

Bar Ilan University Program on Conflict Resolution

BEYOND THE OSLO PROCESS: COMPARING DIRECT AND INDIRECT NEGOTIATIONS

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The origins of the negotiations that have become known as the “Oslo process,” or the “Middle East peace process” can be traced to President Sadat’s trip to Jerusalem in November 1977, and the Israeli-Egyptian Peace Treaty that was signed about 18 months later. This process, including the Camp David summit meeting in which the format for the treaty was negotiated, and the terms of reference, created the model or paradigm, as well as much of the substantive basis for other negotiations.

In October 1991, following the defeat of Saddam Hussein, and what was declared with great fanfare as “the new world order”, the U.S. organized the Madrid Middle East Peace Conference, and initiated bilateral as well as multilateral negotiations. Two years later, following a change of government in Israel and the selection of Yitzchak Rabin as Prime Minister, Israeli and Palestinian negotiators, meeting in secret, produced a Declaration of Principles, (the Oslo agreement), and exchanged letters of mutual recognition.

Looking back, seven years after the Oslo agreement, and nine years after Madrid, this process did not lead to a comprehensive Middle East peace, and the region is again characterized by instability and violence. Some argue

that the Oslo framework also has been counterproductive, creating expectations that could not be met, emphasizing cultural differences, and increasing the level of anger, frustration, and insecurity. There is no agreement on the Israel-Syria track, and the instability in the Israeli-Syrian-Lebanese triangle is growing. Violence and terrorism involving the Palestinian Authority and Israel has continued throughout this period, and the events of the past two months threaten to lead the entire region back into a major conflagration.

Academic analysis of conflict and conflict resolution are useful in identifying a number of weaknesses that explain this failure of the Oslo approach.

1) Structurally, the concept of an interim process in which Israel relinquished territorial assets, without a clear idea of the final status, was problematic. The “land for peace” formula was overly simplistic, and obfuscated more than it clarified. In the absence of accepted international boundaries, and given the transitory nature of the 1948-1967 cease-fire lines, the status of the territory in question was and remains ambiguous (in contrast to the Israeli borders with Egypt or Syria).

The definition of “peace” also remains unclear, but, from the Israeli perspective, the minimal requirement of security has not been met. From the beginning, Palestinians were concerned that Israel would leave them with small isolated cantons, preventing them from developing a viable state. Israeli concerns focused on the scenario in which a Palestinian state in most of the West Bank regions would become a failed state and, like Lebanon or Sudan, a base for terrorism and continued conflict. Without reaching agreed definitions of these critical terms, the Oslo process was doomed from the beginning.

2) The five-year framework in which to resolve the “permanent status issues”, such as boundaries, settlements, refugees, and Jerusalem was also never realistic. When Jerusalem was first raised at the highest levels in July 2000 at the Camp David summit, it was clear that the perceptions of the two sides were very far apart. Similarly, the “red lines” regarding Palestinian claims to the right of return for refugees, which has not changed since the 1993 Oslo agreement, or even since 1949, were also very distant. Even under the best of circumstances, the odds of convergence on these central issues in a short period would have been very low.

3) The concept of a “permanent status agreement” created in the Oslo talks and enshrined in the Declaration of Principles was a major source of unrealistic expectations. Nothing in the relations between peoples and states can be considered permanent, and certainly, the promise that the parties to a bitter ethno-national and religious conflict could create a permanent peace between them in a period of five or even twenty-five years was counterproductive. Among Israelis, it created the expectation that the enmity and hatred would suddenly be replaced by mutual acceptance and cooperation. Among Palestinians, this created a real time frame in which they planned to achieve the “historic justice” that they have adopted as part of their historical narrative for the past fifty years. At best, and under optimum conditions, mutual understanding and tolerance can only evolve slowly, and sudden transformations are rare and short-lived. Thus, the introduction of the concept of “permanent status” was a mistake from the beginning.

4) Confidence-building measures become the glue to cement the interim measures into longer-term stability. The continuation of the hate speech and incitement in the Palestinian textbooks and official media created the foundation for the wave of violence and the war of attrition that we are presently witnessing. From the Palestinian perspective, continuing Israeli

settlement activity and disagreement over the release of prisoners constitute failures to build confidence.

5) Finally, the Oslo process created a series of ever-more complex and detailed interim agreements, hundreds of pages long, with meticulously drafted annexes and maps. This highly legalistic approach also emphasized the cultural differences between Israeli and American negotiating styles, and Arab approaches. The obligations that were included were often ambiguous, as in the case of the 1998 Wye Memorandum's infamous FRDs, "further redeployments" to undefined "specified military locations"; with respect to extradition of terrorist suspects; or in the case of Palestinian pledges to end anti-Israeli incitement. As Israelis and Palestinians focused on claims of the other's violations, the "constructive ambiguity" in the Oslo agreements became destructive.

On this basis, it appears that structurally, the Oslo process was never suited for this stage of the Israeli-Palestinian relationship, and, as argued above, was in some critical ways, counter productive. At the same time, it is clear that the status quo, characterized by a swiss-cheese map that invites friction, is also untenable. As a result, alternative approaches to managing this conflict must be sought.

ALTERNATIVE ROUTES FROM ZERO-SUM TO WIN-WIN

From an academic perspective, negotiation and conflict resolution efforts can be summarized in terms of the effort to move from a "zero-sum" framework, in which one side's gain is the other's loss, to a positive sum approach, or "win-win" situations. Parties to a dispute that are "ripe" for a negotiated resolution, based on mutual acceptance and compromise, are characterized by an understanding that their interests, including national

survival, are best realized through a political process, rather than through violence.

Ripeness is often attributed to war-weariness, as illustrated in Europe after two devastating world wars and centuries of brutal warfare. In the Middle East, the high costs of the Yom Kippur War for all the participants provided the basis for initial diplomatic steps, beginning with direct disengagement talks, President Sadat's trip to Jerusalem in 1977, and then the 1979 Peace Treaty. Similarly, in the view of the U.S. and many other governments, the combination of the *intifada* and the 1991 Gulf War seemed to leave both Israel and the Palestinians in a similar situation, and "ripe" for a negotiated agreement.

Assuming that some of the necessary conditions for the transition to a win-win approach and compromise existed at the time, and in the hope that they have not disappeared entirely (and indeed, might have been reinforced through the current wave of violence), it is important to avoid repeating the mistakes of the Oslo process, and to explore viable alternatives. Just as the term "permanent status" is a misnomer, so is the claim that diplomacy has reached a dead end.

Instead, different processes should be sought with more modest and realistic goals of conflict management (in contrast to conflict resolution) and intermediate goals designed to reduce the level of friction. At this stage, before the parties to the conflict are "ripe" for formal concessions and commitments on the core issues, informal processes based on gradual unilateral reciprocal measures are the best way to proceed. Such measures will not produce the grand ceremonies on the White House lawn or to receive Nobel peace prizes, but in terms of substance, they are likely to prove more resilient.

The concept of “gradual reduction in tensions” (GRIT) was developed by academics such as Robert Osgood, during the height of the Cold War. The concept was based on a situation of intense conflict and distrust, while at the same time, the two parties in the conflict also recognized that their vital interests and survival required some level of cooperation. In this situation, in which direct negotiations and compromise solutions were not possible, low-level unilateral measures to reduce friction and prevent unwanted clashes and escalation could be taken. Each such unilateral measure was chosen carefully in order to avoid misperception (either as a sign of weakness or as an indication of hostile intentions), and to invite reciprocal responses in kind. The overall conflict relationship is maintained via deterrence, but evolving “rules of the game” are designed to lower the chances of misunderstanding, miscommunication, and catastrophic failures in the deterrence relationship.

In the Cold War context, particularly after the Cuban Missile crisis in 1962 brought Moscow and Washington to the brink of mutual annihilation, this process was the basis for some success. On a number of occasions, the Kennedy and Johnson Administrations deliberately acted with restraint vis-à-vis the Soviet Union, and in some critical actions, the Soviets responded in kind. This mutual restraint applied, in particular, to deployment of strategic nuclear forces, and has been traced in a number of research publications (including my doctoral dissertation). This process of indirect gradual unilateral but reciprocal moves was an important prelude to the beginning of the formal arms control negotiations that produced the SALT I and ABM treaties in 1972, and also helped to maintain this process from the collapse of détente in the 1970s and until the Gorbachev era.

In the Middle East, a series of informal “understandings”, rules of the game, and mutual restraint has also been applied, with varying success, in the

relationship between Israel and Syria after the 1974 separation of forces agreement. During most of this period, there were no direct substantive talks, and the deterrence relationship was managed indirectly, informally, and sometimes, via third parties to avoid misinterpretation. While the 1982 Lebanon War interrupted this relationship, it was restored a few years later, contributed to the deescalation of crises in the mid-1990s. (Indeed, it might be argued that the acceleration of the direct peace talks in 1999 at Shephardstown resulted in greater incentives to use violence in Lebanon, in order to increase the pressure for concessions, and also in terms of domestic audiences.) This is another example in which, given the absence of “ripeness”, direct negotiations can be counterproductive.

In a similar manner, the cooperative relationship between Israel and Jordan until the 1994 peace treaty was also based on informal “understandings”, although, in contrast to the other cases, these were negotiated directly in secret meetings. After the 1967 war, Moshe Dayan’s policy of “open bridges” and de-facto local autonomy for the Palestinians was also based, in large part, on informal arrangements designed to reduce tensions and conflict. These arrangements lasted until the late 1970s, and some elements continued until the outbreak of the *intifada*. While the limited lifetime of informal reciprocal arrangements in this and other cases illustrates that such approaches are not permanent substitutes for formal efforts to resolve conflict, this approach is potentially more suitable than the plunge into formal direct negotiations.

In this context, and under the assumption that the Israeli-Palestinian relationship is not yet ripe, the informal and gradual approach based on unilateral reciprocal measures to reduce violence and prevent unwanted escalation should be considered.

We cannot turn the clock back, and under these conditions, the first goal of an informal process would be to reduce the degree of friction left by the incomplete Oslo process. Neither side wants to return to the pre-Oslo map, but neither can live with the status quo. Despite the well-known limitations and difficulties, separation in some form is a necessary step towards reduction in tensions. In order to reduce this friction, and separate the combatants, Israel will have to ***unilaterally*** reduce its presence in some areas (meaning that some settlements will be dismantled). This step would expand the areas under exclusive Palestinian control, allowing Palestinians to move between neighboring cities and villages without encountering Israeli forces. A revised map would also permit Israelis to move about without entering areas under Palestinian control.

At the same time, the Palestinians must find ways to demonstrate that the transfer of additional territory will not increase the level of violence and terrorism. This will not be easy, and detailed consideration is required. Furthermore, the continuation and expansion of this process will require continuous Palestinian reciprocity, including ending the anti-Israeli incitement that has been the foundation for terrorism. In the absence of credibility (another casualty of Oslo), words, in terms of negotiated agreements, will count for little, while unilateral actions will be central.

Under such conditions, and despite the absence of direct negotiations, the declaration of a viable Palestinian state would not necessarily be seen as a threat, but rather as a step towards long-term coexistence with Israel. At this point, mutual recognition and the exchange of ambassadors would also build confidence, and strengthen the dynamism of this process.

Implementation of this informal and gradualist approach to conflict management is not easy, by any measure. In Israel, there will be strong ideological opposition to unilateral separation and dismantling of isolated

settlements, and critics will charge that these measures rewards and encourages Palestinian violence. Many Palestinians will also resist efforts to end the violence and develop informal cooperative relationships with Israelis.

Over time, perhaps a few years, or a decade or more, the environment will change, new leaders will emerge, and the last and most difficult steps towards an end to the conflict can be taken, perhaps allowing a return to the negotiating table at the final phase. For this informal and gradual process to succeed, a great deal of patience and leadership is required, and both are in short supply in the Middle East. However, in the absence of “ripeness”, this appears to be the best available option.