

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

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I. INTRODUCTION

The land known as Palestine has had a storied and tumultuous history. It has: birthed religions,¹ been the place of occupation and conquest,² spawned discord,³ and been the site of inter-faith cooperation.⁴ The small area of land has also been the subject of modern debates and the source of military and political conflicts that have crossed centuries.⁵ To be sure, the question of who should control or occupy Palestine/modern day Israel did not begin with Netanyahu's address to the United States Congress in 2015, nor did it begin with the meeting between Sadat and Begin at Camp David in 1978 or the meeting between Arafat and Barak at Camp David in 2000. Instead, that modern debate began after World War II—seventy years ago.⁶

1. See MORRIS JASTROW, *ZIONISM AND THE FUTURE OF PALESTINE: THE FALLACIES AND DANGERS OF POLITICAL ZIONISM* 98 (1919); see also Wayne Jackson, *The Origin of Christianity*, CHRISTIAN COURIER, <https://www.christiancourier.com/articles/83-origin-of-christianity-the> (last visited Jan. 23, 2018).

2. See GUDRUN KRÄMER, *HISTORY OF PALESTINE: FROM THE OTTOMAN CONQUEST TO THE FOUNDING OF THE STATE OF ISRAEL 1–17* (2011); see also Joseph E. Katz, *History of "Palestine" 1273 BCE to 1948*, ERETZ YISROEL, <http://www.eretzyisroel.org/~jkatz/palestine.html> (last visited Jan. 23, 2018).

3. See MICHAEL KRYZANEK, *DEBATES, DIFFERENCES, AND DIVISIONS: THE 25 ISSUES THAT SHAPE AMERICAN POLITICS* (2011) (discussing how the most intractable foreign policy problem facing the United States is the Israeli-Palestine dispute); see also Nathan Thrall, *The Past 50 Years of Israeli Occupation*, N.Y. TIMES (June 2, 2017), <https://www.nytimes.com/2017/06/02/opinion/sunday/the-past-50-years-of-israeli-occupation-and-the-next.html>.

4. See GUDRUN, *supra* note 2, at 202; see also Oren Liebermann, *Two Muslim Families Entrusted with Care of Holy Christian Site for Centuries*, CNN (Mar. 27, 2016), <http://www.cnn.com/2016/03/26/middleeast/easter-muslim-keyholder/index.html>; Lisa Palmieri-Billig, *Israeli Rabbi Speaks of Interfaith Cooperation in Vatican*, JERUSALEM POST (Oct. 17, 2010, 1:42 PM), <http://www.jpost.com/Jewish-World/Jewish-News/Israeli-rabbi-speaks-of-interfaith-cooperation-in-Vatican>.

5. See Rouba Al-Fattal, *The Foreign Policy of the EU in the Palestinian Territory*, CTR. FOR EUR. POL'Y STUD. (2010), http://aei.pitt.edu/14582/1/WD328_Al-Fattal_on_EU_FP_in_Palestine.pdf; see also *U.S. Role in the Israeli-Palestinian Conflict*, PBS NEWSHOUR (May 11, 2006, 10:18 AM), http://www.pbs.org/newshour/updates/middle_east-jan-june06-us_05-11/.

6. Some may say the Balfour Declarations reflect a modern approach, but that declaration was made before the World War II and mass relocation of European Jews into the Holy Land. Nonetheless, the Balfour Declaration is, in and of itself, the source of conflict as it seeks to give rights to and protect the rights of distinct peoples without ever stating how that feat was to be accomplished. See PALESTINE ROYAL COMMISSION REPORT, 1937, Cmd. 5479, at 22 (UK) (quoting the Balfour Declaration).

His Majesty's government view with favour [sic] the establishment in Palestine of a national home for the Jewish people, and will use their best endeavours [sic] to facilitate the achievement of this object. It being clearly understood that nothing shall be done which may prejudice the civil and religious rights of the existing non-Jewish communities in Palestine

Id. But see RASHID KHALIDI, *PALESTINIAN IDENTITY: THE CONSTRUCTION OF MODERN NATIONAL CONSCIOUSNESS* 27 (2010).

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 Enlich 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. PALESTINE IS A STATE EVEN IF THE UNITED NATIONS FAILS TO OFFICIALLY RECOGNIZE PALESTINE AS A STATE

Indeed, no analysis of whether two states may exist in historical Palestine/modern-day Israel can be accomplished without first identifying and explaining what, under international law, is a state. A state is “an entity which has a defined territory and permanent population, under the control of its own government, and which engages in, or has the capacity to engage in, formal relations with other such entities.”¹⁷ Moreover, unlike corporations, which are created by following legally required processes, there is no clearly defined legal process for the creation of states. Thus, “the nearest international law analogues are (a) the process by which new members are admitted to the UN and (b) the phenomenon known as the recognition of the international system.”¹⁸

First, that the UN has not recognized¹⁹ or admitted a political entity as a member is not dispositive of whether that political entity

15. See generally Richard Falk, *Forty Years after 242: A “Canonical” Text in Disrepute?*, 37 J. PALESTINE STUD. 39 (2007). Even Bill Maher, who regards himself as an under-appreciated voice for societal introspection and equality, is not able to dispassionately debate the issue. See Presenting Israel, *Bill Maher: “Maybe now Europe Will Have More Sympathy for Israel”*, YOUTUBE (Mar. 26, 2016), <https://www.youtube.com/watch?v=-7nCRJHiDxA>.

16. See Herbert C. Kelman, *The Interdependence of Israeli and Palestinian National Identities: The Role of the Other in Existential Conflicts*, 55 J. SOC. ISSUES 581, 583, 588 (1999); see also Max Fisher, *The Two-State Solution: What it is and Why it Hasn’t Happened*, N.Y. TIMES (Dec. 29, 2016), <https://www.nytimes.com/2016/12/29/world/middleeast/israel-palestinians-two-state-solution.html>.

17. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 201 (AM. LAW INST. 1987), LexisNexis; see Montevideo Convention on the Rights and Duties of States, art. 1, Dec. 26, 1933, 49 Stat. 3097, 165 L.N.T.S. 19 (describing a similar definition of “state”). “The [D]eclaratory [T]heory provides that the moment in which an entity satisfies all the conditions set out in the Montevideo [C]onvention the entity is a state.” Joseph William Davids, *What Makes a State?*, {NEW} INT’L L. (Oct. 3, 2015, 7:12 AM), <https://thenewinternationallaw.wordpress.com/2012/05/02/what-makes-a-state/>.

18. CHRISTOPHER L. BLAKESLEY ET AL., THE INTERNATIONAL LEGAL SYSTEM: CASES AND MATERIALS 80 (5th ed. 2001); see also Montevideo Convention on the Rights and Duties of States, *supra* note 17.

19. The Constitutive Theory of Statehood provides that in addition to satisfying the four criteria described in the Montevideo Convention, the putative state must seek and obtain recognition as a state. See Brad R. Roth, *The Entity that Dare Not Speak Its Name: Unrecognized Taiwan as a Right-Bearer in the International Legal Order*, 4 EAST ASIA L. REV. 91, 106-07 (2009).

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 International Organization at San Francisco, or having previously signed the Declaration by the United Nations of 1 January 1942, sign the present Charter and ratify it in accordance with Article 110.²¹

Article 4

1. Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present charter and, in the judgment of the Organization [sic], are able and willing to carry out these obligations.
2. The admission of any such state to membership in the United Nations will be affected by a decision of the General Assembly upon the recommendation of the Security Council.²²

Because Article 4 of the Charter is conspicuously devoid of any criteria that the Security Council must consider or any limitations on that body’s power to refuse to recommend new members, the Security Council, as a body or its members (individually), have the unfettered discretion to recommend or refuse to recommend UN membership for new political entities including those entities claiming to be new states or nations. As a result, the Security Council, in making its decision, may be influenced by the afore-mentioned religious and geo-political biases without regard for whether the political entity that claims to be a state has established that it satisfies the criteria (territory, population, government, and foreign relations) for statehood.²³ Because of the purported bias, some experts have criticized the oft-quoted Reso-

20. U.N. Charter art. 4.

21. *Id.* art. 3.

22. *Id.* art. 4, ¶¶ 1, 2.

23. See Rosalyn Cohen, *The Concept of Statehood in United Nations Practice*, 109 U. PA. L. REV. 1127, 1127-30, 1168 (1961); see also Ilona-Margarita Stettner, *Legal Fact Sheet – Palestinian Statehood According to International Law*, KONRAD-ADENAUER-STIFTUNG, http://www.kas.de/wf/doc/kas_7185-1442-2-30.pdf?120718151615 (last visited Jan. 28, 2018) (stating that “The declarative theory recognises [sic] the statehood of a territorial entity as long as the normative conditions of the Montevideo Convention are met. In contrast, the constitutive theory requires other countries to recognise [sic] the statehood of this territorial unit.”).

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 Israel in 1988, more than 130 nations have recognized Palestine as a sovereign state.²⁸ The issue then is not

24. S.C. Res. 242 (Nov. 22, 1967).

25. See NORMAN G. FINKELSTEIN, *IMAGE AND REALITY OF THE ISRAEL-PALESTINE CONFLICT* 161 (2003); see generally *Legal Fact Sheet – Palestinian Statehood According to International Law*, *supra* note 23.

26. *Sweden Vows to Recognise State of Palestine*, AL JAZEERA (Oct. 4, 2014), <http://www.aljazeera.com/news/europe/2014/10/sweden-recognise-state-palestine-2014103144745449229.html>; see David C. Unger, *Maps of War, Maps of Peace*, 19 *WORLD POL’Y J.* 1 (2002); Nicole Gaouette & Elise Labott, *Trump Backs Off Two-State Framework for Israeli-Palestinian Deal*, CNN: POL., <http://www.cnn.com/2017/02/15/politics/trump-netanyahu-two-state-solution-israel-palestinians/index.html> (last updated Feb. 16, 2017, 12:54 AM).

UN Secretary-General Antonio Guterres, speaking in Cairo alongside the Egyptian Minister of Foreign Affairs, stressed that the Israelis and Palestinians must not abandon a commitment to a two-state solution.

“There is no Plan B to the situation between Palestinians and Israelis but a two-state solution and that everything must be done to preserve that possibility,” he said in remarks to the press.

Id.

27. See Francis A. Boyle, *The Creation of the State of Palestine*, 1 *EUR. J. INT’L L.* 301 (1990); see also James Crawford, *The Creation of the State of Palestine: Too Much Too Soon*, 1 *EUR. J. INT’L L.* 307, 309 (1990); Isabel Kershner, *Sweden Gives Recognition to Palestinians*, N.Y. TIMES (Oct. 30, 2014), <http://www.nytimes.com/2014/10/31/world/europe/sweden-recognizes-palestinian-state.html>.

The Swedish government on Thursday officially recognized a state of Palestine, as the new prime minister, Stefan Lofven, ignored Israeli protests and followed through on a pledge he made at his inauguration this month.

The Swedish Foreign Ministry posted a message on Twitter on Thursday announcing the move and saying the Swedish government “expressed hopes for peaceful coexistence between #Israel and #Palestine.”

Id.

28. See John V. Whitbeck, *The State of Palestine Exists*, 18 *MIDDLE EAST POL’Y* 62, 64 (2011); see also *Palestine (Or Palestinian Territories)*, WORLD ATLAS, <https://www.worldatlas.com/webimage/countrys/asia/lcolor/palestinianlinks.htm> (last updated Nov. 29, 2017).

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, the fragmented Palestinian Territories are generally located within the Gaza Strip, East Jerusalem, and the West Bank.³³ In addition, the “Palestinian State” believes that Israel must relinquish any right to, or control of, territories that Israel captured in the Six Day War of 1967.³⁴ Moreover, Palestine believes that Israel’s construction of settlements in the West Bank is unlawful.³⁵ Consequently, Palestine firmly believes that Israel must withdraw, pursuant to UN Security Council Resolution 242, to the pre-1967 borders,³⁶ and cede to Palestine all lands and settlements in the West Bank.³⁷ As a result, the boundaries of the Palestine State are still unsettled and/or disputed.

29. See Suzanne Kelly Panganiban, *Palestinian Statehood: A Study of Statehood through the Lens of the Montevideo Convention* 16 (Jan. 18, 2016) (unpublished Masters thesis, Virginia Tech University) (on file at <https://vtechworks.lib.vt.edu/handle/10919/64512>); see also *Legal Fact Sheet – Palestinian Statehood According to International Law*, *supra* note 23.

30. See Panganiban, *supra* note 29, at 15; see also *Legal Fact Sheet – Palestinian Statehood According to International Law*, *supra* note 23.

31. See Steven Erlanger, *Sweden to Recognize Palestinian State*, N.Y. TIMES (Oct. 3, 2014), http://www.nytimes.com/2014/10/04/world/europe/sweden-to-recognize-palestinian-state.html?_r=0 (“Though Mr. Reinfeldt’s [(the former Prime Minister of Sweden)] government had been critical of Israeli policies on settlements and the recent Gaza war, it refused to recognize Palestine as a sovereign state, arguing that the government there did not satisfy a basic criterion of sovereignty: to have control over its territory.”).

32. See ANTHONY H. CORDESMAN, *THE ISRAELI-PALESTINIAN WAR: ESCALATING TO NOWHERE*, 65-66 (2005).

33. *Land and Settlement Issues*, GLOBAL POLICY FORUM, <https://www.globalpolicy.org/security-council/index-of-countries-on-the-security-council-agenda/israel-palestine-and-the-occupied-territories/land-and-settlement-issues.html> (last visited Mar. 13, 2018); *State of Palestine: Palestinian Territories*, NATIONS ONLINE PROJECT, http://www.nationsonline.org/oneworld/palestinian_territory.htm (last visited Mar. 13, 2018).

34. See ERIC BLACK, *PARALLEL REALITIES: A JEWISH/ARAB HISTORY OF ISRAEL/PALESTINE* (1992); Eric Black, *Resolution 242 and the Aftermath of 1967*, PBS, <https://www.pbs.org/wgbh/pages/frontline/shows/oslo/parallel/8.html> (last visited Mar. 20, 2018); see also CORDESMAN, *supra* note 32.

35. See Zena Tahhan, *Israel’s Settlements: 50 Years of Land Theft Explained*, ALJAZEERA, (Nov. 21, 2017), <https://interactive.aljazeera.com/aje/2017/50-years-illegal-settlements/index.html>.

36. See S.C. Res. 242, *supra* note 24; see also BLACK, *supra* note 34.

37. See S.C. Res. Jordan Draft 2014/916 (Dec. 30, 2014), <http://www.securitycouncilreport.org/un-documents/israelpalestine/>; see also BLACK, *supra* note 34.

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 (Aug. 3, 2011, 9:50 PM), <http://foreignpolicy.com/2011/08/03/the-palestinians-imaginary-state-2/> (arguing that only either Hamas-controlled Gaza or Fatah-controlled West Bank could potentially gain legal recognition as Palestinian state because only these maintain self-controlled government).

41. S.C. Res. 242, *supra* note 24; see S.C. Res. Jordan Draft, *supra* note 37.

42. S.C. Res. 242, *supra* note 24.

43. S.C. Res. 242, *supra* note 24, ¶ 1(ii).

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) For achieving a just settlement of the refugee problem;

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

3. *Requests* the Secretary-General to designate a Special Representative to proceed to the Middle East to establish and maintain contacts with the States concerned in order to promote agreement and assist efforts to achieve a peaceful and accepted settlement in accordance with the provisions and principles in this resolution;

4. *Requests* the Secretary-General to report to the Security Council on the progress of the efforts of the Special Representative as soon as possible. Adopted unanimously at the 1382nd meeting.

Id. at ¶¶ 1-4.

44. S.C. Res. 338 (Oct. 22, 1973).

45. See *History of Mid-East Peace Talks*, BBC NEWS (July 29, 2013), <http://www.bbc.com/news/world-middle-east-11103745>; see also *U.N. Security Council: The Meaning of Resolution 242*, JEWISH VIRTUAL LIBR. PROJECT AICE, <http://www.jewishvirtuallibrary.org/the-meaning-of-un-security-council-resolution-242> (last visited Feb. 4, 2018).

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.

3. At a Minimum, the Palestinian State Should Include the West Bank and Gaza

In 1978, President Jimmy Carter invited President Sadat of Egypt and Prime Minister Begin of Israel to Camp David for talks.⁵⁴ Those talks resulted in two agreements.⁵⁵ The first agreement was called “A Framework for Peace in the Middle East.”⁵⁶ The Framework for Peace in the Middle East in pertinent parts states:

To achieve a relationship of peace, in the spirit of Article 2 of the United Nations Charter, future negotiations between Israel and *any neighbor prepared to negotiate peace and security with it are necessary for the purpose of carrying out all the provisions and principles of Resolutions 242 and 338.*⁵⁷

52. S.C. Res. 242, *supra* note 24.

53. *Id.*; see U.N. Charter, *supra* note 20, art. 2, ¶ 4 (stating, “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”).

54. *Camp David Accords and the Arab-Israeli Peace Process*, OFF. HISTORIAN, <https://history.state.gov/milestones/1977-1980/camp-david> (last visited Mar. 20, 2018).

55. *Id.*

56. *Camp David Accords: The Framework for Peace in the Middle East*, JIMMY CARTER PRESIDENTIAL LIBR. & MUSEUM, https://www.jimmycarterlibrary.gov/research/framework_for_peace_in_the_middle_east (last visited Mar. 20, 2018) [hereinafter *Framework for Peace in the Middle East*].

57. *Id.* (emphasis added).

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 also recognize the legitimate right of the Palestinian peoples and their just requirements.* In this way, the Palestinians will participate in the determination of their own future⁵⁹

Moreover, notwithstanding the fact that states have interpreted the Framework For Peace differently,⁶⁰ the document unequivocally resolves that self-government is to be exercised in the West Bank and Gaza.⁶¹ Consequently, what, if at all, should be at issue, is the scope and nature of the security and mutual assistance agreements⁶² that ought to be implemented between Israel and a Palestinian State—not whether a self-governing Palestinian State should exist.⁶³

Indeed, to argue that Palestine is not a state because its borders or territories are disputed or challenged by another state is tantamount to stating that Israel is not a state because its borders or territo-

58. *See id.* (explaining the Palestinian people were intended third-party beneficiaries of the contract).

59. *Id.* (emphasis added).

60. *See Camp David Accords*, ISR. MINISTRY FOREIGN AFF., <http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/camp%20david%20accords.aspx> (last visited Jan. 28, 2018) (stating “The framework agreement regarding the future of Judea, Samaria and Gaza was less clear and was later interpreted differently by Israel, Egypt and the US.”).

61. *Framework for Peace in the Middle East*, *supra* note 56.

62. *See generally* Kenneth L. Lewis Jr., *The Extradition Treaty Between Jamaica and the United States: Its History and the Saga of Christopher “Dudus” Coke*, 45 U. MIAMI INTER-AM. L. REV. 63, 64-65, 76 (2013) (demonstrating that nations often enter into mutual legal assistance treaties and extradition treaties).

63. *Framework for Peace in the Middle East*, *supra* note 56.

Security is enhanced by a relationship of peace and by cooperation between nations which enjoy normal relations. In addition, under the terms of peace treaties, the parties can, on the basis of reciprocity, agree to special security arrangements such as demilitarized zones, limited armaments areas, early warning stations, the presence of international forces, liaison, agreed measures for monitoring and other arrangements that they agree are useful.

Id.

ries are disputed or challenged by other states.⁶⁴ To fully illustrate the invalidity of the argument, I offer that it is unlikely, under international law, that Argentina or Great Britain would have lost the cloak of statehood due to their dispute over the right to control the Falkland Islands.⁶⁵ Similarly, China does not lose its statehood or its place on the UN Security Council merely because China describes Taiwan as within its territorial borders⁶⁶—that is, some parcel of its land is subject to competing territorial claims.

B. *The Palestinian State Is Under the Control of Its Own Government*

The Palestinian State is under the control of its own government, although to a limited degree. “Palestine is governed by a Parliamentary Democracy referred to as the Legislative Council (“PLC”).”⁶⁷ The Palestinian Authority comprises, like the government of the United States, a legislative branch, an executive branch, and a judicial branch.⁶⁸ The Palestinians also have their own police force.⁶⁹

In September 2005, after Israel withdrew troops from the Gaza Strip, the Palestinian Authority assumed control of the territory, but Israel “control[led] . . . the airspace, seafront and access - including deliveries of food and other goods - apart from the crossing with Egypt.”⁷⁰ Moreover, although pursuant to the Protocol on Economic

64. See *Legal Fact Sheet – Palestinian Statehood According to International Law*, *supra* note 23, at 1-2 (“Exclaves and fragmented territories such as Gaza, East Jerusalem and the West Bank also exist in other regions and states such as Alaska, Gibraltar and Kaliningrad. At the same time, it is difficult to use the lack of defined borders between the Palestinian territories and Israel as an argument against the criterion of a defined territory when the same undefined border also applies to Israel, where it is not considered a problem.”).

65. See generally Peter Wilby, *The Islands of Black Gold*, *NEW STATESMAN*, Mar. 15, 2010, at 22, 25 (discussing British and Argentinian control over the Falkland Islands).

66. See generally John Shijian Mo, *Settlement of Trade Disputes Between Mainland China and the Separate Customs Territory of Taiwan Within the WTO*, 2 *CHINESE J. INT’L L.* 145 (2003) (explaining both the Constitution of People’s Republic of China and the laws of the Republic of China expressly consider both Mainland China and Taiwan as belonging to the same China).

67. *Palestinian Government*, MISSION PALESTINE, <http://palestine.dk/palestine/government/> (last visited Jan. 28, 2018); *For the Council*, PALESTINIAN LEGIS. COUNCIL, <https://goo.gl/n219uQ> (last visited Jan. 28, 2018).

68. See *The Basic Law*, PALESTINIAN LEGIS. COUNCIL, <https://goo.gl/n219uQ> (last visited Jan. 28, 2018).

69. See *Palestinian Authority*, *ENCYCLOPEDIA BRITANNICA*, <https://www.britannica.com/topic/Palestinian-Authority> (last visited Jan. 28, 2018).

70. *Palestinian Territories Profile*, *BBC NEWS* (Dec. 7, 2017), <http://www.bbc.com/news/world-middle-east-14630174>.

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

C. *History is Replete with Examples of the “Two-State Solution”*

History is replete with examples of countries that have been divided into separate states. In fact, several states were divided to settle political, religious, economic, and ethnic-based conflicts or wars. Lest we forget, India and Pakistan previously comprised one state.⁷⁵ Likewise, South Korea and North Korea were, before separation, one nation.⁷⁶ The international community also recognized Serbia and

71. Protocol on Economic Relations Between the Government of the State of Israel and the P.L.O., Representing the Palestinian People, Isr.-P.L.O., May 4, 1994, 33 I.L.M. 622.

72. See Daniel Engber, *Israel Sends \$50 Million a Month to the Palestinians?*, SLATE (Feb. 17, 2006), http://www.slate.com/articles/news_and_politics/explainer/2006/02/israel_sends_50_million_a_month_to_the_palestinians.html; see also U.N. Conference on Trade and Development, *supra* note 39, at 8.

73. Ted Piccone & Ashley Miller, *Cuba, the U.S., and the Concept of Sovereignty: Toward a Common Vocabulary?*, BROOKINGS INST. (Dec. 19, 2016), <https://www.brookings.edu/research/cuba-the-u-s-and-the-concept-of-sovereignty-toward-a-common-vocabulary/>.

74. See *id.* (explaining Cuba does not enjoy territorial and economic sovereignty).

75. See Rathnam Indurthy & Muhammad Haque, *The Kashmir Conflict: Why it Defies Solution*, 27 INT’L J. WORLD PEACE 9, 10 (2010); see also Kallie Szczepanski, *What Was the Partition of India?*, THOUGHT CO. (Mar. 8, 2017), <https://www.thoughtco.com/what-was-the-partition-of-india-195478>.

76. See Mark P. Barry, *The U.S. and the 1945 Division of Korea: Mismanaging the ‘Big Decisions’*, 29 INT’L J. ON WORLD PEACE 37, 37, 39-40; see also Kallie Szczepanski, *Why Is the Peninsula Split into North Korea and South Korea?*, THOUGHT CO. (Mar. 10, 2017), <https://www.thoughtco.com/why-north-korea-and-south-korea-195632>.

Montenegro as two separate states,⁷⁷ and, more recently, Sudan, the African nation, became two states—Sudan and the Republic of South Sudan.⁷⁸

There is no doubt that, as a result of deeply-rooted cultural and religious reasons, India was divided into two states—India and Pakistan.⁷⁹ In 1947, the United Kingdom decided to make India an independent country that would enjoy self-rule.⁸⁰ Unfortunately, at that time, the political parties—one comprising predominantly Hindus and the other comprising predominantly Muslims—determined that their constituents did not desire to be governed by another religious/ethnic group.⁸¹ Consequently, in an effort to reduce or eliminate the existing conflicts and skirmishes based on religious differences or identity, the UK determined that it would divide India into two separate countries—India and Pakistan.⁸²

Similarly, after almost a half-century of articulating their discontent with the then government of a united⁸³ Sudan,⁸⁴ the people of

77. See John M. Fraser, *Serbia and Montenegro: How Much Sovereignty? What kind of Association?*, 58 INT'L J. 373, 373-74 (2003); see also Matt Rosenberg, *History of the Former Country of Yugoslavia*, THOUGHT CO. (Jan. 22, 2018), <https://www.thoughtco.com/the-former-yugoslavia-1435415> (“Following a referendum, in June 2006, Montenegro and Serbia split into two separate independent countries. The creation of Montenegro as an independent country resulted in Serbia losing their access to the Adriatic Sea.”).

78. See North, *South Sudan Now Separate Nations*, CBC NEWS (July 8, 2011), <http://www.cbc.ca/news/world/north-south-sudan-now-separate-nations-1.992942> (“June 20, 2011[.] The governments of Sudan and Southern Sudan sign an agreement that calls for the withdrawal of Sudan troops from the disputed border region of Abyei. A UN-backed peacekeeping force from Ethiopia will be in Abyei until a referendum to decide which part of Sudan its residents will join . . . July 9, 2011[.] The Republic of South Sudan declares independence, becoming the [fifty-fourth] state in Africa.”). See generally Alan Boswell, *Sudan's Split: As South Cheers, the North Protests*, TIME MAG. (Jan. 31, 2011), <http://content.time.com/time/world/article/0,8599,2045274,00.html> (“It is a bloody equation southerners remember all too well. Oppression and war at the hands of Khartoum have left the soon-to-be nation one of the least developed areas in the world, and racial and religious tensions still bring the blood here to a boil. Most southern Sudanese, who are mainly non-Muslim Africans, see their years of war as resistance to northern attempts to Islamicize the South and pin it under Arab rule. ‘The mistreatment that they [northerners] have subjected southerners to, [treating them as] sub-humans—this is what brought people to this day,’ declared the South’s leader, Salva Kiir, in a speech after the referendum results were announced on Sunday.”).

79. See STEPHEN P. COHEN, *SHOOTING FOR A CENTURY: THE INDIA-PAKISTAN CONUNDRUM* 2, 5, 12 (2013).

80. *Id.* at 5.

81. See generally *id.* at 5, 31-32 (discussing the history of the communal and political rivalry between India and Pakistan).

82. See *id.* at 2, 5, 12.

83. Here, “united” means only that the country was recognized by the UN and other international bodies as one country, not that its people share common interests or equal protections under the law.

South Sudan, primarily non-Muslim Sudanese, resisted what they believed was Muslim and Islamic oppression and created a new and separate state—The Republic of South Sudan.⁸⁵ The international community supported the separation of Sudan into two countries because the international community desired to end war, suffering, genocide, and the shameful episode in human history, often referred to simply as “Darfur.”⁸⁶

Indeed, if the international community reasoned that India and Sudan should have been, and eventually were, separated into two independent nations so that those persons who share religious, ethnic, and cultural identities may live together and enjoy self-government, then the international community should also recognize that Israel and Palestine should be separated, so that those persons who share religious, ethnic, and cultural identities may live together and enjoy self-government. Similarly, if the international community reasoned that India and Sudan should have been, and eventually were, separated into independent nations to avoid armed conflict between disparate groups, then the international community must also recognize

84. See Hagar Taha, *Darfur and South Sudan: United in Struggle, Divided by Future?*, E-INT’L REL. (Sept. 9, 2011), <http://www.e-ir.info/2011/09/09/darfur-and-south-sudan-united-in-struggle-divided-by-future/> (“The South question started even before the independence of Sudan in 1956 with one civil war that extended from 1955 to 1972, and another that started in 1983 and ended with the signing of the Comparative Peace Agreement (CPA) between the Government of Sudan (GoS) and the Sudan Liberation Movement (SPLM/A) in Nairobi in 2005.”).

85. See Boswell, *supra* note 78 and accompanying text.

86. See Ahmed Hussain Adam, *The Secession of South Sudan and Its Impact on Darfur: Time for a New Direction*, SUDAN TRIB. (May 30, 2011), <http://www.sudantribune.com/spip.php?article39066> (“Darfur Conflict is more than [eight] years old today. The UN described it as the world worst humanitarian crisis; the International Criminal Court (ICC) as well as the US State Department classified it as genocide. The ICC indicted the Head of the regime, AL-Bashir for masterminding with absolute control a criminal plan to destroy the people of Darfur. Yet, the international community failed to impose the norm of the Responsibility to Protect (R2P) in [favor] of the civilian populations in Darfur. The human and economic costs of this conflict are horrific beyond . . . belief. The international and regional political responses to the Darfur conflict started in 2004[.] [N]onetheless, they failed to put an end to the conflict. Therefore, it is incumbent upon the international community and all concerned actors to reassess their approaches and strategies to formulate a holistic and bold approach to end the human suffering and restore peace and security in Darfur. It is time for a new beginning in Sudan. This is the only way forward, to guarantee a united, democratic and stable Sudan or rather Sudan minus the South. Darfur is a key factor for the stability of Sudan and the region as a whole. O[nce] it is less than a million square miles, Darfur becomes a majority in terms of number of the population (more than [forty-five] percent of Sudan’s population) and land-size in the Sudan; with major implications. Thus, Darfur crisis has to be resolved within the context of the broader agenda of structural and democratic change in Sudan. The experience of more than [eight] years of the negotiations manifested that, a peaceful and negotiated solution can[no]t be reali[z]ed under the current regime. Nevertheless, Darfur can[no]t be resolved militarily.”). See generally David Lanz, *Save Darfur: A Movement and Its Discontents*, 108 OXFORD UNIV. PRESS 669.

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. THE DECLARATION OF INDEPENDENCE para. 1 (U.S. 1776) (emphasis added).

90. See Mitchell Bard, *Israel-Egypt Relations: Background & Overview of Peace Treaty*, JEWISH VIRTUAL LIBR. PROJECT AICE (Mar. 26, 1979), <http://www.jewishvirtuallibrary.org/israel-and-egypt-make-peace>; see also *Framework for Peace in the Middle East*, *supra* note 56.

three decades, and which has survived the Arab Spring, regime change, and wars in the Middle East, may be the model to which Palestine and Israel should aspire. For example, as a result of its peace agreement with Egypt, Israel conceded certain territories that it had obtained through war and that Israel considered to be of vital military strategic importance.⁹¹ Moreover, in furtherance of peace, Israel ceded to Egypt certain settlements that were constructed in the Sinai.⁹² So too, in furtherance of peace between Israel and Palestine, Israel may return territories that Israel obtained through military conflict, and Israel may also return Palestinian lands that are occupied by Israeli settlers.

Certainly, Israel should expect and demand that the Palestinians also make some overtures in furtherance of peace. Like Egypt, the Palestinian military and intelligence services should share information⁹³ to thwart the efforts of zealots (various and sundry) and radical hate groups like ISIS. Notwithstanding the fact that such cooperation seems unlikely or unachievable, one must note that before 1979, no one would have expected that senior Egyptian and Israeli government and military officials would meet regularly to share data and assess common threats.⁹⁴

Pursuant to its 1979 peace agreement with Israel, Egypt agreed to turn the Sinai into a demilitarized zone and acquiesced to the free passage of Israeli ships through the Suez Canal.⁹⁵ Similarly, Palestine should agree to a demilitarized zone⁹⁶ between it and Israel, and Pal-

91. See ARIE MARCELLO KACOWICZ, *PEACEFUL TERRITORIAL CHANGE* 134 (1994); see also Bard, *supra* note 90.

92. See KACOWICZ, *supra* note 91, at 135; see also Bard, *supra* note 90.

93. See Ben Caspit, *The Israeli-Egyptian Love Affair*, AL-MONITOR (Mar. 3, 2016), http://www.washingtonpac.com/Articles%20of%20Interest/israeli_egyptian_love_affair.htm; see also Neri Zilber, *Israel's Secret Arab Allies*, N.Y. TIMES (July 14, 2017), <https://www.nytimes.com/2017/07/14/opinion/israels-secret-arab-allies.html>.

94. See Caspit, *supra* note 93 (“Nonetheless, it is clear that the closeness between Sisi and Israel’s highest echelons is not a superficial one. . . . For the first time in many generations, intelligence information is almost totally shared between the sides, mainly with regard to the struggle against the Islamic State (IS) branch in the Sinai Peninsula.”).

95. Egypt-Israel Peace Treaty, Egypt-Isr., Mar. 26, 1979, U.N.T.S. 17813; see Andrew Glass, *Egypt, Israel Finish Peace Treaty, March 26, 1979*, POLITICO (Mar. 26, 2014, 12:01 AM), <http://www.politico.com/story/2014/03/this-day-in-politics-egypt-israel-march-26-1979-105014>.

96. A Demilitarized Zone between North and South Korea has existed since 1953. See Paul Szoldra, *The Border Area Between North and South Korea may be the Tensest Place on Earth*, BUS. INSIDER (Mar. 17, 2017, 10:03 AM), <http://www.businessinsider.com/north-and-south-korea-dmz-border-is-a-warzone-2017-3>.

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.

vide explicit support and unequivocal direction and policies regarding the use of force, the UN peacekeeping mission will fail¹⁰⁰ and the parties will think that the peacekeepers are toothless tigers that are unable to enforce their mandate.¹⁰¹

For example, Amira A. Ghoniem is careful to demonstrate that that “one of the main reasons the UN was initially unable to make notable progress in Bosnia was the lack of international support early in the peace effort.”¹⁰² Ghoniem, in her thesis supervised by Professor Lusignan, also highlights that the UN peacekeeping efforts were unsuccessful in Bosnia because the “U.S . . . strongly opposed the use of force.”¹⁰³ Therefore, if a UN peacekeeping force is not permitted to use force in more than ill-defined instances of self-defense,¹⁰⁴ Israeli and Palestinian terrorists could destabilize the peace between the nations, recognizing that the terrorists would escape recourse unless they were apprehended or killed by Israeli and Palestinian forces, who, in light of geopolitical and religious biases, may be reluctant to apprehend and prosecute terrorists.

2. The UN Peacekeeping Force Should Comprise Members of the UN (not merely Members of The UN Security Council), and That Force Should Be Directed and Controlled By General Assembly Resolution to Ensure That the Objectives and Directives of the Force Are Democratically and Universally Determined and Enforced
 - a. The UN Peacekeeping Force Should Comprise Members of the UN, not Merely Members of the UN Security Council

Because the members of the UN desire¹⁰⁵ that Israel and Palestine become two separate, independent, and sovereign states, those member nations must support and comprise the peacekeeping force that it is to operate in Jerusalem and the demilitarized zones. Moreover, a peacekeeping force that comprises all members of the UN (not

100. See Ghoniem, *supra* note 98, at 5.

101. See *id.*

102. *Id.* at 9.

103. *Id.*

104. See *id.* at 5 (“This problem characterizes United Nations peacekeeping missions in Somalia, Bosnia, and Rwanda. This attempt proved disastrous in that UN protection forces did not have the power to offer either protection or force.”).

105. See Fisher, *supra* note 16 (stating that “Most governments and world bodies have set achievement of the two-state solution as official policy, including the United States, the United Nations, the Palestinian Authority and Israel. This goal has been the basis of peace talks for decades.”).

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 Democratically and Universally Determined and Enforced

Because Security Council resolutions do not always reflect the desire, conclusions, or agreements of the general assembly,¹⁰⁶ the peacekeeping force should be directed and controlled by General Assembly Resolution¹⁰⁷ to ensure that the objectives and directives of the force are democratically and universally determined, enforced, and accepted. For example, the US-led force that occupied Iraq did not receive universal support¹⁰⁸ and was considered illegitimate because the invasion did comply or comport with international law. To that end, Kofi Annan, the former Secretary-General of the UN, stated that the US-led invasion of Iraq was illegal because “it was not sanctioned by the UN Security Council or in accordance with the UN’s founding charter.”¹⁰⁹ Mr. Annan stated that “the war in Iraq and its aftermath . . . brought home *painful lessons about the importance of resolving use-of-force issues jointly through the UN*” and noted “that

106. See BLAKESLEY ET AL., *supra* note 18, (stating that there have been several General Assembly Resolutions passed against Israel but few Security Council Resolutions passed against Israel); see also Nigel D. White, *The Relationship Between the UN Security Council and General Assembly in Matters of International Peace and Security*, in *THE USE OF FORCES IN INTERNATIONAL LAW* 292, 307 (Marc Weller ed., 2015).

107. This represents a departure from the status quo because issues of peace and security are to be within the province of the UN Security Council and General Council Resolutions are non-binding.

108. See Elaine Sciolino, *Chirac Says Time Proves France Was Right to Resist War*, N.Y. TIMES, Jan. 6, 2007, at A7.

109. Ewen MacAskill & Julian Borger, *Iraq War was Illegal and Breached UN Charter, says Annan*, GUARDIAN (Sept. 15, 2004), <https://www.theguardian.com/world/2004/sep/16/iraq.iraq>.

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, implement Resolutions 242 and 338, and create a universal peacekeeping force to operate in Jerusalem and the demilitarized zones. Likewise, independent Israel and Palestine should enter into

110. *Excerpts: Annan Interview*, BBC NEWS, http://news.bbc.co.uk/2/hi/middle_east/3661640.stm (last updated Sept. 16, 2004, 2:39 PM) (emphasis added); see *Lessons of Iraq War Under-score Importance of UN Charter*, UN NEWS CTR. (Sept. 16, 2004), <http://www.un.org/apps/news/story.asp?NewsID=11953#.WZ4iK3d949c> (emphasis added).

111. See White, *supra* note 106.

112. See Fisher, *supra* note 16.

113. See *What We Do: The General Assembly*, U.N. FOUND., <http://www.unfoundation.org/what-we-do/issues/united-nations/the-general-assembly.html?referrer=https://www.google.com/> (last visited Feb. 6, 2018).

114. *Id.*

115. See The Declaration of the Establishment of the State of Israel, 5708-1948, 1 LSI 3 (Isr.), <http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/declaration%20of%20establishment%20of%20state%20of%20israel.aspx>.

116. See generally Joel Greenberg, *Abbas Formally Declares U.N. Statehood Bid*, WASH. POST (Sept. 16, 2011), https://www.washingtonpost.com/world/middle-east/abbas-formally-announces-un-membership-bid/2011/09/16/gIQAUJpfXK_story.html?utm_term=.d9b4d56771ec.

117. See *supra* note 13; see also *supra* Part III(A).

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).