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The 2016 MOU on U.S. Defense Aid to Israel: Perspective of the Chief Israeli Negotiator, Four Years On

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The latest memorandum of understanding (MOU) on U.S. foreign defense aid to Israel was signed in September 2016 after over three years of negotiations. The negotiations went through ups and downs and were even temporarily suspended at one point. The new agreement covers 10 years (2019–2028), during which time total American aid will be increased to $38 billion. That figure includes $33 billion in ordinary defense aid, or foreign military financing (FMF), compared to $30 billion in the previous agreement. It also includes $5 billion in a new multi-year agreement for ballistic missile defense (BMD), compared to $400 million annually with no multi-year commitment in the preceding decade.

The process began in March 2013 during a visit to Israel by U.S. President Barack Obama. The visit was designed mainly to soften the Israeli position on two issues: the nuclear agreement with Iran, and Israel's relations with Turkey, which had soured following the *Mavi Marmara* incident. As is customary with visits to Israel by a U.S. president, Obama realized that he had to give something in return for Israel's compromise on the Turkish issue and for progress on the Iranian issue (although, on the latter issue, the messages Obama received during the visit were clear: Israel is against a deal with Iran if it does not include a total closure of Iran's nuclear program and all its derivatives). It appears that in the absence of alternatives for a possible gesture to Israel, Obama announced that he had instructed his staff to form a joint committee for the purpose of reaching a new agreement on aid to Israel – five years before the current agreement expired. This announcement surprised everyone because the agreement was set to remain in effect until the end of 2018, and renewal negotiations usually begin only two years before the end of an existing agreement.

The talks between the parties began in the summer of 2013. At the time, I was head of the Division for Strategic Development and Organization and deputy head at Israel's National Security Council (then headed by Major General [Res.] Yaakov Amidror). The interministerial team formed to accompany me included representatives from all of the relevant Israeli agencies (the Ministry of Defense's Defense-Political Branch and Budget Department; the Ministry of Foreign Affairs; the Ministry of Finance's Department of the Accountant General and Budget Department; the Israeli Defense Forces' [IDF's] Planning Directorate and financial advisor to the chief of staff; the Israeli Embassy in Washington, DC; Ambassador to the United States Ron Dermer; and Defense Attaché to the United States Yaacob Ayish). The team worked with complete synergy and cooperation; even if there were initially

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disagreements on a number of issues, they were usually resolved without becoming publicly known. The American team was led by the special assistant to the president and White House coordinator for the Middle East, North Africa, and the Gulf region on the U.S. National Security Council, Philip Gordon, under U.S. National Security Advisor Susan Rice.

Despite the tension between Obama and Prime Minister Benjamin Netanyahu at the time, the two sides wanted to reach an agreement that would meet the needs of both countries and continue the special relationship and strategic alliance between them.

For about a year, a number of meetings between the teams took place in Israel and Washington. During those meetings, the Israeli team presented its position to the American side in four separate sections. The first section, for which the Defense-Political Branch in the Ministry of Defense was responsible, included an analysis of the general state of the Middle East and the potential threats to Israel in 2023. The second section, prepared by the Ministry of Defense's Budget Department and the Ministry of Finance, was devoted to a macroeconomic analysis of the Israeli economy and Israel's defense budget within its state budget. The third (and largest) section, for which the IDF, led by its Planning Directorate, was responsible, focused on the IDF's needs and force building. In this section, the Israeli team constructed a detailed theoretical model, excluding budgetary constraints, showing the needs of the defense establishment in shekels and foreign currency. In the fourth section, the Israeli National Security Council presented Jerusalem's preferred process for continuing the negotiations and its desired structure for the aid agreement, in light of the preceding sections.

The budget for assistance with BMD was not included in the discussions at this stage. Most of the early talks concerned the dire state of the American economy, Israel's needs, and the amount of FMF Washington could provide to Israel. The American side argued that aid provided under the new agreement should either remain constant or decrease. In order to justify its requested increase in aid, the Israeli team presented economic analyses of the decline in the dollar's purchasing power and the rising cost of maintaining and owning the main battle systems, adjustments needed for inflation in Israel and the United States, macroeconomic assessments of both countries, and the projected Israeli defense budget.

After about a year of discussions, we presented a draft agreement, but we had not yet reached the stage at which it was acceptable to our American colleagues. In the background, Washington was making progress in negotiations with Iran aimed at reaching a nuclear agreement, to which Netanyahu was strongly opposed. To Obama's dismay, Netanyahu addressed a joint session of the U.S. Congress in March 2015. In his speech, Netanyahu thanked the United States for its ongoing support for Israel but did not conceal his determined opposition to the emerging agreement with Iran. The speech exacerbated the rift between the two leaders and prompted a prolonged suspension of the MOU talks.

Paradoxically, the talks resumed after the nuclear agreement with Iran was signed in the summer of 2015. Obama may have wanted to leave a positive impression regarding his relations with Israel, and considerations pertaining to the U.S. presidential election campaign, which was just beginning, also may have played a role. Obama also may have been responding to efforts by Hillary Clinton, who had been Obama's secretary of state and was now running for president, to restart negotiations on the aid agreement. Netanyahu instructed his negotiators to accept the American offer to renew the talks separately from the Iranian nuclear issue, in order to highlight that U.S.-Israeli strategic relations remained strong despite their differences over the Iran deal, and to enable the IDF to go ahead with its multi-year plan.

Obama appointed U.S. National Security Council Senior Director for the Levant, Israel, and Egypt Yael Lempert to head the American team, which included senior officials from the departments of Defense, State, and the Treasury, with very active involvement by U.S. Ambassador to Israel Daniel Shapiro. Susan Rice provided constant guidance and was involved in every detail of the negotiations. The Israeli team included the same agencies that comprised the original team (with some personnel changes, as expected). Following my appointment as acting head of Israel's National Security Council in early 2016, Rice asked me during our first meeting whether I was there in my capacity as head of the negotiating team or as head of the National Security Council responsible for it. I smiled and replied that I was fulfilling both functions.

Behind the scenes, the team heads discretely established a number of clear "ground rules," especially regarding two matters that we all agreed would not be included in the discussions: the Iranian nuclear agreement (neither as a factor that should increase the amount of aid because of a greater threat, nor as a factor that should reduce the aid because of a lesser threat) and the Palestinian question, which would not under any circumstances be raised as a condition for signing the aid agreement. At this stage, the Americans asked that aid for BMD be included in the negotiations.

When the talks resumed, the Americans presented four basic demands, which we did not fully accept:

1. The new agreement should completely eliminate provisions allowing Israel to convert some of the U.S. aid (26.4 percent) into shekels for the purpose of offshore procurement (OSP) – that is, procurement in Israel – of goods and services to support systems and related equipment purchased with dollars in the United States using U.S. aid money. During a face-to-face meeting, Rice presented Washington's position unequivocally to me: "No conversion from the first year of the agreement."

2. The new agreement should no longer permit Israel to use the aid budget to purchase fuel from American companies.

3. The new agreement should preserve the balance between an increase in U.S. aid and the increase in Israel's defense budget. The American negotiators stressed that every nominal increase in U.S. aid should be accompanied by an increase in Israel's defense budget. From the American perspective, it was unacceptable for Israel's defense budget to decrease (which the Israeli media were reporting at the time) while U.S aid increased.

4. Most of the money in the new agreement should be earmarked in advance for procurement of a specific type and quantity of American weapons systems, and no general agreement would be signed on the annual amount of aid; the precise content would be determined each year. The American team planned to demand that Israel state which systems it would procure with the aid money, according to the team's analysis of the threat in a given theater and the Israeli response needed to preserve Israel's relative advantage.

In the second round of talks, the Israeli team returned to the same four (revised) professional sections established in the first round. We set for ourselves two main principles, based on detailed and reliable data. These principles informed our presentation and analysis of Israel's requirements:

1. The agreement will remain in effect until 2028 and therefore should not be constructed based on an assessment of the current or near-term security environment. For a reference point to guide its planning, Israel instead selected the year 2023, the middle of the period covered by the new MOU. When looking this far into the future, Israel cannot rule out any scenario, including conventional war. The force-building process therefore

must include readiness for a broad range of scenarios, and the MOU's terms should be sufficiently flexible to accommodate Israel's evolving defense needs.

2. Israel's revised defense needs (in dollars and shekels) far exceed what Washington is capable of providing in the aid agreement and what Israel is capable of allocating to its defense budget from its government budget. Given that Washington cannot meet all Israel's needs and Israel cannot even predict which needs will be the most important, the question is not what and how much is needed, but how much the United States is willing and able to provide Israel.

Based on these arguments, we persuaded our Americans allies that it was impossible to predetermine which systems Israel should procure, and would therefore be unwise to dictate how Israel spent the aid budget. Following our detailed presentation, the Americans abandoned their own outline, which included their position on the scope of Israel's needs and a proposal for the systems that the agreement would include. They decided to work with our data and to focus the discussion on the framework of the agreement and its indirect terms. In my professional opinion, the comprehensive preparations we made in Israel and the high-quality meetings we held with the American team paved the way to the new agreement.

In mid-2016, we reached an understanding that Israel would receive $3.3 billion a year in American FMF. Two issues remained undecided: fuel purchases and the conversion of aid into shekels for OSP. Regarding the fuel, at the time, the inclination was to attach a side letter to the agreement stating that Israel would not purchase fuel with FMF without Washington's agreement. In the final stages of the negotiations, the Americans (including the president) insisted that this commitment be part of the agreement. After further deliberations, we decided to insert a clause into the agreement (similar to the general legal principles governing the use of FMF) stating that the Unites States and Israel had agreed that "FMF is not intended for fuels and consumables."

The thorniest issue concerned whether to allow Israel to convert some of the aid into shekels for use in Israel as support for the systems purchased with dollars in the United States. In the previous agreements, Israel received permission to convert 26.4 percent of the dollar aid into shekels for procurement in Israel. In pushing for an immediate end to this conversion option, the Americans explained that this permission originally stemmed from a U.S. desire to help Israel develop its defense industry. Since Israel's defense industry is now thriving, it is unacceptable for Israel to convert American dollar aid into shekels and then use those funds to develop state-of-the-art products that eventually compete with American products throughout the world. However, that contention – that Israel uses the shekel conversion budget for research and development (R&D) – is incorrect. Unfortunately, it had been disseminated and reinforced by various parties, including Israelis, who were unfamiliar with the data – a fact that hindered us in the negotiations. Israel's aid agreements with the United States bar Israel from using converted aid for R&D. Each year, Israel provides the U.S. administration a detailed accounting of how it spent the converted money, demonstrating Israel's compliance with the agreement. The claims by some industries and irresponsible senior administration officials that halting the aid conversion arrangement would harm Israeli R&D greatly hampered us during the negotiations, and we worked hard to rectify the situation. During discussions on this issue, Susan Rice reiterated several times that Israel's refusal to accept the American position was a deal-breaker, and that if Israel wanted to hold out, we could wait for the next administration.

Long and exhausting negotiations followed, with participation by then-IDF Planning Directorate head Major General Amikam Norkin and then-IDF Budget Division head Brigadier General Sasson Hadad. Finally, after innumerable compromise formulas had been proposed, we reached an agreement that did eliminate conversion of aid dollars into shekels, as Rice had demanded, but not until 2028, the agreement's last year, instead of at the outset of the agreement. We also agreed the new MOU would include approximately 70 percent of the conversion amount approved in the old agreement, and that the reductions in conversion in the first five years would be purely symbolic. According to this compromise, the conversions were to be reduced gradually, not in a dagger thrust starting in 2019, as the Americans initially wanted.

The compromises that we reached on this topic were very important. They will provide Israel's defense industry, particularly the industry's smaller companies, with an extended period to prepare for the change, with the help of government ministries and larger companies. The agreement was signed two years before the expiration of the preceding agreement, affording a total of seven to nine years to prepare for the change. (Unfortunately, some parties have not yet taken advantage of this time to prepare, but it is not too late to start.)

As part of the agreement, the Americans also sought to reach 10-year understandings regarding the amount of aid for joint BMD projects, in order to avoid repeating these discussions every year (and probably also to take credit for a bigger hike in aid to Israel by the Obama administration). The White House did not like the annual congressional debates at which various parties tried to obtain more support for the joint projects. A majority on the Israeli side also favored decade-long understandings, which would enable better planning of joint projects and avoid the need to submit annual aid requests to Congress. We ultimately agreed on $500 million a year for 10 years – a total of $5 billion for joint projects. The language in the new agreement was copied exactly from the previous agreements in order to preserve all of our existing understandings.

In September 2016, we reached a final draft of the MOU, for a sum of $38 billion over a decade: $33 billion in FMF and $5 billion for BMD. Just before the time came to sign it, a last obstacle arose from the direction of U.S. Senate Finance Committee Chairman Lindsey Graham, caused by ongoing tension between the White House and Congress concerning responsibility for defense aid. Following a number of exchanges, including letters at the highest levels, this problem was also resolved. After over three years of discussions, the MOU for defense aid to Israel in 2019–2028 was signed on September 14, 2016.

It should be stressed that contrary to the rumors and leaks on the matter, at no stage in the negotiations did the American side offer a better agreement to Israel in exchange for Israel's ceasing its opposition to the Iran nuclear agreement. This matter was never raised. Furthermore, because of legal and fiscal constraints, the U.S. administration had no practical way of offering substantially higher sums than those eventually agreed. In my opinion, any statements suggesting otherwise – which mainly came from Israel – by parties not directly involved in the negotiations reflected either faulty analysis or unrelated motives. I believe that the new MOU was very good for Israel and was signed at the right time, for the following reasons:

1. The amount of aid was higher than that provided by any previous agreement.

2. Early on, many argued that the Obama administration, still struggling in the wake of the financial crisis, would not agree to provide anything near what Israel received under the previous agreement. Furthermore, even if Israel had waited for Obama to leave office, the additional aid funding available to Israel would be limited. Given the constrained U.S. foreign aid budget, an increase in aid to Israel might require a reduction in aid to other countries.

3. Could Israel have obtained a better agreement with a new administration? I am one of those who believe that we did well to sign the agreement with the Obama administration, despite the tensions and disagreements with it. Moreover, the signed MOU underscores America's bipartisan support for Israel.

4. While the new agreement cuts the amount of aid that can be converted into shekels, the cut is gradual and very small in the deal's early years. This allows for lengthy preparation (seven to nine years) for the new situation.

5. The new agreement increases total FMF for Israel by $3 billion in comparison with the previous one. Offset (reciprocal) procurement alone will increase investment in the Israeli defense industry by approximately $1 billion, which amounts to a large chunk of the reduction in aid conversion. Offset procurement is not binding on the United States under the formal terms of the aid agreement, so it will go mainly to the large industries, but history proves that the Americans are committed to making good-faith efforts on this matter.

The new agreement was a superb achievement that enabled Israel to preserve its strategic alliance and cooperation with the United States. The agreement highlighted America's long-term commitment to Israel. And it enabled the Israeli defense establishment to plan its budget and procure essential platforms for the very long term.