

The Abraham Accords

Daniel Taub

After nearly three decades during which no formal treaties were reached between Israel and any of its Arab neighbors, this past year has been an extraordinary period of intensive bridge-building and normalization.

The framework for these developments has been the Abraham Accords, a term originally used to describe the joint declaration between Israel, the UAE, Bahrain and the United States reached on September 15, 2020 (“the *Joint Declaration*”). It is now used more broadly to refer collectively to a wide range of agreements between Israel and a number of Arab states.

The *Joint Declaration*, signed at the White House in Washington, followed a Joint Statement issued by the United States, Israel, and the UAE on August 13, 2020. The Declaration expressed the parties’ commitment to cooperation and dialogue. At the same ceremony, Israel and the UAE also signed a *Treaty of Peace, Diplomatic Relations and Full Normalization* (“the *UAE Agreement*”), while Israel and Bahrain signed a *Declaration of Peace, Cooperation and Constructive Diplomatic and Friendly Relations* (“the *Bahrain Declaration*”). These three accords were followed, on October 18, 2020, by the signing in Manama of a *Joint Communiqué on the Establishment of Diplomatic, Peaceful and Friendly Relations* (“the *Bahrain Agreement*”).

The circle of normalization widened further on October 23, 2020, with the signing of a *Joint Statement of the United States, the Republic of Sudan, and the State of Israel* (“the *Sudan Agreement*”). Subsequently, on January 6, 2021, at a ceremony in Khartoum, Sudan officially signed its accession to the *Joint Declaration* of the Abraham Accords.

On December 22, 2020, a *Joint Declaration* was signed in Rabat by the Kingdom of Morocco, the United States of America, and the State of Israel (“the *Morocco Agreement*”). At the same ceremony, Israel and Morocco exchanged notes regarding the reopening of liaison offices in Tel Aviv and Rabat.

These documents also provided for further agreements in a range of fields to be concluded, and in the months following their signature, intensive negotiations have taken place. A list of agreements negotiated and concluded, and their status, is attached in the Appendix.

Preliminary Legal Questions

Before considering the content of these various agreements, several preliminary legal questions arise. The first is their status. Are these documents, some of which are termed “Declaration,” “Statement,” or “Communiqué,” actually binding international agreements?

A document can be considered a binding treaty under international law regardless of its designation or title.¹ This principle has been upheld by the International Court of Justice (ICJ). Referring to a document designated a “Joint Communiqué,” the ICJ found “no rule of international law which might preclude a joint communiqué from constituting an international agreement to submit a dispute to arbitration or judicial settlement.” Rather, the Court determined that the question whether a document constitutes an agreement “essentially depends on the nature of the act or transaction to which the Communiqué gives expression.”² The ICJ has expressed similar positions in relation to documents titled “minutes.”³

There are also many examples of arrangements entitled “Declaration” or similar terms, in which it is clear from the context that these were intended by the parties to be a binding agreement.⁴ A similar intention can be

1. UN Vienna Convention on the Law of Treaties, 23 May 1969, U.N.T.S., vol. 1155, p. 331, Art. 2, available at <https://www.refworld.org/docid/3ae6b3a10.html>
2. Aegean Sea Continental Shelf, Greece v Turkey, Jurisdiction, Judgment, [1978] ICJ Rep 3, ICGJ 128 (ICJ 1978), 19 December 1978, UN; ICJ, para. 96.
3. Maritime Delimitation and Territorial Questions between Qatar and Bahrain, Jurisdiction and Admissibility, Judgement, I.C.J. REPORTS, 1994, para. 30.
4. For example, the Joint Declaration of the UK and China on the Question of Hong Kong, signed in December 1984, stipulates in Article 8 that: “...This Joint Declaration and its annexes shall be equally binding.” Similarly, the Joint Declaration made by Portugal and China on the Question of Macao, signed on April 13, 1987, states in Article 7 that it is binding. Both were registered as agreements with the United Nations.

identified in the recent Abraham Accords. The *Bahrain Agreement*, for example, though termed a “Communiqué,” uses the language of a binding treaty (“have agreed as follows,” “hereby establish,” etc.).

A further question arises in relation to the agreements signed with the UAE, termed “*Treaty of Peace*” and with Bahrain, termed “*Declaration of Peace*,” as to whether they can truly be considered “peace treaties,” since the parties were never in a state of war with each other.

Most peace treaties, to be sure, relate to situations where the context is a termination of hostilities. Still, there are numerous precedents where the term “Treaty of Peace” has been used even between countries that did not previously consider themselves to be in a state of war.⁵

In practice, there is no difference between the legal force of an agreement termed a “peace treaty” or any other binding agreement. It seems, however, that in this case there is a declarative dimension, emphasized by representatives of the parties in their speeches accompanying their signature, highlighting that these agreements are intended not only to set out practical arrangements but also to serve as regional game-changers auguring a new era of peaceful and cooperative relations.

The Content of the Agreements – Disputes Versus Deals

In negotiation theory, it is sometimes advised to distinguish between disputes and deals.⁶ In a dispute, parties are locked into a conflict situation, and their efforts are primarily focused on extricating themselves from areas of disagreement. In a deal scenario, by contrast, there is no urgent need on the side of either party to enter into an agreement, and the motivation is not to escape from a situation of historic disagreement but rather to explore and capitalize on potential joint gains.

Viewed through this prism, the Abraham Accord agreements are far more akin to deals than dispute resolutions. (Former President Trump's use of the phrase “deal of the century,” arguably far less applicable in the Palestinian context, is much more appropriate here.) In this sense, they contrast with Israel's prior peace treaties with Egypt and with Jordan, in which the dispute-resolution elements are dominant. The focus in these recent agreements is firmly placed on the potential to be achieved based on cooperation between the parties. In the words of the preamble to the *UAE Agreement*, the goal is “to chart together a new path to unlock the vast

potential of their countries and the region.”

While in practical terms the importance of the agreements is a series of specific and tangible normalization provisions, the importance of establishing a general relationship of mutual understanding and coexistence is strongly emphasized. Though similar language appears in many treaties, in the Abraham Accords the commitment to a deep and warm relationship seems central to the intentions of the parties.

This emphasis is reflected in the title the “Abraham Accords,” and the commitment, in the Joint Declaration, “to advance a culture of peace among the three Abrahamic religions and all humanity.” In the preamble to the Israel-UAE agreement, this theme is amplified with the recognition that “the Arab and Jewish peoples are descendants of a common ancestor, Abraham,” while in the Bahrain communiqué the parties agree to promote mutual respect “in the spirit of their common ancestor, Abraham.” Beyond reflecting an aspiration for brotherly relations, this is also an important recognition of the historic connection of the Jewish people to the region. As such, the Abraham Accords represent a paradigm shift regarding Israel's peacemaking efforts, contrasting with Israel's negotiations with the Palestinians in which the Jewish identity of the State of Israel, and the Jewish people's historic links to the land, have remained issues of contention.

Flowing from the emphasis on a common religious ancestry, the agreements also place a strong emphasis on the importance of interfaith dialogue. The *Joint Declaration* encourages efforts “to promote interfaith and intercultural dialogue.” The importance of interfaith relations is also referenced in the Moroccan declaration, which recognizes “the special ties that His Majesty [King Mohammed VI] maintains with the Moroccan Jewish community.”

In practical terms, the goal of the agreements is to unlock potential through concrete normalization arrangements, which have subsequently been

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5. For example: Treaty of Peace and Friendship between Chile and Argentina, signed Nov. 29, 1984; The Treaty of Peace and Friendship between Japan and the People's Republic of China, signed Aug. 12, 1978; Treaty of Peace, Friendship and Co-operation between India and the USSR, signed Aug. 9, 1971.
 6. See e.g. Howard Raiffa, *THE ART AND SCIENCE OF NEGOTIATION* (Cambridge, Mass: Belknap Press of Harvard University Press, 1982).

energetically negotiated and implemented. Regarding the UAE, Bahrain and Morocco, these arrangements include the establishment of full diplomatic relations. In the case of the UAE and Bahrain, these relations include the establishment of embassies and exchange of resident ambassadors. In the case of Morocco, the commitment is to “resume official contacts,” including the reopening of liaison offices in Rabat and Tel Aviv.

The Abraham Accords also identify a series of fields in which normal relations and cooperation are envisioned, to be realized in forthcoming agreements. In the case of the UAE and Bahrain, the list is extensive, including finance and investment, civil aviation, innovation, healthcare technology, energy, agriculture, water and more. In the *UAE Agreement*, an annex sets out key principles governing relations in each of these areas. The *Sudan Agreement* includes a less extensive list of fields in which arrangements will be agreed upon (economy and trade, as well as agriculture, technology, aviation, migration issues and other areas). While the *Morocco Agreement* does not commit to reaching specific agreements, cooperation on a broad range of issues, as with the UAE and Bahrain, is envisaged.

What Is Not Included in the Abraham Accords

A comparison with Israel's peace treaties with Egypt and Jordan highlights not only the warm tone of the recent agreements, but also the absence of provisions that were necessary when agreements were reached with neighbors who shared borders and a history of conflict.

The Abraham Accord agreements do not, for example, contain provisions regarding recognition and demarcation of international boundaries (Egypt Treaty Article 2; Jordanian Treaty Article 3). Beyond general commitments to work together to ensure peace and stability and to prevent terrorist and hostile activities, they do not contain detailed security provisions (Egypt Article 4; Jordan Article 4). There is also no reference to water allocation (Jordan Article 6), or maritime passage (Egypt Article 5).

Almost entirely absent from the recent agreements is any reference to the Israeli-Palestinian conflict. The preamble to the *UAE Agreement*, alongside a reference to Israel's treaties with Egypt and Jordan, does mention the commitment of the parties to “working together to realize a negotiated solution to the Israeli-Palestinian conflict that meets the legitimate needs and aspiration of both peoples,” while the *Morocco Agreement* makes reference to the “coherent, constant and unchanged

position of the Kingdom of Morocco on the Palestinian question” and “the importance of preserving the special status of the sacred city of Jerusalem.”

These preambular references are clearly tangential to the thrust of the agreements and their focus on establishing normal bilateral relations. This is very different from the approach reflected in the Arab League Plan adopted in Beirut in March 2002. While that initiative held out the prospect of normal relations between Arab countries and Israel, it explicitly conditioned such relations on a series of measures to be taken by Israel, including full Israeli withdrawal from all the territories occupied since 1967, including the Golan Heights; resolution of the Palestinian refugee issue in accordance with UNGA Resolution 194; and acceptance of the establishment of a Palestinian state in the West Bank and Gaza Strip with East Jerusalem as its capital.

Accordingly, the recent agreements, which see normal relations not as a grudging concession to Israel but rather as a key to mutual benefit and prosperity, present a significant challenge to the Palestinian leadership and its strategy of reliance on broad Arab opposition to normalization with Israel. Following the agreements with the UAE and Bahrain, the Palestinian leadership failed in its efforts to have the Arab League condemn the Abraham Accords, and it is striking that its opposition was far more muted in relation to the subsequent agreements with Sudan and Morocco.

At the same time, it is not yet clear what impact these bilateral agreements will have on their signatories' conduct in the multilateral context. Both the *UAE Agreement* and the *Bahrain Agreement* include provisions providing for the application by the parties “in their bilateral relations of the provisions of the multilateral conventions of which they are both parties.” In the case of the *UAE Agreement*, this commitment includes “submission of appropriate notification to the depositaries of such conventions.” It is not clear whether any such notification has so far been given.

No agreement is reached in a vacuum and these agreements as well were reached in a unique set of circumstances and parallel arrangements. These contextual dimensions are for the most part not referred to directly in the agreements. The common threat of Iranian nuclearization, for example, clearly a critical shared interest, does not find expression beyond a general reference to strategic cooperation. Israeli commitments in relation to initiatives toward applying sovereignty to parts of the West Bank are also not referenced in the agreements, though Israel's

commitment to “suspend declaring sovereignty over areas outlined in the President's vision for Peace” was mentioned in the Joint Statement that preceded the agreements. No mention is made of the United States' commitments to supply military and other equipment. There are, however, references to two commitments on the part of the United States. The first is recognition by the United States of the sovereignty of the Kingdom of Morocco over the Western Sahara, which is highlighted in a preambular paragraph in the *Morocco Agreement*. The second U.S. commitment is referenced in the *Sudan Agreement*, and relates to removing Sudan from the U.S. Department of State's list of State Sponsors of Terrorism and to helping alleviate its debt burden.

Looking Ahead

On their face, the Abraham Accord agreements create

a set of relationships between Israel and its Arab partners to enable the deepening of cooperation and the release of potential for synergy. Below the surface, they have an even greater significance. They represent a substantial breach in the longstanding barrier to official relations between Israel and pragmatic Arab states. They also indicate a change in perceptions regarding the Israel-Palestine conflict, reducing its constraining role in Israel's bilateral relations. How far these changes are likely to result in a further expansion of the circle of peace and cooperation in the region, particularly under a new United States administration with new priorities, is yet to be seen. ■

Daniel Taub has served as an international lawyer in Israel's Ministry of Foreign Affairs and as Israel's Ambassador to the United Kingdom.

Appendix

Status of Agreements Reached Under the Framework of the Abraham Accords

(April 1, 2021)

United Arab Emirates:

Joint Statement by the United States, Israel, and the United Arab Emirates — Issued on 13 August 2020.⁷

Treaty of Peace, Diplomatic Relations and Full Normalization between the United Arab Emirates and the State of Israel — Signed on 15 September 2020.⁸ Ratified by the UAE and Israel on 19 and 25 October 2020, respectively.

Additional Agreements — Signed on 20 October 2020.⁹

- **Agreement on Promotion and Protection of Investments.** Ratification still pending on both sides.
- **Agreement on Air Services.** Ratification still pending on both sides.
- **Agreement on Mutual Exemption of Entry Visa Requirements.** Both sides ratified the agreement. The UAE suspended the entry into force of the agreement until 1 July 2021 due to COVID-19 related travel restrictions.
- **Protocol on cooperation in banking and financial services** — Signed on 1 September 2020 and came into force upon signature.¹⁰
- **Agreement on Cooperation in the Fields of Improvement and Development of Science and Advanced Technology.** Israel ratified the agreement. UAE ratification still pending.
- **Exchange of notes regarding opening of embassies.** Israel opened a temporary embassy in Abu Dhabi on 24 January 2021.¹¹ Israel opened a General Consulate in Dubai on 26 January 2021.¹² The UAE is in the process of opening an embassy in Israel.¹³
- **MOU on cooperation between the respective Ministries of Finance.** Signed in a bilateral meeting between the Finance Ministers on 20 October 2020. Came into force upon signature.
- **MOU between investment authorities.** Signed on 27 December 2020. Came into force upon signature.
- In addition, there are ongoing negotiations regarding several MOUs in other fields.

Bahrain:

Declaration of Peace, Cooperation and Constructive Diplomatic and Friendly Relations, Announced by the

7. Joint Statement of the United States, the State of Israel and the United Arab Emirates, UNITED ARAB EMIRATES MINISTRY OF FOREIGN AFFAIRS & INTERNATIONAL COOPERATION (Aug. 13, 2020), available at <https://www.mofaic.gov.ae/en/mediahub/news/2020/8/13/13-08-2020-uae-statement>
8. Treaty of Peace, Diplomatic Relations and Full Normalization between the United Arab Emirates and the State of Israel, U.S. DEPARTMENT OF STATE (Sept. 15, 2020), available at https://www.state.gov/wp-content/uploads/2020/09/UAE_Israel-treaty-signed-FINAL-15-Sept-2020-508.pdf
9. PM Netanyahu hosts historic trilateral Israel-UAE-US summit meeting, ISRAEL MINISTRY OF FOREIGN AFFAIRS (Oct. 20, 2020), available at <https://mfa.gov.il/MFA/PressRoom/2020/Pages/PM-Netanyahu-hosts-historic-trilateral-summit-meeting-20-October-20202.aspx>
10. Israel and the UAE sign first protocol of understandings on cooperation in banking and financial services, ISRAEL MINISTRY OF FOREIGN AFFAIRS (Sept. 1, 2020), available at <https://mfa.gov.il/MFA/PressRoom/2020/Pages/Israel-and-the-UAE-sign-first-protocol-of-understandings-on-cooperation-in-banking-and-financial-services-1>
11. Opening of a temporary embassy in Abu Dhabi, ISRAEL MINISTRY OF FOREIGN AFFAIRS (Jan. 24, 2021), available at <https://mfa.gov.il/MFA/PressRoom/2021/Pages/Opening-of-a-temporary-embassy-in-Abu-Dhabi-24-January-2021.aspx>
12. Opening of a temporary embassy in Abu Dhabi, 26 January 2021, available at https://www.gov.il/he/departments/news/arrival_of_the_israeli_commissioner_to_rabat_and_the_opening_of_the_consulate_general_of_israel_in_dubai
13. Statement on planned opening of UAE Embassy in Israel, EMIRATES NEWS AGENCY (Jan. 25, 2021), available at <https://wam.ae/en/details/1395302904128>

State of Israel and the Kingdom of Bahrain on 15 September 2020.¹⁴

Joint Communiqué on the Establishment of Diplomatic, Peaceful and Friendly Relations between the State of Israel and the Kingdom of Bahrain — Signed on 18 October 2020, ratified in Israel on 15 November 2020. Bahrain notified Israel on completion of ratification proceedings on 10 December 2020. The Joint Communiqué is in force.

- In addition, the following documents were signed on 18 October 2020¹⁵:
 - Agreement on telecommunications. Ratification on both sides still pending.
 - Agreement on exemption of visa requirements for diplomats. The agreement came into force on 12 January 2021.
 - MOU on economic and trade cooperation. Ratified by Bahrain. Pending final ratification by Israel.
 - MOUs between the respective Ministries of Foreign Affairs, the Ministries of Finance, and the Ministries of Agriculture. These MOUs came into force upon signature.
- MOUs on tourism, small business and technical cooperation. Signed in Jerusalem on 1 December 2020.¹⁶ Came into force upon signature.

- In addition, there are ongoing negotiations regarding several MOUs in other fields.

Morocco:

Documents signed in Rabat on 22 December 2020:

- Joint Declaration by the Kingdom of Morocco, the United States of America and the State of Israel.¹⁷
- Exchange of notes regarding reopening liaison offices in Tel-Aviv and Rabat. Israel announced the arrival of the Israeli Chargé d’Affaires in Rabat on 26 January 2021.¹⁸
- Agreement on exemption of visa formalities for holders of diplomatic and service passports. Pending ratification by both sides.
- MOUs regarding civil aviation, finance and investments, innovation and development of water resources. Came into force upon signature.¹⁹
- In addition, there are ongoing negotiations regarding several MOUs in other fields.

Sudan:

- Joint Statement of the United States, the Republic of Sudan, and the State of Israel Issued on 23 October 2020.²⁰

14. Abraham Accords: Declaration of Peace, Cooperation, and Constructive Diplomatic and Friendly Relations, U.S. DEPARTMENT OF STATE (Sept. 15, 2020), available at https://www.state.gov/wp-content/uploads/2020/09/Bahrain_Israel-Agreement-signed-FINAL-15-Sept-2020-508.pdf

15. Israel and Bahrain sign Memorandums of Understanding, ISRAEL MINISTRY OF FOREIGN AFFAIRS (Oct. 18, 2020), available at <https://mfa.gov.il/MFA/PressRoom/2020/Pages/Israel-and-Bahrain-sign-Memorandums-of-Understanding-18-October-2020.aspx>

16. Bahrain News Agency, “Bahrain and Israel sign cooperation agreements,” BAHRAIN NEWS AGENCY, Dec. 1, 2020, available at <https://www.bna.bh/en/BahrainandIsraelsigncooperationagreements.aspx?cms=q8FmFJgiscL2fwIzON1%2BDgqGvX2jzJwHoaGyKHDXsI%3D>

17. Joint Declaration, U.S. EMBASSY & CONSULATES IN MOROCCO (Dec. 22, 2020), available at <https://ma.usembassy.gov/joint-declaration/>

18. https://www.gov.il/he/departments/news/arrival_of_the_israeli_commissioner_to_rabat_and_the_opening_of_the_consulate_general_of_israel_in_dubai

19. The Kingdom of Morocco and the State of Israel Concluded Four Agreements, KINGDOM OF MOROCCO MINISTRY OF FOREIGN AFFAIRS AFRICAN COOPERATION AND MOROCCAN EXPATRIATES (Dec. 22, 2020), available at <https://www.diplomatie.ma/en/kingdom-morocco-and-state-israel-concluded-four-agreements>

20. Joint Statement of the United States, the Republic of Sudan, and the State of Israel, U.S. EMBASSY IN QATAR (Oct. 23, 2020), available at <https://qa.usembassy.gov/joint-statement-of-the-united-states-the-republic-of-sudan-and-the-state-of-israel/>