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From the Madrid Conference to the Kerry Initiative

An Insight into the Israeli-Palestinian Peace Process

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## C. Final status issues

### I. Borders and Territory

Perhaps the most crucial issue of the Israeli-Palestinian peace negotiations is the territorial dispute.<sup>395</sup> The Palestinian position is that the new Palestinian state should be based on the territory controlled by Egypt and Jordan prior to June 4, 1967, before the beginning of the 1967 War and Israel's seizure of control over the West Bank and Gaza.<sup>396</sup> Though representatives of Israel's centre and liberal parties have openly engaged in negotiations based on the pre-1967 lines in the past, the Likud and right-wing Israeli parties have generally not publicly endorsed such a pre-condition for negotiations.<sup>397</sup> Thus, the starting point of recent rounds of peace negotiations were based on a compromise, which

included an Israeli withdrawal to the pre-1967 line with secure and recognized borders in accordance with Security Council Resolution 242 of November 27, 1967 and mutual agreed land swaps.<sup>398</sup> The land swap model suggests that the settlements do not necessarily make the Two State Solution impossible.<sup>399</sup> This model is led by the understanding that approximately 80 per cent of settlers live in approximately five per cent of the West Bank largely adjacent to the pre-1967 lines and inside the Barrier. Most of the remaining 20 per cent live outside the Barrier, in 92 per cent of the West Bank.<sup>400</sup> The land swap model has most notably been acknowledged by President Bush in his April 14, 2004, letter to Israeli Prime Minister Sharon, in which he stated that considering new realities on the ground, it was realistic to expect that any final status agreement will be achieved on the basis of mutually agreed changes that would reflect these realities.<sup>401</sup>

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<sup>395</sup> For an overview of the legal positions of Israel, the Palestinians and the international community, see *Benjamin Rubin*, *Israel, Occupied Territories*, in: *Rüdiger Wolfrum* (ed.), *Max Planck Encyclopedia of Public International Law*, Vol. 6, Oxford, 2012, pp. 423-425.

<sup>396</sup> *Ilan Goldenberg*, *Lessons from the 2013-2014 Israeli-Palestinian Final Status Negotiations*, Washington, DC 2015, p. 9, from the website of the Center for a New American Security, available at <http://www.cnas.org/lessons-learned-final-status-negotiations#.Vva5rXr5HPA>, accessed on March 27, 2016.

<sup>397</sup> *Ilan Goldenberg*, *Lessons from the 2013-2014 Israeli-Palestinian Final Status Negotiations*, Washington, DC 2015, p. 9, from the website of the Center for a New American Security, available at <http://www.cnas.org/lessons-learned-final-status-negotiations#.Vva5rXr5HPA>, accessed on March 27, 2016.

<sup>398</sup> The land swap model explained in *David Makovsky* with *Sheli Chabon* and *Jennifer Logan*, *Imagining the Border, Options for resolving the Israeli-Palestinian Territorial Issue*, The Washington Institute for Near East Studies, January 2011, available at <http://www.washingtoninstitute.org/uploads/Documents/pubs/StrategicReport06.pdf>, accessed on April 3, 2016. Such a plan has been taken into account since the Camp David negotiations in 2000 as well as in the pre Annapolis negotiations between Olmert and Abbas in 2007; see also *Einat Wilf*, *Aligning policy with preference, Preserving a path to a two-state solution*, *Policy Focus*, 141 (2015), pp. 13-14, from the website of The Washington Institute for Near East Policy, available at <http://www.washingtoninstitute.org/policy-analysis/view/aligning-policy-with-preference-preserving-a-path-to-a-two-state-solution>, accessed on March 27, 2016.

<sup>399</sup> *David Makovsky* with *Sheli Chabon* and *Jennifer Logan*, *Imagining the Border, Options for resolving the Israeli-Palestinian Territorial Issue*, The Washington Institute for Near East Studies, January 2011, available at <http://www.washingtoninstitute.org/uploads/Documents/pubs/StrategicReport06.pdf>, accessed on April 3, 2016.

<sup>400</sup> *Dennis Ross* and *David Makovsky*, *The neglected Israeli-Palestinian peace process must be revived*, *The Washington Post*, February 25, 2016, available at [https://www.washingtonpost.com/opinions/the-neglected-israeli-palestinian-peace-process-must-be-revived/2016/02/25/aa9d61dc-d715-11e5-b195-2e29a4e13425\\_story.html](https://www.washingtonpost.com/opinions/the-neglected-israeli-palestinian-peace-process-must-be-revived/2016/02/25/aa9d61dc-d715-11e5-b195-2e29a4e13425_story.html), accessed on February 28, 2016. However, some settlements are located deep inside the West Bank. The eastern part of the West Bank includes the Jordan Valley and the shore of the Dead Sea. Approximately 10,738 settlers live in this area, mainly in kibbutzim and moshavim, see *The Israeli Information Center for Human Rights in the Occupied Territories (B'Tselem)*, "Background on the Jordan Valley", May 18, 2011, (last updated October 6, 2013), available at [http://www.btselem.org/jordan\\_valley](http://www.btselem.org/jordan_valley), accessed on January 25, 2016.

<sup>401</sup> The White House, *Letter from President Bush to Prime Minister Sharon*, April 14, 2004, available at <http://georgewbush-whitehouse.archives.gov/news/releases/2004/04/20040414-3.html>, accessed on February 2, 2016 "As part of a final settlement, Israel must have secure and recognized borders, which should emerge from negotiations between the parties in accordance with UNSC Resolutions 242 and 338. In light of new realities on the ground, including already existing major Israeli population centers, it is unrealistic to expect that the outcome of final status negotiations will be a full and complete return to the armistice lines of 1949, and all

Nevertheless, it can be argued that ongoing settlement construction hurts the national aspirations of the Palestinian people and pains the Palestinian leadership.<sup>402</sup>

In a final status agreement, Israel would annex between 2–7 per cent of the West Bank territory in which over 80 per cent of settlers live. These settlers live in so-called “settlement blocs”, areas known in Hebrew as “Gushim”. In this context, the Israeli settlement blocs close to the Green Line that have often been referred to in the discussions about land swaps are Karnei Shomron, Ariel, Gush Etzion and Ma’ale Adumim, an area that is more disputed. In return, a future Palestinian state would receive parts of land southwest or northwest of the Green Line that are currently located in Israel. Even though this plan is often referred to as a “swap”, this does not necessarily mean that territory exchanged must be equal in size or quality (a factor also subject to negotiation).

In case relocation is necessary, to help maintain public order and prevent internal political tensions, Israel’s aim is to relocate the least amount of people possible. Israel’s position on this issue is most likely influenced by the traumatic experience of the disengagement from the Gaza Strip in 2005.

For the Palestinians, their position on the border dispute has undergone a significant transformation since 1948. Though they once claimed all of historic Palestine, by 1988, Palestinians had limited their national aspirations for statehood to 22 per cent, consisting of the West Bank and Gaza Strip, with East Jerusalem as its capital. Though the Palestinians hold that Israel has no valid claim to any part of the West Bank or the Gaza Strip, in the interest of peace, the PLO has been willing to discuss “minor,

equitable, and mutually agreed territorial changes”, should the PLO decide that it is “in their interest to do so.”<sup>403</sup> For the PLO, the West Bank and the Gaza Strip should function as a single territorial unit with a connecting strip of land between them. This territorial link must be permanent and permit unrestricted movement of people, goods and vehicles between the two geographical areas.

One suggestion regarding the territorial solution proposes not to relocate settlers wishing to remain in the West Bank but rather, after a five-year interim period, offer them permanent residence in Palestine while retaining their Israeli citizenship. The number of settlers staying in a future Palestinian state would then be set off against Palestinian refugees wishing to return to Israel.<sup>404</sup> Though this proposal could help prevent large population transfers, it caused uproar and dispute within the Israeli government after being discussed by Israeli Prime Minister Netanyahu at the 2014 World Economic Forum in Davos. Furthermore, because many within the settlement movement believe in the ideological foundation of establishing a Jewish state on the biblical land of Israel, it is perhaps unrealistic that settlers would then actually agree to reside outside the sovereign territory of such Jewish state. The negotiations regarding the border dispute contain five major questions:

- Is a land swap carried out according to the disputed requirements of UN Security Council Resolution 242?
- Would the exchange of territory be executed quantitatively (1:1) or qualitatively (taking into consideration natural resources and strategic locations)?

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previous efforts to negotiate a two-state solution have reached the same conclusion. It is realistic to expect that any final status agreement will only be achieved on the basis of mutually agreed changes that reflect these realities [...]

<sup>402</sup> Jack Khoury and Barak Ravid, Palestinians reject Netanyahu’s proposal to discuss settlement borders, Haaretz, May 26, 2015, available at <http://www.haaretz.com/news/diplomacy-defense/premium-1.658127>, accessed on June 14, 2015. In the article, Erekat is quoted as saying to Haaretz that, “if Netanyahu is interested in renewing the political process, he must halt all construction in the settlements, implement the fourth stage of prisoner release of Palestinians jailed and tried before the Oslo Accords, hold negotiations based on the 1967 lines, and within a determined period of time end the

occupation. Any other position will render the negotiations irrelevant and meaningless.”

<sup>403</sup> Palestine Liberation Organization, Negotiation Affairs Department, Keyword: Borders, available at <http://www.nad-plo.org/etemplate.php?id=10&more=1#4>, accessed on January 25, 2016.

<sup>404</sup> Yossi Beilin, Saving Kerry’s peace plan, The New York Times, November 10, 2013, available at [http://www.nytimes.com/2013/11/11/opinion/saving-kerrys-peace-plan.html?\\_r=0](http://www.nytimes.com/2013/11/11/opinion/saving-kerrys-peace-plan.html?_r=0), accessed on May 17, 2015.

- Would Israel annex areas of the West Bank territory where 80 per cent of the Jewish settlers reside?
- Will the Palestinians demand a unified state, connecting Abu Dis in East Jerusalem with Hebron?
- Can such a territorial link be reconciled with Israel's security demands and wish for retaining certain settlements?

## II. Security arrangements

Any future Israeli-Palestinian border would be close to Israeli population centres. It would also be about 15 miles from the centre of Tel Aviv and less than a mile from the centre of the Jewish neighbourhoods of Jerusalem. Therefore, in previous rounds of negotiations, Israel has always expressed its position that certain security arrangements must be implemented.<sup>405</sup>

Israel's position on the issue of security focuses on four major points: (1) the de-militarization of a future Palestinian state, with the Palestinians agreeing to not having an army (but having a strong

police force), not allowing for the deployment of any alien military force on Palestinian land, and not creating military alliances between Palestine and another country or military force; (2) a temporary Israeli presence in the Jordan Valley,<sup>406</sup> that will be reduced in a gradual manner and eventually replaced by a reliable peace keeping force that is either Palestinian, Jordanian or multinational (Palestinian, Jordanian and Israeli); (3) the right for Israel to deploy its forces in case of an emergency situation, the installation of 2–3 early warning intelligence stations<sup>407</sup> and access to the Palestinian electromagnetic spectrum and (4) the regulation of air space with the right of military use given to Israel and the right of limited civil use given to the Palestinians.<sup>408</sup>

On March 4, 2013, during his speech at the AIPAC policy conference in Washington, D.C., Israeli Prime Minister Netanyahu explained that only an on-site Israeli presence in the Jordan Valley could effectively prevent arms smuggling.<sup>409</sup> From an Israeli perspective, only at a later stage, could the redeployment of an Israeli military presence be subject to negotiation. At previous negotiations for a final status agreement, the proposals regarding

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<sup>405</sup> See on Security Arrangements, *Ilan Goldenberg, Gadi Shamni, Nimrod Novik, Kris Bauman*, Advancing the Dialogue: A Security System for the Two-State Solution, Washington DC 2016, from the website of the Center for a New American Security, available at <http://www.cnas.org/2statesolution#.V1wvTDcaqqQ>, accessed on May 31, 2016; *Michael Eisenstadt and Robert Satloff*, Clarifying the Security Arrangements Debate: Israeli Forces in the Jordan Valley, February 24, 2014, Policy Watch 2214, from the website of The Washington Institute for Near East Studies, available at <http://www.washingtoninstitute.org/policy-analysis/view/clarifying-the-security-arrangements-debate-israeli-forces-in-the-jordan-valley>, accessed on April 3, 2016. Besides the size and status of residual Israeli forces in the Jordan Valley, these have been said to include: Israel's demand for lightly manned early warning stations on strategic hilltops in the West Bank; arrangements for the aerial approaches to Ben Gurion International Airport; access and control over the main east-west roads and passes in the West Bank; management and control of airspace and the electromagnetic spectrum in the Palestinian territories; and details of the Palestinian states' demilitarization.

<sup>406</sup> Israel seems in the past to have insisted on having a small military presence in the Jordan Valley in order to prevent the smuggling of weapons, see *Michael Birnbaum and Ingy Hassieb*, Egyptian military begins closing smuggling tunnels near Gaza, The Washington Post, September 4, 2011, available at <http://www.washington>

[post.com/world/middle-east/egyptian-military-begins-closing-smuggling-tunnels-near-gaza/2011/09/04/gIQANvy31J\\_story.html](http://post.com/world/middle-east/egyptian-military-begins-closing-smuggling-tunnels-near-gaza/2011/09/04/gIQANvy31J_story.html), accessed on July 1, 2015.

<sup>407</sup> In this regard it seems still difficult who will determine what constitutes an emergency.

<sup>408</sup> "Limited" in this context refers to civil use by Palestinians with Israeli consent regarding in and outward flights to Palestine coordinated with Israeli air space control.

<sup>409</sup> Israel Ministry of Foreign Affairs, PM Netanyahu addresses AIPAC Policy Conference 2013, March 4, 2013, available at <http://mfa.gov.il/MFA/PressRoom/2013/Pages/PM-Netanyahu-addresses-AIPAC-Policy-Conference-2013.aspx>, accessed on January 25, 2016. Prime Minister Netanyahu said: [I]f we reach an agreement, as I hope, with the Palestinians, I don't delude myself. That peace will most certainly come under attack – constant attack by Hezbollah, Hamas, al Qaeda and others. And experience has shown that foreign peacekeepers – foreign peacekeeping forces, well, that they keep the peace only when there is peace. But when they're subjected to repeated attacks, those forces eventually go home. So as long as the peace is under assault, the only force that can be relied on to defend the peace and defend Israel is the force that is defending its own home – the Israeli Army, the brave soldiers of the IDF [...]"



security arrangements varied. Among them, there was the idea of three to five early warning stations and the presence of either an international or Israeli force. Such presence could potentially prevent a coordinated attack on Israel from the East.

The Clinton Parameters mention three early warning stations in the West Bank with the possibility of the addition of a Palestinian liaison presence subject to review after ten years and with any change of status to be mutually agreed upon.<sup>410</sup> With an increasing threat posed by “Daesh” – Al-Daula-al Islamiya fik – Irak val Scham, also known as the “Islamic State of Iraq and the Levante” (ISIL), a radical Sunni terrorist organization mainly operating in Iraq and Syria, international support for Israeli military presence in the Jordan Valley will probably increase. In case of an armed conflict with the Palestinians, or non-state actors attacking Israel from Palestinian territory, Israel would prefer to fight from its current positions. Therefore, the Israeli government is hesitant to surrender very real and concrete military advantages for promises of future behaviour and developments.

As regards security, the starting point for Palestinians is to put an end to Israeli military control of the West Bank. For Palestinians, ending the Israeli occupation requires the full withdrawal of Israeli military and civilian presence from all Palestinian territories, airspace and territorial waters. In addition, according to the Palestinian negotiation position, in order to achieve an independent national homeland for the Palestinians, “the security relations between Israel and Palestine would need to be structured in ways that will achieve the following: provide effective responses to internal and external

threats, create mechanisms for ongoing cooperation as peaceful and friendly nations, respect international human rights and promote regional and international peace and security through developing relations with all of its neighbouring countries, based on peace, security and stability”.<sup>411</sup> It seems that if foreign military presence is necessary, the Palestinians would favour the deployment of an international peacekeeping force instead of an Israeli military presence that could help stabilizing a final status agreement and possibly discourage Israeli intervention in Palestinian territory. According to the Palestinian view, the international community should show more determination in backing up its own decisions, as embodied in UN resolutions.<sup>412</sup> Palestinians believe that an international presence would deter Israeli violations of any future agreement and give Palestinians a chance to build their state and society.

It has been reported that during the latest round of U.S led peace talks, the idea that a future State of Palestine would be demilitarized and that a transitional IDF presence would be stationed in the Jordan Valley, was received favourably by the parties.<sup>413</sup> It has also been reported that the U.S. proposal of December 2013 suggested a ten-year presence of Israeli forces in the Jordan Valley, for training and strengthening the Palestinian security forces, before the gradual transfer of control over the Jordan Valley to the Palestinians.<sup>414</sup>

### III. Settlements

Israeli settlements in the West Bank are subject to controversy and debate, both within and outside the

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<sup>410</sup> Institute for National Security Studies (INSS), Center for Applied Negotiations, The Israeli-Palestinian Negotiation file, Clinton Proposal on Israeli-Palestinian Peace, Part 1/3, Tel Aviv 2013, p. 167.

<sup>411</sup> Palestine Liberation Organization, Negotiation Affairs Department, Keyword: Security, available at <http://www.nad-plo.org/etemplate.php?id=181>, accessed on January 25, 2016.

<sup>412</sup> Alan Dowty, *Israel/Palestine*, 3<sup>rd</sup> ed., Cambridge 2012, p. 240.

<sup>413</sup> Einat Wilf, *Aligning policy with preference, Preserving a path to a two-state solution*, Policy Focus, 141 (2015), p. 4, from the website of The Washington Institute for Near East Policy, available at <http://www.washingtoninstitute.org/>

*policy-analysis/view/aligning-policy-with-preference-preserving-a-path-to-a-two-state-solution*, accessed on March 27, 2016; Barak Ravid, U.S. Security Proposal includes Israeli Military Presence in Jordan Valley, Haaretz, December 7, 2013, available at <http://www.haaretz.com/israel-news/premium-1.562242>, accessed on February 2, 2016.

<sup>414</sup> Barak Ravid, U.S. Plan Keeps Israeli Army in Jordan Valley for 10 Years, Haaretz, December 10, 2013, available at <http://www.haaretz.com/israel-news/premium-1.562718>, accessed on February 4, 2016.

negotiation room. The term “settlements” as used here, describes areas where Jews founded private suburban communities with governmental building permits, and at times, financial incentives after the 1967 War. In Hebrew, the disputed territory in the West Bank is referred to as the biblical land of Judea and Samaria. This land was part of the biblical land of Israel and it is viewed as historically and culturally important by most observant Jews and Torah scholars. While it is part of Jewish history and heritage, the Palestinians view this land as part of “Filastin” the territory of the State of Palestine and the national homeland of the Palestinian people.

Over the years, the number of Jewish residents of settlements in the West Bank has consistently grown, with 1,500 reported in 1972, 23,700 in 1983, 132,900 in 1995 and 274,500 in 2008.<sup>415</sup> In 2014, the Israeli Bureau of Statistics counted 362,900 Jewish residents of “125 Jewish localities in (the) Judea and Samaria region”.<sup>416</sup> This number does not include Jewish residents of the Greater Jerusalem area (including East Jerusalem) that are not considered “settlers” by Israel.

According to the Central Intelligence Agency (“CIA”) World Factbook, approximately 365,000 Israeli settlers live in the West Bank and approximately 200,000 Israelis live in East Jerusalem.<sup>417</sup> Palestinians believe, “settlers” reside on occupied Palestinian territory. Today, some of the “settlements” turned into real cities. The cities of Ariel, Modi’in Illit, Ma’ale Adumim or Betar Illit, for example, inhabit a population of over 30,000 citizens each.

Historically, Israeli settlements in the West Bank and the Gaza Strip developed in three different

phases with distinct motivations and ethos. In the first years after the 1967 War, Israel’s Labour government sponsored or authorised settlements of two sorts: (1) where Jewish settlements had existed before 1948 but had been conquered or destroyed, such as the Jewish quarter of Jerusalem, Kiryat Arba (an area close to Hebron that was founded in 1968) and the Etzion bloc south of Jerusalem; and (2) where strategic considerations dominated, as with the Golan Heights, the Jordan Valley, and by the Egyptian border in Gaza.

In the mid-1970s, the second phase of settlement construction began on a small scale under, and often in conflict with, the Israeli Labour Party. It consisted of settlers with strong ideological and religious commitments to resettling the land, typically in the heart of the West Bank, where it would be more difficult to “disentangle” the two populations and reverse the settlement process. These settlements included Jewish enclaves near the major Palestinian cities of Ramallah, Nablus, and Jenin. In the 1977 Israeli parliamentary elections, the Labour Party was defeated by the Likud Party. At this time, the number of settlers totalled 4,000.<sup>418</sup> After 1977, the new Likud government strongly supported settlement construction and by 1982 there were over 21,000 settlers.<sup>419</sup>

The third phase began in the 1980s, as the number of ideologically motivated settlers decreased and the government began building “bedroom communities” just across the Green Line, within easy commuting distance of Tel Aviv and Jerusalem. By offering homes in a suburban style in the West Bank at an attractive and subsidized price, the settlement movement attracted a larger number of people. The total number of settlers, not including residents of

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<sup>415</sup> For 2014, the Yesha (Judea and Samaria) Council, the official umbrella group representing the more than 100 Jewish settlements in the West Bank, estimated a settler population growth between June 30 and December 31, by two per cent, according to Yesha’s statistics, a rise from 374,469 to 382,031. The anticipated annual four per cent growth rate would be more than double than Israel’s nationwide growth rate, see *The Times of Israel*, *Israel okays 2,610 homes for Jews and Arabs in E. Jerusalem*, *The Times of Israel*, October 1, 2014, available at <http://www.timesofisrael.com/israel-okays-2610-homes-for-jews-and-arabs-in-e-jerusalem/>, accessed on June 7, 2015.

<sup>416</sup> Israel Central Bureau of Statistics, *Sources of Population Growth, by District, Population Group and Religion*, Publication of September 10, 2015, available at

[http://cbs.gov.il/shnaton66/st02\\_15x.pdf](http://cbs.gov.il/shnaton66/st02_15x.pdf), accessed on April 3, 2016.

<sup>417</sup> Central Intelligence Agency (CIA), *The World Factbook*, “West Bank”, (updated January 5, 2016), available at <https://www.cia.gov/library/publications/the-world-factbook/geos/we.html>, accessed on January 25, 2016.

<sup>418</sup> *Alan Dowty*, *Israel/Palestine*, 3<sup>rd</sup> ed., Cambridge 2012, p. 230.

<sup>419</sup> *Alan Dowty*, *Israel/Palestine*, 3<sup>rd</sup> ed., Cambridge 2012, p. 198.

suburbs within the Jerusalem municipal boundary, rose to 115,000 in 1993 and approximately 268,000 in 2007. Today, the settlers of this third category, who were seeking better “quality of life”, account for about 77 per cent of the total number of settlers, while religious or ideologically motivated settlers account for approximately 20 per cent.<sup>420</sup> As part of a comprehensive peace agreement with Egypt in 1979, Israel dismantled all its 18 settlements in the Sinai Peninsula by 1982. Israel also dismantled all 21 settlements in the Gaza Strip and four settlements in the West Bank as part of its disengagement in 2005.

According to the majority international view, Jewish settlements in the West Bank violate international law. The United States, Canada, the European Union, the International Committee of the Red Cross, the UN Security Council, the UN General Assembly and the International Court of Justice consider them a violation of Article 49, paragraph 6 of the Fourth Geneva Convention Relative to the

Protection of Civilian Persons in Time of War (1949) (also known as the “Fourth Geneva Convention”).<sup>421</sup>

According to this view, the purpose of Article 49, paragraph 6, which prohibits an occupying power to “deport or transfer part of its own civilian population into territory occupied”, is to preserve the territorial and demographic structure of such territory in order to allow for reconciliation and peace to follow an armed conflict.

“As regards settlements [...] Article 49, paragraph 6, of the Fourth Geneva Convention [...] prohibits not only deportations or forced transfers of population such as those carried out during the Second World War, but also any measures taken by an occupying power in order to organise or encourage transfers of parts of its own population into the occupied territory. In this respect, the information provided to the Court shows that, since 1977, Israel has conducted a policy and developed practices involving the establishment of Settlements

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<sup>420</sup> The New York Times, The cost of Israeli settlements, The New York Times, October 3, 2003, available at <http://www.nytimes.com/2003/10/03/opinion/the-cost-of-israeli-settlements.html>, accessed on May 25, 2015.

<sup>421</sup> U.S. Department of State, Israel/Palestinians, U.S. Position on Settlements, Press Briefing on October 12, 2011, available at <http://www.state.gov/t/pa/prs/ps/2011/10/175339.htm>, accessed on May 18, 2015: “Our position on this issue remains unchanged. The United States has a clear policy – we do not accept the legitimacy of continued Israeli settlement activity. We oppose any effort to legalize settlement outposts, which is unhelpful to our peace efforts and would contradict Israeli commitments and obligations.”; Government of Canada, Global Affairs Canada, Canadian Policy on Key Issues in the Israeli-Palestinian Conflict, January 13, 2014, available at [http://www.international.gc.ca/name-anmo/peace\\_process-processus\\_paix/canadian\\_policy-politique\\_canadienne.aspx?lang=eng](http://www.international.gc.ca/name-anmo/peace_process-processus_paix/canadian_policy-politique_canadienne.aspx?lang=eng), accessed on May 18, 2015: “Canada does not recognize permanent Israeli control over territories occupied in 1967 (the Golan Heights, the West Bank, East Jerusalem and the Gaza Strip)”; Statement by the EU High Representative Catherine Ashton on Israel’s announcement of further settlements, January 11, 2014, 140111/02, from the website of the European Union External Action Service (EEAS), available at [http://eeas.europa.eu/statements/docs/2014/140111\\_02\\_en.pdf](http://eeas.europa.eu/statements/docs/2014/140111_02_en.pdf), accessed on May 18, 2015: “I was deeply concerned to hear the latest announcement by the Israeli authorities to advance settlement plans once more in the West Bank including East Jerusalem. The settlements are illegal under international law, constitute an obstacle to peace and threaten to make the two-State solution impossible. On 16 December, the 28 Foreign Ministers of the Member States of the European Union unanimously warned against actions that undermine the current

negotiations and deplored Israel’s continuous expansion of settlements. I call on Israel to stop all settlement activities [...]”; International Committee of the Red Cross, Conference of High Contracting Parties to the Fourth Geneva Convention, Statement, Geneva, December 5, 2001, available at <https://www.icrc.org/eng/resources/documents/misc/57jrgw.htm>, accessed on May 18, 2015; UN Security Council, Resolution 446 (1979) of March 22, 1979, [S/RES/446], available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/446%281979%29](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/446%281979%29), accessed on April 3, 2016, considered that settlements have “no legal validity” and affirmed “once more that the Geneva Convention to the Protection of Civilian Persons in Time of War, of August 12, 1949 is applicable to the Arab territories occupied by Israel since 1967, including Jerusalem.” It called “once more upon Israel, as the occupying Power, to abide scrupulously by that Convention.”; UN General Assembly, A/RES/67/120, January 14, 2013, Resolution adopted by the General Assembly on 18 December 2012, 67/120, Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan, available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/67/120](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/67/120), accessed on January 25, 2016: “Affirming that the transfer by the occupying Power of parts of its own civilian population into the territory it occupies constitutes a breach of the Fourth Geneva Convention and relevant provisions of customary law, including those codified in Additional Protocol I to the four Geneva Conventions.”; International Court of Justice, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion of July 9, 2004, I.C.J. Reports, 2004, p. 136.

in the Occupied Palestinian Territory, contrary to the terms of Article 49, paragraph 6, just cited.”<sup>422</sup>

Israel’s government and several academics, however, do not consider the settlements to be in violation of Article 49, paragraph 6 of the Fourth Geneva Convention.<sup>423</sup> The main argument for this position is that, due to the absence of a legal sovereign in the West Bank prior to the 1967 War, the Fourth Geneva Convention would not apply to the West Bank territory.<sup>424</sup> Furthermore, even if this provision is applicable, the scope of Article 49 paragraph 6 was limited to transfers or deportations into or out of occupied territories that are “forcible” and not “voluntary”.<sup>425</sup> Finally, an argument has also

been brought forward that this provision, when put into its historical context, was created to prohibit and prevent forceful deportations of civilians such as those carried out by the Nazis, when they deported Jewish-German civilians into occupied Eastern Europe, and by the former Soviet Union when they deported political prisoners into territories acquired in Siberia. An independent three-member judicial committee led by a Supreme Court justice appointed by the Israeli government also determined that the Israeli settlements are legal according to Israeli law and international law.<sup>426</sup> In past proceedings before the Israeli Supreme Court, the Israeli government considered the control of the West Bank and the construction of buildings and settlements militarily

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<sup>422</sup> International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion of July 9, 2004, I.C.J. Reports, 2004, p. 183, paragraph 120.

<sup>423</sup> Israel Ministry of Foreign Affairs, *Israeli Settlements and International Law*, November 30, 2015, available at <http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/israeli%20settlements%20and%20international%20law.aspx>, accessed on January 8, 2016.

<sup>424</sup> *Yehuda Z. Blum*, *The Missing Reversioner, Reflections on the Status of Judea and Samaria*, *Israel Law Review* Vol. 3 (1968), pp. 279-301; *Stephen M. Schwebel*, *What Weight to Conquest?* *American Journal of International Law*, Vol. 64 (1970), pp. 344, 346-347: “If the foregoing conclusions that (a) Israeli action in 1967 was defensive and (b) Arab action in 1948 being aggressive, was inadequate to legalize Egyptian and Jordanian taking of Palestinian territory, are correct what follows? [...] It follows that the application of the doctrine no weight to conquest requires modification in double measure. In the first place, having regard to the consideration that, as between Israel, acting defensively in 1948 and 1967, and her Arab neighbours acting aggressively in 1948 and 1967, on the other hand, Israel has better title in territory of what was Palestine, including the whole of Jerusalem, than do Jordan and Egypt, (the U.A.R. has, unlike Jordan, not asserted sovereign title), it follows that modifications of the 1949 armistice lines among those states within former Palestinian territory are lawful (if not necessarily desirable), whether those modifications are, in Secretary Rogers’ words, “insubstantial alterations required for mutual security” or more substantial alterations – such as recognition of Israeli sovereignty over the whole of Jerusalem [...] The foregoing analysis accords not only with the terms of the United Nations Charter, notably Article 2, paragraph 4, and Article 51, but law and practice as they have developed since the Charter’s conclusion.” *David M. Phillips*, *The Illegal-Settlements Myth*, *Commentary*, December 1, 2009, available at <https://www.commentarymagazine.com/articles/the-illegal-settlements-myth/>, accessed on January 25, 2016; *Eugene*

*Kontorovich*, “Five Puzzles about occupation and settlements: Questions for Geneva”, *The Washington Post*, December 17, 2014, available at <http://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/12/17/five-puzzles-about-occupation-and-settlements-questions-for-geneva/>, accessed on May 18, 2015; *Eugene V. Rostow*, *Correspondence*, *American Journal of International Law*, Vol. 84 (1990), p. 719: “[T]he Convention prohibits many of the inhumane practices of the Nazis and the Soviet Union during and before the Second World War – the mass transfer of people into and out of occupied territories for purposes of extermination, slave labor or colonization, for example. [...] The Jewish settlers in the West Bank are most emphatically volunteers. They have not been “deported” or “transferred” to the area by the Government of Israel, and their movement involves none of the atrocious purposes or harmful effects on the existing population it is the goal of the Geneva Convention to prevent.”

<sup>425</sup> Furthermore, it has been argued that Article 49 paragraph 6 could not be regarded as prohibiting the return of individuals to towns and villages such as Gush Etzion and Hebron, from which they have been expelled before or during 1948. However, the weakness of this argument is that it were not the same families resettling in Hebron after 1967 who were expelled in 1948. The territorial claim to the land cannot be brought forward just because of the people’s ethnical connection to the Jewish people and its historical claim (justified or not) to the city of Hebron.

<sup>426</sup> Israel Prime Minister’s Office, *The Levy Report - Report on the Legal Status of Building in Judea and Samaria*, July 9, 2012, available at <http://www.pmo.gov.il/Documents/doch090712.pdf> (in Hebrew). An English language summary of the report is available at <http://www.pmo.gov.il/English/MediaCenter/Spokesman/Documents/edmundENG100712.pdf>; accessed on December 2, 2013.

necessary and argued that the Israeli settlements contribute a vital element to Israel's security.<sup>427</sup>

The Israeli government has not made an explicit declaration on the issue of West Bank settlements under customary international law. From the statements made by the Israeli government in proceedings before the Israeli Supreme Court, it can be inferred that the Israeli government seems not to regard settlements in the West Bank being covered by a rule under customary international law prohibiting the transfer of civilians into occupied territory for the following reasons.<sup>428</sup> First, the

situation in the West Bank would not fall under a customary prohibition because the Israeli government views the settlement enterprise as a completely voluntary and not as a state-sponsored project. Furthermore, it seems that the Israeli government would dispute the existence of sufficient state practice necessary for even establishing such customary international law.<sup>429</sup>

The PA, on the other hand, views the existence of Israeli settlements in the West Bank as a violation of international law. Moreover, according to the PA, the settlements and their protection by the Israeli

<sup>427</sup> *Melanie Jacques*, *Armed conflict and displacement, The Protection of Refugees and Displaced Persons under International Humanitarian Law*, Cambridge 2012, p. 88; *David Kretzmer*, *The law of belligerent occupation in the Supreme Court of Israel*, *The International Review of the Red Cross*, Vol. 94, No. 885 (2012), p. 213. In its decision on the settlement of Beth El, the Israeli Supreme Court followed the view that this settlement may serve a security interest, see The Israeli Supreme Court sitting as High Court of Justice, *Suleiman Tawfiq Oyyeb and others v. Minister of Defense and others* (Beth El case), H.C.J. 606/78 of March 15, 1979, reprinted in *The Palestine Yearbook of International Law*, Vol. 2 (1985), *Anis F. Kassim*, (Ed. in chief), p. 134: “[I]t is indisputable that in occupied areas the existence of settlements – albeit ‘civilian’ – of citizens of the Occupying Power contributes greatly to the security in that area and assists the army in fulfilling its task. One need not be a military and defense expert to understand that terrorist elements operate with greater ease in an area solely inhabited by a population that is indifferent or sympathises with the enemy, than in an area in which one also finds people likely to observe the latter and report any suspicious movement to the authorities. Terrorists will not be granted a hideout, assistance or supplies by such people [...]” However, in the decision on the Israeli settlement of Alon Moreh, the Israeli Supreme Court decided in favour of the petition by residents of the Arab village of Rujeib against the Israeli government's decision to allow the establishment of a settlement in the area, see The Israeli Supreme Court sitting as High Court of Justice, *Izzat Muhammad Mustafa Duweikat et 16 al. v. Government of Israel et al.*, (Elon Moreh Case), H.C.J. 390/79 of October 22, 1979; unofficial translation available at [http://www.hamoked.org/files/2010/1670\\_eng.pdf](http://www.hamoked.org/files/2010/1670_eng.pdf), accessed on November 25, 2015.

<sup>428</sup> *Jean Marie Henckaerts and Louise Doswald-Beck*, *Customary International Humanitarian Law*, Vol. 1, Rules, Reprinted with corrections, Cambridge 2009, p. 462, Rule 130: “States may not deport or transfer parts of their own civilian population into a territory they occupy [IAC].” After deliberations on the Statute of the International Criminal Court, Israel explained its negative vote with a statement declaring that it “fails to comprehend why it has been considered necessary to insert into the list of the most heinous

and grievous war crimes the action of transferring population into occupied territory. The exigencies of lack of time and intense political and public pressure have obliged the Conference to by-pass very basic sovereign prerogatives to which we are entitled in drafting international conventions, in favour of finishing the work and achieving a Statute on a come-what-may basis. We continue to hope that the Court will indeed serve the lofty objectives for the attainment of which it is being established.” See UN Meetings Coverage and Press Releases, Press Release L/2889, UN Diplomatic Conference Concludes in Rome with decision to establish permanent International Criminal Court, July 20, 1998, available at <http://www.un.org/press/en/1998/19980720.l2889.html>, accessed on January 8, 2016.

<sup>429</sup> In the case of Afu, in which the Israeli Supreme Court dealt with the deportation of protected persons from the occupied territory on security grounds, the Court did not view the first paragraph of Article 49 or Article 49 in its entirety of the Fourth Geneva Convention as forming part of customary international law, see The Israeli Supreme Court sitting as High Court of Justice, *Abd Al Nasser Al Aziz Abd Al Azis al Affo et al. v. Commander of the IDF in the West Bank*, H.C.J. 785/87 of April 10, 1988, available at [http://elyon1.court.gov.il/files\\_eng/87/850/007/Z01/87007850.z01.pdf](http://elyon1.court.gov.il/files_eng/87/850/007/Z01/87007850.z01.pdf), accessed on April, 8, 2016, pp. 21-22: “But whatever the correct interpretation of the first paragraph of Article 49 of the Convention may be, the Convention, as Article 49 in its entirety, does not in any case form a part of customary international law [...] At the time no basis was given for the argument that Article 49 expresses a customary rule of international law; and given the material presented to us, the armed conflicts that have occurred since 1949 (India-Pakistan, Cyprus and others) have not brought about legal decisions that would shed a different light on the issue. In any case if there are any, they were not brought to our attention by the parties.” For an English summary of the decision, see *Fania Domb*, *Judgments of the Supreme Court of Israel Relating to the Administered Territories*, *Israel Yearbook on Human Rights* Vol. 23 (1993), pp. 277-286.

military, pose a major obstacle to the peace process, the Palestinian aspiration for a state with a unified territory and a hindrance to the establishment of an independent and sustainable economy.<sup>430</sup> Furthermore, the Israeli settlements are viewed by the PA as significant obstacle to the Palestinian right to self-determination.<sup>431</sup>

In 2010, the Baker Institute for Public Policy at Rice University (Houston) published a comprehensive analysis of the territorial issue between Israel and the Palestinians and its possible solution.<sup>432</sup> The study, which was presented to President Obama in February 2010, was a serious attempt by previous peace negotiators and government/military officials of Israel, the PA and the U.S. with good relations to their respective governments to delineate a possible compromise between the Israeli and Palestinian positions on territory. The study attempts to close the gap between a previous Israeli proposal of a 7.03 per cent land swap (Israeli map) and a 1.9 per cent proposal by the Palestinians on the basis of an exchange of land at a ratio of 1 to 1. The Israeli and the Palestinian teams working on the study under U.S. guidance, formulated three possible territorial solutions: (i) a land swap of 4.0 per cent, necessitating the evacuation of 115,142 Israeli settlers (Option 1); (ii) a land swap of 3.4 per cent, necessitating the evacuation of 120,182 Israeli settlers (Option 2); and (iii) a land swap of 4.4 per

cent necessitating the evacuation of 100,780 Israeli settlers (Option 3).

#### *IV. Palestinian Refugees and Jewish State*

Two more controversial aspects of the Israeli-Palestinian peace negotiations are the issues of Palestinian refugees and Israel's demand for recognition as a Jewish State. Both issues are closely linked to each other because allowing for the return of an unlimited number of Palestinian refugees from Lebanon, Syria, and Jordan to Israel, is incompatible with the concept of Israel as a Jewish State.

On December 11, 1948, the UN General Assembly Resolution 194 (III) resolved that:

“refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or any damage to property which, under principles of international law or equity, should be made good by the governments or authorities responsible.”<sup>433</sup>

According to Resolution 242, there is a “necessity for achieving a just settlement of the refugee problem”. While the starting point for most Palestinians in the negotiations on refugees is the indisputable existence of a “right of return” and the need for compensation, for most Israelis, while acknowledging the need for a just and fair solution,

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<sup>430</sup> Palestine Liberation Organization, Negotiations Affairs Department, Keyword: Settlements, available at <http://www.nad-plo.org/etemplate.php?id=11&more=1#1>, accessed on January 8, 2016: “In addition to being illegal, Israeli settlements in the Occupied Palestinian Territory pose the single greatest threat to a two-state solution, and hence, to a just and lasting peace. Settlements, their infrastructure and associated areas of Israeli control grossly reduce the amount and quality of land remaining for our future state and severely undermine its territorial integrity. Under the “land for peace” formula contained in UN Security Council Resolutions 242 and 338 and upon which the peace process is based, Israel is to withdraw from the territories it occupied in 1967 in exchange for full peace and recognition from its neighbours.”

<sup>431</sup> State of Palestine, Ministry of Information, History of Israeli settlement, April 5, 2009, available at <http://minfo.ps/English/index.php?pagees=main&id=39&butt=5>, accessed on November 19, 2015.

<sup>432</sup> James A. Baker III Institute for Public Policy, Rice University, Getting to the Territorial Endgame of an Israeli-Palestinian Peace Settlement, A Special Report by the Israeli-

Palestinian Workshop of the Baker Institute's Conflict Resolution Forum, chaired by Edward P. Djerejian, 2010, available at <https://bakerinstitute.org/files/399/>, accessed on November 21, 2015.

<sup>433</sup> UN General Assembly, 194 (III), Palestine - Progress Report of the United Nations Mediator, December 11, 1948, [Resolution A/RES/194/(III)], available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/194%28III%29](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/194%28III%29), accessed on January 28, 2016. Neither the original General Assembly resolution, nor UN Security Council Resolutions 242 and 338 speak of a “right of return”. Nor is it mentioned in the Israeli-Egyptian peace treaty 1978, the agreements between Israel and the PLO since 1993, or the Israeli-Jordanian peace treaty 1994. Israel has agreed in its treaties with Egypt and Jordan and in the Oslo Accords, to negotiate the refugee issue as part of its talks on final status issues. The wording of the peace agreements signed since 1978 between Israel and its neighbours suggests a compromise solution can be found for the Palestinian refugees.

the starting point is the absence of such right under international law.<sup>434</sup>

In 2016, the following number of persons, identifying themselves as Palestine refugees, live in refugee camps: 449,957 persons in twelve refugee camps in Lebanon, 2,097,338 persons in ten refugee camps in Jordan, 526,744 in nine refugee camps in Syria, 762,788 in 19 refugee camps in the West Bank (including suburbs in East Jerusalem) and 1,258,559 in eight refugee camps in the Gaza Strip.<sup>435</sup> While UNRWA carries out important social and welfare functions, such as the provision of health care, assistance, and education to descendants of Palestinians displaced persons and refugees, the organization has also been subjected to criticism.<sup>436</sup>

For instance, an aspect of UNRWA that is often criticized is the fact that its mandate lacks a precise

definition of who is a “refugee” and thus is entitled to register for assistance with UNRWA. Hence, since 1952, individuals have been eligible to receive assistance from UNRWA if their “normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948 and who lost both home and means of livelihood as a result of the 1948 conflict”.<sup>437</sup> For UNRWA’s operations, “Palestine refugees are persons who fulfil the above definition and descendants of fathers fulfilling the definition”.<sup>438</sup>

An individual is eligible for UNRWA relief if: (1) he is in need, (2) since the conflict, he has been residing in one of the countries where UNRWA provides relief; and (3) he is officially and currently registered with UNRWA.<sup>439</sup> UNRWA is the only refugee organization in which descendants of

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<sup>434</sup> Summarized by *Ruth Lapidot*, *Israel and the Palestinians, Some Legal Issues*, Jerusalem 2003, p. 49: “This interpretation, however, does not seem warranted: the paragraph does not recognize any “right”, but recommends that the refugees “should” be “permitted” to return. Moreover, that permission is subject to two conditions – that the refugee wishes to return, and that he wishes to live at peace with his neighbors. The violence that erupted in September 2000 forecloses any hope for a peaceful co-existence between Israelis and masses of returning refugees. Moreover, the Palestinians have linked the request for return to a claim for self-determination. If returning refugees had a right to external self-determination, this would mean the end of the very existence of the State of Israel. Under the 1948 resolution, the return should take place only “at the earliest practicable date”. The use of the term “should” with regard to the permission to return underlines that this is only a recommendation – it is hortatory. One should also remember that under the UN Charter the General Assembly is not authorized to adopt binding resolutions, except in budgetary matters and with regard to its own internal rules and regulations. Finally, the reference to principles of international law or equity refers only to compensation for property and does not seem to refer to the permission to return. It should also be borne in mind that the provision concerning the refugees is but one element of the Resolution that foresaw “a final settlement of all questions outstanding between” the parties, whereas the Arab States have always insisted on its implementation (in accordance with the interpretation favorable to them) independently of all other matters [...]”

<sup>435</sup> For an overview of the number of Palestine Refugees registered with UNRWA see UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), *Where We Work*, available at [http://www.unrwa.org/where-we-work?qt-view\\_\\_unrwa\\_fields\\_\\_unrwa\\_fields\\_where\\_we\\_work\\_block=0#qt](http://www.unrwa.org/where-we-work?qt-view__unrwa_fields__unrwa_fields_where_we_work_block=0#qt), accessed on January 8, 2016; Palestine

Liberation Organization, Negotiation Affairs Department, *Keyword: Refugees*, available at <http://www.nad-plo.org/etemplate.php?id=12&more=1#4>, accessed on January 25, 2016.

<sup>436</sup> *James G. Lindsay*, *Fixing UNRWA, Repairing the UN’s Troubled System of Aid to Palestinian Refugees*, Policy Focus, 91 (2009), p. 1, from the website of The Washington Institute for Near East Policy, available at <http://www.washingtoninstitute.org/policy-analysis/view/fixing-unrwa-repairing-the-uns-troubled-system-of-aid-to-palestinian-refugee>, accessed on March 27, 2016; *Eimat Wilf*, *Aligning policy with preference, Preserving a path to a two-state solution*, Policy Focus, 141 (2015), p. 17, from the website of The Washington Institute for Near East Policy, available at <http://www.washingtoninstitute.org/policy-analysis/view/aligning-policy-with-preference-preserving-a-path-to-a-two-state-solution>, accessed on March 27, 2016.

<sup>437</sup> UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), *Frequently Asked Questions*, available at <http://www.unrwa.org/who-we-are/frequently-asked-questions>, accessed on March 8, 2016.

<sup>438</sup> UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), *Frequently Asked Questions*, available at <http://www.unrwa.org/who-we-are/frequently-asked-questions>, accessed on March 8, 2016.

<sup>439</sup> *James G. Lindsay*, *Fixing UNRWA, Repairing the UN’s Troubled System of Aid to Palestinian Refugees*, Policy Focus, 91 (2009), p. 24, from the website of The Washington Institute for Near East Policy, available at <http://www.washingtoninstitute.org/policy-analysis/view/fixing-unrwa-repairing-the-uns-troubled-system-of-aid-to-palestinian-refugee>, accessed on March 27, 2016.

displaced persons are also eligible to register as “refugees”.<sup>440</sup> Such persons, except for refugees in the Hashemite Kingdom of Jordan, cannot receive full citizenship with full rights of employment and residence in their Arab host states (e.g. Syria and Lebanon). In the past, UNRWA has been criticized by its former general counsel and legal adviser for its one sided pro-Palestinian statements and its limited success with preventing funds from being transferred to persons involved in criminal acts.<sup>441</sup> Additional problems with UNRWA are its education system which has been criticized for not successfully preventing the incitement of hatred against Israel,<sup>442</sup> and the reoccurring incidents in which UNRWA facilities, as UN institutions under the protection of the laws of armed conflict, are used as weapon storage facilities and rocket launching sites.<sup>443</sup>

On December 7, 2014, Netanyahu addressed the 11<sup>th</sup> Saban Forum in Washington, D.C., and outlined his three pillars of peace with the Palestinians (including an end to the demand for a right of return):

“Real peace will only come with leadership that demands from the Palestinians to accept the three pillars of peace: one, genuine mutual recognition; two, an end to all claims, including the right of return; and three, a long-term Israeli security presence. Now, I will never give up on this triangle of true peace.”<sup>444</sup>

The PLO envisions a “just solution to the Palestinian refugee issue in accordance with international law, and specifically UN General Assembly Resolution 194” which “must be based on the right of return and reparations.”<sup>445</sup> According to the PLO, this position was supported by the Arab Peace Initiative, which called for a just solution to the Palestinian refugee problem to be agreed upon in accordance with UN General Assembly Resolution 194 and to address both: the right of return and reparations.

On the question of Palestinian refugees, U.S. President Clinton proposed that the new State of Palestine would be the homeland to the refugees that left their residence or were displaced during the

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<sup>440</sup> In practice this means that any individual born in one of the refugee camps in the Gaza Strip and whose parents were also born there, but his grandparents left their homes in 1948 can register as a UNRWA refugee and is eligible for humanitarian support.

<sup>441</sup> *James Lindsay*, Fixing UNRWA, Repairing the UN’s Troubled System of Aid to Palestinian Refugees, Policy Focus, 91 (2009), p. 19, from the website of The Washington Institute for Near East Policy, available at <http://www.washingtoninstitute.org/policy-analysis/view/fixing-unrwa-repairing-the-uns-troubled-system-of-aid-to-palestinian-refugee>, accessed on March 27, 2016. In 1964, the agency permitted its staff to attend the Palestine National Congress in Jerusalem – where the Palestine Liberation Organisation was established – despite UN and UNRWA rules against political activities; after the 1967 war, UNRWA took on the responsibility of protesting Israel’s demolition of Palestinian housing in the newly controlled territories. It also proposed a UN presence to protect civilians from the Israeli military, echoing Palestinian leaders; from 1975 to 1982 the agency’s Siblun Vocational Training Centre outside Sidon, Lebanon, was occasionally under the control of the PLO and issued for various improper activities such as storing weapons, housing PLO personnel and equipment, indoctrinating students.

<sup>442</sup> *Lazar Berman*, Palestinian kids taught to hate Israel in UN-funded camps, The Times of Israel, August 14, 2013, available at <http://www.timesofisrael.com/palestinian-kids-taught-to-hate-israel-in-un-funded-camps-clip-shows/>, accessed on May 19, 2015. UNRWA rejects this allegation,

see UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), Statement by UNRWA Spokesperson Chris Gunness, October 22, 2014, available at <http://www.unrwa.org/newsroom/official-statements/unrwa-rejects-allegations-incitement-baseless>, accessed on May 19, 2015.

<sup>443</sup> UN Secretary Council, S/2015/286, Letter dated 27 April 2015 from the Secretary-General addressed to the President of the Security Council, Annex, available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/2015/286.pdf](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2015/286.pdf), accessed on April 3, 2016: Incident (h) Presence of weaponry at the UNRWA Gaza Beach Elementary Coeducational “B” school on July 16, 2014; Incident (i) Presence of weaponry at the UNRWA Jabalia Elementary “C” and Ayyobiya Boys School on July 22, 2014; Incident (j) Presence of weaponry at the UNRWA Nuseirat Preparatory Coeducational “B” School on July 29, 2014 and on August 17, 2014.

<sup>444</sup> Israel Ministry of Foreign Affairs, PM Netanyahu addresses 11<sup>th</sup> Annual Saban Forum, Excerpts, December 7, 2014, available at <http://mfa.gov.il/MFA/PressRoom/2014/Pages/PM-Netanyahu-addresses-11th-Annual-Saban-Forum-7-Dec-2014.aspx>, accessed on January 26, 2016.

<sup>445</sup> Palestine Liberation Organization, Negotiation Affairs Department, Keyword: Refugees, available at <http://www.nad-plo.org/etemplate.php?id=12&more=1#4>, accessed on January 25, 2016.



armed conflict of 1948–1949, with priority given to those refugees residing in Lebanon. This proposal, however, would not prevent Israel from absorbing a symbolic number of refugees in accordance with its laws and sovereign decisions. Clinton further advocated for a joint international effort to compensate refugees and assist them with housing either in the new State of Palestine, in the area swapped with Israel, in their current host countries, in another state or, if admitted, in Israel. Both parties would have to agree that this solution would meet all the requirements of Resolution 194 (III).

On June 21, 2008, in a meeting with the Israeli negotiation team during the negotiations following the Annapolis Conference, Ahmed Qurei demanded the following in regard to the refugee issue: responsibility, the right of return, reparations for individuals, reparations for host countries, the establishment of an “international fund” and an “absentee property fund” that would compensate Palestinians.<sup>446</sup> In 2008, as a symbolic gesture of good will, Olmert offered to allow 5,000 Palestinians to return to Israel within a time frame of five years and to provide financial compensation to the remaining first generation refugees. It has been suggested that this plan was supported by Israel, the U.S. and Saudi Arabia.<sup>447</sup> In addition, Israelis and the Palestinians presumably discussed the inclusion of a preamble to a future final status agreement, in which each side would acknowledge the other side’s suffering. In this context it has been pointed out that Israel would be willing to acknowledge, but neither apologize nor accept legal responsibility for any

injustice the Palestinians experienced. In return, the Palestinians would be willing to give up their claim for the return of all refugees to Israel.<sup>448</sup> On November 1, 2012, in an interview with an Israeli television network, Abbas denied that he had any intentions to return to his birthplace Safed, a city in northern Israel. This denial has been interpreted by some, as a waiver of the demand of physical return of Palestinian refugees.<sup>449</sup>

Israel’s demand for recognition as a Jewish State or the homeland of the Jewish nation has been summarized by Tal Becker as the demand for public recognition of the right of the Jewish people to self-determination in a state of their own:

“The term ‘Jewish State’ is sometimes misconceived as implying an aspiration for a Jewish theocracy [...] properly understood, however, the claim seeks no more and no less than public recognition of the right of the Jewish people to self-determination in a state of their own. In this respect the demand for recognition is no different from the self-determination claims advanced by many other peoples under international law. The claim should also not be seen as an attempt to negate corresponding Palestinian right to self-determination. Indeed, today’s advocates of recognition argue that it is Israel’s acceptance of a Palestinian nation-state that justifies parallel Palestinian acknowledgement of the Jewish nation-state.”<sup>450</sup>

For Netanyahu, Israel’s recognition as a Jewish State by the Palestinians is a fundament for peace and the absence of this recognition poses a real obstacle to Israel-Palestinian progress.<sup>451</sup> On March

<sup>446</sup> Al Jazeera, *The Palestine Papers*, Minutes from Plenary Session Post Annapolis, June 21, 2008, available at <http://transparency.aljazeera.net/en/projects/the-palestine-papers/201218233520312797.html>, accessed on February 1, 2016.

<sup>447</sup> *Smadar Peri*, Compensation plan for Palestinian refugees promoted, *Ynetnews*, March 28, 2007, available at <http://www.ynetnews.com/articles/0,7340,L-3382162,00.html>, accessed on May 19, 2015.

<sup>448</sup> *Avi Issacharoff*, Revealed: Olmert’s 2008 peace offer to the Palestinians, *The Jerusalem Post*, May 24, 2013, available at <http://www.jpost.com/Diplomacy-and-Politics/Details-of-Olmerts-peace-offer-to-Palestinians-exposed-314261>, accessed on March 9, 2016; *Avi Issacharoff*, Interview with *Ehud Olmert*, Olmert: I am still waiting for Abbas to call, *The Tower*, May 24, 2013, available at <http://www.thetower.org/exclusive-olmert-i-am-still-waiting-for-abbas-to-call-will-abbas-ever-say-yes/>, accessed on May 19, 2015.

<sup>449</sup> *Asher Zeiger*, Abbas says he has no right to live in Safed, and no territorial demands on pre-1967 Israel, *The Times of Israel*, November 1, 2012, available at <http://www.timesofisrael.com/abbas-says-he-has-no-right-to-live-in-safed-and-has-no-demands-on-pre-1967-israel/>, accessed on November 18, 2015.

<sup>450</sup> *Tal Becker*, *The Claim for Recognition of Israel as a Jewish State: A reassessment*, *Policy Focus*, 108 (2011), p. 4, from the website of The Washington Institute for Near East Policy, available at <http://www.washingtoninstitute.org/uploads/Documents/pubs/PolicyFocus108.pdf>, accessed on March 27, 2016.

<sup>451</sup> Israel Prime Minister’s Office, PM Netanyahu’s Remarks to the Saban Forum, December 6, 2015 available at <http://www.pmo.gov.il/English/MediaCenter/Speeches/Pages/speechsaban061215.aspx>, accessed on February 4, 2016:

4, 2014, during a speech in the U.S., Netanyahu asked Abbas publicly to recognize Israel as a Jewish State:

“[J]ust as Israel is prepared to recognise a Palestinian State, the Palestinians must be prepared to recognise a Jewish State. President Abbas, recognise the Jewish State, and in doing so, you would be telling your people, the Palestinians, that while we might have a territorial dispute, the right of the Jewish people to a state of their own is beyond dispute. You would be telling Palestinians to abandon the fantasy of flooding Israel with refugees, or amputating parts of the Negev and the Galilee. In recognising the Jewish State, you would finally make clear that you are truly prepared to end the conflict. So recognise the Jewish State. No excuses, no delays, it’s time [...]”<sup>452</sup>

For Israel, the demand for recognition as a Jewish State also includes the demand for the end to any further claims by the Palestinians and the acceptance that a final status agreement determines the end of the Israeli-Palestinian conflict. In opposition to this position, it has been argued that Israel should not insist to be recognized by the Palestinians as a Jewish State.<sup>453</sup> According to this view, rather than to demand for some vague concept of Jewish statehood, the frontline of Israel’s negotiating position should be to demand that the Palestinians do not insist on their right of return, refrain from aiming to defeat Israel in a war, and refrain from international efforts to isolate and delegitimize Israel. In this context, it has been argued that in order

to reach a peace agreement between Israel and the Palestinians, it was not vital that both sides accept each other’s narrative, slogans or terminology but rather find practical solutions to live side-by-side in peace.

Abbas, on the other hand, seems to oppose the recognition of Israel as a Jewish State.<sup>454</sup> During a speech before the PLO Central Council on March 30, 2014, Abbas said that Israel did not require from Jordan or Egypt to be recognized as Jewish State and that the Palestinian government had already recognized the State of Israel, which was sufficient for mutual recognition:

“[F]or the past two or three years, the case of the Jewishness of the State of Israel has been proposed to me. Our position is mutual recognition. We and the Palestinian government have acknowledged the state of Israel. When Israel concluded a treaty with Egypt, Egypt was not asked to recognize the Jewishness of Israel. And when Israel concluded a treaty with Jordan, Jordan was not asked to recognize the Jewishness of Israel. Why are we asked to acknowledge the Jewishness of the State of Israel? I say no to the recognition of the Jewishness of the State of Israel. I ask, “Why does not Israel go to the UN and ask them to recognize it as a Jewish state?” One last point I explained to the Israeli journalists: You may not know your history; we know more about your history than you do [...] The soldier stops at the checkpoint and prays. This is not my business, but Israel allows one to enter and forbids the other. We will not accept the recognition of the Jewishness of the State of Israel.”<sup>455</sup>

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“[A]nd I think it’s important if we’re ever going to resolve this issue is to demand from the Palestinian leadership to recognize the Jewish state. We’ll still have many, many issues to resolve, but it begins with the recognition of the right of the Jewish people to have a state of their own. This is the fundament of peace and the absence of this recognition is the real obstacle.”

<sup>452</sup> Israel Prime Minister’s Office, PM Netanyahu’s speech at the AIPAC policy conference, March 4, 2014, available at <http://www.pmo.gov.il/English/MediaCenter/Speeches/Page/s/speechaipac040314.aspx>, accessed on June 15, 2015.

<sup>453</sup> *Donniel Hartman*, A Jewish State: It’s our problem, not theirs, March 18, 2014, from the website of the Shalom Hartman Institute, available at [http://hartman.org.il/Blogs\\_View.asp?Article\\_Id=1330&Cat\\_Id=273&Cat\\_Type=Blogs](http://hartman.org.il/Blogs_View.asp?Article_Id=1330&Cat_Id=273&Cat_Type=Blogs), accessed on May 19, 2015.

<sup>454</sup> *Shmuel Even*, Abu Mazen’s Opposition to Recognition of Israel as a Jewish State: Strategic Implications, INSS Insight No. 762, November 4, 2015, available at <http://www.inss.org>.

[il/index.aspx?id=4538&articleid=10902](http://www.inss.org.il/index.aspx?id=4538&articleid=10902), accessed on November 18, 2015. *Even* argues that Abbas assigns the Israeli Arab-Palestinians, especially in their future numbers an important role in the design of Israel as a bi-national state, in both demographic and political aspects. *Even* believes that Abbas expects the Arab proportion of the Israeli population to increase in several ways: Exercise of the right of return on a large scale, a Palestinian policy of increasing the number of Israeli identity cards held by Palestinians, including not giving Palestinian passports to Palestinian-Israeli citizens who want them; and refusal to accept territory within the Green Line populated by Israeli Palestinian citizens as part of a negotiated territorial exchanges. All these policies have one common denominator: a one-way movement of Palestinians to Israel.

<sup>455</sup> State of Palestine, Palestine Liberation Organization, Office of the President, Address of H. E. President Mahmoud Abbas to the PLO Central Council, April 30, 2014, from the website of the Palestine Liberation Organization, Negotiation

There are two main reasons for this opposition: the fear of a deterioration of the status of Israeli-Arabs in “Jewish Israel” and the consequences for the Palestinians’ claims to historical Palestine. On November 30, 2014, in an interview with Egyptian newspaper *Akhbar Al-Yawm*, Abbas is quoted to have rejected to recognize Israel as a Jewish State precisely for these two reasons:

“[W]e will stand against this enterprise, not out of obstinacy, but because it contradicts our interests. The first to suffer from this law (The Israeli Jewish State Bill; *J.H.*) will be 1.5 million Arabs who would no longer belong to Israel, due to their religion... There is another reason ... (Israel, *J.H.*) will not allow the return of refugees. There are six million refugees who wish to return, and by the way, I am one of them. We need to find creative solutions because we cannot close the door to those who wish to return [...]”<sup>456</sup>

## V. Jerusalem

A final status agreement between Israel and the Palestinians must address the future status of Jerusalem.<sup>457</sup> Proposals for the Jerusalem issue range from a division of the city into Israeli West Jerusalem and Palestinian East Jerusalem (with

common sovereignty over the holy sites) to an undivided Jerusalem that serves as the capital of both states.<sup>458</sup>

However, few official government documents, let alone a clear formulation of policy, have been published on this issue. The reason behind the reservation on this issue is the symbolic nature and the religious and political significance of Jerusalem for both peoples. The Old City of Jerusalem is the central focus of the national aspirations of Israelis and Palestinians and perhaps the most contentious territory in the Arab-Israeli conflict. Sovereignty, administration and control over Jerusalem are questions subject to great dispute.<sup>459</sup> Ilan Goldenberg, former Chief of Staff to U.S. Special Envoy Martin Indyk, and a member of the U.S. negotiation team during the Kerry Initiative, described the Jerusalem issue, if the Israeli-Palestinian conflict were to be compared to a complicated divorce, as the custody battle over the couple’s young child.<sup>460</sup> Both parties know that concessions, rumours or speculations about their position on Jerusalem can have harmful effects on their negotiating positions and respective internal political situations.

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Affairs Department, at [http://www.nad-plo.org/userfiles/file/statements/address%20of%20H\\_E%20president%20Mahmoud%20Abbas.pdf](http://www.nad-plo.org/userfiles/file/statements/address%20of%20H_E%20president%20Mahmoud%20Abbas.pdf), accessed on January 26, 2016.

<sup>456</sup> The Middle East Media Research Institute (MEMRI), Abbas in Interview: “Six Million Refugees Want To Return, And I Am One Of Them”, Special Dispatch No. 5898, December 5, 2014, available at [http://www.memri.org/report/en/0/0/0/0/8323.htm#\\_edn1](http://www.memri.org/report/en/0/0/0/0/8323.htm#_edn1), accessed on November 18, 2015.

<sup>457</sup> For a thorough analysis of Jerusalem’s legal status, see *Martina Haedrich*, *Der Rechtsstatus von Jerusalem und die Hauptstadtfrage*, *Jahrbuch des Öffentlichen Rechts der Gegenwart*, Vol. 55 (2007), pp. 403-428; for past proposals and positions on Jerusalem, see *Moshe Hirsch*, *Deborah Housen-Couriel*, *Ruth Lapidot*, *Whither Jerusalem? Proposals and Positions Concerning the Future of Jerusalem*, The Hague 1995, p. 25.

<sup>458</sup> *Martina Haedrich*, *Der Rechtsstatus von Jerusalem und die Hauptstadtfrage*, *Jahrbuch des Öffentlichen Rechts der Gegenwart*, Vol. 55 (2007), pp. 403-428, at 425-426; on the Israeli discussions during the Camp David Summit 2000 on Jerusalem see *Martin Indyk*, *Innocent Abroad, An Intimate Account of American Peace Diplomacy in the Middle East*, New York 2009, pp. 319-320.

<sup>459</sup> *Michael Bell*, *Michael J. Molloy*, *John Bell* (Project Directors, Jerusalem Old City Initiative, Security Working Group), *The Jerusalem Old City Initiative Security Assessment*, November 15, 2007, (revised as of 27 February 2008), p. 83, available at <http://www1.uwindsor.ca/joci/system/files/security-assessment.pdf>, accessed on February 3, 2016.

<sup>460</sup> *Ilan Goldenberg*, *Lessons from the 2013-2014 Israeli-Palestinian Final Status Negotiations*, Washington, DC 2015, from the website of the Center for a New American Security, available at <http://www.cnas.org/lessons-learned-final-status-negotiations#.Vva5rXr5HPA>, accessed on March 27, 2016, p. 1: “The nastiest fight in any divorce tends to be over custody of the children; in this case the “child” is Jerusalem. It is the most emotionally charged issue, and any solution will be extremely challenging. During every final status negotiation, the issue of Jerusalem has been the most sensitive even to discuss. Ultimately, the only solution that might possibly work would be some kind of shared custody arrangement; it would not be ideal for either of the parties and would be cumbersome for the residents of the city, but it would have to be tolerated by all sides.

The Partition Plan of 1947 proposed a special status for Jerusalem.<sup>461</sup> It sought to establish the city of Jerusalem as a “corpus separatum” (separate body) that would be governed by a special international regime led by the Governor of the UN Trusteeship Council. During the 1948 War, while Jordan gained control over East Jerusalem including the Old City, West Jerusalem fell under the sovereignty of Israel. Mount Scopus became a UN protected Israeli enclave within the Jordanian territory. During the 1967 War, Israel also gained control over East Jerusalem, including the Temple Mount and the Wailing Wall.<sup>462</sup> During the Oslo peace talks, the status of Jerusalem was determined to be an issue to be discussed in negotiations for a final status agreement, which were to commence in 1996. At the 2000 Camp David Summit, as regards the Jerusalem issue, most friction between Israel and the Palestinians arose on the matter of sovereignty over the Temple Mount and the holy sites in Jerusalem. According to the Road Map for Peace, the Jerusalem issue is supposed to be negotiated and solved during the last phase of implementation of the

peace plan. An agreement would “respect the political concerns of both parties as well as the religious interests of Jews, Muslims and Christians in the same way.”<sup>463</sup>

The current Israeli government maintains its position that Jerusalem will remain the undivided capital of the State of Israel.<sup>464</sup> In 1980, the Knesset passed an act with constitutional status, the “1980 Basic Law: Jerusalem, Capital of Israel”.<sup>465</sup> Under this law, Jerusalem, “complete and united”, was declared Israel’s capital. This law also guarantees freedom of access for members of different religions to their holy sites. The Palestinians, however, consider Al Quds (Jerusalem) the capital of Palestine.<sup>466</sup> Under Article 3 of the Palestinian Basic Law, Jerusalem is the Capital of Palestine.<sup>467</sup> In the context of Jerusalem’s holy sites, Jordan had also consistently raised concerns and reiterated claims based upon the Israeli-Jordanian Peace Treaty of 1994. Under Article 9 Section 2, Israel agreed to respect the present “special role of the Hashemite Kingdom of Jordan in Muslim holy shrines in Jerusalem” and to “give high priority to the

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<sup>461</sup> UN General Assembly Resolution 181 (II) and the Partition Plan, in: *Terje Rød-Larsen, Nur Laq and Fabrice Aidan*, *The Search for Peace in the Arab-Israeli Conflict, A Compendium of Documents and Analysis*, Oxford 2014, p. 577. Part III. City of Jerusalem reads: “The City of Jerusalem shall be established as a corpus separatum under a special international regime and shall be administered by the United Nations. The Trusteeship Council shall be designated to discharge the responsibilities of the Administering Authority of the United Nations.”

<sup>462</sup> *Ruth Lapidot*, “Jerusalem”, in *Rüdiger Wolfrum* (ed.): *Max Planck Encyclopedia of Public International Law*, (Online-Ed.), Oxford, last updated in May 2013, available at <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1303?rskey=ZEM3WG&result=1&prd=EPIL>, accessed on November 18, 2015.

<sup>463</sup> U.S. Department of State, *A Performance-Based Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict*, Office of the Spokesman, Press Statement, April 30, 2003, available at <http://2001-2009.state.gov/r/pa/prs/ps/2003/20062.htm>, accessed on April 10, 2016.

<sup>464</sup> *Herb Keinon*, *Netanyahu: “Jerusalem has and always will only be the capital of the Jewish people”*, *The Jerusalem Post*, May 17, 2015, available at <http://www.jpost.com/Israel-News/Netanyahu-Jerusalem-has-and-always-will-only-be-the-capital-of-the-Jewish-people-403357>, accessed on May 19, 2015.

<sup>465</sup> The Knesset, *Basic Law: Jerusalem, Capital of Israel*, available at [https://www.knesset.gov.il/laws/special/eng/basic10\\_eng.htm](https://www.knesset.gov.il/laws/special/eng/basic10_eng.htm), accessed on February 4, 2016; *Martina Haedrich*, *Der Rechtsstatus von Jerusalem und die Hauptstadtfrage*, *Jahrbuch des Öffentlichen Rechts der Gegenwart*, Vol. 55 (2007), pp. 403-428, 410.

<sup>466</sup> *Erik Bolstad and Tonje M. Viken*, 2003 Amended Basic Law: “[T]he birth of the Palestinian National Authority in the national homeland of Palestine, the land of their forefathers, comes within the context of continuous and vigorous struggle, during which the Palestinian people witnessed thousands of their precious children sacrificed as martyrs, injured persons and prisoners of war, all in order to achieve their people’s clear national rights, the foremost of which are the right of return, the right to self-determination and the right to establish an independent Palestinian state, with Jerusalem as a capital [...], from the website of The Palestine Basic Law, available at <http://www.palestinianbasiclaw.org/basic-law/2003-amended-basic-law>, accessed on May 19, 2015. The site is created by the Norwegian journalists *Erik Bolstad* and *Tonje M. Viken* in February 2008, it is a private initiative and has no affiliation to any organizations or authorities.

<sup>467</sup> *Palestinian Basic Law*, in: *Terje Rød-Larsen, Nur Laq and Fabrice Aidan*, *The Search for Peace in the Arab-Israeli Conflict, A Compendium of Documents and Analysis*, Oxford 2014, p. 1149.

Jordanian historic role in these shrines” when negotiations on the permanent status of Jerusalem take place.<sup>468</sup>

Multiple ideas have been presented to solve the Jerusalem issue.<sup>469</sup> In his Parameters, President Clinton suggested granting the Palestinians sovereignty over the Arab neighbourhoods of the city and the Israelis sovereignty over the Jewish neighbourhoods of the city, with Israel retaining control over the Western Wall. Under the Clinton Parameters, the Palestinians would have sovereignty over the Temple Mount and Israel would have sovereignty over the Western Wall and both sides sharing “functional sovereignty” over the issue of excavation under the Temple Mount and behind the Western Wall “such that mutual consent would be requested before any excavation can take place”.<sup>470</sup>

After the Annapolis Conference, Israeli Prime Minister Olmert proposed a special regime for Jerusalem that would apply to the Old City and regard the Old City as neither solely Israeli nor Palestinian. Olmert suggested that in a final status agreement, the area containing the religious sites in Jerusalem would be governed by a special committee consisting of representatives of five states: Saudi Arabia, Jordan, Palestine, the U.S. and Israel.<sup>471</sup> Olmert proposed a special arrangement and/or historic framework that includes multiple spheres (above and under the Temple Mount) and a

special conflict resolution mechanism. Under his proposal, there would be two distinct municipalities that would govern issues such as transportation, economy and culture with different laws. The outstanding issue remaining under this proposal are the freedom of movement and freedom of worship at the holy sites.

It seems that during the talks of 2013–2014, Israel and the Palestinians negotiated on the basis that an undivided Jerusalem, with a joint municipal body governing its day-to-day administration would serve as the capital of both Israel and Palestine.<sup>472</sup> While the discourse around Jerusalem often highlights Israel’s need to give up its control over key sections, the focus may need to shift to the way a negotiated solution could simultaneously enable an Israeli Prime Minister to finally receive international recognition of Jerusalem as Israel’s capital and guarantee lasting and uncontested Israeli control over key holy Jewish sites.<sup>473</sup>

Any negotiated solution for Jerusalem will have to consider several key aspects. First, it will have to take into account the city’s symbolic and religious meaning, as well as the heterogeneous structure of its inhabitants and their geographical location. Second, regarding the issue of sovereignty, the final compromise will have to provide an answer to the question of whether the city will be divided or united. If the city will be divided, the question

<sup>468</sup> Treaty of Peace between the State of Israel and the Hashemite Kingdom of Jordan, October 26, 1994, in: *Terje Rød-Larsen, Nur Laq and Fabrice Aidan, The Search for Peace in the Arab-Israeli Conflict, A Compendium of Documents and Analysis*, Oxford 2014, p. 1007.

<sup>469</sup> See *Moshe Hirsch, Deborah Housen-Couriel, Ruth Lapidot, Whither Jerusalem? Proposals and Positions Concerning the Future of Jerusalem*, The Hague 1995, p. 25.

<sup>470</sup> Clinton Parameters, December 23, 2000, in: *Terje Rød-Larsen, Nur Laq and Fabrice Aidan, The Search for Peace in the Arab-Israeli Conflict, A Compendium of Documents and Analysis*, Oxford 2014, p. 461.

<sup>471</sup> *Avi Issacharoff, Revealed: Olmert’s 2008 peace offer to Palestinians*, The Jerusalem Post, May 24, 2013, available at <http://www.jpost.com/Diplomacy-and-Politics/Details-of-Olmerts-peace-offer-to-Palestinians-exposed-314261>, accessed on March 9, 2016.

<sup>472</sup> *Thomas L. Friedman, Why Kerry is Scary*, The New York Times, January 28, 2014, available at

[http://www.nytimes.com/2014/01/29/opinion/friedman-why-kerry-is-scary.html?\\_r=0](http://www.nytimes.com/2014/01/29/opinion/friedman-why-kerry-is-scary.html?_r=0), accessed on May 19, 2015.

<sup>473</sup> See *Tal Becker, The End of the ‘Peace Process’?*, Policy Notes, 10 (2012), from the website of The Washington Institute for Near East Policy, available at <http://www.washingtoninstitute.org/uploads/Documents/pubs/PolicyNote10.pdf>, accessed March 27, 2016; on policy recommendations for Western states, see *Einat Wilf, Aligning policy with preference, Preserving a path to a two-state solution*, Policy Focus, 141 (2015), from the website of The Washington Institute for Near East Policy, available at <http://www.washingtoninstitute.org/policy-analysis/view/aligning-policy-with-preference-preserving-a-path-to-a-two-state-solution>, accessed on March 27, 2016, p. 22: “If the international consensus is that Jerusalem should serve as capital of two states, then *Wilf* recommends Western states to universally recognize Jerusalem as belonging to Israel and serving as Israel’s capital and recognize Arab East Jerusalem as capital of the state of Palestine, with embassies moved there or existing consulates upgraded to fulfil the role. According to *Wilf*, the concept of a *corpus separatum* could remain but would be limited to the Holy Basin.”

remains how such division would be carried out, for instance dividing the city according to ethnic affiliation or according to functional competence of the municipality. Third, a negotiated solution would have to define the external municipal demarcation line of Jerusalem. The current demarcation line could remain as it is, or be expanded. Finally, regardless of the political boundaries, the municipalities' authority regarding education, construction, planning, zoning and the city's relations with other cities, in particular with regard to foreign investments and also cultural and economic projects, would have to be regulated.