

By Jeffrey I. Abrams

A Firsthand View of the Middle East

The lessons of mediation provide insight into the obstacles to peace in the region

At the end of last year, I visited Kuwait, Israel, the West Bank, and Jordan as part of a 50-person U.S. delegation to the Middle East led by former Ambassador Dennis Ross. Over a period of 10 days, our delegation met with a king, three prime ministers, and a host of high-ranking government and military officials to discuss the major topics of the day, including Israeli-Palestinian relations. (Photos are available at www.jeffreyabrams.com.) As we met with leaders such as King Abdullah of Jordan, Prime Minister Ariel Sharon of Israel, and Prime Minister Abu Ala of the Palestinian Authority, I was struck by how much my experience as a professional mediator affected my perspective about the seemingly irresolvable dispute between Israelis and Palestinians.

One of the principal challenges in resolving a litigated case is to overcome a spiralling process of creating myths that the parties, and often their counsel, engage in toward the opposition: "He hates women." "They are terrible people." "The lawyer will never settle while she is getting paid." Eventually, these myths can grow into perceived realities that make settlement harder, if not impossible.

This same process is an impediment to peace in the Middle East. In his cabinet room, Prime Minister Sharon repeatedly spoke of Jerusalem as "the eternal, undivided capital of the Jewish people," referred to disputed land as the "birthright" of the Jewish people, and stated that the immigration of one million Jews was the solution to Israel's demographic problems. On the Arab side, this mythmaking process takes the form of a consistent focus on Israeli "occupation." In the West Bank village of Abu Dis, Palestinian Prime Minister Abu Ala spoke of Israel's "racist, apartheid wall." At a dinner party in Amman, Jordan, a Palestinian Christian investment banker, whose family once lived in Haifa, spoke passionately of his grandfather's home being occupied in 1947 by one million European Jews. Reinforced by the public statements of their leaders, this mythmaking process continues to grow over time and serves as a true obstacle to peace.

The choice of language also can be critical in both framing and resolving a dispute. Consider a private company in which the principals are separating. One views a financial settlement as a "redemption of stock," reflecting his role as a partner. The other views it as a "discretionary bonus," considering the other guy as just an employee. Each party places certain values behind each term, and a mediator (as well as parties and counsel) need to be conscious of the impact of using the wrong term, at the wrong time, with the wrong party.

In Israel today, there is enormous debate not only about whether to construct a separation barrier, but what it should be called. The Israelis call it a "fence," while the Palestinians call it a "wall." By calling it a fence, the Israelis hope to conjure up images of an open structure, easily opened through gates, and easily moved, or even ulti-

mately removed. By calling it a wall, the Palestinians seek to convey the image of a solid, permanent, prisonlike structure. The placing of such deep meaning in each side's choice of language not only makes peace between the two parties more difficult but increases the risk that the dispute will be further inflamed by third parties intentionally or unintentionally using these value-laden terms.

As every trial lawyer knows, presentation matters. This is equally true in a mediation, where clear and effective briefs and visual aids can not only have an impact on the opposition but on the mediator as well. In Israel, we saw this truth dramatized by the opposing presentations discussing the Israeli-built barrier. The Palestinians used a Powerpoint presentation delivered by an articulate Palestinian American graduate of the University of Texas School of Law. In contrast, the presentation of General Eival Giladi, chief of strategic planning for the Israel Defense Forces, included little more than displaying a foldout map taped to an easel and distributing a printout with handwritten corrections.

Cautious optimism is the greatest tool of any mediator. Even if it appears that there is no hope that a resolution can be reached, an effective mediator keeps the parties talking. The ultimate settlement may not look as the parties envisioned it or occur as quickly as the parties might have liked, but a settlement will come only if the parties continue to strive for a solution.

This was the clear message that the drafters of the Geneva Accords hoped to convey. Amram Mitzna, the former leader of the Israeli Labor Party, proudly pointed to the accords as a demonstration that people on both sides can work together to reach a detailed agreement. Even for those who oppose its specific details (or absence of details), Mitzna expressed the hope that it would provoke discussion, which as a process will lead to peace. This view was shared by a Palestinian member of the team addressing the issue of Jerusalem in the Geneva Accords, who expressed the need for both sides to simply keep talking.

My view of the Middle East peace process and my approach to mediating litigated cases will forever be changed by these meetings, as I have seen first hand that with every dispute, whether it is over a business or an international border, there are certain common factors that can either enhance or destroy the chance of resolution. ■



Jeffrey I. Abrams is a private mediator focusing on entertainment, employment, and nonprofit disputes.