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Israel, Palestine, and the Oslo Accords

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Abstract

This Comment addresses the Middle East peace process, focusing upon the relationship between Israel and Palestine. Part I discusses the background of the land that today comprises the State of Israel and its territories. This Part summarizes the various accords and peace treaties signed by Israel, the Palestinians, and the other surrounding Arab Nations. Part II reviews commentary regarding peace in the Middle East by those who believe Israel needs to surrender more land and by those who feel that Palestine already has received too much. Part II examines the conflict over the permanent status negotiations, such as the status of the territories. Part III argues that all the parties need to abide by the conditions and goals set forth in the Oslo Accords before they can realistically begin the permanent status negotiations. Finally, this Comment concludes that in order to achieve peace, both sides will need to compromise, with Israel allowing an independent Palestinian State and Palestine amending its charter and ending the call for the destruction of Israel, though the circumstances do not bode well for peace in the Middle East.

ISRAEL, PALESTINE, AND THE OSLO ACCORDS

Jill Allison Weiner*

INTRODUCTION

Israel's¹ history has always been marked by a juxtaposition between two peoples—the Israelis and the Palestinians²—each believing that the land is rightfully theirs according to their religion³ and history.⁴ In 1897, Theodore Herzl⁵ wrote *Der Jeden-*

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1. THE EUROPA WORLD YEARBOOK 1782 (39th ed. 1998) (describing Israel as small country located in Asia). The western border of Israel is compromised of Egypt and Mediterranean Sea. *Id.* Lebanon is located directly north of Israel. *Id.* Syria is to the northeast and the Dead Sea and Jordanian land comprise the rest of the eastern border. *Id.* This region was part of the Ottoman Empire from 1516-1917, and then was under a British mandate from 1923-1948. *Id.*

2. See LARRY COLLINS & DOMINIQUE LAPIERRE, O JERUSALEM! 23 (1972) (stating that there were 1.2 million Arabs in Palestine at time of partition). *But see, e.g.,* Justus R. Weiner, *The Palestinian Refugees' "Right to Return" and the Peace Process*, 20 B.C. INT'L & COMP. L. REV. 1, 4 (1997) (explaining that "Palestinians" are split into refugees and displaced persons). The first group is the Palestinian refugees who left the land in 1948. Weiner, *supra*, at 4. The second group is comprised of the refugees' offspring and displaced persons, which are people who left in 1967. *Id.* Both of these numbers are difficult to tally. *Id.* at 7.

3. See EUROPA, *supra* note 1, at 1782 (stating Judaism is officially recognized religion of Israel); see also WHITAKER'S ALMANAC (131st ed. 1999) (stating 90% of Palestinians are Muslim and other 10% are Christian).

4. See JOHN R. HINNELLS, A HANDBOOK OF LIVING RELIGIONS 21, 135 (1984) (stating that Abraham, as first monotheist, is considered by Jews to be first Jew and by Muslims to be first Muslim); see also *The Koran* 17:1 (stating God "made His servant go by night from the Sacred Temple [Mecca] to the farther Temple [Jerusalem] whose surroundings We have blessed . . ."). According to the Old Testament, God said to Abraham:

I will maintain my covenant between Me and you and your offspring to come as an everlasting covenant through-out the ages, to be God to you and your offspring to come. I give the land you sojourn in to you and your offspring to come, all the land of Canaan [the historic name for Israel], as an everlasting possession.

Genesis 17:7-8. According to the Old Testament, "the Lord Appeared to Abraham and said, 'Unto your seed will I give this land!'" *Genesis* 12:7. Abraham had two sons: Ishmael, from whom Muslims believe they descended, and Isaac, from whom Jews believe they descended. See *The Koran* 14:42, 2:127 (stating that Abraham and Ishmael built Ka'bah at Mecca for Day of Atonement). Isaac, according to the Old Testament, renewed Abraham's covenant with God that Canaan would be the land of Isaac's descendants. *Genesis* 36:2, 3, 4; Jasmine Jordaan, *Proposal of Dispute Resolution Mechanisms for the Israeli-Palestinian Oslo II: A Crucial Step in Establishing Long-Term Economic Stability in Palestine and a Lasting Peace*, 23 BROOK. J. INT'L. L. 555, 555 (1997) ("[B]oth sides stubbornly believe that their own religion and history has given them the right to the land"); Jarred A. Fishman, *Are International Institutions Doing Their Job? Middle East Peace Process*, 90 AM.

staat, beginning the Zionist movement⁶ and planting the idea of an independent Jewish state.⁷ Herzl intended that the Jews build their new homeland in what is today known as the nation of Israel.⁸

During World War I, Great Britain declared themselves proponents of a Jewish homeland in Palestine, as long as the new state did not impede the rights of the non-Jews who were already living in the region.⁹ This declaration was solidified in the Mandate for Palestine ("Palestinian Mandate").¹⁰ When the League of Nations¹¹ at the end of World War I assigned Palestine to Great Britain, the pledge of the Jewish homeland was incorpo-

SOC'Y INT'L L. PROC. 463 (1996) (quoting Hasan Rahman as saying that "Palestine is the home to two peoples, and we must formulate a modality to share the land as two peoples.").

5. See COLLINS & LAPIERRE, *supra* note 2, at 21 (explaining Herzl's impetus derived from witnessing Dreyfus affair). Herzl, a Viennese Jew and reporter, witnessed a military ceremony where the French convicted Alfred Dreyfus, a Jewish officer on the French General Staff, of treason. *Id.* Dreyfus' innocence was considered common knowledge. *Id.* He was convicted again at a retrial because, according to Herzl, of culturally pervasive anti-Semitism. *Id.*; see also NAOMI BEN-ASCHER & HAYIM LEAF, THE JUNIOR JEWISH ENCYCLOPEDIA 143-44 (1973) (witnessing this anti-Semitism drove Herzl to write *Der Judenstaat*).

6. See MOSHE LESHEM, ISRAEL ALONE 11 (1989) (explaining that Zionism responded to European anti-Semitism and sought to "transform Jewish people into a conventional nation"). "Just as Moses led the Jews out of Egypt into the Promised Land, so would the Zionists lead the Jews out of the indignity and discomfort of their European bondage into self-determination in a country of their own." *Id.* at 90.

7. See COLLINS & LAPIERRE, *supra* note 2, at 21 (noting that Herzl did not formally launch Zionist movement until two years after writing *Der Judenstaat*). The first line of *Der Judenstaat* is: "[t]he Jews who will it shall have a state of their own." *Id.* At the time that Herzl wrote his proposal, "30,000 of Jerusalem's 50,000 inhabitants were already Jewish." *Id.* at 22.

8. See *id.* at 21 (noting, though, that "[a]t no time had Jewish life wholly disappeared in the Palestine to which Herzl's followers proposed a return."). Interestingly, Jews were persecuted in Palestine much more under Jerusalem's Christian rule than under the Ottoman Turks, who were Muslim. *Id.*

9. See ENCYCLOPAEDIA JUDAEICA 131 (1971) (memorializing Balfour Declaration and conveying "declaration of sympathy with Jewish Zionist aspirations which has been submitted to, and approved by, the Cabinet."); see also COLLINS & LAPIERRE, *supra* note 2, at 23 (noting that reason for offer was "[p]artly out of a sincere sympathy for Zionism, [and] partly in an effort to rally Jewish support for the Allies in World War I . . .").

10. See U.N. Docs., GAOR, 1st Sess., Plenary Meetings (1946) (entrusting Britain with control of Palestine)

11. See COLLINS & LAPIERRE, *supra* note 2, at 23 (stating that League of Nations, predecessor of U.N., approved mandate for Palestine in July 1922, which recognized "the historical connection of the Jewish people with Palestine and to the grounds for reconstructing their national home in that country . . .").

rated into the Palestinian Mandate.¹² Subsequent to the atrocities of World War II, the Jewish people demanded that the United Nations¹³ grant them a homeland.¹⁴ The State of Israel was eventually formed in 1948, even though Palestinians and Jews battled each other for the land.¹⁵ From 1948 until 1993, there was unrest between the Jews of Israel and the Palestinians, who believed the land should be theirs.¹⁶ These differing beliefs and goals led to fifty years of conflict and several wars.¹⁷

Beginning in 1978, Israel and the Arab Nations¹⁸ slowly began to open lines of communication.¹⁹ Since 1993 Israel has signed agreements, such as Oslo I and Oslo II (collectively "Oslo Accords"), to get toward the goal of peace.²⁰ As set forth in these agreements, final settlement negotiations were supposed to be completed by May 4, 1999.²¹ This deadline has passed without a final agreement between the parties.²²

This Comment addresses the Middle East peace process, focusing upon the relationship between Israel and Palestine. Part I discusses the background of the land that today comprises the State of Israel and its territories. This Part summarizes the vari-

12. See *id.* (stating that immigration was slow at first, but with rise of Nazi persecution, many Jews fled to Israel and in 1935-36 immigration reached its peak at 60,000).

13. WEBSTER'S NEW WORLD DICTIONARY 645 (1990) (defining United Nations as international organization of nations for promoting world peace and security and noting that it was formed in 1948).

14. See COLLINS & LAPIERRE, *supra* note 2, at 23 (explaining that "[t]he United Nation's recognition of their right to such a state seemed to the Jews no more than just reparation for the suffering the world had inflicted on them.").

15. *Id.* at 14.

16. See Brigadier General Uri Shoham, *The Principle of Legality and the Israeli Military Government in the Territories*, 153 MIL. L. REV. 245, 247 (1996) (describing Israel as surrounded by Arab nations as well as other details of wars).

17. See *id.* (describing War of 1967 as full scale war in region).

18. For purposes of this Comment, "Arab Nations" refers to the nations surrounding Israel including Egypt, Jordan, Lebanon, and Syria.

19. See Camp David Agreements, Sept. 17, 1978, Egypt-Isr-U.S., 17 I.L.M. 1466 (signing "A Framework for Peace in the Middle East").

20. See, e.g., Declaration of Principles on Interim Self-Government Arrangements, Sept. 13, 1993, Isr-P.L.O., 32 I.L.M. 1525 [hereinafter Oslo I]; Interim Agreement on the West Bank and the Gaza Strip, With Selected Annexes, Sept. 28, 1995, Isr-P.L.O., 36 I.L.M. 551, 567 [hereinafter Oslo II].

21. Oslo I, *supra* note 20, art. V, at 1525 (stating that five year transitional period was to begin upon withdrawal of Israeli troops from Gaza Strip and Jericho).

22. See Thomas W. Lippman, *U.S. Embassy in Israel to Remain in Tel Aviv; Clinton Cites Peace Talks, National Security in Decision To Waive Relocation Law*, WASH. POST, June 19, 1999, at A14 (noting that not only have permanent settlement negotiations not been concluded, but they have also not yet started negotiating).

ous accords and peace treaties signed by Israel, the Palestinians, and the other surrounding Arab Nations. Part II reviews commentary regarding peace in the Middle East by those who believe Israel needs to surrender more land and by those who feel that Palestine already has received too much. Part II examines the conflict over the permanent status negotiations, such as the status of the territories. Part III argues that all the parties need to abide by the conditions and goals set forth in the Oslo Accords before they can realistically begin the permanent status negotiations. Finally, this Comment concludes that in order to achieve peace, both sides will need to compromise, with Israel allowing an independent Palestinian State and Palestine amending its charter and ending the call for the destruction of Israel, though the circumstances do not bode well for peace in the Middle East.

I. FORMATION OF THE ISRAELI STATE, CONFLICT, AND THE PEACE ACCORDS

A. History and Formation of the Israeli State

In 1937, Great Britain, then the occupiers of Palestine, recommended partitioning Palestine into an Arab state, which would be incorporated into Transjordan,²³ and a Jewish state.²⁴ Nothing was implemented from the 1937 plan, and in August 1947 the U.N. established a committee that recommended a partition plan to divide Palestine into three territories: an Arab State, a Jewish State, and a third area that would be under international control.²⁵ The fighting, however, continued between the Israelis and the Palestinians through the partition plan and even after the armistice in 1949.²⁶

23. See WEBSTER'S NEW COLLEGIATE DICTIONARY 1444 (1st ed. 1973) (explaining that country is currently known as Jordan, or Hashemite Kingdom of Jordan).

24. See Omar M. Dajani, *Stalled Between Seasons: The International Legal Status of Palestine During the Interim Period*, 26 DENV. J. INT'L L. & POL'Y 27, 37 (1997) (explaining that Great Britain seemed to intend keeping Palestine as single state, but it agreed to work toward making Jewish homeland in area described in Balfour Declaration).

25. See *id.* at 38 (stating that United Nations proclaimed that third area would be an "internationally administered enclave around Jerusalem"); see also COLLINS & LAPIERRE, *supra* note 2, at 17 ("Most important, the United Nations plan refused to both states sovereignty over the city of Jerusalem, the pole to which, since antiquity, the political, economic and religious life of Palestine had gravitated.").

26. See COLLINS & LAPIERRE, *supra* note 2, at 48 (stating that "[n]either the Arabs

1. Pre-Statehood Developments

Great Britain's desire around 1937 was to keep Palestine a single state.²⁷ Nonetheless, it supported a partition of Palestine due to the deteriorating relations²⁸ between the Jews and the Arabs.²⁹ Palestinian Arabs rejected the plan, and in 1947, Great Britain relinquished its control over the fate of the land to the United Nations.³⁰ Israel declared an independent state in May 1948 in accordance with the U.N. partition.³¹

2. Original Partition Plans for Palestine and Israel

Under the plan dividing Palestine into three territories, fifty-seven percent of the land would be given to the Jews to form an independent state, despite the fact that Palestinian Arabs represented two-thirds of the population.³² After much hesitation, the Zionists, representatives of the Jewish people fighting for an independent state of Israel, agreed to this division of land,³³ yet the Palestinian Arabs refused to agree to it.³⁴ On May 14, 1948, the Zionists declared an independent state of Israel on the land allocated to the Jews in the U.N. Partition Plan.³⁵

nor the Jews were completely unprepared for the struggle which the U.N. vote made inevitable.").

27. See Dajani, *supra* note 24, at 37 (noting that Great Britain had already signed Balfour Declaration promising Jewish State in land of Palestine).

28. See *id.* (finding that pro-Jewish stance was not well-received by Palestinian Arabs, leading to violence).

29. See *id.* at 38 (arguing that Zionists thought land allotted to them was too small and Arab Palestinians felt Great Britain had no right to partition land).

30. *Id.*; see also PAUL HARPER, *THE ARAB-ISRAELI CONFLICT* 19 (1990) (explaining that terrorist Jews bombed Great Britain's headquarters in Palestine, killing 88 people including Britons, Arabs, and Jews).

31. See HARPER, *supra* note 30, at 19 (noting that Great Britain refused to implement partition plan and instead relinquished Mandate on May 15, 1948).

32. See COLLINS & LAPIERRE, *supra* note 2, at 17 (noting that Arabs owned more land in what became Jewish state than Jews did).

33. See *id.* at 18 (explaining that this division of land was not what Jews wanted). "The proposal had been a staggering blow to Jewish hopes. Re-creating a Jewish state in Palestine without Jerusalem as its capital was an anathema to the Jewish people, the resurrection of a body without its soul." *Id.*

34. *Id.*; see also, BARRY RUBIN, *REVOLUTION UNTIL VICTORY? THE POLITICS AND HISTORY OF THE PLO* 4 (1994) (noting that Palestinians received little support for their position, possibly due to the Palestinian leader's support of Nazi's, which increased support for Jews).

35. See Dajani, *supra* note 24, at 39 (explaining that although Israel declared statehood only over U.N.-allocated land, it had control over some land allotted to Arab Palestinians as well).

A civil war between the Arabs and the Jews ensued and by the time armistice talks began, the Jews had conquered most of Palestine.³⁶ Palestinian Arabs enlisted the help of Egypt, Iraq, Jordan, and Syria in trying to block the partition plan and make Palestine an independent Arab State.³⁷ The 1948 war followed, ending with the Jews defeating the Arab Nations and taking all of British occupied Palestine except the West Bank, which Jordan retained, and the Gaza Strip, which Syria retained.³⁸

3. Post 1948 Conflicts Between Israel and the Surrounding Nations

In 1967, the Arab Nations³⁹ completely surrounded Israel, and desired to take back the land they felt should never have left their possession.⁴⁰ In the war that followed, commonly termed the Six-Day War, Egypt mobilized its armed forces from the south, Iraq, Jordan, Saudi Arabia, and Syria invaded Israel from all other angles.⁴¹ There were 3000 U.N. soldiers in the Sinai region⁴² where Egypt mobilized its army.⁴³ These U.N. forces withdrew after demands by Egypt that they do so.⁴⁴ One commentator states that the leaders of each of the Arab Nations spoke of the demolition of Israel and the Israeli people, believing that only one of the two peoples could exist.⁴⁵ Israel decided

36. See HARPER, *supra* note 30, at 24 (stating that by time armistice agreements were concluded in 1949, Israel encompassed almost 80% of territory that was British-occupied Palestine).

37. See RUBIN, *supra* note 34, at 4 (explaining that Lebanon and Saudi Arabia also lent help, but that each nation sought to obtain Palestine for itself).

38. See *id.* (stating that between 630,000 and 730,000 Palestines left Palestine and 450 Palestinian Arab villages had disappeared).

39. See *id.*, at 13 (listing Egypt, Jordan, and Syria, as nations whose armies Israel defeated).

40. See Shoham, *supra* note 16, at 247 (stating that certain Arab Nations wanted to eliminate Israel and thus "rectif[y] what in their eyes was nothing more than a temporary historical footnote").

41. See THE WORLD ALMANAC AND BOOK OF FACTS 492 (1997) (showing that Syria's border is comprised of northern borders of both Jordan and Iraq). The western border of Syria is adjacent to Israel. *Id.* The southern most part of Israel is in proximity to Saudi Arabia, with Jordan between the two. *Id.*

42. See WEBSTER'S NEW COLLEGIATE DICTIONARY 1478 (1st ed. 1973) (stating that Sinai is peninsula between Red Sea and Mediterranean).

43. Shoham, *supra* note 16, at 247.

44. *Id.*

45. See *id.* at 247-48 (explaining that President Gamal Abdel Naser of Egypt, President Aref of Iraq, and Chairman of Palestinian Liberation Organization ("PLO") Ahmed Shukairy, all proclaimed that they wanted to destroy Israel).

to launch a preemptive air strike that destroyed most of the Egyptian army's planes while they were still on the ground.⁴⁶ The war lasted only six days, but by the end Israel wrested the Sinai Peninsula and the Gaza Strip from Egyptian control.⁴⁷ In addition Israel seized control of the West Bank⁴⁸ from Jordan and the Golan Heights from Syria.⁴⁹ The acquired territory comprised the other twenty percent of what was British-occupied Palestine prior to the 1947 partition plan.⁵⁰ After the Six-Day War, Israel offered to return all of the newly acquired land, aside from the newly unified Jerusalem, in return for full peace with its neighbors.⁵¹ The Arab Nations rejected this plan, and refused to recognize Israel as a state with whom they would negotiate.⁵²

On Yom Kippur, the Jewish Day of Atonement, Egypt and Syria surprised Israel by attacking on the holiest Jewish day.⁵³ The war lasted for three-weeks, and at the end, Israel pushed the Arab Nations back to the pre-war lines.⁵⁴ U.S. and Soviet negotiation led to a cease-fire in order to end the war.⁵⁵ Commentators state that the goal of the failed attempt was to restore the territory lost by Egypt and Syria in 1967.⁵⁶

46. See *id.* at 248 (noting that Israel perceived threat to national security and therefore launched air strike).

47. See RUBIN, *supra* note 34, at 13 (stating that Gaza Strip was part of pre-1948 Palestine, but Sinai was not); see also THE WORLD ALMANAC AND BOOK OF FACTS 492 (1997) (stating that Gaza Strip is area on Mediterranean Sea that borders Sinai Peninsula).

48. See RUBIN, *supra* note 34, at 13 (explaining that Golan Heights were not part of pre-1948 Palestine); see also THE WORLD ALMANAC AND BOOK OF FACTS 492 (1997) (stating that West Bank comprises large area in center of Israel bordering Dead Sea and Jordan).

49. See RUBIN, *supra* note 34, at 13 (stating that "resulting humiliation and hopelessness inflamed the Arabs' worst fears that Israel would take over the region.").

50. See John Quigley, *The Oslo Accords: More Than Israel Deserves*, 12 AM. U. J. INT'L. L. & POL'Y 285, 286-87 (1997) (explaining that Israel gained control of all land that comprised British occupied Palestine).

51. See Shoham, *supra* note 16, at 249 (explaining that Arab nations did not want peace with Israel, preferring instead to claim all of former British mandate).

52. See RUBIN, *supra* note 34, at 13 (stating that Arabs held summit in 1967 and together decided against dealing peacefully with Israel).

53. See *id.* at 45 (describing attack's effect on Israel).

54. See *id.* (noting, however, that many Arabs felt regained honor they had lost in Six-Day War).

55. See HARPER, *supra* note 30, at 31 (noting that U.S. nuclear forces were on worldwide alert in case of Soviet intervention).

56. See *id.* (finding that war was not primarily about Palestinian problem).

B. *The Camp David Agreements*

The Camp David Agreements forced Israel and Egypt to recognize the 1967 U.N. Resolution 242.⁵⁷ This resolution recognized the need for members of the Middle East to respect and acknowledge the political independence and sovereignty of the states in the region and their right to live in peace.⁵⁸ The Camp David Agreements also recognized United Nations Security Council Resolution 338⁵⁹ ("Resolution 338").⁶⁰ Resolution 338 summoned Egypt, Israel, Jordan, and the representatives of the Palestinian people to negotiate on the settlement of the Palestinian situation.⁶¹ By negotiating with Egypt and agreeing to recognize these two resolutions, Israel recognized that the Palestinian people had rights.⁶²

1. Resolution 242

Resolution 242 required the withdrawal of the Israeli armed forces from the territories they acquired during the Six-Day war.⁶³ The U.N. Security Council adopted Resolution 242 shortly after the Six-Day War.⁶⁴ The United Nations stated that the refugee problem needed to be addressed and that demilitarized zones had to be created.⁶⁵

Following Resolution 242, the U.N. General Assembly recognized the Palestinians' status as a people, their core role in achieving a just resolution of the Palestinian's situation, and

57. See Shoham, *supra* note 16, at 249; Resolution 242, U.N. Security Council Official Records, 22nd Year Supp. (1967) [hereinafter Resolution 242] (representing "the establishment of a just and lasting peace in the Middle East which should include . . . [w]ithdrawal of Israeli armed forces from territories occupied in the recent conflict.").

58. See *id.* (recognizing "every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force.").

59. Resolution 338, U.N. Security Council Official Records, 28th Year Supp. (1973) [hereinafter Resolution 338].

60. See Camp David Agreements, *supra* note 19, at 1467 (trying to reach peace through treaties "based on Security Council Resolutions 242 and 338 in all their parts").

61. See *id.* (using three stages to achieve goal of peace).

62. *Id.*

63. See Resolution 242, *supra* note 57, at 8 (requiring "[t]ermination of all claims or states of belligerency").

64. See *id.* at 9 (adopting resolution of November 22, 1967).

65. See *id.* (requesting U.N. Secretary General to designate "Special Representative" to go to Middle East to help achieve peaceful settlement in accordance with Resolution 242.)

their right to self-determination.⁶⁶ No real changes occurred in the Middle East, however, until the 1978 Camp David Agreements.⁶⁷ At Camp David, Egyptian President Anwar Sadat and Israeli Prime Minister Menachem Begin agreed to a framework of peace in the Middle East that offered some Palestinian autonomy in occupied territories, as well as setting the stage for an agreement between Israel and Egypt.⁶⁸ The Camp David Agreements created a framework for peace that could be used for the entire Middle East.⁶⁹

2. Resolution 338

Resolution 338, passed during the Yom Kippur War,⁷⁰ had the following requirements: that the fighting cease, Resolution 242 be implemented, and that the Israelis and the Arabs commence negotiations.⁷¹ The negotiations regarding the West Bank and Gaza Strip were supposed to proceed in three stages and were very similar to the three stages later implemented in the Oslo Accords.⁷² All parties comprehended the symbolic na-

66. See *id.* at 8 (stating there was necessity "[f]or achieving a just settlement of the refugee problem"); Dajani, *supra* note 24, at 41; see also WEBSTER'S NEW COLLEGIATE DICTIONARY 1041 (1st ed. 1973) (defining self-determination as "determination by the people of a territorial unit of their own future political status.").

67. Camp David Agreements, *supra* note 19. Since the Camp David Agreements, much talk and negotiation occurred regarding the Middle East Peace Process between Israel and the Arab Nations, often with the United States as a monitor. See *Middle East Peace Process*, (visited Feb. 2, 1999) <<http://www.usia.gov/regional/nea/summit/chron.htm>> [hereinafter *Middle East Peace Process*] (on file with the *Fordham International Law Journal*) (giving time line of peace process since Camp David).

68. See *Middle East Peace Process*, *supra* note 67, at 12 (noting that agreement offers limited autonomy to Palestinians in occupied territories, setting stage for Israeli-Egyptian peace treaty).

69. See Camp David Agreements, *supra* note 19, at 1466 (stating that "[t]he agreed basis for a peaceful settlement of the conflict between Israel and its neighbors is United Nations Security Resolution 242, in all its parts.").

70. See RUBIN, *supra* note 34, at 45 (explaining that Yom Kippur War occurred in 1973-74, when Egypt and Syria attacked Israel on Jewish Holy Day of Atonement, catching Israelis by surprise).

71. See Resolution 338, *supra* note 59, at 10 (calling for cease-fire within 12 hours of Resolution being adopted and for immediate negotiations between parties).

72. See Camp David Agreements, *supra* note 19 (breaking down peace process into three stages: first, transitional arrangements for West Bank and Gaza Strip for period of no more than five years; second, Egypt, Israel, and Jordan agreeing on how to establish elected self-government authority in West Bank and Gaza Strip; and third, negotiations to decide final status of West Bank and Gaza Strip, including peace treaty between Israel and Jordan). Cf. Oslo I, *supra* note 20 (breaking up process into immediate actions, interim period where power and control over occupied territories switches hands,

ture of the negotiations and Egypt and Israel realized that they were witnessing a historic moment.⁷³ The Israelis viewed making peace with Egypt as a stepping stone to peace in the Middle East.⁷⁴ From an Egyptian standpoint, many of the dreams that were set out in these accords have become a reality.⁷⁵

Despite numerous obstacles, this co-existence has remained essentially peaceful for twenty years.⁷⁶ Initially, problems existed for both Israel and Egypt with other Arab Nations.⁷⁷ For instance, the Palestinians refused to participate in the Camp David process.⁷⁸ In March 1979, certain Arab Nations boycotted Egypt as a result of the Israeli/Egyptian bilateral peace treaty⁷⁹ signed in Washington.⁸⁰ In accordance with the treaty, Israel returned Sinai to Egypt, but remained in control of the Gaza Strip and the West Bank.⁸¹

Eventually, these other Arab Nations also moved towards peace.⁸² In 1986, Jordan's King Hussein severed links with the Palestinian Liberation Organization⁸³ ("PLO") after PLO leader

and then permanent status negotiations whereby fate of Palestine is negotiated and determined).

73. See Camp David Agreements, *supra* note 19, at 1463 (describing President Sadat's visit to Jerusalem and warm welcome he received as "historic initiative . . . [that] created an unprecedented opportunity for peace . . .").

74. See Ian S. Lustick, *Ending Protracted Conflicts: The Oslo Process Between Political Partnership and Legality*, 30 CORNELL INT'L L.J. 741, 744 (1997) (emphasizing that Israeli and Egyptian leaders referred to each other as "partners"). Prime Minister Rabin said, "[j]ust as we made peace with our greatest enemy in war, with Egypt, so will we make peace with others who were our enemies and who will be our partners in building peace in the Middle East." *Id.*

75. Alison Inafuku, *Regional and Global Impacts of the Arab-Israeli Peace Process*, 89 AM. SOC'Y INT'L PROC. 363, 363 (1995) (quoting Ambassador Nabil Eleraby, Mission of Egypt to the U.N., during panel at Syracuse University April 7, 1995, who argued that Israeli occupation of land acquired in 1967 should come to end).

76. See *id.* at 379 n.4. (including obstacles, such as lack of other Arab Nations' support).

77. See *Middle East Peace Process*, *supra* note 67, at 11 (including Arab boycott of Egypt and 1981 assassination of President Sadat).

78. See Weiner, *supra* note 2, at 6 (pointing out that there was no need to debate who were deemed Palestinians due to boycott).

79. Treaty of Peace between Egypt and Israel, Mar. 26 1979, 18 I.L.M. 362 (1979) [hereinafter Egypt Peace Agreement].

80. *Middle East Peace Process*, *supra* note 67, at 11.

81. *Id.*

82. See, e.g., Israel-Jordan: Treaty of Peace, Oct. 26, 1994, 34 I.L.M. 43 (1995) [hereinafter Jordan Peace Treaty] (establishing peace between Jordan and Israel recognizing each other's sovereignty).

83. See RUBIN, *supra* note 34, at 70 (explaining King Hussein and PLO's troubled

Yasser Arafat refused to accept U.N. resolutions regarding the peace talks.⁸⁴ This stance in alliance with the United Nations occurred eight years before Jordan and Israel met in Washington to declare an end to their state of conflict.⁸⁵ Tensions heightened during 1987-93 when the PLO spurred uprisings among Palestinians through an *Intifada*.⁸⁶ Confronted with the option of treating the *Intifada* as a war or attempting to pursue peace, Israel chose the latter.⁸⁷

C. *The Oslo Accords*

The Israelis and the PLO chose to pursue peace,⁸⁸ with the breakthrough occurring in Oslo.⁸⁹ Oslo I codified the Oslo negotiations.⁹⁰ Oslo II's purpose was to create a momentum that would push Israel and the Palestinian Authority toward reaching a final settlement as well as to create a learning period in which trust and confidence could grow.⁹¹ Oslo I sets out the basis for

past, including 1970 when King Hussein of Jordan imprisoned and expelled PLO officers and gunmen and banned PLO propaganda; in 1986 Jordan again closed its doors to PLO with King Hussein noting that PLO did not keep their word and attempt to make peace in Middle East); *see also* Dajani, *supra* note 24, at 27 (stating PLO emerged as international representatives of Palestinian people in 1960s).

84. *See* RUBIN, *supra* note 34, at 77 (explaining that in November 1985, Arafat promised to confine future terrorist attacks solely to Israel and occupied territories, and that PLO Central Council met simultaneously and refused to recognize Resolutions 242 and 338).

85. *See* Jordan Peace Treaty, *supra* note 82 (having Israel withdraw from land held in Jordan on January 30, 1995).

86. Lustick, *supra* note 74, at 743. *See* RUBIN, *supra* note 34, at 85 (explaining that *Intifada*, which literally means revolt, was incapable of creating independent Palestinian state). The *Intifada* brought the Palestinian issue international attention and sympathy. RUBIN, *supra*, at 86.

87. *See* Lustick, *supra* note 74, at 743 (stating that military option was deemed too unilateral, so Israel felt peace was better answer).

88. *See, e.g.*, Shaw D. Dallal, *The Palestinian Israeli Peace*, 22 SYRACUSE J. INT'L L. & COM. 43, 45 (1996) (stating that Prime Minister Rabin and Chairman Arafat shook hands on Sept. 13, 1993, to mark beginning of Oslo I Agreement).

89. *See* Dajani, *supra* note 24, at 60 (noting that this process led Israel and PLO to recognize each other's sovereign right to exist, and impelled drafting of Oslo I). Oslo I created the framework for negotiations regarding the final status of occupied territories and established that the Palestinian self-governing authority should lead during the interim period. *Id.*

90. Oslo I, *supra* note 20.

91. *See* Justus R. Weiner, *The Hebron Protocol: The End of the Beginning or the Beginning of the End of the Israeli-Palestinian Peace Process?*, 15 B.U. INT'L L.J. 373, 416 (1997) ("With the DOP breakthrough in 1993, hopes blossomed that an era of trust could, within the modest period of less than six years, write a new page of history and result in an enduring permanent status agreement resolving all dimensions of this conflict.").

Oslo II.⁹² Oslo II, however, supercedes all but Oslo I.⁹³ The parties wanted to move Israel and Palestine toward permanent status negotiations through Oslo II.⁹⁴ Oslo II specifies that the permanent status negotiations are to commence as soon as possible, but no later than May 4, 1999.⁹⁵

1. Declaration of Principles ("Oslo I")

Secret meetings between the Israeli government and the PLO occurred over the course of 1993 in Oslo.⁹⁶ Up until the Oslo negotiations, both the Israelis and the United States refused to recognize the Palestinians' right to participate in the Middle East peace process.⁹⁷ They also refused to recognize the PLO as the representative of the Palestinians.⁹⁸ Making this recognition was a crucial first step toward peace.⁹⁹ Scholars note that the scope of the rights recognized by Israel, however, is difficult to assess.¹⁰⁰

When Oslo I was signed, PLO leader Yasser Arafat shook the hand of Prime Minister Rabin on the White House Lawn.¹⁰¹ The leaders agreed to a three stage plan toward peace.¹⁰² The first

92. Oslo I, *supra* note 20.

93. See Weiner, *supra* note 2, at 4 (formulating Oslo II as final interim agreement superseding all other previous agreements).

94. See Oslo II, *supra* note 20, at 558 (stating that one aim of Oslo II is election of Council for five year interim period beginning May 4, 1994 and "leading to a permanent settlement based on Security Council Resolutions 242 and 338").

95. See *id.* (stating that permanent status negotiations would start no later than May 4, 1999).

96. See Dajani, *supra* note 24, at 60 (noting that there were at least 14 rounds of negotiations). Johann Jorgen Holst, former foreign minister of Norway, mediated these talks. *Id.*

97. See *id.* at 41-42 (arguing that United States and Israel still refrain from acknowledging Palestinians' claimed right to self-determination).

98. See RUBIN, *supra* note 34, at 89 (stating that PLO is known terrorist organization that has claimed credit for taking lives of many Israelis). Syria arrested several thousand of Arafat's supporters in Syria and killed many others in Lebanon. *Id.*

99. See Jordaen, *supra* note 4, at 555 (recognizing Israel's desire to participate in peace negotiations).

100. See Dajani, *supra* note 24, at 44 (pointing to failure of Israel and PLO's agreement to mention self-determination of Palestinians).

101. See Dallal, *supra* note 88, at 45 (noting that handshake was historic and that only days before, letters were exchanged between leaders allowing for Oslo I). To many, the handshake was to "mark the end of a violent history and the beginning of an era committing Palestinians and Israelis to share a country each claims as exclusively its own." *Id.*

102. See Oslo I, *supra* note 20, at 1529 (stating that there will be an interim agreement and permanent status negotiations, as well as Oslo I).

phase involved the withdrawal of Israeli forces from the Gaza Strip and Jericho.¹⁰³ The second stage implemented an Interim Agreement ("Oslo II")¹⁰⁴ that redeployed Israeli forces in the West Bank and transferred certain agreed powers.¹⁰⁵ The final phase envisioned the creation of a Permanent Status Agreement finalized by the end of the Interim Period, May 4, 1999.¹⁰⁶ Many commentators believe that what made the agreement at Oslo possible was the adoption of a gradual approach whereby issues were sorted into those requiring immediate attention and those warranting postponement until the final status negotiations.¹⁰⁷ Yet, the parties have neither agreed upon the present status of Palestinians, nor the status that the Palestinians will have after the final status negotiations—leaving the debate for later negotiations.¹⁰⁸

Oslo I specifies that the aim of the negotiation is to create an interim Palestinian Authority ("PA").¹⁰⁹ The PA is elected to serve for a transitional period that should lead to permanent settlement resolutions based on Resolutions 242 and 338.¹¹⁰ Oslo I

103. *See id.* (noting that "[u]pon the entry into force of this Declaration of Principles and the withdrawal from the Gaza Strip and Jericho area, a transfer of authority from the Israeli military government . . . to authorised Palestinians . . . will commence.").

104. Oslo II, *supra* note 20.

105. *See* Oslo I, *supra* note 20, at 1530 (stating that "[t]he Interim Agreement shall specify, among other things, the structure of the Council, the number of its members, and the transfer of powers and responsibilities from the Israeli military government and its Civil Administration to the Council.").

106. *Id.*; *see also* Shoham, *supra* note 16, at 269 (summarizing agreement and noting that first two stages of implementation proceeded smoothly).

107. *See* Inafuku, *supra* note 75, at 364 (noting that important features of Oslo I "are conceived in this two-phase plan").

108. *See* Dajani, *supra* note 24, at 28 (noting that when Prime Minister Netanyahu took office, he declared that he was opposed to formation of independent Palestinian State).

109. *See* Oslo I, *supra* note 20, at 1525 (stating that aim was "[t]o establish a 5-year Palestinian Interim Self-Government Authority."); *see also* Dajani, *supra*, note 24, at 72 (observing that there are many differences between PLO and Palestinian Authority ("PA")). The PA has municipal authority over affairs of Palestinians in Occupied Territories. Dajani, *supra*. The PLO has broader decisions regarding Palestinian people living outside Occupied Territories and ultimate status of Palestine, but they do not have legal authority over decisions of PA that relate to local governance of Palestinians in Occupied Territories. *Id.* The PA and PLO, however, are intrinsically intertwined. *Id.* The PLO negotiated for the creation of PA and Arafat is the leader of both. *Id.*

110. *See* Oslo I, *supra* note 20, at 1527 (stating aim of negotiations is to establish elected Palestinian Council "for a transitional period not exceeding five years, leading to a permanent settlement based on Security Council Resolution 242 and 338.").

also specifies the need for a general election in Palestine under democratic principles and agreed upon supervision.¹¹¹ Once elected, the PA will preside over designated areas in the West Bank and the Gaza Strip.¹¹² Israel and Palestine specifically tabled difficult issues until the permanent status negotiations, including the status of Jerusalem, refugees, settlements, security arrangement, and borders.¹¹³

During this interim period, Oslo I dictated that Israel is to transfer power to the PA.¹¹⁴ Oslo I provided for immediate Palestinian authority over education, health, social welfare, direct taxation, and tourism in the West Bank and Gaza Strip.¹¹⁵ Oslo I set out the framework for Oslo II, discussed the composition of the PA, and dictated that once the PA is elected, Israel will withdraw its military presence from the occupied areas.¹¹⁶ Israel was to redeploy the military forces outside of the populated areas.¹¹⁷ The redeployment was to occur gradually and there was a special schedule for the withdrawal from the Gaza Strip and Jericho areas.¹¹⁸ After its withdrawal, Israel would remain responsible for the external security of those territories as well as the internal security of the Israelis living in those areas.¹¹⁹ Additionally, Oslo I states that the roads are to remain open for both Israeli and

111. *See id.* at 1528 (noting that “[i]n order that the Palestinian people in the West Bank and Gaza Strip may govern themselves according to democratic principles, direct free and general political elections will be held for the Council under . . . international observation”).

112. *See id.* (stating that “[j]urisdiction will cover the West Bank and Gaza Strip territory, except for issues that will be negotiated in the permanent status negotiation.”).

113. *See id.* at 1529 (explaining that “[i]t is understood that these [permanent status] negotiations shall cover remaining issues, including Jerusalem, refugees, settlements, security arrangements, borders. . . .”).

114. *See id.* (stating that authorized land will be transferred only after inauguration of PA).

115. *See id.* (providing for Palestinian control immediately after Oslo I enters into force and Israel withdraws from Gaza Strip and Jericho).

116. *See id.* at 1532-33 (explaining that “[a]fter the entry into force of this Declaration of Principles, and not later than the eve of elections for the Council, a redeployment of Israeli military forces in the West Bank and the Gaza Strip will take place. . . .”).

117. *Id.* at 1533.

118. *See id.* (noting that Palestinian Police will assume responsibility for “public order and internal security”).

119. *See id.* at 1544 (stating that “subsequent to the Israeli withdrawal, Israel will continue to be responsible for external security, and for internal security and public order of settlements and Israelis.”).

Palestinian use.¹²⁰

To ensure a smooth transition, the parties established a Joint Israeli-Palestinian Liaison Committee¹²¹ to deal with disputes and issues that require coordination.¹²² Oslo I called for future negotiation on outstanding issues after an interim period during which the PA would have certain power and autonomy over the West Bank and Gaza Strip.¹²³ Oslo I established a framework for negotiations to reach a final status agreement.¹²⁴ Accordingly, many agreements have been subsequently signed in the Middle East.¹²⁵

2. Interim Agreement ("Oslo II")

Article I of Oslo II sets out the basic terms for the transfer of authority from Israel to the Palestinians as well as defining the powers that Israel retains under this agreement.¹²⁶ The West Bank is the first area where the Israeli military government will turn over power to the PA.¹²⁷ Pursuant to the Oslo Accords, state status is an issue to be taken up in the permanent status negotiations.¹²⁸

a. Transfer of Authority

The transfer of authority from Israel to Palestians is enumerated in Article I of Oslo II.¹²⁹ Oslo II expands Oslo I and enumerates how elections will occur,¹³⁰ who is allowed to vote,¹³¹

120. *See id.* (stating that roads within Gaza Strip and Jericho are included).

121. *See id.* (noting that committee will be equally represented by each side).

122. *See id.* at 1531-32, 1544 (noting that parties can add technicians and experts if necessary).

123. *See* Quigley, *supra* note 50, at 285 (finding that agreement has "the prospect of bringing resolution to the long-standing territorial dispute over Palestine").

124. *But see id.* (offering that agreements provide Palestinians less than they are entitled and, therefore, that the agreements unfairly favor Israel).

125. *See Middle East Peace Process*, *supra* note 67 (listing accomplishments in post-Camp David agreements).

126. *See* Oslo II, *supra* note 20, at 558-59 (noting that powers will be transferred to Council or to PA until such time that Council is elected); *but see* Jordaan, *supra* note 4, at 593 (noting that Oslo II has vague and very generalized language).

127. *Id.* art. XI, at 561.

128. *See* Oslo I, *supra* note 20, at 1528 (leaving issue to be debated).

129. *See* Oslo II, *supra* note 20, at 558-59 (noting that transfers will occur gradually).

130. *Id.* art. II at 559 (stating that PA members will serve throughout Interim period); *see also*, Dajani, *supra* note 24, at 62 (noting PA/Council members' terms will end at conclusion of Interim Period).

and the structure of the Palestinian National Council ("Council")—or until the point that it is established, the structure of the Palestinian Authority.¹³² The Council will have legislative and executive power in accordance with Oslo I, but cannot adopt any laws inconsistent with Oslo II.¹³³ Oslo II also dictates that an independent judicial system composed of independent Palestinian courts and tribunals will be convened.¹³⁴

b. The West Bank and Gaza Strip

The redeployment of Israeli military forces is set out in phases, with the first phase commencing in the populated areas of the West Bank.¹³⁵ The West Bank is split into three areas.¹³⁶ Area A includes the larger cities of Bethlehem, Hebron, Jenin, Jericho, Kalkilya, Nablus, Ramallah, and Tulkarm.¹³⁷ Area B consists of smaller towns and villages where the PA has control over civilian life, but Israel is in control of internal security.¹³⁸ The Israeli-controlled remainder of the West Bank, including rural areas, military zones, and Israeli settlements, is designated as Area C.¹³⁹ The land located in Areas A and B come under the Council's jurisdiction in the first phase.¹⁴⁰ Under Oslo II, Israel must transfer only authority over the people in Area C during the first phase, and not transfer authority over the land in that area.¹⁴¹ The Council must assume responsibility for both the in-

131. See Oslo II, *supra* note 20, art. II, at 559 (including Palestinian individuals in West Bank, Gaza Strip, and Jerusalem).

132. See *id.* art. III at 559 (calling for immediate election of speaker). The Council, once it is inaugurated, will replace the PA and assume all of the responsibilities of the PA under various Agreements. *Id.* art. XXXI, at 567.

133. See *id.* art. III, at 559 (stating that "[i]mmediately upon its inauguration, the Council will elect from among its members a Speaker.").

134. See *id.* art. IX, at 561 ("[t]he Palestinian Council may adopt all necessary measures in order to enforce the law and any of its decisions, and bring proceedings before the Palestinian courts and tribunals.").

135. See *id.* art. XI, at 561 (including "cities, towns, villages, refugee camps and hamlets").

136. *Id.*; see Keith C. Molkner, *Legal and Structural Hurdles to Achieving Political Stability and Economic Development in the Palestinian Territories*, 19 FORDHAM INT'L L.J. 1419, 1429 n.32 (1996) (describing towns and villages within West Bank).

137. Molkner, *supra* note 136.

138. *Id.*

139. *Id.*

140. *Id.*

141. Oslo II, *supra* note 20, art. XI, at 562.

ternal security and public order in Area A.¹⁴² In Area B Israeli military forces will be completely redeployed, which means that the Palestinian Police will have control over public order,¹⁴³ but Israel will retain responsibility for protecting Jews in the area and confronting terrorism.¹⁴⁴

There are several Jewish Holy Sites in Area A¹⁴⁵ and the Palestinian Police are in charge of protecting these sites and the people who visit them.¹⁴⁶ A Joint Mobile Unit ("JMU") will consist of vehicles from both the Israelis and Palestinians.¹⁴⁷ The JMU's job is to respond to emergency situations¹⁴⁸ and will be situated in the area surrounding the holy sites and on access routes to these sites.¹⁴⁹ Oslo II permits Israeli plain clothed guards within the sites to monitor them as well.¹⁵⁰ Also, while the PA will govern in the city of Bethlehem, special security arrangements will be made regarding Rachel's Tomb, another Jewish holy site.¹⁵¹

The redeployment will be effectuated in various stages.¹⁵² Oslo II sets the deadline for withdrawal from the West Bank to be completed at least twenty-two days before the eve of the Council's elections.¹⁵³ Security arrangements, such as the Israeli military redeployment, are neither to disturb the Palestinian development projects in the West Bank, nor are they to prejudice the moral or physical dignity of those Palestinians residing in the

142. *Id.* art. XIII, at 562.

143. *See id.* art. XIII-XIV, at 562-63 ("The Council shall establish a strong police force.").

144. *Id.* art XIII, at 562.

145. *Id.* at 574, 629 (including Elazer's Tomb and Joshua's Tomb, Samaria, Jewish Cemetery in Sammerat, and Synagogue in Gaza City).

146. *Id.* at 574.

147. *See id.* at 572 (explaining that Joint Patrol will have one four-wheel drive vehicle from each party and whichever party is supposed to be in control of specific road will lead other vehicle).

148. *See id.* (stating that Joint Mobile Unit ("JMU") "is to provide rapid response in the event of incidents and emergency situations, in order to ensure free, unimpeded and secure movement along their designated routes of activity, or in their areas of activity.").

149. *Id.* at 574, 619.

150. *See id.* (explaining that extra measure will be taken because of religious nature of these sites).

151. *See id.* at 576 ("While the Tomb, as well as the main road leading from Jerusalem to the Tomb . . . will be under the security responsibility of Israel, the free movement of Palestinians on the main road will continue.").

152. *Id.* at 569.

153. *See id.* (noting that this is first stage).

West Bank.¹⁵⁴ In the ten day transition period set to occur prior to each redeployment, the Israeli military will brief the Palestinian Police commanders about the respective area and any specific problems that the Israeli Military has encountered in the area.¹⁵⁵ Further redeployments of Israeli military forces are to take place, according to Oslo I, in three stages.¹⁵⁶ During the period of redeployment, Israel and the Palestinians will negotiate the specific areas to which the Israeli military will be redeployed.¹⁵⁷

Israel is still responsible for defense against external threats.¹⁵⁸ Oslo II does provide, however, that the Palestinians can have a police force of up to 30,000 people.¹⁵⁹ The Palestinian Police are the only Palestinian security authority, and no weapons other than those of the Palestinian Police and the Israeli military are allowed into the occupied territories.¹⁶⁰ The Council can issue gun permits, however, to private citizens, but any illegal arms will be confiscated by the Israeli Military.¹⁶¹ If individuals are suspected of perpetrating acts of violence, then the Palestinian Police should arrest and prosecute them.¹⁶²

According to Oslo II, both sides are to work together in order to keep the peace.¹⁶³ Regular as well as special meetings will occur between the commander of the Israeli military forces and the Palestinian Police in the West Bank and Gaza Strip.¹⁶⁴ In

154. *See id.* ("In order to maintain the territorial integrity of the West Bank and the Gaza Strip as a single territorial unit . . . both sides shall implement the provisions of this Annex, while respecting . . . normal and smooth movement of people, vehicles, and goods within the West Bank, and between the West Bank and the Gaza Strip.").

155. *Id.*

156. *See id.* (detailing stages are each to be six months apart, completion to be not more than 18 months after inauguration of Council).

157. *See id.* (noting that this will be part of permanent status negotiations as well).

158. *See id.* at 562 (including Egyptian and Jordanian borders)

159. *See id.* at 573 (stating that of these police officers, up to 12,000 may be deployed in West Bank and up to 18,000 in Gaza Strip). These police forces will be deployed in phases similar to Israeli deployment of their military. *Id.* The total number of Palestinian recruits from abroad cannot exceed 5000 in West Bank and 7000 in Gaza Strip, but these recruits can bring their children and spouses. *Id.*

160. *See id.* at 563, 569, 573 (including enumeration of weapons that police are allowed to have—i.e., up to 4000 rifles and up to 120 machine guns of 0.3" or 0.5" caliber).

161. *Id.* at 569.

162. *See id.* at 569 ("The Palestinian Police will act systematically against all expressions of violence and terror.").

163. *Id.* at 570.

164. *See id.* (occurring as appropriate).

order to help facilitate this coordination, each side must operate a twenty-four hour regional security coordination office with direct and constant communication between both sides.¹⁶⁵

Terrorism is another area where the two parties agreed to cooperate.¹⁶⁶ The parties agreed to exchange information and to coordinate policies and activities.¹⁶⁷ Whether it be Israeli or Palestinian terrorists, both sides agreed to take all measures to end the violence.¹⁶⁸ In order to implement this goal, the parties agreed to apprehend, investigate, and prosecute persons suspected of terrorism.¹⁶⁹

Oslo II also addressed some confidence building measures.¹⁷⁰ Israel agreed to turn over Palestinian detainees and prisoners in both the West Bank and Gaza Strip to the PA.¹⁷¹ The released persons are free to return to their homes in the territories.¹⁷² The two parties agreed to help each other with searching for missing persons and bodies of persons that have not been recovered.¹⁷³ Also, Palestinians from abroad who under Oslo II can enter the West Bank and the Gaza Strip will not be prosecuted for offenses committed before September 13, 1993.¹⁷⁴

The Oslo Accords addressed the need for the Palestinian Charter to be amended.¹⁷⁵ As per the chairman of the PLO's letter to the Prime Minister of Israel, the PLO agreed that within two months of the inauguration of the Council, it would make changes in the Palestinian Covenant.¹⁷⁶ Also, they agreed to

165. *See id.* (having up to six officers from each side: one commander and five duty officers).

166. *See id.* at 571 ("Each side shall immediately and effectively respond to the occurrence or anticipated occurrence of an act of terrorism, violence or incitement and shall take all necessary measures to prevent such an occurrence.").

167. *Id.*

168. *See id.* (agreeing to "actively prevent incitement to violence, including violence against the other side or persons under the authority of the other side").

169. *See id.* (preventing, also, damage to infrastructure serving other side such as roads, water, electricity, telecommunications, and sewage).

170. *See id.* at 563 (attempting "to establish a solid basis of mutual trust and good faith").

171. *See id.* (occurring, as with most everything else in Agreements, in stages).

172. *Id.*

173. *Id.* at 567.

174. *See id.* at 563-64 (agreeing that Israeli officials will not harass released Palestinians).

175. *See id.* at 568 (stating Council "will convene and formally approve the necessary changes in regard to the Palestinian Covenant").

176. *Id.*

abide by the standards of international law.¹⁷⁷ Both sides agreed not to incite the other by any means, such as propaganda, and that each side's education system will contribute to peace between the two parties.¹⁷⁸

c. Declaration of a Palestinian State

Under the Oslo Accords, Israel reserves conferring state status on the territories, instead making that part of the final negotiation process.¹⁷⁹ Oslo II restates the idea that the Council will not have power in the international arena, although certain exceptions are carved out.¹⁸⁰ Commentators note that the reason for not allowing the Council to engage in international processes is to prevent influencing Palestine's status before the final settlement negotiations.¹⁸¹

3. Post Oslo II Developments

In May 1994, an agreement regarding the West Bank and Jericho area was signed in Cairo.¹⁸² This agreement provided for the partial withdrawal of the Israeli administration and troops in the Gaza Strip and Jericho, and transferred most of the local control to the PA.¹⁸³ Israel and the PLO also entered the Agreement on the Preparatory Powers and Responsibilities

177. See *id.* at 565 (agreeing to use "internationally-accepted norms and principles of human rights and rule of law.")

178. See *id.* at 566 (undertaking to have mutual understanding and tolerance).

179. See Oslo I, *supra* note 20, at 1528 (finding state status to be difficult issue and, therefore, to be negotiated in final status negotiations); see also Jordaan, *supra* note 4, at 590 (emphasizing that result of territories lacking capacity to enter into relations with other states is found under Restatement (Third) of Foreign Law of United States); Shoham, *supra* note 16, at 272 (explaining that general status of territories remains same during Interim Period, even though partial authority is granted to Palestinians). Some commentators have argued that Oslo II demonstrates Israel's unwillingness to diminish its control over Palestine. Jordaan, *supra*.

180. See Oslo II, *supra* note 20, at 561 (including specific economic agreements, agreements with donor countries in interest of regional development plans or aiding PA, as well as cultural, scientific, and educational agreements).

181. See Dajani, *supra* note 24, at 68 (finding that if PA were allowed to participate in international politics, then other countries might treat PA as independent state, thereby weakening Israel's position in final settlement negotiations).

182. Agreement on the Gaza Strip and the Jericho Area, May 4, 1994, Isr.-P.L.O., 33 I.L.M. 622 (signed in Cairo, Egypt) [hereinafter Cairo Agreement].

183. *Id.*

("Erez Agreement").¹⁸⁴ This agreement allowed for the limited transfer of authority to Palestine to parts of the West Bank outside Jericho area.¹⁸⁵ The Erez Agreement specifies that the PA will have no power over Jerusalem, settlements, military locations, or Israelis.¹⁸⁶

In October 1994, Israel and Jordan signed a peace treaty.¹⁸⁷ In the peace treaty, Israel and Jordan recognize each other's territory, and, once the treaty became effective, agreed to keep to their own side of the international border.¹⁸⁸ The two parties also agreed to deal with the refugee and displaced persons issue on a bilateral level.¹⁸⁹ The Hebron Protocol¹⁹⁰ was signed in May 1997, which intended to wrap up loose ends in Oslo II as well as to clear the table to begin the permanent status talks.¹⁹¹ The Hebron Protocol set up a Temporary International Presence in Hebron for a three month period in order to create a feeling of security for the Palestinians living in Hebron.¹⁹² Finally, the Wye River Memorandum¹⁹³ was signed in order to help both parties continue to fulfill their obligations under previous treaties and to move the peace process forward.¹⁹⁴ According to the Wye River Memorandum, both sides affirm their fight against terror-

184. Agreement on the Preparatory Powers and Responsibilities, August 29, 1994, *Isr.-P.L.O.*, 34 *I.L.M.* 455 (signed at Erez, Israel) [hereinafter Erez Agreement].

185. *See id.* art. II, at 458 ("Israel shall transfer and Palestinian Authority shall assume powers and responsibilities from the Israeli military government and its Civil Administration in the West Bank in the following spheres: education and culture, health, social welfare, tourism, direct taxation . . .").

186. *See id.* art. III, at 458 (excluding those items Oslo I postponed until final settlement negotiations).

187. Jordan Peace Treaty, *supra* note 82.

188. *See id.* art. III, at 47 (noting, however, that boundary set out is permanent "without prejudice to the status of any territories that came under Israeli military government control in 1967").

189. *See id.* art. VIII, at 49 ("Recognizing that the above human problems [i.e. refugee and displaced persons] caused by the conflict in the Middle East cannot be fully resolved on the bilateral level, the Parties will seek to resolve them in appropriate forums, in accordance with international law . . .").

190. Agreement on the Temporary International Presence in the City of Hebron ("TIPH") and Memorandum of Understanding between Denmark, Italy, Norway, Sweden, Switzerland and Turkey on the Establishment of the TIPH, January 1997, *Isr.-P.L.O.*, 36 *I.L.M.* 547 (signed at Jerusalem) [hereinafter Hebron Protocol].

191. *See* Weiner, *supra* note 91, at 425 (noting that Israeli Cabinet voted 11-7 to endorse Hebron Protocol, which was quite narrow margin).

192. *See* Hebron Protocol, *supra* note 190, at 549 (including "up to 180 members from Denmark, Italy, Norway, Sweden, Switzerland, and Turkey").

193. The Wye River Memorandum, October 23, 1998, *Isr.-P.L.O.* 37 *I.L.M.* 1251.

194. *See id.* at 1251 (claiming that agreement was signed so that "the Israeli and

ism.¹⁹⁵ This agreement restates that May 4, 1999 is the deadline for the completion of the permanent status negotiations and reiterates the goal of all of the accords: peace in the Middle East.¹⁹⁶

II. FACTORS AFFECTING COMPLIANCE WITH OSLO I AND OSLO II: COMPETING VIEWS

Scholars note that in order for the peace process to continue moving forward, the Oslo Accords must be deemed enforceable by the international community and recognized as internationally valid.¹⁹⁷ Also, the Oslo Accords have been violated by both sides.¹⁹⁸ It seems clear from both parties that until the violations of the Oslo Accords stop, especially with regard to terrorism, Israel and Palestine will not come close to peace.¹⁹⁹ Intentionally, the parties left what they deemed the hardest issues for last.²⁰⁰

A. Enforceability of the Oslo Accords

The Vienna Convention on the Law of Treaties²⁰¹ ("Vienna Convention") proclaimed that treaties are enforceable only if

Palestinian sides can more effectively carry out their reciprocal responsibilities, including those relating to further redeployments and security respectively.")

195. See *id.* at 1252 ("Both sides recognize that it is in their vital interests to combat terrorism and fight violence . . .").

196. See *id.* at 1255 (noting that United States offered to facilitate permanent status negotiations).

197. Louis Rene Beres, *Why the Oslo Accords Should be Abrogated By Israel*, 12 AM. U. J. INT'L L. & POL'Y. 267 (1997); Quigley, *supra* note 50; See Jordaan, *supra* note 4, at 591 (noting if Oslo Accords are not believed to be enforceable, then either party could renege at any time and claim they were never under obligation).

198. See, e.g., An Oslo Scorecard, Middle East Digest, (visited Feb. 1, 1999) <<http://www.cdn-friends-icej.ca/medigest/sept98/scorecard.html>> (on file with the *Fordham International Law Journal*) (including Israel not withdrawing from certain territories on time and Palestinians working with Hamas).

199. See *Netanyahu: Peace Process in 'Virtual Collapse'*, THE JERUSALEM POST, Mar. 31, 1997, (visited Mar. 18, 1999) <<http://www.jpost.com/com/Archive/31.Mar.1997/News/Article-0.html>> (on file with the *Fordham International Law Journal*) (stating that Arafat's support of terrorism is significantly stalling peace process); see also *Arafat's Dilemma*, ECONOMIST (UK), Mar. 2, 1996, at 40 (saying that Israel must stop terrorism against Hamas).

200. See Oslo I, *supra* note 20, at 1528 (including status of territories, Jerusalem, and refugees and displaced persons).

201. Vienna Convention on the Law of Treaties, May 23, 1969, art. 1. 1155 U.N.T.S. 331, 333 (entered into force Jan. 27, 1980) [hereinafter Vienna Convention].

they are codified between states.²⁰² By the terms of the Oslo Accords, Israel did not confer state status on Palestine,²⁰³ leaving open the question of whether the Oslo Accords are binding.²⁰⁴ Some scholars state that since Palestinians fear they may have not entered into a binding agreement, they have heightened feelings of distrust, insecurity, and believe that they are at Israel's mercy, with minimal autonomy.²⁰⁵ Israel negotiated, however, with the PLO on behalf of all Palestinians in Oslo I and Oslo II, and not just with the Palestinians living in the occupied territories.²⁰⁶

Aside from the issue of Palestine not being a state, the PLO is considered by many scholars to be a terrorist organization,²⁰⁷ and therefore these scholars believe that the PLO should not be permitted to negotiate with Israel.²⁰⁸ In order to ensure the de-

202. *Id.*; see also Jordaan, *supra* note 4, at 590 (assuming, therefore, that under Vienna Convention, Oslo II is not fully enforceable by Palestine); see also Beres, *supra* note 197, at 271 (objecting that PLO, which is non-state, is held to same standard of accountability as Israel under international law); see Jordaan, *supra* note 4, at 590 (noting that Israel and Palestine do not have equal recognition by international legal standards).

203. Oslo I, *supra* note 20; Oslo II, *supra* note 20; Dajani, *supra* note 24, at 79. ("Although the PLO and the PA each fulfill aspects of the objective criteria for statehood at least as well as some recognized States, the two bodies do not, together, form a unit independent and unified enough to constitute a state.").

204. See Beres, *supra* note 197, at 271 (stating two parties should not be held to same standards of accountability because of their unequal obligations). In response, another scholar states that since both entities are "subjects of international law" and both intend to be bound, Oslo I is a binding agreement; see also Quigley, *supra* note 50, at 288 (responding to Beres).

205. See Jordaan, *supra* note 4, at 591 (claiming that Israel's delays and threats to change Oslo II have lead investors to be wary, which frustrates Palestinian people and their cause). Scholars also claim that it is essential for Israel to guarantee that any contract entered into between foreign investors and Israel will be honored by Israel. *Id.* at 594.

206. See Dajani, *supra* note 24, at 69 (noting that Oslo Accords are not unilateral enactments by State of Israel, but instead are international agreements).

207. Louis Rene Beres, *Israel After Fifty: The Oslo Agreements, International Law, and National Survival*, 14 CONN. J. INT'L 27 (1999) (stating that PLO is known terrorist organization); see also RUBIN, *supra* note 34, at 150 (according to 1986 poll of West Bank Palestinians, who are most moderate segment of Palestinians, around "88 percent justified seizing an Israeli bus and murdering a teenaged passenger; about 21 percent endorsed placing bombs on civilian airliners (60 percent if the target was an El Al plane), and nearly 37 percent backed the machine-gunning of travelers in the Vienna and Rome airports.").

208. See Beres, *supra* note 197, at 271 (specifically objecting to clause releasing PLO members); accord Inafuku, *supra* note 75, at 367 (stating that despite fact that terrorism attacks all states and, therefore, is universal problem, still believe that peace

feat of terrorism, some scholars maintain that an agreement is needed whereby all states agree to either extradite or prosecute terrorists.²⁰⁹ One expert states that it is a violation of Principle I of the Nuremberg Principles to form any agreements with a terrorist organization calling for the release of terrorists.²¹⁰ It must be noted, however, that the United States and the Russian Federation witnessed Oslo I²¹¹ and the United States, the Russian Federation, Egypt, Jordan, Norway, and the European Union all witnessed Oslo II.²¹²

B. Violations of the Oslo Accords

There have been many violations of the Oslo Accords by both the Israelis and the Palestinians.²¹³ The Palestinian Charter, which calls for *Jihad*²¹⁴ and thereby the destruction of the Jews, was to be amended.²¹⁵ Also, article XXII of Oslo II calls for abstention of incitement, including use of propaganda,²¹⁶ yet

process should move forward). *But see* Weiner, *supra* note 91, at 403 ("In the name of the Oslo peace process, Yasser Arafat and his PLO cronies were given a blanket amnesty for decades of terrorism and thousands of murders.").

209. *See* Inafuku, *supra* note 75, at 367 (quoting Ambassador Robbie Sabel finding that terrorism is "phenomenon that requires regional cooperation . . . [o]ur aim as lawyers must be to provide the legal framework whereby such individuals have no safe haven"); *see also*, Beres, *supra* note 197 (stating that no government has right to lawfully pardon or grant immunity to terrorists who have violated international law).

210. Beres, *supra* note 197, at 269; *see* Steven Fogelson, *The Nuremberg Legacy: An Unfulfilled Promise*, 63 S. CAL. L. REC. 833, 833 (1990) (stating that Nuremberg represents first real attempt to merge international law with fundamental moral principles and "gave notice to the nations of the world that, henceforth, claims of absolute sovereignty must yield to the world community's claim on peace."); *see also* Louis Rene Beres, *After the "Peace Process": Israel, Palestine, and Regional Nuclear War*, 15 DICK. J. INT'L L. 301, 301 (1997) (stating opponents of Oslo Accords also believe that creation of Palestinian State from territories is expected to reduce tension in Middle East, but more likely outcome is encouragement of war and terrorism).

211. Oslo I, *supra* note 20, at 1544.

212. Oslo II, *supra* note 20, at 568.

213. *See e.g.*, Oslo Scorecard, *supra* note 198, (giving "scorecard of both the Palestinian and Israeli violations").

214. *See* WEBSTER'S NEW COLLEGIATE DICTIONARY 617 (1st ed. 1979) (defining *Jihad* as "a holy war waged on the behalf of Islam as a religious duty").

215. *See* Louis Rene Beres, *The Oslo Agreements in International Law, Natural Law, and World Politics*, 14 ARIZ. J. INT'L & COMP. L. 715, 734 (1997) (quoting Palestinian Charter as saying ". . . [t]here is no solution to the Palestinian problem except by Jihad . . . I will assault and kill, assault and kill, assault and kill."); *see also* Oslo II, *supra* note 20, at 569 (providing for making necessary changes to Palestinian Charter).

216. *See* Oslo II, *supra* note 20, art. XXII, at 566 (providing "Israel and the Council shall seek to foster mutual understanding and tolerance and . . . shall take legal meas-

both sides feel that the other is guilty of using propaganda to incite their populace.²¹⁷ Terrorism, however, seems to be the violation that is stalling the peace process the most.²¹⁸ Upon close analysis, it appears that the Oslo Accords have been implemented in some instances, while stalling in others.²¹⁹

1. Palestinian Violations

The PLO's charter rejects a peaceful solution to the situation, and calls for the destruction of Israel.²²⁰ An amendment to the Palestinian Charter was one of the preconditions for Israel recognizing the PLO.²²¹ On September 9, 1993, Yasser Arafat wrote a letter to Prime Minister Yitzak Rabin affirming that the clauses calling for the destruction of the Jews no longer exist, but the Council, at that time, still needed to vote on the change to make it official.²²²

Scholars note that Arafat's reluctance to challenge the opposition to changing the charter can be interpreted as his fear of a Palestinian civil war.²²³ Many radical Palestinians prefer a holy

ures to prevent such incitement by any organizations, groups, or individuals within their jurisdiction.").

217. See Israeli Implementation of Obligations Contained in the Israeli-Palestinian Agreements (visited Jan. 30, 1999) <<http://www.pmo.gov.il/english/policy/pp-10.html>> (on file with the *Fordham International Law Journal*) (stating Palestinian side distributed documents listing supposed Israeli violations of Oslo Accords); see also Oslo Scorecard, *supra* note 198 (explaining Palestinian objection to Israel's use of biblical names for West Bank and Gaza Strip).

218. See, e.g., Chronology of Bombing Attacks Following September 1993 Accord (visited Feb. 16, 1999) <http://www3.nando.net/newsroom/ntn/top/022596/top-story_12128_S8.html> (on file with the *Fordham International Law Journal*) (listing attacks of Palestinian militants in Israel post-Oslo Accords).

219. See Oslo Scorecard, *supra* note 198 (stating Israel left West Bank, but later than called for in agreement); see also Letter Transmitting the National Council's Resolution to Amend the Palestinian National Charter Fulfilling the PLO Obligations, 36 I.L.M. 771 (1997) (amending Charter, but three years late).

220. See Molkner, *supra* note 136, at 1424 (demonstrating Palestinian leaders' conflicting political pressure: jihad or peace).

221. See Oslo II, *supra* note 20, at 568 (undertaking to change Charter)

222. See Israel-PLO Recognition (visited March 10, 1999) <<http://www.mfa.gov>> (on file with the *Fordham International Law Journal*) ("those articles of the Palestinian Covenant which deny Israel's right to exist . . . are now inoperative and no longer valid. Consequently, the PLO undertakes to submit to the Palestinian National Charter for formal approval the necessary changes in regard to the Palestinian Covenant."). In a subsequent letter dated the same day, Rabin wrote that due to the PLO commitments of Arafat's letter, Israel would recognize the PLO as the representatives of the Palestinian people. *Id.*

223. See James Bruce, *The PLO, Israel and Security-Part 2: The Peace Process Under*

war to regain territory rather than peace.²²⁴ As long as the Charter remained unchanged, commentators stated that the security measures taken by the Israeli government were justified.²²⁵

In April 1996, the PLO and the Council decided to amend the Charter.²²⁶ The Israeli government was not satisfied with the amendments.²²⁷ In December 1998, the Central Council of the PLO, who are the core members of the Council, ratified the amendments to the PLO Charter.²²⁸ A week later, all of the present Council members accepted the content of Arafat's letter to U.S. President William Clinton.²²⁹ The letter detailed twenty-six articles that had been renounced.²³⁰ Numerous members of the Palestinian Council boycotted the meeting though, leading commentators to believe they did not want to move forward

Attack, 8 JANE'S INTELLIGENCE REV. 220 (1996) (claiming that until Arafat can prove that "Palestinians are masters of their own destiny" there is strong chance of opposition from within which makes him vulnerable to Israeli pressure on security).

224. Jordaan, *supra* note 4, at 565. Shoham, *supra* note 16, at 246. This is not to say that there are no Israeli radicals who are against the peace process. Shoham, *supra*. In Israel there is an extreme right that wants to annex the territories, an extreme left that wants an immediate state of Palestine, and the majority of the population who realize that control of the territories is currently necessary. *Id.* See Dallal, *supra* note 88, at 44 (linking assassination to outcry of Jewish settlers in response to Oslo I and Oslo II). Also, a Jewish extremist assassinated Rabin. Dallal, *supra*.

225. See Jordaan, *supra* note 4, at 565 (finding that PA is actually doing Palestinians disservice by refusing to amend Charter).

226. See Letter Transmitting the National Council's Resolution, *supra* note 219, at 772 ("[T]he Palestinian National Charter is hereby amended by cancelling the provisions that are contrary to the letters exchanged between the PLO and the government of Israel on 9/10 Sept. 1993.")

227. See Morton A. Klein, *PLO's Vote Didn't Change the Covenant*, JEWISH POST OF NEW YORK (visited Feb. 1, 1999) <<http://www.jewishpost.com/jp0205/jpn0205a.htm>> (on file with the *Fordham International Law Journal*) (stating that it "used future tense and was unspecific").

228. See Joel Greenberg, *Council Backs Revoking Call To Destroy Israel*, THE PATRIOT LEDGER, Dec. 11, 1998, at 5 (reporting that by this action, PLO Central Council was "setting the stage for a broader meeting with President Clinton" to affirm that articles calling for Israel's destruction have been amended). This action was done in preparation for President Clinton's visit to the region in order to prove that the Charter had indeed been amended in accord with the Wye River Memorandum. *Id.*

229. See *Palestine/Charter-3: No Count Taken*, DOW JONES NEWS SERVICE, Dec. 14, 1998 (noting Israel said in response they would not pull back troops that week as required under Wye, but instead would wait for Arafat to publicly withdraw from plans to declare independent Palestinian state in May of 1999 and would wait for them to crush the riots in the West Bank).

230. See Barbara Demick, *Many Palestinians Unwilling To Quit Struggle with Israel*, SEATTLE TIMES, Dec. 14, 1998, at A16 (explaining there are only 33 articles total in charter).

peacefully with Israel.²³¹

Some scholars claim that the use of hostile propaganda has not ended, and thus constitutes a violation of Oslo II.²³² Commentators further posit that Palestinians use their children in the propaganda war against Israel.²³³ Also, Israel is not included on the map of the Middle East on the Palestine web site.²³⁴ This maneuver conflicts with Palestine's stated goal to recognize Israel's statehood, as part of the compliance measures detailed in the Oslo Accords.²³⁵ Instead, the entire land of Israel is labeled Palestine.²³⁶ When described in the geography page, Palestine is described as encompassing Israel and the occupied territories.²³⁷

Since the Oslo Accords were signed, terrorism, especially suicide bombers, has increased greatly.²³⁸ Arafat allows Hamas to

231. See *id.* ("unwilling to give up an armed struggle against Israel" and accusing Arafat of padding attendance with his own loyalists).

232. See Oslo II, *supra* note 20, art. XXII (preventing use of propaganda by either side); see also *Senior Palestinian Officials Continue to Incite Against Israel in Violations of Oslo*, Israeli Government Press Office, May 29, 1997, (visited Feb. 16, 1999) <<http://www.isrinfo.demon.co.uk/articl24.htm>> (on file with the *Fordham International Law Journal*) (quoting statement made on PA's Voice of Palestine by cabinet in Nablus on May 16, 1997). Palestinian propaganda has included the following radio announcement:

We did not pay with the dear blood of thousands of martyrs so that the Israeli government could establish settlements on our land in the name of peace. We have sacrificed in the past and we will be ready to sacrifice again in the future for the sake of liberating our land and returning it to the bosom of the Palestinian nation and for the sake of establishing an independent Palestinian state whose capital is Jerusalem.

Id.

233. See Oslo Scorecard, *supra* note 198 (arguing that this is contrary to fostering atmosphere of peace and tolerance as was undertaken at Oslo).

234. Map of Palestine (visited February 16, 1999) <<http://www.palestine-net.com/geography/gifs/palmap.gif>> (on file with the *Fordham International Law Journal*); see generally Beres, *supra* note 197, at 279 ("Indeed, even Israel's 'friends' in the Middle East, i.e., Egypt and Jordan . . . do not include Israel on any of their maps.").

235. See Oslo I, *supra* note 20, at 1527 (recognizing Resolutions 242 and 338 that call for respect and recognition of all of states in Middle East area).

236. *Id.*

237. See *Palestine: Geography* (visited Feb. 16, 1999) <<http://www.palestine-net.com/geography/>> (on file with the *Fordham International Law Journal*) (defining Palestine as "currently under occupation . . . located on the East Coast of the Mediterranean Seas, West of Jordan and to the South of Lebanon. The territory of Palestine covers around 10,435 square miles . . ."). This description is of the land of Israel and the Occupied Territories according to the Accords and other nations' maps. *Id.*

238. See *id.* (explaining that many terrorist attacks consist of Palestinian suicide bombers, such as one who blew up bus in Jerusalem killing four Israelis, one American, and wounding over 100 people on Aug. 21, 1995); see also *Death Toll Since Oslo Is 50%*

set up base in the Gaza Strip, which appears to contradict any efforts to stop terrorism.²³⁹ Also in violation of Oslo II, Arafat invited Hamas to join the PA.²⁴⁰ In March 1997, Netanyahu said that the PA's approval of terrorism against Israel had hurt the peace process to an extent that brought it to a virtual collapse.²⁴¹ Due to the rise of terrorism, Israel conditioned the continuation of the peace process on Arafat's commitment to ending terrorism.²⁴² In March 1996, Arafat condemned terrorist bombings and arrested 150 people linked to Hamas' military wing.²⁴³ It has also been reported that there have been hundreds of suspected terrorists arrested in the Gaza Strip.²⁴⁴

Israel has had trouble trying to transfer Palestinian criminals back into Israel to be tried for their crimes.²⁴⁵ Arafat's reluctance to address terrorism and to transfer requested terrorists to Israel can be linked to his fear of starting a civil war with Hamas²⁴⁶ or other Palestinian terrorist organizations.²⁴⁷ For example in February 1999, a suspected member of Hamas,

Greater than During the Intifada, The Prime Minister's Office, (visited Jan. 30, 1999) <<http://www.pmo.gov.il/english/policy/oslo5.html>> (on file with the *Fordham International Law Journal*) (claiming that total of 279 men women and children have been killed in 92 attacks by Palestinian terrorists since Oslo Accords).

239. See Beres, *supra* note 197, at 273 (advocating abrogation of accords since conditions have changed and Arafat is not living up to expectation).

240. *Arafat Invitation to Hamas to Join PA Cabinet Without Renouncing Terrorism Violates Accords* (visited Dec. 26, 1998) <<http://www.pmo.gov.il/english/policy/violations-140698.html>> (on file with the *Fordham International Law Journal*); see also Oslo II, *supra* note 20, at 563 (whereby both sides agree to take all necessary measures to prevent hostile acts).

241. See Netanyahu: *Peace Process in 'Virtual Collapse'*, *supra* note 199 (stating that Netanyahu charged that Palestinian Police encouraged demonstrations occurring earlier in month).

242. See Michael Yudelman, *Inner Cabinet Demands PA Crack Down on Terror* (visited March 18, 1999) <<http://www.jpost.com/com/Archive/24.Mar.1997/News/Article-1.html>> (on file with the *Fordham International Law Journal*) (noting first pullback from West Bank, which was supposed to have started early in March 1997, was neither carried out nor was safe-passage opened between Gaza Strip and West Bank because Arafat did not fulfill his commitments to Israel). Most Israeli government ministers took a moderate stance, and agreed to continue talks with the PA. *Id.*

243. See *Arafat's Dilemma*, *supra* note 199, at 40 (stating Arafat ordered all Palestinians living in Palestine-ruled territory to turn in unlicensed weapons).

244. See *id.* (explaining arrests have caused Palestinian, international, and even Israeli human-rights organizations to protest).

245. See Weiner, *supra* note 91, at 389 (finding that from outset of peace process, PA has refused to enforce or implement provisions requiring criminal terrorists who commit crimes against Israel to be extradited).

246. See RUBIN, *supra* note 34, at 165-66 (noting Hamas is militant terrorist organization and threat to both Israel and Palestinian Authority); see, e.g., Sol Schindler, *This*

who also served in the Palestinian Security Force, was sentenced to death by the PA for killing a Palestinian police officer.²⁴⁸ The passing down of this sentence led to riots in the Gaza Strip, where Palestinians threw stones at the Palestinian police who retaliated with their guns and clubs, as well as tear gas.²⁴⁹

2. Israeli Violations

Alternatively, the PA claims that Israel also violated the Oslo Accords by utilizing propaganda techniques.²⁵⁰ Scholars explain that Palestine objects to Israel's use of the terms Judea and Samara even though both sides make use of the term West Bank in the Oslo Accords.²⁵¹ Also, talks have stalled over differences between the parties about security, and Israel has not therefore reached an agreement about safe passage between the West Bank and Gaza Strip or an airport in the Gaza Strip.²⁵²

In September 1996, protests over Israeli construction of a tunnel in Jerusalem turned violent and Israeli soldiers killed two Palestinians.²⁵³ Several months before, a Hamas bombmaker was killed by an Israeli booby trap.²⁵⁴ Hamas responded to the

is Not the Time to Re-establish Relations with Iran, WASH. TIMES, Feb. 21, 1999, at B2 (claiming that Iran subsidizes Hamas).

247. See Fishman, *supra* note 4, at 466 (citing Yoram Dorstein, President of Tel Aviv University, who says that in order for peace process to proceed, Arafat must face terrorism head on instead of trying to avoid it). This criticism has also been levied against Arafat concerning his reluctance to change the Palestinian Charter. *Id.*; see Jordaan, *supra* note 4, at 565 (discussing changing of Palestinian Charter).

248. See, e.g., Joel Greenberg, *2 Teen-Agers Killed at Protest of Gaza Verdict*, N.Y. TIMES, Mar. 11, 1999, at A4 (explaining that two other militants were incarcerated).

249. See *Bloody Riots Continue in Gaza over Militant's Death Sentence: Senate Opposes Unilateral Palestinian State as Hamas Warns Arafat Against an Execution*, STAR-LEDGER, Mar. 12, 1999, at 9 (relaying that riots injured 85 people in fist two days, including 70 policemen and 15 protesters). The PA claimed that Israeli soldiers caused one of the deaths, but Israel denied any involvement. *Id.*

250. See Israeli Implementation of Obligations Contained in the Israeli-Palestinian Agreements, *supra* note 217 (defending these accusations as "part of a concerted attempt to try to bring international pressure to bear on one side of the current negotiations and to avoid dealing with the practical resolution of the outstanding issues . . . of the current peace process.").

251. See *id.* (responding to document "Israeli violations of the Palestinian-Israeli Agreements" yet noting that Agreement does not prohibit use of these terms).

252. Oslo Scorecard, *supra* note 198.

253. See *Protests over Jerusalem Tunnel Rage Across Palestinian Areas*, AGENCE FRANCE-PRESSE SEPT. 25, 1996, (noting over 300 people were wounded as well).

254. See *Arafat's Dilemma*, *supra* note 199 (stating that bombmaker, Yehya Ayyash, was Israel's main target).

Israeli booby trap by claiming that they would refuse to stop the bloodshed until Israel stops their terrorism and releases Hamas prisoners.²⁵⁵ Israelis fear that terrorists who attack within Israel escape punishment by fleeing to the territories governed by the PA.²⁵⁶ The lists of the violations continue with many of the agreements not being upheld.²⁵⁷ One of the reasons experts posit for Palestinians violating the Oslo Accords more often than Israelis is the notion that Israel is getting the better end of the deal.²⁵⁸

C. Operability of the Oslo Accords

The issues that Israel and Palestine thought would be the most difficult to resolve were put off until the permanent status negotiations.²⁵⁹ The issues that were easier to agree upon were made part of either Oslo I or Oslo II.²⁶⁰ These more difficult issues include the debate over the status of the territories, the Palestinian refugee/displaced person issue, and the West Bank, Gaza Strip, and East Jerusalem.²⁶¹ The Palestinian leaders and officials are in the position of not knowing what will be the final

255. See *id.* (exclaiming that when Israel "stops terrorism against Hamas and releases our prisoners . . . we will reach an historic position . . . not to shed blood in Palestine."). Ghazi Hamad, a senior Hamas official, said "[t]he majority of Hamas members are now ready to give up . . . temporarily . . . the armed struggle against Israel and turn to political activity." *Id.*

256. See Weiner, *supra* note 91, at 389 (noting PA has refused from outset to transfer people suspected of terrorism). According to both the Cairo Agreement and Oslo II, Israel has exclusive jurisdiction when terrorists attack Israel. Oslo II, *supra* note 20 at 637; Cairo Agreement, *supra* note 182, at 693. No person however, is allowed to be transferred if the offense could carry a capital punishment sentence, unless the requesting side asserts that capital punishment will be waived in the case. Oslo II, *supra*.

257. See Beres, *supra* note 197, at 515-16 (including PA having too many police, failure to extradite or punish terrorists, detainment of Israeli citizens, and failure to confiscate arms and disarm militia).

258. See Quigley, *supra* note 50, at 297 (stating that even if Israel were to concede maximum that Palestinians want, including all of Jerusalem, status quo prior to 1948 still would not be restored). Quigley noted that "[f]or Israel, the Oslo agreements do not represent a bad bargain." *Id.* This theory is not fully accurate considering that Palestine was never an independent state. *Id.*

259. Oslo I, *supra* note 20, at 1528; Dajani, *supra* note 24, at 68. As pointed out earlier, the language of the agreements, as well as leaving the more difficult issues open until the end, has caused scholars to wonder whether the two parties have agreed from what or to what they are making a transition. *Id.* See Inafuku, *supra* note 75, at 365 (printing Ambassador Elaraby's speech that says "there is not enough clarity about what course should be attained in the following phase").

260. Oslo I, *supra* note 20; Oslo II, *supra* note 20.

261. Oslo I, *supra* note 20, at 1528.

status of the territories.²⁶² Also the debate about how many people can be considered either a displaced person or a refugee and who will be allowed to return is identified as an issue having a large role in the permanent settlement negotiations.²⁶³ Many scholars consider Israel as belligerent occupiers of the West Bank and Gaza Strip, which could effect the permanent status negotiations as well.²⁶⁴ One of the most potentially controversial debates will occur over East Jerusalem, due to the many holy sites located there.²⁶⁵ Finally, the question of an independent Palestinian State and where it will be located, needs to be addressed in the permanent status negotiations.²⁶⁶

1. Transfer of Authority

In this state of uncertainty, the Palestinians are responsible for the administration of the territories under their jurisdiction.²⁶⁷ Further, there is the additional problem that no truly authoritative sovereign exists to whom the territories can be returned.²⁶⁸ When Israel acquired the territories during the Six-Day War, it immediately tried to give them back to the nations from whom it had won from, in return for peace.²⁶⁹ When this

262. See Molkner, *supra* note 136, at 1428 (giving examples of independent state or one which is confederation with Jordan).

263. Oslo I, *supra* note 20, at 1528; Weiner, *supra* note 2, at 7-8. "Conflicts over the precise definition of "refugee" and "displaced person," and the extent to which these Palestinians or their descendants and relatives by marriage have retained or acquired their refugee or displaced person status are crucial to the negotiation on the Palestinian return issue." *Id.*

264. See Quigley, *supra* note 50, at 289-90 (claiming that Israel has not claimed sovereignty in West Bank); see also John Quigley, *Living in Legal Limbo: Israel's Settlers in Occupied Palestinian Territory*, 10 PACE INT'L L. REV. 1, 11 (1998) (stating that West Bank and Gaza Strip fall under belligerent occupation which occurs whenever foreign army occupies territory, regardless of whether they were acting aggressively or defensively).

265. See Inafuku, *supra* note 75, at 369 (discussing that all three major religions have interest in Jerusalem, but it has had Jewish majority for over 100 years).

266. See Dallal, *supra* note 88, at 50 (finding creation of independent Palestinian State inevitable).

267. See Oslo II, *supra* note 20, at 558-59 (discussing that PA will be in charge of government in territories).

268. See Beres, *supra* note 210, at 326-27 ("As a legal entity, Palestine ceased to exist in 1948, when Great Britain relinquished its League of Nations mandate. Prior to that decisive moment in history, which was followed by Israel's declaration of independence on May 14, 1948, Palestine had never existed as an independent sovereign state.").

269. See Shoham, *supra* note 16, at 249 (noting that accepting land would have meant negotiating with Israel, and Arab nations refused to negotiate with Israel).

offer was rejected by the Arab Nations, Israel adopted a mixed approach to governing the territories.²⁷⁰ As more time passed, however, Israeli authorities were forced to delve into additional civil spheres in the territories.²⁷¹

One scholar has suggested that since statehood will not be conferred on the territories until the permanent settlement negotiations conclude, pending these negotiations the territories are, at least to some extent, under Israeli control.²⁷² Therefore, these early negotiations legalize the settlements.²⁷³ Either way, Resolution 242, which Israel and the PA agreed to accept in the Declaration of Principles,²⁷⁴ calls for an end of the occupation of these territories.²⁷⁵

2. Refugee and Displaced Person Issue

The Palestinians base their struggle for national independence on the legal foundation of self-determination.²⁷⁶ Commentators note that self-determination only becomes a legal right, however, when it is invoked by groups who are recognized as a people and it is used with regard to a territory that can serve as its own unit.²⁷⁷ Palestinians argue that they meet these criteria since the United Nations has recognized the Palestinians to be a people and declared that they have the rights to self-determination.²⁷⁸

270. See *id.* at 250 (noting that Israel was instructed to abide by Hague Regulations as well as other various international conventions applicable to occupied territory). Shoham also explained that "Israel would not acknowledge *de jure* that the Territories are occupied territory, thereby effectively setting aside the political aspect of the question, but it would govern the Territories *de facto* under the provisions of customary international law applicable to belligerent occupation."

271. See *id.* at 253 (explaining that existing legislature in place in Territory was lacking).

272. See Oslo I, *supra* note 20, at 1529 (leaving difficult issues, such as state status, to final settlement negotiations).

273. See Quigley, *supra* note 265, at 11 (noting that agreements appear to constitute acknowledgement by PLO that Israel is legally maintaining settlements).

274. Oslo I, *supra* note 20, at 1527.

275. Resolution 242, *supra* note 57.

276. See Dajani, *supra* note 24, at 29-30 (arguing that self-determination has been elevated to right since "both the International Covenant on Civil and Political Rights and the Covenant on Economic, Social, and Cultural Rights state that 'all peoples' have a right to self-determination.>").

277. *Id.* at 32-33.

278. See *e.g.*, Resolution 242, *supra* note 57 (referring to concept of self-determination). Though the term self-determination is not used, the Resolution calls for "guaranteeing the territorial inviolability and political independence of every State in the area

One scholar has suggested that in 1922, when Transjordan was established as an independent principality, it was to be a Palestinian Arab state.²⁷⁹ Therefore, whatever legal rights the Palestinians have to self-determination have already been fulfilled.²⁸⁰ Whether Israel has recognized the Palestinian's right to self-determination or not, there is some recognition to the Palestinian's claim to land, as seen through the transfer of power in certain territories to Palestine.²⁸¹

There are different classifications of Palestinians that may affect their right to return to a newly formed Palestinian State.²⁸² Refugees are generally considered to be the people who left or were forced to leave their homes in what is now Israel during the fighting that occurred in 1948.²⁸³ Displaced persons are those who left Israel after the Six-Day War.²⁸⁴

Some commentators contend that due to their direct military action, Israel forced out the Palestinians.²⁸⁵ Jordan, who annexed the West Bank,²⁸⁶ offered Jordanian citizenship to the

... " *Id.* The Resolution never uses the word Palestine or Palestinian. *Id.*; see also Inafuku, *supra* note 75, at 364 (quoting speech of Ambassador Eleraby stating that Palestinians need to exercise all of their "inalienable rights including the right to self-determination.").

279. See JULIUS STONE, *ISRAEL AND PALESTINE* 22-25 (1981) (stating that designation of "Palestine referred historically to the territory on both sides of the Jordan River.").

280. Dajani, *supra* note 24, at 35 n.45.

281. See Lustick, *supra* note 74, at 742 (explaining that Jewish people emphasize inevitable sacrifice of Jewish control and sovereignty over parts of Israel and that Palestinians emphasize right of return and humiliating weakness and dependence that will probably be part of new Palestinian State).

282. See, e.g., Weiner *supra* note 2, at 8 n.7 (separating refugees and displaced persons).

283. See *id.* at 5 (noting that these people pose "thorniest" part of peace process since, when their spouses and offspring are included, there may be millions of individuals). The number of people who actually left in 1948 is strongly debated, ranging from around 604,000 to 900,000. *Id.* at 7.

284. See *id.* (noting there is debate not only on number of displaced persons, but also on number of old displaced persons—those who left their residences for second time—and new displaced persons—those who only left once). Presumably, counting old displaced persons would be unfair since it would count the same person twice. *Id.* The disparity between the numbers of these people, including refugees, has widened over the decades. *Id.*

285. See John Quigley, *Displaced Palestinians and a Right of Return*, 39 HARV. INT'L L.J. 171, 172 (1998) (finding that "analysis of the wartime displacement issue is complicated by the fact that the two parties disagree not only over the law but also over the facts . . .").

286. See Quigley, *supra* note 264, at 20 (noting Jordan renounced claim of West Bank in favor of Palestine).

Palestinians.²⁸⁷ The Israelis, conversely, claim that they neither directly nor indirectly forced the Palestinians to leave.²⁸⁸

Israel also claims that it is probably inequitable to require them, as the country of origin, to bear the entire burden of rehabilitating these refugees when the surrounding Arab Nations would not grant citizenship.²⁸⁹ Despite its fears,²⁹⁰ Israel has let 100,000 displaced persons/refugees back through "family reunification" as of 1997.²⁹¹ Almost one million Palestinians have been granted full Israeli citizenship.²⁹²

3. West Bank and the Gaza Strip

The United States deems Israel as an occupying power in the West Bank and the Gaza Strip, and therefore subject to the Hague Regulations.²⁹³ Israel rejects the idea of the territories as being occupied.²⁹⁴ Some commentators believe that Israel wants to control the lives and movements, as well as the ultimate

287. See RUBIN, *supra* note 34, at 9 (offering that this was done to give alternative loyalty).

288. See Quigley, *supra* note 285, at 172 (explaining that Israel claims that Palestinians left on their own accord).

289. See Quigley, *supra* note 264, at 44 (stating that refugees could have been absorbed into countries to which they fled but were not because those countries favored formation of independent state to absorb refugees instead). It has been posited that a large percentage of Palestinian refugees must be absorbed permanently into either the countries of their current residence, or in the other neighboring countries in the Middle East. *Id.*; see also Inafuku, *supra* note 75, at 370 (quoting Donna E. Arzt as also saying that result could be acceptable to Palestinians so long as they are compensated for their abandoned property and given dual citizenship).

290. See Beres, *supra* note 210, at 302 (noting that areas to which these refugees return act as buffer zone for Israel from surrounding Arab Nations).

291. Shaii Cahana, *The Claim of a "Right to Return" for Palestinians and Its Meaning for Israel* 13 (1993) (pamphlet published by Leonard Davis Institute of International Relations, Hebrew University, Jerusalem) (Hebrew original).

292. See Louis Rene Beres, *Response to John Quigley*, 12 AM. U. J. INT'L L. & POL'Y 509, 510 (1997) (stating that this statistic is current through 1997).

293. RICHARD SCHIFTER, U.S. DEP'T ST. BULL., DEPARTMENT OF STATE: COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1985 76 (1986) [hereinafter 1985 Report]; Shoham, *supra* note 16.

294. See Beres, *supra* note 210, at 330 (noting that their right to reject idea of territories as occupied stems from right to security).

Because transformation of these lands into an Arab state of Palestine would threaten the very existence of the Third Temple, Israel is under no obligation to transfer the West Bank and Gaza to another sovereign authority especially as the extant Arab states, together with Iran, persistently call for 'elimination' or 'liquidation' of the 'Zionist entity'.

Id. at 330.

destiny, of the Palestinians, even though it may have relinquished some control of the Gaza Strip and the West Bank.²⁹⁵

Some critics note that Israel has had problems trying to maintain the territories and therefore Israel is not necessarily in a weaker position for relinquishing control of the territories.²⁹⁶ Others state that it may be more practical for Israel to relinquish sovereignty gradually and in proportion to Palestinian compliance with Oslo II.²⁹⁷ Shortly after being elected prime minister, Binyamin Netanyahu said that he would seek reciprocity, and a fulfillment of all of the commitments.²⁹⁸

The implementation of Oslo II began with the Gaza Agreement being applied within weeks of its signing.²⁹⁹ This gave the Council control of most of the Gaza Strip.³⁰⁰ Also, due to the redeployment set out in Oslo II, approximately ninety-five percent of Palestinian residents of the West Bank are under the jurisdiction of the Council.³⁰¹

One of the debates is whether Israeli settlements can be built in the occupied territories.³⁰² Under the Geneva Civilians Convention,³⁰³ occupying powers cannot transfer their own civilians onto the land that they are occupying.³⁰⁴ Since the 1993

295. See Dallal, *supra* note 88, at 53 (claiming that this feeling perpetuates tension between Israelis and Palestinians).

296. See Quigley, *supra* note 50, at 296 (finding that giving up control of territories "does not take Israel from an obviously stronger to an obviously weaker position" and positing that peace with Palestinians is only way that Israel can maintain decent relations in long term, not only with its neighbors, but with world at large).

297. *But see* Jordaan, *supra* note 4, at 559 (arguing that dispute settlement is also viable alternative to helping peace process).

298. See Weiner, *supra* note 91, at 432 n.78 (quoting interview with David Makovsky in JERUSALEM POST, June 28, 1996, at 7).

299. See Cairo Agreement, *supra* note 182.

300. See Shoham, *supra* note 16, at 270 (effectively leaving Israel in control of only minute portions of area, including 100-meter wide security strip along Egyptian border and several Israeli settlements).

301. *Id.* However, Israel's Area C, where Israel retains control, comprises 70% of the territory of the West Bank. *Id.* at 273 n.48.

302. See Quigley, *supra* note 264, at 12 (stating that international community believes Israel to be in violation of international standards for its settlement construction activity).

303. Convention Relative to the Treatment of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 [hereinafter Geneva Civilians Convention].

304. *Id.*; See Quigley, *supra* note 264, at 12 (stating that occupying power must leave land to population that it finds there). The United Nations is expected to pass a resolution calling for another Geneva Convention on "illegal" activities by Israel in the

negotiations and the signing of Oslo I, there has been settlement construction in the territories.³⁰⁵ Disputes over the building of new settlements have stalled the peace process.³⁰⁶

Certain factors make it difficult to imagine the West Bank and Gaza Strip as forming the state of Palestine in the final settlement negotiations.³⁰⁷ After the 1948 war and prior to Palestinian self-rule, the West Bank and the Gaza Strip each functioned as distinct civil administrations.³⁰⁸ The two areas are not in close proximity to one another³⁰⁹ and it is often difficult for Palestinians, including public officials, to get permission to cross through Israel to get to the other territory.³¹⁰ Finally, the legal system of the Gaza Strip derives from English common law whereas the legal system of the West Bank derives from civil law.³¹¹

One contention is that under the laws of belligerent occupation, Israel is permitted to protect the security of its temporary hold on the land and the Israeli settlements serve this purpose.³¹² In line with this reasoning, the city of Hebron, in central Israel, has also caused much controversy.³¹³ Palestinians

territories that Palestine will occupy. *Id.*; see also Marilyn Henry, *UN Votes on Geneva Convention over settlements*, JERUSALEM POST, Feb. 10, 1999, at 2. (quoting Switzerland as saying that "resolution may send an important political message, but was not a legally binding decision.")

305. See Quigley, *supra* note 264, at 7 (stating that since 1993 "settlement-housing construction has focused on sectors of West Bank adjacent to East Jerusalem and in East Jerusalem itself.") The goal of this construction seems to be to preempt any future effort to challenge Israel sovereignty in East Jerusalem. *Id.*

306. See David Makovsky & Michal Yudelman, *PM: Accelerate Final Status Pledges Palestinian Won't Lose Pullbacks if Talks Fail*, JERUSALEM POST, March 20, 1997, at 1 (stating that talks were supposed to resume between parties around March 20, 1997, but did not "due to Palestinian anger over Har-Homa" in southwestern Jerusalem).

307. See Molkner, *supra* note 136, at 1428 (discussing court systems and difficulties they cause).

308. See *id.* at 1428. (noting that court systems remain separate and distinct with each governed by its own rules and procedures).

309. Relatively speaking, since the West Bank and Gaza Strip are on opposite sides of Israel they can be deemed far apart, but it must be noted that Israel in its entirety is about the size of Vermont.

310. Molkner, *supra* note 136, at 1428; see Oslo I, *supra* note 20, at 1537 (providing for safe passage between Gaza Strip and Jericho).

311. See Molkner, *supra* note 136, at 1429 (making two legal systems incompatible and "internally disharmonious").

312. Quigley, *supra* note 264, at 15 (citing Esther Cohen, *HUMAN RIGHTS IN THE ISRAELI OCCUPIED TERRITORIES 1967-1982* (1985)).

313. See, e.g., Jay Bushinsky & Margot Dudkevitch, *PM: Peace Process Is in Danger*, JERUSALEM POST, July 6, 1997, at 1 (stating that "[t]he peace process is in serious danger

comprise the majority of the population in Hebron.³¹⁴ There are approximately 500 Jews that live in downtown Hebron as well as major religious sites,³¹⁵ and due to concerns for their safety, Hebron was the last city to be turned over to the PA.³¹⁶ Under Oslo II, Hebron was to be split into two sections: one in which Palestine would have partial jurisdiction, and one in which Israel would remain in control.³¹⁷ In 1998, there was a decrease in the number of riots by settlers in Hebron.³¹⁸ Most Arab and Jewish residents agree, however, that the Hebron Protocol³¹⁹ has failed and there is still tension and strife in the region.³²⁰

Reporters note that the Jewish community in Hebron was disappointed in March 1997 when they learned that building permits and expansion plans would not be approved in the near future.³²¹ The debate over who can build where has increased tensions in Hebron.³²² The mayor of Hebron has stated that conditions have improved for the Palestinians living under Palestinian control, but has worsened for those living in the areas

because of ongoing violence in Hebron . . . according to Prime Minister Binyamin Netanyahu.”)

314. Weiner, *supra* note 91, at 377.

315. See Zalmon Shoval, *In Hebron, a Brewing Crisis*, WASH. TIMES, July 10, 1997, at A15 (“The late David Ben-Gurion said after the Six-Day War that Hebron, the cradle of the Jewish faith and nationhood, was just as holy as Jerusalem and that it should be settled by tens of thousands of Jews.”).

316. See Weiner, *supra* note 91, at 377-78 (noting that there were many violent encounters between Jews and Arabs in Hebron post 1967).

317. Oslo II, *supra* note 20, at art. VII (noting there was six month window after agreement was signed for redeployment to occur); see also Dajani, *supra* note 24, at 64 (claiming that Netanyahu has expressed dissatisfaction with this agreement).

318. See Margot Dudkevitch, *PA Violations in Territories Down, but More Serious. Judea and Samaria Police Preparing for Declaration of Statehood*, JERUSALEM POST, Feb. 2, 1999, at 4 (noting that number of riots by settlers in other areas increased by 15% in 1998).

319. See Hebron Protocol, *supra* note 190.

320. See Margot Dudkevitch & Mohammed Najib, *Hebron Agreement One Year Later: Disappointment and Tension on Both Sides*, JERUSALEM POST, Jan. 15, 1998, at 2 (claiming that 54 families living in Hebron’s Jewish Quarter feel that safety has declined and that high gates, to keep stones from hitting their homes, makes it feel like ghetto).

321. See Margot Dudkevitch, *No New Building Permits for Hebron’s Jews*, JERUSALEM POST, Feb. 17, 1997 (visited Mar. 18, 1999) <<http://www.jpost.com/com/Archive/17.Feb.1997/News/Article-1.html>> (on file with the *Fordham International Law Journal*) (stating Israeli Defense Secretary needs to approve all building plans in settlements).

322. See *id.* (stating settlers and Arabs threw eggs and oranges at each other because Arabs built market that Jews thought was on their land). The Jews in Hebron want to expand their settlement and claim that their living quarters are like a ghetto. *Id.*

under Israeli control.³²³ Netanyahu's policy adviser agreed that, disappointingly, the Hebron Protocol has not brought about the desired result of peace in the region.³²⁴

4. East Jerusalem

When discussing Jerusalem,³²⁵ the Palestinian claim to self-determination is an attempt to assert sovereignty over an administrative unit, East Jerusalem, which, prior to Jordan's invasion in 1948, had no independent existence.³²⁶ Israel declared West Jerusalem its capital in 1948 and in 1967 it declared the undivided Jerusalem its capital.³²⁷ Jerusalem has had a Jewish majority for at least the past 100 years.³²⁸ The importance of Jerusalem lies mainly in its holy sites.³²⁹ For Jews there is the Western Wall of the Holy Temple,³³⁰ for Muslims the Dome of the Rock,³³¹ and

323. See Dudkevitch, *supra* note 321 (noting that Shuheida Street, which under Agreement was supposed to be open to Palestinian traffic, still remains closed to Palestinians). Many settlers feel that opening Shuheida Street will bring terrorists to their doorsteps. *Id.*

324. See *id.* ("[I]t did not bring about progress in the peace process, mainly because the Palestinians failed to perceive it as a first step to greater understanding between Israel and the Palestinian people."). Palestinians expected further withdrawals despite their lack of compliance with the Oslo Accords. *Id.*

325. See BEN-ASCHER & LEAF, *supra* note 5, at 172-73 (explaining Jerusalem is divided into New City, which Israel acquired in 1947, and Old City or East Jerusalem, which Israel took from Jordan in 1967).

326. See Charles Bryon Baron, *The International Legal Status of Jerusalem*, 8 *TOURO INT'L L. REV.* 1, 4 (1998) (discussing that Turks were in control of Jerusalem from 1517 to 1917 when British took control of Jerusalem, and that neither viewed it as east and west Jerusalem, but as unified).

327. *Id.* see Dallal, *supra* note 88, at 50 n.58 (quoting BASIC LAW: JERUSALEM, CAPITAL OF ISRAEL IN 34 LAWS OF THE STATE OF ISRAEL 209 (1980)) (noting Israeli Kinnesset in 1980 declared "Jerusalem, complete and united . . . the capital of Israel."). This is a sore issue between the parties since the "Israeli argument essentially amounts to the establishment of a new principle of international law, namely, the acquisition of territory by lawful force, coupled with a more compelling argument based on pure self-determination for the people of Jerusalem, of which the Jews have long compromised the majority." Dallal, *supra*, at 32. It however, easily can be concluded that between 1948 and 1967, Jordan was a belligerent occupier of East Jerusalem. *Id.* at 16, 78 n.58. Soon after the Six-Day War, Israel attempted to annex East Jerusalem with Law and Administration Ordinance No. 11 in 21 Laws of the State of Israel 75 (1967).

328. Accord Inafuku, *supra* note 75, at 369 with Baron, *supra* note 327, at 32 (both concurring on point).

329. COLLINS & LAPIERRE, *supra* note 2.

330. *Id.* at 18 (noting that Jewish bridegroom crushes glass under his foot at his wedding to symbolize grief of destruction of Temple in Jerusalem as well as praying that there will be dancing in streets of Jerusalem). Even the word Zionism stems from Mount Zion in Jerusalem. *Id.* At the end of every Passover seder the words, "Next Year

for Christians, the Church of the Holy Sepulcher.³³²

In September 1996, Arafat proclaimed that Jerusalem would be the capital of Palestine.³³³ Days after the Hebron Protocol was signed, Arafat again declared that Jerusalem would be the capital of Palestine.³³⁴ East Jerusalem is still legally considered by some to be part of the occupied West Bank and illegally annexed by Israel.³³⁵ Along those lines, however, Jordan, as the ousted state, was only a belligerent occupier of the region and there only to safeguard the area, with no right to reversion.³³⁶ Neither Oslo I nor Oslo II allots the PA jurisdiction in Jerusalem, either over the city, or over the Palestinian residents.³³⁷ The Camp David Agreements and the peace treaty between Egypt and Israel do not mention Jerusalem.³³⁸

The building of settlements in Jerusalem has been a source of much contention.³³⁹ As previously mentioned, in September

in Jerusalem" are proclaimed. *Id.* It must be noted, though, that the Western Wall is in Eastern Jerusalem, so if there were no free access to Eastern Jerusalem, as was the case when Jordan was occupying the area from 1948-1967, the Jews would have no access to the Wall. *Id.*; Baron, *supra* note 326, at 35.

331. See COLLINS & LAPIERRE, *supra* note 2, at 33 (stating that for Muslims, Dome of the Rock, Quebbet es Sakhra, also in Jerusalem, houses Mount Moriah of antiquity). The Mount Moriah has a faint impression of the handprint of Gabriel from the night Prophet Mohammed descended from heaven. *Id.*

332. See *id.* at 32 (stating one of most sacred shrines in Christendom, Church of the Holy Sepulcher, which is built over hill top where Jesus Christ was crucified, is just few hundred yards away from other two holy sites).

333. See Beres, *supra* note 197, at 275-76 (noting that Arafat committed violation when he proclaimed that "Palestine is our land and Jerusalem is our capital."). In the same speech, Arafat said that they planned to eliminate the State of Israel and praised the suicide bombers who had murdered women and children, calling them martyrs. *Id.*

334. See Weiner, *supra* note 91, at 398 (offering that anyone who did not like that idea should drink from Dead Sea).

335. See Dajani, *supra* note 24, at 64 (allowing that 5000 Palestinian residents of East Jerusalem were permitted to register to vote in the Council elections).

336. See Baron, *supra* note 327, at 29 (noting that United Nations has left all options concerning Jerusalem open). Neither the U.N. General Assembly nor the Security Council protested when Israel made Western Jerusalem its capital in 1950. *Id.* at 20.

337. Dajani, *supra* note 24, at 64. This is one of the items put off until the permanent status negotiations due to the sensitivity of the issue. Oslo I, *supra* note 20, at 1528.

338. See Baron, *supra* note 327, at 12, 43 n.73 (noting, however, both President Sadat and Prime Minister Begin sent letters to President Carter outlining their thoughts on Jerusalem).

339. See Daoud Kuttab, *Bloody Road to Peace Apartheid-Style Obstacles Stalk the Palestinians*, PHOENIX GAZETTE, Dec. 30, 1996, at B5 ("There is no issue that angers Palestinians these days more than the issue of Jewish settlements in the occupied Palestinian territories.").

1996 Israel opened a new entrance to a tunnel that was next to the Temple Mount.³⁴⁰ Jordan demanded that the tunnel be closed, but Israel's conceit to this request would have meant relinquishing some sovereignty in Jerusalem.³⁴¹

Oslo II does not forbid Israel from building individual homes or even entire neighborhoods in any of the territories.³⁴² The settlement of Har Homa,³⁴³ however, has created much tension between the parties.³⁴⁴ The Palestinians claim that the building of the 6500 apartments at Har Homa violates the Oslo Accords.³⁴⁵ Palestinians protested in the Gaza Strip with members of the PA and members of Hamas marching arm in arm.³⁴⁶ To the Palestinians, the settlements in East Jerusalem are extremely problematic because this area is the land that they are hoping will form their state.³⁴⁷ The United Nations has called a conference to discuss the Israeli settlements in the territories,

340. See *Tunnel Sparked Clashes in Israel*, BALT. SUN, Sept. 30, 1996, at 2A (finding Temple Mount to be holiest place in Jerusalem). All three major religions hold that the faithful will gather at the Temple Mount on Judgement day. *Id.*; see also, Baron, *supra* note 327, at 1 (noting tunnel is actually 400-yard water conduit that passes from Western Wall, under Arab Quarter, and exists on road holy to Christians).

341. Baron, *supra* note 327, at 3. Jordan argues that Israel needed to consult with them according to the Jordanian-Israeli Peace Treaty. *Id.*

342. Oslo II, *supra* note 20; see Weiner, *supra* note 91, at 400 (noting that this contradicts Arafat's claims that Israelis are violating Oslo Accords through settlement).

343. See Brian Hendler, *Peace Now Protesters Arrested at Har Homa*, JERUSALEM POST, Dec. 2, 1998, at 2 (explaining Har Homa is settlement in Jerusalem where home are being built for Jews).

344. See Netanyahu: *Peace Process in 'Virtual Collapse'*, *supra* note 199 (stating that Arab Nations approved resolution to stop steps toward normal relations with Israel, but "Netanyahu said he doubts Arab nations would cut ties to Israel because of continuing street battles between Israeli soldiers and Palestinians demonstrating against Har Homa.") There was also resistance by Peace Now, a Jewish Organization, who held a protest while the government was meeting with the contractor's and potential purchasers in regard to Har Homa. *Id.* Arafat has responded by appealing to Arab foreign ministers to stop any steps in regard to "normalizing relations with Israel." *Id.*; see also Hendler, *supra* note 343, at 2 (noting that police barred protestors from entering site and arrested head of protest).

345. See Hendler, *supra* note 343, at 2 (saying that Palestinians feel that Har Homa is part of larger Israeli scheme to separate Palestinian settlements in East Jerusalem from rest of West Bank).

346. See Netanyahu: *Peace Process in 'Virtual Collapse'*, *supra* note 199 (quoting Hamas spokesman stating that "This is a clear message to Israel that the Palestinian people are united against Israel's policy on settlements and Judaizing Jerusalem.")

347. See Kuttub, *supra* note 339, at B5 ("Every additional Jewish settler and every settlement home built will weigh 10 times its physical size in obstructing even a remotely fair peace agreement based on concept of two states . . . a Palestinian State alongside State of Israel").

including East Jerusalem.³⁴⁸

A last indication of the internal conflict within East Jerusalem is evidenced by the fact that its Arab population is eligible to vote for the Council.³⁴⁹ Palestinian security services operate in East Jerusalem and Palestinian institutions continue their operations.³⁵⁰ The PA, however, is not allowed to set up any type of office, not even a symbolic one, in East Jerusalem.³⁵¹

5. Declaration of a Palestinian State

Arafat pronounced that on May 4, 1999 he will declare Palestine itself independent state.³⁵² Palestine actually declared itself an independent state in 1988.³⁵³ Jordan appeared to accept the Palestinian state, as demonstrated by renouncing its claim to the West Bank.³⁵⁴ Palestinian leadership has asserted that peace and security will only come with an independent Palestinian State.³⁵⁵ Oslo II seems to make the establishment of an in-

348. See *U.N. Assembly Approves Talks on Israel Settlements*, GRAND RAPIDS PRESS, Feb. 10, 1999, at A10 (noting conference itself was voted against by Israel and United States, but passed by landslide (115-2, with five abstentions); see also Quigley, *supra* note 264, at 13, 27. (stating that most of international community views Jewish settlements in territories as blocking the peace process).

349. See Lustick, *supra* note 74, at 755 (claiming that before Rabin died, two high ranking officials were in negotiating idea of Jerusalem as two capitals, that of Israel and that of Palestine).

350. *Id.* (opining that Rabin felt he could expand his political base by "emphasizing Jerusalem as a purely Jewish city").

351. *Id.* (noting that PA is not allowed to have offices inside city limits of Jerusalem). See Kuttub, *supra* note 339, at B5 ("such a move attempts to predetermine the outcome of the negotiations.").

352. See Weiner, *supra* note 91, at 430 (noting that having gained as much as possible from Oslo II, Arafat will likely go forward and declare independent Palestinian State). Arafat has backed off on his statement that he would declare a state on May 5, 1999, and instead suggested that he would negotiate for creation of a state. *Id.*; see also Samar Assad, *Arafat Moderates Position on Palestinian Statehood*, ASSOCIATED PRESS, May 20, 1998 (visited Dec. 26, 1998) <<http://foxmarketwire.com/news/052098/mideast.sml>> (on file with the *Fordham International Law Journal*) (noting that Netanyahu would consider declaration of State violation and "would react harshly."); *Bloody Riots Continue in Gaza over Militant's Death Sentence Senate Opposes Unilateral Palestinian State as Hamas Warns Arafat Against an Execution*, STAR-LEDGER, Mar. 12, 1999, at 9 (stating that U.S. Senate voted in March 1999, to oppose any unilateral declaration of state by Arafat).

353. See Quigley, *supra* note 264, at 21 (noting Arafat declared Palestinian state to include West Bank and Gaza Strip).

354. *Id.*

355. See Dajani, *supra* note 24, at 28 (explaining that when Netanyahu took power he asserted that there would be no independent Palestinian state).

dependent state inevitable.³⁵⁶ The outcome, however, must be one that is within international legal principles, or it will not be able to endure in the long run.³⁵⁷

Some scholars believe, though, that a Palestinian state in the territories would threaten Israel with the presence or absence of national armed forces.³⁵⁸ Even if the Palestinian State was demilitarized, a threat to Israel still would exist because international enforcement mechanisms may not be adequate to hold Palestine to its word.³⁵⁹ Indeed, one scholar has gone so far as to submit that the creation of an independent state of Palestine would end Israel's right to physical survival.³⁶⁰

Both sides must agree to compromise in order for the permanent status talks to succeed.³⁶¹ Arafat wants all of the negotiations regarding matters set forth in the Oslo Accords to be completed before the beginning of the permanent status negotiations.³⁶² The climax of the negotiations, however, will occur if Palestinians are not able to negotiate a permanent settlement agreement that would meet their minimum standards.³⁶³

356. See Dallal, *supra* note 88, at 50 (finding, though, that "the structure and functioning of the envisioned state . . . needs to be considered realistically and dispassionately."); see also Beres, *supra* note 197, at 278 (claiming that implementation of Oslo Accords would definitely lead to Palestinian state, which in turn would incite the Muslims to turn to more Jihad centered attitude, thus making them want to take more of Israel).

357. See Quigley, *supra* note 265, at 27 (stating that this will be difficult because Israel is intent on maintaining settlements).

358. See Louis Rene Beres & Zalman Shoval, *Why a Demilitarized Palestinian State Would Not Remain Demilitarized: A View Under International Law*, 11 TEMP. INT'L & COMP. L.J. 347, 349 (1997) (noting that Arab Nations vying for power in new Palestinian state would pose just as great threat to Israel).

359. See *id.* (enforcing their demilitarization would probably be problematic).

360. See Beres, *supra* note 210, at 330 (believing that this might even lead to nuclear war). "Israel—if confronted by a new state of Palestine—would be well advised to do everything possible to prevent the appearance of Arab or Iranian nuclear powers, including pertinent non-nuclear preemptions." *Id.* at 322-23; Inafuku, *supra* note 75, at 375-76. Ambassador Sabel, an Arab Nations Designate of Israel to Canada, and Minister of Foreign Affairs, has said, however, that an arms race is not in Israel's interest and "[w]e are abiding by our position that we will not be the first in the Middle East to introduce nuclear weapons into the area." Inafuku, *supra*.

361. See Weiner, *supra* note 91, at 403 (reminding that it is far from unheard of for leaders in Middle East to be assassinated for compromising with other side).

362. *Id.* (wanting Israel not to have ability to use Oslo Accords as leveraging power in permanent status negotiations).

363. *Id.* at 430 (predicting, erroneously, that on May 5, 1999, Arafat would declare independent state regardless of circumstance that would likely cost Palestinians their international backing).

III. *THE FAILURE OF ISRAEL AND THE P.L.O. TO
SUCCESSFULLY IMPLEMENT OSLO I AND OSLO II DOES NOT
BODE WELL FOR THE CHANCES
OF A SUCCESSFUL OSLO III*

The impasses that have occurred in the first two stages of the peace process do not bode well for peace in the Middle East. The first two Oslo Accords left aside those issues deemed the most difficult to implement.³⁶⁴ Since the difficult issues were tabled for the permanent status negotiations, Oslo I and Oslo II were meant to implement other, easier peace-building measures. Considering the failure of Oslo I and Oslo II to successfully accomplish goals such as curtailing propaganda and establishing land allocation, however, it does not appear that Oslo III will be successful either.

A. *The Problem of Propaganda*

As previously discussed, both sides have violated the Oslo Accords on numerous occasions. One violation, however, over which both sides have full control is propaganda.³⁶⁵ Propaganda invokes deep-seeded emotions that have developed over decades of war. In order for the people of the Middle East to believe that their leaders are behind the peace movement, however, the verbal attacks must stop. The peace process, begun in secret due to fears of how the peoples of both sides would react, has spawned various reactions. Rabin was assassinated by an Israeli who wanted to stall the peace process. Hundreds of innocent people have been harmed by terrorists, many of whom were willing to sacrifice their own life in the hopes of derailing the peace process.³⁶⁶ Propaganda fuels these setbacks.

With such high barriers to overcome, it is essential that the propaganda barrage end. The confidence-building measures undertaken in Oslo II were considerably undermined by Arafat's simultaneous call for the destruction of the Israelis.³⁶⁷ In this

364. See *supra* notes 259-66 and accompanying text (separating issues into those that are easier and harder to implement).

365. See *supra* notes 220-37, 250-51 and accompanying text (explaining propaganda includes speeches by the leaders as well as newspaper reports).

366. See *supra* notes 238-56 and accompanying text (noting terrorist attacks have occurred intermittently from period prior to Israel's independence until present day).

367. See *supra* notes 170-74 and accompanying text (having impact of widening rift between people of both parties).

light, perhaps the fact that the Palestinians exceeded the deadline before finally amending their charter to eliminate the call for the destruction of Jews was the worst violation of all. Indeed, the message of *Jihad*, which is bolstered through the spread of propaganda, is still prevalent. Terrorism attacks continue through today.

B. *The Problem of Land*

Oslo III is supposed to be the culmination of the peace negotiations, granting statehood to Palestine in exchange for peace. The logistics of what land will comprise the new Palestinian state causes much concern. The West Bank and Gaza Strip are on opposite sides of Israel, necessitating the need for a secure road to run through the middle.³⁶⁸ This road could give Israel a large degree of control; if a conflict arose, the road could be cut off. Palestinians, therefore, must trust Israel enough to believe that the passage would never be blocked.

The strongest point of contention, however, concerns Jerusalem. Arafat has stated that he wants an independent Palestinian state with Jerusalem as the capital.³⁶⁹ There is no reason to believe, however, that Israel will relinquish control of any portion of Jerusalem, due to its considerable theological and historical significance to the Jewish people. The section of Jerusalem referred to as East Jerusalem contains the Western Wall, the holiest Jewish place. Every year at the traditional Passover seder, Jews pray, "Next year in Jerusalem," signifying the Jewish belief that they are the chosen people to occupy the land of Israel. To Muslims, conversely, East Jerusalem, which holds the Dome of the Rock, is the only the third holiest place behind Mecca and Medina. Muslims pray facing Mecca, not Jerusalem. With this disparity in religious significance, chances are great that the two sides will reach an impasse during the negotiations for East Jerusalem. It is unrealistic to expect the parties to agree on the status of Jerusalem, when they have not even fulfilled the agreements promised earlier.

As previously stated, these impasses do not bode well for

368. See *supra* notes 307-11 and accompanying text (explaining that road was negotiated for in Oslo II).

369. See *supra* notes 326-52 and accompanying text (explaining that Israeli leaders, conversely, have said they will never give up any part of Jerusalem).

peace in the Middle East. If the parties cannot agree on implementing initial peace-building measures, then there is little hope that those deemed more complex will come to fruition. Violations of the accords, especially those that curtail confidence-building measures such as propaganda, must stop immediately in order to move forward towards Oslo III.

CONCLUSION

The problems previously discussed, aside from those concerning an independent Palestinian state, were negotiated in Oslo I and Oslo II. The authors of the Oslo Accords created a step-by-step process to introduce peace to the Middle East. However, in many instances it seems as though leaders from both sides worked against the Oslo Accords. The stalled peace process needs to resume by creating Oslo III, without waiting for the outstanding issues of earlier Oslo Accords to be implemented. Oslo III should set forth those issues that Oslo II failed to implement, and incorporate them into the permanent status negotiations. These issues, however, should not be subject to negotiation, but simply on the timeline of objectives to satisfy. The sooner Oslo III is signed, the closer we will come to peace in the Middle East.