



## A TWO-STATE SOLUTION

**Samih Al-Abid, Ph.D.**

Diana Tamari Sabbagh Fellow in Middle Eastern Studies

December 2018

© 2018 Rice University's Baker Institute for Public Policy

This material may be quoted or reproduced without prior permission, provided appropriate credit is given to the author and the Baker Institute.

Wherever feasible, papers are reviewed by outside experts before they are released. However, the research and views expressed in this paper are those of the individual researcher(s) and do not necessarily represent the views of the Baker Institute.

Samih Al-Abid, Ph.D.  
“A Two-State Solution”

## Introduction

The Trump administration has yet to endorse the two-state solution (TSS) as the preferred outcome to the Israeli-Palestinian conflict. The U.S. president has instead indicated that he stands ready to support any solution negotiated between the parties, whether it is a one-state solution where Israeli Jews and Palestinians live together within the borders of a pre-1947 Mandate Palestine, or whether it is a two state solution that establishes an independent State of Palestine alongside Israel in the Palestinian territories occupied since June 4, 1967. The current U.S. administration's ambivalence about a solution to the Israel-Palestine conflict, coupled with its relocation of the U.S. embassy from Tel Aviv to Jerusalem, breaks with decades of U.S. policy that has supported Palestinian statehood. As a result of the policy shift, the Palestinian leadership has refused to re-enter negotiations with Israel so long as the U.S. is the sole mediator. The Israeli government, for its part, has taken the U.S. policy shift as a green light to accelerate settlement expansion in the occupied West Bank, including Jerusalem.

Even if the U.S. administration changes course and announces its support for the TSS today, the parties are unlikely to restart peace talks without significant external pressure to do so. The platform of the ruling party in Israel, the Likud, has called for the annexation of the West Bank. A number of bills currently making their way through the Knesset would, if passed, make permanent Israeli sovereignty over much of the West Bank. Though a TSS may still be the preferred solution among Israelis, it is not clear that there is a consensus on how an acceptable two-state outcome would deal with the final status issues such as Jerusalem, Palestinian refugees, and Israeli settlements.

Palestinian reconciliation efforts—critical to any negotiated solution to the Israel-Palestine conflict—have been stalled and there is little political incentive for Hamas, the authority in Gaza, or the Fatah-controlled Palestinian Authority (PA) in Ramallah to move forward with the Cairo-brokered deal. The recent civil society protests in Gaza, dubbed the “Great Return March,” have only bolstered Hamas's standing in the occupied territories and have provided an avenue for political recognition of Hamas's authority with key members of the international community. The PA will not take over responsibility for administering Gaza so long as Hamas maintains its own militia separate from Palestinian security forces. Though Hamas has handed governance and control over crossings to the PA, it has not shown the same willingness to hand over its weapons. If there is any consensus to be found in Palestinian political thought, it is that there can be no Palestinian state without Gaza. Reconciliation is the *sine qua non* of Palestinian statehood.

Under these circumstances, the current one-state reality in which Israel maintains effective control over the West Bank, including East Jerusalem and Gaza, without extending Palestinians living there political, economic, or social rights is likely to continue indefinitely. The status quo has gone from creeping Israeli de facto annexation of the occupied West Bank to accelerated de jure annexation. This is neither sustainable for Palestinians and Israelis nor acceptable as a matter of international law. Failure to reach a comprehensive agreement will also mean that the humanitarian relief, reconstruction, and

economic development desperately needed in Gaza cannot be provided fast enough to prevent the public health catastrophe that is looming over enclaves of two million people, most of whom are under the age of 30.

The continuation of the status quo all but guarantees a prolonged conflict that could go from the largely nonviolent civil society-led protests seen since March 30 in Gaza, to alternating high- and low-intensity violent confrontations throughout the occupied territories, including East Jerusalem. Without a political horizon and with unemployment among Palestinian youth in the occupied territories at astronomically high rates, resistance to Israeli military and settler activity will likely grow, leading to further loss of life and civilian casualties.

This paper aims to show that there is still an opportunity for Israelis and Palestinians to live in peace and security within a two-state framework if the parties and the international community—including the U.S.—act now. The formula begins with recognition of the parameters for a territorial agreement between the parties and ends with an agreement that includes political recognition between the two states, Israel and Palestine, within their respective borders.

## The Two-State Solution

### *Why is the two-state solution the best and only option?*

The two-state solution (TSS) refers to the creation of an independent Palestinian state in the West Bank and Gaza, with East Jerusalem as the capital, living in peace and security alongside the State of Israel. The border called for by the TSS is to be based on the pre-June 4, 1967 line.

A TSS serves the interests of both Israelis and Palestinians. A successful, prosperous and contiguous State of Palestine can become an important guarantor of security and stability in the region and a bulwark against extremism. Israeli commitment to the TSS, including an end of its military occupation, would mean that Israel's relations with the Arab and Islamic world could be normalized, opening the door to full political and economic relations pursuant to the Arab Peace Initiative (API) adopted in 2002, and reaffirmed in 2007 and 2017, by the Council of the League of Arab States. Israeli regional integration and an end of occupation would unleash economic opportunities for Palestinians and regional cooperation that would serve as the cornerstone of a durable peace and good neighborly relations.

Because of the win-win situation for Israelis and Palestinians, the TSS has gained international consensus and legitimacy over the last quarter century. It has been embraced by the UN, the U.S., and the international community writ large. The TSS was last referenced in UN Security Council Resolution 2334 and it forms the basis for the Quartet framework and EU foreign policy in the region.

The alternative to the TSS is a one-state solution in which Palestinians from the occupied territories are offered full citizenship and equality inside the State of Israel. The prospect of a binational state in Israel has never been considered a viable option for the majority of Israel's Jewish citizens, who represent over 70% of the population. Israel defines itself as a Jewish state and has worked to maintain a decisive demographic majority since 1948. Political parties that call for Israel to be a state for all its citizens are prohibited by law in Israel. No Israeli government is likely to call for a redefined Israel that allows equalrights and responsibilities between the country's Jews and non-Jews. The current governing coalition is the most right-wing in Israel's history. Political trends in Israel indicate that the polity will continue to lean right for the foreseeable future.

### *How can the two-state-solution be implemented now?*

Assuming that the U.S. endorses the TSS and, along with the EU, is able incentivize the parties to return to negotiations, a new approach is needed to reach a comprehensive agreement to end the conflict. To build trust and help bring Palestinians back to negotiations, before the launch of talks Palestinians and Israelis must publicly commit to both an end to the military occupation that began in 1967 and to the TSS. They must accept that the border between the parties will be based on the pre-June 4, 1967 lines, with any modifications to be agreed to by the parties during territorial talks. Interim arrangements and provisional borders have proven to be unworkable negotiation traps in the past and should be avoided. Recognition of the territorial contours of the TSS makes the endgame clear and levels the power asymmetry between an occupying state and an occupied people.

The process for relaunching talks toward a comprehensive agreement consists of the following four components:

- Phased political recognition between the parties linked to three key milestones;
- Convocation of an international conference and creation of an international mechanism for an end of occupation, resolution of the refugee status and claims, and the implementation of the comprehensive agreement for the creation of a Palestinian state;
- Accelerated state-building during territorial talks that shall be carried over into final status negotiations with the participation and coordination of regional stakeholders and international donors; and
- An agreement on territory and security within one year and an agreement on final status issues within two years.

### Phased Political Recognition

Three milestones should coincide with negotiations at the launch of talks, at the conclusion of a territorial agreement, and at the signing of a final status agreement.

- 1) At launch: Both parties will publicly commit to the TSS based on the pre-June 4, 1967 line.
- 2) After the conclusion of a territorial agreement and within one year: Both parties will recognize the border between them with the mutually agreed-upon modifications.
- 3) After the conclusion of the final status agreement: Language for political recognition will be contained in a comprehensive agreement between the parties. The international mechanism will be responsible for ensuring implementation until it determines that there is an end of occupation and Palestine has achieved full sovereignty.

### Principles for a Territorial Agreement

The conclusion of a territorial agreement should adhere to the following principles:

- 1) A territorial agreement will be reached within one year.
- 2) Any mutually agreed-upon modifications to the border between the parties will be on a one-to-one basis in equal size and value.
- 3) Once a border is determined, each party will prepare to transfer sovereignty by passing the necessary domestic legislation and by preparing the physical sites. The processes for transfer will be overseen by the international mechanism.
- 4) No settlement construction may take place during negotiations and no construction will be allowed on the transferred areas until each party has relinquished sovereignty as provided under the territorial agreement.

The border between the State of Palestine and the State of Israel is a crucial element for the success of a two-state solution. It will be the tool that will make the two-state solution tempting and appealing. The border was negotiated in several sessions between the Palestinians and Israel. The latest was in 2008 in Annapolis, where the Palestinians showed a willingness to consider a concession to negotiate the future border of the State of Palestine and a willingness to modify the location of the border. An ideal border would be one that is close in proximity to the 1967 border that will wind around areas that are occupied with Israeli settlements on the West Bank side and wind around uninhabited areas on the Israeli side of the border. Both areas on both sides of the original 1967 line that will be negotiated should be of equal size and value. This negotiated and agreed-upon border will fulfill two goals. First, it will allow approximately 80% of Israeli settlers to stay where they are living today. The remaining 20% of settlers living today in isolated settlements in the West Bank should relocate outside of the State of Palestine and outside this new borderline. Note that these scattered settlements represent one-third of the total number of settlements, and each accommodates fewer than 1,000 settlers. The evacuation of such scattered, isolated

settlements will be a very important component, as 20% or more of the settlers who are living there today—including 10,500 settlers living in the Jordan Valley— will be asked to evacuate. Incentives should be given to encourage such a move. The second goal is for the border to include uninhabited areas west of the 1967 border that will be fully contiguous and part of the Palestinian State and will allow for keeping the size of the West Bank unchanged. Moreover, the area of the West Bank with the newly negotiated and agreed-upon border would comprise 100% of the area of the West Bank that lies within the 1967 border as per UNSC resolution 242.

### State-building and Economic Development

State-building is key to alleviating the dire economic conditions in both the West Bank and Gaza, and will help build trust in the new round of final status negotiations. State-building and economic development projects should begin at launch and be guided by the following principles:

- 1) The aim of all state-building projects must be to support territorial contiguity, sovereignty, and prosperity for the State of Palestine.
- 2) Of primary importance are preparations for the Gaza-West Bank link and major infrastructure, e.g., water, energy, and transportation, including port and airport facilities.
- 3) Palestine will assemble a list of priority projects in consultation with the Ad Hoc Liaison Committee (AHLIC) and international donors.
- 4) Israel will implement movement and access agreements, arrange for redeployments, and transfer the authority required for economic development and trade.

### *The Security Plan*

The security plan for the launch of talks, during negotiations, and for the post-comprehensive agreement must take the following into consideration:

- 1) The Palestinian state will agree to be established as a state with only defensive capabilities and limited arms.
- 2) During the transfer of sovereignty, the international mechanism will oversee redeployments and a third party will jointly provide security for the territory of Palestine alongside Palestinian forces.
- 3) Long-term regional and bilateral security arrangements and coordination will be established under the comprehensive agreement.

### *Regional Participation*

The participation of regional stakeholders will be key to the success of the negotiations and is essential at certain milestones in the process and during talks on final status issues. Regional stakeholders will also be involved through multilateral mechanisms such as the High Contracting Parties of the Fourth Geneva Convention, which will be empowered to adjudge the end of a state of occupation in the West Bank and Gaza.

- 1) Regional stakeholders should participate in developing the necessary transitional security arrangements at the conclusion of territorial talks and during talks on final status issues involving security, trade relations, interstate matters, sharing and management of transboundary natural resources, and in creation of the international mechanism for adjudication of refugee status and claims and reparation claims.
- 2) The Arab Peace Initiative will be implemented after the conclusion of a comprehensive agreement between the parties and after specified steps have been taken toward implementation of the agreement as determined by the international mechanism for adjudication of claims and the High Contracting Parties of the Fourth Geneva Convention, which will determine when a state of occupation has ceased.

### *International Engagement*

The international community has a critical role to play in the launch of talks, in advancing the process, and in the long-term durability of the agreement.

- 1) International donor participation will be required to fund and implement Palestinian state-building plans and to create necessary guarantees and monitoring procedures during negotiations. Processes within the AHLC ought to be reviewed to determine how the body may better work to support Palestinian state-building during a relaunch of talks.
- 2) International coordination with the AHLC will be required to provide incentives for follow-through by the parties. A dispute resolution mechanism during talks and after a comprehensive agreement is also necessary to deal with any issues that might otherwise derail the talks or successful implementation of a comprehensive agreement. The dispute resolution mechanism may take the form of a special mandate created by the UN or through the use of the good offices of the Quartet or the creation of a multi-lateral body empowered to resolve disputes between the parties.
- 3) An international mechanism will be needed to fund and implement the agreement to resolve refugee status and claims and to adjudicate other matters related to reparations for damages associated with occupation.
- 4) The High Contracting Parties of the Fourth Geneva Convention should be empowered to determine when the occupation has ended for purposes of implementing provisions of the comprehensive agreement.



### *Conduct of Negotiations*

How negotiations are conducted will greatly impact the success of talks. The process should be guided by the following principles:

- 1) Talks will be conducted in secret.
- 2) What has been agreed upon shall be implemented except that Israel is not permitted to build or expand settlements until full sovereignty has been transferred under the comprehensive agreement and there is an end of occupation as determined by the High Contracting Parties of the Fourth Geneva Convention.
- 3) The parties will refrain from statements and actions that undermine negotiations.
- 4) Neither party will unilaterally change the legal status of any area that is the subject of negotiations during negotiations.
- 5) The parties will prepare their populations for a positive reception of the agreements.
- 6) The final status issues should include the functionality of Jerusalem, bilateral and regional security arrangements, creation of the international mechanism for the resolution of refugee status and claims, and for reparations for damages associated with occupation, the management and sharing of trans-boundary natural resources, and other state-to-state matters.

### *Note on a total settlement freeze*

Negotiations on territory while Israel is permitted to continue to expand and establish new settlements has only complicated the issue of reaching a comprehensive agreement.

Facts on the ground today are a challenge to the implementation of a two-state solution. Today in 2018, more than 650,000 Israeli settlers live illegally in settlements in the occupied West Bank and East Jerusalem, comprising 2.7%<sup>1</sup> of the area of the West Bank.<sup>2</sup> Settlements are continually expanding and settlement construction has escalated dramatically since 2017. Settlements have an “area of jurisdiction” that is larger in size compared to the settlement built up area within the fence. The area of jurisdiction of the settlements represents more than 9.3% of the area of the West Bank. Moreover, the settlements are connected by a well-developed road network that takes up 2.3% of area; the road network also connects the settlements to their center of life in Israel. Settlers exploit natural resources and use more 2% of the land for agriculture. Additionally, 20% of the area of the West Bank has been declared a closed military area and includes firing zones. Another very important fact is that the occupying power of Israel has declared more than 20% of the area of the West Bank as “State Land.” In addition, 9.4% of the area of the West Bank today is isolated between the Annexation Wall and the 1967 border. Consequently, almost 60% of the West Bank is today under full Israeli control, leaving 2.9 million

---

<sup>1</sup> The area within the fence constructed around settlements.

<sup>2</sup> The land area of the West Bank including occupied East Jerusalem is 5664.5 km<sup>2</sup>.

Palestinians to live in 169 “islands” in areas A and B, on less than 40% of the West Bank that resulted in the unfulfilled Oslo Interim agreement. Given such land control facts, the West Bank today is totally fragmented.

Obviously, time is on the side of party building and expanding settlements. History has borne this out. In 1993, when the PLO and Israel signed the Declaration of Principles, there were approximately 270,000 illegal settlers in the West Bank, including East Jerusalem. As noted above, there are approximately 650,000 today.

For Palestinians, a settlement freeze builds trust and confidence, which has been lacking after more than 20 years of talks. It also preserves the possibility of the TSS and allows for meaningful improvements on the ground as well as infrastructure development that will be immediately felt by Palestinians. This will shore up Palestinian support for both the TSS and for the current Palestinian leadership.

For Israelis, a settlement freeze begins to repair the growing international perception that Israel is bent on illegally annexing the West Bank and on indefinitely denying Palestinians their political, economic, and social rights, including their right to self-determination. A freeze encourages the current Israeli leadership to move its political base to the center-left and away from more extreme right-wing parties that are not interested in a TSS. A settlement freeze also facilitates an adjustment in the expectations of the settler community and establishes certain geopolitical realities between Palestinians and Israelis that support a TSS.

Figure 1. Territorial Control in the West Bank

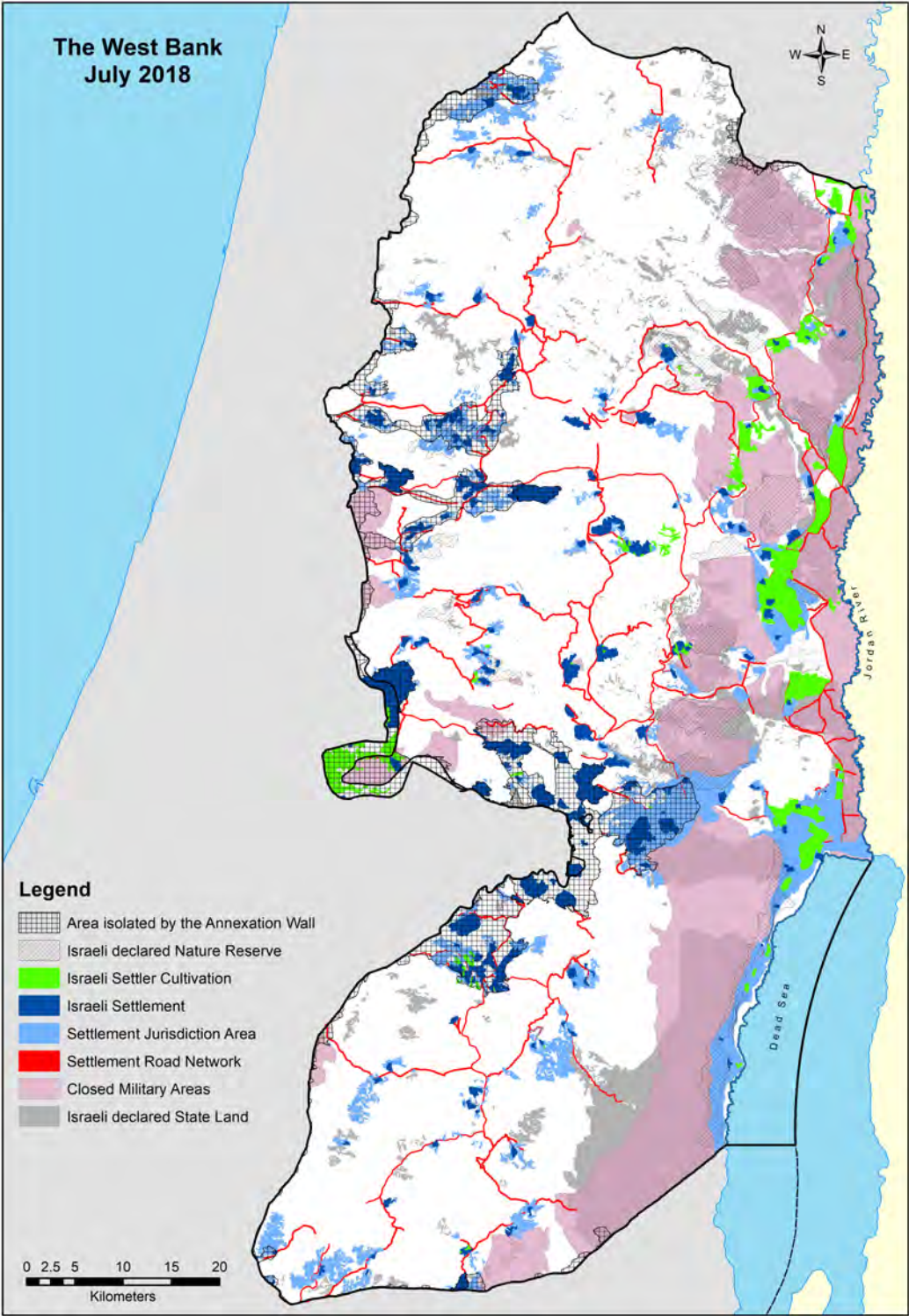
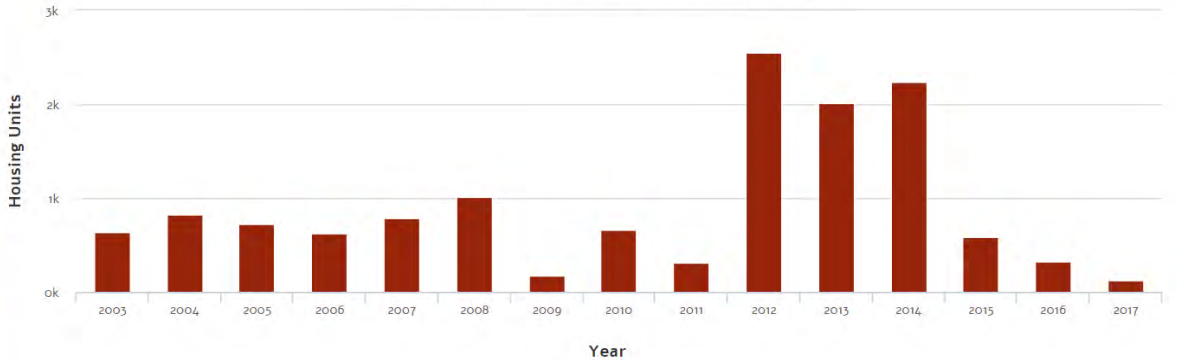


Figure 2. Construction Starts in Settlements by Year



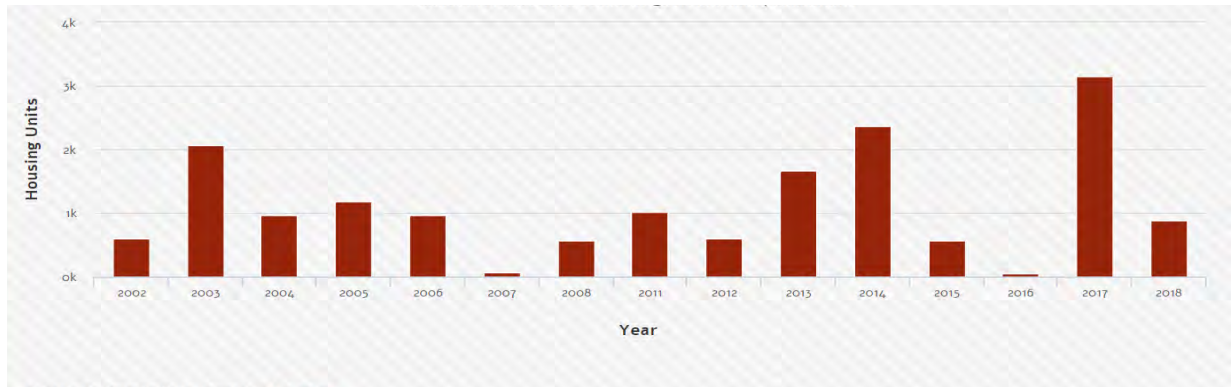
Source: Israeli Central Bureau of Statistics (CBS)

Figure 3. Tenders in East Jerusalem by Year



Tenders are housing units for construction marketed by the government to contractors. The contractor with the winning bid builds the housing units and markets them to consumers.

Source: A Peace Now count of government publications

**Figure 4.** Tenders for Settlement Construction by Year

Source: A Peace Now count of governmental publications

### *Notes on “what’s agreed will be implemented”*

The concept of implementation as the parties come to agree on issues related to territory, security, and economic development is a novel one that enables the Palestinian state to jump-start statehood in a way that has not been possible in the past because of the lack of clarity on Israel’s territorial intentions. On the Israeli side, the public will see the active and ongoing implementation of agreements as proof of the government’s commitment to the two-state formula; settlers will prepare for this reality and will make the necessary adjustments in their lives with financial support and incentives from their government.

There is an important exception to this principle, however, with respect to the areas to be transferred between the parties under the territorial agreement. As the occupying party, Israel has the legal obligation to withdraw from the territories it captured in 1967 and remove its settlers without qualification. It is legally invalid and impermissible for an occupied people to trade a partial withdrawal of troops from occupied territory (or in exchange for some other economic benefit the occupier already owes) for its consent to allow some settlements to remain or expand in the occupied territory absent a final agreement. Thus, there must be a complete moratorium on all settlement construction in the occupied territories until a final agreement is reached on the remaining final status issues and Israeli troops are withdrawn.

In any case, the Israeli side is legally incapable of ceding territory to the Palestinian side until certain Israeli laws have been repealed and/or amended to enable it to relinquish control over East Jerusalem or transfer sovereignty to land inside Israel proper. This will take time and will mean that the Palestinian side will not have the security of knowing that land promised to them under the territorial agreement will in fact be ceded to them. Freezing settlements in the areas to be transferred as well as in the rest of the West Bank incentivizes action to pursue legislation to permit the cession of territory to the Palestinian state and to move forward with final status talks.

## Domestic considerations in occupied Palestinian territory making TSS ripe

### *Trends among Palestinian youth*

The current situation in Palestine is marked by growing disillusionment with the TSS and a focus on a rights-based approach to the conflict, particularly among the youth, that would allow Palestinians to live in dignity in their homeland regardless of what passport they hold. This is the growing trend buoyed by the persistence of violent interactions with Israeli occupation forces and settlers in the West Bank, expanding settlements, and a general unemployment rate of over 25% that rises to over 40% in Gaza.

The Oslo framework has been largely discredited and is seen only as a mechanism to expand Israeli settlements and to prolong Israel's grip on Palestinian land and natural resources. Still, with an absence of a viable alternative solution that could end their suffering in the near term, a plurality of Palestinians still favor the TSS, according to recent polling.

### *Political changes within Hamas*

Changes to Hamas's political program indicate that the Islamic movement also supports a two-state framework based on the 1967 borders, with Jerusalem as the capital to end the prolonged conflict, at least as an interim solution. It maintains the right to return of Palestinian refugees as prescribed by international law and as a basis for national consensus.

It would be a mistake to dismiss Hamas's overtures to both the PA and the international community merely because it continues to refuse to recognize the State of Israel. After all, Likud, the party of the sitting Israeli prime minister, has never recognized the right of Palestinians to self-determination, does not mention the TSS in its party platform, and has recently voted to annex the West Bank. The position of Likud has not prevented the United States or the international community from engaging with Israel. In fact, more engagement, not less, has been the preferred course with Israel. This has not been tried with Hamas.

### *Reconciliation efforts*

A Hamas-Fatah reconciliation has been elusive despite the signing of three national unity agreements over the course of the 10-year political division. The lack of implementation of agreements for a Palestinian consensus government has meant national elections have also been stalled. To date, there is no alternative mechanism for the selection of a successor to the Palestinian president, thus making it difficult to predict with any certainty what direction Palestinians will take in any future negotiations or whether new leadership will be interested in negotiations under current conditions at all.

### *A note about the situation in Gaza*

The situation in Gaza can no longer wait for the perfect set of circumstances to restart a final status agreement. In 2012, the UN Country Team in the occupied Palestinian territory (UNCT) determined that Gaza would be uninhabitable by 2020. Today, UNCT reports that

the unlivability threshold has been passed, spurred along by the 2014 Israeli bombardment and ground invasion that saw 100,000 people displaced and made homeless. With between two and four hours of electricity a day now, essential services—including hospital care, water treatment, and sanitation—have been crippled.

By the end of this year, Gaza will have no source for drinking water and experts predict that its aquifer will soon be irreversibly damaged. Over one million people, more than half the population, is dependent on humanitarian assistance to survive. Because most of Gaza's youth were born after the Oslo peace process began more than two decades ago, they generally associate the signing of the interim agreement with their captivity inside Gaza and the deprivations they live with daily. With 60% youth unemployment, postponing a comprehensive peace agreement indefinitely is not an option.

### *U.S. aid to Palestinians*

U.S. economic aid, ranging annually from between \$270 million to \$400 million per year, will likely be significantly curtailed if not completely stopped in the coming year pursuant to the recently passed Taylor Force Act (TFA). The TFA will end economic support funds for programs in the occupied Palestinian territories unless the secretary of state certifies that the PA and the PLO no longer provide any assistance to the families of those held as prisoners in Israeli jails or of those killed during violence against Israel. Despite the looming aid cut, the Palestinian leadership has indicated that it will continue to provide dependent families with needed social assistance. If the economic hardship faced by Palestinians living in the West Bank becomes even more acute, the security situation is likely to deteriorate.

### *Settlement construction and the threat of annexation*

At least as early as 1978, the legal advisor to the State Department determined that settlement construction in the occupied territories is inconsistent with international law, i.e., it is illegal. Secretary of State John Kerry confirmed before leaving his post in December 2016 that in the almost 40 years since that legal opinion, the U.S. position has remained the same. Despite U.S. opposition to settlement construction over the years, the number of Israeli settlers today stands at approximately 650,000, representing an almost three-fold increase since the PLO and Israel signed the Oslo interim peace agreement in 1994. Just since 2009, the settler population in the West Bank, not including East Jerusalem, has increased by 100,000. Nearly 90,000 settlers live east of the separation barrier, which in years prior Israeli leaders had argued ought to be the border imposed on Palestinians. Some of these settlements are located deep in the West Bank, making a sovereign, contiguous Palestinian state unlikely. Twenty thousand of the settlers living east of the separation barrier moved there between 2009 and 2016.

Further delay in concluding an agreement for a TSS will make the creation of a sovereign Palestinian state impossible. Though this is the intention of the leaders of the Israeli right-wing and the settler movement who seek to annex the greater part of the West Bank, the TSS is still the preferred solution among a majority of Israelis.

## Conclusion

Despite the fact that the TSS appears to have been abandoned by the current U.S. administration and by the present Israeli governing coalition, it remains the only viable option for resolution of the Israel-Palestine conflict. A one-state solution in which Palestinians are extended equal rights inside the State of Israel is not practicable in light of Israel's self-definition as a Jewish state and the dominance of conservative right-wing parties that seek to maintain a decisive Jewish majority in Israel.

Assuming the U.S. and the international community reengage on the TSS and are able to get the parties back to the negotiating table, the formula for reaching a comprehensive peace agreement between Israelis and Palestinians begins and ends with recognition: recognition of the territorial endgame, of agreed modifications to the border, and of political recognition between the State of Israel and the State of Palestine. The international community will have to play a significant role through each milestone in the process; the process cannot be left to one mediator. Domestic realities in the occupied territories make postponing a comprehensive agreement dangerous. The humanitarian catastrophe looming in Gaza and the expansion of settlements and legalization of the same by Israel mean that the international community must act now before the situation in Israel-Palestine devolves into a state of prolonged violence that will have negative implications for regional security.