



UNIVERSITY OF CALIFORNIA PRESS
JOURNALS + DIGITAL PUBLISHING



The Palestine Papers: Chronicling the U.S. Abandonment of the Road Map

Source: *Journal of Palestine Studies*, Vol. 40, No. 3 (Spring 2011), pp. 84-114

Published by: [University of California Press](#) on behalf of the [Institute for Palestine Studies](#)

Stable URL: <http://www.jstor.org/stable/10.1525/jps.2011.XL.3.84>

Accessed: 10/03/2015 14:36

Your use of the JSTOR archive indicates your acceptance of the Terms & Conditions of Use, available at
<http://www.jstor.org/page/info/about/policies/terms.jsp>

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact support@jstor.org.



University of California Press and Institute for Palestine Studies are collaborating with JSTOR to digitize, preserve and extend access to *Journal of Palestine Studies*.

<http://www.jstor.org>



SPECIAL DOCUMENT FILE

THE PALESTINE PAPERS: CHRONICLING THE U.S. ABANDONMENT OF THE ROAD MAP

A. Meeting Minutes, PLO Negotiation Affairs Department Office, Jericho, 16 September 2009 (excerpts)	86
B. Meeting Minutes, PLO Negotiation Affairs Department Office, Jericho, 17 September 2009 (excerpts)	91
C. Meeting Minutes, U.S. Mission to the United Nations, New York, 24 September 2009 (excerpts)	94
D. Meeting Summary, U.S. State Department, Washington, 1 October 2009 (excerpts)	99
E. U.S. Draft Terms of Reference Document for Restarting Negotiations, 2 October 2009	102
F. PLO Negotiation Support Unit, Preliminary Comments on U.S. Proposal as Presented on 2 October 2009	105
G. Meeting Minutes, U.S. State Department, Washington, 2 October 2009 (excerpts)	107
H. Meeting Minutes, U.S. State Department, Washington, 21 October 2009 (excerpts)	111

On 23 January 2011, as U.S. efforts to revive Israeli-Palestinian peace talks floundered, the Qatar-based al-Jazeera satellite TV channel and Britain's Guardian newspaper released a set of documents, written mostly by Palestinian officials (the "Palestine Papers"), claimed to be "the confidential record of ten years of efforts to seek a peace agreement with Israel." The more than 1,600 pages of documents dating from September 1999 to September 2010 came mostly from the PLO Negotiation Affairs Department (PLONAD) and its successor body, the Negotiations Support Unit (NSU) headed by chief negotiator Saeb Erakat, and included memos, emails, maps, minutes of private meetings, accounts of high-level exchanges, strategy papers, and Power Point presentations. The papers were leaked (apparently by several PLONAD/NSU staff) to al-Jazeera. Timed with the release, al-Jazeera launched a series (1/23-26) of hour-long programs to discuss the contents of the leaked material thematically: Jerusalem, settlements, and borders; refugees and right of return; PA security coordination with Israel; and the negotiations process.

Journal of Palestine Studies Vol. XL, No. 3 (Spring 2011), pp. 84-114, ISSN: 0377-919X; electronic ISSN: 1533-8614.
© 2011 by the Institute for Palestine Studies. All rights reserved. Please direct all requests for permission to photocopy or reproduce article content through the University of California Press's Rights and Permissions website, at <http://www.ucpressjournals.com/reprintInfo.asp>. DOI: jps.2011.XL.3.84.

Al-Jazeera contended, and many outraged Palestinians agreed, that the documents showed that Palestinian negotiators had secretly made serious concessions to Israel, including steep compromises on Jerusalem, borders, settlements, and refugees, while at the same time colluding with Israel on security matters at the expense of national unity (see under “Palestine Papers” in this issue’s Quarterly Update for details). Others noted that the documents were also problematic for Israel, by showing that the Palestinians repeatedly offered serious proposals for discussion that were consistently either not even considered or rejected out of hand, and for the United States, by their clear depiction of U.S. officials as condescending to, and dismissive of, the Palestinians and the extent to which Israel’s demands were prioritized.

Following the example of analyst Mark Perry, JPS has chosen to focus on the U.S. role in the peace process by reproducing a small number of documents that show, in Perry’s words, “just how far the Obama administration has been willing to go to satisfy Israel—to the point of abandoning prior pledges, international agreements, and American principles. (Foreign Policy, 27 January 2011)”

The Obama administration’s effective abandonment of the U.S.-drafted road map, was very damaging to the U.S.’s image as honest broker and had potentially far-reaching consequences for the future of the final status talks. Since the road map (which lays out staged sets of obligations required of both sides in order to achieve a final settlement) was agreed in April 2003, it had been central to the peace process. Obama himself stressed its importance in his June 2009 Cairo speech—his first major address to the Muslim world (see Doc. D2 in JPS 153)—where he stated: “The obligations that the parties have agreed to under the road map are clear. For peace to come, it is time for them—and all of us—to live up to our responsibilities.” Since 2003, the United States and Israel frequently reminded the Palestinians of their stage 1 obligations to cease all violence (including incitement), while the Palestinians attempted in vain to hold Israel to its stage 1 requirement to halt settlement expansion and remove settlement outposts.

In its first months in office, the Obama administration had in fact made serious efforts to get Israel to agree to a total settlement freeze, but by the time of the meetings documented below took place, the attempt had been abandoned. The rationale cited by the U.S. team was an apparently novel interpretation of the negotiating principle to which both Israelis and Palestinians had subscribed: “nothing is agreed until everything is agreed.” As originally intended by the parties, this meant that the points of agreement reached in previous negotiating rounds would not be considered binding or permanent until all other issues had been finalized and a written agreement formally signed, thereby allowing for final tradeoffs. The principle had not been intended to mean, as the U.S. (and doubtless Israel) now implied, that official agreements already endorsed by

the parties could be discarded at will by one side to facilitate progress. Indeed, the U.S. team during an exchange with the Palestinian team at a meeting held 2 October 2009 (document G below) appears to suggest that the Agreement on Movement and Access (see Doc. A4 in JPS 138) for easing Israeli restrictions on Palestinian movement, negotiated by former Secretary of State Condoleezza Rice in November 2005, may no longer hold.

The documents below cover talks between the Palestinian negotiating team led by Saeb Erakat and U.S. team led by special envoy George Mitchell (who was not always present) between 16 September and 21 October 2009. They took place against the background of an all-out push by the U.S. for a resumption of negotiations between the two sides. After the failed attempt to get Israel to agree to a complete halt to settlement building during the summer, the U.S. was now trying to persuade Israel to accept a limited moratorium and on that basis to get the Palestinians to return to the table: Israel's obligations (settlement freeze) and hence the road map, and the terms of reference (TOR) to which both sides must agree for negotiations to begin, are therefore at the heart of all the discussions. Also included are a U.S.-drafted TOR and the Palestinian response. Text within single brackets reflects JPS clarifications, and text within double brackets are original internal comments made by PLONAD/NSU personnel. All text is excerpted from the original documents posted on al-Jazeera's Transparency Unit Web site at <http://www.ajtransparency.com>.

A. MEETING MINUTES, PLO NEGOTIATION AFFAIRS DEPARTMENT OFFICE, JERICHO, 16 SEPTEMBER 2009 (EXCERPTS).

*With a meeting between U.S. Pres. Barack Obama, Israeli PM Benjamin Netanyahu, and Palestinian Authority Pres. Mahmud Abbas planned for 22 September 2009 on the sidelines of the opening United Nations General Assembly session in New York, the Obama administration hoped to use the occasion to announce resumption of Israeli-Palestinian peace talks. Details were still being worked out, and special envoy Mitchell and his team arrived in the region in mid-September to move the process forward (see Quarterly Update in JPS 154 for details). The Jericho meeting included, on the Palestinian side **chief negotiator Saeb Erakat (SE)**, **deputy chief negotiator Issa Kassissieh (IK)**, and **legal advisor Rami Dajani (RD)**; and on the U.S. side **Deputy Assistant Secretary of State David Hale (DH)** and **deputy envoy Mara Rudman (MR)**.*

DH: We're here to discuss the trilateral meeting to relaunch negotiations on the two-state outcome. That session will not be long. Afterwards the president will make a statement. Today we should discuss issues to enable the meeting to take place. The package is essential—I am well aware you have

misgivings regarding the quality of the package with Israel, but we will not be able to meet all expectations of all parties. In the aggregate, however, it's a good package. Our understanding is there will be language on Jerusalem in the president's statement and a reference to 1967 territory.

SE: What is the U.S. understanding of a settlement freeze—as stated in the road map? Your road map.

DH: A freeze is a flexible concept—every Israeli official has a different concept of it. For the president it means an end to all settlement activity—and he will say this. His position is that the settlements are illegitimate, and we've been working to bring an end to construction that is credible and that the Israelis are willing to do.

SE: [[Notes the exclusions as stated by [Israeli PM Benjamin Netanyahu (BN)]] For your information this will mean more settlement construction in 2009 than in 2008. This is the biggest game of deceit since 1967. . . . I simply can't ask less of BN than [opposition leader Tzipi] Livni did [[SE discusses Kadima's refusal to join a right-wing coalition that excludes Jerusalem from negotiations]]. If this is the package, it's a no go. It's about credibility. You had three options: you convince BN, he convinces you, or you maintain a disagreement—it seems he convinced you.

DH: . . . We intend to have a freeze—an end to activity. This is significant; no other president has invested so much and done so much on that before. If there is no meeting [on 22 September], there will be no freeze, so all our work will be wasted. And all the other elements will not be there. No one will get what they want. We said an explicit reference to Jerusalem and 1967 territory. Will these change the equation?

SE: I need to clarify things first. . . . Last night GM [U.S. special envoy George Mitchell] told AM [Abu Mazin, i.e., Palestinian Authority (PA) Pres. Mahmud Abbas] this is the best he could get. After several months of meetings with the Israelis. You need to give me a report. Instead you say a meeting on the 22nd—next Wednesday. You never discussed with me. . . . You spent 8 months with the Israelis—no time with me. We at least need to spend some time to build a political framework. You don't know what the framework will be. Maybe you don't have a plan. If you do, you have to lay it out. . . .

DH: This is a different president and a different approach. . . .

SE: But he will make a statement? On settlement freeze, if it's not a total freeze, it's a no-go. I know Israel. . . . This time let me make myself clear: We will not compromise on our people. We held the Fatah conference, we've carried out security reform—one authority one gun, rule of law—we've rebuilt

the PA. This is the time for clarity. If BO [U.S. Pres. Barack Obama] cannot stop BN for 9 months while we negotiate, why would we negotiate 1967 or Jerusalem?

DH: Our whole approach is based on the freeze. . . . The package will not be 100% of what you want or we want. But we did what is required.

MR: Also you haven't done a 100% . . .

SE: We have carried out our [road map] obligations. Ask your generals and the Israelis.

MR: There's the issue of incitement.

SE: We have asked for the convening of the trilateral committee on incitement. We have done our work—there are many things we would like to ask the Israelis about.

MR: But it's not complete.

SE: When will we know about the package? Before the 22nd? Is today the last meeting with BN?

. . .

DH: There are some important issues that need to be discussed prior to the 22nd, but there are others that do not. . . . The outcome is that the president will emerge from the meeting with the two leaders [Abbas and Netanyahu] and he will make comments to the press (alone but in their presence). It will be straightforward and simple, it won't break new ground, it will state key pertinent aspects and to the extent necessary previous agreements. He will announce a package that enables us to relaunch negotiations to end the conflict. He will also announce the intention to meet in Egypt towards the end of October. He will say a "contiguous, viable, democratic state of Palestine living side by side"—you know the formula—"with the Jewish State of Israel." . . .

RD: You said "Jewish"?

DH: Yes.

SE: Will he mention the core issues?

DH: To compensate for less than 100% freeze, maybe he will mention the core issues.

SE: We told Mitchell, we need recognition by the U.S. of a Palestinian state on 1967 borders. You have the meeting with [Secretary of State Condoleezza] Rice on July 30, 2008. She told me she wrote an 11-page memo on this. So what we need is consistency in the statement of Obama, according to the road map—ending the occupation that started in 1967—so recognition of Palestinian state on 1967 border with swaps agreed between the parties and incremental steps, third party. We said this to Mitchell. He said he will use road map language.

MR: In the Annapolis statement you didn't get the core issues, so this is giving you more. We would like to be able to mention all core issues . . .

DH: There will be reference to two states, a reference to West Bank territory—will that satisfy or compensate for the gaps?

SE: How can I? I am just asking you to state your own position—U.S. policy and international law!

RD: [[explains that reference to “territory” is not an acceptable alternative to “border” and illustrates with reference to state with provisional borders]]

. . .

MR: We can look at previous language for TORs [terms of reference].

RD: The TORs and the end game in Annapolis were not clearly defined which led to open-ended negotiations and stalling by Israel. Defining the TORs is not imposing an outcome and it needs to be done at the outset for negotiations to be meaningful.

SE: I know BN and how he works. You're saying the outcome is more or less the road map. The formula I need is 1967 borders with agreed swaps, third party, and incremental steps. Anything less is meaningless after all the way we have come. After the Cairo speech, Obama comes and says what Bush said! How do you sell that? I need to stay the course with my people.

DH: Let me elaborate: In addition to mentioning PS [permanent status] issues, 242, 338, the territory formula, lasting peace, mutual recognition, freedom from incitement and terror, respect for the principle of not prejudging outcome—that unilateral actions will not prejudice the outcome—the president will make clear that the U.S. will have an active and sustained role. . . . He will say “relaunch” negotiations. . . .

SE: Why not “resume negotiations from where the parties left off”?

DH: We prefer “relaunch” since there was no agreement—nothing is agreed until everything is agreed.

SE: There is a detailed record of our negotiations. The U.S. administration kept it—it is perhaps our only achievement with the Bush administration. And so much for Obama and rapprochement . . . there is not a new word! Give me something at least to save face! . . . We should not go into this thing leading to October without knowing what we will negotiate about. When can you tell me about the package?

DH: Hopefully soon.

SE: What about incentives on Jerusalem? Just mentioning it? It’s already in Oslo. So now I need to pay a price to have it mentioned!? What about real incentives. There are families sleeping on the street, kicked out of their homes, there are institutions closed, Iftar dinners shut down . . . fulfilling their obligations! That is what I mean by incentives! . . . We need a fallback position—we need to make sure there is no finger pointing [if there is no meeting on the 22nd]. It shouldn’t be all doom and gloom.

DH: If there is no meeting on the 22nd then there will be no freeze and everything we have accomplished will unravel. You will have nothing.

RD: If there is no freeze before or after what is there to unravel?

. . .

SE: Let’s not talk hypothetically. I have more questions: Will you define the end game? . . .

DH: On the end game and 1967 I will get back to you. . . The U.S. position is that we want negotiations to succeed regardless of approach. . .

SE: . . . Have you asked BN about his seriousness and willingness to enter negotiations? Have you considered the lessons learned from Camp David—failure to prepare properly can lead to explosion? What about the rest of the road map phase I obligations?

DH: Regarding BN’s willingness to enter into negotiations, I’m not a mind reader, but he has told us he is willing to enter meetings for the “two-state outcome.” On Camp David—you know there are positive and negative lessons from all previous rounds. This time it’s different from Camp David. It is not a “summit” and will not lead to collapsed expectations. Rather we are looking at launching a process. You asked about road map obligations: we’ve touched on all of them; they’ve been on the agenda with Israel since

April—based on our discussion with you back in April. East Jerusalem institutions are not part of the package. . . .

SE: Do you consider the credibility of the U.S., after Obama's speech in Cairo, when you are discussing this package?

DH: We do consider the credibility of the U.S. The Cairo speech shows that the president understands the consequences and the need to rebuild U.S. image. This is the foundation of his approach. We need the help of friends like you.

SE: I hope this so. His success is my survival.

MR: You will not have a better president or a better moment in this presidency.

DH: . . . [Y]ou are in a position to bring peace—this is what distinguished you and your leadership from the others. So, yes, we need certain principles, and we need something tangible soon. That is the point of New York [the meeting on the 22nd] . . . something you can deliver. I understand the freeze possible is a little less than what you wanted, but if there is no New York, we lose everything and you have nothing to show for. . . .

SE: I hope we will not be put in this position: accept, or else—like previous U.S. administrations. It's not that we don't want to—we can't. So please don't put us in this position.

[[Parties agreed to meet again the following day (September 17) to continue discussions.]]

B. MEETING MINUTES, PLO NEGOTIATION AFFAIRS DEPARTMENT OFFICE, JERICHO, 17 SEPTEMBER 2009 (EXCERPTS).

Between the 16 September meeting reported in Doc. A above and this meeting, Israel proposed a temporary limited settlement construction freeze to convince the Palestinians to resume negotiations. Participating in the meeting on the Palestinian side were chief negotiator Saeb Erakat (SE), deputy chief negotiator Issa Kassissieh (IK), and legal advisor Rami Dajani (RD); and on the U.S. side Deputy Assistant Secretary of State David Hale (DH), Jerusalem consul general Daniel Rubinstein (DR), National Security Council senior director for the Middle East Daniel Shapiro (DS), legal advisor Jonathan Schwartz (JS) and deputy envoy Mara Rudman (MR).

SE: From the Israeli view the deal is what BN [Israeli PM Benjamin Netanyahu] spoke about in the Knesset: 2,500 housing units under construction—notice

it's units not buildings; 450 tenders; exclusion of Jerusalem; exclusion of public buildings. . . . I know you did your best, and it's not the outcome you wanted. For the last decades you have been dealing with Israeli governments based on what is possible—what is it that Israel can live with. I've been saying you should pursue what is needed—what is in your interests. Instead this is the best you can get. With this deal Bibi will say settlements will continue, and they will continue—there will be more settlements in 2010 than in 2009 or 2008. Plus I don't have a framework: you will not recognize the 1967 border or the resumption of negotiations from where we left off. Instead you give me [Israeli demands on the release of captured Israel Defense Forces soldier Gilad] Shalit, the tunnels [for smuggling goods from Egypt into Gaza], and the Jewish state. If Jerusalem is excluded, no Muslim or Arab will engage.

DH: Who said Jerusalem is excluded?

SE: BN did . . .

. . .

DH: I know we wanted more but there are political constraints. Restraint on settlements is better than unrestricted growth everywhere.

SE: As far as I'm concerned settlements will continue everywhere. There is a difference this time from the past. We've had General Dayton, the EU COPPS [Coordinating Office for Palestinian Police Support], and others [overseeing Palestinian security reform and promoting security coordination with Israel]. We have had to kill Palestinians to establish one authority one gun and the rule of law. We continue to perform our obligations. . . . With this in mind BN begins the process of destroying AM [Abu Mazin, i.e., Palestinian Authority (PA) Pres. Mahmud Abbas] and SF [Palestinian PM Salam Fayyad] and the PA institutions. We are back to 1996–99 again. If the U.S. government now tailors its policy to BN, not just the Palestinians, but the whole region will go down.

DR: The package includes no new tenders, no new confiscation . . .

SE: I'm not coming from Mars! 40% of the West Bank is already confiscated. They can keep building for years without new tenders!

DH: Regarding the statement, if it includes a reference to Jerusalem—if we can achieve that—that would be a substantial concession from the Israelis. Regarding reference to 1967, we've had a long discussion with Israelis yesterday. We are working on language to state in some fashion regarding territory a reference to 1967. If we achieve these along with elements of the package, will that enable you to overlook the imperfections—with an end to new settlement activity—and start a political process?

SE: I need to see a text—I would need to work with you on it. Anything short of two states on the 1967 border is meaningless. We've had language formulas in the past, in Oslo, in the road map. . . .

DS: We are developing building blocks for the speech. We hope to be able to reach an understanding on the concepts. Then the White House speechwriting machine would take it and turn it into actual words. So we cannot go over the speech but can ensure there are absolutely no surprises.

DH: The statement will be general. We will have time after the 22nd to work on details before the next meeting. . . .

SE: When talking with the Israelis, did you ask them if they are willing to resume negotiations from where we left off?

DH: We like to say “relaunch” and state the objective. That's our position on this. . . .

SE: On substance, from day one BN said: Jerusalem the eternal undivided capital of Israel, demilitarized state without control over borders or airspace, no refugees. Once you agree to this we can negotiate a piece of paper and an anthem. We have invested time and effort and even killed our own people to maintain order and the rule of law. The PM [Salam Fayyad] is doing everything possible to build the institutions. We are not a country yet, but we are the only ones in the Arab world who control the Zakat and the sermons in the mosques. We are getting our act together. Now we have BN back again like in 1996. Back then Israeli-Palestinian relations were at their best. No attacks or violence. He consistently undermined this—and I believe he has begun that same process again. You know I tried to have meetings with the Israelis—with [Israeli national security advisor Uzi] Arad and [Israeli chief negotiator Yitzhak] Molcho. They adamantly rejected. Arad cancelled three times.

So there are three options: (1) We go to New York to the trilateral under this formula. This is a non-starter. It is not an option for us. (2) We don't go and declare failure—doom and gloom. This will lead to an explosion and strengthen Hamas and others. (3) We have bilateral meetings and continue talking about a package with much more clarity. Maybe you can recognize a Palestinian state on the 1967 borders. Don't underestimate the Palestinian public and its expectations, and what you have helped us build. When Bibi talks about excluding Jerusalem it is to make sure we can't attend, because he doesn't want to.

DS: So by not going aren't you playing into his hand?

SE: You put me in this position! It's like having a gun to my head—damned if you do and damned if you don't. I thought at the very least you would have a moratorium and not surprise me with this.

DR: Put aside Bibi's statements. Your achievements are real—the future Palestine is in the making, and we will continue to support it. But you can't make that vision a reality without a negotiation process. So this point is a transition—a pivotal point.

SE: I've been doing this for 16 years. This is the last shot. I will only go into it with an end game.

. . .

DS: The president has demonstrated a personal and real commitment to you. What you are saying indicates that you tend to discount the president's commitment. It strikes me that it doesn't seem to be worth a lot to you.

SE: This is not about personalities or conscience. Bush did not wake up one day and his conscience told him "two-state solution." It's about interests. We have waited a painful 17 years in this process to take our fate in our own hands. We cannot allow this to be undermined.

DH: This will be undermined if you don't pursue the two-state outcome.

SE: BN will not give two states. If the U.S. government, over several months, cannot get him to do what Senator [George] Mitchell himself wrote—before the road map, in the Mitchell Report . . .

DH: We cannot force a sovereign government. We can use persuasion and negotiations and shared interests.

SE: Of course you could if you wanted. How do you think this will reflect on the credibility of the U.S., if you can't get this done?

DS: We make the call on our own credibility.

C. MEETING MINUTES, U.S. MISSION TO THE UNITED NATIONS, NEW YORK, 24 SEPTEMBER 2009 (EXCERPTS).

This meeting took place two days after U.S. Pres. Barack Obama, Israeli PM Benjamin Netanyahu, and Palestinian pres. Mahmud Abbas met on the sidelines of the United Nations General Assembly (UNGA) opening session in New York but failed to bridge the gaps necessary to announce a resumption of peace talks, as the United States had hoped. At a press conference afterward, Obama expressed frustration that Abbas and Netanyahu had failed to move beyond the issue of a settlement freeze, arguing that settlements had become a distraction from the more important

*final status issues of Jerusalem, borders, and the rights of Palestinian refugees. He ordered the sides to work intensively with U.S. special envoy George Mitchell over the next month to find a basis for resuming negotiations, ordering Secretary of State Hillary Clinton to report to him on 22 October regarding the progress. See Quarterly Update in JPS 154 for details. Participating in the meeting on the Palestinian side were **chief negotiator Saeb Erakat (SE)**, with **legal advisors Rami Dajani (RD)** and **Akram Haniyeh (AH)**; and on the U.S. side **Deputy Assistant Secretary of State David Hale (DH)**, **Jerusalem consul general Daniel Rubinstein (DR)**, **National Security Council senior director for the Middle East Daniel Shapiro (DS)**, **legal advisor Jonathan Schwartz (JS)** and **deputy envoy Mara Rudman (MR)**.*

DH: Our intention is to move quickly to relaunch negotiations. We are wrapping up an agreement on a package with Israel, and including other parties. So we want to get the right context—and the formula to resume negotiations. President Obama's speech at the UN yesterday is our starting point for the TORs [terms of reference]. We want to know if you think this is a good starting point. Regarding Palestinian steps [that must be fulfilled], you know there is incitement, and demonstrable efforts on security and institution building. Our intention is to meet with both sides in the second half of next week. Based on the outcome of that, either we will be ready or there will be one more trip by the senator [U.S. special envoy George Mitchell (GM)].

SE: Are your negotiations still ongoing with Israel on the package?

DH: Yes—but agreement is within reach. . . .

AH: Are the components the same that have been discussed? For example, is Jerusalem excluded?

DH: Jerusalem is not yet agreed. You know from the beginning we've treated Jerusalem and settlements as separate issues. So there will be something on Jerusalem in the package other than settlements. . . . In the interest of reaching a solution we need to reach a package. We need to move forward and get the parties to take [confidence-building] steps . . .

SE: When we began I asked you about the package, because it is unfair if we are not told what it is before we are asked to respond. Until then we keep asking the same questions.

DH: But GM told you the other day about the elements. A couple of issues remain to be resolved: the time it starts, the duration, and the Jerusalem element—which I doubt we will reach agreement on.

SE: From the beginning we were clear and did not hide our position. If Jerusalem is not part of the moratorium, it's a non-starter. You know what destroyed Camp David? It was Jerusalem. The U.S. underestimated the importance of Jerusalem. Your colleagues did that and it led to the collapse. . . .

DH: But these are two separate issues [meaning settlements and Jerusalem].

SE: No. For me Jerusalem is the same as the rest of West Bank. No one, including your government, says it's not occupied territory! So by allowing this to take place we will be acquiescing to it. We cannot allow it. Again, I appreciate your efforts, but Israel is the occupier, not the U.S., so it is not enough for Obama to merely say the word Jerusalem. That's why I asked if you have anything new to tell me. For me this is about international law, legitimacy, and principles, not making these deals. With this, you're better off without a deal than with one. The mere fact that Jerusalem is not part of the moratorium will mean the Arabs won't accept it. It's a victory for Netanyahu and he can continue to rule for years, and I will continue to live under occupation. I've stated this to you every time we met—wherever and whenever: Anything that takes Jerusalem out will be a non-starter.

DH: Our reaction is that obviously it is no surprise you are unhappy if the settlement package has imperfections (in this case Jerusalem)—but if you want a perfect settlements package you just won't get it. . . . [W]e can all just go home.

. . .

SE: Let's go back to the road map. It is U.S. language. You knew what you were writing. . . .

DR: You are looking at words, not the numbers. [Fewer signs of construction equal visible signs of progress.]

AH: So Jerusalem is over for you? You know the Arabs and Palestinians will not come to the table if that is the case.

DH: The package combined with the statement.

AH: So the issue is settled on Jerusalem?

DH: I don't believe we can reach a package on Jerusalem. But the statement from the U.S president that [settlements] are illegitimate . . . a difference of opinion on Jerusalem. Maybe we can help if we can get them not to take provocative measures.

AH: The mere fact that you are agreeing to [this formula] gives Netanyahu the green light.

SE: You know Bibi! I've heard this before and I've been there before. I simply cannot afford to go into a process that is bound to fail. I am trying to defend my existence and way of life. You know I asked to meet with the Israelis several times. They refused because they don't want to answer my questions. And then he [[Israeli FM and Yisrael Beitanu party head Avigdor Lieberman]] says I am a "wild beast of a man"—you know the reference to Ishmael. What a disgrace. I would shake hands with Lieberman and tell him "Shana Tovah" instead of this incitement. You talked about incitement—we have taken significant steps . . .

DH: Getting back to the significance of the package in terms of [[having Israel agree to show]] restraint . . .

SE: It's a non-starter.

DH: So you would rather OK them building more?

SE: They're the occupying power. They can do anything they want. I am not agreeing to anything.

DS: If the moratorium that lacks Jerusalem is very difficult for Palestinian to accept, is it preferable to have no moratorium? Would you be prepared to enter PS [permanent status] negotiations?

SE: That's a good question. When BO [U.S. Pres. Barack Obama] says settlements are illegitimate in front of the whole world, Israel continues, despite this and despite all of international law—the Fourth Geneva Convention, the Hague Convention, Security Council resolutions. Why then did you reach the position that there needs to be a freeze, including natural growth? This was your language. And why did you then change your mind? Why is it now changed to "restraint"?

DS: My question to you was not rhetorical.

SE: You want to restart negotiations, we have to do that from where we left off with Olmert. We have the maps, the matrix¹ . . . So in order to be able to answer your question, we need to define these negotiations. For example,

¹This refers to a document prepared by the NSU, entitled "Current P/I Positions—Reflecting Discussion up to January 1, 2009," which lists side-by-side the Palestinian and Israeli positions on all final status issues. It is available on the JPS website at <http://palestine-studies.org/~ipsdc/positionmatrix.pdf>

let's say we start negotiations and they say Jerusalem can wait, that borders can wait. Then it's acquiescence. Bibi is a non-negotiator. I told him this to his face. You have the example of Wye River, the Hebron Agreement. Even when he signs an agreement, he does not implement it. Now we have restored the PA [Palestinian Authority], we have the rule of law, no corruption, we are building institutions. So I need the U.S. to say: a state on the 1967 border, third party role, and incremental steps to withdraw. Why can't you do it? I understand Bibi won't do it . . .

DH: You ask why? How would it help you if we state something so specific and then not be able to deliver?

. . .

JS: Are you willing to look at the president's UNGA speech to be the TOR?

SE: No . . .

AH: He said the Jewish state.

RD: Which is indirectly taking a position on refugees.

DS: That's our position.

SE: But not the 1967 border?

JS: But when you did Annapolis you didn't refer to it . . .

[[Break—both sides confer separately. Meeting resumes with U.S. special envoy George Mitchell (GM) participating.]]

GM: Sorry I couldn't be here for the full meeting. . . . DH and DR have filled me in on the discussion so far, but I want to hear from you. Undoubtedly you've perceived the sense of urgency of the president. His attitude was consistent: we need to proceed to negotiations; delay will not be beneficial to anyone. . . . I want to bring discussion to a conclusion. This can't go on indefinitely. The president is strongly committed to supporting AM and his government. . . . We will stay the course on this. There will be setbacks. I hope you will join us by taking steps.

SE: . . . [N]o one has any doubts about President Obama's or your commitment. . . . Our problem is with the occupying power. We've had these experiences before and don't want to repeat them. When you came up with the road map, you knew what you were doing. You said "settlement freeze including natural growth." The logic was for Israel to do this, and for the

Palestinians to get their act together. . . . [W]e are doing our part. [U.S. security coordinator Lt. Gen. Keith] Dayton and the U.S. Consulate can submit a report on our behalf. So let be clear now: . . . [A]nything without Jerusalem is a non-starter.

GM: So we can have years of argument.

SE: On settlements, I will present to you a chart and figures. . . . [[Hands GM Roadmap Phase I chart showing each side's obligations and status of performance]] Look at Israel's obligations—minus the elections—what did they do? They are not freezing Palestinian life in Jerusalem. They are destroying it. I am not refusing negotiations. I wanted negotiations to start 6 months ago. That is not the issue. During the last negotiations, we had maps. Can I put it to [Israeli chief negotiator Yitzhak] Molcho [[shows GM a map]], can I put it on the table?

GM: You can put maps but they are not bound by them.

SE: Nations need to be responsible. We had an Israeli government that accepted the 1967 line with Sec. [of State Condoleezza] Rice present.

GM: But that was part of the principle “nothing is agreed until everything is agreed.” You agreed to this principle.

SE: You know there are tradeoffs within and between issues. That's what the principle is about. So if we have agreement on something, it is a card that I won't announce until the other issue is announced.

GM: I know something about negotiations. When you say “nothing is agreed until everything is agreed,” these are not empty words.

D. MEETING SUMMARY, U.S. STATE DEPARTMENT, WASHINGTON, 1 OCTOBER 2009 (EXCERPTS).

On 1 and 2 October 2009, U.S. special envoy George Mitchell met separately with the Israeli and Palestinian negotiating teams in Washington in effort to agree on detailed terms of reference (TORs) for resuming peace talks. This document summarizes the first day's discussions. Participating in the meeting on the Palestinian side were chief negotiator Saeb Erakat (SE), general coordinator of negotiations Maen Areikat (MA); and legal advisors Khaled Elgindy (KE), and Rami Dajani (RD); and on the U.S. side special envoy George Mitchell (GM), Deputy Assistant Secretary of State David Hale (DH), National Security Council senior director for the Middle East Daniel Shapiro (DS), legal advisor Jonathan Schwartz (JS), and deputy envoy Mara Rudman (MR).

GM asked questions based on discussion with the Israelis:

GM asked . . . :

- If we can get an agreement on the TORs [terms of reference] leading to relaunching of negotiations, there needs to be some time before we actually relaunch—in order to discuss bilaterally and trilaterally and organize for a good start. We've proposed 2 to 4 weeks. The Israelis think a longer time may be needed.
- How formal would the launch be? The U.S. position is something like a meeting in Sharm [al-Shaykh]; Israel prefers a "crawling start." You begin with bilateral meetings then involve us. We will have an active role.

GM noted another issue: Would you follow the "nothing is agreed until everything is agreed" principle? SE replied yes, but a lot depends on how you interpret it. GM said you would need clarity on that. SE explained the logic behind the rule (to allow parties to discuss scenarios linked to tradeoffs without being committed) and noted that the Israelis, including [Israeli chief negotiator Yitzhak] Molcho, understand this.

SE explained that the TORs should specify the point of beginning, the end game, the structure. . . .

GM inquired about the Palestinian position on the points SE made (re: TORs). SE said decisions are needed: A Palestinian state on the 1967 border with agreed swaps. . . .

GM asked how to reach the point of having that discussion. SE cautioned about the current Israeli government. It has not engaged with the Palestinian side because what it has to offer would be a shock: starting from areas A and B, 39 to 45% of the West Bank. If this is part of the 3rd further redeployment, we already have that obligation, including in the Wye River Memorandum, but it is not a starting point for PS [permanent status] negotiations.²

GM emphasized the risk of spending months discussing TORs in detail, and not getting to the point where you have actual negotiations. SE reiterated

²Erakat's reference to 39% to 45% of the West Bank refers to Israel's existing commitments to transfer control of West Bank areas to the PA as agreed in signed peace treaties. In the 1995 Oslo II accord, Israel agreed to make an immediate initial redeployment from major Palestinian cities, followed by three further redeployments (FRDs) over 18 months, expanding the PA's control to most of the West Bank except for settlements and Israeli-designated security areas (left for final status talks). Israel, however, delayed implementation from the outset, renegotiating the extent and phasing of the FRDs in the 1997 Hebron Accord, the 1998 Wye agreement, and the 1999 Wye II agreement—leaving the Palestinians with less each time. In March 2000, Israel completed the second FRD, giving the PA full control of 18.2% of the West Bank and partial control of 21.8% (40% combined). The third FRD was never implemented.

the need to establish the end game (state on the 1967 border . . .). Approach should be based on what is needed (despite the pain and the risks), not what is merely possible.

GM discussed the reference to 1967 borders, and expressed understanding for the Palestinian position, but noted Israeli rejection of it. He said the TORs will mention all permanent status issues. SE reminded that these TORs (naming PS issues) can be found in the Oslo Agreements, and are not new. . . .

SE reiterated the need to restart negotiations from where they left off. GM argued that because of the “nothing agreed” rule nothing was binding on the parties. A discussion ensued on the interpretation of this rule and whether the current administration is bound by the position stated by [Secretary of State Condoleezza] Rice during the Annapolis negotiations with respect to the 1967 line. GM proposed to say that the negotiations will be “guided by” previous discussions. SE noted that is it a shame to lose all that was done in previous negotiations.

. . .

[GM] said the Israelis are willing to speak about borders. SE questioned which borders—areas A and B? A state with many provisional borders? He rejected a return to the Oslo approach. . . . Is it two states on the 1967 border with agreed swaps? Then it’s worth it. . . . GM replied that his concern was a delay of another 6 months, and was trying hard on the 1967 border with the Israelis.

. . .

GM talked about the announcement for relaunching negotiations. . . . SE objected that it should build on previous negotiations—that agreements and obligations are binding and should be enforced.

. . .

GM said half the time with the Israelis has been spent discussing the 1967 border, that it was an overwhelming effort. He expressed personal reservations about the situation: the attitude being contentious and full of mistrust—the only way to get going is through relaunching negotiations.

. . .

SE noted that it was time for the U.S. to upgrade its position and explicitly endorse the 1967 border, as [Rice] had done during Annapolis—it was agreed then, it is consistent with U.S. policy regarding the occupied territory. GM

replied that this means taking a new position. SE said this is a new administration that should state what others have tacitly agreed in the past.

GM noted that difficulties with the Israelis on this and other issues, that they would not agree to any mention of 1967 whatsoever and that [they] strongly objected to Obama's UNGA speech [calling settlements "illegitimate"]. . . . SE suggested the following language: "two states along the 1967 border with agreed swaps." He stressed the importance of parallel negotiations of all PS issues.

KE started a brief presentation on the Israeli partial freeze proposal. Discussion took place over various aspects of the presentation. . . . KE briefed on how a Jerusalem exemption can be more harmful than not reaching any deal.

GM said he agreed about the importance of Jerusalem, but the Israelis will not go for it. He said you have to deal with the world as it is, not as you would like it—for that reason the best he can get is "restraint." SE interjected that this means they can accelerate Jerusalem construction, while you expect us to go ahead with negotiations. GM replied the same will happen in the absence of negotiations. . . .

. . .

SE explained that the concern over East Jerusalem is ultimately political. If we turn a blind eye to such an arrangement, this will have devastating consequences on the PA and Palestinian leadership. He reiterated the central position of Jerusalem in the conflict, noting that failures in the past were due to underestimating the importance of it for Palestinians. There has to be a way to address our concerns over Jerusalem, he concluded.

GM replied that with regard to construction there is no way, even if we engage with the Israelis till doomsday . . .

SE asked for a paper in writing setting out proposed terms for the TORs. GM agreed to have a part of it ready the next morning, including language on the 1967 border.

E. U.S. DRAFT TERMS OF REFERENCE DOCUMENT FOR RESTARTING NEGOTIATIONS, 2 OCTOBER 2009.

U.S. special envoy George Mitchell presented this draft document to the Palestinian negotiating team at the State Department. It includes a list of steps based on the road map requirements that the Palestinian side would agree to undertake while negotiations were ongoing. Mitchell

gave the Israelis a parallel document that included the draft terms of reference and a list of steps required of the Israeli side, but this was never made public.

Introduction: Bilateral

Parties have agreed to relaunch bilateral negotiations on ____ [[date]] in ____ [[place]], with the goal of concluding negotiations within 24 months that will bring an end to the conflict.

Regional track/Multilateral

As soon as possible, a structured negotiation track with multilateral participation will begin on an ongoing basis in parallel with the bilateral negotiations to address issues of common interest such as [[not a determined list; illustrative]]: Energy, Refugees, Water, Health, Education, Interfaith dialogue, in order to create new realities in the region.

Comprehensive Peace

We will also pursue peace between Israel and Lebanon, Israel and Syria, and broader peace between Israel and its many neighbors.

Goals—provided separately in hard copy

The goal is clear: bring an end to the Israeli-Palestinian conflict and to resolve the open disputes and claim between the parties, including the territorial and security issues addressed by UN Security Council Resolution 242 and 338, by reaching realistic, effective, and enduring agreements and arrangements which will enable two states to live side by side in peace and security—the state of Israel with secure and recognized borders and an independent and territorially and economically viable Palestinian state. [[Without prejudice to the location of the borders, the land being discussed is the territory occupied in 1967.]]

It is understood that this will be achieved through direct bilateral negotiations which will resolve previously identified issues such as security, borders, settlements, refugees, Jerusalem, relations and cooperation with other neighbors as well as other issues of common interest. The U.S. will play an active and sustained role in supporting the parties in this effort. The parties will need to: agree on the conduct of negotiations, reach the necessary agreements and arrangements, and ultimately attain their long awaited mutual reconciliation.

Character

Lasting peace can only come through the re-energized efforts of all concerned and can only be based on an enduring commitment to mutual recognition, freedom from violence, incitement and terror, including socialization for peace, and the two state solution, building on previous agreements and obligations.

Consistent with this principle, neither side should take any actions that could prejudice the very issues under negotiation. Unilateral actions will not prejudice the outcome of these negotiations.

Gaza

Conditions in Gaza present a tremendous challenge. It is in the interest of the parties and the international community, including the United States, to overcome this challenge in a manner that facilitates the flow of aid and commerce to meet the legitimate needs of Palestinians in Gaza, while addressing Israel's legitimate security concerns.

Palestinian Authority (PA) Steps

- The Palestinian Authority (PA) has committed to continue its efforts on security reform and to undertaking operations aimed at confronting all those engaged in terrorism, including the confiscation of illegal weapons.
- The PA will finalize the Interior Ministry's "Plan for Reorganization, Restructuring, and Development of the Palestinian Security Establishment" and begin implementation, including the following priorities:
 - Reduce where possible the number of security services through combining them.
 - Rename some of the security services to be consistent with higher national strategy of promoting law and order and preventing terrorism.
- The PA will continue over the next 12 months its security initiative in Jenin.
- The PA will enhance specialized training courses for security services focused on law enforcement and counter-terror operations.
- The PA will enhance efforts to combat terrorist-financing, through the Palestinian Monetary Authority (PMA) Financial Follow-Up Unit (FFU) and by continuing to develop capacity to track and deter financial transactions used to fund terrorist activity.
- The PA will intensify efforts to develop judicial, administrative, and economic institution, consistent with the Program for the Thirteenth Government, to ensure that the Palestinian state is viable, provides safety to its citizens, and is a good neighbor. The PA will continue with criminal justice sector, including training of criminal investigators, prosecutors and judges, and infrastructure projects such as police stations, jails courthouses and prisons. In particular, the PA will resolve ongoing jurisdictional conflicts among officials in the justice sector that have hindered reforms to date and facilitate the timely and effective prosecution following arrests.
- The PA will continue to improve its public sector to ensure effective service delivery and revenue collection, and strengthen its fiscal

position through structural reforms to the public pension system and the electricity sector. The PA will continue efforts to create a regulatory and judicial environment favorable to private investment.

- All official Palestinian institutions end incitement against Israel.
- The PA will help to promote a positive atmosphere conducive to negotiations; in particular during negotiations it will refrain from pursuing or supporting any initiative directly or indirectly in international legal forums that would undermine that atmosphere.

F. PLO NEGOTIATION SUPPORT UNIT, PRELIMINARY COMMENTS ON U.S. PROPOSAL AS PRESENTED ON 2 OCTOBER 2009.

1. TOR [Terms of Reference]

The terms of reference for the process should be: international law, UNSCR 242, 338, 1397, and 1515, UNGAR 194, the “land for peace” principle, agreements previously reached by the parties, and the Arab Peace Initiative.

The goal is the end of the Israeli-Palestinian conflict through the two-state solution. This requires: (1) the end of the Israeli occupation and the establishment of a fully sovereign and viable Palestinian state on the 1967 border (plus any agreed land swaps) with East Jerusalem as its capital, and (2) a just and agreed resolution to the Palestinian refugees issue in accordance with UNGAR 194.

Language in the U.S. proposal that does not meet these requirements:

- “Resolve the open disputes and claims”—implies that the conflict is over disputed territory, rather than ending a military occupation and fulfilling the right of self-determination in accordance with international law.
- “Territorial and security issues addressed by . . . 242 and 338”—This can only be understood as an exclusion of other issues addressed by 242, in particular the requirement for a just solution to the refugee issue.
- “Territorially and economically viable Palestinian state”—The concept of viability is much broader. Qualifying it in this manner implies limits to full sovereignty.
- “Realistic” “agreements and arrangements that enable two states to live . . .”—Realistic to whom? Why “agreements” in the plural, and what is meant by “arrangements”? This language favors partial, interim arrangements based on unilateral actions rather than a comprehensive PS [permanent status] agreement.
- “Land to be discussed is the territory occupied in 1967”—Much more is involved: air space, sea space, territory on the Israeli side of the 1967 border, sovereignty, etc. For detailed analysis, see Annex A, attached herewith.

2. Negotiations Should Include All PS [Permanent Status] Issues

Negotiations must resolve all PS issues, including Borders, Settlements, Jerusalem, Refugees, Water and Security. Note that the paper does not include water as a PS issue, while it lists Water under the multilateral track.

Language that does not meet these requirements:

- “Negotiations ... will resolve ... issues such as ...”—“Such as” implies that not all of the issues listed need to be resolved.

3. Normalization

The Arab Peace Initiative is clear about sequencing of events. Normalization of relations is on offer once: (a) Israel withdraws fully from all Arab territories occupied since 1967, (b) the establishment of a sovereign Palestinian state on the 1967 border with East Jerusalem as its capital, and (c) a just and agreed resolution of the Palestinian refugees issue in accordance with UNGAR 194.

Language that does not meet these requirements:

- “[A] structured negotiation track with multilateral participation will begin ... in parallel with the bilateral negotiations to address issues of common interest such as ...”—The issues identified are means of promoting normalization in disguise prior to resolution of territorial and refugee issues.

4. Third Party/U.S. Role

The U.S. should play an active and sustained role as an **unbiased and honest broker** in PSN [permanent status negotiations]. There should also be a credible and robust monitoring, verification and enforcement mechanism, which would include public reports and real consequences for (non-)compliance with existing obligations of both parties and progress (or lack thereof) in the peace process.

5. Previous Agreements and Obligations

Existing agreements and obligations must be respected and implemented. Key among these is a genuine and comprehensive settlement freeze (which was notably absent from the U.S. paper). The paper does not explicitly reference any previous agreement or obligation (Interim Agreements, road map, AMA [Agreement on Movement and Access]).

Language that does not meet these requirements:

- “... building on previous agreements and obligations.”—Implies that agreements are not binding and undermines their authority and the need to implement them.

6. Gaza

While the situation in Gaza merits urgent attention, the language is inappropriate. It describes the situation in Gaza as if it were a natural or humanitarian disaster; and reduces the rights of Palestinian residents to a “challenge” to meet “legitimate needs.” Humanitarian relief for Gaza is an urgent non-political issue and should not be linked to the conduct of the negotiations. Rather, there should be reference to Gaza and WB [West Bank] being one territorial unit. And, rather than “facilitate the flow of aid and commerce,” there has to be an unequivocal reference to ending the siege on Gaza.

7. PA Steps

The paper refers to a number of specific steps that were not previously identified in the road map, and have not been developed in consultation with the PA and/or PLO. While it is in the PA’s own interest to carry out most of these measures (and more), there should be consultation and agreement with the PA on specific steps, rather than imposition, to ensure they are in line with the PRDP [Palestinian Reform and Development Plan] and various ministries’ plans, to take into account priorities, feasibility, and ensure efficiency in implementation.

Re: “refrain from pursuing . . . any initiative . . . in international legal forums”—The expectation that Palestinians will forsake peaceful, lawful means of enforcing their rights is totally unacceptable. When the ANC [African National Congress] negotiated for peace with the Nationalist Party in South Africa, they continued to publicly support the global BDS [boycott, divestment, and sanctions] movement which they had initiated. And in fact it was this leverage that allowed for a meaningful, though perhaps not friendly, atmosphere which resulted in the two sides reaching a lasting agreement.

G. MEETING MINUTES, U.S. STATE DEPARTMENT, WASHINGTON, 2 OCTOBER 2009 (EXCERPTS).

Here, the U.S. and Palestinian teams discuss the U.S. draft terms of reference (Doc. F above) in detail. Participating in the meeting on the Palestinian side were chief negotiator Saeb Erakat (SE), and general coordinator of negotiations Maen Areikat (MA) with legal advisors Khaled Elgindy (KE), and Rami Dajani (RD); and on the U.S. side special envoy George Mitchell (GM), Deputy Assistant Secretary of State David Hale (DH), legal advisor Jonathan Schwartz (JS), and deputy envoy Mara Rudman (MR).

SE: Why is there no reference to the road map [RM]? The parties obligations?

DH: Why do you need that? The president used the language from the RM in his speech.

SE: In PS [permanent status] negotiations I won't abandon RM phase I obligations.

GM: I want to remind you that we need language that both sides can agree to. . . .

SE: They will [[impose]]!

GM: Why would you engage at all then with them if that's how you think they will act?

SE: I want to negotiate—yesterday and today to reach peace, but not under these terms and conditions.

. . .

GM: The reality is: No negotiation is not in your interest. So we are trying to come up with a statement to give you a ladder to climb down on this issue—just like you asked a week ago. Now you are arguing over the color of the ladder. And you are drawing unfounded inferences.

SE: I remember Obama telling all of us—the Arab and Muslim world in his speech in Cairo—about a full settlement freeze.

GM: You guys are now trying to come up with a history that Obama somehow invented the freeze. You and the Arabs have been calling for a freeze long before Obama. He did not pull it out of the air and impose it!

SE: You wrote it in your report.

GM: You established it as a precondition. We tried very hard, and we know what you think of us because we failed. Fine. So you can look back 10, 20, 60 years from now without negotiations or we can try to move forward.

SE: . . . The ladder is two states on the 1967 border with agreed swaps. I am saying agreed—so Israel has a veto. I need something to take back as the end game. I remind you that my “ticket” as a partner in the peace process was to recognize Israel on the 1967 border—remember [Secretary of State James] Baker's words . . . “standing shoulder to shoulder” . . . now you're asking me to negotiate which part of 1967 will be in the state? Israel violates all aspects of international law and the Geneva Conventions over decades—so I resort to swaps, a new idea—for the sake of peace and the two-state solution. Maybe after I join the Zionist movement, recognize the Jewish state and agree to a state on 40% they will agree. That will not happen.

GM: What you just said is the best argument for taking up this text. . . . So you can argue over words and delay indefinitely, so you lose the most important thing—this opportunity: the presence of a U.S. president completely committed to achieving the objective you want. However, . . . the solution has to be agreed between the two parties. If you think [U.S. Pres. Barack] Obama will force the option you've described, you are seriously misreading him. . . .

SE: . . . But, what am I asking? Am I asking you to say Jerusalem as capital for two states? Refugees right of return? Equal swaps? Solution based on water rights? Third-party role in security? Not to support more interim periods or state with provisional borders? I am not asking you to state any of that! All I ask is to say two states on 1967 border with agreed modifications. This protects me against Israeli greed and land grab—it allows Israel to keep some realities on the ground. I am avoiding stating any outcomes in the TORs [terms of reference]—I am just protecting the end game! When you say “discuss” about the “land occupied in 1967”—discuss is meaningless—it doesn't say anything about the end game. The Bush administration agreed . . .

GM: Again I tell you that President Obama does not accept prior decisions by Bush. Don't use this because it can hurt you. Countries are bound by agreements—not discussions or statements.

SE: But this was an agreement with Secretary [of State Condoleezza] Rice.

JS: It is not legally binding—not an agreement.

SE: For God's sake, she said to put it on the record. It was the basis for the maps.

GM: When you enter negotiations and say “Nothing is Agreed Till Everything is Agreed” then there is nothing unless you have an agreement on everything.

SE: In that case there will be nothing but parallel discussions on all issues. I told you before why we had this rule—in order to discuss everything without fear of impact on trade offs. There are other examples—like what we did with [U.S. special envoy for Middle East security] General [Jim] Jones [charged with a security plan to address the needs that will arise from the establishment of a Palestinian state—a document that was never made public]—I said we will have demilitarized state—without an army. So all that is gone. We have to start from scratch.

. . .

GM: Any other comments on the paper?

SE: There are many. . . . For example, there is no reference to the RM and 1515 [UNSC res. 1515 (2003) endorsing the road map]. If Israel is hesitating about a reference to the RM . . .

GM: We didn't include the RM—you said before you didn't want the language from the RM.

SE: It's the obligations, not the wording [[“end the occupation the started in 1967”]]. Is what you gave us the full text? Where is the full text [i.e., the Israeli steps]?

DH: . . . The Israeli paper is mainly on the moratorium. There is a commitment to take meaningful steps to create a positive context for negotiations. We know neither side will be satisfied with the other side's steps. We will monitor all steps by all sides. On the settlement moratorium—it's not complete yet. We have not agreed on the start date and the duration, but hope to agree soon. The duration will probably be 9 to 12 months, and we want it to start soon. Settlement outposts will be removed (specific ones) . . .

SE: So not the RM obligations. This is a new RM!

DH: . . . within a specific time frame. The Israelis will remove additional road blocks and take steps to improve access and movement. . . .

. . .

SE: You know there is an Agreement on Movement and Access—the AMA. Is that off the table? Is the new Israeli government not recognizing it?

GM: The AMA is not part of this.

. . .

SE: . . . I want my obligations under the RM—this is what we have been basing our work on. You are now doing this exercise over again. A new RM! Is it because [Israeli chief negotiator Yitzhak] Molcho and others want to avoid the RM? . . .

. . .

GM: I understand the frustrations.

SE: There are limits. What's in it for the Palestinian people? So this is a new RM. The Israelis managed to get rid of the RM of 2003.

...

GM: . . . We won't have a perfect TOR, or perfect negotiations, or a perfect outcome. That's life. I understand the frustration and the burden of history but please don't let this opportunity slip by.

SE: For 60 years we have suffered. For 42 years our existence was denied. I had to exist as part of the Jordanian delegation. It took a long time for the Israelis to realize that to deny that we exist does not mean we don't exist. We have a long history of the peace process. We have the TORs from 1993. We have the RM. I know how much the Israelis hate the RM, but you should not let them off the hook.

MR: The RM continues to apply.

SE: So my obligations are "upgraded" and theirs are "downgraded."

H. MEETING MINUTES, U.S. STATE DEPARTMENT, WASHINGTON, 21 OCTOBER 2009 (EXCERPTS).

*The week after the 2 October meeting in Washington reported in Doc. G above, U.S. special envoy George Mitchell traveled to the region for several days of talks with Israeli and Palestinian officials, but with the United States offering no bridging proposals or new initiatives, the sides could not narrow the gaps on the terms of reference (TOR) document. The Israeli and Palestinian teams returned to Washington ca. 20 October for a final push to agree on the TOR before Secretary of State Hillary Clinton was to report to Pres. Barack Obama on the progress toward resuming negotiations (see introduction to Doc. C above for background). Meanwhile, U.S.-Palestinian relations were further strained by extreme U.S. efforts to block a Palestinian effort to convene a UN Security Council emergency session to discuss the conclusions and recommendations of the UN's Goldstone Report, which investigated claims that Israel and Palestinian militant groups committed war crimes and crimes against humanity during Operation Cast Lead (see Quarterly Update in JPS 154 for background). Thus, when Clinton briefed Obama on 22 October, she could inform the president only that "a little progress has been made, . . . but in some respects the atmosphere for talks is actually worse now than it was a month ago." Participating in the meeting on the Palestinian side were **chief negotiator Saeb Erakat (SE) with legal advisors Rami Dajani (RD), and Khaled Elgindy (KE);** and on the U.S. side **special envoy George Mitchell (GM), Deputy Assistant Secretary of State David Hale (DH), legal advisor Jonathan Schwartz (JS), and deputy envoy Mara Rudman (MR).***

GM: This morning, . . . we want to have a specific discussion on the TORs [terms of reference] and side letters. . . . We understand your preference for the 1967 and swaps language. Because you told us you accept there will be adjustments—with the so called [settlement] blocs—that will be offset by benefits to you. We need as straightforward a formulation of that concept as possible [GM reads the proposed text]: “An independent and viable state encompassing all of the territory that was occupied in 1967 or its equivalent in value.” . . . This is better than swaps for you, and I will ask JS to comment on the language.

JS: Your TOR language didn’t say “equal.”

SE: We said “agreed.”

JS: We did not want a mathematical formula, so we used “equivalent.” . . .

. . .

GM: Note we do not have Israeli approval of this.

SE: So do you plan to give me something in writing?

GM: I will read it all out loud and RD can write it down. . . . [GM reads the proposed text:] “The U.S. believes that through good faith negotiations the parties can mutually agree on an outcome that achieves both the Palestinian goal of an independent and viable state encompassing all the territory occupied in 1967 or its equivalent in value, and the Israeli goal of secure and recognized borders that reflect subsequent developments and meets Israeli security requirements.” Obviously “subsequent developments” refers to the settlement blocs. We would also stress “mutually agreed.” This is as direct and straightforward as we can get. Just so you’re clear.

. . .

SE: So no road map?

. . .

GM: Let’s not get diverted. You said 1967 is a key issue. . . .

SE: Are you clear on the settlement freeze? Do you understand the message?

DH: It’s clear: regardless of the TOR language?

SE: Yes. Just get me 4 or 5 months of a full moratorium so we can talk. BN [Israeli PM Benjamin Netanyahu) needs to budge.

JS: Does your position include “proximity” talks?

SE: We cannot have resumption of negotiations with this government. . . . We won’t give him leverage of taking us for a ride and continuing settlements while we negotiate. Am I clear, David? This is the decision of the leadership—the PLO Executive Committee and the Fatah Central Committee. They won’t allow it. Period. Finito.

DH: Your staying in this position means no direct negotiations.

SE: No direct negotiations if there is no freeze and an exclusion of Jerusalem.

. . .

DH: You’re establishing a standard, as we said yesterday, that you yourself did not follow.

SE: I know. You don’t have to tell me. We had [Secretary of State James] Baker who said the U.S. will stand shoulder to shoulder with us, that we shouldn’t miss the bus. Then we had Clinton—Camp David did not fail—it was the petty politics—it made Clinton look like a chapter in a Greek tragedy. Then with the Bush administration we had promises [they would] be the judge of phase I of the road map. . . . They lied to us. . . . [T]his has been the behavior of previous administrations. You expect to fool us like the others?

. . .

GM: So no talks with BN while settlement activity continues.

SE: Yes. You asked me yesterday and I said that.

GM: So why are we having a discussion over the [TOR] language?

SE: That’s a good question.

GM: So even if we give you the your TOR language, there will be no negotiations without the freeze?

SE: Yes.

GM: Then please rip out and [hand me] the text I read out. [[RD and KE hand GM papers]] So you want us to give you the outcome. You're saying there won't even be negotiations. That's your position.

SE: As long as BN continues as I said. . . . We need to have weight with our own people, our constituency. Netanyahu has to implement what you—not us—wrote in the road map. . . .

GM: Does the language we read to you not mean anything? . . . We are trying very hard, desperately, to satisfy on 1967 language. You're saying not enough . . .

SE: Settlement freeze is Israel's obligation. The TORs are for all parties.

GM: So how do you justify that you had all previous negotiations without the freeze?

SE: AM [Abu Mazin, PA Pres. Mahmud Abbas] will tell you it was a mistake. Now it's a moment of truth. It's about our future. Watch what's happening around us. . . . AM cannot go back to negotiations with settlements and business as usual.

GM: Then there will never be negotiations. . . .