



# Israel/Palestine: Parameters for a Two-State Settlement

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Headquarters

**International Crisis Group**

Avenue Louise 149 • 1050 Brussels, Belgium

Tel: +32 2 502 90 38 • Fax: +32 2 502 50 38

[brussels@crisisgroup.org](mailto:brussels@crisisgroup.org)

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## *Executive Summary*

President Obama has a final chance to shape his legacy as a peacemaker by putting out parameters for resolving the Israeli-Palestinian conflict, ideally in a concise, balanced UN Security Council resolution. It would be the Council's first engagement on all the conflict's core issues and expand the international role, one of many needed peace process adjustments. Enshrining principles, if not via the Council then at least by the Quartet or in another multilateral framework is but one of several needed changes to Israeli-Palestinian negotiations. But it is the most consequential move with the prospect of being accomplished today. If a two-state settlement is eventually reached, it will be remembered as an historic contribution, the most important U.S.-backed peace initiative since the occupation began. For President-elect Trump, who said he "would love to be able to be the one that made peace with Israel and the Palestinians", and he has "reason to believe I can do that", internationally-endorsed parameters would better position him for that goal than any recent predecessor.

The peace process, long discredited, has never seemed more of an outdated relic, following Russia's resurgence, the rise of isolationist sentiment in the West and the crumbling of the regional order. It could be said that it is both too late and too early to issue parameters: too late in that the entire process requires thorough rethinking; too early in that it is scarcely worth risking negative consequences when there is little chance that they will be impactful at present. Many Israelis fear they would embolden Palestinians to demand the unattainable, while Palestinians fear they would water down the little international law already accords them and is the minimum they deserve. Even if the Palestinian leadership does not reject them, Israel will, as will large constituencies on each side.

Add to this Donald Trump's election. His opposition to an Obama initiative could undermine its legitimacy and provoke an uproar that distracts attention from other matters Obama may feel more important to his legacy and global security. But if the president-elect puts as high a priority on peacemaking as his statements suggest, he has every interest in establishment of internationally-endorsed parameters before he enters office. He would obtain all the benefits such parameters may bestow on future mediators, while paying none of the political costs associated with creating them.

Any two-state agreement will almost certainly resemble the parameters the U.S. is considering: two independent states, one Arab, one Jewish, as cited in the Palestinian Declaration of Independence (1988) and called for in UN General Assembly Resolution 181 (1947), with equal rights for all citizens; borders on the pre-1967 lines with mutually agreed, equal land swaps; two capitals in historic Jerusalem with arrangements for freedom of access and worship at holy sites; a refugee resolution consistent with two states for two peoples and compensation to Palestinian refugees; and an agreed timeline for the end of occupation and withdrawal of Israeli forces from the non-militarised Palestinian state. More detail would increase opposition on both sides and provide grist to squabble over.

The main ways in which the U.S. might set down parameters are a presidential speech; a document multilaterally endorsed by the Quartet and other states; or a Security Council resolution. The more broadly endorsed, the more consequential parameters will be – but so too will their establishment be more difficult and, if not carefully constructed, more controversial, even detrimental.

A speech is almost certain not to have a lasting effect and might strengthen the region's impression the administration is mainly full of empty words. Multilaterally-endorsed principles may have a more lasting effect and in the best case could become the de facto consensus on a two-state solution's contours, though it is more likely that they would merely be yet another set of ignored guidelines, to be debated and perhaps modified or superseded but not acted upon. The record of the Arab Peace Initiative and the Road Map for Middle East Peace is hardly inspiring.

The final possibility, principles enshrined by the Security Council, would be most significant. Resolution 242 (1967), the sole example of such parameters in the Arab-Israeli conflict, structured Middle East diplomacy for 50 years and is the basis of Israel's peace treaties with Egypt and Jordan. Similar guidelines have yet to be set for Israel-Palestine. The point of adopting them is not so much to preserve the two-state solution in the face of an adverse reality or put a resolution on the books that a future peacemaker could someday invoke. It is to crystallise today's loose, inchoate consensus on a solution and endow it with a legitimacy that will enable its supporters, over time, to bake it into a corpus of law and policy.

A parameters resolution in effect would modify the Arab Peace Initiative, something Israelis across much of the political spectrum have called for, to make it more favourable to Israel on all core issues and become the consensus position of the entire international community, including the Arab states. Depending on what President Obama does, President-elect Trump could either spend the next four years trying to achieve such a modification or enter office with it in his pocket.

A Security Council resolution would face serious obstacles. There likely would be strong U.S. domestic opposition, including from within Obama's party, many of whose members want no conditions imposed on Israel, even when they break new ground, impose larger conditions on the Palestinians and satisfy demands Israel has been unable to root in international law. Diplomatic challenges could be more trying. U.S.-Russia tensions have nearly paralysed the Security Council. It is not clear Moscow or Arab capitals want a resolution, though many diplomats believe the Israeli-Palestinian conflict works by different rules, and a Washington-Moscow agreement at the highest level may be possible. Passage would require Palestinians to quietly signal willingness to accept it with reservations, which may be possible. Allowing another Council member, eg, France, to put in the resolution, with the U.S. abstaining, might carry tactical advantages for Washington and could be considered.

Parameters would also carry risks, though those are likely overstated. They would not jumpstart a new peace process, but neither would they be the cause of deterioration that is already underway. Unwanted steps the parties might consider, such as further Israeli settlement expansion or Palestinian insistence on revising the Oslo Accords, would also result from processes already begun and likely to continue, with or without parameters. That one or both parties refuse for the foreseeable future to negotiate on the basis of the parameters is no reason not to issue them: if and when the parties return to talks, they will be much more likely to succeed.

Obama's choice is not whether to have an Israel-Palestine legacy but what kind. Internationally-endorsed parameters would give immediate and future successors tools no president has had. If he does not move, Palestinians are likely to lay down a Security Council resolution defining Israeli settlement as a breach of international law; as in 2011, the U.S. is likely to veto. But the stakes are bigger than a personal legacy or tools for the president-elect. The peace process long has been hampered by

international community unwillingness to present consensus guidelines for talks. The only lasting achievement Obama can make in his remaining weeks is to remove this impediment. If a two-state agreement is someday reached, he will be thanked.

**Ramallah/Jerusalem/Washington/Brussels 28 November 2016**

# Israel/Palestine: Parameters for a Two-State Settlement

## I. Introduction

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Following the collapse of U.S.-led negotiations between Israel and the Palestine Liberation Organisation (PLO) in April 2014 and the devastating war in Gaza several months later, the parties have entered a period marked by political instability, rising violence, settlement expansion, continued Gaza-West Bank division, growing tensions over Palestinian political succession and a diplomatic and strategic impasse.<sup>1</sup>

Policymakers are at a loss to treat problems they can scarcely diagnose: erosion of President Mahmoud Abbas's power; turmoil within the ruling Fatah party; a financially and politically vulnerable Palestinian Authority (PA); growing distance between the Palestinian public and leaders; a young generation increasingly attracted to violence but without a clear political program or demands; growing calls among Israelis and Palestinians to overturn the Oslo framework that, for varying reasons, each side feels simultaneously beholden to and entrapped by; Gaza's intensified impoverishment and seeming slide toward renewed conflict; U.S., international and Arab abandonment of the Palestinian issue; Israeli settlement growth; the rising power of Israeli politicians who favour some degree of West Bank annexation; and an ambivalent Israeli policy, torn between the army's aim to preserve the status quo and the aspirations of the most right-wing members of the ruling coalition, who seek to overturn it.

In the background lies anticipation of what U.S. President Barack Obama, in the waning days of his tenure, may choose to make his legacy on a conflict that he entered office determined to resolve. Among the most discussed possibilities, though not necessarily the most likely, is a U.S.-led UN Security Council resolution outlining principles for resolving the conflict.<sup>2</sup> Options seen in the U.S. as less politically costly are guidelines endorsed by the Quartet of Middle East mediators (the U.S., European Union (EU), Russia and UN Secretary-General) and perhaps other nations; or simply presenting U.S. parameters in a speech. Other options are to cooperate with efforts led by France to arrange an international conference for the Israeli-Palestinian peace process (which could be tied to the establishment of consensus parameters) or to support a UN Security Council resolution that endorses the July 2016 Quartet report or is more narrowly focused on condemning settlements and Palestinian "incitement", a generic term that, unhelpfully, encompasses both incitement to violence and ideological disagreement.<sup>3</sup>

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<sup>1</sup> For background on the 2014 war and its aftereffects, see Crisis Group Middle East Reports N°s 162, *No Exit? Gaza & Israel Between Wars*, 26 August 2015; and 149, *The Next Round in Gaza*, 25 March 2014; and Briefings N°s 42, *Toward a Lasting Ceasefire in Gaza*, 23 October 2014; and 39, *Gaza and Israel: New Obstacles, New Solutions*, 14 July 2014.

<sup>2</sup> This is frequently referred to as a "parameters resolution", but what is being considered is much closer in length to the "principles" of Security Council Resolution 242 (1967) than to the "parameters" President Clinton set down in December 2000. Crisis Group interviews, U.S. officials, Washington, September 2016. The U.S. is not considering and would not support a parameters resolution that is legally binding, ie, adopted under Chapter VII of the UN Charter. Crisis Group interviews, U.S. officials, Washington, September-November 2016.

<sup>3</sup> Crisis Group interviews, U.S. officials, Jerusalem, Washington, February-April, September-October 2016. "Report of the Middle East Quartet", U.S. Department of State website, 1 July 2016.

## II. Filling the Diplomatic Vacuum

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### A. Palestinian Efforts

During the past year, the Palestinian leadership has restarted old efforts to advance along two tracks that currently appear to have little chance of success: renewed discussions of Palestinian reconciliation with Hamas, and a possible UN Security Council resolution condemning Israel's settlement policy, which is seen by virtually the entire world as a violation of the Fourth Geneva Convention. The former option has confronted the same obstacles that blocked reconciliation in the past, including questions of Hamas's integration into the PLO, elections, the Palestinian government's political program and the fate of tens of thousands of Gaza government employees hired after Hamas took over in 2007.<sup>4</sup> The latter depends on U.S. abstention or support in the Security Council. Though Washington has yet to state its position on a Palestinian draft that has not been formally introduced, support for a resolution focusing exclusively on settlements does not appear to be forthcoming.<sup>5</sup>

Instead of pursuing new strategic options, of which there are believed to be few in any case, the Palestinian leadership has largely been in a state of suspension, awaiting political initiatives from outside. These fell into two broad categories, neither of which met with particular enthusiasm: first, a changing set of proposals suggested by France, including efforts to establish an ill-defined international support group for the peace process, which was then combined with the proposal for a French-organised international conference to restart negotiations, at the end of which France (and

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<sup>4</sup> The reconciliation talks have yet to surmount the old, familiar challenges, including Hamas's demand and Fatah's refusal to treat all employees in Gaza equally when considering how to integrate those hired prior to the June 2007 takeover and those hired after it. See Crisis Group Report *No Exit?*, op. cit. Several Hamas senior leaders in Gaza and Fatah leaders in the West Bank said the talks had little chance because Fatah wished to avoid responsibility for Gaza. Crisis Group interviews, Gaza City, February-April, October 2016. Fatah leaders were unanimous that Hamas was more desperate for reconciliation than ever because of its financial crisis and inability to pay government salaries in Gaza. However, for most this did not translate into optimism about reconciliation – quite the opposite, since few in Fatah want to rescue Hamas. Crisis Group interviews, Gaza City, Ramallah, February-April, October 2016.

<sup>5</sup> In February 2011, the U.S. vetoed UNSCR draft resolution S/2011/24 affirming the illegality of settlements. Ambassador Susan Rice said, "while we agree with our fellow Council members, and, indeed, with the wider world about the folly and illegitimacy of continued Israeli settlement activity, we think it unwise for this Council to attempt to resolve the core issues that divide Israelis and Palestinians". In March 2016, a U.S. official said that if the administration were to consider a Council resolution on settlements, it would insist on a "balanced" one that also condemned Palestinian incitement. Crisis Group interview, Washington, March 2016. Ambassador to Israel Dan Shapiro stated: "We oppose one-sided resolutions against Israel, and we vetoed a resolution about the settlements in 2011. But it is impossible to predict how we would react to resolutions that have not yet been finalized". Nitsan Keidar, "U.S. opposes one-sided resolutions against Israel", *Israel National News*, 27 October 2016; also "US undecided on veto of UNSC resolution against West Bank settlements," *The Jerusalem Post*, 4 April 2016. An Israeli foreign ministry official said, "the Palestinians are Israel's best ally at the UN Security Council; they are incapable of putting forward a text that the Security Council can adopt". Crisis Group interview, Jerusalem, March 2016. In October 2016, the U.S. reportedly warned the Palestinian Authority (PA) not to introduce a resolution before the U.S. presidential election; Abbas aides said they thought U.S. support unlikely. Jack Khoury, "U.S., Egypt Warn Palestinians Not to Push Security Council on Settlements Before U.S. Elections," *Haaretz*, October 20, 2016; Crisis Group interviews, Ramallah, October-November 2016.

possibly several other EU member states) might recognise the State of Palestine; secondly, the issuance of U.S.-supported guidelines or parameters for future negotiations to end the conflict, including the possibilities of a UN Security Council resolution or U.S. parameters presented perhaps initially in a presidential speech, with potential endorsement from the Quartet and other nations. Though Palestinian leaders have been deeply ambivalent about these options, they have viewed some of them as the only potential sources of change in a conflict of which they themselves have grown weary.<sup>6</sup>

### B. *French Efforts*

France may yet organise an international peace conference by year's end, but, with President Francois Hollande casting doubt on its feasibility, it seems more likely to be the first Israeli-Palestinian diplomatic casualty of Trump's electoral victory.<sup>7</sup> A French official described the purpose of the initiative as:

First, in light of the regional chaos, to show that the Palestinians are not forgotten. Without any political initiative put forward by the international community, we fear that the current violence could develop into a full-fledged intifada. Secondly, the initiative could help to prevent trends over the last several years that have been pointing to the death of the two-state solution.<sup>8</sup>

The PLO leadership and President Abbas have expressed support for the initiative, which potentially offers them a way to restart negotiations without insisting upon conditions that previously had precluded renewed talks: an Israeli settlement freeze, Israeli commitment to provide a map of the borders of the two states within three months of the start of negotiations and agreement by Israel to negotiate borders based on the pre-1967 lines. A conference could allow the Palestinian leadership, which frequently states that the period of bilateral negotiations is over, to claim that it constitutes multilateral talks.<sup>9</sup>

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<sup>6</sup> Crisis Group interviews, Fatah Central Committee members, Palestinian political analysts, Ramallah, February-April 2016.

<sup>7</sup> On 17 November, French President Francois Hollande commented: "The chances to hold the peace conference in Paris are not good". He added: "However, the problem is not only the cancelling of the conference. ... If Trump keeps to his word, the international community cannot come together to support the peace process. The very commitment to peace and the future of the process will be in danger". "French president: Trump might sink chances for peace conference", *The Jerusalem Post*, 17 November 2016. Well before this, however, diplomats had criticised the French initiative as inchoate and unserious. "What you have just called 'the French thing' is so empty of content that you have referred to it as a 'thing'. They have no idea what issues will be addressed in which groups, what will be bilateral, what will be multilateral, what the purpose of the two phases of the conference are. It's not serious". Crisis Group interview, Arab diplomat, Tel Aviv, April 2016.

<sup>8</sup> Crisis Group interview, Jerusalem, April 2016. There are also domestic considerations. A French diplomat said recognition, initially a part of the initiative, was still a possibility: "President Hollande may opt for recognising Palestine as a way to keep left-wing voters from further drifting to the right. At the same time, given how strongly coloured by identity recent elections have been ... the Palestine issue has become explosive and may distance the Left from centrists who sympathise with Israel due to terrorism incidents in France". Crisis Group interview, Jerusalem, 17 October 2016.

<sup>9</sup> "The French initiative is not about negotiations. It's a multilateral forum, not bilateral, at least we assume so. We don't want [it] to take us back to bilateral negotiations. That is finished .... We want

In return for their acceptance, Palestinian leaders were told they would obtain French recognition of the State of Palestine at the end of negotiations, whether successful or not. Israeli officials denounced this. A little over a month later, in what appeared to be an attempt to lure Israel into attending the conference, France said recognition would not be automatic. Despite this, Palestinian officials remain committed to attending and say they are still under the impression that recognition will be granted by the end of Hollande's term, in the first half of 2017.<sup>10</sup>

The U.S. has kept its distance from the French effort. Many officials believe another international peace conference without guiding parameters is the last thing the parties need, since they showed their inability to agree during the U.S.-led 2013-2014 talks, and there is little reason to believe another attempt would be different. However, officials have not ruled out the possibility that a conference could be convened for another purpose, perhaps to unveil internationally-supported parameters for future talks or to invite the parties to attend talks based on parameters.<sup>11</sup>

Israeli officials have remained cold to the initiative even after the retraction of automatic recognition. On 7 November, Prime Minister Benjamin Netanyahu's acting national security adviser and senior envoy informed French Envoy Pierre Vimont that Israel would not participate. Israel prefers bilateral negotiations to an international conference, where it could potentially be subject to more pressure.<sup>12</sup>

### C. Other Efforts

In May, following extensive backchannel talks with Israel mediated by former UK Prime Minister and Quartet Envoy Tony Blair, Egyptian President Abdel Fatah el-Sisi called for resuming Israeli-Palestinian talks.<sup>13</sup> The Egyptian-Israeli plan had been

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a multilateral forum like the Syria talks and the negotiations between the P5+1 and Iran". Crisis Group interview, Fatah Central Committee member, Ramallah, March 2016.

<sup>10</sup> Announcing preparations for the conference, then-Foreign Minister Laurent Fabius said if the "attempt to achieve a negotiated solution reaches a dead end, we will take responsibility and recognise the Palestinian state". "France: If New Peace Initiative Fails, We'll Recognise Palestine," *Haaretz*, 29 January 2016. "Why would the Palestinians compromise on even the smallest iota in the conference, if they know from that start, that if progress is not made, they will get what they want?" See "Israel: French threat to recognise 'Palestine' if talks fail encourages deadlock", *The Jerusalem Post*, 31 January 2016. Similarly, Yair Lapid, chairman of the Yesh Atid party, stated: "We won't be dragged by threats to the negotiating table. No sovereign nation would accept that". Ibid. "France denies 'automatic' recognition of Palestinian state," France 24, 9 March 2016. Crisis Group interviews, Ramallah, March-April 2016.

<sup>11</sup> Crisis Group interviews, Washington, March 2016. A U.S. official said French officials acknowledged they cannot launch the conference without U.S. support. Crisis Group interview, Washington, March 2016. A French official said, "for many U.S. officials the main value of our initiative is that it is a hook for getting the U.S. president to engage with the issue by telling him that if the U.S. didn't act, the French would fill the void". Crisis Group interview, Jerusalem, April 2016.

<sup>12</sup> Crisis Group interviews, Israeli foreign ministry officials, Jerusalem, March 2016. Barak Ravid, "Israel Tells France: We Oppose Your Peace Initiative, Won't Attend International Conference in Paris," *Haaretz*, November 7, 2016. A French official said, "in Israel we hear that the initiative does precisely what they want to avoid: bring in the international community. Rather, we hear from them that they want to renew bilateral negotiations with Abbas without any preconditions". Crisis Group interview, Jerusalem, April 2016.

<sup>13</sup> Raoul Wootliff, "Egypt sees 'real opportunity' for Israel-Palestinian deal," *The Times of Israel*, May 17, 2016; Barak Ravid, "Egypt's Foreign Minister to Meet Netanyahu in First Visit to Israel in Nine Years," *Haaretz*, 10 July 2016.

premised on bringing the Israeli Labour Party into the governing coalition. At the last moment, Netanyahu instead struck a deal with Avigdor Lieberman, Head of the Yisrael Beiteinu (Israel Our Home) party, who became defence minister. Despite talk that this negated a possible Cairo summit, Sisi sent his foreign minister to Israel in July for the first such visit in nearly a decade. At a press conference with him, Netanyahu welcomed President “el-Sisi’s recent offer of Egyptian leadership in efforts to advance peace with the Palestinians and a broader peace in our region”.<sup>14</sup> But discussion then quieted considerably. Days later, Israeli cabinet ministers told the pro-Netanyahu daily *Israel Hayom* that by agreeing to new regional talks “the prime minister hopes to thwart any potential international initiative or diplomatic move by U.S. President Barack Obama in the coming months”.<sup>15</sup>

In September, there was much discussion of an alternative summit in Moscow that Netanyahu and Abbas signalled willingness to attend. That would have offered Netanyahu a different means of complicating any U.S. move to introduce parameters or a Security Council resolution, while giving Abbas renewed international attention and standing. A summit with Netanyahu would also offer him the opportunity to potentially thwart a U.S.-supported resolution on parameters, which he has signalled his opposition to in numerous public statements.<sup>16</sup>

Adding to Israeli fears of a possible Obama initiative have been clashes with the administration during the past several months: Israeli criticisms of the July Quartet report after it had been significantly altered to appease Israel; the U.S. rebuke of Netanyahu’s video claiming the Palestinians sought ethnic cleansing; the strong U.S. condemnation of Israeli plans to build a new settlement in violation of commitments to the U.S. (and just weeks after Washington had given Israel the largest security aid package in U.S. history); and bilateral disputes in the Security Council over the testimony of the Israeli human rights organisation, B’Tselem.<sup>17</sup>

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<sup>14</sup> The plan also envisaged confidence building measures a Likud/Labour government would take. Crisis Group interview, Israeli foreign ministry official, Jerusalem, June 2015. An Israeli official said, “this is called the Egyptian initiative, but behind the scenes we were the ones who started it”. Crisis Group interview, Jerusalem, June 2016. “Statements by Prime Minister Benjamin Netanyahu and Egyptian Foreign Minister Sameh Shoukry”, Israel Government Press Office, 10 July 2016.

<sup>15</sup> “Report: Netanyahu willing to meet Abbas at Cairo summit”, *Israel Hayom*, 12 July 2016.

<sup>16</sup> Crisis Group interviews, Palestinian, Israeli officials, Ramallah, Jerusalem, November 2016; Barak Ravid, “Russia: Netanyahu and Abbas Agree to Meet, but No Date Set,” *Haaretz*, 8 September 2016; “Russian PM set to meet with Netanyahu, Abbas during visit to region,” *i24 News*, 30 October 2016; “Statements by Prime Minister Benjamin Netanyahu at the General Assembly of the Jewish Federations of North America”, Israel Government Press Office, 15 November 2016.

<sup>17</sup> Crisis Group interviews, U.S. diplomat, Washington, July 2016. For Israel’s criticisms, see “Prime Minister’s Office response to the Quartet report”, Ministry of Foreign Affairs website, 1 July 2016. “Netanyahu ‘ethnic cleansing’ comment against Palestinians draws U.S. rebuke”, Reuters, 10 September 2016. The new settlement plan was advanced in response to an Israeli Supreme Court order to evacuate the Amona outpost. Mark Landler, “United States Criticizes Israel Over West Bank Settlement Plan”, *The New York Times*, 5 October 2016; “Factsheet: Memorandum of Understanding Reached with Israel”, White House Office of the Press Secretary, 14 September 2016. Tamar Pileggi, “US, Israel envoys clash over B’Tselem at Security Council forum”, *The Times of Israel*, 19 October 2016.

### III. Parameters

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The idea of presenting guidelines for future Israeli-Palestinian negotiations is one the Obama administration has considered multiple times in its two terms. In May 2011, it decided on a compromise in which the president would not issue full parameters on the four core issues – borders, security, Jerusalem and refugees – but only on the two least sensitive issues of borders and security.

During a 19 May 2011 speech, Obama said the basis of future negotiations should be borders “based on the 1967 lines with mutually agreed swaps”; and a “full and phased withdrawal of Israeli military forces should be coordinated with the assumption of Palestinian security responsibility in a sovereign, non-militarised state”, with a transition period whose duration “must be agreed” and “the effectiveness of security arrangements must be demonstrated”. He also stated, not as part of the guidelines but as a declaration of the U.S. position prior to itemising the guidelines: “What America and the international community can do is to state frankly what everyone knows – a lasting peace will involve two states for two peoples: Israel as a Jewish state and the homeland for the Jewish people, and the state of Palestine as the homeland for the Palestinian people, each state enjoying self-determination, mutual recognition, and peace”.<sup>18</sup>

After the collapse of the U.S.-led negotiations in April 2014, several members of the administration suggested that the U.S. publish full parameters on all core issues, in a text based closely on a version of the draft framework agreements the U.S. created in consultation with the parties in 2014. At that time, the U.S. was unable to create a set of parameters both parties could accept as the basis for an extension of the talks. Some U.S. officials believed, nevertheless, that publicly presenting its own compromise proposal could help advance a resolution of the conflict in the long run, even if the immediate reaction of the parties was to reject it.<sup>19</sup>

#### A. *The Debate*

Those calling for the U.S. to issue full parameters on all core issues argue that past negotiations have been crippled by the absence of agreed guidelines.<sup>20</sup> The more that can be resolved in the parameters, they say, the less there will be to negotiate and the greater the chance future talks will succeed. Parameters are useful for any negotiation, but especially so in the Israeli-Palestinian case, they assert, because of the great disparity in power between the two sides. Agreed parameters cannot fully compensate for the absence of Palestinian negotiating leverage, but they can at least set a floor below which proposals by either side cannot go.<sup>21</sup> They further argue that even

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<sup>18</sup> “Remarks by the President on the Middle East and North Africa”, White House Office of the Press Secretary, 19 May 2011.

<sup>19</sup> Crisis Group interviews, U.S. officials, Washington, December 2015, March 2016. A dissenting U.S. official contended that issuing parameters would lead to a dead-end: “After the parties reject them, then what do we do?” Crisis Group interview, Washington, April 2014.

<sup>20</sup> Though the U.S. has issued parameters before, by President Bill Clinton on 23 December 2000, weeks before he left office, they were not made public until he departed, and the parties were told they were not U.S. policy and would disappear as soon as Clinton was gone.

<sup>21</sup> Crisis Group interviews, U.S. officials, Israeli peace activists, Fatah leaders, Washington, Jerusalem, Ramallah, December 2015-April 2016.

if the parties reject the parameters initially, it is likely that in the long run they, or future leaders on each side, will come to accept them, because of the weight of the international consensus. Besides, they say, it is unconvincing to argue that issuing parameters will ruin chances for negotiations when there is no current prospect of their happening, and so much weighs against their success even if resumed.

There is a tendency among both opponents and advocates of Security Council-endorsed parameters to overstate the influence they would have. Parameters, of course, are not a framework agreement; they are general principles that go some distance in setting an agenda, but their generality means they inevitably will be reinterpreted in accordance with circumstances if and when talks eventually commence. That is one advantage of simple parameters: the less detail, the less to squabble over later.

Some Israelis calling for Security Council parameters, including prominent former officials, have taken the argument further than evidence supports, claiming that parameters would allow Israel “to continue construction” in settlement blocs and East Jerusalem, “because building there would not contravene the parameters of the permanent agreement”.<sup>22</sup> But the only parameters the U.S. is considering would not include a map or any other form of delineation of which settlement blocs and Jerusalem settlements would remain in Israel and which would not, so they would not allow Israel to continue construction any more or less than at present. Other Israeli advocates of parameters argue that they will have a transformative effect in Israeli society, reviving a dormant debate about peace and perhaps becoming the central issue of the next election.<sup>23</sup>

Israeli officials and leaders who oppose parameters, by contrast, say that issuing them will make the conflict more difficult to resolve; potentially insert language that will make an agreement impossible;<sup>24</sup> harden public opinion on both sides;<sup>25</sup> turn

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<sup>22</sup> Ami Ayalon, Gilead Sher, and Orni Petruschka, “The Obama Parameters,” *ForeignAffairs.com*, 13 April 2016. The same article argues that “the prospective Obama Parameters could help dissuade Israel and Palestine from taking destructive steps ... Israel would be dissuaded from building outside of settlement blocs, and Palestine would be less inclined to take its case to the International Criminal Court”. But this has no supporting evidence. Parameters could as easily be used against Israel if it refused to accept them, thereby accelerating its isolation and increasing the incentive to use the International Criminal Court and other forums for Palestinian claims. Nor would parameters make Israeli settlement construction outside the blocs more of a violation of international law.

<sup>23</sup> Crisis Group interviews, Israeli peace activists, Jerusalem, Tel Aviv, December 2015-January 2016.

<sup>24</sup> An Israeli foreign ministry official said, “There are perhaps three or four people in the world who know the difference between the few words Israel says it doesn’t want but can live with and the few words that Israel says it doesn’t want and if included will kill the possibility of any deal. The word restitution, for example. If that is in the parameters, there is no chance that an Israeli government will negotiate on the basis of the document”. Crisis Group interview, Jerusalem, March 2016.

<sup>25</sup> A former Israeli negotiator said, “a UN Security Council resolution with terms of reference for future negotiations will be rejected by both sides. Not only will it be rejected, it will strengthen the opposition to a two-state solution on both sides. In Israel, it will strengthen Netanyahu. Is the U.S. really going to put forward a UN Security Council resolution on parameters now? Who is still talking about a two-state solution? Look at Israeli society. Look at what is happening on the Palestinian side. It’s not going to get you anywhere. And what chance is there [for] final status negotiations between Israel and the Palestinians in the next few years? So you put forward a resolution, both sides reject it, the rejectionists are strengthened politically, and the left will say that the resolution is the position of the international community. So it will be one more obstacle to convening negotiations. In addition, the U.S. president has very low credibility in the region. He’s seen as a failure. So there

politically relevant elites in both societies against parameters that are seen as externally imposed;<sup>26</sup> and, by becoming the entry card for negotiations, postpone the possibility of final-status negotiations or even of talks on a state within interim borders by many years.<sup>27</sup> A security official said:

The Palestinians will never have the leverage to compel Israel to make a deal. So a UN Security Council resolution on parameters only does harm: it emboldens the Palestinians and raises their expectations, but without giving them the capability to get a deal. That just encourages friction and violence. On both sides, positions will harden in reaction to parameters. You can have Israel start building in sensitive parts of Jerusalem, including the E1 area, in response. You can have a new law in the Knesset requiring a supermajority in order to change the boundaries of Jerusalem. This Israeli government will not accept parameters that include the division of Jerusalem and a Palestinian state on the 1967 borders. An imposed solution will just cause tensions.<sup>28</sup>

Most Palestinian leaders are either opposed or lukewarm to the idea. They are deeply frustrated with the Obama administration, do not have much confidence that its parameters would be favourable to them in the long run, and are convinced they would offer them less than what international law currently affords them.<sup>29</sup> Existing UN Security Council resolutions are in many cases stronger than what the U.S. is likely to propose. Resolution 465 (1980), for example, calls on Israel not just to stop all settlement construction but to dismantle all settlements in the territories occupied in 1967, including Jerusalem.<sup>30</sup> There is a risk, a U.S. official admitted, that the text of

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will be a text associated with this failed president that the region will dismiss and will be seen as totally disconnected from reality on the ground". Crisis Group interview, Jerusalem, March 2016.

<sup>26</sup> An Israeli analyst said Israeli politicians would react based on electoral rather than substantive considerations, likely leading even many agreeing with the content to reject parameters so as to side with an increasingly hawkish public. Crisis Group interview, Jerusalem, November 2016.

<sup>27</sup> A former Israeli negotiator warned that any parameters framed as terms of reference for future negotiations, rather than as the way the international community would like to see the conflict resolved, would be far more likely to be rejected by Israel. "It is not just a matter of what is better for Israel. It is about what is better for the peoples and for resolving the conflict". Crisis Group interview, Jerusalem, March 2016.

<sup>28</sup> Crisis Group interview, Tel Aviv, 7 March 2016. E1 refers to a West Bank area east of Jerusalem, between the city's municipal boundary and the Israeli settlement of Maale Adumim. Israeli building there would encumber Palestinians' movement between the north and south of the West Bank and further restrict their access to Jerusalem, complicating establishment of a Palestinian state.

<sup>29</sup> Crisis Group interviews, Fatah Central Committee members, Abbas adviser, Fatah Revolutionary Council members, ex-ministers, ex-prime minister, Jerusalem, Ramallah, December 2015-April 2016. A former Abbas adviser said, "the U.S. just wants to support the status quo. They don't care about corruption. They say that anyone other than Abbas will be worse. Worse for whom? They don't want to think about Palestine. They don't want to think about the problems, social crises, elections, succession. So they postpone dealing with it. It's the next administration's problem. I've never seen so much neglect in a U.S. administration, from Reagan until today". Crisis Group interview, Ramallah, March 2016.

<sup>30</sup> Resolution 465 "Determines that all measures taken by Israel to change the physical character, demographic composition, institutional structure or status of the Palestinian and other Arab territories occupied since 1967, including Jerusalem, or any part thereof, have no legal validity and that Israel's policy and practices of settling parts of its population and new immigrants in those territories constitute a flagrant violation of the Fourth Geneva Convention relative to the Protection of

Washington parameters “will water down or erase what exists in previous agreements, U.S. positions and UN resolutions” – a reasonable fear, though the political relevance of these resolutions has eroded over time, and they no longer shape, if they ever did, international policy toward the conflict.<sup>31</sup>

But the best argument against putting forward parameters, even in a Security Council resolution, is one that U.S. officials have trouble addressing: the parties will, to varying degrees, oppose the resolution before it is issued; they will likely issue enervating reservations afterward; and most of the world will do little to act upon it, much as with previous Security Council resolutions on the Israeli-Palestinian conflict that have never been implemented. In return for so much shouting into the diplomatic wind, Obama would face a bitter reaction from many quarters in the U.S. It is unclear that the president would want to spend the limited time and political capital his administration has left on such a thankless endeavour. And, amid U.S.-Russia tensions and potential opposition not just from Israelis but also Palestinians (to whom many on the Security Council are likely to defer), it may well be too difficult to achieve even if the administration tries in earnest.<sup>32</sup>

## B. *Quo Vadis?*

U.S. positions on the four core issues of the conflict contain bitter pills for each side. For the Palestinians, they include some sort of recognition that the resolution of the conflict should fulfil the 1947 UN partition resolution that called for two states, one Jewish, one Arab; acceptance of an Israeli withdrawal from the future State of Palestine that, unlike the Clinton parameters, does not have a time limit; and commitment to resolve the refugee problem in a manner consistent with a vision of two states, one Jewish, one Arab. For Israel, they include a Palestinian capital in Jerusalem and a Palestinian state based on the 1967 borders with mutually agreed swaps. In the event the U.S. moves forward, it seems inclined toward such a bare-bones text – and

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Civilian Persons in Time of War”; “*Strongly deplores* the continuation and persistence of Israel in pursuing those policies and practices and calls upon the Government and people of Israel to rescind those measures, to dismantle the existing settlements and in particular to cease, on an urgent basis, the establishment, construction and planning of settlements in the Arab territories occupied since 1967, including Jerusalem”; and “*Calls upon* all States not to provide Israel with any assistance to be used specifically in connection with settlements in the occupied territories.”

<sup>31</sup> Crisis Group interview, Jerusalem, March 2016. This official warned that U.S. parameters, even ones produced by an administration seen as more sympathetic to the Palestinians than its predecessors, could be a “disaster” for the Palestinians, “another Bush-Sharon letter”. He said, “The U.S. is capable of producing an Oslo-like text with a thousand loopholes that would perpetuate occupation. Israel could point to the text for the next many years as justification for continued occupation. Those peace activists who are calling for parameters should be careful what they wish for”.

<sup>32</sup> An Israeli official inferred that there would be a Russian veto of any Security Council resolution regarding the Israeli-Palestinian conflict when the Russian deputy foreign minister declared, “personally, I think that a resolution won’t be approved in a forced manner”. “Moscow aims to host ‘meaningful’ Israeli-Palestinian talks”, *Russia Today*, 28 October 2016. Another Israeli foreign ministry official said, “what really makes it difficult to get parameters through the Security Council is not so much Russia-U.S. tensions, though there is that, as Palestinian opposition to them. The French and the Egyptians and the Arabs and Africans just don’t know how to deal with a situation in which a resolution is introduced that is maybe good for the Palestinians but that the Palestinians object to. Their immediate, instinctual reaction is to back away as soon as the Palestinians say they don’t want something”. Crisis Group interview, Jerusalem, 10 November 2016.

wisely so, since the more detailed the text, the more likely it will provoke opposition to this or that provision.<sup>33</sup>

There is an important difference between the concessions the sides would be asked to make. The Israeli concessions on Jerusalem and borders are already the stated positions of the vast majority of nations, enshrined in such official documents as the EU Council Conclusions. This is not so for the Palestinian concessions. No EU policy statement calls for recognising Israel as a Jewish state or a solution of the refugee problem that is not merely “just and agreed” but rather seeks, far more explicitly, one that would greatly constrain implementation of UN General Assembly Resolution 194 (1948), which “*Resolves* that the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return”. If U.S. positions on the refugee issue were to be included in a Security Council resolution, international law would for the first time unequivocally rule out large-scale return of Palestinians to their former homes and lands in Israel, which Israeli hawks have claimed is the primary obstacle to resolving the conflict.

What Israel would gain from an agreement based on such parameters, then, is something it does not have: the world’s explicit acceptance of its positions on refugees, international recognition of Jerusalem as Israel’s capital and, quite probably, some sort of recognition of Israel as a Jewish state, with equal rights for all citizens.<sup>34</sup> What it stands to lose it has already lost: the world’s insistence on a Palestinian state based on the pre-1967 borders with a capital in Jerusalem. Indeed, it is in no small part because of this disparity that many – though not all – Palestinians are opposed to U.S.-issued parameters.<sup>35</sup> And it is precisely for this reason that at least some Israelis, albeit outside government, see their benefit.<sup>36</sup>

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<sup>33</sup> Some have recommended that parameters include a call for continuing the Status Quo at Jerusalem’s Holy Esplanade. The U.S. at present is not inclined to recommend this, nor should it, as it could impede one potentially useful Palestinian compromise about, for instance, Jewish worship at the Esplanade in exchange for Palestinian sovereignty there. See Crisis Group Middle East and North Africa Report N°159, *The Status of the Status Quo at Jerusalem’s Holy Esplanade*, 30 June 2015. Other potential pitfalls include a reference to Israel as the nation-state of the Jewish people (a bridge too far for Palestinians) and a reference to the Arab neighbourhoods of Jerusalem forming the Palestinian capital (a bridge too far for both Palestinians and Israelis, for different reasons).

<sup>34</sup> One possibility would be for the preamble of a Security Council resolution to cite UN General Assembly Resolution 181, much as the 1988 Palestinian Declaration of Independence did.

<sup>35</sup> Several Fatah Central Committee members said they opposed U.S. parameters in part because the language on Jewish state and refugees would not be to their liking, and the language on Jerusalem would probably be fuzzy enough not to rule out a Palestinian capital in an outlying Jerusalem suburb, like Kafr Aqab, which is within municipal Jerusalem on the West Bank side of the security barrier, close to Ramallah. But other Palestinian leaders, including some on the Fatah Central Committee, said they believed that the flawed parameters of the Obama administration were the best they were going to get and that without them, the Palestinian issue would be ignored by the next administration. Crisis Group interviews, Ramallah, November-December 2015, January, March, November 2016.

<sup>36</sup> For example, a Netanyahu government negotiator during the 2013-2014 Kerry talks recently wrote favorably of not just U.S.-drafted parameters, but parameters put forward in the Security Council, so long as they were balanced: “While pushing the parties to negotiate currently serves little purpose, creating a political horizon is crucial and should not be neglected. Based on our experience, the initial focus should be on defined parameters for negotiating and resolving the core issues that separate the parties. Israelis and Palestinians failed to achieve this bilaterally and are unlikely to succeed in the foreseeable future. There is a school of thought that advocates such parameters through a United National Security Council resolution (UNSCR) – an idea considered by the French

### C. Reactions

For U.S. officials who advocate parameters, the parties' rejection is a given.<sup>37</sup> Their goal is not to restart talks in the near term but to anchor the two-state solution in a "new UN Security Council Resolution 242", one that, unlike 242, is focused not on the Arab-Israeli conflict but the Israeli-Palestinian one, outlining terms of reference for future talks for the first time. The idea is to give Palestinians a sense of hope, inject a dose of realism into both societies about the compromises that will be required and bind future administrations, as well as the international community, to what today's U.S. officials believe is the bare minimum that will be required in a lasting agreement.<sup>38</sup>

Official Israeli rejection of U.S. parameters is all but guaranteed. In this, the government would have the overwhelming support of its Jewish citizens. In his 22 March 2016 speech to the American Israel Public Affairs Committee (AIPAC), Prime Minister Netanyahu began a pre-emptive assault on those who:

... seek to impose terms on Israel in the UN Security Council .... such an effort in the UN would only convince the Palestinians that they can stab their way to a state .... A Security Council resolution to pressure Israel would further harden Palestinian positions, and thereby it could actually kill the chances of peace for many, many years. And that is why I hope the United States will maintain its longstanding position to reject such a UN resolution.<sup>39</sup>

The reaction among Palestinian leaders is far more difficult to predict. Some have suggested that though Abbas would do his utmost to prevent parameters from being issued, once the UN Security Council had accepted them, he would also. An Abbas adviser said:

For the past twenty years, the Palestinians have been saying that all their decisions are based on international law. PLO officials have frequently defended positions by saying, "What can we do? This is the position of the whole world". Once parameters become international law, the Palestinians will have to accept them. They don't have a choice.<sup>40</sup>

Other Palestinian leaders have said that the Palestinians might issue reservations while accepting the parameters as the basis for talks. Some thought that Abbas would have no choice but to reject them completely because ruling out meaningful refugee

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and the Obama administration. However, for a UNSCR to be constructive and serve both parties it has to be balanced (namely addressing both parties' core concerns), contain elements which are currently rejected by both of them and enjoy broad international and regional support". Michael Herzog, "The Israeli-Palestinian Arena – what could be done short of an agreement", *Fathom*, 25 October 2016. This, however, is a minority view. Almost no centrist Israelis have come out in favor of a parameters resolution. For another exception, see Ami Ayalon, Gilead Sher and Orni Petruschka, "The Obama Parameters", *op. cit.*

<sup>37</sup> Crisis Group interviews, Washington, December 2015, February-March 2015.

<sup>38</sup> Nathan Thrall, "Obama and Palestine: The Last Chance", *The New York Review of Books* (online), 10 September 2016.

<sup>39</sup> Israel Government Press Office, 22 March 2016.

<sup>40</sup> Crisis Group interview, Ramallah, April 2016. An Israeli analyst expressed worry that a UN Security Council resolution on parameters could push the PLO toward rejecting international law for the first time in decades, thus setting back the prospect of resolving the conflict. Crisis Group interview, Jerusalem, March 2016.

return to Israel and endorsing the notion of a Jewish state, however couched, run contrary to the national consensus.<sup>41</sup> Yet other figures believe that Abbas and the rest of the leadership would quietly accept a historic resolution offering the pre-1967 borders and a capital in Jerusalem, so long as compensation for Palestinian refugees was clearly indicated and the mention of Israel as a Jewish state came, as in the Palestinian Declaration of Independence, through reference to UN General Assembly Resolution 181.<sup>42</sup>

Whether the Arab states would support them is also open to question. Arab diplomats, of course, say that they would back the Palestinian position, whatever it may be, as has historically been the case, though some U.S. officials say they have been assured otherwise.<sup>43</sup> Several U.S. officials said they believed there was a chance key Arab states could support parameters even if the Palestinians opposed them, since they would be so eager to see the U.S. finally allow the Security Council to act on the conflict that they would be flexible about the resolution's content.<sup>44</sup> Conversely, displeasure in key Arab capitals with Abbas could lead them to quash a resolution that would hand him a diplomatic achievement, even if the Palestinians were to quietly signal its acceptance.<sup>45</sup>

#### D. *Presidential Speech vs. Multilateral Action*

Though U.S. officials insist no decision has yet been made, there remains a question of how parameters should be issued, whether in a presidential speech, a UN Security Council resolution, a Quartet statement, a UN Security Council presidential statement, or some other multilateral mechanism that would gather the support of as many other states as possible. There is no dispute in the administration about the fact that putting the parameters in a Security Council resolution would have the greatest impact. The question, as a senior official said, is one of political will:

It's a political question, not a policy one. Any action, even outside the UN Security Council, will have to get the approval of the White House, and they will have to make a determination of whether the domestic political costs are worth it. If AIPAC opposes it, that's not such a big deal. But if AIPAC gets all of Congress to oppose – not just Republicans but many Democrats too – that's a much higher cost. For something the U.S. thinks is really important, like the Iran deal, it's willing to go against AIPAC and large parts of Congress and push it through. But that's not a calculation the White House is likely to make in this case.<sup>46</sup>

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<sup>41</sup> Crisis Group interviews, Ramallah, December 2015-April 2016.

<sup>42</sup> Crisis Group interview, Fatah Central Committee member, Ramallah, November 2016.

<sup>43</sup> A U.S. official said, "we know they are saying different things to us and the Palestinians. You can question whether we should believe that what we are being told is right, but there is no question they have indicated they would support us". Crisis Group interview, Washington, October 2016.

<sup>44</sup> Several U.S. officials acknowledged that this may not turn out to be the case, and that what the Arab states say privately offers little assurance they will take the same position publicly. Crisis Group interviews, Washington, March-April 2016. "In Muhammad Dahlan's Ascent, a Proxy Battle for Legitimacy", *The New York Times*, 2 November 2016.

<sup>45</sup> An Egyptian official said, however, that his country, currently on the Security Council, would support a parameters resolution. Crisis Group interview, November 2016.

<sup>46</sup> Crisis Group interview, Washington, March 2016. In the November election, the Republican majority was reaffirmed.

A number of U.S. officials believe a presidential speech or a document with other multilateral endorsement is more likely than U.S. support for a Security Council resolution, primarily because the domestic political costs of the latter are seen as too high.<sup>47</sup> In April, 388 Democratic and Republican members of Congress wrote President Obama warning that U.S. support for a UN Security Council resolution on parameters would “dangerously hinder” the prospect of renewed negotiations. In September, 88 senators urged Obama “to continue longstanding U.S. policy and make it clear that you will veto any one-sided UNSC resolution that may be offered in the coming months”.<sup>48</sup>

Now, of course, the administration needs to contend with Trump’s opposition to any move as well, including the possibility that a parameters resolution will further sour his administration’s view of the UN.<sup>49</sup> For these reasons, the Obama administration is convinced that the domestic and international opposition to a speech or other kind of multilateral endorsement would be far less great, though it is aware that anything short of a Security Council resolution will be ridiculed as a further display of its ineptitude and impotence.<sup>50</sup>

#### E. *The U.S. in Transition*

Donald Trump’s victory in the presidential election brings new uncertainty about U.S.-supported parameters. On one hand, the argument for parameters has grown stronger. Whereas Obama would have been constrained by Hillary Clinton’s preference had she won, that is less true with Trump, especially given his open support for settlements and advisers who say that he may reverse U.S. support for a Palestinian

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<sup>47</sup> A U.S. official said that most in the administration were convinced of the merits of a Security Council Resolution; the real question was whether it would be deemed worth the domestic political price. Crisis Group interview, Washington DC, September 2016.

<sup>48</sup> Carol E. Lee, “Don’t Back U.N. Council on Israeli-Palestinian Conflict, Lawmakers Urge Obama”, *The Wall Street Journal* (online), 14 April 2016. The Senators’ letter added: “Any such resolution, whether focused on settlements or other final status issues, will ultimately make it more difficult for Israelis and Palestinians to resolve the conflict .... Even well-intentioned initiatives at the United Nations (UN) risk locking the parties into positions that will make it more difficult to return to the negotiating table and make the compromises necessary for peace”. “88 senators urge Obama to veto ‘one-sided’ Security Council resolutions on Israel”, Jewish Telegraphic Agency, 20 September 2016.

<sup>49</sup> “Trump team warns Obama not to make major moves on foreign policy”, *Politico*, 10 November 2016. There is a concern at the UN that members of Congress could move to defund or otherwise punish the institution for a Security Council resolution seen as imbalanced.

<sup>50</sup> “Ideally, this would have been done in two steps: first, U.S. parameters with widespread international endorsement; second, you take that to the Security Council. But at this point there is no time for two steps”. Crisis Group interview, U.S. official, Washington, October 2016. An analyst of U.S.-Israel relations disputed this: “The idea that AIPAC will go full throttle against parameters in the Security Council but will act with restraint if the parameters are instead put forward by the Quartet is horribly mistaken. AIPAC goes full throttle against just about everything. The administration will pay the same domestic price for doing something lasting and effective as it will for a cop-out like a Quartet initiative or a presidential speech”. Crisis Group interview, Dan Rothen, Jerusalem, 8 November 2016. A senior Israeli foreign ministry official agreed: “We have fights with the U.S. over much smaller things than parameters. Of course there will be a conflict over parameters in whatever form they are issued. Whether there is really any domestic price to that for the administration in its final weeks I’m not so sure”. Crisis Group interview, Jerusalem, 10 November 2016. Other Israeli officials disagreed, saying that a UNSCR would provoke far more opposition than a speech. Crisis Group interview, Jerusalem, 17 November 2016.

state.<sup>51</sup> Following the election, the politically powerful Israeli education minister Naftali Bennett declared:

The era of a Palestinian state is over. Trump's victory is an opportunity for Israel to immediately retract the notion of a Palestinian state in the centre of the country, which would hurt our security and just cause .... This is the position of the president-elect, as written in his platform, and it should be our policy, plain and simple.<sup>52</sup>

On the other hand, Obama may decide that in the wake of Trump's victory – and in advance of what many expect to be an assault on the pillars of the post-Cold War international order – his administration has more important priorities. Moreover, Obama has been conciliatory toward the president-elect since the election, and it is not clear that he would want to pursue a course that the latter seems likely to criticise, that Trump advisers have pre-emptively attacked and that could create a distraction and embattle his own administration during its final weeks.<sup>53</sup>

To this must be added the obstacles that can be expected internationally. Unless Moscow joins Washington in a rare show of cooperation, a UN resolution or Quartet statement could fall victim to bilateral tensions. Moscow would be hard-pressed to publicly kill a resolution the rest of the Security Council or Quartet and much of the world backed, though it is unlikely to support any initiative opposed by the Arab states and especially Egypt, which sits on the Council, in effect giving Cairo a veto over a resolution. The Council's African and Asian members, like Egypt, would find it difficult to support a measure opposed by the Palestinian leadership – in effect giving it a veto as well.

The Obama administration is considering another potential international downside as well: that a Security Council resolution, on such a controversial topic, would bring even greater scrutiny and criticism to the body and to multilateralism in general, which could prove especially damaging if a future Trump administration takes an antagonistic position toward the UN. As a UN official asked, "is this the time to stick a red flag on the UN? A [Security Council resolution] would give him more ammunition when he already has the UN in his sights".<sup>54</sup> The official suggested a tactic to limit such "ammunition": that France, as part of its own Israel/Palestine initiative, hold the pen and put forward the draft resolution and the U.S. abstain in the vote. But with the U.S. widely seen as the parameters' author, "having dotted every 'i' and crossed every 't'", as a U.S. official said, it is questionable how much insulation the tactic would provide. If the Trump administration is going to disinvest from or otherwise seek to marginalise the institution, it has plenty of opportunities for doing so.

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<sup>51</sup> See Barak Ravid, "Trump's Israel Adviser Visits Jerusalem, Meets With Officials From Prime Minister's Office," *Haaretz*, 9 August 2016.

<sup>52</sup> Gil Hoffman, "Israeli Right hails Trump: 'The era of a Palestinian state is over'", *The Jerusalem Post*, 9 November 2016.

<sup>53</sup> "Joint Statement from Jason Dov Greenblatt and David Friedman, Co-Chairmen of the Israel Advisory Committee to Donald J. Trump", *Medium.com*, 2 November 2016.

<sup>54</sup> Crisis Group interview, New York, November 2016.

## IV. Conclusion

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To many in the region, including Palestinians and Israelis, there is something absurd and almost comical in the enormous disconnect between developments on the ground – resurgent violence in Israel and the West Bank, the worst (and still deteriorating) conditions in Gaza in recent memory, the rapidly dwindling faith in a two-state solution in both societies – and the renewed interest in diplomatic initiatives that seem drawn from another era. An Egyptian diplomat said:

The two-state solution is either dead or on life support, and the French and the Americans are talking about prescribing more aspirin. Israel is heading toward a demographic majority of ultra-Orthodox and national religious Jews. The PLO has been totally discredited. There is violence on the ground and every reason to expect that there will be more. And the U.S. wants to issue terms of reference for non-existent negotiations that both parties reject? The French want to hold an international conference whose purpose and contours even they cannot explain? This conflict needs a massive intervention, and not more of these tiny and largely irrelevant steps.<sup>55</sup>

In 2012, Crisis Group called for a radical overhaul of a process unable to deliver peace. Today, its inadequacy is widely recognised even by proponents, who now look for a way to either jumpstart the process, or, if not possible, to cryogenically freeze it so that when the parties are ready, a viable one will still be there. Neither is realistic. A new Security Council resolution would not reverse growing Arab indifference to the Palestinian issue, convince the parties or the international community that renewed negotiations would succeed or insulate Israel/Palestine from a U.S. retreat from peacemaking. Palestinian fracture and disenchantment with the Palestinian Authority will not be slowed by a Security Council resolution, nor will the Gaza-West Bank split, expansion of Israeli settlements, ascendancy of the Israeli right-wing and proliferation of initiatives for de facto annexation of parts of the West Bank. It could even exacerbate and accelerate some of these negative tendencies.

But though parameters are no panacea, they, in combination with other urgent adjustments, are necessary. Among the many needed structural changes to the peace process as conceived over 25 years are greater consultation of neglected constituencies such as religious Zionists and Palestinian refugees; a new Palestinian strategy and rebuilding of the national movement; a more prominent role for the Arab states; and a focus not just on leveraging incentives to reach peace, but also disincentives to prolong the status quo. Alongside these changes, a new international architecture is needed, an element of which could be internationally-endorsed parameters to someday give direction to new talks. It is unrealistic to expect all these structural changes at once, just as it is unrealistic to demand that any one structural change be capable of fundamentally altering the conflict.

Too much of the debate has assumed that proponents or opponents must prove or disprove that parameters alone can help bring peace. In all likelihood, they cannot. But that does not mean they would not be helpful or should not be pursued. The U.S. is focusing on this option not because the conflict demands it most urgently; indeed, the other adjustments noted are no less crucial and probably prerequisites

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<sup>55</sup> Crisis Group interview, Cairo, April 2016.

for parameters to become impactful. It will almost certainly take a much bigger crisis to force further-reaching policy responses along those lines. But that does not mean the U.S. should forgo issuing parameters during this unique window.

Doing so, of course, carries risks. From one side, some Israelis fear it could preclude a return to talks by setting their basis so high that no leadership would be able to accept them. And should public anger at the terms prompt Israel to reply sharply by, say, expanding settlements in particularly sensitive areas, and in response were the Palestinians to follow through on threats to withhold some forms of cooperation with Israel and press ahead at international forums, the parties could find themselves yet further from a settlement. From the other side, one could argue that a UN resolution would provide cover for the charade that the peace process has become. By holding out the prospect of a two-state outcome that has little chance of materialising, this logic holds, issuing parameters would retard the substantive changes needed for a real resolution, giving new life to the moribund peace process and diverting attention toward unattainable or undesirable principles that would be difficult to undo.

But these negative outcomes are very likely even in the absence of parameters, albeit perhaps somewhat more slowly. The effects of parameters can be debated, but the consequences of the alternative – doing nothing – cannot. Refraining from issuance would not stop settlement growth nor end the Palestinian drift toward engaging international institutions. By the same token, without parameters there will almost certainly at some point be an alternative proposal to keep the peace process alive, as seen with the French initiative, talk of a Moscow summit and efforts to convene a Cairo-sponsored peace conference. If parameters make future exercises in futility less likely, that is not necessarily a negative. It is ironic that a UN resolution, so often derided for its irrelevance, should now take on such tremendous, conflict-altering importance.

Alone, neither a Security Council resolution nor Quartet-endorsed parameters would offer Obama's successors a significantly improved chance of resolving the conflict. They could give Trump an excuse to avoid trying (that is, until something forced his hand, such as the parties accepting the parameters or large-scale violence). But when he or a successor decides that conditions have changed enough to warrant new negotiations, particularly if other structural changes have taken place, those talks would be more likely to succeed if based on Security Council or at least multilaterally enshrined principles for a realistic settlement. That is something that a quarter-century of negotiations has sorely lacked.

**Ramallah/Jerusalem/Washington/Brussels 28 November 2016**

Appendix A: Map of Israel/West Bank/Gaza



## Appendix B: About the International Crisis Group

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The International Crisis Group (Crisis Group) is an independent, non-profit, non-governmental organisation, with some 120 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries or regions at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international, regional and national decision-takers. Crisis Group also publishes *CrisisWatch*, a monthly early warning bulletin, providing a succinct regular update on the state of play in up to 70 situations of conflict or potential conflict around the world.

Crisis Group's reports are distributed widely by email and made available simultaneously on its website, [www.crisisgroup.org](http://www.crisisgroup.org). Crisis Group works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The Crisis Group Board of Trustees – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring the reports and recommendations to the attention of senior policymakers around the world. Crisis Group is chaired by former UN Deputy Secretary-General and Administrator of the United Nations Development Programme (UNDP), Lord Mark Malloch-Brown. Its Vice Chair is Ayo Obe, a Legal Practitioner, Columnist and TV Presenter in Nigeria.

Crisis Group's President & CEO, Jean-Marie Guéhenno, served as the UN Under-Secretary-General for Peacekeeping Operations from 2000-2008, and in 2012, as Deputy Joint Special Envoy of the United Nations and the League of Arab States on Syria. He left his post as Deputy Joint Special Envoy to chair the commission that prepared the white paper on French defence and national security in 2013. Crisis Group's international headquarters is in Brussels, and the organisation has offices in nine other locations: Bishkek, Bogota, Dakar, Islamabad, Istanbul, Nairobi, London, New York, and Washington DC. It also has staff representation in the following locations: Bangkok, Beijing, Beirut, Caracas, Delhi, Dubai, Gaza City, Guatemala City, Jerusalem, Johannesburg, Kabul, Kiev, Mexico City, Rabat, Sydney, Tunis, and Yangon.

Crisis Group receives financial support from a wide range of governments, foundations, and private sources. Currently Crisis Group holds relationships with the following governmental departments and agencies: Australian Department of Foreign Affairs and Trade, Austrian Development Agency, Canadian Department of Foreign Affairs, Trade and Development, Dutch Ministry of Foreign Affairs, Finnish Ministry for Foreign Affairs, French Ministry of Foreign Affairs, German Federal Foreign Office, Irish Aid, Principality of Liechtenstein, Luxembourg Ministry of Foreign Affairs, New Zealand Ministry of Foreign Affairs and Trade, Norwegian Ministry of Foreign Affairs, Swedish Ministry of Foreign Affairs, Swiss Federal Department of Foreign Affairs, and U.S. Agency for International Development.

Crisis Group also holds relationships with the following foundations: Carnegie Corporation of New York, Henry Luce Foundation, Humanity United, John D. and Catherine T. MacArthur Foundation, Koerber Foundation, Open Society Foundations, Open Society Initiative for West Africa, Ploughshares Fund, Rockefeller Brothers Fund, and Tinker Foundation.

**November 2016**

## Appendix C: Reports and Briefings on the Middle East and North Africa since 2013

### Special Reports

*Exploiting Disorder: al-Qaeda and the Islamic State*, Special Report, 14 March 2016 (also available in Arabic).

*Seizing the Moment: From Early Warning to Early Action*, Special Report N°2, 22 June 2016.

### Israel/Palestine

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