

## Confederalism: A Third Way for Israel–Palestine

After years of wishful thinking and failed efforts at Israeli–Palestinian peacemaking, the Obama administration has now finally acknowledged what most observers have been saying for some time—there is no chance of a two-state solution to the conflict, at least in the next couple of years.<sup>1</sup> Many now question whether such a solution will ever be possible. Although diplomats and experts have long regarded a two-state solution as the best way to resolve this most intractable conflict—and for the last two decades, a majority of Israelis and Palestinians have agreed with this—this conventional wisdom is now seriously in doubt.

Israeli Prime Minister Benjamin Netanyahu won a resounding reelection in March 2015 after promising voters that he would oppose the establishment of a Palestinian state. Although he has since walked back this statement, he has also reiterated that even if he supports the notion of Palestinian statehood, the current situation and the recent wave of violence require Israel to continue controlling the West Bank and maintaining the status quo in the Gaza Strip. Prominent members of Israel’s government such as Naftali Bennett, Education Minister and head of the right-wing Jewish Home Party, are even less equivocal: “The era of a Palestinian state is coming to a close.”<sup>2</sup>

These are just the latest blows to the prospects of a two-state solution. Add to this the failure of U.S. Secretary of State John Kerry to broker either a comprehensive or more limited framework for a peace agreement based on two states; the PLO

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Dahlia Scheindlin is a public opinion expert and international political consultant. She writes for +972 Magazine and is also an adjunct lecturer at Tel Aviv University and a Policy Fellow at Mitvim—the Israeli Institute for Regional Foreign Policies. Dov Waxman is a professor of Political Science, International Affairs, and Israel Studies at Northeastern University and the co-director of its Middle East Center. His new book *Trouble in the Tribe: The American Jewish Conflict over Israel* has just been published by Princeton University Press. The views expressed in this article are those of the authors alone.

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stepping up its strategy of ‘internationalizing’ the conflict in recent years and seeking to pressure Israel through the United Nations and other international bodies (most notably, the International Criminal Court); the declining Palestinian domestic support for, and legitimacy of, Mahmoud Abbas, the octogenarian decade-long president of the Palestinian Authority who has been the main proponent of the negotiated two-state solution in Palestinian society; Hamas’ continued rule over the Gaza Strip and its staunch rejection of Israel’s existence; the relentless growth and geographic spread of Israel’s West Bank settlements and the number of Israeli settlers (their number has more than doubled in the West Bank since the year 2000, in addition to East Jerusalem settlers) and it is easy to

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understand why so many observers of the conflict have come to regard the possibility of a two-state solution as fanciful at best.<sup>3</sup> Even former U.S. President Jimmy Carter, a determined optimist, believes that “there is zero chance of the two-state solution” at the moment.<sup>4</sup>

Most Israelis and Palestinians feel the same way. According to recent surveys, only around half of Israelis and Palestinians continue to support the two-state solution,<sup>5</sup> even before the surge of violence since October 2015 that has killed dozens of Israelis, roughly 150 Palestinians (many while perpetrating attacks), and continues as of this writing.<sup>6</sup> Declining support for the two-state solution among Palestinians reflects their disillusionment at the kind of state that would probably be created under the current circumstances: it would consist of islands of concentrated population centers divided by Israeli territory that hampers movement among them, encircled and enclosed on its eastern flank by an Israeli-controlled Jordan Valley. Israelis meanwhile see ISIS and Hamas hovering, Syria and Iraq violently collapsing, and Egypt facing a jihadist insurgency; and they fear that a Palestinian state would inevitably bring the same chaotic violence to their doorstep (a fear that their leadership has done much to stoke). Netanyahu has regularly spoken of the West Bank as a future “Hamastan,” and during the 2015 election campaign produced a campaign advertisement showing ISIS reaching Jerusalem.<sup>7</sup>

While many mourn the apparent death of the two-state solution, some have welcomed it. Rejectionists among Israelis and Palestinians—who have always opposed any partition of the land (mostly for religious and nationalist reasons)—are not the only ones who view the demise of this approach as a positive development. So, too, do so-called ‘one-staters’ who prefer a single, secular, democratic state for both Jews and Palestinians encompassing all the territory of Israel and Palestine. For them, a two-state solution, entailing a Jewish state and a Palestinian

state existing side by side, was always less than ideal. Some believed it to be unjust or unworkable, others are in principle opposed to the idea of ethnically-based states.

After years of being dismissed as hopeless dreamers or dangerous radicals, and confined to the margins of political debate about the Israeli–Palestinian conflict, advocates of a democratic one-state solution (mostly Palestinian intellectuals and Israeli or Western leftists) now see an opportunity to advance their cause by insisting that the human and civil rights of Palestinians can only be realized when they become equal citizens with Israelis. This means having full voting rights, as well as all other forms of equality, in all the land Israel now controls. Some supporters of a two-state solution have even pushed this argument in the hope that the more likely a one-state solution becomes, the more pressure Israeli leaders will feel to prevent it, in order to preserve the Jewish majority and character of Israel. Consequently, according to this view, Israel’s leaders would become more willing to implement a two-state solution. If you really want a two-state solution, therefore, demand a one-state solution.<sup>8</sup>

This argument is predicated on the naïve assumption that Israel would not allow an unequal one-state outcome. But there is no reason to believe that if a single state does emerge that it will be a bi-national state, or a Palestinian state, and not a Jewish state. At least one survey has indicated that the majority of Israelis are not opposed to controlling Palestinians and granting them fewer rights, even if there are more of them than Jews.<sup>9</sup> This finding is hardly surprising, given the fact that this is similar to the situation today. While such a state would undoubtedly face international criticism and even isolation, that would not necessarily prevent it from emerging. After all, there are many non-democratic states in the world.

A single state, whether by design or by default, is unlikely to be liberal or democratic. Rather than the secular democracy that its left-wing proponents envisage, it is more likely to be a Jewish ethnocracy, as per the right-wing vision. To a certain extent, this is already the case today as Israel effectively rules over the West Bank and East Jerusalem (and Gaza as well, as the UN report investigating the 2014 Gaza war concluded based on international law).<sup>10</sup>

If a two-state solution is infeasible, and a democratic one-state solution a fantasy, where does this leave us? For many, in despair. But despair, though understandable, is dangerous. It fosters passivity and perpetuates the status quo. And the violence that escalated this past autumn is a brutal reminder that the status quo is deadly for both Israelis and Palestinians.

Moreover, despair is rooted in the mistaken notion that no other options exist. It is true that the current situation highlights the urgent need for innovative thinking about how to resolve the conflict. But such

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thinking has been happening, far away from Washington DC, with little fanfare or media attention. Over the past year, small groups of Palestinians and Israelis have been coming together to rethink a solution to their conflict. Sharing the perspective that the conflict cannot simply be managed until some indefinite future time, these groups have been talking about ‘outside the box’ approaches. They have come up with ideas that depart from either the classic two-state solution or the one-state solution, but combine elements of both.

## **A Confederal Approach**

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One morning last June, an auditorium in West Jerusalem filled up with people who came to hear about a project, now three years old, called “Two States, One Homeland.”<sup>11</sup> A similar project called “Two States in One Space” was launched before an Israeli, Palestinian, and international audience in East Jerusalem in November 2014.<sup>12</sup> Both of these projects, led by Israelis and Palestinians, proposed a solution to the conflict involving two independent states, with an open border between them, freedom of movement and residency, and some limited shared governance. This can be described roughly as a ‘confederal’ approach to resolving the conflict since it is based on the notion of two separate sovereign states that have agreed to some kind of permanent cooperative political framework. The extent and nature of that cooperation is up to the states to decide.

In terms of the character of the entities, the projects envision two states, both governed as independent democracies, rather than the Palestinian entity governed by Israeli military rule as it is today. There would still be a strong element of separation—a clear geographic division along the 1967 border—but there would be an open border, which ensures greater mobility and access for all people to all areas (perhaps the most pervasive impact of the conflict upon Palestinians today is the restriction on their movement with its accompanying impact on their livelihood).

The open border concept distinguishes this approach most clearly from the classic two-state solution. Since the two-state model proposes closed borders, Israel would annex parts of the West Bank containing Jewish settlements, including areas of land that are not contiguous with Israel. This has led Palestinians to fear that they would be left with a ‘Swiss cheese’ territory or even isolated bubbles of Palestine, comprised of disconnected areas and no freedom of movement. That specter has contributed to their growing disillusionment with the two-state approach.

At the same time, a traditional closed border two-state solution would give Palestinians sovereignty and full control over areas such as Hebron. The idea that Jewish holy sites like the Tomb of the Patriarchs come under full

Palestinian control, and may become inaccessible to religious Israeli Jews, arouses strong opposition among them. Denying Jews access to their holy sites would surely lead to deep religious grievances and, most likely, motivate violent action by a radical minority. A confederal approach with open access and freedom of movement would enable Palestinians and Israelis to freely visit their holy sites.

It would also allow them to actually live in each other's states. While each state would decide its own citizenship policies, including laws of return, citizens of one state could be permitted to live as residents in the other (much like the European Union), with each state setting limits on the number of non-citizens granted residency. This is also a major departure from the classic two-state solution. The latter offers no flexibility on residency. Other than Palestinian citizens of Israel, there is no population mixing: Jews stay on the Israeli side of whatever border is drawn and Palestinians on the eastern side. Avigdor Lieberman's plan to move borders and de-patriate Palestinian citizens of Israel is an extreme version of this attempt at ethnic homogenization.<sup>13</sup>

Distinguishing between residency and citizenship also opens up a new way of addressing the issue of Palestinian refugees, which has bedeviled previous efforts at resolving the conflict. In the traditional two-state solution, the vast majority of Palestinian refugees would not be allowed to return to the areas they (or their ancestors) were expelled from in 1948 or 1967. Perhaps just a symbolic number of a few thousand Palestinians would be allowed to return to areas inside the Green Line in Israel, while all the rest would be completely barred and would be able to reside only in the Palestinian state. Israeli Jews adamantly oppose accepting the right of return of Palestinian refugees to Israel proper because they view it as the end of the Jewish majority state; Palestinians just as resolutely insist upon it—indeed it has become the symbolic centerpiece of their national struggle.

The lack of flexibility on both sides has been one of the main reasons why peace negotiations have failed so far. In the confederal approach, however, Palestinian refugees who wish to return could live in Israel as residents, but not citizens. Any returning Palestinian refugees would not be a demographic threat to Israel's Jewish majority citizenry. This mitigates the problem of a Palestinian right of return in a way that the traditional two-state approach never has.

Delinking citizenship and residency could also help with another thorny issue—the future of Jewish settlers, who currently number more than half a million in the West Bank and East Jerusalem. Even if Israel were to annex the large settlement blocs along the Green Line, where most Jewish settlers

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live, a classic two-state solution would still necessitate the evacuation of tens of thousands of settlers, possibly as many as 80,000–100,000 (ten times the number of settlers who were evacuated from the Gaza Strip in 2005). Some of these settlers, inspired by messianic religious Zionism, would fiercely resist removal, and might even employ violence. In all the years of two-state negotiations, settlement evacuation has carried the threat of resistance, violence, or even civil war, not to mention the potential for mutiny within the Israeli army, whose ranks are increasingly made up of religious nationalists and settlers. These risks have been a significant political constraint on Israeli politicians. The lack of stomach among Israeli politicians for a showdown with the settlers and their supporters (or the convenient manipulation of the threat they pose as an excuse for stasis) following the dismantling of Gaza settlements in 2005 has been another major obstacle in the way of the two-state solution.

In a confederal model, by contrast, there is no need to evacuate all the settlements that Israel does not annex. Instead, settlers can still live in these settlements as Israeli citizens, but under Palestinian law (they must, of course, be law-abiding residents of the Palestinian state). Thus, the Palestinians do not have to give up large chunks of territory since they would have sovereignty over the settlements, possibly including large settlement blocs. And if major settlements such as Ariel (located deep inside the West Bank) remain, they need not impair Palestinian mobility since the land remains under Palestinian sovereignty.

The future of Jerusalem is another final-status issue that has always torpedoed peace talks. A division of Jerusalem has been on the table ever since the Camp David negotiations in July 2000. Many Israeli Jews have reluctantly come to accept this, at points even some who are politically on the right. Since the violence emanating from East Jerusalem that escalated in September–October of 2015, polls indicate that a strong majority, nearly two-thirds of Israeli Jews, is prepared to part with Palestinian neighborhoods in East Jerusalem outside the Old City.<sup>14</sup>

Dividing Jerusalem, however, is much easier in theory than in practice. There are now nearly a quarter-million Jews residing in East Jerusalem, and many Palestinians work in West Jerusalem.<sup>15</sup> Dividing the city would force many Israelis and Palestinians to relocate, and many more Palestinians to lose their jobs and their livelihoods. It would do little, if anything, to help Palestinians who already live in impoverished, slum-like neighborhoods of the city today. On the contrary, a division of the city would entrench, not redress, rampant poverty and hinder opportunities for economic development. The fact is that East Jerusalem has a better chance of socioeconomic and infrastructural improvement as part of the whole city, rather than being cut off and

grafted onto a fledgling Palestinian state that starts from a much lower socio-economic status.

In another departure from the classic two-state model, the confederal model envisions Jerusalem unified, serving as the shared capital of two states. Instead of Palestine having sovereignty over certain neighborhoods in the eastern part of the city and two quarters of the Old City, while Israel has sovereignty in the west and the other two quarters, the confederal model proposes that the city is undivided. Jerusalem residents could take the citizenship of their respective states, and a single special status municipality representing all the residents would manage the city. The holy sites could be managed by local religious authorities and international bodies.

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A final significant difference between the classic two-state model and a confederal model is that the latter proposes some aspects of shared sovereignty, notably the establishment of joint institutions. In the words of the “Two States in One Space” project: “The two states will enter a political and economic union, with common economic and social institutions, and a High Court for Human Rights.”<sup>16</sup> Although each state would be solely responsible for its own security, there would be close security cooperation.

There would also be agreements between the two sides governing external defense. This may sound naïve, but in fact the security cooperation between Israel and the Palestinian Authority today is one of the few surviving aspects of the Oslo Accords. Although the current security cooperation with Israel is widely unpopular among Palestinians, this is partly due to the fact that it is being carried in the context of Israel’s ongoing occupation, leading Palestinians to see such cooperation as part of the occupation itself, and preserving it. In the framework of an agreement that offers independence for Palestinians, security cooperation with Israel could be viewed instead as a contribution toward Palestinian security and statehood.

In sum, a confederal approach to resolving the conflict addresses many of the difficulties and challenges that have emerged since Israelis and Palestinians first started trying to negotiate an end to their conflict at the Madrid peace conference 25 years ago. It offers more freedom of movement for both peoples and greater access to sites of religious and national significance than a classic two-state solution would. Thus, Israelis would have full access, but not national sovereignty, over Hebron; Palestinians would not be sovereign over Acre, but they could visit and some could live there.

A confederal approach also allows for greater economic, cultural, and political interaction than the classic two-state solution. It creates conditions for more economic equality and prosperity through shared institutions, instead of fostering conditions for state failure were a Palestinian state to be established and simply left to fend for itself. It leaves Jerusalem united while providing both sides with a capital in the city they believe to be theirs. And it offers a new approach to the perennial stumbling block of the Palestinian refugee claims.

Although a confederal approach offers new solutions to some intractable problems, it faces significant obstacles. Many Israeli Jews will surely object to the idea of allowing Palestinians refugees to return to the country, even as non-citizen residents. They will fear that this opens the door, sooner or later, to a flood of Palestinians who might eventually become a majority inside Israel. The fact that each sovereign state would have final say over the number of residents it allows is intended to allay this concern. Jewish settlers in outlying settlements, especially the more radical ones, may well reject living in a Palestinian state, and Palestinians would certainly object to having them there—the settlers' presence would be seen as a victory for the occupation's worst offense of lawless land grabs. Ensuring the future security of Jewish settlers would undoubtedly be a major challenge.

There are many other challenges. How exactly would a shared Jerusalem be governed? What would be the representation of Palestinians and Israelis in the municipality, and how would they divide services, resources, and land fairly? How could security be guaranteed in Jerusalem without turning the city into a mini-police state? And could security be maintained broadly, in both states, with freedom of movement between them? Or would the necessary arrangements repeat the asymmetrical balance of power today in Israel's favor, leading to further Palestinian disillusionment and discontent? Would any measure of security be insufficient the more these populations are mixed? On the economic front, an economic union could result in the less developed Palestinian economy dragging down Israel's stronger economy, rather than boosting Palestine's growth. Finally, the joint institutions envisaged in a confederal arrangement could easily become complex, dysfunctional, venal bureaucracies, such as the convoluted bureaucracies governing Bosnia/Herzegovina and Republika Srpska.

### **The Least Bad Option**

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Confederalism has a bad reputation. Critics often cite the example of Belgium (composed of two autonomous states, Dutch-speaking Wallonia in the north

and French-speaking Flanders in the south), to demonstrate how unworkable it can be in practice. Just forming a government in Belgium has been almost impossible at times—it took a world record of 589 days for the Walloons and Flemish to form a governing coalition following national elections in 2010.<sup>17</sup> But while Belgium’s political travails are no doubt a source of constant frustration to its citizens (and occasional ridicule by foreigners), they pale beside the problems facing Israelis and Palestinians today, most of whom would surely welcome the chance to live in such a relatively peaceful and prosperous country as Belgium. Similarly, the European Union is in effect a confederation of states. Although at times dysfunctional—as its current failure to effectively respond to the refugee crisis makes clear—it is infinitely less violent than the status quo in Israel and Palestine.

To be sure, an Israeli–Palestinian confederation would have to overcome much greater challenges than the EU at present. But not long ago, Europe faced war and ethnic strife on a scale much greater and more devastating than in Israel and Palestine today. Bosnia, mentioned earlier, is not called a confederation but similarities exist. The Bosniak–Croat Federation of Bosnia and Herzegovina is one constituent entity and the Bosnian–Serb-led Republika Srpska is another; three presidents representing each major ethnic group jointly govern the entities. The twentieth anniversary of the Dayton Accords has yielded a somber review of the flaws and growing instability there.<sup>18</sup> Yet, even this awkward political condominium ended the inter-ethnic slaughter of the 1990s, and peace has prevailed for 20 years, albeit uneasily.

These examples suggest that for all its difficulties, confederalism can actually work in practice. It can be a viable alternative to either ethnic hegemony or inter-communal violence. It may be unwieldy, even dysfunctional at times, but surely a political resolution of some sort is better than the present situation in Israel and Palestine, with ongoing violence and human rights abuses. And if a confederal arrangement proves too unworkable or too unpopular, it can provide a mechanism for peaceful exit. In 2006, Serbia and Montenegro did just this after a majority of Montenegrins voted to secede in a national referendum. There is also the possibility that people vote in an exit referendum and the majority upholds the arrangement, as occurred in Quebec in 1995.

However problematic and far-fetched it may seem, a confederal approach to resolving the century-long conflict between Israelis and Palestinians is probably better than the alternatives. It will be fairer and more democratic than any one-state outcome that is likely to emerge, and it avoids some of the biggest problems that have always prevented a two-state solution. It may be more realistic today than the classic two-state solution, since it accepts the fact that Israelis and

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Palestinians have become too intermingled and too interdependent to completely separate from each other, however much they wish to.

There is no reason to believe that Israelis and Palestinians will necessarily reject a confederal approach. While support for it has not been tested among the Palestinian public (as far as we know), a survey conducted in late 2014 among Israelis (designed by one of us) found surprisingly encouraging results.<sup>19</sup> When respondents were asked about some of the

specific elements of a confederal approach (such as two states with open borders, a shared Jerusalem, and the distinction between citizenship and residency), most items received between one-third to 45 percent support. Moreover, when asked how they felt about the whole package as a framework for resolving the conflict, a majority of Israelis (56 percent) supported it. This survey result is similar to public attitudes in Israel regarding the classic two-state solution, for which support also hovers at just over half for the full package, but is lower for most specific items.<sup>20</sup>

Nor is the idea anathema to political leaders. Israel's current President, Reuven 'Ruby' Rivlin, a longstanding opponent of a two-state solution and advocate of a one-state solution, has recently declared that a confederation is the most appropriate solution to the conflict.<sup>21</sup> On the other side of the Israeli political spectrum, former government minister Yossi Beilin, one of the architects of the Oslo peace process and a longtime proponent of a two-state solution, has also recently come out in support of a confederation, writing in an op-ed in *The New York Times*: "Difficult though it may be to achieve, confederation seems to me the most realistic and practical option."<sup>22</sup> Although no prominent Palestinian politician has yet publicly embraced the idea, it may grow increasingly attractive as support for a two-state solution continues to fade among the Palestinian public.

A more basic criticism is that the confederal approach is simply an idea or a slogan, with no details in reality. This article has observed that people in the region have invested significant efforts in thinking out details. The more time goes by, the more the outlines proposed above take shape, and the more the advocates in the civil society projects mentioned here confront the problems and look for solutions.

Indeed, the apparent demise of the two-state solution and the strong resistance to a one-state solution suggest that a confederal approach to resolving the conflict is likely to become more popular in the years ahead. It is time, therefore, for policymakers in Washington, Jerusalem, Ramallah, and elsewhere to start seriously considering the potential of this approach.

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