

**PEACE IN ISRAEL AND PALESTINE:
MOVING FROM CONVERSATION
TO IMPLEMENTATION OF A
TWO-STATE SOLUTION**

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The Israeli government and the Palestinian Authority purportedly control or govern the land, but, although Israel is recognized as a state by the United Nations,⁷ a majority of countries,⁸ non-governmental organizations (“NGOs”),⁹ and international sport organizations,¹⁰ modern-day Palestine does not enjoy that wide-spread recognition.¹¹ Nonetheless, recently, several European nations, including the Vatican,¹² have moved to recognize modern-day Palestine as a state, and, in 2012, the UN General Assembly, via vote, upgraded Palestine’s status to a non-member observer state.¹³

Of course, the debate (whether at a water-cooler, over-a-beer, or organized by academics) over whether the country of Israel should be divided into two states has not been informed solely by an analysis of international law. The debate is informed and influenced by deeply rooted religious¹⁴ and geo-political¹⁵ viewpoints that often impede the

7. G.A. Res. 181 (II), at 133 (Nov. 29, 1947).

8. *Israel International Relations: International Recognition of Israel*, JEWISH VIRTUAL LIBR. PROJECT AICE, <http://www.jewishvirtuallibrary.org/international-recognition-of-israel> (last visited Jan. 19, 2018).

9. See Amichai Cohen & Stuart Cohen, *Israel’s Dichotomous Attitude Toward International Humanitarian Laws: Causes, Consequences, and Implications*, in *ISRAEL IN THE WORLD: LEGITIMACY AND EXCEPTIONALISM* 51, 62 (Emanuel Adler ed., 2013); see also 1 *ENCYCLOPEDIA OF THE JEWISH DIASPORA: ORIGINS, EXPERIENCES, AND CULTURE* 409 (M. Avrum Enrich ed. 2009).

10. See Yair Galily & Amir Ben-Porat, *Introduction: Sport, Politics and Society in the Land of Israel*, in *SPORT, POLITICS AND SOCIETY IN THE LAND OF ISRAEL: PAST AND PRESENT* 1, 5 (Yair Galily & Amir Ben-Porat eds., 2009).

11. Cf. John Quigley, *Palestine Statehood: A Rejoinder to Professor Robert Weston Ash*, 36 *RUTGERS L. REC.* 257 (2010). See generally Robert Weston Ash, *Is Palestine a “State”? A Response to Professor John Quigley’s Article, “The Palestine Declaration to the International Criminal Court: The Statehood Issue,”* 36 *RUTGERS L. REC.* 186 (2009).

12. As a sovereign monarchical-sacerdotal state, the Vatican City State is a unique, independent state, established in 1929, in which the state’s monarch is also the spiritual leader of the Roman Catholic Church throughout the world. See Stephen E. Young & Alison Shea, *Separating State from Church: A Research Guide to the Law of the Vatican City State*, 99 *L. LIBR. J.* 589, 589–592 (2007).

13. G.A. Res. 67/19, ¶ 2 (Nov. 29, 2012); see also *Palestinian Territories Profile*, BBC NEWS, (Dec. 7, 2017), <http://www.bbc.com/news/world-middle-east-14630174> (“UNESCO - the UN cultural and educational agency - did admit the ‘State of Palestine’ as a member.”).

14. See Joel Beinin & Lisa Hajjar, *Palestine, Israel and the Arab-Israeli Conflict: A Primer*, MIDDLE EAST RES. & INFO. PROJECT, Feb. 2014, at 1-4, 7, https://web.stanford.edu/group/sper/images/Palestine-Israel_Primer_MERIP.pdf; Anshel Pfeffer, *The Israel-Palestine conflict is not just about land. It’s a bitter religious war*, *GUARDIAN* (Nov. 20, 2014, 1:16 PM), <https://www.theguardian.com/commentisfree/2014/nov/20/israel-palestine-conflict-religious-war>; see also David Eidensohn, *Ultra Orthodox and Other Jews*, *YOUTUBE* (Jan. 31, 2013), https://www.youtube.com/watch?v=UVwp_OfBeNs; University of Nottingham, *Basic Beliefs of Islam*, *YOUTUBE* (Jan. 26, 2016), <https://www.youtube.com/watch?v=WxuHBTES2-s>; cf. Desiring God, *Israel, Palestine, and the Middle East*, *YOUTUBE* (Mar. 30, 2013), https://www.youtube.com/watch?v=ov0P_92wb n8.

dispassionate and objective analysis that fosters a solution.¹⁶ Consequently, this article will analyze whether international law or international agreements support the creation of two separate states—Israel and Palestine.

II. P

qualifies for statehood because the criteria for membership in the UN requires a decision of the UN General Assembly upon recommendation of the UN Security Council.²⁰ The UN Charter (the "Charter") provides in pertinent part:

Article 3

The original members in the United Nations shall be the states which, having participated in the United Nations Conference on In-

lution 242²⁴ as being so biased that it reduced the question of Palestine to a mere refugee problem.²⁵

III. THE SHELL GAME: MANY NATIONS RECOGNIZE PALESTINE AS STATE, BUT IT REMAINS UNCERTAIN WHETHER PALESTINE HAS A DEFINED TERRITORY AND WHETHER IT IS UNDER THE CONTROL OF ITS OWN GOVERNMENT

“The conflict between Israel and Palestine can only be solved with a two-state solution, negotiated in accordance with international law. . . . A two-state solution requires mutual recognition and a will to peaceful co-existence. . . .”²⁶ There can be no doubt that Palestine, albeit not universally, is recognized as a state.²⁷ In fact, since Palestine declared independence from 1948 (tine declared ined a1988, mot P17 a130 -1.18s-1.182 3

recognition under the Constructive Theory of Statehood,²⁹ but rather satisfaction of all four of the afore-mentioned criteria under the Declarative Theory of Statehood.³⁰ Thus, the lingering questions are whether Palestine has a defined territory, and whether Palestine has control over those defined territories.³¹

Indeed, a fundamental roadblock to peace has been how and where to define the borders of Israel and Palestine.³² In recent years,

Similarly, Palestine does not have its own air force.³⁸ It does not collect all of its taxes and revenues, and its borders are monitored and patrolled by Israeli forces.³⁹ Consequently, some experts opine that Palestine is not in control of its own government.⁴⁰

Below, this article demonstrates that Palestine, notwithstanding its disputed or ill-defined borders and “shared” governmental functions, is still an independent nation, and should be treated as such. This article further illustrates that the boundaries of the Palestinian State may be defined by resort to existing UN Resolutions, and prospective agreements between Israel and Palestine.

A. *The Boundaries of a Palestinian State, Without Force of Security Council Orders, are Merely Amorphous Talking Points*

1. Resolution 242 Should be a Basis for Defining the Boundaries of Israel/Palestine

As described above, the Palestinian State believes that its borders must include territories that Israel seized in the Middle East War of 1967. Palestine, as do other nations, asserts that Israel must adopt and respect Resolution 242, which was passed in November 1967.⁴¹ Resolution 242 called for the “withdrawal of Israeli armed forces from territories occupied in the recent conflict.”⁴² Resolution 242 also required that Israel demonstrate “respect for and acknowledgment of the sovereignty, territorial integrity and political independence of every state in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force.”⁴³ As

38. See *Comparisons of Military Strength of Israel and the Palestinians*, INST. FOR MIDDLE EAST UNDERSTANDING (Jan. 5, 2009), <https://imeu.org/article/comparison-of-military-strength-of-israel-and-the-palestinians> (fact sheet comparing Israel with Palestinian military forces).

39. See U.N. Conference on Trade and Development, *Report on UNCTAD Assistance to the Palestinian People: Developments in the Economy of the Occupied Palestinian Territory*, U.N. Doc. TD/B/60/3 (July 8, 2013); Meir Hovav & Menachem Amir, *Israel Police: History and Analysis*, 2 POLICE STUD.: INT’L REV. POLICE DEV. 5, 9 (1979) (discussing Israeli border police).

40. See Adam G. Yoffie, *Palestine Problem: The Search for Statehood and the Benefits of International Law*, 36 YALE J. INT’L L. 497, 503-04 (2011) (explaining ways in which Palestine does not meet international standards of legally recognized government); see also *Legal Fact Sheet – Palestinian Statehood According to International Law*, *supra* note 23; Steven Rosen, *The Palestinians’ Imaginary State*, FOREIGN POL’Y

described below, Resolution 338⁴⁴ further reinforces that Resolution 242 should be the basis on which the parties define and describe the boundaries of the two states.

2. Resolution 338 is Instructive in its Application of Resolution 242

Notwithstanding the language of Resolution 242, the shell game regarding Palestinian borders may be played in perpetuity. For example, the Israelis have opined that the word “territories” as used in Resolution 242 does not mean *all* territories.⁴⁵ Likewise, the Israelis ask, if Palestine was not a state in 1967, how could or would Israel recognize Palestine’s right to live “within secure and recognized bounda-

The Security Council,

Expressing its continuing concern with the grave situation in the Middle East,

Emphasizing the inadmissibility of the acquisition of territory by war and the need to work for a just and lasting peace in which every State in the area can live in security,

Emphasizing further that all Member States in their acceptance of the Charter of the United Nations have undertaken a commitment to act in accordance with Article 2 of the Charter,

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

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

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

2. *Affirms further* the necessity

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

(b)

ries?”⁴⁶ Because, even if the Palestinians have the right to live within secure and recognized borders, Israel would argue that those borders were not recognized in 1967 and are still undefined in 2017.

Indeed, it is important that in moving toward a two-state solution, the parties embrace the spirit of Resolution 242, if not the inartful letter of Resolution 242. Certainly, subsequent resolutions and agreements have expanded on Resolution 242 and have illuminated the purpose and spirit of Resolution 242. For example, in 1973, the Security Council adopted Resolution 338, which provides:

The Security Council,

1. Calls upon all parties to the present fighting to cease all firing and terminate all military activity immediately, no later than 12 hours after the moment of the adoption of this decision, in the positions they now occupy;
2. Calls upon the parties concerned to start immediately after the ceasefire the *implementation of Security Council resolution 242 (1967) in all of its parts*;

Decides that, immediately and concurrently with the ceasefire, negotiations shall start between the parties concerned under appropriate auspices aimed at establishing a just and durable peace in the Middle East.⁴⁷

Resolution 338 required that the parties involved implement Resolution 242 in all of its parts.⁴⁸ Consequently, Resolution 338 essentially required that Israel withdraw its “armed forces⁴⁹ from territories occupied in the [June 1967] conflict.”⁵⁰ Therefore, the assertion that the word “territories” is ill-defined is specious at best. Indeed, Israel does not, and would not argue, that the phrase “recent conflict” is ill-defined, because Israel, like the drafters of Resolution 242, understood that phrase to mean and refer to that conflict known as the Six-Day War, the June 1967 War, or the Third Arab-Israeli War.⁵¹ If the parties know the conflict to which Resolution 242 refers, then the par-

46. The argument is that Palestine had no recognized boundaries in 1967 and, hence, Israel did not agree to recognize something that did not exist and which Israel could not identify. See President Barak Obama, Remarks by the President on the Middle East and North Africa (May 19, 2011), for the President Obama’s remarks on Israel/Palestine’s borders returning to the 1967 lines.

47. S.C. Res. 338, *supra* note 44, ¶¶ 1-3 (emphasis added).

48. *Id.* ¶ 2.

49. A literal and narrow interpretation would lead, albeit disingenuously, to the conclusion that Resolution 242 requires that Israel withdraw only soldiers and police (armed forces) but not Israeli civilians.

50. S.C. Res. 242, *supra* note 24, ¶ 1(i).

51. See *U.N. Security Council: The Meaning of Resolution 242*, *supra* note 45.

ties are fully cognizant of the territories (areas of land) that the parties to the conflict also lost or acquired during, or as a result of, the conflict.

Moreover, if Resolution 338 is not instructive in its application of the letter of Resolution 242, Resolution 338 is instructive in its application of the spirit of Resolution 242. The spirit of Resolution 242 is "the inadmissibility of the acquisition of territory by war and the need to work for a just and lasting peace in which every State in the area can live in security"⁵² and that "all Member States . . . have undertaken a commitment to act in accordance with Article 2 of the Charter."⁵³ Thus, because the parties know and understand that Resolution 242 refers to the June 1967 War, the parties also know and understand the spirit of 242 (the inadmissibility of the acquisition of territory by war) must and does refer to inadmissibility of the acquisition of territory acquired during the June 1967 War.

Notwithstanding the fact that the Palestinians were not a party to the agreement,⁵⁸ the agreement stated:

(b) . . . The parties will negotiate an agreement which *will define the powers and responsibilities of the self-governing authority to be exercised in the West Bank and Gaza*. A withdrawal of Israeli armed forces will take place and there will be a redeployment of the remaining Israeli forces into specified security locations

(c) *When the self-governing authority (administrative council) in the West Bank and Gaza is established and inaugurated, the transitional period of five years will begin The negotiations will resolve, among other matters, the location of the boundaries and the nature of the security arrangements. The solution from the negotiations must*

ries are disputed or challenged by other states.⁶⁴ To fully illustrate the invalidity of the argument, I offer that it is unlikely, under interna-

Relations,⁷¹ Israel collects taxes for the Palestinian Authority, Israel is required to remit those taxes to the Palestinian Authority, and the Palestinian Authority also collects money on behalf of Israel.⁷² Therefore, one should note that the Palestinian people are not required to pay taxes to a foreign nation (namely, Israel). Instead, Israel collects taxes on behalf of the Palestinian State.

In light of the foregoing, the question is not, for purposes of international law, whether the Palestinian people have their own government. Instead, the question is whether the Palestinian Authority has yet achieved the level of sovereignty that it desires and is typically attributable to an independent state. “Although understandings of sovereignty have evolved over time, the earliest and most traditional definition asserts that states have the freedom to govern themselves as they choose, with full control over their internal and external affairs and free from interference or intervention”⁷³ Today, we may regard Palestine as a nation that, like others, does not have territorial or economic sovereignty.⁷⁴

that Israel and Palestine should be separated to avoid wars, air strikes, intifadas, civilian casualties, and a persistent state of unrest.⁸⁷ The international community has recognized that truth for almost four decades, because, as early as 1979, the former European Community has recognized that lasting peace would result only from a two-state solution.⁸⁸

IV. AFTER ISRAEL AND PALESTINE ARE DIVIDED INTO TWO NATIONS, THEY MUST ENTER INTO AGREEMENTS THAT GUARANTEE EACH OTHER'S SAFETY AND RIGHT TO EXIST, AND THEY MUST CONCEDE TO THE PRESENCE OF A PEACEKEEPING CONTINGENT THAT HAS THE RIGHT TO USE FORCE

After dividing Israel and Palestine into two nations, the two nations must enter into agreements that guarantee each other's safety and right to exist. The parties must agree that each has the right to exist and that the citizens of each country have the right to life, liberty, and the pursuit of happiness.⁸⁹ The two sovereign nations must agree that neither will interfere with nor cause anyone or any nation to interfere with or abridge the afore-mentioned rights. As such, and in furtherance and support of the agreements, the parties must agree to the presence of UN peacekeeping forces—in Jerusalem and the proposed demilitarized zones—that have the right to use force.

A. *Palestine and Israel Should Seek to Emulate the Relationship and Agreements Between Egypt and Israel*

Like Israel and Egypt, Israel and Palestine could enter an agreement that normalizes diplomatic relations and terminates hostilities.⁹⁰ The state of peace that has lasted between Israel and Egypt for over

87. See Jeffrey Heller, *Netanyahu Wants to Define Israel as Jewish State in Law*, REUTERS (May 1, 2014), <http://www.reuters.com/article/us-israel-jewish-netanyahu-idUSBREA400EP20140501>.

88. See *1979: Israel and Egypt Shake Hands on Peace Deal*, BBC NEWS, http://news.bbc.co.uk/onthisday/hi/dates/stories/march/26/newsid_2806000/2806245.stm (last visited Jan. 28, 2018). "A statement from the nine European Community nations praised the efforts of President Sadat and Prime Minister Begin to make peace. But, in a comment bound to anger the Israelis, it added that a settlement could only happen if the Palestinian people were given a homeland." *Id.*

89. For instance, the United States Declaration of Independence states that *all people* should enjoy the inalienable rights of life, liberty, and the pursuit of happiness. TmeP88. p4ynceUd 424.87oB5.432TELARATf2 r-mer

estine should agree not to use its land or territories to block Israeli commercial vehicles and vessels.⁹⁷

B. A Peacekeeping Force That Has the Right to Use Force Should be Stationed in the Demilitarized Zones and Jerusalem

To secure the peace that is to be achieved by the two-state solution and the concessions that the parties would make in furtherance of that solution, the UN should deploy a peacekeeping force to monitor the demilitarized zones and Jerusalem. The characteristics of that peacekeeping force, however, should be a hybrid of some of the characteristics of the traditional peacekeeping force and some of the characteristics of the so-called modern peacekeeping force.

The traditional UN peace-keeping force is characterized by consent and cooperation of parties to the conflict, international support, as well as support of the UN Security Council, UN command and control, multinational composition of operations, no use of force, neutrality of UN military between rival armies, and political impartiality of the UN in relationships with rival states.⁹⁸

The modern UN peacekeeping force is characterized by, among other things, “(1) military disengagement, demobilization, and cantonment, (2) policing, (3) human rights monitoring and enforcement, (4) information dissemination, (5) observation, organization, and conducting of elections, (6) rehabilitation, (7) repatriation, (8) administration, [and] working with or overseeing regional or non-UN peacekeeping operations”⁹⁹

1. The UN Peacekeeping Force Should Adopt Many of the Characteristics of Traditional UN Peacekeeping Efforts, But The UN Peacekeeping Contingent That Operates in Jerusalem and the Proposed Demilitarized Zones Must Have the Right to Use Force

The UN Peacekeeping Contingent in Jerusalem and the proposed demilitarized zones must be neutral and impartial, and it should have the right to use force. Unless the UN and the Security Council pro-

97. There can be no doubt that Israel also should agree that it would not use its lands or territories to block Palestinian commercial vehicles and vessels.

98. See PEACEKEEPING OPERATIONS: AD HOC MISSIONS, PERMANENT ENGAGEMENT 10, (Ramesh Thakur & Albercht Schnabel eds., 2001); see also Amira A. Ghoniem, United Nations Peacekeeping Operations: Improvements for Mission Success (2003) (unpublished thesis, Stanford University) (on file with Stanford University).

99. See PEACEKEEPING OPERATIONS: AD HOC MISSIONS, PERMANENT ENGAGEMENT, *supra* note 98, at 12.

merely members of the Security Council) would embody the political impartiality and neutrality that must exist in and typify any peacekeeping force that operates in Jerusalem and the demilitarized zones. Of course, by using a peacekeeping force that is universal in its membership, the UN can effectively counter any arguments offered by Israel or Palestine that the peacekeeping force is or would be ineffective because the peacekeeping force comprises only allies of either Israel or Palestine, and that the peacekeeping force comprises only a small percentage of countries, who have significant clout and leverage such that they would dominate the operations of the peacekeeping force.

- b. **The Peacekeeping Force Should be Directed and Controlled by General Assembly Resolution to Ensure That the Objectives and Directives of the Force Are**

such action needed UN approval *and a much broader support of the international community.*"¹¹⁰

Democratic principles are furthered should the peacekeeping force be controlled by General Assembly Resolution, because, absent input by the entire UN Membership, only the permanent members of the UN Security Council (United States, United Kingdom, France, Russia, and China) would determine (subject to the veto power of the each permanent member) the mission, scope, and composition of the peacekeeping force.¹¹¹ As stated above, however, the two-state solution for Israel and Palestine must be universal in appearance and in fact.¹¹² That two-state solution should represent the universal, concrete and collective will of the members of the UN.¹¹³ That resolution, defining and describing the purpose, scope, and function of a peacekeeping force, cannot be universal in fact where it does not include the vote of almost two hundred member nations.¹¹⁴

V. CONCLUSION

Israel declared itself an independent nation state seventy years ago.¹¹⁵ In those seven decades, it has become patently apparent that the Palestinian people also desire their own independent state.¹¹⁶ As demonstrated above, an increasing number of countries have recognized Palestine as an independent country, and there is an existing basis for determining the borders of the two countries.¹¹⁷ Consequently, the international community must, to promote peace and security, imhassf1 0 0 6urecog-clude the vote 4 Tw 11I593br78 4 Tw Llqdent nation pe, and f

security agreements, mutual assistance agreements, and extradition agreements to ensure that each nation cooperates with the other to preserve peace and security and to punish Israeli and Palestinian citizens who violate the terms of peace.¹¹⁸

The discussion above serves as a catalyst for peace between Israel and Palestine, and a notice to the international community that it need not, nor should it wait another seventy years before separating Israel and Palestine into two *independent and sovereign* nations. Israelis have the right to live in peace and security. Palestinians desire the same. The international community must take affirmative steps to bring peace to the Middle East.

118. See *supra* Part IV(B).