

## Chapter 7

### THE SITUATION IN THE MIDDLE-EAST

*“As the destroyer moved away from the fearful scene and darkness descended, the flames, raging now over a vast area, grew brighter and brighter, presenting a scene of awful and sinister beauty... nothing was lacking in the way of atrocity, lust, cruelty and all that fury of human passion which, given their full play, degrade the human race to a level lower than the vilest and cruelest of beasts... one of the keenest impressions which I brought away with me from Smyrna was a feeling of shame that I belonged to the human race.”*

George Horton (American Consul) as quoted in: Giles Milton, *Paradise Lost. Smyrna 1922.*

*The Destruction of Islam's City of Tolerance.* Sceptre 2008.

*“The conquest transformed, elevated and complicated Jerusalem in a flash of revelation that was simultaneously messianic and apocalyptic, strategic and nationalistic. And this new vision itself altered Israel, the Palestinians and the Middle East. A decision that had been taken in panic, a conquest that was never planned, a military victory stolen from the edge of catastrophe, changed those who believed, those who believed nothing and those who craved to believe in something.”*

Simon Sebag Montefiore, *Jerusalem the Biography.* Weidenfeld & Nicolson 2011.



**THE SITUATION IN THE MIDDLE-EAST** has been a major subject on the international agenda – of the League of Nations, the United Nations and, as we like to say today, the “international community”- ever since the Ottoman Empire broke up during the First World War.

*From the Eastern Question to the Situation in the Middle-East*

“Henceforward”, Prime Minister Herbert, Henry Asquith reported to the King on 2 November 1914, “Great Britain must finally abandon the formula of Ottoman integrity whether in Europe or in Asia.” It was the same day the Ottoman Empire joined the Central Powers by virtue of its secret treaty of alliance with Germany and began war against Russia. The day thereafter Britain entered the war (also) against the Ottoman Empire. Another complete reversal of alliances took place. No longer would Britain support the Ottoman Empire against Russia, it would now do the opposite.<sup>1</sup> This time, the reversal of alliances would result in the end of the Ottoman Empire and the partition of its territories between the allied powers.

Russia ended the war with Turkey on 5 December 1917 shortly after the Bolsheviks had come to power. For the Ottomans the First World War ended with the armistice of Mudros on 30 October 1918. It was followed by the occupation of Constantinople by British and French forces and the partition of the Empire as provided by the Treaty of Sèvres of 10 August 1920.<sup>2</sup>

Partition had already been the agreed policy of the Entente powers since 1915.<sup>3</sup> As originally envisaged, partition was to be applied to all Ottoman territories. Heartland Anatolia was to be partitioned in a Greek territory (Smyrna and adjacent territories), an independent state of Armenia, Kurdistan (from autonomy to

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1 Cf. Chapter 2 *supra*, paragraph on the Eastern Question. Quote from Asquith from: Geoffrey Miller, 'Turkey Enters the War and British Actions'. As reproduced on WW1-L, in December 1999.

2 Text on my website: Document I.1.18 under Western Cooperation.

3 The Sykes-Picot secret treaty of 1915, publicized by the Bolsheviks in 1918. Text in document GL.11.

independence) and Turkey proper. Syria, Mesopotamia and Palestine were to be placed under League of Nations' Mandates (Britain and France). The Hedjaz was to become an independent kingdom (Saudi Arabia). British annexation of Cyprus was officially recognized. Egypt and Soudan would have the status as provided in the convention between Egypt and Britain. The French protectorates of Morocco and Tunis were to be recognized and Italy would acquire Libya and the Aegaen Islands already occupied.

The Treaty of Sèvres – as the Treaty of Versailles against Germany – provided for penalties to be imposed upon Turkey in articles 226-230.:

“ARTICLE 226

The Turkish Government recognizes the right of the Allied Powers to bring before military tribunals persons accused of having committed acts in violation of the laws and customs of war. Such persons shall, if found guilty, be sentenced to punishments laid down by law. This provision will apply notwithstanding any proceedings or prosecution before a tribunal in Turkey or in the territory of her allies. The Turkish Government shall hand over to the Allied Powers or to such one of them as shall so request all persons accused of having committed an act in violation of the laws and customs of war, who are specified either by name or by the rank, office or employment which they held under the Turkish authorities.

ARTICLE 227

Persons guilty of criminal acts against the nationals of one of the Allied Powers shall be brought before the military tribunals of that Power. Persons guilty of criminal acts against the nationals of more than one of the Allied Powers shall be brought before military tribunals composed of

members of the military tribunals of the Powers concerned. In every case the accused shall be entitled to name his own counsel.

#### ARTICLE 228

The Turkish Government undertakes to furnish all documents and information of every kind, the production of which may be considered necessary to ensure the full knowledge of the incriminating acts, the prosecution of offenders and the just appreciation of responsibility.

#### ARTICLE 229

The provisions of Articles 226 to 228 apply similarly to the Governments of the States to which territory belonging to the former Turkish Empire has been or may be assigned, in so far as concerns persons accused of having committed acts contrary to the laws and customs of war who are in the territory or at the disposal of such States. If the persons in question have acquired the nationality of one of the said States, the Government of such State undertakes to take, at the request of the Power concerned and in agreement with it, or upon the joint request of all the Allied Powers, all the measures necessary to ensure the prosecution and punishment of such persons.

#### ARTICLE 230

The Turkish Government undertakes to hand over to the Allied Powers the persons whose surrender may be required by the latter as being responsible for the massacres committed during the continuance of the state of war on territory which formed part of the Turkish Empire on August 1, 1914. The Allied Powers reserve to themselves the right to designate the tribunal which shall try

the persons so accused, and the Turkish Government undertakes to recognise such tribunal. In the event of the League of Nations having created in sufficient time a tribunal competent to deal with the said massacres, the Allied Powers reserve to themselves the right to bring the accused persons mentioned above before such tribunal, and the Turkish Government undertakes equally to recognise such tribunal.

The provisions of Article 228 apply to the cases dealt with in this Article.”

Article 230 is of special importance for understanding the end of the Eastern Question and the beginning of the new situation in the Middle-East. Allied and especially British victory over the Ottoman Empire, initially, was more complete and more religious inspired than their victory over Germany. The Young Turk leaders of the Ottoman Empire had to be punished for the massacres of the Christian Armenians during the war, and Palestine had to be returned to the Jewish people (the Balfour Declaration). The peace treaty with the Ottoman Empire was to be the last chapter written in the long history of war and conflict between Christendom and Islam.<sup>4</sup> In reality, the opposite happened.

The prosecution of those deemed to be responsible for the massacres of the Armenians collapsed<sup>5</sup> and the partition of heartland Anatolia was undone by the war of independence waged by the Turkish National Movement of Mustafa Kemal Ataturk. A new peace treaty – The Treaty of Lausanne – was concluded in 1923 in which Armenia disappeared again, Smyrna became Izmir and the genocide of the Armenians would henceforward be a forbidden subject in Turkey and should be erased from memory everywhere.

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4 Cf. Chapter 2, *supra*.

5 Cf. Gary Jonathan Bass, *Stay the Hand of Vengeance*. *op. cit.* Chapter FOUR: Constantinople, tells the sad story of the failure of British efforts to indict and condemn the Young Turks leaders for their role in the Armenian massacres.

The Turkish National Movement was a virulent, ethno-nationalist movement fighting the Allies, the Sultanate, the Kurds, the Armenians and the Greeks. Between 1919 and 1922, the Movement fought the Armenians in the East, the French in the South and the Greeks in the West. After the conquest and the burning of Smyrna, their victories in war were recognized in the Treaty of Lausanne. The new National Assembly abolished the Sultanate on 1 November 1922. On 29 October 1923, Turkey was proclaimed a Republic with Kemal Ataturk as President. The new Republic was officially a secular state. Its territory covered Anatolia. Its North-Eastern boundaries had been established in the Treaty of Kars with the newly formed Soviet Union and the Soviet Socialist Republics of Armenia and Georgia.

Annexed to the Treaty of Lausanne, was the Convention concerning the Exchange of Greek and Turkish Populations and Protocol, signed at Lausanne on 30 January 1923.<sup>6</sup> The Convention "legalized" the first large-scale ethnic cleansing operation of the twentieth century. "Turkish nationals of the Greek Orthodox religion established in Turkish territory" were forcibly expelled in exchange for "Greek nationals of the Moslem religion established in Greek territory" (art. 1). The purpose of "the exchange" was ethnic-religious homogeneity in the new Turkish Republic and in Greece in response to the expulsion of the Orthodox Greeks from the Turkish territory. Fridtjof Nansen as the first high commissioner for refugees of the League of Nations was to supervise the exchange, considered to be the only viable option for dealing with ethnic tensions. At the time of the Convention, most of the one million five hundred thousand Greeks involved in the exchange had already fled following Greece's defeat in the war with the Turkish army of Kemal Ataturk. On the other side, some five hundred thousand Muslims were expelled from Greece. The Republic of Turkey emerging from the wars was a secular republic for Muslim citizens only.

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6 See Documents GL. 13. 1-3 on my website under Global Law.

Nevertheless, the British formula (now) of Turkish integrity was back in business.

In the other former Ottoman territories dealt with in the Treaty of Sèvres, further partitions would follow. The French Mandate was partitioned into Syria and Lebanon. The British Mandate of Mesopotamia was partitioned into Iraq and Kuwait. Anglo-Egyptian Sudan would come to an end when Sudan gained independence on 1<sup>st</sup>. January 1956, to be split into Sudan and Southern-Sudan in 2011. The Arab Revolt during the First World War led to the formation of the unified kingdom of Saudi-Arabia. Other countries on the Arabian Peninsula are: Bahrain, Qatar, United Arab Emirates(UAE) on the east, Oman on the south-east, Yemen on the south and the island nation of Bahrain off the east coast of the peninsula.

### *Partition, Self-determination and Democracy*

For most of its one hundred year history, the “situation in the middle-east” stood for the conflict between Jews and Arabs, later between Israel and the Arab States, between Israel and the Palestinians and now for area-wide turbulence.

Throughout this whole century – the American era in international relations – three methods of peace-making dominated the discussions in the international community.

The first one has been **Partition**: *when people fight, split them*. When Britain obtained its League of Nations' Mandate, it split its territory between a Palestinian Mandate west of the Jordan and a new Jordanian Kingdom east of the Jordan. When the Jewish and Arab peoples within that shrunken mandate continued to fight, Britain proposed another partition. In May 1939, just three months before the outbreak of the Second World War, the British Government abandoned its policy, initiated in 1917, altogether. In a new White Paper<sup>7</sup> it declared its

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7 White Paper on Palestine. See Document GL. 12.



intention to establish an independent Palestinian state within ten years, to restrict Jewish immigration to 10,000 a year for the next five years. Further immigration thereafter would be subject to Arab consent; 25,000 additional certificates were promised for Jewish refugees from Europe. Britain decided in 1946 to leave. It “entrusted” to the UN the unenviable task to find a solution. Again, partition between a Jewish and an Arab state was the core of the resolution adopted by the General Assembly of the United Nations.<sup>8</sup> The Resolution could not be implemented as the Arab States invaded Palestine with the purpose of driving the Jews into the sea. War followed and an armistice was reached in 1949 with armistice-lines that significantly differed from the borderlines proposed by the UN Resolution. Since then, nevertheless, the “international community” is glued to what is now called the two-state solution: the state of Israel and “an Arab State” now referred to as a Palestinian State. Like the British before them, the United Nations have their headquarters on the Hill of Evil Counsel south of Jerusalem.

Two arguments are advanced for the two-state solution. The first one is that the Jewish People have the right to a national home, like all other people. The second one is that the population living there should also be given the right to **Self-Determination**. From the outset nobody knew how to reconcile the rights of a people without a country with the rights of the people already living there.

In the thinking of the Americans in particular, **Democracy** would help to peacefully resolve the conflicting aspirations of the peoples concerned.

The problem with the British and (later) the American approach has been that their objectives were at odds with each other and with the realities in the territory.

The British (according to the Balfour Declaration of 1917) promised a Jewish **Home**. The Zionist wanted a Jewish **State**. The

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8 Text of the UNGA Resolution of 29 November 1947 as Document GL. 14.

British saw themselves as Crusaders, returning after an absence of 730 years. Of course they were different and benign crusaders: they would rebuild Jerusalem and sponsor the Jewish national home.<sup>9</sup> The British political promise became a legal duty by virtue of article 2 of the document adopted by the Council of the League of Nations regarding the British Mandate for Palestine.<sup>10</sup> This duty – to say the least – was at odds with the other duty in this article and article 22 of the Covenant of the League: to prepare the territory for independence while “safeguarding the civil and religious rights of all the inhabitants of Palestine.”

### *Cynical and shameless*

In May 1939, war was imminent. The destruction of the Jewish people, already was in full operation: in Germany since the 1935 Nurnberg Laws, in Austria since the 1936 *Anschluss*, in Czechoslovakia since 1938. When war broke out with the German (and three weeks later the Soviet) invasion of Poland, *Einsatzkommandos* started murdering Jews right behind the frontlines. Every government in Europe knew and could know what would happen to the Jews of Europe once the German killer armies had reached the territories of their countries. Still all of them, including the U.S. Administration practically closed their borders to Jewish immigrants. The British policy of the White Paper was cynically and shamelessly carried out and enforced by the British Navy. Ruth Klüger, stationed for the Mossad in Bucharest, was one of the leading agents to organize illegal immigration (called the *Alyab*) into Palestine. The story she wrote with Peggy Mann, *The Last Escape*<sup>11</sup>, must be read to understand how one person can make the difference. The odds were incredible in-

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9 Amos Elon, *Jerusalem. City of Mirrors*. Fontana 1991, and Barbara W. Tuchman, *Bible and Sword. How the British Came to Palestine*. Macmillan London 1982.

10 Adopted on 24 July 1922 and entering into force on 29 September 1923. Document GL. 13.

11 *The Last Escape*. The True Story of one young woman who defied incredible odds to rescue thousands of her people from the Nazi holocaust. Pinnacle Books New York 1974 (second printing).

deed. Most European Jews refused to believe. The British, cynically, found it more important to appease the Arabs than to save the European Jews at the time of the greatest threat to their survival. Still, Ruth managed to organize three ships to sail from South-East European ports to Palestine,. From beginning to end, the stories were harrowing, but Ruth Klüger was determined, inventive and courageous. Those young men and women, who reached Palestine, would make the difference in 1948, when the Arabs tried and failed to prevent the establishment of Israel as envisaged by the 1947 UN Resolution.

### *Dead-end street*

After a century of trying and fighting many wars, none of these methods has brought the area closer to peace. In fact, since the so-called Arab Spring the whole area from Morocco to Pakistan is in turmoil. The two-state solution is further removed from realization than ever before. In the meantime hundreds of meetings, statements, UN Resolutions, armistices and treaties create the false impression that a body of rules of international law has been created by which Israel can be condemned and the Palestinians commended.

The two-state solution adhered to by the international community is no solution at all. It shall not bring peace, it shall not ensure the survival of Israel, it shall not give Palestinians the right to self-determination and it shall not promote democracy. International involvement has followed a recognizable pattern throughout the century. It began with full support to a Jewish homeland (in 1917) and to the State of Israel (from 1948) and gradually shifted to diplomatic support to the Palestinian aspirations for statehood with increasing condemnation of the policies of Israel.

In this Chapter, I intend to reflect on the broader historical context and focus on recent developments, emphasizing the importance of history and memory in the Middle-East and the

counterproductive impact of the international community's involvement.<sup>12</sup>

## ARMAGEDDON

“Tel (mound) Megiddo, known as Tel-el-Mutesellim (Hill of the Ruler) has been identified as one of the most important cities of biblical times. Located on a hill overlooking the fertile Jezreel Valley, Megiddo was of great strategic importance, as it commanded the eastern approaches of Nahal Iron (nahal, a dry river bed), part of the international highway which led from Egypt, along the coastal plain to the Jezreel Valley, and thence to Damascus and Mesopotamia (the highway became known later as Via Maris, Way of the Sea). Numerous battles fought for control of the city are recorded in ancient sources; in the New Testament (Revelations 16:16), Armageddon (believed by some to be a corruption of Har Megiddo – the hill of Megiddo) is named as the site of the “Battle of the End of Days”.<sup>13</sup>

Armageddon definitely was not the site of the battle of the end of days or of the last battles. The archeological Tel covers the ruins of twenty cities, the last of them destroyed around the year 500 B.C. The battles over the future of that part of the Middle East continue into the twenty first century A.D.. The City of Jerusalem approximately 3000 years old only, has been conquered 36 times in its history, the latest and the least destructive conquest in 1967. In Jerusalem and beyond every-one has a past, but nobody allows any-one else there to have a future.<sup>14</sup> In a way the two places symbolize that Middle East peace-makers

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12 For the history from 1915 through 1975, see my: *European Perspectives On World Order*. Sythoff 1975. Chapter 9, pages 219ff. Also available on my website.

13 From Jewish Virtual Library.

14 Compare Amos Elon, *JERUSALEM. Op. cit.*

are aiming for the unattainable, they are trying to plow the sea. Jerusalem also symbolizes another truth in international law making. National sovereignty over holy places is unacceptable, international government is unworkable.

Har Megiddo and Jerusalem symbolize the history of mankind and their rulers continuously in pursuit of power, profit and piety. They do so in different ways. Megiddo's strategic importance vanished when the First Persian Empire extended its rule over the northern empires and Egypt. Thereafter the imperial rulers channeled the passions of piety, either into a cult for the divine ruler or into toleration of polytheism.. The Jewish people were and continued to be the problematic exception. They firmly believed in YAHWEH the one and only God. They rejected polytheism and refused to adore any "divine" ruler. As a consequence, they could never be completely subdued or trusted. Even after the full destruction of Jerusalem in the year 70 A.D. the city remained holy as a memory for the Jews in the Diaspora – to regain its place as the Center of their faith after the 36<sup>th</sup> conquest by the Israeli army in 1967.

The life, death and resurrection of Jesus-Christ in Jerusalem gave an entirely new dimension to the pursuit of power and the passions of piety in the Middle-East. For the Jews, Jesus was a "Marginal Jew"<sup>15</sup>, for Christians He is the Messiah and the Founder of a new and universal Faith. As Christians we want access to the places where Jesus preached, walked, suffered and appeared after His resurrection. Following Empress Helena's re-discovery of the Holy Places and the Christianization of the Roman Empire in the fourth century A.D. the passions of power and piety merge; access to the Holy Places can be ensured only by full control over and possession of these places. The more, Christians became divided among themselves – by the Great Schism in 1054 and the Reformation since the sixteenth century – the more the possession of the Holy Places became source of conflict among them.

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<sup>15</sup> The title from a four volume masterwork by John P. Meier and published by Yale University Press.

In the year 637 A.D. Jerusalem was conquered by the Arab Kingdom, in the name of Mohammed, the last prophet and the founder of the last and highest universal faith in one God. Based on the myth of Mohammed's voyage to heaven from the Rock of Creation – on the Temple mount – Jerusalem is made into the third holy place of Islam ...for some time at least.

Henceforward Jerusalem became a center of the world, as so beautifully painted in the picture, for the Jews in the Diaspora, the Christians and the Muslims – wherein the passions of power and piety continue to dominate their thinking and actions.

Since the Arab conquest, Jerusalem and the Middle East changed hands several more times. Following the Crusades proclaimed by Pope Urbanus in 1095, a Latin Kingdom ruled from 1099-1187. They were succeeded by the Mameluks (1187-1617) and the Ottoman Empire (1517-1917). Jerusalem and Palestine faded into an impoverished backwater of the Empire until the nineteenth century, when European powers increasingly made inroads into Ottoman domination over the city and the area. With a few exceptions, Jerusalem's architecture dates from the 19<sup>th</sup> and 20<sup>th</sup> centuries. Jerusalem and the Middle East as a major international problem date from the First World War. Some staunch believers are convinced that Armageddon or the battle of the end of days will not be fought in Megiddo but over Jerusalem. Jerusalem, in any case, teaches us that agreement over the city and stability in the Middle-East are unattainable goals – until the Second Coming of the Messiah.

As far as access to the City and its holy places are concerned, Christian rulers were the most intolerant towards Jews and Muslims; the Muslims for some time were tolerant towards Christians and Jews as long as they accepted second class status; under Jordanian rule (1949-1967), Jews were denied access to the City. Since 1967, access to their holy places is guaranteed to Christians and Muslims, as well as the autonomous administration of the holy places themselves.

## BREAKING AWAY TOWARDS PEACE?<sup>16</sup>

For many years after the creation of the state of Israel in 1948, peace in the Middle East has been an elusive goal, despite the continuous attention given to it by the United Nations and the (mainly American) efforts to promote negotiations between the parties concerned. The affirmation by the UN Security Council "that the fulfillment of Charter principles requires the establishment of a just and lasting peace in the Middle East" failed to break the threefold deadlock barring the way towards peace. The Arab states and the PLO refused to recognize Israel's right to exist as a sovereign state in the Middle East. Their goal of a 'comprehensive peace' was peace without Israel. Israel refused to recognize the existence of a Palestinian people as defined by the PLO, entitled to exercise its right of self-determination. Its goal was to conclude peace treaties with neighboring states, without the creation of a Palestinian state, however. In the context of the global conflict between the United States and the Soviet Union (from 1945-1989) neither side could achieve peace on its own terms. Either side had enough support from one of the two major world powers to thwart such an outcome while the United States and the Soviet Union only agreed on measures to prevent the conflict from escalating into full-scale war.

The threefold deadlock could only be broken by breaking away from the requirement of Arab consensus throughout the peace-making process. Obviously, only the Arab parties directly concerned were in a position to thus decide; the international community or third states at best might help create a favorable climate for direct negotiations between Israel and its Arab adversaries.

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16 The Documents referred to or quoted in this section can be found in *The Arab-Israel Collection*, Volume I, 1897-1993, Ed. Yonah Libermann and Willem-Jan vander Wolf. WLP 1995. This section of chapter 8 is excerpted from my article 'Breaking Away Towards Peace. In *Leiden Journal of International Law*, Vol. 8, Number 1 1995. Pages 81-101.



### *The Peace Treaty Between Egypt and Israel*

The outcome of the October War in 1973 and US diplomacy following the war created such a climate for Egypt. The lessons of the 1979 Egypt- Israeli Peace Treaty are most instructive for the pattern of peace-making which followed after 1991. The US-sponsored agreements on the disengagement of forces in the Sinai created a favorable climate for further negotiations, but irritation about lack of progress made President Sadat decide to take matters in his own hands and go to Jerusalem to "talk peace with the Knesset". Direct negotiations between Israel and Egypt required active US participation to achieve the desired outcome. The peace-making process consisted of three stages: the Camp David Agreements of September 1978; the conclusion of the Peace Treaty of March 1979; and the establishment of normal relations after the implementation of the security arrangements.

While breaking away from the Arab consensus, in the first stage Egypt did not confine itself to an Agreement on the Framework for the Conclusion of a Peace Treaty with Israel, but insisted on an Agreement with respect to a Framework for Peace in the Middle East. By virtue of this latter framework, the other parties to the Arab-Israeli conflict, in particular Jordan and the representatives of the Palestinian people were invited to adhere to it. They were invited to take part in negotiations towards the establishment of an elected self-governing authority in the West Bank and the Gaza Strip during a transitional period of five years, to be followed by negotiations on the final status of the West Bank and the Gaza Strip. In a letter attached to the Camp David Agreements, President Sadat explained his position in the following words:

"(t)o ensure the implementation of the provisions related to the West Bank and Gaza and in order to safeguard the legitimate rights of the Palestinian people, Egypt will be



prepared to assume the Arab role emanating from these provisions, following consultations with Jordan and the representatives of the Palestinian people.”

These negotiations never materialized as Jordan and the PLO refused to participate. The PLO rejected autonomy because it rejected both Israel's right to exist and Security Council Resolution 242 as a basis for resolving the conflict. Both Jordan and the PLO rejected Egypt's claim to assume the Arab role with respect to the legitimate rights of the Palestinian people.

In an exchange of letters between President Sadat and Prime Minister Begin, attached to the Camp David Agreements, the future status of Jerusalem clearly figured as the outstanding and non-negotiable issue.

Nevertheless, peace-making between Egypt and Israel went ahead. Their seriousness of purpose was underlined by the commitment “to negotiate in good faith with a goal of concluding *within three months from the signing of this framework* (for peace in the Middle East) a peace treaty between them”. The other parties were (only) invited “to proceed simultaneously to negotiate and conclude similar peace treaties with a view to achieving a comprehensive peace in the area”, i.e. without a time-frame. By virtue of Article I of the Peace Treaty, the state of war between the parties was terminated upon the exchange of instruments of ratification and normal relations were established upon completion of the interim withdrawal of Israeli armed forces from the Sinai. Again, interim withdrawal was subject to an agreed time-limit: within nine months from the date of exchange of instruments of ratification of the Peace Treaty. According to Article 111(3) of the Peace Treaty, the normal relationship established between them will include full recognition, diplomatic, economic and cultural relations, termination of economic boycotts and discriminatory barriers to the free movement of people and goods, and will guarantee the mutual enjoyment by citizens of the due process of law.

The agreed security arrangements to be made in the third stage included limited force zones in Egyptian and Israeli territory, and the deployment of UN forces and observers to supervise the implementation of the arrangements. Because of Soviet opposition to the Peace Treaty, a multinational force was eventually deployed instead of UN forces.

According to Article II of the Peace Treaty, "(t)he permanent boundary between Egypt and Israel is the recognized international boundary between Egypt and the former mandated territory of Palestine (...) without prejudice to the issue of the status of the Gaza Strip" (being on the Israeli side of the boundary).

Disputes arising out of the application or interpretation of the Peace Treaty shall be resolved by negotiations or – if they cannot be so settled – by conciliation or arbitration (Article VII). The boundary dispute concerning the Taba area could not be settled through negotiations and was, consequently, submitted to arbitration. Following the award of the Egypt-Israel Arbitration Tribunal, final agreement was reached between the two states on the delimitation of their permanent boundaries.

Finally, the Peace Treaty also resolved the difficult issue of the Israeli settlers in the Sinai. In an exchange of letters attached to the Camp David Agreements, Prime Minister Begin informed President Carter that he would ask the Knesset to decide on the following question:

(i)f during the negotiations to conclude a peace treaty between Israel and Egypt all outstanding issues are agreed upon, 'are you in favor of the removal of the Israeli settlers from the northern and southern Sinai areas or are you in favor of keeping the aforementioned settlers in those areas?"

According to President Sadat in his letter to President Carter, approval by the Knesset to the withdrawal of all Israeli settlers was "a prerequisite to starting peace negotiations for conclud-

ing a peace treaty". The Knesset gave its approval. Article 1(2) of the Peace Treaty provided: "Israel will withdraw all its armed forces *and civilians* from the Sinai behind the international boundary between Egypt and mandated Palestine, as provided in the annexed protocol (Annex I)4, and Egypt will resume the exercise of its full sovereignty over the Sinai."

### *Agreements Between Israel And The PLO*

Peace between Egypt and Israel survived the war between Israel and the Lebanon of 1982, and the Arab rejection of the Peace Treaty, but it was not until the early 1990s that a second breakaway towards peace (and a full rehabilitation of Egypt) could materialize.

At least three related events created a favorable climate for resuming the peace-process. The first one was the Palestinian uprising or *Intifadah* in the West Bank and the Gaza Strip. After five years of violent clashes, the PLO realized that a Palestinian state could not be created by force. The (new) Israeli government of Rabin realized they "lacked the power to secure the legitimacy of and the acquiescence in the control they had gained".<sup>17</sup> The second one was the collapse of the bipolar world order. The disintegration of the Soviet Union deprived 'rejectionist' Arab parties like Iraq, Syria and the PLO of their support, and the Soviet Union (later Russia) joined the United States in their efforts to resume the peace-process. The third one was the Iraqi invasion of Kuwait in August 1990. The Gulf War deeply divided the Arab world and deprived the PLO of much of its Arab support as it took the side of Saddam Hussein. The existence of Israel could no longer be advanced as the principal threat to peace in the Middle East.

After extensive consultations (which had begun almost immediately after the cease-fire in the Gulf), the United States and the Soviet Union convened a peace conference in Madrid on

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17 M.A. Heller, "The Israeli-Palestinian Accord: An Israeli view." 93 *Current History* 56 (1994).

30 October 1991. The invitation called for “direct negotiations along two tracks, between Israel and the Arab states, and between Israel and the Palestinians, based on United Nations Security Council resolutions 242 and 338”.<sup>18</sup> The conference was to set the stage for direct bilateral negotiations to begin within four days after the opening of the conference, and for multilateral negotiations on region-wide issues for those parties who wished to attend them. Its effect was comparable to the effect of the US sponsored disengagement talks between Egypt and Israel in the 1970s. The parties were brought together in direct negotiations, and lack of progress made them look for other bilateral channels to achieve better results. The announcement, late August 1993, of an imminent agreement between Israel and the PLO came as a surprise, as much as did the announcement in 1977 of Sadat's visit to Jerusalem. The agreement of 13 September 1993 on a Declaration of Principles on Interim Self-Government Arrangements, and the Agreement on the Gaza Strip and the Jericho Area of 4 May 1994, could only be reached after difficult negotiations and intensive mediation (by Norway, the United States and Egypt in particular).

### *Mutual recognition*

In an exchange of letters dated 9 September 1993, prior to the signing of the Declaration of Principles, Arafat confirmed the following PLO commitments: recognition of the right of the state of Israel to exist in peace and security; acceptance of Security Council Resolutions 242 and 338; a commitment to the Middle East peace-process; and a declaration that all outstanding issues relating to permanent status will be resolved through negotiations. Accordingly, the PLO renounced the use of terrorism and other acts of violence; it affirmed that those articles of the Palestinian Covenant which deny Israel's right to exist and the other provisions of the Covenant which are inconsistent with the

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<sup>18</sup> *Middle-East*. 21 UNIDIR newsletter 7 (1993).

commitments entered into by this letter were from that moment inoperative and no longer valid. Consequently, the PLO undertook to submit to the Palestinian National Council for formal approval the necessary changes with regard to the Palestinian Covenant.

In reply, Israeli Prime Minister Rabin confirmed that, in light of the PLO-commitments included in the letter, the government of Israel had decided to recognize the PLO as the representative of the Palestinian people and to commence negotiations with the PLO within the Middle East peace-process. In the exchange of letters attached to the Agreement of 4 May 1994, Arafat (as requested by Rabin) confirmed on behalf of the PLO that the PLO undertakes to submit to the next meeting of the Palestinian National Council for formal approval the necessary changes in regard to the Palestinian Covenant. And again, according to the text of the Joint Israel-Palestinian Statement of 7 July 1994, the Chairman of the PLO stated that he intends to convene the Palestinian National Council in Gaza "in the very near future" for that purpose, inter alia.

### *Two stages*

According to the Declaration of Principles and the Agreement of 4 May 1994, two stages are provided for in the peace-process: (1). the establishment of a Palestinian interim self-governing authority, the elected Council for the Palestinian people in the West Bank and the Gaza Strip for a transitional period not exceeding five years; and (2). permanent status negotiations between the government of Israel and the Palestinian people representatives leading to a permanent settlement based on Security Council Resolutions 242 and 338. Although the Camp David Agreement on a Framework for Peace in the Middle East is not referred to anywhere, the agreements adopt the Framework in many aspects, but with two important differences.

*Firm time limits*

Unlike the earlier Framework, the Declaration of Principles sets firm time-limits for the beginning of the five-year transitional period and for the commencement of permanent status negotiations. According to Article V (1-2), the five-year transitional period will begin upon the withdrawal from the Gaza Strip and the Jericho area. Permanent status negotiations will commence as soon as possible but not later than the beginning of the third year of the interim period. Commitment to the latter time limit has since been reiterated twice by the parties: in the exchange of letters of 4 May 1994, and in the Cairo Agreement of 31 March 1994 on Hebron Security Arrangements. By virtue of Article XXIII (3) of the Agreement of 4 May 1994, "the five-year interim period referred to in the Declaration of Principles commences on the date of the signing of this Agreement". Permanent status negotiations thus must commence no later than 4 May 1996 and be concluded before the end of the transitional period, now agreed to be 3 May 1999.

*The first stage: two sub-stages*

Unlike the earlier Framework, the first stage itself is divided into two sub-stages: the establishment of a Palestinian interim self-governing authority for the Gaza Strip and the Jericho area (preparatory transfer of powers and responsibilities of Article VI of the Agreement of 4 May 1994); and the conclusion of an interim agreement (Article VII of the Agreement of 4 May 1994). While the two sides "view the West Bank and the Gaza Strip as a single territorial unit, whose integrity will be preserved during the interim period" (Article IV of the Declaration of Principles), the Agreement of 4 May 1994 only contains arrangements to apply in the Gaza Strip and the Jericho area. Arrangements for the West Bank and the Gaza Strip as a whole, are to be made in the interim agreement specifying the structure of the Council, the number of its members, and the transfer of powers and respon-

sibilities from the Israeli military government and its civil administration to the Council. The interim agreement shall include arrangements, to be implemented upon the inauguration of the Council (Article VII of the Agreement of 4 May 1994). The Council, obviously, can only be inaugurated following free and general political elections. An agreement "will be concluded on the exact mode and conditions of the elections (...) with the goal of holding the elections not later than nine months after the entry into force of this declaration of principles" (Article III of the Declaration of Principles). This time-table for the elections (to be held not later than 13 July 1994) could not be met. The Cairo Agreement on Text to be Included in the Gaza-Jericho Agreement of 9 February 1994 stipulated that the interim agreement "*including modalities for elections and redeployment of forces will be negotiated in Washington*". In the Agreement on Hebron Security Arrangements of 31 March 1994, and in the exchange of letters of 4 May 1994, it was agreed to "intensify negotiations on the interim arrangements consistent with the Declaration of Principles, and guided by its target date".

It should be emphasized, however, that the Agreement of 4 May 1994 already embodied extensive arrangements in Articles III-IX (together with the Annexes I and II) with respect to the Palestinian Authority, in accordance with Article VI of the Declaration of Principles and is considered to be of a preparatory nature until the inauguration of the Council. Most of these arrangements are likely to reappear in the provisions of the interim agreement to be written for the Council. Article III provides for the transfer of authority from the Israeli military government and its civil administration to the Palestinian Authority, the dissolution of the civil administration in the Gaza Strip and the Jericho area, and the withdrawal of the military government. Article IV deals with the structure and composition of the Palestinian Authority. Article V deals with the territorial, functional and personal jurisdiction of the Palestinian Authority. Articles VI and VII detail the legislative, executive and judicial powers transferred to the Palestinian Authority. They are elaborated upon in great detail in



Annex II, Protocol Concerning Civil Affairs; Annex III, Protocol on Legal Affairs; and Annex IV, Protocol on Economic Affairs.

Interestingly, according to Article VI (2.b) of the Agreement of 4 May 1994, “(t)he PLO may conduct negotiations and sign agreements with states or international organizations for the benefit of the Palestinian Authority” in a number of specified cases, like certain economic agreements, agreements with donor countries, agreements for the purpose of implementing the regional development plans, and cultural, scientific and educational agreements. Arrangements for security and public order are dealt with in article VIII, the establishment of the Palestinian police in Article IX. They are elaborated upon in detail in Annex I, Protocol Concerning Withdrawal of Israeli Military Forces and Security Arrangements.

Negotiations concerning the second sub-stage commenced in Cairo on 11 July 1994, and resulted in the Agreement on Preparatory Transfer of Powers and Responsibilities of 29 August 1994. By virtue of this Agreement another phase (Early Empowerment) of the Declaration of Principles was put into effect, providing for the transfer of powers and responsibilities to the Palestinian Authority (for the West Bank and the Gaza Strip as a whole) within the five spheres of education and culture, health, social welfare, tourism, and direct taxation.

After the signing of the Agreement of 29 August 1994, three issues are still outstanding: confidence-building measures (release of Palestinian prisoners, Article XX of the Agreement of 4 May 1994); the establishment of a Temporary International Presence (Article XXI); and the mode and conditions of the elections for the Council (Article III of the Declaration of Principles). So far only Israel, and reluctantly so, agreed to a Temporary International Presence in the City of Hebron by virtue of the Agreement on Hebron Security Arrangements of 31 March 1994 (following the massacre in a Hebron mosque).

According to Article XVII of the Agreement of 4 May 1994, differences relating to the application of this Agreement shall be referred to the appropriate co-ordination and co-operation



mechanism established by the Agreement. Differences not settled in this manner and other disputes shall be settled by negotiation through the Liaison Committee, by a mechanism of conciliation to be agreed between the parties or by submission to arbitration (by an Arbitration Committee to be established).

Finally, the solution of the issue of Israeli settlements in the West Bank and the Gaza Strip is, in its entirety, left for the permanent status negotiations. Settlements and Israelis are not subject to the territorial, functional and personal jurisdiction of the Palestinian Authority (cf. Annex III, Protocol on Legal Affairs with respect to criminal and civil jurisdiction).

### *Nature of the Agreements between Israel and the PLO*

The agreements concluded between Israel and the PLO are considered to be international agreements, governed by international law. The signing of the Declaration of Principles and the Agreement of 4 May 1994 were witnessed by representatives of the United States, the Russian Federation, and the Arab Republic of Egypt. The United Nations had not been involved in the negotiations. The agreements entered into force on the date of signature or one month after their signing (the Declaration of Principles), and did not require approval by the Knesset or the Palestinian National Council. In this respect, they are comparable to the Camp David Agreements between Israel and Egypt. The nature of the agreements, however, differs substantially from the Camp David Agreements. The Camp David Agreements outlined a program with an agreed objective: a peace treaty subject to approval and ratification. The agreements between Israel and the PLO fundamentally changed a relationship, but initiate the new relationship without an agreed objective and without an agreed program beyond the transitional period.

The Camp David Agreements and the Peace Treaty were agreements between two sovereign states by which Israel withdrew from, and Egypt resumed full sovereignty over, the Sinai.

The agreements between Israel and the PLO belong to the category of agreements concluded between states and other subjects of international law to which the 1969 Vienna Convention on the Law of Treaties is not applicable. However, this fact of non-application shall not affect: (a) the legal force of such agreements; and (b) the application to them of any of the rules set forth in the present Convention to which they would be subject under international law independently of the Convention.

Each of these two subparagraphs of Article 3 of the Vienna Convention raised interesting questions of international law at the time the agreements were concluded.

The PLO was recognized as a national liberation movement, not exercising effective territorial jurisdiction. As such, the PLO was considered to be a partial subject of international law having the capacity to maintain official relations with states recognizing it and to conclude treaties with those states and Israel. The recognition by Israel of the PLO as the representative of the Palestinian people does not imply a recognition of the PLO as an equal – to a sovereign state – subject of international law. The proclamation in 1988 of “the establishment of the State of Palestine in the land of Palestine with its capital at Jerusalem” by the Palestinian National Council has not changed the position of the PLO. By virtue of the agreements with Israel, the PLO has given up the right, recognized in Article 7 of the Definition of Aggression, to continue the armed struggle for the exercise of self-determination by the Palestinian people it represents. The PLO has done so primarily on the basis of Article III of the Declaration of Principles, which states, in its first and third paragraphs:

“1. In order that the Palestinian people in the West bank and the Gaza Strip may govern themselves according to democratic principles, direct, free and general political elections will be held for the Council under agreed supervision and international observation, while the Palestinian police will ensure public order. (...)

3. These elections will constitute a significant interim preparatory step toward the realization of the legitimate rights of the Palestinian people and their just requirements.”

The Article amounts to an agreement between the PLO and Israel to move toward the “realization of the legitimate rights” of the Palestinian people during the transitional period. It does not imply that the Declaration of Principles is an agreement between two equal subjects of international law. The inequality of the parties, however, does not affect the legal force of the agreement. The agreements go no further than granting the Palestinian people in the West Bank and the Gaza Strip the right to “govern themselves according to democratic principles” within very strict limits. Powers and responsibilities are transferred to the Palestinian Authority (and the Council), but these bodies remain legally subordinate to the authority of the Israeli military government, which will not be dissolved but only withdrawn. The question raised by Article 3(b) of the 1969 Vienna Convention on the Law of Treaties primarily concerns Article 53 of the Convention (treaties conflicting with a peremptory norm of general international law (*ius cogens*)). Is the right to self-determination (of the Palestinian people) a peremptory norm of general international law? And, if so, do the agreements between Israel and the PLO conflict with them or not? If they do, they would have to be considered void from the time of their conclusion.

The *ius cogens* character of the right of self-determination, it was argued in 1979, “has been gaining ground in recent years” with respect to peoples subjected to colonial or alien domination.<sup>19</sup> This argument, in my opinion, cannot be upheld on the basis of existing international law. The relevant resolutions of the UN General Assembly are vague and inconclusive as regards the definitions of ‘peoples’ possessing such a right, and the scope and nature of self-determination. No consensus has been

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19 According to H. Gros Espiel in A. Cassese (ed), *UN Law/Fundamental Rights. Two Topics of International Law*. 1979 at pages 167-171.

reached on the relationship between the claim to self-determination and the principle of territorial integrity of states. At best, the resolutions can be seen as expressing the principles governing the decolonization *policy* of the General Assembly during the post-war era. As such, they were political principles rather than peremptory legal norms.

A more solid legal basis is provided by the 1966 International Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights (Human Rights Covenants), which Israel acceded to in 1991. According to their respective Articles 1(1):

“All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”

In the case of the Palestinian people, Israel and the PLO appear to agree that those residents of the West Bank and the Gaza Strip not being Israeli citizens, belong to the Palestinian people. By their acceptance of Security Council Resolution 242, Israel and the PLO also agree that the West Bank and the Gaza Strip are occupied territories and, consequently, that the Palestinian people are a people “under other forms of alien domination” (Article 7 of the Definition of Aggression).<sup>20</sup> Accordingly, as a state party to the Human Rights Covenants, Israel is committed “to promote the realization of the right of self-determination” (by the Palestinian people) and to “respect that right, in conformity with the provisions of the Charter of the United Nations” (Articles 1(3) of the Human Rights Covenants).

Article III of the Declaration of Principles expresses agreement, on the part of Israel, to *promote* the realization of the “legitimate rights” of the Palestinian people, although the right of the Palestinians to “freely determine their political status” is still subject to severe limitations. These limitations, it can be argued,

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20 Cf. F.L. Kirgis, ‘The Degree of Self-determination in the United Nations Era.’88 *AJIL*.1994 at p. 304-310.

are legally acceptable during the transitional period (with a fixed time-limit). In the extremely complex Israeli-Palestinian relationship, progress towards representative Palestinian government (self-government according to the democratic principles referred to in Article III) is necessary to enhance the legitimacy of the Palestinian claim and to prevent it from destabilizing the peace-process.

### *Permanent Status Negotiations*

According to Article V (4) of the Declaration of Principles, “(t)he two parties agree that the outcome of the permanent status negotiations should not be prejudiced or preempted by agreements reached for the interim period”. Does this provision imply that all options are left open to the parties? In the context of the commitments undertaken by the parties, the following restrictions would apply. The parties are committed to seek a just and lasting peace by peaceful means, through negotiations and on the basis of Security Council Resolutions 242 and 338. By virtue of Article 1 of the Human Rights Covenants, Israel is bound to allow the Palestinian people “to freely determine their political status”. By virtue of Article 111(3) of the Declaration of Principles, the “legitimate rights of the Palestinian people” must be realized in the permanent status negotiations. According to the PLO, the Palestinian people have the “legitimate right” to establish its own sovereign state in the land of Palestine.

The position of the Israeli government on this issue is less clear; its acceptance of the term “legitimate rights” could indicate that Israel does not foreclose the PLO option. The provision in Article V (2) of the Declaration of Principles, that permanent status negotiations will be conducted “between the government of Israel and *the Palestinian People Representatives*” indicates that Israel would prefer to consider other options than the one claimed by the PLO. In co-operation with Jordan in particular, Israel and the PLO must ensure appropriate conditions to the Palestinian people so as to enable them to make a meaningful

choice by democratic procedures.

One of the most difficult issues, not mentioned in the Declaration of Principles, concerns agreed definitions on the peoples concerned, the scope and nature of their rights, and on the objective of living together in peace. Are 'people' defined territorially, that is, on the basis of the state in which they live, or by common ethnic, religious and linguistic bonds? An agreed definition would be important for at least four remaining issues mentioned in Articles IV and V (3) of the Declaration of Principles: the jurisdiction of the Council, refugees, settlements and co-operation with neighboring Jordan.

Security arrangements, another remaining issue, require agreement on the choices offered to the Palestinian people in the exercise of their right of self-determination.

Finally, the future status of Jerusalem is considered to be the most difficult remaining issue. In the exchange of letters between President Sadat and Prime Minister Begin of 1978, Sadat stated that "Arab Jerusalem should be under Arab sovereignty". Begin replied that "Jerusalem is one city indivisible, the Capital of the State of Israel", a non-negotiable position. Agreement, apparently, existed on three issues: free access to the City, administration and control of the holy places by the representatives of each faith, and undivided essential functions in the City. The inclusion of Jerusalem as a remaining issue for permanent status negotiations implies that Israel and the PLO agree that its future status is negotiable, although the viewpoints are far apart. The PLO claims Jerusalem as the capital of the state of Palestine. The present Israeli government holds the view that Jerusalem within its present municipal boundaries should remain Israel's capital. In the Washington Declaration of 25 July 1994, issued by King Hussein of Jordan, Prime Minister Rabin of Israel and President Clinton of the United States, it is stated that:

"Israel respects the present special role of the Hashemite Kingdom of Jordan in Muslim holy shrines in Jerusalem. When negotiations on the permanent status will take

place, Israel will give high priority to the Jordanian historic role in these shrines. In addition the two sides have agreed to act together to promote interfaith relations among the three Monotheistic religions.”

Israel also recognizes the role of certain Palestinian institutions in East Jerusalem, including those related to the Christian and Muslim holy places. According to Annex I, Protocol on the mode and conditions of elections, to the Declaration of Principles, “Palestinians of Jerusalem who live there will have the right to participate in the election process (for the Council), according to an agreement between the two sides”. The future status of Jerusalem will undoubtedly be the most difficult remaining issue; its inclusion among the negotiable issues was potentially important. The Camp David Summit of July 2000 was called to conclude the Oslo peace process by moving straight to resolving the final-status issues. The summit failed as the parties were unable to agree on a formula to share Jerusalem.

#### *Treaty of Peace between Israel and Jordan*

On 14 September 1993, one day after the signing of the Palestinian-Israeli Declaration of Principles, Israel and Jordan agreed on a common agenda for bilateral peace negotiations. On 25 July 1994, King Hussein, Prime Minister Rabin, and President Clinton signed the Washington Declaration. Already on 26 October 1994, they formally signed a Treaty of Peace in Wadi Araba on the Israel-Jordan border.<sup>21</sup> The warmth of the two latter ceremonies gave proof of the fact that informal relations between the two countries had been improving over a longer period, and that King Hussein had only been waiting for the appropriate moment to formally join the peace-process. Already in Washington, the two governments decided to terminate the state of

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<sup>21</sup> The Treaty consists of 30 articles. And five annexes: I. on the International Boundary; II on Water related matters; III. On Combatting Crime and Drugs; IV. On Environment; V. On Border crossing points.



belligerency between Jordan and Israel immediately. According to Article 1 of the Treaty of Peace, "Peace is hereby established (...) effective from the exchange of the instruments of ratification of this Treaty".

Unlike Egypt and Israel, Jordan and Israel had no such issues like withdrawal of troops or settlers to deal with, nor did the two states have a serious dispute over their borders. The two states, according to Article 3(2) of the Treaty of Peace, accept the boundary as defined under the Mandate as "the permanent, secure and recognized international boundary between Israel and Jordan, without prejudice to the status of any territories that came under Israeli military government control in 1967".

The special relationship between Jordan and Israel clearly shows in Article 4, dealing with security. In addition to bilateral undertakings in its Paragraphs 3 and 4 with respect to refraining from participation in or allowance of hostile acts against the other party, the two states also agree to co-operate with a view to achieving peace in the Middle East at large. In Paragraph 1, they aim at a regional partnership in peace and commit themselves to the creation of a Conference on Security and Cooperation in the Middle East (analogous to the former CSCE, the predecessor of the OSCE). In Paragraph 5, they agree to take measures and co-operate in combating terrorism of all kinds. In Paragraph 6, they agree to conclude an agreement (within three months of the exchange of instruments of ratification) on a mechanism of consultation (supervision, liaison and verification). In Paragraph 7, they emphasize as their priorities (in the framework of a multilateral working group on arms control and regional security) the creation in the Middle East of a region free from hostile alliances and coalitions as well as from weapons of mass destruction, both conventional and non-conventional, in the context of a comprehensive, lasting and stable peace characterized by the renunciation of force, reconciliation and goodwill.

Full diplomatic relations, dealt with in Article 5, have been established in the meantime. In Articles 6, 7, 10, and 12 to 23,



the parties commit themselves to conclude agreements within periods ranging from one month to nine months on water, economic relations, cultural and scientific exchanges, combating crimes and drugs, transportation and roads, freedom of navigation and access to ports, civil aviation, post and telecommunications, tourism, environment, energy, Rift Valley development, health, agriculture, and arrangements for Aqaba and Eilat.

Articles 11 and 26 deal with mutual understanding, good neighborly relations and the necessary legislation to that effect. According to Article 11, they are to abstain from propaganda and to repeal not later than three months after the exchange of instruments of ratification all adverse or discriminatory references and expressions of hostility in their respective legislations. According to Article 26, also within three months, they are to enact any legislation necessary in order to implement the Treaty of Peace, and to terminate any international commitments and to repeal any legislation inconsistent with the Treaty of Peace.

Article 8 addresses itself to the complex issue of refugees and displaced persons. The parties agree to further alleviate their situation on a bilateral level, and to seek to resolve them in appropriate forums, such as a quadripartite commission together with Egypt and the Palestinians (for displaced persons), a multilateral working group (for refugees), and in negotiations in a framework to be agreed, bilateral or otherwise in conjunction with and at the same time as the permanent status negotiations pertaining to the territories referred to in Article 3.

With respect to the settlement of disputes, Article 29 provides for negotiations, conciliation and arbitration. In addition, Article 11 provides for a joint commission to examine incidents, and Article 24 for a claims commission.

The rights and obligations of the parties are the subject of Article 25. In Paragraph 3, measures to be taken for application in their relations of multilateral conventions are enumerated, including notification to the UN Secretary-General. According to Paragraphs 5 and 6, the parties shall "not enter into any obligation in conflict with this Treaty". Subject to article 103 of the Unit-

ed Nations Charter, in the event of a conflict between the obligations of the Parties under the present Treaty and any of their obligations, the obligations under this Treaty will be binding and implemented.

The Treaty of Peace between Jordan and Israel no doubt stands out as the most far-reaching step towards peace between Israel and its Arab neighbors. The status of the Treaty of Peace as a fundamental treaty is underlined by its Article 25 and the commitments to co-operation in a great variety of fields. In addition, the Treaty of Peace not only aims at peaceful bilateral relations, but also commits the parties to joint efforts towards regional peace in the entire region.

## **PLOWING THE SEA**

The Oslo agreements between Rabin and Arafat were deeply controversial on both sides. As agreed for the interim period, the Palestinian National Authority (PNA) was formed in 1994; presidential and legislative elections were held in 1996 and in 2005/2006. In 2013 the PNA renamed itself the government of the State of Palestine; recognized as a “non-member state” in November 2012 by the UN General Assembly.

While the “international community” came out more and more loudly in favor of the two-state solution, that solution became more and more controversial within Israel and in the Palestinian territories.

The two-state solution was to be the outcome of the so-called permanent status negotiations envisaged by the Oslo agreements, to be conducted by the two parties. It continues to be strongly advocated by the U.S., later supported by the E.U, the U.N and Russia with their roadmap for peace.<sup>22</sup> It must be noted, however, that neither President Bush (2002-2010) nor President Obama (2010- ) showed as much interest as President Clinton before them.

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22 Cf. Document GL. 15.

On 4 November 1995 Yitzak Rabin was assassinated by Yigal Amir, Zionist and enemy of the Oslo peace process. After a brief interregnum by Peres, Netanyahu became prime minister in June 1996 – known to oppose the Oslo agreements. He was succeeded in 1999 by Barak, who for two years tried in vain to re-launch the peace process. His successors – Sharon (2001-2006), Olmert (2006-2009), and again Netanyahu since 2009 – all belonged to the opponents of the Oslo peace process.

On the Palestinian side, the leadership situation was not much better, if not worse. Arafat, PLO leader and PNA President until his death in 2004 could never be fully trusted and refused to go along in the Camp David Summit of June 2000. The Summit failed to agree on a formula to share Jerusalem and on the question of Palestinian refugees. He was succeeded by Mahmoud Abbas. After Israel's disengagement from Gaza in 2005, Hamas won the elections in Gaza and took power in 2007. Henceforward Abbas only represented the West bank in negotiations with Israel.

Despite US efforts to re-open negotiations on the permanent status – the two state solution – all paths appear thoroughly blocked.<sup>23</sup> Israel under its current government is actively working towards a one-state solution, mainly by continuing to support new settlements on the West Bank. The Palestinians are profoundly divided between Fatah, running the West Bank and Hamas running Gaza. In both parts of Palestine, the populations suffer from corrupt and inefficient government, internal strife, humiliation by the Israeli's and despair.

As Nathan Brown rightly observes, the current situation is not so much unsustainable as deeply entrenched. It is entrenched in the pursuit of a delusion. Even under the best possible conditions the two-state solution, is a delusion.

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23 Cf. Nathan J. Brown, "No Horizon in a perpetually Unsustainable Palestine". *Carnegie Endowment for International Peace*. June 27, 2013.

## LEARNING FROM HISTORY?

Learning from history is not common among politicians, diplomats and scholars. Still, for us in academia, it is necessary to try.

**The first lesson** from history regards the “Western” approaches to the Middle East since the early nineteenth century. As Peter Mansfield wrote: “In the nineteenth century the Ottoman Empire had become the sick man of Europe in Western eyes.”<sup>24</sup> Henceforward the Western powers began to treat the sick man and the Middle East as healers driven by their superior ideas of enlightenment and revolution, and as conquerors driven by conquest. During the 19<sup>th</sup> century their principal instruments were the so called Capitulations, treaties by which extraterritorial privileges were conceded to nationals of the Western and Russian powers in Ottoman territory. When the Ottoman Empire disintegrated during the First World War, these same powers secretly divided substantial Ottoman territories among themselves.<sup>25</sup> The Western powers were convinced that it was their task to re-organize the Middle-East in line with the modern Western ideas of freedom, equality and nationalism. Of course, as article 22 of the Covenant of the League of Nations stated, the communities formerly belonging to the Turkish Empire are far enough advanced to provisionally recognize their existence as independent nations. They still need, however, advice and assistance by a Mandatory (read: France and the U.K.) until such time as they are able to stand alone. As a consequence the British and the French created such states as Syria, Iraq, Kuwait, Lebanon, Jordan, and a Palestinian mandate to become the national home for the Jewish people. They intended to do the same for the Armenian and the Kurdish people – unfortunately

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24 *A History of the Middle East*. Penguin Books 1991 at p. 35. Also in Russian eyes. In the last two decades of the 18th. century, Russia had substantially extended its territory around the Black Sea at the expense of the Ottoman Empire.

25 After the Bolsheviks came to power in 1917, Lenin published the secret treaties. Document GL. 11.

they were abandoned in the second peace treaty with Turkey.<sup>26</sup> None of these states developed into true nation-states as envisaged by the Western powers. Even the new Turkish Republic of Kemal Ataturk only became a nation-state on the basis of the ethnic cleansing of the Greek and Armenian populations of Anatolia. It may have to do with the fact that the borders between those states were drawn on the basis of French and British interest rather than on any knowledge of the make-up of tribes and peoples in the area. That may be part of the reason but not the only reason for their failure as a nation-state. The fact is that none of these states – with the exception of Israel and possibly Jordan – managed to grow into stable, modern nation-states. From the Arab point of view the West and Israel are to be blamed for this failure, or to put it more sharply: *Western policies* and the fact of Israel's *existence as a sovereign state* in the Middle East are to be blamed for it.

**The second lesson** from history regards Israel. Created in war against the Arab invasions, Israel received immediate and full support from the Western powers and the Soviet Union. From the outset, Israel faced an Arab world united only in commitment to its destruction. The Arab commitment took a variety of forms: outright war in 1967 and 1973, terrorist-type incursions into Israeli territory, random attacks on Israeli targets, and suicide attacks. The IDF (Israeli Defence Forces) was strong enough to repulse the attacks of 1967 and 1973. Israel's greatest delusion after the victory in the 1967 war was that conquered territory could be exchanged for peaceful relations. It erroneously assumed that Arab states could be negotiated into something else than the destruction of Israel. The continuing occupation of territory earmarked for an Arab state – not wanted by any Arab state in 1947 – added insult to injury. It enabled the PLO (Palestinian Liberation Organization) to gain stature and international recognition.

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26 Cf. my: *Western Cooperation*. WLP 2009. Part I, Chapter 1 at p. 44 and Document I.1.18.

Terrorist-type incursions came from Egyptian territory between 1948-1956, from Jordan territory between 1967-1970 and from Lebanese territory between 1970-1982. The 1982 war against the PLO in Lebanon temporarily sent the PLO in exile to Tunisia. In Lebanon it was replaced by Iran-supported Hezbollah. The 1987 Intifadah internalized the problem for Israel; terrorist attacks now came from the inside, the West bank and Gaza under Israeli occupation. Hamas was created in 1987, ironically with Israeli support as counterweight for Arafat's El Fatah. Thanks to the Oslo agreements, the PLO could install itself in the West bank under the flag of the PNA. The suicidal attacks from autonomous Palestinian territory since 1994 and the second Intifadah of 2000, led Israeli Premier Ariel Sharon to the plan of building a fence/wall between Israel and the occupied West bank.

The tragedy of this is all too clear. The Arab/Palestinian side employs every possible method to pursue the destruction of Israel – peace negotiations included. The Israeli side responds with overwhelming force. The “international community” increasingly condemns Israel, progressively ignoring the Arab commitment to the destruction of Israel. From the Israeli point of view kibbutzim, today settlements are the proven instruments of forward defense; for the “international community” self defense can not apply to occupied territory; from the Arab point of view, the whole of Palestine from the Jordan to the Mediterranean is illegally occupied territory and must be liberated. The International Court of Justice in its 2004 Advisory Opinion reflects the tragedy.<sup>27</sup> Like the UN General Assembly, it condemns Israel on the basis of rules of international law never applied by other states in time of war and thus supports those states from which originated the request to the Court as part of their strategy to achieve the destruction of Israel. The hypocrisy of the international community, the E.U. included, is further complicating the situation.

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27 Advisory Opinion. 9 July 2004 on the request of the UN General Assembly. "Legal Consequences Of The Construction Of A Wall In The Occupied Palestinian Territory".

**The third lesson** from history concerns the Arab nation. In a well written and critical report prepared by a number of Arab intellectuals, one reads: "There is a substantial lag between the Arab countries and other regions in terms of participatory government. The wave of democracy.... has barely reached the Arab states." (..) "Gender inequality is the most pervasive manifestation of inequity of all kinds in any society because it typically affects half the population."<sup>28</sup> The report forewarned the deep tragedy of the so-called Arab Spring from 2010 onwards. In a region suffering from extremely bad government – military or totalitarian dictatorship – widespread discrimination of women, poverty and ignorance, an explosion was bound to come in this era of internet and social media.

As always the international community and the E.U. in particular<sup>29</sup> with its illusionary Mediterranean policy, did not see the warning signs. When the explosions came, they had little more than political declarations and ill-fated military intervention to offer. From Tunisia to Afghanistan, Western intervention only further complicated and worsened the conflicts.

In 1979, Ayatollah Khomeini came to power in Iran, turning the country into a new source and center of Shiite Islamic terror and extremism. In reaction Saudi-Arabia redoubled its efforts to spread Sunnite extreme Wahabism or Salafism through its so called cultural institutions, channeling billions of dollars to madrassah's and mosques as learning sites for salafist teaching. It turned political Islam or Islamism into an additional and serious threat to peace and stability in the Middle East and beyond. As the violence spread – from Tunisia to Libya, to Egypt and the Gulf, to the Levant, to Syria in an endless, cruel civil war – it revived the old conflicts between Sunnite and Shiite Islam; leaving the suffering population with the impossible alternatives be-

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28 United Nations Development Programme/Arab Fund For Economic and Social Development, *Arab Human Development. Report 2002. Creating Opportunities for Future Generations.*

29 Cf. my *European Unification into the Twenty First Century*, Part II, chapter 5 at p. 298ff.



tween military and totalitarian regimes on the one and Islamist regimes of Shiite or Sunni terror on the other side.

The UNDP Report considers: "Israel's illegal occupation of Arab lands (is) one of the most pervasive obstacles to security and progress in the region geographically (since it affects the entire region) and developmentally (impacting nearly all aspects of human development and human security, directly for millions and indirectly for others)". It is mentioned as the first challenge to the pursuit of freedom from fear and the achievement of freedom from want. In other words: the existence of Israel as a sovereign state in the Middle East is considered to be the most pervasive obstacle to progress in the Arab nations. This opinion is shared throughout the Arab world, in fact the only common Arab opinion.

The opinion reflects the inability of the Arab states to cope with their own challenges. Israel is a convenient scapegoat behind which such inability can be concealed, but no more. In the history of the Middle East one finds no good reason, why Israel cannot be accepted as a sovereign state in a modernized Middle East alongside sovereign states like Jordan, Egypt and others. In our modern world there is no good reason to accept the Muslim claim that territory once conquered by Muslim forces, should be returned to Islamic rule.

In reality the opposite should be done: *full and genuine acceptance of Israel as a sovereign state in the Middle East is required to achieve a "future for all" as outlined in the Report.* If anything sensible could be contributed by the international community, it would be in this sense.

**The fourth lesson** concerns an even longer and deeper trend in the history of the Middle East. Once upon a time, the area we now refer to as the Middle-East, used to be the heartland of Christianity. It was not until the fifteenth century that Europe was finally Christianized and Christianity became Europeanized. The Middle-East today appears to be living through the final days of



a meaningful Christian presence. Fierce and violent persecution of Christians can be found everywhere in the area: whether allied with the West – like Turkey, Saudi-Arabia, Pakistan or Egypt – or in confrontation – like Iran, Iraq, Syria or Afghanistan. The Christian communities in the Middle East are weak and divided. Political interest in the current persecution of Christians is shockingly low in Europe and the West – Western Christians included. As Philip Jenkins wrote:

“And yet this older Christian world perished, destroyed so comprehensively that its memory is forgotten by all except academic specialists. During the Middle Ages, and especially during the fourteenth century, church hierarchies were destroyed, priests and monks were killed, enslaved or expelled, and monasteries and cathedrals fell silent. As church institutions fell, so Christian communities shrank, the result of persecution or ethnic and religious cleansing. Survivors found it all but impossible to practice their faith without priests or churches, especially when rival religions offered such powerful attractions.” (..)

“So extensive, indeed, were persecutions and reductions of minority groups, from the Middle Ages through the twentieth century, that it is astonishing how little they have registered in popular consciousness, or how readily the myth of Muslim tolerance has been accepted.” (...)

“Only by understanding the lost Eastern Christianities can we understand where Islam comes from, and how very close it is to Christianity.”<sup>30</sup>

A “Future for All” in the Middle East can be achieved only through justice, cooperation and peace, among the Arab

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30 Philip Jenkins, *The Lost History of Christianity. The Thousand-Year Golden Age of the Church in the Middle East, Africa, and Asia – and How It Died*. Lion 2008 at p. 22, 23, 33, 37.

states, between Arabs and Israelis, between Jews, Christians and Muslims. It requires democracy and development, acceptance of every-one's right to freedom of religion and equality between men and women. An end must come to religious persecution, to the repression of women and to dictatorial regimes. Above all the Middle East needs a process of reconciliation, solidarity and cooperation across borders. To achieve such transition in the Middle East, an active civil society must be developed; visionary, democratic leadership must be given a chance; and regional international cooperation based on common rules and common institutions must be initiated. Only in this way can a new memory of peace and cooperation, gradually replace the memory of violence and hatred. Events in the Middle-East since the revolt of the younger generations against repressive and backward rulers offer few signs of hope for such a transition.