

**THE OUTLOOK FOR THE MIDDLE EAST  
PEACE PROCESS**

**STUCK IN A ONE-STATE REALITY, AND YOU CAN'T GET OUT OF IT**

**Timo R. Stewart**

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## STUCK IN A ONE-STATE REALITY, AND YOU CAN'T GET OUT OF IT

Although there is international consensus on the desired outcome of the Middle East Peace Process (MEPP) – namely Israeli–Palestinian talks resulting in a two–state solution – there is no peace, and for years there has been no process either. In the meantime, Israelis still live with the threat of terrorism and rocket attacks, while Palestinians continue living without full rights under what were supposed to be interim arrangements agreed on in the 1990s.

This Working Paper outlines how repeated failures to reach a permanent status agreement, and continuing developments on the ground, leave little hope for a two–state future. At the same time, the current situation is inherently unstable, and will not hold indefinitely.

Without credible movement towards a two–state solution, the ongoing shift in focus to the power dynamics of the current one–state reality and rights–based approaches will continue. Analysts and policymakers also need to prepare for outcomes other than a two–state solution, should the people of Israel–Palestine shift to pursuing them.



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# THE OUTLOOK FOR THE MIDDLE EAST PEACE PROCESS

## STUCK IN A ONE-STATE REALITY, AND YOU CAN'T GET OUT OF IT

### INTRODUCTION

While there are several ongoing wars in the Middle East, and several peace processes, there has only ever been one Middle East Peace Process (MEPP). It has been talked about for several decades, and even though its existence has long been notional, it still boasts a considerable institutional footprint. This is particularly the case in the United States and the European Union. Referring to the Venice Declaration of 1980, Swedish scholar Anders Persson has claimed that the “Israeli-Palestinian conflict lies at the heart of European foreign policy”.<sup>1</sup> The EU still has a Special Representative for the Middle East Peace Process, and the UN has a Special Coordinator for the Middle East Peace Process.<sup>2</sup> Numerous foreign ministries, particularly in Europe, have MEPP desks, as does the European External Action Service.

However, among the unusual things about the MEPP, as a peace process, is that while there is no peace, the situation the process aims to resolve cannot easily be characterised as a war either. There is also very little process, as there have been no direct talks between the parties since 2014 and no horizon for resuming them. Another peculiarity is that while there is wide consensus on the desired outcome, a two-state solution, observers have been warning for many years that such a solution may no longer even be possible.

This FIIA Working Paper will examine how perceptions are changing regarding the current, supposedly temporary situation. Starting with a brief historical outline, the first section of the paper will revisit the main developments on the way *towards a two-state consensus*. The second section will then look at the considerable *obstacles to agreement* between the parties that are standing in the way of realising any two-state outcome. Significant as they were in the 1990s, these differences have only become more substantial over time and due to developments on the ground. Currently, almost no one holds out any hope

of achieving what is nevertheless thought of as the consensus solution.

This has left us with the status quo, the Israeli occupation that started in 1967 and the interim arrangements put in place through the 1993–1995 Oslo Accords. Although nominally an interim situation, as far as basic structures of control are concerned, the status quo has been constant for decades. Although outside pressure could alter this, it is unlikely to be applied. This, and Israel’s strong security forces, give an appearance of stability even while the situation on the ground gradually changes. However, the third section of this paper argues that a lack of outside drivers should not blind us to internal dynamics, and that we are actually looking at *an unsustainable status quo*. The current structure of military occupation with partial self-rule requires a level of acquiescence from Palestinians in a situation that is patently unsatisfactory in ways that are not always sufficiently recognised. It is unrealistic to expect this situation to last indefinitely.

The sustainability of the status quo also ultimately rests on being seen as temporary. This requires a horizon for change and some measure of confidence in its feasibility. As both have eroded, attention is increasingly shifting from a non-existent process to existing power structures. It is in this *growing critique of a one-state reality* that the term apartheid is now being used by Israeli, Palestinian and international human rights organisations in particular. It can be seen as signalling a potentially wider paradigm shift. In any event, analysts and policymakers also need to prepare for other outcomes apart from a two-state solution, should the people of Israel-Palestine shift to pursuing them.

<sup>1</sup> Persson 2020, ix.

<sup>2</sup> The current UN Special Coordinator for the MEPP is Mr Tor Wennesland of Norway, who was appointed on 21 December 2020, and the EUSR for the MEPP from 1 May 2021 is Mr Sven Koopmans.

## 1. TOWARDS A TWO-STATE CONSENSUS

After World War I, Britain ruled what was then known as Palestine under a mandate from the League of Nations. During this period, the Peel Commission proposed in 1937 to resolve the conflict between the country's Zionist and Arab nationalist movements by dividing the territory into Jewish and Arab states. This never happened, but the idea was brought up again after the Second World War by the United Nations Special Committee on Palestine (UNSCOP). It also recommended partitioning the area into a Jewish and an Arab state, with Jerusalem left under international rule, a plan that was approved by the UN General Assembly in November 1947.<sup>3</sup>

The Zionist movement accepted the UN partition plan and welcomed finally having a state for Jews in a land so inextricably tied to Jewish history. Palestinian Arabs rejected what to them was a foreign plan to divide their homeland and give parts of it to a national movement composed largely of recent colonists from Europe. What followed was war, first between Jews and Arabs within the Palestine Mandate, then after British withdrawal, between the newly formed State of Israel and the Arab countries surrounding it. The fighting ended in a victorious Israel asserting its independence and gaining recognition from both the United States and the Soviet Union, as well as their allies. For Palestinian Arabs, the events of 1948 are known as the *Nakba*, the catastrophe. Some 700,000 fled or were driven from their homes in what became Israel.<sup>4</sup> The Arab state envisaged in the UN partition never materialised as Egypt occupied the Gaza Strip, Israel took over large territories not included in its share by the partition plan, and Jordan unilaterally annexed the West Bank and East Jerusalem.

After 19 years of division, the war of 1967, known as the Six-Day War or June War, resulted in the whole of former Mandate Palestine coming under Israeli control as Israel occupied the Gaza Strip and the West Bank and unilaterally annexed East Jerusalem. The 1970s also saw a stabilisation of the international situation with Israel and Egypt concluding a peace treaty in 1979. The agreement has held and prevented interstate war involving Israel, but US President Jimmy Carter's attempt to have the Palestinians included in a

comprehensive peace agreement failed.<sup>5</sup> Meanwhile, the Palestinians tried to reach their aims through the Palestinian Liberation Organization (PLO), which used armed struggle and terrorism, as well as diplomatic means to further its cause. Ultimately, the PLO gained international recognition as the sole legitimate representative of the Palestinian people.

Attempts to resolve the conflict were renewed at the Madrid Conference in the autumn of 1991. Despite the European Community's normative and economic power, as well as leading the way in recognising Palestinian rights to self-determination, it was the United States that called the shots in sponsoring peace talks, just as it had done since the 1970s. However, a key breakthrough occurred only later, through a secret and direct Israeli-Palestinian backchannel in Norway. The talks resulted in the signing of the Declaration of Principles (DoP) on Interim Self-Government Arrangements, more commonly known as the Oslo Accords (Oslo I), and an exchange of letters between Israel and the PLO in September 1993. This was a significant step, with both parties recognising each other and committing to resolving their differences through negotiations. This was supposed to happen over a five-year transitional period.<sup>6</sup>

The DoP was followed by the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (Oslo II), signed in September 1995.<sup>7</sup> Together, Oslo I and Oslo II outlined the creation of what became known as the Palestinian Authority (PA). The PA would take over certain administrative responsibilities, particularly in urban areas, in what would be called Areas A and B. Most of the West Bank was classed as Area C, which was left under direct Israeli control. At the same time, the Palestinians would pursue negotiations with Israel on a permanent status or final status agreement that would resolve all the numerous outstanding issues and bring the conflict to an end.

The contents of the permanent status agreement were not outlined in the interim agreements, except at the very broadest level: "Jerusalem, refugees, settlements, security arrangements, borders, relations and cooperation with other neighbours, and other issues of common interest."<sup>8</sup> The Palestinians wanted the process to end in an independent Palestinian state, which had in fact already been unilaterally declared

3 UNGA 1947, Resolution 181.

4 Much has been written on the creation of the Palestine refugee problem in 1947-1948. The figure of 700,000 is used for example in Morris 2008, 407.

5 For more on this, see Jensehaugen 2018.

6 Declaration of Principles on Interim Self-Government Arrangements 1993.

7 Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip 1995.

8 Declaration of Principles on Interim Self-Government Arrangements, Article V.3.

## The State of Israel, the Gaza Strip and the West Bank

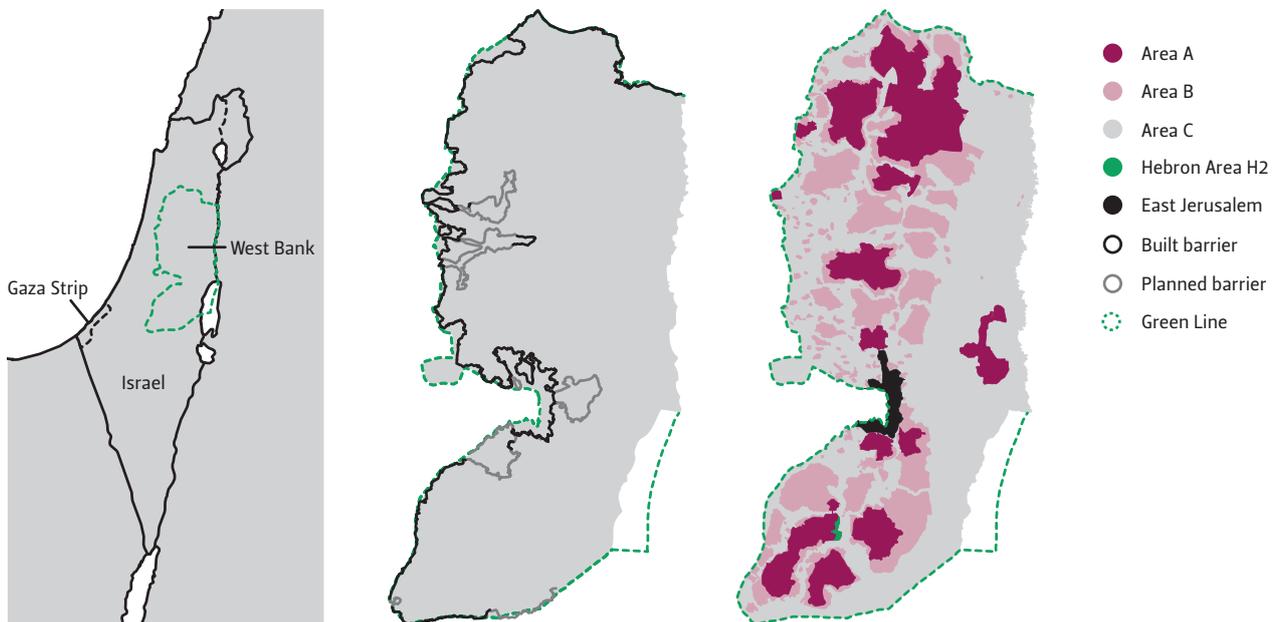


Figure 1. Map of Israel, the Gaza Strip and the West Bank  
Source: OCHA (<https://www.ochaopt.org/maps>). Data as of 11 October 2022.

by them in November 1988. The Israelis also came to see the process as resulting in a Palestinian state, but this was not a given from the beginning, nor did they necessarily have the same understanding of the new state's degree of sovereignty.<sup>9</sup>

By the end of the 1990s, however, most observers understood the MEPP as aiming at a two-state solution. One of the states, Israel, already existed. The other would be the State of Palestine, the borders of which would be negotiated by the parties. The EU came out explicitly in favour of a two-state solution in its Berlin Declaration in 1999.<sup>10</sup> The United States was a little slower but finally publicly endorsed the idea of a Palestinian state in November 2001.<sup>11</sup> In November 2012, an upgrade of the Palestinian mission to the United Nations from permanent observer to non-member observer state was approved by 138 UN member states. The same number of UN members have bilaterally recognised the State of Palestine, signalling strong support for the two-state solution. Those states that have not recognised the State of

Palestine, including most EU member states, generally also support the two-state solution but choose to withhold recognition until an agreement is reached between the parties.

The two-state solution has remained the consensus model of the international community, with the MEPP understood to be aiming at, to quote the European Council, “the final settlement of the Israeli–Palestinian conflict based on a two-state solution, in line with the UNSCR 2334 (2016)”.<sup>12</sup> The Security Council resolution in question expresses a vision “of a region where two democratic States, Israel and Palestine, live side by side in peace within secure and recognized borders”.<sup>13</sup> The same two-state vision is also shared by the now moribund Quartet, consisting of the UN, EU, US and Russia, which has been mandated for twenty years to support this process.<sup>14</sup>

9 O'Malley 2015, 87–88.

10 European Council 1999.

11 More on this in Persson 2015, 84–86.

12 European Council 2021.

13 UNSCR 2334 2016.

14 Office of the Quartet.

## 2. OBSTACLES TO AGREEMENT

Despite the Oslo breakthrough of the 1990s, Israeli and Palestinian popular support for a two-state solution at the time, and the still prevailing remarkable international consensus on it, a permanent status agreement realising such a solution has proved elusive. Instead, the late 1990s saw an erosion of mutual trust, an increase in violence, a Hamas suicide bombing campaign in Israel, and the strengthening of the Israeli military presence in the Occupied Palestinian Territory (OPT). Military closures in the OPT became more common than before, disrupting or preventing the free movement of Palestinians.<sup>15</sup>

Israel also continued constructing housing for Israeli civilians in the OPT. These settlements are illegal under international law, but Israel disputes this.<sup>16</sup> Settlements were not explicitly covered in the Oslo Accords, but their rapid expansion was viewed by Palestinians as contrary to the spirit of the whole process. After all, building on occupied land that was the subject of ongoing negotiations could easily be seen as an attempt to prejudge the outcome.

The five-year interim period set out in the Oslo Accords ended in 1999. There was an attempt to reach an agreement at the Camp David summit, hosted by US President Bill Clinton in July 2000, but this failed acrimoniously. The violent second intifada (2000–2005) began soon after, sweeping away all chance of success at the negotiating table for a while.

The years that followed saw the Arab League's Peace Initiative (2002) and the Quartet's Road Map for Peace (2003). While both would serve as future reference points, they did not immediately lead to renewed negotiations between the parties themselves. In 2006, talks resumed between Ehud Olmert, then prime minister of Israel, and Mahmoud Abbas, who had become the president of the PA after Yasser Arafat's death in 2004. A summit in Annapolis, Maryland in November 2007 did not lead to a breakthrough, neither did direct talks held in 2010–2011 and most recently in 2013–2014.

There have been numerous sticking points on all core issues, including borders and settlements, refugees, Jerusalem, and security. Palestinians feel they have made a historical concession in being willing to accept the 1967 borders, the Green Line,

which concedes 78 per cent of Mandate Palestine to Israel. Israelis have not been willing to start off from this pre-1967 situation as a basis for talks but rather from the current status quo. The State of Israel is, from the Israeli perspective, not a concession but a reality, and talks about the borders need to accommodate facts on the ground, that is Israeli settlements, as well as security and religious concerns.<sup>17</sup> Complete withdrawal to the 1967 lines has been considered out of the question. After all, ten per cent of Israel's Jewish population, over 680,000 Israelis, are now living in settlements built beyond the Green Line since 1967.<sup>18</sup> Evacuating and resettling even a relatively small number of these settlers would be potentially difficult, expensive, and politically costly, as the 2005 evacuation of some 9,000 settlers from the Gaza Strip demonstrated.

For Palestinians, agreeing to have all the settlements remain part of the State of Israel is an impossibility. Depending on the counting methodology, there are 132 settlements in the West Bank. Settlements have been placed, often intentionally, to disrupt territorial contiguity and to control strategic locations or water sources. While the more far-flung settlements are less populous than the settlement blocks close to the Green Line and Jerusalem, they still house tens of thousands of Israeli citizens. A feature of many peace plans has been evacuating the outlying settlements, annexing the settlement blocks to Israel, and compensating for them by land swaps to keep the area of the future Palestinian state at 22 per cent of Mandate Palestine. However, what constitutes equal value is not simply an economic question.

While the issue of borders and the related question of settlements was difficult to resolve at Camp David in 2000, the number of Israeli settlers in the West Bank has grown since then from just under 200,000 to 450,000, not counting East Jerusalem. Settlements now cover almost 10 per cent of the West Bank, and their regional councils control 40 per cent of total West Bank territory.<sup>19</sup>

The question of Jerusalem is related to the issue of borders and settlements. Soon after the June 1967 war, Israel unilaterally enlarged the municipal area of Jerusalem to encompass areas it now occupied, effectively annexing territory. In 1980, the Knesset passed a basic law on Jerusalem declaring that the "complete

15 O'Malley 2015, 83–84.

16 Israeli settlements are widely understood to violate the Fourth Geneva Convention, according to which the "Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies". Both the UN Security Council and the International Court of Justice have affirmed the illegality of settlements. International Court of Justice 2004, 44, 52.

17 O'Malley 2015, 31.

18 Peace Now 2022. This includes 451,700 Israelis living in 132 settlements in the West Bank and a further 229,377 Israelis living in 14 East Jerusalem neighbourhoods.

19 B'Tselem 2019a.

and united Jerusalem is the capital of Israel”.<sup>20</sup> This has meant that from an Israeli point of view, construction in occupied East Jerusalem has been a question of city planning while construction in the occupied West Bank requires permits from the Israeli Defence Ministry. Almost 230,000 Israelis currently reside in settlements in East Jerusalem, up from 167,000 at around the time of the Camp David summit in 2000.<sup>21</sup> Many of these settlements stand in the way of connecting the Palestinian neighbourhoods of East Jerusalem to the West Bank, which is what Palestinians insist on as part of a permanent status agreement.

The role of Jerusalem as national capital is considered central by both Israelis and Palestinians, but so far, the international community has mostly held back from recognising either claim. Departing from this position, US President Donald Trump recognised Jerusalem as Israel’s capital in 2017. However, the stance was not aimed to prejudice the “specific boundaries of Israeli sovereignty in Jerusalem”, as this would be decided in “final status negotiations between the parties”.<sup>22</sup>

Regarding security, Israel has insisted on the demilitarisation of the State of Palestine and various ideas have been presented for maintaining Israeli bases or a security zone in the Jordan River Valley, at least for a transition period. From a Palestinian perspective, Israeli control over all of its borders would signal something less than full sovereignty. However, military control is seen as important by Israelis. Many Israelis fear that a full withdrawal from the West Bank would ultimately lead to a situation similar to the one that followed the withdrawal of Israeli settlements and permanent military presence from the Gaza Strip in 2005. Firing rockets into Israel would be far easier from the West Bank. This scenario hinges not so much on a lack of trust in the Palestinian Authority, with which Israel currently enjoys close security cooperation, but the PA losing control or even a Hamas takeover of the West Bank in the absence of the Israeli security forces.

More difficult still is the Palestinian demand for recognition of the right of return. Israelis fear any solution that could open up a possibility for millions of Palestinian refugees to move to Israel and change its demographic balance. The issue is sensitive for the Palestinian leadership, as refugees from 1948 and their descendants constitute a sizeable proportion of the

Palestinian people and the question is considered important by most, if not all.<sup>23</sup> Complications include the fact that most of the villages from which Palestinians fled in 1948 were destroyed by Israel. Many refugees carry the keys of their former homes, but these homes either no longer exist or have been lived in by others for 74 years. Several possible formulations for bridging the gap between the question of principle and practical difficulties have been floated. They have tried to thread the needle with solutions that recognise the past in a way that results in compensation and possible relocation, but that does not in practice obligate Israel to take in more than a symbolic number of refugees.

Although the issues at stake are difficult to resolve, there has been a rough understanding of what a permanent status agreement would most likely look like. In 2003, experienced Israeli and Palestinian negotiators who no longer held official positions hammered out a model agreement known as the Geneva Accord or the Geneva Initiative. It resolved the issue of borders by using the pre-1967 situation as a baseline but doing 1:1 land swaps that would allow most settlements to remain. Jerusalem would be the capital of both states, with Jewish neighbourhoods going to Israel and Arab neighbourhoods to Palestine. Movement within the Old City would be free for all. Refugees would be entitled to compensation and the right to return to the State of Palestine, with Israel admitting a small number at its discretion. Palestine would be non-militarised but have a strong security force.<sup>24</sup>

Although theoretically feasible, the Geneva Accord has not in practice been adopted by either Israeli or Palestinian leaders. In addition to reaching an agreement with each other, both would have to persuade their publics of the benefits of an agreement, and be able to withstand the inevitable and very harsh criticism for the painful compromises such an agreement would entail. Negotiating a virtual agreement, chiefly an intellectual exercise, is a very different undertaking compared to a real, politically and practically implementable one.<sup>25</sup>

A further serious impediment to the parties’ ability to conclude a peace treaty emerged when the militant Islamist organisation Hamas won the 2006 Palestinian legislative election. This led to conflict between Hamas and Fatah, the previously dominant faction, and ultimately the Hamas takeover in the Gaza Strip in 2007.

20 Knesset. Basic Law: Jerusalem the Capital of Israel 1980.

21 Peace Now 2022.

22 Trump 2017.

23 UNRWA currently counts 5.8 million registered Palestine refugees. UNRWA 2022.

24 Geneva Initiative.

25 O’Malley 2015, 102–103.

Hamas also remains popular in the West Bank and has been able to portray itself as the embodiment of Palestinian resistance also outside Gaza, a sentiment that peaked during the May 2021 conflict.

The Hamas-Fatah split persists to this day despite numerous attempts at reconciliation. This has impeded Israeli-Palestinian talks in a number of ways. In a situation reminiscent of its treatment of the PLO prior to 1993, Israel has eschewed negotiations with Hamas on account of it being classified as a terrorist organisation. Hamas for its part has not been willing to talk to or recognize Israel. There are indications that it might accept a two-state solution based on the 1967 borders and a return of refugees as an *interim* solution, but not an end of claims.<sup>26</sup>

Fatah, on the other hand, cannot implement any potential agreement in Gaza, which undermines its credibility with Israel. As any agreement would require support from the Palestinian public, the Hamas-Fatah power struggle, in a situation in which Hamas is completely side-lined from talks, gives Hamas no incentive to support any agreement that the Fatah-led Palestinian Authority would reach. This in turn makes it politically costly or outright impossible for Fatah to make concessions. A measure of Palestinian unity is a prerequisite for any credible two-state outcome.

On the Israeli side, there has also been a marked change in the political situation compared to the early 1990s. The left-right divide in Israel is mainly conceived of in relation to the Israeli-Palestinian conflict, with the right less inclined to compromise and more sceptical of Palestinian statehood. Since the mid-1990s, Israeli governments have hailed predominantly from the right and the peace process has drifted almost completely off the political agenda. Settlements have been expanded both in the West Bank and in East Jerusalem, and additional hurdles have been placed for negotiations in the form of a demand that Palestinians not only recognise Israel but recognise it as a Jewish State.<sup>27</sup>

If reaching a permanent status agreement was hard in 2000, doing so now appears next to impossible. Mutual trust, never very high, is lower than ever. Political will on both sides is lacking, and public expectations of what peace would look like, and what each side would be prepared to sacrifice for it, do not look promising. Opinion polls show that the two-state solution no

longer enjoys majority support either amongst Israelis or Palestinians.<sup>28</sup>

As for outside support for a negotiated solution, EU member states are Israel's main trading partner and the main funder of the Palestinian Authority, but this has had little impact on actual negotiations or developments on the ground. Previously, the EU has often been a trend-setter on the conflict and exhibited strong normative power. It still pays lip service to a two-state solution but has increasingly struggled to find common positions on what is no longer considered a priority issue for it in the Middle East. Member states have been unwilling to pay the price for more forceful engagement and to face the risks inherent in it. As a recent report by the International Crisis Group puts it: "European policy accordingly focuses on maintaining a minimum of stability, while attempting – though with limited success – to ensure that nothing is done that would completely doom a two-state solution."<sup>29</sup>

The United States has for decades kept most other actors at arm's length from actual peace talks, but its interest has waned considerably. While the Trump administration had a novel approach to peacemaking in the Middle East, it antagonised the Palestinians through its one-sided and ultimately failed peace plan. The Biden administration looks to be altogether avoiding the draining and not particularly promising quagmire of Middle East peacemaking.

All this has sown further doubt in the already elusive two-state solution itself. Although the concept is still relatively popular amongst many Israelis and Palestinians, the concessions that reaching an agreement would require are not. Indeed, constant settlement expansion, including in Jerusalem, has led many to conclude that it is simply no longer possible to create a viable Palestinian state.

Settlements can of course be dismantled as well as built. No amount of building will ever make a two-state solution technically impossible, just more politically costly, which may have the same result. As a reflection of this, leaders and analysts have for years warned that the window of opportunity is closing on a two-state solution. Strictly speaking, it will never close definitively because there simply is no threshold that would unequivocally put it out of reach. Despite serious problems, it also still has the advantage of being seen by many as more desirable or at least more achievable and

26 Wintour 2017.

27 Rosenberg 2014.

28 Palestinian Center for Policy and Survey Research 2020.

29 International Crisis Group 2022, 32.

realistic than other conceivable alternatives such as a unitary state, a federal state or a confederation.<sup>30</sup> Be that as it may, the fact remains that actually achieving a two-state solution has never looked less likely.

### 3. AN UNSUSTAINABLE STATUS QUO

Naftali Bennett, then prime minister of Israel, told *The New York Times* in August 2021 that “[t]his government will neither annex nor form a Palestinian state, everyone gets that”. On the one hand, Bennett was referring to plans by the previous prime minister, Benjamin Netanyahu, to unilaterally declare parts of the Palestinian territories, occupied by Israel since 1967, as belonging to the State of Israel. On the other hand, he was referring to the long-standing MEPP goal of reaching a two-state solution. Whoever the next prime minister of Israel will be after the November 2022 election, they are very unlikely to take a different course on this issue.

With both annexation and a Palestinian state taken off the table for the time being, what is left is the current situation. In many ways, the power structures currently in force in the OPT have been in place since June 1967 despite the peace process and the creation of the PA in the 1990s. The ultimate authority for the Palestinian inhabitants of the OPT is the Israeli military. Hamas administers life in the Gaza Strip, and the PA in West Bank cities and towns, but in both areas, Israel controls the movement of goods and people. It controls the population registry, airspace, water areas (in Gaza), and even the level of internet access. Israeli security forces operate frequently in both the West Bank and Gaza, but also enjoy close cooperation and coordination with the PA security forces.

The perceptions of this status quo differ drastically between Israelis and Palestinians. For Israelis, the threat of terrorism and rocket attacks from Gaza cause casualties, fear, disruption to life and contribute to a securitisation of society. Nevertheless, the military and security response has been highly efficient, and most Israelis are able to live their lives unperturbed most of the time. It also allows the continued utilisation of the land and resources in the West Bank and continued control of Greater Jerusalem. For most Israeli settlers, life in occupied territory is practically the same as life in Israel. Often it is hard or even impossible to tell the

difference. Most settlements are largely integrated into Israeli society; they have public transport links and full municipal services. Calm is for the most part enforced by Israel’s efficient security forces, in cooperation with the PA in the West Bank and with tacit understanding with Hamas in Gaza. In the West Bank, the cooperation is so close that the Palestinian security forces have long feared, with good reason, that there is a risk of them being seen merely as Israel’s security subcontractor.<sup>31</sup>

At the same time, Palestinians living in the OPT suffer from a range of extensively documented restrictions and violations. Many of these relate to freedom of movement. Travel between Gaza and the West Bank is strictly limited and completely subject to Israeli approval. Gazans find it very difficult to leave to go anywhere, or to return if they are allowed to go. Residents of the West Bank require special permits to access Jerusalem or any areas beyond the security barrier. They also face numerous movement restrictions within the West Bank, which increase travel times and add uncertainty. For the Palestinians living under direct Israeli rule in East Jerusalem and the 60 per cent of the West Bank comprising Area C, construction permits are hard to obtain, which results in illegal building and the threat of demolition.<sup>32</sup> East Jerusalem is also woefully lacking in schools and other public facilities for Palestinians.

Unlike Israeli settlers, Palestinians accused of crimes in the OPT are tried in Israeli military courts, not civilian ones, and can be detained indefinitely without charge.<sup>33</sup> Palestinians in the OPT also lack political rights. This is partly due to the failure of Hamas and the Palestinian Authority to hold elections and uphold basic liberties. Another factor is that neither Hamas nor the PA have ultimate control over the lives of Palestinians in the OPT. Far from constituting the government of even an autonomous state, the PA has been aptly described as “a semiautonomous entity under occupation”.<sup>34</sup>

Even if “Israelis don’t wake up in the morning thinking about the conflict”, as Bennett told the United Nations General Assembly in September 2021, it is considerably harder for Palestinians to say the same. For them, the experience of living under occupation is continuous and permanent. For Israelis, the situation appears as a largely contained conflict, which erupts

30 Sharvit Baruch 2021, 80–81; Efron & Gottesman 2020, 103.

31 International Crisis Group 2010, 39.

32 Area C, comprising 60% of the West Bank and home to an estimated 180,000–300,000 Palestinians, is under direct Israeli rule. B’Tselem 2019b.

33 For information on the dual legal systems in force in the OPT, see e.g. The Association of Civil Rights in Israel 2014.

34 International Crisis Group 2010, i.

into violence periodically, particularly in Gaza. Hamas and Islamic Jihad have regularly staged rocket attacks against Israel and Israel has responded by what has been termed “mowing the grass” – military operations to degrade Hamas’s capacity.<sup>35</sup> Thousands have been killed over the years.

When violence breaks out, Israelis and Palestinians alike are of course forced to think about the conflict. But for most Palestinians the “conflict” is manifested in daily structural violence that is impossible to avoid. The conflict is not simply violent clashes, it is the limited possibilities and indignities of daily life. It is military occupation. Even alleviating some of the economic hardships, travel restrictions and other humiliations caused by occupation will not create a political horizon nor remove the basic causes of popular dissatisfaction. This dissatisfaction is increasingly directed also at the PA, which has failed to hold elections, exhibits increasingly authoritarian tendencies and has brutally stifled dissent. The same can be said of Hamas in Gaza.

Broad popular dissatisfaction, a lack of confidence in their own leaders as well as resentment towards the occupying power occurs in a Palestinian population that is relatively well educated, poor, young, growing fast and suffering from high levels of unemployment. Even if Israel and to an extent the PA are willing to let the status quo continue, the Palestinians are likely to eventually try to unsettle it. There is certainly no shortage of trigger points for clashes or underlying causes for an intensified conflict. Jerusalem continues to be a trigger for escalation. Periodically recurring rounds of violence have been more the rule than the exception. There is no reason to expect this to change.

#### 4. GROWING CRITIQUE OF A ONE-STATE REALITY

In 2021–2022, Naftali Bennett’s government prepared for sustained control by “shrinking the conflict”, which appears to have meant shrinking the effects of occupation through unilateral measures.<sup>36</sup> This approach aimed at improving living conditions for Palestinians, increasing their autonomy, and removing some of the more glaring restrictions resulting from Israeli occupation. However, a slightly less intrusive occupation still leaves Palestinians under Israeli control with less than full rights. The past suggests that the long-term success

of such a strategy, even if continued by the next Israeli government, is highly doubtful.

There is much blame to go around for the repeated failures of negotiations. Whatever share of the blame one assigns to each party, and certainly some belongs to all, the fact remains that in the absence of an agreement, it is the State of Israel that remains in control, to varying extents, of all the former Palestine Mandate territory. The more structured and permanent this de facto one-state reality becomes, the greater the willingness by many scholars, observers, and organisations – in Palestine, Israel and internationally – to address it as not merely an interim period in a peace process, but rather as a permanent power structure. The characterisation of the situation as a conflict, which it also is, plays along with a media-driven overemphasis on periods of violent clashes. This reflects the perception of Israelis, but not that of the Palestinians. In many ways, the experience of living under military occupation creates a similar dynamic to structural inequality within one state. The violence is bureaucratised, sanitised, legalised and often overlooked by those who are not on the receiving end of it.

The current interim situation is certainly not something that the Palestinian leadership would have been able to accept, or sell to Palestinians, had it been known to become a permanent reality. A perception of impermanence is still necessary for accepting the situation now. However, as the expectation of a two-state agreement fades and the interim period stretches on, an overall shift in perception is currently taking place. In the absence of a political solution, a focus on current power dynamics is likely to gain traction and be increasingly reflected in the language used to describe the situation in Israel–Palestine. It is in this context that the term *apartheid* has become more common as an attempt to describe the current one-state reality.

Use of the term *apartheid* is still controversial, contains problematic elements and is strongly objected to by Israel. Addressing Amnesty’s use of the term in early 2022, the Foreign Ministry of Israel claimed that an accusation of *apartheid* is essentially based on falsehoods and involves “double standards and demonization in order to delegitimize Israel. These are the exact components from which modern antisemitism is made”.<sup>37</sup> Yair Lapid, then foreign minister of Israel, considered the fact that countries like Syria and Iran are not accused of *apartheid* as proof of Israel being

<sup>35</sup> Inbar & Shamir 2014.

<sup>36</sup> “Shrinking the conflict” is a phrase coined by Micah Goodman. See e.g. Goodman 2018.

<sup>37</sup> Ministry of Foreign Affairs of Israel 2022a.

singled out due to it being a Jewish state, another reference to antisemitism.<sup>38</sup> He also saw the accusation as aiming “to challenge Israel’s right to exist as the nation state of the Jewish people”.<sup>39</sup> Human rights organisations using the term apartheid have strenuously rejected accusations of antisemitism. Moreover, the term is frequently used in Israel, which warrants a closer look.

For years, apartheid was invoked in Israel as a description of the eventual outcome if Palestinians do not achieve independence or at least substantial self-rule. Such warnings have been made repeatedly by Israeli leaders. Almost immediately after the beginning of the occupation in 1967, former prime minister David Ben-Gurion warned about the necessity of ridding Israel of the conquered territories and their population, lest Israel become an apartheid state. In 1976, Yitzhak Rabin, then serving his first term as Israel’s prime minister, said it would be impossible for Israel to occupy a large Palestinian population in the long term without ending up in apartheid. In 2010, then Defence Minister Ehud Barak warned that in the absence of a Palestinian state, Israel would become either a non-Jewish state with a Palestinian majority or a non-democratic apartheid state. Ehud Olmert, another former Israeli prime minister, has repeatedly warned of apartheid if the peace process fails.<sup>40</sup>

It is important to note the conditional nature of the use of the term apartheid in the above examples. It is employed in the context of an Israeli policy debate to delegitimise certain policy choices. These warnings conceptualise Israel as having essentially three options. The first is annexing the occupied territories and granting equal citizenship rights to their inhabitants. This is presented as out of the question, as it would add so many Palestinians to the population as to result in a binational state of some kind. It would spell the end of Israel as a Jewish state or even a state with a Jewish majority. The second, a continuation of the status quo with Israel controlling the OPT without granting full rights to the Palestinians, is also seen as undesirable as it would at some point be perceived as apartheid, and thereby result in a situation inconsistent with Israel’s democratic values. Annexing the territory without granting citizenship to Palestinians would have the same result. This leaves the third option, peace with the Palestinians resulting in a Palestinian state, which

although requiring difficult and painful concessions, is nonetheless presented as the only real Zionist and democratic alternative. This was the choice that former US President Jimmy Carter referred to in his book *Palestine: Peace Not Apartheid*.<sup>41</sup>

What is less clear about these warnings is when the risk they mention is expected to materialise. Since neither equal rights nor a Palestinian state have become reality, what would it take to cross the threshold into apartheid? Annexation is often mentioned as such a measure, as when 56 former Knesset members protested against the Netanyahu government’s limited annexation plans in 2020. However, East Jerusalem and its surrounding areas were already annexed in 1967 and most of their Palestinian residents are still not citizens. Further changes, such as formally annexing settlement blocks, would not result in any practical changes for either Israelis or Palestinians as Israel already exerts full control. The salient feature about this ‘road to apartheid’ argument is that the future it describes is always around the corner but never quite here. In this respect it mirrors the warnings about the closing of the two-state window, which never seems to swing completely shut. In the meantime, Israel is described as a democracy, albeit with undefined borders, and the Palestinians are described as living under temporary occupation with PA rule in the West Bank and Hamas rule in Gaza.

In May 2021, French Foreign Minister Jean-Yves Le Drian drew scathing criticism from his Israeli counterpart after issuing the same warning about the risk of future apartheid in the absence of a two-state solution.<sup>42</sup> Despite the objections that such warnings generate, they have gradually normalised the use of the apartheid concept in the Israeli-Palestinian context.

Warnings of future apartheid are essentially a device employed in support of the peace process and a two-state solution. However, Israelis and Palestinians are losing faith in the feasibility of such a solution. Over three quarters of both groups believed in 2020 that the chance of an independent Palestinian State being established within the next five years was low or very low. When asked whether a two-state solution is still feasible, 45 per cent of Israeli and 43 per cent of Palestinians said they believed it was not, while 43 per cent of both groups thought that it was.<sup>43</sup>

38 The Times of Israel 2022.

39 Ministry of Foreign Affairs of Israel 2022b.

40 Goodman, Hirsh, 2009, 78; The Times of Israel 2015; McCarthy 2010; Haaretz 2015.

41 Carter 2006.

42 Barotte 2021.

43 Palestinian Center for Policy and Survey Research 2020.

All things considered, it is perhaps not surprising that the term apartheid has increasingly been used to describe not a potential situation in the future, but the one-state reality existing now. In the last two years in particular, there has been a marked increase in the willingness to re-examine the current situation from the point of view of a permanent power structure. This should be seen as a symptom of the growing loss of faith in the Middle East Peace Process.

For example, the prominent Israeli human rights organisation B'Tselem announced in January 2021 that apartheid had become a reality in Israel: "A regime that uses laws, practices and organized violence to cement the supremacy of one group over another is an apartheid regime." B'Tselem was careful to note that Israeli policies and practices were not identical to those of apartheid South Africa and that apartheid had become an "independent term, entrenched in international conventions, referring to a regime's organizing principle: systematically promoting the dominance of one group over another and working to cement it".<sup>44</sup>

Much of the criticism levelled against B'Tselem's position centred on differences between Israel and apartheid South Africa. Restrictions to Palestinian rights were generally attributed to security considerations. B'Tselem's critics also pointed to the significant rights enjoyed by Israel's Palestinian citizens, or Arab-Israelis.<sup>45</sup> To be sure, Palestinian citizens enjoy far more rights than Palestinians living in the OPT, with Jerusalem residents somewhere in between. Some have addressed this by differentiating between Israel proper and the OPT as essentially separate regimes, with apartheid occurring only in the latter.

To mention just a few examples, two former Israeli ambassadors to South Africa, Ilan Baruch and Alon Liel, wrote in June 2021 that the occupation with its two-tiered legal system was not temporary and the Israeli government was not looking to end it. "Such a reality is, as we saw ourselves, apartheid." Former UN Secretary-General Ban Ki-moon also wrote about "dual regimes imposed in Palestinian territories by Israel" which together with inhumane and abusive acts "arguably constitute apartheid".<sup>46</sup> In his report to the UN Human Rights Council in March 2022, Special Rapporteur Michael Lynk used the term apartheid to describe Israel's practices in the OPT.<sup>47</sup>

These references were directed specifically at Israel's system of control in the OPT. B'Tselem disagrees with this differentiation. In its view, distinguishing between Israel and the territories it occupies "has grown divorced from reality". According to B'Tselem, Israel and the OPT are not, in fact, two parallel regimes, but rather manifestations of one regime with the same organizing principle for the entire area: "advancing and cementing the supremacy of one group – Jews – over another – Palestinians."<sup>48</sup> This is done through different rules for each group and more specifically by giving full rights to Jewish Israelis wherever they live and inferior rights to Palestinians, further differentiated depending on where they live. It is important to note that the approach taken by B'Tselem in erasing the distinction between Israel and the OPT runs somewhat counter to the two-state logic, as such a solution would do nothing to resolve discrimination within Israel.

In the spring of 2021, B'Tselem commissioned a survey to find out how many Israelis and Palestinians shared their views on apartheid. It used its own definition whereby "a regime in which one group controls, and perpetuates its control over another, through laws, practices and coercive/forced means is considered an apartheid regime". Asked whether this was a fitting description of Israel, three quarters of Palestinians in the West Bank and Gaza responded 'very much' or 'somewhat'. Only 41 per cent of Palestinian citizens of Israel felt the same way, although another 46 per cent said they did not know. Perhaps surprisingly, also a quarter of Israeli Jews found that apartheid was a very much or somewhat fitting description of Israel.<sup>49</sup> In another poll, 22 per cent of Israeli Jews, and 33 per cent of religious Israeli Jews, indicated that a one-state solution with unequal rights for Jews and Arabs was in fact their favoured solution to the situation.<sup>50</sup>

The willingness to apply the term apartheid has also grown outside Israel-Palestine. For example, a recent survey of Jewish voters in the United States found 25 per cent of respondents agreeing with the statement "Israel is an apartheid state". According to the University of Maryland's Middle East Scholar Barometer of August-September 2021, 65 per cent of the polled scholars described the status quo as "a one state reality akin to apartheid". This represented a noticeable

44 B'Tselem 2021a.

45 Haaretz 2021.

46 Baruch & Liel 2021; Ban Ki-moon 2021.

47 Human Rights Council 2022.

48 B'Tselem 2021a.

49 B'Tselem 2021b.

50 Palestinian Center for Policy and Survey Research 2020.

increase from the previous poll in February, in which 59 per cent shared this view.<sup>51</sup>

Speaking of a one-state reality underlines the connection between Israel and the OPT. While using apartheid as a rhetorical warning was aimed at moving decision-makers towards a two-state solution, using apartheid to describe a one-state reality emphasises the unacceptability of the status quo while leaving the solutions more ambiguous. It could create the impetus for a two-state solution, but if apartheid is seen as a problem that also affects Israel's Palestinian citizens, a two-state solution would not really address their concerns. Furthermore, a one-state reality suggests, although does not necessarily require, solutions in a unitary or federal state centring around equal rights, not necessarily Palestinian independence. Such solutions have indeed been floated in various levels of detail.<sup>52</sup> They have also been invoked as a threat. Speaking in Berlin in August 2022, Mahmoud Abbas, the president of the PA, said that without a state of their own, Palestinians would have no choice but to seek equal rights in Israel. "Is this what Israel wants?"<sup>53</sup>

Furthermore, B'Tselem was not alone. Another Israeli human rights organisation, Yesh Din, had made the apartheid accusation in 2020.<sup>54</sup> Human Rights Watch followed suit in April 2021<sup>55</sup> and Amnesty International in February 2022. Their focus has been slightly different. Unlike B'Tselem, they did not want to use apartheid in a descriptive or comparative sense, but rather to conduct a legal analysis based on the United Nations Apartheid Convention and the Rome Statute that established the International Criminal Court (ICC). This analysis led them to accuse Israel of being guilty of the crime of apartheid. Amnesty International also called on the ICC to include this in its current investigation into events in the OPT, something that the ICC has not done so far.<sup>56</sup>

The above uses of the term apartheid, whether legal or more general, link its origins to Israel's occupation of the Palestinian territories that started in 1967, even if they apply the term to Israel as a whole. There is, however, also a broader application of the term apartheid to Israel, mainly found amongst Palestinians and in international academia. This view does not differentiate between Israel and the OPT, nor does it focus on the 1967 occupation. Indeed,

proponents like Palestinian-American academic Fayez A. Sayegh wrote about Israeli apartheid even before 1967, when the few Palestinians that remained in the new state were citizens living under military rule. In this view, apartheid is written into the very idea of the State of Israel and has been implemented throughout its existence. In this interpretation, Israel is not at risk of becoming an apartheid state nor has it relatively recently become one; it has been an apartheid state since its founding and by design.<sup>57</sup>

In this framing, Israel is seen as a settler colonial state: Outsiders (Zionist Jews) settled a territory (Palestine) with the help of a colonial power (Britain) and dispossessed the native population (the Palestinian Arabs). The settler colonial project underwent numerous different phases, but apartheid is seen as intrinsic to all of them. The polity that Zionists were setting up was never intended as a state for all of its citizens equally, but rather the nation-state of the Jewish people. Consequently, apartheid is also not seen as limited to the occupied territories, but as something all Palestinians suffer from to various degrees whether they are citizens of Israel, permanent residents of Jerusalem or living elsewhere in the OPT.

The response most commonly called for in this last approach is decolonisation.<sup>58</sup> This is usually envisaged as happening in the context of one unified state comprising Israel and the OPT, with equal rights granted to all citizens. In another alternative, the state could be binational, with recognised Israeli and Palestinian national identities. However, the main point is in addressing past wrongs through recognition, reconciliation, and fully equal rights. Part and parcel of this is allowing Palestine refugees from 1947-1948 and their descendants to return. An unavoidable consequence is the loss of a Jewish majority and a distinctly Jewish state, for which reason such ideas have been strongly opposed by most Jewish Israelis.

Whatever the framework of an apartheid narrative, it grows from a perception that the current situation has ceased to be temporary. Israel has protested against use of the term as it is correctly perceived as delegitimising the current power structure and opening the door to legal battles, boycott and other forms of outside pressure. However, in the absence of a peace process, it seems likely that this paradigm shift will gain momentum.

51 Jewish Electoral Institute 2021; Middle East Scholar Barometer 2021.

52 See e.g. Boehm 2021.

53 Eldar 2022.

54 Yesh Din 2020.

55 Human Rights Watch 2021.

56 Amnesty International 2022.

57 Sayegh 1965, 21-30.

58 See e.g. Halper 2021.

## CONCLUSIONS

A two-state vision has much to commend it. For sure, it would require extremely painful compromises to realise. Israeli and Palestinian nationalist narratives both see the entire land as belonging exclusively to them. Whatever the historical merits of these respective narratives, their exclusivist claims are mirrored in each other, and making room for the other would mean reimagining one's own national present and future. However, it would also provide a chance to realise this future independently in a nation-state. It would offer at least a possibility for achieving security, national self-determination, and the opportunity for increased prosperity.

In addition to more tangible benefits, a two-state solution has also seemed like the only possible alternative. For Israelis, the dominant party, one of the few things that a majority of the country's Jewish population can agree on is Zionism, the need for a Jewish State. This, it is usually believed, requires a Jewish majority, which in turn rules out not only full refugee return but also full citizenship rights of Palestinians in the occupied territories. Of Israeli citizens, 74 per cent are Jews, but if the Palestinians in the OPT are counted as well, the share dips just below half. The Palestinian population is also growing faster. On the one hand, keeping Israel as a majority Jewish state rules out equal rights with all Palestinians within one shared state. On the other hand, having a democratic Israel rules out a one-state reality in which Palestinians do not have equal rights. Palestinians achieving their own state has seemed to be a logical answer to both points. Despite all this, it has still not happened. A two-state solution

may not be strictly speaking impossible, but very few actually believe it can be reached.

Whatever the appropriate share of blame for failure, fixating on an out-of-reach two-state solution risks being blindsided by events in an inherently unstable situation. The occupation has continued for 55 years, and it is nearly 30 years since the beginning of the Oslo peace process. Most Palestinians have only known military occupation and interim self-government arrangements, but the so-called status quo is also continuously changing for the worse. Many feel they have little to lose. Not surprisingly, a paradigmatic shift from hopes of a two-state solution to the current one-state reality and from there to a more rights-based struggle is in evidence amongst younger Palestinians in particular. Outside observers, especially amongst human rights defenders but also in the scholarly community, are making a similar shift of perspective, exemplified in the increasingly common apartheid narrative. This shift will continue in the absence of credible movement towards a two-state solution. Most fundamentally, it involves understanding the current situation not as an interim phase, but as a permanent power structure that needs to be actively challenged for change to occur.

What all this will lead to is unclear. Ultimately, it is up to the Palestinian and Israeli people and their leaders. However, it is necessary for outside analysts and policymakers to acknowledge recent developments, and the lack thereof, and to recognise the signs of shifting paradigms. This means being prepared to think through other outcomes apart from a two-state solution, including rights-based approaches, should the people of Israel-Palestine shift to pursuing them. /

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