

Modern Geopolitics and Security

Strategies for Unwinnable Conflicts

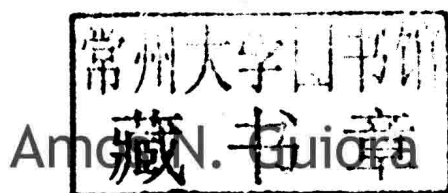
Amos N. Guiora



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Needless to say, my understanding is influenced by particular professional experiences that have significantly shaped my world view. However, this book has benefited from innumerable comments, observations, and criticisms suggested by readers of previous drafts and participants in “work in progress” presentations. To all, my many thanks.

There are, however, four individuals in particular that I would like to acknowledge. I do so with the recognition that although all faults and errors are mine, this book enormously benefited from their contribution

Professor Holbrook without whose extraordinary collegiality this project would not have come to fruition; my research assistant, Jason Shelton (JD expected, 2014) who provided invaluable assistance throughout the research and writing process; my editor, Mark Listewnik, who was a full participant in this project; and my friend and Dean, Hiram Chodosh who, as always, created an intellectual environment that enormously facilitated scholarship.

Amos N. Guiora

Professor of Law

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INTRODUCTION

GEOPOLITICS AND INTERNATIONAL SECURITY

This book is a product of professional experiences, academic scholarship, and personal reflection. In many ways my interest in the topic of geopolitics and international security dates back to my childhood when *Foreign Affairs* arrived regularly at my parents' house. Although I was initially drawn by the distinct quality of the page (readers of my generation will recall its unique feel), I found myself increasingly reading the articles. My parents had subscriptions to other magazines (*Newsweek*, *New Yorker*, *Commentary*) and I had the obligatory subscription to *Sports Illustrated*; however, there was something different about *Foreign Affairs*. Whether a direct or indirect result of *Foreign Affairs* is unclear but for as long as I can recall, foreign affairs have captivated me.

My interest in foreign affairs became professionally relevant when I was assigned to the Middle East desk while working in the office of U.S. Congressman Howard Wolpe (D-Michigan). I never pursued a career directly related to foreign affairs, however, various postings during the nineteen years I served in the Israel Defense Forces were directly related to foreign affairs and geopolitics. Two experiences in particular are an important background to this book: the five years (1994–1999) I was directly involved in on-the-ground implementation of the Oslo Peace Process in the Gaza Strip and my direct experience in targeted killing decision making.* Those two experiences formed much of my thought regarding state power, particularly determining its effectiveness and recognizing its limits.

Based on that dilemma—the limits of power—I accepted the suggestion of my friend and colleague, Professor James Holbrook regarding the subtitle for this book. It was neither randomly offered nor chosen for it captures one of the most important dilemmas in contemporary geopolitics. The transformation from traditional war between nation-states to

* While serving as the Legal Advisor to the Gaza Strip (1994–1997).

conflict between nation-states and nonstate actors requires decision makers, policy analysts, military commanders, intelligence officials, jurists, and legislators to answer the question of whether there is a strategy for an unwinnable conflict. The question is both theoretical and practical. It takes on particular urgency given the extraordinary number of conflict points that define the current state of international relations.

As discussed in the pages that follow, the contemporary geopolitical dilemma is enormously complicated and fraught with danger for a number of reasons including:

- The “lack of rules” that largely define the relationship between the nation-state and the nonstate actor
- The number of players with significant weaponry at their disposal who are not a part of the traditional world order
- The economic crises
- Dwindling natural resources
- Profound uncertainty regarding the limits of sovereignty and borders, as traditionally understood, because of the remarkable impact and penetration of the Internet

An essay I wrote previously regarding the 2012 Israeli film, *The Gatekeepers*, highlights two questions: whether there is a strategy for an unwinnable conflict and what the strategic ramifications are regarding the use of force. To that end, the movie addresses the twin tensions that reflect contemporary geopolitics: the use of force in a nontraditional setting and the imperative for negotiated settlement of conflict. In focusing on both, separately and together, the film sets the stage for much of this book’s discussion.

The Israeli movie, *The Gatekeepers*, nominated for an Oscar award earlier this year, serves as extraordinary background for a discussion of critical issues—and not just with respect to the Israel–Palestine conflict. What makes the movie compelling is the direct, unapologetic and reflective manner in which the limits of power are addressed. What makes the movie even more compelling is that six retired heads of the Israeli intelligence agency, the Shin Bet, address the subject. Speaking frankly, without pathos and devoid of undue emotion, the six look directly into the camera to say there is a limit to the effectiveness of power.

Their frankness is particularly noteworthy because all six authorized the use of force against suspected Palestinian terrorists. The second part of their message is that Israel must negotiate directly with the

Palestinians—that the conflict can be resolved only through the pen, not the sword.

The Gatekeepers is particularly relevant to America on two distinct levels: American involvement in Iraq and Afghanistan and the recently released Department of Justice White Paper articulating drone policy, including against U.S. citizens. Both manifest executive power at its zenith, unchecked by Congress or court. Rearticulated: each reflects Justice Jackson's warning in the 1952 Supreme Court case *Youngstown Sheet & Tube vs. Sawyer* regarding the danger posed by an "unfettered executive."

While the movie focuses on the Israeli dilemma regarding resolution of the Israel-Palestinian conflict, it also serves as an invaluable jumping off point for a broader geopolitical discussion. That is, though the direct focus of the movie is local (Israel-Palestine), its subtext (geopolitics) is of equal importance.

The six retired heads of Shin Bet—Avraham Shalom, Ya'kov Pe'ri, Carmi Gillon, Ami Ayalon, Avi Dichter and Yu'val Diskin—speak compellingly and bluntly regarding the limits of state power. The six do not come from the "faint of heart school": all deployed state power in an effort to protect Israeli society against Palestinian terrorism. None are apologetic or engaged in maudlin mea culpas expressing remorse for authorizing tough measures. That is not their message; that is not the import of the film. The significance of the film lies in the willingness of the six retired Shin Bet heads to engage in reflection and offer this conclusion—that force alone cannot not resolve conflict.*

Since joining American academia (2004), my scholarship has addressed issues related to national security, comparative counterterrorism, conflict, extremism (religious and secular), and limits on state power. Although occasionally encouraged by friends and colleagues to reflect on my Oslo-related experiences, I consistently resisted such suggestions. My resistance ultimately met a greater force: Professor Holbrook who repeatedly suggested that such an article would provide an "insider's" insight regarding implementation of a peace agreement, as compared to the drafting of an overarching agreement that others have previously addressed.[†] As is well known, flattery will get you everywhere.

* Guiora, A.N. *The Gatekeepers: Geopolitics and the Limits of Power*. Foreign Policy Research Institute (2013). Accessed May 28, 2013. <http://www.fpri.org/articles/2013/03/gatekeepers-geopolitics-and-limits-power>

[†] Savir, U. *Peace First: A New Model to End War*. San Francisco: Berrett-Koehler, 2008; and Ross, D. and Makovsky, D. *Myths, Illusions, and Peace: Finding a New Direction for America in the Middle East*. New York: Viking, 2009.

My article "Negotiating Implementation of a Peace Agreement: Lessons Learned from Five Years at the Negotiating Table,"^{*} is a direct result of Professor Holbrook's constant encouragement and conviction that the tale is "worth telling." In many ways, the article is the impetus for this book. In the course of researching and writing the article I found myself increasingly discussing geopolitics while teaching my comparative counterterrorism course, "Global Perspectives on Counterterrorism." In that spirit, the more my scholarship reflected comparative analysis, the more relevant geopolitics became. Although unclear which came first, the chicken or the egg, the relationship among geopolitics and extremism, national security, international security, and international law, makes studying geopolitics essential to understanding themes both large and small.

One of this book's aims is to give the reader a snapshot into the process of negotiating implementation of an agreement. In doing so, I hope to enhance understanding of the relationship between geopolitics and security in the context of the broader question regarding strategy and conflict. The book's intended audience ranges from students and academics in a variety of forums and stations, to the general public and policy makers. The range of the potential audience reflects the breadth of the book's themes. A discussion about geopolitics implies a wider discourse touching upon different academic disciplines, including political science, international relations, national security, history, economics, conflict resolution, and international law. No one area of study is more important than another; in that regard, this book is applicable to a number of different academic programs at both the undergraduate and graduate levels, in the United States and worldwide. In that spirit, the text incorporates the following:

- Definitions necessary to establish a baseline
- "Scenarios to Consider" intended to facilitate discussion points
- Maps, for a discussion of geopolitics is predicated on understanding geographical realities
- Personal reflections, particularly regarding my experience in negotiating implementation of the Oslo Peace Process
- Analysis of a wide range of issues relevant to understanding geopolitics

^{*} Guiora, A.N. Negotiating implementation of a peace agreement: Lessons learned from five years at the negotiating table. *Cardozo J. Conflict Resolution* 11 (2010): 411–436.

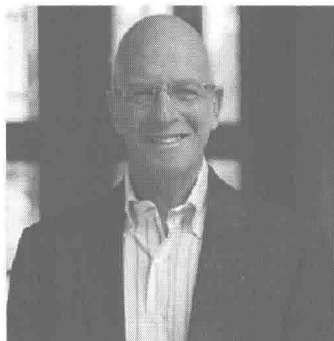
Walter Lippmann was, arguably, the greatest American commentator on the modern world. Like any commentator, his batting average was not 100%; nevertheless, his observations, insights, and reflections were enormously, perhaps inordinately, important in shaping U.S. foreign policy. Henry Kissinger's book *Diplomacy** sheds extraordinary light on foreign relations, diplomacy, and power politics. Although some suggested the book be called *Kissinger on Kissinger*, its importance cannot be dismissed. Kissinger's unique personal and academic experiences significantly contributed to our understanding of diplomacy. Other scholars and practitioners have written books considerably adding to our understanding of geopolitics from both an American and international perspective. Some of these books are referenced in the pages to come.

In undertaking this book I draw on a wide range of sources and experiences. I am not a political scientist nor do I teach international relations, however, my eclectic background will, it is hoped, enable me to address the issues of geopolitics, strategy, and conflict from a unique and new perspective. Although drawing on personal experiences, I rely on the insights, observations, and wisdom of others whose experiences and scholarship are immensely important to understanding the issue at hand.

* Kissinger, H. *Diplomacy*. New York: Simon & Schuster, 1994.

ABOUT THE AUTHOR

Amos N. Guiora is Professor of Law and Co-Director of the Center for Global Justice at the S. J. Quinney College of Law, the University of Utah. Guiora, who teaches Criminal Procedure, International Law, Global Perspectives on Counterterrorism, and Religion and Terrorism, incorporates innovative scenario-based instruction to address national and international security issues and dilemmas.



Guiora is a Member of the American Bar Association's Law and National Security Advisory Committee; a Research Associate at the University of Oxford, Oxford Institute for Ethics, Law and Armed Conflict; a Research Fellow at the International Institute on Counter-Terrorism, The Interdisciplinary Center, Herzlyia, Israel; and a Corresponding Member, The Netherlands School of Human Rights Research, University of Utrecht School of Law.

Professor Guiora has published extensively both in the United States and Europe on issues related to national security, limits of interrogation, religion, and terrorism, and the limits of power, multiculturalism, and human rights. He is the author of *Legitimate Target: A Criteria Based Approach to Targeted Killing*; *Freedom from Religion: Rights and National Security* (first and second editions); *Global Perspectives on Counterterrorism* (first and second editions); *Fundamentals of Counterterrorism*; *Constitutional Limits on Coercive Interrogation*; *Homeland Security: What is it and Where is it Going*; and *Tolerating Intolerance: The Price of Protecting Extremism* (forthcoming, 2013).

Professor Guiora has received grants from both the Stuart Family Foundation and the Earhart Foundation and was awarded a Senior Specialist Fulbright Fellowship for The Netherlands in 2008. He served for nineteen years in the Israel Defense Forces as Lieutenant Colonel (retired), and held a number of senior command positions, including Commander of the IDF School of Military Law and Legal Advisor to the Gaza Strip.

ABOUT THE AUTHOR

Professor Guiora has testified before the U.S. Senate Judiciary Committee, the U.S. House of Representatives Committee on Homeland Security, and the Committee on Foreign Affairs in the Dutch House of Representatives.

Professor Guiora was awarded the S.J. Quinney College of Law Faculty Scholarship Award, 2011.

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1

Background and Definitions

This book seeks to examine subjects that, at first blush, are not obviously linked; perhaps, however, the connection is not a wild stretch. After all, geopolitics is the sum total of state actions that affect the international community, whereas international security suggests mechanisms whereby global order is enhanced. Although some might claim, not implausibly, that geopolitics represents the opposite of force and security, a compelling argument can be made that the two are cousins if not blood relatives. Rearticulated: there is a greater link between geopolitics and international security than readily meets the eye, considering one enhances understanding the other.

To wit: international security reflects both national self-interest and geopolitical calculations and considerations. After all, as this book is written, enormous international efforts are being exerted to convince Iranian leaders to back away from a planned nuclear initiative. These efforts reflect a desire to ensure international security through a combination of diplomatic and economic sanctions. Success, defined as convincing the Iranians to step back from their intention without the use of force, reflects a combination of geopolitics and international security.

As history has repeatedly demonstrated, there comes a time when force is necessary to ensure both national survival and international security. In those instances, use of force wins out over geopolitical considerations; under those circumstances, while the cannons roar, muses and diplomacy are relegated to positions of secondary importance. However, even in times of death and destruction, diplomacy, negotiations, long-term security considerations, and geopolitics re-assert their importance.

Therefore, it is imperative to recall that the abeyance of geopolitics, when conflict is at its zenith, is but temporary, and perhaps an illusion. Once the conflict ends security and geopolitical considerations rise to the fore; what is post-conflict diplomacy if not the re-emergence of international security draped in the cloak of geopolitics. In addition, as the film, *The Gatekeepers*, makes crystal clear, the effectiveness of force is limited.

This was made readily apparent when I was tasked with negotiating implementation of the Oslo Peace Process in the Gaza Strip. As discussed at length in Chapter 4, my involvement provided me an invaluable opportunity both directly to participate in and observe complex negotiations seeking to resolve the Israeli–Palestinian conflict. This enabled me to gain significant understanding regarding the realities and limitations of negotiation regarding both tactical and strategic considerations. See Figure 1.1.

That involvement facilitated my appreciation for the powerful tension among geopolitics, conflict, and the use of force. Lessons learned from the Oslo Peace Process are applicable to other conflicts, both large



Figure 1.1. Map of Israel.

and small. Admittedly, each conflict has its unique history, culture, and nuance; nevertheless, sufficient similarities exist to draw parallels and suggest common themes. For that reason, lessons learned from how the Oslo Agreement was implemented in the Gaza Strip provide an effective backdrop to issues this book seeks to address.

Negotiating the implementation of the Oslo Agreement required both deciphering the drafters' intent and applying that decoding to an on-the-ground reality not foremost in the drafters' minds. Although great efforts were made to resolve complicated conundrums, we were saddled with the weight of religion, history, and mutual suspicion regarding motivation and intent. In addition, powerful competing forces were determined to derail the peace process. Those efforts are as important to understanding geopolitics, as are the efforts of those seeking to resolve conflict.

In other words, geopolitics cannot be fully understood without sufficient attention paid to the motivations and actions of those who inflame rather than resolve conflict. The question of motivation was a constant in the negotiations; that query was oftentimes unresolved which had a significant impact on the effectiveness of particular sessions and the negotiation process in general.

As mentioned in the Introduction, Professor Holbrook's terminology correctly reflects the practical reality of managing conflict. In many ways "managing conflict" and "the limits of intervention" could be this book's subtitle. They represent a most compelling confluence of geopolitics and conflict, particularly in determining whether there is a strategy for an unwinnable conflict. The chapters that follow address this question in a multidisciplinary manner, reflecting the reality of geopolitics, which suggests it inhabits many "homes." That has been made very clear to me in the course of researching and writing this book; innumerable conversations with subject matter experts from different countries covering a wide range of disciplines reinforced the broadness of the subject. Focusing on strategy and conflict facilitates addressing the important question regarding the limits of power. Highlighting the limits of power requires recognizing the centrality of a wide range of issues and concerns extending significantly beyond the use of force. These additional issues are of particular relevance given that the effectiveness and utility of force is, ultimately, largely limited.

The geopolitical jigsaw puzzle is, I suggest, inherently more complex than in years past. While not diminishing its previous tensions and dilemmas, significant developments suggest contemporary "crisis points" that highlight profound changes confronting decision makers.