation phases (**criterion 1**).

Albeit a tough task given this political context, Israeli and Palestinian leaders and negotiators could have begun to successfully condition their peoples through the media or through public appearances and speeches.<sup>194</sup> Rather than perceiving public involvement as something to be feared and avoided within the peace process, Israeli and Palestinian leaders needed to recognize that any agreement that might have been reached at CD2 would have been rendered useless and defunct had they failed to secure public “buy in”— i.e. vis-à-vis a national referendum or through basic public addresses that used simple, clear, and honest language to communicate the CD2 deal to their publics in a convincing way. However, the leaders would have had to be clear that they were preparing their respective publics for the *right* future reality! Note again that the leaders would have been more prepared to successfully make such public addresses had they been engaged in more substantial pre-negotiation and preparation phases that allowed for the development of consistently understood sets of interests, entry positions, and goals within and between both parties (**criteria 1 and 2**).

Even more importantly, however, the Israeli and Palestinian negotiating teams would have enhanced their chances of creating public “buy in” if they had better supported or even initiated joint Israeli-Palestinian government and grassroots initiatives that created legitimacy for their peace-building efforts (**criterion 3**). Recall that examples of such endeavors in Israel and Palestine, both real and recommended, are described in detail throughout chapter 2, as well as listed in **Appendix 1**. However, it is noteworthy that such initiatives were primarily conducted through the initiative and efforts of civil society alone. In fact, not only did the Palestinian and Israeli governments fail to give sufficient funding and public support to these ventures, but according to many, they also failed to take them

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making it more difficult for us to facilitate the summit process successfully” (Miller, *supra* note 2).

seriously.<sup>195</sup> [Note that examples of successful, bipartisan civil society work can also be seen in other post-conflict situations, such as civil society initiatives in South Africa that run through the surprising partnership of the African National Congress (ANC) and the National Party.]

Though such actions would have likely isolated various extremist factions within both Israeli and Palestinian domestic constituencies, thereby risking the occurrence of violent extremism, it appears that the risk would have been well worth the political opportunity. In other words, it is impossible for any politician to ever please everyone; thus, his task must be to strategically balance the commitment to his own vision/ platform *with* a keen understanding of which constituencies' support he can (and must) afford to forego. Ultimately, through the aforementioned preparing of publics, Arafat and Barak could have likely dissipated the publics' unrealistic expectations of CD2.

Of course, these leaders could not have ignored this aforementioned likelihood of reactionary instability or violence following the delivery of any difficult peace agreements or compromises reached at CD2 (**criterion 4**). Both Arafat and Barak could have honestly strived to “de-link” such issues from the peace process for their respective constituencies. In other words, they could have stressed that the likely extremism and casualties that might result from making such creative decisions towards peace was, in no way, “casualties of peace,” but rather “casualties of continuing war and violence.”<sup>196</sup> Again, Israeli and Palestinian leaders could have further stressed that the long-term benefits from peace with their neighbors would ultimately far exceed the short-term costs.<sup>197</sup> Ultimately, Barak and Arafat could have garnered public support and courage by stressing that such potential external shocks or extremist violence (committed by the minority) could not stop the majority (a.k.a. moderate Israeli and Palestinian peoples) from forging forward on this path towards a just, sustainable peace.

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<sup>194</sup> Though some may argue that this would have left the leaders and the peace process vulnerable to attack by extremists, it appears that they were equally, if not more, vulnerable to such attacks by failing to engage further in some of these actions to prepare the publics.

<sup>195</sup> Miller, *supra* note 2.

<sup>196</sup> Baskin, *supra* note 60.

<sup>197</sup> Note that this would have been an easier case to make if these Track 1 leaders could have pointed to government-sponsored, bipartisan infrastructure-, institution-, or civil society-building mechanisms as evidence that peaceful and profitable co-existence with their neighbors was, indeed, possible.

If Barak and Arafat had successfully communicated these points to their people, their respective CD2 negotiating teams would probably have been less constrained by their own domestic constituencies. This is because public expectations would likely have been more grounded in reality.<sup>198</sup> In preparing the publics to realistically expect instability and extremist violence (**criteria 4**), however, the leaders would have also had to be mindful that they not undermine the peoples' simultaneous ability to have a belief in the possibility that a negotiated CD2 agreement could ultimately deliver security to the region (**criteria 3**). In other words, the publics needed to be prepared for the likelihood of external shocks—and they should have known that their respective leaders had a plan for dealing with such occurrences—while concurrently being able to envision the ultimate viability of the agreement reached.

In the end, all of these points implicitly emphasize the importance of working simultaneously at the Track 1 (top-down), as well as Track 2 and grassroots (bottom-up), levels in mediation and negotiation processes if any peace is to endure (**criteria 3**).<sup>199</sup>

## **Section 2- Differences of Culture (Criteria 1, 5, and 6)**

There were two different ways in which varying cultures existed among Israelis and Palestinians in the negotiating dynamic—both of which led to misunderstanding and miscommunication throughout the negotiation process. First, in the traditional sense of the word “culture,” the negotiating partners came from an Israeli (more Western) versus an Arab (less Western) culture. Second, in the unconventional sense of the word “culture,” Israelis came from the “culture of power” (high-status), whereas the Palestinians embodied the “culture of powerlessness” (low-status). These differences in ethnicity and power thus led to different—and often misunderstood—negotiation behavior between the two parties.

The differential power of each party affected the way in which the negotiations were framed largely as Israel “giving” to the Palestinians. Thus, in effect, the language

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<sup>198</sup> Instead, for instance, it is said that Barak virtually ensured the Israeli public's rejection of his CD2 package (and, ultimately, of him as their leader) because he presented it as an “unavoidable catastrophe, a bitter pill that he, himself, could barely swallow” rather than as a serious compromise that would form the necessary foundation for a secure peace with Palestinians (as put by Gideon Levy, *Ha'aretz*, December 31, 2000).

used by negotiators and mediators, alike, connoted that the low-status Palestinians should be grateful for any “gift” received from the high-status Israeli party. This notion that Israel was “offering” land, being “generous,” or “making concessions” was a double blow to the Palestinians in that it not only reinforced the power asymmetry in the relationship, but it also was an affirmation of Israel’s rights without a comparable recognition of the rights of the Palestinians.<sup>200</sup> Thus, in effect, CD2 failed to establish a shared sense of equal legitimacy and credibility for both negotiating partners (**criteria 6**). And the U.S. did nothing to dissipate this dynamic that developed between the two parties.

Additionally, Israeli and Arab cultures had completely different ways of expression and dialogue. Israelis tended to be more blunt and direct, while the Palestinians tended to speak more circuitously—invoking metaphor or symbolism in their dialogue with others. The result of this dialogical difference was that the Palestinians believed the Israelis to be rude, while the Israelis believed that the Palestinians could not be trusted. In fact, Barak is on record as stating what he believed to be a fundamental cultural-linguistic difference (and, thus, negotiation impasse) in his dealings with the Palestinians: “It is because of the character of the Arab discourse that their culture does not contain the concept of compromise. Compromise is apparently a Western concept of settling disputes.”<sup>201</sup> Likely, this view of his Arab negotiating counter-parts may have been derived from the Palestinians’ reluctance to put forward counter-proposals or to be specific in their reasons for refusal of Israeli proposals. Perhaps such actions signified to Barak that the Palestinians were too opaque, or always hiding something, and therefore not capable of acting in the spirit of compromise.

In terms of differential negotiation tactics, the “culture of power” at CD2 likely influenced the negotiating strategies employed by the individual Israeli and Palestinian participants wherein the former defined the sequence and substance of the negotiations, while the latter simply responded.<sup>202</sup> To elaborate, the Israelis occupied the active role of making an offer that the Palestinians would then passively accept or refuse. Thus, it was a

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<sup>199</sup> The effective nature of this multi-track diplomacy is confirmed in much of the mediation literature (including sources cited in footnote 28, such as Lederach).

<sup>200</sup> Malley and Agha, *supra* note 27, at 13.

<sup>201</sup> Shavit Interview in Slater, *supra* note 182, at 12.

<sup>202</sup> It is likely that such negotiating behavior was especially facilitated by the fact that CD2’s pre-negotiation phase had been insufficient.

recipe for failure that the Palestinians were ultimately positioned in such a way that (no matter how good the deal) they would feel as if they were “giving in” to the Israelis.<sup>203</sup> Again, that this dynamic was created at CD2 is a testament to the mediator’s inability to establish a shared sense of legitimacy and credibility in the negotiating parties (**criterion 6**).<sup>204</sup> Had the Palestinians felt this sense of equal positioning at the summit, perhaps CD2 would have transpired differently.

Lastly, differences in culture surfaced from the U.S.- Palestinian relationship dynamics. The Clinton mediation team was not necessarily sensitive to the Arab's notion of hierarchy and respect according to age. Clinton’s team spent considerable time attempting to woo two younger-generation Palestinian officials whom they thought were more moderate politically: Muhammad Rashid (Arafat’s Kurdish economic advisor) and Muhammad Dahlan (the Gaza preventive security chief). This reportedly angered veteran Palestinian negotiators, who felt that the Americans were seeking to divide and weaken them.<sup>205</sup> Given the deeply ingrained notion of respect for one’s elders in Arab society, the Palestinian senior negotiators were greatly offended by what they perceived to be extreme disrespect on the part of the Americans.

Thus, the U.S. mediation team failed in its attempt to successfully befriend the Palestinians, as well as to communicate the Israeli entry position, interests, and goals to these rookie Palestinian members who, in turn, could have communicated this position to their seniors.<sup>206</sup> This could mainly be attributed to the U.S. mediation team’s failure to ever establish a real relationship of trust and understanding with the Palestinian negotiating team. This specifically prevented the Palestinians from viewing themselves as equal negotiating partners to Israel in CD2 (**criterion 6**), as well as from viewing the U.S. as a credible, trusted mediator to them (**criterion 5**). Returning to earlier analyses, more well developed pre-negotiation and preparation phases could have facilitated a better

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<sup>203</sup> Interestingly, despite this power asymmetry, Peter Stroh argues that “. . . balance exists precisely because neither side has succeeded in eliminating the claims of the other to the land predominantly inhabited by the other. This suggests that Palestinian strengths in terms of determination, persistence, armed resistance, and verbal incitement have compensated adequately for what it lacks in other resources” (Peter Stroh. *Anatomy of a Conflict: A Systems View of Israeli-Palestinian Relations*. (Unpublished), at 36.

<sup>204</sup> Rashid Khalidi. Professor at University of Chicago and former advisor to the Palestinian negotiating team through the OPP. *Telephone Interview* on November 8, 2002.

<sup>205</sup> Sontag, *supra* note 27, at 30.

<sup>206</sup> Matz, *supra* note 101, at 55.

understanding of the different cultural norms, language, and behaviors embodied by the negotiating parties, as well as by the U.S. mediation team (**criterion 1**).

### **Section 3- U.S. As Mediator (Criteria 1, 5, and 6)**

The U.S. has been the traditional large-state mediator in the Israeli-Palestinian conflict because of its leverage and ability to extend both “carrots” and “sticks” in the negotiation process. First, both Israel and Palestine depend on America for significant military, economic, and technical assistance. Israel receives roughly \$3 billion a year in the form of U.S. aid, as well as access to the best U.S. military technology. Palestinians also receive significant U.S. aid for development projects and refugee programs. Thus, the ability to increase or withdraw such aid from both parties continues to grant the U.S. considerable leverage in this seemingly intractable conflict.<sup>207</sup> Second, despite the U.S. alliance with Israel, the U.S. remains the preferred mediator for the Palestinians. This is because the Palestinians recognize not only America’s unique leverage in the situation, but also its concerns for securing and maintaining allegiances with the larger Arab world (on whom it depends for oil). Thus, the Palestinians realize that it remains important for the U.S. to ensure that Palestinian rights are represented in any agreement that might be made between them and the Israelis.

Having established why the U.S. was the appropriate choice as mediator for CD2, it is now important to analyze flaws in its mediation strategy that likely contributed to CD2’s failure. First, the U.S. created a mediator-dominated process that had serious implications on the negotiating dynamics. This was evident in the differential progress made at CD2 versus Taba (wherein the U.S., and in fact *no* mediator, was present) or CD1 (earlier mentioned). Because all substantial CD2 communications were done through Clinton, it apparently created an atmosphere wherein the U.S. was situated as a third player that also had to be pleased.

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<sup>207</sup> Despite the ability of the U.S. to impose such consequences on Israel or Palestine, they have largely refrained from adopting this type of monitoring or enforcement role—both throughout the OPP and CD2. It is the author’s belief that the parties might have approached these negotiations and the implementation phase with more seriousness if they had had to face serious consequences for non-adherence (such as upgraded or downgraded relations with the U.S., economic assistance, etc.).

Second, coinciding with explanations and analyses of the premature timing of CD2, the U.S. was too hasty and aggressive in initiating these negotiations in July 2000 rather than respecting the Palestinians' concerns and request for a several month delay in order to allow them to prepare both their negotiating team and their publics. Instead, Clinton prioritized the impending end of his presidential term, as well as his legacy concern, above the Palestinians' concern and time-line. Additionally, as Israel's strategic ally and advocate of the peace process, Clinton had a vested interest in helping Barak (whose popularity was faltering in the polls) to regain domestic constituency support. Thus, Clinton ultimately failed to meet **criterion 5**— mediator neutrality— because his haste to push CD2 to occur in July 2000 diminished the perception that he was working in the best interest of both sides. In so doing, as earlier described, he also prevented the Palestinians from perceiving themselves to be equal partners in this process (**criterion 6**).

Third, the U.S. mediation team reportedly acted too erratically—not being firm enough at some points, then losing its temper at other points in the negotiation process. Even worse, the U.S. team also bowed to Israeli pressure at various points in the negotiations, thus sending a message to the Palestinians that the Israelis controlled the agenda. One example of this behavior is when the U.S. announced that it would submit its own “non-paper,” describing an arrangement for Jerusalem that would allow for shared sovereignty.<sup>208</sup> Given that Barak wanted the American document to explicitly stipulate that “Jerusalem will be an open city, undivided, placed under Israeli sovereignty,” he adamantly opposed the U.S. motion to submit this “non-paper.” As a result, the U.S. rescinded.<sup>209</sup>

Another example of the U.S. failure to be firm throughout CD2 was evident with regard to its lack of response to Barak and Arafat when they failed to comply with certain pre-negotiation commitments that they had made (i.e. handing over three West Bank villages to Palestinian control, or Palestinian collection of illegal weapons).<sup>210</sup> Additionally, during the negotiation process, Arafat and Barak continuously retracted on

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<sup>208</sup> See chapter 3 for an in-depth description of the American position on Jerusalem.

<sup>209</sup> Eighteen months later, Dennis Ross admitted this error, stating: “We made a mistake in withdrawing our ‘non-paper.’ We’d defined a strategy for this summit, but when we ran into opposition from one party, we backed off. Our idea, from the beginning, was to turn the differences [between the parties’ positions] into variables. Then the negotiations would proceed within the limits of these variables. Barak was against this method, and the president [Clinton] didn’t want to put pressure on him.” (Enderlin, *supra* note 18, at 207 - 8).

<sup>210</sup> Ross, *supra* note 29.

certain compromises made. It is during such instances that firm and fair pressure from the U.S. mediating was needed but was sorely lacking (**criterion 5**).

Fourth, many analysts have argued that the U.S. was too sympathetic to Barak's domestic constraints without exhibiting an equal recognition or appreciation for those faced by Arafat. As a fellow democracy, the U.S. understood that Barak must be highly responsive to the views of his internal constituency— especially those of right-wing, religious, and settler populations. This reportedly resulted in an exaggerated appreciation of Israel's substantive moves without being sensitive to the domestic constraints similarly faced by Arafat. In other words, given Arafat's position as an autocratic ruler, it appeared that the U.S. mediation team believed that Arafat, *personally*, needed to be persuaded through incentives and threats. However, they never considered this "Autocrat's" stubbornness or intransigence to be the result of domestic constraints; thus, the U.S. lacked empathy for Arafat's predicament in any of the decision-making processes of CD2.<sup>211</sup>

Clearly, this U.S. assumption was not congruent with reality—especially given the importance that Jerusalem holds, not only for Palestinians, but also for Arabs worldwide. Thus, if Arafat was perceived by Arabs to have given away Jerusalem, it is likely that he would not have been able to "sell the deal," nor to contain the opposition.<sup>212</sup> In the end, this lack of appreciation for domestic constraints and international pressures faced by the Palestinians led to U.S. bias in their mediation—a bias that certainly did not go unnoticed by the Palestinians (**criterion 5**).<sup>213</sup> Furthermore, it contributed to the situation wherein the parties—particularly the Palestinians— did not perceive that they were being treated as equal, legitimate negotiating partners at CD2 (**criterion 6**).

A fifth flaw of Clinton and the U.S. mediation team (and an extension of their lack of neutrality) was their handling of the media once the negotiations failed. Post-CD2, Clinton broke his pre-negotiation promise to Arafat that— no matter the outcome— he

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<sup>211</sup> Incidentally, Israel shared this misconception of the power and ability that Arafat had to take actions against anti-peace forces in Palestine. In fact, Prime Minister Rabin coined the famous phrase, "*bli bagatz u'bli btzelem*" (translated as "without the Supreme Court and without Betzelem"), meaning that Arafat could arrest, detain, and even execute anyone without any real due process of law. (Baskin, *supra* note 60, at 8).

<sup>212</sup> Shibley Telhami. *The Fallacy of Camp David Revisionism (Robert Malley and Deborah Sontag's Accounts of Camp David)*, at 7 (2001).

<sup>213</sup> Clinton is reported to have lost his temper and to have pointed blame numerous times on the Palestinians throughout CD2. (See footnote 183).

would not hold anyone at fault.<sup>214</sup> Ultimately, Clinton blamed Arafat for the failed negotiation in not-so-subtle terms (**criterion 5**).<sup>215</sup> This action not only had long-term implications for the future relationship and trust between the U.S. and Palestine, but also had some ironic, short-term consequences for the political standing and popularity of the parties involved.

Ironically, in both the Palestinian and Israeli cases, the intended messages were different from the received ones. For example, when Clinton praised Barak for his courage, vision, and spirit of compromise at CD2, Barak subsequently lost favor with the Israeli publics according to the polls. Most likely, this was because such a report caused many Israelis to believe that Barak had been “too soft” or was willing to give up too much to the Palestinians. In contrast, Clinton’s couched condemnation of Arafat (for his inability to demonstrate the same spirit of compromise and courage as Barak) ultimately resulted in a soaring of his ratings in the polls. Essentially, Clinton succeeded in (at least temporarily) emblazoning this aging Palestinian leader as a hero among his people . . . as a proud Palestinian who would never give up on the noble Palestinian dream.

In sum, it appears that the U.S. team lacked sufficient mediation skill. Period. Perhaps the Americans may have better served as mediator at CD2 had they engaged in more substantial preparation (in order to further develop and hone an effective, cohesive mediating strategy). However, given the extent to which their own interests seemed to be overriding the process, it is not even certain that more significant mediator preparation would have rectified the blunders that they exhibited throughout CD2. Thus, the conundrum of a “mediator with muscle” becomes apparent in that it is the only mediator choice that has the leverage to exhibit significant pressure on both parties, yet its own interests may affect its ability to function as a successful and neutral mediator.

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<sup>214</sup> In his June 15, 2000 meeting with Arafat at the White House, Clinton said: “. . . I promise you that under no circumstances will I place the blame for failure on you.” (Enderlin, *supra* note 14, at 177).

<sup>215</sup> In his first public statement following the collapse of CD2, Clinton reported: “Prime Minister Barak showed particular courage, vision, and an understanding of the historical importance of this moment.” He then added, almost as an aside: “Chairman Arafat made it clear that he, too, remains committed to the path of peace” (President Clinton’s *Joint statement from Thurmont, Maryland* on July 25, 2000).

## **Section 4- Establishing Consequences (Criteria 1 and 7)**

A last major flaw in the U.S. mediation strategy was the failure to introduce clear monitoring measures and/ or consequences that could have been imposed in the case that either party did not follow through on potential promises made (**criterion 7**). Based on the OPP precedent, there was an obvious disincentive for either party to believe that any agreement reached would actually be implemented. This context within which the CD2 summit occurred ultimately changed the value that each party placed on the promises made between the two parties. In other words, given this poor precedent of upholding the sanctity of the OPP interim agreements, the negotiating parties and their publics heavily discounted the concessions that were made to them by the other side.

However, given the U.S. leverage to threaten its friendship, economic and/ or technical support and trade to both parties, there was significant opportunity for the mediation team to constructively introduce measures of enforcement to the packages being considered at CD2.<sup>216</sup> Furthermore, in better developed and orchestrated pre-negotiation and preparation phases, the U.S. could have encouraged both parties to think about provisions for action in the case that an agreement was not reached at the summit (**criterion 1**).<sup>217</sup>

Lastly, it should be noted that if such measures or consequences were to be included in a CD2 agreement, it would not have changed the fact that Arafat allegedly believed that the implementation of any CD2 deal would be near impossible given that Clinton (and likely Barak) had hardly any time remaining in their respective leadership terms.<sup>218</sup> The Palestinians reportedly feared that in the case that an agreement was reached, with Clinton and Barak no longer in office, they would be left with principles that were detailed enough so as to supersede international resolutions, yet too fuzzy so as to constitute a final

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<sup>216</sup> Note that the more “ripe” a conflict is for mediation, the greater is the chance that a shared sense of urgency, alone, can create the necessary incentive to adhere to agreements for both parties. Therefore, though not ideal, it is “the next best thing” to suggest that the U.S. should have developed more tangible “carrots” and “sticks” at CD2 in order to have worked to ensure a just and sustainable agreement, as well as its successful implementation.

<sup>217</sup> Note that Enderlin’s interviews and documentation of CD2 participants’ discourse reveal that Arafat and the Palestinians were thinking along these lines. This makes sense given their aforementioned tendency toward the strategy of incrementalism, unlike Barak, who was favoring the comprehensive approach and, thus, was not interested in thinking about scenarios “B” or “C” in the event that an agreement was not reached at the Camp David summit.

<sup>218</sup> Malley and Agha, *supra* note 27, at 18.

agreement in the years to come.<sup>219</sup> Thus, it must also be explicitly mentioned that the U.S. introduction of implementation or monitoring mechanisms to the CD2 proposals would not have been a full-proof way to ensure Palestinian acceptance of the package.

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In conclusion, it appears that the four primary flaws of CD2's structure and processes are clearly related to (and perhaps can be better understood by using) the seven criteria of the PF. To re-iterate, the most notable problems of CD2 were the issues of timing (related to **criteria 1, 2, 3, 4, and 6**), the differences of culture (related to **criteria 1, 5, and 6**), the problems in the U.S. role as mediator (**criteria 1, 5, and 6**), and the lack of established consequences and enforcement mechanisms (**criteria 1 and 7**). In the end, each of these four major weaknesses in the summit demonstrated failed adherence to more than one of the provisional framework's criterion. And ultimately, it was the composite effect of these flaws that served to prevent an agreement from being reached at CD2.

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<sup>219</sup> *Ibid*, at 19. This problem resulting from leadership transition in Israel was earlier discussed in chapter 2.

**Table 1. Summary of PCLF Criteria Not Met in CD2 According to Four Major Categories**

<b>FOUR CATEGORIES FOR ANALYZING CD2 FAILURES</b>	<b>CRITERIA NOT MET</b>						
	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>
TIMING	X	X	X	X		X	
DIFFERENCES OF CULTURE	X				X	X	
U.S. ROLE AS MEDIATOR	X				X	X	
CONSEQUENCES	X						X

## CHAPTER 5

### *PF EVALUATIONS AND RECOMMENDATIONS*

Though the OPP and CD2 summit ultimately failed, marked progress was made through each of these processes. Clearly, these diplomacy efforts have allowed significant lessons to be learned by all stakeholders— and by the Palestinian, Israeli, and American negotiating and mediating teams in particular. This chapter will focus on the lessons learned through the preceding in-depth analysis of CD2 . . . lessons that may guide future peacemaking processes in the Israeli-Palestinian conflict.

The chapter will begin by returning to the PF. **Section 1** will address the validity of the author’s initial hypothesis about the PF’s weighted criteria. **Section 2** will make some overall observations about peacemaking that were derived from the use of the PF in the analysis of CD2. **Section 3** will discuss limitations to the PF, drawing on examples from CD2 in particular. Based on these conclusions, **section 4** will provide a *revised* version of the PF framework, which should be further tested as an effective analytical tool in understanding peacemaking processes. In this way, the PF’s applicability to conflict scenarios outside of Israel and Palestine may be examined. To conclude, **section 5** will provide some final recommendations for future mediation of the Israeli-Palestinian conflict based on the lessons learned through the PF analyses of this study.

#### **Section 1-Evaluating My Hypothesis**

It is useful to re-cap my *process* for evaluating the validity of my hypothesis before presenting my conclusions on the matter and suggestions for future research. First, recall that I synthesized and constructed the PF after extensive study of both *general* negotiation/mediation literature and of *specific* documentation and expert interviews of mediation of the Israeli-Palestinian conflict in particular. I hypothesized that this PF’s seven criteria

were listed in order of their importance towards contributing to a successful peacemaking process. I then sought to test this hypothesis through an analysis of CD2, ultimately weighing the importance of each criterion by counting the number of times that each one was *not* met within each of the four major categorical flaws of this summit [See **Table 1**].

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Using this method of evaluation, my hypothesis was ultimately disproven. In other words, by looking at **Table 1**, one finds that there was no clear and distinct descending difference in the number of times that each of the seven criteria was not met. According to my method of evaluation, I *could* attempt to make the case that my hypothesis was partially proven to be true given that **criterion 1**— the pre-negotiation and preparation phases— was revealed to be the most important because it was marked four times on the table. However, the predictive value of my hypothesis ends there.

**Criterion 6**— the negotiating parties’ mutual sense of legitimacy— was marked three times, which would place it as the second-most important criterion in my PF (rather than placing **criterion 2**, or any of the other earlier **criteria**, above it). Next, **criterion 5**— the value of a neutral mediator— was marked two times on the summary table, revealing that it would be third-most important criterion according to my evaluation method. Finally, **criteria 2, 3, 4, and 7** were each marked only one time— meaning that, according to my analysis, each of these criteria was manifest in only *one* of the four major categorical flaws of CD2 and, thus, no differentiation could be made with regard to their level of importance.

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Because my original hypothesis was disproven through this CD2 case-study analysis based on the frequency with which each of the seven criteria were not met, one might expect that me to suggest a new ordering of importance of these criteria based on what I actually did find through this study (see **Table 1**). Namely, this would lead to the new hypothesis that the valuing of these criteria, in descending order of importance, are as follows: **criterion 1** (strong pre-negotiation and preparation phases), **criterion 6** (the negotiating parties’ mutual sense of legitimacy), **criterion 5** (mediator neutrality), followed by *equally weighted* **criterion 2** (clear Track 1 agenda), **criterion 3** (Track 2 and

preparation of publics), **critterion 4** (preparation for shocks), and **critterion 7** (establishment of consequences and/ or monitoring mechanisms). However, I would not feel comfortable deriving this new hypothesis on the basis of my CD2 analysis for the three reasons discussed below.

First, though I recognize that useful *provisional* conclusions and recommendations can be drawn from the lessons learned through this analysis, I do not believe that my hypothesis can be *definitively* proven or disproven through only one case-study. Rather, following the trend of most academic studies, I would be interested in concluding this study with suggestions for future research that would involve further testing my original hypothesis and/ or the second hypothesis mentioned in chapter 1 (and further detailed in section 4 of this chapter). Such research would be more well-informed and better targeted because analyses would be conducted according to the *revised* framework (RF) of criteria.<sup>220</sup>

A second reason that I am hesitant to conduct future research on the basis of the new ordering of “criteria importance” suggested by my findings is because I am not convinced that my method for evaluating these levels of importance was necessarily the best one. To elaborate, in the case of CD2, even if my hypothesis regarding the order of importance of each criterion was true, this could not have been proven according to my method of evaluation. In fact, at best, only four distinctions could have been made with regard to the seven criteria’s differing levels of importance.

In order to draw a *full* distinction between each of the seven criteria’s importance, a more elaborate evaluation process would be needed. For example, I would have to organize the various categories of CD2’s failure into more narrow, focused components so as to increase the number of categories of failure against which each criterion was being measured. In this way, it would be possible for each criterion to be marked a different number of times on the summary **Table 1** and thus, to potentially prove each one’s distinct and differential valuing.

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<sup>220</sup> As earlier noted, this RF was derived from my analysis of CD2 wherein I was made aware of specific limitations to the PF as it currently exists; thus, it contains several amendments and additions to the PF that I believe strengthens the overall framework (as will be further detailed in sections 3 and 4 of this chapter).

However, this leads to my third point. After engaging in this process of analysis CD2, I am no longer convinced that it is possible or accurate to draw *seven* distinct levels of importance to successful peacemaking for each of the seven criteria of the PF. Rather, given the interconnectedness of these criteria with one another (as revealed through the case-study analysis), perhaps differential weights of importance is better placed in terms of different *aggregate groupings*. For instance, there may be some criteria that are revealed as **most important** (i.e. Group A), some criteria that are revealed as being **of middle importance** (i.e. Group B), and some criteria that are revealed as **least important** (i.e. Group C).

This aforementioned “interconnectedness” of these seven criteria can be explained through the following example. CD2’s establishment of a strong pre-negotiation phase (**criterion 1**), in order to “ripen” conditions for successful mediation, would likely have consisted of several other criteria from the PF in addition to **criterion 1**. First and foremost, this phase would have consisted of mechanisms that sufficiently *opened and strengthened the intra-party and inter-party channels of communication and understanding* (**criterion 1**). However, this pre-negotiation phase would also have ideally consisted of procedures that allowed for and facilitated the development of *consistently understood interests, entry positions, bottom lines, and end goals, as well as a consistently agreed upon negotiation structure, processes, and objectives* (**criterion 2**). And third, this pre-negotiation phase would have been best strengthened by occurring concurrent to *Track 2 negotiations and government-sponsored bipartisan civil society work, or infrastructure- and institution-building*, that ultimately sought to create public “buy in” into the process (**criterion 3**). Therefore, in this case, the interconnectedness of **criteria 1, 2, and 3** is revealed. Following from this point, perhaps these three criteria are all of an *equal level of importance* (in terms of their contribution to a successful peacemaking process) and would best be categorized accordingly (either in the aforementioned Groups A, B, or C).

Thus, these aforementioned three points explain my hesitancy to base future research on the new ordering of criteria importance suggested through my CD2 analysis and findings summarized in **Table 1**.

## Section 2- Key Observations About Peacemaking Derived From PF

This section concentrates on the presentation of three overall observations about peacemaking processes— observations and understanding that may not have otherwise been derived (or articulated as clearly) without the use of the PF. This further confirms the usefulness of the PF as a mode of analysis of peacemaking processes *despite* the fact that my hypothesis— with regard to it being a list of *prioritized* criteria— was disproven.

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First, chapter 4's CD2 analyses continuously revealed that many of the problems inherent to the CD2 summit could have been avoided had there been well-developed pre-negotiation and preparation phases (understood in the broadest sense). Ultimately, relating back to the observation that the PF criteria are all interconnected, strong pre-negotiation and preparation phases (**criterion 1**) would have been inclusive of **criteria 2, 3**, and even **4**. Generally speaking, such preparation occurring prior to Track 1 talks would have “ripened” the timing for negotiation or mediation.<sup>221</sup>

Second, it is interesting to relate these seven criteria to the various *stages* of the peacemaking process within which they should and/ or do occur.<sup>222</sup> Such a discussion is useful in that it serves to demonstrate the fluidity of a mediation process given the degree to which certain criteria “bleed” into more than one stage of a negotiation or mediation. For example, while **criterion 1** (pre-negotiation and preparation phases) and **criterion 2** (setting a clear Track 1 agenda) are clearly most relevant in the *pre-negotiation* phase, **criterion 3** (Track 2 and preparation of publics) and **criterion 4** (preparation for shocks) should ideally continue throughout the *entire* peacemaking process (meaning the pre-negotiation, preparation, negotiation, and implementation phases). Further, it became clear

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<sup>221</sup> That said, a well-developed pre-negotiation phase could never replace the *external* conditions necessary in order to create a situation of “ripeness,” such as civilian, military, political, or economic losses that create a shared sense of urgency (or “mutually hurting stalemate”) among the parties.

<sup>222</sup> The stages of a peacemaking process are described in chapter 1.

that the pre-negotiation phase does not necessarily end before negotiation begins. In other words, the sequencing is not always linear.

Third, through the OPP and CD2 analyses in general, and the scholarly work of Sebenius in particular, my assumption with regard to the optimal sequencing of intra-party and inter-party trust-building measures in the pre-negotiation phase was “de-bunked.” In other words, my original assumption with regard to **criteria 1** (pre-negotiation phase)—though not explicitly stated— was that intra-party trust-building measures should always occur *before* inter-party trust-building activities. However, given the repeated evidence of progress made through inter-party negotiations prior to the attainment of intra-party cohesion, the assumption does not hold.<sup>223</sup> In fact, through analyses of both the OPP and CD2 it became clear that, if parties had waited until *intra-party* cohesion was built before engaging in *inter-party* communications, they would have waited forever. Therefore, it appears that there are some cases where it may be appropriate for parties to instead first pursue inter-party negotiations. Then if such talks lead to any “break through” progress, it may ultimately serve to fortify the building of intra-party cohesion.<sup>224</sup>

### **Section 3- Noteworthy Limitations to the PF**

Although the PF proved to be a useful tool of analysis for my study of CD2, as earlier hinted, there were also limitations to using this framework. Most notably, this framework left out aspects that are important, if not essential, elements to successful negotiation and/ or mediation processes. The proceeding discussion will outline some of these aspects that were either omitted or not made sufficiently explicit in the original PF. Ultimately, the ideas presented in this section will guide the revision of the framework in the proceeding section 4.

The overall format for this discussion will comprise a listing of each of the four criteria to be amended. Each criterion will be followed by an outline of the specific aspects that the author believes should be explicitly included in a new framework, particularly if it

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<sup>223</sup> Examples include the Track 2 channel in Oslo leading to the formulation and signing of the DOP and the Stockholm negotiations that built trust between the two parties prior to the CD2 summit.

<sup>224</sup> Note that this concept was further discussed in chapter 2 and 4.

is to more accurately and comprehensively analyze or predict reasons for successes and failures of mediation processes. Where appropriate, specific CD2 examples will be provided in *italics* in order to further substantiate or clarify an amendment made. Finally, in line with the disproving of my original hypothesis, it should be reiterated that these criteria, and their more explicitly specified components, are not and cannot be presented in order of importance at this time.

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### **Criterion 1: Strong Pre-Negotiation and Preparation Phases**

*[Note that some of the aspects detailed below were included in criterion 2 of the original PF; however, the author believes that they should be made more explicit and should be placed in criterion 1 instead.]*

- a) With regard to the Pre-Negotiation Phase: account for “ripeness” of a Track 1 peacemaking process given political context and the parties’ sense of urgency

-Is the timing of the summit being driven internally or externally?

*\*CD2 was largely driven by Clinton’s sense of urgency (due to the imminent end to his presidential term) rather than by a shared sense of urgency in the negotiating parties (i.e. Arafat did not want to be at the summit).*

-What investment do the summit participants have in the process? Have both sides come to the summit in good faith—i.e. ready to engage in serious negotiations and to make difficult decisions and concessions (if need be)? Do the participants even want to be there in the first place, or are they there physically but not politically?

*\*Given the Palestinian reluctance to have a summit in July 2000, they reportedly entered CD2 more intent on surviving, rather than benefiting from, the negotiations.*

-Is the timing of the summit “ripe” with respect to situation “on the ground”?

*\*As was earlier discussed, the Palestinian public was reportedly not in favor of the CD2 summit. The result was strong domestic constraints felt by the Palestinian negotiators, which prevented them from freely negotiating at the summit (as they were always “looking over their shoulder”). Furthermore, Barak encouraged unrealistic expectations of agreements that the summit might deliver, such as no shared sovereignty over Jerusalem. This constrained the degree to which the Israeli negotiating team could concede to the Palestinians on contentious points throughout the summit in order to reach positive-sum solutions. Overall, there was also a lack of successful joint, bipartisan infra-structure or institution-building*

*mechanisms that could model to the Israeli and Palestinian publics that peace was a realistic possibility.*

- b) With regard to the Preparation Phase: prepare appropriate physical dimensions for the negotiations

-Location: (based on people's identity, how comfortable do they feel in this territory? Based on where people live, are they able to travel to this location?)

*\*For example, one would obviously not have convened the CD2 summit in Tel Aviv, Israel given the negative effect that it would have had on the Palestinian negotiating team's comfort level. That said, it should be mentioned that the Palestinians got lost on their way driving to CD2, which left them sufficiently perturbed as they entered the summit. This, in turn, undoubtedly affected their initial approach to negotiations.<sup>225</sup> In retrospect, this whole incident was actually powerfully symbolic in that it showed that the U.S. and Israel were not even paying attention to whether or not the Palestinians were sufficiently prepared (i.e. with an appropriate map) that would enable them to successfully arrive at the summit.*

- c) With regard to the Preparation Phase: prepare a detailed summit agenda that includes the following:

-Substance: (what are the issues on the agenda?)

-Structure: (process and procedure?)

*\*Recall that the U.S. had made certain strategic decisions at CD2 regarding the summit process with which they later did not follow through in the face of objections from both sides (i.e. Israel's objection to the U.S. presentation of their "non-paper" regarding Jerusalem). Such objections were likely derived from an insufficient pre-negotiation phase wherein this process and structuring of the summit could have been explicitly detailed.*

-Product: (what will the end-goal of this summit be— i.e. overcoming a particular hurdle as an interim step? Reaching a final, comprehensive solution? Furthermore, do the goals of the summit match the decision-making capacities of summit participants? What are the trade-offs of inviting negotiators of *higher official status* (and thus greater decision-making power and ability to ensure implementation, but further bound by their respective government/ leaders) **versus** those with *lower or non-official status* (and thus holding less political sway, but greater freedom to be creative and exploratory in devising solutions to the issues at hand)? Based on

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<sup>225</sup> Enderlin, *supra* note 18, at 189.

these trade-offs, who is included and excluded from the summit, and what are the ramifications of each?)

*\*It appears that one of CD2's flagrant flaws was that it sought a product that only one side (the Israelis) supported: namely, a final, comprehensive solution. Furthermore, given the premature abortion of the Track 2 "Stockholm track," sufficient inter-party trust had not been developed between the lower-profile Abu Ala', Hassan Asfour, Shlomo Ben-Ami, and Gilead Sher (who, in and of themselves did not have final decision-making capacity, yet had considerable sway over their respective leaders). Therefore, it did not appear wise timing to craft a high-profile, Track 1 CD2 summit with Arafat and Barak, themselves, who experienced even less trust for one another and had different notions of what the **product** of this summit should be. Thus, though these leaders had ultimate decision-making power, they had not developed the necessary inter-party or intra-party relationship, trust, or public support to creatively and freely explore options for agreement at Camp David.*

-Time Table: (how long will the entire summit, or negotiation, last? How long will "small group" and "large group" meetings within the summit last? What will be the sequencing of each? Will various intra-summit deadlines be set wherein parties are expected to have made certain progress or to have reached certain agreements by a specified date prior to the final summit deadline?)

*\* At CD2, the American mediation team reportedly failed in moderating an appropriate sequencing of "small group" meetings focused around discreet issues, such as Jerusalem, refugees, border, or security. Deadlines for these "small group" meetings were not clear or firm, nor was appropriate "reporting back" to the entire group of Israeli and Palestinian negotiators conducted in a way that could encouragingly demonstrate to the participants that some (albeit minimal) progress was being made through all of their hard work at the summit. Instead, "small groups" carried on well beyond their designated time. Further, the U.S. allegedly did not effectively de-brief the entire group with regard to any progress made in these smaller working groups. Instead, it is reported that Clinton resorted to yelling and blaming summit participants—and Arafat, in particular—as he became increasingly frustrated with the manner and pace at which it was proceeding. In other words, Clinton allegedly spent more time chastising both teams than he did encouraging them.*

-Plan B: (what happens in the case that the summit does not work? Have appropriate plans been made, i.e., for a summit #2, 3, and 4?)

*\*With regard to CD2, it appears that it was unrealistic for the U.S. to expect that the Israeli-Palestinian conflict (which is so deep-rooted and long-term) could be resolved in the duration of **one summit over thirteen days!** Furthermore, if one of the negotiating sides— i.e. the Palestinians— were entering the summit reluctantly,*

*it seemed even more far-fetched that the mediator was still pushing for a comprehensive agreement rather than focusing comparable attention to viable “Plan Bs” (in the likely event of failure).*

-Participants: (are all of the necessary stakeholders involved?)

*\*In the CD2 preparations, the U.S. did not account for the fact that the other Arab countries would necessarily have to be consulted before any Palestinian leader would feel comfortable making a decision/ agreement on such volatile issues as Jerusalem and the refugees).*

-Support Mechanisms: (what support mechanisms are in place for summit participants/ leaders in order to help them make tough choices? Who can decision-makers consult with, or receive support from, throughout the summit? Is there seclusion or accessibility? With regard to the situation “on the ground,” how much political and public support is there for summit participants to negotiate creatively, firmly, and effectively towards a sustainable agreement?)

*\*The most glaring omission from the CD2 summit was the larger Muslim Arab world. Essentially, by not involving these stakeholders (in some fashion) in the summit, the American and Israeli teams demonstrated a failed recognition of just how tied is Arafat’s decision-making capacity to the support or opposition of this—particularly when he is negotiating over sites as holy to Islam as Haram al-Sharif. Though this does not suggest that representative delegates from Egypt, Jordan, or Saudi Arabia necessarily be physically present at Camp David, it does suggest that the American mediation team, in particular, should have considered ways that Arafat could have been in communication with them prior to and/ or during the summit. Had this occurred, perhaps Arafat would have felt more comfortable exploring and negotiating with the options being put forward by the Israelis at the summit.*

- Documentation and Communication to the Public: (will there be documentation of the summit? If so, who/ how are the documents and transcripts of the summit prepared? How will these documents be used to communicate summit progress or results to the public?)

*\*As earlier mentioned, unlike the SNT strategy used at CD1, there were no written documents to aid in the progression of clear communication between both parties at CD2. Likely, this reluctance to put anything down in writing reflected both parties’ lack of trust for the other. Not only did this prevent clear communication and an assurance that each side consistently understood the terms that the other side was putting forward (particularly when borders were being discussed without the use of maps drawn-to-scale on paper), but it also has impeded the degree to which*

*Palestinians and Israelis can use progress made at this summit in order to move forward towards future negotiation and mediation efforts.*

### **Criterion 2: Establishment of Clear Track 1 Agenda**

***[Note that this main idea was included in the PF criterion 2; however, it did not address the need to ensure that both parties have a consistent understanding of the summit's end-goals, nor did it comment on the mediator's role in this phase.]***

- a) Ensure that the summit structure, process, and end-goals (established in the pre-negotiation phase) are consistently understood and agreed upon by both parties and by the mediator

- Do parties have an agreed upon definition of summit “success” and “failure” based on clearly articulated end-goals?

*\*As earlier noted, it has been widely acknowledged that Arafat did not favor a comprehensive approach to the Israeli-Palestinian conflict until prior interim agreements were implemented. In contrast, Barak was a proponent of a comprehensive approach that would deal with all of the issues in “one fell swoop” and could then be sold to the public for acceptance through a national referendum.*

- b) Mediator establishes credibility with, and understanding of, both parties and their bottom lines

*\*The Palestinians were rightly skeptical of the U.S. neutrality at CD2 from the very beginning given that Arafat had repeatedly requested that Clinton postpone the summit and Clinton had continuously refused. Further, it was earlier described that the U.S. mediation team reportedly had not fully tested, nor even had a basic awareness of, each party's bottom lines on the seven “core” issues to-be-discussed. This lack of preparedness severely impeded on their ability to successfully and credibly mediate the summit.*

### **Criterion 3: Pursuit of Track 2 Diplomacy and Preparation of Publics**

- a) Establish effective communication channels and strategies that link the negotiations and/ or the negotiators and leaders to their respective publics

*\*As earlier mentioned, the Palestinian public was not highly supportive of CD2. Had Arafat, himself, had greater support for the Track 1 process at Camp David, he could have engaged in more active, targeted campaigning (i.e. through public addresses) that appropriately targeted the fears, concerns, and “mood” on the Palestinian streets so as to garner support for the process. For instance, he could*

*have been clear about positive outcomes that he and the Palestinian negotiating team hoped would result from the summit and how/ why the Palestinian public could expect actual implementation of potential agreements reached at CD2 (thus making it distinct from the OPP, which had left a bitter taste in the mouths of both Israeli and Palestinian publics).*

*Note: The importance of **leadership** in ensuring the successful implementation of this criterion, as well as most other criteria in this framework, is revealed. This essential component of diplomacy will be added to the RF as another **criterion** necessary for successful peacemaking processes.*

- b) Establish effective mechanisms that link Track 2 to Track 1 negotiations

*\*Recall Arafat's lack of awareness concerning progress made on the substantive issues vis-à-vis the Stockholm Track. Such lack of communication can have drastically negative results (directly or indirectly), as was witnessed through the collapse of CD2.*

#### **Criterion 4: Preparation for Shocks**

- a) Explicitly address publics with regard to the likelihood of extremist violence so as to diminish unrealistic expectations

*\*Israel/ Palestine is a region where one must learn to "expect the unexpected." Without such psychological preparation, "spoilers" can ruin any progress made in the peace process between Israelis and Palestinians by scaring the public into believing that a just and secure peace is not possible (as witnessed through Rabin's assassination, or Palestinian suicide bombings throughout the OPP).*

- b) Work to prevent and effectively respond to extremist violence through separate and joint security mechanisms

*\*Recall earlier mention of the effectiveness of Palestinian and Israeli police forces working together in order to quell violence and rioting that had broken out at Bir Zeit University in Ramallah in response to the 1996 provocative opening of the Hasmonean Tunnel (near both the Western Wall and al-Aqsa mosque in the Old City). No doubt, if such examples of joint security-building and enforcement occurred with enough frequency and publicity, they would have a powerful effect on the psyche of Israeli and Palestinian publics. These measures would thus serve as a model to the publics that cooperation between the two sides is not only possible, but also would result in enhanced security than would non-cooperation.*

## Section 4- Revising the PF and Suggestions for Future Research

This section will provide a *Revised* Framework (RF) incorporating the changes discussed above. These revisions are minor—essentially serving to make various criteria more explicit or specific. Aside from the addition of one criterion, the framework’s basic structure and main criteria will remain intact. Ultimately, this is a testament to the overall strength of the original PF. That said, this slightly “new and improved” framework should be used to conduct future analyses of mediation cases.

To elaborate on this suggestion for future research, I believe that a strong follow-up study would consist of the following three components. **First**, the analyses should be conducted using the forthcoming *revised framework* (RF) based on the lessons learned from this CD2 study. **Second**, based on the aforementioned recognition of the interconnectedness of these criteria, the hypothesis concerning the level of importance of these criteria should be made in terms of *aggregate groupings*, rather than each criterion holding a distinct valuation. And **third**, in order to make the conclusions with regard to this hypothesis more full-proof, the RF should be used to analyze several failed *and* successful cases of mediation. In fact, through this more extensive and comparative study, it would allow conclusions to be drawn regarding the second hypothesis that I held at the beginning of this study.<sup>226</sup>

Ultimately, through future study, one might arrive at a polished and proven framework of necessary or recommended components to peacemaking processes. Ideally, this framework could serve to guide the planning of future Track 1 mediation processes in a order to enhance their likelihood of meeting with success.

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<sup>226</sup> To remind the reader, this hypothesis was that the likelihood of arriving at a successful mediation process is greatly enhanced if each of the PF’s seven criteria is met; however, that is not to say or assume that successful peacemaking requires that *all* seven criteria necessarily be met, nor that each of the seven criteria need be met *in full*, nor that— even *if* each of these seven criteria were met— a successful peacemaking process would necessarily result.

# **Revised Check-List Framework (RCLF) for Successful Peacemaking**

## ***Criterion 1- Strong Leadership***

Leaders on both sides who are invested in the peacemaking process and act in good faith towards reaching an agreement

- Leaders possess charisma, courage, vision, and an acute understanding of the challenges and opportunities of negotiating with the other side (i.e. a realistic sense of concessions and gains that are likely to be made through negotiations)
- Leaders enjoy the support of their respective publics and maintain an accurate sense of “the mood on the streets”
- Leaders effectively manage the media and public relations, engaging in communication to their respective publics that successfully results in establishing a realistic public understanding and expectations of any upcoming peace processes

## ***Criterion 2- Strong Pre-Negotiation and Preparation Phases***

Emphasize Pre-Negotiation and Preparation Phases in order to enhance a conflict’s “ripeness” for mediation or negotiation

- *Intra-party meetings*: to build trust and establish internal cohesion on party’s interests, end-goals, bottom lines, and negotiating strategy (*during Pre-Negotiation Phase*)
- *Inter-party meetings*: to build trust, overcome psychological barriers or cultural misunderstanding/ misperceptions, and communicate party’s interests and objectives (*during Pre-Negotiation Phase*)
- Establish understanding of short-term costs (sacrifices/ concessions) necessary to receive long-term benefits (i.e. security, political rights, economic gains, stability in the region) (*during Pre-Negotiation Phase*)
- Establish agreements on negotiation sequence, timing, and substance based on the conflict’s “ripeness” (*during Preparation Phase*)
- Establish location, participants, substance, structure, product, time-table, linkages, support mechanisms, “Plan B,” and methods of documentation and communication to publics (*during Preparation Phase*)

## ***Criterion 3- Establishment of Consistent Understanding of Track 1 Agenda***

Ensure that Track 1 Summit structure, process, and goals is *consistently* understood and agreed upon by both parties and by the mediator

- Mediator establishes credibility with both parties through this exchange process

#### ***Criterion 4- Pursuit of Track 2 Diplomacy and Preparation of Publics***

Establish concurrent Track 2 inter-party negotiations & preparation of publics (i.e. through institution-, infrastructure- and nation-building mechanism vis-à-vis media, education, grassroots-level initiatives, interfaith encounters, coordinated security efforts)

- Address and seek to mitigate internal, domestic constraints as tough decisions must be made
- Aim to dissolve the disconnect between the leaders and the peoples' concerns, ideas, and expectations
- Establish realistic expectations, an understanding, trust, and involvement in the peace process, as well as a sense of safety/ security within civil society
- Establish effective channels and strategies to link Track 1 negotiations (and/or negotiators & leaders) to their respective publics
- Establish effective mechanisms that link Track 2 to Track 1 negotiations

#### ***Criterion 5- Preparation for Shocks***

Prepare for internal and external shocks

- Explicitly address publics with regard to the likelihood of extremist violence so as to diminish unrealistic expectations and the ability of these acts to sabotage the peace process
- Facilitate moderates from both sides to meet with one another so that the extremists from each side do not come to typify 'the Other' for the parties themselves or for the larger world
- Expect and be ready for unstable leaderships and leadership transitions
- Work to prevent and effectively respond to extremist violence through separate and joint security mechanisms

#### ***Criterion 6- Mediator Neutrality and Competence***

Attempted and perceived neutrality of mediator and competence in summitry management

- Mediator establishes relationship of trust with each side
- Mediator genuinely works in the best interest of both parties
- Mediator manages summit effectively by ensuring that agreed upon agenda and procedures are followed

#### ***Criterion 7- Establishment of Mutual Sense of Legitimacy Among Negotiating Parties***

Attempted and perceived legitimacy and credibility of negotiating parties

- Each party believes that the other is signing agreements in good faith
- Each party believes that the other will likely deliver on their promises

(a.k.a. agreements will be implemented)

### **Criterion 8- Establishment of Consequences and/ or Monitoring Mechanisms**

Establish solid monitoring and mechanisms to aid in implementation phase

- Establish provisions or guidelines for revision processes of agreements made in the event that the implementation phase does not go as planned
- Establish externally-imposed consequences (i.e. a transparent system of incentives/ disincentives; outside guarantors) for non-adherence or missed deadlines
- Establish internally-imposed consequences vis-à-vis a fully developed legal and political framework (i.e. Constitution, verification regimes)

### **Section 5- Recommendations**

To conclude from the lessons learned through the extensive OPP, CD2, and PF analyses, the author will now attempt to make six general recommendations for future Track 1 diplomacy in the Israeli-Palestinian conflict. Today, January 2003, one is arguably working with tougher ingredients than those of CD2— after all, Ariel Sharon is now prime minister and a twenty-seven-month-old *intifada* is still rumbling. Given this reality, it seems unlikely that any talks in the immediate future can be predicated on the condition of a cease-fire. Though a cessation of violence would be an ideal backdrop to any negotiation (especially as a means of re-building the public’s trust and confidence in the process), it is unlikely that this will be attainable in the near future. Yet too many lives are being lost for the Israelis and Palestinians to further stall on pursuing a negotiated agreement until the timing is more “ripe.” Rather, the author believes that, through a well-designed and – implemented Track 1 pre-negotiation phase, leaders and negotiators of the region can boldly work to prepare a situation “on the ground” and “at the negotiating table” that it is more “ripe” for mediation.

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### **Recommendation #1- Engage in Extensive Pre-Negotiation and Preparation Phases**

Any successful agreement be based upon a stronger degree of trust and confidence— in one’s own side, in the other side, in the mediating party, and in the process, itself— than exists today. During the *pre-negotiation phase*, intra-party trust must be established vis-à-vis the formation of a small, core negotiating team that meets periodically in order to establish understanding and consensus on a clearly articulated set of interests, entry position, negotiating strategy, bottom lines, and expectation of best- and worst-case scenarios of the ultimate negotiation process. It is likely that these intra-party teams would be comprised of negotiators who have already been deeply involved in the peace process over the past few years— such as Saeb Erekat and Mohammed Dahlan on the Palestinian side, and Shlomo Ben Ami and Oded Eran on the Israeli side.<sup>227</sup>

Inter-party trust must also be established through back channel, private pre-negotiation talks that are safely kept from media leakages to the fullest extent possible (i.e. similar to the 1993 Track 2 Oslo talks).<sup>228</sup> In this way, negotiators would ideally be able to engage in true problem-solving and courageous decision-making without being as significantly burdened by the constant preoccupation over how all of their constituents would potentially respond. Each side would honestly communicate to the other side their respective party’s interests and end-goals as a preface to such discussions. Further, the success of this pre-negotiation process would be dependent upon the successful establishment of “ground rules,” or a code-of-conduct, which would ultimately serve to create an environment and to establish a culture wherein good behavior could be cultivated and bad behavior could be avoided.<sup>229</sup>

Additionally, during the *preparation phase*, an agenda for a Track 1 diplomacy process must be jointly devised by Israeli and Palestinian parties— likely with the assistance of a mediator. Whether the parties are aspiring to attain a comprehensive or an

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<sup>227</sup> Note that, at this phase, the author believes that there would be no need to involve outside stakeholders— such as Jordan, Egypt, Saudi Arabia, or Lebanon. Rather, it is the author’s sense that securing a strong intra-party consensus and vision is more likely to increase the potential stability and success of the process than would an initial attempt to involve outside parties.

<sup>228</sup> As was the case in the Taba and Stockholm processes, the U.S. need not be present as mediator at all meetings during this pre-negotiation phase lest they dominate the process. Rather, the parties, themselves, should be able to use this opportunity to arrive at a better understanding of the other side, as well as to explore interests and options in a non-binding atmosphere of trust. Only at both parties’ request should the U.S. attend these talks as a third-party.

interim agreement, it is necessary that the Palestinians and Israelis *prioritize* the issues at stake in order of their importance, ultimately setting a clear and agreed-upon agenda for the higher profile, U.S.-mediated Israeli-Palestinian peace summit (or *series* of summits, preferably). Furthermore, the parties must clearly establish the location, structure, process, and end-goals of this summit. This agenda should include decisions with regard to the summit's participants, issues to be discussed, time-table, linkages, support mechanisms, "Plan Bs," and methods of documentation and communication to the publics.<sup>230</sup>

### **Recommendation #2- Ensure Consistent Understanding of Aforementioned Track 1 Agenda**

Once decisions are made with regard to the Track 1 summit structure, process, and goals, it is imperative that these be *consistently* understood and agreed upon by both parties and by the mediator. Furthermore, this must occur within the *preparation phase*, prior to the summit, as opposed to once the Track 1 diplomacy phase has already begun.

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<sup>229</sup> Ideally, these "ground rules" would set the tone for negotiations in any future, high-level summit between Israelis and Palestinians.

<sup>230</sup> Though it is the parties, themselves, who would ideally reach decisions regarding the aforementioned ways of structuring and managing the Track 1 diplomacy process, the author believes that it is worth mentioning ideas that she, herself, favors with regard to some of these components. First, is the author's personal belief that a comprehensive agreement should be attempted because of the prior failures of interim agreements (i.e. the OPP), as well as the inextricable linkages of the major issues. For example, it seems impossible to discuss borders and territorial transfers without simultaneously discussing the status of Jerusalem. Not only that, but by accounting for the "whole picture," each side would be able to lay out all of their bargaining chips at once and in equal fashion, thus enabling a greater likelihood that a just agreement is reached.

In fact, this agreement may be based on the contours of CD2 proposals, as well as the highly publicized proposal of Saudi Arabia's Crown Prince Abdallah. The basic premise of a future agreement must still be based on the withdrawal of Israel from Palestinian lands in exchange for the full acceptance of Israel and Israel's right to live in peace. Such an agreement would likely include: minor modifications of pre-1967 border lines, a jointly administered East Jerusalem (with unimpeded access to holy places), the right of refugee return to a small number of displaced Palestinians and fair compensation to others, and the establishment of an international monitoring force that ensured each side's compliance with the agreed-upon terms. [Note that Carter's *America Can Persuade Israel to Make a Just Peace*, contributed to the formulation of some of these ideas. (Jimmy Carter (2002). *America Can Persuade Israel to Make a Just Peace*, in New York Times. April 22, 2002.)]

Furthermore, with regard to summit participants, it appears that a role should be defined for Arab countries, such as Egypt and Jordan. This would not necessarily mean "bringing them to the table," but perhaps finding a way to build in communication channels and/ or support mechanisms from leaders of these countries to the Palestinian negotiating team, in particular. In so doing, perhaps the discomfort, low-

### **Recommendation #3- Develop Track 2 Channels and Prepare Publics**

Concurrent to the back channel, *pre-negotiation* and *preparation* intra- and inter-party talks, it is necessary that the Israeli and Palestinian public confidence in the peace process be restored. Thus, both leaderships must begin to prepare their peoples— religious, secular, right-wing, left-wing, nationalist, or activist, alike— for some of the compromises to be made. The politicians would have to use the media in order to encourage motivation for, and confidence in, a burgeoning peace process rather than in pursuing the current violent struggle. Further, the Track 1-level must work to establish effective channels and linkages to negotiators at the Track 2-level, as well as to their respective publics.

Not only should the government leaders inform their constituencies of progress being made in the peace process, but they should also ensure that the exchange goes both ways. In other words, they should seek to institutionalize public input and encourage public debate so as to: a) continue preparing the public for the peace process, b) solicit new ideas and creative thinking, and c) empower the public to see themselves as partners to their government rather than silent victims of it. Institutionalized public involvement could take many forms, such as a newly-established “Ministry for Peace” or a creative use of the Internet.<sup>231</sup> Certainly, it must be noted that, for the time being, such suggestions are more likely to be feasibly implemented in Israel rather than Palestine given the lack of strengthened democracy-building mechanisms in Palestine at present. Further, it appears that this cannot realistically be a priority for the Palestinians to pursue given the emergency situation that presently exists due to Israeli military blockades, closures, shelling, and bombings.

Of course, the people will need as many tangible initiatives as possible so as to have proof that co-existence is a legitimate and realistic possibility, beyond the lofty Track 1 official statements of assurance. Thus, grassroots-level initiatives must resume—which bring together people *within* each society (i.e. religious with secular Israeli Jews, or young-

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status, and sense of isolation that the Palestinians often endure in the presence of the “chummy” U.S. and Israeli negotiating teams would be slightly diminished.

<sup>231</sup> To elaborate, a “Ministry for Peace” could be established, serving as a clearing house for the collection of ideas, suggestions, criticisms, and proposals from the public. These ideas could then be shared with decision-makers through specified channels of communication. Further, the benefits of technology could be tapped by local political circles who could begin to encourage their respective communities to contribute to constructive debate and government participation vis-à-vis written and electronic media. (Baskin, *supra* note 60, at 7).

guard with old-guard Palestinians), as well as bring Palestinians and Israelis together *across* societal divides.<sup>232</sup> Only then will an official policy or Track 1 agreement actually hold meaning for the people of the region. And it is the *people* who will ultimately determine whether the future of the region reaches a state of quiet or continued war and violence.<sup>233</sup>

#### **Recommendation # 4- Prepare the Public for the Likelihood of Shocks**

This pre-negotiation phase must further include a sufficient preparation of the publics for the likelihood of unforeseen shocks of violence throughout the negotiation and implementation phases of any peace process. With this recognition, the author believes that the peace process should strive to continue adherence to firm and binding deadlines of agreements almost wholly regardless of these violent shocks. As Rabin articulated, there should be a policy “that the fight against terror would continue as if there were no negotiations and that the negotiations would continue as if there was no terror.”<sup>234</sup>

Further, it appears that any future peacemaking process must involve the two sides working honestly and sincerely in partnership in order to confront the problem of terrorism and violent opposition to the peace process. A real Palestinian effort against its own extremists must be enhanced through a cooperative, rather than an antagonistic, approach with Israel.<sup>235</sup>

#### **Recommendation # 5- Conduct Track 1 Summit According to Agenda Set in Preparation Phase and Inclusive of Externally-Imposed Consequences**

Having thoroughly engaged in the aforementioned inter-party, pre-negotiation phase, as well as the confidence-building measures at the Track 1 and Track 2 levels, the time will be more “ripe” for a final, high-level, U.S.-mediated summit(s) that structurally

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<sup>232</sup> Examples of such joint Israeli-Palestinian civil society initiatives can be found in **Appendix 1**.

<sup>233</sup> Descriptions of how such grassroots-level work might be conducted in the Israeli-Palestinian region has been earlier presented in chapters 2 and 4, specifically. That said, there is no simple explanation for how these civil society efforts should interact synergistically with their governments—though every effort must be made to do so.

<sup>234</sup> Baskin, *supra* note 60, at 6.

<sup>235</sup> In other words, the more that Israel blamed the Palestinian leaders and security chiefs for failing to prevent terrorism, the more these leaders were presented by Palestinian media as “agents of Israel, as they suddenly responded to Israeli demands to ‘round up’ some extremists and imprison them.” Thus, the

incorporate(s) an established deadline on the process, as well as substantively includes some form of clear and firm accountability measures. Note that these implementation and enforcement mechanisms would have also been devised and agreed upon by both sides vis-à-vis the aforementioned pre-negotiation and preparation phases.<sup>236</sup>

Further, it is worth mentioning the *post-summit implementation* phase—though that is not the real focus of these recommendations and, given the scope of this study, cannot be detailed in full. Simply put, in addition to externally-imposed consequences, a successful implementation phase should involve: a) mediator assistance, b) decreased military action towards civilians, c) increased military cooperation between the parties, d) an ongoing contact between leaders, and e) a continuation and strengthening of bottom-up work (particularly with regard to education and democracy-building that continues to allow for active participation and support from an informed citizenship).<sup>237</sup>

### **Recommendation # 6- Convene Multilateral Summit to Garner Stability in the Region and Recognized Legitimacy for any Track 1, Bilateral Agreement Reached**

Following from these bilateral negotiations (which would have ideally provided for some type of support mechanisms from other Arab countries for the Palestinians, in particular), a multilateral summit should be pursued. However, it is the author’s belief that this involvement of other parties—such as Egypt, Jordan, Saudi Arabia, and various European countries (modeled after the 1991 Madrid Conference)—would more likely be effective only *after* a tangible, inter-party agreement was reached at the aforementioned U.S.-mediated summit.

The purpose of convening an international conference at this point would be two-fold. First, it is important that any devised agreement between Israelis and Palestinians have the backing of other countries in the region if it is to be successfully implemented.

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Israeli response was self-defeating. In the end, it appears that joint security mechanisms must be pursued, though there is no simple recipe or “blue print” to guide such initiatives (Baskin, *supra* note 60, at 6.)

<sup>236</sup> Such mechanisms would likely comprise some type of international or multinational monitoring body as a confidence-building measure that strengthens the stabilization package reached. This compliance with an international monitoring force might be similar to the one approved for the Sinai region in 1979, following Israel’s withdrawal from Egyptian territory.

<sup>237</sup> Some of these ideas were covered in Baskin’s article, *The Oslo Peace Process—Lessons Learned*. (Baskin, *supra* note 50).

Second, these countries could also bring pressure to bear on the Israeli and Palestinian leaders in order to further ensure implementation of their commitments.

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Clearly, all negotiation processes are much more “messy” than the process neatly recommended above. However, it appears both useful and relevant to consider a “blue print” for a future peacemaking process in the Israeli-Palestinian conflict that might meet with more success than has its predecessors. This is especially true in light of the numerous lessons learned from the OPP and CD2 analyses (according to the PF and RF), as well as the current state of affairs in the region today. Though it is unclear when such a peacemaking process may occur, one can only hope that eventually the day will come when our newspapers are no longer filled with the stories of the latest violence in the Middle East.

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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)***

## APPENDIX 1- LIST OF PEACEBUILDING CSOS

### DURING THE OPP

Note: Some CSOs had offices in both Israel and Palestine, others were based solely in Israel, and others were based solely in Palestine. They have been listed and described accordingly.

#### **Joint-based Bipartisan Peacebuilding CSOs**

**Israel-Palestine Center for Research and Information (IPCRI) Education Project-** Builds people-to-people peace by educating the next generation of Israelis and Palestinians with the skills, knowledge, and motivation to understand “the Other” and to successfully defuse, manage, and solve conflicts with a respect for the universal values of peace, human rights, and democracy. Aims to develop cooperative and practical solutions for the cardinal issues in the Israeli-Palestinian conflict.

#### **Jerusalem Link (Bat Shalom and Marcaz al-Quds la I-Nissah/ The Jerusalem Center for Women)-**

A coalition of two women’s peace organizations, located in West and East Jerusalem, respectively. Bat Shalom and Marcaz al-Quds la I-Nissah’s joint work represents the first time that an Israeli and Palestinian organization have worked so closely together towards the advancement of women’s rights and human rights in the region. Additionally, they work towards the resolution of the larger Palestinian-Israeli conflict. To accomplish these goals, their services and collaboration primarily comprise a public media correspondence and opening of channels of communication vis-à-vis publishing letters in one another’s newsletters, writing petitions to politicians, and running dialogue groups and conflict resolution courses. The “Jerusalem Link” is the coordinating body for these two organizations.

#### **Interns for Peace-**

Trains community development peace workers in Israel and Palestine (also Jordan and Egypt) to initiate cooperative inter-communal action—broadly defined—that ultimately aims to unite the Israeli and Palestinian peoples.

#### **Peace Research in the Middle East (PRIME)-**

Joint venture, or public policy think tank, between Bethlehem University and Ben Gurion University. Through academic research and analysis, PRIME aims to bring light to the seemingly irreconcilable issues that plague the Israeli and Palestinian peoples.

#### **Friends of the Earth in the Middle East-**

Umbrella organization that represents leading Middle Eastern environmental NGOs. Its primary objective is the promotion of cooperative efforts to protect the shared environmental heritage of Israeli and Palestinian peoples. In order to achieve sustainable regional development and the creation of necessary conditions for lasting peace in the region.

### **Israel-based Bipartisan Peacebuilding CSOs**

#### **Kol-ha-isha, the Jerusalem Women's Center-**

Established in 1994 by a group of women involved in the peace movement. Progressive grassroots feminist organization with women from Ethiopian, Mizrahi, Ashkenazi, Palestinian and Russian backgrounds. Mission is to promote a feminist, multicultural model of social change and to encourage a feminist paradigm for an authentic and collaborative peace. The Center engages women from different communities for dialogues.

#### **Economic Cooperation Foundation-**

The Economic Cooperation Foundation (ECF), based in Tel Aviv, was founded in 1990 with the aim of building, maintaining and supporting Israeli-Palestinian and Israeli-Arab cooperation in political, economic and civil society arenas. The ECF is involved both in track two diplomacy and in promoting civil society cooperative activities relating to the environment, research, education, health and other relevant topics.

#### **Neve Shalom/Wah-at-I'sal'am-**

This is a village that was established in Israel in 1977 both by Jews and Palestinian Arabs of Israeli citizenship. Its aim is to promote education towards peace, equality and understanding, and its members aim to demonstrate that coexistence is possible. The village's bilingual children's education program now has 300 children enrolled. The village also has a spiritual center and a school for peace that conducts courses and seminars for Arab and Jewish youth.

#### **Machsom Watch-**

Established in January 2001, Machsom Watch – Women Against the Occupation was set up in response to increasing reports of abuse of Palestinians at checkpoints in the West Bank and Gaza Strip. The group undertakes regular observations of checkpoints in and around Jerusalem and women observe, record and report what they see.

#### **Re'ut-Sadaka (Friendship) Jewish-Arab Youth Movement for Coexistence and Peace in Israel-**

This group gives Arab and Jewish youth the opportunity to meet and to share ideas and perspectives. It is based on the belief that to build mutual understanding, real relationships must be established.

## **Palestinian-based Bipartisan CSOs**

### **The Palestinian Center for Peace and Democracy (PCPD)-**

This non-profit organization is dedicated to promoting the concepts of peace, democracy, social justice, human rights, and civic education in Palestine. Also, focuses on strengthening Palestinian civil society.

### **Wi'am (in Arabic, "cordial relationships"), or the Palestinian Conflict Resolution Center-**

This center helps to resolve disputes within the Palestinian community by complementing the traditional Arab form of mediation, called *sulha*, with Western models of conflict resolution.

### **Rapprochement-**

This organization is currently running the current Olive Branch Picking campaign. It is based in Beit Sahur.

APPENDIX 2- MAP OF PRE-1967  
ISRAEL/ PALESTINE

[Courtesy of *Jewish Virtual Library* website]<sup>238</sup>

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<sup>238</sup> *Jewish Virtual Library* website, at <http://www.us-israel.org/jsource/Peace/borders.html>

## APPENDIX 3

### U.S. DECEMBER 23, 2000 PACKAGE

*(as reported by Dennis Ross on March 18, 2001)*<sup>239</sup>

- 1) **Boundaries-** Four to six percent of the West Bank would be annexed by Israel, thus giving Palestinians sovereignty over 94 to 96 % of the West Bank. One to three percent of the West Bank would be absorbed by Israel in exchange for land that is presently a part of the state of Israel.
  
- 2) **Jerusalem-** Loosely speaking, neighborhood currently occupied by Arabs would become part of the Palestinian state, while those neighborhoods that are Jewish would be absorbed by the Israeli state. Arab Jerusalem would become the Palestinian state capital. Additionally, Palestinians would exercise sovereignty over the Haram al-Sharif, while Israel would have sovereignty over the Western Wall.
  
- 3) **Refugees-** The right of return to and/ or citizenship in five designated areas would be granted to Palestinian refugees. These five areas are: a) return to one of fifteen designated countries (including the U.S.); b) return to Palestinian territories; c) return to Israel (with the stipulation that these refugees then become Israeli citizens and be subject to Israeli sovereignty); d) return to a piece of land in Israel that Israel will grant to the Palestinians; and, e) become a citizen of the country in which they presently reside. Additionally, a \$30 billion fund for refugees (for claims and grievances) would be established and distributed.
  
- 4) **Security-** Palestinians would have their own borders with Jordan and an international presence would be phased-in in order to replace the current presence of Israeli soldiers on the borders between Jordan and the PNA. Israel would have the right to return to his area in a “state of emergency” (defined as such according to specific criteria).

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<sup>239</sup> Note that Ross’ statements were made with regard to this package at a PICAR public lecture at Harvard University on this date.

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