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Samuel Horowitz

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A One-State Solution to the Arab-Israeli/Israeli-Palestinian Conflict: A Recommendation Supported by a Review of the Historical Record and Current Context

SAMUEL HOROWITZ*

Abstract

This article examines the legal underpinning of the creation of the state of Israel and historical documents to note that despite calls for a two-state solution at the UN, a one-state solution to the conflict is not necessarily precluded. It then identifies why both the status quo and the proposed two-state solution are problematic and untenable. Lastly, it looks to the example of South Africa because of similarities between South Africa and modern-day Israel/Palestine. It concludes that the creation of a single state, following the example of post-apartheid South Africa, is the only solution to the conflict that will create a comprehensive, just, durable, and lasting peace for Palestinians and Israelis.

*J.D., 2020, University of Minnesota Law School; B.A., 2017, University of Wisconsin-Madison; A.A., 2014, Defense Language Institute. The author is a practicing attorney with experience and an educational background in international relations, international organizations, human rights law, humanitarian law, and criminal law.

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“May God soon bring a lasting peace and freedom of all peoples.”¹

Introduction

The Arab-Israeli (Israeli-Palestinian) conflict has raged and simmered for the last century, since the end of the First World War. The finger-pointing and blaming must stop and the facts on the ground must be objectively considered and practical solutions adopted. Those conditions are as follows: upwards of 200,000 people have been killed throughout the conflict and countless more injured;² hundreds of thousands of people have been displaced;³ hundreds of billions of dollars have been spent on the conflict or lost;⁴ millions of people are living under the fear of indiscriminate bombings, rocket attacks, home demolitions, reprisals, and detention; tens of thousands are living as refugees or in veritable ghettos; and both the current situation and a possible two-state solution are untenable. This article examines the legal underpinning of the creation of the state of Israel and historical documents to note that, despite calls for a two-state solution at the UN,⁵ a one-state solution to the conflict is not necessarily precluded. It then identifies why both the status quo, and the proposed two-state solution are problematic and untenable. Lastly, it looks to the example of South Africa because of the similarities between South Africa and modern-day Israel/Palestine. It concludes that the creation of a single state, following the example of post-apartheid South Africa, is the only solution to the conflict that will create a comprehensive, just, durable, and lasting peace for Palestinians and Israelis.

1. Letter from Sir Henry McMahon, British High Comm'r in Cairo, to Hussein Ibn Ali, Sherif of Mecca (Oct. 24, 1915).

2. Both Palestinian Arabs and Jews. Though risking regression to the blame-game, it must be noted that deaths have been disproportionately Palestinian.

3. See *Vital Statistics: Total Casualties, Arab-Israeli Conflict*, JEWISH VIRTUAL LIBR. (last visited May 6, 2020) (estimating 116,074 Palestinian and Israeli deaths and 114,298 injuries over the course of the whole conflict); *The Arab-Israeli Wars*, ALJAZEERA (Dec. 9, 2003), <https://www.aljazeera.com/archive/2003/12/2008410115114656999.html> (estimating over 200,000 deaths caused by the five major wars between Israel and the Arab States).

4. See *Arab-Israeli Wars*, *supra* note 3.

5. See S.C. Pres. Statement 2023/1 (Feb. 20, 2023) (“The Security Council reaffirms its unwavering commitment to the vision of the two-State solution where two democratic States, Israel and Palestine, live side by side in peace within secure and recognized borders, consistent with international law and relevant UN resolutions.”); U.N. Under-Secretary-General, ‘Robust’ cooperation with Arab League can quell conflict in the region (June 8, 2023), <https://news.un.org/en/story/2023/06/1137477>.

I. Background

Most, if not all, of the international legal, political, and other documents on Israel and Palestine are characterized by ubiquitous and intentional constructive ambiguity. Each appears directed at appeasing the fears and apprehensions of both the Arab and Jewish populations and showing support for them. However, this has created a legal landscape for the issue that is just as convoluted and contested as the physical landscape. This paper seeks to pick out the language of some of these pre-partition international documents that appear to support a one-state solution while fully acknowledging—at times explicitly—that there is also language clearly envisioning a two-state solution. Some of these documents are presented to show that some viewed a two-state solution as impracticable or undesirable, and others to show the—at least formal and facial—attitude of brotherhood and unity between Arabs and Jews.

A. The Sykes-Picot Agreement

Made between Great Britain and France during the First World War, the Sykes-Picot Agreement set out how the two powers would split up and reshape the Middle East.⁶ Relevant to the issue of the parties' ability to establish boundaries, the Agreement stated: "The negotiations with the Arabs as to the boundaries of the Arab State or Confederation of Arab States shall be continued through the same channel as heretofore on behalf of the two Powers."⁷ Additionally, the Agreement gave the port cities of Haifa and Acre, as well as most of what is modern-day Israel and Palestine, to Great Britain,⁸ but established that the former Ottoman Sanjak of Jerusalem would be an international zone.⁹

Though colonialist, the Agreement recognized the need to maintain ties and gather input from people living in the areas concerned and establish the importance of the Holy Places.

6. See THE ISRAEL-ARAB READER: A DOCUMENTARY HISTORY OF THE MIDDLE EAST CONFLICT 13 (Walter Laqueur & Dan Schueftan eds., Penguin Books, 8th ed. 2016) [hereinafter ISRAEL-ARAB READER].

7. The Sykes-Picot Agreement ¶ 11, May 15–16, 1916.

8. *Id.* ¶¶ 2, 4.

9. See *id.* ¶ 3; *A Century On: Why Arabs Resent Sykes-Picot*, ALJAZEERA, <https://interactive.aljazeera.com/aje/2016/sykes-picot-100-years-middle-east-map/index.html> (last visited May 6, 2020) (providing a map of the areas of influence created by France and Great Britain in the Agreement).

B. Balfour Declaration

With a substantive section of fewer than seventy words, the Balfour Declaration—and its subsequent embodiment in the British Mandate—is viewed as the first and perhaps most important document in the legal arguments for a Jewish state in Palestine. The Declaration states:

His Majesty's Government view with favour the establishment in Palestine of a national home for the Jewish people and will use their best endeavors 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 existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country.¹⁰

While what, if anything, was promised in the Balfour Declaration is still contested,¹¹ it represents a clear example of the constructive ambiguity and contradictions present in many of the documents about Palestine and the future state of Israel. The contradictory nature of the Declaration is especially clear in the last sentence; it is unimaginable that a population could be moved, or a new state established in an already-populated land without affecting the people living there.

C. Emir Feisal and Chaim Weizmann Agreement

Though later denying that he wrote it¹²—despite a caveat added in Arabic next to his signature on the conditionality of the agreement—the language in the Agreement between Feisal and Weizmann speaks to the ties between the Arab and Jewish people and the necessity of cooperating to achieve their goals. The preamble to the Agreement recognizes “the racial kinship and ancient bonds existing between the Arabs and the Jewish people” and states that “the surest means of working out the consummation of their

10. The Balfour Declaration, Nov. 2, 1917 (UK).

11. The use of the phrases “views with favour” and “best endeavors to facilitate” do not clearly set out a course of action beyond perhaps an obligation to act in good faith toward the stated goal.

12. See ISRAEL-ARAB READER, *supra* note 6, at 17; *The Weizmann-Feisal Agreement*, ISR. MINISTRY OF FOREIGN AFF., <https://mfa.gov.il/mfa/foreignpolicy/peace/mfadocuments/pages/the%20weizmann-feisal%20agreement%203-jan-1919.aspx>.

national aspirations is through the closest possible collaboration in the development of the Arab State and Palestine.”¹³ It adds that the parties are “desirous [] of confirming the good understanding which exists between them [through the terms of the agreement].”¹⁴

Article III of the Agreement incorporates the Balfour Declaration and Article V declared that:

“No regulation nor law shall be made prohibiting or interfering in any way with the free exercise of religion; and further the free exercise and enjoyment of religious profession and worship without discrimination or reference shall forever be allowed. No religious test shall ever be required for the exercise of civil or political rights.”¹⁵

D. Emir Feisal and Felix Frankfurter Correspondence

The two letters exchanged between Emir Feisal and Felix Frankfurter, a member of the Zionist Delegation at the Paris Peace Conference, further show the bond between Arabs and Jews and the possibility for peaceful coexistence. In his letter, Emir Feisal wrote “[w]e feel that the Arabs and Jews are cousins in race, having suffered similar oppressions at the hands of powers stronger than themselves, and by a happy coincidence have been able to take the first step towards the attainment of their national ideals together.”¹⁶ He continued:

“[w]e are working together for a reformed and revived Near East, and our two movements complete one another. The Jewish movement is national and not imperialist. Our movement is national and not imperialist, and there is room in Syria for us both. Indeed I think that neither can be a real success without the other. . . . I look forward . . . to a future in which we will help you and you will help us, so that the countries in which we are mutually interested may once again

13. Agreement between Emir Feisal and Chaim Weizmann, pmbl. (Jan. 3, 1919).

14. *Id.*

15. *Id.* at art. V.

16. Letter from Emir Feisal, Delegation Hedjazienne, to Felix Frankfurter, Zionist Delegate (Mar. 3, 1919).

take their places in the community of civilized peoples of the world.”¹⁷

In his response, Felix Frankfurter affirmed these sentiments in saying “we knew that the aspirations of the Arab and the Jewish peoples were parallel, that each aspired to reestablish its nationality in its own homeland, each making its own distinctive contribution to civilization, each seeking its own peaceful mode of life.”¹⁸ His letter concluded by saying:

“It is no easy task to rebuild two great civilizations that have been suffering oppression and misrule for centuries. We each have our difficulties we shall work out as friends, friends who are animated by similar purposes, seeking a free and full development for the two neighboring peoples. The Arabs and Jews are neighbors in territory; we cannot but live side by side as friends.”¹⁹

E. The King-Crane Commission: Recommendations

President Woodrow Wilson appointed the King-Crane Commission and assigned it the task of determining which power should be given the Mandate for Palestine and how it should be implemented.²⁰ The Commission’s Report, based on “the actual facts in Palestine, coupled with the force of the general principles proclaimed by the Allies and accepted by the Syrians[.]”²¹ recommended serious modification of the Zionist plan.²² The Report declared that:

“a national home for the Jewish people” is not equivalent to making Palestine into a Jewish State; nor can the erection of such a Jewish State be accomplished without the gravest trespass upon the “civil and religious rights of existing non-

17. *Id.*

18. Letter from Felix Frankfurter, Zionist Delegate, to Emir Feisal, Delegation Hedjazienne (Mar. 5, 1919).

19. Letter from Felix Frankfurter, Zionist Delegate, to Emir Feisal, Delegation Hedjazienne (Mar. 5, 1919).

20. *See* ISRAEL-ARAB READER, *supra* note 6, at 23.

21. KING-CRANE COMMISSION, REPORT OF AMERICAN SECTION OF INTER-ALLIED COMMISSION ON MANDATES IN TURKEY (Aug. 28, 1919).

22. *Id.* (quoting the Balfour Declaration).

Jewish communities in Palestine.” The fact came out repeatedly in the Commission’s conference with Jewish representatives, that the Zionists looked forward to a practically complete dispossession of the present non-Jewish inhabitants of Palestine by various forms of purchase.

The Commission concluded that the Zionist plan—in its present state—could only be implemented through armed force and would require at least 50,000 soldiers.²³ It further found that the extreme Zionist plan “would intensify, with a certainty like fate, the anti-Jewish feeling both in Palestine and in all other portions of the world which look to Palestine as ‘the Holy Land.’”²⁴ The Report concluded by stating that “the project for making Palestine distinctly a Jewish commonwealth should be given up[,]” and suggesting a one state solution with an international body in charge of governing the Holy Places with representation by Jews.”²⁵

F. Churchill White Paper

Because of the increasing hostility towards the Zionist plan, the British Colonial Secretary drafted a White Paper aimed at softening the Balfour Declaration.²⁶ The statement said that “[u]nauthorized statements have been made to the effect that the purpose [of the Balfour Declaration] is to create a wholly Jewish Palestine[,]” and that “the terms of the Declaration . . . do not contemplate that Palestine as a whole should be converted into a Jewish National Home, but that such a Home should be founded *in Palestine*.”²⁷ The White Paper expressed a belief “that the status of all citizens of Palestine in the eyes of the law shall be Palestinian, and it has never been intended that they, or any section of them, should possess any other juridical status.”²⁸ It also reaffirmed the insusceptibility of the Balfour Declaration to change following its inclusion in the Treaty of Sevres.²⁹ The statement clarified that:

23. *Id.*

24. *Id.*

25. *Id.*

26. ISRAEL-ARAB READER, *supra* note 6, at 25–26.

27. WINSTON CHURCHILL, BRITISH WHITE PAPER OF 1922 ON PALESTINE (1922).

28. *Id.*

29. *Id.*

“what is meant by the development of the Jewish National Home in Palestine, it may be answered that it is not the imposition of a Jewish nationality upon the inhabitants of Palestine as a whole, but the further development of the existing Jewish community, with the assistance of Jews in other parts of the world, in order that it may become a centre in which the Jewish people as a whole may take, on grounds of religion and race, an interest and a pride. . . . in Palestine as of right and not on sufferance.”³⁰

In perhaps the finest example of fence-sitting seen on the international stage, the White Paper declared that “[the Declaration] does not contain or imply anything which need cause either alarm to the Arab population of Palestine or disappointment to the Jews.”³¹ In breaking from its ambiguous character, the White Paper did explicitly state that “[t]he whole of Palestine west of the Jordan was [] excluded from Sir H. McMahon’s pledge [to the Sherif of Mecca].”³²

G. The British Mandate

Despite its paternalist and colonialist nature and tone, the British Mandate included several terms that should or could have formed the basis for the creation of a single state for Jews and Arabs in Palestine. These are found in Articles 7, 15, 17, and 22 excerpted below. It also included the Balfour Declaration in its preamble.³³

Article 7 provided that “[t]here shall be included in [Palestine’s nationality] law provisions framed so as to facilitate the acquisition of Palestinian citizenship by Jews who take up their permanent residence in Palestine.”³⁴ Article 15 dealt with non-discrimination and declared that “[n]o discrimination of any kind shall be made between the inhabitants of Palestine on the grounds of race, religion or language. No person shall be excluded from Palestine on the sole ground of his religious belief.”³⁵ It further stated that “[t]he right of each community to maintain its own schools for the education of its own members in its own language, while conforming to such

30. *Id.*

31. *Id.*

32. *Id.*

33. Mandate for Palestine, C.529 L.N.T.S. 314 (1922).

34. *Id.* at art. 7.

35. *Id.* at art. 15.

educational requirements of a general nature as the Administration may impose, shall not be denied or impaired.”³⁶

Article 17 of the Mandate referred to the creation of military forces and provided that:

“[t]he Administration of Palestine may organize on a voluntary basis the forces necessary for the preservation of peace and order, and also for the defence of *the country*, subject, however, to the supervision of the Mandatory, but shall not use them for purposes other than those above specified save with the consent of the Mandatory.”³⁷

As far as the languages of Palestine, Article 22 established that “English, Arabic and Hebrew shall be the official languages of Palestine. Any statement or inscription in Arabic on stamps or money in Palestine shall be repeated in Hebrew and any statement or inscription in Hebrew shall be repeated in Arabic.”³⁸

H. The MacDonald Letter

Containing—after the Churchill White Paper—perhaps one of the most ambiguous statements on the Balfour Declaration and the future of Palestine, was the MacDonald Letter. It followed the heated response of Zionists to the Passfield White Paper to placate them and was rejected by the Arabs.³⁹ It stated:

“A double undertaking is involved [in the Balfour Declaration], to the Jewish people on the one hand and to the non-Jewish population of Palestine on the other; and it is the firm resolve of his Majesty’s Government to give effect, in equal measure, to both parts of the declaration and to do equal justice to all sections of the population of Palestine.”⁴⁰

36. *Id.*

37. *Id.* at art. 17 (emphasis added).

38. *Id.* at art. 22.

39. ISRAEL-ARAB READER, *supra* note 6, at 36–37.

40. Letter from James Ramsay MacDonald, Prime Minister, to Dr. Chaim Weizmann, President (Feb. 13, 1931).

The Letter went on to acknowledge that “the full solution of the problem depends upon an understanding between the Jews and the Arabs” and that “no solution can be satisfactory or permanent which is not based upon justice, both to the Jewish people and to the non-Jewish communities of Palestine.”⁴¹

I. The Palestine Royal Commission (Peel Commission) Report

The Peel Commission was established during the Arab revolt that began in 1936.⁴² It was the first document suggesting the partition of Palestine into a Jewish and an Arab state united with Transjordan.⁴³ The partition plan was rejected by both the Arabs, a substantial minority of the Zionist Congress, and later, the British government.⁴⁴ Written in response to a violent conflict, the Report’s recommendations are unsurprising but probably suffered short-sightedness and gave undue weight to an exceptional situation.⁴⁵ The Report actually served to exacerbate the conflict as it spread fear among the Arab population that they would be forcibly transferred to Transjordan.⁴⁶ However, the Report stated that “forcible conversion of Palestine into a Jewish State against the will of the Arabs. . . . would clearly violate the spirit and intention of the Mandate System[]” and that “the right of the Jews to return to their old homeland did not involve the recognition of the right of the Jews to govern the Arabs in it against their will.”⁴⁷ While highly doubting the likelihood of peaceful coexistence, the Report also acknowledged that “Arabs and Jews might possibly learn to live and work together in Palestine if they would make a genuine effort to reconcile and combine their national ideals and so build up in time a joint or dual nationality.”⁴⁸

41. *Id.*

42. ISRAEL-ARAB READER, *supra* note 6, at 41.

43. *Id.* at 41–42; *see also*, Glenn Richard Bugh et al., *Palestine, The Arab Revolt*, ENCYC. BRITANNICA (Feb. 24, 2020), <https://www.britannica.com/place/Palestine/The-Arab-Revolt>.

44. *Id.* at 42.

45. *See* Glenn Richard Bugh et al., *supra* note 43 (stating that the revolt “was the first sustained violent uprising of Palestinian Arabs in more than a century”).

46. *See* Glenn Richard Bugh et al., *supra* note 43.

47. THE PALESTINE ROYAL COMM’N (PEEL COMM’N), REPORT (July 1937).

48. *Id.*

J. British Government Policy Statement Against Partition

Almost a year and a half after the release of the Peel Commission Report, the British government rejected the Commission's recommendations. In it, the British government concluded that "the political, administrative and financial difficulties involved in the proposal to create independent Arab and Jewish States inside Palestine are so great that this solution to the problem is impracticable."⁴⁹

"It is clear that the surest foundation for peace and progress in Palestine would be an understanding between the Arabs and the Jews"

K. The 1939 White Paper

After the rejection of the partition plan, the British government essentially proposed a one-state solution in the White Paper published on May 17, 1939.⁵⁰ In support of the one-state solution, the British government stated that:

"the establishment of self-supporting independent Arab and Jewish States within Palestine has been found to be impracticable[[and] . . . that the framers of the Mandate in which the Balfour Declaration was embodied could not have intended that Palestine should be converted into a Jewish State against the will of the Arab population of the country."⁵¹

It also suggested that the Constitution of the Palestinian state should result in "a State in which the two peoples in Palestine, Arabs, and Jews, share authority in government in such a way that the essential interests of

49. Palestine, Statement by His Majesty's Government in the United Kingdom Presented by the Secretary of State for the Colonies to Parliament by Command of his Majesty, Nov. 1938.

50. See British White Paper of 1939.

51. 1939 White Paper paras. 3–4.

each are secured.”⁵² This recommendation was repeated almost verbatim in paragraph 10.⁵³

L. The Anglo-American Committee of Inquiry: Recommendations and Comments

The Anglo-American Committee of Inquiry was established in 1945 to determine how many Jews in countries formerly controlled by the Axis powers would likely migrate to Palestine.⁵⁴ The Report of the Committee made ten recommendations to the British Mandatory Power and the governments of the United States and Great Britain, as well as to the United Nations more generally.⁵⁵

Recommendations Nos. 3 and 5 are especially relevant to the issue of a one-state solution. Recommendation No. 3 established and explained the following three principles:

“[t]hat Jew shall not dominate Arab and Arab shall not dominate Jew in Palestine[,] Palestine shall be neither a Jewish state nor an Arab state[,] [and] the form of government ultimately to be established, shall, under international guarantees, fully protect and preserve the interests of the Holy Land of Christendom and of the Moslem and Jewish faiths.”⁵⁶

The Recommendation went on to state that the future Palestinian state must provide sufficient protections for the interests of Muslims, Jews, and Christians and provide its inhabitants with self-governance.⁵⁷ The Recommendation concluded by stating that:

“Palestine must be established as *a country* in which the legitimate national aspirations of both Jews and Arabs can be

52. *Id.* at para. 8.

53. *Id.* at para.10(2) (“The independent State should be *one* in which Arabs and Jews share in government in such a way as to ensure that the essential interests of each community are safeguarded.”) (emphasis added).

54. ISRAEL-ARAB READER, *supra* note 6, at 62.

55. ANGLO-AMERICAN COMMITTEE OF INQUIRY, REPORT OF THE ANGLO-AMERICAN COMMITTEE OF ENQUIRY REGARDING THE PROBLEMS OF EUROPEAN JEWRY AND PALESTINE (1946).

56. *Id.* Recommendation No. 3.

57. *See id.*

reconciled without either side fearing the ascendancy of the other. In our view this cannot be done under any form of constitution in which a mere numerical majority is decisive, since it is precisely the struggle for a numerical majority which bedevils Arab-Jewish relations.”⁵⁸

Recommendation No. 5 proposed that the Mandatory Power adopt measures to help the Arab population of Palestine attain the same level of economic, educational, and political advancement as the Jewish population “and to bring the two peoples to a full appreciation of their *common interest and common destiny in the land where both belong*.”⁵⁹

M. UN Special Committee on Palestine: Summary Report

According to British Foreign Secretary Ernest Bevin, “Palestine . . . could not be so divided as to create two viable states.”⁶⁰ Among the unanimously adopted recommendations in the Report were recommendations VII and IX. Recommendation VII stated that “the constitution of the new state *or states* should be fundamentally democratic and should contain guarantees for the respect of human rights and fundamental freedoms and for the protection of minorities.”⁶¹ Recommendation IX stated that “the economic unity of Palestine should be preserved.”⁶² These recommendations show that a possible one-state solution was not even excluded immediately prior to the Partition Resolution.

N. Partition Resolution

On November 29, 1947, the UN General Assembly adopted Resolution 181 (II).⁶³ The Resolution stated that “[i]ndependent Arab and Jewish States

58. ANGLO-AMERICAN COMMITTEE OF INQUIRY, REPORT OF THE ANGLO-AMERICAN COMMITTEE OF ENQUIRY REGARDING THE PROBLEMS OF EUROPEAN JEWRY AND PALESTINE (1946)(emphasis added).

59. *Id.* at Recommendation No. 5.

60. ISRAEL-ARAB READER, *supra* note 6, at 65.

61. *Id.* at 66 (emphasis added).

62. *Id.*

63. G.A. Res. 181 (II) (Nov. 29, 1947) [hereinafter Partition Resolution]; *see also* UNITED NATIONS, *The Question of Palestine and the General Assembly*, https://www.un.org/unispal/data-collection/general-assembly/?wpv_view_count=237041&wpv_paged=89 (last visited Sept. 1, 2023).

... shall come into existence in Palestine ... not later than 1 October 1948.”⁶⁴ It is worth noting here that the General Assembly resolutions do not have binding legal authority under the UN Charter as such resolutions are merely recommendations.⁶⁵ Only the Security Council’s resolutions, adopted under Chapter VII of the Charter, are considered binding.⁶⁶ Therefore, the Partition Resolution does not preclude a two-state solution.

O. UN Security Council Resolutions

The UN Security Council stated its preference for a two-state solution in Resolution 1397 in which it affirmed “a vision of a region where two States, Israel and Palestine, live side by side within secure and recognized borders.”⁶⁷ However, this statement was included in a preambular, as opposed to operative, paragraph of Resolution 1397.⁶⁸ Preambular paragraphs of Security Council resolutions “may assist in interpretation by giving guidance as to their object and purpose, but they need to be treated with caution since they tend to be used as a dumping ground for proposals that are not acceptable in the operative paragraphs.”⁶⁹ The Security Council first endorsed, and called on the parties to implement a two-state solution, in the operative paragraphs of a resolution in Resolution 1515.⁷⁰ Despite endorsing and calling for a two-state solution, the Security Council always has the ability to adopt a new resolution in favor of a one-state solution.⁷¹ Additionally, the Security Council’s resolutions endorsing the two-state solution lacked the language that the Security Council generally includes when it intends a provision to be mandatory, that is, a reference to or inclusion of an Article 39 determination and the phrase “‘acting under

64. Partition Resolution, *supra* note 63, at I.A.3.

65. See U.N. Charter arts. 10–14; UNITED NATIONS, THE GA HANDBOOK: A PRACTICAL GUIDE TO THE UNITED NATIONS GENERAL ASSEMBLY 52 (Johann Aeschlimann & Mary Regan eds., 2nd ed. 2017); see also W. Thomas Mallison & Sally V. Mallison, *An International Law Analysis of the Major United Nations Resolutions Concerning the Palestine Question*, 6–7 UNITED NATIONS, 1979 (available at <https://www.un.org/unispal/document/auto-insert-196128/>) (stating that the General Assembly is empowered “to act through ‘recommendations’”).

66. U.N. Charter arts. 25, 39–51; Michael C. Wood, *The Interpretation of Security Council Resolutions*, Max Planck Yearbook of United Nations Law, 75, 77–79.

67. S.C. Res. 1397 (Mar. 12, 2002).

68. *Id.*

69. Wood, *supra* note 66, at 86–87.

70. S.C. Res. 1515 (Nov. 19, 2003).

71. See Wood, *supra* note 66, at 78 (stating that the Security Council “may depart from or override existing rules in particular cases.”).

Chapter VII' or reference to an appropriate article thereof, as well as the word 'decides.'"⁷² Therefore, a two-state solution is not necessarily, or need not be, precluded by Security Council resolutions.

II. Why One State

A. Dangers of a Two-State Solution or Maintaining the Status Quo

The current situation between Israel and Palestine is unsustainable and—given the present conditions—there is no way to create a viable second state for Palestinians.⁷³ The current relationship between Israel and the Palestinian territories is one of occupation and de facto segregation, marred by acts and counteracts of terrorism, violence, and destruction. Palestinians have little economic power or potential and continue to suffer dispossession.⁷⁴

Partitioning a territory as small as Palestine was initially problematic because the resources did not follow the artificially constructed borders.⁷⁵ Furthermore, Israeli settlements are too large, numerous, and established to allow for a two-state solution by giving Palestinians the land currently occupied by settlements.⁷⁶ A Palestinian state created out of the remaining scraps would lead to further instability because its cities would be separated from each other, it would be physically obstructed from the Israeli economy, and its government would lack control over water resources, agriculture, and trade.⁷⁷

The two-state solution was doomed to fail from the very beginning. It had no support from the Arab Palestinians or indeed from the British Mandate. Because of the Palestinian boycott of UNSCOP, their voices were neither heard nor taken into account, and, before jumping to blame the Arab Palestinians for the two-state solution because of this boycott, a solution that ignored the needs and desires of more than half that affected people was no solution at all.

72. See Wood, *supra* note 66, at 82.

73. VIRGINIA TILLEY, THE ONE-STATE SOLUTION: A BREAKTHROUGH FOR PEACE IN THE ISRAELI-PALESTINIAN DEADLOCK 10 (2005).

74. See generally Sara Roy, *The Palestinian-Israeli Conflict and Palestinian Socioeconomic Decline: A Place Denied*, 17 INT'L J. POL., CULTURE & SOC'Y 365 (2004).

75. GHADA KARMI, MARRIED TO ANOTHER MAN: ISRAEL'S DILEMMA IN PALESTINE 230 (2007).

76. TILLEY, *supra* note 73 at 1–3.

77. *Id.* at 3–5.

B. Barriers to Peace Resolved by a One-State Solution

Among the issues currently considered to be impediments to peace are the status of Jerusalem,⁷⁸ the status of the occupied territories,⁷⁹ the security wall,⁸⁰ Israeli settlements,⁸¹ and the right of return.⁸² A one-state solution would immediately—or through its creation—make these issues moot. Jerusalem would become the capital of a unified state. No territory would be occupied because it would all be part of the same state. There would be no need for a security wall separating territories because there would be only one territory and all citizens would have representation and a voice in government. Settlements would no longer be seen as illegal under international law but would merely constitute towns and cities within the single state. The right of return would remain for any Jew wishing to move to the unified state and would be granted to any Palestinians wishing to return.

The greatest barrier to a one-state solution is a political one, erected by hardliners on both sides who refuse to give up a “Jewish state” or who reject and refuse to recognize the presence of the Jewish people and a Jewish state in Palestine. These voices cannot be allowed to control the debate any longer as they are the very reasons for the conflict and its severity in the first place. Extremist Zionists were the ones to institute a program of ethnic cleansing against Palestinian Arabs immediately before and after Israel declared its independence⁸³ and extremist Arab leaders have given Israeli leaders fodder to use both as propaganda and legal and moral justification for conflict by calling for the destruction of Israel and engaging in and promoting armed

78. See Henry Cattán, *The Status of Jerusalem Under International Law and United Nations Resolutions*, 10 J. PALESTINE STUD., No. 3, 1981, at 3–15; Quincy Wright, *Legal Aspects of the Middle East Situation*, 33 L. & CONTEMPORARY PROBLEMS 5, 15–16 (1968).

79. See generally Adam Roberts, *Transformative Military Occupation: Applying the Laws of War and Human Rights*, 100 AM. J. INT’L L. 580 (2006).

80. See generally Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136 (July 9); HCJ 2056/04 Beit Sourik Village Council v. Government of Israel 58(5) PD 807 (2005) (Isr.).

81. See generally TILLEY, *supra* note 73, at 51–87.

82. See generally George J. Tomeh, *Legal Status of Arab Refugees*, 33 L. & CONTEMPORARY PROBLEMS 110 (1968) (arguing that Palestinian Arabs have a right of return or compensation); Yaffa Zilbershats, *International Law and the Palestinian Right of Return to the State of Israel*, in ISRAEL AND THE PALESTINIAN REFUGEES 191 (Eyal Benvenisti et al. eds., 2007) (arguing against a Palestinian right to repatriate to Israel).

83. See generally ILAN PAPPÉ, *THE ETHNIC CLEANSING OF PALESTINE* (2007).

conflict and terrorism.⁸⁴ This cycle is—and always has been—self-reinforcing.

C. The Example of South Africa

South Africa and Israel/Palestine have a great deal in common as far as their history and populations. They share a history of colonial/mandatory rule, dispossession, segregation, terrorism, and a minority population with a palpable and well-founded fear of domination by the majority. After years of Apartheid, South Africa adopted a Constitution that recognized past injustices and divisions in its society⁸⁵ and guaranteed human rights, non-discrimination, and equality under the law.⁸⁶ The South African Constitution also established common citizenship and universal suffrage.⁸⁷ It further took into account the diversity of the people living there and so recognized 11 languages as official languages and put in place administrative requirements to respect and preserve these languages.⁸⁸ South Africa also established a Truth and Reconciliation Commission (TRC) to provide an objective historical account of the conflict to prevent the continuation of competing narratives.⁸⁹

i. Human Rights, Non-Discrimination, and Equality

South Africa's constitution enshrined guarantees of human rights, non-discrimination, and equality under the law in its Bill of Rights.⁹⁰ Importantly, for a diverse nation, the South African constitution explicitly included articles protecting freedom of religion, belief, and opinion;⁹¹ freedom of association;⁹² language and culture;⁹³ and cultural, religious, and linguistic

84. *See generally Palestine*, HIST., <https://www.history.com/topics/middle-east/palestine> (Aug. 11, 2017).

85. *See* S. AFR. CONST. pmbl., 1996.

86. S. AFR. CONST. ch. 1.

87. *Id.*

88. *Id.* at ch. 1(6).

89. *See* Promotion of National Unity and Reconciliation Act 34 of 1995 (S. Afr.); Desmond Tutu, *Truth and Reconciliation Commission, South Africa*, ENCYC. BRITANNICA (Feb. 4, 2019), <https://www.britannica.com/topic/Truth-and-Reconciliation-Commission-South-Africa>.

90. *See* S. AFR. CONST. ch. 2.

91. S. AFR. CONST. ch. 2(15).

92. S. AFR. CONST. ch. 2(18).

93. S. AFR. CONST. ch. 2(30).

communities.⁹⁴ The constitution of a unified Israeli-Palestinian state should mirror the guarantees of human rights, non-discrimination, and equality under the law found in the South African Constitution.

ii. Common Citizenship and Universal Suffrage

The South African constitution established “a common South African citizenship”⁹⁵ by which “[a]ll citizens are equally entitled to the rights, privileges, and benefits of citizenship; and equally subject to the duties and responsibilities of citizenship.”⁹⁶ It also confers on every adult citizen the right “to vote in elections for any legislative body . . .”⁹⁷ and “to stand for public office and, if elected, to hold office.”⁹⁸ Any constitution of a single Israeli-Palestinian state should include these same guarantees to ensure that all citizens have an equal voice in government.

iii. Official Languages

As to recognition of linguistic diversity, the single Israeli-Palestinian state should make its official languages Arabic and Hebrew and put in place the same requirements that are found in the South African Constitution⁹⁹ to ensure that no matter which language they speak, people have access to the government, society, and the services they need. The Israeli-Palestinian state, having only two official languages, should go farther and make both languages mandatory for primary and secondary education.

iv. Truth Commission

South Africa’s TRC was an example of a truth commission. Truth commissions have been defined as bodies that are:

“(1) focused on the past, rather than ongoing events; (2) investigate[] a pattern of events that took place over a period of time; (3) engage[] directly and broadly with the affected

94. S. AFR. CONST. ch. 2(31).

95. S. AFR. CONST. ch. 1(3)(1).

96. S. AFR. CONST. ch. 1(3)(2).

97. S. AFR. CONST. ch. 2(19)(2)(a).

98. S. AFR. CONST. ch. 2(19)(2)(b).

99. S. AFR. CONST. ch. 1(6), ch. 2(30)–(31).

population, gathering information on their experiences; (4) [are] temporary [] with the aim of concluding with a final report; and (5) [are] officially authorised by the state under review.”¹⁰⁰

Truth commissions have been established in Argentina, Chile, East Timor, El Salvador, Ghana, Guatemala, Liberia, Morocco, Peru, Rwanda, Sierra Leone, and South Africa.¹⁰¹ Though often accompanying amnesties and used in place of prosecutions, truth commissions do not inherently preclude prosecutions.¹⁰² Truth commissions can also encourage members of close-knit groups, who would otherwise resist testifying, to provide an accounting of their actions.¹⁰³ A truth commission mechanism would be especially useful in the context of Israel and Palestine given debates over the Palestinian exodus, acts of terrorism, and Israeli military action. As it did in South Africa, a truth commission would be designed to provide some closure for human rights abuses while remaining palatable to those in power and allowing them to avoid possible criminal liability through conditional amnesty applications.¹⁰⁴ Because the effectiveness of truth commissions depends on their process and design and the quality of information available to them,¹⁰⁵ a great deal of planning would be required to ensure that an Israeli-Palestinian truth commission would lead to, or at least increase the chances of, reconciliation.

III. Conclusion

The Arab-Israeli/Israeli-Palestinian Conflict has been a self-reinforcing conflict since its earliest days, characterized by terrorism and an “us or them” mentality that has worked to dehumanize the parties in each other’s eyes. It would be insensitive and historically inaccurate to claim that the conflict has reached a breaking point, as the 20th and 21st centuries have been full of breaking points with wars, violent attacks, uprisings, reprisals, and increasing securitization. However, what should now be clear is that a two-

100. ROBERT CRYER, DARRYL ROBINSON, AND SERGEY VASILIEV, AN INTRODUCTION TO INTERNATIONAL CRIMINAL LAW AND PROCEDURE 542 (4th ed. 2019) (citing Albie Sachs, *The Strange Alchemy of Life and Law* 84, 2009).

101. *Id.* at 542–546; *Truth Commission*, ENCYC. BRITANNICA <https://www.britannica.com/topic/truth-commission>.

102. Cryer, Robinson, and Vasiliev, *supra* note 100, at 542–546.

103. *See id.* at 542.

104. *See* Tutu, *supra* note 89.

105. Cryer, Robinson, and Vasiliev, *supra* note 100, at 543, 546.

state solution as envisaged in the Partition Resolution and subsequent resolutions and agreements, is no longer tenable—if it ever was. Nor can the present situation of dispossession, violence, and separation continue if there is ever to be peace between Israeli Jews and their Palestinian neighbors. The law, as it stands, provides legitimate and defensible positions to both Jews who claim a right to reside and establish a national home in Palestine, and to the Arab Palestinians who were expelled, fled, or still reside in abysmal conditions in Israel or Palestine. A return to basic principles of human dignity and justice—in conjunction with an objective analysis of the lived conditions of Israelis and Palestinians—requires that a single state be established in Palestine to serve as a home for both peoples. Numerous issues, including the status of Jerusalem and the Occupied Territories, debates over the validity or binding nature of relevant General Assembly and Security Council Resolutions, Israeli settlements, the security wall, and the right of return would all become moot under a one-state solution. To assuage fears of domination by one side against the other, the example of South Africa should be followed. A constitution should be adopted—like that of South Africa—that reflects the progress of the human species as embodied in human rights law and guarantees equality under and before the law. Though hardliners and others in both parties may oppose a one-state solution, it represents as good and fair a compromise as possible. In the words of Larry David, “[a] good compromise is when both parties are dissatisfied.”¹⁰⁶ However, this need only be the case for those too extreme or too stubborn to acknowledge that Palestinian Arabs and Israeli Jews can—and indeed must—create a society and a government in which all people have an equal voice and equal access.

106. Larry David, *Curb Your Enthusiasm: The Complete Seventh Season*.
