

2008

Maximizing Rights The One State Solution to the Palestinian-Israeli Conflict

George Bisharat

UC Hastings College of the Law, bisharatg@uchastings.edu

Follow this and additional works at: http://repository.uchastings.edu/faculty_scholarship

Recommended Citation

George Bisharat, *Maximizing Rights The One State Solution to the Palestinian-Israeli Conflict*, 8 *Global Jurist Frontiers* Art. 1 (2008).

Available at: http://repository.uchastings.edu/faculty_scholarship/1003

This Article is brought to you for free and open access by UC Hastings Scholarship Repository. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of UC Hastings Scholarship Repository. For more information, please contact marcusc@uchastings.edu.

Global Jurist

Frontiers

Volume 8, Issue 2

2008

Article 1

Maximizing Rights: The One State Solution to the Palestinian-Israeli Conflict

George E. Bisharat*

*UC Hastings College of the Law, bisharat@uchastings.edu

Recommended Citation

George E. Bisharat (2008) "Maximizing Rights: The One State Solution to the Palestinian-Israeli Conflict," *Global Jurist*: Vol. 8: Iss. 2 (Frontiers), Article 1.

Maximizing Rights: The One State Solution to the Palestinian-Israeli Conflict*

George E. Bisharat

Abstract

This article employs a 'rights-based approach' in evaluating a 'single state solution' to the Palestinian-Israeli conflict. International human rights provide a necessary normative standard for the just resolution of this long-running dispute. A single state, as compared to the two-state solution that has been broadly supported by the international community since 1947, offers superior opportunities to maximize the legitimate rights, interests, and aspirations of the greatest number of Israelis and Palestinians. Yet Israeli Jews and Palestinian Arabs each enjoy internationally recognized rights of self-determination and sovereignty. Accordingly, there is no legal means by which a one-state solution could be directly imposed on the parties to the dispute without violating the respective rights of each people. As a matter of law, then, a one-state solution could only come about through the agreement of Palestinians and Israelis and as an exercise of their respective rights to self-determination. The inability to implement a one-state solution without consent of the parties requires consideration of the means by which such an agreement might be encouraged. There is no indication that states are likely to brook the current international consensus in support of a two-state solution. Thus it is necessary to examine whether international civil society is capable of playing a facilitating role analogous to the role it played in the demise of apartheid in South Africa. A variety of scenarios can be imagined, but in any of them, ultimately, broad Israeli Jewish opposition to a single state solution will have to be overcome. This suggests that a non-violent campaign, or at least one that scrupulously avoids attack on innocent civilians, is the most promising route to achieving a one-state solution. While such a shift appears farfetched at the moment, no other solution to the conflict currently seems imminent. The moral power of a single state, based on equal rights for all residents of Israel/Palestine, has transformative power that should not be underestimated.

KEYWORDS: Israel/Palestine, rights-based approach, one-state solution

*I am indebted to Michael Lynk for many valuable editing suggestions and to Routledge for permission for this article. It will appear as a chapter in volume published by Routledge entitled *International Law and the Israeli-Palestinian Conflict: A Rights-Based Approach* edited by Michael Lynk, Susan Akram, Michael Dumper and Iain Scobbie.

I Introduction

The principal aim of this article is to explore a ‘rights-based approach’ to one possible overarching political framework for the resolution of the Palestinian/Israeli conflict: the ‘single state solution.’¹ A ‘rights based approach’ is generally distinguished by reliance on international human rights, as elaborated in international treaties and declarations, to provide a normative framework for addressing or resolving problems.² That is, indeed, the sense in which it is used here, although with the addition that, in the particular context of Middle East peacemaking, principles of both international humanitarian law and of more general public international law also have key roles to play.³ In turn, a ‘single state solution’ involves a resolution of the Palestinian/Israeli conflict in which outstanding rights, claims, and interests of Jewish Israelis and Palestinian Arabs will be addressed within a single polity. Thus, the main question I seek to answer is: What promise does a single-state solution hold as a vehicle for fulfilling fundamental rights of both Palestinians and Israelis, particularly in comparison to

¹ Accordingly, a comprehensive argument in support of a one-state solution is beyond the scope of this writing. For two recent book length treatments of the topic, see V. Tilley, *The One-State Solution* (Ann Arbor: University of Michigan, 2005); and A. Abunimah, *One Country: A Bold Proposal to End the Israeli-Palestinian Impasse* (New York: Metropolitan Books, 2006). The topic is also addressed in J. Kovel, *Overcoming Zionism* (London, Ann Arbor: Pluto Press, 2007), and G. Karmi, *Married to Another Man* (London, Ann Arbor: Pluto Press, 2007). I will, however, briefly review some of the major arguments in support of a one-state solution by these and other authors below.

² A ‘rights based approach’ has been urged in a wide variety of contexts, including development (see online: UNHCHR <<http://www.unhchr.ch/development/approaches.html>>); reproductive health (see “A Rights-Based Approach to Reproductive Health” (2003) 20:4 Outlook, online: PATH <http://www.path.org/files/EOL_20_4_dec03.pdf>); budget analysis (see M. Diokno for the International Human Rights Internship Program, “A Rights-Based Approach to Budget Analysis” (1999), online: <<http://www.iie.org/Website/Custom/Pages/ACFE8.pdf>>); refugee assistance (see M. Posner & D. Clancy, “A Human Rights-Based Approach to Refugee Assistance”, online: Human Rights First <http://www.humanrightsfirst.org/intl_refugees/regions/approach_refugess.pdf>); and gender equality (see (S. Gooneskere, “A Rights-Based Approach to Realizing Gender Equity”, online: UN Inter-Agency Network on Women and Gender Equality <<http://www.un.org/womenwatch/daw/savitri.htm>>).

³ International humanitarian law regulates the conduct of states and individuals in times of war. Public international law governs the structure and conduct of states, international organizations, and to a lesser extent, supranational corporations and individuals. While Israel has protested the application of human rights law to its occupations of the West Bank and Gaza Strip, the international community “is increasingly coming to view the two sets of standards [IHL and IHL] as conceptually different but complementary, and both applicable in situations of internal and international conflict.” C. Bell, *Peace Agreements and Human Rights* (Oxford: Oxford University Press, 2000) at 89.

the more widely accepted alternative of partitioning Palestine into two states, one for each people?

I will advocate four broad points here. First, a rigorous rights-based approach is a necessary, though not sufficient, ingredient to successful Middle East peacemaking.⁴ While not all aspects of the Palestinian-Israeli dispute are amenable to resolution along legal lines, some are, and the application of international law in its various strains would have a number of salutary effects on efforts to bring peace to the region. International law is not a substitute for negotiations between the two parties to the dispute, but rather establishes parameters that can help structure and guide negotiations toward resolutions that are mutually respectful of the rights of all.

Second, a one-state solution is supported by a variety of arguments, some of which will be reviewed here. But the most important argument and the primary concern of this chapter is that a single state, as compared to the two-state solution that has been broadly supported by the international community since 1947, offers superior opportunities to maximize the legitimate rights, interests, and aspirations of the greatest number of Israelis and Palestinians. In particular, it is the framework most amenable to the genuine realization of the rights of Palestinian refugees to return to their homes and homeland, and to the vindication of rights to full equality for the Palestinian citizens of Israel. Thus the one-state solution is most just, not only as between Israeli Jews and Palestinian Arabs, but also as among differently situated groups of Palestinians. Moreover, a solution that emphasizes justice and truly remedies past violations of rights will prove more durable over time, and will pave the way for the acceptance into the region that Israel has longed for, but never achieved.

⁴ Increased emphasis on international law in Middle East peace-making has been urged by a variety of writers, including most participants in a 2004 symposium sponsored by the Toda Institute for Global Peace and Policy Research entitled “Facts, Rights, and Remedies: Implementing International Law in the Israel/Palestine Conflict.” The proceedings of the symposium were published in the *Hastings International and Comparative Law Review*. See G. Bisharat, “Facts, Rights, and Remedies: Implementing International Law in the Israel/Palestine Conflict” (2005) 28 *Hastings Int’l & Comp. L. Rev.* 319 for the introduction to the symposium. See also several commentators in a discussion entitled “Is there a Role for International Law in the Middle East Peace Process?”; G. Abi Saab, “Is there a Role for International Law in the Middle East Peace Process” (2005) 99 *American Society of International Law Proceedings* 307; J. Quigley, “The Role of Law in Palestinian-Israeli Accommodation” (1999) 31 *Case W. Res. J. Int’l L.* 351; R. Falk, “International Law and the Peace Process” (2005) 28 *Hastings Int’l & Comp. L. Rev.* 331; and E. Kaufman & I. Bisharat, “Introducing human rights into conflict resolution: the relevance for the Israel-Palestine Peace Process” (2002) 1 *Journal of Human Rights* 79. The Bethlehem-based NGO Badil, the Center for Refugee Rights, has been particularly active in advocating a rights-based approach to the Palestinian refugee issue. O. Dajani, “Shadow or Shade? The Roles of International Law in Palestine-Israeli Peace Talks” (2007) 32:1 *Yale J. Int’l L.* 61.

Third, notwithstanding the attractions of a one-state solution, substantial legal and practical obstacles lie in the path to its achievement. Most significantly, each people – Israeli Jews and Palestinian Arabs – enjoys internationally recognized rights of self-determination and sovereignty. There is no legal means by which a one-state solution could be directly imposed on the parties to the dispute without violating the respective rights of each group. Although there may be a number of legal levers that could be used to pressure the two parties to such an agreement, as a matter of law, a one-state solution could only come about through the agreement of Palestinians and Israelis and as an exercise of their respective rights to self-determination.

Fourth and finally, the inability to implement a one-state solution without consent of the parties obligates us to consider the means by which such an agreement might be encouraged. While states and international organizations wield powerful tools to urge the parties toward a one-state solution, the political will to do so is currently lacking. That is a condition not likely to change radically in the near future. It is, therefore, necessary to consider whether international civil society is capable of playing a facilitating role, analogous to the role it played in fostering the demise of apartheid in South Africa.

In view of current realities in the region and foreseeable trends, it is conceivable that Israel might suffer sustained international isolation, similar to that experienced by South Africa during the apartheid era. This might eventually bring a cadre of Israeli leaders to view the one-state solution as the only viable long-term option. Even in this scenario, widespread support for a one-state solution would have to be won among Jewish Israelis at some point. It is difficult to imagine this kind of support emerging among Israelis in an atmosphere of distrust stoked by continuing violence between the two parties, including Palestinian violence that fails to discriminate between Israeli civilians and military targets. This strongly suggests that a movement with non-violence as its central component, or at least one that scrupulously curbed lethal violence against civilians, would enjoy the greatest chance of success in implementing a one-state solution to the Palestinian-Israeli conflict.

No reasonable person can deny that a single-state solution faces enormous political obstacles: a lack of broad public support at the present time among either Israelis or Palestinians and an international consensus that has reigned for sixty years in support of partition of Palestine between the two peoples, are only two such obstacles. My conclusion that a rights-based approach to Middle East peacemaking favours a one-state solution thus poses several difficult questions: Can those who support rights-based approaches as a matter of principle justify abandoning such an approach in this case, in the face of the political challenges to its implementation? Does the image of a single-state solution merely entice Palestinians and Israelis into a quixotic venture that would cruelly prolong the

sufferings of the two peoples, likely for decades to come? These are challenging and real questions and supporters of a single-state solution – particularly those who do not experience the direct sufferings of the two peoples – must ponder them respectfully and carefully and begin to offer answers that dispel justifiable scepticism about the approach and the end that they seek.

II A Rights-Based Approach to Middle East Peacemaking

We have already seen that a rights-based approach to resolving conflict in the Middle East is one that is normatively based on international law, including international human rights standards, international humanitarian law, and general principles of public international law. This section will explore the implications of a rights-based approach somewhat more specifically and operationally, and outline some of its advantages. In particular, a rights-based approach is posed here as an alternative, if not an antidote, to the approach that prevailed during the years of the Oslo peace process, in which international law was treated largely as an impediment to peace negotiations. Although Palestinian representatives repeatedly sought to base negotiations on international legal principles, Israeli and American negotiators favoured “pragmatism,” flexibility, and political accommodation.⁵ As we are all painfully aware, this anti-legal approach ended in failure.

⁵ Dajani, *ibid.* documenting numerous attempts by Palestinian negotiators at Camp David to introduce international legality but facing resistance by both Israeli and U.S. negotiators. Perhaps at no point was the difference in approaches between Palestinians, on the one hand, and Israelis and Americans, on the other hand, more dramatically underscored than in President Clinton’s tirade against PLO negotiator Ahmad Qurei. Qurei had requested that Israel negotiate on the basis of the June 4, 1967 border. As recounted by C. Swisher, *The Truth about Camp David* (New York: Nation Books, 2004) at 275: Clinton shouted: “...This isn’t the Security Council. This isn’t the General Assembly. If you want to give me a lecture, go over there and don’t make me waste my time. I’m the President of the United States. I’m ready to pack my bags and leave. I also risk losing a lot here. You’re obstructing the negotiation. You’re not acting in good faith.” A similar version of the incident is given in D. Ross, *The Missing Peace* (New York: Farrar, Strauss and Giroux, 2004) at 668-669. Palestinians’ appeal to international legality is also described in W. Quandt, “Israeli-Palestinian Peace Talks: From Oslo to Camp David II” in C. Wittes, ed., *How Israelis and Palestinians Negotiate* (Washington, D.C.: United States Institute for Peace, 2005). (Palestinians have “clung to their strong suit – international legitimacy, UN resolutions, and broad principles of international law”); and O. Dajani, “Surviving Opportunities: Palestinian Negotiating Patterns in Peace Talks with Israel” in C. Wittes, *ibid.* at 65, quoting a PLO legal advisor that Palestinians “were raised, in a sense, identifying the Palestinian cause with law”. For some representative Israeli views on the role of law in the peace process, see S. Shetreet “Negotiations and Agreements Are Better Than Legal Resolutions: A Response to Professor John Quigley” (2000) 32 Case W. Res. J. Int’l L. 258 (international legal norms are indeterminate and do not mandate acceptance of Palestinian legal claims); E. Barkan, “The Mirage of Rights – Response”

A rights-based approach starts with a belief that to designate something a “right” in international law is not a trivial act. Rather, bestowal of this very special status means that it embodies the most cherished principles of morality and justice held by the world community.⁶ Rights exist as a matter of law and are distinct from desires, aspirations, or interests, in the sense that they bestow entitlements for which the rights holder need not bargain and for which a demand for enforcement may be made of legitimate authority.⁷ When rights conflict with interests or aspirations, rights should prevail.

A rights based approach involves a commitment to maximize rights – that is, to make concerted effort to achieve the widest array of rights for parties to a dispute and to firmly resist the sacrifice of rights to power or political expediency.⁸ Proposals to rank, prioritize, or establish hierarchies of rights should be approached with great care, as rights are often intangible and extremely difficult to compare. Instead, every effort should be made to reconcile rights to the maximum extent possible.⁹ Notions of superior and inferior rights can be a

(2005) 28 *Hastings Int'l & Comp. L. Rev.* 411 (rights are a “mirage” that fail to offer practical solutions and immediate relief to Palestinian refugees), and World Council of Churches “Panelists at Odds over role of international law in Palestinian-Israeli peace efforts” (2003), online: <<http://www.eappi.org/pressreleasesge.nsf/ebf057bee62ea308c1256df300354399/026c0d6a2afe151fc1256ddd003578a0?OpenDocument>> (reporting statements of Avraham Burg that peace negotiators should focus on “practical concerns of ordinary citizens, not ‘theoretical’ international norms”). See also A. Klieman, “Israeli Negotiating Culture” in Wittes, *ibid.* (2005) (Israeli negotiating style dominated by security subculture).

⁶ This is not to suggest that international law, including international human rights standards, does not reflect the values and preferences of the world’s most powerful, and predominantly Western, states. See, for example, M. Mutua, *Human Rights: A Political and Cultural Critique* (Philadelphia: University of Pennsylvania Press, 2002) (arguing that the human rights corpus, though well meaning, is a Eurocentric formula for the reconstruction of non-Western societies and peoples through a set of culturally-biased norms and practices that inhere in liberal thought and philosophy). Changes in the international legal order since the September 11, 2001 attacks on the World Trade Tower have caused some to speculate that the “age of rights” is over. A. Neier, “Did the Era of Rights end on September 11?” *Crimes of War Project* (September 2002), online: *Crimes of War* <<http://www.crimesofwar.org/sept-mag/sept-neier.html>>. Flawed and frayed though they may be, international legal principles nonetheless represent a kind of consensus within the world community, and provide some objective standards of the reasonableness of the claims of parties to a conflict. See Falk, *supra* note 4 at 334.

⁷ V. Lowe, “Is there a Role for International Law in the Middle East Peace Process?” (2005) 99 *American Society of International Law Proceedings* 221 at 222.

⁸ A “rights-based approach” to development, for example has been described as “...a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights.” online: UNHCHR <<http://www.unhchr.ch/development/approaches.html>>.

⁹ For a good example of this, see M. Kagan, “Do Israeli Rights Conflict with Palestinians’ Rights of Return? Identifying the Legal Arguments” *Badil Working Paper* (2005), online: *Badil* <http://www.badil.org/Publications/Legal_Papers/WorkingPapers/WP-E-10.pdf>. He considers

prelude to ‘balancing conflicting rights’, and ultimately, to the negation of the rights of some in favour of the putative rights of others.¹⁰ Where properly defined rights are genuinely and inevitably in conflict, a rights-based approach would presumptively favour equitable compromise – splitting the difference. Zero-sum dispositions, in contrast, are subversive of the very notion of rights, as “rights” that cannot be enforced are not, ultimately, worthy of the designation.

A rights-based approach should, wherever possible, prioritize direct remedies of rights over indirect remedies. The danger, otherwise, is that the conversion of rights into monetary or other values is an invitation for the rich and powerful to overbear and exploit the poor and weak.¹¹ Extreme vigilance is due to the conditions under which rights are bargained or negotiated – that is, to who purports to speak for rights holders, with what representative authority, mediated by whom, and whether in an environment supportive or subversive of the protection of rights. At the same time, when a suitably protective bargaining environment is created, the choices of rights holders to either insist on enforcement or to trade rights for other benefits must be respected. No one should be “held hostage” to his or her right.

Finally, a rights-based approach should pay attention not just to substantive definitions of rights, but also to process. This is not so much a moral imperative as a practical one: if proponents of this approach are incapable of tracing a legal path to the realization of rights, then they risk being dismissed as well-intentioned but misguided dreamers.

What advantages does a rights-based approach bring to Middle East peacemaking? Let me suggest three. First, international legal rights establish a baseline of protections for both Palestinians and Israelis and would partially offset

whether the right of Palestinian refugees to return to their homes in Israel conflicts with Israeli rights to self-determination, finding that the rights, properly defined, do not conflict. International law does not support Israel’s claim of a right to exclude Palestinian refugees simply because they would transform Israel’s demography and jeopardize Jewish predominance, and Palestinian exercise of the right of return is thus compatible with Israel’s right of self-determination.

¹⁰ For example, the U.S. Supreme Court’s explicit introduction of a “balancing approach” in Fourth Amendment jurisprudence – that dealing with search and seizure rights – has, in almost every case, led to the diminution of individual rights to privacy in favour of community rights or interests in expeditious and accurate prosecutions of crimes. S. Sundby, “A Return to Fourth Amendment Basics: Undoing the Mischief of *Camara* and *Terry*” (1987-1988) 72 *Minn. L. Rev.* 383 (critiquing the two major cases that introduced a “balancing approach” to search and seizure issues).

¹¹ Perhaps reflecting this concern, the recently drafted Pinheiro Principles dealing with housing rights of refugees favours restitution over compensation. UN Commission on Human Rights, *Housing and property restitution in the context of the return of refugees and internally displaced persons: Final Report of the Special Rapporteur, Paulo Sérgio Pinheiro*, UN ESCOR, 56th Sess., UN Doc. E/CN.4/Sub.2/2005/17 (2005), online: Badil <<http://www.badil.org/e-library/Pinheiro-Principles.pdf>>.

the huge imbalance of military, economic, and diplomatic power between the two parties.¹² It would thus promote a resolution based on justice, not simply power. Second, an agreement based on well-established international norms would enjoy the greatest legitimacy among both domestic constituencies and within the international community more generally.¹³ Third, a rights-based resolution to the conflict would demonstrate to the peoples of the Middle East, and elsewhere, that international law is not simply the tool by which greater powers justify military interventions, but also a means by which justice and durable peace can be achieved. In a region afflicted by great, and understandable, cynicism about the rule of law, with the resulting temptation to redress grievances through extralegal means, this would be a powerful and positive statement.¹⁴

Calls to enhance the role of international law in Middle East peacemaking could easily go unheeded.¹⁵ While one can speculate as to the reasons for U.S. official hostility to international law in this context, it is hard not to see Israeli reticence as stemming from trepidation over the support that international law provides Palestinian positions on a number of key issues.¹⁶ The simple fact is that the application of a rights-based approach to Middle East peacemaking is likely to effectuate a substantial redistribution of rights and benefits in favour of Palestinians. How might Israel, which still possesses an enormous power differential over the Palestinians, and the United States, Israel's ally, ever be coaxed into responding differently to this approach than in the past?

The answer, of course, is that they may not – at least, not in the immediate future. Nonetheless, each power has the failure of the Camp David negotiations

¹² E. Kaufman & I. Bisharat, "Are Human Rights Good for the Top Dog as Well? Rescuing the Missing Dimensions of the Israeli-Palestinian Peace Process" (2003) 10:3 *Palestine-Israel Journal of Politics, Economics, and Culture* 89 (arguing that employing human rights standards in conflict resolution benefits the more powerful as well as the less powerful of the parties). See also Quandt, *supra* note 5, citing the power imbalance between Israel and the Palestinians as one reason for failure of the Oslo peace process.

¹³ Dajani, *supra* note 4, demonstrating that the conformity with international law can provide negotiated agreements legitimacy with domestic constituencies and international actors.

¹⁴ I have made these points previously. See Bisharat, *supra* note 4. See also Falk, *supra* note 4: International law represents a general embodiment of reasonableness, and therefore gives disputants an approximate gauge of the fairness of prospective resolutions of conflict. Omar Dajani, *supra* note 4, has performed perhaps the most systematic examination of the role of international law in Palestinian-Israeli peace negotiations from the perspective of a participant. His tally of benefits of the role of international law in peace negotiations include some similar to mine, but he adds further that international law can serve to fill gaps in agreements.

¹⁵ See Falk, *supra* note 4, admitting the improbability of implementing international law "because of considerations of political feasibility."

¹⁶ Quigley, *supra* note 4, international law supports Palestinian positions on requirement of full Israeli withdrawal from territories occupied in 1967, illegality of Israeli settlements in the West Bank and Gaza Strip, repatriation of Palestinian refugees, and challenging Israeli claims to sovereignty over Jerusalem.

to learn from. In the aftermath of Israel's unsuccessful war against Lebanon in 2006, and with the scale of the United States' Iraq debacle becoming increasingly clear, it is possible that both powers will develop greater incentives to negotiate on terms more respectful of international law.

Nonetheless, calls for implementing international law in Middle East peacemaking are likely to be treated as partisan, and those making them must be scrupulous in upholding legality in a consistent and principled manner, and in emphasizing the law's benefits to both parties to the dispute. A healthy awareness of the limitations of international law is also necessary. International law does not offer clear prescriptions for all of the outstanding issues between Palestinians and Israelis.¹⁷ Nor were the failures of past negotiations between Palestinians and Israelis solely due to insufficient reliance on international law; rectifying only one part of the equation will not guarantee more successful results in future negotiations.¹⁸

III General Arguments for a One-State Solution

This section will briefly review the history of the idea of a one-state solution, and outline some of the major arguments that have been made in its support. While it would be possible to articulate a rights-based justification for a one-state solution in the abstract, situating it in a broader historical and political context is helpful. The notion of a single state seems far less alien when its origins and rationale are excavated. In some respects, the rights-based approach echoes and recasts themes that are evident in the arguments considered in this section.

For the last sixty years, following the United Nations General Assembly passage of the partition plan for Palestine,¹⁹ the prevailing assumption in the international community has been that the competing claims of Jewish Israelis

¹⁷ Rights to water (H. Elver, "Palestinian/Israeli Water Conflict and Implementation of International Water Law Principles" (2005) 28 *Hastings Int'l & Comp. L. Rev.* 421) and the disposition of Jerusalem (Dumper, this volume) may be two issues in which international law fails to offer clear prescriptions.

¹⁸See Quandt, *supra* note 5, for a discussion on the failure of diplomacy to settle Israeli-Palestinian conflict due to history, culture, intrinsic difficulty of solving core issues, inequality between parties, domestic opponents to conciliation, and dependency on third-party mediation; Kaufman & Bisharat, *supra* note 4 at 71: for causes of breakdown of the Oslo process include "leadership failure, intercultural misunderstandings, contending negotiating styles, and previous traumatic experiences.

¹⁹ *Resolution Adopted on the Report of the ad hoc Committee on the Palestinian Question*, GA Res. 181(II), UN GAOR, 2d. Sess., A/RES/181(II) (1947), reproduced at: The Avalon Project, Yale Law School <<http://www.yale.edu.lawweb/Avalon/un/res181.htm>>. As A. Hodgkins, "Beyond Two-States: Alternative Visions of Self-Determination for the People of Palestine" (2004) 28:2 *Fletcher Forum of World Affairs* 109 shows, partition was not the international community's preferred solution to the conflict until virtually the eve of the vote on partition.

and Palestinian Arabs to the land of former Mandate Palestine must be resolved by some kind of territorial division. Palestinian national aspirations were occluded for the two decades or so following the collapse of the British mandate in Palestine and the creation of Israel. UN Security Council Resolution 242, adopted after the June 1967 Arab-Israeli war, did not call for a Palestinian state, but it did mandate Israeli withdrawal from the Arab territories it seized, including the West Bank. Palestinian rights to self-determination and nationhood gained steady international recognition through the 1970s. In 2003, the Security Council adopted the Roadmap for Peace as official UN policy, thereby adopting an explicit plan to create a separate Palestinian state alongside Israel.²⁰ Israel, which for many years denied the national rights of Palestinians and opposed the creation of a Palestinian state, finally bowed to international opinion, and at least verbally assented in the need to create a Palestinian state.

Yet the notion that Jews, Muslim and Christian Palestinians should live within a single polity has relatively deep roots in both communities. In the period before Israel's foundation, prominent Jewish intellectuals Judah Magnes, Martin Buber, and Hannah Arendt supported a program to establish a common Jewish-Arab state in Palestine in which all citizens, regardless of ethnic or religious affiliation, would live as equals.²¹ This current of Jewish thought was largely superseded, during and after World War II and the Nazi holocaust, by the Zionist drive to establish a Jewish state in Palestine. But it never entirely disappeared, and recently has begun to re-emerge in the writings of a small number of Jewish Israelis and others outside of Israel – some of which will be reviewed below.

Palestinian Arabs strongly opposed the partition of Palestine, as an unwarranted violation of their rights to self-determination and sovereignty in the land they had inhabited continuously for generations.²² Calls for the creation of a single state by Palestinians resurfaced during the late 1960s, when official policy of the Palestine Liberation Organization (PLO) stipulated the creation of a “democratic secular state” in Palestine, in which Jews and Palestinians would reside as equal citizens. By the mid-seventies, however, the PLO had begun to support a “national authority” in any areas from which Israel might withdraw – which was largely understood as a coded acceptance of Israel's permanency and a

²⁰ See *The Situation in the Middle East, including the Palestinian Question (The Road Map)*, SC Res. 1515, UN SCOR, 4862d Mtg., UN Doc. S/RES/1515 (2003).

²¹ Tilley, *supra* note 1 at 214-18, describing the positions of Magnes, Buber, and Arendt. See also L. Silberstein, *The Postzionism Debates: Knowledge and Power in Israeli Culture* (New York: Routledge, 1999), showing that Zionism was, from its inception, contested and controversial, and reviewing the thoughts of both early and contemporary Jewish critics of Zionism.

²² See R. Khalidi, *The Iron Cage* (Boston: Beacon Press, 2006), describing Palestinian Arab opposition to partition.

call for a two-state solution.²³ In 1988, the PLO took the momentous step of recognizing Israel within its boundaries prior to the June 1967 war and declared the independence of the State of Palestine. The latter, of course, was a purely symbolic gesture, but the PLO's commitment to respecting Israel's integrity as a state was cemented in the Declaration of Principles signed by Israel and the PLO in 1993 that ushered in the "Oslo peace process." Support for a two-state solution has been the PLO's official stance ever since.²⁴

Palestinian critics of the two-state solution, likewise, have never disappeared and as the Oslo process floundered, a number of Palestinians began to articulate support for a one-state solution. As early as 1997, prominent Palestinian-American literary critic and theorist Edward Said began to criticize the logic of partition underlying the Oslo process, and to call for Palestinians and Israelis to "plan a common life together."²⁵ As despair over the viability of the two-state solution has set in, support for a single state appears to be growing, particularly among Palestinian intellectuals, joined by a smaller number of Israeli thinkers.²⁶

In fact, the phrase "one-state solution" is better conceived as a category of possible solutions, rather than a single defined model or plan. Indeed, elements of the Israeli right support a version of a one-state solution whereby Israel would

²³ Two of the better sources on these shifts in Palestinian diplomatic posture are A. Gresh, *The PLO – The Struggle Within* (London: Zed Books, 1987); and H. Cobban, *The Palestine Liberation Organization: People, Power, and Politics* (Cambridge: Cambridge University Press, 1984). See also Y. Sayigh, *Armed Struggle and the Search for State* (Oxford: Oxford University Press, 1997).

²⁴ On several occasions, Palestinian leaders, including PLO Chairman Yasser Arafat and Palestinian Authority Prime Minister Ahmad Qurei have remarked on the narrowing window for the two-state solution, and raised the possibility of again calling for a single state.

²⁵ E. Said, *The End of the Peace Process: Oslo and After* (New York: Vintage Press, 2001), reprinting the 1997 article, along with others.

²⁶ Palestinians writing recently in support of a single state include M. Tarazi, "Two peoples, one state" *New York Times* (4 October 2004); G. Bisharat, "Two-state solution again sells the Palestinians short" *Los Angeles Times* (25 January 2004); L. Abu Odeh, "The Case for Binationalism" *Boston Review* (December 2001/January 2002); M. Qumsiyeh, *Sharing the Land of Canaan* (London: Pluto Press, 2004); Abunimah, *supra* note 1; and A. Khalidi, "A one-state solution. A unitary Arab-Jewish homeland could bring lasting peace to the Middle East" *The Guardian* (29 September 2003), online: Guardian Unlimited <<http://www.guardian.co.uk>>. American political scientist Virginia Tilley has also contributed one of the most important works in support of a single state, *supra* note 1. In July 2007, a group of academics, journalists and activists from the United States, Israel, Europe, and South Africa met outside Madrid, Spain, to discuss the vision of a one-state solution and strategies for its implementation. The group issued a statement calling for a one-state solution, and for further debate and study of the means of its implementation. The statement and meeting participants may be viewed at <http://electronicintifada.net/v2/article7102.shtml>. Support for a one state solution is by no means uniform among Palestinian intellectuals; for two critical views see S. Tamari, "The Dubious Lure of Binationalism" (2000) 30 *Journal of Palestine Studies* 83; and M. Baraka, "Between the one-state and the two-state solution: Independence is a necessity, not a luxury" (2005) 28 *al-Majdal* 20.

annex the entire West Bank and either expel large numbers of Palestinians or formalize their permanent disenfranchisement.²⁷ The Palestinian group Hamas also supports a single-state solution, although one in which Muslims would rule over Christians and Jews.²⁸ But the one-state solution contemplated here involves either a state in which all citizens enjoy equal rights – what might be called the secular democratic model – or one in which Palestinian Arab and Jewish Israeli collective identities are formally recognized and made the basis of power-sharing arrangements – what might be called the binational model.²⁹

The arguments in support of a one-state solution reviewed here are somewhat overlapping, but emphasize different things. They include what might be called, for shorthand, an “organic” argument; a “moral-ideological” argument; and a “negative” or “default” argument.

i. The organic argument

The organic argument is one that views Palestine/Israel as a functioning, natural, organic unit. Its Jewish and Palestinian inhabitants are so inextricably entwined – geographically, economically, administratively, and otherwise – that no equitable and mutually acceptable partition of the territory is possible.³⁰ Indeed, partition, far from being the solution to inter-communal tensions, is the source of many problems. All attempts to draw partition lines that fairly apportion territory to the

²⁷ See G. Sussman, “The Challenge to the Two-State Solution” in J. Beinlin & R. Stein, eds., *The Struggle for Sovereignty: Palestine and Israel, 1993-2005* (Stanford: Stanford University Press, 2006), describing Israeli right wing plans for permanent Jewish rule over a Palestinian majority.

²⁸ K. Hroub, *Hamas: Political Thought and Practice* (Washington, D.C.: Institute for Palestine Studies, 2000), describing the ideology and objectives of Hamas. Hamas leaders, however, have hinted more than once that they might countenance a long term, and possibly permanent, reconciliation with Israel. See K. Meshal, “The chief of Hamas’ political bureau outlines its mission – and its message for the U.S., Europe, the Arab states and Israel” *The Guardian* (24 January 2006); M. Abu Marzouk, “What Hamas is Seeking” *Washington Post* (31 January 2006), A17; and A. Yousef, “A Pause for Peace” *New York Times* (1 November 2006).

²⁹The binational model can be further broken down: Sussman, *supra* note 27 at 304: “The binational model encompasses federal, confederal, and consociational variants.” Unfortunately, there is no terminological consistency in discussions of the single state solution. Sussman points out that in Israel “binationalism” sometimes refers to what I characterize here as the “secular democratic model”.

³⁰ Abunimah, *supra* note 1, offers one of the most straightforward articulations of the “organic” argument. Another version, given by Meron Benvenisti (quoted in A. Shavit, “Cry, the Beloved Two State Solution” *Haaretz* (8 August 2003)) poses unity of the land almost as if it were the “natural order of things”:

“The model of a division into two nation-states is inapplicable. It doesn’t reflect the depth of the conflict and doesn’t sit with the scale of the entanglement that exists in large parts of the country. You can erect all the walls in the world here but you won’t be able to overcome the fact that there is only one aquifer here and the same air and that all the streams run into the same sea. You won’t be able to overcome the fact that this country will not tolerate a border in its midst.”

two peoples have failed, and attempts to separate them have necessarily entailed violence.³¹ The first major attempt to impose separation was during the 1948 war, when close to 800,000 Palestinians were expelled or fled from their homes in fear in the areas that fell under Israel's control.³²

This separation, however, was reversed when Israel occupied those territories in 1967, in effect, reintegrating Israel/Palestine into a single functioning geopolitical and economic unit. Israel has determinedly battled Palestinian efforts to establish meaningful sovereignty there and implanted nearly half a million Israeli settlers in over 200 West Bank settlements, linked by an extensive system of roads and infrastructural services.

Attempts to reimpose separation – through the closing of Israel's borders to Palestinian migrant labourers, through the creation of a separate legal system for the settlers and settlements, and through the erection of Israel's "security barrier" – have only imposed further hardship on Palestinians and increased strife. With shared water resources, limited airspace, integrated economies, and the like, disentangling Israel and the Palestinian territories would be, if not impossible, at least highly inefficient and would inevitably produce further injustices.

In short, partition, in a variety of formulations, has been the international community's guiding principle with respect to Palestine/Israel for sixty years – and it has repeatedly proved itself a failure. After six decades of experimentation with dividing the land of Palestine/Israel between the two peoples, resulting only in conflict and strife, it is time to admit defeat and to explore a new approach.

ii. The moral-ideological argument

The moral-ideological argument essentially states that Zionist ethnic nationalism is a regressive, chauvinistic ideology that, if not by its very nature, at least in the form and manner actualized in Palestine, has entailed aggression, oppression, and injustice against the Palestinians. In contrast, a single state founded on principles of inclusion, tolerance, and recognition of the mutual dignity of all citizens – Jews, Palestinian Muslims, and Christians – would be more in consonance with the morals, aspirations, and ideals of the contemporary world, and is therefore more desirable.

Zionism was born not simply as a reaction to European anti-Semitism, but was also inspired by nineteenth century ethnic nationalism. A central Zionist tenet was that a Jewish state could not be maintained except through establishing and maintaining a Jewish majority. Unfortunately, this tenet had disastrous implications when played out in a country in which the majority population, as late as 1948, was overwhelmingly Palestinian Arab. The expulsion of the

³¹ Abunimah, *ibid.* at 19-54, discusses the failure of various attempts at partition.

³² I. Pappé, *The Ethnic Cleansing of Palestine* (Oxford: Oneworld Press, 2006) at xiii.

Palestinians in 1948 was a logical corollary of Zionism's commitment to Jewish majority domination. While the fate of the Palestinians was not greatly different than that of other native peoples subjected to settler colonialism, Israel was founded in the era of decolonization, when international law no longer tolerated the excesses of the colonial past.³³

Israel claims membership in the fellowship of democratic nations, but is the only ethnic democracy to do so. Other settler colonial societies, such as the U.S., Australia, and South Africa, have all learned the painful lesson that ethnic nationalism, with its tendencies toward ethnic cleansing, discourses of ethnic supremacy, and incompatibility with the precept of equality before the law, is in fundamental ways anti-democratic and an anachronism. Israel, propelled out of World War II by the Nazi holocaust, won itself temporary reprieve from the judgments that other ethnic regimes faced. But the tension between Israel's commitment to being a Jewish state and its espousal of democratic ideals is deepening, not diminishing, and its policies are currently leading to intolerable regional and global tensions.³⁴

Needless to say, this is by no means a new critique of Zionism.³⁵ It is evident, however, that the demise of the Oslo "peace process" and the outbreak of the al-Aksa *Intifada* brought about a revival of older concerns and spurred soul-searching among some former Zionists.³⁶

Far from rendering the final answer to the "Jewish question", Israel may well have contributed, by its policies, to the rise of anti-Semitism in the Muslim world, and possibly in the West as well. Although conceived as a safe haven for Jews, in fact Israel has now become one of the most dangerous places for Jews in the world, a fact reflected in flagging immigration numbers.³⁷ Thus Zionism is a failed ideology, even in its own terms.

³³ The moral-ideological argument is well-stated by Tilley, *supra* note 1: Zionism is a form of ethnic nationalism that contradicts equality under the law, a basic precept of true democracy.

³⁴ Tilley, *supra* note 1 at 179-182.

³⁵ See Silberstein, *supra* note 21, which reviews Jewish and some Palestinian critics of Zionism.

³⁶ Perhaps the most prominent example in recent years is T. Judt, "Israel: The Alternative" (2003) 50:16 *New York Review of Books*: "The problem with Israel, in short, is not – as is sometimes suggested – that it is a European enclave in the Arab world; but rather that it arrived too late. It has imported a characteristically late-nineteenth-century separatist project into a world that has moved on, a world of individual rights, open frontiers, and international law. The very idea of a "Jewish state – a state in which Jews and the Jewish religion have exclusive privileges from which non-Jewish citizens are forever excluded – is rooted in another time and place. Israel, in short, is an anachronism." See also D. Gavron, *The Other Side of Despair: Jews and Arabs in the Promised Land* (Oxford: Rowman and Littlefield Publishers, 2003); and Shavit, *supra* note 30, interviewing Meron Benvenisti and Haim Hanegbi.

³⁷ D. Lazare, "The One State Solution" *The Nation* (3 November 2003): "Herzl envisioned a state that would draw Jews like a magnet, yet more than half a century after Israel's birth, most Jews continue to vote with their feet to remain in the Diaspora, and an increasing number of Israelis

iii. The negative argument

The negative argument, or argument by default, rests on the belief that a two-state solution is no longer possible given political conditions on the ground in Palestine/Israel, and therefore the only principled solution that remains is the one-state solution.³⁸ The basic thrust of the argument is that Israel's colonizing process in the West Bank has gone so far that it is now irreversible and that the remaining land base for a Palestinian state is insufficient.

The challenge of reversing decades of Israeli colonization of the West Bank to make adequate space for credible and sustainable Palestinian sovereignty is, indeed, daunting. The West Bank, including East Jerusalem, is now home some 460,000 Israeli settlers.³⁹ Many hold a powerful ideological attachment to what they believe to be the ancient Jewish heartland. While it is commonly believed that many Israelis support withdrawal from the West Bank and the creation of a Palestinian state, they have repeatedly elected leaders who tolerate, if not actively promote, further settlement activity. Some polling data suggests that a minority of Israelis actually support full withdrawal to the pre-June war borders, while a majority oppose it.⁴⁰

The movement to absorb West Bank land is continuing,⁴¹ so the challenge is to forecast when – if ever – the political forces against expansion will overtake those in its support. This involves a reading of domestic Israeli politics, in which the forces in favour of continuing colonization the West Bank are, at least for the foreseeable future, insurmountable. Key external actors, such as the U.S., European Union, the Arab states, and the Palestinians themselves are either unable or unwilling to effectively oppose consolidation of Israeli control over

prefer to live abroad. Israel was supposed to serve as a safe haven, yet it is in fact one of the more dangerous places on earth in which to be Jewish.”

³⁸Almost all proponents of a one-state solution make this argument in one form or another. Perhaps the most complete statement is Tilley, *supra* note 1. See also Abunimah, *supra* note 1; Gavron, *supra* note 36; H. Cobban, “A Binational Israel-Palestine” *Christian Science Monitor* (9 October 2003); and Abu Odeh, *supra* note 26.

³⁹ S. Erlanger, “Israeli Map says West Bank posts sit on Arab land” *New York Times* (2 November 2006): 80,000 Israeli settlers beyond the “security barrier”, 180,000 on the Israeli side of the barrier, and 200,000 in East Jerusalem.

⁴⁰ Abunimah, *supra* note 1 at 52.

⁴¹ In June 2006, for example, Israel announced plans to establish Maskiot, a new settlement in the Jordan Valley, to be inhabited by settlers evacuated from the Gaza Strip. L. Copans, “Israel builds West Bank settlement” *Associated Press* (3 June 2006). Other existent settlements have continued to expand, even beyond lands authorized to them by the Israeli government. S. Erlanger, Israeli Settlements Found to Grow Past Borders,” *New York Times*, July 7, 2007, at <http://www.nytimes.com/2007/07/07/world/middleeast/07mideast.html?ex=1341460800&en=cdaa-beb646d90ab0&ei=5088&partner=rssnyt&emc=rss>.

major parts of the West Bank. Were a Palestinian state to be created of the remaining enclaves of territory, the result would still be continuing instability.⁴²

The problem with the “negative” argument is that the conditions rendering a two-state solution no longer possible would appear similarly to block the creation of a single state. On close inspection, then, this argument seems to conjoin an empirical proposition – that two-states have been precluded by facts on the ground – with a normative one – that we should, for moral reasons, support the only principled solution that remains. Yet read most realistically, the facts on the ground seem to foreshadow a future in which no principled or just solution is likely to be reached at all.

IV The Single State as a Framework for Maximizing Rights

Let me now turn to the rights-based argument in support of a one-state solution: a single state offers the most promising framework for realizing the widest array of rights for both Israelis and Palestinians, particularly as compared to the conventionally accepted two-state solution. To reiterate: rights achieve their very special status because they embody particularly cherished values and exemplify norms of justice held throughout the world. A resolution of the conflict that vindicates rights of both peoples, and remedies violations of individual rights, is one that best approximates a just outcome and best guarantees a durable peace. Thus we must ask: what are the internationally recognized rights of each of these two peoples, that each would seek to preserve in a final resolution of their conflict, and how would they fare under a one-state solution as opposed to its common alternative, the two-state solution?⁴³ Palestinians and Israelis harbour other interests and aspirations that are not rights. While interests and aspirations do not have the same claim to vindication that rights do, it is still important to also ask: how may these other interests and aspirations be interwoven with the peoples’ respective rights, so as to create the best deal for both peoples?

As a matter of principle, of course, both Palestinians and Israelis possess symmetrical collective rights of self-determination and sovereignty – a point to which I will return below. Israelis and Palestinians enjoy the same array of

⁴² Tilley, *supra* note 1 at 3-5 states: “The resulting Palestinian statelet would be blocked off physically from the Israeli economy, its major cities would be cut off from each other, and its government would be unable to control the territory’s water resources, develop its agriculture, or manage its trade with neighbo[u]ring states. It would comprise little more than a sealed vessel of growing poverty and demoralization.”

⁴³The Alternative Palestinian Agenda presents a similar inventory and analysis of what are called the “concerns and aspirations” of Israelis and Palestinians. See “Proposal for an Alternative Configuration in Palestine-Israel”, online: Alternative Palestinian Agenda <http://www.ap-agenda.org/not_a_last_resort.htm>.

individual human, civil, and political rights as all other human beings. Their respective experiences, however, lead to some similar and some different priorities.⁴⁴ The object here cannot be to provide an exhaustive catalogue of all the legal rights at stake in the conflict. Rather, I have tried to identify some key demands of the two peoples, and to determine what rights might underlie and support them.

i. Key Palestinian Rights and Interests

The rights that seem most important to Palestinians include: a return for Palestinian refugees; equality of Palestinian citizens of Israel; national self-determination and sovereignty; control over East Jerusalem; and freedom from Israeli occupation of the West Bank and Gaza Strip.⁴⁵

The right of return for Palestinian refugees and compensation for losses they suffered. The forced exile of hundreds of thousands of Palestinians in 1948, and again in 1967, for many Palestinians was, and remains, the very essence of their conflict with Israel. The condition of statelessness, attendant estrangement and vulnerability are defining features of the Palestinian experience and the commitment to return is a key dimension of Palestinian identity. Palestinian refugees and their offspring today probably constitute a majority of the Palestinian people, whether living outside the borders of Palestine, or in the West Bank and Gaza Strip.⁴⁶

While there is lingering controversy over the legal status of Palestinian refugee claims, the more compelling argument is that the right of Palestinian refugees to return to their homes of origin, and the associated right to receive either restitution of their properties or compensation, is firmly grounded in international law.⁴⁷ Importantly, the right to return is an individual right and is

⁴⁴ It is impossible in the limited scope of this article to provide full legal argument in support of each of the “rights” below – as desirable as that may be. I fully recognize that some “rights” are contested (such as the “right of return” for Palestinian refugees); all I can do here is to state my position and provide supporting references.

⁴⁵ Although Israel withdrew its civilian settlers from the Gaza Strip in 2005, it continues to control the region’s borders, airspace, and coast, and provides it with gas, electricity, and water. “Effective control” is the legal measure of occupation, and Israel, therefore, may be said to still occupy the Gaza Strip. See I. Scobbie, “Is Gaza Still Occupied Territory?” (2006) 26 *Forced Migration Review – Palestinian Displacement: A Case Apart?* 18.

⁴⁶ See Badil, online: <<http://www.badil.org/Refugees/text02.htm>> which states the registered and unregistered Palestinian refugees from 1948 together were 5.51 million in 2003; and PASSIA, online: <http://www.passia.org/Palestine_facts/pdf/pdf2006/4-Population.pdf>, which puts the total Palestinian population at about 10 million.

⁴⁷ W. Mallison & S. Mallison, *An International Law Analysis of the Major United Nations Resolutions Concerning the Palestinian Question* (New York: United Nations, 1979) at 28, “Historically, the right of [refugee] return was so universally accepted and practiced that it was not

fulfilled only when a refugee is offered a free choice between repatriation with compensation for damages or compensation and support for resettlement.⁴⁸ Associated property rights are also individual rights, violations of which are remedied by restitution, compensation, or a combination of the two.

It should be evident that genuine fulfillment of the Palestinians' right of return can only be effectuated under a one-state solution. It is, of course, unknowable how many refugees would return were they offered the choice, but it is hard to square the return of any significant number of Palestinian refugees with maintaining the predominance of Jews in Israel, which is the very rationale of a two-state solution.⁴⁹ Actual return of large numbers of Palestinian refugees would raise real, but surmountable challenges – for example, restitution may be physically impossible in many cases, and due measures would have to be taken to protect the rights of secondary occupants.⁵⁰

The most generous treatment of Palestinian refugees yet envisioned in association with the two-state solution occurred in the unofficial Geneva Accord

deemed necessary to prescribe or codify it in a formal manner"; J. Quigley, "Displaced Palestinians and a Right of Return" (1998) 39 Harv. Int'l L.J. 171, which responds to major criticisms of the right of return, and concludes that Palestinians are entitled to return as matter of right irrespective of the causes of flight; S. Akram & T. Rempel, "Recommendations for Durable Solutions for Palestinian Refugees: A challenge to the Oslo Framework" (2000/2001) XI Palestinian Y.B. Int'l L. 1, which discusses the Palestinian right of return rooted in principles of state succession, human rights, and humanitarian law; and L. Takkenberg, *The Status of Palestinian Refugees in International Law* (Oxford: Clarendon Press, 1998), which states that UN Resolution 194 of 1948 affirmed, rather than established, Palestinian right of return. For contrary views, see R. Lapidot, "The Right to Return in International Law, with special reference to Palestinian refugees" (1986) 16 Isr. Y.B.H.R. 103, which states that Palestinian refugees were never nationals of Israel, having fled before Israel was created, and Israel is not obligated to accept return; E. Benvenisti & E. Zamir, "Private Claims to Property Rights in the Future Israeli-Palestinian Settlement" (1995) 89 Am. J. Int'l L. 295, stating the right of return in the *Universal Declaration of Human Rights* is individual, with no application to situations of mass exodus; and J. Weiner, "The Palestinian Refugees Right to Return and the Peace Process" (1997) 20 B.C. Int'l & Comp. L. Rev. 1, stating that Palestinian refugees left voluntarily hoping Arab armies would conquer area and aid return, and have no right of return.

⁴⁸ G. Boling, *The 1948 Palestinian Refugees and the Individual Right of Return: an International Law Analysis* (Bethlehem: Badil Resource Center, 2001), standing for the claim that the right of return is an individual right.

⁴⁹ R. Korobkin & J. Zasloff, "Roadblocks to the Roadmap: A Negotiation Theory Perspective on the Israeli-Palestinian Conflict After Yasser Arafat" (2005) 30 Yale J. Int'l L. 1 at 12-13: Israel is unalterably opposed to resolution involving return of large numbers of Palestinian refugees.

⁵⁰ Kagan, *supra* note 9: a "balance of hardships" favours Israeli secondary occupants, who should be allowed to remain, while returning refugees should receive alternative property and compensation. See however S. Abu Sitta, "The Right of Return: Sacred, Legal, Possible" in Naseer Aruri, ed., *The Palestinian Refugees: the Right of Return, 2001* (London: Pluto Press, 2001): showing that 78% of Israelis inhabit 14% of land, and most refugees fled from 86% inhabited by only 22% of Israelis.

of 2003.⁵¹ The Accord was never formally adopted by either Israel or the Palestinians, and then-Israeli Prime Minister Sharon firmly rejected it. Nonetheless, it gives us a rough “best case” scenario for refugee rights under a two-state solution.

According to the Geneva Accord, Palestinians would be entitled to seek compensation for “refugeehood” and losses of property. In addition, Palestinian refugees would be offered a choice between return to Israel and resettlement, either in current host countries or in third countries. However, the actual numbers permitted to return would be subject to Israel’s sovereign discretion.⁵² The few who actually returned to their homes in Israel would receive the fullest remedy of their rights, although at the expense of second-class citizenship, in effect trading one violation of their rights for another.⁵³ Palestinian refugees in the West Bank and Gaza Strip, even if compensated for damages and losses of their property in Israel, would receive no real remedy for their right to return, as their right would be deemed already “realized.”

Palestinians abroad would be faced with the prospect of crowding into the West Bank, as the Gaza Strip is greatly overpopulated and already in urgent need for demographic relief itself. Those who, however unwisely – or desperately – did so would at least have been spared the condition of statelessness, which is a net positive, of course. But provision of a state, no matter how welcome, does not remedy the core right that has been violated – which is an individual right to choose freely to remain in the home of one’s long attachment. In fact, statehood is a remedy for the denial of different rights – the rights of the Palestinian people to self-determination and sovereignty. The only true remedy for a violation of the right to return is actual return and restitution of refugee property. The probable outcome of the two-state treatment of refugee rights, therefore, is that the majority of Palestinian claimants would be forced to accept partial and imperfect remedies.

Rights to equality for the Palestinian citizens of Israel. The nearly 1.4 million Palestinian citizens of Israel constitute approximately 20% of the population of that state.⁵⁴ Rights of Palestinian citizens of Israel to basic equality under the law, as the citizens of any other state, are protected by the United

⁵¹ Geneva Initiative, *Geneva Accord*, online: <<http://www.geneva-accord.org/Accord.aspx?FolderID=33&lang=en>>.

⁵² Geneva Accord, *ibid.* art. 7. Host and third countries would also be able to specify the numbers of refugees they would resettle.

⁵³ The status of Palestinian citizens of Israel will be taken up below.

⁵⁴ See Israel Central Bureau of Statistics, showing Arab population of Israel in 2003 at 1,302,000, or 19% of the total population of Israel, and with a growth rate of 3%, online: <http://www.cbs.gov.il/reader/cw_usr_view_Folder?ID=141>.

Nations Charter,⁵⁵ the *Universal Declaration of Human Rights*,⁵⁶ and other sources of international law.⁵⁷

In reality, Palestinian citizens of Israel suffer a variety of forms of discrimination in their daily lives, whether in the form of 20 laws that either privilege Jews or discriminate against Palestinians⁵⁸ or in the form of discrimination in the allocation of government services and resources.⁵⁹ Israel's *Basic Law of Human Dignity and Liberty*, intended as the country's "bill of rights", not only fails to include an explicit guarantee of equal rights, but it characterizes Israel as a "Jewish and democratic" state.⁶⁰ Palestinian citizens thus face *de jure* and *de facto* discrimination in many aspects of life without benefit of a constitutional principle protecting equal rights under the law.

Again, only in a one-state solution would the rights of Palestinian citizens of Israel truly be realized. The key fact is that their current plight is, fundamentally, an outgrowth of their status as non-Jews in a state that is in letter and in spirit a Jewish state. Surely there is a degree to which their plight is exacerbated by the conflict; in a post-conflict Israel, this plight might be somewhat ameliorated even in the event of a two-state solution. Yet it is hard to imagine how Palestinians could ever achieve full equality in a state that explicitly represents itself as the state of another people.⁶¹ It is far more likely that this

⁵⁵ *Charter of the United Nations*, 26 June 1945, Can. T.S. 1945 No. 7 at Preamble, online: UN <<http://www.un.org/aboutun/charter/>>.

⁵⁶ *Universal Declaration of Human Rights*, GA Res. 217(III), UN GAOR, 3d Sess., Supp. No. 13, UN Doc. A/810 (1948) 17 at art. 1, online: UN <<http://www.un.org/Overview/rights.html>>.

⁵⁷ See for example, *International Covenant on Civil and Political Rights*, 19 December 1966, 999 U.N.T.S. 171, art. 26, (entered into force 23 March 1976), online: UN HCHR <<http://www.ohchr.org/English/law/ccpr.htm>>.

⁵⁸ According to Adalah, the Legal Center for Arab Minority Rights in Israel, online: <<http://adalah.org/eng/backgroundlegalsystem.php>>.

⁵⁹ See for example, Human Rights Watch, "Second Class: Discrimination Against Palestinian Children in Israel's Schools" (New York: Human Rights Watch, 2001), online: Human Rights Watch <<http://hrw.org/reports/2001/israel2/ISRAEL0901-01.htm#TopOfPage>>. See also S. Nathan, *The Other Side of Israel* (New York: Doubleday, 2005), relating experiences of Jewish immigrant woman moving to unrecognized Palestinian village, and documenting Israeli discrimination against Palestinian citizens.

⁶⁰ Israel, *Basic Law of Human Dignity and Liberty*, passed by the Knesset on 12 Adar 5752 and amended on 21 Adar 5754, art. 1, online: Knesset <http://www.knesset.gov.il/laws/special/eng/basic3_eng.htm>.

⁶¹ T. Segev, "Breakdown" *Haaretz* (22 November 2006) reports on an Israel Democracy Institute initiative that brought twelve Israeli Jews and eight Palestinian citizens of Israel to meet monthly for two years to draft a Charter on Jewish-Arab relations within Israel. The group reportedly ended its meetings without agreement, as Jews demanded Arab recognition of Israel as a Jewish state, and Arabs refused, on the grounds that unless Israel became a state of all of its citizens, it would not be democratic and would continue to discriminate against Arabs. According to one of its Jewish members, law professor and former head of the liberal Association for Civil Rights in Israel, Ruth Gavison "One of the fraudulent things about the Israeli-Jewish left is the statement

symbolic official commitment to Jews will continue to be actualized in discriminatory policies on the ground, and that any improvement for Palestinian citizens will be at the margins.⁶² Furthermore, if the birth rate of Palestinian citizens of Israel continues to outstrip that of Jewish Israelis, the latter have only deferred, not solved, the “demographic problem” to which the two-state solution was in large part directed.⁶³ If so, Palestinian citizens of Israel are likely to continue to be the object of policies designed to curb their political influence.⁶⁴

Palestinian rights to national self-determination and sovereignty in their own land. Many Palestinians directly trace their vulnerability to their condition of statelessness. Therefore, creating a viable Palestinian state is essential to the protection of their other rights, and is a good in itself, as a form of national self-expression. The right of the Palestinian people to national self-determination, including the right to establish a state, has been recognized by the international community.⁶⁵

A two-state solution, at least one involving real and not truncated sovereignty, would satisfy this right, however unevenly. All Palestinians would enjoy the symbolic affiliation with a state that embodies the collective identity of the Palestinian people. But only those living within the territorial jurisdiction of the Palestinian state would enjoy the full tangible benefits of statehood; those remaining outside its boundaries – Palestinian citizens of Israel, and Palestinian refugees for whom immigration to the new Palestine is impracticable – would not.

A one-state solution, on the other hand would apportion this right more evenly and justly among Palestinians. However, as the one-state solution necessarily would involve shared sovereignty with Jewish Israelis, Palestinians of

that yes, there will be equality. There will not be equality. There will be dispute. It will be better than [elsewhere] in the region; it will be better than in many other places; there will be a process; but there will not be equality”

⁶² See N. Gordon, “Bitter Wine for Israeli Bedouins” *The Nation* (5 June 2006), describing Israel’s plan to develop a “Wine Route” in the Negev Desert, and continuing to violate land rights and intensify alienation of Bedouin population of Israel.

⁶³ A. Soffer, “Demographics in the Israeli-Palestinian Dispute” *Peacewatch* #370 (22 March 2002), online: http://www.ciaonet.org/pbei/winep/peace_2002/2002_370.html <http://www.ciaonet.org/pbei/winep/peace_2002/2002_370.html>, projecting that non-Jews will be one third of the population within Israel’s pre-1967 borders by 2020; E. Schechter, “Doomsday Demographer Gets a Hearing at the Prime Minister’s office” *Jerusalem Report* (5 November 2001), citing demographer Sergio della Pergola that Israeli Jews’ majority would be “severely eroded” in fifty years.

⁶⁴ I. Lustick, *Arabs in a Jewish State* (Austin: University of Texas, 1980) is still the best analysis of the policies employed by the Israeli government to subjugate its Palestinian citizens.

⁶⁵ See *Question of Palestine*, GA Res. 3236(XXIX), UN GAOR, 29th Sess., Supp. No. 31, UN Doc. A/9631 (1974) 4, affirming Palestinian rights to self-determination and to national independence and sovereignty. See also Bell, *supra* note 3 at 78: international legal position supports three propositions: there is a Palestinian people; Palestinians have rights of self-determination; these rights may be realized in the West Bank and Gaza Strip, not all of former mandatory Palestine.

the Occupied Territories would be sacrificing the exclusive sovereignty a two-state solution would afford so that all Palestinians have some share in this right. Of course, when sovereignty is shared between two peoples, each enjoys less of that right than would be the case were one or the other to have exclusive sovereignty. Shared sovereignty, while a compromise, is a far cry from no sovereignty at all, and the specific identities and interests of each people can be enshrined and protected in a variety of ways.

Control over East Jerusalem. East Jerusalem has been the economic, political, and cultural hub of the West Bank and is the centre of religious life for Palestinian Muslims and Christians. A Palestinian state lacking a capital in East Jerusalem is inconceivable to many Palestinians and this strong desire will not be satisfied by locating the capital in a re-named suburb. Although the international legal status of Jerusalem is contested – the UN Partition Plan provided for an internationally administered *corpus separatum* for the city and Israel’s annexation of the city has never been recognized as legal by the international community – Palestinians have rights of sovereignty there that are equal or superior to those of Israel.⁶⁶

A two-state solution would be adequate to address Palestinian rights to Jerusalem provided that the two sides can agree to an equitable division of the city, coupled with agreements guaranteeing the rights of non-citizens who remain in the quarters falling under the control of the other state. Given the intermingling of the populations and the intense attachments of each side to areas that are, literally, part and parcel of each other (such as the Western Wall and the Haram ash-Sharif) such a division seems nearly impossible.⁶⁷ A one-state solution would vault over all these difficulties, and provide Palestinians and Israelis equal access to the city to which both peoples are deeply devoted.

Freedom from Israeli occupation of the West Bank and Gaza Strip. Properly speaking, there is no international legal right to be free of foreign military occupation as such. On the other hand, Israeli occupation has entailed many violations of Palestinian rights and an end to Israeli occupation would free Palestinians from these violations. Nations are barred from territorial acquisition by war and Israel has been under call by the United Nations Security Council to end its occupation of Palestinian territories since 1967.⁶⁸ Israeli occupation is the principal obstacle to the realization of Palestinian right to self-determination.

⁶⁶ J. Quigley, “Sovereignty in Jerusalem” (1995) 45 *Cath. U. L. Rev.* 765: Citizens of Palestine had rights to sovereignty over all of Palestine, including Jerusalem, by virtue of a self-determination principle that outweighs Israeli claims based on occupation. *Cf.* Dumper (this volume): International law provides no clear template for resolution of disputed claims over the city.

⁶⁷ See Dumper in this volume, describing the complexity of dividing Jerusalem.

⁶⁸ *Principles for a Just and Lasting Peace in the Middle East*, SC Res. 242, UN SCOR, 1967, UN Doc. S/Res/242, online: The Avalon Project, Yale Law School <<http://www.yale.edu/lawweb/avalon/un/un242.htm>>.

Occupation has provided the umbrella under which Israel has colonized Palestinian land in the West Bank, violating both individual property rights of Palestinian landowners,⁶⁹ and Israel's obligations as an occupying authority.⁷⁰ Specific policies of Israel's occupation forces including restrictions on freedom of movement,⁷¹ detention without charge,⁷² torture,⁷³ assassination,⁷⁴ home demolition,⁷⁵ curfew,⁷⁶ and others have entailed violations of Palestinian rights to life, freedom of travel, housing, medical care, work, due process, and dignity.

An end to Israeli occupation would be effected by either a one-state or a two-state solution. In regard to the rights of Palestinians now living under Israeli occupation, both solutions are equally effective.

ii. Key Israeli Rights and Interests

Key Israeli rights and interests include: rights to individual and collective security; preserving Israel as a Jewish state; achieving sovereignty in Jerusalem; continued settlement in the West Bank; and regional acceptance and friendly relations with neighbouring Arab countries.

Rights to individual and collective security. All nations have rights to be free of aggressive attack⁷⁷ and individuals have rights to life that are violated by acts of violence, and no less so Israel as a nation and Israeli Jews as individual

⁶⁹ Erlanger, *supra* note 39.

⁷⁰ Specifically, Israeli settlements violate Article 49 of the Fourth Geneva Convention.

⁷¹ See B'tselem – The Israeli Information Center for Human Rights in the Occupied Territories, “Restriction of Movement”, online: B'tselem <<http://www.btselem.org/English/Freedom%5Fof%5FMovement>>.

⁷² See B'tselem, “Administrative Detention”, online: <<http://www.btselem.org/English/Administrative%5FDetention>>.

⁷³ See B'tselem, “Torture”, online: <<http://www.btselem.org/english/Torture/Index.asp>>.

⁷⁴ B'tselem, “Take No Prisoners – The Fatal Shooting of Palestinians by Israeli Forces During Arrest Operations” (May 2005), online: <http://www.btselem.org/english/publications/summaries/200505_take_no_prisoners.asp>.

⁷⁵ B'tselem, “Through No Fault of Their Own: Israel's Punitive House Demolitions in the al-Aqsa Intifada (November 2004), online: <http://www.btselem.org/english/publications/summaries/200411_punitive_house_demolitions.asp>.

⁷⁶ B'tselem, “New Report: Lethal Curfew – The Use of Live Ammunition to Enforce Curfew” (16 October 2002), online: <http://www.btselem.org/english/press_releases/20021016.asp>.

⁷⁷ The *Charter of the United Nations* bars recourse to armed force in international relations except in a valid exercise of self-defense under Article 51, or in collective action to enforce peace under Chapter VII. It further specifies “suppression of aggression” as one of its principle goals. Principle VI.a of The Principles of the Nuremberg Tribunal (available at <http://deoxy.org/wc/wc-nurem.htm>), defines aggressive war as a crime against peace.

human beings.⁷⁸ Notwithstanding the power of Israel's military, it is indisputable that Israelis live with a chronic sense of insecurity, and that they fervently desire, and deserve, to live a normal life of peace.

Perhaps the most important lesson of Israel's build-up of immense military power yet continued sense of embattlement and threat is that security, ultimately, does not stem from military superiority. While a two-state solution might defuse hostilities in the short term, the rights of Palestinian refugees and Palestinian citizens of Israel would remain smouldering issues. Israelis know that some Palestinians support a two-state solution as part of the *al-barnamij al-marhali*, or "program of stages" adopted by the PLO in 1978, whereby acceptance of a Palestinian state on the West Bank and Gaza Strip would be a first step toward total liberation of Palestine.⁷⁹ The election of a Hamas majority in the January 2006 elections to the Palestinian Legislative Council is likely to further convince many Israelis of the ultimate determination of Palestinians to destroy Israel. An atmosphere of tension and distrust is therefore likely to accompany the two-state solution. Israel is likely to remain highly vigilant regarding its security and to take direct actions to guarantee it. Palestinians may initially accept a demilitarized state, but if they continue to suffer Israeli incursions and the same chronic sense of insecurity they faced under Israeli occupation, they may begin to question the legitimacy of a state that cannot fulfill basic state functions, including defense of the nation's territory and individuals. It would then be only a few short steps to a resumption of larger scale conflict.⁸⁰

A one-state solution, on the other hand, would resolve all the major outstanding Palestinian grievances with Israel, and thus largely eliminate the sources of conflict. No doubt, some Palestinians would remain ideologically committed to establishing an Islamic state in all of Palestine, but there are strong indications that this group is a small minority within the Palestinian population.⁸¹

⁷⁸ UN Security Council Resolution 242 (*supra* note 68) recognizes the right of all states in the region – including, of course, Israel – "to live in peace within secure and recognized boundaries free from threats or acts of force." The individual right to life is sanctified in Article 3 of the *Universal Declaration of Human Rights*, *supra* note 56.

⁷⁹ Alternative Palestinian Agenda, *supra* note 43, citing Israeli distrust of Palestinian intentions due to awareness of "*al-barnamij al-marhali*".

⁸⁰ As Tilley, *supra* note 1 at 3-4, argues, "The resulting Palestinian statelet would be blocked off physically from the Israeli economy, its major cities would be cut off from each other, and its government would be unable to control the territory's water resources, develop its agriculture, or manage its trade with its neighbor[s]. It would comprise little more than a sealed vessel of growing poverty and demoralization."

⁸¹ For example, according to a poll conducted by the Jerusalem Media and Communications Center in June 2006 ("Poll Results on 100 days on the formation of the 10th Palestinian government"), only 2.9% of Palestinians polled in the Occupied Territories supported the aim of establishing an Islamic state in Palestine, while another 7.4% supported creating one Palestinian state. Results of the poll are available online: JMCC

Preserving Israel as a Jewish democratic state. The lesson that many Jews drew from the Nazi holocaust was that the defense of the Jewish people should never be entrusted to others. A majority of Jewish Israelis clearly support the idea of a Jewish state as the ultimate guarantor of the safety of the Jewish people and as the national expression of Jewish identity. Maintaining a safe haven for Jews worldwide, and facilitating their in-migration, is a key component of Israel's role. Israel's political leadership has always operated as if these goals could only be achieved by establishing and maintaining a dominant Jewish majority in the country. While Israel has never publicly avowed a precise formulation of a desirable demographic mix, there is evidence that its leaders have set a Palestinian minority of 15-20% as a target.⁸²

There is substantial legal support for the proposition that the international community has recognized the Jews as a people with rights to self-determination in Palestine.⁸³ The Council of the League of Nations incorporated the terms of the Balfour Declaration into the British Mandate for Palestine, approving the "establishment in Palestine of a national home for the Jewish people."⁸⁴ A Jewish state was recommended by the United Nations General Assembly Partition Plan of 1947.⁸⁵ Israel was admitted to the United Nations in 1949.⁸⁶ Its independence and right to sovereignty were affirmed in 1967, in the aftermath of the June War.⁸⁷ Israel, today, is recognized by all but a handful of states.

But is Israel's desire to remain a state with a predominant Jewish majority justifiable in international law? The answer is almost certainly no. None of the sources that Israel cites as grounds for Jewish self-determination and sovereignty entitle Israel to any specific demographic configuration. Indeed, the U.N. Partition plan would have established a "Jewish state" in which Jews were perhaps a slight minority, undercutting the notion that a "Jewish state" necessarily entailed a strong Jewish majority.⁸⁸ All of these same sources also contain at least

<<http://www.jmcc.org/publicpoll/results/2006/no58.pdf>>.

⁸² N. Masalha, *Expulsion of the Palestinians* (Washington, D.C.: Institute for Palestinian Studies, 1992) at 199; Israeli Transfer Committee in 1948 recommended maximum Arab population of 15% in mixed cities and towns, and reportedly advised a maximum Arab population in the country of 20%.

⁸³ Yet see J. Quigley, *The Case for Palestine* (Durham: Duke University Press, 2005) for a critique on legal grounds for Israel's establishment.

⁸⁴ Text of the Palestine Mandate is available online through the Avalon Project at Yale Law School <<http://www.yale.edu/lawweb/avalon/mideast/palmanda.htm>>.

⁸⁵ United Nations General Assembly Resolution 181 of 1947, available at <http://www.yale.edu/lawweb/avalon/un/res181.htm>.

⁸⁶ United Nations General Assembly Resolution 273 of 1949, *supra* note 19.

⁸⁷ UN Security Council Resolution 242, see *supra* note 68.

⁸⁸ There is some disagreement among sources as to the population figures for the two prospective states. Quigley, *supra* note 83 at 36, cites UN Statistics showing that the Jewish state would have 499,020 Jews and 509,780 Palestinian Arabs. H. Cattani, *Palestine and International Law*

general protections for the rights of non-Jews that would bar Israel from taking discriminatory actions with respect to them. Nor is it clear that any legal authority could entitle Israel to violate fundamental Palestinian rights – to equality, to property, *et cetera* – that are secured in basic instruments of international human rights law.

It follows, then, that Israel's desire to maintain a strong Jewish majority, while deeply held, is not a "right" protected in international law. Thus, it cannot operate as a legal justification for the denial of Palestinian rights – for example, the right of Palestinian refugees to return.⁸⁹ Putting that to one side for a moment, let us consider how Israel's desire for Jewish demographic predominance would fare under the two- and one-state solutions.

On the face of it, it seems a simple and obvious fact that a two-state solution is compatible with the goal of preserving Israel as a state for the Jews – that, indeed, is its very rationale – and a one-state solution is not. But the reality is that Israel today is already a flawed democracy and as long as it has a significant Palestinian minority, it will continue to be. As we have already noted, given the higher birth rate among Palestinians than among Jewish Israelis, a two-state solution will delay confrontation with, but not ultimately resolve, the contradiction between Israel's commitments to its Jewishness and to democracy. To date, that contradiction has been resolved in favour of Israel's Jewish character at the expense of its democratic character, but more measures will be necessary to contain Palestinian growth or the contradiction will become more acute and visible over time.

There is no escaping the difficult fact that a one-state solution would require an abandonment of the goal of preserving Israel as a predominantly Jewish state, or one in which Jews enjoy privileged status over non-Jews. The fact that Israel has no right to maintain Jewish predominance in international law is likely to provide small comfort to many Israeli Jews.

The question they will have to face is whether that goal is an end in itself or a means to achieve other ends, and, if a means, whether it is superior to other political frameworks in achieving them. As we have seen, Jews have not always insisted on separate statehood and Israelis, with the rest of us, now have sixty years of agonized experience with partition on which to reflect. Whereas a predominantly Jewish state may have seemed sensible in 1948, efforts to establish

(London: Longman Group, 1973), p. 101, cites these same figures, as does D. Hirst, *The Gun and the Olive Branch* (3d ed., New York:Thunder's Mouth Press and Nation Books, 2003) p. 257. Yet A. Sa'di, "Afterword," in *Nakba: Palestine, 1948, and the Claims of Memory* (A. Sa'di and L. Abu-Lughod, eds.), p. 290 maintains that the Jewish state would have been inhabited by 499,000 Jews and 438,000 Arabs. Certainly the borders of the Jewish state were drawn with the expectation of large-scale Jewish immigration, but the General Assembly could not have known in advance the scale of it.

⁸⁹ Kagan, *supra* note 9.

and maintain it have only brought strife, and ultimately insecurity, to Israeli Jews. It is not inconceivable that some, and eventually many, Israelis will be convinced to try a different course.

It is clear that a single state ensuring equality for all citizens would be more truly democratic and would eliminate the underlying fault that runs through the Israeli polity today. While Israel would surrender its character as a “Jewish state,” it would more fully realize its commitment to democracy – a commitment that, no doubt, many Jewish Israelis hold deeply. Finally, just as for Palestinians, shared sovereignty for Jews does not imply the complete negation of sovereign rights, and arrangements to preserve Jewish interests and identity can be incorporated into a one-state framework.

Sovereignty in Jerusalem. Jerusalem is the center of Jewish religious life and a symbol of the connection of Jews to the land. Continuing control over most or all of Jerusalem is a *sine qua non* for a large majority of Israeli Jews. As we have noted previously, the international legal status of Jerusalem is contested and Israel’s designation of it as its capital has not been recognized by the international community. However, its claims of sovereign rights to the city are stronger with respect to West Jerusalem than with respect to East Jerusalem.⁹⁰

As we have also previously seen, a two-state solution will require a division of sovereignty within Jerusalem, while a one-state solution would avoid the difficulties entailed in territorial division. Full sovereignty over some parts of the city would be traded for shared sovereignty over all.

Continued access to residence in parts of the country of particular historical importance to Jews. While not of such universal significance to all Israelis, and a value that many would readily sacrifice in exchange for peace, many others hold passionate and sincere attachments to the parts of the West Bank that are viewed as the heartland of the ancient Jewish kingdoms. Jewish Israelis, however, have no legal rights to settle in the West Bank, and Israel, on the contrary, has an international legal obligation not to settle its civilian in occupied Palestinian territories.⁹¹ Still, this desire is strongly held by some Israelis.

A two-state solution would likely, but not necessarily, entail evacuation of Jewish settlements in the West Bank and curtailment of opportunities for Jews to

⁹⁰ M. Eisner, “Jerusalem: An analysis of legal claims and political realities” (1993-1994) 12 *Wis. Int’l L.J.* 221 which finds Israeli claims weak with respect to East Jerusalem, including the Walled City, and superior to Palestinian claims regarding West Jerusalem.

⁹¹ *Geneva Convention relative to the Protection of Civilian Persons in Time of War*, 12 August 1949, 75 U.N.T.S. 287, art. 49, (entry into force 21 October 1950). The International Court of Justice, as part of its 2004 advisory opinion on Israel’s separation Wall, unanimously agreed that this provision applied to the West Bank and barred Israel’s extensive settlement program there. *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, [2004] I.C.J. Rep. 136.

settle there in the future. In a single state, however, there would be no need to restrict residence by either Jews or Palestinians in any part of the country. In theory, Jewish settlements and settlers could remain where they are in the West Bank, although the rights of Palestinian property owners whose lands were taken for settlements would still require redress.

Regional acceptance and friendly relations with the surrounding Arab countries. It may well be the case that Israelis have despaired of ever gaining genuine acceptance in the Arab world. Israel has had a peace agreement with Egypt for nearly thirty years and with Jordan for more than a decade, but those agreements have, manifestly, not led to acceptance by the populations of those countries, nor those of other countries in the Middle East. Of course, Israel has no legal rights against its neighbours beyond respect for its borders and security and cannot compel their friendship or admiration.

Attitudes toward Israel in the Arab and Muslim worlds are likely to continue to be significantly influenced by perceptions of its treatment of the Palestinians. A two-state solution that does not genuinely address the plight of Palestinian refugees and Palestinian citizens of Israel and leaves injustices festering is unlikely to change the current reality of “cold peace” in the region. It is conceivable that a single, democratic secular state in Israel/Palestine may be ideologically challenging to some forces in the region in other ways, but it is far less likely to generate the kind or level of hostility that Israel currently attracts. On the contrary, it may constitute a positive beacon of tolerance, egalitarianism, and other progressive ideals that will inspire democratic forces in the region.⁹²

One of the key points that should emerge from this exercise is that different resolutions of the conflict have differential impacts not only as between Palestinians and Israelis, but also as between differently situated segments of the Palestinian people.⁹³ The one-state solution is the most just, not only in the way that it maximizes and reconciles rights between Palestinians and Israelis, but also in the way that it distributes justice among Palestinians themselves. In particular, the one-state solution is the only framework that would enable the realization of rights to equality for Palestinian citizens of Israel and rights of return for Palestinian refugees. If we are to truly take rights seriously, as a principled rights-based approach mandates, no solution to the conflict can afford to simply ignore the rights of these two groups of Palestinians. As importantly, no solution that leaves basic grievances unresolved will ever withstand the test of time.

⁹² J. Halper, “Beyond Road Maps and Walls” (2005) 37:1 *The Link* 1. Halper proposes a “two stage” solution, in which Palestinian-Israeli reconciliation is followed by a Middle East Union, catalyzing economic growth and democratic reforms regionally.

⁹³ O.Dajani, “Preparing for the inevitable negotiation” (2006) 139:3 *Journal of Palestinian Studies*. 39.

Sharing sovereignty clearly involves serious compromise to each people's rights to nationhood. It is, however, a reciprocal compromise, and the only means of avoiding a zero-sum disposition in which some enjoy full rights and others enjoy none. It would require Jewish Israelis to abandon a deeply cherished value – that of maintaining Israel's character as a state for the Jews. It would also require Palestinians to surrender hopes of an independent Palestinian state, and to rethink, and perhaps attenuate, their connections to the broader Arab world.

Assuming, however, that the one-state solution is the most desirable resolution of the Palestinian-Israeli conflict, how might that end be achieved? More specifically, if a rights-based approach encompasses respect for procedural regularity, is there a legal path to achieve that goal? These are questions that must be engaged if proponents of the one-state solution expect to gain genuine political traction.

VI GETTING TO ONE STATE

Those committed to charting a legal path to a one-state solution must confront one overriding consideration: as a matter of law, Israelis and Palestinians cannot be compelled to accept such a solution against their wills. Israel is a recognized sovereign state, and although the Palestinians have not yet achieved sovereignty, their right to establish a state has also received international recognition. It would seem completely incompatible with the concept of sovereignty, even in its modern, somewhat permeable form, for any external entity or group of states to force Israel to extend jurisdiction to the entirety of former Palestine and to share sovereignty with Palestinians within that territory. It would seem equally inconsistent with these rights were the international community to force the Palestinian people into an unwanted union with Israeli Jews.

The question thus becomes: under what conditions might Israelis and Palestinians choose to bind their people's futures together in one polity? We will look first at prospects for internal developments in support of one state within each group and then turn to the potential roles that external actors may play in encouraging the one state solution.

i. Support for one-state among Palestinians

As it stands today, among Palestinians in the West Bank and Gaza Strip, support for a one-state solution appears to range between one quarter and one third, but no organized political party or prominent political leader espouses a single state.⁹⁴

⁹⁴ See Abunimah, *supra* note 1 at 162 for reporting on polls conducted by the Jerusalem Media and Communications Center. But see Tilley, *supra* note 1 at 241-242 which identifies methodological problems with JMCC polls.

Logically, Diaspora Palestinians may be expected to support a single state in higher proportions than those living under Israeli military occupation, and perhaps so would many Palestinian citizens of Israel. These are the two Palestinian constituencies whose interests would be least adequately addressed under a two-state solution. But there is little hard data to substantiate this expectation.

In one benign scenario, a one-state solution may follow a period of diminished tension and a gradual realization among both Israelis and Palestinians that economic, administrative, and other interests would be best served by union. This assumes, however, an interim phase in which tensions indeed diminish considerably. As I have already suggested, a two-state solution is unlikely to accomplish long-term stability. The far more likely future – in a truncated, discontinuous Palestinian entity lacking full sovereign powers – is virtually guaranteed to bring continued, if sporadic, violence and conflict. So the necessary condition for this benign scenario almost certainly will not be met. We need to look, instead, at how the two parties to the conflict are likely to respond to circumstances of continued, and possibly even intensified, tension.

Such predictions are always somewhat risky, but it is not difficult to imagine the rapid conversion of a majority of Palestinians to support for a one-state solution. All that may need to happen is for many to finally acknowledge that a viable Palestinian state is no longer possible – a moment that may not be so distant from the present.⁹⁵ There are some indications that this transformation has already begun. Perhaps the most notable shift occurred in the summer of 2005, when 170 Palestinian civil society organizations issued a public call for boycotts, divestment, and sanctions against Israel on the anniversary of the International Court of Justice's advisory opinion on Israel's separation Wall. While the statement did not explicitly call for a one-state solution, its demands included realization of the Palestinians' right of return, and end to Israeli occupation, and, especially tellingly, equality for Palestinian citizens of Israel.⁹⁶ As we have seen, these are not rights that are easily accommodated within a two-state framework. Moreover, the civil society organizations represented all major segments of the Palestinian people – those in Israel, in the Occupied Territories, and in exile – and across many occupational and other sectors.⁹⁷

⁹⁵ Abunimah, *supra* note 1 at 170-171: A Palestinian majority would, if offered a single state option, willingly accept; Tilley, *supra* note 1 at 188, quoting Palestinian political scientist Ali Jirbawi: "Most Palestinians prefer the idea of separation, because they want their own state. But Sharon's idea of a two-state solution is to squeeze us into cantons...Given a choice between cantonization and one-state, Palestinians will choose the latter."

⁹⁶ ICJ Advisory Opinion, *supra* note 91. The text of the statement is available online: Palestine BDS Campaign <<http://www.bds-palestine.net>>.

⁹⁷ The list of endorsing organizations is also available at Palestine BDS Campaign <<http://www.bds-palestine.net>>.

One significant restraint on a strategic shift in support of a single state is the resistance of the secular nationalist Palestinian leadership. Most PLO and Palestinian Authority figures appear wholly invested in a strategy of negotiations toward a two-state solution.⁹⁸ Palestinian officials, including PLO Chairman Yasser Arafat before his death, and Palestinian Authority Prime Minister Ahmad Qurei, have occasionally raised the possibility of shifting strategy to seek a single state.⁹⁹ Their pronouncements, however, were widely dismissed as posturing.¹⁰⁰ An admission by the leadership that its two-state strategy had failed, and an announcement of a shift of strategy in favour of equal rights in a unified Israel/Palestine, could have a galvanizing effect on many Palestinians. The shift could legitimately be represented not as a deviation, but rather as a return to the PLO's earlier principled stand in support of a secular democratic state.

At the moment, of course, there is no forum within the Palestinian national movement to debate strategic options. The Palestinian Authority only operates in the Occupied Territories and its elected members represent the perspective of only one segment of the Palestinian people. Meanwhile, the PLO – the internationally recognized representative body of the Palestinian people, is nearly defunct.¹⁰¹ The supreme policy making body of the PLO – the Palestine National Council¹⁰² – has not met since 1996. Even under the best of circumstances, the PNC was never a fully representative body and membership was always brokered among established political parties and groupings.¹⁰³ If there is, indeed, an emerging gap between Palestinian “officialdom” fixated on the two-state strategy, and Palestinian civil society, moving in the direction of a one-state strategy, an urgent preliminary need may be to recreate a forum for the frank debate of options for strategic directions. If this is done via a revivification of the PLO, reforms must truly open up PNC membership and free it from the monopoly of established

⁹⁸ There is evidence, however, that some Palestinian leaders privately question this position and are at least intrigued by the one-state solution. Abunimah, *supra* note 1 at 162, quoting PLO legal advisor Michael Tarazi that Palestinian Authority officials had privately admitted support for one-state but could not state so publicly.

⁹⁹ Reuters, “Queria: Israel’s unilateral moves are pushing us toward a one state solution” *Ha’aretz*, online: Haaretz.com

<<http://www.haaretz.com/hasen/pages/ShArt.jhtml?itemNo=381153&contrassID=2&subContrassID=1&sbSubContrassID=0&listSrc=Y>>; S. Milne, “Two state plan at risk, warns Arafat” *The Guardian* (24 January 2004), online: Guardian Unlimited <<http://www.guardian.co.uk>>.

¹⁰⁰ D. Rubenstein, “Making threats, cultivating an image” *Ha’aretz* (9 January 2004), describing Qureia’s statement as “threat”.

¹⁰¹ The PLO was granted observer status in 1974, and was invited to participate in all deliberations on Palestine. See *Observer Status for the Palestine Liberation Organization*, GA Res. 3237, UN GAOR, 29th Sess., UN Doc. A/RES/3237/29 (1974).

¹⁰² See Cobban, *supra* note 23 at 11 for a description of the structure of the PLO.

¹⁰³ Cobban, *ibid.* at 11: The PNC requirement of elections never followed in practice; membership was negotiated among leaders of major political factions.

political groupings to effectively foster genuine debate and enable a strategic shift.¹⁰⁴

ii. Support for one state among Israelis

The obstacles on the Israeli side are infinitely greater. A single state is bitterly opposed across almost the entire Israeli political spectrum and is supported by only a few isolated intellectuals.¹⁰⁵ Needless to say, the likely future of continued or intensified tension will fuel distrust and hostility toward the Palestinians among Israelis. That is certainly indicated by the trajectory of Israeli politics since the outbreak of the al-Aksa *Intifada* in September 2000. This period has seen the ascendance of right wing forces, such as the patently racist Israel Beitenu party – now a member of Israel’s ruling coalition – and the redefinition of the Israeli political landscape, such that the Kadima party with roots in revisionist Zionism, now occupies the political centre. A measure of commitment to separation from the Palestinians is exemplified in the growing popularity among Jewish Israelis of the idea of “transfer” of Palestinians under Israeli rule – either through mass expulsions or through the redrawing of political boundaries to exclude them.¹⁰⁶

Yet there is another noticeable trend that has emerged in recent years in Israel – a small but influential number of Israeli voices calling for fundamental reassessment of the Zionist project and supporting the creation of a binational state. These include former deputy mayor of Jerusalem Meron Benvenisti,¹⁰⁷ political activist Haim Hanegbi,¹⁰⁸ journalist Daniel Gavron,¹⁰⁹ and others. They come from different backgrounds and ideological positions, but they are all

¹⁰⁴ There have been recent calls, of course, to reform the PLO, although the focus of these efforts has been the integration of Hamas into the formerly purely secular organization. The “Cairo Declaration” of March 2005, for example, called for the creation of a committee to select PNC members, but provided that these committee members would be appointed from among established Palestinian parties and factions. This would broaden the base of the selection process to include more such groups, but does not fundamentally democratize it. See G. Usher, “The Calm Before the Storm?” *Al-Ahram Weekly* (14-30 March 2005), online: <http://weekly.ahram.org/eg/2005/735/re1.htm> for comments on, and providing text of, the Cairo Declaration.

¹⁰⁵ Abunimah, *supra* note 1 at 171: Israeli Jews view one state as “invitation to commit suicide”.

¹⁰⁶ R. Blecher, “Living on the Edge: the Threat of ‘Transfer’ in Israel and Palestine: in J. Beinun & R. Stein, *The Struggle for Sovereignty: Palestine and Israel, 1993-2005* (Stanford: Stanford University Press, 2006). “Transfer” has more legitimacy in Israel today than at any point since 1948.

¹⁰⁷ Shavit, *supra* note 30, interviewing Meron Benvenisti.

¹⁰⁸ Shavit, *ibid.* interviewing Haim Hanegbi.

¹⁰⁹ Gavron, *supra* note 36; and P. Hirschberg, “One state awakening” *Ha’aretz* (10 December 2003), interviewing Daniel Gavron.

deeply pessimistic about the long-term prospects for Israel, if it continues in its current path.¹¹⁰

The Israeli supporters of a one-state solution need not persuade a vast swath of the Jewish Israeli public – at least not initially. Rather, the change could be catalyzed by Israeli political elites. The process would be more complex and contentious than it might be on the Palestinian side. But if a leader were to be convinced that Israel's future cannot ultimately be guaranteed by forcible imposition of its will over the Palestinians, and were he or she willing to speak forthrightly to the Israeli people about its future in the region, change might come quicker than expected.

Such a scenario is not likely to be realized if Israel feels strong, prosperous, and secure. Rather, it will only be brought to such a radical change out of desperation and a sense of beleaguerment. Since the Palestinians are currently powerless to bring such a condition about alone, the question becomes: could it be accomplished in concert with external actors?

iii. The role of the international organizations and other states

Although the international community lacks the legal capacity to force a one-state solution directly on undesiring Palestinians and Israelis, it nonetheless possesses powerful means to herd the parties toward political union indirectly. Perhaps the international community's biggest "stick" would be a threat to enforce, or actual enforcement of, the Palestinian right of return. There is nothing in principle that would bar the United Nations Security Council from declaring the continuing plight of the Palestinian refugees a threat to peace and to impose sanctions, or even resort to force, to compel Israeli compliance.¹¹¹ This action, alone, would bring about a result nearly tantamount to imposition of a one-state solution. Theoretically, the same actions could be taken to compel Israel's withdrawal from the West Bank, or to halt its construction of the separation wall, or to stop construction of illegal Israeli settlements. While none of these actions would directly bring about a single-state solution, forcing Israel to face staunch international resistance, and denying it alternatives, might pressure it ultimately in that direction.

¹¹⁰ A similarly pessimistic view is expressed by former Knesset speaker Avraham Burg, who, while not endorsing the one-state solution, argues that democracy cannot be maintained without granting equal rights to Arabs and Jews, and that Israelis must choose between land and democracy. A. Burg, "The End of Zionism?" *The International Herald Tribune* (6 September 2003).

¹¹¹ Under Article 39 of the UN *Charter*, the Security Council has broad discretion to identify a threat to the peace, a breach of the peace, or an act of aggression, and to decide what measures to remedy the situation.

There is, of course, little indication that the international community is inclined to take this course and it is difficult to envision how this situation might change in the near future.¹¹² After all, these options have always been available, but have never been exercised. It is almost inconceivable that states would adopt this radical course until the official representative body of the Palestinians, the PLO, assumes the lead by shifting to a one-state strategy. Few, if any, states will be “more Palestinian than the Palestinians.” It is worth noting, however, that these theoretical possibilities exist, even if current political circumstances make them unattainable.

iv. *The role of international civil society*

If international organizations and states are, for now and the reasonably foreseeable future, disinclined to employ legal leverage to effectuate, might the initiative come from elsewhere? For example, could Israel face the kind of international isolation and condemnation that South Africa faced during the apartheid era, led by groups in international civil society?

This is a terribly complex question with many factors to weigh. The world is a vastly different place than it was in the 1980s, the heyday of the anti-apartheid movement. Among the most important changes since that era are the emergence of the United States as the world’s only superpower; the tightening of the U.S. alliance with Israel; and the unfolding of the so-called “War on Terror.” All of these developments (and more) create a far less friendly environment for the emergence of any equivalent to the anti-apartheid movement. There are also critical differences between Israel and South Africa that make the prospects of international isolation more challenging.¹¹³

There is, of course, a nascent international civil society movement advocating boycotts, divestment, and sanctions (“BDS”) against Israel that parallels the aforementioned Palestinian movement for BDS. It consists at this point of a disparate mix of loosely coordinated organizations, churches, and other

¹¹² The great obstacle to these prospective actions would appear to be the U.S. government, with its tremendous diplomatic and political power, and its willingness to employ these assets to insulate Israel from the enforcement of international law. The U.S. has exercised its veto power in the Security Council no fewer than forty one times since 1948 on Israel’s behalf – half of the total number of uses of its veto power for all purposes since the birth of the UN. Great political changes would have to occur within the United States to begin to check this trend and there is no reason to believe that such changes are in the making. See Tilley, *supra* note 1 at 89-129, documenting incapacity of external actors to deflect current Israeli policies.

¹¹³ For example, the struggle of black South Africans for equality resonated with the U.S. experience of the struggle for civil rights. Israel, on the contrary, reads as a form of “affirmative action” for the Jews. On the comparison of Israel to South Africa, see C. McGreal, “Worlds Apart” *The Guardian* (1 February 2006), online; Guardian Unlimited <<http://www.guardian.co.uk>>.

groups with roots in Palestine, Europe, South Africa, and the U.S. Its campaigns range from shareholders actions within corporations (such as Caterpillar),¹¹⁴ to civil lawsuits or criminal actions against Israeli officials for human rights violations,¹¹⁵ to the boycott of Israeli academics urged by the National Association of Teachers in Further and Higher Education in mid-2006.¹¹⁶ The primary demands of this movement to this point have been to stop construction of Israel's separation wall and to end Israeli occupation of the West Bank and the Gaza Strip.

This movement, too, shows signs of a strategic shift in support of a one-state solution. It is significant, for example, that the resolution passed in May 2006 by NATFHE spoke of Israeli "apartheid policies."¹¹⁷ A more recent boycott resolution passed by the Ontario branch of the Canadian Union of Public Employees cites the "apartheid nature of the Israeli state", and specifically cited General Assembly Resolution 194.¹¹⁸ Whatever the merits of the apartheid analogy, the point here is that the concerns being articulated no longer run solely to Israeli occupation, and the demands strain to be met through the conventional version of the two-state solution.¹¹⁹

¹¹⁴ The American-based organization A Jewish Voice for peace has been active in the Caterpillar shareholder action; see its statements online: Stop Caterpillar <<http://www.catdestroyshomes.org/index.php>>.

¹¹⁵ V. Dodd & C. Urquart, "Israeli evades arrest at Heathrow over army war crime allegations" *The Guardian* (12 September 2005), online: Guardian Unlimited <<http://www.guardian.co.uk>>, reporting on senior Israeli military officer's evasion of arrest warrant at Heathrow Airport.

¹¹⁶ B. Joffe-Walt, "Lecturers back boycott of Israeli academics" *The Guardian* (30 May 2006), online: Guardian Unlimited <<http://www.guardian.co.uk>>, reporting on the NATFHE vote in support of an Israel boycott. In May 2007, the University and Colleges Union, a successor union to the NATFHE, voted to conduct debate over the possibility of a boycott of Israeli academic institutions, with an eye toward returning to the issue and deciding whether to implement such a boycott after one year. Debbie Andalo, "Lecturers back boycott of Israel," *The Guardian*, May 30, 2007. Boycotts of Israeli goods were also supported by trade unions in South Africa (Cnaan Liphshiz, "South Africa's largest trade union seeks to boycott Israel," *Haaretz*, May 31, 2007), the United Kingdom (Haim Bior, "Major British workers' union joins moves to boycott Israel," *Haaretz*, July 8, 2007), and Northern Ireland ("Boycott and divestment gains ground in Northern Ireland," Press Release, *Trade Union Friends of Palestine*, Jun 27, 2007, viewed at <http://electronicintifada.net/v2/article7064.shtml>).

¹¹⁷ M. Cowell, "A British teachers' union weighs boycott of Israeli teachers" *New York Times* (14 May 2006) A11, online: *New York Times* <<http://www.nytimes.com>>, reporting that NATFHE resolution noted "continuing Israel apartheid policies".

¹¹⁸ For the text of the CUPE resolution, see Coalition Against Israeli Apartheid, Press Release, "CUPE Ontario Votes in Support of Boycott, Divestment, Sanctions Against Israeli Apartheid" (29 May 2006), online: Coalition Against Israeli Apartheid <<http://electronicintifada.net/cgi-bin/artman/exec/view.cgi/12/4745>>.

¹¹⁹ On the other hand, it is entirely possible to invoke the analogy of apartheid without supporting a single state, as is demonstrated in former President Jimmy Carter's book *Israel: Peace not Apartheid* (New York: Simon and Schuster, 2006). President Carter explicitly limits the term

This movement has faced fierce opposition from Israel and its supporters in the U.S. and Europe. The British Association of University Teachers reversed its own boycott resolution last year after one month of withering attack.¹²⁰ The Presbyterian Church, which passed a divestment resolution in 2004¹²¹ and faced condemnation from Israel's defenders in the U.S., modified, but did not rescind their position in 2006.¹²² Despite this opposition, the movement seems to be slowly, fitfully, gaining momentum.

It is, perhaps, remarkable that the BDS movement has achieved the progress it has without clear direction and leadership from the formal representatives of the Palestinian people – namely, the PLO. Again, were the PLO leadership to make the strategic judgment to abandon negotiations toward a two-state solution and plunge ahead toward a one-state solution, framing their demand as a struggle for equality and fundamental human rights, this could be immensely powerful. Indeed, there are indications that Israeli leaders are quite aware of this possibility – and are terrified by it.¹²³

VII CONCLUSIONS

After six decades during which the international community has attempted, at least intermittently, to implement a partition of Palestine into two states, it is time to admit a painful truth: these efforts have brought only conflict and strife. There is no realistic scenario by which this pattern will change. The time has come for a new paradigm.

A rights-based approach to resolving the Palestinian-Israeli conflict strongly militates in support of a one-state solution to the Palestinian-Israeli

“apartheid” to Israel’s treatment of Palestinians under occupation, yet continues to strongly support a two-state solution.

¹²⁰ M. Taylor, “Vote ends Israeli boycott” *The Guardian* (27 May 2005), online: Guardian Unlimited <<http://www.guardian.co.uk>>, quoting AUT member regarding “a well funded campaign and massive pressure on members” to reverse earlier boycott vote.

¹²¹ For the text of this resolution, see *General Assembly Resolution on Israel and Palestine: Initiating Divestment and Ending Occupation*, online: PC (USA) <<http://www.pcusa.org/worldwide/israelpalestine/israelpalestineresolution.htm#1>>.

¹²² T. Hill, “GA overwhelmingly approves Israel/Palestine recommendation” (21 June 2006), online at PC(USA) <<http://www.pcusa.org/ga217/newsandphotos/ga06124.htm>>, reporting on Presbyterian Church 2006 vote.

¹²³ D. Landau, “Maximum Jews, minimum Palestines” *Ha'aretz* (13 November 2003), quoting Ehud Olmert as saying: “More and more Palestinians are uninterested in a negotiated, two-state solution, because they want to change the essence of the conflict from an Algerian paradigm to a South African one. From a struggle against ‘occupation’, in their parlance, to a struggle for one-man-one-vote. That is, of course, a much cleaner struggle, a much more popular struggle - and ultimately a much more powerful one. For us, it would mean the end of the Jewish state.”

conflict, as the one solution that promises to provide the widest array of rights to the greatest number of Palestinians and Israelis. Moreover, where rights are genuinely in conflict – such as in the right of Israelis and Palestinians to nationhood in Palestine/Israel – a one-state solution would effectuate the most equitable compromise of rights for all. Quite simply: the one-state solution is the most just solution. It is the solution most likely to bring lasting peace to the region because it will truly resolve the major grievances that currently contribute to conflict.¹²⁴ Pragmatists should embrace it for this reason as well.

The one-state solution is sometimes derided as “unrealistic” or utopian. No one should imagine that a single state lies just over the horizon. In fact, however, it is the two-state solution that has proven – through decades of empirical experience – to have been impracticable and utopian. Thus, with the realistic hopes fading for the creation of a viable Palestinian state on the West Bank and the Gaza Strip, supporters of peace and justice are faced with no acceptable choices.

Still, proponents of the one-state solution must take seriously the challenge inherent in the charge that their goal is fanciful. One-state supporters must think carefully, strategically, and responsibly, and begin to define concrete steps toward their desired future. If a single state can only be brought about through the agreement of Israelis and Palestinians, it would seem imperative that one-state supporters begin to seriously address the need to engage the Israeli public, or at least leading elements within it, and to win their support. As difficult as this may be, there is no other route. This strongly implies a rigorous commitment to non-violence, as violence, particularly against Israeli civilians, has driven a majority of Israelis away from conciliatory positions and toward ever more hostile and harsh ones.¹²⁵

The greatest resources on which proponents of one-state may draw are the deep commitments of both Israelis and Palestinians for real and lasting peace and true democracy. In the end, perhaps one of the weaknesses of the two-state solution has been its inability to excite anyone, on either side of the conflict, as it clearly involves deep compromises to justice. The one-state vision, by contrast, can be far more morally compelling, and has the capacity to unite both Israelis and Palestinians in a joint struggle against chauvinist nationalisms, and in support of principles of universalism and humanism worthy of our contemporary world. The power of a moral idea should never be underestimated. Israel – or perhaps Israel/Palestine – may yet be a “light unto nations”, although in a form never expected.

¹²⁴ As Bell, *supra* note 3 notes, peace and justice can be opposed, especially in post-conflict situations, where fears of investigations and prosecutions for past wrongs can inhibit political settlement.

¹²⁵ Blecher, *supra* note 106, describing rise in anti-Arab sentiment in Israel.