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MIDDLE  
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# OSLO 'PEACE PROCESS' AS A REBUTTAL OF PALESTINIAN SELF-DETERMINATION

## Abstract

The legal terms surrounding the establishment of the mandatory Palestine after the First World War, the United Nations' partition plan of 1947 and subsequent international legal developments on the subject of self-determination are firmly behind the right of the Palestinian people to obtain independent statehood. However Israel has been adamantly opposed to such an eventuality because, first and foremost, from its inception, it has chosen to become a colonial-settler state in the entire mandatory Palestine. Not surprisingly, the Oslo negotiations from 1993 up until 2000 involving Israel and the Palestinians consisted of a series of 'frustrations' from the glance of the Palestinians' political aspirations. The Oslo 'peace process', then, is best described as another instrument of subjugation deployed by Israel and the USA in order to obliterate the possibility of Palestinian independence based on the right of self-determination. Today, the alternative route for Palestinians and their international supporters should be to make efficient use of the United Nations' mechanisms that, *inter alia*, enable the imposition of sanctions against Israel in order to transform the Palestinian right of self-determination into reality.

**Keywords:** Palestine, Israel, colonial-settler state, Oslo 'peace process', United Nations

**Prof. Dr.  
Berdal Aral\***

\* İstanbul  
Medeniyet  
Üniversitesi  
Uluslararası  
İlişkiler Bölümü

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## Özet

Birinci Dünya Savaşı sonunda Filistin'de bir manda rejiminin kurulması, Birleşmiş Milletlerce 1947'de kabul edilen taksim planı, ve her halkın kendi geleceğini belirleme hakkı (self-determinasyon) konusunda uluslararası hukuk alanında kaydedilen gelişmeler, hiç şüphe yok ki Filistin halkının devlet kurma hakkını ortaya koymaktadır. Ne var ki, İsrail, öncelikli olarak, devlet olarak vücut bulmasından itibaren manda yönetimi altındaki tüm Filistin toprakları üzerinde sömürgeci-yerleşimci bir devlet olma yolunu seçmiştir. Nitekim 1993 ile 2000 yılları arasında İsrail ve Filistin tarafları arasında gerçekleşen Oslo müzakere sürecinin Filistin halkının geleceğe ilişkin siyasi beklentilerini tersyüz etmiş olması, şaşırtıcı değildir. O nedenle, Oslo 'barış süreci'ni, ABD ile İsrail'in, Filistinlilerin self-determinasyon haklarına dayalı olarak bağımsız olma ihtimallerini ortadan kaldırmak için suiistimal ettikleri yeni bir 'boyun eğdirme aracı' olarak tanımlamak, en doğrusu olacaktır. Bugün, Filistin halkının self-determinasyon hakkını hayata geçirmek için Filistinlilerin ve onları destekleyenlerin izlemeleri gereken yeni strateji, Birleşmiş Milletler içinde ihdas edilmiş olan mekanizmaları daha etkin kullanarak, İsrail'e karşı, *inter alia*, yaptırım uygulanmasını öngören kararların alınması için çaba göstermektir.

**Anahtar Kelimeler:** Filistin, İsrail, Oslo Barış Süreci, Birleşmiş Milletler, Sömürgeci - Yerleşimci Devlet

## **Introduction**

Based on primary materials and scholarly studies, this article argues that the negotiation process between Israel and the Palestinians which began with Oslo I in 1993, has, contrary to expectations, facilitated the deepening of the Israeli occupation of West Bank, including East Jerusalem. Israel and, as the intermediary, the US, abused and manipulated the negotiation process with a view to wear away the Palestinian right to self-determination. The overall external context of the Oslo peace process, which was premised on the Israeli-US exploitation of the weakness of the Palestinians and the fragmentation within the Arab world, meant that the Oslo process was all along intensely impregnated with imperial power relations of asymmetry between the two 'negotiating' sides. This asymmetry allowed the Israelis, before and during the Oslo process, to distort and misinterpret international legal rules and principles on self-determination. The United Nations' (UN) lack of assertiveness, combined with the failure of prominent international actors to exert tangible pressure on Israel, meant that the Oslo 'peace process' became the final nail in the coffin of the Palestinian rights.

The issues discussed in this paper under five subheadings are intended to show how, during the Oslo process, the Palestinian search for self-determination was lightly treated by Israel, the US, and international society at large. First, this study argues that, based on Article 22 of the Covenant of the League of Nations, the specific UN General Assembly resolution (181) that brought about the partition of mandatory Palestine in 1947 as well as the overall progress of international law after the Second World War, indicate that the Palestinian people possess the international legal right to obtain independent statehood by virtue of self-determination. After that, this paper draws on the colonial-settler nature of Israel and its relevance to the latter's refusal to recognize the Palestinian right to self-determination. Then, this study turns its focus on the terms and context of Oslo negotiations from the spectrum of self-determination and on the substance of the main international texts constituting the foundations of the "Oslo Peace Process". This section draws on the self-delusion of the Palestinian negotiators whose hopes for a Palestinian state in reliance of Oslo were, as is argued, bound to be dashed right from the outset. The section preceding the Conclusion delves into the possibility of employing certain mechanisms within the UN system in search of enforcing the Palestinian right of self-determination leading to independence.

## **Self-Determination and the Palestinian Statehood under International Law**

It is legally and politically very important to bear in mind that the Palestinians enjoyed the right of self-determination *prior* to the legal developments after the Second World War. In other words, the Palestinians were given the right of self-determination even *before* the UN Charter enshrined the right of self-determination as a cardinal principle on which the UN system would be based and which would be a major ingredient of international peace and security. Indeed when Palestine was put under the British mandate in the aftermath of the First World War, the area was designated as Class A Mandate. This meant that the British had a legal duty to pave the way for the eventual independence of the Palestinian people.<sup>1</sup> Indeed Article 22 of the Covenant of the League of Nations (1919) contained a clear entitlement regarding the eventual independence of Palestinians:

Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory.<sup>2</sup>

This suggests that the Palestinians were entitled to gain independence, as it was later to be the case for, say, Iraqis, once Britain, as the mandatory power, would have left Palestine.

Although generally supportive of the Israeli views, as a legal jurist, D'Amato admits that the Palestinians are entitled to establish their own independent state on the basis of the terms of the mandates system as applied to Palestine. This is what he has to say:

Is the Palestine Mandate still in existence? I think it is. Although the Mandate was dated to expire in August 1948, an essential term, namely the creation of an "Arab state," was not fulfilled...The Jewish people were protected by the creation of their state, but the Palestinian people were not protected. Therefore I would argue that the Mandate survives until its sub-

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<sup>1</sup> Richard A. Falk, "Foreword" to Victor Kattan, *From Coexistence to Conquest: International Law and the Origins of the Arab-Israeli Conflict, 1891-1945*, (London, Pluto Press, 2009), p. xi.

<sup>2</sup> Covenant of the League of Nations, April 28, 1919, [http://avalon.law.yale.edu/20th\\_century/leagcov.asp](http://avalon.law.yale.edu/20th_century/leagcov.asp)

stantive terms are fulfilled. The most important substantive requirement still unmet is the creation of an Arab State (Palestine).<sup>3</sup>

This mandatory entitlement enjoyed, *inter alia*, by the Palestinians was transformed into a norm of general international law through, *inter alia*, the struggle of anti-colonial movements after the Second World War. Following the initial impetus of the UN Charter, the right of self-determination gained greater credence and applicability by virtue of a set of international human rights documents, such as the 1960 UN Declaration on the Granting of Independence to Colonial Countries and Peoples<sup>4</sup> as well as Article 1 of the twin conventions on general human rights, both of which were adopted in 1966.<sup>5</sup>

Even if we turn our focus on UN General Assembly Resolution 181<sup>6</sup> which, contrary to the Arab wishes, partitioned the land of Palestine between the Arabs and Jews on November 29, 1947, Palestinians could still claim sovereignty in parts of British mandated Palestine. This partition plan divided the area between the two communities: roughly 43,5 per cent was allocated for Palestinians, 56 per cent for Jews, and Jerusalem would become an international city. This suggests that there is ample scope to argue that the Palestinians have a right to establish their own state on the parts of Palestine which were apportioned for them by the General Assembly. D'Amato argues that "this Resolution constitutes the *first, last, and only legally authorized demarkation of the Israeli-Palestine borders.*"<sup>7</sup> (Emphasis not mine.)

Even in our post-colonial era, the right of self-determination is applicable to all *peoples* as set out in Article 1(2) of the UN Charter. Specifically, Palestinians are legally qualified to be a state for a long list of reasons on the basis of self-determination. First, a series of resolutions have been adopted in the UN endorsing the Palestinians' right to self-determination. Second, the fact that Israel holds

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<sup>3</sup> Anthony D'Amato, "Israel's Borders Under International Law", Northwestern University School of Law Public Law and Legal Theory Series, p. 6, <http://anthonydamato.law.northwestern.edu/Adobefiles/israels-borders-under-international-law.pdf>.

<sup>4</sup> Resolution No. 1514, 14 December 1960, [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/1514\(XV\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/1514(XV)).

<sup>5</sup> International Covenant on Civil and Political Rights, Adopted by the General Assembly of the United Nations on 16 December 1966, Resolution 2200A (XXI), <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>; International Covenant on Social, Economic and Cultural Rights, Adopted by the General Assembly of the United Nations on 16 December 1966, Resolution 2200A (XXI), <http://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf>

<sup>6</sup> UN General Assembly Resolution No. 181, 29 November 1947, <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/038/88/IMG/NR003888.pdf?OpenElement>

Palestinian territories under occupation does not give it the right to deny the Palestinians, with attributes of statehood, the right to enjoy sovereign political existence in Palestine.<sup>8</sup> Third, (the State of) Palestine has gained acceptance to the UN as an 'observer *state*'. Fourth, currently a great majority of states in the world -137 states- recognize Palestine as a state.<sup>9</sup>

## **Palestinian Self-Determination v. Israel as a Colonial-Settler State**

As far as Israel is concerned, Palestinian right of self-determination as a gateway to independence is something that is not negotiable, i.e. it is out of question. This damning view of Palestinians ought to be linked to Israel's peculiar character as colonial-settler state. In other words, Israel cannot possibly be conceived and accepted as a 'normal' state just like others. Rather, it was a colonial-settler movement from the moment it came into existence, seeking to uproot another people –Palestinians- in order to replace them with Jews. The whole project was in fact modelled on the ruthless experience of European colonialism in the non-Western world. This is what Massad has to say about the essence of Zionism:

What Zionism remained unashamed about throughout its history...was its commitment to building a demographically exclusive Jewish state modeled after Christian Europe, a notion pervaded...by a religio-racial epistemology of supremacy over the Palestinian Arabs, not unlike that used by European colonialism with its ideology of white supremacy over the natives.<sup>10</sup>

It is thanks to the 'ethnic cleansing' of the Palestinians that Jews became majority in mandatory Palestine. Although Israel claims to be a democracy, in fact this 'democracy' has caused the endless dispossession of the people 'indigenous' to the land.<sup>11</sup> In spite of its permanent territorial expansionism and claims of ethnic and religious purity, the world has by and large treated this anomalous entity, Israel, as an ordinary state. This is in sheer contrast with the Apartheid South Africa of the Cold War era when it was universally condemned as a racist

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<sup>7</sup> D'Amato, *op.cit.*, p. 3.

<sup>8</sup> Legal Fact Sheet – Palestinian Statehood According to International Law, Konrad Adenauer Stiftung, 2011, p. 5.

<sup>9</sup> <http://palestineun.org/about-palestine/diplomatic-relations/>

<sup>10</sup> Joseph A. Massad, *The Persistence of the Palestinian Question*, (London & New York, Routledge, 2006), p. 143.

<sup>11</sup> Ilan Pappé, *The Forgotten Palestinians: A History of the Palestinians in Israel*, (New Haven and London, Yale University Press, 2011), p. 267.

state and was confronted with UN-led sanctions and embargoes.

All along, Israel has refused to discuss and thus 'acknowledge' the series of events which have led to the Palestinian catastrophe. In other words, the Israelis are adamantly opposed to the tracing of the past in search of truth about the apparently intractable Israel/Palestine conflict. Secure in the knowledge that it is fully supported by the USA, Israel has all along appeared blind to the history of its past injustices towards the Palestinians. What has really mattered for the 'victimiser' has been the reality of a vigorous Israeli state which has, for decades now, been able to shape the future of the area (Palestine). Apparently, this unrelenting Israeli position leaves the Palestinians with one of the two courses of action: either they must accept an unjust Israeli 'peace offer' which is unlikely to lead to the establishment of a (sustainable) Palestinian state or must continue the liberation struggle under innumerable obstacles and adverse international conditions.<sup>12</sup>

It is telling to remind ourselves that nearly none of the founding fathers of Zionism were religious; yet they sought to legitimise the Zionist enterprise of settling Jews in Palestine and the founding of a Jewish state by recourse to Jewish religious texts.<sup>13</sup> The Zionists' persistent claim to the so-called 'Land of Israel' which they have enforced with extraordinary savagery "turned the Palestinians into resident aliens on their own soil."<sup>14</sup> Jewish settlements in the occupied Palestine are, *inter alia*, meant to serve the goal of maintaining loyalty to the Land of Israel which, for the overwhelming majority of Israelis, is 'promised by God'. Therefore territorial concession to the Palestinians is deemed by most Israeli Jews as disloyalty to the Divine Will. The founding of the state of Israel and the military victory against the Arab armies in 1967 is seen by the bulk of the Israelis as the harbinger of the eventual deliverance of the Jewish people. Not surprisingly, since it came to existence, Israel has continued to prevail as a militarized state and society that considers violence against, and military control over, its enemies as the only option for tackling problems with its neighbours. For the Israelis, this is "far less threatening than the alternatives: a dubious political solution involving existential compromises and the prospect of an Arab demographic takeover."<sup>15</sup> Israel's seizure of the unoccupied parts of Palestine in its 1967 victory against its

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<sup>12</sup> Falk, *op.cit.*, p. ix.

<sup>13</sup> Nur Masalha, *Imperial Israel and the Palestinians: The Politics of Expansion*, (London, Pluto Press, 2000), p. 105.

<sup>14</sup> *Ibid.*, p. 106.

<sup>15</sup> Jeff Halper, *War Against the People: Israel, the Palestinians and Global Pacification*, (London, Pluto Press, 2015), p. 38.

Arab adversaries, helped reinforce this deeply entrenched view among most Jews in Israel about the efficacy of brute force. This explains why Israel has never contemplated a two-state solution after 1967, even on terms advantageous to it: its military supremacy and territorial expansion rendered this formula unnecessary. Thus, at every point in time, it opted for “the path of domination and pacification.”<sup>16</sup>

Israeli denial of the right of return for the Palestinian diaspora is, among others, another symptom of its colonial-settler nature and determination to supplant the Arabs with Jews in (British-mandated) Palestine. The discussion about the possibility of the Palestinian refugees to go back to Palestine, including Resolution No. 194<sup>17</sup> which speaks about the Palestinians’ right of return, reveals a great deal about the Israeli state policy of presenting Palestinians with *faits accomplis* on the ground and then making legal gains out of them. First, after the Palestinian inhabitants were forced to leave during the war in 1948-49, Israel confiscated their land. Second, they were barred from returning. As Israel has virtually done everything to erase their connection with their homeland, it has been putting forward all sorts of legal arguments to deny the legal relevance of Resolution 194 for Palestinian refugees.<sup>18</sup> In refuting the Israeli claims, international law endorses the right of return for Palestinians. Boling draws on the fundamental purpose of refugee rights:

Under refugee law, the principle of refugees’ absolute right of return on a voluntary basis to their place of origin (including to their homes of origin) is central to the implementation of durable solutions designed by the international community to address refugee flows.<sup>19</sup>

Israeli state and society have by and large been agreed that there should be no *viable* Palestinian state and that united Jerusalem should be Israel’s capital. Indeed for those who were aware of the intricacies of Israeli politics, the victory of the Labour Leader, led by Ehud Barak, in the Israeli elections of July 1999 was unlikely to revive the Oslo process; they were indeed proven correct by events. As a BBC News analysis put it, Barak’s perception of ‘peace’ was only marginally different from that of Netanyahu, the leader of the right-wing Likud Party (in power: 1996-1999; 2009- ). Barak was largely in agreement with the Israeli

<sup>16</sup> *Ibid.*, p. 39.

<sup>17</sup> UN General Assembly Resolution No. 194(III), 11 December 1948, <https://unispal.un.org/DPA/DPR/unispal.nsf/0/C758572B78D1CD0085256BCF0077E51A>

<sup>18</sup> Gail J. Boling, *Palestinian Refugees and the Right of Return: An International Law Analysis*, BADIL - Information & Discussion Brief, Issue No. 8, January 2001, p. 14.

<sup>19</sup> *Ibid.*, p. 12.

political establishment and the overwhelming majority of the Jewish citizens of Israel who, as said above, wanted Jerusalem to be a united city under the Israeli control/sovereignty and believed that Palestinians should never be allowed to have a -viable- state.<sup>20</sup>

## The Terms and Context of Oslo Negotiations

The Palestinian struggle for self-determination gained a new lease of life with the onset of the *intifada* in 1987 in the West Bank and Gaza which highlighted the tragedy of the Palestinians and alerted the international community about the urgent need for a solution. A year later, in 1988, the Palestine National Council accepted the two-state solution and announced the founding of the Palestinian state. Yet, this document appeared to have some flaws as it was not sufficiently committal about the rights of the Palestinian Israelis and the Palestinian refugees in the diaspora.<sup>21</sup> In addition to the punitive effect of the PLO's pro-Iraq posture during the Gulf crisis of 1990-91, Iraq's defeat in the Gulf War of 1991 demonstrated to the Palestinians that there was almost no possibility of an Arab war with Israel in the foreseeable future.<sup>22</sup> Hence, international conditions at the start of secret talks between Israel and the Palestinians -leading to the Oslo negotiations- were far from being favourable to the Palestinian side.

Instead of engaging in open negotiations under the watchful eyes, *inter alia*, of the Palestinian people, the Palestinian side embarked on secret talks with the Israelis under the patronage of Yasser Arafat during the early 1990s. The confidentiality of negotiations apparently furthered the docility of PLO leadership. There is enough reason to suggest that the Palestinian negotiators involved in the Oslo process, which took off in 1993, gradually came to internalize the asymmetry operating in favour of Israel that condemned the Palestinians to constant suffering. In the course of secret negotiations, the Palestinian side was forced to give ever more concessions to the other party in the name of 'pragmatism'. This meant that it was 'un-pragmatic' for Palestinians to insist on the right of return for Palestinian refugees, neither was it pragmatic to demand that the Israeli settlements in the occupied territories be dismantled. Likewise, in order to avoid being too idealistic and unrealistic, Palestinian negotiators were expected to refrain from denouncing

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<sup>20</sup> BBC News, "Analysis: New chance for peace?", 15 July 1999, [http://news.bbc.co.uk/2/hi/special\\_report/1999/05/99/israel\\_elections/345996.stm](http://news.bbc.co.uk/2/hi/special_report/1999/05/99/israel_elections/345996.stm)

<sup>21</sup> Massad, *op.cit.*, p. 115.

<sup>22</sup> Tamim Al-Barghouti, "War, Peace, Civil War: A Pattern?" in Rochelle Davis & Mimi Kirk (eds.), *Palestine and the Palestinians in the Twenty First Century*, (Indiana, Indiana University Press, 2013), 60-80, p. 75.

the 'Jewish' character of Israel. Conversely, this suggested that the Palestinians had better accepted to live in bantustans (cantons) encircled by Israel, instead of insisting for a viable and sustainable state. Again, for the sake of 'pragmatism', they were urged to recognize the Jewish supremacy in the Israeli territory which condemned the Palestinians to a third class citizenry.<sup>23</sup>

When the Palestinian leadership signed the Declaration of Principles in September 1993 (Oslo I)<sup>24</sup>, those –Palestinians- who were in favour of the Oslo process were considered as 'realists', while the ones opposing it were seen as "anachronisms relegated to the dustbin of history."<sup>25</sup> The whole process of Oslo turned out to be a lethal blow to the Palestinian rights. The following penetrating observation by Mustafa Barghouti, from the Palestinian National Initiative, in respect of the Oslo accords, speaks for itself: "Oslo was the greatest idea Israel ever had. It let them continue the occupation without paying any of the costs."<sup>26</sup>

The docility of Palestinian negotiators and the asymmetry of the whole context of negotiations were duly reflected in the overall framework of negotiations. This is well expressed by Massad, who, in referring to the PLO, has this to say:

...signing of the Declaration of Principles (DoP) was premised on its transformation from a diaspora leadership to a West Bank and Gaza leadership who would be willing to forsake the rights of the diaspora and the refugees altogether. It was within the confines of the DoP that the PLO leadership was transformed into the Palestinian Authority and the Palestinian refugees were relegated to one of the many issues to be discussed during the "final status talks" whenever they materialize.<sup>27</sup>

The hard truth was that the Oslo Document was in fact a revived version of the draft proposed by the Israelis to the Palestinian Delegation during the Middle East peace talks in 1992. The plan had intended to create separate chunks of territory in Palestine instead of forming a single and sustainable piece of territory. The plan had spoken of the *Palestinian autonomy*, and not independence. To no one's surprise, it had then been rejected by the Palestinian delegation. In Oslo,

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<sup>23</sup> Massad, *op.cit.*, p. 144.

<sup>24</sup> Declaration of Principles on Interim Self-Government Arrangements ("Oslo Agreement"), 13 September 1993, <http://www.refworld.org/docid/3de5e96e4.html>

<sup>25</sup> Massad, *op.cit.*, p. 104.

<sup>26</sup> *Aljazeera* English. 2013. "The Price of Oslo", <https://interactive.aljazeera.com/aje/palestineremix/the-price-of-oslo.html#/14>

<sup>27</sup> Massad, *op.cit.*, p. 116.

Israel did not feel shy about presenting the rejected plan once again to the Palestinians. This time, with some limited change, the plan became the basis of the Declaration of Principles (Oslo Agreement) which was signed between Israel and the Palestinians in the US on 13 September 1993.<sup>28</sup>

The 'peace diplomacy' was supposed to settle the long-standing disputes between Israel and the Palestinians by virtue of a set of arrangements, such as Oslo II<sup>29</sup> (also known as Taba Agreement) (1995), Camp David II (2000) (no agreement was reached), and Annapolis (2007) (no agreement was reached; only joint statement was issued), which were all follow-up to Oslo 1. The hard truth was that, this process was effectively premised on the denial of the most essential rights of the Palestinians. Although international law was on the side of the Palestinians, Israel induced the Quartet, namely, the US, Russia, the EU, and the UN, which had been involved in the peace process as mediators, to ignore the Palestinian grievances. In fact, international law obliged Israel to meet the following requirements as far as the Palestinians were concerned: Israel's obligation to withdraw from the occupied territories captured during the 1967 war; dismantle the illegal settlements in the West Bank and East Jerusalem and the barrier wall traversing the West Bank (2000- ); to end the monopoly of its control over Jerusalem; and to recognize the right of return for the Palestinians uprooted from their homeland. Israel also refused to face up to its responsibilities based on its past crimes against the Palestinian people. Instead, it made sure that it bargained with the Palestinians from a position of strength, instead of seeking a solution based on international law and justice. The peace process, reflecting the domination of one party by the other, eventually satisfied only a small fraction of the rightful demands of the Palestinian side. The eventual formulation indeed involved nothing other than the founding of an emasculated Palestinian state whose sovereignty only existed on paper. Not surprisingly, Israel's 'take it or leave it' dictate was eventually refused by the Palestinians.<sup>30</sup>

All along, Israel's self-assurance was bolstered by the knowledge that the United States, as mediator, would persistently support itself whichever diplomatic posture the latter adopted.<sup>31</sup> Undeniably, the Israeli obligations in Oslo I were generally vaguely defined. While the text makes reference to international law

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<sup>28</sup> Francis A. Boyle, "International Law and Israel's War on Gaza", *Global Research*, January 24, 2009, <https://www.globalresearch.ca/international-law-and-israel-s-war-on-gaza/11995>

<sup>29</sup> Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, Washington, D.C., September 28, 1995, [https://ecf.org.il/media\\_items/624](https://ecf.org.il/media_items/624)

<sup>30</sup> Falk, *op.cit.*, p. xi.

<sup>31</sup> *Ibid.*, p. xii.

and human rights, its content appears rather general and ambiguous. Although the 1993 Declaration of Principles speaks of the “legitimate and political rights” of the Palestinian people, there is hardly any definition or description within the text as to what those rights are. This lack of clarity is also evident in the Gaza-Jericho Agreement of 1994<sup>32</sup> which, in Article 14, holds that the “internationally-accepted norms and principles of human rights and the rule of law” will, *inter alia*, be observed by Israel when exercising its power. However, as observed by Akram, this agreement fails to make “any specification of what norms or rights apply, and without reference to treaties or UN Charter obligations.”<sup>33</sup> Finally, in the Interim Agreement of 1995 (Oslo II-Taba Agreement), although a mention is made of the protection of the property rights of the Israelis in the Occupied Territories, no corresponding rights of the Palestinians are enshrined in the text.<sup>34</sup>

The whole course of the Oslo process was, in a way, a repeat of Oslo I. Indeed the Oslo agreements have failed to bring to fruition a definitive agreement on the key issues related to the Israeli-Palestinian problem. Rather, the process only produced ‘interim agreements’, instead of ultimate peace agreements. This is the case for all of the more significant documents signed between the parties, such as Declaration of Principles (1993), the 1994 Gaza-Jericho Agreement, and the 1995 Interim Agreement.<sup>35</sup>

Contrary to the earlier conviction within international society that peace and occupation could not coexist, increasing number of Israelis continued to benefit from occupation during the course of Oslo negotiations. The building of new settlements continued unabated, while the ‘peace dividend’ strengthened the Israeli economy thanks to the “perceived containment of the conflict”.<sup>36</sup> Israelis have come to argue, with ever greater ease, that Israel has the right of sovereignty over the West Bank. Blocks of buildings, their infrastructure and the web of roads linking Jewish settlements in the occupied territories have been seen as rightful justifications for establishing territorial unity between Israel and the West Bank.<sup>37</sup> The deepening occupation, based on the rationale of ‘zero sum game’ between

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<sup>32</sup> Gaza-Jericho Agreement, Annex IV, Protocol on Economic Relations between the Government of the State of Israel and the P.L.O., representing the Palestinian people, Paris, April 29, 1994, <https://israelipalestinian.procon.org/sourcefiles/1994ParisProtocol.pdf>

<sup>33</sup> Susan Musarrat Akram “The Legal Trajectory of the Palestinian Refugee Issue”, in Davis & Kirk, *op.cit.*, 121-141, p. 124.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> Sara Roy, “Before Gaza, After Gaza”, in Davis & Kirk, *op.cit.*, 103-120, p. 105.

<sup>37</sup> *Id.*

Israel and the Palestinians, has delivered a lethal blow to the territorial foundations of the Palestinian search for self-determination.

During the Oslo process, Israel rarely reciprocated Palestinian concessions. For instance, in order to implement the Wye River Memorandum of 1998<sup>38</sup>, envisioning the resumption of the execution of the Interim Agreement of 1995 (Oslo II Accord), Israel asked the Palestinian side, *inter alia*, to delete any reference to the destruction of Israel which had been mentioned in the PLO Constitution. The Palestinians accepted to delete this reference when Bill Clinton paid a visit to Gaza in December 1998.<sup>39</sup> To the disappointment of the Palestinians, however, this historic sacrifice on their part was not reciprocated by an Israeli withdrawal from the occupied territories, which was a breach of the Israeli commitments in Oslo II and the Wye River Memorandum.<sup>40</sup> During Oslo negotiations, instead of acting as a non-partisan mediator, the US often sided with the Israelis. The US as ‘intermediary’ did not exert any tangible pressure on Israel when the latter refused to deliver even the limited concessions which had been agreed by the parties.<sup>41</sup> Hence, the US contrived with Israel to frustrate the Palestinian aspirations expressed in the language of self-determination.

The Oslo process effectively came to an end roughly eight years after the 1993 Oslo Accord, i.e. in 2001. The Camp David negotiations of 2000 witnessed talks about the final status of the occupied territories. However Israel and the Palestinians failed to reach an agreement on this most significant issue. The parties ceased negotiations after having realised that they had deep disagreements about the final status issues.<sup>42</sup> Any hope that the Oslo process would bring to an end and reverse the Israeli occupation has proven to be a mirage. Roy noted in 2013 that, “at least 38 percent of the West Bank is under Israeli control and inaccessible to Palestinians”.<sup>43</sup> Besides, Israel has been seeking to disable “the emergence of any viable entity that could be called a Palestinian state”.<sup>44</sup>

Indeed, for about hundred years, all the predictions about the ‘solution’ of the Palestinian problem along the lines suggested by the Zionists and their supporters

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<sup>38</sup> The Wye River Memorandum, October 23, 1998, [https://peacemaker.un.org/sites/peacemaker.un.org/files/IL%20PS\\_981023\\_The%20Wye%20River%20Memorandum.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/IL%20PS_981023_The%20Wye%20River%20Memorandum.pdf)

<sup>39</sup> Bora Bayraktar, *Oslo Barış Süreci: İsrail-Filistin Barış Görüşmeleri, 1991-2000* (İstanbul, Küre Yayınları, 2013), p. 260.

<sup>40</sup> *Ibid.*, p. 261.

<sup>41</sup> *Ibid.*, p. 265.

<sup>42</sup> *Ibid.*, p. 259.

<sup>43</sup> Roy, *op.cit.*, p. 104.

<sup>44</sup> *Id.*

have failed. The Oslo 'peace process' has been part of the long chain of palliative solutions which have not brought about peace.<sup>45</sup> The Israeli strategy has all along been to refuse to come to grips with the true nature of the 'Palestinian problem' and the aspirations of the Palestinian people. Based on the denial of self-determination for Palestinians as well as the past injustices committed against them, the Israeli approach has been premised on coercing Palestinians into accepting whatever it is prepared to offer – i.e. no other than a few pieces of territory. To be more specific, as envisioned by Israel, the quasi-state to be established in the West Bank under Oslo could not possibly lead to a real statehood. Israel's cruel assault on the West Bank in 2002 demonstrated that the Palestinian authority operating in the West Bank along the line of the Oslo agreements would not be able to defend itself.<sup>46</sup> Today, the West Bank is effectively controlled by Israel, while Gaza is governed by the Islamic-leaning Hamas. Israel has little motivation to make a deal with the PLO, granting that the latter's control over the West Bank is very limited and its hold on Gaza is non-existent.<sup>47</sup> Thus, today, there isn't even a modicum of authority deriving from the right of self-determination that can define the Palestinian existence as a 'political' community in parts of historical Palestine.

It is now common knowledge that, for decades, Israel has been carving up the territory over which Palestinians have a right to self-determination. The building of illegal settlements and security zones in the West Bank and East Jerusalem, combined with the construction of a gigantic wall traversing the whole of the West Bank<sup>48</sup>, which has furthered the territorial loss of the Palestinian people, is a grave breach of international law. This is not only the breach of the Geneva Conventions on the law of war<sup>49</sup>, but is also a serious offence against the Palestinian right of self-determination. The grave abuse of international law in this respect is aptly expressed by Akram:

The goal of dividing the territory over which Palestinians have a right to self-determination and a sovereign state runs afoul of customary law that requires

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<sup>45</sup> Massad, *op.cit.*, p. 166.

<sup>46</sup> Al-Barghouti, *op.cit.*, p. 75.

<sup>47</sup> *Ibid.*, p. 76.

<sup>48</sup> The construction of this segregation wall began in 2000. When completed, the length of the wall will have surpassed 700 kms. Israel has grabbed large chunks of territory from the Palestinians as the wall frequently cuts deep into the West Bank.

<sup>49</sup> The Geneva Conventions of 1949 and their Additional Protocols (1977), The texts can be found in <https://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm>

that a single territorial unit for a people's self-determination must not be dismembered.<sup>50</sup>

## Enforcing the Palestinian Right of Self-Determination through the UN System

Israel has proven itself to be an unreliable partner of peace in so far as the Palestinians are concerned. Therefore, the latter needs to alert and activate international society in order to put pressure on Israel. This could be best achieved by Palestinians and their supporters turning the locus of their attention to the forums and mechanisms that exist within the UN. What possible measures could the UN take against Israel in order to force for a viable and sustainable peace between the parties and to actualise the self-determination of the Palestinian people? As suggested by Boyle, among a list of possible actions which could be deployed against Israel, the following appear particularly pertinent: First, Israel ought to be suspended from membership of the UN for breaching the condition of its acceptance to the membership of this organization. Indeed this country has been in breach of the UN General Assembly Resolution 181 (II) (1947) relating to the partition of Palestine between Arabs and the Jews and Resolution 194 (III) (1948) which expresses the right of return for all Palestinian refugees. By its subsequent actions, Israel has repudiated both resolutions which means that it has breached the precondition of its admission to the UN. Second, a possible future settlement of the Israel-Palestinian problem should be sought within the framework of the UN General Assembly Resolutions 181 (II) (1947) and 194 (III) (1948).<sup>51</sup> Third, based on the Uniting for Peace Resolution of 1950<sup>52</sup>, the UN General Assembly should impose economic and diplomatic embargo against Israel and bring travel ban on selected individuals in Israel. Finally, the UN General Assembly, if such attempts are aborted in the UN Security Council, should establish an International Criminal Tribunal for Israel in order to try those who are suspected of committing war crimes against the Palestinian people.<sup>53</sup>

No doubt, Palestinians and their supporters should alert the UN Security Council about its responsibilities towards the Palestinian people. One could legitimately argue that the South Sudan or East Timor formulas, meant to refer to

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<sup>50</sup> Akram, *op.cit.*, p. 129.

<sup>51</sup> I assume that this resolution could only serve as *part* of a wider solution to the Palestinian problem.

<sup>52</sup> UN General Assembly Resolution No. 377 (V), "Uniting for Peace", 3 November 1950, <http://www.un-documents.net/a5r377.htm>

<sup>53</sup> Boyle, *op.cit.*

the independence of two victimised people through the intermediary of the UN Security Council on the basis of humanitarian intervention, could be usefully deployed by the same body in the light of the following *international crimes* which Israel has been committing against the Palestinians: Israel's unceasing and callous occupation of the Palestinian territories; its incessant killing of Palestinians; its daily oppression and harassment of the same; its disregard for human rights; its periodic wholesale assaults on Gaza; and the deadly embargo which it has imposed against the inhabitants of Gaza since 2007. Israel is not only an *illegal occupant* of the Palestinian territories, but is also a state that has been engaged constantly in war crimes, crimes against humanity, and crimes against peace. The South Sudan or East Timor formulas refer to the granting of independence to a 'people' by virtue of resolutions adopted by the UN Security Council in order to protect the victims of hideous, large-scale and systematic human rights crimes, combined with the forcible denial of their self-determination rights. This is when independence stands as the only viable solution for a 'people'. As is well-known, the inhabitants of East Timor and South Sudan eventually became states after seceding from Indonesia and Sudan respectively thanks to a series of Security Council resolutions adopted from the end of the 1990s onwards. This same formula should also be applicable for the Palestinians. In case the UN Security Council declines to pursue a similar course of action, and this has been the case up until now, the UN General Assembly could take up this issue by making recourse to the "uniting for peace" powers it obtained in 1950. This could involve a variety of options based on the General Assembly 'recommendations' to the member states, ranging from 'condemnation' to more forceful actions against Israel, such as the imposition of comprehensive sanctions against the Zionist state.

## Conclusion

The preceding discussion provides plentiful evidence about Israel's consistent lack of concern about genuine peace with the Palestinians or with the Arab countries surrounding it. Even when it *seemed* to negotiate for peace, Israel used the process of negotiation as a cloak to conceal and/or manipulate the process as a pretext for its aggression against, and oppression of, the Palestinians and to further its territorial expansion at the expense of the Palestinians and its Arab neighbours. The whole process of Oslo, including the pre-Oslo and post-Oslo episodes, was premised on the denial of the Palestinians' right to self-determination. This is an apparent distortion of the usual international path for negotiations between the 'colonizer' and the 'colonized' when the former willy-nilly comes to *recognize* the self-determination right of the latter. Israel and its supporters, first and foremost, the US, manipulated and abused Oslo 'peace negotiations' with the Palestinians as a useful device to intensify the Israeli occupation of West Bank (including East Jerusalem), to get greater international acceptance for Israel's devastating military incursions into Gaza, and to render meaningless the Palestinian discourse about self-determination by grabbing never-ending concessions from the other –weaker- party. Oslo Agreements allowed Israel to expand its expropriation of the Palestinian territory in the occupied territories. The expansion of Jewish settlements and other structures of domination have been intended to uproot the Palestinians from their homeland. By virtue of denying full refugee rights for the Palestinian diaspora, the Oslo agreements themselves contributed to the further estrangement of the diaspora.<sup>54</sup>

In the light of the collapse of the Oslo negotiations due to the intransigence of the Israeli side, Palestinians should endeavour to strengthen their *statehood* by establishing political unity *within* between various political groups and factions, especially between the PLO and Hamas, while enhancing the Palestinian visibility in various international platforms, in particular, international organizations. The Palestinian leadership should also seek to mobilize members of the Islamic Cooperation Organization so that the latter adopts *effective* resolutions in the form of economic and political sanctions against Israel. The realization of the Palestinian right of self-determination in the form of statehood hence requires that the 'victim' in question confronts the Zionist state and its supporters by every conceivable means in all platforms and thus insures that the 'victimiser' is faced with the challenge of economic, legal, diplomatic and political pressures.

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<sup>54</sup> Masalha, *op.cit.*, p. 224.

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