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From the Madrid Conference to the Kerry Initiative

An Insight into the Israeli-Palestinian Peace Process

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“There is little prospect of mediating any conflict if one does not understand the historical narratives of each side. I say this not because it is important to perpetuate the historical debate or because one side can convince the other that it is wrong, but rather because both sides in any conflict must see that a third party understands why it feels the way it does, why it values what it values, why its symbols say so much about its identity.”¹

¹ *Dennis Ross, The Missing Peace, The Inside Story of the Fight for Middle East Peace, New York 2004, p. 15.*

Introduction

This essay provides a historical overview of the Israeli-Palestinian conflict and peace process.² The term “Israeli-Palestinian peace process” as used hereafter describes negotiations between Israelis and Palestinians in relation to the ongoing conflict over part of the territory designated as “The Mandate of Palestine” (also known as “Mandatory Palestine”) by the League of Nations in 1922. This essay does not discuss the Israeli-Egyptian or Israeli-Jordanian peace agreements even though these developments foster a more comprehensive understanding of the Arab-Israeli conflict.

The Israeli-Palestinian conflict is multifaceted and complex. Israelis and Palestinians have distinct historical narratives. Thus, many of the events discussed here might offer multiple interpretations. The main objective of this essay is to provide an impartial and multi-angled introduction to the Israeli-Palestinian peace process. Part I of this essay provides a historical overview of the Israeli-Palestinian conflict. Part II summarizes the stages of Israeli-Palestinian peace negotiations and agreements in chronological order from the Madrid Conference of 1991 until the breakdown of the final status negotiations led by the United States (“U.S.”) from 2013–2014. Part III identifies what the parties have designated as the core issues of final status negotiations: borders, security arrangements, settlements, refugees and Jerusalem.³ This part also examines Israel’s claim to be recognized by the Palestinians as Jewish State. Part IV presents pragmatic proposals to overcome the current deadlock in the peace process.

² This essay has been first presented as part of an expert seminar on the Middle East conflict in December 2013 at the University of Cologne. I am deeply grateful to my academic mentor Claus Kreß for his encouragement to formulate this study and his continuous support and to Gilead Sher and the Institute for National Security Studies (INSS) for providing a great research opportunity. In addition, I would like to thank Yossi Beilin, Julia Dornbusch, Daniel Geron, Elisabeth Günnewig, Roei Kibrik, Solvej Krause, Liran Ofek, Pnina Sharvit-Baruch, Björn Schiffbauer and Einat Wilf for providing helpful comments on previous drafts and insights on earlier rounds of negotiations. I am also very grateful to Tamara Gavrilov for editing the manuscript and Monika Richter for reviewing the footnotes. Views expressed herein are my personal views and do not necessarily represent the views of the Institute for International Peace and Security Law or the INSS. I can be contacted via email: Jonathan.Heuberger@gmail.com. This essay is dedicated to my parents Georg (1946–2010) and Rachel.

³ Declaration of Principles signed by Israeli Prime Minister Yitzhak Rabin and Palestinian Liberation Organization Chairman Yasser Arafat on September 13, 1993 states that: “It is understood that these (permanent status; *J.H.*) negotiations shall cover remaining issues, including: Jerusalem, refugees, settlements, security arrangements, borders, relations and cooperation with other neighbors, and other issues of common interest, Article 5, Section 3, Declaration of Principles on Self-Government Arrangements, in: *Terje Rød-Larsen, Nur Laq and Fabrice Aidan, The Search for Peace in the Arab-Israeli Conflict, A Compendium of Documents and Analysis*, Oxford 2014, p. 6.

A. Historical Overview

I. Roots of the Conflict

The roots of the Israeli-Palestinian conflict can be traced back to the beginning of the twentieth century. Until World War I, the Ottoman Empire ruled over the territory commonly referred to as “Palestine”, in which most of the population was Muslim, although there were also Christian and Jewish residents.⁴ In the late nineteenth century, Zionism, the Jewish-national movement that supports the reestablishment of a homeland for the Jews began gaining popularity.⁵ The growth of the Zionist movement can be partly attributed to the anti-Semitic pogroms that prevailed in Eastern Europe, such as the Kishinev pogrom of 1903.⁶ In Russia, Jews faced systematic discrimination and were thus not allowed, for example, to own private property or engage in certain professions.

There were several streams of Zionism prevalent in the nineteenth century. “Labour Zionism”, for instance, presented an appealing alternative to the finite list of professions that were legally available to

Jews in Russia, such as inn-keeping, pawn brokering, and petty selling, by propagating the creation of a Jewish state through the cultivation of land and the promotion of the settlement of the working class in Palestine in collective agricultural communities, also known as “Kibbutzim”.⁷ “Religious Zionism”, on the other hand, stressed their political and spiritual desire to establish a Jewish homeland and independent state in the biblical land of Israel, also known as “Eretz Israel”.⁸ Even though the philosophy of Zionism began emerging in the 1860s, prominent figures such as Chaim Weizmann, Achad Ha’Am, Nahum Sokolov and Zeev Jabotinsky began to transform it into a political movement with deep national yearning for independence, also known as “Political Zionism”.⁹

One of the founders of Political Zionism was Austro-Hungarian journalist Theodor Herzl. Herzl was not the first to call for the establishment of a Jewish nation-state, as he was preceded by Moses Hess and Leo Pinsker.¹⁰ Nevertheless, Herzl’s activity was crucial in creating the institutional and organizational structure that helped bring the idea of a Jewish state to the attention of world leaders and to make it of interest to the international community.¹¹

⁴ *Gudrun Krämer*, *A History of Palestine, From the Ottoman Conquest to the Founding of the State of Israel*, Princeton 2008, p. 40; In 1881, Palestine inhabited about 450,000 Arabs – about 90 per cent of them were Muslim and the rest were Christian. At the time, there were about 25,000 Jews, see *Benny Morris*, 1948: *A history of the First Arab-Israeli War*, New Haven and London 2008, p. 2. *Anita Shapira* points out that at the beginning of the nineteenth century, Palestine was almost empty, with some 250,000 inhabitants, including about 6,500 Jews concentrated in the four holy cities: Jerusalem, Safed, Tiberias, and Hebron, see *Anita Shapira*, *Israel, A history*, Waltham, MA 2012, p. 27.

⁵ For a thorough overview on Zionism, see *Walter Laqueur*, *A history of Zionism*, London 2003, pp. 1 ff.; *Jacob Katz*, *The Forerunners of Zionism*, in: *Jehuda Reinharz and Anita Shapira* (ed.), *Essential Papers on Zionism*, New York 1996, p. 33.

⁶ *Anita Shapira*, *Israel, A history*, Waltham, MA 2012, p. 43.

⁷ *Shmuel Ettinger and Israel Bartal*, *The First Aliyah: Ideological Roots and Practical Accomplishments*, in: *Jehuda Reinharz and Anita Shapira* (ed.), *Essential Papers on Zionism*, New York 1996, p. 75.

⁸ *Dan Cohn-Sherbok*, *Introduction to Zionism and Israel, From Ideology to History*, London and New York 2012, p.

18; *Mark Tessler*, *A history of the Israeli-Palestinian Conflict*, Bloomington and Indianapolis, 1994, p. 20.

⁹ *Walter Laqueur*, *A history of Zionism*, London 2003, p. 40: “The Jewish national revival which took place in the nineteenth century, culminating in political Zionism, was preceded by a great many activities and publications, by countless projects, declarations and meetings; thousands of Jews had in fact settled in Palestine before Herzl ever thought of a Jewish state. These activities took place in various countries and on different levels; it is difficult to classify them and almost impossible to find a common denominator for them. They include projects of British and French statesmen to establish a Jewish state; manifestos issued by obscure east European rabbis; the publication of romantic novels by non-Jewish writers; associations to promote settlement in Palestine, and to spread Jewish culture and national consciousness. The term Zionism appeared only in the 1890s but the cause, the concept of Zion, has been present throughout Jewish history.”

¹⁰ *Dan Cohn-Sherbok*, *Introduction to Zionism and Israel, From Ideology to History*, London and New York 2012, pp. 3-7.

¹¹ *Shlomo Avineri*, *Theodor Herzl and the Foundation of the Jewish State*, London 2013, pp. 1, 165. See also *Jacques*

Herzl's personal experience with growing anti-Semitism in France, as manifested in the "Dreyfus affair", convinced him that anti-Semitism within European society would not disappear after the emancipation of the Jews and that the establishment of the Jewish state is the only long-term solution.¹² To help promulgate his plan, Herzl published two books, *Altneuland* and *Der Judenstaat. Versuch einer modernen Lösung der Judenfrage*, in which he advocated for the establishment of a Jewish state as a necessary and practical solution for the national aspirations of the Jewish people.¹³ Between August 29–31, 1897, Herzl convened the first Zionist Congress in Basel, Switzerland. This congress had three main items on its agenda: the presentation of Herzl's plan of establishing a homeland for the Jews, the establishment of the Zionist Organization and the declaration of the "Basel program" outlining the goals of Zionism.¹⁴

Kornberg, Theodore Herzl: A Re-evaluation, in: *The Journal of Modern History*, Vol. 52, No. 2 (1980), pp. 226, 228.

¹² Being a young correspondent in Paris, Herzl witnessed the "Dreyfus Affair" in which a French military court convicted French-Jewish artillery captain Alfred Dreyfus in 1894 for alleged treason for the benefit of the German Reich. The conviction was based on unlawful evidence and later overturned and Dreyfus rehabilitated. Herzl followed the reaction of the French public and military ranks very closely. He felt that deeply rooted anti-Semitism within the French society was the main force behind the proceedings against Dreyfus.

¹³ *Shlomo Avineri*, *Theodor Herzl and the Foundation of the Jewish State*, London 2013, p. 1.

¹⁴ The original program of the first Zionist Congress sets out the goals of the Zionist movement: "Zionism aims at establishing for the Jewish people a publicly and legally assured home in Palestine. For the attainment of this purpose, the Congress considers the following means serviceable: 1. The promotion of the settlement of Jewish agriculturists, artisans, and tradesmen in Palestine. 2. The federation of all Jews into local or general groups, according to the laws of the various countries, 3. The strengthening of the Jewish feeling and consciousness and 4. Preparatory steps for the attainment of those governmental grants which are necessary to the achievement of the Zionist purpose." See the "Basel Program" from the website of the Israeli Parliament, "Knesset", available at http://www.knesset.gov.il/lexicon/eng/bazel_eng.htm, accessed on April 16, 2015.

1. McMahon-Hussein Correspondence

During World War I, the Ottoman Empire allied itself with Germany, which fought against Great Britain, France and Russia ("the Triple Entente"). From 1915 onwards, in an attempt to receive military support by the Arab nations in the Middle East against the Ottomans, the British High Commissioner of Egypt, Sir Henry McMahon, and Hussein Ibn Ali, Emir of the Hijaz and Sharif of Mecca ("Ruler of Western Arabia and Keeper of the Holy Sites in Mecca and Medina"), exchanged ten letters (collectively known as the "McMahon letters").¹⁵ In the McMahon letters, Hussein demanded that in exchange for an Arab uprising against the Ottomans, Britain must acknowledge the independence of the Arab provinces of the Ottoman Empire and allow for the creation and recognition of an independent Arab state. The proposed Arab state would include all of the territory on the Arab Peninsula extending north into what is today southern Turkey, bordered by Persia to the east and the Mediterranean Sea to the west.¹⁶ In today's map,

¹⁵ *Walter Laqueur*, *A history of Zionism*, London 2003, p. 46; *Gudrun Krämer*, *A History of Palestine, From the Ottoman Conquest to the Founding of the State of Israel*, Princeton 2008, p. 147; *Jonathan Schneer*, *The Balfour Declaration, The Origins of the Arab-Israeli Conflict*, New York 2010, p. 64; *Mark Tessler*, *A history of the Israeli-Palestinian Conflict*, Bloomington and Indianapolis, 1994, p. 147; *Dennis Ross*, *The Missing Peace, The Inside Story of the Fight for Middle East Peace*, New York 2004, p. 31; Jewish Virtual Library, *The Hussein-McMahon Correspondence, Letter No. 1, July 14, 1915*, available at <http://www.jewishvirtuallibrary.org/jsource/History/husmac1.html#1>, accessed on January 27, 2016: "Firstly: England will acknowledge the independence of the Arab countries, bounded on the north by Mersina and Adana up to the 37th degree of latitude, on which degree fall Birijik, Urfa, Mardin, Midiat, Jezirat (Ibn 'Umar), Amadia, up to the border of Persia; on the east by the borders of Persia up to the Gulf of Basra; on the south by the Indian Ocean, with the exception of the position of Aden to remain as it is; on the west by the Red Sea, the Mediterranean Sea up to Mersina. England to approve the proclamation of an Arab Khalifate of Islam."

¹⁶ *Ray L. Cleveland*, *Husayn-McMahon Correspondence*, in: *Cheryl A. Rubenberg* (ed.), *Encyclopedia of the Israeli-Palestinian Conflict*, Vol. 1, Boulder and London 2010, pp. 579-580.

this would include Syria, Lebanon, Israel, Palestine, Iraq, Saudi Arabia and the United Arab Emirates.¹⁷ At first, McMahon attempted to avoid a border discussion,¹⁸ but shortly after Hussein reiterated that these borders were not solely his demands but the demands of the Arab people.¹⁹

In McMahon's next response, which is considered the most important letter exchanged between Hussein and McMahon,²⁰ he outlined several limitations to Britain's acceptance of Hussein's demands. First, with respect to areas where Britain did not have to consider French interests, Britain was

prepared to recognize and support the independence of the Arab provinces within the boundaries demanded by Hussein, under the condition that such recognition would not prejudice treaties between the British and Arab leaders.²¹ McMahon, however, excluded two districts – Mersina and Alexandretta – and portions of Syria lying to the west of the “districts” of Damascus, Homs, Hama and Aleppo.²² Since then, historians have debated whether Palestine was included or excluded in McMahon's promise with respect to British recognition of Arab independence.²³ According to Britain, it had

¹⁷ Dennis Ross, *The Missing Peace, The Inside Story of the Fight for Middle East Peace*, New York 2004, p. 31.

¹⁸ Jewish Virtual Library, *The Hussein-McMahon Correspondence*, Letter No. 2, August 30, 1915, available at <http://www.jewishvirtuallibrary.org/jsource/History/hussmac1.html#2>, accessed on January 27, 2016: “With regard to the questions of limits and boundaries, it would appear to be premature to consume our time in discussing such details in the heat of war, and while, in many portions of them, the Turk is up to now in effective occupation; especially as we have learned, with surprise and regret, that some of the Arabs in those very parts, far from assisting us, are neglecting this their supreme opportunity and are lending their arms to the German and the Turk, to the new despoiler and the old oppressor.”

¹⁹ Jewish Virtual Library, *The Hussein-McMahon Correspondence*, Letter No. 3, September 9, 1915, available at <http://www.jewishvirtuallibrary.org/jsource/History/hussmac1.html#3>, accessed on January 27, 2016: “As the limits and boundaries demanded are not those of one person whom we should satisfy and with whom we should discuss them after the war is over, but our peoples have seen that the life of their new proposal is bound at least by these limits and their word is united on this.”

²⁰ Jonathan Schneer, *The Balfour Declaration, The Origins of the Arab-Israeli Conflict*, New York 2010, p. 64.

²¹ Ray L. Cleveland, *Husayn-McMahon Correspondence*, in: Cheryl A. Rubenberg (ed.), *Encyclopedia of the Israeli-Palestinian Conflict*, Vol. 1, Boulder and London 2010, pp. 579-580; Jewish Virtual Library, *The Hussein-McMahon Correspondence*, Letter No. 4, October 24, 1915, available at <http://www.jewishvirtuallibrary.org/jsource/History/hussmac1.html#4>, accessed on January 26, 2016.

²² Jonathan Schneer, *The Balfour Declaration, The Origins of the Arab-Israeli Conflict*, New York 2010, pp. 65-66: “McMahon's first qualification to Hussein's suggested boundaries was the districts of Mersina and Alexandretta: These he wished to exclude from the proposed Arab kingdom because he suspected that France would claim them after the

war, or even possibly because Britain might wish to claim Alexandretta before the French did. As for the second qualification regarding “our treaties with the Arab chiefs,” this referred primarily to the line of principalities along the east coast of Arabia on the Indian Ocean with which the British government in India had established relations. With regard to “portions of territories ... in which Great Britain is free to act without detriment to the interest of her Ally, France,” McMahon simply was recognising that Britain's most important partner in the war might make additional territorial claims in Syria that Britain would likely be obliged to support, although she did not know precisely what the claims might be and actually rather begrudged them. And finally, as for Baghdad and Basra, McMahon mentioned them to satisfy the territorial ambitions of the British government in India, which still wanted to annex portions of Mesopotamia.”

²³ See Jonathan Schneer, *The Balfour Declaration, The Origins of the Arab-Israeli Conflict*, New York 2010, pp. 66-67: “The key word is “districts”, simple enough in the English language but ambiguous when translated, as it was by Ruhi or Storrs or conceivably someone else in Cairo, into the Arabic *wilayat*. This is the plural form of the Arabic word *wilayah*, which means *vilayet*, a political jurisdiction in Turkish, but “vicinity” or “environs,” a geographical expression in English. [...] Arabs have claimed that Hussein understood the word to mean “vicinity” or “environs” and therefore *not* to refer to Palestine, which is south of the line connecting Damascus, Hama, Homs, and Aleppo, not west of it as any glance at a map will quickly show and clearly not within the vicinity or environs of any of those towns. The British and Zionists have argued to the contrary, however, that since *wilayat* can mean *vilayets* and since the *vilayet* or “province” of Damascus extended all the way south to Ma'an and beyond down to Aqaba, therefore McMahon did indeed mean to exclude Palestine from the Arab kingdom because Palestine is indubitably west (not south) of Ma'an.”; Mark Tessler, *A history of the Israeli-Palestinian Conflict*, Bloomington and Indianapolis 1994, p. 147; Dennis Ross, *The Missing Peace, The Inside Story of the Fight for Middle East Peace*, New York 2004, p. 31. Ray L. Cleveland,

qualified its promise in relation to Palestine. Hussein, on the other hand, believed he had received a firm promise of Arab independence there in return for the Arab uprising.

On May 16, 1916, in the “Sykes-Picot Agreement”, Great Britain and France, with Russia’s consent, secretly agreed upon the division of their territorial control and influence in the Middle East in case the Triple Entente would defeat the Ottoman Empire during World War I.²⁴ As a result, France was allocated control over Syria and Great Britain was allocated control of areas roughly comprising the coastal strip between the Jordan River, Jordan, southern Iraq, and a small area encompassing the ports of Haifa and Akko.

2. Balfour Declaration

World War I reached southern Palestine in 1917 and, after the McMahon-Hussein correspondence,

Husayn-McMahon Correspondence, in: *Cheryl A. Rubenberg* (ed.), *Encyclopedia of the Israeli-Palestinian Conflict*, Vol. 1, Boulder and London 2010, pp. 579-580. McMahon himself stated many years later that he had always believed Palestine to be part of the area excluded from his government’s pledge to the Arab. The matter was raised again by a Palestinian Arab delegation which came to London in 1921. Although the delegation pointed out that the promise to Hussein could not reasonably be interpreted as to exclude Palestine, the June 1922 White Paper issued by Churchill, reaffirmed the British position that Palestine was not included in its pledge to the Sherif. Arab nationalists later claimed that Palestine was included in the promise of Arab independence, regardless the fact that the British government and Zionist leaders had said that it was excluded. This question had been particularly relevant under the impact of British support of the Zionist enterprise of settling Palestine and whether such settlement was compatible with agreements embodied in this exchange of letters. On the pro-Zionist side, it was argued that the letter did not explicitly refer to the Sanjak of Jerusalem, the Ottoman administrative division that covered most of Palestine. However, the letters are pretty clear which areas are to be part of the Arab state and which are not. Furthermore, it has been argued that because of Jerusalem’s importance in Islam, Hussein would have insisted that it be part of the promise of Arab independence, excluded by McMahon. For a discussion of this question see *Yahya Armanjani*, *Middle East: Past and Present*, New Jersey 1970, p. 294; *Richard Allen*, *Imperialism and Nationalism in the Fertile Crescent*, London 1974, pp. 228-232; *Fred J. Khouri*, *The Arab-Israeli Dilemma*, Syracuse 1985, p. 6.

²⁴ Sykes-Picot Agreement, in: *Terje Rod-Larsen, Nur Laq and Fabrice Aidan*, *The Search for Peace in the Arab-Israeli*

Great Britain now made a competing promise about independence in Palestine to the Jewish leadership. On November 2, 1917, the Foreign Minister of Great Britain, Lord James Balfour, sent a letter, also known as the “Balfour Declaration”, to the Vice President of the Jewish community of Great Britain, Lionel Walther Rothschild, 2nd Baron Rothschild.²⁵ In his Declaration, Lord Balfour reinforced the Zionist movements’ expectation to establish a Jewish homeland in Palestine.²⁶ The declaration reads:

“His majesty’s government view with favour the establishment in Palestine of a national home for the Jewish people, and will use their best endeavours to facilitate the achievement of this object, it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country.”²⁷

Conflict, A Compendium of Documents and Analysis, Oxford 2014, p. 809.

²⁵ *Jonathan Schneer*, *The Balfour Declaration, The Origins of the Arab-Israeli Conflict*, New York 2010, p. 303.

²⁶ The significance of the Balfour Declaration under international law is subject to some debate. Some view it as legally binding and a formal declaration of intent by the British foreign office which was to be the Mandatory power over Palestine to the Jewish representatives. Others see it merely as a letter of support between two leaders. See *Anita Shapira*, *Israel, A history*, Waltham, MA 2012, p. 72-73; *Avi Shlaim*, *The Balfour Declaration and its Consequences*, in: *William Roger Louis* (ed.) “Yet More Adventures with Britannia: Personalities, Politics and Culture in Britain”, London 2005, pp. 251-270; *M. Cherif Bassiouni*, *The “Middle East”: The Misunderstood Conflict*, University of Kansas Law Review, Vol. 19 (1970-1971), pp. 373, 384. According to *Bassiouni*, at the time of the Balfour Declaration, the population of Palestine had been about 90 per cent Arab. Therefore, the Balfour Declaration, mindful of the Arab character of the state of Palestine promised to facilitate the establishment of a “National Jewish Homeland in Palestine (*emphasis added by Bassiouni*) to Jews willing to immigrate to Palestine but also to safeguard the rights of the Arabs by these terms, putting another emphasis to the last sentence of the Declaration: “nothing shall be done which may prejudice the civil and religious rights of non-Jewish communities in Palestine [...]”

²⁷ Israel Ministry of Foreign Affairs, *The Balfour Declaration*, November 2, 1917, available at

The effect of the Balfour Declaration on world Jewry was electric and resulted in over 200,000 enthusiastic Jews in Odessa eagerly greeting a Zionist delegation after its issuance.²⁸

On January 3, 1919, during the Paris Peace Conference, Emir Faisal I, who would subsequently be the King of Syria and Iraq, along with the President of the World Zionist Organization, Chaim Weizmann, who would subsequently serve as the first President of the State of Israel, signed an agreement that proposed new borders between an Arab and Jewish state in Palestine. This agreement (also known as the “Faisal-Weizmann Agreement”), was never implemented due to the fact that Britain and France had already negotiated issues of sovereignty and borders in the Middle East during World War I.²⁹

In 1920, after World War I, at the Conference of San Remo, Britain was entrusted with Mandatory Palestine (the territories East and West of the Jordan River). This designation, which was formally approved by the Council of the League of Nations on July 24, 1922 as the British Mandate for Palestine (the “British Mandate”), would determine Palestine’s status for years to come.³⁰ According to the Mandate, Great Britain was

“responsible for placing the country under such political and administrative and economic conditions as will secure the establishment of the Jewish national home, as laid down in the preamble, and the development of self-governing institutions, and also safeguarding the civil and religious rights of all

inhabitants of Palestine irrespective of race and religion.”³¹

Article 4 of the British Mandate recognized the role of the pre-existing Zionist Organization as public, Jewish agency

“responsible for advising and cooperating with the British administration in Palestine for economic, social and other matters that may affect the establishment of a Jewish national home and the interests of the Jewish population in Palestine.”³²

Article 6 of the British Mandate laid out the groundwork for the immigration policy adopted by the Mandate for subsequent years. According to the British Mandate,

“[T]he administration in Palestine, while ensuring that the rights and positions of other sections of the population are not prejudiced, shall also facilitate Jewish immigration under suitable conditions and shall encourage, in co-operation with the Jewish agency referred to in Article 4, close settlement by Jews on the land, including state lands and waste lands not required for public purposes.”³³

Due to this immigration policy, it has been argued that the League of Nations disregarded the national aspirations of Arabs in Palestine by giving preference to the Sykes-Picot Agreement and the Balfour Declaration to the detriment of the commitment outlined in the McMahon letters. The broken promise formulated in the letters, coupled with rising tensions between Arabs and Jews in Palestine, formed an important part of the Arab

<http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/the%20balfour%20declaration.aspx>, accessed on February 3, 2016.

²⁸ *Dennis Ross*, *The Missing Peace, The Inside Story of the Fight for Middle East Peace*, New York 2004, p. 16.

²⁹ *Gudrun Krämer*, *A History of Palestine, From the Ottoman Conquest to the Founding of the State of Israel*, Princeton 2008, p. 147. Article 2 of the Faisal-Weizmann agreement reads: “Immediately following the completion of the deliberations of the Peace Conference, the definite boundaries between the Arab State and Palestine shall be determined by a Commission to be agreed upon by the parties hereto, see the text of the Faisal-Weizmann Agreement, January 3, 1919, from the website of the United Nations Information System on the Question of Palestine (UNISPAL), available at <https://unispal.un.org/DPA/DPR/unispal.nsf/0/5BFF833964EDB9BF85256CED00673D1F>; accessed on April 16, 2015.

³⁰ See *Nick Reynold*, *Britain’s Unfulfilled Mandate for Palestine*, London 2014.

³¹ Israel Ministry of Foreign Affairs, *The (League of Nations) Mandate for Palestine*, Article 2, available at <http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/the%20mandate%20for%20palestine.aspx>, accessed on April 16, 2015.

³² *Anita Shapira*, *Israel, A history*, Waltham, MA 2012, p. 76.

³³ English, Arabic and Hebrew were to be the official languages of Palestine (Article 22). Holy days of the respective communities in Palestine should be recognised by the Administration of Palestine as legal days of rest for the members of such communities (Article 23).

narrative of perceived broken promises, betrayal, and efforts to deny Arabs their desired destiny.³⁴

During the 1920s, tensions arose between Arabs and Jews in Palestine.³⁵ The first de-facto partition of Palestine occurred in August of 1922 when the British presented a memorandum to the League of Nations stating that the trans-Jordanian territory (“Transjordan”), an area constituting seventy-four per cent of the territory of the Mandate, would be separated administratively from the rest of Palestine and excluded from the Mandate provisions dealing with Jewish settlement.³⁶ Nevertheless, even after the administrative separation of Transjordan from Mandatory Palestine, ideas and plans for partitioning Palestine, with the inclusion of Transjordan into a Jewish and Arab state remained on the table until the establishment of the Hashemite Kingdom of Transjordan in 1946.

In the following years, Jewish immigration to Palestine expanded and so did clashes between Jews and Arabs. Britain’s policy for Mandatory Palestine throughout this time was inconsistent and was perceived discriminatory by both Arabs and Jews at different times. On July 6, 1922, the British House of Commons accepted the “Churchill Memorandum” (also known as the “Churchill White Paper”), through which Britain reaffirmed its commitment to a Jewish national home in Palestine.³⁷ This Memorandum stated that Jewish presence in Palestine was based on “a right and not

on sufferance.”³⁸ The Memorandum also defined the Jewish national home as the

“further development of the existing Jewish community, with the existence of Jews in other parts of the world that it may become a centre in which the Jewish people as a whole may take, on grounds of religion and race, an interest and a pride.”³⁹

Although Britain promised that the Jewish community would not dominate or impose Jewish nationality on the indigenous Palestinians and that the absorption of Jewish immigrants would be limited to the economic capacity of the country, it also stressed that immigration was a necessary step in the growth of the Jewish community in Palestine. Despite it being viewed by the Zionist movement as a retraction of some of the commitments of the Balfour Declaration, Zionist leaders accepted the Churchill Memorandum because it did not rule out the establishment of a Jewish state in Palestine. Arab leaders, on the other hand, rejected the Memorandum because it largely upheld the Balfour Declaration and continued to allow Jewish immigration.

At the end of the 1920s, more tensions erupted in Palestine. For example, the massacre against the Jewish community in Hebron perpetrated by Arab rioters from August 23–24, 1929, resulted in the murder of 67 Jewish civilians, many of whom were religious scholars. In response, the “Haganah”, the Jewish paramilitary organization founded by the

³⁴ The question remains whether the conflicting compromises and territorial assignments of the beginning of the twentieth century seeded the plants for today’s conflicts – not only in Palestine but across the Middle East. See Churchill Memorandum 1922, in: *Cheryl A. Rubenberg* (ed.), *Encyclopedia of the Israeli-Palestinian Conflict*, Vol. 1, Boulder and London 2010, pp. 262-263; *Dennis Ross*, *The Missing Peace, The Inside Story of the Fight for Middle East Peace*, New York 2004, p. 31.

³⁵ *Dennis Ross*, *The Missing Peace, The Inside Story of the Fight for Middle East Peace*, New York 2004, p. 17.

³⁶ *Oded Eran*, *Arab-Israeli Peacemaking*, in: *Avraham Sela* (ed.), *The Continuum Political Encyclopaedia of the Middle East*, New York 2002, p. 95.

³⁷ Churchill Memorandum 1922, in: *Cheryl A. Rubenberg* (ed.), *Encyclopedia of the Israeli-Palestinian Conflict*, Vol. 1, Boulder and London 2010, p. 262.

³⁸ Churchill Memorandum 1922, in: *Cheryl A. Rubenberg* (ed.), *Encyclopedia of the Israeli-Palestinian Conflict*, Vol. 1, Boulder and London 2010, p. 262.

³⁹ Churchill Memorandum 1922, in: *Cheryl A. Rubenberg* (ed.), *Encyclopedia of the Israeli-Palestinian Conflict*, Vol. 1, Boulder and London 2010, p. 262. The Memorandum went on to say that, to accomplish this, “[I]t is necessary that the Jewish community in Palestine should be able to increase its numbers by immigration.” However, the memorandum also tempered Zionist ambitions “to effect that the purpose in view is to create a wholly Jewish Palestine ... His Majesty’s government regards any such expectations as impractical and have no such aim in view.” The memorandum also affirmed Britain’s commitment to prevent “the disappearance or the subordination of the Arab population, language or culture in Palestine”, and it promised that the Jewish community would not dominate or impose Jewish nationality on the indigenous Palestinians and that “the absorption of Jewish immigrants would be limited to the economic capacity of the country.”

“Yishuv” (the body of Jewish residents in Palestine) after the 1920s riots, carried out counter-attacks. In the last week of August 1929, 133 Jews and 110 Arabs were killed. In response, Britain sent two fact-finding commissions to Palestine, the Shaw Commission and Hope-Simpson Enquiry, respectively, to investigate the reasons for destabilization and violence. On October 20, 1930, a third commission headed by Colonial Lord Webb Passfield, Secretary of State for the Colonies, issued its report (known as the “Passfield White Paper”), which adopted some of the recommendations of the previous commissions.

The Passfield White Paper asserted that obligations laid down by the British Mandate regarding Arabs and Jews were of equal weight and that the two obligations imposed on Mandatory Palestine were reconcilable.⁴⁰ Though it did not suggest an end to Jewish immigration and reiterated the nature of the Jewish national home as laid down in the Churchill Memorandum and the Balfour Declaration, the Passfield White Paper emphasized the condition safeguarding the Arabs’ rights and was thus considered favourably by the Arabs.⁴¹ The Passfield White Paper stated that the issues of development, immigration and unemployment were interrelated and that the ideals of the Jewish national home could sensibly only be realized in a peaceful prosperous Palestine and that property can only be secured by cordial cooperation between the Jews, the Arabs, and the British High Commissioner for Palestine and Transjordan.⁴²

3. Arab Revolt of 1936–1939

In the 1930s, tensions between Arabs and Jews further intensified. With the rise to power of Adolf Hitler’s National Socialist Party, which led to the humiliation and degradation of German Jews in the early 1930s, Jewish immigration to Palestine expanded. Between 1933 and 1936 alone, 174,000 Jews arrived in Palestine. In 1935, Jewish immigration reached a record high, with the recording of more than 62,000 Jewish immigrants.⁴³ Meanwhile, Jewish land purchases reached 73,000 dunams (a measure of land area used in Palestine at the time).⁴⁴

In 1936, an Arab uprising erupted in Palestine.⁴⁵ On April 15, 1936, an armed Arab gang killed two Jews who were on their way to Nablus. Two days later, members of the Haganah killed two Arabs in retaliation. Following these events, Arab demonstrations took place in Jaffa, Nablus and other cities throughout the country.⁴⁶ On April 17, following a Jewish funeral in Tel Aviv, nine Jews were beaten, stoned and stabbed to death. In order to crush the riots, the British government in Palestine intervened by entering Jaffa with armed police vehicles and by imposing a curfew. In response to these measures, Mohamed Amin al-Husseini, the “Grand Mufti of Jerusalem” (the Muslim Sunni cleric in charge of Al-Aqsa Mosque and other holy sites of Jerusalem), established an “Arab Higher Committee”, which called for a strike by the Arab working population of Palestine and outlined their demands: The end of Jewish immigration, the prohibition of land sales to Jews, and the establishment of an Arab representative government. The Arab Higher Committee called on the Arab

⁴⁰ Jewish Virtual Library, The Passfield White Paper, 1930, available at <http://www.jewishvirtuallibrary.org/jsource/History/passfield.htm>, accessed on January 26, 2016.

⁴¹ Passfield White Paper 1930, in: Cheryl A. Rubenberg (ed.), *Encyclopedia of the Israeli-Palestinian Conflict*, Vol. 2, Boulder and London 2010, pp. 1135-1136.

⁴² Jewish Virtual Library, The Passfield White Paper 1930, available at <http://www.jewishvirtuallibrary.org/jsource/History/passfield.html>, accessed on January 26, 2016.

⁴³ Anita Shapira, *Israel, A history*, Waltham, MA 2012, p. 83.

⁴⁴ Gudrun Krämer, *A History of Palestine, From the Ottoman Conquest to the Founding of the State of Israel*,

Princeton 2008, p. 264. A dunam is the Ottoman unit of area representing the amount of land that could be ploughed by a team of oxen in a day.

⁴⁵ Anita Shapira, *Israel, A history*, Waltham, MA 2012, p. 84; Ari Shavit, *My Promised Land, the Triumph and Tragedy of Israel*, New York 2013, p. 71.

⁴⁶ Dan Cohn-Sherbok, *Introduction to Zionism and Israel, From Ideology to History*, London and New York 2012, p. 123.

population to refuse to pay taxes. The strike also had other economic implications; it impeded road transportation and stopped the Jaffa port from functioning.⁴⁷

In the summer of 1936, the revolt spread throughout the country. In June, attacks took place along the roads and on the Haifa-Lydda railway line. Over the next two months, disturbances intensified. Jewish buildings, crops and plantations were special targets for Arab gangs.⁴⁸ In response to the increased tensions, in the autumn 1936, the British government instituted a series of emergency regulations resulting in “statutory” martial law, providing extensive powers to the British armed forces engaging with the revolt without instituting full military rule. In addition, Britain convinced the regional Arab leaders of Iraq, Saudi Arabia, Transjordan and Egypt to issue a joint statement calling for tranquillity. On October 11, 1936, the Arab strike was called off and a short period of quiet followed.⁴⁹

In November of 1936, a British Royal Commission of Enquiry headed by Lord William Peel (the “Peel Commission”) arrived in Palestine.⁵⁰ The Peel Commission heard testimony from British government officials and from Jewish and Arab representatives.⁵¹ The Peel Commission quickly determined that the evolving reality in Palestine could not be tolerated any longer.⁵² Eight months later, in July of 1937, the Peel Commission presented its report to the British government. The report recommended a partition of the land into two nation-states, a Jewish one and an Arab one. In addition to an exchange of land, the Peel Commission also recommended an exchange of population, whereby the Arabs residing in the proposed Jewish state territory be transferred to the proposed Arab state territory and the Jews residing in the proposed Arab

state territory be transferred to the proposed Jewish state territory.⁵³

The Peel Commission’s recommendations led to another outbreak of fighting, more violent than prior ones. In 1938, the Arab uprising reached a climax and threatened to take over large parts of the country. Police stations were burned and there was chaos in the mountain regions.⁵⁴ Only in the late autumn and winter of 1938 and 1939, respectively, when the Munich agreement with the Germans Reich allowed Britain to send additional forces to Palestine, was the uprising suppressed by British forces. In 1939, by the time of the outbreak of World War II in Europe, general peace and calm prevailed in Palestine.⁵⁵

On May 17, 1939, the British Parliament adopted the recommendations issued in the “MacDonald White Paper”, a policy paper that was named after the British Colonial Secretary Malcolm MacDonald (also known as the “White Paper of 1939”). The MacDonald White Paper proposed a single state of Arabs and Jews, abandoning the Peel Commission’s proposal of two distinct states. The MacDonald White Paper also limited Jewish immigration to Palestine to 75,000 for five years, subject to the country’s “economic absorptive capacity”. According to the MacDonald White Paper, after this initial five-year period, further immigration would be determined by the Palestinian-Jewish government. This document altered the British government’s previous policy by restricting Jewish land acquisition and repealed the Peel Commission’s

⁴⁷ Tom Segev, *One Palestine, Complete, Jews and Arabs Under the British Mandate*, New York 2000, p. 387.

⁴⁸ Tom Segev, *One Palestine, Complete, Jews and Arabs Under the British Mandate*, New York 2000, pp. 399-400.

⁴⁹ Gudrun Krämer, *A History of Palestine, From the Ottoman Conquest to the Founding of the State of Israel*, Princeton 2008, p. 264.

⁵⁰ Tom Segev, *One Palestine, Complete, Jews and Arabs Under the British Mandate*, New York 2000, p. 401.

⁵¹ Anita Shapira, *Israel, A history*, Waltham, MA 2012, p. 85.

⁵² Ari Shavit, *My Promised Land, the Triumph and Tragedy of Israel*, New York 2013, p. 74.

⁵³ Ari Shavit, *My Promised Land, the Triumph and Tragedy of Israel*, New York 2013, p. 74.

⁵⁴ Ari Shavit, *My Promised Land, the Triumph and Tragedy of Israel*, New York 2013, p. 76.

⁵⁵ Gudrun Krämer, *A History of Palestine, From the Ottoman Conquest to the Founding of the State of Israel*, Princeton 2008, p. 271.

recommendation for the partition of Palestine through an exchange of land and population.⁵⁶

Both Arabs and Jews ultimately rejected the proposals suggested in the MacDonald White Paper. The Zionist Movement appealed to the Permanent Mandates Commission of the League of Nations, which was the commission responsible for the oversight of mandates. This Commission declared that the MacDonald White Paper violated the British Mandate. Though Britain continued to enforce the MacDonald White Paper's provisions, the policies were practically ineffective and not enforceable because of the political, military and economic development of the Yishuv. By 1940, nearly 250,000 Jews had arrived in Palestine and the Yishuv's population reached 450,000 individuals.

In the wake of the Holocaust and murder of six million Jews by Nazi Germany and its affiliates, international support for establishing a sovereign Jewish national homeland in Palestine broadened. Britain, coping with the ramifications of World War II, and hoping to strengthen its alliance with the U.S., considered giving up its Mandatory powers over Palestine. Unable to financially and militarily maintain a presence in Palestine, in February of 1947 the British cabinet decided to place the future of Palestine in the hands of the newly founded United Nations ("UN"), the successor organization of the League of Nations.⁵⁷ On April 2, 1947, the British delegation to the UN sent a letter to the acting Secretary-General of the UN requesting that the question of Palestine be placed on the agenda of the

next regular session of the General Assembly and that a special committee be formed to prepare a report on the question of Palestine's future for the General Assembly.

On May 15, 1947, the UN set up the Special Committee on Palestine ("UNSCOP"). This Committee included representatives of eleven states and was tasked to investigate the cause of the conflict in Palestine, and, if possible, prepare a solution. UNSCOP visited Palestine and gathered testimony from Zionist organizations but was boycotted by the Arab Higher Committee, which viewed the Palestinian Arabs' natural rights to Palestine as being self-evident and deserving of international recognition rather than investigation. Following UNSCOP's recommendations, on November 29, 1947, the UN General Assembly adopted "Resolution 181 (II). Future Government of Palestine", which envisaged the division of the British Mandate of Palestine into a Jewish and Arab state.⁵⁸

The Partition Plan (also referred to as the "Plan of Partition with Economic Union"), a detailed four-part document attached to the Resolution 181, provided for the termination of the Mandate, the progressive withdrawal of British armed forces, the delineation of boundaries between the proposed two States, and the future of Jerusalem.⁵⁹ The plan included the creation of the Arab and Jewish states by October 1, 1948, and the division of Palestine into eight parts, three allotted to the Jewish state and three

⁵⁶ MacDonald White Paper, 1939, in: *Cheryl A. Rubenberg* (ed.), *Encyclopedia of the Israeli-Palestinian Conflict*, Vol. 2, Boulder and London 2010, p. 898.

⁵⁷ *Benny Morris*, 1948: A history of the First Arab-Israeli War, New Haven and London 2008, p. 37.

⁵⁸ UN General Assembly Resolution 181 (II) and the Partition Plan, in: *Terje Rød-Larsen, Nur Laq and Fabrice Aidan*, *The Search for Peace in the Arab-Israeli Conflict, A Compendium of Documents and Analysis*, Oxford 2014, p. 577. A majority of seven states represented in UNSCOP favoured the creation of separate Jewish and Arab states in Palestine, with Jerusalem to be placed under international administration. Three states recommended the creation of a single federal state; one state abstained. The General Assembly voted in favour of the Partition Plan by 33 to 13 with 10 abstentions, and adjusted the borders proposed by UNSCOP. A critical factor in the adoption of the Resolution

181 was the support of both the United States and the Soviet Union.

⁵⁹ According to the borders described in the Plan, the Arab and Jewish states in Palestine would each contain a majority of the relevant population. The Jewish State would be formed on 56 per cent of Palestine; the Arab state would comprise 43 per cent. The Jewish state would encompass the coastal plain along the Mediterranean, the Eastern Galilee, and the southern desert of the Negev. It would have access to the Red Sea and Lake Tiberias. The Arab state would comprise some parts along the coast included Isdud (today the city of Ashdod) and the Gaza Strip in the south, and the town of Acre (today: Akko) in the north, the Western Galilee and the central highlands. The latter comprise the heartland of the West Bank, with major towns along the ridge running from Jenin, via Nablus, Ramallah, Bethlehem and Hebron.

to the Arab state.⁶⁰ The seventh part, the town of Jaffa, was to form an Arab enclave within Jewish territory. The eighth part, the international regime of Jerusalem, was to be administered by the United Nations Trusteeship Council.⁶¹

The Palestinian Arabs and the Arab states rejected the Partition Plan for several reasons.⁶² Firstly, they were not willing to tolerate an independent Jewish state in the Middle East region. Secondly, the neighbouring Arab countries regarded the UN partition plan to be an unfair division of Mandatory territory.⁶³ Several major Jewish organizations endorsed the Partition Plan because despite the fact that this territorial assignment did not include Jerusalem or Judea and Samaria in the Jewish state (areas that are significant to Jewish history), the prospect of Jewish independence in Palestine, with

all the prerogatives and powers attached to it, provided an important refuge to hundreds of thousands of Jewish displaced persons stranded in war-ravaged Europe and the Jewish population living in Palestine. After the decisive vote in the General Assembly, strong feelings of euphoria and spontaneous celebrations filled the Jewish quarters of Palestine.⁶⁴

Following the adoption of Resolution 181, an armed conflict broke out in Palestine, known as the “1948 War”.⁶⁵ The 1948 War had two distinct stages. The first stage was a civil war between Palestine’s Jewish and Arab communities, the latter assisted by a small army of volunteers from the wider Arab world and was characterized by guerrilla warfare and acts of terrorism. This stage lasted from November 30, 1947, until May 14, 1948. The second stage was

⁶⁰ The Partition Plan, Part A, Future constitution and government of Palestine, A. (3): “Independent Arab and Jewish States and the Special International Regime for the City of Jerusalem, set forth in part III of this plan, shall come into existence in Palestine two months after the evacuation of the armed forces of the mandatory Power has been completed but in any case not later than 1 October 1948. The boundaries of the Arab State, the Jewish State, and the City of Jerusalem shall be as described in parts II and III below.”

⁶¹ For a thorough analysis of the Partition Plan put in its historical context, see *Ruth Gavison* (ed.), *The Two-State Solution, The UN Partition Resolution of Mandatory Palestine*, New York 2013. The Partition Plan laid out in some detail provisions for the protection of the freedom of worship, minority rights, and the regulation of citizenship upon independence of the Jewish and Arab states, to be affirmed in declarations made by either state. The declarations were never made, but the provisions contributed to ensure freedom of worship, access to sacred sites, and minority rights and thus provide an important foundation for a permanent status agreement to build on. The Partition Plan envisaged an economic union between the Jewish and Arab states, comprising a customs union, a joint currency, infrastructural cooperation and resource sharing, and freedom of movement.

⁶² *Mark Tessler*, *A history of the Israeli-Palestinian Conflict*, Bloomington and Indianapolis, 1994, pp. 284-287.

⁶³ *Mike Berry* and *Greg Philo*, *Israel and Palestine, Competing histories*, London 2006, p. 25, *Victor Kattan* *From coexistence to conquest, International Law and the origins of the Arab-Israeli conflict, 1891-1949*, London and New York 2009, p. 156. Resolution 181 recommended the division of Palestine with the Jewish state allotted 5,700 square miles including the fertile coast areas, while the Arab state was allotted 4,300 square miles comprised of mostly hilly areas. *Berry* and *Philo* argue that for the Arabs the partition plan was

“a major blow, they believed it was unfair that the Jewish immigrants, most of whom had been in Palestine less than thirty years, and who owned less than 10 per cent of the land, should be given more than half of Palestine including best arable land.” It must be noted though, that the Partition Plan was consistent with self-determination of both peoples and gave effect to rights entrenched to the Jewish people in the Covenant of League of Nations. *Kattan*, points out that “although land ownership is not commensurate with territorial sovereignty under international law, one would have thought that in marking the frontier between the Jewish state, the Arab state and the corpus separatum (Jerusalem and Bethlehem), the boundary commission would have taken into consideration those areas in which the land was predominantly Arab owned or alternatively partitioned those areas in which Arabs formed a majority of the population from those parts where Jews were preponderant [...]”, p. 157.

⁶⁴ *Benny Morris*, *1948: A history of the First Arab-Israeli War*, New Haven and London 2008, p. 75.

⁶⁵ While David Ben-Gurion referred to the 1948 War as “*Milchemet Hakommehut*” (the “War of Establishment,” or the “War of Sovereignty,” or translated literally as the “War of Uprising”), the Israeli army referred to it as “*Milchemet Hashichrur*” (the “War of Liberation”), see *Benny Morris*, *1948: A history of the First Arab-Israeli War*, New Haven and London 2008, pp. 76, 396 and *Anita Shapira*, *Israel, A history*, Waltham, MA 2012, p. 156. The Palestinians commonly refer to it as the “1948 War” or “*Al Nakba*” (the “Catastrophe”). In Israel, the 1948 War is commonly referred to as *Milchemet Ha’atzmaut* (the “War of Independence”).

a conventional war between Israel's armed forces, Haganah (replaced by the "Israel Defence Forces" on June 1, 1948), and the armies of Syria, Egypt, Transjordan and Iraq, with contingents from other Arab countries. This stage started with the Pan-Arab invasion on May 15, 1948, and lasted until January 1949. The 1948 War officially ended in July 1949.⁶⁶

II. The Establishment of the State of Israel

In the afternoon of May 14, 1948, hours before the British Mandate expired, David Ben-Gurion gathered the members of the Jewish People's Council ("Moetzet Ha'Am"), which was an assembly of leaders from different Jewish political parties to vote on declaring independence. Together they approved the "Declaration of the Establishment of the State of Israel", also known as the "Israeli Declaration of Independence".⁶⁷ The text of the

Declaration did not define the State's borders but rather refers to the establishment of a Jewish state in "Eretz Israel" (the "Land of Israel") "based on the strength of the Resolution of the UN General Assembly".⁶⁸ All residents within the territory governed by the people's council were encouraged to become citizens with equal rights of the newly established state. The Declaration also stated that the People's Council would act as a temporary legislature and that the executive organ, the "People's Administration" ("Minhelet Ha'Am"), would act as the provisional government of the State of Israel. In response, the United States immediately recognized Israel's independence. The Soviet Union followed on May 17, 1948. On May 15, 1948, the Israeli government issued an injunction officially abolishing the MacDonald White Paper.

The Arab states considered the establishment of Israel as an illegal and illegitimate act.⁶⁹ The day

⁶⁶ *Anita Shapira*, *Israel, A history*, Waltham, MA 2012, p. 157; *Benny Morris*, *1948: A History of the First Arab-Israeli War*, New Haven and London 2008, p. 77. During first stage of the civil war the Arabs held the initiative and the 1920 established Jewish underground military organization "Haganah" was on the strategic defensive. In early April 1948 the Haganah went over to the offensive and by mid-May cursing the Palestinians. This second stage of the war involved major campaigns and battles and resulted in conquest of territory, mainly by newly founded Israel Defense Forces. At its end emerged clear front lines marking a continuous Israeli-held piece of territory with the areas beyond it under Arab control. Three factors were important in this context: First, most of the fighting took place in areas assigned for Jewish statehood, except being Jerusalem, assigned for international control, and the largely Arab-populated "corridor" to it from Tel Aviv. Second, the Jewish and Arab communities and western and northern Palestine were thoroughly intermingled (In Haifa, Jaffa, Tel Aviv, Jerusalem, Safed, Tiberias the populations were mixed, with Arabs often sitting astride routes to the Jewish areas and Jews dominating the routes to and from Arab neighbourhoods). Third, the civil war took place while Britain ruled the country and while its military forces were deployed in various regions.

⁶⁷ David Ben-Gurion, born on October 16, 1886, as David Grün in Plonsk, Poland emigrated to Palestine in 1906 and headed the World Zionist Organisation from 1946 onwards. Ben-Gurion became the first Prime Minister of the State of Israel from May 17, 1948, until January 26, 1954, and fulfilled this role again from November 3, 1955, until June 26, 1965, see *Anita Shapira*, *Ben-Gurion, Father of Modern Israel*, New Haven and London 2014, p. 1.

⁶⁸ Israel Ministry of Foreign Affairs, *The Declaration of the Establishment of the State of Israel*, May 14, 1948, available at <http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/declaration%20of%20establishment%20of%20state%20of%20israel.aspx>, accessed on February 3, 2016. The Declaration also includes the principle of equality: "The state of Israel [...] will ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex."

⁶⁹ *Viktor Kattan*, *From coexistence to conquest, International Law and the origins of the Arab-Israeli conflict, 1891-1949*, London and New York 2009, p. 156; *Edward Said*, *The Question of Palestine*, New York 1980, p. 99; *Clement Henry Dodd* and *Mary E. Sales*, *Israel and the Arab World*, New York 2015, pp.84-90: Document VI, Statement Issued by the Governments of the Arab League States on the occasion of the entry of the Arab armies into Palestine, May 15, 1948: "Palestine was part of the former Ottoman Empire subject to its law and represented in its parliament. The overwhelming majority of the population of Palestine were Arabs. There was in it a small minority of Jews that enjoyed the same rights and bore the same responsibilities as the (other) inhabitants, and did not suffer any ill-treatment on account of its religious beliefs. The holy places were inviolable and the freedom of access to them was guaranteed. [...] When the General Assembly of the United Nations issued, on 29 November 1947, its recommendation concerning the solution of the Palestine problem, [...] the Arab States drew attention to the injustice implied in this solution (affecting, *J.H.*) the right of the people of Palestine to immediate independence, as well as democratic principles and the provisions of the Covenant of the League of Nations and (the Charter, *J.H.*) of the United Nations. [...] Now that

after Israel declared its independence, the League of Arab states (“the Arab League”) declared war on Israel and an armed conflict subsequently broke out between Israel and the armed forces of Syria, Jordan, Lebanon, Egypt and Iraq.⁷⁰ In May of 1948, Jews feared of the possibility of imminent defeat and even annihilation. These fears only began to dissipate after the Arab armies proved to be much smaller and, by and large, less competent than anticipated.⁷¹

On May 29, 1948, the UN Security Council imposed an arms embargo on all Middle East combatants, which lasted until August 11, 1949. It has been argued that the keys to the Yishuv’s military victory were its superior motivation, a stronger economy than that of most of the Arab states, superior armaments⁷², effective military and administrative organization, and a qualitative edge in manpower, with comparatively better educated and

militarily experienced combatants.⁷³ There is no confirmed statistic regarding the number of casualties during the 1948 War. It is estimated that Arab forces suffered between 10,000 and 12,000 casualties. With the death of nearly 6,000 soldiers and civilians, which amounted to 1 per cent of Israel’s total Jewish population at the time, Israel also suffered severe losses.⁷⁴

Between March and July 1949, Israel agreed to several bilateral armistice agreements with its neighbouring Arab states (the “1949 Armistice Agreements”). The armistice agreements were signed with Egypt on February 24, Lebanon on March 23, Jordan on April 3, and Syria on July 20. As a consequence of the 1948 War and the armistice agreements, Egypt occupied the Gaza Strip and Jordan took control of the West Bank of Transjordan

the British mandate over Palestine has come to an end, without there being a legitimate constitutional authority in the country [...] the Governments of the Arab States declare the following: First: That the rule of Palestine should revert to its inhabitants, in accordance with the provisions of the Covenant of the League of Nations and (the Charter, *J.H.*) of the United Nations and that (the Palestinians) should alone have the right to determine their future. Second: Security and order in Palestine have become disrupted. The Zionist aggression resulted in the exodus of more than a quarter of a million of its Arab inhabitants from their homes and in their taking refuge in the neighbouring Arab countries. The events which have taken place in Palestine have unmasked the aggressive intentions and the imperialistic designs of the Zionists, including the atrocities committed by them against the peace-loving Arab inhabitants, especially in Dayr Yasin, Tiberias and others. Nor have they respected the inviolability of consuls, as they have attacked the consulates of the Arab States in Jerusalem. [...] This state of affairs would render Palestine without any governmental machinery capable of restoring order and the rule of law to the country, and of protecting the lives and properties of the inhabitants.”

⁷⁰ *Ari Shavit*, *My Promised Land, the Triumph and Tragedy of Israel*, New York 2013, p. 106. The Arab League is a regional organisation of Arab countries and countries around North Africa, the Horn of Africa, and Southwest Asia, which in 1945 consisted of seven members: Egypt, Iraq, Lebanon, Syria, Saudi Arabia, Jordan and Yemen.

⁷¹ *Benny Morris*, 1948: A History of the First Arab-Israeli War, New Haven and London 2008, p. 205. On May 15, 1948, only 60 per cent of Haganah troops had arms. On paper, Haganah estimated the Arabs as much stronger, as they were (165,000 anticipated versus 20,000 invading forces in practice); the same applies to the Arabs, who overestimated the Haganah’s strength. In fact, in 1948, twenty to forty-four

year old males constituted 22 per cent of the Jewish population, Israel succeeded in drafting 13 per cent into uniform. By mid-July the newly founded Israel Defense Forces counted 65,000 thousand troops, by October 88,000 thousand and by January 1949 it was already 108,000. Egyptian and Syrian forces together had about 20,000 combat troops (5,500 Egyptians, between 4,500 and 6,000 Syrians, 2,700 Iraqis, 2,000 Lebanese, and later on 4,500 Jordanians). During the following two to three weeks, more troops from Egypt, Syria, and Iraq with further Jordanian troops numbering around 8,000 arrived at the fronts. “The Arab armies were joined by troops from Yemen, Morocco, Saudi Arabia and Sudan and by mid-May 1948 probably had 40,000-50,000 troops in Palestine, rising to 60,000-80,000 by mid-October 1948.”

⁷² *Benny Morris*, 1948: A History of the First Arab-Israeli War, New Haven and London 2008, p. 206. Whereas the Haganah had made its main arms purchases between October 1947 and March 1949, the Arabs had failed to prepare large stockpiles of weaponry, ammunition and spare parts before May 15, so the Embargo hit the Arab troops much harder than Israel.

⁷³ *Benny Morris*, *The Birth of the Palestinian Refugee Problem Revisited*, Cambridge 2004, p. 14.

⁷⁴ *Benny Morris*, 1948: A History of the First Arab-Israeli War, New Haven and London 2008, p. 406; *Ephraim Karsh*, *Fabricating Israeli History, The ‘New Historians’*, 2nd rev. ed., London/Portland 2000, p. 22; *Adam Garfinkle*, *Politics and Society in Modern Israel*, New York 2000, p. 61; *Dennis Ross*, *The Missing Peace, The Inside Story of the Fight for Middle East Peace*, New York 2004, p. 20.

(the “West Bank”). On April 24, 1950, Jordan formally annexed the West Bank and Jerusalem.

The fate of the Arab population that lived prior to the 1948 War in areas of the Mandate of Palestine that would become part of the State of Israel is subject to a debate among historians, journalists and jurists.⁷⁵ In some cities, Arab leaders instructed the local residents to flee to not be killed or enable the

Arab troops to achieve an easy victory.⁷⁶ In other cities, the Arab population was forcibly expelled and in some instances killed.⁷⁷ During and in the aftermath of the armed conflict, over 150,000 Arabs remained in Israel and 700,000 persons (a disputed figure) fled, were expelled or voluntarily left their original place of residence.⁷⁸ Population transfer, whilst tolerated in some areas, was not part of official Israeli governmental policy.⁷⁹ It is fair to

⁷⁵ See *Benny Morris*, 1948: A History of the First Arab-Israeli War, New Haven and London 2008; *Benny Morris*, The Birth of the Palestinian Refugee Problem Revisited, Cambridge 2004; *Anita Shapira*, Israel, A history, Waltham, MA 2012; *Rashid Khalidi*, Palestinian Identity, The Construction of Modern National Consciousness, New York 1997; *Ephraim Karsh*, Fabricating Israeli History, The ‘New Historians’, 2nd rev. ed., London/Portland 2000; *Avi Shlaim*, The Debate about 1948, International Journal of Middle East Studies, Vol. 27, No. 3 (1995), pp. 287-304; *Ari Shavit*, My Promised Land, the Triumph and Tragedy of Israel, New York 2013; *Viktor Kattan*, From coexistence to conquest, International Law and the origins of the Arab-Israeli conflict, 1891-1949, London and New York 2009; *Edward Said*, The Question of Palestine, New York 1980; *Clement Henry Dodd* and *Mary E. Sales*, Israel and the Arab World, New York 2015.

⁷⁶ *Anita Shapira*, Israel, A history, Waltham, MA 2012, p. 162; *Benny Morris*, 1948: A History of the First Arab-Israeli War, New Haven and London, p. 411: “At first, during December 1947-March 1948, it was the middle-and upper class families who fled, abandoning the towns, later from April on, after the Yishuv shifted to the offensive, it was the urban and rural masses who fled, in a sense emulating their betters. Most of the displaced likely expected to return to their homes within weeks or months, on the coattails of victorious Arab armies or on the back of a UN decision or Great Power intervention. Few expected that their refugeedom would last a lifetime or encompass their children and grandchildren. But it did.” *Dennis Ross*, The Missing Peace, The Inside Story of the Fight for Middle East Peace, New York 2004, p. 36: “Nearly 750,000 Arabs fled Palestine, demoralised, disoriented, homeless, and with no clear place to go. It is part of the Palestinian narrative that the refugees were forced by the Israelis to leave their homes. Naturally, the Israeli narrative is different, with far greater emphasis put on refugees fleeing because they thought the Arabs would, as Nusseibeh said, make quick work of the Jews - and that once done they could return. While there is some truth to this, there is no denying that in many places the Israelis did force Arabs to leave and, with the exception of Haifa, the Israelis shed no tears over the Arab departure from the new state.”

⁷⁷ *Leslie Stein*, The Making of Modern Israel, 1948-1967, Cambridge 2009, p. 77; *Ari Shavit*, My Promised Land, the Triumph and Tragedy of Israel, New York 2013, p. 107: “[O]n July 11, two 3rd Regiment platoons advance from the

conquered village of Daniyal toward the olive orchards separating Ben Shemen from Lydda. Strong machine gun fire from the outskirts of Lydda halts them. In the meantime, Moshe Dayan’s (Israeli commander of the 89th battalion, later Israel’s Minister of Defense; *J.H.*) Regiment 89 arrives in Ben Shemen. By the water fountain Dr. Lehmann built for his Arab neighbours, Dayan forms the regiment into an armoured column. One behind the other, they stand at the ready: a giant armoured vehicle mounted with a canon, menacing half-tracks, and machine-gun-equipped jeeps. In the late afternoon the column leaves Ben Shemen and speeds into the city of Lydda, firing at all in its way. In forty-seven minutes of blitz, more than a hundred Arab civilians are shot dead – women, children, old people. Regiment 89 loses nine of its men.”

⁷⁸ *Riccardo Bocco*, UNRWA and the Palestinian Refugees: A history within history, in: Refugee Survey Quarterly, Vol. 28, Issue 2-3 (2009), pp. 229-252, 237, available at <http://rsq.oxfordjournals.org/content/28/2-3.toc>; *Anita Shapira*, Israel, A history, Waltham, MA 2012, p. 174: “The war’s biggest losers were the Palestinians. By the war’s end about 700,000 Palestinians had been exiled from their homeland.” *Morris* (Cambridge 2004) describes how the number of refugees is also disputed between Israeli and Arab sources. The Israeli Central Bureau of Statistics estimated the number at about 577,000; the Arab states often spoke of 900,000. *Morris* says that “if pressed, 700,000 is probably a fair estimate.” *Benny Morris*, The Birth of the Palestinian Refugee Problem Revisited, Cambridge 2004, p. 604; *Ari Shavit*, My Promised Land, the Triumph and Tragedy of Israel, New York 2013, p. 131.

⁷⁹ The number of 700,000 is disputed. Transfer or expulsion was never adopted by the Zionist movement or its main political groupings as official policy at any stage of the movement’s evolution – not even in the 1948 War, see *Benny Morris*, 1948: A History of the First Arab-Israeli War, New Haven and London 2008, p. 407; Disagreeing *Rashid Khalidi*, Palestinian Identity, The Construction of Modern National Consciousness, New York 1997, p. 179. Interview of *Ari Shavit* with *Benny Morris*, Survival of the Fittest, January 8, 2004, Haaretz: “From April 1948, Ben-Gurion is projecting a message of transfer. There is no explicit order of his in writing, there is no orderly comprehensive policy, but there is an atmosphere of [population] transfer. The transfer idea is in the air. The entire leadership understands that this is the idea.

argue that the Palestinian refugee problem emerged as a result of the 1948 War and the neighbouring Arab states' refusal to absorb the refugees.⁸⁰

From 1948 onwards, the Palestinians regard Israelis, who were the victors, as the conquerors and themselves as the true victims of the 1948 War, a sentiment that many Israelis, a great number of them Holocaust survivors or their descendants, are outraged by till this day.⁸¹ Unlike the Arab states, the young Jewish state was able to propagate a more positive view of the events of 1948 by regarding them as tragic but necessary to the survival of the Zionist enterprise.⁸² There are understandable reasons for the two conflicting narratives about the fate of Arabs in Palestine after the 1948 War:

“The question of what in 1948 turned hundreds of thousands of Palestinians into refugees has been a fundamental propaganda issue between Israel and the Arab states ever since. The general Arab claim, that the Jews expelled Palestine's Arabs with predetermination and preplanning, as part of a systematic, grand political-military design, has

The officer corps understands what is required of them. Under Ben-Gurion, a consensus of transfer is created [...] Of course, Ben-Gurion was a transferist. He understood that there could be no Jewish state with a large and hostile Arab minority in its midst. There would be no such state. It would not be able to exist [...] Ben-Gurion was right. If he had not done what he did, a state would not have come into being. That has to be clear. It is impossible to evade it. Without the uprooting of the Palestinians, a Jewish state would not have arisen here” available at <http://www.haaretz.com/survival-of-the-fittest-1.61345>, accessed on January 31, 2016.

⁸⁰ *Anita Shapira*, *Israel, A history*, Waltham, MA 2012, p. 175. Rightly observed by *Benny Morris* (New Haven and London 2008), who estimates the number at 700,000, the word “refugee” in this context is inaccurate. Refugees are usually defined as people displaced from their countries. According to Morris, as regards two-thirds of this number, they were displaced from their homes in areas that became the State of Israel and came to rest in other parts of Palestine (the West Bank and Gaza Strip). About a third came to rest in Lebanon, Syria and Transjordan. Still less accurate is the definition of the descendants of the bulk of those displaced – their children and grandchildren and great-grandchildren – as refugees, because they themselves were never displaced and, in any case, live in areas of Palestine. Nonetheless, the United Nations applied the term to all those displaced from their homes in the course of the war – and to their descendants, wherever they now reside. The United Nations now has about four million Palestinian “refugees” on its rolls, see *Benny Morris*, *1948: A History of the First Arab-Israeli War*, New Haven and London 2008, p. 406; *Ephraim Karsh*, *Fabricating*

served to underline the Arab portrayal of Israel as a vicious, immoral robber state. The official Israeli narrative, that the Palestinians fled ‘voluntarily’ (meaning not as a result of Jewish compulsion) or that they were asked or ordered to do so by their leaders and by the leaders of the Arab states, helped leave intact the new state's self-image as the haven of a much persecuted people, a body politic more just, moral and deserving of the West's sympathy and help than the surrounding sea of reactionary, semi-feudal, dictatorial Arab societies.”⁸³

UN Security Council Resolution 302 (IV), adopted on December 8, 1949, established the United Nations Relief and Works Agency for Palestine Refugees in the Near East (“UNRWA”). UNRWA began operating in May 1950 and was tasked with the care of Palestinian refugees living in various refugee camps throughout the West Bank, Gaza Strip, Syria, Jordan and Lebanon.⁸⁴

In addition to the Palestinian refugee crisis, the 1948 War also created a second major refugee problem. From 1948 to 1970, between 500,000 to 1,000,000 Jews left their homes in Arab countries.⁸⁵

Israeli History, The ‘New Historians’, 2nd rev. ed., London/Portland 2000, p. 22.

⁸¹ *Avi Shlaim*, *The Debate about 1948*, *International Journal of Middle East Studies*, Vol. 27, No. 3 (1995), pp. 287-304, 287.

⁸² *Ari Shavit*, *My Promised Land, the Triumph and Tragedy of Israel*, New York 2013, p. 108: “[L]ydda is our (Israeli, *J.H.*) black box. In it lies the dark secret of Zionism. The truth is that Zionism could not bear Lydda. From the very beginning there was a substantial contradiction between Zionism and Lydda. If Zionism was to be, Lydda could not be. If Lydda was to be, Zionism could not be.”

⁸³ *Benny Morris*, *The Birth of the Palestinian Refugee Problem Revisited*, Cambridge 2004, p. 2.

⁸⁴ UNRWA operates under the authority of the Secretary-General of the UN and most of its employees are Palestinians.

⁸⁵ *Morris* (New Haven and London 2008) assesses the number to be 500,000 - 600,000 Jews who fled Arab countries, see *Benny Morris*, *1948: A History of the First Arab-Israeli War*, New Haven and London, p. 412; *Israel Ministry of Foreign Affairs*, *Address by Prime Minister Shamir at the Madrid Peace Conference*, October, 31 1991, available at http://www.mfa.gov.il/mfa/foreignpolicy/mfa_documents/yearbook8/pages/243%20address%20by%20prime%20minister%20shamir%20at%20the%20madrid.aspx, accessed on March 22, 2016: “After their attack on Israel

Most of them were intimidated into flight or were expelled from their native countries. A majority of these refugees fled to Israel, while a minority relocated to France, Britain and other Western countries. The main reason for their flight was Arab hostility, which was triggered by the armed conflict in Palestine and specific governmental measures. This hostility, which included pogroms against the Jewish populations of the Arab states, amounted to institutionalized discrimination and the oppression of Jewish minority communities.⁸⁶

III. The Foundation of the Palestine Liberation Organization

After the 1948 War, the notion of the Palestinians as an independent people was overtaken by the notion of Pan-Arabism. The Palestinians did not have a strong, independent leadership prior to 1948 and their political position was certainly not improved by the 1948 War. Upon the end of the 1948 War, the Arab states, for the most part, still had control over the fate of the Palestinians.⁸⁷ Even though the Arab states recognized the Palestinian cause for an independent state and self-determination, it became a tool in inter-Arab rivalries and “a stick with which to beat one’s Arab rivals”.⁸⁸ Egyptian President Gamal Abdel Nasser,

failed, the Arab regimes continued their fight against Israel with boycott, blockade, terrorism and outright war. Soon after the establishment of Israel, they turned against the Jewish communities in Arab countries. A wave of oppression, expropriation and expulsion caused a mass exodus of some 800,000 Jews from lands they had inhabited from before the rise of Islam. Most of these Jewish refugees, stripped of their considerable possessions, came to Israel. They were welcomed by the Jewish State. They were given shelter and support, and they were integrated into Israeli society together with half a million survivors of the European holocaust.”

⁸⁶ *Benny Morris*, 1948: A History of the First Arab-Israeli War, New Haven and London 2008, p. 412. The first Jews to leave the Arab states were the Jews of Syria (1947-1948) and Libya (1949-1951). Then Jews from Yemen left for the newly founded State of Israel (May 1949-August 1950), followed by Jews from Iraq (early 1950s), from Egypt (mid-1950s) from Algeria, Tunisia (mid-1950s) and Morocco (1955-1956, 1961); *David Harris*, Israel and the Arab-Israeli Conflict, A Brief Guide for the Perplexed, American Jewish Committee, New York 2015, pp. 10-12.

⁸⁷ *Baruch Kimmerling* and *Joel S. Migdal*, The Palestinian people, A history, Cambridge 2003, pp. 225-226.

for example, would often preach about Arab nationalism and thus quickly assumed a hero status in the Arab world by seemingly provoking the Western states and Israel, who in his opinion, humiliated the Arabs for so long.⁸⁹

At the first summit of the Arab League in Cairo, held on January 13–16, 1964, Nasser advocated for the establishment of an organization that would represent the Palestinian people. Half a year later, on June 2, 1964, and after the convention of the Palestinian National Council in East Jerusalem on May 28, the Palestine Liberation Organization (the “PLO”) was established, with Ahmed Al-Shuqueiri becoming its first Chairman.⁹⁰ The PLO is an umbrella organization of different Palestinian factions, which represents Palestinian interests to Arab countries, the non-Muslim Diaspora and international organizations.⁹¹ In 1964, the PLO’s stated goal was the liberation of Palestine. At the time, the PLO denied Israel’s right to exist and considered Jews and Arabs of Palestinian origin as Palestinians. The text of the PLO’s Charter became even more strongly anti-Zionist after the Six-Day War, also known as the 1967 Arab-Israeli War (the “1967 War”). In 1968, the amended PLO-Charter called for “the elimination of Zionism in Palestine

⁸⁸ *Dennis Ross*, The Missing Peace, The Inside Story of the Fight for Middle East Peace, New York 2004, p. 36.

⁸⁹ Nasser lost his status as hero in 1967 after the war and after the Arab Nationalists failed. But the Palestinians understood that political achievements will only come if they look out for themselves.

⁹⁰ *As’ad Abu Khalil*, Ahmad Shuqayri, in: *Cheryl A. Rubenberg* (ed.), Encyclopedia of the Israeli-Palestinian Conflict, Vol. 3, Boulder and London 2010, p. 1382. Ahmed Al-Shuqueri was born on January 1, 1908, in Tebnine, South Lebanon to a Turkish mother and Palestinian Arab father. He was a prominent lawyer during the British Mandatory Period and was the Secretary-General of the Arab League between 1950 and 1956.

⁹¹ *Nathan J. Brown* and *Daniel Nerenberg*, Palestine in Flux, From Search for State to Search for Tactics, Carnegie Endowment for International Peace, Washington, DC 2016, p. 9, available at http://carnegieendowment.org/files/CEIP_CP264_Brown-Nerenberg_Final.pdf, accessed on April 4, 2016.

and the liberation of Palestine through armed struggle”.⁹²

In 2016, the Permanent Observer Mission of Palestine to the United Nations described the PLO as the “national liberation movement striving to achieve the political goals of the Palestinian people” and “fulfilling tasks related to their lives and communities in areas such as health, education and social services”.⁹³

Currently, the largest faction in the PLO is “Fatah”, a secular-national party founded by Yasser Arafat and others in Kuwait in 1959, which aims to restore Arab sovereignty in Mandatory Palestine. In contrast to the Fatah’s early years, when it viewed armed violence as legitimate tool to achieving political goals, in principle, Fatah believes in bilateral negotiations with Israel towards achieving a Two State Solution. As bilateral negotiations have not brought about statehood for Palestine, the PLO started promoting unilateral recognition of the State of Palestine by other states and international organizations.

The PLO’s second largest faction is the “Popular Front for the Liberation of Palestine” (“PFLP”). The PFLP is a secular Marxist group founded by George Habash and others in 1967, which seeks the liberation of Palestine, employing the use of violence when circumstances dictate. The PFLP declined the offer to join a Hamas-led unity government in Gaza

after the elections of 2006 and boycotts the PLO’s Executive Committee for not holding elections since 2006. The PFLP is considered a terrorist organization amongst others by Israel, the United States, Canada and the European Union (“EU”).⁹⁴

IV. The 1967 War, UN Security Council Resolution 242 and the Emergence of Palestinian Nationalism

1. The 1967 War

The tension that ultimately led to the 1967 War (also referred to as the “Six-Day War” or the “June War”), which was fought between June 5 and June 10, 1967, had already been building up for a year.⁹⁵ A variety of factors and events led Israel to carry out a pre-emptive strike against Egypt on June 5, 1967. On the military level, starting from May 16, 1967, Egypt began gathering troops in the Sinai desert which ultimately amounted between 60,000 and 80,000, while Iraqi troops were positioned in Jordan. Additionally, on May 22, 1967, Egypt blockaded the Straits of Tiran, the narrow sea passages between the Sinai and Arabian peninsulas, from Israeli vessel passage.⁹⁶ On the diplomatic level, on May 18, 1967, Egypt expelled the United Nations Emergency Force (“UNEF”) from Egyptian territory.⁹⁷ Egypt also

⁹² Original Palestinian National Charter 1964, in: *Terje Rød-Larsen, Nur Laq and Fabrice Aidan, The Search for Peace in the Arab-Israeli Conflict, A Compendium of Documents and Analysis*, Oxford 2014, p. 1111; Palestinian National Charter 1968, in: *Terje Rød-Larsen, Nur Laq and Fabrice Aidan, The Search for Peace in the Arab-Israeli Conflict, A Compendium of Documents and Analysis*, Oxford 2014, p. 1114.

⁹³ Permanent Observer Mission of The State of Palestine to the UN, “Palestine Liberation Organization”, available at <http://palestineun.org/about-palestine/palestine-liberation-organization>, accessed on January 12, 2016.

⁹⁴ Israel Ministry of Defense, Designation of Terrorist Organizations, Forbidden Entities and Restraining Orders (in Hebrew), November 23, 2015, available at http://www.mod.gov.il/Defence-and-Security/Fighting_terrorism/Pages/default.aspx, accessed on January 30, 2016; U.S. Department of State, Foreign Terrorist Organizations, Designated on October 8, 1997, available at <http://www.state.gov/j/ct/rls/other/des/123085.htm>, accessed on January 30, 2016; Government of Canada, Public Safety Canada, Currently listed entities, Designated on November

13, 2003, available at <http://www.publicsafety.gc.ca/cnt/ntnl-scrnt/cntr-trrrsm/lstd-ntts/crrnt-lstd-ntts-eng.aspx#2041>, accessed on January 30, 2016; For Council Decision 2430 of December 2015 in which Hamas is listed as entity subject to combat-terrorism measures, see <http://www.consilium.europa.eu/en/policies/fight-against-terrorism/terrorist-list/>, accessed on January 30, 2016.

⁹⁵ *Randolph S. Churchill and Winston Churchill, The six day war*, London 1967, p. 29.

⁹⁶ *Randolph S. Churchill and Winston Churchill, The six day war*, London 1967, pp. 15, 38.

⁹⁷ UNEF’s mandate was to secure calm on the border between Israel and Egypt in accordance with UN General Assembly Resolution 1001 of November 7, 1956, following the “Suez Crisis” of 1956, when Israeli forces, with the support of Britain and France, at first took control of the Sinai Peninsula but later completely withdrew after UN and U.S. pressure.

entered into a defence agreement with Syria on November 4, 1966,⁹⁸ and with Jordan on May 30, 1967.⁹⁹ Finally, the war-rhetoric used and statements made by Egyptian President Gamal Abdel Nasser¹⁰⁰ and PLO Chairman Ahmad Shuqueiri¹⁰¹ contributed to Israel's decision to strike the Egyptian Air Force.¹⁰²

After the War, on June 19, 1967, Israeli Foreign Minister Abba Eban justified Israel's attack on Egypt before the United Nations with the following statement:

“Never in history have blockade and peace existed side by side. From May 24 onward, the question of who started the war or who fired the first shot became momentarily irrelevant...From the moment at which the blockade was imposed, active hostilities had commenced and Israel owed Egypt nothing of her Charter rights.”¹⁰³

According to Churchill and Churchill, the most significant event that led to the 1967 War was the unexpected visit of Jordan's King, Hussein bin Talal to Cairo on May 30, 1967.¹⁰⁴ After his stay of a mere six hours, Egypt and Jordan signed a defence

agreement. Thus, this visit is regarded as a major turning point in Arab-Israeli tensions. According to the strategic assessment of the Israeli government at the time, an alliance between Egypt and Jordan could not be tolerated by Israel. Such an alliance could have exposed Israel to an attack from its most vulnerable geographical point due to the fact that Jordan provided for a potential hostile base for an attack on Israel only twelve miles from the Mediterranean coast. According to this defence agreement, Egypt's Chief of Staff would command both Jordanian and United Arab Republic (“U.A.R.”) forces in the event of war, thus establishing an Egyptian-Jordanian pincer that could be commanded from Cairo.

The 1967 War began in the early morning of Monday, June 5, 1967, with Israeli air-strikes hitting the Egyptian Air Force, effectively destroying them as a functional fighting force after less than three hours of air-strikes.¹⁰⁵ On the same day at around noon, after hearing false stories of Egyptian victory, Syria and Jordan attacked Israel. The Syrian Air Force dropped bombs near the oil refinery in Haifa Bay and attacked the airfield in Megiddo, where the

⁹⁸ Michael B. Oren, *Six Days of War, June 1967 and the making of the modern Middle East*, Toronto 2002, p. 31.

⁹⁹ Randolph S. Churchill and Winston Churchill, *The six day war*, London 1967, p. 52.

¹⁰⁰ Randolph S. Churchill and Winston Churchill, *The six day war*, London 1967, p. 38. Part of Nasser's war-rhetoric included the following statement: “The Israeli flag will no longer pass the Gulf of Aqaba; our sovereignty over the Gulf is indisputable. If Israel threatens us with war, we will reply thus: Go ahead, then.” In addition, Nasser addressing the leaders of the Pan-Arab Federation of Trade Unions on May 26, saying that if war came “it will be total and the objective will be to destroy Israel. We feel confident that we can win and are ready now for a war with Israel ... This time it will not be like 1956 because we were not fighting Israel at that time, but Britain and France.” See Churchill/Churchill, *The six day war*, p. 47.

¹⁰¹ Ahmad Shuqueiri is quoted as saying in Amman on May 30, 1967, that “it was possible and even most likely that (his; J.H.) Palestine Liberation Army would fire the first shot” [...] “if the Arabs took Israel”, he said, “the surviving Jews would be helped to return to their native countries [...] but my estimation is that none will survive [...]” see Randolph S. Churchill and Winston Churchill, *The six day war*, London 1967, p. 52.

¹⁰² Already on May 23, 1967, Israel's Prime Minister Levi Eshkol, speaking in the Knesset said that interference with

Israeli shipping in the Straits of Tiran would be seen as an act of war. On the same day, U.S. President Lyndon B. Johnson declared that the blockade of Israeli shipping by Egypt was illegal and that the United States was firmly committed to support the integrity of all the nations of the Middle East. Johnson pointed out that the U.S. was “dismayed at the hurried withdrawal without action by either the General Assembly or the Security Council”, see Randolph S. Churchill and Winston Churchill, *The six day war*, London 1967, p. 45.

¹⁰³ Statement before the UN Security Council, Israeli Minister of Foreign Affairs, Statement to the Security Council by Foreign Minister Eban, June 6, 1967, available at http://www.mfa.gov.il/mfa/foreignpolicy/mfadocuments/yea_rbook1/pages/19%20statement%20to%20the%20security%20council%20by%20foreign%20mi.aspx, accessed on January 5, 2016. See also Edi Gnesa, *Die von Israel besetzten Gebiete im Völkerrecht, Eine besetzungsrechtliche Analyse*, Zürich 1981, p. 19.

¹⁰⁴ Randolph S. Churchill and Winston Churchill, *The six day war*, London 1967, p. 53.

¹⁰⁵ Randolph S. Churchill and Winston Churchill, *The six day war*, London 1967, p. 85.

Israeli armed forces staged mock-up aircrafts. Israel retaliated with a counter-attack on a Syrian Air Force base near Damascus. Jordanian ground forces launched an offensive against Israel and fighting also broke out against Jordan in Jerusalem. On the Egyptian front, Israeli ground forces also moved deeper into the Sinai Peninsula. In Jerusalem, Israel initially tried to protect Mount Scopus, an Israeli enclave on Jordanian territory, which Israel feared would not be able to withstand a Jordanian attack. Shortly after, Israel moved towards East Jerusalem and later fought the weakened Jordanian forces in the West Bank. After Israel's armed forces secured control of Jerusalem's Old City including the Western Wall, in the afternoon of June 7, 1967, Israel's Defence Minister Moshe Dayan, Chief of Staff of Israel's armed forces Yitzhak Rabin, and Commander of the Central Region Uzi Narkiss, finally entered the Old City of Jerusalem. The 1967 War officially ended on the evening of Saturday, June 10, 1967, when the Syrian and Israeli army ceased fire after the UN'S Security Council's repeated call to put an end to the hostilities.

Even though Israel was surrounded by hostile armies who were superior in quantity and quality of equipment and overwhelmingly superior in number of combatants, Israel had fought a war on three fronts and managed to not only survive, but to win with a resounding victory.¹⁰⁶ As a result of the hostilities, Israel was left in control of a significant amount of its opponents' territory, including the Gaza Strip, Sharm-el-Sheikh and the entirety of the Sinai Peninsula (up to the Suez Canal), the Old City of

Jerusalem, which was promptly reunited with the rest of Jerusalem, the West Bank of Jordan and Syria's Golan Heights.¹⁰⁷ For Israel's first Prime Minister and elder statesman, David Ben-Gurion, at the time not elected to a governmental position, two factors were necessary conditions for Israel to surrendering any captured territory. The first factor was that the Arabs must recognize the State of Israel and the second factor was the signing of a genuine peace treaty.¹⁰⁸

With its rapid gain in territory, Israel was now left with ruling over a million Arab inhabitants.¹⁰⁹ In addition to the 392,700 Arab residents in Israel, there were about 300,000 refugees of the 1948 War living in the West Bank and another 315,000 refugees in the Gaza Strip under Israel's control.¹¹⁰

As a result, when negotiating peace, Israel wished to prioritize the refugee issue. Before the war, the Egyptian government had prevented the refugees from Gaza from maintaining contact with Egypt or enjoying even the strictly limited liberties of the Egyptian people. Gaza refugees were only allowed to travel to Cairo if they had permits, which were usually difficult to obtain. With this severe lack of travel ability and a stagnant economy in Gaza, these 315,000 refugees were effectively prevented from gaining employment. Unlike Palestinian refugees in Jordan, Gaza refugees were not allowed to emigrate to other countries. Their survival depended on UNRWA. In Jordan, Palestinians refugees made up one tenth of the national population and there was an attempt to integrate them into the local economy.¹¹¹

¹⁰⁶ *Randolph S. Churchill and Winston Churchill*, *The six day war*, London 1967, p. 193.

¹⁰⁷ *Randolph S. Churchill and Winston Churchill*, *The six day war*, London 1967, p. 199; in an interview on June 29, 1967, former Prime Minister David Ben-Gurion said to Randolph Churchill in "The World at One BBC Radio" (broadcasted on July 12, 1967,) that not only the Straits of Tiran but also the Suez Canal should be free for Jewish navigation, according to international law. Furthermore, he said that Jerusalem must remain a Jewish city and also Hebron since "it was more Jewish even than Jerusalem". Furthermore, Ben-Gurion is quoted as saying that the people of the West Bank of the Jordan should receive autonomy and lead their own life as a free people but tied to Israel. When asked whether he views the victory as a turning point in Israel's history, Ben-Gurion answered that "in a way, yes, but if I had the choice, I would prefer to go back if possible. You cannot change the past but if I could prevent this war, I would

prefer to remain as we are, without any conquests, because we've paid a very high price for that; the best of our youth was killed, something like seven hundred people ... I prefer peace to any war, even if the war is a beneficent one, it's too high a price.", quoted by *Randolph S. Churchill and Winston Churchill*, *The six day war*, London 1967, p. 200.

¹⁰⁸ *Randolph S. Churchill and Winston Churchill*, *The six day war*, London 1967, p. 200.

¹⁰⁹ *Anita Shapira*, *Israel, A history*, Waltham, MA 2012, p. 305.

¹¹⁰ *Alexander Bligh*, *The Israeli Palestinians, An Arab minority in the Jewish State*, London 2003, p. 38.

¹¹¹ *Randolph S. Churchill and Winston Churchill*, *The six day war*, London 1967, pp. 200, 203. The authors argue that

There has been considerable discussion among jurists about the legality of Israel's use of force at the beginning of the 1967 War. According to Schwebel, the facts of the 1967 War demonstrate that Israel reacted "defensively" and according to Dinstein, in "anticipatory self-defence" against the threat and use of force against it by its Arab neighbours.¹¹² Any state using military force and asserting self-defence has to immediately explain itself to the UN Security Council. According to Israel's statement to the Security Council of June 6, 1967, a number of factors could have been regarded as Israel's justification for the attack¹¹³: An actual Egyptian attack on June 5, 1967, an imminent Egyptian attack, Egypt's shipping restriction (which could be interpreted as an actual attack) and/or the totality of

Egypt's mid-May 1967 course of conduct.¹¹⁴ Gray and Byers viewed Israel's assertion of "casus belli", or case for war, over Egypt's shipping restrictions as its primary justification for its attack on Egypt,¹¹⁵ while Cassese pointed out that Israel had referred to the Egyptian naval restrictions as an "act of war".¹¹⁶ While Cassese has noted that Israel did not formally invoke anticipatory self-defence after the naval restrictions had been imposed since May 22, Quigley rightly hints at Israel's cabinet decision on June 4, 1967, which did mention that Egypt was about to attack.¹¹⁷

As mentioned above, after the war, Shapira regarded Egypt's mid-May actions as an actual

the Palestinians were maintained and used as a depressed political class and as a political instrument against Israel, in an effort to maintain hatred and terrorism along the frontiers in order to remind the world of Arab claims to Palestine.

¹¹² *Stephen Schwebel*, What Weight to Conquest? *American Journal of International Law*, Vol. 64 (1970), pp. 344, 346: "The facts of June 1967, "Six Day War" demonstrate that Israel reacted defensively against the threat and use of force against her by her Arab neighbours," *Yoram Dinstein*, The Legal Issues of "Para-War" and Peace in the Middle East, *St. Johns Law Review*, Vol. 44 (1970), pp. 466 at 469-470, relativizing in *Yoram Dinstein*, War, Aggression and Self-Defence, 5th ed., Cambridge 2011, p. 207: "That, at least, was the widely shared perception (not only in Israel) in June 1967, based on sound judgement of events. Hindsight knowledge, suggesting that – notwithstanding the well-founded contemporaneous appraisal of events – the situation may have been less desperate than it appeared, is immaterial. The invocation of the right of self-defence must be weighed on the ground of reliable information available (and reasonably interpreted) at the moment of action, without the benefit of *post factum* wisdom. In the circumstances, as perceived in June 1967, Israel did not have to wait idly by for the expected shattering blow (in the military manner of the October 1973 'Yom Kipur' offensive), but was entitled to resort to self-defence as soon as possible."

¹¹³ Statement before the UN Security Council, See Israeli Minister of Foreign Affairs, Statement to the Security Council by Foreign Minister Eban, June 6, 1967, available at <http://www.mfa.gov.il/mfa/foreignpolicy/mfadocuments/yearbook1/pages/19%20statement%20to%20the%20security%20council%20by%20foreign%20mi.aspx>, accessed on February 3, 2016: "[...] But then there came a graver source of tension in mid-May, when abnormal troop concentrations were observed in the Sinai Peninsula. For the ten years of relative stability beginning with March 1957 and ending with May 1967, the Sinai Desert had been free of Egyptian troops.

In other words, a natural geographic barrier, a largely uninhabited space, separated the main forces of the two sides. It is true that in terms of sovereignty and law, any State has a right to put its armies in any part of its territory that it chooses. This, however, is not a legal question: it is a political and a security question [...] When we examine, then, the implications of this act, we have no cause to wonder that the international shock was great. There was another reason too for that shock. Blockades have traditionally been regarded, in the pre-Charter parlance, as acts of war. To blockade, after all, is to attempt strangulation; and sovereign States are entitled not to have their trade strangled. To understand how the State of Israel felt, one has merely to look around this table and imagine, for example, a foreign Power forcibly closing New York or Montreal, Boston or Marseille, Toulon or Copenhagen, Rio or Tokyo or Bombay harbour. How would your Governments react? What would you do? How long would you wait? [...] These acts taken together – the blockade, the dismissal of the United Nations Emergency Force, and the heavy concentration in Sinai - effectively disrupted the status quo which had ensured a relative stability on the Egyptian-Israeli frontier for ten years [...]"

¹¹⁴ *John Quigley*, The Six-day War and Israeli Self-Defense, questioning the legal basis for preventive war, Cambridge 2012, p. 121.

¹¹⁵ *Christine Gray*, International Law and the Use of Force, Oxford 2008, p. 161; *Michael Byers*, War Law, International Law and Armed Conflict, London 2005, p. 74.

¹¹⁶ *Antonio Cassese*, International Law, Oxford 2005, pp. 358-359.

¹¹⁷ *John Quigley*, The Six-day War and Israeli Self-Defense, questioning the legal basis for preventive war, Cambridge 2012, p. 128.

attack against Israel.¹¹⁸ According to this view, Egyptian manoeuvres and operations throughout May and early June of 1967 could have sincerely been regarded by Israel as amounting in their totality to an “armed attack” within the meaning of Article 51 of the UN Charter, which deals with the right of self-defence. This position concludes that in consideration of all the relevant circumstances, Israel’s actions were justified:

“In view, of (1) the particular nature and history of the Middle East dispute, (2) the fact that in terms of the professed goal of the Arab belligerence, nothing less than Israel’s survival was at stake; (3) the superior arsenal at Egypt’s disposal and its manifestly advantageous geographical position; (4) the unreserved political backing given Egypt by the Soviet Union; and (5) the conspicuous impotence of the international community, primarily the Security Council, the legitimacy of Israel’s decision becomes all the more apparent.”¹¹⁹

Bassiouni, on the other hand, rejected Israel’s claim of anticipatory self-defence and concluded that Egypt was not about to attack. According to this view, serving Israel’s political strategy, Egypt was painted as the aggressor, which allowed Israel to deal a surprising military defeat while still presenting itself as the victim.¹²⁰ Bassiouni argues that the blockade was not an armed attack and did not provide justification for an attack on Egypt.

Furthermore, according to Bassiouni, the blockade of the Straits of Tiran, has not been put into full effect, as a German freighter passed through it on its way to Eilat. In addition, according to this view, the expulsion of the UNEF was merely President Nasser’s response to Israeli attacks on Syria on April 7, 1967. Bassiouni argues that even after the UNEF troops were asked in May 1967 to leave Egypt, Israel had allowed the UNEF troops to pass through

Israel’s territory, so that they could have easily been positioned on the Israeli side of the border.

Quigley disputed the number of Egyptian troops gathered and claimed that Egypt only had at most about 40,000 troops at its borders, while the Israeli Defense Force (the “IDF”) estimated 320,000 troops. Quigley further argues that Israeli intelligence knew that Egypt was not going to attack and that political and military opportunity for an attack coincided in Israel’s favour. Thus, by denying the existence of an imminent threat against Israel at the time, Quigley concludes that the

“legal community in the West has done a disservice by perpetuating a misconstruction of the facts of the June 1967 War [...] The 1967 war, rather than serving as precedent for preventive war, should be the poster child for pre-textual invocation of force used in advance.”¹²¹

It is fair to say that hostilities in the Middle East have to be seen in their regional and historical context. It is unclear whether Egypt would have started a military campaign against Israel but Israel’s pre-emptive military steps can be understood, considering

“[T]he real and urgent threat posed to Israel’s very existence by the massed armies of her immediate neighbours, backed by all the other Arab states.”¹²²

2. Security Council Resolution 242

On November 22, 1967, the Security Council of the United Nations unanimously adopted Resolution 242 (the “Resolution”).¹²³ The Resolution expressed its ongoing concern with the Middle East conflict, emphasizing the “inadmissibility of the acquisition of territory by war and the need to work for a just and lasting peace in the Middle East in which every State in the area can live in security.” The Resolution

¹¹⁸ *Amos Shapira*, *The Six Day War and the Right of Self-Defence*, *Israel Law Review*, Vol. 6 (1971), pp. 65, 76.

¹¹⁹ *Amos Shapira*, *The Six Day War and the Right of Self-Defence*, *Israel Law Review*, Vol. 6 (1971), pp. 65, 76.

¹²⁰ *M. Cherif Bassiouni*, *The “Middle East”, The Misunderstood Conflict*, *University of Kansas Law Review*, Vol. 19 (1970-1971), pp. 373, 395.

¹²¹ *John Quigley*, *The Six-day War and Israeli-Self-Defense*, questioning the legal basis for preventive war, Cambridge 2012, p. 192.

¹²² *Shabtai Rosenne*, *Directions for a Middle East Settlement – Some Underlying Legal Problems*, *Law and Contemporary Problems*, Vol. 33 (1968), pp. 44, 55.

¹²³ UN Security Council, Resolution, S/RES/242 (1967), November 22, 1967, available at http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/242%281967%29, accessed on April 3, 2016.

further emphasized that through their acceptance of the Charter of the United Nations, all Member States have undertaken a commitment to act in accordance with its Article 2, which *inter alia* calls on member states to settle international disputes by peaceful means and to refrain from the threat or use of force against the territorial integrity or political independence of any state. The operative part of the Resolution reads:

“[The Security Council]

1. Affirms that the fulfillment of Charter principles requires the establishment of a just and lasting peace in the Middle East which should include the application of both the following principles:

(i) Withdrawal of Israel armed forces from territories occupied in the recent conflict;

(ii) Termination of all claims or states of belligerency and respect for and acknowledgment of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force;

2. Affirms further the necessity

(a) For guaranteeing freedom of navigation through international waterways in the area;

(b) For achieving a just settlement of the refugee problem;

(c) For guaranteeing the territorial inviolability and political independence of every State in the area, through measures including the establishment of demilitarized zones;

3. Requests the Secretary-General to designate a Special Representative to proceed to the Middle East

to establish and maintain contacts with the States concerned in order to promote agreement and assist efforts to achieve a peaceful and accepted settlement in accordance with the provisions and principles in this resolution;

4. Requests the Secretary-General to report to the Security Council on the progress of the efforts of the Special Representative as soon as possible.”¹²⁴

Resolution 242 was intended to serve as a basic framework for the solution of the conflict. The Arab states and Israel offered different interpretations for the Resolution. For the Arab states, the Resolution demanded Israel’s immediate and complete withdrawal from territories occupied by Israel in the 1967 War. For Israel, however, withdrawal depended on secure (i.e., defensible) and recognized (i.e. recognition of Israel by Arab states) borders.¹²⁵

According to some jurists, for instance Bassiouni or Haedrich, the use of the words “recent conflict” in Article 1 (i.) of Resolution 242 makes it clear that Israel was required to withdraw from all territories occupied in the 1967 War. They hold that there was no room left for arguing that the Resolution was ambiguous in this regard only because Article 1 (i.) lacked the definite article “the” before “territories occupied”. According to another position, supported for instance by Lapidoth and Kontorovich, the UN Security Council never demanded from Israel to withdraw from all territories acquired in the 1967 War.¹²⁶ Firstly, Lapidoth recalls that due to the fact that the Resolution was passed under Chapter VI and not under Chapter VII of the UN Charter and in accordance with the prevalent view at the time, it was not binding but constituted a mere recommendation instead.¹²⁷ Secondly, Kontorovich

¹²⁴ UN Security Council Resolution, S/RES/242 (1967), November 22, 1967, available at http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/242%281967%29, accessed on April 3, 2016.

¹²⁵ The English version of the Resolution speaks of “withdrawal [...] from territories” with the article “the”, whereas the French version speaks of “des territories” (the territories). Israel claims that the Resolution never requested the withdrawal of all territories controlled after the 1967 War, see *Edi Gnesa*, Die von Israel besetzten Gebiete im Völkerrecht: Eine besetzungsrechtliche Analyse, Zürich 1981, p. 20.

¹²⁶ *Ruth Lapidoth*, Security Council Resolution 242 at Twenty Five, *Israel Law Review*, Vol. 26, No. 3 (1992), p. 295; *Eugene Kontorovich*, Resolution 242 Revisited: New

Evidence on the Required Scope of Israeli Withdrawal, *Chicago Journal of International Law*, Vol. 16, No.1 (2015), pp. 127, 129.

¹²⁷ *Ruth Lapidoth*, Security Council Resolution 242 at Twenty Five, *Israel Law Review*, Vol. 26, No. 3 (1992), pp. 295, 299. In the debate that preceded its adoption, the delegates stressed that they were acting under Chapter VI of the charter, namely, they were dealing with the settlement of a dispute “the continuance of which is likely to endanger the maintenance of international peace and security, see Lord Caradon, the Representative of Great Britain, Security Council Resolution, 22nd year, 1373rd meeting, November 9, 1967, p. 18, sec. 164; Ambassador A. Goldberg of the U.S.A., *ibid.* 1377th meeting, November 15, 1967, p. 6, sec. 54; The

argues that British and U.S. diplomats involved in framing the resolution during several months of UN Security Council deliberations, intentionally omitted the definite article “the” before “territories” to leave the extent of the required withdrawal open for future negotiations between Israel and its neighbours and rejected attempts by the Arab-aligned nations to explicitly use language requiring Israel’s withdrawal from “all” or “the” territories.¹²⁸ The Western states, however, insisted that it would be both unreasonable and unrealistic to require a complete Israeli

withdrawal to the lines of 1949 Armistice Agreements, which would entail Israel’s complete abandonment of Jerusalem’s holy sites.¹²⁹ Finally, Kontorovich, having compared Resolution 242 with other Security Council Resolutions that require a party to withdraw from territory, suggests, that if the Security Council had intended to request that Israel completely withdraw from all territories occupied during the 1967 War, it would have said so with clear and explicit language.¹³⁰

Representative of Denmark, Mr. Borch at the 1373rd meeting, November 9/10, 1967, p. 24, sec. 235; the Representative of Canada, Mr. Ignatieff at the 1373rd meeting, p. 22 sec. 212, and at the 1377th meeting, p. 9, sec. 86; The Representative of Nigeria, Mr. Adebo, 1373rd meeting, November 9/10, 1967, p. 12, sec. 107 all quoted by *Ruth Lapidoth*, Security Council Resolution 242 at Twenty Five, *Israel Law Review*, Vol. 26, No. 3 (1992), p. 299. Even though the International Court of Justice decided in its June 21, 1971 Advisory Opinion *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)* that a resolution taken in accordance with Chapter VI can also be a binding decision, (Par. 113 and 114: “The language of the resolution of the Security Council should be carefully analysed before a conclusion can be made on its binding effect.”), however this was not the prevalent view in 1967 when the resolution was discussed in the Security Council, see *Lapidoth* (*Israel Law Review*, 1992) with further references; *Ruth Lapidoth*, *The Misleading Interpretation of UN Security Council Resolution 242 (1967)*, *Jewish Political Studies Review*, Vol. 23, No. 3/4 (2011), p. 9: “[H]ad the intention been to impose a “binding decision,” agreement between the parties would not have been one of its major preoccupations. In particular, the provision on the establishment of “secure and recognized boundaries” proves that the implementation of the resolution required a prior agreement between the parties. In addition, the use of the term “should” in the first paragraph (“which should include the application of both the following principles”) underlines the recommendatory character of the resolution.”

¹²⁸ *Ruth Lapidoth*, Security Council Resolution 242 at Twenty Five, *Israel Law Review*, Vol. 26, No. 3 (1992), pp. 295, 307-308 provides seven arguments why the Resolution does not require a complete withdrawal by Israel: (1) The preamble referring to “inadmissibility of territory by war” merely reiterated the principle that military occupation, although lawful if it is the result of an act of self-defence, does not itself justify annexation and acquisition of title to territory, (2) the English version of the withdrawal clause only requires “withdrawal from territories”, not *all* territories. This provision, with reference to a statement made by the representative of Great Britain, Lord Caradon was clear and unambiguous, (3) The French version which allegedly

supported full withdrawal could only be considered to be ambiguous because “*des*” could either be the plural of *de* (indefinite article) or a contraction of “*de les*” (definite article). Because the French translation is an idiomatic rendering of the original English text, and with reference to the statement of French Ambassador Bernard in the Security Council, “*des territoires occupés*” corresponded to the expression “occupied territories”. If in fact the French version was ambiguous, it should be interpreted in conformity with the English text, since the English text was clear and the hence to be preferred. (4) The English version should be preferred because it was identical with the original version of the British draft on which the Resolution is based. Multilingual texts in international law should be interpreted according to the basic language. (5) The prior discussions in the Council from May 1967 onwards showed that all draft resolutions calling for a complete withdrawal of the Israeli armed forces from all the territories occupied in 1967 were rejected; they also show a predominance of the English language in all the deliberations. (6) The preferred status of the English language has also been recognized by implication by Egypt, since the English version was annexed to the 1978 Framework for Peace in the Middle East agreed at Camp David by Egypt and Israel. (7) The provision on the establishment of “secure and recognized boundaries” included in para. 1 (ii.) of the Resolution would have no meaning if there had been an obligation to a withdrawal of Israel’s armed forces from all the territories occupied in 1967.

¹²⁹ *Eugene Kontorovich*, *Resolution 242 Revisited*, *New Evidence on the Required Scope of Israeli Withdrawal*, *Chicago Journal of International Law*, Vol. 16, No.1 (2015), pp. 127, 130.

¹³⁰ *Eugene Kontorovich*, *Resolution 242 Revisited*, *New Evidence on the Required Scope of Israeli Withdrawal*, *Chicago Journal of International Law*, Vol. 16, No.1 (2015), p. 135: Looking at the other eighteen Security Council withdrawal Resolutions adopted until November 1967, Kontorovich observes that the term “withdrawal ... from territories” is unique to Resolution 242. Other Resolutions either referred to the status that existed before hostilities broke out or used the definite article or use the terms “all” or

A matter often neglected by international commentators, is the fact that nowhere in Resolution 242's substantive issues (i.e., termination of claims and states of belligerency, respect for and acknowledgment of the sovereignty, territorial integrity and political independence of every state in the area, and the right to live in peace within secure and recognized boundaries free from threats or acts of force) does the question of the Palestinian people and their rights under the Charter arise.¹³¹ Therefore, a rapid implementation of Resolution 242 by Israel and its neighbour states could have actually closed Palestinian claims for an independent state and a "return of refugees" definitively.¹³² The idea of an independent state of "Palestine" was ignored by the Resolution and no representative of the Palestinian people had been made a party to the talks leading up to the passing of the Resolution or even consulted with by the commission appointed to implement it. The Resolution calls for a just solution of the refugee problem without referring to a Palestinian right of return. Finally, the future status of Jerusalem, one of the issues that the parties have defined to be settled in a final status agreement, is not mentioned in the Resolution.

"whole". Kontorovich argues that if a Resolution required a complete withdrawal, according to the Security Council practice, it would have said so explicitly. Kontorovich cites pre-1967 Territorial Withdrawal Provisions such as SC Resolution 3 (1946), which "calls for the "withdrawal of all USSR troops from the whole of Iran"; SC Resolution 61 (1948), which "calls upon the interested Governments, without prejudice to their rights ... with regard to a peaceful adjustment of the future situation of Palestine ... to withdraw those of their forces which have advanced beyond the positions held on 14 October; SC Resolution 82 (1950), which "calls upon the authorities in North Korea to withdraw forthwith their armed forces to the 38th parallel"; SC Resolution 143 (1960), which "calls upon the parties (India & Pakistan) to ... promptly withdraw all armed personnel to the positions held by them before 5 August 1965". Finally, Kontorovich argues that the norm against territorial acquisition was not understood at the time, as reflected in the debates and Draft Codes of the International Law Commission and scholarly writing as to categorically prohibit post war border changes at the time, see pp. 144, 150.

¹³¹ William B. Quandt, *Peace Process, American Diplomacy and the Arab-Israeli conflict since 1967*, rev. ed., Washington 2001, p. 392.

¹³² M. Cherif Bassiouni, *The "Middle East", The Misunderstood Conflict*, University of Kansas Law Review, Vol. 19 (1970-1971), pp. 373, 396. As regards the operative

3. The Emergence of Palestinian Nationalism

As a consequence of the refugee crisis of the 1948 War, the Palestinian struggle of living in undeveloped refugee camps and the rejection of Israeli independence, since the 1950s, Palestinians had been attacking Israelis, which again triggered Israeli reprisal operations.¹³³ Mostly based in the refugee camps located in Jordan, Palestinian militants also known as "Fedayeen", developed a state within a state by obtaining funds and arms from Arab states and Eastern Europe. After the Arab defeat in the 1967 War, Palestinian nationalism, which was often previously neglected by Arab states in favour of Pan-Arabism, re-emerged in the Palestinian refugee camps and was symbolized by the Fedayeen.¹³⁴

On March 21, 1968, in the "Battle of Karameh", Israeli forces attacked Fedayeen bases in the Jordanian town of Karameh. The battle dragged on for hours and with the joining of the Jordanian army, the Palestinian fighters were able to resist the Israelis.¹³⁵ A new mythos was created and the Fedayeen were regarded as heroes by many Palestinians. One of these fighters was Yasser

paragraph of Resolution 242, United Nations Secretary-General Sithu U-Thant, on November 23, 1967, appointed Swedish diplomat Gunnar Jarring as Special Envoy to achieve and oversee implementation of the Resolution.

¹³³ Martin Gilbert, *The Routledge Atlas of the Arab-Israeli conflict*, 8th ed., London and New York 2005, p. 58; also Benny Morris, *Israel's Border Wars 1949-1956, Arab infiltration, Israeli retaliation, and the countdown to the Suez War*, Oxford 1997, p. 178; Israel Ministry of Foreign Affairs, *Which Came First - Terrorism or Occupation - Major Arab Terrorist Attacks against Israelis Prior to the 1967 Six-Day War*, March 2002, available at <http://mfa.gov.il/MFA/ForeignPolicy/Terrorism/Palestinian/Pages/Which%20Came%20First-%20Terrorism%20or%20Occupation%20-%20Major.aspx>, accessed on January 31, 2016.

¹³⁴ Baruch Kimmerling and Joel S. Migdal, *The Palestinian people, A history*, Cambridge 2003, pp. 241-243; Dennis Ross, *The Missing Peace, The Inside Story of the Fight for Middle East Peace*, New York 2004, p. 37.

¹³⁵ Baruch Kimmerling and Joel S. Migdal, *The Palestinian people, A history*, Cambridge 2003, p. 425; Dennis Ross, *The Missing Peace, The Inside Story of the Fight for Middle East Peace*, New York 2004, p. 39.

Arafat, who alongside the Muslim brotherhood, had already fought in the 1948 War.¹³⁶ In 1959, Arafat had founded the Fatah party and in February of 1969 he became the Chairman of the PLO. At the time, terror and violence were seen by the Palestinians as legitimate tools to force the world to pay attention to their plight and address their grievances.¹³⁷

By late 1968, the main activities of the Fedayeen in Jordan seemed to shift from fighting Israel to attempts to overthrow King Hussein of Jordan. The threat to his rule and Israeli reprisals on Jordanian territory became a major concern for King Hussein. Subsequently, another major confrontation occurred in November of 1968, when the Jordanian government sought to disarm the Palestinian refugee camps. On September 6, 1970, after a failed attempt to assassinate King Hussein, and the hijacking of two airplanes by the PFLP, a civil war broke out between the Jordanian forces and the Palestinian Liberation Army (the “PLA”), the military wing of the PLO led by Arafat. On September 27, 1970, after bitter fighting that resulted in thousands of casualties, King Hussein and Arafat signed a ceasefire agreement in Cairo. Despite this agreement, the last months of 1970 and the first half of 1971, a conflict referred to by the Palestinians as “Black September”, were marked by a series of broken agreements and continued battles between the Jordanian army and the Palestinian guerrilla forces. Following this armed

struggle, the PLO was expelled from Jordan to Lebanon.¹³⁸

In 1970, the Black September Organization (the “BSO”) was founded. The BSO was infamous for carrying out terrorist attacks to avenge Palestinian losses and draw the world’s attention back to the Palestinian national cause. After the PLO’s establishment, some of its members have been accused by Israel and the U.S. to be involved in providing logistics and financing to violent acts carried out by the BSO, such as the attack on the Israeli delegation during the Munich Olympic Games in 1972.¹³⁹ Hence, for the first years after its establishment, some states, including Israel and the U.S., considered the PLO to be a terrorist organization.

V. *The 1973 War and UN Security Council Resolution 338*

1. *The 1973 War*

It been argued that the roots of the October War of 1973 (“the 1973 War”), also known as the “Yom Kippur War” or “Ramadan War”, are directly related to the military and diplomatic outcomes of the 1967 War.¹⁴⁰ Israel’s sudden gain of control over territory which was formerly under the rule of Jordan and Egypt, the rise of Palestinian national consciousness,

¹³⁶ According to most historians, Arafat was born in Cairo on August 24, 1929, to a father from Gaza and a mother from Jerusalem. Arafat himself is said to have claimed being from Jerusalem or Gaza. See *Barry Rubin and Judith Colp Rubin, Yasir Arafat, A Political Biography*, Oxford 2003, p. 11; *Muhammad Muslih, Yasir Arafat*, in: *Cheryl A. Rubenberg* (ed.), *Encyclopedia of the Israeli-Palestinian Conflict*, Vol. 1, Boulder and London 2010, p. 97.

¹³⁷ *Dennis Ross, The Missing Peace, The Inside Story of the Fight for Middle East Peace*, New York 2004, p. 38.

¹³⁸ *Benjamin Rubin, Israel, Occupied Territories*, in: *Rüdiger Wolfrum* (ed.), *Max Planck Encyclopedia of Public International Law*, Vol. 6, Oxford 2013, p. 427. PLO activities in Lebanon and attacks from Lebanon against Israeli targets resulted in an invasion of that country by Israeli forces in 1982, in an operation called “Peace for Galilee”. During that conflict, Israeli forces reached as far as Beirut and beyond. Members of the PLO were expelled from Lebanon and set up their new headquarters in Borj Cedria near Tunis, Tunisia.

¹³⁹ In 2003, members of the PLO were accused by Israeli Non-Governmental Organization Israel Law Center (Shurat Hadin) of having carried out acts of terror such as the attack on the Israeli Olympic Team in Munich in 1972. See Letter by the Israel Law Center *Shurat Hadin* to U.S. President George W. Bush and German chancellor Gerhard Schröder in 2003, citing the book of the mastermind behind the 1972 Munich terrorist attack, Daoud Oudeh (Abu Daoud) who confirmed Mahmoud Abbas role in financing the attack, see the statement of the Israel Law Center (Shurat Hadin), Arafat’s new pm behind Munich Olympic attacks, April 29, 2003, available at <http://israellawcenter.org/in-the-media-items/arafats-new-pm-behind-munich-olympics-attacks/>, accessed on June 10, 2015.

¹⁴⁰ *Asaf Siniver, Introduction*, in: *Asaf Siniver* (ed.), *The October 1973 War, Politics, Diplomacy, Legacy*, London 2013, p. 1.

and the internationalization of the Arab-Israeli conflict, all outcomes of the 1967 War, impacted the region's unstable geostrategical status.

The seeds of the 1973 War were planted in the spring of 1973. Egypt's plan to attack Israel was first shaped around March – April of 1973, with more decisive deliberations on launching the war taking place at an Egyptian cabinet meeting on April 5, 1973.¹⁴¹ The Egyptian plan was to end the military deadlock by breaking the existing ceasefire, to inflict the greatest possible losses on Israel and to regain control over the territories lost in 1967.¹⁴²

Egypt launched its surprise attack on Israel on Saturday, October 6, 1973, on “Yom Kippur”, the holiest day in Judaism and the “Day of Atonement”, which Jews traditionally spend in synagogue or at home fasting. October 6 was not only the birthday of the President of Syria, Hafez al Assad, but also the tenth day of the Muslim holiday of Ramadan. Historically, this is the date upon which the Prophet Muhammad began his preparations for the Battle of

Badr, which ultimately enabled his return to Mecca.¹⁴³ The head of Israel's intelligence service received notification of an upcoming attack from an Egyptian source just one day in advance. At this point, however, it was already too late for appropriate preparations.¹⁴⁴ While Israel was left with almost no time to prepare, the Arab states sent wide support in the form of arms, troops and money. Prior to the 1973 War, the Arab armies together were vastly superior to Israel in manpower, aircraft and artillery.¹⁴⁵ Because of the unification between the Arab states, many Israelis felt that 55 million Arabs stood against just 3.1 million of them.¹⁴⁶

By October 8, 1973, the Egyptian army had accomplished most of its preliminary goals: the launching of a surprise attack, the crossing of the Suez Canal and the establishment of several bridges over it, and the transfer of infantry and equipped armed forces across them.¹⁴⁷ Within two days, Egypt had six hundred tanks and 100,000 soldiers on the East Bank helping to reclaim territory lost in 1967.¹⁴⁸

¹⁴¹ After Egyptian President Gamal Abdel Nasser died on September 28, 1970, the new Egyptian President Muhammad Anwar el-Sadat asked from his War Minister Ahmad al-Ismaïl to shape a plan for a surprise attack against Israel. The plan took more concrete forms in March and April of 1973, with decisive deliberations on launching the strike taking place at the Egyptian cabinet on April 5, 1973. As formulated in two documents handed by Sadat to Egypt's War Minister Ahmad Ismaïl on October 1 - 5, 1973, Egypt's aims of the war were: “[F]irst, to end the military deadlock by breaking the ceasefire as from October 6, 1973, second, to inflict the greatest possible losses on the enemy, in personnel, arms and equipment and third to work for the liberation of the occupied land in successive stages in accordance with the growth and development of the potentialities and capabilities of Armed Forces”. See *Yoram Meital*, *The October War and Egypt's Multiple Crossings*, in: *Asaf Siniver* (ed.), *The October 1973 War, Politics, Diplomacy, Legacy*, London 2013, p. 53.

¹⁴² *Yoram Meital*, *The October War and Egypt's Multiple Crossings*, in: *Asaf Siniver* (ed.), *The October 1973 War, Politics, Diplomacy, Legacy*, London 2013, p. 53

¹⁴³ *Walter J. Boyne*, *The two o'clock War, The 1973 Yom Kippur Conflict and the Airlift that saved Israel*, New York 2002, p. 21.

¹⁴⁴ *Ahron Bregman* has pointed out that the head of Israel's foreign intelligence agency, Mossad, Zvi Zamir had been warned by Egyptian businessman Ashraf Marwan some 40 hours before the attack about an imminent attack to take place on October 6, after sunset, see *Ahron Bregman*, *Ashraf Marwan and Israel's Intelligence failure*, in: *Asaf Siniver* (ed.), *The October 1973 War, Politics, Diplomacy, Legacy*,

London 2013, pp. 195, 206. However, this warning came after a previous false warning in April 1973 about a May 1973 attack, which made Israel mobilise its reserves and cost 35 million dollar. Until today, it is not sure whether Ashraf Marwan, who died (or was killed) in London on June 27, 2007, was an Israeli source or an Egyptian double agent, see *Simon Parkin*, *Who killed the 20th century's greatest spy? The Guardian*, September 15, 2015, available at <http://www.theguardian.com/world/2015/sep/15/who-killed-20th-century-greatest-spy-ashraf-marwan>, accessed on January 6, 2016.

¹⁴⁵ Eleven nations supported the Arab forces. Kuwait and Saudi Arabia backed the war financially and committed over 3,000 troops. Algeria, Tunisia, Sudan, and Morocco contributed a combined force of 10,000 troops, 150 tanks and three fighter and bomber squadrons. Lebanese radar operators guided Syrian aircraft and allowed Palestinians to set up artillery positions within Lebanon's borders.

¹⁴⁶ *Walter J. Boyne*, *The two o'clock War, The 1973 Yom Kippur Conflict and the Airlift that saved Israel*, New York 2002, p. 21.

¹⁴⁷ *Yoram Meital*, *The October War and Egypt's Multiple Crossings*, in: *Asaf Siniver* (ed.), *The October 1973 War, Politics, Diplomacy, Legacy*, London 2013, p. 56.

¹⁴⁸ *Walter J. Boyne*, *The two o'clock War, The 1973 Yom Kippur Conflict and the Airlift that saved Israel*, New York 2002, p. 2.

The Egyptian army was not, however, the only victor of this war. In the initial stages of the 1973 War, the Syrian army also scored several victories, albeit being temporary and limited in nature.¹⁴⁹

After two days of fighting, Israeli reserve forces began to arrive to help back up front-line troops. These reserve soldiers enabled Israel's armed forces to block any further Syrian assault from the north-east. Between October 8–9, Israel was able to regain control over territory, which Syria had just reconquered. At this point, Egypt had already halted its strike against Israel from the southwest front.¹⁵⁰ On October 10, the Soviet Union began to air lift supplies and arms to both Egypt and Syria. After Israel suffered heavy losses on the battlefield and partially motivated by the fact that the U.S. did not want to see Soviet allies with Soviet weapons defeat a U.S. ally equipped with U.S. weapons, the U.S. responded positively to Israel's request for military aid. By helping Israel, the U.S. also hoped to deliver a clear message to the Arab states that the Arab-Israeli conflict would not be solved by force.

The turning point of the 1973 War came on October 16, when Israeli forces broke through to the western bank of the Suez Canal near the Deversoir

Air Base (close the town of Ismailia).¹⁵¹ Thereafter, the Egyptian President Muhammad Anwar El Sadat made a public statement directly addressed to U.S. President Richard Nixon proposing a ceasefire.¹⁵² Israeli Prime Minister Golda Meir announced to the Israeli public that Israeli tanks had crossed into Africa. Moreover, Meir was proud to announce that, on October 19, the mobile bridge which Israel had built prior to the war was successfully installed over the Suez Canal. U.S. Secretary of State, Henry Kissinger, who played an important part in negotiating the following ceasefire, informed Egypt that Israel was ready to enter direct negotiations on the implementation of the ceasefire and that Egypt was at liberty to choose the time and place to hold such negotiations. President Sadat was ready to negotiate and appointed General Abd al-Ghani al-Jamasi to represent Egypt at the talks.

2. UN Security Council Resolution 338

On October 22, 1967, after a series of appeals by the international community to cease hostilities, the UN Security Council eventually adopted Resolution 338.¹⁵³ Its terms stipulated a ceasefire, the immediate

¹⁴⁹ These victories included breaking through the Israeli defensive line (October 6 and 7) along the Golan Heights to within a few kilometres of the Jordan River passages, and the capture of the Mount Hermon (Jabal al-Shaykh) outpost. In addition, the Syrian air defences on the Golan front were able to block Israeli air force attacks and inflict heavy losses, see *Eyal Zisser*, Syria and the October War, The Missed Opportunity, in: *Asaf Siniver* (ed.), The October 1973 War, Politics, Diplomacy, Legacy, London 2013, pp. 76, 75.

¹⁵⁰ *Yoram Meital*, The October War and Egypt's Multiple Crossings, in: *Asaf Siniver* (ed.), The October 1973 War, Politics, Diplomacy, Legacy, London 2013, p. 59. However, in order to remain loyal to its commitment to Syria, and when the scope of Israel's counter-attack to Syria became evident (October 11–13), the Egyptian army, tried on October 14 to push forward again. This attempt turned into a costly failure and ended in retreat. After the event senior Egyptian officers blamed Sadat for holding back under international pressure at the beginning of the war.

¹⁵¹ *Yoram Meital*, The October War and Egypt's Multiple Crossings, in: *Asaf Siniver* (ed.), The October 1973 War, Politics, Diplomacy, Legacy, London 2013, p. 62. At this stage of the War, the Egyptians were already outnumbered and an Egyptian manoeuvre would have required a massive redeployment of Egyptian general reserve from the area of Cairo and perhaps from Sinai to the Western Bank from Sinai.

¹⁵² Sadat said: “[W]e are prepared to accept a cease-fire on condition that the Israeli forces withdraw forthwith from all the occupied territories to the pre-June 5 1967 lines, under international supervision. We are willing, at this hour [...] to start clearing the Suez Canal to open it to international navigation [...] Throughout all this we are not prepared to accept ambiguous promises for flexible expressions.”, see *Yoram Meital*, Egypt's Struggle for Peace, Continuity and Change 1967-1977, Gainesville 1997, p. 123.

¹⁵³ UN Security Council, Resolution S/RES/338 (1973), October 22, 1973, available at http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/338%281973%29, accessed on April 3, 2016. The Resolution was adopted with 14 votes to none (China did not participate in the vote) and “1. calls upon all parties to the present fighting to cease all firing and terminate all military activity immediately, no later than 12 hours after the moment of the adoption of this decision, in the positions they now occupy; 2. calls upon the parties concerned to start immediately after the ceasefire the implementation of Security Council resolution 242 (1967) in all of its parts; 3. decides that, immediately and concurrently with the ceasefire, negotiations shall start between the parties concerned under appropriate auspices aimed at establishing a just and durable peace in the Middle East.”

implementation of Resolution 242 by the parties to the armed conflict and the start of negotiations between Israel and its Arab neighbours “aimed at establishing a just and durable peace in the Middle East.” Only Egypt accepted this resolution on the day it was passed. As fighting continued in the region, President Sadat appealed directly to the Soviet Union and the U.S. and requested that they intervene militarily to help enforce the ceasefire and that the U.S. send in its military attaché based in Tel Aviv to the front lines in order to verify Israel’s commitment to the ceasefire. While the Soviet Union agreed to the request, the U.S. opposed it, putting the two “Super Powers” at odds with each other. On October 24, 1973, the UN Security Council reconvened to work on passing Resolution 340, which called for the creation of a new peacekeeping force – the United Nations Emergency Force (UNEF II). After Egypt and Israel agreed to disengage their forces, UNEF II supervised their redeployment.

On October 25, 1973, on the brink of a potentially devastating military conflict between the United States and Soviet Union, the UN Security Council adopted another, now renewed and more stringent ceasefire call (Resolution 340) and fighting ceased there and then.¹⁵⁴ As a result of the 1973 War, Israel lost 2,691 soldiers, while the Arab armies lost nearly 18,000. In addition, 305 Israelis and 8,370 Arabs had become prisoners of war.¹⁵⁵

The 1973 War was greatly traumatizing for Israel’s society. It led to the dismissal of the IDF’s Chief of Staff, David Elazar, and other senior officers. Public anger with the political establishment and the government’s handling of the war led to the resignation of Prime Minister Golda Meir and Defence Minister Moshe Dayan.¹⁵⁶ For Egypt, however, the War is considered a military and

political victory. Given the fact that Syria failed to recapture the Golan Heights and to elevate the country’s regional and international standing, the 1973 War’s anniversary is not celebrated in Syria. In Egypt, however, October 6 is celebrated annually, as it marks the crossing of the Suez Canal and the military gains of the first week of the 1973 War. The early achievements of the Egyptian army challenged the myth of Israeli invincibility that had emerged as a result of the 1967 War. The 1973 War would also lead to political gains for Egypt in the coming years. For instance, Egypt signed several disengagement agreements with Israel from 1974–75 and a comprehensive peace treaty in 1979, which returned control over the Sinai Peninsula. Egypt also established strong security ties with the United States and received financial aid-packages.

Syria suffered great losses as a result of the 1973 War.¹⁵⁷ Although Syria had joined forces with Egypt, it was misled by Egypt about the real objectives of the war. Furthermore, Syria did not rightly assess the consequences of Egypt’s initial success on the battlefield for its own front with Israel. Moreover, due to Sadat’s decision to halt the Egyptian attack from October 8, the Syrian forces were soundly defeated by Israel within just a few days after Syria’s entry into the war. At the end of the war, Syrians felt that they were once again betrayed by President Sadat, who, in their view, had sacrificed Arab unity for the sake of developing significant relations with the United States. Sadat left the leadership in Damascus out of these diplomatic

¹⁵⁴ *Yoram Meital*, *The October War and Egypt’s Multiple Crossings*, in: *Asaf Siniver* (ed.), *The October 1973 War, Politics, Diplomacy, Legacy*, London 2013, p. 61. Under a separate agreement reached in May 1974, Israel and Syria signed a disengagement agreement. This agreement led to the establishment of the United Nations Disengagement Force (“UNDOF”), which was assigned to monitor the agreements between Israel and Syria. The Security Council also renewed UNEF’s mandate that operated on the Egyptian-Israeli border periodically until July 1979, when it was allowed to lapse following the conclusion of a peace treaty between Egypt and Israel. UNDOF continues to function on the Golan Heights.

¹⁵⁵ *Yoram Meital*, *The October War and Egypt’s Multiple Crossings*, in: *Asaf Siniver* (ed.), *The October 1973 War, Politics, Diplomacy, Legacy*, London 2013, p. 61.

¹⁵⁶ *Asaf Siniver*, Introduction, in: *Asaf Siniver* (ed.), *The October 1973 War, Politics, Diplomacy, Legacy*, London 2013, p. 6.

¹⁵⁷ *Asaf Siniver*, Introduction, in: *Asaf Siniver* (ed.), *The October 1973 War, Politics, Diplomacy, Legacy*, London 2013, p. 6.

developments, which changed the geostrategical situation of the entire Middle East region.¹⁵⁸

After the 1973 War, there was a period of relative stability in the region, aided by Jordan's decision not to open an eastern front against Israel. After the humiliating experience of the 1967 War, in which Jordan lost control over the West Bank and Jerusalem to Israel, King Hussein was mindful of the potential risks of another Arab-Israeli war. For the sake of Arab unity, with the acquiescence of Israel and the United States, King Hussein agreed to place Jordan's 40th Brigade under Syrian command. Jordan's mere symbolic participation in the 1973 War is more telling than the 40th Brigade's actual contribution to the war effort as it symbolized the new order in the region. After holding secret meetings with Israeli officials, Hussein not only warned the Israelis of the imminent Egyptian-Syrian offensive, but also notified Israel and the U.S. of his decision to send a small force to the Syrian front.¹⁵⁹

VI. The Algiers Declaration and the First Intifada

While the 1973 War was not directly related to the Israeli-Palestinian conflict and the PLO and other Palestinian factions did not take part in the 1973 War, this war did serve as a facilitator for change in Palestinian internal politics and the development of the Palestinian struggle for independence. From now on, Fatah would view diplomacy, rather than the mere perpetuation of organized violence, as an

acceptable means to achieve the goal of Palestinian independence. On the other hand, the PFLP, opposed this approach.

In 1974, during the Arab League summit in Rabat, Morocco, the Arab League unanimously declared the PLO to be the sole representative of the Palestinian people. On November 22, 1974, the UN General Assembly recognized the PLO as the official representative of the Palestinian people and granted it observer status.¹⁶⁰ However, for as long as the PLO rejected UN Security Council Resolution 242, refused to recognise the State of Israel and continued to regard armed violence as a legitimate alternative for achieving political aims, it was not accepted by neither Israel nor the United States as legitimate partner for peace negotiations.

1. Algiers Declaration

In 1988, King Hussein officially relinquished all claims to the West Bank by Jordan, and recognized the PLO as the legitimate representative of this territory.¹⁶¹ On November 14, 1988, at its nineteenth session held in Algiers, the Palestine National Council, the legislative body of the PLO, adopted a formal Palestinian Declaration of Independence, (the "Algiers Declaration"), a symbolic declaration of statehood in exile.¹⁶²

The significance of the Algiers Declaration was its acceptance of the UN General Assembly's Partition Plan. For the first time, the PLO accepted a two-state

¹⁵⁸ *Asaf Siniver*, Introduction, in: *Asaf Siniver* (ed.), *The October 1973 War, Politics, Diplomacy, Legacy*, London 2013, p. 7.

¹⁵⁹ *Asaf Siniver*, Introduction, in: *Asaf Siniver* (ed.), *The October 1973 War, Politics, Diplomacy, Legacy*, London 2013, p. 7.

¹⁶⁰ The UN General Assembly Resolution invited the PLO to participate in the sessions and the work of the General Assembly in the capacity of an observer, to participate in the sessions and the work of all international conferences convened under the auspices of the General Assembly and other organs of the United Nations, see UN General Assembly, 3236 (XXIX), Question of Palestine, [Resolution A/RES/3236] (1974) and UN General Assembly, 3237 (XXIX), Observer status for the Palestine Liberation Organization [Resolution A/RES/3237] (1974), November 22, 1974, available at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/3236%28XXIX%29, accessed on February 3, 2016.

¹⁶¹ *Asaf Siniver*, Introduction, in: *Asaf Siniver* (ed.), *The October 1973 War, Politics, Diplomacy, Legacy*, London 2013, p. 8

¹⁶² Palestine Liberation Organization, Negotiation Affairs Department, Palestine National Council Declaration of Independence, November 15, 1988, available at <http://nad-plo.org/userfiles/file/Document/declaration%20of%20independence%20En.pdf>, accessed on February 3, 2016; Declaration of Independence, Palestinian, in: *Cheryl A. Rubenberg* (ed.), *Encyclopedia of the Israeli-Palestinian Conflict*, Vol. 1, Boulder and London 2010, p. 311: "[T]he State of Palestine is the state of Palestinians wherever they may be. In it they shall develop their national and cultural identity and enjoy full equality in rights [...]"

solution, acknowledging some form of settlement within 22 per cent of historic Palestine.¹⁶³ In the declaration, the PLO committed itself to the protection of human rights and renounced all forms of terrorism, whether state or individual, but reiterated the right of its people to fight against foreign occupation.¹⁶⁴ The Algiers Declaration was released with a communiqué to clarify specific PLO positions.¹⁶⁵ In the communiqué, the PLO was willing to accept UN supervision over Palestine until the end of the occupation. The communiqué also called for an international peace conference based on Security Council Resolutions 242 and 338. This reflected a major policy change and concession as these two resolutions only mention “a just solution to the refugee problem”, rather than specifically demanding a “right of return” of Palestinian refugees.

On December 13, 1988, a month after the communiqué was issued, Yasser Arafat gave a speech before the 43rd session of the General Assembly. Due to the fact that the U.S. denied Yasser Arafat’s request for an entry visa, the Arab states demanded that the Palestine issue be discussed by the UN in Geneva so that Yasser Arafat could take part.¹⁶⁶ In Geneva, the UN General Assembly passed Resolution 43/177, acknowledging the Algiers Declaration and affirmed “the need to enable the Palestinian people to exercise their sovereignty

over their territory occupied since 1967,” and deciding that the use of the designation “Palestine” in the UN referred to the PLO.¹⁶⁷ In Geneva, for the first time, Arafat specifically stated that Israel has the right to exist in peace and security and denounced individual and state terrorism. This opened the door to U.S.-PLO negotiations, which President Ronald Reagan authorized on a low level, despite Israeli opposition.

2. *First Intifada*

In the late 1980s, a new, generation of Palestinians, born after 1967 reached the age of adulthood. This generation, most of them descendants of Palestinian refugees, had grown up under Israeli occupation and was no longer willing to accept it. High unemployment among the youths, coupled with the collective hope for political independence after the Algiers Declaration, led to the first Palestinian Intifada (or “Uprising”). On December 18, 1986, in Ramallah, a sixteen-year-old Palestinian struck an Israeli soldier on the head with an axe. On December 9, 1987, outside the Jabalya refugee camp, an Israeli truck tragically collided with a jeep carrying Palestinian workers, leaving four Palestinians dead. This event is largely regarded as a trigger for a series of violent clashes between Palestinians and Israeli security forces in Gaza.¹⁶⁸

¹⁶³ Palestine Liberation Organization, Negotiation Affairs Department, Palestine National Council Declaration of Independence, November 15, 1988, available at <http://nad-plo.org/userfiles/file/Document/declaration%20of%20independence%20En.pdf>, accessed on February 3, 2016: “[...] Despite the historical injustice done to the Palestinian Arab people by their dispersion and deprivation of the right of self-determination after the United Nations General Assembly Resolution 181 of 1947, which partitioned Palestine into two states, Arab and Jewish, that resolution still provides the legal basis for the right of the Palestinian Arab people to national sovereignty and independence. [...]”

¹⁶⁴ Palestine Liberation Organization, Negotiation Affairs Department, Palestine National Council Declaration of Independence, November 15, 1988, available at <http://nad-plo.org/userfiles/file/Document/declaration%20of%20independence%20En.pdf>, accessed on February 3, 2016: “[...] The State of Palestine declares its belief in the settlement of international and regional disputes by peaceful means in accordance with the charter and resolutions of the United Nations; and its rejection of threats of force or violence or terrorism and the use of these against its territorial integrity and political independence or the territorial integrity of any

other state, without prejudice to its natural right to defend its territory and independence.”

¹⁶⁵ *Francis A. Boyle*, Forum: The Algiers Declaration on Palestine, The Creation of the State of Palestine, *European Journal of International Law*, Vol. 1 (1990), pp. 301, 303-304.

¹⁶⁶ *Paul Lewis*, Arabs at UN set Arafat Strategy, *The New York Times*, November 29, 1988, available at <http://www.nytimes.com/1988/11/29/world/arabs-at-un-set-arafat-strategy.html>, accessed on January 30, 2016.

¹⁶⁷ UN General Assembly, 43/177, Question of Palestine, December 15, 1988, [Resolution A/RES/43/177], available at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/43/177&Lang=E, accessed on February 3, 2016.

¹⁶⁸ *Joseph Croitoru*, Hamas, Der islamische Kampf um Palästina, München 2007, p. 64. The Palestinians see in the traffic accident just a spark; the Intifada is rather viewed as a result of prolonged Israeli policies in the disputed territories that included measures such as detention, house raids and expropriation of lands. Even though the first Intifada started

The following uprising took two forms: civil disobedience (i.e. strikes, boycotts of Israeli civil administration in the Gaza Strip and West Bank) and violent street protests (i.e. large demonstrations, the throwing of stones and Molotov cocktails).¹⁶⁹

as a non-violent civil disobedience movement, it turned more violent when it clashed with the Israeli Military.

¹⁶⁹ *Alan Dowty, Israel/Palestine, 3rd ed., Cambridge, 2012, pp. 142-148.*

B. The stages of peace negotiations

I. Madrid Conference

Until 1991, there were no peace negotiations between Israeli and Palestinian officials. In fact, Israeli law penalized contact with members of the PLO.¹⁷⁰ Egypt had been the only Arab state to sign a peace treaty with Israel.¹⁷¹ Many Arab states followed a policy of the three “No’s”, which was adopted at the Arab League summit in Khartoum, Sudan on September 1, 1967. This policy was supposed to govern Arab foreign relations towards Israel and included the following three conditions: no peace with Israel, no recognition of Israel, and no negotiations with Israel.¹⁷²

In 1991, following the fall of the Berlin Wall and outbreak of the Gulf War, the shift in the balance of

powers between the Soviet Union and the U.S. led to a renewed attempt of U.S. Secretary of State, James Baker, to help solve the Middle East conflict.¹⁷³ Between March and October of 1991, Baker made eight trips to the region and finally succeeded in getting the parties to agree to participate in an international peace conference.¹⁷⁴ Prior to the conference, Israel insisted that no independent Palestinian delegation should be allowed to participate in the conference. Due to the alleged involvement of the PLO in terrorist acts, Israel would only allow Palestinians from the West Bank or the Gaza Strip, and not Palestinians from East Jerusalem or PLO members, to take part in the conference.¹⁷⁵ After the Arab leaders and Palestinian representatives dropped their demand that PLO officials and Palestinians from East Jerusalem participate, Baker was able to proceed with promoting the idea of a conference.¹⁷⁶

¹⁷⁰ In 1986, the Israeli Knesset adopted a law which in effect banned any contact between Israelis and members of the PLO. Since then there were some contacts, even at a high level, but only one Israeli was sentenced to a prison term for such meetings, see Israel Ministry of Foreign Affairs, Press Conference with Justice Minister Libai on Repeal of Law Banning Meetings with the PLO, December 3, 1992, available at <http://mfa.gov.il/MFA/ForeignPolicy/MFADocuments/Yearbook9/Pages/33%20Press%20Conferece%20with%20Justice%20Minister%20Libai%20on.aspx>, accessed on June 15, 2015.

¹⁷¹ On September 17, 1978, Egyptian President Anwar Sadat and Israeli Prime Minister Menachem Begin signed the Camp David Accords, a guide for a comprehensive peace settlement of the long-standing territorial and other disputes between Israel and the Arab states since the establishment of Israel in 1948. The accords comprised three parts: (1) A Framework for Peace in the Middle East, a detailed description on how to proceed in solving the Palestinian problem; (2) A Framework for the Conclusion of a Peace Treaty between Egypt and Israel, provisions to guide negotiations for an Israeli-Egyptian peace agreement; and (3) “Associated Principles” to be applied in negotiating peace treaties between Israel and its other Arab neighbours, Jordan, Syria, and Lebanon, see *Yair Hirschfeld*, *Track-Two Diplomacy toward an Israeli-Palestinian Solution 1978-2014*, Washington 2014, p. 1.

¹⁷² Arab League Summit Conference Resolution, Khartoum September 1, 1967, in: *Yehuda Lukacs*, *The Israeli-Palestinian Conflict, A Documentary Record, 1967-1990*, Cambridge 1992, pp. 454 ff.: “[3]. The Arab Heads of State have agreed to unite their political efforts at the international and diplomatic level to eliminate the effects of the aggression and to ensure the withdrawal of the aggressive Israeli forces

from the Arab lands which have been occupied since the aggression of June 5. This will be done within the framework of the main principles by which the Arab States abide, namely, no peace with Israel, no recognition of Israel, no negotiations with it, and insistence on the rights of the Palestinian people in their own country.” *Alan Dowty*, *Israel/Palestine*, 3rd ed., Cambridge 2012, pp. 138-140.

¹⁷³ *Yair Hirschfeld*, *Track-Two Diplomacy toward an Israeli-Palestinian Solution 1978-2014*, Washington 2014, p. 96.

¹⁷⁴ *Elie Podeh*, *Chances for Peace, Missed Opportunities in the Arab-Israeli Conflict*, Austin 2015, p. 210.

¹⁷⁵ *Dennis Ross*, *The Missing Peace, The Inside Story of the Fight for Middle East Peace*, New York 2004, pp. 57, 59; *Clyde Haberman*, *Palestinian says his delegation will assert P.L.O ties at talks*, *The New York Times*, October 22, 1991, available at <http://www.nytimes.com/1991/10/22/world/palestinian-says-his-delegation-will-assert-plo-ties-at-talks.html>, accessed on January 28, 2016.

¹⁷⁶ U.S. Department of State, Office of the Historian, *Milestones 1989-1992, The Madrid Conference 1991*, available at <https://history.state.gov/milestones/1989-1992/madrid-conference>, accessed on January 28, 2016. Israel and the Arab parties agreed that the Palestinians would only be represented by delegates from the Territories, and as part of a mixed Jordanian-Palestinian delegations. Simultaneously, U.S. Secretary of State James Baker and U.S. President George Bush put pressure on Israeli Prime Minister Yitzhak Shamir to drop Israel’s insistence to conduct only bilateral negotiations by possibly withholding a \$10

In October, 1991, the U.S. sent a letter of assurances to Syria, Lebanon, Israel and the Palestinians, stating that the aim of this three day conference was to resolve the Middle East conflict and to provide a framework for the participating states to engage in bilateral talks without being obligated to sign binding peace agreements.¹⁷⁷ In addition, the U.S. and the Soviet Union issued an invitation to Israel, Syria, Lebanon, Jordan and the Palestinians to a Middle East peace conference, which outlined the structure of the upcoming “Madrid Conference”.¹⁷⁸ According to the invitation, there would be:

- An opening conference having no power to impose binding solutions;
- Bilateral negotiations between Israel and neighbouring Arab states;
- Negotiations between Israel and the Palestinians about a potential 5-year interim term of self-government, to be followed by negotiations of a more permanent government; and
- Multilateral negotiations between Israel, its Arab neighbours and members of the international community on key regional issues, like economic cooperation and development, environment, water, refugees, arms control and regional security.

Delegations from Israel, Syria, Lebanon and a mixed Jordanian-Palestinian delegation participated in the negotiations.¹⁷⁹ In Madrid, Palestinians were represented by Haydar Abd-al-Shafi, a well-known physician from the Gaza Strip, and Saeb Erekat,¹⁸⁰ who was then 36 years old and teaching political science in Nablus in the West Bank. Prime Minister Yitzhak Shamir led the Israeli delegation, which included Israel’s permanent representative to the United Nations at the time and current Prime Minister, Benjamin Netanyahu. Held from October 30–November 1, 1991, the Madrid Conference marked the first official diplomatic negotiations between Israel and its three neighbouring states – Jordan, Syria and Lebanon.

The negotiation framework included bilateral and multilateral negotiations. The bilateral negotiations between Israel and Jordan, Israel and Syria, and Israel and Lebanon respectively, were aimed at resolving the conflicts of the past and to result in peace treaties. The bilateral negotiations with the Palestinians attempted to reach a five-year term of Palestinian self-government to be followed by final status negotiations. The Madrid Conference was followed by five rounds of bilateral talks beginning in Washington on December 9, 1991. The Israeli-Syrian and Israeli-Lebanese negotiations started on December 10, while the negotiations between the Israeli and the mixed Jordanian-Palestinian

billion in loan guarantees requested by Israel to help with Immigration of Jews from the former Soviet Union to Israel. Shamir had to commit that these funds would not finance settlement activity in the Territories. See *Dennis Ross, The Missing Peace, The Inside Story of the Fight for Middle East Peace*, New York 2004, p. 84.

¹⁷⁷ The original speeches of the Madrid Peace Conference can be found at Special Document File published by University California Press on behalf of the Institute for Palestine Studies, *The Madrid Peace Conference*, *Journal of Palestine Studies*, Vol. 21, No. 2 (1992), pp. 117, 133.

¹⁷⁸ Madrid Conference: Invitation and Letters of Assurances, in: *The Madrid Peace Conference*, *Journal of Palestine Studies*, Vol. 21, No. 2 (1992), pp. 117-149. With regard to the Israeli-Palestinian track the invitation reads: “[W]ith respect to negotiations between Israel and Palestinians who are part of the joint Jordanian-Palestinian delegation, negotiations will be conducted in phases, beginning with talks on interim self-government arrangements. These talks will be conducted with the objective of reaching agreement within one year. Once agreed, the interim self-government arrangements will last for

a period of five years; beginning the third year of the period of interim self-government arrangements, negotiations will take place on permanent status. These permanent status negotiations, and the negotiations between Israel and the Arab states, will take place on the basis of Resolutions 242 and 338 [...]”

¹⁷⁹ On the formation of the joint Jordanian-Palestinian delegation, see *Mahmoud Abbas, Through Secret Channels*, Reading 1995, pp. 86-87; U.S. Department of State, Office of the Historian, *Milestones 1989-1992, The Madrid Conference 1991*, available at <https://history.state.gov/milestones/1989-1992/madrid-conference>, accessed on January 28, 2016.

¹⁸⁰ Saeb Erekat was born in 1955 in Abu Dis, near Jerusalem. He spent most of his childhood in Jericho although he had U.S. citizenship. He holds a Ph.D. in Political Science from Bradford University in England, see *Gilead Sher, The Israeli-Palestinian Peace Negotiations, 1999-2000, Within reach*, London and New York 2006, p. 6.

delegation began on December, 18, 1991. There was no real progress between the Israeli and the mixed Jordanian-Palestinian delegation because both sides were not able to agree on an agenda for the negotiations and had to resort to sending memoranda to each other expressing their respective viewpoints and demands.¹⁸¹ The bilateral talks under the Madrid framework continued until January 24, 1994.¹⁸²

The multilateral negotiations included not only delegations from the parties to the Middle East conflict but also twenty states and were meant to build a new Middle East, by establishing confidence and cooperation among the regional parties.¹⁸³ The framework for the multilateral talks included five forums in which the parties would discuss issues relevant to the regional development and the advancement of peace negotiations: water, environment, arms control, refugees and economic development. The multilateral talks began in Moscow, on January 28, 1992.¹⁸⁴ Israel did not attend follow-up meetings of the issues of refugees and economic development because it included Palestinians from outside the West Bank and Gaza Strip.¹⁸⁵ In the course of the negotiations, Syria and Lebanon made their participation conditional on the progress of the Israeli-Palestinian negotiations and thus subsequently did not attend any of the follow-up meetings. Even though the peace process starting in Madrid in 1991 did not bring about comprehensive peace treaties between all the parties

of the Middle East conflict, it enabled the parties to engage in an official dialogue and to understand each other's positions. The process also led to successful negotiations between Israel and Jordan, resulting in the signing of a comprehensive peace treaty in 1994.¹⁸⁶

II. Declaration of Principles ("Oslo I")

The Oslo peace talks started through unofficial back channel negotiations initiated by Israel's then Deputy Foreign Minister, Yossi Beilin, and Norwegian sociologist, Terje Rod-Larsen.¹⁸⁷ During the campaign preceding the Israeli parliamentary ("Knesset") election of June 1992, Beilin had already met with Terje Rod-Larsen, who at the time was the head of the FAFO Institute for Applied International Studies in Oslo, Norway. Larsen and Beilin agreed that if the left-liberal Labour Party, then led by Yitzhak Rabin, would win the election, Beilin and Larsen would subsequently establish a secret channel of negotiations with moderate and secular Palestinians.

On June 23, 1992, the Labour Party won the Israeli elections.¹⁸⁸ A few months after, on September 9, 1992, Jan Eggeland, then State Secretary in the Norwegian Ministry of Foreign Affairs, went on an official state visit to Israel, which was the first official visit that Beilin hosted as the new Deputy

¹⁸¹ *Mahmoud Abbas*, *Through Secret Channels*, Reading 1995, pp. 89.

¹⁸² *Ian Bickerton*, *The Arab-Israeli Conflict: A Guide for the Perplexed*, New York, London 2012, p. 203.

¹⁸³ *Elie Podeh*, *Chances for Peace, Missed Opportunities in the Arab-Israeli Conflict*, Austin 2015, p. 211.

¹⁸⁴ The following meetings took place referring to the relevant forum: Water (in Vienna, May 1992; in Washington, September 1992; in Geneva, April 1993), Security and arms control (in Washington, May and September 1992; Moscow, in May and November 1993), Refugees (in Ottawa, May and November 1992; Oslo, May 1993; in Tunis, October 1993), Environment (in Tokyo, May 1992; in Cairo, October 1993) and Economic development (in Brussels, May 1992; in Paris, October 1992; in Rome, May 1993; in Copenhagen, November 1993), see Palestinian National Authority, Preamble: Madrid Peace Conference, archived on November 19, 2003, available at https://web.archive.org/web/20031219142434/http://www.pna.gov.ps/Peace_Process/Peace_files/madrid.asp, accessed on February 17, 2016.

¹⁸⁵ *Mahmoud Abbas*, *Through Secret Channels*, Reading 1995, p. 98; *Ian Bickerton*, *The Arab-Israeli Conflict, A Guide for the Perplexed*, New York, London 2012, p. 203.

¹⁸⁶ See *Eyal Bentsur*, *The Way to Peace emerged at Madrid, A Decade since the 1991 Madrid Conference*, *Jerusalem Letter/Viewpoints*, No. 472 (2002).

¹⁸⁷ *Yossi Beilin*, *Touching Peace, From the Oslo Accord to a Final Agreement*, London 1999, p. 49; *Uri Savir*, *The Process, 1,100 days that changed the Middle East*, New York 1998, p. 1; *Geoffrey Watson*, *The Oslo Accords: International Law and the Israeli-Palestinian Agreements*, Oxford 2000, p. 41.

¹⁸⁸ On the 1992 Israeli elections, see *Itamar Rabinovich*, *Waging Peace, Israel and the Arabs at the End of the Century*, New York 1999, p. 45.

Foreign Minister.¹⁸⁹ For Israel, Norway served as a suitable mediator and host for informal discussions as it is not part of the EU and could act independently regarding foreign policy.¹⁹⁰ During his visit Eggeland agreed to host discreet Israeli-Palestinian back channel negotiations.

On December 3, 1992, a Knesset bill revoking the law that prohibited Israelis from holding contact with members of the PLO passed its first reading.¹⁹¹ The next day, Yossi Beilin participated in a meeting of the multilateral negotiations steering committee under the Madrid framework in London. Palestinians Faisal Husseini, Hanan Ashrawi and PLO's London representative, Afif Safieh, asked Ahmed Qurei (also known as "Abu Ala"¹⁹²) to meet in London with Yair Hirschfeld¹⁹³, an Israeli professor of Middle Eastern history from Haifa and an expert in economic development, who co-founded the Economic Cooperation Foundation.¹⁹⁴

To Ahmed Qurei's surprise, his meeting with Hirschfeld in London focused not on economic but rather on political issues. Hirschfeld, even though being in constant contact with Beilin, pretended to act only in an academic function. He succeeded in persuading Ahmed Qurei to continue the informal

Israeli-Palestinian dialogue. Assuming that Hirschfeld had political backing, Ahmed Qurei agreed. On January 20, 1993 the first "Oslo peace talks" were held in a lodge in Sarpsborg, a small industrial town, 80 miles south of Oslo.¹⁹⁵ On the Israeli side, the talks were initially conducted by Yair Hirschfeld and Ron Pundak, who had just completed his PhD on Middle Eastern and Political History at London's School of Oriental and African Studies.¹⁹⁶ On the Palestinian side, Ahmed Qurei, Hassan Asfur, a political adviser to Arafat's adviser Mahmoud Abbas,¹⁹⁷ and Maher al-Kurd, Arafat's economic adviser, participated.¹⁹⁸

Mona Juul, Rod-Larsen's wife and an experienced Norwegian diplomat, assisted in the talks and accompanied the Palestinian delegation, while Rod-Larsen accompanied the Israeli delegation. Israel's Foreign Minister at the time, Shimon Peres, received continuous updates from Beilin about the progress of the talks. In the beginning of February of 1993, Peres informed Prime Minister Yitzhak Rabin of the establishment of the back channel.

Although Rabin had been very pessimistic about the chance of the talks being successful, he authorized the back channel communication

¹⁸⁹ *Yossi Beilin*, *Touching Peace, From the Oslo Accord to a Final Agreement*, London 1999, p. 56.

¹⁹⁰ *Yossi Beilin*, *The Path to Geneva, The Quest for a Permanent Agreement, 1996-2003*, New York 2004, p. 99.

¹⁹¹ Israel Ministry of Foreign Affairs, Press Conference with Justice Minister Libai on Repeal of Law Banning Meetings with the PLO, December 3, 1992, available at <http://mfa.gov.il/MFA/ForeignPolicy/MFADocuments/Yearbook9/Pages/33%20Press%20Conference%20with%20Justice%20Minister%20Libai%20on.aspx>, accessed on June 15, 2015.

¹⁹² See *Ahmed Qurei (Abu Ala)*, *Beyond Oslo, The Struggle for Palestine, Inside the Middle East Peace Process from Rabin's Death to Camp David*, New York 2008, p. 176. Ahmed Qurei, a banker with expertise in financial and economic matters, originally from Abu-Dis in East Jerusalem, acted unofficially, amongst the Palestinians, as supervisor of the multilateral negotiations under the Madrid framework. Due to the fact that Ahmed Qurei was also senior PLO official, at the time residing in Tunis, he was not physically present during the multilateral negotiations.

¹⁹³ *Yair Hirschfeld*, *Track-Two Diplomacy toward an Israeli-Palestinian Solution 1978-2014*, Washington 2014, p. 108. In 1990, Hirschfeld and Beilin had founded an Israeli non-governmental organization called the Economic

Cooperation Foundation (ECF). Hirschfeld had also worked as an unpaid political advisor for Beilin throughout the 1992 election campaign. Due to this academic position and work for the ECF, he maintained good relations with moderate, secular Palestinians from East Jerusalem, many of whom, were living outside Israel, see *Raphael Ahren*, *No regrets, many laments, from the architect of Oslo*, *The Times of Israel*, September 15, 2013, available at <http://www.timesofisrael.com/no-regrets-many-laments-from-the-architect-of-oslo/>, accessed on March 2, 2014.

¹⁹⁴ *Mahmoud Abbas*, *Through Secret Channels*, Reading 1995, pp. 112-114.

¹⁹⁵ *Yair Hirschfeld*, *Track-Two Diplomacy toward an Israeli-Palestinian Solution 1978-2014*, Washington 2014, p. 108.

¹⁹⁶ See *Ron Pundak*, *Secret Channel, Oslo - the Full Story* (in Hebrew), Tel Aviv 2013.

¹⁹⁷ *Mahmoud Abbas*, *Through Secret Channels*, Reading 1995, p. 117.

¹⁹⁸ *Uri Savir*, *The Process, 1,100 days that changed the Middle East*, New York 1998, p. 24.

established by Hirschfeld and Pundak. From May 20, 1993, the Oslo peace talks were conducted on an official, but still confidential basis. Thereafter, Uri Savir, director-general of Israel's Ministry of Foreign Affairs, joined the Israeli negotiation team. During the summer of 1993, Yoel Singer, who was the former head of the legal department of Israel's Ministry of Foreign Affairs and already living in the U.S., drafted and advised on an official declaration of principles, which was sent to the Palestinians after Rabin's approval.¹⁹⁹ A prerequisite to the formal signing of a declaration was the mutual recognition of the State of Israel and the PLO. In return of Israel's readiness to recognize the PLO, the PLO was to commit itself to the following points:

- Recognition of Israel's right to exist in security and peace;
- Acknowledgement of the PLO as the representative of the Palestinian people;
- Commitment by the Palestinians to the peace process and to work towards a peaceful solution to the conflict;
- Palestinians abstaining from terror and violence and a halt to the Intifada;
- Acceptance of Security Council resolutions 242 and 338; and
- Rescinding the clauses of the Palestinian Covenant that called for the destruction of Israel or otherwise contradicted the peace process.²⁰⁰

¹⁹⁹ *Uri Savir, The Process, 1,100 days that changed the Middle East, New York 1998, p. 24.*

²⁰⁰ *Uri Savir, The Process, 1,100 days that changed the Middle East, New York 1998, p. 50.* On August 4, 1993, as the peace talks in Oslo went on, the work on the Declaration of Principles on Interim Self Government Arrangements commenced. The Palestinians accepted the essential claim of Israel, namely retention of existing settlements in the West Bank and the Gaza Strip. They also accepted Israel's responsibility for the security of Israeli citizens residing in the West Bank and the Gaza Strip for so long as the final status talks would proceed. With negotiations ongoing, Rabin's hopes and confidence in the talks grew – in particular to achieve a final and final status agreement in the future.

²⁰¹ *Arafat-Rabin-Holst Exchange of Letters (Israel-PLO Recognition), September 9, 2013, in: Terje Rød-Larsen, Nur Laq and Fabrice Aidan, The Search for Peace in the Arab-Israeli Conflict, A Compendium of Documents and Analysis, Oxford 2014, p. 3.*

On August 27, 1993, after Arafat approved a draft of the declaration sent by Israel and the issue of mutual recognition was settled, Israel's Foreign Minister, Shimon Peres, and his Norwegian counterpart, Jorgen Holst, informed U.S. President Bill Clinton of the positive progress of the talks. On August 30, 1993, the Israeli press made the negotiations public.

Five days before the official signing of the agreement, Arafat, in a letter to Rabin and to Holst, recognized Israel's right to exist in peace and security and Security Council Resolutions 242 and 338. On the same day, Rabin, on behalf of the Israeli government, sent a response letter stating that "in light of the PLO commitments undertaken [...] the Government of Israel recognizes the PLO as the representative of the Palestinian people and commence negotiations with the PLO within the Middle East peace process."²⁰¹ On September 13, the declaration (also known as the "Declaration of Principles") was signed on the lawn outside of the White House.²⁰² According to the preamble of the declaration:

"The Government of the State of Israel and the PLO Team [...] representing the Palestinian people agree to put an end to decades of confrontation and conflict, recognize their mutual legitimate and political rights, and strive to live in peaceful co-existence and mutual dignity and security and achieve a just, lasting and comprehensive peace

²⁰² *Martin Indyk, Innocent Abroad, An Intimate Account of American Diplomacy in the Middle East, New York 2009, p. 67.* Until the very end of the talks there was an open issue who would sign such a Declaration of Principles and whether there would be a historic encounter between (former "enemies") Rabin and Arafat. Mainly in Israel, but also amongst others in the international community, Arafat was still considered a terrorist. At first, Rabin wanted to avoid such shaking Arafat's hand at all costs because of the potential domestic political harm and the fear of negative reactions in Israel's media. In the end, the Declaration of Principles was signed by Israel's Foreign Minister Shimon Peres and PLO quasi "Foreign-Minister" Mahmoud Abbas. U.S. Secretary of State Warren Christopher and Russian Foreign Minister Andrej Kozyrev signed the Declaration as guarantors, in the presence of Rabin, Arafat and Clinton. The mutual recognition between the parties is the core element of the Declaration of Principles.

settlement and historic reconciliation through the agreed political process.”²⁰³

The declaration also refers to UN Security Council Resolutions 242 and 338 and established a “Palestinian Interim Self-Government Authority” as well as an elected Palestinian council. Containing 17 Articles and seven annexes, the declaration sets out the issues to be settled in a final status agreement: the future status of Jerusalem, refugees, settlements, security arrangements, borders, relations and cooperation with other neighbours, and other issues of common interest, such as water and the environment. According to Article 7, paragraph 2, only a subsequent interim agreement could transfer powers and responsibilities from the Israeli military to the Palestinians.

1. *Opposition to Peace Negotiations*

On both sides, many viewed the agreement critically. In Israel, the more conservative and right-wing parties started to publicly lobby against the agreement. In the West Bank and Gaza, radical Islamists tried to sabotage Israeli-Palestinian

progress. As a result, violence erupted in Israel, Gaza and the West Bank. On February 25, 1994, radical Jewish settler Baruch Goldstein killed 29 Palestinians praying in Hebron.

In the West Bank and Gaza Strip, the radical Islamic Resistance Movement (also known as “Harakat al Muqawama al Islamiyah” or “ Hamas”), which was founded in 1987 by cleric Sheikh Ahmad Yassin, gained popularity and support. In the early and mid-1990s, the Israeli public was exposed to the new phenomenon of Palestinian suicide bombings. Between April 6, 1994, and August 21, 1995, Hamas and the Islamic Jihad²⁰⁴, carried out nine terror attacks and killed 77 Israelis. In reaction to these events, the Israeli government increased its security measures in the West Bank and Gaza Strip.²⁰⁵

According to the Hamas Charter, the goal of Hamas is the destruction of the State of Israel and its replacement with an Islamic State on all the territory of former Mandatory Palestine.²⁰⁶ Hamas is an organization consisting of a political representation, located partly in the Gaza Strip and partly in Doha, Qatar²⁰⁷ and armed forces, known as the “Izz-al-Din al Kassam Brigades”.²⁰⁸ In the West Bank and Gaza,

²⁰³ Declaration of Principles on Self-Government Arrangements, in: *Terje Rød-Larsen, Nur Laq and Fabrice Aidan, The Search for Peace in the Arab-Israeli Conflict, A Compendium of Documents and Analysis*, Oxford 2014, p. 6. See public international law analysis of the agreement in *Peter Malanczuk, Some Basic Aspects of the Agreements between Israel and the PLO from the perspective of International law*, *European Journal of International Law*, Vol. 7, No. 4 (1996), pp. 485 ff.; *Antonio Cassese, The Israel-PLO Agreement and Self-Determination*, in: *European Journal of International Law*, Vol. 4, No. 1 (1993), pp. 564 ff. and *Eyal Benvenisti, The Israeli-Palestinian Declaration of Principles, A Framework for Future Settlement*, in: *European Journal of International Law*, Vol. 4, No. 1 (1993), pp. 542 ff.

²⁰⁴ The Islamic Jihad Movement in Palestine, (also known as “Harakat al-Jihad al-Islami fi Filastin), was founded in 1980 in Gaza by Rafah-based physician Dr. Fathi and al-Aziz Shaqari and others with the aim to destroy the State of Israel and establish an Islamic Palestinian state, see *Islah Jad, Islamic Jihad Movement*, in: *Cheryl A. Rubenberg* (ed.), *Encyclopedia of the Israeli-Palestinian Conflict*, Vol. 2, Boulder and London 2010, pp. 643-645.

²⁰⁵ Interview with Amichay (Ami) Ayalon, Head of the Israeli Security Agency Shabak (1995-2000), in: *Dror Moreh, The Gatekeepers* (in Hebrew), Tel Aviv 2014, p. 224.

²⁰⁶ The Hamas Charter of August 18, 1988 states that: “[I]srael by its virtue of its being Jewish and of having a

Jewish population, defies Islam and the Muslims” and that “Hamas’ struggle against the Jews is extremely wide-ranging and grave,” and that “Allah’s will shall be fulfilled only once “Muslims will fight the Jews (and kill them)”, see Hamas Charter, in: *Terje Rød-Larsen, Nur Laq and Fabrice Aidan, The Search for Peace in the Arab-Israeli Conflict, A Compendium of Documents and Analysis*, Oxford 2014, p. 1124; see *Die Charta der Hamas: Der Heilige Krieg als Programm*, in: *Joseph Croitoru, Hamas, Der islamische Kampf um Palästina*, München 2007, p. 88.

²⁰⁷ *Jonathan Schanzer, Hamas’s BFFs, It’s time to stop treating Turkey and Qatar like they’re anything other than proxies for terrorists*, *FP/Foreign Policy*, August 4, 2014, available at <http://foreignpolicy.com/2014/08/04/hamass-bffs/>, accessed on June 23, 2015.

²⁰⁸ See Chapter 2, *The Background to the 2014 Gaza Conflict*, pp. 8-10, 75, in: *State of Israel, The 2014 Gaza conflict: Factual and Legal Aspects*, full report, from the website of Israel’s Ministry of Foreign Affairs, available at <http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx>, accessed on May 14, 2015.

Hamas also serves as a welfare organization. For example, the “Dawa”, which means calling, preaching, bringing closer to religion, is a socio-economic division of Hamas that runs schools, hospitals and aid for the poor.²⁰⁹ Hamas views itself as part of the global Muslim Brotherhood umbrella organization²¹⁰, which is banned by Egypt and Saudi Arabia.²¹¹ Israel, the United States, Canada, and the EU have designated Hamas as a terrorist organization.²¹²

²⁰⁹ The Dawa network enables Hamas to broaden the base of public support whilst exposing the Palestinian population in the Territories to Hamas’ values and to Jihadi ideology and resistance to Israel. Hamas offers Dawa support to the general public, not only to its followers. As a result, many Palestinians are committed to Hamas in terms of ideology and values, and even in financial dependency on the assistance it provides, see Israel Security Agency Shabak, “Dawa” – Hamas’ Civilian Infrastructure and its Role in Terror Financing, available at <https://www.shabak.gov.il/English/EnTerrorData/Reviews/Pages/Dawa-Hamas-report.aspx>, accessed on November 13, 2015.

²¹⁰ The Covenant of the Hamas of August 18, 1988: “It is from Islam that it derives its ideas, concepts and perceptions concerning the universe, life, and man, and it refers to Islam’s judgment in all its actions” (Article 1); “The Islamic Resistance Movement is one of the wings of the Muslim Brotherhood in Palestine.”, (Article 2), see Hamas Charter, in: *Terje Rød-Larsen, Nur Laq and Fabrice Aidan, The Search for Peace in the Arab-Israeli Conflict, A Compendium of Documents and Analysis*, Oxford 2014, p. 1124.

²¹¹ BBC Online, Egypt court bans Muslim Brotherhood’s political wing, BBC Online, August 9, 2014, available at <http://www.bbc.com/news/world-middle-east-28722935>; accessed on April 27, 2015; L’Agence France-Press (AFP), Egypt PM labels Brotherhood ‘terrorist’ group after bomb kills 14, *Hürriyet Daily News*, December 24, 2013, available at <http://www.hurriyetaidailynews.com/egypt-pm-labels-brotherhood-terrorist-group-after-bomb-kills-14.aspx?pageID=238&nID=60050&NewsCatID=352>, accessed on April 27, 2015. In June 2010, An Egyptian court invalidated the countries’ placement of Hamas on a list of terrorist organisations but the ban of the Muslim Brotherhood Organization and the organisation’s armed wing Izz-al-Din-al-Kassam remained in place, see *Jack Khoury* and Reuters, Egyptian court cancels ruling to put Hamas on terrorist list, *Haaretz*, June 6, 2015, available at <http://www.haaretz.com/news/middle-east/1.659888>, accessed on June 10, 2015; Reuters, Saudi Arabia designates Muslim Brotherhood terrorist group, March 7, 2014, available at <http://www.reuters.com/article/us-saudi-security-idUSBREA260SM20140307>, accessed on April 27, 2015.

²¹² Israel Ministry of Defense, Designation as terrorist organization by the Israeli Government in force since June 22,

2. Gaza-Jericho-Agreement

Against this background, the Oslo peace process continued to move forward. Israel’s policy during the early and mid-1990s can be summarized by the agenda formulated by Prime Minister Rabin:

“We have to fight terror, as if there were no peace talks, and we have to pursue peace, as if there was no terror.”²¹³

1989 and pursuant to the Ordinance on the Prevention of Terrorism of February 25, 1996, list of designated terrorist organizations, available at http://www.mod.gov.il/Defence-and-Security/Fighting_terrorism/Pages/default.aspx (in Hebrew); Designation by the U.S. Department of State, in force since October 8, 1997, see U.S. Department of State, Foreign Terrorist Organizations, available at <http://www.state.gov/j/ct/rls/other/des/123085.htm>, Designation by Public Safety Canada, in force since November 27, 2002, see Government of Canada, Public Safety Canada, Currently listed entities, available at <http://www.publicsafety.gc.ca/cnt/html-scr/cntr-trrrsm/lstd-ntts/crrmt-lstd-ntts-eng.aspx#2023>; Hamas is listed on The Council of the European Union, Decision 2015/2430, December 21, 2015, updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism, and repealing Decision (CFSP) 2015/1334, see Official Journal of The European Union, December 22, 2015, L 334/18, available at <http://www.consilium.europa.eu/en/policies/fight-against-terrorism/terrorist-list/>, all accessed on January 17, 2016.

²¹³ Reference to Yitzhak Rabin’s remarks can be found in an essay by Israel’s former Foreign Minister *Avidgor Lieberman* in: *Dimitry Radyshevsky* (ed.), *The Jerusalem Alternative, Moral clarity for ending the Arab-Israeli conflict, Inaugural Jerusalem Summit 2004, Green Forest 2005*, p. 287 and also in *Tony Karon*, Israel peace talks aren’t a reward for terror, *Time Magazine*, April 10, 2002, available at <http://content.time.com/time/world/article/0,8599,229868,00.html>, accessed on January 17, 2016. This quote is a rephrasing of the strategy by David Ben-Gurion during his period as chairman of the Jewish Agency. Ben-Gurion explained his policy towards the British during the 2nd World War, who were partners against Hitler but enemies on the issue of the White Paper that restricted Jewish immigration to Palestine. Ben-Gurion is quoted to having said that: “We must support the [British] army as though there were no White Paper, and fight the White Paper as though there were no war”, Statement by David Ben-Gurion on September 12, 1939, see *Shabtai Teveth*, *Ben-Gurion, The Burning Ground, 1886-1948*, Boston 1987, p. 717.

On April 29, 1994, following up on the Declaration of Principles, Israel and the PLO signed the “Protocol on Economic Relations” in Paris, France. The Protocol established agreements related to import taxes and policies, monetary and financial issues, direct and indirect taxation, labour relations, agriculture, industry, tourism, and insurance issues.²¹⁴

On May 4, 1994, Israel and the PLO signed the “Agreement on the Gaza Strip and Jericho Area” in Cairo, Egypt.²¹⁵ This agreement established a Palestinian Authority (“PA”), which would exercise jurisdiction over certain parts of the Gaza Strip and Jericho. For the first time, autonomy over the Gaza Strip and the city of Jericho (except the surrounding Jewish settlements) was transferred to the Palestinians. Upon signing this agreement, on July 1, 1994, Arafat travelled to Gaza, where he was greeted by a cheering crowd. The Agreement on Preparatory Transfer of Powers signed between the parties on August 29, 1994 outlined the details of the transfer of civil administration duties from Israel to the PA, as previously agreed upon in the Declaration of Principles.²¹⁶ In accordance with the Declaration of Principles, Israel would transfer authority in the West Bank in several civilian spheres to the PA, which would take control over educational, health, and social welfare institutions.

III. Interim Agreement on the West Bank and Gaza Strip (“Oslo II”)

The most important agreement governing the Israeli-Palestinian relations is the “Interim agreement on the West Bank and the Gaza Strip” (also known as “Oslo II” or “Interim Agreement”), which was signed by Rabin and Arafat in Taba, Egypt on September 28, 1995. This agreement contains five comprehensive chapters: “The Council”, “Redeployment and Security Arrangements”, “Legal Affairs”, “Cooperation” and “Miscellaneous Provisions”.²¹⁷ According to the agreement, the West Bank would be divided into three areas: “A”, “B” and “C”. Area A included the six bigger Palestinian cities – Ramallah, Nablus, Jenin, Kalkilyah, Tulkarem and Bethlehem. Special arrangements would apply for the city of Hebron, as regards to the Old City of Hebron, the Jewish Quarter, and everything linked from there to Kiryat Arba and the Tomb of the Patriarchs.²¹⁸ Under the previously mentioned Gaza-Jericho agreement, Jericho was part of Area A. Over these areas, the PA would exercise sovereign rights with regard to security and administrative matters.²¹⁹ In Area B, Israel would be responsible for security, whereas the PA would be responsible for civil and administrative matters. In Area C, where most of the Jewish

²¹⁴ Protocol on Economic Relations between the Government of the State of Israel and the P.L.O. representing the Palestinian people (Paris Protocol), in: *Terje Rød-Larsen, Nur Laq and Fabrice Aidan, The Search for Peace in the Arab-Israeli Conflict, A Compendium of Documents and Analysis*, Oxford 2014, p. 6.

²¹⁵ Gaza-Jericho Agreement, in: *Terje Rød-Larsen, Nur Laq and Fabrice Aidan, The Search for Peace in the Arab-Israeli Conflict, A Compendium of Documents and Analysis*, Oxford 2014, p. 45.

²¹⁶ Agreement on Preparatory Transfer of Powers and Responsibilities, in: *Terje Rød-Larsen, Nur Laq and Fabrice Aidan, The Search for Peace in the Arab-Israeli Conflict, A Compendium of Documents and Analysis*, Oxford 2014, p. 111.

²¹⁷ Israel Ministry of Foreign Affairs, Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, September 28, 1995, available at <http://www.mfa.gov.il/MFA/ForeignPolicy/Peace/Guide/Pages/THE%20ISRAELI-PALESTINIAN%20INTERIM%20AGREEMENT.aspx>, accessed on February 3, 2016.

²¹⁸ Israel Ministry of Foreign Affairs, Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, September 28, 1995, Annex I, Protocol Concerning Redeployment and Security Arrangements, Article VII, available at <http://www.mfa.gov.il/MFA/ForeignPolicy/Peace/Guide/Pages/THE%20ISRAELI-PALESTINIAN%20INTERIM%20AGREEMENT.aspx>, accessed on February 3, 2016.

²¹⁹ “Land in populated areas (Areas A and B), including government and Al Waqf land, will come under the jurisdiction of the Council during the first phase of redeployment.” see Article 11 (2) (a), “Land”, Israel Ministry of Foreign Affairs, Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, September 28, 1995, Annex I, Protocol Concerning Redeployment and Security Arrangements, , available at <http://www.mfa.gov.il/MFA/ForeignPolicy/Peace/Guide/Pages/THE%20ISRAELI-PALESTINIAN%20INTERIM%20AGREEMENT.aspx>, accessed on February 3, 2016.

settlements are located, Israel would retain security responsibility as well as civil administration.

In Area A, currently comprising about 18 per cent of the land in the West Bank, the PA is equipped with most governmental powers. Area B, which encompasses large rural areas, comprises approximately 22 per cent of the West Bank. Under the Interim agreement, 90 per cent of all Palestinians would live under Palestinian self-governmental rule. Area C covers around 60 per cent of the West Bank and contains most of the natural resources of the West Bank. Thus, these areas are crucial to the development of the Palestinian economy.²²⁰ Today, 1.87 Million Palestinians live in the Gaza Strip²²¹ and about 2.78 Million Palestinians live in the West Bank,²²² with around 300,000 Palestinians living in Area C.²²³ These figures as well as the relative share of territory falling under one of the three territories (“A”, “B” or “C”) are disputed between Israelis and Palestinians.²²⁴

²²⁰ Orhan Nksic, *Nur Nasser Eddin, and Massimiliano, Cali, Area C and the Future of the Palestinian Economy*. Washington, DC 2014, available at <https://openknowledge.worldbank.org/handle/10986/18930>, accessed on November 13, 2015.

²²¹ Central Intelligence Agency (CIA), *The World Factbook*, “West Bank”, available at <https://www.cia.gov/library/publications/resources/the-world-factbook/geos/we.html>, updated in January 2016, accessed on January 17, 2016.

²²² Central Intelligence Agency (CIA), *The World Factbook*, “Gaza Strip”, available at https://www.cia.gov/library/publications/resources/the-world-factbook/geos/print_gz.html, updated in July 2015, accessed on January 17, 2016.

²²³ UN, Office for the Coordination of Humanitarian Affairs, *Occupied Palestinian Territory (OCHA oPt), Area C of the West Bank: Key Humanitarian Concerns*, Updated August 2014, available at https://www.ochaopt.org/documents/ocha_opt_area_c_factsheet_august_2014_english.pdf, accessed on November 13, 2015.

²²⁴ See *Naftali Bennett*, *A New Plan for Peace in Palestine*, *The Wall Street Journal*, May 20, 2014, available at <http://www.wsj.com/articles/SB10001424052702304081804579559432394067704>, accessed on February 19, 2016; *Nir Hasson*, *Demographic Debates Continues - How Many Palestinians Actually Live in the West Bank?* *Haaretz*, June 30, 2013, available at <http://www.haaretz.com/israel-news/premium-1.532703>, accessed on February 20, 2016; *Elhanan Miller*, *Expert bashes UN’s ‘politicized’ West Bank numbers*, *The Times of Israel*, March 6, 2014, available at <http://www.timesofisrael.com/expert-bashes-uns-politicized->

The Interim Agreement determined the responsibilities of a Palestinian Legislative Council (“PLC”) that in accordance with the Declaration of Principles would represent the West Bank and Gaza Strip as a “single territorial unit,” except for “(a) issues that will be negotiated in the permanent status negotiations: Jerusalem, settlements, specified military locations, Palestinian refugees, borders, foreign relations and Israelis” and “(b) powers and responsibilities not transferred to the Council”.²²⁵ The parties agreed that Israel would, through its military government, maintain the “authority over areas that were not under the territorial jurisdiction of the Council, powers not transferred to the Council, and Israelis”.²²⁶

It was agreed that final status negotiations covering the remaining issues would commence as soon as possible, but not later than May 4, 1996.²²⁷ The Interim Agreement stipulated that pending the outcome of the final status negotiations, neither side

west-bank-numbers/, accessed on February 20, 2016.; The Israeli Information Center for Human Rights in the Occupied Territories (B’Tselem), *What is Area C?* October 9, 2013 (last updated May 18, 2014), available at http://www.btselem.org/area_c/what_is_area_c, accessed on February 20, 2016; *Elhanan Miller*, *Right-wing annexation drive fueled by false demographics, experts say*, *The Times of Israel*, January 5, 2015, available at <http://www.timesofisrael.com/right-wing-annexation-drive-fueled-by-false-demographics-experts-say/>, accessed on February 20, 2016; *fuelled Palestinian Central Bureau of Statistics, Population 2014*, available at http://www.pcbs.gov.ps/site/lang_en/881/default.aspx#Population, accessed on February 20, 2016.

²²⁵ Israel Ministry of Foreign Affairs, *Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip*, September 28, 1995, Chapter 3, “Legal Affairs”, Article 17, “Jurisdiction”, par. 1, available at <http://www.mfa.gov.il/MFA/ForeignPolicy/Peace/Guide/Pages/THE%20ISRAELI-PALESTINIAN%20INTERIM%20AGREEMENT.aspx>, accessed on February 3, 2016.

²²⁶ Israel Ministry of Foreign Affairs, *Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip*, September 28, 1995, Chapter 3, “Legal Affairs”, Article 17, “Jurisdiction”, par. 4, available at <http://www.mfa.gov.il/MFA/ForeignPolicy/Peace/Guide/Pages/THE%20ISRAELI-PALESTINIAN%20INTERIM%20AGREEMENT.aspx>, accessed on February 3, 2016.

²²⁷ Israel Ministry of Foreign Affairs, *Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip*, September 28, 1995, Chapter 5, “Miscellaneous Provisions”,

was to initiate or take any step that would change the status quo of the West Bank and the Gaza Strip.²²⁸ The Palestinian National Council, the legislative body of the PLO, had to formally ratify the Palestinian obligations undertaken in the agreement and, amongst other measures, remove passages in the PLO-Charter that still called for the destruction of the State of Israel.

Until today, the Interim Agreement serves as the principal Israeli-Palestinian agreement. It is particularly relevant in the context of territorial and judicial arrangements in the West Bank. Some of the established joint committees, such as the Israeli-Palestinian Joint Water Committee, still meet regularly. Following Israel's unilateral withdrawal from the Gaza Strip in 2005 and Hamas' subsequent violent political takeover in 2007, the Interim Agreement has lost some of its practical relevance with regard to the Gaza Strip. Nevertheless, Israel – as agreed in the Interim Agreement – continues to control Gaza's external demarcation lines, its airspace and its territorial waters. Israel also continues to transfer humanitarian aid to Gaza and supply water and electricity to its residents.

1. Hebron Protocols

A sequence of historic events, including continuous Hamas terrorist attacks on Israeli civilians, the assassination of Israeli Prime Minister Yitzhak Rabin and the lingering implementation of

the redeployment of Israel's military from the West Bank, brought the peace process to a standstill.²²⁹ In 1996, Benjamin Netanyahu of the Likud party was elected as Prime Minister of Israel and tasked with the formation of a new government.²³⁰ Before the election, Netanyahu had openly advocated against the Oslo peace process. Between January 7–15, 1997, Israel and the PLO negotiated and signed the "Hebron Protocols".²³¹ During these negotiations, which were guided by U.S. Secretary of State Warren Christopher, Netanyahu and Arafat met for the first time.

The Hebron Protocols governed Israel's withdrawal from 80 per cent of the Hebron area in accordance with the Interim Agreement. In addition, Israel and the Palestinians agreed to three redeployments provided the Palestinians met their security responsibilities of protecting the Israelis.²³² Starting from March 7, 1997, and ending mid-1998, Israel would ultimately withdraw its military from the West Bank, except for "Jewish settlements and military locations". The Hebron Protocols did not, however, contain a definition of military locations. Moreover, these locations were not clearly demarcated or defined. Thus, it would fall within the discretion of the Israeli government to define these areas, an issue that caused fierce dispute between the parties.

Talks for a final status agreement were supposed to start within two months and to be completed by May 4, 1999.²³³ Further negotiations included the

Article 31, "Final Clauses", par. 5, available at <http://www.mfa.gov.il/MFA/ForeignPolicy/Peace/Guide/Pages/THE%20ISRAELI-PALESTINIAN%20INTERIM%20AGREEMENT.aspx>, accessed on February 3, 2016.

²²⁸ Israel Ministry of Foreign Affairs, Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, September 28, 1995, Chapter 5, "Miscellaneous Provisions", Article 31, "Final Clauses", par. 7, available at <http://www.mfa.gov.il/MFA/ForeignPolicy/Peace/Guide/Pages/THE%20ISRAELI-PALESTINIAN%20INTERIM%20AGREEMENT.aspx>, accessed on February 3, 2016.

²²⁹ Rabin was killed on November 4, 1995, by an Israeli radicalized law student Yigal Amir, see *Dan Ephron*, *Killing a King, The Assassination of Yitzhak Rabin and the Remaking of Israel*, New York 2015.

²³⁰ Benjamin Netanyahu was born on October 21, 1949, in Tel Aviv. He grew up in Jerusalem and Pennsylvania, where his father was a history professor. Netanyahu served as Israel's Ambassador to the United Nations from 1984-1988.

He is the chairman of the Israeli Likud party. From 1996-1999 and from 2009 to this day, Netanyahu serves as Israeli Prime Minister.

²³¹ The Temporary International Presence in Hebron (TIPH), Protocol Concerning the Redeployment in Hebron, January 17, 1997, available at http://www.tiph.org/en/About_TIPH/Mandate_and_Agreements/Hebron_Protocol/, accessed on February 3, 2016.

²³² Hebron Protocol 1997, in: *Cheryl A. Rubenberg* (ed.), *Encyclopedia of the Israeli-Palestinian Conflict*, Vol. 1, Boulder and London 2010, p. 536.

²³³ *Marco Pinfari*, *Peace Negotiations and Time, Deadline diplomacy in territorial disputes*, London, New York 2013, p. 106.

establishment of freedom of movement for Palestinians, also known as “safe passage”, between Beit Hanoun in the Gaza Strip and Hebron in the West Bank.²³⁴ In return, the PLO promised to effectively fight incitement and propaganda against Israel, strengthen cooperation for security matters, systematically destroy terrorist groups, seize illegal weapons, carry out investigations and prosecute and punish those trying to infiltrate Israel in order to kill civilians. Moreover, the parties negotiated arrangements for the establishment of an airport and a seaport in Gaza City and discussed financial and security related issues. The Palestinians reiterated their commitment to change the PLO National Covenant, which still called for the destruction of the State of Israel. However, terrorist attacks on Israel’s society did not halt. Between 1996 and 1997, seven suicide bombings inside Israel carried out by Hamas claimed the lives of 83 Israelis. Israel, on the other hand, failed to follow through on its promise of creating a safe passage between Gaza and the West Bank.

2. Wye-River Memorandum

On October 23, 1998, Netanyahu and Arafat signed an additional memorandum in Wye River, Maryland, USA (the “Wye-River Memorandum”).²³⁵ The purpose of the Wye-River Memorandum was to implement more parts of the Interim Agreement. One of its central points included a transfer of 12 per cent of the land of Area “C” to Area “B”, 1 per cent from Area “C” to Area “A”, and 14.2 per cent from Area “B” to Area “A”.²³⁶

²³⁴ See Israel Ministry of Foreign Affairs, Protocol Concerning Safe Passage between the West Bank and the Gaza Strip, October 5, 1999, available at <http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/protocol%20concerning%20safe%20passage%20between%20the%20west.aspx>, accessed on February 20, 2016.

²³⁵ Wye River Agreement, in: *Terje Rød-Larsen, Nur Laq and Fabrice Aidan, The Search for Peace in the Arab-Israeli Conflict, A Compendium of Documents and Analysis*, Oxford 2014, p. 348.

²³⁶ *Elie Podeh, Chances for Peace, Missed Opportunities in the Arab-Israeli Conflict*, Austin 2015, p. 222.

²³⁷ Israel Ministry of Foreign Affairs, The Wye River Memorandum, October 23, 1998, Article I, A (1), available at <http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/>

In order to meet Israel’s security needs, the Palestinian Authority agreed to convert 3 per cent of Area B to be designated as “Green Area and/or Natural Reserve”.²³⁷ The Wye-River Memorandum also includes multiple provisions on the redeployment of Israel’s military, security measures and clarifications concerning the authority of the Palestinian police force. In addition, this memorandum deals with issues relating to judicial cooperation, the PLO National Covenant and the protection of human rights.

3. Memorandum of Sharm-el-Sheikh

On May 17, 1999, Ehud Barak, the Labour Party candidate and former Chief of Staff of the IDF, won the Israeli elections. During his campaign, Barak advocated for an advancement of the stalled peace talks and created hope amongst the Israeli public to move towards a final status agreement and peace with the Palestinians. On September 4, 1999, Barak and Arafat, with the help of U.S., Egypt and Jordan, signed the “Sharm-el-Sheikh Memorandum”. Its main focus was the development away from continuous interim agreements towards the formulation of a Framework Agreement on Permanent Status (“FAPS”), by creating the necessary conditions for negotiating about the core issues.²³⁸ Israel agreed to release 350 Palestinian prisoners, while both sides agreed to refrain from unilaterally changing the status of Gaza and the West Bank. Additionally, the parties agreed that the construction of the Gaza Seaport should commence.²³⁹ Israel agreed to withdraw parts of its

[the%20wye%20river%20memorandum.aspx](http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/the%20wye%20river%20memorandum.aspx), accessed on February 20, 2016.

²³⁸ *Gilead Sher, The Israeli-Palestinian Peace Negotiations 1999-2001*, Within reach, London and New York. 2006, p. 14.

²³⁹ The airport, which was officially opened in 1998, operated until October 2000. In December 2001 and May 2002, Israel bombed the control tower and runway. During the 2008-2009 Gaza War, the airport was further destroyed and presently serves as a site for foraging gravel and other construction materials, see Legal Center for Freedom of Movement (Gisha), Gaza Strip Mapping Movement and Access, September 2013, available at <http://www.gisha.org/UserFiles/File/publications/>

military forces from 11 per cent of the West Bank and reassigned Areas A, B and C, in three stages starting from September 5, 1999, to January 20, 2000. The parties agreed that a final peace treaty should be signed by September of 2000, during the last months of U.S. President Clinton's second term in office.

IV. *Camp David*

On July 11, 2000, President Clinton initiated a summit in the presidential residence of Camp David, Maryland, in order to finalize a comprehensive peace treaty between the Israelis and Palestinians.²⁴⁰ Israeli and Palestinian leaders arrived in Camp David with very different expectations and demands.²⁴¹ Barak aimed for a comprehensive peace agreement, an end of conflict and all claims and an understanding that respected Israel's fundamental interests: the protection and sovereignty over the religious and cultural site on the Temple Mount in Jerusalem, as well as a waiver of the indefinite return of Palestinian refugees to Israel.²⁴²

In early 2000, Barak had decided to unilaterally pull Israel's troops out of South Lebanon, a move that received praise from the U.S. and the international community.²⁴³ He had also made progress towards a settlement with the Syrians, which further strengthened his ties with President Clinton. Hence, Barak's overall position in the negotiation process was slightly better than that of Arafat, who was angered by the fact that in his view, Israel had failed to vacate most areas in the West Bank.

map-2013/map-english-2013.pdf, accessed on February 20, 2016.

²⁴⁰ *Gilead Sher*, *The Israeli-Palestinian Peace Negotiations 1999-2001*, Within reach, London and New York, 2006, p. 56 ff.; *Ahmed Qurie (Abu Ala)*, *Beyond Oslo, The Struggle for Palestine, Inside the Middle East Peace Process from Rabin's Death to Camp David*, New York 2008, p. 176; *Martin Indyk*, *Innocent Abroad, An Intimate Account of American Peace Diplomacy in the Middle East*, New York 2009, p. 306.

²⁴¹ *Galia Golan*, *Israeli Peacemaking since 1967, Factors behind the breakthroughs and failures*, London 2015, p. 142.

²⁴² *Bill Clinton*, *My Life*, New York 2004, p. 804.

²⁴³ *Kofi Annan with Nader Mousavizadeh*, *Interventions: A Life in War and Peace*, London 2012, p. 264: "On May 22,

During negotiations, the Palestinians demanded sovereignty over all of the West Bank and Gaza Strip, complete sovereignty over the Temple Mount and East Jerusalem (except for the Jewish quarter) and a solution to the refugee issue, which would not force Arafat to give up on the right of return as a legitimate claim. For the first time ever, all the final status issues of the Israeli-Palestinian conflict, relating to borders and territory, security arrangements, settlements, refugees and Jerusalem, were put on the agenda and negotiated by different teams of experts.

In his memoirs, President Clinton presented his impressions of Barak and Arafat. Describing Ehud Barak, Clinton observed:

"By this time, I had gotten to understand Barak better. He was brilliant and brave, and he was willing to go a long way on Jerusalem and territory. But he had a hard time listening to people who did not see things the way he did, and his way of doing things was diametrically opposed to honoured customs among the Arabs with whom I'd dealt. Barak wanted others to wait until the time was right, then, when he made his best offer he expected it to be accepted as self-evidently a good deal. His negotiating partners wanted trust-building courtesies and conversations and lots of bargaining. The culture clash made my team's job harder. They came up with a variety of strategies to break the impasse, and some progress was made after the delegations broke up into different groups to work on specific issues, but neither side had permission to go beyond a certain point."²⁴⁴

On Yasser Arafat, Clinton noted:

"At times Arafat seemed confused, not wholly in command of the facts. I had felt for some time that

2000, I (Kofi Annan; *J.H.*) presented the proposed Blue Line in a report to the Security Council, which endorsed it, just as things were heating up on the ground. The Lebanese had no intention of allowing the occupying force to extricate itself on Israel's terms. Large crowds, including Hizbollah element, began moving south, entering villages in the Israeli-controlled area. Barak had to rush through his departure – within a week, Israel had vacated almost all positions in Lebanon, leaving mainly at night under cover of Israeli artillery fire."

²⁴⁴ *Bill Clinton*, *My Life*, New York 2004, p. 806.

he might not be at the top of his game any longer, after all the years spending the night in different places to dodge assassin's bullets, all the countless hours on airplanes, all the endless hours of tension-filled talks. He had grown used to flying from place to place, giving mother-of-pearl gifts made by Palestinian craftsmen to world leaders and appearing on television with them. It would be different if the end of violence took Palestine out of the headlines and instead he had to worry about providing jobs, schools and basic services. Most of the young people on Arafat's team wanted him to take the deal. I believe Abu Ala and Abu Mazen would have agreed but did not want to be at odds with Arafat."²⁴⁵

On the morning of the eighth day of negotiations, President Clinton had to reschedule his planned trip to the Group of Eight (the "G8") summit in Okinawa, Japan. After negotiating with Barak until 2.30 am and just before leaving to the summit, Clinton suggested the following terms to Arafat:

- Sovereignty over 91 per cent of the West Bank and a symbolic exchange of land close to Gaza and the West Bank;
- A capital in East Jerusalem, sovereignty over the Muslim and Christian quarters in the historic Old City and eastern suburbs of Jerusalem, as well as the right of planning, zoning and law enforcement in the remaining eastern part of the city; and
- Custodianship, but not "sovereignty" over the Temple Mount (also known as "al-Haram ash-Sharif").

²⁴⁵ *Bill Clinton, My Life*, New York 2004, p. 826.

²⁴⁶ *Bill Clinton, My Life*, New York 2004, p. 806.

²⁴⁷ *Gilead Sher, The Israeli-Palestinian Peace Negotiations 1999-2001, Within reach*, London and New York, 2006, p. 97; *Galia Golan, Israeli Peacemaking since 1967, Factors behind the breakthroughs and failures*, London 2015, p. 149: "It was left to Albright to explain to Barak that, in fact, Arafat had not agreed to the American proposal, to which Barak responded by saying that there would be no formal discussions at all and secluded himself in his cabin more or less for the duration. In the two days of talks after Clinton's return, Barak took his own Jerusalem offer off the table, and the Palestinians for their part, retreated on some of their positions regarding refugees and security." See also *Clayton E. Swisher, The Truth about Camp David, The Untold Story about the Collapse of the Middle East Peace Process*, New York 2009, p. 313.

²⁴⁸ Holding a press conference on the airfield in Israel upon arrival from Camp David, Ehud Barak said: "I have to say in

At the time, this offer represented the most far reaching proposal ever made by Israel in peace negotiations with the Palestinians. Arafat, disappointed that his demand for full sovereignty over all of East Jerusalem (including the Temple Mount) had not been satisfied, rejected Clinton's proposal.²⁴⁶ He considered de-facto control over the Temple Mount and almost all of East Jerusalem as insufficient. Barak, who at first agreed to Clinton's plan, was offended that Arafat did not directly or indirectly respond to his offer. Disappointed by the way the U.S. conducted the negotiations, which resulted at the time in not succeeding to create a solid and common ground between the two parties, Barak did see no purpose in engaging in further negotiations and refrained from doing so for a considerable amount of time.²⁴⁷

When Clinton reviewed the dispute related to the control of Jerusalem, he found that the disagreement was not about how the Jerusalem question would be resolved in general, but rather about which party could claim "sovereignty" over the Temple Mount. Ultimately, the Camp David talks failed and upon his return to Israel, Barak said that in Arafat he did not find "a partner for peace" – a slogan that would be repeated again and again by Israeli politicians in reference to Mahmoud Abbas and by Palestinian leaders in reference to the Israeli government.²⁴⁸ Arafat was greeted in Gaza City by a cheering crowd

anguish that we have not yet succeeded because we did not find a partner that was prepared for hard decisions on all topics [...]", see *Alan Philips, I will not despair in peace quest, pledges Barak*, *The Telegraph*, July 27, 2000, available at <http://www.telegraph.co.uk/news/worldnews/middleeast/israel/1350600/I-will-not-despair-in-peace-quest-pledges-Barak.html>, accessed on November 21, 2015; Similar with a slightly different translation from the original Hebrew, see *Clayton E. Swisher, The Truth about Camp David, The Untold Story about the Collapse of the Middle East Peace Process*, New York 2009, p. 340. For examples for the hesitation of Israeli cabinet ministers to consider Mahmoud Abbas a partner for peace, see Israel's Defense Minister Moshe (Bogi) Ya'alon on December 7, 2013, saying: "As someone who supported the Oslo Accords, I'm learning that we have no partner on the other side", in: *The Times of Israel, Defense minister: There's no partner' for peace*, *The Times of Israel*, December 8, 2013, available at <http://www.timesofisrael.com/defense-minister-theres-no->

and flowers because he had not given up on Jerusalem.

Shortly after the U.S. election in 2000 and just before the end of his presidency, Clinton presented his peace plan to Israelis and Palestinians, the “Clinton Parameters”.²⁴⁹ According to this plan, the Palestinians would be awarded sovereignty over 94–96 per cent of the West Bank but would have to “swap” 1–3 per cent of territory across the armistice line of 1949 (also known as “pre-1967 lines”) with Israel. The specific area to be annexed by Israel would include the territory, which inhabites approximately 80 per cent of all Jewish settlers living in the West Bank. In relation to security arrangements, Clinton proposed that the Israeli military would withdraw from the West Bank within a time period of three years. The Palestinians would have to agree to the deployment of an international force and to an Israeli force (under the authority of the international force) in the West Bank’s Jordan Valley for another three years. Israel would maintain its early “warning station” in the West Bank with a Palestinian liaison presence in order to prevent attacks perpetrated by Jordan or eastern Arab countries.²⁵⁰ There were also provisions for emergency Israeli engagements in the West Bank in the event of an “imminent and demonstrable threat to Israel’s security”. The State of Palestine would be

“demilitarized”, yet maintain adequate security forces. It would also be equipped with sovereignty over its airspace – even though special arrangements would have to be made in order to ensure meeting the training and operational requirements of the Israeli Air Force.

Clinton also suggested granting the Palestinians sovereignty over the Arab neighbourhoods of Jerusalem and the Israelis sovereignty over the Jewish neighbourhoods of Jerusalem. The Palestinians would have sovereignty over the Western Wall and the “Holy Basin” but no excavation around the Wall or under the Temple Mount would be permitted, unless Israel consented.

The agreement would constitute an end to the conflict and all claims. Clinton proposed a new UN Security Council resolution which would include an agreement on the release of the rest of the Palestinian prisoners serving time in Israeli prisons. Such a resolution would also meet the requirements of Resolutions 242 and 338. Clinton presented his parameters to the parties of the conflict without opening the issues to further debate. Only mutual consent of the parties to these conditions would allow for the negotiations to continue. On December 27, 2000, the Israeli cabinet accepted the Clinton Parameters with certain reservations.²⁵¹ For the first

partner-for-peace/?fb_comment_id=1395193730726562_42921#f22d849ed8, accessed on January 21, 2016; Israeli Energy Minister Yuval Steinitz on November 7, 2015: “(Abbas; *J.H.*) has still not proven to be a partner for peace, and the critical thing to do now is stop the incitement.” see *Tamar Pileggi*, Steinitz: “Abbas incitement proves he isn’t partner for peace”, *The Times of Israel*, November 7, 2015, available at <http://www.timesofisrael.com/steinitz-abbas-incitement-proves-he-isnt-partner-for-peace/>, accessed on January 21, 2016. Also Chief Negotiator Saeb Erekat referring to the Israeli Government as not “being a partner for peace”, see *i24news*, Saeb Erekat: “No partner for peace in Israel”, *i24news*, April 7, 2014, available at <http://www.i24news.tv/en/news/israel/diplomacy-defense/36280-140704-saeb-erekat-we-don-t-have-a-partner-in-israel>, accessed on January 21, 2016.

²⁴⁹ The Institute for National Security Studies (INSS), Center for Applied Negotiations, *The Israeli-Palestinian Negotiation file*, Clinton Proposal on Israeli-Palestinian Peace, Part 1/3, Tel Aviv 2013, p. 167.

²⁵⁰ An early warning system is a small intelligence unit sitting on a hill-top which can provide warnings on potential threats in real time, see *Dennis Ross*, *The Missing Peace*, The

Inside Story of the Fight for Middle East Peace, New York 2004, pp. 159-160; Interview conducted by the author with the Israeli chief-negotiator at Camp David Gilead Sher on June 18, 2015.

²⁵¹ The Israeli government outlined its position on the Clinton-Parameters in a letter on January 5, 2000 which was approved by the Israeli cabinet and sent by Israel’s chief negotiator Gilead Sher to Sandy Berger, at the time then U.S. national security advisor, see *The Institute for National Security Studies (INSS)*, Center for Applied Negotiations, *The Israeli-Palestinian Negotiation file*, Clinton Proposal on Israeli-Palestinian Peace, Part 1/3, Tel Aviv 2013, p. 171. Summarized by *Galia Golan*, *Israeli Peacemaking since 1967*, Factors behind the breakthroughs and failures, London 2015, p. 159. See also Interview of *Ari Shavit* with *Ehud Barak*, “Continuation of Eyes wide shut”, *Haaretz*, September 4, 2002, available at <http://www.haaretz.com/continuation-of-eyes-wide-shut-1.35091>, accessed on April 28, 2015. On the question of Israel’s reservations Barak answered that: “[...] I send him (Clinton, *J.H.*) a 20-page document detailing all our reservations. The two main points that I explained to him over and over were that I would not sign any document

time in the history of the Israeli-Palestinian conflict, for the sake of peace, an Israeli government was willing to negotiate on the basis of a 97 per cent territorial withdrawal from the West Bank and Gaza, with mutual agreed land swaps. The Palestinians, rejected, amongst others, the division of the Palestinian territory, the division of Jerusalem and giving up the right of return of Palestinian refugees. In their view, the Clinton Parameters “failed to satisfy the conditions required for a permanent peace”.²⁵²

On December 31, 2000, Clinton again met with Arafat, who still rejected the Clinton Parameters but responded to it with follow-up questions. Clinton later blamed the failed negotiations on Arafat, who he claimed was indecisive. On February 6, 2001, after Ariel Sharon had already been elected to serve as the new Prime Minister of Israel and Clinton had already completed his second presidential term, Arafat finally agreed to negotiate on the basis of the Clinton Parameters. By then, however, as Clinton recalls, it was already too late:

“Apparently Arafat had thought that the time to decide, five minutes to midnight, had finally come. His watch had been broken a long time. Arafat’s rejection of my proposal after Barak accepted it was an error of historic proportions. However, many Palestinians and Israelis are still committed to peace. Someday peace will come, and when it does, the final agreement will look a lot like the proposals that came out of Camp David and the six long months that followed.”²⁵³

that transfers sovereignty on the Temple Mount to the Palestinians and that no Israeli prime minister will accept even one refugee on the basis of the right of return.”

²⁵² The Palestine Liberation Organization, Negotiation Affairs Department, Official Palestinian Response to The Clinton Parameters (and letter to the international community) - Remarks and Questions from the Palestinian Negotiating Team Regarding the United States Proposal, January 1, 2001, available at <http://www.nad-plo.org/etemplate.php?id=98>, accessed on February 20, 2016.

²⁵³ *Bill Clinton, My Life*, New York 2004, p. 832.

²⁵⁴ Mohammed Dahlan was born in 1961. He is fluent in Hebrew and very knowledgeable in Israeli history and politics as a result of his detention from 1983-1984 in Israeli prisons. From 1993, Dahlan lived in Khan Yunis in Gaza, first serving as head of Internal Security and later as head of the Preventative Security Service, see *Gilead Sher*, *The Israeli-*

1. Taba Summit

On July 31, 2000, after the talks at Camp David, Israelis and Palestinians resumed negotiations. These negotiations lasted for 54 consecutive days in a very small forum that included Gaza’s Security Chief, Mohammed Dahlan,²⁵⁴ Palestinian Chief Negotiator, Saeb Erekat, Israel’s Foreign Minister, Shlomo Ben-Ami,²⁵⁵ and Israel’s Chief Negotiator, Gilead Sher. At times, the Deputy Chief of the Israeli Security Agency, Israel Hasson, Arafat’s advisor, Akram Haniyah, and the PLO’s Executive Committee member, Yasser Abed Rabbo, would join the negotiations. These negotiations (the “Taba process”) were an intense and extensive negotiation effort right after the Camp David talks to take up the negotiation results of Camp David and provide a framework for potential peace talks after the Israeli prime ministerial elections. They concluded at a summit held between January 21–27, 2001 in Taba, Egypt (the “Taba Summit”), and resulted in a Joint Statement.²⁵⁶

During the Taba process, Israel adhered to its three fundamental negotiation positions: (1) a renouncement of a Palestinian right of return to Israel; (2) a rejection of Palestinian sovereignty over the Temple Mount; and (3) assurances of the integration of territory inhabited by 80 per cent of the Jewish settlers in the West Bank into Israel as part of a comprehensive peace treaty.²⁵⁷ The parties were willing to use Resolution 242 as the basis for further negotiations. The Palestinians rejected the proposal

Palestinian Peace Negotiations 1999-2001, Within reach, London and New York 2006, p. 7.

²⁵⁵ From 1999, Shlomo Ben-Ami served as Minister of Internal Security. In this capacity he was involved in the negotiations with the Palestinians. In August 2000, when David Levy resigned as Minister of Foreign Affairs, Ehud Barak designated Ben-Ami to be the acting Minister of Foreign Affairs. He was officially appointed to the role in November 2000.

²⁵⁶ U.S. Department of State, Israeli-Palestinian Joint Statement, January 27, 2001, available at <http://2001-2009.state.gov/p/nea/rls/22699.htm>, accessed on January 22, 2016.

²⁵⁷ The account of the Taba talks is largely based on a non-paper, prepared by EU Special Representative for the Middle East Peace Process Miguel Moratinos. This draft was

contained in the Clinton Parameters that required the integration of major Jewish settlements in the West Bank with Israel as they felt it would impose too much of a burden on the freedom of movement within the territory of the proposed Palestinian state.²⁵⁸

The parties agreed on the creation of the safe passage between Gaza and the West Bank for Palestinians to commute within their future state.²⁵⁹ Regarding Jerusalem, the parties accepted the idea to make Jerusalem an open city for the citizens of two states, as suggested by the Clinton Parameters.²⁶⁰ There was still disagreement about how access to the Temple Mount should be governed and whether Israel's sovereignty over the Western Wall would also include sovereignty over Temple Mount.

On the issue of refugees, the parties were aware that there were two possible solutions.²⁶¹ The first possible solution would be the return and restitution of Palestinian refugees (either through a return to Israel, return to territory "swapped", or return to a future Palestinian state). The second possible

solution would entail compensation and resettlement of the refugees (either in a third country or in the country of their current residence). Additionally, the parties agreed that the UNRWA would slowly be dissolved. Israel raised the issue of Jewish refugees from Arab states but the Palestinians viewed this matter not to be a subject for an Israeli-Palestinian agreement.²⁶²

In relation to security arrangements, Israel demanded security control over the West Bank which in practice meant control over Palestinian air space, five early warning systems and the presence of Israel's armed forces in the Jordan Valley.²⁶³ The Palestinians vehemently opposed the deployment of Israeli forces in parts of the West Bank but agreed to the presence of an international force. Both sides agreed to help prevent violence. It was also clear that any future Palestinian state would be demilitarized, as suggested by the Clinton Parameters. Israel agreed to a withdrawal of its armed forces from the West Bank within 36 months and from the Jordan Valley after an additional 36 months. Due to internal

contested by some participants, but other officials have considered the document to provide a fair reflection of the negotiations. Full text available at *Ahmed Qurie (Abu Ala)*, *Beyond Oslo, The struggle for Palestine, Inside the Middle East Peace Process from Rabin's Death to Camp David*, New York 2008, p. 354 ff.; and EU Moratinos Non-Paper on Taba Negotiations, January 27, 2001 in: *Terje Rød-Larsen, Nur Laq and Fabrice Aidan*, *The Search for Peace in the Arab-Israeli Conflict, A Compendium of Documents and Analysis*, Oxford 2014, p. 468.

²⁵⁸ The Palestine Liberation Organization, Negotiation Affairs Department, Official Palestinian Response to The Clinton Parameters (and letter to the international community) - Remarks and Questions from the Palestinian Negotiating Team Regarding the United States Proposal, January 1, 2001, available at <http://www.nad-plo.org/etemplate.php?id=98>, accessed on February 20, 2016: "[I]n this context, the Palestinian side rejects the use of "settlement blocs" as a guiding principle recommended by the United States proposal. The use of this criterion subordinates Palestinian interests in the contiguity of their state and control over their natural resources to Israeli interests regarding the contiguity of settlements, recognized as illegal by the international community. It also contradicts the United States proposal's criteria concerning minimizing annexed areas and the number of Palestinians affected. In addition, the Palestinian side needs to know exactly which settlements Israel intends to annex."

²⁵⁹ In retrospect, Yossi Beilin, one of the "architects of Oslo", thinks that the incomplete implementation of a safe

passage between the Gaza Strip and the West Bank was one of the main issues after Taba. The author interviewed Yossi Beilin on November 25, 2013. According to Beilin, the Palestinians showed no interest to continue talks with Israel as long as this demand was rejected. This view is not shared by Camp David's lead negotiator Gilead Sher. The author interviewed Gilead Sher on June 18, 2015.

²⁶⁰ *Elie Podeh*, *Chances for Peace, Missed Opportunities in the Arab-Israeli Conflict*, Austin 2015, p. 292.

²⁶¹ *Elie Podeh*, *Chances for Peace, Missed Opportunities in the Arab-Israeli Conflict*, Austin 2015, p. 292.

²⁶² This is a demand that Israeli Prime Minister Yitzhak Shamir already remarked upon at the Madrid Peace Conference in 1991. During the conference Yitzhak Shamir said: "Soon after the establishment of Israel they (the Arab states, *J.H.*) turned against the Jewish communities. A wave of oppression, expropriation, and expulsion caused a mass exodus of some 800,000 Jews from land they inhabited from before the rise of Islam." See *The Madrid Peace Conference*, *Journal of Palestine Studies*, Vol. 21, No. 2 (1992), pp. 117, 129.

²⁶³ Israel's demand for a military presence in the Jordan Valley was less rooted in fear of state-to-state hostilities with a future Palestinian state but more rooted in concern over heavy weapons smuggling from Jordan and Iraq into the Palestinian territories to provide radical armed organizations.

political pressure and the fear of potential riots, the Palestinians rejected a time frame of six years for complete withdrawal and only agreed to an eighteen-month withdrawal under the supervision of international forces, while in the Jordan Valley the Palestinians would accept an additional ten-month time-frame.²⁶⁴

The Palestinians also rejected the demand that Jewish neighbourhoods outside the centre of Jerusalem but within the Jerusalem Metropolitan Area, such as Ma'ale Adumim and Givat Zeev would be directly connected to Israel.²⁶⁵ The Israeli-Palestinian Joint Statement of the Taba Summit indicates a certain (premature) optimism of the time. As stated in the Joint Statement:

“The sides declare that they have never been closer to reaching an agreement and it is thus shared belief that the remaining gaps could be bridged with the resumption of negotiations following the Israeli elections.”²⁶⁶

By early 2001, however, sentiments of the region had already changed.²⁶⁷ Facing heavy internal political pressures, which were magnified by the lynching of two Israeli soldiers in Ramallah, Israeli

Prime Minister Ehud Barak had announced elections for Israeli Prime Minister on November 28, 2000. On February 6, 2001, Ariel Sharon was elected the new Prime Minister of Israel.

2. *Second Intifada*

After the Camp David talks and shortly before the Taba Summit, another Palestinian “uprising” (also known as the “Al Aqsa Intifada” or the “Second Intifada”) had begun in the West Bank and Gaza Strip.²⁶⁸ According to the Palestinians, this intifada was sparked by Ariel Sharon’s visit to the Temple Mount on September 28, 2000, and by the general lack of progress of the Palestinian national aspirations.²⁶⁹ The Israeli government however asserted, amongst others, that the PA had planned and organized the Intifada to create sympathy for the Palestinian cause around the world by provoking Israeli security forces to fire upon young Palestinian demonstrators.²⁷⁰ For both sides, the Second Intifada marked the bloody climax of the Israeli-Palestinian conflict. By August of 2002, 603 Israelis and 1596 Palestinians were killed.²⁷¹ While most of the Israeli

²⁶⁴ *Elie Podeh*, *Chances for Peace, Missed Opportunities in the Arab-Israeli Conflict*, Austin 2015, p. 291.

²⁶⁵ *Ahmed Qurie (Abu Ala)*, *Beyond Oslo, The struggle for Palestine, Inside the Middle East Peace Process from Rabin’s Death to Camp David*, New York 2008, p. 355; EU Moratinos Non-Paper on Taba Negotiations, January 27, 2001, in: *Terje Rød-Larsen, Nur Laq and Fabrice Aidan*, *The Search for Peace in the Arab-Israeli Conflict, A Compendium of Documents and Analysis*, Oxford 2014, p. 468.

²⁶⁶ U.S. Department of State, *Israeli-Palestinian Joint Statement*, January 27, 2001, available at <http://2001-2009.state.gov/p/nea/rls/22699.htm>, accessed on January 22, 2016.

²⁶⁷ *Gilead Sher*, *The Israeli-Palestinian Peace Negotiations 1999-2001, Within reach*, London and New York 2006, pp. 227-228.

²⁶⁸ *Martin Indyk*, *Innocent Abroad, An Intimate Account of American Peace Diplomacy in the Middle East*, New York 2009, p. 341.

²⁶⁹ Palestine Liberation Organization, *Negotiations Affairs Department, The PLO’s Response to the Mitchell Committee Report/Official Response of the Palestine Liberation Organization to the Final Report of the Sharm-el-Sheikh Fact-Finding Committee (led by Senator Georg J. Mitchell)*, May 15, 2001, available at <http://www.nad-plo.org/etemplate.php?>

[id=161](#), accessed on March 28, 2016. Ami Ayalon, former head of the Israeli Security Agency (ISA) argues the initial demonstrations and violence as a reaction, mainly by less radical but highly frustrated students at their leadership and at Israel as occupiers. The already existing cycle of violence was then taken up by armed groups such as Hamas, the Islamic Jihad, the al Aqsa brigades and the Popular Front for the Liberation of Palestine, who carried out suicide bombings, in a clear attempt to halt all cooperation with Israel, frighten its population and put the world’s focus back to the Palestinian issue. See *Ami Ayalon*, “The Broken Dream: Analysing the Israeli Palestinian-Peace Process” in: *Yaacov Bar-Siman-Tov* (ed.), *As the Generals see it: The Collapse of the Oslo process and the violent Israeli-Palestinian Conflict*, Jerusalem 2004, p. 9-17; *Ahmed Qurie (Abu Ala)*, *Peace Negotiations in Palestine, From the second Intifada to the Roadmap*, New York 2015, p. 11 ff.

²⁷⁰ Israel Ministry of Foreign Affairs, *Sharm el-Sheikh Fact-Finding Committee-First Statement of the Government of Israel*, December 28, 2000, para. 118 ff. available at <http://mfa.gov.il/MFA/MFA-Archive/2000/Pages/Sharm%20el-Sheikh%20Fact-Finding%20Committee%20-%20First%20Sta.aspx>, accessed on February 23, 2016.

²⁷¹ *Don Radlauer*, *An Engineered Tragedy – Statistical Analysis of Casualties in the Palestinian-Israeli conflict*, September 29, 2002, from the website of the International

casualties resulted from Palestinian suicide bombings committed in cafes, nightclubs, restaurants, supermarkets and public places, most Palestinian casualties resulted from the April 2002 Israeli military operation in the West Bank (also known as “Operation Defensive Shield”). In this operation, the Israeli military took control of major Palestinian cities in “Area A”, carried out targeted killings against Hamas and Islamic Jihad leaders, and engaged in various law enforcement operations.²⁷²

3. Arab Peace Initiative

Continued Palestinian suicide attacks and retaliation by Israel’s armed forces effectively ended any further Israeli-Palestinian peace negotiations. Against the background of the attacks of September 11, 2001, by the “Al Qaeda” terrorist organization on the U.S., Saudi Arabia initiated a new comprehensive Arab-Israeli peace plan (known as the “Arab Peace Initiative” or “API”).

A number of factors led to this step: First, Saudi Arabia was looking to strengthen its ties with the U.S. and promote an image of loyal ally and reliable partner to the U.S. after persons with Saudi Arabian citizenship carried out the attacks of September 11, 2001. Second, the continued Israeli-Palestinian hostilities remained a destabilizing factor for the whole Middle East region and also concerned Saudi Arabia. Third, in absence of a strong role of an Arab state during the negotiations of Camp David and Taba, a new Arab peace proposal had the potential of filling a gap of Arab leadership at the time.²⁷³

Consequently, in an interview with New York Times foreign policy columnist, Thomas L. Friedman, Saudi Crown Prince, Abdullah Ibn Abd

al-Aziz Al Sa‘ud said that normal relations between Israel and the Arab states would be discussed upon an Israeli withdrawal from territories controlled since 1967.²⁷⁴ Following up on his statements, Abdullah reiterated his views during a speech at the Arab League summit in Beirut on March 27–28, 2002, where he said that:

“[T]he use of violence, for more than fifty years, has only resulted in more violence and destruction, and that the Israeli people are as far as they have ever been from security and peace, notwithstanding military superiority and despite efforts to subdue and oppress [...] peace emanates from the heart and mind, and not from the barrel of a cannon, or the exploding warhead of a missile. The time has come for Israel to put its trust in peace after it has gambled on war for decades without success. Israel, and the world must understand that peace and retention of the occupied Arab territories are incompatible and impossible to reconcile or achieve. I would further say to the Israeli people that if their government abandons the policy of force and oppression and embraces true peace, we will not hesitate to accept the right of the Israeli people to live in security with the people of the region.”

This speech was of great importance as it included a direct and public appeal of an Arab leader to Israel, reflecting a major shift of Saudi Arabia’s policy towards Israel since the Khartoum Principles of 1967. Following Abdullah’s speech in Beirut, the Arab League adopted the main ideas of the API in their official Declaration, also referred to as the “Beirut Declaration”.²⁷⁵ However, when finally read out at the Arab League summit, due to pressure from Syria and Lebanon, the Beirut Declaration had undergone significant policy changes compared to the Saudi Arabian principles, particularly regarding the refugee question.

In essence, the Beirut Declaration’s preamble affirmed the Arab states’ willingness to establish

Institute for Counter-Terrorism (ICT), available at <http://www.ict.org.il/Article/840/An%20Engineered%20Tragedy>, accessed on April 10, 2015.

²⁷² Ahmed Qurie (*Abu Ala*), *Peace Negotiations in Palestine, From the second Intifada to the Roadmap*, New York 2015, pp. 23-24.

²⁷³ Elie Podeh, *Chances for Peace, Missed Opportunities in the Arab-Israeli Conflict*, Austin 2015, p. 305.

²⁷⁴ Marwan Muasher, *The Arab Center: The Promise of Moderation*, New Haven 2008, p. 116; Joshua Teitelbaum,

The Arab Peace Initiative: A Primer and Future Prospects, Jerusalem 2009, p. 7.

²⁷⁵ Arab Peace Initiative, in: Terje Rod-Larsen, Nur Laq and Fabrice Aidan, *The Search for Peace in the Arab-Israeli Conflict, A Compendium of Documents and Analysis*, Oxford 2014, p. 484; Marwan Muasher, *The Arab Center: The Promise of Moderation*, New Haven 2008, p. 119; Alon Ben-Meir, *Israel and the Arab Peace Initiative*, in: *Journal of Peace, Conflict and Development*, Issue 14 (2009), p. 40.

normal relations (“alaqat tabi’yya”) with Israel in return for Israel’s withdrawal from all Arab territories occupied since 1967.²⁷⁶ The Declaration calls for a “just solution to the Palestinian refugee problem”, but at the same time also refers to UN General Assembly Resolution 194, which

“[R]esolves that the refugees returning to their homes and live at peace with their neighbours should be permitted to do so at the earliest practical date [...]”²⁷⁷

²⁷⁶ *Marwan Muasher*, *The Arab Center: The Promise of Moderation*, New Haven 2008, pp. 127-128; *Alia al Kadi*, *The Arab Peace Initiative: An Instrument for Peace*, June 2010, p. 4, from the website of The International Centre for the Study of Radicalisation and Political Violence (ICSR), available at <http://icsr.info/2010/09/the-arab-peace-initiative-an-instrument-for-peace/>, accessed March 27, 2016; *Joshua Teitelbaum*, *The Arab Peace Initiative, A Primer and Future Prospects*, Jerusalem 2009, p. 17. *Teitelbaum* points out that a final statement which accompanied the Beirut Declaration was stronger on the refugee issue explicitly demanding all of the Palestinians’ rights, including “guaranteeing the right of return (ta’min haqq al-’awda) for the Palestinian refugees on the basis of international legitimacy and the principles of international law including General Assembly Resolution 194” and rejecting any solution that involve “resettling of the Palestinians outside of their homes (tatwinihim kharij diyarihim)”.

²⁷⁷ The Beirut Declaration on Saudi Peace Initiative, Article 2 (I), (II): “Further calls upon Israel to affirm [...] Achievement of a just solution to the Palestinian refugee problem to be agreed upon in accordance with UN General Assembly Resolution 194.”, Israel Ministry of Foreign Affairs, Beirut Declaration on Saudi Peace Initiative, March 28, 2002, available at <http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/beirut%20declaration%20on%20saudi%20peace%20initiative%20-%2028-.aspx>, accessed on February 24, 2016, see UN General Assembly, 194 (III), Palestine - Progress Report of the United Nations Mediator, December 11, 1948, [Resolution A/RES/194(III)], available at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/194%28III%29, accessed on February 28, 2016, Article 11: “[...] Resolves that the refugees wishing to return to their homes and live at peace with their neighbors should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible; Instructs the Conciliation Commission to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation, and to maintain close relations with the

The Declaration calls for a sovereign and independent Palestinian state on Palestinian territory, including areas occupied by Israel since 1967 in the West Bank and Gaza Strip, with East Jerusalem as its capital.²⁷⁸ In the Declaration, the Arab states rejected any Palestinian resettlement or patriation (“tawtin”) in Arab countries.²⁷⁹ In return for Israel meeting these obligations, the Arab states would enter into a peace agreement with Israel, which would provide security for all the states of “the region”, which could be interpreted as including Israel.²⁸⁰ The Beirut Declaration was the first time

Director of the United Nations Relief for Palestine Refugees and, through him, with the appropriate organs and agencies of the United Nations.”

²⁷⁸ The Beirut Declaration on Saudi Peace Initiative: “[...] Having listened to the statement made by his royal highness Prince Abdullah bin Abdul Aziz, crown prince of the Kingdom of Saudi Arabia, in which his highness presented his initiative calling for full Israeli withdrawal from all the Arab territories occupied since June 1967, in implementation of Security Council Resolutions 242 and 338, reaffirmed by the Madrid Conference of 1991 and the land-for-peace principle, and Israel’s acceptance of an independent Palestinian state with East Jerusalem as its capital, in return for the establishment of normal relations in the context of a comprehensive peace with Israel.”, Israel Ministry of Foreign Affairs, Beirut Declaration on Saudi Peace Initiative, March 28, 2002, available at <http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/beirut%20declaration%20on%20saudi%20peace%20initiative%20-%2028-.aspx>, accessed on February 24, 2016.

²⁷⁹ The Beirut Declaration on Saudi Peace Initiative, Article 4: “Assures the rejection of all forms of Palestinian patriation which conflict with the special circumstances of the Arab host countries”, Israel Ministry of Foreign Affairs, Beirut Declaration on Saudi Peace Initiative, March 28, 2002, available at <http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/beirut%20declaration%20on%20saudi%20peace%20initiative%20-%2028-.aspx>, accessed on February 24, 2016.

²⁸⁰ The Beirut Declaration on Saudi Peace Initiative, Article 3 (1): “Consequently, the Arab Countries affirm the following: Consider the Arab-Israeli conflict ended, and enter into a peace agreement with Israel, and provide security for all the states of the region.”, Israel Ministry of Foreign Affairs, Beirut Declaration on Saudi Peace Initiative, March 28, 2002, available at <http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/beirut%20declaration%20on%20saudi%20peace%20initiative%20-%2028-.aspx>, accessed on February 24, 2016.

that the Arab states, as a collective, stated that in return for Israel fulfilling its obligations as outlined by the Beirut Declaration, they would consider the Arab-Israeli conflict to be resolved.

4. Geneva Initiative

The Geneva Initiative (also known as the “Geneva Accord”) is a non-governmental proposal for a final status agreement that was formulated by Yossi Beilin and Yasser Abed Rabbo.²⁸¹ The proposal was endorsed by a number of prominent Israeli and Palestinian politicians, former security officials, authors and academics. The talks relating to drafts of the Geneva Initiative began in 2002 and included some former Israeli and Palestinian negotiators. The agreement deals with the core issues of the Israeli-Palestinian conflict and was signed by non-official representatives of both parties in Geneva in December 2003.

In the proposed agreement, in accordance with Resolutions 242 and 338, the border between Israel and Palestine was based on the pre-1967 lines. Thus, Israeli settlements were not included within the borders of Israel, with the exception of major Jewish settlement blocs that were retained as part of a 1:1 land swap.²⁸² Additionally, according to the

agreement, the State of Palestine would be demilitarized and a safe passage would be established between Gaza and the West Bank. Palestinian refugees would be allowed to return to Israel upon Israel’s discretion, “in accordance with a number that Israel will submit to an international commission”.²⁸³ According to the Geneva Initiative’s proposed agreement, a mechanism and a fund would be established to compensate the refugees for loss of property and their “refugeehood”. The proposed agreement also provides an end to all claims and to the refugee status of the Palestinians:

“Palestinian refugee status shall be terminated upon the realisation of an individual refugee’s permanent place of residence (PPR) as determined by the International Commission [...] this agreement provides for the permanent and complete resolution of the Palestinian refugee problem. No claims may be raised except for those related to the implementation of this agreement.”²⁸⁴

To this day, the Geneva initiative’s draft is considered by many to be the most detailed example of what an Israeli-Palestinian peace agreement could look like.²⁸⁵

²⁸¹ The Geneva Accord, A Model Israeli-Palestinian Peace Agreement, available at <http://www.geneva-accord.org/mainmenu/english>, accessed on January 22, 2016; The Reut Institute, Geneva Initiative, November 11, 2004, available at <http://reut-institute.org/Publication.aspx?PublicationId=543>, accessed on May 26, 2015.

²⁸² The Land Swap Model suggests an exchange of territory between Israel and the Palestinians. Under this proposal, Israel would annex settlement blocs inhabited by a large Jewish population located east to the pre-1967 lines in return for giving up territory with a large Arab population located west to the pre-1967 line. According to news reports, in recent negotiations, an area of northern Israel known as “the Triangle” encompassing Arab villages would, upon the signing of a peace agreement, be put under the authority of a new Palestinian state whereas Israel would be allowed to keep authority over settlement blocs located on land currently claimed by the Palestinians as being part of a Palestinian state, see *Robert Tait*, Israel ‘proposes land swap’ as part of peace deal with Palestinians, *The Telegraph*, January 1, 2014, available at <http://www.telegraph.co.uk/news/worldnews/middleeast/israel/10545947/Israel-proposes-land-swap-as-part-of-peace-deal-with-Palestinians.html>, accessed on February 24, 2016.

²⁸³ The Geneva Accord, A Model Israeli-Palestinian Peace Agreement, available at <http://www.geneva-accord.org/mainmenu/english>, accessed on January 22, 2016, Article 7 reads: “[...] The number of (refugees; *J.H.*) shall be at the sovereign discretion of Israel and will be in accordance with a number that Israel will submit to the International Commission. This number shall represent the total number of Palestinian refugees that Israel shall accept. As a basis, Israel will consider the average of the total number submitted by the different third countries to the International Commission.”

²⁸⁴ The Geneva Accord, A Model Israeli-Palestinian Peace Agreement, Article 7, available at <http://www.geneva-accord.org/mainmenu/english>, accessed on January 22, 2016.

²⁸⁵ *Ben Birnbaum* and *Amir Tibon*, The Explosive, Inside Story of how John Kerry built an Israel-Palestine Peace Plan - and watched it crumble, *New Republic*, July 21, 2014, available at <https://newrepublic.com/article/118751/how-israel-palestine-peace-deal-died>, accessed on November 17, 2015.

5. Roadmap for peace

After two years of hostilities between Israelis and Palestinians, the “Middle East Quartet” (consisting of the U.S., the EU, Russia and the United Nations) initiated a “Roadmap for Peace”.²⁸⁶ On April 30, 2003, the U.S. Department of State released the text of the Roadmap.²⁸⁷ This proposal suggested a three-stage peace plan between Israelis and Palestinians. The first stage, which was proposed to last until May 2003, was meant to bring about mutual recognition between the parties, a halt to Israeli anti-terrorism measures (i.e., targeted killings), an institutional reform in the Palestinian territories, improvement of the humanitarian situation in the West Bank and the Gaza Strip, as well as an end to Palestinian violence and terrorism. The second phase was set for June–December 2003 and included a plan for an international conference in order to improve the economic situation in the Palestinian territories. The third and final phase from 2004–2005 was aimed at leading to a comprehensive solution to the conflict, in which every outstanding issue was supposed to be addressed.

On May 2, 2003, the Israeli cabinet accepted the Roadmap with fourteen reservations.²⁸⁸ The Israeli government agreed in part to the goals pursued by the plan but rejected a complete settlement freeze in the West Bank. Israel’s reservations included the demand for “the emergence of a new and different

leadership in the Palestinian Authority”²⁸⁹, an understanding that the “end of the process will lead to the end of all claims and not only the end of the conflict”²⁹⁰ and the “removal of references other than [Security Council] Resolutions 242 and 338”.²⁹¹ The Roadmap received international recognition and, on November 19, 2003, was finally endorsed by the UN Security Council Resolution as Resolution 1515 (2003).²⁹² Nevertheless, the Roadmap stagnated in its first stage and was thus never fully implemented.

After the failed Camp David talks and during the Second Intifada, international leaders started doubting Yasser Arafat’s willingness and ability to effectively prevent terrorist attacks, fight corruption within the Palestinian Authority and doubted his seriousness to reach a peaceful resolution with the Israelis.²⁹³ Consequently, under international pressure, on March 19, 2003, Arafat appointed Mahmoud Abbas to take over as interim President of the Palestinian Authority. On November 11, 2004, Yasser Arafat died. In the presidential elections of January 9, 2005, Mahmoud Abbas was elected as President of the Palestinian Authority.

²⁸⁶ A performance based Roadmap to a permanent Two-State Solution to the Israeli-Palestinian Conflict, April 30, 2003, in: *Terje Rød-Larsen, Nur Laq and Fabrice Aidan, The Search for Peace in the Arab-Israeli Conflict, A Compendium of Documents and Analysis*, Oxford 2014, p. 493.

²⁸⁷ *Ahmed Qurie (Abu Ala), Peace Negotiations in Palestine, From the second Intifada to the Roadmap*, New York 2015, p. 98.

²⁸⁸ Israel’s Response to the Road Map (14 Reservations), May 25, 2003, in: *Terje Rød-Larsen, Nur Laq and Fabrice Aidan, The Search for Peace in the Arab-Israeli Conflict, A Compendium of Documents and Analysis*, Oxford 2014, p. 492.

²⁸⁹ Israel’s Response to the Road Map (14 Reservations), May 25, 2003, in: *Terje Rød-Larsen, Nur Laq and Fabrice Aidan, The Search for Peace in the Arab-Israeli Conflict, A Compendium of Documents and Analysis*, Oxford 2014, Reservation No. 3.

²⁹⁰ Israel’s Response to the Road Map (14 Reservations), May 25, 2003, in: *Terje Rød-Larsen, Nur Laq and Fabrice*

Aidan, The Search for Peace in the Arab-Israeli Conflict, A Compendium of Documents and Analysis, Oxford 2014, Reservation No. 7.

²⁹¹ Israel’s Response to the Road Map (14 Reservations), May 25, 2003, in: *Terje Rød-Larsen, Nur Laq and Fabrice Aidan, The Search for Peace in the Arab-Israeli Conflict, A Compendium of Documents and Analysis*, Oxford 2014, Reservation No. 10.

²⁹² UN Security Council, S/RES/1515, November 19, 2003, Resolution 1515 adopted by the Security Council, available at http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1515%282003%29, accessed on January 23, 2016.

²⁹³ The New York Times, The Arafat Problem, The New York Times, July 22, 2004, available at <http://www.nytimes.com/2004/07/22/opinion/the-arafat-problem.html>, accessed on February 24, 2016.

6. *The Barrier, Israeli Disengagement and Palestinian Elections*

With an increasing number of suicide and attempted suicide attacks stemming from the West Bank, Israel decided to build a barrier for security purposes, loosely based on the pre-1967 lines (also known as the “Green Line”). Though the idea of building a physical separation had been discussed before the start of the Second Intifada, it was only implemented by Prime Minister Sharon’s government in June 2002.²⁹⁴ The Barrier has been a highly contentious issue, with even its name subject

to controversy. For instance, on July 9, 2004, subsequent to UN General Assembly Resolution ES 10-14²⁹⁵, the International Court of Justice referred to this construction as a “Wall”.²⁹⁶ The Israeli government, however, refers to it as a “Security Fence”. The Secretary-General of the UN refers to it as a “Barrier”²⁹⁷, the term used for the purposes of this essay.

With more than just its name at stake, the Barrier has led to a range of reactions from various parties. Israel argues that it is a necessary, defensive measure permitted under international humanitarian law to protect Israeli citizens from Palestinian terrorism.²⁹⁸

²⁹⁴ UN General Assembly, A/ES-10/248, November 24, 2003, Report of the Secretary-General prepared pursuant to General Assembly resolution ES-10/13, available at <http://www.un.org/Docs/journal/asp/ws.asp?m=A/ES-10/248>, accessed on January 7, 2016, pp. 2-3, par. 4-8: “The Government of Israel has since 1996 considered plans to halt infiltration into Israel from the central and northern West Bank, with the first Cabinet approval of such a plan in July 2001. After a sharp rise in Palestinian terror attacks in the spring of 2002, the Cabinet approved Government Decision 64/B on 14 April 2002, which called for construction of 80 kilometres of the Barrier in the three areas of the West Bank. The Seam Zone Administration, headed by the director general of the Israeli Ministry of Defense, was established to implement that decision. 5. On 23 June 2002, Israel’s Cabinet Decision 2077 approved the first phase of a “continuous” Barrier in parts of the West Bank and Jerusalem. The decision stated that the Barrier “is a security measure” that “does not represent a political or other border”. The route discussed was not made public; the decision stated that the “exact and final route of the fence will be decided by the prime minister and minister of defence”. On 14 August 2002, the Cabinet approved the final route for Phase A construction, which ultimately included 123 kilometres in the northern West Bank and 19.5 kilometres around Jerusalem, almost entirely on land occupied by Israel in 1967. On 1 October 2003, after nearly a year of construction on various sections, the Israeli Cabinet approved a full Barrier route in Decision 883. Ministry of Defence documents say the planned route of the Barrier will form one continuous line stretching 720 kilometres along the West Bank. A map of the route, which shows both completed and planned sections, was posted on the Ministry of Defense web site on 23 October 2003, two days after the General Assembly approved resolution ES-10/13. 7. Much of the completed Barrier, excluding East Jerusalem, runs close to the Green Line, though within Palestinian territory. The completed Barrier deviates more than 7.5 kilometres from the Green Line in certain places to incorporate settlements, while encircling Palestinian population areas. The part of the Barrier that roughly hews to the Green Line is along the northernmost part of the West Bank. A 1-2 kilometre stretch west of Tulkarem appears to run on the Israeli side of the

Green Line. The planned route, if fully constructed, would deviate up to 22 kilometres in places from the Green Line. Based on the route on the official map, including depth barriers and East Jerusalem, approximately 975 square kilometres, or 16.6 per cent of the entire West Bank, will lie between the Barrier and the Green Line. This area is home to approximately 17,000 Palestinians in the West Bank and 220,000 in East Jerusalem. If the full route is completed, another 160,000 Palestinians will live in enclaves, areas where the Barrier almost completely encircles communities and tracts of land. The planned route incorporates nearly 320,000 settlers, including approximately 178,000 in occupied East Jerusalem.”

²⁹⁵ UN General Assembly, A/RES/ES-10/14, December 12, 2003, Resolution adopted by the General Assembly, available at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/ES-10/14, accessed on February 24, 2016.

²⁹⁶ International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion of July 9, 2004, I.C.J. Reports 2004, par. 136.

²⁹⁷ UN General Assembly, A/ES-10/248, November 24, 2003, Report of the Secretary-General prepared pursuant to General Assembly resolution ES-10/13, available at <http://www.un.org/Docs/journal/asp/ws.asp?m=A/ES-10/248>, accessed on January 7, 2016, p. 2: “This report focuses on the period from 14 April 2002, when the Government of Israel first decided to build a system of fences, walls, ditches and barriers in the West Bank (“the Barrier”), to 20 November 2003.”

²⁹⁸ Israel Ministry of Foreign Affairs, *Saving Lives - Israel's Security Fence*, November 26, 2003, available at <http://mfa.gov.il/MFA/MFA-Archive/2003/Pages/Saving%20Lives-%20Israel-s%20Security%20Fence.aspx>, accessed on March 22, 2016: “The security fence would not have been needed had there been no terrorism against innocent Israelis. The fence is not a border. The border will be determined by negotiations. The Palestinians will not be cut off from their

On the other hand, opponents view the Barrier, which crosses through areas beyond the pre-1967 borders, as a disproportionate restriction on Palestinian freedom of movement and an unlawful *de facto* annexation of Palestinian land.²⁹⁹ By 2006, around 362 km of the structure were completed. By 2012, 440 km of the Barrier had been completed (around 62 per cent) with 57 km under construction and 212 km (30 per cent) not yet developed. On July 9, 2004, referred to the court by the UN General Assembly, the International Court of Justice ruled in an advisory opinion that the Barrier was unlawful under international law.³⁰⁰ Ten days earlier, the Israeli Supreme Court confirmed the legality of the Barrier in principle but ordered that some

fields, places of commerce and urban centers. The terrorist target their victims for death. Death is irreversible. Inconveniences caused by the fence are reversible. The right to live from terrorism must take precedence. A legitimate temporary security measure, the fence will help to end terror and restore calm – steps that are necessary for renewing the peace process. More than 900 people were murdered in attacks carried out by Palestinian terrorists since late September 2000. Thousands of Israelis have been injured, many of the victims maimed for life. The terrorists infiltrated Israeli cities and towns and carried out attacks – including suicide bombings – on buses, in restaurants, shopping malls, and even private homes. No other nation in the world has before this time faced such an intense wave of terror, especially in the form of suicide bombings. In almost all of the cases, the terrorists infiltrated from Palestinian areas in the West Bank. The Palestinian leadership has done nothing to stop them and has even encouraged them [...].”

²⁹⁹ State of Palestine, Palestine Liberation Organization, Negotiations Affairs Department, Statement by PLO Executive Committee Member Dr. Saeb Erekat on the 11th Anniversary of the ICJ Opinion Regarding the Israeli Annexation Wall, July 9, 2015, available at <http://www.nad-plo.org/etemplate.php?id=563>, accessed March 28, 2016: “Today, 150 Palestinian communities have been isolated in the area between the Israeli Annexation Wall and the 1967 border. Just this week, an Israeli Occupation Court gave the green light to its army to build the Wall through the Cremisan Valley, strangling the Bethlehem district and dividing 58 families from their land, in an attempt to expand the illegal settlements of Gilo and Har Gilo. At the same time, the peaceful Palestinian popular resistance in areas like Bil’in, Nil’in and Burin have highlighted the consequences of the Wall and the steadfastness of our people. The international community cannot simply continue to violate its own obligations. To stop Israeli crimes and to ensure the Palestinian right to self-determination is an international obligation [...]; The Israeli Information Center for Human Rights in the Occupied Territories (B’Tselem) criticize that 85 per cent of the planned Barrier touches territory in the

amendments to its route be implemented in order to avoid excessive infringements on the rights of the local population.³⁰¹

Israeli Prime Minister Sharon did not regard Yasser Arafat to be a reliable partner for peace and in February 2005, the Israeli government decided to leave the Gaza Strip (the “disengagement”) and to formally declare an end to the military administration there.³⁰² The plan included the decision to dismantle 21 civilian settlements, to relocate 8,500 settlers from Gaza, and to withdraw all Israeli military from inside the Gaza Strip. In the context of the disengagement, Israel also dismantled four northern West Bank settlements – Chomesh,

West Bank East of the Green line and that it annexes 10 per cent of disputed land and crosses through many privately owned Palestinian land plots, thereby destroying farmers’ livelihoods, see The Israeli Information Center for Human Rights in the Occupied Territories (B’Tselem), The Separation Barrier, available at http://www.btselem.org/separation_barrier/map, accessed on November 16, 2015.

³⁰⁰ International Court of Justice, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion of July 9, 2004, I.C.J. Reports 2004, p. 136, (par. 114-137), at par. 143: “The Court having concluded that, by the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem, and by adopting its associated régime, Israel has violated various international obligations incumbent upon it.”

³⁰¹ The Israeli Supreme Court sitting as High Court of Justice, *Beit Sourik Village v. The Government of Israel*, H.C.J. 2056/04 of June 30, 2004, available at http://elyon1.court.gov.il/Files_ENG/04/560/020/A28/04020560.A28.pdf, accessed on May 3, 2015.

³⁰² Israel Ministry of Foreign Affairs, Israel’s Disengagement Plan: Selected Documents, available at <http://mfa.gov.il/MFA/ForeignPolicy/Peace/Guide/Pages/Israeli%20Disengagement%20Plan%2020-Jan-2005.aspx>, accessed on March 27, 2016; On the legal status of Gaza after Israel’s disengagement, see *Yuval Shany*, Faraway, so close: The Legal Status of Gaza after Israel’s Disengagement, in: Yearbook of International Humanitarian Law, Vol. 8, No. 12 (2005); *Yuval Shany*, The Law Applicable to Non-Occupied Gaza: A Comment on *Bassiouni v. Prime Minister of Israel*, February 27, 2009, Hebrew University International Law Research Paper No. 13-09; available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1350307, accessed on March 27, 2016; *Yair Hirschfeld*, Track-Two Diplomacy toward an Israeli-Palestinian Solution 1978-2014, Washington 2014, p. 293.

Ganim, Kadim and Sa Nur. On August 15, 2005, the Israeli government implemented the disengagement plan.³⁰³ Thus, according to the Israeli government, it has not exercised effective control over the Gaza Strip since August 2005.³⁰⁴ It has, however, fulfilled post-armed conflict obligations, allowed the passage of goods of a humanitarian nature and provided

electricity and water³⁰⁵, even during times of active hostilities with Hamas. Whether Israel, even in the absence of its troops on the ground in Gaza, still exercises effective control over it, and if so to what degree, remains debated in jurisprudence and scholarship.³⁰⁶

³⁰³ On November 15, 2005, Israel and the Palestinian Authority signed the AMA - Agreement on Movement and Access. Its aim was to enable free movement of goods between Israel Egypt and the Gaza Strip and allow for the construction of a seaport in Gaza. However, the agreement was never fully implemented, due to the security situation, see UN Office for the Coordination of Humanitarian Affairs, Occupied Palestinian Territory (OCHA oPt), The Agreement on Movement and Access, One Year On, available at https://www.ochaopt.org/documents/ama_one_year_on_nov_06_final.pdf, accessed on November 18, 2015.

³⁰⁴ State of Israel, The 2014 Gaza Conflict: Factual and Legal Aspects, full report, p. 17, par. 45, from the website of Israel's Ministry of Foreign Affairs, available at <http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx>, accessed on May 14, 2015. Israel argues that it would not be able to exercise governmental functions in the Gaza Strip without a massive military campaign to regain such control. Perhaps the clearest indication of Israel's inability to exercise effective control over the Gaza Strip is Hamas's military capacities, including its ongoing military operations against Israel and continuous military buildup. Furthermore, the 2014 conflict with Hamas demonstrated that Israel was required to exert significant military efforts in order to reach and neutralize the openings of cross-border tunnels at the outskirts of the Gaza Strip.

³⁰⁵ See the Letter signed by 12 Professors, (*Eyal Benvenisti, Yuval Shany David Kretzmer, Yael Ronen* et al.) to the Members of the Knesset Foreign Affairs and Defense Committee, July 20, 2014, Re: Legal Opinion Concerning Supply of Electricity and Water to the Gaza Strip, from the website of the Legal Center for Freedom of Movement (Gisha), available at <http://gisha.org/UserFiles/File/publications/letters/letter-en-20-7-14.pdf>, accessed on February 4, 2016: "Indeed, there is an ongoing debate regarding the legal status of the Gaza Strip after the Israeli disengagement 2006, and specifically regarding the question whether the international law of occupation applies to Gaza in its entirety. We shall not resolve this complex issue here. Nonetheless, it is clear that regarding the specific administrative powers that Israel retains over the Gaza Strip, these must be exercised for the benefit of the residents of Gaza, subject to security considerations. As held by the Supreme Court over the years, when the state exercise power that affects individuals, the balance between security considerations and human rights must be maintained, inter alia, through a proportionality analysis [...] Due to the same considerations, Israel's control

over this infrastructure results also in positive obligations. Accordingly, in the event that infrastructure providing electricity and water to Gaza is damaged during the hostilities, and this infrastructure is under Israel's effective control – the latter is under an obligation to attempt to repair them, as far as possible, in order to renew the supply of these basic needs."

³⁰⁶ *Yoram Dinstein*, The International Law of Belligerent Occupation, Cambridge 2009, pp. 276-280; Benjamin *Rubin*, Israel, Occupied Territories, in *Rüdiger Wolfrum* (ed.): Max Planck Encyclopedia of Public International Law, Vol. 6, Oxford 2012, p. 425. For the position that Israel no longer maintains effective control over the Gaza Strip, and thus cannot be considered as occupying the Gaza Strip, see The Israeli Supreme Court sitting as High Court of Justice, *Jaber Al-Bassiouni and others v. Prime Minister*, H.C.J. 9132/07 of January 27, 2008, available at http://elyon1.court.gov.il/Files_ENG/07/320/091/n25/07091320.n25.pdf, accessed on February 4, 2016, at par. 12: "We should point out in this context that since September 2005 Israel no longer has effective control over what happens in the Gaza Strip. Military rule that applied in the past in this territory came to an end by the decision of the government, and Israeli soldiers are no longer stationed in the territory on a permanent basis, nor are they in charge of what happens there. In these circumstances, the State of Israel does not have a general duty to ensure the welfare of the residents of the Gaza Strip or to maintain public order in the Gaza Strip according to the laws of belligerent occupation in international law." *Adam Roberts*, in: Expert Meeting, Occupation and Other Forms of Administration of Foreign Territory, Report prepared and edited by *Tristan Ferraro*, Legal Adviser, ICRC, Geneva 2012, p. 41, Appendix 2, The Termination of Military Occupations, available at <https://www.icrc.org/eng/assets/files/publications/icrc-002-4094.pdf>, accessed on April 1, 2016; *Eyal Benvenisti*, The International Law of Occupation, 2nd ed., Oxford 2012, pp. 211-212; *Yuval Shany*, Faraway, so close: The Legal Status of Gaza after Israel's Disengagement, in: Yearbook of International Humanitarian Law, Vol. 8, No. 12 (2005); The Public Commission to Examine the Maritime Incident of 31 May 2010, The Turkel Commission, Report, Part 1, January 2010 [2011], available at <http://www.turkel-committee.gov.il/files/wordocs/8808report-eng.pdf>, accessed on April 10, 2016, pp. 50-53. This position has been rejected, amongst others, by The Office of the Prosecutor (OTP) of the International Criminal Court (ICC), which has assumed that the situation in Gaza can be considered within

On January 25, 2006, elections for the second Palestinian Legislative Council were held. Prior to the elections, the voting system was changed: First, the number of elected representatives was increased from 88 to 132 and second, half of the representatives were now elected by a majority vote within different districts and the other half according to lists of political parties in accordance with the parties' overall result in the whole of the Palestinian territories. Out of a total of 132 seats, the Change and Reform (Hamas) party secured 74 seats, whilst the Fatah party only won 45 seats.³⁰⁷ The PLC convened on February 18, 2006.

In March 2007, Hamas and Fatah agreed to a unity government, which never effectively succeeded in governing together. During the following months, as

a result of the implementation of the election results, violence erupted between Fatah and Hamas.³⁰⁸ At first, members of Fatah did not evacuate government offices in Gaza, which led Hamas activists to turn to take office by force. Then, in June 2007, as a consequence of the rising turmoil and violence in Gaza, PA President Mahmoud Abbas declared a state of emergency and fired Ismael Haniyah, who was listed first on the Hamas election list and had been appointed as Palestinian Prime Minister by Abbas on February 21, 2006.³⁰⁹ Eventually, as of mid-June 2007, Hamas took over control of the Gaza Strip.³¹⁰ As a reaction to the Hamas takeover of Gaza, Israel and Egypt temporarily closed their border crossings with Gaza but continued to deliver humanitarian aid and basic food for Gaza's residents.

the framework of an international armed conflict in view of the continuing military occupation by Israel, see International Criminal Court, Situation on Registered Vessels of Comoros, Greece and Cambodia, November 6, 2014, Article 53 (1), par. 27-29. The OTP points out that the prevalent view with the international community was that Israel remains an occupying power in Gaza despite the 2005 disengagement. This view was based on the scope and degree of control that Israel has retained over the territory, inter alia, exercise of control over border crossings, the territorial sea adjacent to the Gaza Strip, and the airspace of Gaza; its periodic military incursions within Gaza; its enforcement of no-go areas within Gaza near the border where Israeli settlements used to be; and its regulation of the local monetary market based on the Israeli currency and control of taxes and customs duties. The OTP of the ICC concluded, with reference to the International Criminal Tribunal for the former Yugoslavia that although Israel no longer maintains a military presence in Gaza, its ability to conduct incursions into Gaza at will, and expressly reserved the right to do so as required by military necessity, strengthens this view. The Office of the Prosecutor notes that the geographic proximity of the Gaza Strip to Israel potentially facilitates the ability of Israel to exercise effective control over the territory, despite the lack of a continuous military presence, leads the OTP to the conclusion that, "there is a reasonable basis upon which to conclude that Israel continues to be an occupying power in Gaza despite the 2005 disengagement." *Peter Maurer*, President of the International Committee of the Red Cross, Challenges to international humanitarian law: Israel's occupation policy, *International Review of the Red Cross*, Vol. 94, No. 888 (2012) at p. 1508: "Even though Israel has not had a permanent presence in Gaza since its official disengagement in 2005, it has in fact maintained effective control over the Strip and its borders since 1967." *Shane Darcy and John Reynolds*, Enduring Occupation: The Status of the Gaza Strip from the Perspective of International Humanitarian Law, *Journal of Conflict & Security Law*, Vol. 15, No. 2 (2010), pp. 211-243.

³⁰⁷ In terms of total votes received, Change and Reform (Hamas) took 44.45 per cent of the vote, whilst Fatah received 41.43 2006. In the electoral districts, Change and Reform (Hamas) candidates received 41.73 per cent whereas Fatah candidates secured 36.96 per cent of the votes. The Popular Front for the Liberation of Palestine taking 3 seats, Independent representatives 4 seats, "Third Way" and "Independent Palestine" each winning 2 seats and the "Palestinian people's party" and "Democratic Front for the Liberation of Palestine" each 1 seat. See National Democratic Institute for International Affairs (NDI) / The Carter Center, Election Observation Center, Final Report on the Palestinian Legislative Council Elections, January 25, 2006, available at https://www.ndi.org/files/2068_ps_elect_012506.pdf, accessed on January 7, 2016.

³⁰⁸ Regardless of the clashes with Fatah, Hamas also continued to engage in violence against Israel. For instance, on June 25, 2006, a Hamas military squad of seven to eight militants entered Israel through a tunnel, killed two Israeli soldiers and captured another Israeli soldier Gilad Shalit, who was subsequently released in a prisoner exchange for 1027 Palestinian prisoners on October 19, 2011.

³⁰⁹ *Ahmed Qurie (Abu Ala)*, Peace Negotiations in Palestine, From the second Intifada to the Roadmap, New York 2015, p. 235; *Francesco Cavatorta and Robert Elgie*, The Impact of Semi-Presidentialism on Governance in the Palestinian Authority, in: *Parliamentary Affairs*, Vol. 63, No. 1 (2010), p. 23.

³¹⁰ *Ian Black and Mark Tran*, Hamas takes control of Gaza, *The Guardian*, June 15, 2007, available at <http://www.theguardian.com/world/2007/jun/15/israel4>, accessed on February 24, 2016.

Until today, Hamas maintains that this decision had been unconstitutional and still considers Ismael Haniyah to be the Palestinian Prime Minister. These inner Palestinian clashes led to 600 deaths, most of which occurred in June–July 2007, when Fatah members were arrested and killed by Hamas activists in Gaza. This internal Palestinian struggle reflects the deep ideological divide between Hamas and Fatah. Within the regional political spectrum, three considerations determine a political party's identity and agenda: Islam, nationalism and Pan-Arabism. Whereas Hamas considers Islam to be its most important consideration, Fatah prioritizes Palestinian nationalism. Additionally, Hamas also rejects Fatah's attempts at engaging in diplomacy with Israel and opts for armed struggle instead.

On January 4, 2006, Prime Minister Ariel Sharon suffered a stroke and was subsequently declared incapable of leading the Israeli government. Thus, on April 11, 2006, Deputy Prime Minister and former Jerusalem Mayor, Ehud Olmert, took over as Prime Minister of Israel.

V. *Annapolis Conference*

On December 23, 2006, after a number of delays, PA President Mahmoud Abbas agreed to meet with Israeli Prime Minister Ehud Olmert in the Prime Minister's official residence in Jerusalem.³¹¹ Olmert welcomed the Palestinian leader with an exceptional display of formal recognition that involved a large security escort and Palestinian flags hanging inside and outside the Prime Minister's official residence.³¹² According to Olmert, in order to establish trust between the two leaders and in order to stabilize the PA institutions, he offered to transfer

a large sum of customs held by Israel to the Palestinian Authority.³¹³

The Hamas-Fatah unity government brokered by Saudi Arabia in February 2007 excluded the possibility of official U.S.-led peace negotiations between Israel and the Palestinian unity government. Thus, when U.S. Secretary of State Condoleezza Rice visited the region in March 2007, she met with Olmert and Abbas separately. Following the Hamas takeover of Gaza in June 2007, Rice thought that an international conference with both Israeli and Palestinian leaders present, which would also include regional stakeholders, could strengthen Abbas internally, revive the peace process and start renewed attempts at achieving a Two State Solution. Thus, Rice tried to form a broad coalition of moderate Arab and Muslim countries that would abide by the conference's Terms of Reference ("ToR"): a Two State Solution, rejection of violence, recognition of Israel's right to exist, and commitment to all previous agreements.³¹⁴

Rice succeeded in her efforts and the Annapolis Conference took place at the U.S. Naval Academy in Maryland, U.S., on November 27, 2007.³¹⁵ On the basis of the Road Map principles, U.S. President Bush invited, besides Ehud Olmert and Mahmoud Abbas to officially renew the peace negotiations, 49 states and international organizations to send representatives. Attendees included members of the Arab League Follow-Up Committee (Algeria, Bahrain, Egypt, Jordan, Lebanon, Morocco, Qatar, Saudi Arabia, Sudan, Syria, Tunisia, and Yemen), the G-8 group of industrialized states, permanent members of the UN Security Council, fellow members of the International Quartet, members of the Organization of the Islamic Conference, and representatives of the International Monetary Fund

³¹¹ During the summer of 2006 Israel and Lebanese Hezbollah engaged in hostilities which commenced with an ambush on Israeli soldiers at the Israeli-Lebanese border on July 12, 2006, which resulted in the death of three soldiers and the kidnapping of another two (which turned out to be killed in the ambush). This attacked provoked the government to start a military operation referred to as "Second Lebanon War" or the "2006 Summer War". Hostilities ended on August 14, 2006, when the parties agreed to a ceasefire based on UN Security Council Resolution 1701.

³¹² *Galia Golan*, *Israeli Peacemaking since 1967, Factors behind the breakthroughs and failures*, London 2015, p. 173.

³¹³ This money was held by Israel on behalf of the Palestinian Authority. The sum that Olmert offered was substantially higher than the original sum requested by Abbas.

³¹⁴ *Elie Podeh*, *Chances for Peace, Missed Opportunities in the Arab-Israeli Conflict*, Austin 2015, p. 345.

³¹⁵ The Annapolis Conference, Special Document File, *Journal of Palestine Studies*, Vol. 37, No. 3 (2008), pp. 74-92.

and the World Bank.³¹⁶ The large number of participants from Arab states was also due to the fact that they needed to strengthen their strategic alliance with the United States against Iran and indicated support for Abbas over Hamas. On November 27, 2007, U.S. President George W. Bush read out a Joint Understanding which reiterated the parties' commitment to the Two State Solution:

“We express our determination to bring an end to bloodshed, suffering and decades of conflict between our peoples [...] In furtherance of the goal of two states, Israel and Palestine, living side by side in peace and security, we agreed to immediately launch good-faith bilateral negotiations in order to conclude a peace treaty, resolving all outstanding issues, including all core issues without exception, as specified in previous agreements.”³¹⁷

³¹⁶ *Carol Migdalovitz*, *Israeli-Palestinian Peace Process: The Annapolis Conference*, CRS Report for Congress, December 7, 2007, from the website of the Federation of American Scientists, available at <https://www.fas.org/sgp/crs/mideast/RS22768.pdf>, accessed on January 27, 2016.

³¹⁷ The White House, *Joint Understanding read by President Bush at Annapolis Conference*, November 27, 2007, available at <http://georgewbush-whitehouse.archives.gov/news/releases/2007/11/20071127.html>, accessed on March 5, 2014: “President Bush: The representatives of the government of the state of Israel and the Palestinian Liberation Organization, represented respectively by Prime Minister Ehud Olmert, and President Mahmoud Abbas in his capacity as Chairman of the PLO Executive Committee and President of the Palestinian Authority, have convened in Annapolis, Maryland, under the auspices of President George W. Bush of the United States of America, and with the support of the participants of this international conference, having concluded the following joint understanding. We express our determination to bring an end to bloodshed, suffering and decades of conflict between our peoples; to usher in a new era of peace, based on freedom, security, justice, dignity, respect and mutual recognition; to propagate a culture of peace and nonviolence; to confront terrorism and incitement, whether committed by Palestinians or Israelis. In furtherance of the goal of two states, Israel and Palestine, living side by side in peace and security, we agree to immediately launch good-faith bilateral negotiations in order to conclude a peace treaty, resolving all outstanding issues, including all core issues without exception, as specified in previous agreements. We agree to engage in vigorous, ongoing and continuous negotiations, and shall make every effort to conclude an agreement before the end of 2008. For this purpose, a steering committee, led jointly by the head of the delegation of each party, will meet continuously, as agreed. The steering committee will develop a joint work plan

The Annapolis Conference led to another round of official bilateral negotiations, also referred to as “Annapolis process” or “Olmert-Abu Mazen talks”. These negotiations were conducted through a dual-track process. The first track involved negotiations on two levels on a final status agreement. At one level, Olmert and Abbas would meet bi-weekly, trying to arrive at an understanding in principle.³¹⁸ At another level, Tzipi Livni, who had been appointed Israeli Chief Negotiator and her Palestinian counter-part, Chief Negotiator Ahmed Qurei would form twelve professional committees holding more detailed negotiations. The professional committees had an Israeli and Palestinian committee head each and dealt with the following issues: security, borders and territory, refugees, economics, infrastructure, water, state-to-state relations, passages, environment, prisoners and culture of

and establish and oversee the work of negotiations teams to address all issues, to be headed by one lead representative from each party. The first session of the steering committee will be held on 12 December 2007. President Abbas and Prime Minister Olmert will continue to meet on a bi-weekly basis to follow up the negotiations in order to offer all necessary assistance for their advancement. The parties also commit to immediately implement their respective obligations under the performance-based road map to a permanent two-state solution to the Israel-Palestinian conflict, issued by the Quartet on 30 April 2003 – this is called the road map – and agree to form an American, Palestinian and Israeli mechanism, led by the United States, to follow up on the implementation of the road map. The parties further commit to continue the implementation of the ongoing obligations of the road map until they reach a peace treaty. The United States will monitor and judge the fulfillment of the commitment of both sides of the road map. Unless otherwise agreed by the parties, implementation of the future peace treaty will be subject to the implementation of the road map, as judged by the United States.”

³¹⁸ *Shlomo Brom*, *The Annapolis Process: A Profit-Loss Balance Sheet*, *Strategic Assessment*, Vol. 11, No. 3 (2009), pp. 53-54, from the website of The Institute for National Security Studies; available at <http://www.inss.org.il/upload/images/Import/%28FILE%291234084415.pdf>, accessed on March 27, 2016; The term “shelf agreement” is also used in this context, which means an agreement with symbolic significance whose implementation could be postponed, see The Reut Institute, *Shelf Agreement*, October 9, 2007, available at <http://reut-institute.org/Publication.aspx?PublicationId=2487>, accessed on January 7, 2016.

peace. The second track of the negotiations after the Annapolis Conference was defined by the Conference's Joint Understanding as "commitment to continue the implementation of the ongoing obligations of the road map until they reach a peace treaty".³¹⁹ This part of the Joint Declaration allowed the parties to skip directly into the final phase of the Roadmap, enabling negotiations on final status issues.³²⁰

After the Annapolis Conference, intensive final status negotiations continued. In her memoirs, Rice summarized a May 2008 offer by Olmert to Abbas that included the following: direct negotiations, Jerusalem divided into the capital of two states, a joint city council, the return of around 5,000 refugees to Israel, Israel's annexation of 5.8–6.3 per cent of the West Bank, Israel's withdrawal from the remaining disputed territory and U.S.-led security arrangements that would take into account IDF demands:

"I (Olmert; *J.H.*) want to do it directly with Abu Mazen," he said, referring to Mahmoud Abbas by his nom de guerre [...] "We can write down the agreement in a few pages and then give it to the negotiators to finalise," he said. I know what he needs. He needs something on refugees and on Jerusalem. I'll give him enough land; maybe something like 94% with swaps. I have an idea about Jerusalem. There will be two capitals, one for us in West Jerusalem and one for the Palestinians in East Jerusalem. The mayor of the joint city council will be selected by population percentage. That means an Israeli mayor, so the deputy should be a Palestinian. We will continue to provide security for the Holy sites because we can assure access to them." [...] "I'll (Olmert; *J.H.*) accept some Palestinians into Israel, maybe five thousand. I don't want it to be called family reunification because they have too many cousins; we won't be able to control it. I've been thinking about how to administer the Old City. There should be a committee of people – not officials but wise people – from Jordan, Saudi Arabia, the Palestinians, the United States, and Israel. They will oversee the city but not in a political role."³²¹

Rice passed over Olmert's offer to Abbas, who turned it down on the basis that Olmert, perhaps for a fear of having his peace plan exposed to the public, had not physically handed over a map for Abbas to consult his experts about. Furthermore, Abbas was not willing to negotiate about the final status issues – perhaps he feared undermining the role of his negotiator, Ahmed Qurei. Abbas was also not willing to agree to any terms without first consulting with representatives from the Fatah party, the PLO leadership and the Arab states.

"The next day I (Rice; *J.H.*) went to see Abbas and asked to see him in the little dining room adjacent to his office. I sketched out the details of Olmert's proposal and told him how the prime minister wanted to proceed. Abbas started negotiating immediately. "I can't tell four million Palestinians that only five thousand of them can go home," he said. [...] In the waning months of our time in Washington, we tried one last time to secure a two-state solution. The Olmert proposal haunted the President and me. In September the prime minister had given Abbas a map outlining the territory of a Palestinian state. Israel would annex 6.3% of the West Bank. (Olmert gave Abbas cause to believe that he was willing to reduce that number to 5.8%). All of the other elements were still on the table, including the division of Jerusalem. Olmert had insisted that Abbas sign then and there. [...] I talked to the President and asked whether he would be willing to receive one last time. What if I could get the two of them to come and accept the parameters of the proposal? We knew it was a long shot. Olmert had announced in the summer that he would step down as prime minister. Israel would hold elections in the first part of the next year. The two leaders came separately in November and December (2008) to say good-bye. The President took Abbas into the Oval Office alone and appealed to him to reconsider. The Palestinian stood firm, and the idea died."³²²

The last important meeting between Olmert and Abbas was held on September 16, 2008. The following day, Tzipi Livni was elected Chairwoman of the "Kadima Party", which Olmert had led before. Due to pending corruption charges against him,

³¹⁹ The White House, Joint Understanding read by President Bush at Annapolis Conference, November 27, 2007, available at <http://georgewbush-whitehouse.archives.gov/news/releases/2007/11/20071127.html>, accessed on March 5, 2014.

³²⁰ *Elie Podeh*, Chances for Peace, Missed Opportunities in the Arab-Israeli Conflict, Austin 2015, p. 346.

³²¹ *Condoleezza Rice*, No higher honor, A Memoir of my years in Washington, New York, 2011, p. 651.

³²² *Condoleezza Rice*, No higher honor, A Memoir of my years in Washington, New York, 2011, p. 652

Olmert had decided not to run for the position of Chairman of the Party. Corruption charges subsequently led to the opening of official criminal proceedings against Olmert, after which he submitted his resignation to the Israeli President.

Even though Olmert tried in the following weeks to strike a historic deal with Abbas, Abbas had lost faith in Olmert's ability to implement such agreement or alternatively receive the Israeli cabinet's approval.³²³ The direct Israeli-Palestinian peace talks under the Annapolis framework ended on December 28, 2009, with the beginning of the Gaza Conflict 2008/2009.

The parties had probably never been closer to an agreement than in the winter of 2008. While the goal of reaching a final status agreement was not achieved, there was significant progress in developing the relations between the two sides.³²⁴ There were two main achievements of the Annapolis Conference and the Olmert-Abbas talks. The first main achievement was the renewal of the close and ongoing dialogue between Israel and the PA, which had almost frozen during the Second Intifada. The dialogue was only renewed after Arafat's death, but halted again after the Hamas-Fatah unity government 2007. The second main achievement

was receiving broad international and Arab support for an Israeli-Palestinian peace process, demonstrated by the wide participation of various international Arab states in the Annapolis Conference, in the World Economic Forum on the Middle East and the unanimous adoption of UN Security Council Resolution 1850 (2008) supporting the Annapolis Conference.

1. Gaza Conflict of 2008/2009

After the continuous launching of rockets and mortars by Hamas from the Gaza Strip onto cities in southern Israel, especially on an area referred to as the "Gaza envelope" ("Otef Aza"),³²⁵ Israel carried out its military operation "Cast Lead", also known as "The Gaza Conflict of 2008/2009".³²⁶ The Gaza Conflict of 2008/2009 lasted from December 27, 2008, to January 18, 2009. It involved continuous Israeli air strikes against facilities used by Hamas in the Gaza Strip and a short Israeli ground offensive. Following the operation, Israeli-Palestinian negotiations completely broke down. The conflict concluded with between 1,166 and 1,434 casualties on the Palestinian side and 13 on the Israeli side.³²⁷

³²³ The parties involved in the talks have offered different explanations why the Olmert-Abbas talks did not lead to a peace agreement. Rice, in her memoirs, described that the U.S. negotiators were briefed by Livni's advisors in late 2008 about the potential insincerity and impossibility of implementing all of Olmert's offer because of his weak position in Israel at the time. Senior Palestinian negotiators, such as Saeb Erekat pointed out that from September until December 2008, they had heard from undisclosed Israeli sources that any agreement signed by Olmert would not be regarded as binding by the Israeli government. This version of events has been refuted by Israel's Chief Negotiator Livni and Defense Minister Ehud Barak, who were both political rivals of Olmert for the upcoming Israeli elections. Olmert, on the other hand, argued, that if corruption charges had not been brought up against him, he would have succeeded in the upcoming parliamentary elections, and by March 2009, could have persuaded Abbas to sign a peace deal, as well as presented it before the Security Council of the United Nations.

³²⁴ *Shlomo Brom*, *The Annapolis Process: A Profit-Loss Balance Sheet*, Strategic Assessment, Vol. 11, No. 3 (2009), p. 53, from the website of The Institute for National Security Studies; available at <http://www.inss.org.il/uploadimages/>

[Import/%28FILE%291234084415.pdf](http://www.inss.org.il/uploadimages/Import/%28FILE%291234084415.pdf), accessed on March 27, 2016.

³²⁵ Otef Aza is an area that surrounds the Gaza Strip by a few miles and includes the town of Sderot and smaller Kibbutzim, such as, Kfar Aza, Nahal Oz and Nir Am.

³²⁶ After the Hamas take of control in Gaza and Israel's implementation of the blockade, Hamas continuously fired rockets into southern Israel. Tensions briefly cooled down when Hamas and Israel declared a six-month truce in June 2008. The truce expired on December 19, 2008; Hamas fired 300 rockets into Israel between December 19 and 27, 2008.

³²⁷ UN General Assembly, Human Rights Council, A/HRC/12/48, September 25, 2009, Human Rights in Palestine and Other Occupied Arab Territories, Report of the United Nations Fact-Finding Mission on the Gaza Conflict, from the website of the Office of the UN High Commissioner for Human Rights, available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48.pdf>, accessed on February 24, 2016, p. 17, par. 30: "Statistics about Palestinians who lost their lives during the military operations vary. Based on extensive field research, non-governmental organizations place the overall number of persons killed between 1,387 and 1,417. The Gaza authorities

On January 6, 2009, during these hostilities with Hamas, Israel announced its intention to impose a naval blockade on the Gaza Strip. This announcement was formalized in Notice to Mariners No. 1/2009.³²⁸ On January 31, 2009, the Likud party won in the Israeli elections and on February 10, Benjamin Netanyahu became Prime Minister of Israel.

2. New York 2009

Following a speech given by U.S. President Barack Obama to Arab delegates in Cairo, Netanyahu gave a speech on June 14, 2009, at the Bar-Ilan University in Israel, where, for the first time, he publicly acknowledged the need for a Two State Solution, envisaging the Jewish State of Israel and a demilitarized Palestinian State. Netanyahu also agreed to freeze settlement building for nine months in order to enable a new round of direct talks with the Palestinians. On September 22, 2009, during the annual sessions of the UN General Assembly in New York, Israeli-Palestinian peace talks continued with the help of Egyptian and Jordanian diplomats.

Nine months later, in May 2010, Palestinian President Abbas was quoted that the parties had, in principle, agreed to a land swap with different views regarding its implementation (a 1:1, qualitative or quantitative swap).³²⁹ In 2010, Netanyahu's

settlement freeze was lifted and only unofficial, "non-negotiations" continued with the exchange of letters between the parties. These letters concerned Israel's demand to be recognized by the Palestinians as a Jewish State. They also included the Palestinian request that Israel freeze building activity beyond the Green Line and in particular that Israel refrain from granting building permits for the construction of apartment buildings in East Jerusalem.

3. Maritime Incident 2010

On May 31, 2010, the Israeli Navy intercepted a flotilla of six vessels sailing from Istanbul to the Gaza Strip on what has been claimed to be a humanitarian aid mission (the "Maritime Incident"). On board on the biggest ship of the group, the "Mavi Marmara", were 590 passengers, including humanitarian activists and volunteers, but also armed members of the Foundation for Human Rights and Freedoms and Humanitarian Relief (the "IHH"), who were willing to forcefully break through the naval blockade if necessary.³³⁰ During the interception of the flotilla, Israeli soldiers were met with resistance from at least 40 individuals. Consequently, nine Turkish citizens were killed, between 40–50 of those aboard the ship were wounded, and nine members of the Israeli security forces were injured.³³¹ After the Maritime Incident,

report 1,444 fatalities. The Government of Israel provides a figure of 1,166 [...]" ; Reuters, Israel's Gaza toll far lower than Palestinian tally, March 26, 2009, available at <http://www.reuters.com/article/idUSLQ977827>, accessed on January 7, 2016; *Efrat Weiss* and Associated Press, Israel challenges Palestinian claims on Gaza death toll, Ynetnews, March 26, 2009, available at <http://www.ynetnews.com/articles/0,7340,L-3692950,00.html>, accessed on January 7, 2016.

³²⁸ *Elizabeth Spelman*, The Legality of the Israeli Naval Blockade of the Gaza Strip, *Web Journal of Current Legal Issues*, Vol. 19, No. 1 (2013), available at <http://webjcli.org/article/view/207/277>, accessed on November 21, 2015.

³²⁹ *Khaled Abu Toameh*, Abbas: Land swap principle reached, *The Jerusalem Post*, May 23, 2010, available at <http://www.jpost.com/Middle-East/Abbas-land-swap-principle-reached>, accessed on March 5, 2014.

³³⁰ The IHH is a Turkish-registered organization that provides humanitarian relief, but is also accused for being affiliated with Hamas. In Germany, the IHH is a banned

organization, see Bundesamt für Verfassungsschutz, Verbotene islamistische Organisationen, Verbotungsverfügung vom 23.6.2010, available at <https://www.verfassungsschutz.de/de/arbeitsfelder/af-islamismus-und-islamistischer-terrorismus/verbotene-organisationen-islamismus>, accessed on January 23, 2016. Israel conducted its own examination into the incident, see The Public Commission to Examine the Maritime Incident of 31 May 2010, The Turkel Commission, Report, Part 1, January 2010 [2011], available at <http://www.turkel-committee.gov.il/files/wordocs/8808report-eng.pdf>, accessed on April 10, 2016.

³³¹ The Public Commission to Examine the Maritime Incident of 31 May 2010, The Turkel Commission, Report, Part 1, January 2010 [2011], p. 207, available at <http://www.turkel-committee.gov.il/files/wordocs/8808report-eng.pdf>, accessed on April 10, 2016; *Ahiya Raved*, Hospitals treat 42 people injured in Gaza sail raid, Ynetnews, May 31, 2010, available at <http://www.ynetnews.com/articles/0,7340,L-3896843,00.html>, accessed on November 21, 2015. On May 23rd, 2014, a tenth member of the Flotilla died in hospital, after a four-year coma.

Israel's naval blockade became the subject of an international examination.³³² The event sparked international criticism and led to a debate on the legality of the blockade and its enforcement. The Report of the UN Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident (the "Palmer Report") found that Israel's naval blockade was legal and that:

"Israel faces a real threat to its security from militant groups in Gaza. The naval blockade was imposed as a legitimate security measure in order to prevent weapons from entering Gaza by sea and its implementation complied with the requirements of international law."³³³

But the report also stated that Israel's response was excessive:

³³² For the international examination, see UN Secretary-General, Panel of Inquiry (Sir Geoffrey Palmer, Chair), Report of the Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident ("Palmer Report"), September 2011, available at http://www.un.org/News/dh/infocus/middle_east/Gaza_Flotilla_Panel_Report.pdf, accessed on June 24, 2015.

³³³ UN Secretary-General, Panel of Inquiry (Sir Geoffrey Palmer, Chair), Report of the Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident ("Palmer Report"), September 2011, at par. 81-82, pp. 44-45, available at http://www.un.org/News/dh/infocus/middle_east/Gaza_Flotilla_Panel_Report.pdf, accessed on June 24, 2015.

³³⁴ UN Secretary-General, Panel of Inquiry (Sir Geoffrey Palmer, Chair), Report of the Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident ("Palmer Report"), September 2011, at par. 113, p. 53, available at http://www.un.org/News/dh/infocus/middle_east/Gaza_Flotilla_Panel_Report.pdf, accessed on June 24, 2015.

³³⁵ In its decision to close the preliminary examination on the Gaza Flotilla, on November 6, 2014, the Prosecutor of the International Criminal Court Fatou Bensouda, unlike Israel's Public Commission of Inquiry (Turkel Commission) concluded that the violent IHH-activists on the Mavi Marmara were not to be seen as civilians taking direct part in hostilities and therefore were not a legitimate military target for attack. According to the report, however, all passengers on the ship, including IHH activists were to be considered as protected civilians but force against violent civilians endangering the soldiers' lives could perhaps be justified by self-defence. The Prosecutor concluded that the gravity threshold required by the Statute for the International Criminal Court had not been met, see International Criminal Court, Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on concluding

"The resort to boarding without warning or consent and the use of such substantial force treated the flotilla as if it represented an immediate military threat to Israel. That was far from being the case and is inconsistent with the nature of the vessels and their passengers, and the finding contained in Israel's report that significant violent resistance to boarding was not anticipated. It seems to us to have been too heavy a response too quickly. It was an excessive reaction to the situation."³³⁴

Despite the fact that the Office of the Prosecutor (the "Prosecutor") of the International Criminal Court (the "ICC") had previously decided not to open a formal investigation into the Maritime Incident, the Pre-Trial Chamber of the ICC referred the matter back to the Prosecutor on July 15, 2015, because of an appeal by the Union of Comoros, an island state and ICC state party, where the vessel "Mavi Marmara" had been registered.³³⁵ Since then,

the preliminary examination on the situation referred by the Union of Comoros: "Rome Statute legal requirements have not been met", November 6, 2014, available at http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/pages/otp-statement-06-11-2014.aspx, accessed on June 16, 2015. Following an appeal by the Union of the Comoros against this decision, the Pre-Trial Chamber I of the International Criminal Court referred the matter back to the Office of the Prosecutor: "[I]t follows from the above that the Prosecutor's analysis of the manner of commission of the identified crimes is affected by the following errors of fact: The Prosecutor did not correctly assess the information that live fire was used by the IDF prior to the boarding of the Mavi Marmara; The Prosecutor unreasonably failed to consider that the fact that the detained passengers suffered cruel and abusive treatment in Israel reasonably suggests that the identified crimes may not have occurred as individual excesses of IDF soldiers; The Prosecutor unreasonably failed to recognise the fact that the unnecessarily cruel treatment of passengers on the Mavi Marmara, the attempts of the perpetrators of the identified crimes to conceal the crimes, and the fact that the events did not unfold on other vessels in the flotilla in the same way as they did on the Mavi Marmara, are not incompatible with the hypothesis that the identified crimes were planned. In the view of the Chamber, these errors are such that they make unsustainable the conclusion of the Prosecutor with respect to the manner of commission of the identified crimes, in particular with respect to the question whether the identified crimes were "systematic or resulted from a deliberate plan or policy to attack, kill or injure civilians" – [an] argument that was ultimately considered by the Prosecutor as an indicator of insufficient gravity of the potential case(s). See International Criminal Court, Situation on the Registered Vessels of the Union of the Comoros, The Hellenic Republic and The Kingdom of Cambodia, ICC-01/13, July 16, 2015, Decision on

in accordance with the Pre-Trial Chamber, the Prosecutor is reconsidering her decision not to open a formal investigation into the Maritime Incident.

The Gaza Conflict of 2008/2009 and the Maritime Incident of 2010 caused a major setback to diplomatic efforts to renew Israeli-Palestinian peace talks.

From then on, the Palestinians changed their political strategy by trying to receive diplomatic recognition of a Palestinian state that encompasses territory that includes the West Bank and Gaza with East Jerusalem as its capital. The Palestinians also focused on initiatives in international forums, by initiating a preliminary ICC examination into the Gaza Conflict 2008/2009³³⁶ and by applying for membership at the United Nations Educational, Scientific and Cultural Organization (“UNESCO”) in 2011.³³⁷ UNESCO accepted the Palestinian request to recognize and register the Church of Nativity and the Pilgrimage Route in Bethlehem and the Palestinian village of Battir under “Palestine” in their “List of World Heritage in Danger”. It has been argued that the protection of Battir as a World Heritage Site was intended to block the continuation of the building of Israel’s security barrier in the area.³³⁸ Finally, in 2012 the Palestinians initiated

General Assembly Resolution 67/19, in which they applied for non-member observer status at the United Nations. The Resolution was ultimately adopted:

“The General Assembly reaffirms the right of the Palestinian people to self-determination and to independence in their State of Palestine on the Palestinian territory occupied since 1967; decides to accord to Palestine non-member observer State status in the United Nations, without prejudice to the acquired rights, privileges and role of the Palestine Liberation Organisation in the United Nations as the representative of the Palestinian people, in accordance with the relevant resolutions and practice [...]”³³⁹

VI. Kerry Initiative

In November 2012, Barack Obama was re-elected as U.S. President. He appointed John Kerry as Secretary of State. For Kerry, the Israeli-Palestinian peace process was an important foreign policy issue.³⁴⁰ After President Obama had visited Israel and the Palestinian territories in March 2013, Kerry travelled numerous times to the region to meet with Netanyahu and Abbas in order to set out “Terms of References”, which would set the issues for a new round of bilateral peace talks.³⁴¹ By the end of July

the request of the Union of the Comoros to review the Prosecutor’s decision not to initiate an investigation, available at <https://www.icc-cpi.int/iccdocs/doc/doc2015869.pdf>, accessed on January 23, 2016.

³³⁶ Under Article 12 (3) of the Rome Statute of the International Criminal Court (“ICC-Statute”), see International Criminal Court, Rome Statute, July 17, 1998, available at https://www.icc-cpi.int/nr/rdonlyres/ea9aef7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf, accessed at March 27, 2016, a State may, by declaration lodged with the registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question. On January 21, 2009, the Justice Minister of “the State of Palestine” filed a letter with the Court accepting its jurisdiction. However, as Palestine had not reached statehood at that point, the Office of the Prosecutor refused to exercise its jurisdiction over the situation in Palestine. It held that Palestine could not be regarded a *state* under Article 12 (3) of the ICC-Statute, see the decision not to open a formal investigation into the situation in Palestine, International Criminal Court, The Office of the Prosecutor, Situation in Palestine, decision of April 3, 2012, available at <https://www.icc-cpi.int/NR/rdonlyres/C6162BBF-FEB9-4FAF-AFA9-836106D2694A/284387/SituationinPalestine030412ENG.pdf>, accessed on November 2, 2014.

³³⁷ United Nations Education, Scientific and Cultural Organization (UNESCO), Palestine, available at <http://whc.unesco.org/en/statesparties/ps/>, accessed on May 14, 2015.

³³⁸ *Ali Sawafta*, UNESCO recognizes Palestinian village as world heritage site, Haaretz, June 20, 2014, available at <http://www.haaretz.com/israel-news/1.600141>, accessed on May 14, 2015.

³³⁹ UN General Assembly, A/RES/67/19, December 4, 2012, Resolution adopted by the General Assembly on 29 November 2012, 67/19, Status of Palestine in the United Nations, available at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/67/19, accessed on January 23, 2016.

³⁴⁰ *Yair Hirschfeld*, Track-Two Diplomacy toward an Israeli-Palestinian Solution 1978-2014, Washington 2014, p. 337.

³⁴¹ On the idea of setting “Terms of Reference” see James A. Baker III Institute for Public Policy, Rice University, Re-Engaging the Israelis and the Palestinians: Why an American role in initiating Israeli-Palestinian Negotiations is necessary and how it can be accomplished, Publ. by The Conflict

2013, the U.S. suggested to the parties to engage in official peace negotiations under the following conditions:³⁴²

- Uninterrupted negotiations on all core issues spanning over nine months;³⁴³
- The release of 104 Palestinian prisoners detained in Israel since before the Oslo accords were signed over several release dates: August 13, October 29 and December 29, 2013 and March 29, 2014; and
- Assurance by the Palestinians to refrain from all unilateral action in international organizations or forums

On July 28, 2013, after a 13 to 7 vote, the Israeli government accepted these conditions.³⁴⁴ Palestinian

President Abbas agreed as well. On July 29, 2013, in a letter to Abbas, Kerry reiterated President Obama's position that "Palestine's borders with Israel should be based on the 1967 lines with mutually agreed swaps".³⁴⁵

Peace talks officially commenced on July 31, 2013.³⁴⁶ Israeli Justice Minister Livni, accompanied by Prime Minister Netanyahu's special envoy, Yitzhak Molcho, led the Israeli negotiation team. Palestinian Chief Negotiator Saeb Erekat and Mohamed Shtayeh, the Minister and Head of the Palestinian Economic Council for Development and Reconstruction, led the Palestinian negotiation team. Mohamed Shtayeh was subsequently replaced by

Resolution Program of Rice University's Baker Institute, Houston 2013, p. 24, available at <https://bakerinstitute.org/media/files/Research/4c17ebcc/re-engaging-the-israelis-and-the-palestinians-why-an-american-role-in-initiating-israeli-palestinian-negotiations-is-necessary-and-how-it-an-be-accomplished.pdf>, accessed on November 21, 2015.

³⁴² The original U.S. Terms of Reference and the Memoranda of Understanding between the U.S. and Israel and the U.S. and the Palestinians have not been made public. From publications on this topic, it appears that the guarantee by the Palestinians not to pursue efforts in international organizations also meant to include the International Criminal Court. Some commentators have argued that pressure by the EU had a substantial impact to persuade the Israeli government to enter into direct talks with the Palestinians. On July 19, 2013, the EU Commission had published its "Guidelines on the eligibility of Israeli entities and their activities in the territories occupied by Israel since June 1967 for grants, prizes and financial instruments funded by the EU from 2014 onwards", under which Israeli entities will need to prove to have no link with entities in the West Bank, East Jerusalem or the Golan Heights in order to receive EU funding, see Official Journal of the European Union, July 19, 2013, C 205/9, from the website of the Delegation of the EU to Israel, available at http://eeas.europa.eu/delegations/israel/documents/related-links/20130719_guidelines_on_eligibility_of_israeli_entities_en.pdf, accessed on February 24, 2016; *Barak Ravid*, EU's New Policy on Israeli Settlements: The Full Guidelines, Haaretz, July 16, 2013, available at <http://www.haaretz.com/israel-news/.premium-1.536155>, accessed on February 27, 2016.

³⁴³ *Ben Birnbaum* and *Amir Tibon*, The Explosive, Inside Story of how John Kerry built an Israel-Palestine Peace Plan - and watched it crumble, New Republic, July 21, 2014, available at <https://newrepublic.com/article/118751/how-israel-palestine-peace-deal-died>, accessed on November 17, 2015.

³⁴⁴ *Barak Ravid*, *Nir Hasson* and *Jonathan Lis*, Cabinet approves release of 104 Palestinian prisoners, Haaretz July 28, 2013, available at <http://www.haaretz.com/israel-news/.premium-1.538305>, accessed on January 7, 2016.

³⁴⁵ *Ben Birnbaum* and *Amir Tibon*, The Explosive, Inside Story of how John Kerry built an Israel-Palestine Peace Plan - and watched it crumble, New Republic, July 21, 2014, available at <https://newrepublic.com/article/118751/how-israel-palestine-peace-deal-died>, accessed on November 17, 2015.

³⁴⁶ For an overview of the Kerry Initiative, see *Ilan Goldenberg*, Lessons from the 2013-2014 Israeli-Palestinian Final Status Negotiations, Washington, DC 2015, from the website of the Center for a New American Security, available at <http://www.cnas.org/lessons-learned-final-status-negotiations#.Vva5rXr5HPA>, accessed on March 27, 2016; *Jodi Rudoren* and *Isabel Kershner*, Arc of a Failed Deal: How Nine Month of Mideast Talks Ended in Disarray, The New York Times, April 28, 2014, available at http://www.nytimes.com/2014/04/29/world/middleeast/arc-of-a-failed-deal-how-nine-months-of-mideast-talks-ended-in-dissarray.html?_r=0, accessed on February 24, 2016; *Amira Schiff*, Lessons from the Kerry Peace Initiative and the Need for a Constructive Approach, Peace and Conflict Studies, Vol. 22, No. 2 (2015), pp. 160-176; *Barak Ravid*, The Secret Fruits of the Peace Talks, a Future Point of Departure, Haaretz, July 5, 2014, available at <http://www.haaretz.com/peace/.premium-1.603028>, accessed on February 18, 2016; *Sabine Hofmann*, 20 Jahre Oslo-Prozess: Trotz Verhandlungen keine Fortschritte, GIGA Focus Nahost No. 10 (2013) from the website of German Institute of Global and Area Studies (GIGA), available at https://www.giga-hamburg.de/de/system/files/publications/gf_nahost_1310.pdf, accessed on March 27, 2016.

Palestinian Intelligence Chief Majid Faraj.³⁴⁷ Martin Indyk, former U.S. Ambassador to Israel, represented the U.S. during the peace negotiations.³⁴⁸

The conditions for negotiations did not explicitly refer to the issue of settlements. According to some reports, in negotiations with Kerry prior to July 29, 2013, Netanyahu had hinted to building or permitting to build another 2,000 or more units beyond the Green line.³⁴⁹ Head of the U.S. negotiation team, Martin Indyk, said that for the U.S., “there was an understanding on our part that settlement activity would be limited to the blocs”.³⁵⁰ After the breakdown of the talks, however, U.S. negotiators blamed the announcements of approvals for more settlement construction (beyond the main

settlement blocs) as one of the factors that contributed to the failure of the talks.³⁵¹

Moreover, the prisoner release agreement had been a controversial issue in Israel’s internal politics from the outset and was met with intense protests led by the families of the victims. Subsequently, at various stages of the negotiations, these protests resumed.³⁵² Before negotiations had even started, former Israeli Security Agency Chief Yaakov Perry, then a government minister, opposed a prisoner release. He deemed ten of the prisoners on the list immediately “out of the question”, including a militant he had arrested during his term.³⁵³ On the Palestinian side, the conditions set for negotiations were criticized for its requirement to return to negotiations even in the absence of a settlement

³⁴⁷ *Jodi Rudoren and Isabel Kershner*, Arc of a Failed Deal: How Nine Month of Mideast Talks Ended in Disarray, *The New York Times*, April 28, 2014, available at http://www.nytimes.com/2014/04/29/world/middleeast/arc-of-a-failed-deal-how-nine-months-of-mideast-talks-ended-in-disarray.html?_r=0, accessed on February 24, 2016.

³⁴⁸ See *Martin Indyk*, *Innocent Abroad, An Intimate Account of American Diplomacy in the Middle East*, New York 2009.

³⁴⁹ *Ben Birnbaum and Amir Tibon*, The Explosive, Inside Story of how John Kerry built an Israel-Palestine Peace Plan - and watched it crumble, *New Republic*, July 21, 2014, available at <https://newrepublic.com/article/118751/how-israel-palestine-peace-deal-died>, accessed on November 17, 2015: “Israel indeed announced more than 2,000 new settlement units during the talks, in addition to thousands of long-term building plans. After American officials told the Israeli press that his was the main reason for the talks’ collapse, Netanyahu told Jeffrey Goldberg in an interview that the Americans “knew exactly” how much Israel was going to build in the settlements during the nine-month period of the talks.”

³⁵⁰ *Uri Friedman*, Martin Indyk Explains the Collapse of the Middle East Peace Process, *The Atlantic*, July 3, 2014, available at <http://www.theatlantic.com/international/archive/2014/07/indyk-netanyahu-and-abbas-loathe-each-other/373922/>, accessed on January 25, 2016, quoting Martin Indyk about settlement announcements: “The Israeli attitude is that’s just planning [...] But for the Palestinians, everything that gets planned gets built. ... And the fact that the announcements were made when the prisoners were released created the impression that Abu Mazen had paid for the prisoners by accepting these settlement announcements.” The full interview (Aspen Ideas Festival 2014) of *Jeffrey Goldberg* with *Martin Indyk*, In Conversation with US Special Envoy for Israeli-Palestinian Negotiations, from the website of the Aspen Institute, available at

<http://www.aspenideas.org/session/conversation-us-special-envoy-israeli-palestinian-negotiations-0>, accessed on January 25, 2016.

³⁵¹ *Nahum Barnea*, Inside the talks’ failure: US officials open up, Interview with American officials connected to the talks, *Ynetnews*, May 2, 2014, available at <http://www.ynetnews.com/articles/0,7340,L-4515821,00.html>, accessed on January 24, 2016: Speaking anonymously, the negotiators told Barnea that “there are a lot of reasons for the peace effort’s failure, but people in Israel shouldn’t ignore the bitter truth – the primary sabotage came from the settlements. The Palestinians don’t believe that Israel really intends to let them found a state when, at the same time, it is building settlements on the territory meant for that state. We’re talking about the announcement of 14,000 housing units, no less. Only now, after talks blew up, did we learn that this is also about expropriating land on a large scale. That does not reconcile with the agreement [...] At this point, it’s very hard to see how the negotiations could be renewed, let alone lead to an agreement. Towards the end, Abbas demanded a three-month freeze on settlement construction. His working assumption was that if an accord is reached, Israel could build along the new border as it pleases. But the Israelis said no [...]”

³⁵² *Amira Schiff*, Lessons from the Kerry Peace Initiative and the Need for a Constructive Approach, *Peace and Conflict Studies*, Vol. 22, No. 2 (2015), pp. 160, 162.

³⁵³ *Ben Birnbaum and Amir Tibon*, The Explosive, Inside Story of how John Kerry built an Israel-Palestine Peace Plan - and watched it crumble, *New Republic*, July 21, 2014, available at <https://newrepublic.com/article/118751/how-israel-palestine-peace-deal-died>, 2015 accessed on November 17, 2015.

freeze and were partly viewed as a “prisoners for settlements sell out”.³⁵⁴

By December 29, 2013, as per its agreement, Israel had released the first three tranches of prisoners, which was met with demonstrations and fierce criticism from the opposition. Israel also continued to grant building permits to allow for the construction of apartment buildings in East Jerusalem. According to the Israeli government, apartment building was only granted in areas that would be part of Israel proper following a final status agreement.³⁵⁵ After a number of violent incidents between Israelis and Palestinians, in particular in November 2013, members of Netanyahu’s Likud party requested an end to the negotiations.³⁵⁶

From the beginning of the negotiations up until around December 2013, Israelis and Palestinians met approximately 20 times and negotiated bilaterally.³⁵⁷

³⁵⁴ See the full interview (Aspen Ideas Festival 2014) of Jeffrey Goldberg with Martin Indyk, In Conversation with US Special Envoy for Israeli-Palestinian Negotiations, from the website of the Aspen Institute, available at <http://www.aspenideas.org/session/conversation-us-special-envoy-israeli-palestinian-negotiations-0>, accessed on January 25, 2016.

³⁵⁵ BBC Online, Kerry: Israeli settlements move was expected, BBC Online, August 13, 2013, available at <http://www.bbc.com/news/world-middle-east-23677488>, accessed on November 3, 2014, citing spokesman of the Israeli Prime Minister’s office, Mark Regev, who said that “the construction in no way changes the final map of peace. The construction decided upon in Jerusalem and in the settlement blocs is in areas that will remain part of Israel in any possible peace agreement”.

³⁵⁶ Michael Schaeffer Omer-Man, 2013 was a deadly year in Israel-Palestine, +972 Magazine, December 31, 2013, available at <http://972mag.com/2013-was-a-deadly-year-in-israel-palestine/84728/>, accessed on June 10, 2015.

³⁵⁷ Nahum Barnea, Inside the talks’ failure: US officials open up, Interview with American officials connected to the talks, Ynetnews, May 2, 2014, available at <http://www.ynetnews.com/articles/0,7340,L-4515821,00.html>, accessed on January 24, 2016: “[I]n the first six months, there were bilateral talks under our (U.S., J.H.) auspices. The two sides met about 20 times. In one of those meetings, special US envoy to the talks Martin Indyk left the room and the two sides were left alone.”

³⁵⁸ Yair Hirschfeld, Track-Two Diplomacy toward an Israeli-Palestinian Solution 1978-2014, Washington 2014, p. 341.

It was around this time that the parties acknowledged that a full comprehensive agreement would not be attainable by April 2014, the specified conclusion to the nine-month negotiating period. At this point, the U.S. began taking a more active role and suggested that the parties should aim towards a framework agreement (the “Framework”) that would outline the key parameters necessary for a final status agreement instead of aiming for such comprehensive final status agreement.³⁵⁸

In early December 2013, the U.S. presented their plan for security arrangements,³⁵⁹ in which Kerry specified the details concerning the future Palestinian-Jordanian border and its security arrangements, including “new early warning infrastructure, invisible Israeli presence (via cameras) at border crossings and top notch U.S. gadgetry”.³⁶⁰

³⁵⁹ Michael Eisenstadt and Robert Satloff, Clarifying the Security Arrangements Debate: Israeli Forces in the Jordan Valley, February 24, 2014, from the website of The Washington Institute for Near East Policy, Policy Watch 2214, available at <http://www.washingtoninstitute.org/policy-analysis/view/clarifying-the-security-arrangements-debate-israeli-forces-in-the-jordan-va>, accessed on April 3, 2016; Ben Birnbaum and Amir Tibon, The Explosive, Inside Story of how John Kerry built an Israel-Palestine Peace Plan - and watched it crumble, New Republic, July 21, 2014, available at <https://newrepublic.com/article/118751/how-israel-palestine-peace-deal-died>, accessed on November 17, 2015: “[I]n early December, Kerry presented Allen’s proposals to the Israelis. While they sidestepped the question of when Israeli forces would leave the Jordan Valley, they sketched out what the area - and the rest of the West Bank - might look like after they did. The future Palestinian-Jordanian border would include new early warning infrastructure, an invisible Israeli presence (via cameras) at border crossings, and top-shelf American gadgetry. Livni liked the package. So did most of Israel’s security brass.” [...] Netanyahu’s hawkish defense minister – Likud’s Moshe Ya’alon – thought it was worthless. “The Americans think we are natives who will be impressed with their technology,” he told one confidant. “Don’t they know that we are the masters of technology?” Unfortunately for everyone involved, it was impossible to imagine the Israeli government approving any deal without Ya’alon’s support.”

³⁶⁰ Ben Birnbaum and Amir Tibon, The Explosive, Inside Story of how John Kerry built an Israel-Palestine Peace Plan - and watched it crumble, New Republic, July 21, 2014, available at <https://newrepublic.com/article/118751/how-israel-palestine-peace-deal-died>, accessed on November 17, 2015. During the annual conference of the Institute for National Security Studies, David Makovsky, a member of the

At this point, while the U.S. negotiation team worked on the Framework, two issues became very central in the public debate. The first issue was Israel's request for recognition as a Jewish State by the Palestinians. The second issue concerned Israeli-Palestinian security arrangements, specifically Israel's request for IDF presence in the Jordan Valley. Right from the beginning of the talks, Kerry had recruited former Commander of the International Security and Assistance Force in Afghanistan ("ISAF"), General John Allen, to work in the U.S. negotiation team on a plan meeting Israel's security demands in the Jordan Valley.³⁶¹ On the issue of Israel's recognition as a Jewish State, the Palestinians continuously argued that they had already recognised the State of Israel in 1993 and could not – beyond that recognition – accept the notion of Israel as a Jewish State also considering Israel's large Arab population. On the issue of an IDF presence in the Jordan Valley, the Palestinians opposed any prolonged Israeli presence on what they consider Palestinian land. Furthermore, the Palestinians demanded a full settlement freeze and the release of all remaining Palestinian prisoners of Israel.

In February 2014, Kerry set a more modest goal for the negotiation process – both parties reaching an agreement on a document of principles even with express reservation about some of its content.³⁶² This

U.S. negotiations team said that of the five core issues, the two issues "territory" and "refugees" the negotiations were very advanced. On the three open issues Jerusalem, mutual recognition (Jewish state) and security arraignments the gaps were wider with each side wanting a deal on their terms. Thus, it would be important in future negotiations to divide the ideological questions from the security questions, described in *Brian Edwards*, MN Daily Q&A: David Makovsky, Minnesota Daily, February 3, 2016, available at <http://www.mndaily.com/news/world/2016/02/02/mn-daily-qa-david-makovsky>, accessed on February 24, 2016: "[I] think the Secretary was relentless in trying to bring the parties together. I feel of the five core issues, we made some progress on two of the five – the borders and the refugees. I could see a future in solving these. ... You have another issue called mutual recognition, which is where you not only recognize the other state, but the character of the other state. That proved to be difficult. ... We didn't want anyone to say that this wasn't solved because America wasn't creative enough. ... I worry that the leaders themselves are more risk-averse today than the giants of yesterday. ... The leaders are more risk-averse because the public has been around the block a few times since then [...]"

document of principles was designed to enable the continuation of the nine months of final status negotiations that were supposed to conclude in April 2014.³⁶³

On February 19, 2014, Kerry met with President Abbas in Paris. Abbas, disappointed with the continuous announcements of Israeli building permits in areas beyond the Green line, was not willing to constructively discuss Kerry's ideas. On March 17, 2014, Abbas met with President Obama in Washington, D.C. In that meeting, Obama presented Abbas with the core elements of the U.S. Framework for continued negotiations. According to some reports, Abbas rejected three core issues of the Framework: recognition of "Jewish Israel", abandonment of the right of return of Palestinian refugees and commitment to an end of claims.³⁶⁴ At this time, it was unclear whether Israel would release the fourth tranche of prisoners as it would have required good faith negotiations by the Palestinians – including some form of serious engagement with the U.S. proposal.

In the meantime, Hamas and Fatah started negotiating towards the formation of a unity government. Without any assurances that Israeli-Palestinian negotiations would continue after April 29 and disappointed that Palestinian Authority President Abbas did not engage with the U.S. proposal presented on March 17, Israel did not, as

³⁶¹ According to Yair Hirschfeld, the initial reaction of both the Israeli and the Palestinian side was to reject the Allen proposal, while engaging in an in-depth discussion with him and his team to seek common ground, see *Yair Hirschfeld*, Track-Two Diplomacy toward an Israeli-Palestinian Solution 1978-2014, Washington 2014, p. 402, Fn. 7.

³⁶² *Barak Ravid*, The Secret Fruits of the Peace Talks, a Future Point of Departure, Haaretz, July 5, 2014, available at <http://www.haaretz.com/peace/.premium-1.603028>, accessed on February 18, 2016. It was discussed whether these reservations would be made public or remain confidential.

³⁶³ *Amira Schiff*, Lessons from the Kerry Peace Initiative and the Need for a Constructive Approach, Peace and Conflict Studies, Vol. 22, No. 2 (2015), p. 164.

³⁶⁴ *Khaled Abu Toameh*, Abbas: I am a hero. I said no to Obama, Gatestone Institute, March 21, 2014, available at <http://www.gatestoneinstitute.org/4224/abbas-obama-no>, accessed on January 7, 2016.

previously agreed, release the last tranche of Palestinian prisoners, which to Israel's surprise, included fourteen Arab citizens of Israel detained for the commitment of terrorist acts.³⁶⁵ On April 2, 2014, in a live-broadcasted ceremony, the Palestinian Authority, identifying itself as the "State of Palestine", requested to join 15 international treaties, including the Fourth Geneva Convention, the 1966 International Covenant on Civil and Political Rights, the 1966 International Covenant on Economic, Social and Cultural Rights and the 1984 UN Convention against Torture.³⁶⁶

Although the Kerry Initiative had already received major setbacks at the end of March 2014 and the beginning of April 2014, a final deadlock in negotiations was reached six days before the April 29 deadline. On April 23, after three weeks of intense efforts by U.S. envoy Martin Indyk to reach an agreement on extending the negotiations, the Fatah-Hamas unity government was announced. The following day, the Israeli cabinet responded by suspending the talks.

³⁶⁵ According to *Jodi Rudoren* and *Isabel Kershner*, *Arc of a Failed Deal: How Nine Month of Mideast Talks Ended in Disarray*, *The New York Times*, April 28, 2014, available at http://www.nytimes.com/2014/04/29/world/middleeast/arc-of-a-failed-deal-how-nine-months-of-mideast-talks-ended-in-dissarray.html?_r=0, accessed on February 24, 2016, U.S. Secretary of State Kerry had allowed the Palestinians to believe that Arab-Israeli citizens would be among those freed without securing such a commitment from Israeli Prime Minister Netanyahu. This position is also held by *Ben Birnbaum* and *Amir Tibon*, *The Explosive, Inside Story of how John Kerry built an Israel-Palestine Peace Plan - and watched it crumble*, *New Republic*, July 21, 2014, available at <https://newrepublic.com/article/118751/how-israel-palestine-peace-deal-died>, accessed on November 17, 2015. The Israelis said that they would not free any prisoners unless the peace negotiations would be extended beyond the April 29 deadline. This was also around the time when the release of Jonathan Pollard, an American citizen, who had been serving a sentence in a U.S. prison since 1985, for forwarding classified information to Israel, came up in the discussions for the U.S. to convince Israel to continue with the negotiation, see *Roger Cohen*, *Why Israeli-Palestinian Peace Failed*, *The New York Times*, December 23, 2014, available at <http://www.nytimes.com/2014/12/24/opinion/roger-cohen-why-israeli-palestinian-peace-failed.html>, accessed on January 7, 2016; *Elhanan Miller*, *A struggle over Arab Israeli terrorists, as final release looms*, *The Times of Israel*, March 5, 2014, available at <http://www.timesofisrael.com/a-struggle-over-israeli-terrorists-as-final-release-looms/>, accessed on January 7, 2016. On April 1, whilst Netanyahu was collecting vote in his government for extending the talks

The suggested U.S. Framework, which has not yet been published so far, is said to have included the following parameters: a demilitarized Palestinian state, borders based on the pre-1967 lines with agreed land swaps, a shared Jerusalem and no mass return of Palestinian refugees to Israel.³⁶⁷ While Netanyahu is said to have intended an Israeli on the ground presence in the Jordan Valley to prevent the smuggling of terrorists and weapons, Abbas is said to have demanded a full Israeli withdrawal within three years. On the issue of refugees, the U.S. Framework is presumed to have promised monetary compensation to Palestinians displaced as a result of the 1948 War and to Jews who were forced to flee from their homes in the Arab world. Though the U.S. Framework stated that "the Palestinian refugee problem would be solved within the new Palestinian state," it has been argued that Netanyahu, departing from his previous policy, agreed to a mechanism whereby "Israel would admit at its discretion some refugees on a humanitarian basis".³⁶⁸

beyond the deadline, an old tender for 708 apartments in Gilo, East Jerusalem was published, see *Jodi Rudoren* and *Isabel Kershner*, *Arc of a Failed Deal: How Nine Month of Mideast Talks Ended in Disarray*, *The New York Times*, April 28, 2014, available at http://www.nytimes.com/2014/04/29/world/middleeast/arc-of-a-failed-deal-how-nine-months-of-mideast-talks-ended-in-dissarray.html?_r=0, accessed on February 24, 2016.

³⁶⁶ *Elie Podeh*, *Chances for Peace, Missed Opportunities in the Arab-Israeli Conflict*, Austin 2015, p. 371; *Barak Ravid*, *Palestinians submit official bid to join 15 international conventions*, *Haaretz*, April 2, 2014, available at <http://www.haaretz.com/news/diplomacy-defense/1.583409>, accessed on May 14, 2014.

³⁶⁷ *Ben Birnbaum* and *Amir Tibon*, *The Explosive, Inside Story of how John Kerry built an Israel-Palestine Peace Plan - and watched it crumble*, *New Republic*, July 21, 2014, available at <https://newrepublic.com/article/118751/how-israel-palestine-peace-deal-died>, accessed on November 17, 2015.

³⁶⁸ *Ben Birnbaum* and *Amir Tibon*, *The Explosive, Inside Story of how John Kerry built an Israel-Palestine Peace Plan - and watched it crumble*, *New Republic*, July 21, 2014, available at <https://newrepublic.com/article/118751/how-israel-palestine-peace-deal-died>, accessed on November 17, 2015.

On the issue of borders, Netanyahu is said to have accepted that “the new secure and recognized border between Israel and Palestine will be negotiated based on the 1967 lines with mutual agreed swaps.”³⁶⁹ On the issue of Jerusalem, Netanyahu rejected the Barak and Olmert formula of leaving Jewish neighbourhoods for Israel and Arab neighbourhoods for Palestine. Rather, he was only open to accepting a vague formulation that made reference to “Palestinian aspirations” for a capital in the holy city. Additionally, according to the Framework, Israel was to be recognized as the “nation-state of the Jewish people”. The U.S. inserted this phrasing into the document against Abbas’s strong objections while at the same time clarifying that such recognition would not lessen the rights of Israel’s Arab citizens.³⁷⁰

1. Gaza Conflict 2014

On the night of June 12, 2014, two Hamas activists kidnapped and killed three Jewish teenagers, who were trying to hitchhike on their way home from Yeshiva in the West Bank.³⁷¹ Shortly after, a 16-year old Muslim teenager from the Jerusalem neighbourhood of Shuafat was murdered by a Jewish Israeli and two of his affiliates. Uncertain of the fate

of the three kidnapped youths, Israel’s military initiated a law enforcement campaign with the PA’s security forces to search for the kidnapped youth (“Operation Brother’s Keeper”). In the course of the operation, over 400 Palestinians, including Hamas affiliates, were arrested and over 2,000 premises were searched.³⁷² Additionally, five Palestinians died in clashes with Israel’s armed forces. In response, Hamas immediately demanded the release of those arrested and started firing rockets on Israel’s southern cities.

Between July 7 and August 26, violent clashes broke out between Israel and Hamas.³⁷³ During that period Hamas and other armed factions in Gaza fired over 4,000 rockets and mortars on Israeli cities.³⁷⁴ Israel carried out a military campaign, which it named “Operation Protective Edge”. At first Israel only retaliated with air strikes against Hamas launching sites. On July 17, however, as the conflict intensified, Israel initiated a ground offensive in order to destroy a tunnel infrastructure that had enabled Hamas fighters to enter Israeli territory and to smuggle rockets between different locations in the Gaza Strip. In the course of these hostilities, over 2,100 Palestinians, 72 Israelis and one foreign citizen living in Israel died.³⁷⁵

³⁶⁹ *Ben Birnbaum and Amir Tibon*, The Explosive, Inside Story of how John Kerry built an Israel-Palestine Peace Plan - and watched it crumble, *New Republic*, July 21, 2014, available at <https://newrepublic.com/article/118751/how-israel-palestine-peace-deal-died>, accessed on November 17, 2015.

³⁷⁰ *Ben Birnbaum and Amir Tibon*, The Explosive, Inside Story of how John Kerry built an Israel-Palestine Peace Plan - and watched it crumble, *New Republic*, July 21, 2014, available at <https://newrepublic.com/article/118751/how-israel-palestine-peace-deal-died>, accessed on November 17, 2015.

³⁷¹ A Yeshiva is a Jewish learning institution that focuses on the study of traditional Jewish texts, primarily Torah and Talmud study.

³⁷² *Yoav Zitun*, Operation Brother’s Keeper continues in West Bank: 3 Palestinians arrested, 1 killed, *Ynetnews*, July 1, 2014, available at <http://www.ynetnews.com/articles/0,7340,L-4536558,00.html>, accessed on February 4, 2016.

³⁷³ Other armed factions in the Gaza Strip include the Islamic Jihad’s Al-Quds brigades, the Fatah’s aligned Al-

Aqsa and Abd-al-Wader al-Hosseini brigade and the Popular Front of Palestine’s Ali Abu Mustafa’s brigade.

³⁷⁴ State of Israel, The 2014 Gaza Conflict: Factual and Legal Aspects, full report from the website of Israel’s Ministry of Foreign Affairs, available at <http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx>, accessed on May 14, 2015; UN General Assembly, Human Rights Council, A/HRC/29/52, June 24, 2015, Report of the Independent Commission of Inquiry on the 2014 Gaza Conflict, from the website of the Office of the UN High Commissioner for Human Rights, available at <http://www.ohchr.org/EN/HRBodies/HRC/CoIGazaConflict/Pages/ReportCoIGaza.aspx#report>, accessed on June 24, 2015.

³⁷⁵ The number of victims in total, and the number of combatants and civilians amongst them is a controversial fact due to a lack of objective sources inside the Gaza Strip during the combat activities. The Israeli government assesses the number of Palestinian casualties to be 2,125, of them 936 militants, 761 civilians and 428 unidentified; 73 Israelis including one Thai citizen residing in Israel (67 soldiers, six civilians), State of Israel, The 2014 Gaza Conflict: Factual and

Following the Gaza Operation and in accordance with their diplomatic strategy, on December 31, 2014, the Palestinians applied for membership as a state party to the ICC. The Palestinians added a Declaration, whereby they accepted the jurisdiction of the ICC over alleged crimes “in the occupied Palestinian territory, including East Jerusalem since June 13, 2014.”³⁷⁶ This date was not randomly chosen. Rather, it marks the beginning of Operation Brother’s Keeper. The “State of Palestine” became a state party to the ICC on April 1, 2015³⁷⁷, a development opposed by the Israeli government on legal grounds.³⁷⁸

Lately, on October 30, 2014, Sweden became the first major Western government to recognize the State of Palestine.³⁷⁹ On June 26, 2015, the Vatican

also formally recognized the State of Palestine by signing a diplomatic treaty with it.³⁸⁰

2. *Third Intifada?*

Over the course of the following months, violence continued to affect the daily routine of Israelis and Palestinians. On July 31, 2015, the homes of two families in Duma, a Palestinian village in the West Bank, were firebombed by masked attackers, who were later identified by the Israeli Defence Minister Moshe Ya’alon as Jewish terrorists.³⁸¹ As a result of the attack, three family members were killed. Then, starting from September 2015, a wave of violence hit Israel, in Israel referred to as “Wave of Terror”.

Between September 13, 2015 and July 9, 2016, on the Israeli side, 40 people were killed and 517 people

Legal Aspects, full report, p. 55, par. 105, from the website of Israel’s Ministry of Foreign Affairs, available at <http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx>, accessed on May 14, 2015. UN Office for the Coordination of Humanitarian Affairs, Occupied Palestinian Territory (OCHA oPt), Gaza Emergency Situation Report, September 4, 2014, available at http://www.ochaopt.org/documents/ocha_opt_sitrep_04_09_2014.pdf, accessed on March 27, 2016. According to the UN Office for the Coordination of Humanitarian Affairs oPt report 2, 131 Palestinians died.

³⁷⁶ Declaration under Article 12 paragraph 3, ICC Statute (Rome Statute), see International Criminal Court, Rome Statute, July 17, 1998, available at https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf, accessed at March 27, 2016 and State of Palestine, Declaration accepting the Jurisdiction of the International Criminal Court, December 31, 2014, available at https://www.icc-cpi.int/iccdocs/PIDS/press/Palestine_A_12-3.pdf, accessed at March 27, 2016.

³⁷⁷ International Criminal Court, ICC welcomes Palestine as a new State Party, April 1, 2015, available at http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/pr1103.aspx, accessed on July 1, 2015.

³⁷⁸ Israel Ministry of Foreign Affairs, Palestinian Authority joins the ICC – Israel’s response, April 1, 2015, available at <http://mfa.gov.il/MFA/PressRoom/2015/Pages/Palestinian-Authority-joins-the-ICC-Israel-response-1-Apr-2015.aspx>, accessed on November 26, 2015.

³⁷⁹ Palestine currently enjoys recognition by 137 States, see Permanent Observer Mission of The State of Palestine to the United Nations, Diplomatic Relations, available at <http://palestineun.org/about-palestine/diplomatic-relations/>,

accessed on February 2, 2016. Iceland recognized Palestine in December 2011, see Ministry for Foreign Affairs of Iceland, Iceland recognizes Palestine, December 15, 2011, available at <https://www.mfa.is/news-and-publications/nr/6847>, accessed on February 2, 2016; Malta and Cyprus recognized Palestine (Malta: November 15, 1988; Cyprus: November 18, 1988) when the two states were not yet members of the European Union, see Permanent Observer Mission of The State of Palestine to the United Nations, Diplomatic Relations, available at <http://palestineun.org/about-palestine/diplomatic-relations/>, accessed on February 2, 2016; also: *Einat Wilf*, Aligning policy with preference, Preserving a path to a two-state solution, Policy Focus, 141 (2015), p. 3, from the website of The Washington Institute for Near East Policy, available at <http://www.washingtoninstitute.org/policy-analysis/view/aligning-policy-with-preference-preserving-a-path-to-a-two-state-solution>, accessed on March 27, 2016.

³⁸⁰ L’Osservatore Romano, Comprehensive agreement between the Holy See and the State of Palestine signed in the Vatican’s Apostolic Palace, L’Osservatore Romano, June 26, 2015, available at <http://www.osservatoreromano.va/en/news/comprehensive-agreement-between-holy-see-and-state>, accessed on February 2, 2016.

³⁸¹ The Times of Israel, IDF: Duma attack was definitely ‘Jewish terrorism’, The Times of Israel, September 8, 2015, available at <http://www.timesofisrael.com/idf-duma-attack-was-definitely-jewish-terrorism/>, accessed on November 19, 2015, quoting a senior Israel Defense Forces official saying: “[T]his was an act of Jewish terrorism, and that’s unambiguous... All the conjecture and speculations being spread on this issue lack any basis in reality.”

(including four Palestinians) were injured as a result of 156 stabbings and 76 attempted stabbings, 98 shootings, 46 cases of intentional car hitting and one bus bombing.³⁸² Additionally, 200 Palestinians, including perpetrators,³⁸³ were also killed and several hundreds were injured by live ammunition and rubber bullets in clashes with Israeli security forces.³⁸⁴ Some view the latest rise in fatal clashes as a “Third Intifada”, whereas others interpret it as “lone wolf attacks”. These attacks with knives, and sometimes with guns, are carried out by individuals, often teenagers, who were usually radicalized by incitement on television or social media.³⁸⁵ These attackers (also referred to as “Facebook stabbers”) often made prior announcements on social networks of their intention to carry out deadly attacks. Israelis see these attacks as the consequence of powerful and continuous incitement against Jews by Islamist groups, the PA and Palestinian media networks.³⁸⁶ Palestinians regard these attacks as the result of an attempt by right-wing Israelis to change the status

quo on the Temple Mount and general Palestinian frustration with restrictions of movement and occupation.³⁸⁷ Both sides strongly reject the other side’s analysis of events.

3. *Draft Resolutions in the United Nations Security Council*

The UN Security Council has not adopted any resolution on the Israeli-Palestinian conflict since 2009. Frustrated with the lack of process of the bilateral negotiations in recent years, some UN member states have taken a more active role in advancing the Two State Solution and are attempting to enshrine certain principles of the Israeli-Palestinian negotiations, which have been agreed upon to a greater or lesser degree, by either changing their policy towards Israel or promoting a new Security Council Resolution.³⁸⁸ For instance, Jordan and France initiated a diplomatic process that would

³⁸² Israel Ministry of Foreign Affairs, Wave of Terror October–November 2015, available at <http://mfa.gov.il/MFA/ForeignPolicy/Terrorism/Palestinian/Pages/Wave-of-terror-October-2015.aspx>, accessed on June 11, 2016.

³⁸³ Around 130 Palestinian died while being involved in an attack, see *Peter Beaumont*, Israel-Palestine: Outlook bleak as wave of violence passes six-month mark, *The Guardian*, March 31, 2016, available at <https://www.theguardian.com/world/2016/mar/31/israel-palestine-violence-knife-attacks-west-bank-gaza>, accessed on June 11, 2016.

³⁸⁴ *Raoul Wootliff*, Iran pledges thousands of dollars for Palestinian terrorists, *The Times of Israel*, February 24, 2016, available at <http://www.timesofisrael.com/iran-pledges-thousands-of-dollars-for-palestinian-terrorists/>, accessed on February 27, 2016; *Basma Atassi*, Mapping the dead in latest Israeli-Palestinian violence, *Al-Jazeera*, November 24, 2015, available at <http://www.aljazeera.com/indepth/interactive/2015/10/mapping-dead-latest-israeli-palestinian-violence-151013142015577.html>, accessed November 25, 2015.

³⁸⁵ *Gili Cohen*, Shin Bet: Incitement on Palestinian TV Spurred Killer of Israeli Woman, *Haaretz*, January 24, 2016, available at <http://www.haaretz.com/israel-news/.premium-1.699227>, accessed on January 25, 2016.

³⁸⁶ Israel Ministry of Foreign Affairs, Palestinian incitement and terrorism: truth and lies, October 29, 2015, available at <http://mfa.gov.il/MFA/ForeignPolicy/Issues/Pages/Palestinian-incitement-and-terrorism-Oct-2015.aspx>, accessed on November 23, 2015.

³⁸⁷ L’ Agence France-Press (AFP) and *The Times of Israel*, Abbas: Israel changing Temple Mount status quo, executing

Palestinians, *The Times of Israel*, November 24, 2015, available at <http://www.timesofisrael.com/abbas-israel-changing-temple-mount-status-quo-executing-palestinians/>, accessed on November 24, 2015; Associated Press and *Times of Israel*, Israel must maintain Temple Mount status quo, Abbas tells Kerry, *The Times of Israel*, October 24, 2015, available at <http://www.timesofisrael.com/israel-must-maintain-temple-mount-status-quo-abbas-tells-kerry/>, accessed on November 16, 2015.

³⁸⁸ For an overview of such policies see *Einat Wilf*, Aligning policy with preference, Preserving a path to a two-state solution, *Policy Focus*, 141 (2015), p. 2, from the website of The Washington Institute for Near East Policy, available at <http://www.washingtoninstitute.org/policy-analysis/view/aligning-policy-with-preference-preserving-a-path-to-a-two-state-solution>, accessed on March 27, 2016. An example for adapting policy would be non-binding resolutions calling on their governments to directly recognize the State of Palestine, in Ireland, Spain, France, Luxembourg, Portugal and Great Britain or the decision by the EU Commissions decision to release its Interpretative Notice on Indication of Origin of Goods from the Territories Occupied by Israel since 1967, see European Commission, Interpretative Notice on Indication of Origin of Goods from the Territories Occupied by Israel since June 1967, November 11, 2015, available at http://eeas.europa.eu/delegations/israel/documents/related-links/20151111_interpretative_notice_indication_of_origin_en.pdf, accessed on April 3, 2016.

force upon the conflicting parties a binding UN Security Council resolution that sets out a time-frame until negotiations for the Two State Solution needed to commence.³⁸⁹ On December 30, 2014, the Jordanian draft resolution failed to pass through at the Security Council. In June 2015, the French draft resolution was circulated among the Security Council's member states but not brought to a vote. In October 2015, New Zealand also sought a UN Security Council resolution after violence erupted, but this draft has also not been brought to a vote.³⁹⁰

The Jordanian draft resolution called for a "12-month time period until a framework had to be agreed upon".³⁹¹ It also decided that the negotiated solution would be

"based on the following parameters: borders based on 4 June 1967 lines with mutually agreed, limited, equivalent land swaps; security arrangements,

including through a third-party presence, that guarantee and respect the sovereignty of a State of Palestine, including through a full and phased withdrawal of the Israeli occupying forces [...] over an agreed transition period in a reasonable timeframe, not to exceed the end of 2017."

The French draft resolution negotiations calls for the immediate resumption of negotiations between Israel and the Palestinians and their conclusion in a final status agreement within 18 months.³⁹² As per the draft resolution, these negotiations would be for the attainment,

"of a just, lasting and comprehensive peaceful solution that fulfils the vision of two states and establishes an independent, sovereign, democratic, contiguous and viable state of Palestine living side by side with the State of Israel in peace and security within recognised borders."³⁹³

³⁸⁹ UN Security Council, Jordan: draft Resolution, S/2014/916, December 30, 2014, available at http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2014/916, accessed on November 19, 2015; see *Nicolas Boeglin*, Palestine at United Nations Security Council: Two Drafts for a Resolution on Palestinian Self-Determination, from the website of the Centre for Research on Globalization, available at <http://www.globalresearch.ca/palestine-at-united-nations-security-council-two-drafts-for-a-resolution-on-palestinian-self-determination/5421073>, accessed on November 19, 2015; On the French draft: *Barak Ravid*, Report: French UN Resolution sets 18-month Deadline for Israeli-Palestinian Deal, Haaretz, May 20, 2015, available at <http://www.haaretz.com/israel-news/.premium-1.657435>, accessed on November 19, 2015.

³⁹⁰ Summary of the New Zealand draft, see Jewish Telegraphic Agency, New Zealand circulates UNSC draft resolution for Israeli-Palestinian peace talks, The Jerusalem Post, October 30, 2015, available at <http://www.jpost.com/Arab-Israeli-Conflict/New-Zealand-circulates-UNSC-draft-resolution-for-Israeli-Palestinian-peace-talks-430584>, accessed on November 18, 2015.

³⁹¹ The Jordanian proposal, referring to earlier Security Council resolutions, reaffirmed that Israeli settlements in the territories established since 1967 "have no legal validity", and that "a just, lasting and peaceful settlement of the Israeli-Palestinian conflict can only be achieved by peaceful means, based on enduring commitment to mutual recognition, freedom from violence, incitement and terror, and the two-state solution, building on previous agreements and obligations and stressing that the only viable solution to the Israeli-Palestinian conflict is an agreement that ends the occupation that began in 1967, resolves all permanent status

issues as previously defined by the parties, and fulfils the legitimate aspirations of both parties [...]"

³⁹² For the French Draft Resolution see *Barak Ravid*, Report: French UN Resolution Sets 18-month Deadline for Israeli-Palestinian Deal, Haaretz, May 20, 2015, available at <http://www.haaretz.com/israel-news/.premium-1.657435>, accessed on March 6, 2016.

³⁹³ At the outset, the French draft resolution stressed the "importance of the 2002 Arab Peace Initiative", aimed at "enabling Arab states and Israel to live in peace and good neighbourliness and providing future generations with security, stability and prosperity." Regarding security arrangements, the French proposal speaks of "security arrangements that respect the sovereignty of a non-militarised state of Palestine, including through a full and phased withdrawal of Israel Defense Forces over an agreed transition period in a reasonable timeframe, and that ensure the security of both Israel and Palestine through effective border security and by preventing the resurgence of terrorism and infiltration of weapons. The definition of a plan and schedule for implementing these security arrangements shall be placed at the heart of the upcoming negotiations that shall be concluded within the 18-month period." On Refugees, both drafts call for an agreed and just (French also: fair and realistic) solution to the refugee question. Whereas the Jordanian proposal refers to the "Arab Peace Initiative and UN Resolution 194 (III) of the General Assembly, adopted on December 11, 1948", the French proposal calls for "a mechanism to provide for reparation, resettlement, compensation and other agreed measures for a conclusive resolution". Regarding Jerusalem, both draft resolutions call for a status of Jerusalem that fulfils the "aspirations of both parties as the capital of two states that safeguards (Jordanian: protects freedom of worship) its status

The French and the Jordanian resolutions conclude that the final status agreement would put an “end to all claims and to the occupation” and lead to “immediate mutual recognition” and that the “United Nations would welcome Palestine as a full Member State of the United Nations within the framework defined in the resolution.” Both resolutions welcome the “intention to hold an international conference that would launch the negotiations”.

The New Zealand draft proposal, directly referring to the demonstrations, stabbings and shootings of October 2015, noted “with alarm the escalating cycle of violence” and called on both parties to refrain from actions that could harm the peace process, including settlement building and bringing an action at the International Criminal Court.³⁹⁴

for people around the world”. On Gaza, the Jordanian draft proposal underlines that the Gaza Strip constitutes an integral part of Palestinian territory occupied in 1967, calling for a sustainable solution, including the “sustained and regular opening of its border crossings for normal flow of persons and goods, in accordance with international humanitarian law.” The French proposal welcomes the 27 August 2014, agreement in Cairo on a long term ceasefire in Gaza, thanking the Egypt and international mediators. The draft emphasizes “that the status quo in the Gaza Strip is unsustainable and may lead to renewed conflict”. After outlining the parameters, the French draft proposal underlines “that the Gaza Strip constituted an integral part of the territory occupied in 1967, will be part of the Palestinian state” and calls [...] “for the swift resumption of negotiations to move beyond the 26 August 2014 ceasefire and achieve a durable, comprehensive and sustainable solution which must lead to a fundamental improvement in the living conditions for the Palestinian people in the Gaza Strip and ensure the safety and well-being of civilians on both sides.”

³⁹⁴ The New Zealand draft speaks of “actions or statements that might undermine or prejudice negotiations or their outcome, “including continued expansion of settlements and demolition of Palestinian homes in the occupied territories ...” It also calls on the parties to refrain from “referring a situation concerning Israel or the occupied Palestinian territories to the International Criminal Court.” The New Zealand draft demands that both Israel and the Palestinians take steps “to end the violence, avoid incitement and protect civilians.” In an apparent reference to the Temple Mount, it also calls on both sides to refrain from “provocative acts, including acts which threaten the historic status quo of holy sites in Jerusalem” see *Barak Ravid*, UN Resolution would call on Israel to freeze settlements, Palestinians to desist action at ICC, Haaretz, October 28, 2015, available at <http://www.haaretz.com/israel-news/.premium-1.682688>, accessed on November 19, 2015.

C. Final status issues

I. Borders and Territory

Perhaps the most crucial issue of the Israeli-Palestinian peace negotiations is the territorial dispute.³⁹⁵ The Palestinian position is that the new Palestinian state should be based on the territory controlled by Egypt and Jordan prior to June 4, 1967, before the beginning of the 1967 War and Israel's seizure of control over the West Bank and Gaza.³⁹⁶ Though representatives of Israel's centre and liberal parties have openly engaged in negotiations based on the pre-1967 lines in the past, the Likud and right-wing Israeli parties have generally not publicly endorsed such a pre-condition for negotiations.³⁹⁷ Thus, the starting point of recent rounds of peace negotiations were based on a compromise, which

included an Israeli withdrawal to the pre-1967 line with secure and recognized borders in accordance with Security Council Resolution 242 of November 27, 1967 and mutual agreed land swaps.³⁹⁸ The land swap model suggests that the settlements do not necessarily make the Two State Solution impossible.³⁹⁹ This model is led by the understanding that approximately 80 per cent of settlers live in approximately five per cent of the West Bank largely adjacent to the pre-1967 lines and inside the Barrier. Most of the remaining 20 per cent live outside the Barrier, in 92 per cent of the West Bank.⁴⁰⁰ The land swap model has most notably been acknowledged by President Bush in his April 14, 2004, letter to Israeli Prime Minister Sharon, in which he stated that considering new realities on the ground, it was realistic to expect that any final status agreement will be achieved on the basis of mutually agreed changes that would reflect these realities.⁴⁰¹

³⁹⁵ For an overview of the legal positions of Israel, the Palestinians and the international community, see *Benjamin Rubin*, *Israel, Occupied Territories*, in: *Rüdiger Wolfrum* (ed.), *Max Planck Encyclopedia of Public International Law*, Vol. 6, Oxford, 2012, pp. 423-425.

³⁹⁶ *Ilan Goldenberg*, *Lessons from the 2013-2014 Israeli-Palestinian Final Status Negotiations*, Washington, DC 2015, p. 9, from the website of the Center for a New American Security, available at <http://www.cnas.org/lessons-learned-final-status-negotiations#.Vva5rXr5HPA>, accessed on March 27, 2016.

³⁹⁷ *Ilan Goldenberg*, *Lessons from the 2013-2014 Israeli-Palestinian Final Status Negotiations*, Washington, DC 2015, p. 9, from the website of the Center for a New American Security, available at <http://www.cnas.org/lessons-learned-final-status-negotiations#.Vva5rXr5HPA>, accessed on March 27, 2016.

³⁹⁸ The land swap model explained in *David Makovsky* with *Sheli Chabon* and *Jennifer Logan*, *Imagining the Border, Options for resolving the Israeli-Palestinian Territorial Issue*, The Washington Institute for Near East Studies, January 2011, available at <http://www.washingtoninstitute.org/uploads/Documents/pubs/StrategicReport06.pdf>, accessed on April 3, 2016. Such a plan has been taken into account since the Camp David negotiations in 2000 as well as in the pre Annapolis negotiations between Olmert and Abbas in 2007; see also *Einat Wilf*, *Aligning policy with preference, Preserving a path to a two-state solution*, *Policy Focus*, 141 (2015), pp. 13-14, from the website of The Washington Institute for Near East Policy, available at <http://www.washingtoninstitute.org/policy-analysis/view/aligning-policy-with-preference-preserving-a-path-to-a-two-state-solution>, accessed on March 27, 2016.

³⁹⁹ *David Makovsky* with *Sheli Chabon* and *Jennifer Logan*, *Imagining the Border, Options for resolving the Israeli-Palestinian Territorial Issue*, The Washington Institute for Near East Studies, January 2011, available at <http://www.washingtoninstitute.org/uploads/Documents/pubs/StrategicReport06.pdf>, accessed on April 3, 2016.

⁴⁰⁰ *Dennis Ross* and *David Makovsky*, *The neglected Israeli-Palestinian peace process must be revived*, *The Washington Post*, February 25, 2016, available at https://www.washingtonpost.com/opinions/the-neglected-israeli-palestinian-peace-process-must-be-revived/2016/02/25/aa9d61dc-d715-11e5-b195-2e29a4e13425_story.html, accessed on February 28, 2016. However, some settlements are located deep inside the West Bank. The eastern part of the West Bank includes the Jordan Valley and the shore of the Dead Sea. Approximately 10,738 settlers live in this area, mainly in kibbutzim and moshavim, see *The Israeli Information Center for Human Rights in the Occupied Territories (B'Tselem)*, "Background on the Jordan Valley", May 18, 2011, (last updated October 6, 2013), available at http://www.btselem.org/jordan_valley, accessed on January 25, 2016.

⁴⁰¹ The White House, *Letter from President Bush to Prime Minister Sharon*, April 14, 2004, available at <http://georgewbush-whitehouse.archives.gov/news/releases/2004/04/20040414-3.html>, accessed on February 2, 2016 "As part of a final settlement, Israel must have secure and recognized borders, which should emerge from negotiations between the parties in accordance with UNSC Resolutions 242 and 338. In light of new realities on the ground, including already existing major Israeli population centers, it is unrealistic to expect that the outcome of final status negotiations will be a full and complete return to the armistice lines of 1949, and all

Nevertheless, it can be argued that ongoing settlement construction hurts the national aspirations of the Palestinian people and pains the Palestinian leadership.⁴⁰²

In a final status agreement, Israel would annex between 2–7 per cent of the West Bank territory in which over 80 per cent of settlers live. These settlers live in so-called “settlement blocs”, areas known in Hebrew as “Gushim”. In this context, the Israeli settlement blocs close to the Green Line that have often been referred to in the discussions about land swaps are Karnei Shomron, Ariel, Gush Etzion and Ma’ale Adumim, an area that is more disputed. In return, a future Palestinian state would receive parts of land southwest or northwest of the Green Line that are currently located in Israel. Even though this plan is often referred to as a “swap”, this does not necessarily mean that territory exchanged must be equal in size or quality (a factor also subject to negotiation).

In case relocation is necessary, to help maintain public order and prevent internal political tensions, Israel’s aim is to relocate the least amount of people possible. Israel’s position on this issue is most likely influenced by the traumatic experience of the disengagement from the Gaza Strip in 2005.

For the Palestinians, their position on the border dispute has undergone a significant transformation since 1948. Though they once claimed all of historic Palestine, by 1988, Palestinians had limited their national aspirations for statehood to 22 per cent, consisting of the West Bank and Gaza Strip, with East Jerusalem as its capital. Though the Palestinians hold that Israel has no valid claim to any part of the West Bank or the Gaza Strip, in the interest of peace, the PLO has been willing to discuss “minor,

equitable, and mutually agreed territorial changes”, should the PLO decide that it is “in their interest to do so.”⁴⁰³ For the PLO, the West Bank and the Gaza Strip should function as a single territorial unit with a connecting strip of land between them. This territorial link must be permanent and permit unrestricted movement of people, goods and vehicles between the two geographical areas.

One suggestion regarding the territorial solution proposes not to relocate settlers wishing to remain in the West Bank but rather, after a five-year interim period, offer them permanent residence in Palestine while retaining their Israeli citizenship. The number of settlers staying in a future Palestinian state would then be set off against Palestinian refugees wishing to return to Israel.⁴⁰⁴ Though this proposal could help prevent large population transfers, it caused uproar and dispute within the Israeli government after being discussed by Israeli Prime Minister Netanyahu at the 2014 World Economic Forum in Davos. Furthermore, because many within the settlement movement believe in the ideological foundation of establishing a Jewish state on the biblical land of Israel, it is perhaps unrealistic that settlers would then actually agree to reside outside the sovereign territory of such Jewish state. The negotiations regarding the border dispute contain five major questions:

- Is a land swap carried out according to the disputed requirements of UN Security Council Resolution 242?
- Would the exchange of territory be executed quantitatively (1:1) or qualitatively (taking into consideration natural resources and strategic locations)?

previous efforts to negotiate a two-state solution have reached the same conclusion. It is realistic to expect that any final status agreement will only be achieved on the basis of mutually agreed changes that reflect these realities [...]

⁴⁰² Jack Khoury and Barak Ravid, Palestinians reject Netanyahu’s proposal to discuss settlement borders, Haaretz, May 26, 2015, available at <http://www.haaretz.com/news/diplomacy-defense/premium-1.658127>, accessed on June 14, 2015. In the article, Erekat is quoted as saying to Haaretz that, “if Netanyahu is interested in renewing the political process, he must halt all construction in the settlements, implement the fourth stage of prisoner release of Palestinians jailed and tried before the Oslo Accords, hold negotiations based on the 1967 lines, and within a determined period of time end the

occupation. Any other position will render the negotiations irrelevant and meaningless.”

⁴⁰³ Palestine Liberation Organization, Negotiation Affairs Department, Keyword: Borders, available at <http://www.nad-plo.org/etemplate.php?id=10&more=1#4>, accessed on January 25, 2016.

⁴⁰⁴ Yossi Beilin, Saving Kerry’s peace plan, The New York Times, November 10, 2013, available at http://www.nytimes.com/2013/11/11/opinion/saving-kerrys-peace-plan.html?_r=0, accessed on May 17, 2015.

- Would Israel annex areas of the West Bank territory where 80 per cent of the Jewish settlers reside?
- Will the Palestinians demand a unified state, connecting Abu Dis in East Jerusalem with Hebron?
- Can such a territorial link be reconciled with Israel's security demands and wish for retaining certain settlements?

II. Security arrangements

Any future Israeli-Palestinian border would be close to Israeli population centres. It would also be about 15 miles from the centre of Tel Aviv and less than a mile from the centre of the Jewish neighbourhoods of Jerusalem. Therefore, in previous rounds of negotiations, Israel has always expressed its position that certain security arrangements must be implemented.⁴⁰⁵

Israel's position on the issue of security focuses on four major points: (1) the de-militarization of a future Palestinian state, with the Palestinians agreeing to not having an army (but having a strong

police force), not allowing for the deployment of any alien military force on Palestinian land, and not creating military alliances between Palestine and another country or military force; (2) a temporary Israeli presence in the Jordan Valley,⁴⁰⁶ that will be reduced in a gradual manner and eventually replaced by a reliable peace keeping force that is either Palestinian, Jordanian or multinational (Palestinian, Jordanian and Israeli); (3) the right for Israel to deploy its forces in case of an emergency situation, the installation of 2–3 early warning intelligence stations⁴⁰⁷ and access to the Palestinian electromagnetic spectrum and (4) the regulation of air space with the right of military use given to Israel and the right of limited civil use given to the Palestinians.⁴⁰⁸

On March 4, 2013, during his speech at the AIPAC policy conference in Washington, D.C., Israeli Prime Minister Netanyahu explained that only an on-site Israeli presence in the Jordan Valley could effectively prevent arms smuggling.⁴⁰⁹ From an Israeli perspective, only at a later stage, could the redeployment of an Israeli military presence be subject to negotiation. At previous negotiations for a final status agreement, the proposals regarding

⁴⁰⁵ See on Security Arrangements, *Ilan Goldenberg, Gadi Shamni, Nimrod Novik, Kris Bauman*, Advancing the Dialogue: A Security System for the Two-State Solution, Washington DC 2016, from the website of the Center for a New American Security, available at <http://www.cnas.org/2statesolution#.V1wvTDcaqqQ>, accessed on May 31, 2016; *Michael Eisenstadt and Robert Satloff*, Clarifying the Security Arrangements Debate: Israeli Forces in the Jordan Valley, February 24, 2014, Policy Watch 2214, from the website of The Washington Institute for Near East Studies, available at <http://www.washingtoninstitute.org/policy-analysis/view/clarifying-the-security-arrangements-debate-israeli-forces-in-the-jordan-va>, accessed on April 3, 2016. Besides the size and status of residual Israeli forces in the Jordan Valley, these have been said to include: Israel's demand for lightly manned early warning stations on strategic hilltops in the West Bank; arrangements for the aerial approaches to Ben Gurion International Airport; access and control over the main east-west roads and passes in the West Bank; management and control of airspace and the electromagnetic spectrum in the Palestinian territories; and details of the Palestinian states' demilitarization.

⁴⁰⁶ Israel seems in the past to have insisted on having a small military presence in the Jordan Valley in order to prevent the smuggling of weapons, see *Michael Birnbaum and Ingy Hassieb*, Egyptian military begins closing smuggling tunnels near Gaza, The Washington Post, September 4, 2011, available at <http://www.washington>

post.com/world/middle-east/egyptian-military-begins-closing-smuggling-tunnels-near-gaza/2011/09/04/gIQANvy31J_story.html, accessed on July 1, 2015.

⁴⁰⁷ In this regard it seems still difficult who will determine what constitutes an emergency.

⁴⁰⁸ "Limited" in this context refers to civil use by Palestinians with Israeli consent regarding in and outward flights to Palestine coordinated with Israeli air space control.

⁴⁰⁹ Israel Ministry of Foreign Affairs, PM Netanyahu addresses AIPAC Policy Conference 2013, March 4, 2013, available at <http://mfa.gov.il/MFA/PressRoom/2013/Pages/PM-Netanyahu-addresses-AIPAC-Policy-Conference-2013.aspx>, accessed on January 25, 2016. Prime Minister Netanyahu said: [I]f we reach an agreement, as I hope, with the Palestinians, I don't delude myself. That peace will most certainly come under attack – constant attack by Hezbollah, Hamas, al Qaeda and others. And experience has shown that foreign peacekeepers – foreign peacekeeping forces, well, that they keep the peace only when there is peace. But when they're subjected to repeated attacks, those forces eventually go home. So as long as the peace is under assault, the only force that can be relied on to defend the peace and defend Israel is the force that is defending its own home – the Israeli Army, the brave soldiers of the IDF [...]"

security arrangements varied. Among them, there was the idea of three to five early warning stations and the presence of either an international or Israeli force. Such presence could potentially prevent a coordinated attack on Israel from the East.

The Clinton Parameters mention three early warning stations in the West Bank with the possibility of the addition of a Palestinian liaison presence subject to review after ten years and with any change of status to be mutually agreed upon.⁴¹⁰ With an increasing threat posed by “Daesh” – Al-Daula-al Islamiya fik – Irak val Scham, also known as the “Islamic State of Iraq and the Levante” (ISIL), a radical Sunni terrorist organization mainly operating in Iraq and Syria, international support for Israeli military presence in the Jordan Valley will probably increase. In case of an armed conflict with the Palestinians, or non-state actors attacking Israel from Palestinian territory, Israel would prefer to fight from its current positions. Therefore, the Israeli government is hesitant to surrender very real and concrete military advantages for promises of future behaviour and developments.

As regards security, the starting point for Palestinians is to put an end to Israeli military control of the West Bank. For Palestinians, ending the Israeli occupation requires the full withdrawal of Israeli military and civilian presence from all Palestinian territories, airspace and territorial waters. In addition, according to the Palestinian negotiation position, in order to achieve an independent national homeland for the Palestinians, “the security relations between Israel and Palestine would need to be structured in ways that will achieve the following: provide effective responses to internal and external

threats, create mechanisms for ongoing cooperation as peaceful and friendly nations, respect international human rights and promote regional and international peace and security through developing relations with all of its neighbouring countries, based on peace, security and stability”.⁴¹¹ It seems that if foreign military presence is necessary, the Palestinians would favour the deployment of an international peacekeeping force instead of an Israeli military presence that could help stabilizing a final status agreement and possibly discourage Israeli intervention in Palestinian territory. According to the Palestinian view, the international community should show more determination in backing up its own decisions, as embodied in UN resolutions.⁴¹² Palestinians believe that an international presence would deter Israeli violations of any future agreement and give Palestinians a chance to build their state and society.

It has been reported that during the latest round of U.S led peace talks, the idea that a future State of Palestine would be demilitarized and that a transitional IDF presence would be stationed in the Jordan Valley, was received favourably by the parties.⁴¹³ It has also been reported that the U.S. proposal of December 2013 suggested a ten-year presence of Israeli forces in the Jordan Valley, for training and strengthening the Palestinian security forces, before the gradual transfer of control over the Jordan Valley to the Palestinians.⁴¹⁴

III. Settlements

Israeli settlements in the West Bank are subject to controversy and debate, both within and outside the

⁴¹⁰ Institute for National Security Studies (INSS), Center for Applied Negotiations, The Israeli-Palestinian Negotiation file, Clinton Proposal on Israeli-Palestinian Peace, Part 1/3, Tel Aviv 2013, p. 167.

⁴¹¹ Palestine Liberation Organization, Negotiation Affairs Department, Keyword: Security, available at <http://www.nad-plo.org/etemplate.php?id=181>, accessed on January 25, 2016.

⁴¹² Alan Dowty, *Israel/Palestine*, 3rd ed., Cambridge 2012, p. 240.

⁴¹³ Einat Wilf, *Aligning policy with preference, Preserving a path to a two-state solution*, Policy Focus, 141 (2015), p. 4, from the website of The Washington Institute for Near East Policy, available at <http://www.washingtoninstitute.org/>

policy-analysis/view/aligning-policy-with-preference-preserving-a-path-to-a-two-state-solution, accessed on March 27, 2016; Barak Ravid, U.S. Security Proposal includes Israeli Military Presence in Jordan Valley, Haaretz, December 7, 2013, available at <http://www.haaretz.com/israel-news/premium-1.562242>, accessed on February 2, 2016.

⁴¹⁴ Barak Ravid, U.S. Plan Keeps Israeli Army in Jordan Valley for 10 Years, Haaretz, December 10, 2013, available at <http://www.haaretz.com/israel-news/premium-1.562718>, accessed on February 4, 2016.

negotiation room. The term “settlements” as used here, describes areas where Jews founded private suburban communities with governmental building permits, and at times, financial incentives after the 1967 War. In Hebrew, the disputed territory in the West Bank is referred to as the biblical land of Judea and Samaria. This land was part of the biblical land of Israel and it is viewed as historically and culturally important by most observant Jews and Torah scholars. While it is part of Jewish history and heritage, the Palestinians view this land as part of “Filastin” the territory of the State of Palestine and the national homeland of the Palestinian people.

Over the years, the number of Jewish residents of settlements in the West Bank has consistently grown, with 1,500 reported in 1972, 23,700 in 1983, 132,900 in 1995 and 274,500 in 2008.⁴¹⁵ In 2014, the Israeli Bureau of Statistics counted 362,900 Jewish residents of “125 Jewish localities in (the) Judea and Samaria region”.⁴¹⁶ This number does not include Jewish residents of the Greater Jerusalem area (including East Jerusalem) that are not considered “settlers” by Israel.

According to the Central Intelligence Agency (“CIA”) World Factbook, approximately 365,000 Israeli settlers live in the West Bank and approximately 200,000 Israelis live in East Jerusalem.⁴¹⁷ Palestinians believe, “settlers” reside on occupied Palestinian territory. Today, some of the “settlements” turned into real cities. The cities of Ariel, Modi’in Illit, Ma’ale Adumim or Betar Illit, for example, inhabit a population of over 30,000 citizens each.

Historically, Israeli settlements in the West Bank and the Gaza Strip developed in three different

phases with distinct motivations and ethos. In the first years after the 1967 War, Israel’s Labour government sponsored or authorised settlements of two sorts: (1) where Jewish settlements had existed before 1948 but had been conquered or destroyed, such as the Jewish quarter of Jerusalem, Kiryat Arba (an area close to Hebron that was founded in 1968) and the Etzion bloc south of Jerusalem; and (2) where strategic considerations dominated, as with the Golan Heights, the Jordan Valley, and by the Egyptian border in Gaza.

In the mid-1970s, the second phase of settlement construction began on a small scale under, and often in conflict with, the Israeli Labour Party. It consisted of settlers with strong ideological and religious commitments to resettling the land, typically in the heart of the West Bank, where it would be more difficult to “disentangle” the two populations and reverse the settlement process. These settlements included Jewish enclaves near the major Palestinian cities of Ramallah, Nablus, and Jenin. In the 1977 Israeli parliamentary elections, the Labour Party was defeated by the Likud Party. At this time, the number of settlers totalled 4,000.⁴¹⁸ After 1977, the new Likud government strongly supported settlement construction and by 1982 there were over 21,000 settlers.⁴¹⁹

The third phase began in the 1980s, as the number of ideologically motivated settlers decreased and the government began building “bedroom communities” just across the Green Line, within easy commuting distance of Tel Aviv and Jerusalem. By offering homes in a suburban style in the West Bank at an attractive and subsidized price, the settlement movement attracted a larger number of people. The total number of settlers, not including residents of

⁴¹⁵ For 2014, the Yesha (Judea and Samaria) Council, the official umbrella group representing the more than 100 Jewish settlements in the West Bank, estimated a settler population growth between June 30 and December 31, by two per cent, according to Yesha’s statistics, a rise from 374,469 to 382,031. The anticipated annual four per cent growth rate would be more than double than Israel’s nationwide growth rate, see *The Times of Israel*, *Israel okays 2,610 homes for Jews and Arabs in E. Jerusalem*, *The Times of Israel*, October 1, 2014, available at <http://www.timesofisrael.com/israel-okays-2610-homes-for-jews-and-arabs-in-e-jerusalem/>, accessed on June 7, 2015.

⁴¹⁶ Israel Central Bureau of Statistics, *Sources of Population Growth, by District, Population Group and Religion*, Publication of September 10, 2015, available at

http://cbs.gov.il/shnaton66/st02_15x.pdf, accessed on April 3, 2016.

⁴¹⁷ Central Intelligence Agency (CIA), *The World Factbook*, “West Bank”, (updated January 5, 2016), available at <https://www.cia.gov/library/publications/the-world-factbook/geos/we.html>, accessed on January 25, 2016.

⁴¹⁸ *Alan Dowty*, *Israel/Palestine*, 3rd ed., Cambridge 2012, p. 230.

⁴¹⁹ *Alan Dowty*, *Israel/Palestine*, 3rd ed., Cambridge 2012, p. 198.

suburbs within the Jerusalem municipal boundary, rose to 115,000 in 1993 and approximately 268,000 in 2007. Today, the settlers of this third category, who were seeking better “quality of life”, account for about 77 per cent of the total number of settlers, while religious or ideologically motivated settlers account for approximately 20 per cent.⁴²⁰ As part of a comprehensive peace agreement with Egypt in 1979, Israel dismantled all its 18 settlements in the Sinai Peninsula by 1982. Israel also dismantled all 21 settlements in the Gaza Strip and four settlements in the West Bank as part of its disengagement in 2005.

According to the majority international view, Jewish settlements in the West Bank violate international law. The United States, Canada, the European Union, the International Committee of the Red Cross, the UN Security Council, the UN General Assembly and the International Court of Justice consider them a violation of Article 49, paragraph 6 of the Fourth Geneva Convention Relative to the

Protection of Civilian Persons in Time of War (1949) (also known as the “Fourth Geneva Convention”).⁴²¹

According to this view, the purpose of Article 49, paragraph 6, which prohibits an occupying power to “deport or transfer part of its own civilian population into territory occupied”, is to preserve the territorial and demographic structure of such territory in order to allow for reconciliation and peace to follow an armed conflict.

“As regards settlements [...] Article 49, paragraph 6, of the Fourth Geneva Convention [...] prohibits not only deportations or forced transfers of population such as those carried out during the Second World War, but also any measures taken by an occupying power in order to organise or encourage transfers of parts of its own population into the occupied territory. In this respect, the information provided to the Court shows that, since 1977, Israel has conducted a policy and developed practices involving the establishment of Settlements

⁴²⁰ The New York Times, The cost of Israeli settlements, The New York Times, October 3, 2003, available at <http://www.nytimes.com/2003/10/03/opinion/the-cost-of-israeli-settlements.html>, accessed on May 25, 2015.

⁴²¹ U.S. Department of State, Israel/Palestinians, U.S. Position on Settlements, Press Briefing on October 12, 2011, available at <http://www.state.gov/r/pa/prs/ps/2011/10/175339.htm>, accessed on May 18, 2015: “Our position on this issue remains unchanged. The United States has a clear policy – we do not accept the legitimacy of continued Israeli settlement activity. We oppose any effort to legalize settlement outposts, which is unhelpful to our peace efforts and would contradict Israeli commitments and obligations.”; Government of Canada, Global Affairs Canada, Canadian Policy on Key Issues in the Israeli-Palestinian Conflict, January 13, 2014, available at http://www.international.gc.ca/name-anmo/peace_process-processus_paix/canadian_policy-politique_canadienne.aspx?lang=eng, accessed on May 18, 2015: “Canada does not recognize permanent Israeli control over territories occupied in 1967 (the Golan Heights, the West Bank, East Jerusalem and the Gaza Strip)”; Statement by the EU High Representative Catherine Ashton on Israel’s announcement of further settlements, January 11, 2014, 140111/02, from the website of the European Union External Action Service (EEAS), available at http://eeas.europa.eu/statements/docs/2014/140111_02_en.pdf, accessed on May 18, 2015: “I was deeply concerned to hear the latest announcement by the Israeli authorities to advance settlement plans once more in the West Bank including East Jerusalem. The settlements are illegal under international law, constitute an obstacle to peace and threaten to make the two-State solution impossible. On 16 December, the 28 Foreign Ministers of the Member States of the European Union unanimously warned against actions that undermine the current

negotiations and deplored Israel’s continuous expansion of settlements. I call on Israel to stop all settlement activities [...]”; International Committee of the Red Cross, Conference of High Contracting Parties to the Fourth Geneva Convention, Statement, Geneva, December 5, 2001, available at <https://www.icrc.org/eng/resources/documents/misc/57jrgw.htm>, accessed on May 18, 2015; UN Security Council, Resolution 446 (1979) of March 22, 1979, [S/RES/446], available at http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/446%281979%29, accessed on April 3, 2016, considered that settlements have “no legal validity” and affirmed “once more that the Geneva Convention to the Protection of Civilian Persons in Time of War, of August 12, 1949 is applicable to the Arab territories occupied by Israel since 1967, including Jerusalem.” It called “once more upon Israel, as the occupying Power, to abide scrupulously by that Convention.”; UN General Assembly, A/RES/67/120, January 14, 2013, Resolution adopted by the General Assembly on 18 December 2012, 67/120, Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan, available at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/67/120, accessed on January 25, 2016: “Affirming that the transfer by the occupying Power of parts of its own civilian population into the territory it occupies constitutes a breach of the Fourth Geneva Convention and relevant provisions of customary law, including those codified in Additional Protocol I to the four Geneva Conventions.”; International Court of Justice, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion of July 9, 2004, I.C.J. Reports, 2004, p. 136.

in the Occupied Palestinian Territory, contrary to the terms of Article 49, paragraph 6, just cited.”⁴²²

Israel’s government and several academics, however, do not consider the settlements to be in violation of Article 49, paragraph 6 of the Fourth Geneva Convention.⁴²³ The main argument for this position is that, due to the absence of a legal sovereign in the West Bank prior to the 1967 War, the Fourth Geneva Convention would not apply to the West Bank territory.⁴²⁴ Furthermore, even if this provision is applicable, the scope of Article 49 paragraph 6 was limited to transfers or deportations into or out of occupied territories that are “forcible” and not “voluntary”.⁴²⁵ Finally, an argument has also

been brought forward that this provision, when put into its historical context, was created to prohibit and prevent forceful deportations of civilians such as those carried out by the Nazis, when they deported Jewish-German civilians into occupied Eastern Europe, and by the former Soviet Union when they deported political prisoners into territories acquired in Siberia. An independent three-member judicial committee led by a Supreme Court justice appointed by the Israeli government also determined that the Israeli settlements are legal according to Israeli law and international law.⁴²⁶ In past proceedings before the Israeli Supreme Court, the Israeli government considered the control of the West Bank and the construction of buildings and settlements militarily

⁴²² International Court of Justice, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion of July 9, 2004, I.C.J. Reports, 2004, p. 183, paragraph 120.

⁴²³ Israel Ministry of Foreign Affairs, Israeli Settlements and International Law, November 30, 2015, available at <http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/israeli%20settlements%20and%20international%20law.aspx>, accessed on January 8, 2016.

⁴²⁴ *Yehuda Z. Blum*, The Missing Reversioner, Reflections on the Status of Judea and Samaria, *Israel Law Review* Vol. 3 (1968), pp. 279-301; *Stephen M. Schwebel*, What Weight to Conquest? *American Journal of International Law*, Vol. 64 (1970), pp. 344, 346-347: “If the foregoing conclusions that (a) Israeli action in 1967 was defensive and (b) Arab action in 1948 being aggressive, was inadequate to legalize Egyptian and Jordanian taking of Palestinian territory, are correct what follows? [...] It follows that the application of the doctrine no weight to conquest requires modification in double measure. In the first place, having regard to the consideration that, as between Israel, acting defensively in 1948 and 1967, and her Arab neighbours acting aggressively in 1948 and 1967, on the other hand, Israel has better title in territory of what was Palestine, including the whole of Jerusalem, than do Jordan and Egypt, (the U.A.R. has, unlike Jordan, not asserted sovereign title), it follows that modifications of the 1949 armistice lines among those states within former Palestinian territory are lawful (if not necessarily desirable), whether those modifications are, in Secretary Rogers’ words, “insubstantial alterations required for mutual security” or more substantial alterations – such as recognition of Israeli sovereignty over the whole of Jerusalem [...] The foregoing analysis accords not only with the terms of the United Nations Charter, notably Article 2, paragraph 4, and Article 51, but law and practice as they have developed since the Charter’s conclusion.” *David M. Phillips*, The Illegal-Settlements Myth, *Commentary*, December 1, 2009, available at <https://www.commentarymagazine.com/articles/the-illegal-settlements-myth/>, accessed on January 25, 2016; *Eugene*

Kontorovich, “Five Puzzles about occupation and settlements: Questions for Geneva”, *The Washington Post*, December 17, 2014, available at <http://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/12/17/five-puzzles-about-occupation-and-settlements-questions-for-geneva/>, accessed on May 18, 2015; *Eugene V. Rostow*, Correspondence, *American Journal of International Law*, Vol. 84 (1990), p. 719: “[T]he Convention prohibits many of the inhumane practices of the Nazis and the Soviet Union during and before the Second World War – the mass transfer of people into and out of occupied territories for purposes of extermination, slave labor or colonization, for example. [...] The Jewish settlers in the West Bank are most emphatically volunteers. They have not been “deported” or “transferred” to the area by the Government of Israel, and their movement involves none of the atrocious purposes or harmful effects on the existing population it is the goal of the Geneva Convention to prevent.”

⁴²⁵ Furthermore, it has been argued that Article 49 paragraph 6 could not be regarded as prohibiting the return of individuals to towns and villages such as Gush Etzion and Hebron, from which they have been expelled before or during 1948. However, the weakness of this argument is that it were not the same families resettling in Hebron after 1967 who were expelled in 1948. The territorial claim to the land cannot be brought forward just because of the people’s ethnical connection to the Jewish people and its historical claim (justified or not) to the city of Hebron.

⁴²⁶ Israel Prime Minister’s Office, The Levy Report - Report on the Legal Status of Building in Judea and Samaria, July 9, 2012, available at <http://www.pmo.gov.il/Documents/doch090712.pdf> (in Hebrew). An English language summary of the report is available at <http://www.pmo.gov.il/English/MediaCenter/Spokesman/Documents/edmundENG100712.pdf>; accessed on December 2, 2013.

necessary and argued that the Israeli settlements contribute a vital element to Israel's security.⁴²⁷

The Israeli government has not made an explicit declaration on the issue of West Bank settlements under customary international law. From the statements made by the Israeli government in proceedings before the Israeli Supreme Court, it can be inferred that the Israeli government seems not to regard settlements in the West Bank being covered by a rule under customary international law prohibiting the transfer of civilians into occupied territory for the following reasons.⁴²⁸ First, the

situation in the West Bank would not fall under a customary prohibition because the Israeli government views the settlement enterprise as a completely voluntary and not as a state-sponsored project. Furthermore, it seems that the Israeli government would dispute the existence of sufficient state practice necessary for even establishing such customary international law.⁴²⁹

The PA, on the other hand, views the existence of Israeli settlements in the West Bank as a violation of international law. Moreover, according to the PA, the settlements and their protection by the Israeli

⁴²⁷ *Melanie Jacques*, *Armed conflict and displacement, The Protection of Refugees and Displaced Persons under International Humanitarian Law*, Cambridge 2012, p. 88; *David Kretzmer*, *The law of belligerent occupation in the Supreme Court of Israel*, *The International Review of the Red Cross*, Vol. 94, No. 885 (2012), p. 213. In its decision on the settlement of Beth El, the Israeli Supreme Court followed the view that this settlement may serve a security interest, see The Israeli Supreme Court sitting as High Court of Justice, *Suleiman Tawfiq Oyyeb and others v. Minister of Defense and others* (Beth El case), H.C.J. 606/78 of March 15, 1979, reprinted in *The Palestine Yearbook of International Law*, Vol. 2 (1985), *Anis F. Kassim*, (Ed. in chief), p. 134: “[I]t is indisputable that in occupied areas the existence of settlements – albeit ‘civilian’ – of citizens of the Occupying Power contributes greatly to the security in that area and assists the army in fulfilling its task. One need not be a military and defense expert to understand that terrorist elements operate with greater ease in an area solely inhabited by a population that is indifferent or sympathises with the enemy, than in an area in which one also finds people likely to observe the latter and report any suspicious movement to the authorities. Terrorists will not be granted a hideout, assistance or supplies by such people [...]” However, in the decision on the Israeli settlement of Alon Moreh, the Israeli Supreme Court decided in favour of the petition by residents of the Arab village of Rujeib against the Israeli government's decision to allow the establishment of a settlement in the area, see The Israeli Supreme Court sitting as High Court of Justice, *Izzat Muhammad Mustafa Duweikat et 16 al. v. Government of Israel et al.*, (Elon Moreh Case), H.C.J. 390/79 of October 22, 1979; unofficial translation available at http://www.hamoked.org/files/2010/1670_eng.pdf, accessed on November 25, 2015.

⁴²⁸ *Jean Marie Henckaerts and Louise Doswald-Beck*, *Customary International Humanitarian Law*, Vol. 1, Rules, Reprinted with corrections, Cambridge 2009, p. 462, Rule 130: “States may not deport or transfer parts of their own civilian population into a territory they occupy [IAC].” After deliberations on the Statute of the International Criminal Court, Israel explained its negative vote with a statement declaring that it “fails to comprehend why it has been considered necessary to insert into the list of the most heinous

and grievous war crimes the action of transferring population into occupied territory. The exigencies of lack of time and intense political and public pressure have obliged the Conference to by-pass very basic sovereign prerogatives to which we are entitled in drafting international conventions, in favour of finishing the work and achieving a Statute on a come-what-may basis. We continue to hope that the Court will indeed serve the lofty objectives for the attainment of which it is being established.” See UN Meetings Coverage and Press Releases, Press Release L/2889, UN Diplomatic Conference Concludes in Rome with decision to establish permanent International Criminal Court, July 20, 1998, available at <http://www.un.org/press/en/1998/19980720.l2889.html>, accessed on January 8, 2016.

⁴²⁹ In the case of Afu, in which the Israeli Supreme Court dealt with the deportation of protected persons from the occupied territory on security grounds, the Court did not view the first paragraph of Article 49 or Article 49 in its entirety of the Fourth Geneva Convention as forming part of customary international law, see The Israeli Supreme Court sitting as High Court of Justice, *Abd Al Nasser Al Aziz Abd Al Azis al Affo et al. v. Commander of the IDF in the West Bank*, H.C.J. 785/87 of April 10, 1988, available at http://elyon1.court.gov.il/files_eng/87/850/007/Z01/87007850.z01.pdf, accessed on April, 8, 2016, pp. 21-22: “But whatever the correct interpretation of the first paragraph of Article 49 of the Convention may be, the Convention, as Article 49 in its entirety, does not in any case form a part of customary international law [...] At the time no basis was given for the argument that Article 49 expresses a customary rule of international law; and given the material presented to us, the armed conflicts that have occurred since 1949 (India-Pakistan, Cyprus and others) have not brought about legal decisions that would shed a different light on the issue. In any case if there are any, they were not brought to our attention by the parties.” For an English summary of the decision, see *Fania Domb*, *Judgments of the Supreme Court of Israel Relating to the Administered Territories*, *Israel Yearbook on Human Rights* Vol. 23 (1993), pp. 277-286.

military, pose a major obstacle to the peace process, the Palestinian aspiration for a state with a unified territory and a hindrance to the establishment of an independent and sustainable economy.⁴³⁰ Furthermore, the Israeli settlements are viewed by the PA as significant obstacle to the Palestinian right to self-determination.⁴³¹

In 2010, the Baker Institute for Public Policy at Rice University (Houston) published a comprehensive analysis of the territorial issue between Israel and the Palestinians and its possible solution.⁴³² The study, which was presented to President Obama in February 2010, was a serious attempt by previous peace negotiators and government/military officials of Israel, the PA and the U.S. with good relations to their respective governments to delineate a possible compromise between the Israeli and Palestinian positions on territory. The study attempts to close the gap between a previous Israeli proposal of a 7.03 per cent land swap (Israeli map) and a 1.9 per cent proposal by the Palestinians on the basis of an exchange of land at a ratio of 1 to 1. The Israeli and the Palestinian teams working on the study under U.S. guidance, formulated three possible territorial solutions: (i) a land swap of 4.0 per cent, necessitating the evacuation of 115,142 Israeli settlers (Option 1); (ii) a land swap of 3.4 per cent, necessitating the evacuation of 120,182 Israeli settlers (Option 2); and (iii) a land swap of 4.4 per

cent necessitating the evacuation of 100,780 Israeli settlers (Option 3).

IV. Palestinian Refugees and Jewish State

Two more controversial aspects of the Israeli-Palestinian peace negotiations are the issues of Palestinian refugees and Israel's demand for recognition as a Jewish State. Both issues are closely linked to each other because allowing for the return of an unlimited number of Palestinian refugees from Lebanon, Syria, and Jordan to Israel, is incompatible with the concept of Israel as a Jewish State.

On December 11, 1948, the UN General Assembly Resolution 194 (III) resolved that:

“refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or any damage to property which, under principles of international law or equity, should be made good by the governments or authorities responsible.”⁴³³

According to Resolution 242, there is a “necessity for achieving a just settlement of the refugee problem”. While the starting point for most Palestinians in the negotiations on refugees is the indisputable existence of a “right of return” and the need for compensation, for most Israelis, while acknowledging the need for a just and fair solution,

⁴³⁰ Palestine Liberation Organization, Negotiations Affairs Department, Keyword: Settlements, available at <http://www.nad-plo.org/etemplate.php?id=11&more=1#1>, accessed on January 8, 2016: “In addition to being illegal, Israeli settlements in the Occupied Palestinian Territory pose the single greatest threat to a two-state solution, and hence, to a just and lasting peace. Settlements, their infrastructure and associated areas of Israeli control grossly reduce the amount and quality of land remaining for our future state and severely undermine its territorial integrity. Under the “land for peace” formula contained in UN Security Council Resolutions 242 and 338 and upon which the peace process is based, Israel is to withdraw from the territories it occupied in 1967 in exchange for full peace and recognition from its neighbours.”

⁴³¹ State of Palestine, Ministry of Information, History of Israeli settlement, April 5, 2009, available at <http://minfo.ps/English/index.php?pagees=main&id=39&butt=5>, accessed on November 19, 2015.

⁴³² James A. Baker III Institute for Public Policy, Rice University, Getting to the Territorial Endgame of an Israeli-Palestinian Peace Settlement, A Special Report by the Israeli-

Palestinian Workshop of the Baker Institute's Conflict Resolution Forum, chaired by Edward P. Djerejian, 2010, available at <https://bakerinstitute.org/files/399/>, accessed on November 21, 2015.

⁴³³ UN General Assembly, 194 (III), Palestine - Progress Report of the United Nations Mediator, December 11, 1948, [Resolution A/RES/194/(III)], available at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/194%28III%29, accessed on January 28, 2016. Neither the original General Assembly resolution, nor UN Security Council Resolutions 242 and 338 speak of a “right of return”. Nor is it mentioned in the Israeli-Egyptian peace treaty 1978, the agreements between Israel and the PLO since 1993, or the Israeli-Jordanian peace treaty 1994. Israel has agreed in its treaties with Egypt and Jordan and in the Oslo Accords, to negotiate the refugee issue as part of its talks on final status issues. The wording of the peace agreements signed since 1978 between Israel and its neighbours suggests a compromise solution can be found for the Palestinian refugees.

the starting point is the absence of such right under international law.⁴³⁴

In 2016, the following number of persons, identifying themselves as Palestine refugees, live in refugee camps: 449,957 persons in twelve refugee camps in Lebanon, 2,097,338 persons in ten refugee camps in Jordan, 526,744 in nine refugee camps in Syria, 762,788 in 19 refugee camps in the West Bank (including suburbs in East Jerusalem) and 1,258,559 in eight refugee camps in the Gaza Strip.⁴³⁵ While UNRWA carries out important social and welfare functions, such as the provision of health care, assistance, and education to descendants of Palestinians displaced persons and refugees, the organization has also been subjected to criticism.⁴³⁶

For instance, an aspect of UNRWA that is often criticized is the fact that its mandate lacks a precise

definition of who is a “refugee” and thus is entitled to register for assistance with UNRWA. Hence, since 1952, individuals have been eligible to receive assistance from UNRWA if their “normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948 and who lost both home and means of livelihood as a result of the 1948 conflict”.⁴³⁷ For UNRWA’s operations, “Palestine refugees are persons who fulfil the above definition and descendants of fathers fulfilling the definition”.⁴³⁸

An individual is eligible for UNRWA relief if: (1) he is in need, (2) since the conflict, he has been residing in one of the countries where UNRWA provides relief; and (3) he is officially and currently registered with UNRWA.⁴³⁹ UNRWA is the only refugee organization in which descendants of

⁴³⁴ Summarized by *Ruth Lapidot*, *Israel and the Palestinians, Some Legal Issues*, Jerusalem 2003, p. 49: “This interpretation, however, does not seem warranted: the paragraph does not recognize any “right”, but recommends that the refugees “should” be “permitted” to return. Moreover, that permission is subject to two conditions – that the refugee wishes to return, and that he wishes to live at peace with his neighbors. The violence that erupted in September 2000 forecloses any hope for a peaceful co-existence between Israelis and masses of returning refugees. Moreover, the Palestinians have linked the request for return to a claim for self-determination. If returning refugees had a right to external self-determination, this would mean the end of the very existence of the State of Israel. Under the 1948 resolution, the return should take place only “at the earliest practicable date”. The use of the term “should” with regard to the permission to return underlines that this is only a recommendation – it is hortatory. One should also remember that under the UN Charter the General Assembly is not authorized to adopt binding resolutions, except in budgetary matters and with regard to its own internal rules and regulations. Finally, the reference to principles of international law or equity refers only to compensation for property and does not seem to refer to the permission to return. It should also be borne in mind that the provision concerning the refugees is but one element of the Resolution that foresaw “a final settlement of all questions outstanding between” the parties, whereas the Arab States have always insisted on its implementation (in accordance with the interpretation favorable to them) independently of all other matters [...]”

⁴³⁵ For an overview of the number of Palestine Refugees registered with UNRWA see UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), *Where We Work*, available at http://www.unrwa.org/where-we-work?qt-view__unrwa_fields__unrwa_fields_where_we_work_block=0#qt, accessed on January 8, 2016; Palestine

Liberation Organization, Negotiation Affairs Department, *Keyword: Refugees*, available at <http://www.nad-plo.org/etemplate.php?id=12&more=1#4>, accessed on January 25, 2016.

⁴³⁶ *James G. Lindsay*, *Fixing UNRWA, Repairing the UN’s Troubled System of Aid to Palestinian Refugees*, Policy Focus, 91 (2009), p. 1, from the website of The Washington Institute for Near East Policy, available at <http://www.washingtoninstitute.org/policy-analysis/view/fixing-unrwa-repairing-the-uns-troubled-system-of-aid-to-palestinian-refugee>, accessed on March 27, 2016; *Eimat Wilf*, *Aligning policy with preference, Preserving a path to a two-state solution*, Policy Focus, 141 (2015), p. 17, from the website of The Washington Institute for Near East Policy, available at <http://www.washingtoninstitute.org/policy-analysis/view/aligning-policy-with-preference-preserving-a-path-to-a-two-state-solution>, accessed on March 27, 2016.

⁴³⁷ UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), *Frequently Asked Questions*, available at <http://www.unrwa.org/who-we-are/frequently-asked-questions>, accessed on March 8, 2016.

⁴³⁸ UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), *Frequently Asked Questions*, available at <http://www.unrwa.org/who-we-are/frequently-asked-questions>, accessed on March 8, 2016.

⁴³⁹ *James G. Lindsay*, *Fixing UNRWA, Repairing the UN’s Troubled System of Aid to Palestinian Refugees*, Policy Focus, 91 (2009), p. 24, from the website of The Washington Institute for Near East Policy, available at <http://www.washingtoninstitute.org/policy-analysis/view/fixing-unrwa-repairing-the-uns-troubled-system-of-aid-to-palestinian-refugee>, accessed on March 27, 2016.

displaced persons are also eligible to register as “refugees”.⁴⁴⁰ Such persons, except for refugees in the Hashemite Kingdom of Jordan, cannot receive full citizenship with full rights of employment and residence in their Arab host states (e.g. Syria and Lebanon). In the past, UNRWA has been criticized by its former general counsel and legal adviser for its one sided pro-Palestinian statements and its limited success with preventing funds from being transferred to persons involved in criminal acts.⁴⁴¹ Additional problems with UNRWA are its education system which has been criticized for not successfully preventing the incitement of hatred against Israel,⁴⁴² and the reoccurring incidents in which UNRWA facilities, as UN institutions under the protection of the laws of armed conflict, are used as weapon storage facilities and rocket launching sites.⁴⁴³

On December 7, 2014, Netanyahu addressed the 11th Saban Forum in Washington, D.C., and outlined his three pillars of peace with the Palestinians (including an end to the demand for a right of return):

“Real peace will only come with leadership that demands from the Palestinians to accept the three pillars of peace: one, genuine mutual recognition; two, an end to all claims, including the right of return; and three, a long-term Israeli security presence. Now, I will never give up on this triangle of true peace.”⁴⁴⁴

The PLO envisions a “just solution to the Palestinian refugee issue in accordance with international law, and specifically UN General Assembly Resolution 194” which “must be based on the right of return and reparations.”⁴⁴⁵ According to the PLO, this position was supported by the Arab Peace Initiative, which called for a just solution to the Palestinian refugee problem to be agreed upon in accordance with UN General Assembly Resolution 194 and to address both: the right of return and reparations.

On the question of Palestinian refugees, U.S. President Clinton proposed that the new State of Palestine would be the homeland to the refugees that left their residence or were displaced during the

⁴⁴⁰ In practice this means that any individual born in one of the refugee camps in the Gaza Strip and whose parents were also born there, but his grandparents left their homes in 1948 can register as a UNRWA refugee and is eligible for humanitarian support.

⁴⁴¹ *James Lindsay*, Fixing UNRWA, Repairing the UN’s Troubled System of Aid to Palestinian Refugees, Policy Focus, 91 (2009), p. 19, from the website of The Washington Institute for Near East Policy, available at <http://www.washingtoninstitute.org/policy-analysis/view/fixing-unrwa-repairing-the-uns-troubled-system-of-aid-to-palestinian-refugee>, accessed on March 27, 2016. In 1964, the agency permitted its staff to attend the Palestine National Congress in Jerusalem – where the Palestine Liberation Organisation was established – despite UN and UNRWA rules against political activities; after the 1967 war, UNRWA took on the responsibility of protesting Israel’s demolition of Palestinian housing in the newly controlled territories. It also proposed a UN presence to protect civilians from the Israeli military, echoing Palestinian leaders; from 1975 to 1982 the agency’s Siblun Vocational Training Centre outside Sidon, Lebanon, was occasionally under the control of the PLO and issued for various improper activities such as storing weapons, housing PLO personnel and equipment, indoctrinating students.

⁴⁴² *Lazar Berman*, Palestinian kids taught to hate Israel in UN-funded camps, The Times of Israel, August 14, 2013, available at <http://www.timesofisrael.com/palestinian-kids-taught-to-hate-israel-in-un-funded-camps-clip-shows/>, accessed on May 19, 2015. UNRWA rejects this allegation,

see UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), Statement by UNRWA Spokesperson Chris Gunness, October 22, 2014, available at <http://www.unrwa.org/newsroom/official-statements/unrwa-rejects-allegations-incitement-baseless>, accessed on May 19, 2015.

⁴⁴³ UN Secretary Council, S/2015/286, Letter dated 27 April 2015 from the Secretary-General addressed to the President of the Security Council, Annex, available at http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2015/286.pdf, accessed on April 3, 2016: Incident (h) Presence of weaponry at the UNRWA Gaza Beach Elementary Coeducational “B” school on July 16, 2014; Incident (i) Presence of weaponry at the UNRWA Jabalia Elementary “C” and Ayyobiya Boys School on July 22, 2014; Incident (j) Presence of weaponry at the UNRWA Nuseirat Preparatory Coeducational “B” School on July 29, 2014 and on August 17, 2014.

⁴⁴⁴ Israel Ministry of Foreign Affairs, PM Netanyahu addresses 11th Annual Saban Forum, Excerpts, December 7, 2014, available at <http://mfa.gov.il/MFA/PressRoom/2014/Pages/PM-Netanyahu-addresses-11th-Annual-Saban-Forum-7-Dec-2014.aspx>, accessed on January 26, 2016.

⁴⁴⁵ Palestine Liberation Organization, Negotiation Affairs Department, Keyword: Refugees, available at <http://www.nad-plo.org/etemplate.php?id=12&more=1#4>, accessed on January 25, 2016.

armed conflict of 1948–1949, with priority given to those refugees residing in Lebanon. This proposal, however, would not prevent Israel from absorbing a symbolic number of refugees in accordance with its laws and sovereign decisions. Clinton further advocated for a joint international effort to compensate refugees and assist them with housing either in the new State of Palestine, in the area swapped with Israel, in their current host countries, in another state or, if admitted, in Israel. Both parties would have to agree that this solution would meet all the requirements of Resolution 194 (III).

On June 21, 2008, in a meeting with the Israeli negotiation team during the negotiations following the Annapolis Conference, Ahmed Qurei demanded the following in regard to the refugee issue: responsibility, the right of return, reparations for individuals, reparations for host countries, the establishment of an “international fund” and an “absentee property fund” that would compensate Palestinians.⁴⁴⁶ In 2008, as a symbolic gesture of good will, Olmert offered to allow 5,000 Palestinians to return to Israel within a time frame of five years and to provide financial compensation to the remaining first generation refugees. It has been suggested that this plan was supported by Israel, the U.S. and Saudi Arabia.⁴⁴⁷ In addition, Israelis and the Palestinians presumably discussed the inclusion of a preamble to a future final status agreement, in which each side would acknowledge the other side’s suffering. In this context it has been pointed out that Israel would be willing to acknowledge, but neither apologize nor accept legal responsibility for any

injustice the Palestinians experienced. In return, the Palestinians would be willing to give up their claim for the return of all refugees to Israel.⁴⁴⁸ On November 1, 2012, in an interview with an Israeli television network, Abbas denied that he had any intentions to return to his birthplace Safed, a city in northern Israel. This denial has been interpreted by some, as a waiver of the demand of physical return of Palestinian refugees.⁴⁴⁹

Israel’s demand for recognition as a Jewish State or the homeland of the Jewish nation has been summarized by Tal Becker as the demand for public recognition of the right of the Jewish people to self-determination in a state of their own:

“The term ‘Jewish State’ is sometimes misconceived as implying an aspiration for a Jewish theocracy [...] properly understood, however, the claim seeks no more and no less than public recognition of the right of the Jewish people to self-determination in a state of their own. In this respect the demand for recognition is no different from the self-determination claims advanced by many other peoples under international law. The claim should also not be seen as an attempt to negate corresponding Palestinian right to self-determination. Indeed, today’s advocates of recognition argue that it is Israel’s acceptance of a Palestinian nation-state that justifies parallel Palestinian acknowledgement of the Jewish nation-state.”⁴⁵⁰

For Netanyahu, Israel’s recognition as a Jewish State by the Palestinians is a fundament for peace and the absence of this recognition poses a real obstacle to Israel-Palestinian progress.⁴⁵¹ On March

⁴⁴⁶ Al Jazeera, *The Palestine Papers*, Minutes from Plenary Session Post Annapolis, June 21, 2008, available at <http://transparency.aljazeera.net/en/projects/the-palestine-papers/201218233520312797.html>, accessed on February 1, 2016.

⁴⁴⁷ *Smadar Peri*, Compensation plan for Palestinian refugees promoted, *Ynetnews*, March 28, 2007, available at <http://www.ynetnews.com/articles/0,7340,L-3382162,00.html>, accessed on May 19, 2015.

⁴⁴⁸ *Avi Issacharoff*, Revealed: Olmert’s 2008 peace offer to the Palestinians, *The Jerusalem Post*, May 24, 2013, available at <http://www.jpost.com/Diplomacy-and-Politics/Details-of-Olmerts-peace-offer-to-Palestinians-exposed-314261>, accessed on March 9, 2016; *Avi Issacharoff*, Interview with *Ehud Olmert*, Olmert: I am still waiting for Abbas to call, *The Tower*, May 24, 2013, available at <http://www.thetower.org/exclusive-olmert-i-am-still-waiting-for-abbas-to-call-will-abbas-ever-say-yes/>, accessed on May 19, 2015.

⁴⁴⁹ *Asher Zeiger*, Abbas says he has no right to live in Safed, and no territorial demands on pre-1967 Israel, *The Times of Israel*, November 1, 2012, available at <http://www.timesofisrael.com/abbas-says-he-has-no-right-to-live-in-safed-and-has-no-demands-on-pre-1967-israel/>, accessed on November 18, 2015.

⁴⁵⁰ *Tal Becker*, *The Claim for Recognition of Israel as a Jewish State: A reassessment*, *Policy Focus*, 108 (2011), p. 4, from the website of The Washington Institute for Near East Policy, available at <http://www.washingtoninstitute.org/uploads/Documents/pubs/PolicyFocus108.pdf>, accessed on March 27, 2016.

⁴⁵¹ Israel Prime Minister’s Office, PM Netanyahu’s Remarks to the Saban Forum, December 6, 2015 available at <http://www.pmo.gov.il/English/MediaCenter/Speeches/Pages/speechsabon061215.aspx>, accessed on February 4, 2016:

4, 2014, during a speech in the U.S., Netanyahu asked Abbas publicly to recognize Israel as a Jewish State:

“[J]ust as Israel is prepared to recognise a Palestinian State, the Palestinians must be prepared to recognise a Jewish State. President Abbas, recognise the Jewish State, and in doing so, you would be telling your people, the Palestinians, that while we might have a territorial dispute, the right of the Jewish people to a state of their own is beyond dispute. You would be telling Palestinians to abandon the fantasy of flooding Israel with refugees, or amputating parts of the Negev and the Galilee. In recognising the Jewish State, you would finally make clear that you are truly prepared to end the conflict. So recognise the Jewish State. No excuses, no delays, it’s time [...]”⁴⁵²

For Israel, the demand for recognition as a Jewish State also includes the demand for the end to any further claims by the Palestinians and the acceptance that a final status agreement determines the end of the Israeli-Palestinian conflict. In opposition to this position, it has been argued that Israel should not insist to be recognized by the Palestinians as a Jewish State.⁴⁵³ According to this view, rather than to demand for some vague concept of Jewish statehood, the frontline of Israel’s negotiating position should be to demand that the Palestinians do not insist on their right of return, refrain from aiming to defeat Israel in a war, and refrain from international efforts to isolate and delegitimize Israel. In this context, it has been argued that in order

to reach a peace agreement between Israel and the Palestinians, it was not vital that both sides accept each other’s narrative, slogans or terminology but rather find practical solutions to live side-by-side in peace.

Abbas, on the other hand, seems to oppose the recognition of Israel as a Jewish State.⁴⁵⁴ During a speech before the PLO Central Council on March 30, 2014, Abbas said that Israel did not require from Jordan or Egypt to be recognized as Jewish State and that the Palestinian government had already recognized the State of Israel, which was sufficient for mutual recognition:

“[F]or the past two or three years, the case of the Jewishness of the State of Israel has been proposed to me. Our position is mutual recognition. We and the Palestinian government have acknowledged the state of Israel. When Israel concluded a treaty with Egypt, Egypt was not asked to recognize the Jewishness of Israel. And when Israel concluded a treaty with Jordan, Jordan was not asked to recognize the Jewishness of Israel. Why are we asked to acknowledge the Jewishness of the State of Israel? I say no to the recognition of the Jewishness of the State of Israel. I ask, “Why does not Israel go to the UN and ask them to recognize it as a Jewish state?” One last point I explained to the Israeli journalists: You may not know your history; we know more about your history than you do [...] The soldier stops at the checkpoint and prays. This is not my business, but Israel allows one to enter and forbids the other. We will not accept the recognition of the Jewishness of the State of Israel.”⁴⁵⁵

“[A]nd I think it’s important if we’re ever going to resolve this issue is to demand from the Palestinian leadership to recognize the Jewish state. We’ll still have many, many issues to resolve, but it begins with the recognition of the right of the Jewish people to have a state of their own. This is the fundament of peace and the absence of this recognition is the real obstacle.”

⁴⁵² Israel Prime Minister’s Office, PM Netanyahu’s speech at the AIPAC policy conference, March 4, 2014, available at <http://www.pmo.gov.il/English/MediaCenter/Speeches/Page/s/speechaipac040314.aspx>, accessed on June 15, 2015.

⁴⁵³ *Donniel Hartman*, A Jewish State: It’s our problem, not theirs, March 18, 2014, from the website of the Shalom Hartman Institute, available at http://hartman.org.il/Blogs_View.asp?Article_Id=1330&Cat_Id=273&Cat_Type=Blogs, accessed on May 19, 2015.

⁴⁵⁴ *Shmuel Even*, Abu Mazen’s Opposition to Recognition of Israel as a Jewish State: Strategic Implications, INSS Insight No. 762, November 4, 2015, available at <http://www.inss.org>.

[il/index.aspx?id=4538&articleid=10902](http://www.inss.org.il/index.aspx?id=4538&articleid=10902), accessed on November 18, 2015. *Even* argues that Abbas assigns the Israeli Arab-Palestinians, especially in their future numbers an important role in the design of Israel as a bi-national state, in both demographic and political aspects. *Even* believes that Abbas expects the Arab proportion of the Israeli population to increase in several ways: Exercise of the right of return on a large scale, a Palestinian policy of increasing the number of Israeli identity cards held by Palestinians, including not giving Palestinian passports to Palestinian-Israeli citizens who want them; and refusal to accept territory within the Green Line populated by Israeli Palestinian citizens as part of a negotiated territorial exchanges. All these policies have one common denominator: a one-way movement of Palestinians to Israel.

⁴⁵⁵ State of Palestine, Palestine Liberation Organization, Office of the President, Address of H. E. President Mahmoud Abbas to the PLO Central Council, April 30, 2014, from the website of the Palestine Liberation Organization, Negotiation

There are two main reasons for this opposition: the fear of a deterioration of the status of Israeli-Arabs in “Jewish Israel” and the consequences for the Palestinians’ claims to historical Palestine. On November 30, 2014, in an interview with Egyptian newspaper *Akhbar Al-Yawm*, Abbas is quoted to have rejected to recognize Israel as a Jewish State precisely for these two reasons:

“[W]e will stand against this enterprise, not out of obstinacy, but because it contradicts our interests. The first to suffer from this law (The Israeli Jewish State Bill; *J.H.*) will be 1.5 million Arabs who would no longer belong to Israel, due to their religion... There is another reason ... (Israel, *J.H.*) will not allow the return of refugees. There are six million refugees who wish to return, and by the way, I am one of them. We need to find creative solutions because we cannot close the door to those who wish to return [...]”⁴⁵⁶

V. Jerusalem

A final status agreement between Israel and the Palestinians must address the future status of Jerusalem.⁴⁵⁷ Proposals for the Jerusalem issue range from a division of the city into Israeli West Jerusalem and Palestinian East Jerusalem (with

common sovereignty over the holy sites) to an undivided Jerusalem that serves as the capital of both states.⁴⁵⁸

However, few official government documents, let alone a clear formulation of policy, have been published on this issue. The reason behind the reservation on this issue is the symbolic nature and the religious and political significance of Jerusalem for both peoples. The Old City of Jerusalem is the central focus of the national aspirations of Israelis and Palestinians and perhaps the most contentious territory in the Arab-Israeli conflict. Sovereignty, administration and control over Jerusalem are questions subject to great dispute.⁴⁵⁹ Ilan Goldenberg, former Chief of Staff to U.S. Special Envoy Martin Indyk, and a member of the U.S. negotiation team during the Kerry Initiative, described the Jerusalem issue, if the Israeli-Palestinian conflict were to be compared to a complicated divorce, as the custody battle over the couple’s young child.⁴⁶⁰ Both parties know that concessions, rumours or speculations about their position on Jerusalem can have harmful effects on their negotiating positions and respective internal political situations.

Affairs Department, at http://www.nad-plo.org/userfiles/file/statements/address%20of%20H_E%20president%20Mahmoud%20Abbas.pdf, accessed on January 26, 2016.

⁴⁵⁶ The Middle East Media Research Institute (MEMRI), Abbas in Interview: “Six Million Refugees Want To Return, And I Am One Of Them”, Special Dispatch No. 5898, December 5, 2014, available at http://www.memri.org/report/en/0/0/0/0/8323.htm#_edn1, accessed on November 18, 2015.

⁴⁵⁷ For a thorough analysis of Jerusalem’s legal status, see *Martina Haedrich*, *Der Rechtsstatus von Jerusalem und die Hauptstadtfrage*, *Jahrbuch des Öffentlichen Rechts der Gegenwart*, Vol. 55 (2007), pp. 403-428; for past proposals and positions on Jerusalem, see *Moshe Hirsch*, *Deborah Housen-Couriel*, *Ruth Lapidot*, *Whither Jerusalem? Proposals and Positions Concerning the Future of Jerusalem*, The Hague 1995, p. 25.

⁴⁵⁸ *Martina Haedrich*, *Der Rechtsstatus von Jerusalem und die Hauptstadtfrage*, *Jahrbuch des Öffentlichen Rechts der Gegenwart*, Vol. 55 (2007), pp. 403-428, at 425-426; on the Israeli discussions during the Camp David Summit 2000 on Jerusalem see *Martin Indyk*, *Innocent Abroad, An Intimate Account of American Peace Diplomacy in the Middle East*, New York 2009, pp. 319-320.

⁴⁵⁹ *Michael Bell*, *Michael J. Molloy*, *John Bell* (Project Directors, Jerusalem Old City Initiative, Security Working Group), *The Jerusalem Old City Initiative Security Assessment*, November 15, 2007, (revised as of 27 February 2008), p. 83, available at <http://www1.uwindsor.ca/joci/system/files/security-assessment.pdf>, accessed on February 3, 2016.

⁴⁶⁰ *Ilan Goldenberg*, *Lessons from the 2013-2014 Israeli-Palestinian Final Status Negotiations*, Washington, DC 2015, from the website of the Center for a New American Security, available at <http://www.cnas.org/lessons-learned-final-status-negotiations#.Vva5rXr5HPA>, accessed on March 27, 2016, p. 1: “The nastiest fight in any divorce tends to be over custody of the children; in this case the “child” is Jerusalem. It is the most emotionally charged issue, and any solution will be extremely challenging. During every final status negotiation, the issue of Jerusalem has been the most sensitive even to discuss. Ultimately, the only solution that might possibly work would be some kind of shared custody arrangement; it would not be ideal for either of the parties and would be cumbersome for the residents of the city, but it would have to be tolerated by all sides.

The Partition Plan of 1947 proposed a special status for Jerusalem.⁴⁶¹ It sought to establish the city of Jerusalem as a “corpus separatum” (separate body) that would be governed by a special international regime led by the Governor of the UN Trusteeship Council. During the 1948 War, while Jordan gained control over East Jerusalem including the Old City, West Jerusalem fell under the sovereignty of Israel. Mount Scopus became a UN protected Israeli enclave within the Jordanian territory. During the 1967 War, Israel also gained control over East Jerusalem, including the Temple Mount and the Wailing Wall.⁴⁶² During the Oslo peace talks, the status of Jerusalem was determined to be an issue to be discussed in negotiations for a final status agreement, which were to commence in 1996. At the 2000 Camp David Summit, as regards the Jerusalem issue, most friction between Israel and the Palestinians arose on the matter of sovereignty over the Temple Mount and the holy sites in Jerusalem. According to the Road Map for Peace, the Jerusalem issue is supposed to be negotiated and solved during the last phase of implementation of the

peace plan. An agreement would “respect the political concerns of both parties as well as the religious interests of Jews, Muslims and Christians in the same way.”⁴⁶³

The current Israeli government maintains its position that Jerusalem will remain the undivided capital of the State of Israel.⁴⁶⁴ In 1980, the Knesset passed an act with constitutional status, the “1980 Basic Law: Jerusalem, Capital of Israel”.⁴⁶⁵ Under this law, Jerusalem, “complete and united”, was declared Israel’s capital. This law also guarantees freedom of access for members of different religions to their holy sites. The Palestinians, however, consider Al Quds (Jerusalem) the capital of Palestine.⁴⁶⁶ Under Article 3 of the Palestinian Basic Law, Jerusalem is the Capital of Palestine.⁴⁶⁷ In the context of Jerusalem’s holy sites, Jordan had also consistently raised concerns and reiterated claims based upon the Israeli-Jordanian Peace Treaty of 1994. Under Article 9 Section 2, Israel agreed to respect the present “special role of the Hashemite Kingdom of Jordan in Muslim holy shrines in Jerusalem” and to “give high priority to the

⁴⁶¹ UN General Assembly Resolution 181 (II) and the Partition Plan, in: *Terje Rød-Larsen, Nur Laq and Fabrice Aidan*, *The Search for Peace in the Arab-Israeli Conflict, A Compendium of Documents and Analysis*, Oxford 2014, p. 577. Part III. City of Jerusalem reads: “The City of Jerusalem shall be established as a corpus separatum under a special international regime and shall be administered by the United Nations. The Trusteeship Council shall be designated to discharge the responsibilities of the Administering Authority of the United Nations.”

⁴⁶² *Ruth Lapidot*, “Jerusalem”, in *Rüdiger Wolfrum* (ed.): *Max Planck Encyclopedia of Public International Law*, (Online-Ed.), Oxford, last updated in May 2013, available at <http://opil.oup.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1303?rskey=ZEM3WG&result=1&prd=EPIL>, accessed on November 18, 2015.

⁴⁶³ U.S. Department of State, *A Performance-Based Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict*, Office of the Spokesman, Press Statement, April 30, 2003, available at <http://2001-2009.state.gov/r/pa/prs/ps/2003/20062.htm>, accessed on April 10, 2016.

⁴⁶⁴ *Herb Keinon*, *Netanyahu: “Jerusalem has and always will only be the capital of the Jewish people”*, *The Jerusalem Post*, May 17, 2015, available at <http://www.jpost.com/Israel-News/Netanyahu-Jerusalem-has-and-always-will-only-be-the-capital-of-the-Jewish-people-403357>, accessed on May 19, 2015.

⁴⁶⁵ The Knesset, *Basic Law: Jerusalem, Capital of Israel*, available at https://www.knesset.gov.il/laws/special/eng/basic10_eng.htm, accessed on February 4, 2016; *Martina Haedrich*, *Der Rechtsstatus von Jerusalem und die Hauptstadtfrage*, *Jahrbuch des Öffentlichen Rechts der Gegenwart*, Vol. 55 (2007), pp. 403-428, 410.

⁴⁶⁶ *Erik Bolstad and Tonje M. Viken*, 2003 Amended Basic Law: “[T]he birth of the Palestinian National Authority in the national homeland of Palestine, the land of their forefathers, comes within the context of continuous and vigorous struggle, during which the Palestinian people witnessed thousands of their precious children sacrificed as martyrs, injured persons and prisoners of war, all in order to achieve their people’s clear national rights, the foremost of which are the right of return, the right to self-determination and the right to establish an independent Palestinian state, with Jerusalem as a capital [...], from the website of The Palestine Basic Law, available at <http://www.palestinianbasiclaw.org/basic-law/2003-amended-basic-law>, accessed on May 19, 2015. The site is created by the Norwegian journalists *Erik Bolstad* and *Tonje M. Viken* in February 2008, it is a private initiative and has no affiliation to any organizations or authorities.

⁴⁶⁷ *Palestinian Basic Law*, in: *Terje Rød-Larsen, Nur Laq and Fabrice Aidan*, *The Search for Peace in the Arab-Israeli Conflict, A Compendium of Documents and Analysis*, Oxford 2014, p. 1149.

Jordanian historic role in these shrines” when negotiations on the permanent status of Jerusalem take place.⁴⁶⁸

Multiple ideas have been presented to solve the Jerusalem issue.⁴⁶⁹ In his Parameters, President Clinton suggested granting the Palestinians sovereignty over the Arab neighbourhoods of the city and the Israelis sovereignty over the Jewish neighbourhoods of the city, with Israel retaining control over the Western Wall. Under the Clinton Parameters, the Palestinians would have sovereignty over the Temple Mount and Israel would have sovereignty over the Western Wall and both sides sharing “functional sovereignty” over the issue of excavation under the Temple Mount and behind the Western Wall “such that mutual consent would be requested before any excavation can take place”.⁴⁷⁰

After the Annapolis Conference, Israeli Prime Minister Olmert proposed a special regime for Jerusalem that would apply to the Old City and regard the Old City as neither solely Israeli nor Palestinian. Olmert suggested that in a final status agreement, the area containing the religious sites in Jerusalem would be governed by a special committee consisting of representatives of five states: Saudi Arabia, Jordan, Palestine, the U.S. and Israel.⁴⁷¹ Olmert proposed a special arrangement and/or historic framework that includes multiple spheres (above and under the Temple Mount) and a

special conflict resolution mechanism. Under his proposal, there would be two distinct municipalities that would govern issues such as transportation, economy and culture with different laws. The outstanding issue remaining under this proposal are the freedom of movement and freedom of worship at the holy sites.

It seems that during the talks of 2013–2014, Israel and the Palestinians negotiated on the basis that an undivided Jerusalem, with a joint municipal body governing its day-to-day administration would serve as the capital of both Israel and Palestine.⁴⁷² While the discourse around Jerusalem often highlights Israel’s need to give up its control over key sections, the focus may need to shift to the way a negotiated solution could simultaneously enable an Israeli Prime Minister to finally receive international recognition of Jerusalem as Israel’s capital and guarantee lasting and uncontested Israeli control over key holy Jewish sites.⁴⁷³

Any negotiated solution for Jerusalem will have to consider several key aspects. First, it will have to take into account the city’s symbolic and religious meaning, as well as the heterogeneous structure of its inhabitants and their geographical location. Second, regarding the issue of sovereignty, the final compromise will have to provide an answer to the question of whether the city will be divided or united. If the city will be divided, the question

⁴⁶⁸ Treaty of Peace between the State of Israel and the Hashemite Kingdom of Jordan, October 26, 1994, in: *Terje Rød-Larsen, Nur Laq and Fabrice Aidan, The Search for Peace in the Arab-Israeli Conflict, A Compendium of Documents and Analysis*, Oxford 2014, p. 1007.

⁴⁶⁹ See *Moshe Hirsch, Deborah Housen-Couriel, Ruth Lapidot, Whither Jerusalem? Proposals and Positions Concerning the Future of Jerusalem*, The Hague 1995, p. 25.

⁴⁷⁰ Clinton Parameters, December 23, 2000, in: *Terje Rød-Larsen, Nur Laq and Fabrice Aidan, The Search for Peace in the Arab-Israeli Conflict, A Compendium of Documents and Analysis*, Oxford 2014, p. 461.

⁴⁷¹ *Avi Issacharoff, Revealed: Olmert’s 2008 peace offer to Palestinians*, The Jerusalem Post, May 24, 2013, available at <http://www.jpost.com/Diplomacy-and-Politics/Details-of-Olmerts-peace-offer-to-Palestinians-exposed-314261>, accessed on March 9, 2016.

⁴⁷² *Thomas L. Friedman, Why Kerry is Scary*, The New York Times, January 28, 2014, available at

http://www.nytimes.com/2014/01/29/opinion/friedman-why-kerry-is-scary.html?_r=0, accessed on May 19, 2015.

⁴⁷³ See *Tal Becker, The End of the ‘Peace Process’?*, Policy Notes, 10 (2012), from the website of The Washington Institute for Near East Policy, available at <http://www.washingtoninstitute.org/uploads/Documents/pubs/PolicyNote10.pdf>, accessed March 27, 2016; on policy recommendations for Western states, see *Einat Wilf, Aligning policy with preference, Preserving a path to a two-state solution*, Policy Focus, 141 (2015), from the website of The Washington Institute for Near East Policy, available at <http://www.washingtoninstitute.org/policy-analysis/view/aligning-policy-with-preference-preserving-a-path-to-a-two-state-solution>, accessed on March 27, 2016, p. 22: “If the international consensus is that Jerusalem should serve as capital of two states, then *Wilf* recommends Western states to universally recognize Jerusalem as belonging to Israel and serving as Israel’s capital and recognize Arab East Jerusalem as capital of the state of Palestine, with embassies moved there or existing consulates upgraded to fulfil the role. According to *Wilf*, the concept of a *corpus separatum* could remain but would be limited to the Holy Basin.”

remains how such division would be carried out, for instance dividing the city according to ethnic affiliation or according to functional competence of the municipality. Third, a negotiated solution would have to define the external municipal demarcation line of Jerusalem. The current demarcation line could remain as it is, or be expanded. Finally, regardless of the political boundaries, the municipalities' authority regarding education, construction, planning, zoning and the city's relations with other cities, in particular with regard to foreign investments and also cultural and economic projects, would have to be regulated.

D. Pragmatic suggestions

At this point in time, an overall solution to the conflict does, unfortunately, not seem to be attainable in the immediate future. Therefore, it is advisable to reject the previous “all-or-nothing” approach for the Israeli-Palestinian negotiations. The approach of either attaining a solution on all final status issues or cancelling negotiations entirely should not be repeated. In the past, as argued by David Makovsky, senior member of the U.S. negotiation team also during the Kerry Initiative, when the all-or-nothing approach was used, the final result was usually nothing.⁴⁷⁴ This approach created too much pressure in the negotiation room and led to increased hostilities following failed negotiations. For instance, the Second Intifada followed the failed negotiations of 2000 and armed conflicts in the Gaza Strip followed the failed negotiations of 2008 and 2014. In addition to abandoning the all-or-nothing approach, whatever is achieved during the negotiations should be directly implemented.

As rightly presented by Tal Becker, too many speeches or articles on the Israeli-Palestinian peace process seem to embrace an “if-only” approach, arguing that certain measures – if only adopted – would lead to an end to this nearly century-long conflict. The list of such measures is long and diverse, which is another indication that no singular measure can on its own bring peace to the region.⁴⁷⁵ A peaceful environment and the understanding that Israelis and Palestinians are better off with an agreement than without one will be as important as actually signing a document, agreeing to certain

⁴⁷⁴ See *David Makovsky*, Middle East Peace: Ground Truths, Challenges Ahead, Congressional Testimony, March 4, 2010, from the website of The Washington Institute for Near East Studies, available at <http://www.washingtoninstitute.org/policy-analysis/view/middle-east-peace-ground-truths-challenges-ahead>, accessed on March 27, 2016; *Yair Hirschfeld*, Track-Two Diplomacy toward an Israeli-Palestinian Solution 1978-2014, Washington 2014, p. 328.

⁴⁷⁵ *Tal Becker*, The End of the ‘Peace Process’? Policy Notes, 10 (2012), from the website of The Washington Institute for Near East Policy, available at <http://www.washingtoninstitute.org/uploads/Documents/pubs/PolicyNote10.pdf>, accessed on March 27, 2016. The list of such measures includes a settlement freeze, a more active involvement of the United States as broker during the negotiations, financial incentives, and end of terrorism and

principles or establishing a new bilateral commission.

Nevertheless, the diplomatic process has much to gain if certain controversial issues would be dealt with separately, outside the framework of the border and sovereignty negotiations. The following four measures proposed in this sections, which are by no means intended to oversimplify the conflict’s inherent complexity, may upgrade the status of Israel and the status of Palestine in the international community, advance trade and economy, remove major obstacles from the negotiation room, improve the humanitarian situation in the Gaza Strip, and lead to better communication and substantial reform on the refugee issue. The four measures suggested concern (i) the construction of a seaport in Gaza with solid security arrangements and a long term cease fire between Israel and Hamas, (ii) a regional peace summit focused on the issue of mutual recognition and the upgrade of Israel’s and Palestine’s status in international organizations, (iii) the establishment of a new joint Israeli-Palestinian Humanitarian Aid and Claims Commission replacing UNRWA and (iv) a permanent and joint Israeli-Palestinian Negotiation Office.

I. *Establishment of a Gaza Seaport coupled with adequate security arrangements and regional diplomatic understanding*

Subsequent to the Egyptian-brokered cease fire after the Gaza Conflict 2014, indirect negotiations between Israel and Hamas about, *inter alia* the construction of a seaport in Gaza, were supposed to be held.⁴⁷⁶ Hamas’ demand for a seaport is founded

incitement, Arab support of the process or an agreed terms of reference.

⁴⁷⁶ See *Gilead Sher and Jonathan Heuberger*, Prospects for a Gaza Seaport, INSS Insight No. 804, March 13, 2016, available at <http://www.inss.org.il/index.aspx?id=4538&articleid=11591>, accessed on March 13, 2016; *William Booth and Ellen Nakashima*, Israel wants someone to build a \$5 billion island off Gaza – for a seaport, hotels, airport, The Washington Post, June 20, 2016, available at https://www.washingtonpost.com/world/middle_east/israel-wants-someone-to-build-a-5-billion-island-off-gaza--for-a-seaport-hotels-airport/2016/06/20/e45ce6fc-7948-4a10-bef3-0f782b030739_story.html, accessed on June 20, 2016.

on three objectives. First, an independent Palestinian port in Gaza, which would connect the Strip's coast with the World, could deliver to the Palestinians what they aspire most: Freedom of movement for goods and persons and the feeling of autonomy and self-determinations. Second, such port would mean an important victory for Hamas and uplift its status as regional player in the Middle East. Finally, the port could boost Gaza's weakened economy, which never received the majority of the billions pledged for its reconstruction and suffers from the world's highest unemployment rate.⁴⁷⁷

Israel has a strong interest in reaching a long-term cease fire with Hamas and sees Gaza's development as matter of strategic value. Thus, it has been reported that Israel considered to lifting the naval blockade on Gaza in return for a long-term cease fire with Hamas.⁴⁷⁸ However, Israel's security officials also understand that a Palestinian port in Gaza without adequate security arrangements, presents a major security threat for Israel. Hamas could increase its arsenal of weapons including middle and

long-range missiles and air defence systems and guided anti-tank missiles and become an entry and exist channel for Hamas-personnel.⁴⁷⁹ Different options have been presented regarding the Gaza Seaport. The first option is the construction of an actual seaport in Gaza City, whether on its coast or off-shore. The second option is to build a port *for* Gaza, not *in* Gaza, but rather on Egyptian territory in El-Arish, or in the Israeli city of Ashdod with distinct quays for shipments aimed for Gaza.⁴⁸⁰

The complex discussion about the Gaza Seaport should be guided by the following three considerations: First, the port must address the acute need for the flow of goods and easier movement of people from and to Gaza and should be perceived as improvement of Palestinian everyday life. Second, the port's plan must take Israeli and Egyptian security concerns seriously and provide for adequate security arrangements. If a capable third party or a multinational force will supervise the port, such party must have the relevant equipment and mandate to prevent the transfer of weapons and the entry and

⁴⁷⁷ The World Bank, Economic monitoring report to the ad hoc liaison committee, May 27, 2015, available at <http://documents.worldbank.org/curated/en/2015/05/24525116/economic-monitoring-report-ad-hoc-liaison-committee>, accessed on March 27, 2016.

⁴⁷⁸ There have been reports that Israel has shown an interest in lifting the naval blockade in return for a long-term cease fire of seven to ten years, see *Elhanan Miller*, Israel would lift Gaza blockade for truce – report, *The Times of Israel*, August 13, 2015, available at <http://www.timesofisrael.com/israel-would-lift-gaza-blockade-for-truce-report/>, accessed on February 4, 2016.

⁴⁷⁹ The idea of constructing a seaport in Gaza is not new. It was discussed right at the beginning of the Oslo process, and found its way into the Declaration of Principles on Interim-Self Government Arrangements (“DOP”) signed by Israel and the PLO in 1993. Eight months later, the Gaza-Jericho agreement specified these ideas and held that plans for the establishment of the port, its location and other related matters of mutual interest, should be subsequently further negotiated in accordance with the necessary security arrangements, in particular, in particular the arrangements that pertain to the international passages that continued to be controlled by Israel. The Israeli-Palestinian Interim Agreement 1995 reiterated previous commitments. From the outset, Israel's security establishment has had serious reservations to a Palestinian port in Gaza, fearing it could turn into another crossing for the entry of weapons and terrorists. In the view of the Israeli government, only the IDF could guarantee effective checks of vessels and shipments entering

the port. Thus, even though contracts for the port construction were signed as early as 1994, continued disagreement over operating and security arrangements regarding the port, then planned as a PA port with Israeli supervision, prevented its actual construction. Eventually, plans for the Gaza Seaport were reiterated in the 1999 Sharm-el-Sheikh Memorandum: construction would start right away; effective security and custom inspection of people and goods would be established as well as a designated checking area. Works in fact started in the summer of 2000 and were supposed to be completed within two years. However, construction was halted by Israel shortly afterward, and the site was subsequently bombed and destroyed during the second Intifada. At the outbreak of the Al Aqsa Intifada the donor states ceased funding of the project and the work on the port stopped.

⁴⁸⁰ *Amos Harel*, Gaza Seaport Plans Pit Senior Israeli Military Officers Against Netanyahu, *Ya'alon*, *Haaretz*, February 24, 2016, available at <http://www.haaretz.com/israel-news/premium-1.705082>, accessed on February 24, 2016. Proponents of the Gaza port's construction point out that it will improve the economy in Gaza by supplying work for thousands of people and will be an incentive to the Hamas regime in Gaza to maintain a ceasefire with Israel to move ahead with the construction. Opponents of the Gaza port's construction point to the security risk. There is particular mistrust in an international force because of the way that, in Israel's view, the EU mishandled the supervision of the Rafah crossing south of Gaza after Israel's disengagement in 2005.

exit of armed personnel. Third, constructing the port should include a diplomatic understanding between the regional parties involved that includes a long-term cease fire between Israel and Hamas. An agreement on the port should be put in the context of the 2014 cease fire, which held that indirect negotiations between Israel and Hamas were to start subsequently.

Against this background, in order to prevent future hostilities between Israel and Hamas, Israel should consider to lift its naval blockade to be replaced by a multinational naval force with a strong mandate to prevent the transfer of weapons and the travel of persons designated as terrorists. Furthermore, in light of Israel's security concerns and the demand of the people of Gaza for freedom of movement, a Gaza Seaport should be constructed. Such port should include an actual port in Gaza city, and an off-shore naval terminal which would inspect the passage of goods and persons to Gaza City. Such inspection should be carried out either by an Israeli or a

multinational force and include thorough checks of all goods, persons, humanitarian aid, and construction material entering Gaza via the Mediterranean.⁴⁸¹ Finally, a multinational supervising force would need to control that goods and construction materials delivered to Gaza would not be diverted by Hamas for rocket building and tunnel construction.⁴⁸²

As an incentive for both sides, after a time period of ten years without hostilities, a consortium of EU and Asian states should start planning and funding the reconstruction of the Gaza Airport.⁴⁸³ Such proposal, could still be met with rejection by Israel, for security reasons, and also by Hamas, which aspires to deliver to Gaza's people political achievements and freedom of movement of persons and goods without foreign inspection.

Reports that surfaced in March 2015 indicate that Hamas has rejected a ceasefire ("Hudna") in return for the construction of a seaport.⁴⁸⁴ Israeli and Hamas officials later denied the existence of such

⁴⁸¹ In this context, some of NATO's or EU's recent naval operations have been considered quite successful, for instance "Operation Atalanta" against pirates at the Horn of Africa off the Somali Coast and "Operation Active Endeavour" against the transfer of weapons of mass destruction. NATO's Standing Maritime Command could possibly provide such a force. The NATO Standing Maritime Command Group 1 is currently engaged in two operations: 'Ocean Shield' against pirates at the Horn of Africa and 'Endeavour' following the 9/11 attacks on the United States, see The Standing NATO Maritime Group 1 (SNMG1), from the website of the NATO Maritime Command (MARCOM), available at <http://www.mc.nato.int/org/smg/Pages/SNMG1.aspx>, accessed on November 18, 2015. The EU also has a non-standing multinational military naval force, EUROMARFOR (EMF) which has the ability to carry out sea control, humanitarian missions, peacekeeping operations, crisis response operations and peace enforcement. The EMF can be deployed either in a NATO environment, acting as part of the European branch of NATO or acting upon the mandate of other international organizations, such as the United Nations, the Organization for Security and Cooperation in Europe or any other multinational coalition, see European Maritime Force (EMF), available at <http://www.euromarfor.org/overview/1>, accessed on November 18, 2015. Modern technology such as the scanning of cargo with X-Ray technique is already available and in use, for instance by U.S. Customs and Border Protection, see "Container Scanning" verhindert terroristische Handlungen, Informationsdienst US-Exportbestimmungen, Februar (2014), from the website of the Bundesanzeiger Verlag, available at [\[terroristische-handlungen.html\]\(http://terroristische-handlungen.html\), accessed on November 18, 2015.](http://www.bundesanzeiger-verlag.de/aw-portal/exportkontrolle/hintergruende-und-fachwissen/container-scanning-verhindert-</p>
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⁴⁸² About the diversion of materials entering Gaza see *Daniel Taub*, Blaming Israel for Gaza's reconstruction delays is wilful ignorance, *The Guardian*, March 6, 2015, available at <http://www.theguardian.com/commentisfree/2015/mar/06/blaming-israel-gaza-reconstruction-ignorance-palestinian>, accessed on March 8, 2016.

⁴⁸³ See United Nations Interim Force in Lebanon (UNIFIL), Maritime Task Force (MTF), available at <http://unifil.unmissions.org/Default.aspx?tabid=11584>, accessed November 18, 2015. However, in summer 2014 Hezbollah has been estimated to having 100,000 rockets; Associated Press, Hezbollah hiding 100,000 missiles that can hit north, army says, *The Times of Israel*, May 13, 2015, available at <http://www.timesofisrael.com/hezbollah-hiding-100000-missiles-that-can-hit-north-army-says/>, accessed on November 18, 2015. Also *Judah Arie Gross* and *Ilan Ben Zion*, IDF chief: Iran deal raises specter of proxy wars with Israel, *The Times of Israel*, January 18, 2016, available at <http://www.timesofisrael.com/idf-chief-iran-deal-raises-specter-of-proxy-wars-with-israel/>, accessed on January 27, 2016.

⁴⁸⁴ *Jack Khoury*, Hamas Rejected 5-year Israel Truce in Return for End to Gaza Blockade, *Haaretz*, March 11, 2015, available at <http://www.haaretz.com/israel-news/.premium-1.646479>, accessed November 18, 2015.

negotiations.⁴⁸⁵ Although the prospects of immediate success seem weak, negotiations about the Gaza Seaport should nevertheless be conducted.

II. Middle East peace summit on mutual recognition

After the failed efforts by U.S. Secretary of State, Kerry, the Federal Republic of Germany and/or Great Britain, both of which have built a trustful partnership with Israel while engaging in constructive dialogue and maintaining strong economic ties with the Arab States, should attempt to facilitate another round of peace talks. In the winter of 2016, twenty-five years after the Madrid Conference, Berlin or London should host an Arab-Israeli regional peace summit that would be attended by Israel, Palestine, EU member states, the U.S., Russia, China, Saudi Arabia and the Gulf States.⁴⁸⁶ Prior to the summit, a joint declaration should be circulated and agreed upon. This declaration should be signed at the conference, be binding upon the participating states and include, amongst others, the following principles:

1. Israel and the participating states formally accept the State of Palestine as the homeland of the Palestinian people and the Government of Palestine as its legitimate representative.⁴⁸⁷

2. Palestine and the participating states accept the State of Israel as the homeland of the Jewish people and the Government of Israel as its legitimate representative.
3. Israel commits to stop expanding apartment or settlement building outside certain settlement blocs to be defined by the Israelis and the Palestinians.
4. Palestine commits to stop pursuing efforts against Israel at any organization, in particular the International Criminal Court and the United Nations, and not endorse any efforts to delegitimize the State of Israel.
5. Israel agrees that Palestine is granted the right to conduct foreign relations with other countries and open embassies around the world.
6. The participating states agree to move their embassies in Israel to West Jerusalem and their embassies in Palestine to East Jerusalem.
7. Israel establishes formal diplomatic relations with Saudi Arabia, the United Arab Emirates (U.A.E.) and Qatar, and opens trade offices in Dubai and Abu Dhabi (both U.A.E.).

As an incentive to such a declaration, NATO and the EU could offer some form of a privileged partnership arrangement to Israel and Palestine.⁴⁸⁸ Israeli and Palestinian delegations could be invited

⁴⁸⁵ *Herb Keinon* and *Khaled Abu Toameh*, Israel, Hamas deny reports of truce proposal in exchange for lifting Gaza blockade, *The Jerusalem Post*, March 9, 2015, available at <http://www.jpost.com/Arab-Israeli-Conflict/Hamas-denies-offering-truce-to-Israel-in-exchange-for-lifting-Gaza-blockade-393391>, accessed on November 18, 2015.

⁴⁸⁶ On January 29, 2016, French Foreign Minister Laurent Fabius called for an international conference to promote the Two State Solution. As of May 27, 2016 the French peace conference, which is planned to include representatives of 20 states but no Israeli or Palestinian delegation, is scheduled for June 3, 2016, see France 24 with Reuters, France to organise conference on Israel-Palestinian two-state solution, *France 24*, January 30, 2016, available at <http://www.france24.com/en/20160129-france-organise-conference-israel-palestinian-two-state-solution-fabius>, accessed on January 30, 2016; *Barak Ravid*, France: If New Peace Initiative Fails, We'll Recognize Palestine, *Haaretz*, January 29, 2016, available at <http://www.haaretz.com/israel-news/1.700320>, accessed on January 30, 2016; *Isabel Kershner*, French Plan for Middle East Peace Talks Hits a Familiar Snag, *The New York Times*, May 18, 2016, available at <http://www.nytimes.com/2016/05/19/world/middleeast/french-plan-for-middle-east-peace>

-talks-hits-a-familiar-s snag.html?_r=0, accessed on May 27, 2016.

⁴⁸⁷ *Wilf* points out that increasing number of Israeli public figures are supporting recognition of Palestinian statehood. In October 2014, more than three hundred Israeli public figures, including six winners of the prestigious Israeli Prize, former Israeli ministers and a Supreme Court justice, signed a letter to British MPs encouraging them to vote in their parliament in support of recognising Palestine, see *Einat Wilf*, Aligning policy with preference, Preserving a path to a two-state solution, *Policy Focus*, 141 (2015), p. 21, from the website of The Washington Institute for Near East Policy, available at <http://www.washingtoninstitute.org/policy-analysis/view/aligning-policy-with-preference-preserving-a-path-to-a-two-state-solution>, accessed on March 27, 2016.

⁴⁸⁸ See Council of the EU, Council Conclusions on the Middle East Peace Process, Foreign Affairs Council Meeting, Brussels, December 16, 2013, available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/140097.pdf, accessed on February 28, 2016: [5]: "The EU will provide an unprecedented package of

to send representatives to high level security talks and may participate as observers (without right to vote) at the sessions of the EU Council of Foreign Ministers. After the conference, Israel and Palestine should agree to establish a joint renewable energy forum that connects Israeli and Palestinian start-ups in the field of solar technology and water cleansing with companies in the Gulf States that are in need of such services. Income stemming from such investments should benefit both the Israeli and Palestinian economies.

III. Israeli-Palestinian Humanitarian Aid and Claims Commission

The issue of Palestinian refugees is often used as leverage against Israel with UNRWA being a complicating factor as it allows second and third generation refugees to register for aid, thus creating the impression that there are millions of Palestinian refugees waiting to return to Israeli cities. This approach educates young Palestinians to be victims of the 1948 War and aggravates feelings against Israel. Refugees which cannot apply for permanent residence or work permits have grim future prospects and become attracted to violence.

Therefore, it is suggested that UNRWA be dissolved.⁴⁸⁹ Its employees should work at the newly established joint Israeli-Palestinian Humanitarian Aid and Claims Commission, which will have staff members from the U.S., Israel, Palestine, Jordan the U.A.E and the EU. The main task of the commission is to provide development assistance and humanitarian aid to Palestinians in need, and to acknowledge, register and compensate first-generation Palestinian refugees and Jewish refugees (who fled Arab countries).

After having received monthly compensation, these persons would give up their “refugee status” and gain permanent residence and working permits in their current place of residence. If this is not possible, their status would remain unchanged. In this context, Jordan and Lebanon, are unlikely to agree to grant citizenship to Palestinian refugees. A possible solution could be that Lebanon, Jordan and the future Palestinian state give permanent residence with full rights of employment and living to a share of refugees proportional to their national GDP. Such a proposal may be rejected by Palestinians, however, as they may not be open to the idea of accepting compensation for the relinquishment of their “right of return”.

Sixty per cent of the joint Israeli Palestinian Humanitarian Aid and Claims Commission’s fund would be used for the financial compensation of first-generation Palestinian refugees and Jewish refugees from Arab countries. Twenty per cent of the funds would be used for education about the conflict’s history, about the other side’s history, culture, religion, language, narrative and suffering, and for the formulation of a reconcilable narrative respectively taught to both peoples (for example, in a museum or a research institute). Thereby, both peoples could be able to leave behind the “perpetrator-victim” approach to the conflict and begin to understand different narratives. The remaining twenty per cent of the funds would be dedicated to joint commemoration sites (e.g., memorial sites, lecture series and, ceremonies).

IV. Israeli-Palestinian Negotiation Office

The last rounds of negotiations have shown that much of the communication during the negotiation period is held through various media channels. In particular, during the 2013–2014 negotiations, leaks

European political, economic and security support to both parties in the context of a final status agreement. In the event of a final peace agreement the European Union will offer Israel and the future state of Palestine a Special Privileged Partnership including increased access to the European markets, closer cultural and scientific links, facilitation of trade and investments as well as promotion of business to business relations. Enhanced political dialogue and security cooperation will also be offered to both states.” See also *Julian E. Barnes and Emre Peker*, Israel to Open Office at NATO Headquarters, *The Wall Street Journal*, May 4, 2016, available at <http://www.wsj.com/articles/israel-to-open->

[office-at-nato-headquarters-1462362805](http://www.wsj.com/articles/israel-to-open-office-at-nato-headquarters-1462362805), accessed on May 27, 2016.

⁴⁸⁹ The Israeli position in Camp David formulated four practical definitions on Refugees for Permanent Status, see *Gilead Sher*, *The Israeli-Palestinian Peace Negotiations 1999-2001*, Within Reach, London and New York, 2006, p. 101.

and interviews to the media about new Israeli settlements, Israel's recognition as a Jewish State, the Hamas-Fatah unity government, prisoner releases and the Palestinians joining international treaties created much tension and apparently poisoned the atmosphere in the negotiation room.⁴⁹⁰

It is suggested that before the commencement of the next round of negotiations, a joint Israeli-Palestinian negotiation office with a permanent seat should be established. This would be the body charged and authorized by the two parties to give official statements about the progress of the negotiations. Through the creation of this office, attacks by political rivals would be limited because of the political importance that would be given to the official statements of the Israeli-Palestinian negotiation office. The Israeli-Palestinian negotiation office should be led by an experienced Middle East negotiator, such as former U.S. Envoy to the Middle East and Chief Negotiator Dennis Ross, former Middle East Quartet Representative Tony Blair, former EU Higher Representative's Special Envoy for the Middle East Peace Process Andreas Reinicke or former UN Secretary-General Kofi Annan.

⁴⁹⁰ *Ilan Goldenberg*, *Lessons from the 2013-2014 Israeli-Palestinian Final Status Negotiations*, Washington, DC 2015, p. 15, from the website of the Center for a New American Security, available at <http://www.cnas.org/lessons-learned->

[final-status-negotiations#.Vva5rXr5HPA](#), accessed on March 27, 2016.

E. Conclusion

It is vital to progress in the Israeli-Palestinian peace process.⁴⁹¹ An honest and intensive peace process can lead to the resolution, even of complicated, long-standing territorial, ethnic or religious conflicts.⁴⁹² From an Israeli perspective, peace with the Palestinians serves two interests: First, by looking at the current demographic trends, the Arab population could soon outnumber the Jewish population in the territory between the Mediterranean Sea and the Hashemite Kingdom of Jordan.⁴⁹³ In order to retain Israel's character as a Jewish and democratic state, Israel needs to define its borders and clearly detach itself from a future Palestinian entity.⁴⁹⁴ Second, the economic benefit of the Two State Solution is significant. The Two State Solution provides the best economic result for both peoples. Israel's economy would, amongst

others, benefit from the lifting of trade sanctions by Arab countries, cutbacks on security spending and foreign investments upon the establishment of peace and a stable environment. Palestine's economy would, amongst others, benefit from the lifting of Israeli trade and travel restrictions and the return of a considerable number of individuals joining the work force in a phased manner.⁴⁹⁵ A study prepared by the RAND corporation in 2014, which considered budgetary or financial expenditures and missed or realized economic benefits in Israel and Palestine from 2014–2024, outlined that a Two State Solution could benefit Israel's GDP \$22.8 billion and Palestine \$9.7 billion.⁴⁹⁶ Moreover, a Two State Solution could lift millions of Palestinians out of poverty and by advancing Arab-Israeli trade improve Israel's image in the Arab world.

⁴⁹¹ *Dennis Ross and David Makovsky*, The neglected Israeli-Palestinian peace process must be revived, *The Washington Post*, February 25, 2016, available at https://www.washingtonpost.com/opinions/the-neglected-israeli-palestinian-peace-process-must-be-revived/2016/02/25/aa9d61dc-d715-11e5-b195-2e29a4e13425_story.html, accessed on February 28, 2016; *Avi Issacharoff*, Talk to the Palestinians, before it's too late, *The Times of Israel*, January 1, 2016, available at <http://www.timesofisrael.com/talk-to-the-palestinians-before-its-too-late/>, accessed on February 28, 2016.

⁴⁹² Examples in recent history can be found in Northern Ireland (Good Friday Agreement, 1998, see *Jonathan Powell*, *Great Hatred, Little Room, Making Peace in Northern Ireland*, London 2009) and in the Balkan States (Dayton Agreement 1995; Montenegro Referendum 2006; Independence of Kosovo 2008, see on the Dayton Agreement, *Derek Chollet*, *The Road to the Dayton Accords: A Study of American Statecraft*, New York 2005).

⁴⁹³ *Kobi Michael*, The weight of the demographic factor in Israel's Strategic Considerations on the Palestinian Issue, *Strategic Assessment*, Vol. 17, No. 3 (2014), p. 32, from the website of The Institute for National Security Studies; available at http://www.inss.org.il/uploadImages/systemFiles/adkan17_3ENG%20%283%29_Michael.pdf, accessed on March 27, 2016.

⁴⁹⁴ *Isaac Herzog*, Only Separation Can Lead to a Two-State Solution, *The New York Times*, February 28, 2016, available at http://www.nytimes.com/2016/02/29/opinion/international/only-separation-can-lead-to-a-two-state-solution.html?_r=0, accessed on March 9, 2016.

⁴⁹⁵ *Anthony, C. Ross, Daniel Egel, Charles P. Ries, Craig Bond, Andrew Liepman, Jeffrey Martini, Steven Simon, Shira Efron, Bradley D. Stein, Lynsay Ayer and Mary E. Vaiana*.

The Costs of the Israeli-Palestinian Conflict. Santa Monica, CA 2015, from the website of the RAND Corporation, available at http://www.rand.org/pubs/research_reports/RR740-1.html, accessed on June 8, 2015. For the purposes of the RAND study, the Two State Solution assumes that the "Israelis and Palestinians reach a final status accord agreement that is generally based on the Clinton Parameters. Israelis will withdraw to the 1967 borders except for mutually agreed-upon swaps, and we assume that 100,000 settlers will be relocated from the West Bank to Israel. The Palestinians will gain full control of Areas B and C and the ability to exploit the mineral resources there. All trade and travel restrictions on the Palestinians will be lifted, and perhaps as many as 600,000 refugees might return to the West Bank and Gaza in a phased manner. Israeli settlers withdraw from the West Bank except for the agreed-upon swap areas, and the international community pays most of the costs for relocating settlers. Israel's security is guaranteed by the international community, and investment in both Israel and Palestine is forthcoming to take advantage of a new, stable climate and the opportunities that peace brings. Arab country sanctions on Israeli trade are lifted, and Israeli trade with Arab countries increases rapidly." See Executive Summary, p. xxx, Figure S. 3.

⁴⁹⁶ *Anthony, C. Ross, Daniel Egel, Charles P. Ries, Craig Bond, Andrew Liepman, Jeffrey Martini, Steven Simon, Shira Efron, Bradley D. Stein, Lynsay Ayer and Mary E. Vaiana*. *The Costs of the Israeli-Palestinian Conflict*. Santa Monica, CA 2015, pp. 77-80. From the website of the RAND Corporation, available at http://www.rand.org/pubs/research_reports/RR740-1.html, accessed on June 8, 2015.

For the Palestinians, the current situation may be their last chance to achieve statehood, political stability, international recognition and economic development before Hamas or fundamental Islamist (Salafist) forces gain political influence over the West Bank. For Palestinian President Abbas, who turned 80 in 2015, a final status agreement with Israel would not only be a historic moment but also potentially his last personal opportunity to lead his people into statehood.

Pragmatic solutions to every aspect of the Israeli-Palestinian conflict are on the table. One of the critical measures necessary to achieve a solid and lasting peace is an increase of mutual trust and assurances between political leaders of both nations so that an agreement may be reached. The Israelis and the Palestinians have been traumatized by violence and conflict for far too long. The Israelis remember the suicide attacks prevalent throughout their cities during the Second Intifada, rocket attacks during the 50-day Gaza Conflict of 2014 and ongoing stabbings and shootings since September 2015. The Palestinians have grown up with a system of military control, law enforcement measures (e.g., checkpoints, arrests, searches, interrogations, and limitation of movement and freedom) and violent clashes with Israel's armed forces. These experiences have shaped their upbringing and aggravated their views of Israel and Israelis.

Looking back, the Madrid Conference, although not necessarily a "breakthrough" in Israeli-Palestinian relations, did lead to a better understanding of the other party's negotiation position and thus provided a useful foundation for the following rounds of peace negotiations. A breakthrough for the Israeli-Palestinian relations was only achieved during the Oslo peace talks. It is fair to say, however, that the Oslo peace process never

fully recovered from the murder of Yitzhak Rabin by one of the radical opponents of the peace negotiations and from the increased violence in the mid-1990s.

Clinton rightly observed that Arafat committed an error of historic proportions, when he rejected Barak's offer in Camp David. Similarly, Barak's negotiation style and his sometimes difficult personality have also been criticized.⁴⁹⁷ After Camp David, more and more Israelis started to doubt the good faith of Palestinians in these negotiations, their real desire for mutual recognition and their willingness to abandon claims against Israel. Many Palestinians have also lost faith in the commitment of Netanyahu's administration to the Two State Solution.⁴⁹⁸ Some Israeli cabinet members have not affirmed this commitment, even though Netanyahu reiterated the Israeli government's commitment to the Two State Solution during the visit of the European Union's High Representative for Foreign Affairs and Security to Israel and the Palestinian territories on May 20, 2015.⁴⁹⁹

The Annapolis Process represents the point at which the two parties have been closest to reaching a final status agreement. If Olmert had not been investigated for criminal behaviour and Hamas did not launch rockets that provoked the Gaza Conflict of 2008/2009, it seems possible that Olmert and Abbas could have settled all the remaining issues of the Israeli-Palestinian conflict.

After the Kerry Initiative, as proposed by Makovsky, it is advisable to separate ideological from security-related issues. It seems that during the Annapolis process in regard to borders, settlements and territory (and maybe even on security arrangements), the parties were close to reaching

⁴⁹⁷ *Galia Golan*, *Israeli Peacemaking since 1967, Factors behind the breakthroughs and failures*, London 2015, p. 152.

⁴⁹⁸ During the election campaign 2015, Prime Minister Netanyahu has been quoted repeatedly saying that there will not be a Palestinian State under his watch, for example see *Elliott C. McLaughlin*, *Israel's PM Netanyahu: "No Palestinian state on my watch"*, March 16, 2015, from the website of CNN, available at <http://edition.cnn.com/2015/03/16/middleeast/israel-netanyahu-palestinian-state/>, accessed on November 18, 2015. However, after the election, Prime Minister Netanyahu has reiterated Israel's commitment to the two-state solution, see for example *Itamar Eichner*,

Netanyahu to EU: "I support two-state solution", *Ynetnews*, May 20, 2015, available at <http://www.ynetnews.com/articles/0,7340,L-4659743,00.html>, accessed on November 18, 2015.

⁴⁹⁹ *Tamar Pileggi*, *Bennett: "Government doesn't back PM on Palestinian state"*, *The Times of Israel*, October 11, 2015, available at <http://www.timesofisrael.com/bennett-government-doesnt-back-pm-on-palestinian-state/>, accessed on November 18, 2015.

attainable and acceptable solutions.⁵⁰⁰ During the Kerry Initiative, negotiations about territory and refugees appear to have been very advanced with close gaps between the Israeli and the Palestinian position.⁵⁰¹ Ideologically loaded issues, such as Jerusalem, and the recognition of Israel as a Jewish State, seem to remain highly disputed.

The last confrontation between Israel and Hamas in 2014 has shown that the current environment is very fragile, and hostilities can break out with full force with any singular violent incident.⁵⁰²

⁵⁰⁰ *David Makovsky*, Middle East Peace: Ground Truths, Challenges Ahead, Congressional Testimony, March 4, 2010, from the website of The Washington Institute for Near East Studies, available at <http://www.washingtoninstitute.org/policy-analysis/view/middle-east-peace-ground-truths-challenges-ahead>, accessed on March 27, 2016.

⁵⁰¹ During the annual conference of the Institute for National Security Studies, David Makovsky, a member of the U.S. negotiations team said that of the five core issues, the two issues “territory” and “refugees”, the negotiations were very advanced. On the three open issues Jerusalem, mutual recognition (Jewish state) and security arraignments, the gaps were wider with each side wanting a deal on their terms. Thus, it would be important in future negotiations to divide the ideological questions from the security questions, described in *Brian Edwards*, MN Daily, Q&A: David Makovsky, Minnesota Daily, February 3, 2016, available at <http://www.mndaily.com/news/world/2016/02/02/mn-daily-qa-david-makovsky>, accessed on February 24, 2016: “[I] think the Secretary was relentless in trying to bring the parties together. I feel of the five core issues, we made some progress on two of the five – the borders and the refugees. I could see a future in solving these. ... You have another issue called mutual recognition, which is where you not only recognize the other state, but the character of the other state. That proved to be difficult. ... We didn’t want anyone to say that this wasn’t solved because America wasn’t creative enough. ... I worry that the leaders themselves are more risk-averse today than the giants of yesterday. ... The leaders are more risk-averse because the public has been around the block a few times since then [...]”

⁵⁰² *Barak Ravid*, IDF Intelligence Chief: Despite Hamas’ Efforts to Ensure Calm, Suffering in Gaza May Lead to Violence Against Israel, Haaretz, February 23, 2016, available at <http://www.haaretz.com/israel-news/.premium-1.705021>, accessed on February 27, 2016; *Amos Harel*, As Violence Continues, Tension between IDF and Politicians Will Grow, Haaretz, February 26, 2016, available at <http://www.haaretz.com/israel-news/.premium-1.705645>, accessed on February 27, 2016.

⁵⁰³ In Israel, amongst the Jewish population, from 2003 to 2013, public support for the two-state solution was strong and

Nevertheless, there are still reasons to remain optimistic, as many Israelis and Palestinians still agree, at least in principle, with the Two State Solution.⁵⁰³ Another reason for optimism is the solid security cooperation between the IDF and the Palestinian security forces.⁵⁰⁴ Moreover, there is a high number of Palestinians working in Israel. For instance, as of April 17, 2016, about 384,000 Palestinians from the West Bank hold permits to enter Israel and 2,000 Palestinians from the West Bank hold entry permits to enter the Gaza Strip.⁵⁰⁵ In

stable at almost 70 per cent, even during times of crisis, and irrespective of the government in power. This has fallen over the past year but is still high at 50-60 per cent, even since the escalation of the fall of 2015, see *Zipi Israeli*, Public Opinion and National Security, in: *Shlomo Brom and Anat Kurz* (ed.), Strategic Survey 2015-2016, from the website of The Institute for National Security Studies (INSS), available at http://www.inss.org.il/uploadImages/systemFiles/INSS2015-16Balance_ENG%20%284%29_final.pdf, accessed on March 27, 2016, pp. 113, 117. A large majority (up to 90 per cent) of Israeli Arabs favours the Two State Solution. Amongst the Palestinians, around 51 per cent (June 2015) support a Two State Solution, see Konrad-Adenauer-Stiftung (KAS), Israel Office, Joint Israeli-Palestinian Poll June 2015, available at <http://www.kas.de/israel/en/publications/41831/>, accessed on February 4, 2016. A December 2015 poll conducted by the Palestinian Center for Policy and Survey Research found that 55 per cent of the Palestinians in the West Bank and Gaza oppose the Two State Solution whilst 45 per cent support it (Question: Do you support or oppose the solution based on the establishment of a Palestinian State alongside Israel known as the two States solution?) See Palestinian Center for Policy and Survey Research (PSR), Palestinian Public Opinion Poll No (58), December 14, 2015, p. 14, available at <http://www.pcpsr.org/sites/default/files/poll%2058%20full%20English.pdf>, accessed on February 4, 2016.

⁵⁰⁴ *Tal Becker*, The End of the ‘Peace Process’?, Policy Notes, 10 (2012), from the website of The Washington Institute for Near East Policy, available at <http://www.washingtoninstitute.org/uploads/Documents/pubs/PolicyNote10.pdf>, accessed on March 27, 2016.

⁵⁰⁵ These numbers of this abstract were provided to the Author by the Spokesman of the Coordinator of Government Activities in the Territories (COGAT) at Israel’s Ministry of Defense in writing on April 20, 2016. The number of Palestinians holding permits to work in Israel can also be found at Ministry of Defense, Coordinator of Government Activities in the Territories (COGAT), Unclassified Status of Palestinians Authorizations of Entry into Israel, their Passage between Judea and Samaria and the Gaza Strip and their

terms of exits abroad, over the course of 2016, an average of 60,000 Palestinians cross the Allenby Bridge monthly, a bridge that crosses the Jordan River and connects the West Bank with Jordan. In addition, 58,000 Palestinians hold work permits in Israel, as well as 28,000 Palestinians hold work permits in Israeli settlements. The West Bank and Gaza's GDP is recovering from the Second Intifada and has continuously increased since 2006, from \$4.914 billion in 2006 to \$12.737 billion in 2014.⁵⁰⁶

For Israel, the most important aspect of a final status agreement will be the security of its citizens and receiving recognition from Palestine – as well as from the rest of the Arab world – of being a sovereign Jewish State, and an end to all claims against Israel. For the Palestinians, it is the manifestation and acknowledgement of their right to self-determination through international recognition of a continuous, independent and economically sustainable Palestinian nation state.⁵⁰⁷

Further progress also depends on whether the current leaders of Israel and the Palestinians, Netanyahu and Abbas, would regard a negotiated agreement as “a good deal” that they can bring home. Such a deal must help them address their core needs and interests, while not giving them the feeling to have given up too much. A final status agreement remains possible but Netanyahu and Abbas would also have to ignore internal political pressures and start to consider pragmatic solutions for the conflict.

Renewed negotiations between Israelis and Palestinians can also present major challenges to Netanyahu and Abbas. For Netanyahu, a renewed peace process and difficult compromises could lead to the dissolution of some key alliances with right-wing coalition members and to difficult struggles within his own Likud Party. Furthermore, real progress with the Palestinians will only come if the Palestinians are confident that Netanyahu is committed to the Two State Solution and if he agrees not to expand settlements. The announcement of new settlement construction hits Palestinian state building efforts in their weakest point.⁵⁰⁸

For Abbas, a renewed peace process could lead to an open confrontation with Hamas and members of his own Fatah party. Peace with Israel would also mean that Abbas could not longer, in meetings with international leaders or in speeches before the assembly of international organizations, bring focus to Palestinian suffering and Israeli settlement construction. Rather he would have to prioritize the building of a state infrastructure that is capable of meeting the most basic needs of his people, such as education, employment, health care and a sustainable economy. On the political level, the Palestinian government would need to try democratize the state institutions and unequivocally dissociate itself from violence against Israel and make honest and diligent efforts to stop the delegitimization of Israel (and Jews in general), particularly within the Palestinian education system and media.⁵⁰⁹

Travel Abroad, updated as of February 28, 2016, unofficially translated by Gisha – Legal Center for Freedom of Movement, a Non-Governmental Organization, available at <http://www.gisha.org/userfiles/file/LegalDocuments/procedures/general/50en.pdf>, accessed on April 4, 2016 and *Times of Israel Staff*, Israel said to okay work permits for 30,000 more Palestinians, February 8, 2016, available at <http://www.timesofisrael.com/israel-said-to-okay-work-permits-for-30000-more-palestinians/>, accessed on April 12, 2016.

⁵⁰⁶ The World Bank, West Bank and Gaza, available at <http://data.worldbank.org/country/west-bank-gaza>, accessed on March 9, 2016.

⁵⁰⁷ Yair Hirschfeld, *Track-Two Diplomacy toward an Israeli-Palestinian Solution 1978-2014*, Washington 2014, p. 346. According to Hirschfeld, the division of the West Bank into different areas under varying degrees of Israeli control, as provided for in the Interim Agreement of 1995 unduly

limited Palestinian economic development and state-building efforts.

⁵⁰⁸ International Committee of the Red Cross (ICRC), Interview with *Mattea Benatti* (Head of the ICRC sub-delegation in Hebron), West Bank: Illegal settlements cause hardship for Palestinians, June 8, 2009, available at <https://www.icrc.org/eng/resources/documents/interview/palestine-interview-090609.htm>, accessed on November 18, 2015.

⁵⁰⁹ A poll carried out in December 2015 has shown that 67 per cent of the Palestinians in the West Bank and Gaza support the stabbings on Israelis (85 per cent in Gaza, 57 per cent in West Bank; Question: Do you support or oppose the use of knives in the current confrontations with Israel?) See Palestinian Center for Policy and Survey Research (PSR), *Palestinian Public Opinion Poll No (58)*, December 14, 2015, p. 12, available at <http://www.pepsr.org/sites/default/files/pol>

Peace between Israelis and Arabs is possible, as evidenced by the peace treaties between Israel and Egypt and Israel and Jordan, respectively. Despite the characterization of the peace between these states as “cold peace”, no bullet has been officially authorized to be fired between them since the peace treaties came into force. Even during turbulent times, particular during the Arab Spring of 2011 and the Gaza Conflict 2014, peace prevailed between Israel and Egypt/Jordan. Similarly, the success of any negotiated agreement between Israel and the Palestinians will greatly depend on the ability of the two peoples, to finally abandon violent rhetoric, distrust, and one-sided historical narratives. Both parties will need to aim for pragmatic cooperation in the fields of trade, technology, cultural dialogue and educational exchange. Then, the next generation can grow up in a more trusting, stable and peaceful environment.

l%2058%20full%20English.pdf, accessed on February 4, 2016. Today, at least 25 Palestinian Authority schools are named after terrorists, see *Lahav Harkov*, Knesset Education Committee slams incitement in Palestinian schools, The Jerusalem Post, October 29, 2015, available at <http://www.jpost.com/Arab-Israeli-Conflict/Knesset-Education-Committee-slams-incitement-in-Palestinian-schools-430519>, accessed on November 18, 2015. Three are named after Dalal Mughrabi, who led the most lethal terrorist attack in Israeli history in 1978, killing 37 civilians, 12 of them children. Furthermore, the practice that Palestinian Authority continues to pay salaries to persons that have carried out criminal acts against civilians and sit in Israeli jails or have been released, must be terminated, See the Report by Israeli Non-Governmental Organization Palestinian Media Watch (PMW), PA salaries to terrorists, May 20, 2011,

available at <http://www.palwatch.org/main.aspx?fi=1005>, accessed on November 18, 2015. In 2013 the Palestinian Authority spent \$144 million in paying salaries to incarcerated and released prisoners, see *Itamar Marcus and Nan Jacques Zilberdik*, PA allocates \$46 million more for terrorists in 2014, from the website of NGO Palestinian Media Watch (PMW), February 12, 2014, available at http://www.palwatch.org/main.aspx?fi=1041&doc_id=10654, accessed on January 27, 2016; The Times of Israel, Official Palestinian TV calls Jaffa terrorist a ‘martyr,’ victims ‘settlers’, The Times of Israel, March 9, 2016, available at <http://www.timesofisrael.com/official-palestinian-tv-describes-jaffa-attacker-as-martyr/>, accessed on March 9, 2016.

