

CREATING POSITIVE FACTS ON THE GROUND: A VIABLE PALESTINIAN STATE OVERVIEW

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This paper makes a series of inter-related points. (1) The main features of a Palestinian-Israeli agreement for a “two-state” solution—if such an agreement is to be achieved—have become very clear. (2) The long-term success of such an agreement in meeting the needs of the two state will depend on the *viability* of the Palestinian state that is created, which in turn will depend on three features—contiguity of Palestinian territories, permeability of the border with Israel, and normal human security for its citizens. (3) The current political climate does not allow the creation of such a state through standard bilateral negotiations. Indeed, the prospect facing both sides is a second disengagement—this time from the occupied West Bank regions with only small minorities of Israeli settlers—and the ending of negotiations with no immediate prospect for any of the three features stipulated above. (4) The necessary requirements for viability can only be achieved if mutual trust between the sides can be created, trust that provisions will be faithfully enacted and adhered to, and trust that the agreement will truly mark the end of the conflict. (5) To build that trust, we propose a strategy involving unilateral, reciprocal steps in which each side, recognizing the interdependence of the interests of the two sides, acts in a manner that both serves its own interests and signals a willingness to consider the other side’s interests as well. (6) Critical to the success of this strategy is the need for both sides to communicate a view of the future that includes the other side in a way that affords its citizens a status and everyday life that they will find tolerable even if it does not satisfy their notions of justice. Indeed, people on both sides (but especially the Palestinians for whom the absence of an agreement or the failure of their state would be especially disastrous) will be called upon to sacrifice some measure of what they deem fair or appropriate to achieve peace.

I. INTRODUCTION

While a final resolution of the Israeli-Palestinian conflict is not on the immediate political horizon, many informed observers believe that the main

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features of what this settlement will entail—if any settlement is to be reached—are reasonably clear.¹ It will involve a two-state solution based upon the following principles:

- A. Jerusalem will be shared according to a mutually acceptable arrangement concerning the status of East Jerusalem as the capital of the new Palestinian state and the right of each side to exercise authority over its holiest sites.
- B. The border between the two states will essentially follow the pre-1967 border, but land will be swapped so that some heavily populated Israeli settlements are incorporated into Israel in return for a mutually agreed upon transfer of territory to the new Palestinian state.
- C. The vast majority of Palestinian refugees will exercise their right of return within the newly created Palestinian state and receive compensation (or some other form of additional aid) from Israel and third parties.²
- D. The relationship between the new Palestinian state and Israel will be founded upon mutual commitment to the human security of both its citizens.³

Many valid objections could be raised from both an Israeli or Palestinian perspective regarding the features of this settlement. Neither side is likely to think that the terms it imposes are fair or just. Many, and perhaps even most, individuals on both sides will believe that particular aspects impose injustice on them that they should not have to endure and that the relevant terms fall far short of what even a minimally just settlement should offer. Furthermore, many will feel that the settlement inflicts painful costs on their side and offers only modest gains, while rewarding the other side with almost everything of significance that it wanted without requiring them to make any similarly painful concessions. Moreover, people on both sides will feel that the terms we have outlined represent a betrayal of the most heartfelt hopes and aspirations,

¹ In stating that the requirements for a settlement that satisfies the minimum demands of the two sides in the conflict are clear, we are not claiming that such a resolution, much less a resolution in the near future, is inevitable. While polls consistently indicate that a majority of both Israelis and Palestinians would (in many cases only reluctantly) accept a settlement based on these principles, they will not do so unless they are convinced that the other side intends (and has the capacity) to fully honor, and *continue* to honor, its provisions in a manner that would finally end the conflict. In the absence of such trust, many important and powerful Israeli and Palestinian constituencies prefer to continue the conflict in the hopes of increasing their leverage and creating different “facts on the ground.” Accordingly, any significant progress toward peace on the basis of this widely accepted set of principles will ultimately depend upon building such mutual trust—trust regarding not only the other side’s intentions, but also regarding their willingness and capacity to convert, marginalize, or otherwise disempower its would be “spoilers.”

² In this regard, it is important to develop the capacity of the Palestinian state to absorb refugees and to give the refugees some “ideological compensation.” See Robert H. Mnookin et al., *Barriers to Progress at the Negotiation Table: International Conflicts Among Israelis And Among Palestinians*, 6 NEV. L.J. 299 (2006).

³ Our use of the term “*human security*” comes from many quarters; however, Walid Salem has introduced it to us in a new way regarding the relationships between Palestinian and Israeli. Walid Salem, *Settlement of the Palestinian-Israeli Conflict: What’s to be Done?*, Interdisciplinary Seminar at Stanford Center on International Conflict and Negotiation, Stanford University (Feb. 2, 2005).

and a betrayal of those who have devoted or even given up their lives in the struggle.

Our assertion that the proposed terms offer the only imaginable settlement that is achievable thus does not rest on the conviction that either or both parties will be satisfied or reassured by those terms. Indeed, we are absolutely convinced that neither side will find this settlement satisfying or reassuring! Nor are we asserting that this *should* be the settlement—for example, that the Palestinians *should* give up the right of return or that the Israelis *should* share Jerusalem and consent to the '67 borders. Again, we claim only that this list of principles represents the bare minimum of what both sides might be willing to accept under the very best of conditions. In other words, it represents the only plausible arrangement that would allow Israelis and Palestinians to coexist in relative peace—that any significant deviation from it would cause one side or the other (or perhaps both) to feel that its fundamental interests would be better served by continuing the struggle.⁴

Our concern in this paper is not with the features of this proposed agreement *per se* but with a deeper problem lurking below these features that is frequently overlooked. Even if the terms of settlement were fully implemented, it would not necessarily produce real and lasting peace. For this to occur, the Palestinian state that emerges from that settlement must be a *viable* one.⁵ While the existence of a Palestinian state by itself is no guarantee of peace, it is impossible to imagine a lasting stable peace without it. Only a *successful* Palestinian state (i.e., one with a viable economy, a competent and uncorrupt central authority able to curtail factional violence, and the rule of law) could come anywhere close to meeting the requirements necessary for peaceful coexistence between Palestinians and Israelis as laid out in the Roadmap.

In the absence of a truly viable Palestinian state capable of meeting the legitimate needs of its citizens, neither Palestinians nor Israelis would enjoy the

⁴ For example, Palestinians could write a version that places priority on open borders and contiguity of territory and makes suppression of terrorism contingent on the realization of these conditions. Likewise, Israelis might write a version that emphasizes their security concerns and makes all future concession to Palestinians contingent on meeting these to their satisfaction. Such provisions certainly would increase support for the agreement among their core constituencies. However, both Israelis and Palestinians have well-founded reason to reject these and other “improvements” offered by the other side. Indeed, each side would feel that any departure from the terms we have outlined would have to entail movement in a direction that better served its own interests (and its own views about the requirements for justice). It is this shared conviction about the requirements of any change, in fact, that eliminates room for maneuvering and precludes the possibility of an alternative agreement acceptable to both sides.

⁵ The RAND Report states:

Creating a state of Palestine does not ensure its success. But for Palestinians, Israelis, and many around the world, it is profoundly important that the state succeed. If the failed or failing states of recent years—Somalia, Yugoslavia, the Democratic Republic of the Congo, and Afghanistan—have endangered international security, consider the perils in the Middle East and beyond of a failed Palestine, or the costs and risks of one so weak that it must be propped up and policed by the United States and others. The true challenge for a Palestinian state is not that it exist, but that it succeed.

fruits of peace. Indeed, Israelis would be forced to live with the consequences of a non-viable Palestinian state as much as would Palestinians.⁶ Israelis would be condemned to living beside an aggrieved and resentful people primed to vent their anger and frustration on them—especially if Israeli pursuit of their own economic, political, and security interests were the cause, or were *seen* as the cause, of Palestinian woes. In short, as the recent RAND study *Building a Successful Palestinian State* concludes, “The true challenge for a Palestinian state is not that it exist, but that it succeed.”⁷

The RAND study defines a viable Palestinian state as “an independent, democratic state with an effective government operating under the rule of law in a safe and secure environment that provides for economic development and supports adequate housing, food, education, and public services for its people.”⁸ This is, indeed, a very tall order given the current situation. The study calls for improvements in four areas: (1) security, (2) governance and political legitimacy, (3) economic viability, and (4) social well-being.⁹ Taken individually, each of these is enormously difficult; taken collectively, they threaten to overwhelm the capacity of the Palestinians as well as the international donor nations. Addressing each of these adequately will, no doubt, require a monumental effort supported by technical knowledge and specialized skills and backed by a large infusion of international aid.

However, our goal is not to critique or supplement the RAND study or to offer alternative suggestions for meeting the formidable technical challenges of building competent institutions of governance. Instead, we will address a fundamental problem that the authors of the study explicitly stated that they were not going to address—that is, the issue of “how an independent Palestinian state might be created” or “the process or terms that would lead to its creation.”¹⁰ Specifically, we will explore the role that a coordinated strategy of reciprocal unilateral actions might play in overcoming the relational barriers between the Palestinians and Israelis that we and others feel impede the goal of a viable Palestinian state living in peace with Israel.

Our emphasis on unilateral steps is dictated not by a personal preference for unilateralism. On the contrary, there is nothing that we, and most other people who want peace in the Middle East, would welcome more than a “normal,” interest-based, negotiation whereby each party makes disproportionate concessions on the issues it deems less important than its longtime adversary in return for disproportionate concessions on the issues it deems more important.

⁶ We do not suggest here that the situations of the two sides are symmetric. Indeed, the lack of symmetry both in present circumstances and in the consequences of failure to achieve a satisfactory settlement of the conflict is an important part of the problem that confronts us. While the optimal outcome for both Israelis and Palestinians would be a viable Palestinian state living peacefully alongside Israel with free flow of goods and of labor, the most likely alternative—that is, further disengagement between Israel and a failed Palestinian state—would not be equally disastrous for the two sides. Such an outcome would leave Israelis insecure while still able to lead some semblance of normal life, but it would perpetuate and perhaps even worsen an already unbearable existence for Palestinians.

⁷ THE RAND PALESTINIAN STATE STUDY TEAM, *supra* note 5, at 2.

⁸ *Id.* at 3.

⁹ *Id.*

¹⁰ *See id.* at 1.

But it is exactly such a negotiation that has been precluded by the various barriers—structural, strategic, and psychological as well as relational and political—that we at SCCN have long studied. In a sense, therefore, we start out with a simple proposition. In pursuit of peace, each side should identify whatever steps are consistent with its own interests that can be taken unilaterally, and take them! At the same time, it should identify the steps it needs the other side to take and consider what factors or barriers prevent them from taking those steps. Finally, it should consider what steps it can take unilaterally, or by mutual agreement, to remove those factors or barriers.

Before we proceed further with our discussion, however, we want to acknowledge an important asymmetry that complicates the political landscape and frames our analysis. The immediate future that Israelis will most likely face holds the prospect of a range of more preferred and less preferred outcomes. While many Israelis recognize the ways in which their interests might be served if a viable Palestinian state materializes, most feel that they could live, albeit less securely and perhaps less prosperously, with the consequences of a failed state or no state at all. The future for most Israelis, in either case, is likely to be bearable. For Palestinians, the options are much less agreeable. Given the political and economic realities that exist at present, the immediate future—even one that includes a functioning state—is bound, at best, to be difficult and perhaps only minimally bearable. Furthermore, if the future brings a failed state, or no state, that future, for most Palestinians, is almost certain to be utterly unbearable. Thus, while both parties have a stake in the outcome, and most people on both sides of the conflict may recognize that, *ceteris paribus*, a viable Palestinian state is in their mutual interest, it seems clear that the *failure* to produce a viable state will weigh much more heavily on the Palestinians than the Israelis.¹¹ It is largely because of this asymmetry that our analysis will focus more heavily on what Palestinians might be able to do to secure an outcome that they can live with. Ultimately, however, our analysis speaks to the fundamental choices that both societies face and thus to the conclusions we will draw about constructive steps for the future.

II. THE DILEMMA IN A NUTSHELL: THE DYNAMIC RELATIONSHIP AMONG VIABILITY REQUIREMENTS

Beyond detailing the specific features of a functioning state, the RAND study identified three crosscutting issues—permeability of borders, contiguity of territory, and human security—that hold the key to the nature of such a state.¹² Indeed, although there are many features of the current situation that are highly fluid and subject to potential deterioration, the centrality of these issues to any settlement cannot be overstated. A Palestinian state that has *sealed* borders, *discontinuous* territory, and a high level of *insecurity* will almost assuredly fail. But a failure to achieve any *one* of the characteristics

¹¹ In negotiation parlance, the Israelis have the stronger BATNA or “best alternative to a negotiation agreement”—a circumstance that further reflects the relative power that parties bring to the negotiation table.

¹² THE RAND PALESTINIAN STATE STUDY TEAM, *supra* note 5, at 7-9.

identified in the Rand report, we believe, would ultimately undermine the existence of the others, and in all likelihood doom the whole state-building project.

Moreover, there is a dynamic relationship among these viability requirements in that progress with regard to one requirement could either facilitate or inhibit progress towards another requirement, depending on how the requirement in question is achieved. Consider, for example, the issue of permeable borders, and the free flow of labor, products, and services across the state boundary separating Israel and Palestine that would be made possible by such borders. If Israeli security concerns—real, imagined, or even politically manipulated—lead to the sealing of that boarder, the short term effect might be a decrease in Israeli feelings of vulnerability, and hence a reduction in the likelihood of anti-terrorist incursions into Palestine. However, any short-term gain in security obtained at the cost of sealed borders would obviously hamper the future economic growth that is needed to provide Palestinians with a tolerable standard of living and would also interrupt the social and cultural bonds of those Palestinians who have family and friends living in Israel. Both of these latter factors would work to undermine the legitimacy of the Palestinian government and thus diminish not only its capacity to provide security to its citizens but also its ability to suppress violence directed toward Israel.

On the other hand, if the borders are left open despite the security risks in question, the Palestinian economy will likely grow, and Palestinians will experience less social and cultural disruption. This should enhance the legitimacy of the Palestinian state in the eyes of its people and, thus, improve its capacity to provide security to the citizens of both states and even to suppress factions that oppose peaceful coexistence and advocate violent militant action. But if open borders lead to intolerable levels of violence directed at Israel, the result will inevitably be political, economic, and/or military reprisals that both diminish the security and economic viability of the Palestinian state and discourage concessions that would further the goal of territorial contiguity.

Or consider the issue of territorial contiguity. A Palestinian state composed of disjointed cantons would be easier for Israel to manage or control when it feels endangered. In particular, such a state would be more dependent on Israel for its economic livelihood and, thus, vulnerable to sanctions that Israel might choose to impose. But a state of this sort would enjoy little political legitimacy in the eyes of Palestinians and would therefore have very limited ability to achieve economic progress and solve other problems that foster anti-Israeli militancy. In fact, both public safety for Palestinians and the ability to curb violent actions against Israel would suffer in the absence of territorial contiguity, as problems of coordination, communication, and cooperation between different cantons all become more complex and difficult.¹³ Mounting poverty, deterioration of public safety, and hence political dissatisfaction become inevitable, and the weakened state would increasingly lose its monopoly on the use of violence—the defining property of a functioning state. While having catastrophic effect on the well-being of Palestinian people, these developments, if

¹³ Faced with challenges that arise from fragmented states, the RAND report concluded, “Even the most challenging peacekeeping experiences—Cyprus, Bosnia, and Kosovo—might seem easy by comparison.” *Id.* at 8.

they come about, will undoubtedly put Israeli security under greater, not lesser, strain.

If we focus instead on human security, the same interdependencies arise. Across the world, citizens everywhere grant legitimacy to the state in proportion to the protection they receive from it.¹⁴ In other words, the viability of a future Palestinian state ultimately rests upon the confidence that the Palestinian people have that their state both can and will protect them, first and foremost, from the threat of internal and external violence, but also from the economic and social forces that ravish their sense of well-being. While the sense of security that Palestinians seek cannot be separated from the quality of their police force, it cannot be reduced to this either. It is obviously intertwined with the concerns that have been raised about permeable borders and territorial contiguity. At the same time, it must be noted that the sense of security that Israelis seek cannot be derived solely from the effectiveness of their defense forces either and cannot be separated from the choices they make about the borders and territory that they allot the Palestinians. As noted above, harsh measures taken to thwart immediate security threats and risks often undermine the very protection that is the ultimate goal.

In short, decisions made and actions taken with regard to any of the three key issues highlighted in the Rand report necessarily depend upon, and necessarily exert an influence on, the other issues. That influence, in turn, can be positive or negative. If contiguity of territory results in violence or threats that diminish Israeli feelings of security, the goal of permeability of borders will not be met. If permeable borders results in similar violence or threats, the goal of contiguous territory will not be met. If, on the other hand, territorial contiguity and permeable borders are achieved in a manner that enhances rather than diminishes Israeli feelings of security, then the process is likely to unfold in a matter that serves other Palestinian interests as well.

Clearly, from the perspective of both sides, the option of open borders and contiguous territory holds open the promise of viability—if it can be achieved in a manner that is consistent with mutual human security. No doubt, this option contains formidable risks; and, if the challenges of good governance, enhanced security, positive economic performance, and increased standard of living are not adequately met, both the Palestinian and Israeli people have left themselves vulnerable to increased violence and social and political chaos. But the negative scenario of a state consisting of separated enclaves, hemmed in by closed borders, facing a future of periodic Israeli military invasions to deal with “terrorist” threats offers no prospects for either peace or viability. It will most certainly encounter a Palestinian reaction that will include violent confrontation, organized armed resistance, massive resentment, and little hope for Pales-

¹⁴ Martin Van Creveld writes:

The most important single demand that any political community must meet is the demand for protection. A community which cannot safeguard the lives of its members, subjects, citizens, comrades, brothers, or whatever they are called is unlikely either to command their loyalty or to survive for very long. The opposite is also correct: any community able and, more importantly, willing to exert itself to protect its members will be able to call on those members' loyalty even to the point where they are prepared to die for it.

MARTIN VAN CREVELD, *THE TRANSFORMATION OF WAR* 198 (1991).

tinians to enjoy a better life. This scenario, of course, is negative for Israelis as well as Palestinians, but, again, we would argue, more negative and less bearable for the already beleaguered Palestinians. For those who seek to avoid this scenario, the immediate imperative must be, first, to create the trust and mutual confidence necessary to make the people and leadership in both societies strive to achieve the more positive scenario and, second, to make sure that the initial steps taken in the direction of this more positive scenario produce the type of viable Palestinian state that can offer such benefits to its citizenry.¹⁵

III. COORDINATED RECIPROCAL UNILATERAL ACTION

For peace to have a real chance, the Israelis and Palestinians must create the *relationships* that make possible permeable borders, contiguous Palestinian territory, and a high level of human security for both Palestinians and Israelis. If this is the foremost goal, then a speedy return to the negotiation table in pursuit of a comprehensive bilateral agreement may not be the most effective strategy. We reach this conclusion—which no doubt will be unwelcome to supporters of the peace process on both sides—because the current political climate makes unlikely the difficult trade of concessions that would be needed to move toward these goals. To make real headway, the Palestinians must signal their willingness to relinquish the right of Palestinian refugees to return to home within Israel—or, at least, their acceptance of the fact that they will not be able to exercise this right. Israelis, for their part, must signal their willingness to accept the principle of a return to the '67 borders (with any incorporation of previous Palestinian territories compensated by a mutually acceptable exchange of Israeli territories) and also the establishment of a Palestinian capital in East Jerusalem.

Given the current levels of distrust and, perhaps equally important, the current realities of both Israeli and Palestinian politics, the prospects of either side sending these signals seem very dim indeed. Israelis have little trust that their concessions would bring a real end to the conflict and an end to all future claims on the part of the Palestinians. Likewise, Palestinians have little trust that their concessions would produce an end to Israeli domination and the fulfillment of their own social, economic, and political goals. Without a significant shift in this political landscape, it is hard to see how the negotiation table will provide anything more than a platform for the parties to rehash their well-worn arguments about who is responsible for the deadlock and to demand once again that the other side take the initiative in breaking it. Each will feel justified in going slow, offering its own concessions only in response to other side's complete and successful implementation of its obligations.¹⁶

¹⁵ To anticipate our argument, the strategy that unfolds from these two objectives will require a reciprocal unilateral process that leads to the establishment of a viable Palestinian state. For some indication of what this process might look like, see Walid Salem's four part series on post-disengagement. Walid Salem, Series on Post-Disengagement Issues (Sept 1, 2005 through January 19, 2006) (unpublished manuscript, on file with author, Walid Salem).

¹⁶ Concerning the Roadmap, Gershon Baskin, co-director of the Israel/Palestine Center for Research and Information ("IPCRI"), argues that we will simply return to standard arguments over its implementation.

The problem, it is easy to see, is that both sides have very legitimate reason to distrust the other. The current Likud government is skeptical that the Palestinian leadership is interested in taking the difficult steps that most Israelis would demand as the price for relinquishing West Bank territories with significant Israeli settlements. Even those Israelis who would be willing to pay a heavy price for peace have grave doubts about the current Palestinian leadership's ability to uphold its end of any peace agreement. On the other hand, Palestinian leaders have, with good reason, voiced deep concerns about whether Ariel Sharon would be willing to entertain any plan that they and the Palestinian "street" would find even minimally acceptable. They believe that his goal is to impose terms that are more acceptable to most Israelis than anything he is likely to get through a negotiated settlement.

We believe, however, that the problem goes deeper than distrust about the intentions of current political leaders. For trust to replace that distrust, each side must believe that, come what may, the other side genuinely seeks a mutually acceptable agreement and that it is committed to honoring it. The Palestinians must believe that the negotiation process will truly result in a viable Palestinian state. The Israelis must believe that an agreement with the Palestinians Authority ("PA") will truly deliver them the long-term security that they have sought for so long. Seeking detailed agreements about the central issues under dispute—no matter how clearly those details are spelled out—cannot substitute for a lack of trust in this regard. Indeed, the ability to spell out the details of a possible settlement has not been the real problem anyway. In fact, we would argue the central issues have already been *over*-negotiated. Neither Palestinians nor Israelis are going to take comfort in the finer points of an agreement when, irrespective of what is written on paper, they basically don't find each other trustworthy. Given the existing level of skepticism and suspicion, launching a new round of negotiations in the hope that it will lay the foundation for future trust seems doomed from the start.¹⁷ Indeed, there is a real danger that this strategy will achieve the opposite result since history tells us that unsuccessful and unfruitful negotiation generally undermines whatever

First, the Palestinians and the Quartet will state that the implementation must be in parallel, while Israel will claim it must be sequential—meaning that first the Palestinians must dismantle the infrastructure of terrorism and only then Israel will freeze settlements. The Palestinians will claim they have completed their Phase I obligations, while Israel will claim that on the overriding issue of terrorism they have not even begun.

The Palestinians will demand moving immediately to Phase III—or permanent status negotiations. The US and Israel will demand that only after Phase I is complete can we move to the creation of a Palestinian state with provisional borders, as called for in the road map. The Palestinians will indicate that the road map speaks of this only as an option, and that they reject this option.

The Palestinians don't want another interim agreement that will take another 10 years. That is precisely what Prime Minister Ariel Sharon wants. The road map calls for the Quartet to monitor the process, but they never created a monitoring mechanism.

Gershon Baskin, *Looking Beyond Disengagement*, JERUSALEM POST, Aug. 9, 2005, at 15.

¹⁷ There are several well-documented psychological processes (such as loss aversion, biased assimilation of information, and reactance that leads to devaluation of proposed trades of concessions) that present challenges or barriers to effective negotiation in the normal sense of the term. See Lee Ross, *The Reactive Devaluation Barrier in Dispute Resolution*, in *BARRIERS TO CONFLICT RESOLUTION* 30 (Kenneth J. Arrow et al. eds., 1995).

trust had existed and weakens the hand of those who have recommended this path.

These political realities have left those who would like to move the peace process forward feeling—to use an American metaphor—“caught between a rock and a hard place.” While no agreement is possible without negotiation, negotiation at this time may make agreement more difficult rather than less difficult to achieve. In light of this state of affairs, it is instructive to consider the current maneuverings of Prime Minister Sharon. Claiming that Israel has no reliable Palestinian partner, and believing (no doubt correctly) that a final agreement acceptable both to his political allies and to the Palestinians is unreachable, Sharon has launched a policy of *unilateral* disengagement that he defends as furthering Israel’s self-interest.¹⁸ He does not hesitate to acknowledge that he will undertake actions that are designed to benefit Israel (some of which may be welcome to many Palestinians while others will be unwelcome to virtually all Palestinians) and that he will do so with or without Palestinian concurrence. He makes it clear that he is concerned only with Israeli interests and not with any impact, positive or negative, on Palestinian interests. Such a policy, he reckons, will allow Israelis to unite around the politically popular goals of maintaining Jerusalem as an exclusively Israeli capital, retaining large Jewish settlements in the West Bank, and at the same time guaranteeing the continuation of the “Jewish character” of the state.¹⁹

While it is very doubtful that Sharon’s current brand of unilateralism lays a solid foundation for future peace, it is important—given that bilateralism holds little immediate prospect for peace either—to ask what alternatives exist?²⁰ This is the question we turn to next. Our starting point is the conten-

¹⁸ Addressing The Washington Institute’s Special Policy Forum, Zalman Shoval, a prominent Likud politician and former ambassador to the United States, explained that Israelis had adopted a strategy of unilateral action both because there was no reliable Palestinian partner and because there was no formula for producing a final agreement that was acceptable to both sides. The Washington Institute, *Sharon’s Disengagement Plan: A Likud Perspective*, June 14, 2004, <http://www.washingtoninstitute.org/templateC05.php?CID=2153>. Although Shoval doesn’t explicitly say so, the gist of his comments is that Palestinians need to accept that there will be no right of return to Israel proper and to endorse an Israeli interpretation of UN Security Resolution 242 that allows Israel to keep the territory on which it has built most of its settlements and that it deems necessarily for its own security.

¹⁹ In his speech to the Herzliya Conference, Ariel Sharon stated that his disengagement policy had allowed Israelis to unite around Israel’s real goals concerning Jerusalem, the large settlement, and the Jewish character of the state. Moreover, it had created an understanding with President Bush that would allow Israel to keep its large settlement bloc, to resist pressured to return to the ‘67 borders, and to refuse outright to allow Palestinian refugees to resettle in Israel. Prime Minister Ariel Sharon, Speech at the Herzliya Conference (Dec. 16, 2004), <http://www.pmo.gov.il/PMOEng/Archive/Speeches/2004/12/speech161204.htm>.

²⁰ We note again that beyond these political considerations, there are psychological considerations that lead us, in certain circumstances, to favor unilateral actions that build trust and invite reciprocation over bilateral negotiations designed to produce agreements about trades of concessions. In particular, decision-makers are reluctant to part with an asset or opportunity that they already possess in order to gain an asset or opportunity of seemingly equal or even greater value that they would like to possess. DANIEL KAHNEMAN & AMOS TVERSKY, CHOICES, VALUES, AND FRAMES 1-16, 17-43, 269-87 (2000); see generally Richard Thaler, *Toward a Positive Theory of Consumer Choice*, 1 J. OF ECON. BEHAV. & ORG. 39 (1980). The relevance of this bias is twofold. First, it makes parties reluctant to accept proposals that call upon it to accept losses in order to achieve gains—particularly gains that are uncertain

tion that it is sometimes easier to make a particular concession unilaterally on the grounds of self-interest than to make the same concession in the context of bilateral negotiation in which each side must defend itself against the charge that its own concessions were not matched with concessions of equal value and significance by the other side.

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In an insightful paper entitled "Arms Control without Treaties?"²¹ George Bunn and David Holloway explored the possibility of using unilateral acts—acts that are not dictated by any formal agreement, but that are reciprocal in nature—as an alternative to the conventional mechanism of negotiated treaties.²² The authors' primary concern was the means by which the Soviet Union and the U.S. might be able reduce their post-Cold War nuclear arsenals at a time when the traditional approach of engaging in long negotiations to produce meticulously detailed treaties was stalled. While the stalemate was due to several factors, most notably the backbreaking process of formal ratification, the net result was an inability to move the arms control process forward at a time when both sides had a clear and compelling interest in reaching an agreement.

Drawing on the earlier work of Alexander George on U.S.-Soviet relations,²³ Bunn and Holloway differentiate between strategies of bargaining and strategies of reciprocity.²⁴ Whereas bargaining entails negotiations that seek specifically agreed upon concessions and compromises (usually explicit and formal in nature), reciprocity involves unilateral undertakings, albeit ones designed to encourage the other side to respond in kind. While bargaining is designed to produce treaties, the reciprocity strategy relies on less formal arrangements arising from cooperative interactions and communications about mutually desirable goals and intentions. The reciprocal steps that it envisions both reflect the existence of productive working relationships and serve to build greater trust about the future. Furthermore, because they are implemented unilaterally in the conviction that each side's steps serve its own interest, they do not require official legislative ratification and can bypass the political infighting that accompanies the ratification process.

and are to be achieved only in the future. Second, once parties are enjoying some new benefits with which they have been "endowed" they become reluctant to engage in behavior that puts their gains at risk. Unilateral actions can offer such endowments to the other side and prompt reciprocal actions to preserve that endowment.

²¹ George Bunn & David Holloway, *Arms Control without Treaties?* (Ctr. for Int'l Security and Arms Control, Working Paper, 1998), <http://iis-db.stanford.edu/pubs/10211/rum.pdf>.

²² Bunn and Holloway use the acronym R.U.M.s (reciprocal unilateral moves) to cover the three types of reciprocity—GRIT, tit-for-tat, and conditional reciprocity—they explore. Tit-for-tat plays a very minor role in their analysis. Moreover, they note that "Quantitative studies of GRIT and tit-for-tat have suggested that GRIT has been much more effective than tit-for-tat . . ." *Id.* at 9. Tit-for-tat has very limited relevance for our purpose except perhaps to suggest why an exchange of mutual concessions by itself might have building trust. In this light, we have chosen to bypass it.

²³ ALEXANDER L. GEORGE, *U.S.-SOVIET SECURITY COOPERATION: ACHIEVEMENTS, FAILURES, LESSONS* (Alexander L. George et al. eds., 1988).

²⁴ See generally Bunn & Holloway, *supra* note 21.

From their survey of Cold War history, Bunn and Holloway conclude that coordinated reciprocal unilateral actions are capable of producing incremental steps that can lead to informal agreements that only later are codified into formal treaties.²⁵ They also draw several important lessons that have relevance to our concern with trust-building in the context of the Middle East search for a two-state solution.²⁶ They first note that “nothing in the practice of reciprocity . . . necessarily precludes bargaining.”²⁷ In fact, certain other features of normal bargaining may improve the overall chances of success. Indeed, the authors suggest the most successful unilateral strategy has featured a *conditional* component—that is, prior consultation in which one’s initial action is made contingent on the explicit or implicit promise of a specified response from the other side.²⁸ This approach addresses directly problems of uncertainty by making clear what the initiator expects in return and thus establishes the standard by which the other side’s response will be judged. It also counteracts the tendency for the other side to simply “pocket” the benefits without responding with a comparable offer. By demonstrating that unilateral actions can be coordinated around common interests, conditional reciprocity can help the parties—as it did with the U.S. and Soviet Union—to reach greater agreement and, as a result, to improve their overall relationship.

Bunn and Holloway caution, however, that conditional reciprocity may have a limited effect on changing the “enemy images” that fuel the conflict.²⁹ Agreements that are based solely on each side’s perception and pursuit of its own self-interest do not necessarily lend themselves to dealing with critical issues on which the parties do not share a common interest. In this regard, the GRIT (or “Graduated Reciprocation in Tension-reduction”) strategy advocated in the 1960s by Charles Osgood may prove to be more useful.³⁰ With GRIT, one side undertakes a move whose expressed purpose and principal intention is to reduce the distrust of the other side. The other side is then invited to respond in kind, but no attempt is made to specify exactly what this response should be. Thus, with GRIT, gestures are not made contingent on how the other side reacts, although the message is clearly given that some appropriate reciprocation will be necessary if any future action is to be forthcoming.³¹ Ideally, the first move by one party is followed by a reciprocal move by the other side and

²⁵ *Id.* at 22.

²⁶ *Id.* at 19-20.

²⁷ *Id.* at 4.

²⁸ *Id.* at 9.

²⁹ *Id.* at 20.

³⁰ See generally CHARLES E. OSGOOD, AN ALTERNATIVE TO WAR OR SURRENDER (1963).

³¹ While GRIT, like other forms of unilateral moves undertaken to produce a cycle of reciprocated concessions, can be effective, there is a particular psychological process that can compromise its effectiveness. This process involves “reactance.” JACK W. BREHM & SHARON S. BREHM, PSYCHOLOGICAL REACTANCE: A THEORY OF FREEDOM AND CONTROL (1981); LEE ROSS, REACTIVE DEVALUATION (1993). The reactive devaluation barrier in dispute resolution whereby the act of offering a concession decreases its perceived value and significance in the eyes of the recipient. BARRIERS TO CONFLICT RESOLUTION, *supra* note 17, at 30-48. In the absence of prior discussion and the building of a minimal level of trust about future intentions, parties are apt to see unilateral concessions as token or deceptive or, at least, as being of little significance to the party offering the concession. Expressing such sentiments, of course, diminishes trust and leads the parties to doubt each other’s sincerity.

similar invitation to respond. As this process continues, it will produce a decline in tension and an increase in trust that leads to the preconditions for successful formal negotiations and ultimately an end to the conflict.³²

The essential difference between conditional reciprocity and GRIT lies in the different situations they are designed to address. GRIT was proposed as a way to use unsolicited gestures to signal a willingness to pursue common interests to an adversary who has heretofore seen the conflict in zero-sum terms. It invites the other side to give recognition to these points of commonality by responding in kind. Conditional reciprocity, by contrast, seeks to build upon the common interests that the parties have already both acknowledged. It simply calls for the coordination of the relevant (presumably alternating) moves around the mutually recognized expectations of both sides. Our proposal here is to combine these two strategies, taking the strong points of each. Since the limitation of conditional reciprocity lies in expanding this initial domain of common interests beyond what the parties have already recognized, the furtherance of the peace process demands that one or both parties supplement these reciprocal exchanges with unsolicited moves designed to underscore new points of potential, as yet unrecognized, common interests (as in GRIT). For instance, unilateral Israeli initiatives designed to increase human security for Palestinians and/or unilateral Palestinian initiatives designed to increase Israeli security from suicide bombers would contribute to the building of trust about future intentions, and at the same time each initiative would serve the interests of the initiator as well as those of the other side.

IV. BUILDING TRUST: THE IMPORTANCE OF A VISION OF AN ACCEPTABLE "SHARED FUTURE"

Discussions of trust often focus on the value that the individuals or parties place on fulfilling each other's expectations and on preserving a mutually beneficial relationship. By contrast, we join Russell Hardin in maintaining that trust has to do with a "rational expectation about the self-interested behavior" that can be expected from the other person or party.³³ To say that I trust you means that I have grounds for thinking that you will be *trustworthy*.³⁴ These grounds have to do with the way that my interests and yours are related; namely, that I think it is in your interests to take my interests into account when you act. I trust you to recognize this fact and act accordingly—and on that basis I believe you are and will continue to be trustworthy. In other words, I trust you to the extent that I believe my interests are *encapsulated* within yours and that you, as a rational human being, will therefore give appropriate weight to my interests

Avoiding or overcoming reactive devaluation, accordingly, is an important task for the parties hoping to use GRIT.

³² Political scientists are apt to disagree about the "track record" of GRIT. Also, one might well argue that if the relationships needed to make GRIT work are in place, it is the relationships and not GRIT *per se* that account for the parties' success in working together. Indeed, if such relationships are in place, it is clear why GRIT would be needed. Still, acknowledgment that dispelling distrust is apt to require something beyond the taking of unilateral, self-interested steps or even the coordination of steps that are of mutual self-interest, is important.

³³ See RUSSELL HARDIN, TRUST AND TRUSTWORTHINESS 6 (2002).

³⁴ *Id.* at 1.

as you pursue your own. It should be emphasized that trust of the sort described here is not based on the belief that we have identical or even compatible interests.³⁵ Rather, it is grounded in my assessment that your self-interest entails making sure that my interests are impacted in a positive way (or at least not impacted in an overly negative way).

This notion of trust as encapsulated interest is closely related to what we have called the *shared futures* question, which we regard as so central to the achievement of genuine peace as opposed to cessation of hostilities that we sometimes term it simply the *peace* question.³⁶ This question challenges each party to articulate a vision of the future that includes a place for the other that they will judge to be minimally “bearable.” In all likelihood, this place will be less than what they sought, and it will, almost certainly, offer less than what they feel is their just due. Nevertheless, it is a place that offers an everyday life for one’s family and immediate community that one could live with. Unless a place for the other is envisioned and credibly communicated, all negotiation—as well as any other attempt to define mutual interests with regard to particular issues—cannot be expected to bear fruit. In other words, I must feel that a bearable future for me is encapsulated within the future you are pursuing, and you must feel the same about the future that I am pursuing.³⁷

We emphasize the importance of *credible* communication because each side must believe that the other side’s articulated version of the future corresponds to their real intentions rather than to a way station in the struggle to achieve its “real,” longer term objectives. Each side’s uncertainty concerning the other’s real intentions, in turn, will again reflect perceptions of interest-based trustworthiness. In this regard, Hardin argues that trust is always a three-part relation.³⁸ Again, he emphasizes that I don’t trust you in a general or abstract way, but instead trust you with respect to a particular action in a particular context. I trust you to do X (but not necessarily to do or refrain from doing Y) and to do X in situations A, B, and C (but not necessarily to do so in situation D).³⁹ I recognize that if the context shifts or our interactions change, I may need to reconsider the trust I previously invested in you. Trust is always limited to certain actions contingent on certain conditions, and these actions and conditions constitute a domain of trustworthiness. Parties establish their

³⁵ *Id.* at 4-5.

³⁶ Byron Bland et al., *Building a Peace Constituency: The Achievement and Implementation of a Peace Agreement in the Middle East*, in 3 *THE PSYCHOLOGY OF RESOLVING GLOBAL CONFLICTS* 123, 136-37 (Mari Fitzduff & Chris E. Stout eds., 2005); Byron Bland, *Beyond Cheap Talk: Fruitful Dialogue and Building Productive Working Relationships*, Stanford Ctr. on Int’l Conflict and Negotiation, Oct. 2004, <http://www.stanford.edu/group/sccn/Final Cheap Talk10-1.htm>; Byron Bland, *Creating a Political Language For Peace: Grassroots Dialogue Within a Peace Process*, Ctr. on Int’l Conflict and Negotiation, <http://www.stanford.edu/group/sccn/CD-SCCN Peace.htm>.

³⁷ Although peace cannot come about unless the parties address the shared future question to each other’s satisfaction, real peace will require more. Both sides must also feel that a shared future is better for them than what they are likely to achieve through a continuation of the conflict. Moreover, each side must believe that this is true for the other side too or else it will anticipate that the other side will reinitiate the conflict at a time and under circumstances of its own choosing.

³⁸ HARDIN, *supra* note 33, at 9.

³⁹ *Id.*

trustworthiness by demonstrating to the other side that they will honor their commitment to act in this manner.

In summary, a strategy for building trust must (1) establish the foundation for trust in the vision of a shared future, (2) validate the trustworthiness of the parties, and (3) seek to expand the domain of trustworthiness. The settlement outlined at the beginning of this paper offers a view of a shared future that we believe is the only one that majorities of Israelis and Palestinians might find bearable and thus minimally acceptable. What remains are the difficult tasks of validating trustworthiness and expanding its domain. This task involves each side proving to the other side—by deeds as well as words—that it understands the encapsulated nature of the other side's interests within their own, and vice versa.⁴⁰ Independent self-interested action that also promotes the interest of the other side speaks for itself in a way that negotiated concessions, encumbered tradeoffs and coercive tactics, cannot. Still, by itself, this form of unilateral action is not enough. The parties must further demonstrate that the encapsulated nature of their own interests causes them to place value on the relationship itself.

V. DEVELOPING A STRATEGY

It is time to put the various pieces of our analysis together and to pursue its implications. The immediate task at hand is that of developing a strategy to create the trust and mutual confidence required for the parties to move forward on the journey to a viable Palestinian state living side by side in peace with Israel. Palestinians must be made confident that the difficult actions they undertake will, in fact, move toward the permeability of borders, contiguity of territory, and human security and dignity that make for a viable state. Israelis, in turn, must be made confident that these Palestinian achievements will also serve the main interests of its citizens—that is, a true end to the Middle East conflict and the opportunity for them to live secure normal lives, not only in the immediate future, but for all of the foreseeable future as well. This confidence, we have argued, will grow from concrete demonstrations by each side that it recognizes how the other side's interests are encapsulated within its own pursuit of self-interest, and vice versa. We have further argued that unilateral steps—coordinated whenever possible—are the means to provide this demonstration. In a sense, the formula in question is simple and obvious. It calls upon each side to take the confidence building steps of mutual interest that it can take on its own and, where the other side's cooperation is required, to consider what it can do to remove whatever political, strategic, or psychological barriers stand in the way of this cooperation.

⁴⁰ Nowhere is this requirement more evident than in the problem of dealing with "spoilers," that is factions who do not see a place for themselves in any future achievable by non-coercive means that is both bearable and preferable to that achievable by other means. Stephen J. Stedman, *Spoiler Problems in Peace Processes*, INT'L SECURITY, Fall 1997, at 5, 17-35. Such unilateral actions can of course involve suppression of the groups in question; but it can also involve a willingness not to demand such suppression prematurely, that is, before it is politically possible to do so, and/or before the possibility of persuading the spoilers that the future will hold a bearable place for them.

* * *

In a recent article for the *Jerusalem Post*, Gershon Baskin, co-director of the Israel/Palestine Center for Research and Information ("IPCRI"), proposed the kind of strategy we are advocating.⁴¹ Like most observers, he believes that a bilateral negotiated process will be required at some point, but that current levels of distrust make a return to the negotiation table at any time in the foreseeable future unlikely.⁴² The only realistic option left, he argues, is to continue with the unilateral approach that Israel has adopted. He has since joined with Hana Siniora, the Palestinian co-director of IPCRI, to issue a six-point peace plan that stipulates the coordinated unilateral steps intended to ensure that "Gaza first" does not become "Gaza only."⁴³

The first requirement is to make Gaza a success. This will entail (1) improving economic prospects for the people of Gaza, (2) establishing rule of law, (3) enhancing the private sector, (4) increasing water resources, and (5) exploiting natural gas reserves. Responsibility for making progress in these areas will rest primarily on the shoulders of the Palestinians, but success will also require Israeli (as well as international) collaboration and assistance. From our point of view, this first phase offers an excellent opportunity for both sides to demonstrate their commitment to building a viable Palestinian state that would live in peace with Israel, and thereby to lay the foundation for trust that will be sorely needed later as the process continues.

The next step would involve a second Israeli disengagement from those settlements east of the security barrier. This would require the evacuation of about 56,000 Israelis in eighty settlements, but would not include Maale Adumim, whose status would presumably be determined later in talks about Jerusalem. This territory would then be fully turned over to the Palestinians, who would now control Gaza and about eighty percent of the West Bank. In effect, this move, along with trilateral interim arrangements with Jordan concerning security, would give birth to a Palestinian state. Baskin and Siniora emphasize, however, that full peace will not come about as long as the main

⁴¹ Gershon Baskin, *Looking Beyond Disengagement*, JERUSALEM POST, Aug. 9, 2005, at 15.

⁴² *Id.* In specific terms, this means that Israel must follow the first disengagement from Gaza with a second and third and possible even a fourth phase of disengagement. Although Baskin offers no details about the third and fourth phases, he is clear that the second stage of disengagement should include all settlements east of the separation barrier. Regarding the Palestinians, he suggests that they should first do everything they can to ensure that the Gaza disengagement goes smoothly. He further suggests that they should also begin coordinating with Israel so that the second and third phases are not seen as a victory for Hamas and that the Palestinian Authority will be in a position to take control over any territories that Israel vacates. He proposes that they reaffirm their declaration of statehood within the 1967 borders and with East Jerusalem as the capital in a public forum, and finally that they should ask the UN to grant full membership rights and invite the nations of the world to establish temporary embassies in East Jerusalem. Baskin also suggests that the international community, for its part, should improve its monitoring and verification capabilities and that the United States should clarify and elaborate its vision of a two states solution—perhaps in a public declaration of principles and a letter of guarantees to Mr. Abbas similar to President Bush's letter to Mr. Sharon.

⁴³ Gershon Baskin & Hana Siniora, *The Baskin-Siniora Peace Plan: Creating the Two State Reality—The Six Point Plan*, ISRAEL/PALESTINE CENTER FOR RES. & INFO. (Sept. 1, 2005), <http://www.ipcri.org/files/baskin-siniora.html>.

permanent status issues—final borders, Jerusalem, and refugees—remain unresolved. But they argue that the initial steps they have outlined will create conditions that make the resolution of these outstanding issues more likely. The remaining four points of their plan address making Jerusalem the capital of both states, launching environmental initiatives, creating a culture of peace, and reaching agreement on permanent status issues. Each of these would follow and build upon progress made in the first two steps, which is obviously the meat of their proposal.

Given Israeli public opinion, the proposal put forward by Baskin and Siniora is a bold one that pushes the envelope of Sharon's unilateralism far beyond the initial Gaza disengagement. Nevertheless, for the first time, Jews no longer constitute a majority in the lands they now control,⁴⁴ and it is clearly in Israel's self-interest to enact a second disengagement of the kind advocated by Baskin and Siniora. Still, moving beyond this will be possible only if the questions of trust and confidence that we have emphasized are effectively addressed by the two sides. Otherwise, it is hard to see Israeli public opinion backing steps that do more than evacuate territories with large Palestinian majorities.

Indeed, there is every reason to think that Sharon's unilateral disengagement could stop at precisely this point. Having withdrawn from the heavily populated Palestinian areas of the West Bank, he would be in a strategic and political position where he could seal the borders and station the Israel Defense Force to maintain Israeli security, if necessary, through incursions into Palestinian territory. In fact, he would have accomplished his well-understood goal to disengage from any negotiation or dialogue with the Palestinians, leaving it for them to make (or more likely not make) their state viable, while leaving Israel with maximum control over future events. His message to the Palestinians would be to create whatever permeable borders, contiguous territory, and security institutions they wanted—but to do so with Jordan and Egypt, not Israel.⁴⁵

* * *

We have now come full circle to the fundamental asymmetry with which we began this paper. If Sharon's policies, which reflect the views of many Israelis who have grown increasingly distrustful of Palestinian intention, result in a second disengagement of the kind described above, Israelis will be left facing a future that, despite a continuing threat from resentful and desperate Palestinians and despite some forfeiting of economic opportunities, they could bear reasonably well. Palestinians, on the other hand, would face a future that they would find neither bearable nor acceptable. If Israel chooses unilateral disengagement of the sort Sharon probably envisions, it will have *de facto* cho²

⁴⁴ Amiram Barkat, For First Time, Jews are No Longer a Majority Between the Jordan and the Sea, Seminar at Stanford University (Aug. 11, 2005), http://www.stanford.edu/dept/EIS/lectures_tanner_04_05.html.

⁴⁵ Several scholars have begun considering the role that Jordan might play in helping to make the Palestinian state more viable. See Joseph Braude, *Good Neighbor: How Jordan Can Help Palestine*, The New Republic Online (Aug. 30, 2005), <http://www.tnr.com/doc/print.mhtml?i=w050829&s=braude083005>; Gary Sussman, *Ariel Sharon and the Jordan Option*, MIDDLE EAST REPORT ONLINE (March 2005), http://www.merip.org/mero/interventions/sussman_interv.html.

sen to deal with a failed Palestinian state by minimizing the negative consequences to its own citizens. Palestinians, in turn, would have little reason to do anything to make these consequences less harmful to Israel. For they would take Israeli actions to be what they are—actions, taken without regard to Israeli well-being, that maximize Israeli self-interest at the cost of denying Palestinians a state.⁴⁶

Given the all-too-plausible nature of this bleak scenario, the critical question facing Palestinians (as well as Israelis and Americans or others who have any concern for their welfare) is how to change it. A way must be found to move the disengagement process onto a track that leads toward permeable borders, contiguous territory, and human security for both Israelis and Palestinians. To do this, several more proximal goals must be pursued. First, a way must be found to move the center of Israeli political opinion to resist the complacency that is sure to come after the second disengagement. Many Israelis will want to feel that they have done enough, that nothing more is possible anyway, and that in any case it is now time for the Palestinians to show their willingness to take the kind of steps that many Israelis agree are necessary for better relations—disarming militant groups, ending anti-Israeli rhetoric, curbing corruption that robs Palestinians of any peace dividend. In any case, Palestinians must find a way to build Israeli support for further steps along a path that ends in a viable state for them. No less importantly, Palestinians must prepare their own population to back the actions needed to move the Israeli public in this direction.

Needless to say, none of this will be easy. At the risk of repeating ourselves once too often, we say again that the building of trust is the key to the task that lies ahead. Palestinians must communicate in plain language a vision of the future that Israelis—or at least the peace-seeking Israelis who could command the political center—would find acceptable. They must then demonstrate this commitment as concretely, indeed as dramatically, as possible through their words and deeds. Public assurances that the majority of Palestinians seek a “just two-state solution” will not be enough, so long as Israelis think—justifiably or unjustifiably—that the kind of solution that Palestinians envision is one that will not guarantee long-term Israeli security. Even peace-seeking Israelis want to hear something *new* and to see things done that have not been done before—something that signals a *change* in attitudes and aspirations. Secondly, Palestinians must create confidence that the difficult actions they ask their community to undertake will result in a state that offers its citizens a reasonable degree of opportunity, prosperity, security, and dignity. As we have emphasized, this cannot be accomplished without Israeli coopera-

⁴⁶ In a recent editorial, the New York Times stated:

Unfortunately, Mr. Sharon seems to think that withdrawing from Gaza will buy Israel time to spend to consolidate in the West Bank. Even the pro-withdrawal officials in Mr. Sharon's hard-line Likud Party maintain that Gaza is not the beginning, but rather the end. Mr. Sharon's own chief political strategist has said that a central purpose of the Gaza withdrawal plan was to take Palestinian statehood off the table indefinitely. The belief appears to be that by “giving” President Bush Gaza, Israel will have bought for itself at least a lack of American pressure so that it can remain in the West Bank.

Editorial, *Only the Beginning*, N.Y. TIMES, Aug. 15, 2005, at A16.

tion—which is the reason why satisfying Israelis that this state intends to live in peace with Israel for generations to come is essential.

Palestinians may feel that this approach places an unfair share of the burden on their shoulders. They may claim that it implicitly blames the victims for the difficult plight they face. Right-wing Israelis will certainly argue that the approach we have outlined assigns too little blame to Palestinians and does too little to satisfy their security needs or their vision for the Middle East. To our mind, this debate is pointless. We feel that another course of discernment and action is needed and would ultimately prove more productive. The strategy we advocate unfolds in five steps, the first three of which should be implemented in parallel Palestinian and Israeli tracks.

A. *Laying the foundation for trust*

Both Palestinians and Israelis of goodwill must start with an explicit and public commitment to the principles of settlement with which we began this paper. Polls have consistently indicated that a majority of both Israelis and Palestinians would accept this outcome, albeit in many cases reluctantly, if they thought that the other side intended to live within its provisions and, particularly for the Israelis, agreed to end the conflict once and for all. There are several proposals for a final settlement currently circulating among the peace camps of both sides, each more or less prescribing the principles that we have laid out. Efforts to reconcile the wording or even the content of these versions to produce a single agreed upon document are not particularly valuable since, as we have argued, the problem is less perfecting the document than distrusting intentions to comply. These plans seek to articulate a future that is *mutually acceptable*—not in the sense that they necessarily agree on a particular vision but in the sense that both feel that, if the other side's vision came about, they could live with it. As we have argued, the trust needed to reach and implement a settlement must be grounded in the mutually acceptable visions of a shared future that the two societies have. The baseline for both Palestinians and Israelis is that the future—whatever it might be—offers them secure, normal lives within a secure, stable state.

B. *Establishing trustworthiness*

The settlement that we have outlined will produce peace only if a viable Palestinian state emerges in the process. We have argued that, at least at the present time, the best way to move forward towards the creation of a viable Palestinian state is not *negotiation* but *coordinated unilateral action*. Each side must discern what it can do by itself, without the assistance of anyone else, to move beyond the second disengagement toward the conditions that the RAND study identifies for viability—permeable borders, contiguous territory, and human security for Palestinians and Israelis.⁴⁷ Some of these actions will focus on goals that must be addressed separately, distinct from any action undertaken by the other side. Other actions will target goals that require some measure of coordination or, at least, conversation. The critical point in either case is that

⁴⁷ See generally THE RAND PALESTINIAN STATE STUDY TEAM, *supra* note 5.

those concerned have the ability and the will to undertake these ventures in the current political climate and at the present moment.

C. *Broadening the domain of trustworthiness*

Palestinians and Israelis must next identify goals for which they currently do not have the capacity to achieve alone and, therefore, need the support and assistance of some other partner. They must then determine how to use the things they *can* do to build the partnerships they need to do the things they *can't* do. Besides each other, these partners may be third-party international actors (U.S., EU, UN, the Quartet, Arab League), regional actors (Jordan, Egypt) or rival internal domestic factions.

The next two steps will call for greater measures of collaboration between the Palestinians and Israelis. The parties should not abandon the parallel tracks of steps one through three, but they will need to begin engaging each other in more serious and intentional dialogue.

D. *Establishing reciprocity*

The Palestinians and Israelis should now have in-hand two plans of action that they can launch unilaterally; and the next task will be to put these two together, aligning and meshing them wherever and whenever possible. Some of the actions that each has identified may conflict with what the other side is planning. Sometimes, the activities of one side may be made easier if complementary action by the other side either precedes or follows a particular event. The goal here is to make each strategy more effective.

E. *Rectifying injustice*

We acknowledged at the outset that any settlement having a realistic chance of being enacted will leave both sides feeling disgruntled. Most of their objections will center on what they consider to be the failure of the settlement to provide the justice they feel they deserve. The desire for justice rather than a mere advance of the status quo is a universal human attribute, as is the tendency for the parties in a dispute to have very different notions of what would be just in light of the relevant bases for claims and history of the disagreement. Palestinians and Israelis are no different in this regard. We have written elsewhere about the unavoidable problems that the pursuit of justice poses for those seeking a settlement, and the constraints of this paper do not allow us to go into them in any detail here.⁴⁸ Let us simply state that the existential question that each of us faces in our daily lives is not really whether a particular settlement—or in most cases, the political status quo—is just or not. Instead, we face a decision about whether the departures from justice that we suffer in the interests of preserving peaceful and harmonious relationships are worth that price. We do not deny that the weight of such a decision rests much more heavily on some than others—especially those Palestinians who collectively have suffered so much injustice, but also on many Israelis who will now be asked to leave *their* homes, or see the loss of *their* loved ones go unpunished, just as so many

⁴⁸ See Bland et al., *supra* note 36.

Palestinians did before them. As a final act and as a tribute to feelings of those who have suffered most, we encourage both Palestinians and Israelis to come together in serious and extended dialogue to ask themselves whether there is any way, given that true justice cannot be achieved for all, that they might lessen the *injustices* and sense of loss that their actions impose upon each other.⁴⁹

⁴⁹ The philosopher Avishai Margalit has written eloquently about the need to achieve a peace that is non-humiliating to Palestinians and the need for all concerned to abandon the unreachable goal of achieving something that the parties would see as just in favor of the more modest goal of reducing what all concerned recognize to be injustice. See AVISHAI MARGALIT, *THE DECENT SOCIETY* (Naomi Goldblum trans., 1996); see also Avishai Margalit, *Is Peace and Justice Like Fish and Chips?*, Seminar at Stanford University Center on Conflict and Negotiation (Feb. 11, 2003), <http://www.stanford.edu/group/sccn/general/03IDSeminar.htm>. He invites us to pose the problem in the Middle East not as one of peace versus Justice, but rather as one of how much (and what kind) of injustice is to be tolerated for how much and what kind of peace. Avishai Margalit, *Rotten Compromise and Honorable Peace*, Tanner Lecture Series at Stanford University (May 4-6, 2005), http://www.stanford.edu/dept/EIS/lectures_tanner_04_05.html.