Perils of Parity: Palestine's Permanent Transition

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> A decade [after the signing of the Oslo Accords,] . . . . the image of [a Palestinian] economy had taken form. The superheroes were not the negotiators . . . and not even the Audi-happy Palestinian ministers, but rather the donors and their agents who built an entire aid industry using the [Oslo] agreements . . . as its foundation.
>
> – Sam Bahour[1]

> Good governance is the highest form of resistance.
>
> – Senior Palestinian official[2]

Introduction: Stalemate, Internationalized[3]

On September 13, 1993, the *New York Times* announced, "In a triumph of hope over history, Yitzhak Rabin, the Prime Minister of Israel, and Yasir Arafat, the chairman of the [Palestinian Liberation Organization (PLO)], shook hands today on the White House lawn, sealing the first agreement between Jews and Palestinians to end their conflict and share the holy land . . . that they both call home."[4] Media the world over echoed the themes of "hope over history," peace over war, negotiation and compromise over violence and conflict.[5] Many expected that the Declaration of Principles on Palestinian Self-Government signed that day, along with several agreements known collectively as the "Oslo Accords,"[6] would usher in a new and profoundly different era for Israelis and Palestinians.[7]

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1. Sam Bahour, *Palestine's Economic Hallucination*, 165 THIS WEEK IN PALESTINE, Jan. 2012.

2. Interview with senior Palestinian official in Ramallah, West Bank (Jan. 2009).

3. In addition to secondary literature, reference will be made to interviews conducted by the author in Israel and the West Bank between 2007 and 2009. Names have been kept confidential.

4. Thomas L. Friedman, *Rabin and Arafat Seal Their Accord as Clinton Applauds 'Brave Gamble'*, N.Y. TIMES, Sept. 13, 1993, at lA1.

5. *See id.*

6. Declaration of Principles on Interim Self-Government Arrangements, Isr.-PLO, art. 1, Sept. 13, 1993, 32 I.L.M 1525 (1993) [hereinafter DOP]. The litany of documents and meetings that have emerged from various bilateral negotiations since Oslo is vast in scope. Following the Declaration of Principles, there was the Agreement on the Gaza Strip and the Jericho Area (1994); Interim Agreement on the West Bank and Gaza Strip (1995); Hebron Agreement (1997); Wye River Memorandum (1998); Sharm el-Sheikh Memorandum (1999); Camp David II Summit (2000); Taba negotiations (2001); Quartet on the Middle East, A Performance-Based Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict (2003), *available at* http://www.un.org/News/dh/mideast/roadmap122002.pdf [hereinafter Roadmap]; and the Annapolis Conference (2007).

7. This description is not to imply that there were no skeptics at the time. The most renowned was, perhaps, Edward Said, who authored a series of articles criticizing the Accords. Several of these were later collected in Said's PEACE AND ITS DISCONTENTS: ESSAYS ON PALESTINE IN THE MIDDLE EAST PEACE PROCESS (1996).

By April 2014, the *New York Times* had a more skeptical assessment: "The crisis that engulfed the ailing Middle East peace process this week was much more about preserving the process than finding a path to peace."[8] More than two decades after the historic handshake, the goals of the Oslo Accords remain unfulfilled: violence continues, the parties have failed to achieve a diplomatic agreement, and Israeli occupation persists.[9] Yet the institutional forms, central players, and daily practices of the Israeli-Palestinian conflict have been transformed. In this sense, the "Oslo regime" is as significant for the system it produced as for the solution it failed to provide. The Accords produced a durable new reality in the West Bank and Gaza[10] in which international ideas, donor aid, and expert assistance play a dominant role in the routine organization and management of the Palestinian territories.

The Oslo Accords both anticipated and necessitated international intervention. International organizations and foreign states have played a role in managing, governing, and shaping the territory between the Jordan River and the Mediterranean Sea for over a century.[11] Their direct role on the ground diminished between 1948, with the establishment of the state of Israel, and 1993.[12] With the advent of the Oslo era, however, international money, expertise, and ideas became central once again. Israelis and Palestinians negotiated the Accords in an era of increased international involvement in conflict and post-conflict territories, and the Accords were predicated on the availability of international resources and experts. Yet international norms and ideas shaped the regime the Accords produced in ways that its authors could not have foreseen. International involvement contributed to reframing the conflict from the occupation of territory by a victorious power against the will and resistance of a local population, into an indefinite "transition" in which two organized entities face one another in negotiations as notional equals while the focal point of public life in the occupied territories shifts from political resistance to institution-building, economic development, and security.

The Oslo regime formally reallocated power and responsibility for the

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8. Jodi Rudoren, *A Peace Process in Which Process Has Come to Outweigh Peace*, N.Y. Times, Apr. 4, 2014, at A1.

9. *Id.*

10. Throughout this Article, "West Bank and Gaza," "occupied territories," and "Palestinian territories" will be used interchangeably.

11. *See generally* MARK TESSLER, A HISTORY OF THE ISRAELI-PALESTINIAN CONFLICT (2009).

12. The notable exception is the U.N. Relief and Works Agency for Palestine Refugees (UNRWA), which was established in 1949 by the U.N. General Assembly and has worked continuously in the West Bank and Gaza. UNGA A/ RES/302 (IV), 8 Dec. 1949. In 2014, UNRWA served approximately 2 million registered refugees in the West Bank and Gaza. *UNRWA: Where We Work*, UNITED NATIONS RELIEF AND WORKS AGENCY, *available at* http://www.unrwa.org/where-we-work (last visited Apr. 18, 2014). As an institution founded in a wholly different context and operating separately from the Oslo regime, the study of UNRWA is beyond the scope of this Article.

Palestinian population and territory between Israel[13] and the Palestinian Authority ("the Authority"), the nascent quasi-government created by the Accords. While the Oslo Accords assigned the Authority explicit responsibility for Palestinian welfare and duties to control the population, they left overall territorial control and an overriding responsibility for security with the Government of Israel.[14] The agreement was accompanied by a massive ongoing aid package—envisioned as temporary—that inserted international organizations and foreign donors into the inevitable gap that emerged between the Palestinian Authority's responsibilities and its capacities.[15] As negotiations faltered, timeframes expanded, and violence ebbed and flowed, international actors became increasingly indispensable players, enmeshed in governance on the ground no less than in the diplomatic process.

The Authority's limits were not the sole factor making international actors central to the conflict. The Oslo Accords reformulated the Israeli-Palestinian conflict into a series of problems to be negotiated and resolved in an international arena, mediated and managed by external actors. In 1993, being "for" or "against" the Oslo Accords rested on interpreting them as a victory for peace, a repackaging and re-legitimation of Israeli occupation, or a first step in a phased Palestinian plan to take over Israel. In the years since, it has become increasingly clear that none of these notions captured the essential nature of the Oslo regime, which has grown into a multilateral governance project encompassing international organizations, foreign donors, the Palestinian Authority, and Israel (as well as, after 2006, the Islamic Resistance Movement, or Hamas). Under this regime, occupier and occupied—excluding Hamas—were transformed into "partners for peace" who shared an international vocabulary that shaped their practices of conflict and cooperation.[16]

Making international players central to negotiation, conflict, and reconstruction was hardly an exceptional program in the early 1990s. The Oslo Accords were negotiated in an era of renewed vigor for international organizations and multilateral projects. Conflict—including internal wars—and its aftermath had become international concerns. The "international community"—represented by a host of international, regional, and non-governmental organizations—routinely entered post-conflict states and territories to reconstruct and rebuild. The programs and policies pursued in these areas followed the logic of the era as it evolved: peace—negotiated in a multilateral arena—required development based on limited government, high levels of foreign investment, and good governance prac-

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13. Throughout this article, unless otherwise noted, "Israel" will be used to denote the "Government of Israel."

14. *See id.* at 1–2.

15. *See* Oren Gross, *Mending Walls: The Economic Aspects of Israeli-Palestinian Peace*, 15 Am. U. Int'l L. Rev. 1540, 1563 (2000) [hereinafter, Gross, *Mending Walls*]; State Formation in Palestine: Viability and Governance During a Social Transformation 2 (Mushtaq Husain Khan, George Giacaman, & Inge Amundsen, eds., 2004).

16. Mandy Turner, *Creating 'Partners for Peace': The Palestinian Authority and the International Statebuilding Agenda*, 5 J. Intervention & Statebuilding 1 (2011).

tices; human rights, enforced through institutions and courts, were a necessary component; and humanitarian objectives sometimes justified displacing governmental power with international intervention. In this environment, an international role in brokering and securing a negotiated peace between Israelis and Palestinians—and a continuing international presence for a temporary period thereafter—seemed inevitable and necessary.

The Oslo regime was thus comprised of two shifts: from power centralized in Israel to governance shared among multiple actors, and from a regime characterized by explicit asymmetry, conflict, stasis, and legal struggles, to one based on apparent equivalence between the parties, negotiations, post-conflict transition, and policy disputes. The multiplication of actors evolved out of both the provisions of the initial Accords and the functional needs of the regime. The shift from an asymmetric occupation disputed through law to ostensible equivalence and struggle over policy was more subtle and as much a matter of interpretation as of institutional change. As a result of these shifts, thinking about the relationship between Israel and Palestine solely as one of occupation now hides more than it reveals.

Scholars and policymakers have debated whether or not there was an occupation prior to 1993,[17] whether occupation continued after the Israeli withdrawals and redeployments in 1994 and 2005,[18] or whether the occupation is illegal.[19] These questions can be phrased in political, legal, or empirical terms; at times, they have been discussed in all three. They are critical to comprehending the conflict, but they represent only one piece of the contemporary puzzle. Thinking only in terms of occupation misses significant aspects of governance in the West Bank and Gaza today.

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17. *See infra.* notes 49-51 and accompanying text.

18. For an early discussion of the effects of Oslo on the applicability of the law of occupation, *see, e.g.*, Eyal Benvenisti, *Responsibility for the Protection of Human Rights Under the Interim Israeli-Palestinian Agreements,* 28 Isr. L. Rev. 297 (1994) (arguing that transferring "actual control" to a Palestinian government would end Israeli occupation in those areas). *See also* Eyal Benvenisti, The International Law of Occupation (2012) (reflecting that the transfer of power to the Authority was limited as a result of events taking place after his 1994 article). For debates over the status of Gaza as occupied territory after Israel's 2005 disengagement, *see, e.g.*, Elizabeth Samson, *Is Gaza Occupied? Redefining the Status of Gaza Under International Law*, 25 Am. Univ. Intl. L. Rev. 915 (2010); Yuval Shany, *Binary Law Meets Complex Reality: The Occupation of Gaza Debate*, 41 Isr. L. Rev. 69 (2008).

19. *See, e.g.*, Yael Ronen, *Illegal Occupation and Its Consequences*, 41 Isr. L. Rev. 201, 216–21 (2008); Orna Ben-Naftali, Aeyal M. Gross, & Keren Michaeli, *Illegal Occupation: Framing the Occupied Palestinian Territory*, 23 Berkeley J. Int'l L. 553, 605–6 (2005). Scholars have also debated whether a more appropriate legal or political analysis of the situation would involve the category of apartheid rather than occupation. *See, e.g.*, John Dugard & John Reynolds, *Apartheid, International Law and the Occupied Palestinian Territory*, 24 Eur. J. Int'l L. 867 (2013); Yaffa Zilbershats, *Apartheid, International Law, and the Occupied Palestinian Territory: A Reply to John Dugard and John Reynolds*, 24 Eur. J. Int'l L. 915 (2013); Raef Zreik, *Palestine, Apartheid, and the Rights Discourse*, 34 J. Palestine Stud. 68 (2004).

The pre–1993 occupation regime framed the parties as deeply une-qual antagonists, spoke the language of legality and illegality, and created institutions that tethered together Palestinian territory and population. By contrast, the Oslo regime interpreted the parties as relative equals, spoke the language of policy and compromise, and sponsored institutions that assigned territorial control to one party, population responsibility to another, and divided security between the two. While the new regime was neither solely dependent on international actors nor comprehensively formed according to international precepts, international resources, con-cepts, and practices fundamentally affected the ideas, language, and insti-tutional form of the new dispensation. The first half of this article examines the institutional transformation of governance in the Palestinian territories from 1967 to 2014, focusing on changes in the institutional actors, the allocation of power among them, and the practices of govern-ance. The second half of the article focuses on the way the conflict has been and should now be interpreted.

The article begins by examining the roots of the Oslo paradigm and the concomitant international involvement. It describes the shift from an occupation regime that was often articulated through international law and based on Israeli control of both the Palestinian population and its territory, to one expressed in the language of policy and premised on a formal divi-sion of duties between Israel and the Palestinian Authority. Between 1967 and 1993, the relationship between Israel and the Palestinian territories was structured around the law of occupation, despite ongoing debates within Israel with regard to the law's *de jure* applicability.[20] The practices of the military government and its arguments at the High Court of Justice demonstrate that Israel viewed itself as at least partially responsible for the Palestinian population, despite territorially expansionist activities and the imposition of broad restrictions on Palestinian development.[21] The Oslo regime reallocated power by delinking control over territory (retained largely by the Israeli government) from responsibility for the population (transferred formally to the Palestinian Authority). Occupation as both a legal regime and an interpretive framework did remain relevant. Interna-tional actors, the Palestinian population, and Israeli institutions responsi-ble for shaping and defending Israeli activity in the territory all continued to assert their claims, complaints, and defenses in the language of legal and illegal, appropriate and inappropriate acts under "occupation."

Despite the continuing relevance of occupation, however, the new regime produced different actors with new responsibilities. Limitations on the Authority's activity, through both spatial divisions and Israel's contin-ued control over territory, resources, and movement, necessitated interna-tional support for the population formally under the care of the

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20. *See infra, notes* 49-51, and accompanying text.
21. *See generally* SARA ROY, THE GAZA STRIP: THE POLITICAL ECONOMY OF DE-DEVELOP-MENT (1995).

Authority.[22] By focusing on economic issues of trade, revenue, and labor, I analyze the conflict between the Authority's formal role as the provider of Palestinian services and welfare and the limitations it faced and continues to confront as a creature of the Oslo regime. Although certain aspects of the pre-existing occupation regime continued after 1994, the tripartite structure represented a dramatic departure from the prior scheme: the Accords fostered a new system in which Israel, the Palestinian Authority, and international organizations and donors shared responsibility for Palestinian territory and population.[23]

The particular part played by international actors in the Oslo regime was enabled not only by the language of the Accords but by the habits, practices, expertise, and ideas they brought with them. Part II begins by briefly describing the changed nature of the "international community" after the Cold War, tracing its interventionist agenda, reduced emphasis on national governments, and commitment to peace negotiations. It considers shifts in mainstream conceptions of peacebuilding, economic development, human rights, and humanitarianism. Part II then analyzes the fluctuating purposes and uses of aid to the Palestinian territories from 1993 to 2013, tracing the tensions between aid intended to jumpstart the Palestinian economy so as to make independence viable, and aid delivered as emergency assistance to maintain an economy unable to escape dependence. The prolonged nature of the regime eventually created further conundrums for aid providers. Part II concludes by examining three of these conflicts: financial support for a system that many internationals saw as self-perpetuating; the repair of infrastructural damage caused by Israeli military operations; and the mitigation of the effects of occupation on the local population.

Part III suggests that an institutional description of the Oslo regime is necessary but insufficient for understanding the conflict today. Based on published reports and field interviews, I argue that the regime has three key characteristics that influence not only the way Palestinians are governed but also how they resist and how international actors perceive the Israeli-Palestinian conflict. I call these three characteristics "parity," "economism," and "transition." "Parity" refers to the structuring of the relationship between Israel and the Palestinians as if it were one of relative equals, and to the designation of bilateral negotiations as the only appropriate avenue for achieving political change. "Economism" reflects the idea that economic development is both the Palestinians' primary problem (rather than, for example, inequality of resource distribution) and their sole solution (rather than other versions of resistance that defy donor

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22. *See infra* Part I. *See also* Sara Roy, *The Palestinian Economy: Beyond Decline*, 14 Palestine Y.B. Int'l L. 1, 10 (2006).

23. For reasons of space and because the international community's interlocutor is the Palestinian Authority, the Article discusses Hamas' position much less than that of the Authority. However, Hamas plays a critical organizational role in Palestinian governance today. *See, e.g.*, Nathan J. Brown, Gaza Five Years On: Hamas Settles In (Carnegie Papers, 2012).

norms). Finally, "transition" connotes the redefinition of the situation from one of conflict and occupation to one of post-conflict reconstruction preoccupied with process and progress.

Viewing the Israeli-Palestinian conflict as a governance regime and placing international actors at the center of analysis demonstrates that while the Israeli-Palestinian conflict is as *sui generis* as any other, it is no more so. The conflict cannot be meaningfully examined if it is portrayed as the exception to every rule. The international peace and post-conflict enterprise, so integral to post–1993 Palestinian governance, brings with it language and practices learned and deployed around the world. The institutionalization of parity, economism, and transition demonstrate both the influence of international intervention on the Israeli-Palestinian conflict and the manner in which local conditions in turn shape the contours of intervention. In particular, the context of violence and insecurity in which international actors operated for much of the period after 1993, and which belied the language of peace and post-conflict resolution, narrowed the parameters of possibility for intervention. Throughout this period—especially but not only at times of heightened violence, such as Palestinian attacks during the Second Intifada and Israeli incursions into the West Bank, or ongoing conflicts between Israel and Hamas in Gaza—international action was not only reactive to Palestinian needs but shaped by the logic of Israeli security concerns.

Twenty years after Rabin and Arafat shook hands on the White House lawn, the Israeli occupation continues. This could be explained in myriad ways. One could tell a story in which Oslo represented nothing more than the continuation of an unequal regime premised on Israeli territorial expansion and control of Palestinian life and in which occupation was simply repackaged and resold under other names and with other tools. One could also tell a story of Oslo as a dramatic break in a decades-long conflict that would have found a peaceful resolution had one or both sides, or elements thereof, not stood in its way. While each of these stories has elements of truth, neither accounts for the significant influence that international actors and ideas have had. Both suggest that the essence of the story is occupation, whether continuing or ending. Yet the international role in governing Palestine suggests that while occupation remains essential for understanding the situation, it has been displaced as the sole interpretive framework and basis for governance. Instead, a new regime defined by a commitment to negotiations between ostensibly equal partners, state-building based upon a specific version of economic development, and gradualist change has taken hold. Its greatest effect may have been not ending or continuing the occupation but changing the terms of the debate. The Oslo regime intimated that occupation would end while shifting attention from the political project of ending occupation. Without confronting and questioning the benefits and drawbacks of a regime that both reaches beyond and sometimes obscures occupation, it will be impossible to evaluate the consequences, legality, justice, or morality of the current dispensation.

I. **Prelude: The Legal and Institutional Background for International Governance**

In June 1967, Israel occupied the West Bank and Gaza.[24] Legally and institutionally, the relationship between Israel and the Palestinian territories was understood primarily as one of occupation, in which one party controlled the territory and population of the other on a temporary basis, balancing the occupier's security against the occupied's welfare.[25] Institutions formed in the wake of the 1967 War were designed around Israeli security and management of Palestinian territory and population. From the first days after the war, the language of international law was central to discussions about the status of the territories, and contestations over Israeli action.[26] Although Israel prioritized its own security and territorial expansion over the welfare of the occupied population, the primacy of the occupation as both the political and legal framework for rule ensured some link between territory and population. Understanding the situation as one of occupation also suggested a transient period during which the occupier's activities in the occupied territory should be limited.[27] Although the prolonged nature of Israeli occupation challenged some of these assumptions, scholars, policymakers, and activists nonetheless argued over and analyzed the situation on these grounds. Whether evaluated in terms of law, ethics, institutions, or strategy, the most appropriate vocabulary was that of occupation.

In the twenty years since the Oslo Accords, that vocabulary—and a series of related practices—has shifted. Occupation remains central, but new institutions and allocations of power have altered the form and con-

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24. For more information on the 1967 War and the beginning of the occupation, *see generally* THE 1967 ARAB-ISRAELI WAR: ORIGINS AND CONSEQUENCES (Avi Shlaim &William Roger Louis eds., 2012); MICHAEL B. OREN, SIX DAYS OF WAR: JUNE 1967 AND THE MAKING OF THE MODERN MIDDLE EAST (2002).

25. The terminology of "occupation" has been contested in Israeli discourse since 1967. The West Bank and Gaza have often been labeled as "disputed" or "administered" territories in Hebrew. *See, e.g.*, NEIL CAPLAN, THE ISRAEL-PALESTINE CONFLICT: CONTESTED HISTORIES (2010). *See also* Dore Gold, *From "Occupied Territories" to "Disputed Territories"*, 24 AM. FOREIGN POL. INT. 207 (2002). Nonetheless, the governing regime operated largely on the model of belligerent occupation and despite the questions over the applicability of the law of occupation discussed below, the vocabulary and institutions of occupation remained central.

26. Then-military advocate general Meir Shamgar issued a letter to the military commanders directly after the Israeli victory "reminding [them] of the principles of international law . . . ." NEVE GORDON, ISRAEL'S OCCUPATION 26 (2008). The Security Council resolution issued shortly after the conclusion of the 1967 war called for the "withdrawal of Israel armed forces from territories occupied in the recent conflict." U.N. Sec. Council S/RES/242 (Nov. 22, 1967). See also Quincy Wright, The Middle East Problem, 64 AM. J. INT'L L. 270 (1970). Kretzmer points out that the Supreme Court of Israel saw few petitions by residents of the Territories in the first decade of occupation; after the 1977 election of a right-wing government in Israel, many more petitions were made to the Court. DAVID KRETZMER, THE OCCUPATION OF JUSTICE: THE SUPREME COURT OF ISRAEL AND THE OCCUPIED TERRITORIES 8 (2002).

27. BENVENISTI, *supra* note 18, at 93 (The occupant must not seek to effect long-term changes that would complicate the re-establishment of authority by the legitimate government").

ceptualization of the regime. Today, two ostensibly equal parties negotiate common problems while focusing on the production of new Palestinian institutions for security and development. The status quo pressure of the occupation regime has been replaced by a series of steps, conditions, and benchmarks that emphasize process and suggest progress. To analyze this change, this Part examines certain institutional, legal, and policy shifts on the ground, focusing on the move from a regime controlled by Israel to one in which power is shared (albeit unequally) between Israel and the Palestinian Authority. Part II completes the institutional map with an analysis of the role of international aid to the West Bank and Gaza.

The Oslo Accords largely delinked territorial control from population responsibility and the occupier's security from the occupied population's welfare. Under the Accords, Israel withdrew from responsibility for the Palestinian population, transferring duties such as welfare, health care, and basic services to the newly-created Palestinian Authority.[28] Israel maintained control of the majority of Palestinian territory, creating a formal separation between territory (controlled by Israel) and population (cared for by the Authority).[29] On the ground, however, the two could not be meaningfully separated. The occupying power's continuing control of movement, resources, and revenue—including actions taken according to the logic of security—limited the autonomous capacity of the occupied to govern themselves. Without another player, the Accords would have created a governance gap between the Authority's responsibilities and its capacity. As a result, the Oslo regime depended from its inception upon international mediation, funds, and management.

The initial arrangements of Oslo anticipated international involvement, but only on a temporary basis. The incrementalist philosophy of the Oslo Accords—which was based on confidence-building through smaller-scale cooperation and compromise—portrayed shared governance as a pathway to eventual resolution and, potentially, Palestinian independence.[30] Despite formal (and symbolic) gains in autonomy for the new Palestinian leadership, however, a combination of the language of the Accords and subsequent violence and discord between the parties drastically limited the potential for Palestinian self-rule.[31] Instead, the Authority became one member of a tripartite structure of governance, along with

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28. See *infra* Part I.C.

29. See *infra* Part I.C.

30. Orde F. Kittrie, *More Process than Peace: Legitimacy, Compliance, and the Oslo Accords*, 101 MICH. L. REV. 1661 (2003).

31. *See e.g.*, David P. Fidler, *Peace through Trade? Developments in Palestinian Trade Law During the Peace Process*, 38 VA. J. INT'L L. 155, 163-64 (1998) (noting that Israel has frequently closed its borders with the Palestinian Territories, wreaking havoc on the Palestinian economy). The law of occupation does contemplate a degree of self-rule by the occupied population for administrative purposes. Dinstein views the Palestinian Authority in this light, arguing that the autonomy of the local body is inherently limited as long as the occupation continues. *See* YORAM DINSTEIN, THE INTERNATIONAL LAW OF BELLIGERENT OCCUPATION 58 (2009).

Israel and a host of international organizations (as well as Hamas, after 2007).

While undeniable continuities exist from the occupation schema to the Oslo regime, the particular arrangement of responsibility and control, as well as the large-scale insertion of international actors after 1993, belies a tale of unchanging rule.[32] To understand the transformations wrought by Oslo requires revisiting Palestinian governance in the decades preceding the Accords, focusing on the occupation regime. This Part begins by briefly examining the law of occupation. From the outset of Israeli control in the West Bank and Gaza, legal language provided a common vocabulary used for describing the situation, evaluating the validity of Israeli rule, determining the legitimacy of Israeli and Palestinian practices, analyzing the allocation of power among the parties, and supporting or limiting economic development. As a result, considering the law of occupation is critical for understanding the Israeli-Palestinian conflict. Part I.A demonstrates that the legal regime of occupation focuses attention on an unequal bilateral relationship that temporarily and exceptionally separates territorial control from title while maintaining the link between population and territory. Because it is both temporary and exceptional, the regime envisions a separation between occupier and occupied based on limiting the changes made by the occupier to the public order of the occupied. Part I.B argues that between 1967 and 1993, these factors played out in an Israeli occupation comprised of a set of institutions that maintained some linkages between the welfare of the Palestinian population and the security of Israel as manifested through territorial control. At the same time, the particularities of this occupation—including its prolonged nature, the expansion of settlements, and the demographic interest of Israel in maintaining a Jewish state—increased the level of integration between occupier and occupied. Part I.C maps the reconfigured relationship between Israel and the West Bank/Gaza Strip under Oslo through an analysis of the territorial division initiated by the Accords, the establishment of the Palestinian Authority,

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32. *But see* GORDON, *supra* note 26, at 180 (arguing that Oslo allowed Israel to preserve the existing distinction between Palestinian inhabitants and their land); LISA HAJJAR, COURTING CONFLICT: THE ISRAELI MILITARY COURT SYSTEM IN THE WEST BANK AND GAZA 56 (2005) (suggesting that post–1967 Israel sought to "separate the land from the people residing there" by focusing on the land as unoccupied rather than the population as a national collective). While I agree that the Israeli government sought territorial expansion at the expense of protecting or providing for the Palestinian population, I argue that the system as designed nonetheless retained linkages between people and land that were disrupted and replaced in the post–1993 Oslo regime. The 1978 Camp David Accords negotiated between Israel and Egypt reinforce this position. The agreement included a section on Israeli-Palestinian negotiations which suggested a five year transitional period with an interim Palestinian "self-governing authority" to replace the Israeli military authority. *See* Camp David Accords, at A(1), Sept. 17, 1978, Egypt-Isr.-U.S., 17 I.L.M. 1466 (signing "A Framework for Peace in the Middle East") at A(1)(a) (Sept. 17, 1978). The Camp David regime anticipated the division of territory and population eventually implemented by Oslo, but the fact that it was never implemented underlines the difference between the 1967–1993 era (in which territory and population remained linked, despite attempts to separate them) and the post–1993 era.

and the formal allocation of responsibility between Israel and the Authority.

A.   The View from the Law of Occupation

Occupation may be viewed as a way to organize governance, as a political problem, as a military action, or as a legal regime. Perhaps the most central interpretive frame used in the Israeli case has been to examine occupation as a legal regime. The Israeli occupation has been consistently debated and discussed in legal terms, whether with regard to settlements, the Separation Barrier, or targeted assassinations.[33] Even arguments over whether it is an occupation involved citation to international law. Thus, understanding the perception and functions of the regime before 1993 requires focusing on the law of occupation. The International Court of Justice (ICJ) defines occupied territory, under both customary and treaty law, as "territory [that is] actually placed under the authority of the hostile army, and the occupation extends only to the territory where such authority has been established and can be exercised."[34] The law of occupation comes into play at the moment the occupant establishes effective control.[35] Yet title remains with the occupied, severing sovereignty from control.[36] The occupation regime is an exceptional one, defined by a temporary break with the normal international order.[37] It rests upon an unequal relationship between occupier and occupied, in which the former controls both territory and population of the occupied. The law institutes protections for the population on the territory with a view toward the eventual return of control of that territory to the sovereign, relinking sovereignty and control and restoring international 'normalcy'.[38] In this sense, the law of occupation reinforces the connection between territory and population while balancing the security of the occupier against the welfare of the occupied. The occupier maintains its control of territory for its own security but respects the rights of, and continuity of life for, the local population.

As a legal regime, occupation is characterized not only by the separation of sovereignty from control, but by the occupier's management of public order and civil life and by its inherently temporary quality.[39] While the

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33. *See generally* KRETZMER, *supra* note 26.

34. Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136, para. 78 (July 9) [hereinafter Advisory Opinion]. *See also* Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 75 U.N.T.S. 287 [hereinafter Geneva Convention IV].

35. Convention Respecting the Laws and Customs of War on Land, Regulations Respecting the Laws and Customs of War on Land, art. 42, Oct. 18, 1907, 36 Stat. 2277 [hereinafter Hague Regulations 1907]; *see also* DINSTEIN, *supra* note 31, at 42.

36. DINSTEIN, *supra* note 31, at 49.

37. Orna Ben-Naftali, Aeyal M. Gross, & Keren Michaeli, *Illegal Occupation: Framing the Occupied Palestinian Territory*, 23 BERKELEY J. INT'L L. 553, 605–6 (2005).

38. *See, e.g.*, DINSTEIN, *supra* note 31 at 140.

39. Although scholars agree that the occupation regime is intended to be temporary, they argue over the precise implications of its time-bound nature. *See* Orna Ben-Naftali, Aeyal M. Gross and Keren Michaeli, *Illegal Occupation: Framing the Occupied Palestinian Territory*, 23 BERKELEY J. INT'L L. 553, 599 (2005) (arguing that the legality of occupation

security of the occupier is central to the regulatory architecture of occupation, the continuity of life for, and eventual return of the territory to, the occupied population are critical considerations. The Hague Regulations state that the occupier must "take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country."[40] The Geneva regime focuses on protections for the occupied population and responsibilities of the occupier.[41] The international legal regime therefore suggests a 'balance' between the security of the occupier on the one hand and the continuity of the local system (Hague) and protection of the population (Geneva) on the other, although "realistically, one cannot expect the occupant, who is entrusted with the discretion to balance the conflicting interests, to compromise its security interests in favor of the interests of the population."[42]

Although the occupier gains effective control of the territory and thus of the population, the international legal regime regulates the degree to which the occupier can fundamentally alter the local system or the life of the population.[43] The system is based upon a concept of temporary interruption in the life of both territory and population.[44] The regime is set up to maintain separation between the occupier and the occupied on the grounds that the relationship will eventually end. There are multiple pos-

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relies in part on its temporary nature, as opposed to an indefinite duration). *See also* BENVENISTI, *supra* note 18, at 6 ("Because the occupation does not amount to sovereignty, occupation is also limited in time and the occupant has only temporary managerial powers"). For further discussion of the temporary aspects of occupation, see *infra* Part III.C.

40. Hague Regulations 1907, *supra* note 35, at art. 43.

41. *See* Geneva Convention IV, *supra* note 34, at art. 55, 56, 59.

42. BENVENISTI, *supra* note 18, at 105. Some view the occupier as a 'trustee' of the territory. *See, e.g.*, Ralph Wilde, *From Trusteeship to Self-Determination and Back Again: The Role of the Hague Regulations in the Evolution of International Trusteeship and the Framework of Rights and Duties of Occupying Powers*, 31 LOY. L.A. INT'L & COMP. L. REV. 85, 100–02 (2009). Given the largely inevitable conflict between the occupier's interests and its responsibilities, the law of occupation provides for "Protecting Powers" (either a third state or other neutral such as an international organization) to "safeguard the interests of the Parties to the conflict." Geneva Convention IV, *supra* note 34, at art. 9, 11. In the event that "persons protected by the present Convention do not benefit or cease to benefit" from the actions of the protecting power, the occupier has a duty to appoint a state or other neutral to perform the functions. If protection cannot be arranged according to these terms, humanitarian organizations may assume humanitarian functions performed by the protecting power, although the activities included within this category "do not include the power to supervise the management of the affairs of the occupied territory." BENVENISTI, *supra* note 18, at 205. Benvenisti points out that the system of protecting power has been used only twice in the context of Suez (1956) and Goa (1961). BENVENISTI ,*supra* note 18, at 207.

43. *See* DINSTEIN, *supra* note 31, at 286. After the U.S.-led Coalition Provisional Authority occupation of Iraq in 2003, a new set of scholarship began to explore the idea of "transformative occupation." *See, e.g.*, Adam Roberts, *Transformative Military Occupation: Applying the Laws of War and Human Rights*, 100 AM. J. INT'L L. 580, 580 (2006); Nehal Bhuta, *The Antinomies of Transformative Occupation,* 16 EUR. J. INT'L L. 721 (2005); David J. Scheffer, *Beyond Occupation Law*, 97 AM. J. INT'L L. 842 (2003).

44. *See generally* Wilde, *supra* note 42. *See* discussion *infra* Part III.C.

sibilities for the end of occupation—the loss of effective control by the occupant, the signing of a peace agreement with "genuine consent of the [occupied] sovereign," or the transfer of authority to an "indigenous government endorsed by the occupied population through referendum and which has received international recognition"[45]—but there is no provision for its permanence.[46]

B. Occupation on the Ground: 1967–1993

In June 1967, Israel captured the West Bank and Gaza from Jordan and Egypt, respectively.[47] Military administrations were immediately put in place; a military order issued by the Israeli Military Commander declared that existing law would remain in place insofar as it did not conflict with military orders.[48] The Israeli government initially argued that neither the Hague Regulations nor the Fourth Geneva Convention applied to the West Bank and Gaza,[49] although Israel's attorney general asserted that the "humanitarian" provisions of the Fourth Geneva Convention would be applied *de facto*.[50] The Israeli Supreme Court eventually applied the Hague Regulations and has made "relating to provisions of the Fourth Geneva Convention . . . part of [its] standard practice."[51]

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45. BENVENISTI, supra note 18, at 56. Formerly, occupation could also end in a situation of *deballatio*, in which the enemy state was utterly destroyed and no groups continued to fight on the defeated sovereign's behalf. However, the increased emphasis on self-determination has largely overridden that option. *Id.* at 56. Dinstein adds that the Security Council may be able to terminate occupation, as it did in Iraq, but that the fact that this occurred only once and only in a strictly formal sense, makes this a contested possibility. DINSTEIN, *supra* note 31, at 272.

46. As Ben-Naftali et al. discuss, the prohibition on the acquisition of title to territory by force is a central tenet of international law. Ben-Naftali, *supra* note 19, at 2024.

47. *See* Adam Roberts, *Prolonged Military Occupation: The Israeli-Occupied Territories Since 1967*, 84 AM. J. INT'L L. 44, 58–60 (1990).

48. Proclamation Concerning Law and Administration (no. 2) (June 7, 1967). A separate order placed East Jerusalem under the municipality of West Jerusalem, which was interpreted by many international observers as an illegal act of annexation of occupied territory. *See* BENVENISTI, *supra* note 18, at 204–05. The Israeli Supreme Court did not formally recognize the act as annexation, but the state has exercised sovereignty over "united Jerusalem" since 1967. *Id.* A 1980 Basic Law stated that "Jerusalem, complete and united, is the capital of Israel." *Id.*

49. Israeli Attorney General Shamgar claimed that recognizing the applicability of the Fourth Geneva Convention would implicitly recognize the sovereignty of Jordan and Egypt in the West Bank and Gaza respectively by according them the title of High Contracting Party according to the Convention. Meir Shamgar, *Legal Concepts and Problems of the Israeli Military Government— The Initial Stage*, in MILITARY GOVERNMENT IN THE TERRITORIES ADMINISTERED BY ISRAEL, 1967–80 (Meir Shamgar, ed., 1992); *see also* Yehuda Blum, *The Missing Reversioner: Reflections on the Status of Judea and Samaria*, 3 ISR. L. REV. 279 (1968). Israel continues to deny the *de jure* applicability of the Fourth Geneva Convention to the West Bank and Gaza Strip, but neither the International Court of Justice nor the vast majority of international lawyers has accepted this claim. *See* Advisory Opinion, *supra* note 35, para. 101; BENVENISTI, *supra* note 18, at 206; DINSTEIN, *supra* note 31, at 2024 (2009); Roberts, *supra* note 47, at 63–66.

50. BENVENISTI, *supra* note 18, at 206.

51. David Kretzmer, *The Law of Belligerent Occupation in the Supreme Court of Israel*, 94 INT'L. REV. RED CROSS 207, 213 (2012). *See* BENVENISTI, *supra* note 18, at 207–08. *See also* Roberts, *supra* note 48, at 62–63. In the early years of the occupation, the Court

Following the traditional understanding of occupation, control of, and responsibility for, both territory and population fell to the Israeli state.[52] Although the Israeli occupation schema arguably sought territorial expansion at the expense of the population's welfare,[53] the legal regime of belligerent occupation ensured some connection between the two. Orders issued by the Israeli military administration of the Territories[54] immediately became law.[55] These authorities managed (directly or indirectly) most aspects of Palestinian life, ranging from social services to education, trade, and security.[56] A constant battle was waged between Israel's interest in its own security and its duties to protect the Palestinian population's welfare.[57]

The tension between an expansionist settlement project[58] and the state's demographic preoccupations led to a regime that oscillated between integration and separation of occupier and occupied. The legal, political, and economic rules and practices of the occupation swung between the need to separate the Territories from Israel and an interest in maintaining a close relationship between them. This tension was present from the earliest era of the occupation, and it grew markedly as the decades wore on.

At the most explicit level of separation, the West Bank and Gaza were placed under military rule, while East Jerusalem operated under Israeli municipal law.[59] Legally, the Territories were maintained as separate units from the state of Israel, with military courts adjudicating security violations, other tribunals addressing administrative questions, and some existing local courts continuing their operation.[60] Israelis and Palestinians could both move relatively freely across the former border, although the

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"followed this path after government counsel had expressly stated that as the authorities were convinced that they had acted in accordance with the provisions of the Convention, they agreed to review of their acts according to its strictures." The authorities later argued that the Convention was not customary law and thus not applicable, but the Court continued to interpret the Convention in some of its rulings. Kretzmer, *supra* note 26, at 43.

52. *See* Roberts, *supra* note 47, at 58–61.

53. *See* BENVENISTI, *supra* note 18, at 206–09.

54. The Israeli Civil Administration, operating under the Coordinator of Government Operations in the Territories (COGAT) was created in 1981 to replace the military government as the governing body of the West Bank and Gaza Strip. *See* Israel Military Order Concerning the Establishment of a Civilian Administration (No. 947) (Nov. 8, 1981), *translation available at* http://www.israellawresourcecenter.org/israelmilitary-orders/fulltext/mo0947.htm.

55. *See* Shamgar, *supra* note 49.

56. Uri Shoham, *The Principle of Legality and the Israeli Military Government in the Territories*, 153 MIL. L. REV. 245, 250–51 (1996); ALLAN GERSON, ISRAEL, THE WEST BANK AND INTERNATIONAL LAW 112–14 (1978).

57. For a detailed discussion of the dilemma and the approach of the Supreme Court, *see* Kretzmer, *supra* note 26, at 64–72.

58. *See generally* GERSHOM GORENBERG, THE ACCIDENTAL EMPIRE: ISRAEL AND THE BIRTH OF THE SETTLEMENTS, 1967–1977 (2007).

59. *See* BENVENISTI, *supra* note 18, at 204–05. *See generally* MENACHEM KLEIN, JERUSALEM: THE CONTESTED CITY (2001).

60. EYAL BENVENISTI, THE INTERNATIONAL LAW OF OCCUPATION 117–18 (2004); HAJJAR, *supra* note 32, at 58–69.

latter were subject to a permit regime for both labor and non-work related movement.[61]

Despite one set of practices that maintained separation between Israel and the Palestinian territories, another set simultaneously fostered integration. First and foremost, the establishment of Israeli settlements, which were regulated under Israeli law, integrated parts of the West Bank territory into the Israeli system.[62] Second, although the grounds differ, both Israeli citizens and Palestinian residents of the West Bank and Gaza had (and continue to have) recourse to the Israeli High Court.[63] Finally, in the economic arena, "imposed, incomplete" integration stemmed from economic interests and a tactical determination that improving Palestinian daily life might mitigate opposition to Israeli rule.[64]

The Israeli government regulated the Palestinian economy directly and created an economic union between the Palestinian and Israeli economies.[65] In the years following 1967, the Territories became a source of cheap labor (at first illegal and later regulated) for Israeli businesses, and Israel became the primary market for Palestinian goods.[66] A 1983 Israeli High Court case allowing Israel to impose value added taxes (VAT) on the territories both revealed and permitted further integration between the territories and Israel;[67] at the same time, however, the integration itself contributed to further economic inequality between the two areas.[68] According to the High Court, "the economy of the territories is umbilically tied to the economy of Israel,"[69] and the inevitable connection between the two necessitated integration for the purposes of protecting the restoration of public life and order required by the Hague Regulations.[70] The Court's reasoning relies on three premises: first, the existing integration between the economies is both beneficial and inevitable given the military occupation of the West Bank and Gaza;[71] second, the imposition of the VAT on the

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61. *See* Leila Farsakh, Palestinian Labour Migration to Israel: Labour, Land and Occupation (2005)

62. Settlement activity intensified exponentially after the election of the right-wing Likud government of Menachem Begin in 1977. *See, e.g.*, Ian Lustick, *Israel and the West Bank After Elon Moreh: The Mechanics of De Facto Annexation*, 35 Mid. East J. 557 (1981).

63. Kretzmer, *supra* note 26, at 19–30; Benvenisti, *supra* note 18, at 218 (arguing that the Court's motivations included both "humanitarian considerations" and "the wish to intensify ties between the local residents and the Israeli system").

64. Arie Arnon & Jimmy Weinblatt, *Sovereignty and Economic Development: The Case of Israel and Palestine*, 111 Econ. J. 291, 292 (2001).

65. Benvenisti, *supra* note 18, at 232.

66. Gross, *Mending Walls*, *supra* note 15, at 1549-52.

67. *See* HCJ 69/81 Bassil Abu Aita et al. v. The Regional Commander of Judea and Samaria and Staff Officer in Charge of Matters of Customs and Excise 37(2) PD 197 [1983] (Isr.).

68. Gross, *Mending Walls, supra* note 15, at 1551 (2000) (arguing that Israel unilaterally shaped Israeli-Palestinian trade relations).

69. Bassil Abu Aita et al., HCJ 69/81 at 104.

70. *Id.* at 143.

71. Few would argue that Israeli policies did not benefit the Palestinian population in the years between 1967 and the First Intifada, in the sense of increasing the standard of living, levels of employment, and ownership of goods. However, these improvements

Territories is required in order to continue the beneficial integration between the two economies (which are, for all intents and purposes, largely one economy with unequal distribution); and third, maintaining the beneficial level of integration is necessary not only for the benefit of the Palestinian residents of the Territories but also for the security of Israel, since "serious economic harm" in the Territories would constitute a "security danger" for Israel.[72] The decision exemplifies a particular line of argument that finds actions by the occupier necessary for both populations. While the security of the occupying power remained central, both the military government and the Court emphasized during the pre-1993 era the responsibility of the occupier to protect and assist the occupied population.[73]

The longevity of the Israeli occupation exacerbated both the balance between security and welfare and the tension between separation and integration.[74] The longer an integrated system remains, the more the occupier's policies shape the local economy, and the harder it becomes to institute economic (and thus political or legal) separation.[75] As a result, later agreements negotiated in an ostensibly neutral international space

were largely or entirely dependent on the Israeli economy, employment and consumption. *See, e.g.*, BENVENISTI, *supra* note 18, at 241-42 (suggesting that given the existing inequalities, complete economic separation during occupation would have meant "stagnation, unemployment and social unrest in the territories," whereas the notion of a single market could considerably lift the standard of living in the territories); Gross, *Mending Walls, supra* note 67, at 1551-55 (arguing that while the system produced and sustained extreme Palestinian dependence, "the forced economic integration with the Israeli market greatly contributed to the rise in the individual Palestinian's standard of living as well as the growth of the economy"); Hisham Awartini, *Israel's Economic Policies in the Occupied Territories: A Case for International Supervision, in* INTERNATIONAL LAW AND THE ADMINISTRATION OF THE OCCUPIED TERRITORIES: TWO DECADES OF ISRAELI OCCUPATION OF THE WEST BANK AND GAZA STRIP 399-404, 416-417 (Emma Playfair, ed., 1992) (citing statistics that demonstrate Palestinians have experienced rising standard of living, some economic growth, and decreasing unemployment in the Territories while also becoming increasingly dependent, unable to develop economically, and subject to the discretion of the occupier); MERON BENVENISTI WITH ZIAD ABU-ZAYED AND DANNY RUBINSTEIN, THE WEST BANK HANDBOOK: A POLITICAL LEXICON 67 (1986) (characterizing Israel's economic policy as one of "freezing the economic development of the Palestinian sector along with encouragement of improvements in the standard of living" and encouraging individual economic improvement offset by communal stagnation).

72. Bassil Abu Aita et al., HCJ 69/81 at 106-07.

73. Emma Playfair, *Playing on Principle? Israel's Justification for Its Administrative Acts in the Occupied West Bank, in* INTERNATIONAL LAW AND THE ADMINISTRATION OF THE OCCUPIED TERRITORIES: TWO DECADES OF ISRAELI OCCUPATION OF THE WEST BANK AND GAZA STRIP 215, (Emma Playfair, ed., 1992) (finding that Israeli case law reveals that the military government "has cited the welfare or benefit of the local population as the rationale for military orders affecting matters such as insurance, health, agricultural produce, appliances, local courts, price fixing, etc").

74. For a detailed discussion of the temporary nature of occupation, see, *infra*, Part III.C "Transition." Roberts defines "prolonged" as an occupation longer than five years that "extends into a period when hostilities are sharply reduced" although he admits that seeking a precise definition is "likely to be a pointless quest." Adam Roberts, *Prolonged Military Occupation: The Israeli-Occupied Territories Since 1967*, 84 AM. J. INT'L L. 44, 47 (1990).

75. *See, e.g.*, BENVENISTI, *supra* note 18, at 242-43 (discussing the difficulty of imposing the VAT tax only in Israel and not in the occupied territories).

relied upon the asymmetries and inequalities constituted by the uneven integration of the pre-1993 period.[76]

Between 1967 and 1993, Israeli military, legislative, and judicial practices operated between the poles of separation and integration. Although a territorially expansionist agenda generally triumphed over concern for the occupied population, the guiding framework of occupation supported some level of administration or responsibility for the population. As a result, any attempt to integrate Palestinian territory into, while separating its population from, Israel was subject to certain limitations. With Oslo, however, the link between territorial control and population responsibility was severed, as Israel retained the former while the Palestinian Authority took over the latter. The tension between separation and integration was eased as the signing of the Accords and the creation of the Palestinian Authority arguably "further entrenched the dual mechanism that allowed Israel to see the occupied territories as part of Israel when it came to land. . .and separate from Israel when it came to responsibility for the Palestinian population."[77] While the separation of territory from population (and thus of security from welfare) appeared plausible—and even progressive—to some, the situation on the ground suggested an inextricable relationship.[78] As the next section argues, territory plays a key role in restraining population—through building permits, movement regulations, and resource limitations—and population remains tied to territory for both material and symbolic reasons. As a result, the Oslo regime maintained an asymmetrical system that required multilateral intervention.[79]

C.   Occupation Under Oslo/Oslo Under Occupation: 1993–2013

Although the signing of the Oslo Accords did not override the application of the law of occupation to the West Bank and Gaza,[80] the system they spawned altered the parameters of Palestinian governance. The Accords established a new Authority to manage the Palestinian population and to contribute to security in the Territories. As a result of both structural limi-

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76. *See* Arie Arnon, *Israeli Policy Towards the Occupied Palestinian Territories: The Economic Dimension, 1967-1970*, 61 MIDDLE E.J. 573, 583–84 (2007); COLIN SHINDLER, A HISTORY OF MODERN ISRAEL 77 (2008).

77. Raef Zreik, *Palestine, Apartheid, and the Rights Discourse*, 34 J. PAL. STUD. 68, 73 (2004).

78. "Most Palestinians saw the signing of the Oslo agreements and the establishment of the Palestinian Authority (PA) as a step toward achieving their goal of an independent state—complete separation from Israel." *Id.*

79. *See, e.g.*, DINSTEIN, *supra* note 31, at 16–17.

80. Some scholars did suggest that the Accords affected Israel's degree of effective control and thus its occupation of the West Bank and Gaza. *See, e.g.,* Eyal Benvenisti, *Responsibility for the Protection of Human Rights Under the Interim Israeli-Palestinian Agreements,* 28 ISR. L. REV. 297 (1994). Others argue that "[t]he very existence of Israel's residual powers unmistakably indicates that the belligerent occupation was not over." By retaining certain governance powers, Israel retained effective control of the territories and thus continued as the occupier. DINSTEIN, *supra* note 31, at 274–75. The ICJ confirmed that Israel continues as occupier in the *Wall* advisory opinion ("All these territories (including East Jerusalem) remain occupied territories and Israel has continued to have the status of occupying power"). Advisory Opinion, *supra* note 37, at para. 78.

tations written into the Accords and the effects of subsequent events, the Authority was significantly encumbered. Two areas were particularly significant: spatial division and allocation of power. First, Oslo divided the territory into zones, leaving most of the land under Israeli control but formally transferring major Arab population centers to Palestinian management.[81] This left the Authority with relatively little territory under its exclusive control. Second, while the Accords assigned a series of responsibilities to the newly-created Palestinian Authority, they left a wide array of issues under Israeli control.[82] In addition, internal divisions and corruption weakened the Authority over time. The limitations written into the Accords, the longevity of the regime, the effects of internal Palestinian politics, and ongoing violence necessitated large-scale and long-term international involvement, thus transforming the bilateral relationship between occupier and occupied into a tripartite system of governance.

Both the spatial division and the allocation of responsibility were produced according to the gradualist, incrementalist logic of the Accords, which assumed that a growing sense of Israeli security and decreasing Palestinian violence would create confidence for tackling final peace negotiations.[83] By introducing formal territorial fragmentation, divided governance,[84] and an incrementalist philosophy of political change, the new regime affected the factual evaluation of effective control (later exacerbated by the 2005 Israeli disengagement from Gaza), the separation of population from territory and of (occupier's) security from (occupied's) welfare, and the definitiveness of ending occupation.

1. Spatial Separation

The 1993 Declaration of Principles on Interim Self-Government Arrangements (DOP) established the parameters for negotiations between the antagonists.[85] A series of interim agreements followed the DOP; although final status negotiations were formally attempted at Camp David in 2000, no final agreements were ever concluded.[86] The DOP provided for a "Palestinian Interim Self-Government Authority . . . for a transitional

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81. DINSTEIN, *supra* note 31, at 245.

82. *See* Peter Malanczuk, *Some Basic Aspects of Agreements Between Israel and the PLO from the Perspective of International Law*, 7 EUR. J. INT'L L. 485, 497 (1996) ("Israel has retained jurisdiction over Israelis and the Israeli settlements in the respective areas, controls security and external relations and has retained the 'residual power'").

83. *See id.* "Final status" issues such as Jerusalem, Palestinian refugees, borders, settlements, security, and "relations and cooperation with other neighbors" were left for later negotiations. *See* DOP, *supra* note 6, art. V (5).

84. The law of occupation does contemplate a degree of self-government in the territory under occupation, although the occupation continues as long as the occupier maintains its overall authority. DINSTEIN, *supra* note 31, at 58.

85. *See* DOP, *supra* note 6.

86. The DOP was followed by a series of interim agreements; final status negotiations failed in 2000. *See* Robert Malley & Hussein Agha, *Camp David: The Tragedy of Errors,* N. Y. REV. BOOKS (Aug. 9, 2001), http://www.nybooks.com/articles/archives/2001/aug/09/camp-david-the-tragedy-of-errors/.

period not exceeding five years, leading to a permanent settlement . . . ."[87] This body became known as the Palestinian National Authority, or simply the Palestinian Authority.[88] The DOP assigned the Authority responsibility for education, culture, health, social welfare, direct taxation, and tourism, areas previously governed first by the Israeli military government and subsequently by the Civil Administration.[89] The Authority would also establish a "strong police force, while Israel [would] continue to carry the responsibility for defending against external threats, as well as the responsibility for overall security of Israelis."[90]

Spatial separation commenced when, as specified by the DOP, the Israeli military withdrew from the Gaza Strip (excluding Israeli settlements) and Jericho in the West Bank.[91] The transfer of responsibility was detailed in a May 1994 agreement, which formally established the Palestinian Authority.[92] The jurisdictional article of the DOP confirmed that "the two sides view the West Bank and the Gaza Strip as a single territorial unit, whose integrity will be preserved during the interim period."[93] However, the division of territorial responsibility created by the subsequent agreements reconfigured the West Bank and—to a certain extent—Gaza in a way that in practice disrupted the area's internal coherence.[94]

The 1995 Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (Oslo II) projected that the territory of the West Bank and Gaza would come under Palestinian control within eighteen months of the establishment of the Palestinian Council, except with respect to issues reserved for permanent status negotiations.[95] Oslo II divided the West Bank and Gaza into Areas A, B, and C.[96] Area A encompassed Palestinian urban centers—amounting to about three percent of the West Bank at the time, later increasing to about 17 per cent—and came under the Palestinian Authority's control.[97] Area B was comprised of other populated Palestinian areas and was subject to joint Palestinian-Israeli control based on Palestinian control of civil life and Israeli control of security "for the purposes of protecting Israelis and confronting the threat of terrorism."[98] The remainder of the territory (about sixty percent of the total), designated as Area C,

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87. DOP, *supra* note 6, art. I.
88. *See* Agreement on the Gaza Strip & the Jericho Area, Isr.-P.L.O., art. III, V, May 4, 1994, 33 I.L.M. 622.
89. *See id*; DOP, *supra* note 6, art. VI (2).
90. *Id.* art. VIII.
91. *Id.* art. XIV.
92. Israeli-Palestinian Agreement on the Gaza Strip and Jericho Area, Isr.-P.L.O., May 4, 1994, 33 I.L.M. 622 (1994).
93. DOP, *supra* note 6, art. IV.
94. Nathan J. Brown, U.S. Inst. of Peace, The Palestinian Reform Agenda 13 (2009), *available at* http://www.usip.org/sites/default/files/resources/pwks48.pdf (noting that the West Bank and Gaza ended up having different legal systems and different political orientations).
95. Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, Isr.-P.L.O., art. XI, Sept. 28, 1995, 36 I.L.M. 551 [hereinafter Interim Agreement].
96. *Id.* art. XI (3).
97. *Id.* art. XI.
98. *Id.* art. XIII (2)(a).

stayed under Israeli control, although service provision for the population fell under the Authority's mandate.[99]

Unlike the balance or tension inherent in the law of occupation, in which the protection of the population and the preservation of the existing order weigh against the military interest and security of the occupier,[100] the Oslo Accords divided these responsibilities, assigning population welfare to the Palestinian Authority and security to Israel.[101] Beyond the issue of territorial control, the Authority's governance capacity was constrained by movement limitations on its own personnel; an economy weakened by limitations on the movement of goods and services; rampant corruption, mismanagement, and lawlessness among its own security forces; and its inability to engage in independent development policy.[102] These issues forced the Authority to operate within limited parameters and to rely heavily on external donors to finance its operation.[103]

Area C exemplifies both the governance gap created by Oslo and the tension between Israeli security and Palestinian welfare that Oslo embodied. The Palestinian Authority remains responsible for service provision in Area C, although Israel controls the development of infrastructure and the movement of goods and people.[104] Israel has argued since the inception of the Accords that control of much of Area C, particularly in the Jordan Valley, is necessary for maintaining the security of major Israeli population centers and for preventing the import of weaponry to the West Bank.[105] As a result, "[t]he Authority's ability to [provide services in Area C] is severely impeded by Israel's control over planning and construction: for example, the Authority can provide a teacher but not build a school for the teacher to teach in."[106] Israel has permitted some work to go forward,[107] but it continues to deny permits for development projects and to demolish such

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99. *Id.* art. XI (2)(c), Annex III. Jerusalem was placed within the ambit of final status issues under the Oslo Accords and was therefore not included in this territorial division. By default, it remained under full Israeli control.

100. *See supra* notes 39–42 and accompanying text.

101. DOP, *supra* note 6, art. VI (2); Interim Agreement, *supra* note 95, art. XIII.

102. *See* International Crisis Group, The Meanings of Palestinian Reform (Nov. 2, 2002) [hereinafter, Meanings].

103. Funding for development activities in the Palestinian Territories came from a variety of sources. *See, e.g.*, *Programme of Assistance to the Palestinian People*, U.N. Development Programme, http://www.undp.ps/en/aboutundp/donors.html (last visited Feb. 1, 2014).

104. Interim Agreement, *supra* note 98, at annex III, art. IV; *id.* at annex III, appendix 1, art. 30.

105. David Newman, *Shared Spaces - Separate Spaces: The Israel-Palestine Peace Process*, 39 GeoJournal 363, 365 (1996). *See also* Joseph Slater, *Israel's Security Concerns in the Peace Process*, 70 Int'l. Aff. 229 (1994).

106. World Bank, Stagnation or Revival? Palestinian Economic Prospects: Economic Monitoring Report to the Ad Hoc Liaison Committee 19 (March 21, 2012).

107. Government of Israel, Measures Taken by Israel in Support of Developing the Palestinian Economy and Socio-Economic Structure: Report of the Government of Israel to the Ad Hoc Liaison Committee 8 (Sept. 18, 2011) [hereinafter GOI, 2011 Report to the AHLC].

projects when building occurs without permission.[108] Israel argues that development in Area C would prejudice final status negotiations, though in the view of both the Palestinian leadership and most international organizations, the limitations directly undermine the process of development that is supposed to culminate in a state.[109] Israeli security and Palestinian welfare clash directly in this case, and international organizations often struggle to operate in the middle.

The model of separating Israel from the Palestinian territories as well as dividing the territories themselves should be understood within its political context. In 1987, a Palestinian uprising (the *intifada*, now known as the First Intifada) broke out. For the first time, Palestinians collectively organized throughout the territories against Israeli occupation and control through mass protests, economic boycotts, and limited violence. The introduction to an early scholarly collection published during the First Intifada exemplifies a political shift that many Palestinians and their advocates understood to occur at the time:

> The *intifada* has demonstrated the futility of a military solution to the conflict between Palestinian Arabs and Israeli Jews; it has similarly rendered the military occupation of the West Bank and Gaza obsolete . . . The *intifada* and its national leadership openly call for direct negotiation among the parties— including Israel and the Palestinian Liberation Organization—in the context of an international peace conference.[110]

The Israeli military was unable to quell the uprising; the political and economic costs propelled the government to move toward separating Israel from the Palestinian territories,[111] as reflected in the Labor Party's 1992 campaign slogan, "Us here, them there."[112] But Israeli settlements within the Palestinian territories, and the necessity of securing Israeli communities on both sides of the Green Line, made a full separation of the West Bank and Gaza implausible. Given these priorities, negotiations with the PLO became a more favorable option. The Oslo Accords divided the territories into zones, decreasing direct Israeli rule and increasing Palestinian autonomy, while leaving settlements and Israel more or less secure.

The spatial separation enacted by Oslo was echoed in a further effort to separate the two populations from one another. Arguing that security concerns stemming from attacks during the First Intifada dictated separa-

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108. UNSCO, PALESTINIAN STATE-BUILDING: AN ACHIEVEMENT AT INCREASED RISK— UNSCO REPORT TO AD HOC LIAISON COMMITTEE ¶ 32 (2012) [hereinafter UNSCO, PALESTINIAN STATE-BUILDING].

109. According to the U.N., "Area C remains fundamental to the viability of a future Palestinian state." UNSCO, PALESTINIAN STATE-BUILDING, *supra* note 108.

110. Ibrahim Abu-Lughod, *Introduction: On Achieving Independence*, in INTIFADA: PALESTINE AT THE CROSSROADS 10–11 (Jamal R. Nassar and Roger Heacock, eds., 1990).

111. *See* Hemda Ben-Yehuda, *Attitude Change and Policy Transformation: Yitzhak Rabin and The Palestinian Question, 1967–95*, 3 ISRAEL AFFAIRS 201, 216–20 (1997) (discussing Rabin's transformation into an advocate for negotiations based on his perception that separation was necessary first through closure and later through the creation of a Palestinian entity falling short of a state).

112. Robert Blecher, *Living on the Edge: The Threat of 'Transfer' in Israel and Palestine*, 32 MID. EAST REP. (Winter 2002).

tion, Israel reduced Palestinian labor, and issued military orders prohibiting Israeli Jews from traveling into Area A and discouraging their travel into Area B.[113] In the early 2000s, the Second Intifada and its accompanying waves of suicide bombings led Israel to begin constructing the Separation Barrier.[114] The separation of the populations reinforced the spatial division, reconceptualizing the actors as dual governments responsible for separate, conflicting populations.[115] For example, the Oslo regime institutionalized the dual legal system (Palestinian jurisdiction for Palestinians, except in security matters handled by the Civil Administration and the Israel Defense Forces (IDF); and Israeli jurisdiction for Israelis in all cases) created under occupation.[116] Although it was a continuation of the earlier system, the Oslo regime separated the two legal systems as if they were under two separate sovereigns, rather than two systems under centralized rule.[117] Separating the populations reinforced the sense that Israel was no longer responsible for the wellbeing or development of the Palestinian population, while retaining the need to protect Israeli citizens from Palestinian violence.[118] Israel's 2005 "disengagement" from Gaza extended and expanded this process in two ways: first, withdrawing completely from Gaza's territory permitted Israel to explicitly argue that it no longer had effective control, and thus, no positive obligations with regard to the Gazan population, despite Israel's continuing control over movement and access along Gaza's borders.[119] Second, the disengagement separated (Gazan) population from (West Bank) territory; Israel ceded responsibility for the former while consolidating control of the latter.

2. *Palestinian Authority Governance*

Despite having withdrawn (or redeployed) officially from Area A—and to some degree from Area B—Israel remained present throughout most of the Territories after 1993.[120] The actors in the West Bank and Gaza—the

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113. *See* Tobias Kelly, *Laws of Suspicion: Legal Status, Space and the Impossibility of Separation in the Israeli-Occupied West Bank, in* Rules of Law and Laws of Ruling: On the Governance of Law 93, 95 (Franz von Benda-Beckmann, Keebet von Benda-Bekmann, & Julia M. Eckert, eds., 2009); *Cf.* Blecher, *supra* note 112.

114. Kelly, *supra* note 113, at 94–96. Measures for separating the two populations have been consistently justified on the grounds of Israeli security. Limitations on Palestinian labor were part of an effort to restrict Palestinian movement across the Green Line; the Separation Barrier was constructed as a bulwark against violent attacks; and the Israeli military orders restricting Israeli (Jewish) travel to Area A are justified as necessary to protect Israeli citizens from violence and kidnapping. *See id.*

115. *See id.* at 84.

116. *See* Tobias Kelly, Law, Violence and Sovereignty Among West Bank Palestinians 169–70 (2006).

117. *See id.* at 58–60.

118. *See id.*

119. In the aftermath of Israel's disengagement from Gaza, the High Court found that Israel no longer exercised effective control over the territory and thus "bears no obligation to concern itself with the welfare of the residents of the Strip." HCJ 9132/07 Jaber al Bassiouni Ahmed et al. v. Prime Minister et al., Isr. LR 1 para. 12 [2008] (Isr.).

120. *See id.* at 56. On March 29, 2002, Israel re-occupied the cities of the West Bank during Operation Defensive Shield, The IDF officially departed again from Area A on

Palestinian Authority, Israel, international organizations and donors—
quickly became enmeshed in a joint governance system that shared respon-
sibility and control for the Palestinian population. Their codependence
relied upon continuing international support for both the peace process
that provided the backdrop to the Oslo regime and for the institutional
survival of the Authority. As a result, international aid came to support
adaptation to the occupation rather than resistance to it, and the Authority
developed as an institution intertwined with Israel rather than, as the rhet-
oric often depicts, one fostering separation from it.

The Authority became a proto-government for a quasi-state, with many
of the symbolic trappings of sovereignty but few of the substantive powers
of statehood. Despite limitations that ultimately undermined any claims
to sovereignty (for example, the Authority had no control over borders, air
space, external security, residency, or movement), the Authority "had
many of the symbols and trappings of a state (such as passports, stamps,
car number plates, an international airport, ministries, police and security
forces, and other public institutions)."[121] In certain ways, the transforma-
tion was extremely significant for Palestinian daily life; rather than Israeli
control over schools, clinics, post offices, or policing, Palestinians took
charge of providing services for their own population.[122] Israeli with-
drawal meant that everyday existence within the borders of the major cities
required little or no interaction with the IDF.[123] Despite myriad restric-
tions, "if a Palestinian went to school, to court, or to apply for a business
license, the [Palestinian Authority] appeared to be a virtual state."[124] In
this sense, the Palestinian Authority was more a representation of state-
hood than a state itself: it was both an aspiration for what might come at a
later date (if sovereignty were earned) and a simulacrum of a state that
increasingly seemed to obscure the lack of a real one.

Oslo's economic protocols provided the Authority with enough auton-
omy to be held responsible for failure but not enough to have a serious
possibility of success. Limitations on trade, revenue, and labor exemplify
the tension between the expectations and capacities of the Authority. The

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April 21, but the situation on the ground had been fundamentally altered. *See* Brian
Whitaker, *U.N. Report Details West Bank Wreckage*, THE GUARDIAN, Aug. 2, 2002.

121. Mushtaq Husain Khan, *Introduction* to STATE FORMATION IN PALESTINE: VIABILITY
AND GOVERNANCE DURING A SOCIAL TRANSFORMATION 1–2 (Mushtaq Husain Khan, George
Ciacaman, & Inge Amundsen eds., 2004).

122. *See id.* at 1–3.

123. Outside the borders of major cities, Palestinians encountered a complex system
of permits, checkpoints, and other restrictions on movement. Policies of partial or com-
plete closure pre-date the Oslo Accords, but the existence of areas formally controlled by
the Authority permitted the parallel notions of autonomy and constraint to co-exist, with
Area A considered under Authority control despite the inability of the Authority to con-
trol entry and exit. Closures became increasingly widespread during and after the Sec-
ond Intifada, as Palestinian violence increased exponentially; Israeli military incursions
similarly grew more common. *See, e.g.*, Kelly, *supra* note 113, at 94–96. *See generally*,
Access and Movements, U.N. OFFICE FOR THE COORDINATION OF HUMANITARIAN AFFAIRS,
http://www.ochaopt.org/reports.aspx?id=105 (last visited Feb. 1, 2014).

124. NATHAN J. BROWN, PALESTINIAN POLITICS AFTER THE OSLO ACCORDS: RESUMING ARAB
PALESTINE 14 (2003).

primary agreement delineating economic relations between the parties was the 1994 Protocol on Economic Relations between the Government of the State of Israel and the P.L.O., representing the Palestinian people, generally referred to as the "Paris Protocol." Under the Protocol, the Authority received a series of governance powers over economic policy.[125] The Paris Protocol formalized the quasi-customs union that existed between the Palestinian territories and Israel, with certain alterations.[126] However, with regard to any powers not enumerated, goods not specified in the Protocol, or amounts exceeding those agreed upon, Israel remained in control.[127] The economic regime represented a compromise between the Palestinian interest in transforming the existing structure, giving the Palestinians some control, and Israeli reluctance to create any type of borders between Israel and the West Bank and Gaza.[128] However, given the existing power imbalances and subsequent restrictions on movement and access, the end result was to codify significant Israeli government control over Palestinian imports and exports.[129] In addition, Israel's continued power over critical resources like energy, communications, land, and water hampered the Authority's ability to do any strategic planning.[130]

In the area of revenue, the Authority has been largely dependent on Israeli collection and transfer of taxes, a system that came to symbolize the politicization of the economic agreement.[131] Israel collects indirect and direct taxes and transfers them to the Authority; these taxes amount to approximately two-thirds of the Authority's revenue.[132] As a result, the Israeli government can, and sometimes does, withhold funds as a means of exerting political pressure.[133] Like the trade system, the revenue provisions of the Protocol initially suggested substantial Palestinian autonomy

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125. *See* Interim Agreement, *supra* note 95, at annex V (referring to the Protocol on Economic Relations).

126. *See* Protocol on Economic Relations between the Government of the State of Israel and the P.L.O., representing the Palestinian people, Isr.-P.L.O., art. III, Apr. 29, 1994, 7 Pal. Y.B. Int'l L. 308 (1994) [hereinafter Paris Protocol]. *See generally* Nu'man Kanafani, *Trade - A Catalyst for Peace?* 111 Econ. J. 276, 278 (2001). *See also* Sara Roy, The Palestinian Economy and the Oslo Process: Decline and Fragmentation 9 (1998).

127. Paris Protocol, *supra* note 126, at art. III (5)(a). *See also* Arie Arnon, et al., The Palestinian Economy: Between Imposed Integration and Voluntary Separation 109 (1997).

128. *See* Kanafani, *supra* note 126, at 282.

129. *See* Roy, *supra* note 126, at 10.

130. *See, e.g.*, Hiba I. Hussein, *Challenges and Reforms in the Palestinian Authority*, 26 Fordham Int'l L. J. 500, 525 (2003).

131. *See* International Monetary Fund, Recent Experience and Prospects of the Economy of the West Bank and Gaza: Staff Report Prepared for the Meeting of the Ad Hoc Liaison Committee 4 (2011) [hereinafter IMF Report].

132. For rules on tax transfers, *see* Paris Protocol, *supra* note 126, at art. III (15). For analysis of the role of clearance revenues in the Authority's total revenue, *see* IMF Report, *supra* note 131, at 12, box 2.

133. Israel first withheld the funds in 1997; more recently, Israel delayed transfer of the funds after the Authority applied for U.N. membership. For discussion of the influence of Israeli restrictions on Palestinian economic activity, see, e.g., World Bank, Coping with Conflict: Poverty and Inclusion in the West Bank and Gaza Strip ch. 2 (2011).

in the economic arena but in the end reinforced Palestinian dependence on Israeli political decisions.[134] At moments of heightened Palestinian violence and conflict, Israel's security priorities combine with the gaps in capacity left by the Accords to create restrictions on Palestinian economic action.

Israeli limitations on Palestinian labor—largely the result of movement restrictions—caused significant damage to the Palestinian economy and eventually made the Palestinian Authority the largest employer in the West Bank.[135] As a result, the vast majority of the Palestinian economy depends upon salary payments to the civil service; according to the IMF, the wage bill for the Authority is more than half of total recurrent expenditures.[136] Due to the Authority's limited ability to generate revenue, much of the financing for these salaries—and thus for the Palestinian economy as a whole—derives from donor contributions.[137]

In the years following 1993, governance practices in the Palestinian territories challenged several of the central assumptions of occupation: the territory was deliberately fragmented, the occupier no longer took responsibility for the occupied population, and the relationship between occupier and occupied was no longer bilateral but instead relied upon a third category of players—international organizations and national donors. The combination of fragmented territory and divided responsibility restricted the Authority's capacity to maintain its duties. International forces were summoned to fill what would otherwise have been an unmanageable gap between need and capacity.

II.   International Governance: Money and Expertise Under Oslo

The Oslo regime introduced new institutions and reallocated power, resources, and responsibility for Palestinian governance. The Palestinian Authority was a critical actor, but its existence was from its inception dependent upon external financial and political support. As a result, while the international community has long played a key role in historic Palestine, Oslo's inauguration of a multilateral governance regime dramatically increased its centrality.[138] This was largely due to changing norms and institutions after the Cold War, which reframed the pursuit of peace and the reconstruction of states and societies after conflict as sites for expert interventions through statebuilding, economic development, human rights

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134. *See* Kanafani, *supra* note 126, at 288.

135. Palestinian employment fell drastically throughout the 1990s and after the Second Intifada. SECRETARIAT OF THE AD HOC LIAISON COMMITTEE, AID EFFECTIVENESS OF THE WEST BANK AND GAZA: DRAFT REPORT (1999). Israel stated that it planned to phase out Palestinian labor completely by the end of 2008 by denying work permits to Palestinians. THE EUROPEAN COMMISSION AND THE WORLD BANK, STAGNATION OR REVIVAL? ISRAELI DISENGAGEMENT AND PALESTINIAN ECONOMIC PROSPECTS, TECHNICAL PAPER III: TRADE AND EXPORTS, para. 57 (December 2004).

136. *See* IMF REPORT, *supra* note 131, at 17–18.

137. *See id.*

138. *See* Scott Lasenky, *Paying for Peace: The Oslo Process and the Limits of American Foreign Aid*, 58 MID. EAST J. 210, 211 (2004).

reforms, and humanitarian assistance. Peace had become a problem to be identified, analyzed, and resolved by individuals trained to design and implement peace agreements.[139] Recovery and reconstruction were no longer solely, or even primarily, the preserve of national governments: now designated as "post-conflict," these territories became the subject of international concern and intervention. The Oslo Accords were in part a product of these international shifts: they were negotiated in large part under multilateral auspices and conceived with donor resources and international support in mind. Once the Accords were in place, the West Bank and Gaza became a site for post-conflict assistance despite ongoing, and at times escalating, violence. To understand what it meant and means for Palestine to apparently teeter on the edge of, and sometimes be characterized as, post-conflict territory requires examining how the international community constructs and intervenes in those sites more generally. The institutional form that the Oslo regime took was partially a product of international expertise and expectations, although it was also contingent upon events and actors on the ground.

This Part introduces the evolving international pursuit of peace and post-conflict reconstruction after the Cold War. The new understanding in the 1990s of peace and post-conflict reconstruction as subjects of technical expertise and expert intervention was particularly evident in three areas: economic development, human rights, and humanitarianism. Each field brought its own specific histories, biases, experiences, and habits, but together they comprised a paradigm and program for post-conflict states: limited state power, increased foreign investment, and good governance; a human rights program focused on security, criminalization, and the rule of law; and a forceful humanitarian agenda that sometimes displaced national governments and progressively became more militarized.

The Part then turns to the role of international institutions in the Palestinian territories from 1993 through 2013, focusing on the aid regime as a pillar of the robust international presence. External assistance became vital to Palestinian life, as both a necessity for the system's survival and a symbol of the hope for peace. Aid was also critical for Israel. Admirable work has been done on the politics, mechanics, and influence of international aid in the Palestinian territories; I will not retread that ground here.[140] Rather, in outlining the centrality of aid to Palestinian and thereby

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139. "Framework peace agreements reflect a common approach to settlement design that links ceasefires to agreed new political and legal arrangements for the holding and exercising of power. They reflect similar use of third parties to develop, enforce and implement the agreement. These hard-gained settlement terms are formally documented in written, signed, and publicly available agreements, typically involving both domestic and international actors. This loose pattern describes a broad range of conflicts, and cuts across different types of conflict. The pattern holds across continents. . . When it comes to negotiating ends to conflict, at the level of basic settlement goals there is one predominant way of doing business." CHRISTINE BELL, ON THE LAW OF PEACE 105 (2008).

140. *See generally* Nassar Ibrahim & Pierre Beaudet, *Effective Aid in the Occupied Palestinian Territories?*, 12 CONFLICT, SEC. & DEV. 481 (2012); SHIR HEVER, THE POLITICAL ECONOMY OF ISRAEL'S OCCUPATION: REPRESSION BEYOND EXPLOITATION 21–41 (2010); ANNE LE MORE, INTERNATIONAL ASSISTANCE TO THE PALESTINIANS AFTER OSLO (2008); AID, DIPLO-

Israeli life after 1993, this section lays the foundation for Part III, in which I discuss three characteristics of the Oslo regime that have rendered the Israeli-Palestinian conflict internationally cognizable as a transition. The contradiction between apparent transition and an ongoing reality of conflicts and crises has led experts and their organizations to question their work even as they argue for their own indispensability. The paradoxes of aid work raise profound dilemmas for practitioners, three of which are discussed at the conclusion of this section.

A. Peace and Development After the Cold War

As international actors and organizations became integral to daily Palestinian governance, they modeled their work on lessons that they had learned elsewhere and on the normative consensus about peacebuilding, development, human rights, and humanitarianism.

The post-Cold War era was hardly the first in which international organizations, policy, and law grappled with issues of war and peace. While many claim that the new era was marked by unprecedented and progressive international intervention in areas traditionally preserved as sovereign,[141] others argue that the divide between sovereign governments and international law or organizations had never been a stark one.[142] The early 1990s did lend a new gloss to the project of international intervention in conflict areas: peace, like democracy or development,[143] could now be designed, implemented, and accomplished through expert intervention in conjunction with local elites. International consultation was necessary for negotiating peace and managing the subsequent reconstruction,[144]

MACY, AND FACTS ON THE GROUND (Michael Keating, Anne Le More, & Robert Lowe eds., 2005); Scott Lasensky, *Paying for Peace: The Oslo Process and the Limits of American Foreign Aid*, 58 MID. EAST J. 210, 211 (2004); REX BRYNEN, A VERY POLITICAL ECONOMY: PEACEBUILDING AND FOREIGN AID IN THE WEST BANK AND GAZA (2000).

141. *See, e.g.,* Michael Doyle, *Discovering the Limits and Potential of Peacekeeping in* PEACEMAKING AND PEACEKEEPING FOR THE NEW CENTURY 4 (Olara A. Atunnu, Michael W. Doyle eds., 2000).

142. *See, e.g.*, ANTONY ANGHIE, IMPERIALISM, SOVEREIGNTY, AND THE MAKING OF INTERNATIONAL LAW (2005) (arguing that international law was formed in the crucible of colonialism and consistently reproduces a "dynamic of difference" between "civilized" or "universal" and "uncivilized" or "particular"). *See also* David Kennedy, *When Renewal Repeats: Thinking Against the Box*, 32 N.Y.U. J. INTL. L. & POL. 335 (1999) (arguing that the new consciousness of experimentation, revolution, and utopian internationalism was in fact a repeating disciplinary phenomenon).

143. Rejecting the structural bent of modernization theory, the democratization literature of the 1970s and after argued that democracy would be "not the product of evolutionary transformations but only of specific, transitory, and reversible configurations of political forces." It was dependent on unpredictable political change, but democracy could be provoked and encouraged. NICOLAS GUILHOT, THE DEMOCRACY MAKERS: HUMAN RIGHTS AND INTERNATIONAL ORDER (2005).

144. "Through agreements ending civil strife, [international peace efforts] may include disarming the previously warring parties and the restoration of order, the custody and possible destruction of weapons, repatriating refugees, advisory and training support for security personnel, monitoring elections, advancing efforts to protect human rights, reforming or strengthening governmental institutions and promoting formal and informal processes of political participation." U.N. Secretary-General, *An Agenda for*

although the results of external intervention were frequently far from the initial intent. The post-conflict territory or state was characterized not only by the conclusion of a peace agreement or the end of war but by the fragility of the government, weakness of the state, and potential for violence. In this sense, the need for continued international assistance, in the form of money and expertise, was self-perpetuating.[145]

1. *The New Peace*

The U.N. Secretary General, in his 1992 Agenda for Peace, emphasized the U.N.'s role in "preventive diplomacy,"[146] peacemaking,[147] and post-conflict peacebuilding.[148] Peace negotiations, for the first time, took place "in a context where an expanding international machinery has a clear mandate in the areas that many peace agreements deal with, such as human rights, refugees and displaced persons, independence of the judiciary, policing, and economics. Never before [had] international law and international institutions had such an array of tools capable of application to intrastate conflict."[149] While some interpreted them as functional responses to global needs, the new tools also reinforced the sense that territories struggling through, or recovering from, conflict required international intervention.

The Agenda for Peace foreshadowed the increasingly muscular nature of the U.N.'s intervention in conflict zones, where it mediated peace negotiations, enforced peace agreements, and coordinated post-conflict reconstruction. The Security Council, freed from its Cold War deadlock, vastly

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Peace: Preventive Diplomacy, Peacemaking and Peacekeeping: Rep. of the Secretary-General, U.N. Doc. a/47/277-S/24111 (June 17, 1992), at para. 55.

145. "There is a new requirement for technical assistance which the United Nations has an obligation to develop and provide when requested: support for the transformation of deficient national structures and capabilities, and for the strengthening of new democratic institutions. . . . There is an obvious connection between democratic practices—such as the rule of law and transparency in decision-making—and the achievement of true peace and security in any new and stable political order. These elements of good governance need to be promoted at all levels of international and national political communities." U.N. Secretary-General, *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peacekeeping: Rep. of the Secretary-General*, U.N. Doc. a/47/277-S/24111 (June 17, 1992).

146. Defined as "action to prevent disputes from arising between parties, to prevent existing disputes from escalating into conflicts and to limit the spread of the latter when they occur." Agenda for Peace para. 20

147. Defined as "action to bring hostile parties to agreement, essentially through such peaceful means as those foreseen in Chapter VI of the Charter of the United Nations." *Id.*

148. According to the Agenda for Peace, peacebuilding comprised "action to identify and support structures which will tend to strengthen and solidify peace in order to avoid a relapse into conflict." Boutros Boutros Ghali, An Agenda for Peace: Preventive Diplomacy, Peacemaking, and Peace, para. 21. As a category, it included activities such as disarmament, security sector reform, refugee repatriation, human rights, and rule of law. Crucially, its conceptualization at the outset included the notion that "third parties might contribute to preventing, resolving or managing violent conflict and the rebuilding of communities thereafter." ALEX J. BELLAMY & PAUL D. WILLIAMS, UNDERSTANDING PEACEKEEPING 17 (2011)

149. BELL, *supra* note 139, at 104.

increased both the quantity and scope of peace operations.[150] Peace operations took several forms, from traditional enforcement of peace agreements to complex operations coordinating humanitarian assistance, ceasefires, and reconstruction.[151] At the beginning of the 1990s, "U.N. peace operations became international society's conflict management tool of choice."[152] At the same time, actors interested in conflict resolution and post-conflict reconstruction multiplied rapidly, making the era one of "'international deregulation,' one in which there were new players, new capabilities, and new alignments."[153]

Over the course of the 1990s and into the next decade, the Security Council authorized international administrations and international criminal tribunals, creating an unprecedented level of U.N. governance in conflict and post-conflict zones.[154] Despite ebbing confidence in, and decreasing willingness to contribute troops to, peace enforcement after events in Angola, Somalia, and Rwanda demonstrated the limitations of peacekeeping, the growing conviction that peace, development, security, humanitarian relief, and human rights were intimately interwoven led to a continuing international presence in conflict areas.[155]

While it played a central role, the U.N. was only one member of a large community of organizations working actively to (re)build states after conflict. The post-conflict "regime" was governed not only by organizations formed in the aftermath of the Cold War,[156] but also by actors that were less new than newly ascendant. For example, the World Bank and IMF,

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150. Introducing the Agenda for Peace, Boutros-Ghali declared that "The Organization must never again be crippled as it was in the era that has now passed." An Agenda for Peace, para. 3. Between 1998 and 1993, the U.N. "conducted more peace operations than it had undertaken in its previous forty years combined." BELLAMY & WILLIAMS, *supra* note 151, at 93.

151. BELLAMY & WILLIAMS, *supra* note 148, at 93.

152. BELLAMY & WILLIAMS, *supra* note 148, at 100.

153. Richard Haas, *Paradigm Lost,* 74 FOR. AFF. 43, 43 (1995).

154. Perhaps the most striking examples of U.N. involvement in governance were the international administrations in East Timor and Kosovo. For a discussion of these and other territorial administrations, *see generally* RALPH WILDE, INTERNATIONAL TERRITORIAL ADMINISTRATION: HOW TRUSTEESHIP AND THE CIVILIZING MISSION NEVER WENT AWAY (2008); CARSTEN STAHN, THE LAW AND PRACTICE OF INTERNATIONAL TERRITORIAL ADMINISTRATION: VERSAILLES TO IRAQ AND BEYOND (2008); SIMON CHESTERMAN, YOU, THE PEOPLE: THE UNITED NATIONS, TRANSITIONAL ADMINISTRATION, AND STATE-BUILDING (2005). The U.N. was also involved in the creation of a series of international and hybrid criminal tribunals. For further discussion, *see generally*, ANTONIO CASSESE, INTERNATIONAL CRIMINAL LAW (2008); WILLIAM SCHABAS, THE UN INTERNATIONAL CRIMINAL TRIBUNALS: THE FORMER YUGOSLAVIA, RWANDA AND SIERRA LEONE (2006).

155. Duffield argues that Western intervention in the contemporary period has frequently been justified through "examples of a claimed enlightened complementarity linking development and security." MARK DUFFIELD, DEVELOPMENT, SECURITY, AND UNENDING WAR: GOVERNING THE WORLD OF PEOPLES 2 (2007).

156. For discussion of the new role of non-governmental organizations in the aftermath of the Cold War, *see e.g.,* Leon Gordenker & Thomas G. Weiss, *Pluralizing Global Governance: Analytical Approaches and Dimensions, in* NGOS, THE UN, AND GLOBAL GOVERNANCE (Leon Gordenker & Thomas G. Weiss eds., 1996). On the growing influence of transnational activists, *see* KATHERINE SIKKINK & MARGARET KECK, ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS (1998). On the new importance of

among others, shifted focus and expanded their scope of influence as the Cold War ended.[157] By 1997, the World Bank had created a Post-Conflict Unit to act as a "locus of expertise in post-conflict reconstruction."[158] As the Bank's phrasing suggested, the post-conflict arena had become the preserve of international experts trained in the arts of humanitarian relief and development, transition and democracy, peacemaking and peacebuilding,[159] and statebuilding.[160]

The expert community drew from a variety of international, regional, and non-governmental organizations, as well as from donor country development agencies. International institutions in this period often treated the post-conflict government either as a candidate for displacement (when human rights were imperiled or humanitarian catastrophe loomed) or as a site for regulatory intervention (when institution-building could secure private investment and rule of law could ensure private property rights). Converting statebuilding and peacebuilding into expertise also licensed continuing international support (and thus increased the demand for experts) on the grounds that the projects were politically neutral, universally applicable, and inevitably necessary.[161] As conflict resolution and

networks to global politics, *see* ANNE-MARIE SLAUGHTER, A NEW WORLD ORDER (2004); *see also* ANNELISE RILES, THE NETWORK INSIDE OUT (2001).

157. For example, the IMF was only minimally involved with the Third World in its early decades. Initially, it monitored balance of payments issues in industrialized nations; only in the 1980s did the IMF become a lender primarily to the Third World. Balakrishnan Rajagopal, *From Resistance to Renewal: The Third World, Social Movements, and the Expansion of International Institutions*, 41 HARV. INTL. L.J. 529, 570 (2000).

158. THE WORLD BANK, THE ROLE OF THE WORLD BANK IN CONFLICT AND DEVELOPMENT: AN AGENDA 8 (2003).

159. As a category, it included activities such as disarmament, security sector reform, refugee repatriation, human rights, and rule of law. Crucially, its conceptualization at the outset included the notion that "third parties might contribute to preventing, resolving or managing violent conflict and the rebuilding of communities thereafter." BELLAMY & WILLIAMS, *supra* note 148, at 17. For a critical account of the practice of peacebuilding, *see* SÉVERINE AUTESSERRE, THE TROUBLE WITH THE CONGO: LOCAL VIOLENCE AND THE FAILURE OF INTERNATIONAL PEACEBUILDING (2010).

160. Chandler defines statebuilding as the "development of international mechanisms aimed at addressing cases of state collapse or at shoring up failed states." DAVID CHANDLER, EMPIRE IN DENIAL: THE POLITICS OF STATEBUILDING 26 (2006). *See also*, SHAHAR HAMEIRI, REGULATING STATEHOOD: STATE BUILDING AND THE TRANSFORMATION OF THE GLOBAL ORDER (2010); Nehal Bhuta, *Against State-Building,* 15 CONSTELLATIONS 517 (2008).

161. For a discussion of these ideas with regard to peacebuilding, see, e.g., Richmond, *The Problem of Peace, infra* note 376, at 304 (Liberal peace assumes its own "universality, which legitimates intervention, and . . . the superiority of the epistemic peacebuilding community over its recipients"). *See also* John Heathershaw, *Unpacking the Liberal Peace: The Dividing and Merging of Peacebuilding Discourses*, 36 MILLENNIUM 597 (2008) ("Experiments 'on the ground' are conceived in a particularly normalizing fashion, where it is 'the other' of the conflict zone, rather than international political and economic structures themselves, which must undergo change to correspond to mythologised international standards"). With regard to development professionals, Kennedy argues that while they have regularly considered themselves, "at least indirectly, to be engaged in a 'political' project", they have also "thought of their work in each period in nonpolitical terms. . . .[In the contemporary era], development professionals tend not to interpret their expert work in ideological terms – far more, they are the purveyors of something more like science" As a symptom of expertise more than of development

post-conflict reconstruction became technical fields, the experts that dominated them transformed their ideas into a set of standardized practices deployed across diverse sites—the Palestinian territories among them. Notwithstanding growing commitments to local participation and the rejection of one-size-fits-all policies,[162] peacebuilding—through institutions, open markets, the rule of law, and elections—remained largely similar across different cases.

Three fields stood at the nexus of post-conflict reconstruction: economic development, human rights, and humanitarianism. In this era, relief and development "tunnel[ed] toward each other: relief agencies were increasingly contemplating how to tie relief to post-conflict reconstruction, and development agencies were increasingly trying to use relief operations as a springboard for development. Both relief and development agencies were interacting more and more with human rights activists, and the three sectors began discovering areas of common concern. . ."[163] Each field or sector had its own history and preoccupations, but they were increasingly conjoined and reconfigured under the auspices of post-conflict intervention.

2. Economic Development

Towards the end of the Cold War, a developmental consensus—often termed as neoliberalism or the "Washington Consensus"—crystallized around privatization, deregulation, liberalization, and private property rights.[164] Prior emphases on national developmental and trade policies gave way to an era of open markets, conditional economic transition, and decreased global regulation.[165] These policies were implemented by intergovernmental organizations that conditioned financial assistance on policy

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professionals in particular, this description parallels the attitude of those in the 'peace professions'. David Kennedy, *Political Choices and Development Common Sen*se, *in* THE NEW LAW AND ECONOMIC DEVELOPMENT: A CRITICAL APPRAISAL 97 (David Trubek and Alvaro Santos eds., 2006).

162. "Operationally, the new thinking about participation has been reflected in repeated [World] Bank expressions of commitment to ensuring, for example, greater involvement of 'key stakeholders' in the preparation of country assistance strategies, 'sharper client focus,' and 'responsiveness to clients' . . . Within the IMF 'ownership' has become a major element of adjustment programs." Ngaire Woods, *The Challenge of Good Governance for the IMF and the World Bank Themselves*, 28 WORLD DEV. 823, 825 (2000). Woods goes on to point out that "in both the Fund and the Bank, in spite of changes aimed at improving 'participation' and 'ownership,' many staff suggest that much of the basic modus operandi remains the same . . . attempting to reconcile 'participation' and 'ownership' with rigor and expertise poses a real challenge to both international financial institutions." *Id.*

163. MICHAEL BARNETT, EMPIRE OF HUMANITY: A HISTORY OF HUMANITARIANISM (2013).

164. John Williamson, who coined the term "Washington Consensus" in 1990, summarizes its main points and evaluates the (mis)uses of the term in John Williamson, *What Should the World Bank Think of the Washington Consensus?*, 15 THE WORLD BANK RESEARCH OBSERVER 251 (2000). *See also* John Williamson, *What Washington Means by Policy Reform*, *in* LATIN AMERICAN ADJUSTMENT: HOW MUCH HAS HAPPENED? (John Williamson, 1990).

165. Charles Gore, *The Rise and Fall of the Washington Consensus as a Paradigm for Developing Countries*, 28 WORLD DEV. 789, 792 (2000).

change.[166] Foreign aid was conceived as "either a necessary but temporary crutch to facilitate the move from modest interventionism to neoliberalism . . . *or* a humanitarian charity for addressing basic needs, rather than generating development."[167] Private investment, not aid, was viewed as the motor of development, particularly given the widespread faith in the efficiency of markets and opposition to using economic policies to redistribute wealth.[168]

By the early 1990s, the "Washington Consensus" had been chastened by economic events and to some degree transformed by an increasing emphasis on institutions and security reform, as well as on what became known as "good governance" and on the rule of law.[169] By 1991, the World Bank had already concluded that competition and open markets were necessary but insufficient for development and that the state had a significant role to play: "In defining and protecting property rights, providing effective legal, judicial, and regulatory systems, [and] improving the efficiency of the civil service . . . the state forms the very core of development."[170] Repudiating both the import-substitution industrialization paradigm's celebration of a strong state and the Washington's Consensus's attempt to consign it to irrelevance, the "post-Washington Consensus" aimed at a "medium-sized state [which] is to be the economy's ally, not its engine or opponent. . . It should be a stable state, oriented toward maintaining a social democratic market, integrated with the world economy."[171] Stability, statebuilding, and governance became key ideas, as did human rights, which, experts posited, would prevent or save "failed" states and create a necessary legal baseline for development.[172]

These changes tied economic development to questions of conflict and peace. In 1991, the World Bank declared that "[s]ustainable development requires peace," pointing out that the most important cause of famine in developing countries in recent years had been not inadequate agricultural

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166. Paul Collier, Patrick Guillaumont, Sylviane Guillaumont, & Jan Willem Gunning, *Conditionality Redesigned*, 25 WORLD DEV. 1399 (1997).

167. Kennedy, *supra* note 161, at 130–31.

168. Joseph Stiglitz, *Is There A Post-Washington Consensus Consensus?*, *in* THE WASHINGTON CONSENSUS RECONSIDERED: TOWARDS A NEW GLOBAL GOVERNANCE 46 (Narcis Serra & Joseph E. Stiglitz eds., 2008).

169. "Good governance" may be understood as transparent governmental decision-making, a "legitimate, effective, and efficient framework for the conduct of public policy," public participation, rule of law, independent judiciary with judicial review, and oversight agencies. Carlos Santiso, *Good Governance and Aid Effectiveness: The World Bank and Conditionality*, 7 GEORGETOWN PUBLIC POLICY REV. 1, 5 (2001). *See also* Alvaro Santos, *The World Bank's Uses of the "Rule of Law" Promise in Economic Development*, *in* THE NEW LAW AND ECONOMIC DEVELOPMENT: A CRITICAL APPRAISAL 276–78 (David Trubek & Alvaro Santos eds., New York: Cambridge University Press, 2006).

170. THE WORLD BANK, WORLD DEVELOPMENT REPORT: THE CHALLENGE OF DEVELOPMENT 4 (1991).

171. Kennedy, *supra* note 161, at 156.

172. *See, e.g.*, AMARTYA SEN, DEVELOPMENT AS FREEDOM (1999); PETER UVIN, HUMAN RIGHTS AND DEVELOPMENT (2004).

output or poverty, but military conflict.[173] Over the course of the 1990s, the World Bank became a leader in post-conflict reconstruction and peacebuilding, joining with the UN to fill the "relief to development gap".[174] Rather than focus solely on poverty reduction and development assistance, as it had previously, the post-Cold War Bank researched links between poverty and conflict, and between post-conflict reconstruction and development;[175] it also became invested in security and stability as a necessary backdrop for development.[176]

3. Human Rights

The end of the Cold War coincided with the rapid rise of the human rights movement, in terms of both its significance and the resources devoted to it. Two trends in particular distinguished the new era: institutionalization and criminalization. Institutionalization fully integrated human rights concerns into the work of intergovernmental organizations, states, and non-governmental organizations. In addition, it linked human rights to democracy, peace and security, development, and humanitarianism. Criminalization re-oriented the human rights movement toward criminal law and the fight against impunity, and away from "naming and shaming" and opposition to state power.[177] Both exemplified the ways in

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173. THE WORLD BANK, WORLD DEVELOPMENT REPORT: THE CHALLENGE OF DEVELOPMENT 2 (1991). The U.N. Secretary-General made a similar point the next year, linking together democracy, peace, good governance, and security, stating that there is an "obvious connection between democratic practices—such as the rule of law and transparency in decision-making—and the achievement of true peace and security in any new and stable political order." U.N. Secretary-General, *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peacekeeping: Rep. of the Secretary-General*, U.N. Doc. a/47/277-S/24111 (June 17, 1992). Over time, support for peacebuilding based on a liberal peace model expanded to include a strong emphasis on state-building, or "peace-as-governance." OLIVER RICHMOND AND JASON FRANKS, LIBERAL TRANSITIONS: BETWEEN STATEBUILDING AND PEACEBUILDING 6 (2009). Paris argues that the failures in Rwanda, Bosnia, Cambodia, and Angola—which all faced violence after a transitional liberalization phase—led the UN and others to focus on statebuilding as a part of peacebuilding. Roland Paris, *Saving Liberal Peacebuilding*, 36 REV. INTL. STUD. 337, 342 (2010).

174. THE WORLD BANK, THE ROLE OF THE WORLD BANK IN CONFLICT AND DEVELOPMENT, *supra* note 158, at 3.

175. The Bank summarizes its own changes: "Since its creation in 1944, the World Bank's role in reconstruction has moved from rebuilding infrastructure to a comprehensive approach which includes the promotion of economic recovery, evaluation of social sector needs, support for institutional capacity building, revitalization of local communities, and restoration of social capital, as well as specific efforts to support mine action, demobilize and reintegrate ex-combatants, and reintegrate displaced populations. An increased premium has, furthermore, been put on preventing the onset, exacerbation, or resurgence of violent conflict." THE WORLD BANK, THE ROLE OF THE WORLD BANK IN CONFLICT AND DEVELOPMENT, *supra* note 161, at 12.

176. *See, e.g.*, OECD, DAC Guidelines: Helping Prevent Violent Conflict (1997). *See also* Mark Duffield, Development, Security and Unending War: Governing the World of Peoples (2007); Bellamy & Williams, *supra* note 148, at 123.

177. Karen Engle, *Self-Critique, (Anti) Politics and Criminalization: Reflections on the History and Trajectory of the Human Rights Movement*, *in* NEW APPROACHES TO INTERNATIONAL LAW: THE EUROPEAN AND THE AMERICAN EXPERIENCES 57–59 (José María Beneyto & David Kennedy, eds., 2013).

which "human rights. . .became a practice of governance."[178]

The momentum that human rights gained in the last decades of the twentieth century[179] dovetailed with democratic transitions in southern Europe, Latin America, and Eastern Europe.[180] Declaring victory in the Cold War, liberal democracy promoters sought to export specific institutions to transitional and post-conflict states.[181] Open markets constituted one focus; civil and political rights, manifested through elections and the rule of law, comprised another.[182] "Liberal peace" theory held that the guarantee of these rights in post-conflict countries would lead to both intrastate and international peace, based on the theory that liberal democracies are least likely to devolve into internal violent conflict or to wage war on each other.[183] Advocates believed that institutions and agreements supporting the formation of liberal democracies—particularly comprehensive peace agreements, elections, and open markets—would in turn bring internal, regional, and global security. Human rights quickly became part of peacebuilding's international vernacular, inseparable from development projects emphasizing the rule of law.[184] At the same time, the U.N. moved

178. David Kennedy, *The International Human Rights Regime: Still Part of the Problem?*, *in* EXAMINING CRITICAL PERSPECTIVES ON HUMAN RIGHTS 19 (Rob Dickinson, Elena Katselli, Colin Murray & Ole W. Pedersen eds., 2012).

179. S*ee* SAM MOYN, THE LAST UTOPIA: HUMAN RIGHTS IN HISTORY (2010) (arguing that it was "in the middle of the 1970s that human rights came to define people's hopes for the future as the foundation of an international movement and a utopia of international law").

180. *See, e.g.*, Jordan Gans-Morse, *Searching for Transitologists: Contemporary Theories of Post-Communist Transitions and the Myth of a Dominant Paradigm*, 20 POST-SOVIET AFFAIRS 320 (2004); Valerie Bunce, *Rethinking Recent Democratization: Lessons from the Postcommunist Experience,* 55 WORLD POLITICS 167 (2003); SAMUEL HUNTINGTON, THE THIRD WAVE: DEMOCRATIZATION IN THE LATE TWENTIETH CENTURY (1991); JUAN LINZ & ALFRED STEPAN, PROBLEMS OF DEMOCRATIC TRANSITION AND CONSOLIDATION (1996); TRANSITIONS FROM AUTHORITARIAN RULE (Guillermo O'Donnell, Philippe C. Schmitter, & Laurence Whitehead, eds. 1986).

181. Thomas Carothers, *The End of the Transition Paradigm*, 13 J. DEM. 5 (2002).

182. ROLAND PARIS, AT WAR'S END: BUILDING PEACE AFTER CIVIL CONFLICT 21 (2004) ("Whereas during the Cold War the meaning of democracy had itself been a lightning rod for ideological conflict, there now seemed to be widespread agreement. . .that the liberal definition of democracy (emphasizing elections and political liberties) was the 'correct' definition").

183. BELLAMY & WILLIAMS, *supra* note 148, at 23. This is not to suggest that the liberal peace was the only theory motivating international intervention in the 1990s. However, as a crystallization of ideas about the need for open markets, democracy, and individual rights—as well as a legitimating theory for broadscale international intervention—it represents an important interpretive influence. Debates over the meaning, efficacy, ideology, and practices of the liberal peace abound. *See, e.g.*, OLIVER P. RICHMOND, A POST-LIBERAL PEACE (2011); Roland Paris, *Saving Liberal* Peacebuilding, 36 REV. INTL. STUD. 337 (2010); John Heathershaw, *Unpacking the Liberal Peace: The Dividing and Merging of Peacebuilding Discourses*, 36 MILLENNIUM 597 (2008); MICHAEL DOYLE AND NICHOLAS SAMBANIS, MAKING WAR AND BUILDING PEACE (2006); ROLAND PARIS, AT WAR'S END: BUILDING PEACE AFTER CIVIL CONFLICT (2004). For an argument that focus on the liberal peace is misplaced, *see* Jan Selby, *The Myth of Liberal Peace-building*, 13 CONFL., SEC., & DEV. 57 (2013).

184. "The relationship between the rule of law and liberal democracy is profound. The rule of law makes possible individual rights, which are at the core of democracy." Thomas Carothers, *The Rule of Law Revival*, 77 FOR. AFF. 95, 97 (1998).

increasingly toward enforcing human rights, including through institution-alization, making them a concern not only of specialized bodies but throughout the U.N.[185]

The turn toward criminalization was equally apparent. It was most evident in the rapid growth of international criminal tribunals and law from 1993, the prosecution of human rights violations, and the application of universal jurisdiction.[186] The creation of the ad hoc tribunals for Yugoslavia and Rwanda, as well as renewed and successful efforts to establish the International Criminal Court (ICC), marked a new era in which indictment and prosecution of individual perpetrators took center stage.[187] In addition to its institutional effects, the campaign against impunity sometimes constrained peace negotiations by complicating or precluding amnesty.[188]

4. Humanitarianism

The late 1980s saw the rise of the "humanitarian international," a cosmopolitan elite providing relief for victims of conflict and disaster.[189] The U.N. developed institutional initiatives to address "complex emergencies," including "cross-mandate" operations that combined multiple agencies to deal with problems ranging from refugees and internally displaced people to poverty.[190] In the early 1990s, the U.N. created the post of Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator

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185. JULIE MERTUS, THE UNITED NATIONS AND HUMAN RIGHTS: A GUIDE FOR A NEW ERA 1 (2009).

186. For a discussion of the various strands of the turn to accountability, *see, e.g.*, FRANCESCA LESSA & LEIGH PAYNE, EDS., AMNESTY IN THE AGE OF HUMAN RIGHTS ACCOUNTABILITY: COMPARATIVE AND INTERNATIONAL PERSPECTIVES (2012); ELLEN L. LUTZ & KATHRYN SIKKINK, THE JUSTICE CASCADE: HOW HUMAN RIGHTS PROSECUTIONS ARE CHANGING WORLD POLITICS (2011).

187. WILLIAM A. SCHABAS, AN INTRODUCTION TO THE INTERNATIONAL CRIMINAL COURT 61 (2011) ("Without any doubt, [the] creation [of the Rome Statute] is the result of the human rights agenda that has gradually taken center stage at the U.N. . . . From a hesitant commitment in 1945, to an ambitious Universal Declaration of Human Rights in 1948, we have now reached a point where individual criminal liability is established for those responsible for serious violations of human rights, and where an institution is created to see that this is more than just some pious wish.")

188. *See, e.g.*, Diane F. Orentlicher, *Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime*, 100 YALE L.J. 2537 (1991). *See also* Diane F. Orentlicher, *'Settling Accounts' Revisited: Reconciling Global Norms with Local Agency*, 1 INTL. J. TRANS. JUST. 10 (2007). For a discussion of the continuing use of amnesty laws, *see* Louise Mallinder, *Amnesties' Challenge to the Global Accountability Norm? Interpreting Regional and International Trends in Amnesty Enactment*, *in* AMNESTY IN THE AGE OF HUMAN RIGHTS ACCOUNTABILITY: COMPARATIVE AND INTERNATIONAL PERSPECTIVES 69 (Francesca Lessa & Leigh Payne eds., 2012).

189. ALEX DE WAAL, FAMINE CRIMES: POLITICS & THE DISASTER RELIEF INDUSTRY IN AFRICA 70 (2009) (Arguing that "internationalization is the key to the appropriation of power by international institutions and the retreat from domestic accountability in famine-vulnerable countries"). *See also* BARNETT, EMPIRE OF HUMANITY, *supra* note 163, at 214 (arguing that the emphasis of the aid agencies joining to write the Sphere Humanitarian Charter and Minimum Standards in Humanitarian Response presumed that "because basic bodily needs vary little from place to place, the most important people to have around the table are the experts and the professionals, not the end users").

190. DE WAAL, FAMINE CRIMES, *supra* note 191, at 69. *See also*, U.N. Gen. Ass. A/RES/46/18 (Dec. 19, 1991).

to run the new Department of Humanitarian Affairs and coordinate all U.N. humanitarian assistance and work among governmental, intergovernmental, and non-governmental organizations.[191] What had been a "relatively loose association of organizations that occasionally coordinated their activities. . .yielded to a more centralized network of states, international organizations, nongovernmental organizations, and part-time members such as foundations and corporations."[192] The simultaneous surge of attention to "failed states"[193] and the rapidly spreading notion of "earned sovereignty"[194] seemed to justify humanitarian interventions to protect and provide for citizens when their governments could not.

At the same time, humanitarianism was drafted into military projects. Greater attention to, and the increasing severity of, internal violence and civil war—as well as, after the September 11 attacks, the ascendency of the counter-terrorism agenda—made security a focal point for international and regional organizations. The Security Council authorized an increasing number of peace operations under Chapter VII, authorizing the use of force.[195] The influential 2001 Responsibility to Protect Report wove together the diverse strands of robust humanitarianism, failed states, strengthened human rights, and peacebuilding. Proclaiming that U.N. membership entails the obligation to defend the safety and lives of one's citizens, it identified an emerging norm of "intervention for human protection purposes, including military intervention."[196] In arguing for the international responsibility to prevent, react, and rebuild, it invoked the key notions of the era—security, justice, and economic development.[197]

Post-conflict reconstruction combines the predilections and preoccupations of multiple fields. International organizations and experts have become intimately involved in the (re)building of states in the aftermath of

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191. *OCHA: About Us*, United Nations Office for the Coordination of Humanitarian Affairs, *available at* http://www.unocha.org/about-us/headofOCHA. This position also involves overseeing the Inter-Agency Standing Committee, which was created in 1992 for "coordination, policy development and decision-making involving the key U.N. and non-U.N. humanitarian partners." U.N. Gen. Ass. A/RES/46/182 (June 1992).

192. Barnett, Empire of Humanity, *supra* note 163, at 168.

193. "In general, a failed state is characterised by: (a) breakdown of law and order where state institutions lose their monopoly on the legitimate use of force and are unable to protect their citizens, or those institutions are used to oppress and terrorise citizens; (b) weak or disintegrated capacity to respond to citizens' needs and desires, provide basic public services, assure citizens' welfare or support normal economic activity; (c) at the international level, lack of a credible entity that represents the state beyond its borders." Derek W. Brinkerhoff, *Rebuilding Governance in Failed States and Post-Conflict Societies: Core Concepts and Cross-Cutting Themes*, 25 Public Admin. Dev. 3, 4 (2005) (citations omitted).

194. *See, e.g.*, Michael P. Scharf, *Earned Sovereignty: Juridical Underpinnings*, 31 Denv. J. Int'l L. & Pol'y 373 (2003).

195. Bellamy & Williams, *supra* note 148, at 215. *See also* Security Council Report, Special Research Report No. 1: Security Council Action Under Chapter VII: Myths and Realities (2008), *available at* http://www.securitycouncilreport.org/special-research-report/lookup-c-glKWLeMTIsG-b-4202671.php.

196. International Commission on Intervention and State Sovereignty, The Responsibility to Protect 16 (2001) [hereinafter Responsibility to Protect].

197. *Id.,* at 39.

violence, focusing on stability, security, rights, and relief. While never entirely uniform, a common agenda for reconstruction has gradually evolved. Interpreting a territory or state as "post-conflict" has wide-ranging effects, particularly when the gap between the label and practice on the ground grows precipitously.[198]

B. Peace and Development in the Palestinian Territories: International Aid, 1993–2013

The sense that international organizations and actors could and should involve themselves in conflict resolution and post-conflict reconstruction opened space for multilateral mediation as well as for direct international involvement in the structure and implementation of the Oslo regime. From the outset of the Accords, it was clear that only extraordinary financial and institutional support from foreign donors and international organizations could sustain the peace process: by October 1993, donors had already pledged billions in aid.[199] By 2003, the World Bank remarked that "donor disbursement to the West Bank and Gaza remains the highest sustained rate of per capita disbursements to an aid recipient in the world since the Second World War."[200] At the beginning of the Oslo process, funds were intended to bolster the peace process by building confidence that it would improve Palestinians' lives by providing a "peace dividend," supporting Palestinian economic development as a method for achieving autonomy and, eventually, independence.[201] Neither peace nor independence materialized, however, and two decades later, international support aimed simply to maintain the status quo and prevent the collapse of the Authority rather than contribute to progressive change.

Events on the ground constantly affect the permutations of international assistance. Failed talks, concerns over corruption, Israeli settlement building, and Palestinian violence have all affected the provision of aid and the relationships between internationals and local elites. International contributions to the governance regime are partially contingent upon politics and immediate events, but they are simultaneously shaped by the experiences and expertise of those delivering aid. Over the decades of integral international assistance, ideas about the necessity of institutions, the links between development and peace, and the provision of international assistance in humanitarian catastrophes influenced donors and aid organizations. In addition, these ideas affect the relationship between Israel and the Palestinian Authority—who today serve as co-governors of territory and population—and the parameters of Palestinian resistance.

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198. *See* AUTESSERRE, *supra* note 159, at 66–70.

199. LE MORE, *supra* note 140, at 2.

200. THE WORLD BANK, FOUR YEARS—INTIFADA, CLOSURES AND PALESTINIAN ECONOMIC CRISIS: AN ASSESSMENT 64 (2004)[hereinafter FOUR YEARS].

201. Paris Protocol, *supra* note 126, at Preamble. *See also* Lasensky, *supra* note 140, at 220.

1. Building Peace: 1993-2000

The first seven years of the Oslo period were characterized by initial donor optimism and large investments in peacebuilding and development assistance.[202] The interim period was envisioned as a transition from occupation to peace.[203] The general understanding was that aid would "deliver tangible benefits to the Palestinian population to reinforce the momentum towards peace."[204] Early plans for aid focused largely on development, institution-building, and good governance, along with infrastructure, employment and administrative capacity—all in the service of building Palestinian capacity for self-government and sustainable development.[205] Key in this regard was security. The Palestinian Authority established security forces with dual, occasionally contradictory, duties: protecting the personal security of Palestinians and ensuring public order while stopping hostile acts against Israel.[206]

The World Bank estimated that donors disbursed approximately $4.4 billion between 1993 and 2001.[207] Funds came primarily from the U.S., E.U., and the World Bank, along with several European and Arab donor countries.[208] The funds were intended mostly for investment projects, with less than one-fifth planned for "start-up and current expenditures" and the remainder devoted to infrastructure (including water, transport, wastewater, power, and education).[209] However, between 1994 and 1996, almost 50% of assistance was used for short-term support to ensure the "financial viability" of the Authority and to create a fertile environment for private investment.[210] Given concerns about the possible misuse of funds and the unusual nature of a newly-established, donor-funded administration, the Bank administered a trust fund for the Authority's budget support.[211] Two years into the Oslo regime, "crisis management had become an integral part of the strategy."[212] Despite the unexpected use of funds, the Bank maintained that funding remained significant: "These resources have been intended to enhance the capacities of the Palestinian Authority,

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202. *See Preface* to WORLD BANK, EMERGENCY ASSISTANCE TO THE OCCUPIED TERRITORIES, VOL. 1: INVESTMENT PROGRAM (Mar. 1994) [hereinafter INVESTMENT PROGRAM].

203. *See* THE WORLD BANK, EMERGENCY ASSISTANCE TO THE OCCUPIED TERRITORIES, VOL. 2: TECHNICAL ASSISTANCE PROGRAM 1 (Mar. 1994) [hereinafter TECHNICAL ASSISTANCE PROGRAM].

204. *Preface* to INVESTMENT PROGRAM, *supra* note 202.

205. *See* TECHNICAL ASSISTANCE PROGRAM, *supra* note 203, at 1.

206. INTERNATIONAL CRISIS GROUP, SQUARING THE CIRCLE: PALESTINIAN SECURITY REFORM UNDER OCCUPATION 4 (2010) [hereinafter SQUARING THE CIRCLE].

207. *See* WORLD BANK, FIFTEEN MONTHS–INTIFADA, CLOSURES AND PALESTINIAN ECONOMIC CRISIS: AN ASSESSMENT, at iv (Mar. 2002) [hereinafter FIFTEEN MONTHS].

208. THE WORLD BANK OPERATIONS EVALUATION DEPARTMENT, AID COORDINATION AND POST-CONFLICT RECONSTRUCTION: THE WEST BANK AND GAZA EXPERIENCE 5 (Spring 1999).

209. THE WORLD BANK OPERATIONS EVALUATION DEPARTMENT, WEST BANK AND GAZA: AN EVALUATION OF BANK ASSISTANCE, paras. 2.3, 3.7 (2002) [hereinafter EVALUATION].

210. *Id.*, paras. 2.3, 3.8 (2002).

211. *Id.*, paras. 3.13–3.14 (2002). This fund, the Holst Fund, was one of several set up and administered by the Bank, including the Technical Assistance Fund and the Trust Fund for Gaza and West Bank. *Id.* para. 3.11.

212. *Id.*, para. 3.9.

generate tangible improvements in the lives of ordinary Palestinians, and lay the groundwork for future sustainable development."[213] Israeli and Palestinian officials were explicit about the necessity of foreign funding for the success of the peace process.[214]

In actual practice, however, relatively little aid was used for state- and institution-building in the early years.[215] Without meaningful controls, enormous sums were diverted and lost through corruption and mismanagement.[216] Marking a recurrent pattern in the history of post-Oslo contributions, some donors argued that certain priorities (e.g., stability or security, understood as support for one Palestinian political faction over another) trumped others (e.g., good governance and democratization).[217] Palestinian security forces, with the support of their international patrons, were focused more on repressing opponents of the peace process than on building institutions.[218] Over time, however, stability and security—measured by the absence of Palestinian violence—were linked to economic reform, good governance, and democracy rather than to the exchange of cash for quiescence.[219] With the outbreak of the Second Intifada, international rhetoric turned dramatically toward calls for anti-corruption, reform, and castigation of then-Palestinian President Yasser Arafat.[220]

Over the course of the post–1993 era, the institutional reality of the Palestinian Authority became further entrenched even as the promise of conflict resolution became more remote. While a "substantial majority" of Palestinians believed in 1994 that the peace process would award them a better economic situation, less than a year later more than half reported a decline in their standard of living.[221] Already by 1994–95, donors began to shift towards relief assistance, a shift later solidified as closures continued, violence erupted with the Second Intifada, and the permit system became increasingly complex.[222] By 1997, over sixty-five percent of Palestinians stated that the peace process had "negative or "very negative" eco-

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213. THE SECRETARIAT OF THE AD HOC LIAISON COMMITTEE, AID EFFECTIVENESS OF THE WEST BANK AND GAZA, at vii (World Bank Draft Report) (1999).

214. Lasensky, *supra* note 140, at 219, 228.

215. *See id.* at 231.

216. On Authority corruption during the 1990s, *see* MEANINGS, *supra* note 102, at 15.

217. *See* Lasensky, *supra* note 140, at 223–24. *See also* Sandra Pogodda, *Inconsistent Interventionism in Palestine: Objectives, Narratives, and Domestic Policy-Making*, 19 DEMOCRATIZATION 535 (2012).

218. Roland Friedrich & Arnold Luethold, *Introduction, in* ENTRY-POINTS TO PALESTINIAN SECURITY SECTOR REFORM 19 (ROLAND FRIERICH & ARNOLD LUETHOLD EDS., 2007).

219. *See* Lasenky, *supra* note 140, at 228.

220. In 2002, U.S. President George W. Bush said, "True reform will require entirely new political and economic institutions, based on democracy, market economics and action against terrorism . . . . A Palestinian state will require a vibrant economy, where honest enterprise is encouraged by honest government." George W. Bush, Call by President Bush for New Palestinian Leadership (June 24, 2002) (transcript available at http://1.usa.gov/jKNkZ8). Many Palestinians were suspicious that U.S. attention to good governance came about only when the United States sought to depose Yasser Arafat. *C.f.* MEANINGS, *supra* note 102, at 2.

221. BRYNEN, *supra* note 140, at 63.

222. LE MORE, *supra* note 140, at 111.

nomic effects.[223]

2. Managing Crisis: 2000–2006

Despite the rhetorical and organizational emphasis on development assistance, humanitarian aid was a central aspect of international intervention in the West Bank and Gaza from the beginning of the Oslo process. Donor rhetoric continued to focus on state-building and development, but relief remained part of the international toolkit for managing the conflict.[224] The eruption of the Second Intifada in 2000 significantly altered international calculations. Over months of growing violence, Palestinian armed groups led "increasingly accurate operations. . .and gruesome suicide bombings in major Israeli population centres" while the Israeli military reoccupied Palestinian cities, imposed curfews, and tightened the closure regime (including constructing the Separation Barrier).[225] In addition to the numerous victims of direct violence on both sides, the events took a severe toll on Palestinian economy and society.[226] Donors responded by funneling increasing amounts of aid to emergency assistance.[227]

From the beginning of the Second Intifada, the European Union and other donors altered their assistance based on concerns regarding the Authority's viability. They increased both the amount of aid generally and the amount of direct financing to the Authority.[228] By 2002, the ratio of emergency and development aid in commitment terms had changed from 7:1 in favor of development assistance in 2000, to 5:1 in favor of emergency

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223. BRYNEN, *supra* note 140, at 63 (citing Jerusalem Media and Communications Centre public opinion surveys, printed in *Palestine Report*, Apr. 11, 1997 and Apr. 25, 1997).

224. Anne Le More, *Killing with Kindness: Funding the Demise of a Palestinian State*, 81 INTL. AFFAIRS 981, 992 (2005) ("The aid community . . . responded to the degrading socio-economic conditions by shifting to emergency assistance while attempting to maintain a veneer of medium-term development focus and continuing rhetorically to frame its assistance programme within a broader state-building objective").

225. *See* INTERNATIONAL CRISIS GROUP, A TIME TO LEAD: THE INTERNATIONAL COMMUNITY AND THE ISRAEL-PALESTINIAN CONFLICT 2, 7 (2002).

226. The World Bank's initial post-Second Intifada report cited Israel's closure of the territories as the "proximate cause of the Palestinian economic crisis." FIFTEEN MONTHS, *supra* note 209, at iv. The Bank reported a year later that the closures increased unemployment from ten to thirty percent between 2000 to 2003 and that the share of the population living in poverty "tripled during the intifada, to about sixty percent of the population." WORLD BANK, THE TRUST FUND FOR GAZA AND THE WEST BANK: STATUS, STRATEGY AND REQUEST FOR REPLENISHMENT 7 (2003).

227. *See* Le More, *supra* note 224, at 982.

228. *See* MIFTAH, FACT SHEET: THE PALESTINIAN NATIONAL AUTHORITY'S SOURCES OF FUNDING 1–2 (2006) ("[S]ources suggest that the bulk of donor assistance . . . has been recent, with almost 90% of the total amount disbursed over ten years appearing to have been received by the PNA in the last five years only"); *Programme of Assistance to the Palestinian People*, *supra* note 106 (showing a jump in aid in the early 2000s); EUROPEAN COMMISSION, PALESTINE: ECHO FACTSHEET (2013), *available at* http://ec.europa.eu/echo/files/aid/countries/factsheets/palestine_en.pdf.

assistance.[229] The long-term vision of development and state-building had been fettered by the short-term requirements of relief. The Authority was kept from disintegration by regular emergency budget support throughout 2002, averaging $39 million per month, comprising about "half of total Authority budget outlays over the period."[230] The World Bank itself stated in 2002 that "long-term investment has been sacrificed to short-term survival."[231] As violence decreased, medium-term spending increased for infrastructural and other projects.[232] However, direct budget support and emergency assistance remained central; in 2003, donors disbursed $264 million in emergency and humanitarian aid, of which $119 million was dedicated to food aid, job creation programs, and cash assistance.[233]

The tension between relief/humanitarian assistance and development aid demonstrates how donors and service providers endeavored to determine the structure, process, and organization of Palestinian governance but found themselves subject to political contingencies. Donors and providers maintained the rhetoric of long-term planning for peace and development while deploying the methods of immediate relief.[234]

3. *Confronting Statehood: 2006–2013*

While the worst of the humanitarian emergency waned in parallel to the intensity of violence, the Authority—in both the West Bank and Gaza—grew more dependent on international aid after 2006. In January 2006, the Islamist movement Hamas won the Palestinian parliamentary elections.[235] When Hamas formed a government in March 2006, Israel cut off the transfer of customs revenues[236] and donors rerouted their aid from the Authority to a new entity called the Temporary International Mechanism (TIM).[237] The TIM was administered through the office of President Mahmoud Abbas, who is affiliated with the Palestine Liberation Movement and

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229. WORLD BANK, TWENTY-SEVEN MONTHS–INTIFADA, CLOSURES AND PALESTINIAN ECONOMIC CRISIS, at xvii n.13 (2003), *available at* https://openknowledge.worldbank.org/handle/10986/14614 [hereinafter, TWENTY-SEVEN MONTHS].

230. TWENTY-SEVEN MONTHS, *supra* note 229, at 6.

231. FIFTEEN MONTHS, *supra* note 207, at v–vi.

232. FOUR YEARS, *supra* note 200, at 67.

233. FOUR YEARS, *supra* note 200, at xvii.

234. *See* Le More, *supra* note 224, at 992.

235. Scott Wilson, *Hamas Sweeps Palestinian Elections, Complicating Peace Efforts in the Middle East*, WASH. POST (Jan. 27, 2006), http://www.washingtonpost.com/wp-dyn/content/article/2006/01/26/AR2006012600372.html.

236. Steven Erlanger, *Israel Suspends Tax Money Flow to Palestinians*, N.Y. TIMES, Feb. 20, 2006, at A1.

237. Isabel Kershner, *Abbas and Olmert Delay Meeting; Withheld Funds at Issue*, N.Y. TIMES, June 7, 2007, at A12. The Middle East Quartet, an international mediating body for the peace process made up of the EU, Russia, the UN, and the US, set conditions for their recognition of a Hamas-led government. These conditions included recognizing Israel, renouncing violence, and abiding by past PLO agreements. Statement by Middle East Quartet (Jan. 30, 2006) (available at http://www.unsco.org/Documents/Statements/Quartet/2008/Quartet%20Statement%2030%20Jan%202006.pdf). Hamas refused. *See* Greg Myre, *Hamas Criticizes Aid Cuts as It Assumes Power*, N.Y. TIMES (Mar. 30, 2006), http://www.nytimes.com/2006/03/30/international/middleeast/30cnd-mideast.html.

therefore was not subject to the international boycott of Hamas.[238] After a
short-lived attempt at a unity government between Hamas and Fatah fell
apart,[239] the Islamic movement took over Gaza in June 2007.[240] This had
two major consequences for the aid regime in the Occupied Territories.
First, the Israeli government declared Gaza a "hostile entity" and imposed
severe additional restrictions with devastating economic effects.[241] Sec-
ond, in response to Hamas' takeover of Gaza, President Abbas dissolved the
government and appointed Salam Fayyad as Prime Minister.[242] As a result,
the territories were divided into "the internationally recognized and sup-
ported Fatah-led Authority in the West Bank, and the boycotted de facto
Hamas-run Authority in the Gaza Strip."[243] Employees of the Authority in
both territories continued to receive salaries, supported by international
aid, but Palestinian employees in the West Bank were essentially paid *not* to
go to work under Hamas.[244]

With Hamas' ascendance to government, the emergency relief para-
digm established during the Second Intifada became the norm in Gaza. In
2008, due to the prohibition on working with Hamas-connected bodies and
the Israeli refusal to let construction material into Gaza, U.N. agencies cut
foreign aid projects totaling $230 million.[245] Despite both rhetoric and
practice, however, aid continued; in fact, the total value of international
assistance flowing to the Strip increased.[246] Given the impact of Israeli
restrictions, emergency assistance became increasingly critical, particu-
larly in Gaza.[247] The Gazan economy improved markedly after May 2010

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238. *See* David Shearer & Francine Pickup, *Dilemmas for Aid Policy in Lebanon and the
Occupied* Territories, 37 HUMANITARIAN EXCHANGE 6 (2007), *available at* http://www.
odihpn.org/download/humanitarianexchange037pdf. *See also Temporary International
Mechanism*, EUROPEAN COMMISSION, *available at* http://ec.europa.eu/europeaid/where/
neighbourhood/country-cooperation/occupied_palestinian_territory/tim/index_en.htm
(last updated Feb. 17, 2012). Israel occasionally released tranches of clearance revenues
to the TIM, though only a small portion of what it collected. Greg Myre, *Israel Releases
Withheld Tax Funds to Abbas' Office*, N.Y. TIMES (Jan. 7, 2007), http://www.nytimes.com/
2007/01/19/world/africa/19iht-israel.4269261.html.

239. INTERNATIONAL CRISIS GROUP, AFTER GAZA 1 (2007).

240. Steven Erlanger, *Hamas Seizes Broad Control in Gaza Strip*, N.Y. TIMES (June 14,
2007), http://www.nytimes.com/2007/06/14/world/middleeast/14mideast.html.

241. *See, e.g.*, INTERNATIONAL CRISIS GROUP, RULING PALESTINE I: GAZA UNDER HAMAS
1–2 (2008).

242. Isabel Kershner & Taghreed El-Khodary, *Abbas Swears in Emergency Govern-
ment*, N.Y. TIMES (June 18, 2007), http://www.nytimes.com/2007/06/18/world/mid-
dleeast/18mideast.html.

243. Tamer Qarmout & Daniel Béland, *The Politics of International Aid to the Gaza
Strip*, 41 J. PALESTINE STUD. 32, 37 (2012).

244. EUROPEAN COURT OF AUDITORS, EUROPEAN DIRECT FINANCIAL SUPPORT TO THE PAL-
ESTINIAN AUTHORITY 26 (2013)[hereinafter, AUDITORS].

245. INTERNATIONAL CRISIS GROUP, *supra* note 225, at 4.

246. Steven Erlanger, *Aid to Palestinians Rose Despite an Embargo*, N.Y. TIMES (Mar. 21,
2007), http://www.nytimes.com/2007/03/21/world/middleeast/21palestinians.html.

247. "[I]nternational donors . . . have infused massive amounts of money, substituting
humanitarian aid for development assistance, in effect turning most Gazans into wards
of the international community." INTERNATIONAL CRISIS GROUP, *supra* note 225, at 1–2.

when Israel relaxed its blockade,[248] growing faster than the West Bank's.[249] However, the damage had been so great that by 2012, "seventy-five percent of the population in Gaza [still] relied on some form of humanitarian assistance, and given their low incomes, people in Gaza [were] especially vulnerable to fluctuations in prices of food and fuel."[250]

The aid regime in the West Bank was very different. With former IMF official Salam Fayyad as prime minister and Abbas as president, the Ramallah-based Authority did not reject the Quartet conditions, emphasizing good governance, non-violence, institution building, and security—for Palestinians and Israelis alike.[251] Under Fayyad, and with assistance from the U.S. (in the form of the U.S. Security Coordinator, who trained the Authority's paramilitary force) and the E.U. (which focused on the civil police and judiciary), the Authority prioritized security reform, which represented "the triumph . . . of a particular political outlook: the notion that by building institutions of a modern state, enhancing personal security and vigorously establishing a monopoly over the use of force, Palestinians can regain the international community's and Israel's confidence, neutralise a key Israeli argument against statehood and thus pave the way for independence."[252]

With Abbas and Fayyad focused on different aspects of this vision, the two West Bank Palestinian leaders undertook separate, but linked, paths of resistance between 2009 and 2012: Prime Minister Fayyad's "bottom-up" statebuilding strategy and President Mahmoud Abbas's "top-down" diplomatic strategy, in which a bid for U.N. membership played a central role. Frustrated with both aid dependency and arguments that occupation proscribed any progress, Fayyad announced a two-year plan in 2009 to build the institutions of a Palestinian state from the ground up, arguing that good governance and institution-building would constitute resistance to an occupation that damaged Palestinian development.[253] Two years later, President Abbas applied for membership at the U.N., arguing that membership would constitute recognition of Palestinian statehood, thus placing Palestinians in a more powerful position for negotiations.[254] While the

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248. Ethan Bronner, *Reports See Fiscal Woes Undermining Palestinians*, N.Y. TIMES (Sept. 11, 2011), http://www.nytimes.com/2011/09/12/world/middleeast/12palestinians.html. Although Israel had partially relaxed the blockade already, it was forced to speed up the process in the aftermath of an international incident involving the forcible boarding of an activist-led flotilla and the death of several Turks and one American. Isabel Kershner, *Deadly Israeli Raid Draws Condemnation*, N.Y. TIMES (May 31, 2010), http://www.nytimes.com/2010/06/01/world/middleeast/01flotilla.html.

249. *Hamas and the Peace Talks, Contradictory Noises*, THE ECONOMIST, Sept. 23, 2010, *available at* www.economist.com/node/17103827.

250. UNSCO, PALESTINIAN STATE-BUILDING, *supra* note 108, at para. 48.

251. PALESTINIAN NATIONAL AUTHORITY, PALESTINE: ENDING THE OCCUPATION, ESTABLISHING THE STATE PROGRAM OF THE THIRTEENTH GOVERNMENT 31–33 (2009) [hereinafter ESTABLISHING THE STATE].

252. SQUARING THE CIRCLE, *supra* note 206, at 4–5.

253. See *infra*, notes 389–402 and accompanying text. *See generally*, ESTABLISHING THE STATE, *supra* note 251.

254. See *infra*, notes 351–355 and accompanying text. *See generally*, INTERNATIONAL CRISIS GROUP, CURB YOUR ENTHUSIASM: ISRAEL AND PALESTINE AFTER THE UN (2011).

two plans shared an international focus, they were both deployed and received in the international arena in drastically different ways. Both strategies significantly affected international assistance to the Palestinians, but whereas the former won praise and convinced Western donors to increase aid, the U.S. condemned the latter as a "unilateral" step that was harmful to negotiations and antagonistic to the U.S. and Israel; it was subsequently punished by both.[255]

After 2007, the West Bank and Gaza were divided not only due to the conflict between Fatah and Hamas but by international condemnation of Gaza and approbation of the West Bank. The most dramatic division between the two territories from an aid perspective was the treatment of Gaza as a humanitarian disaster and the West Bank as a developing economy.[256] With the resumption of regular aid due to donor confidence in Fayyad's technocratic approach to Palestinian governance, the West Bank's economy stabilized, although it remained heavily dependent on international aid; in 2010, Authority expenditures were approximately $2.9 billion, a little under $1.2 billion of which was financed by external support.[257] Donors and international organizations praised the Authority's success in building institutions as well as its commitments to transparency, anti-corruption efforts, human rights compliance, and rule of law advances.[258] They emphasized the need for "expenditure restraint, institution- and capacity-building, and structural reforms" for growth.[259] In the succeeding years, however, aid shortfalls created an enormous deficit that the Authority struggled to cover.[260] So long as the Authority could rely on coping mechanisms—chiefly borrowing from Palestinian banks and accumulating arrears to the private sector—it could continue to pay salaries.[261] As those alternatives were gradually curtailed, however, the Authority was forced to delay salary payments, with significant consequences for the West Bank's economic and political stability.[262]

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255. *See infra*, Part III.

256. The bulk of donor assistance has been funneled through the U.N.'s Consolidated Appeals Process which some have criticized for "turning a blind eye to some major economic needs (namely recovery and development-based interventions) while focusing almost exclusively on funding humanitarian interventions." Qarmout & Béland, *supra* note 243, at 43.

257. INTERNATIONAL MONETARY FUND, MACROECONOMIC AND FISCAL FRAMEWORK FOR THE WEST BANK AND GAZA: SEVENTH REVIEW OF PROGRESS, STAFF REPORT FOR THE MEETING OF THE AD HOC LIAISON COMMITTEE 17 (2011). The E.U. contributed over $600,000 that same year in direct financing to the P.A. to cover, among other things, civil servant salaries, pensions, public services, and cash assistance. AUDITORS, *supra* note 244, at 11–13.

258. UNSCO, PALESTINIAN STATE-BUILDING, *supra* note 108, at 11.

259. THE WORLD BANK, A PALESTINIAN STATE IN TWO YEARS: INSTITUTIONS FOR ECONOMIC REVIVAL, ECONOMIC MONITORING REPORT TO THE AD HOC LIAISON COMMITTEE 14 (2011).

260. *See* INTERNATIONAL CRISIS GROUP, BUYING TIME? MONEY, GUNS AND POLITICS IN THE WEST BANK 8 (2013) [hereinafter BUYING TIME?].

261. WORLD BANK, FISCAL CRISIS, ECONOMIC PROSPECTS: THE IMPERATIVE FOR ECONOMIC COHESION IN THE PALESTINIAN TERRITORIES—ECONOMIC MONITORING REPORT TO THE AD HOC LIAISON COMMITTEE 7–10 (2012).

262. The financial crisis prompted street protests fueled by Fayyad's political foes in September and December of 2012, culminating in his resignation on April 13, 2013. Isabel Kershner & Jodi Rudoren, *Palestinian Prime Minister Resigns, Despite U.S. Efforts,*

C. Costs and Consequences

Delivering aid to a post-conflict territory still wracked by conflict and crisis inevitably raises questions with regard not only to efficacy but also to ethics. With aid having become an irreplaceable part of a political process and governing arrangement that have not reached their ostensible goals in the Israeli-Palestinian conflict, many question the role aid plays in the local legal and political context.[263] Particularly after the uses of refugee camps and aid by genocidaires after the Rwandan genocide,[264] workers within the humanitarian field, and scholars studying it, came to question the political and ethical consequences of humanitarian work. Claims of the enterprise's neutrality and impartiality were undermined by its entrenchment in ongoing conflicts, by transparent political and economic motives on the part of donors, and by the project's paternalism.[265] These critiques—and parallel ones in the development field[266]—implicated the very machinery of aid itself, particularly the ways in which it often deepens conflict and inequality rather than alleviate their effects.

Three issues have been particularly salient in the last decade in the Palestinian territories: the role of the Authority and international aid in reducing the cost of Israel's occupation; the implicit license for destruction potentially created by donor willingness to rebuild demolished infrastructure; and the "mitigation effect" of aid projects that alleviate the harsh conditions of life under occupation.[267] Self-critique has arguably become part

N.Y. Times, Apr. 13, 2013, at A8. For a detailed analysis of the events of 2012–2013, *see* Buying Time?, *supra* note 260.

263. I do not address here the effects of international intervention on Palestinian civil society, the creation of a new "NGO culture," or the production of a new set of elites, much of which contributed to transforming class structures. *See, e.g.*, Sibille Merz, *'Missionaries of the New Era': Neoliberalism and NGOs in Palestine*, 54 Race & Class 50 (2012); Nasser Abourahme, *The Bantustan Sublime: Reframing the Colonial in Ramallah*, 13 City 500 (2009); Islah Jad, *NGOs: Between Buzzwords and Social Movements*, 17 Dev. in Practice 622 (2007); Sari Hanafi & Linda Tabar, The Emergence of a Palestinian Globalized Elite: Donors, International Organizations and Local NGOs (2005); Karma Nabulsi, *The State Building Project: What Went Wrong?*, in Aid, Diplomacy, and Facts on the Ground, *supra* note 145, at 117.

264. Sarah Kenyon Lischer, Dangerous Sanctuaries: Refugee Camps, Civil War, and the Dilemmas of Humanitarian Aid 1 (2005)

265. *See, e.g.*, Rony Brauman, *Medecins sans Frontieres and the ICRC: Matters of Principle*, 94 Intl. Rev. Red Cross 1 (2012); The Golden Fleece: Manipulation and Independence in Humanitarian Action (Antonio Donini, ed., 2012); Humanitarian Negotiations Revealed: The MSF Experience (Claire Magone, Michael Neuman, & Fabrice Weissman, eds., 2011); Michael Barnett, Empire of Humanity: A History of Humanitarianism (2012); David Kennedy, The Dark Sides of Virtue: Re-assessing International Humanitarianism (2004); Alex De Waal, Famine Crimes: Politics and the Disaster Relief Industry in Africa (1997); Liisa Malkki, *Speechless Emissaries: Refugees, Humanitarianism, and Dehistoricization*, 11 Cult. Anthro. 377 (1996).

266. *See, e.g.*, Empire, Development and Colonialism: The Past in the Present (Mark Duffield & Vernon Hewitt, eds., 2009); Peter Uvin, Aiding Violence: The Development Enterprise in Rwanda (1998); James Ferguson, The Anti-Politics Machine: Development, Depoliticization, and Bureaucratic Power in Lesotho (1994).

267. Mary Anderson states that there is a "widespread [view] that donor assistance to the [occupied Palestinian territories] plays into and reinforces the Israeli occupation of Palestine – that aid 'relieves Israel of its obligations as an occupier,' that it 'rebuilds

of aid provision itself, an expected acknowledgement of personal or organizational complicity linked with skepticism about the possibility for changing the broader system.

1. *Subsidy*

Some scholars and aid workers have described the Authority as a "subcontractor" of an "outsourced" occupation.[268] The subcontractor argument rests on the idea that the Authority lowers the cost and logistical complications for Israel to continue occupying the Palestinian territories; as the major financial support for the Authority infrastructure, international aid provides a subsidy for occupation.[269] Under this line of reasoning, helping to pay salaries and supporting the Palestinian economy means assuming responsibilities that should fall to Israel under international law. Preserving the health and welfare of the occupied population, a responsibility the Fourth Geneva Convention assigns to the occupier,[270] became the responsibility of the population itself in cooperation with its international backers. An Israeli former official affirmed the importance of this arrangement for his country:

> Israel started letting in the internationals with the idea that they would replace us. The Palestinians need help because they need money, infrastructure, buildings, to create wells, to do sewage—everything. . . . And incrementally the international organizations became more active, with the informal blessing of Israel—and now with the formal blessing. And it all becomes more internationalized, and it's clear that this is necessary . . . .[271]

Reflecting this view, Israeli Prime Minister Netanyahu urged the U.S. Congress in 2011 to release $50 million in new assistance to the Authority.[272]

2. *Infrastructure*

Donors routinely rebuild infrastructure that is damaged as a consequence of what Israel calls counter-terrorism operations, or demolished

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whatever Israel destroys' and 'enables' the continuation of such actions and that currently it simply 'maintains' levels of poverty resulting from a strict closure regime and other aspects of Israeli control by providing major financial resources for food, employment, and other essentials." *See* Mary Anderson, *'Do No Harm': The Impact of International Assistance to the Occupied Palestinian Territory*, *in* AID, DIPLOMACY, AND FACTS ON THE GROUND, *supra* note 145, at 144.

268. *See, e.g.*, GORDON, *supra* note 26, at 169–70.

269. *See* Amira Hass, *Palestinians' Low Salaries Also Linked to Israeli Social Struggle*, HAARETZ (Aug. 1, 2011), http://www.haaretz.com/misc/article-print-page/palestinians-low-salaries-also-linked-to-israeli-social-struggle-1.376283?trailingPath=2.169%2C2.225%2C2.239%2C ("Israel is in control of the West Bank and the Gaza Strip–and Palestinian society and the donor countries finance the cost of this domination"). Some scholars argue that the Israeli economy benefits directly from donor funds, given Palestinian consumption and limits on imports. *See, e.g.*, LE MORE, INTERNATIONAL ASSISTANCE, *supra* note 140, at 128; HEVER, POLITICAL ECONOMY, *supra* note 140, 38–40.

270. See Geneva Convention IV, *supra* note 34, art. 55, 56, 59.

271. Interview with former Israeli government advisor in Tel Aviv (May 4, 2008).

272. Jennifer Steinhauer & Steven Lee Meyers, *House G.O.P. Finds Growing Bond With Netanyahu*, N.Y. TIMES, Sept. 20, 2011, at A1.

after being built without permits.[273] Donors evince concerns for the cost
and ethics of reconstructing buildings targeted by the IDF.[274] The damage
done to infrastructure has decreased since the worst violence of the Second
Intifada abated, and the Israeli government has been increasingly solicitous
of donors' goodwill,[275] but the problem still remains—as does the willing-
ness of donors to rebuild rather than lodge substantial protests against the
destruction.[276] Critics argue that such funding encourages a build-
destroy-build cycle, with no real cost, either political or economic, to
Israel.[277] It also potentially weakens high-level condemnation of Israeli
government actions by the Security Council or elsewhere in the interna-
tional system.[278] As a result, the division between politics and econom-
ics—or law and economics—is made manifest. Declarations of illegality or
expressions of condemnation occur at the headquarters level while aid is
meted out on the ground as if operating in an unconnected universe.

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273. *See* ANNIKA HAMPSON & JANINE ABOU AZZAM, WALL MITIGATION: IMPLICATIONS FOR
DONORS AND IMPLEMENTING AGENCIES OPERATING IN AREAS AFFECTED BY THE SEPARATION
BARRIER—REPORT TO THE LOCAL AID COORDINATING COMMITTEE 7 (2005).

274. A 2005 report on issues around wall mitigation noted that Japan was "hesitant to
fund projects either near the Barrier or within the Seam Zone due to the possibility of
Israeli Defense Force-inflicted damage to such projects." *Id.* at 7–8.

275. A former military official said donors increasingly "want guarantees that their
buildings aren't going to be destroyed. Even the U.S., our ally, says it's our taxpayers'
money paying for these buildings and we want commitments that they won't be
destroyed. It does change things. After [Operation] Defensive Shield, [the IDF] mapped
every plant, sewage purification plant, hospital, and put it on the map as a restricted
area to try to avoid bombing there. Officers have orders to be careful not to hit those
areas. But it's unavoidable sometimes." Interview with former Israeli government advi-
sor in Tel Aviv, *supra* note 271.

276. Far less infrastructural destruction has occurred in recent years, though the
problem remains. An umbrella organization of national and international NGOs—
chaired by the U.N.'s Office for the Coordination of Humanitarian Affairs—reported that
"Israel razed 62 European-funded structures [in 2011], and another 110 such projects
were at risk." *EU Palestinian Aid Projects Destroyed by Israel: NGOs*, AGENCE FRANCE
PRESSE, May 13, 2012, *available at* http://www.google.com/hostednews/afp/article/AL
eqM5hzG0fTr6sqqDxnuMtDcsBLisiI2Q.

277. Pointing out that donors have not asked Israel to pay the bill for rebuilding
demolished houses or repairing the massive infrastructural damage in the Gaza town of
Rafah in 2004, Shearer and Meyer query, "If Israel were presented with the $15 million
bill for Rafah's reconstruction, as international law stipulates, would it prompt a rethink-
ing of military strategy and encourage other methods of surveillance that cause less
harm to civilians and property?" David Shearer & Anuschka Meyer, *The Dilemma of Aid
Under Occupation*, *in* AID, DIPLOMACY, AND FACTS ON THE GROUND, *supra* note 277, at 175.
See also TAGHDISI-RAD, POLITICAL ECONOMY 159 (arguing that donors "rushed to set up
'reconstruction' and rehabilitation' programmes and donor pledging conferences follow-
ing each wave of Israeli military destructions in the occupied Palestinian territories" and
that they therefore "indirectly assist[ed] Israeli policies of destroying Palestinian infra-
structure, undermining Palestinian independence and livelihood and fragmenting the
Palestinian territory").

278. As former European Commission for External Affairs Lord Patten writes, "[W]e
should be clear that this cannot be an open-ended commitment to pay the costs of
Israel's occupation of Palestine. At present, international donors meet most of the bill for
the consequences of occupation that should be met under the Geneva Convention by
Israel." Chris Patten, *Europe's Route to a New* Jerusalem, FINANCIAL TIMES (Dec. 16, 2009),
http://www.ft.com/cms/s/0/08e64ec2-e918-11de-a756-00144feab49a.html#
axzz2sfVXacIt.

3. Mitigation

As in any aid situation, donors and workers on the ground are required to work within the parameters of the existing system. For humanitarian actors, the question of how and whether to politicize aid—in the sense of condemning the harm done by powerful actors or refusing to provide assistance that could facilitate further harm—is a function of the benefits and risks that confrontation would have for the needy population they serve as well as for their own high-level politics.[279] In the West Bank and Gaza, calculating harm is often framed in terms of the mitigation effects of aid on the daily harms of occupation and the unwillingness or incapacity of international organizations to directly confront or resist the actions of the occupying power.[280] Aid workers as individuals and organizations more broadly find it difficult to balance the short-term benefits of aiding needy groups and the long-term consequences of contributing to occupation.

The calculations differ in the West Bank and Gaza. Once Israel carried out its 2005 Disengagement Plan in Gaza in 2005, Israeli movement restrictions and international prohibitions on dealing with Hamas hampered the aid community's activities. Donors were more confrontational regarding access to Gaza in the wake of new restrictions imposed on the aid community in 2007.[281] In the West Bank, by contrast, aid dilemmas focus more on individual projects, since in an environment where the Authority and Israel—and therefore the donor community and Israel—work in conjunction, donors and aid workers must weigh the consequences of individual projects.[282]

Donors and aid workers generally avoid projects they view as supporting the occupation directly, although countries' standards differ. For example, USAID funded upgrades to two checkpoints for both goods and people—Jalameh and Shaar Ephraim (near the West Bank cities of Jenin and Tulkarem, respectively).[283] However, it refused to fund improvements at the Kalandiya checkpoint, located within the West Bank and which divides Ramallah from East Jerusalem, which Israel claims as its own.[284] Funding improvements to the checkpoint would essentially endorse the Israeli claim to East Jerusalem, which the U.S. has not done.

Yet drawing these distinctions is not as obvious as it might seem. The Shaar Ephraim checkpoint is one of six back-to-back crossings through

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279. *See* Shearer & Meyer, *supra* note 144. *See also* MARY ANDERSON, DO NO HARM: HOW AID CAN SUPPORT PEACE – OR WAR (1999); Donini, *supra* note 265.

280. *See id.* at 133.

281. *See* *UN Humanitarian Official Urges Israel to Lift Crippling Restrictions on Gaza*, U.N. NEWS CENTRE (Jul. 3, 2013), http://www.un.org/apps/news/story.asp?NewsID= 45332#.UtS0GfRDvIc.

282. *See, e.g.*, *USAID Funds Israeli Military Checkpoint Upgrade*, MA'AN NEWS AGENCY (Nov. 13, 2009), http://www.maannews.net/eng/ViewDetails.aspx?ID=239516.

283. *See* GOI, 2011 REPORT TO THE AHLC, *supra* note 107, at 11.

284. Interview with embassy official in the region (Dec. 3, 2009). *See also* *USAID Funds Israeli Military Checkpoint Upgrade*, *supra* note 282.

which Palestinian goods must travel to enter Israel.[285] While U.S. aid does not directly contribute to the functioning of occupation infrastructure in the West Bank, it does help mitigate the substantial complications of transporting goods that arise from the occupation regime.[286] USAID has funded roads in the West Bank—including one adjacent to the Kalandiya checkpoint that facilitates travel to and from it.[287] Roads built with donor funding ease Palestinian movement, yet because they facilitate the aims of the occupation, some are opposed by the Authority and many Palestinians—the ostensible client of the donors.[288]

Decisions with regard to aid came to the fore with the construction of the Separation Barrier.[289] On the one hand, the Barrier cut off West Bank villages from each other and from the rest of the West Bank, generating broad humanitarian need; on the other, funding those needs posed a quandary for organizations since mitigating the effects of the Barrier could violate the International Court of Justice's decision. In finding the Barrier illegal, the ICJ reasoned that "all States are under an obligation not to recognize the illegal situation resulting from the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem. They are also under an obligation not to render aid or assistance in maintaining the situation created by such construction."[290] Scholars and practitioners continue to grapple with the practical implications of the Court's finding.[291]

An international aid official in the region cited the example of a West Bank town surrounded by the Separation Barrier that has no hospital.[292] Prior to the construction of the Barrier, the inhabitants went to a nearby

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285. World Bank, West Bank and Gaza—Palestinian Trade: West Bank Routes 7–8 (2008).

286. *See USAID Funds Israeli Military Checkpoint Upgrade*, *supra* note 282 (noting that "Israel is not on the list of countries supported by USAID funding").

287. *See id.*

288. *See, e.g.*, Jonathan Cook, *US Funds 'Apartheid' Road Network in Israel*, National (May 15, 2010), http://www.thenational.ae/news/world/middle-east/us-funds-apartheid-road-network-in-israel; Nadia Hijab & Jesse Rosenfeld, *Palestinian Roads: Cementing Statehood, or Israeli Annexation?*, Nation (April 30, 2010), http://www.thenation.com/article/palestinian-roads-cementing-statehood-or-israeli-annexation#.

289. *The Economic Impact of Israel's Separation Barrier*, 10 Palestine-Israel J. Pol., Econ., & Culture (2003), http://www.pij.org/details.php?id=67#.

290. *Id.* para. 159.

291. The Authority suggested a "traffic light" paradigm for advising international organizations about projects they should support. "Green light" projects would be considered consistent with the ICJ's opinion, based on their direct humanitarian contribution. Unacceptable "red light" projects, would involve direct assistance to Israel in building or funding the Barrier, assisting in border arrangements, or any project offering "recognition of Israeli sovereignty over Seam Zone areas [i.e., territory between the Barrier and the Green Line]." Finally, an intermediate category of "orange light" projects would require case-by-case assessment based on the degree to which donor assistance would contribute to making the Barrier regime permanent. Hampson & Azzam, *supra* note 273, at 13–14. *See also* Larissa Fast, Aid in a Pressure Cooker: Humanitarian Action in the Occupied Palestinian Territory, Feinstein International Center, 21–22 (2006).

292. Interview with international aid official in East Jerusalem (April 18, 2008).

maternity center for medical attention. Once it was completed, residents had to drive for over an hour to reach the center. Thus, when donors and international organizations asked residents what they needed, they requested a clinic. As the aid worker pointed out, however, "now *every* little community enclave that's cut off by the [Barrier] needs a school and a clinic. From a service delivery viewpoint, it doesn't make any sense. And it makes each enclave self-sufficient and autonomous. But if you don't do it, people will die."[293] International reluctance to mitigate the effects of the Separation Barrier poses a conundrum, but refusing aid based on its mitigation effects creates equal complexity. The mayor of Qalqilya, a city surrounded entirely by the Barrier, pleaded for the aid community to focus on immediate needs: "It is philosophical to talk about aid in political terms. The farmer who can't reach his olive grove doesn't think about politics, nor does the unemployed father. People need jobs, education, and hope for the future."[294]

The contention about mitigating the effects of the Barrier has been extended to the entirety of the aid enterprise in the West Bank. Some aid workers and Palestinians promote a full withdrawal of humanitarian aid as the only viable alternative for resisting or altering the current situation;[295] others go so far as to support the shuttering of the Authority, which they argue would force Israel to resume full operational control of and financial responsibility for the Palestinian governance.[296]

Others counter that a return to Israeli rule would hardly be preferable[297] and that there is no guarantee that, after two decades of international sponsorship, the Israeli government would dedicate the same amount of resources to the West Bank.[298] At the height of Israel's pressure on Gaza, aid workers reported hearing from Peter Lerner, then the IDF liaison for humanitarian aid in Gaza: "No development, no prosperity, no

293. *Id.*

294. HAMPSON & AZZAM, *supra* note 273, at 10 (quoting an interview with Maa'rouf Zahran, Mayor of Qalqilya).

295. One aid worker at a donor organization suggested that while she would advocate the end of humanitarian aid, a referendum should be required for such a move since the majority of West Bank and Gaza residents would suffer direct and dramatic consequences were aid to be withdrawn. Interview with a national program officer of an international agency operating in the occupied territories in East Jerusalem (Feb. 29, 2008).

296. *See, e.g.*, Yossi Beilin, *Dear Abu Mazen: End This Farce*, FOREIGN POLICY (Apr. 4, 2012), http://www.foreignpolicy.com/articles/2012/04/04/dear_abu_mazen_end_this_farce.

297. Interview with Palestinian professor in the West Bank (Jan. 15, 2009) ("Do we want to go back to the situation where military officers of Israel are running health and education? Do we want to go back to a period without passports, back to having a *laissez-passer* instead?").

298. *See* SCOTT LASENSKY & ROBERT GRACE, U.S. INST. OF PEACE, DOLLARS AND DIPLOMACY: FOREIGN AID AND THE PALESTINIAN QUESTION 1 (2006); Noah Browning, *Israeli Forces Manhandle EU Diplomats, Seize West Bank Aid*, REUTERS, (Sept. 20, 2013) http://www.reuters.com/article/2013/09/20/us-palestinians-israel-eu-hamlet-idUSBRE98J0GK20130920.

humanitarian crisis."[299] The statement revealed Israel's interest in "sus-pending" Gaza between humanitarian crisis and development.[300] While Gaza's situation differs and Israel has shown that it is willing to facilitate development in the West Bank, aid workers and Palestinians do not believe that Israel necessarily would rush to fill a void left by the international community.[301]

The public performance of ambivalence regarding aid and the role it plays in governing the West Bank and Gaza has become standard—even obligatory—within the aid community. If not naïve believers in neutral humanitarianism, international aid workers tend to position themselves wryly as either well-intentioned collaborators or self-conscious contribu-tors genuflecting at the altar of self-knowledge and acknowledging their role in supporting a broken system.[302]

Internationals enmeshed with the occupying power are not unaware of their influence. Their ambivalence stems from questions about whether the immediate benefits they bring aid recipients outweigh the detrimental effects of reinforcing a system that they oppose. The issue is not that they see no "dark side" to their virtuous work, but rather that they internalize their ambivalence as a condition of its continuation. But while ambiva-lence over international financial or material contributions to occupation may have become a standard feature of the aid community, these conversa-tions are situated within a broader governance regime in the Palestinian territories.

III. Reframing the Conflict: The Significance of Oslo

The post-Oslo arrangements fundamentally changed the ways Pales-tinians are governed. The new regime, built on the foundation of the Oslo Accords, both depended upon and was shaped by continuous interactions among Israel, the Palestinian Authority (and Hamas), and a wide range of international actors. It transformed an occupation into a "transition," in which two equivalent parties negotiate core issues while Palestinians pur-sue institution-building, economic development, and security reform with

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299. Interview with U.N. humanitarian official in East Jerusalem (Mar. 14, 2008); Interview with humanitarian aid worker of the European Commission in East Jerusalem (Dec. 18, 2007).

300. Ariella Azoulay & Adi Ophir, *The Order of Violence, in* THE POWER OF INCLUSIVE EXCLUSION: ANATOMY OF ISRAELI RULE IN THE OCCUPIED PALESTINIAN TERRITORIES (2005).

301. Interview with humanitarian aid worker of the European Commission in East Jerusalem (Dec. 18, 2007); Interview with U.N. humanitarian official in East Jerusalem (Mar. 14, 2008). *See* LASENSKY & GRACE, *supra* note 298, at 4–5 ("[Some members of Israel's national security establishment] believe that the economy can be used puni-tively, as an instrument of coercion. International aid is necessary, according to this view, so that Israel itself will not have to shoulder the financial burden, but can still exercise exclusive control over access and movement"); *See* Browning, *supra* note 298.

302. Ariella Azoulay & Adi Ophir, Address at the Van Leer Institute, The Politics of Humanitarianism: The Ruling Apparatus of Control in the Occupied Territories (Apr. 20–21, 2004).

international assistance. Although occupation remains the backdrop, new projects of negotiated peace and state-building have reframed the conflict.

The new regime has three key characteristics which I term: "parity," "economism," and "transition." I use the term "parity" to describe the new structure of relations between Israel and the Palestinians, arranged on the—often illusory—basis of relative bilateral equality between antagonists (rather than asymmetrical parties, as in occupation). I refer to the new regime as "economistic" to reflect the new focus on the need for economic development and a preoccupation with the cost of continuing occupation, which have largely crowded out discussions of the distribution of resources and power between Israelis and Palestinians or of forms of resistance that challenge donor norms. Finally, I argue that conflict and occupation have been replaced by what I term "transition." Prior to Oslo, Palestinians were governed by an occupation regime that was both stable (if prolonged) and associated with an ongoing conflict. Palestinian-Israeli relations are now structured as if they have entered (or will imminently be in) a "post-conflict" transition oriented toward an ultimate resolution based on the asymmetrical fulfillment of economic, legal, and political conditions. The large-scale political objectives of a prior era have been transformed into a series of discrete issues to be discussed, compromised on, and resolved under international auspices. Working within this new regime of transition, elites, aid workers, and donors become focused on process, on achieving benchmarks as signs of progress, rather than on accomplishing particular substantive objectives. Negotiations sometimes appear to be an end in themselves rather than a road towards resolution. Economic development seems like an autonomous goal rather than a process hamstrung by occupation and dependent on donors. Change seems progressive by definition rather than indeterminate ex ante.

These three characteristics have had wide-ranging effects on the possibilities for peace, the achievement of Palestinian statehood, and the continuation of conflict. The Oslo regime as a whole, and these aspects in particular, represents both hope for peace and obstruction of peaceful resolution. The contradictions inherent in putative equality between asymmetrical parties or treating a conflict as a transition have become increasingly manifest. As the gap between the regime on the ground and its ostensible objectives has grown, so has the cost of deviating from accepted practices.

A. Parity

The Oslo Accords, like the institutions they spawned, portrayed the relationship between Israel and Palestine as that of two relatively equivalent parties struggling to make their narratives heard and to satisfy their historical, material, and political needs. The Oslo regime constructed the parties as if they were two entities without fixed borders, with overlapping populations, entrapped in an historical (and possibly primordial) struggle, attempting to make peace through negotiation over such shared concerns as borders, refugees, and Jerusalem. Other vocabularies, particularly that of occupier and occupied, were increasingly marginalized in the

international sphere and even in the rhetoric of the Palestinian government. The conceptualization of the parties as relative equals negotiating common problems began when Arafat and Rabin shook hands and signed the Letters of Mutual Recognition and Declaration of Principles. Political considerations (such as Arafat's weakened position after the first Gulf War) and recent events (most notably the First Intifada) brought the highly antagonistic parties to the point of mutual recognition and negotiation.[303] Yet international ideas and practices were present from the outset: the new era of "preventive diplomacy" created a fertile environment for Israeli-Palestinian negotiations.

The Oslo regime's turn to parity manifests itself in multiple ways, including in the bilateral structure of negotiations, which suggests that each party can fend for itself at the same table, in the presence only of an impartial mediator; in the design of the Oslo Accords, which were signed between two parties with ostensibly reconcilable if competing claims; and in the construction of a quasi-state apparatus in Palestine, which reinforced the status of two equal negotiating partners rather than that of a powerful state and an insurgent liberation movement. At an unofficial level, the structure was echoed and reinforced in the "people-to-people" dialogue groups that sprang up in the 1990s, which tended to operate under the notion of competing and incompatible, but potentially equally valid, narratives.[304]

1. Imagining Equality

The character of the Oslo process was shaped by two factors: the direct participation of the Palestinian Liberation Organization (PLO) and the willingness of the parties to negotiate peace. The Oslo Accords broke many taboos. Unlike other talks, the PLO participated directly. At the Madrid Conference—a different set of Arab-Israeli negotiations, which overlapped with the Oslo talks—Palestinians were present only as members of the

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303. *See infra* Part I.C.

304. These initiatives ranged from projects to write reconciled histories to those focused on shared grief and loss or any number of others focused on humanizing each enemy to the other in various ways. *See, e.g., The Parents Circle Families Forum— Introduction*, PALESTINIAN-ISRAELI BEREAVED FAMILIES FOR PEACE, http://www.theparentscircle. org/Content.aspx?ID=2 (last visited Jan. 12, 2014); PEACE RESEARCH INSTITUTE IN THE MIDDLE EAST, 2 LEARNING EACH OTHER'S HISTORICAL NARRATIVE: PALESTINIANS AND ISRAELIS (2006), *available at* http://vispo.com/PRIME/narrative.pdf; *About Seeds of Peace*, SEEDS OF PEACE, http://www.seedsofpeace.org/about (last visited Jan. 12, 2014). *See also* Ifat Maoz, *Peace Building in Violence Conflict: Israeli-Palestinian Post-Oslo People-to-People Activities*, 17 INT'L J. POL., CUL., & SOC. 563, 565–67, 569 (2004). Hanafi and Tabar point out that "Palestinians have been increasingly critical of 'people-to-people' initiatives that promote dialogue between Israeli and Palestinian civil society groups, arguing that they often result in . . . each side sharing their own narrative, and ignoring the structural roots of the conflict and the broader power relations that perpetuate it." *See* HANAFI & TABAR, *supra* note 269, at 54. *See also* Tami Amanda Jacoby, *Canadian Peacebuilding in the Middle East: Case Study of the Canada Fund in Israel/Palestine and Jordan*, 8 CANADIAN FOREIGN POL'Y J. 83 (2000).

Jordanian delegation.[305] At Oslo, however, Israel explicitly recognized the
PLO as the representative of the Palestinian people; by implication, Israel
thus recognized the Palestinians as a people for the first time.[306] This was
celebrated as a major achievement, one that both was tantamount to peace
and would catalyze agreement on outstanding issues.[307] Lost in the cele-
bration, however, were three elements of the Accords that would under-
mine the pursuit of peace and contradict the apparently equal partnership
set up by the initial Letters of Mutual Recognition exchanged by the PLO
and Israel. First, although the PLO recognized "the right of the State of
Israel to exist in peace and security,"[308] Israel recognized the PLO only as
the representative of the Palestinian people and decided "to commence
negotiations with the PLO within the Middle East peace process."[309] Israel
recognized neither the existence nor the corresponding rights of a state of
Palestine.[310] Thus, even in the course of agreeing to negotiate, the parties'
positions were structured asymmetrically. Second, while the language of
the PLO letter declared the recognition of Israel in light of the "new era" it
invoked in Middle East history, Israel recognized the PLO "in light of the
PLO commitments included in [the PLO] letter."[311] As a result, PLO recog-
nition was framed as conditional on its commitments, while the recogni-
tion of the state of Israel was inherent to the "new era." Finally, as one
Palestinian negotiator discussed, early events suggested that the PLO
would be limited in its ability to represent itself and its territory as it
desired:

> [With] others from my delegation . . . we ran into the Israeli delegation . . . .
> [Former Israeli Minister Binyamin] Ben-Eliezer asked where I was from. And
> I said Nablus. And he said, "[Y]ou mean you're from Shechem [the biblical
> and modern Hebrew name for Nablus]." And I said no, I'm from Nablus.
> And he said Shechem. And we went back and forth for two or three minutes
> on Nablus and Shechem . . . . [L]ater, . . . I told [PLO Chairman Yasser
> Arafat] this story, and I said, "This isn't going to get anywhere."[312]

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305. Institute for Palestine Studies, *The Madrid Peace Conference*, 21 J. Palestine Stud.
117, 121–22 (1992).

306. Letter from Yitzhak Rabin, Prime Minister of Israel, to Yasser Arafat, Chairman,
Palestine Liberation Organization (Sept. 9, 1993) (available at http://mfa.gov.il/MFA/
ForeignPolicy/MFADocuments/Yearbook9/Pages/107%20Israel-PLO%20Mutual%20
Recognition-%20Letters%20and%20Spe.aspx) [hereinafter Letter from Rabin]. *See also*
Avi Shlaim, *The Oslo Accord*, 23 J. Palestine Stud. 24, 28–30.

307. *See id.* at 24–25.

308. Letter from Yasser Arafat, Chairman, Palestine Liberation Organization, to
Yitzhak Rabin, Prime Minister of Israel (Sept. 9, 1993) *available at* http://mfa.gov.il/
MFA/ForeignPolicy/MFADocuments/Yearbook9/Pages/107%20Israel-PLO%20Mutual
%20Recognition-%20Letters%20and%20Spe.aspx) [hereinafter Letter from Arafat].

309. Letter from Rabin, *supra* note 313. The letters may also be contrasted in terms of
length; Arafat's letter stretches several paragraphs, while Rabin's contains one (long)
sentence.

310. *See id.*

311. Letter from Arafat, *supra* note 308; Letter from Rabin, *supra* note 306.

312. Interview with former Palestinian negotiator in Ramallah, West Bank (Jan. 13,
2009).

The story suggests an asymmetry in representation that was produced by and with the Oslo Accords. Although Israel recognized the PLO as the representative of the Palestinian people, recognition of Palestinian ties to West Bank territory—symbolized by the linguistic battle over naming—remained ambivalent.

The practice of the negotiations further evidenced the regime's foundation in parity. The bilateral negotiation structure, which has remained largely unchanged since 1993, represents the situation between the Jordan River and the Mediterranean Sea as a conflict between two parties who must decide for and by themselves how to share territory while maintaining their core national identities.[313] The parties' achievement or failure rests on their own will to participate in good faith and on limiting the actions of 'spoilers' in their midst.[314] According to this model, outside powers such as the U.S. or the Quartet play the important role of mediators, arbitrators, and guides, but they have little contribution to make to the bargaining power of either party or their will to participate.[315] In this sense, the bilateral negotiations model produces Israel and the PLO as notionally equal parties with a similar stake in achieving what is assumed to be a singular goal: peace. Historically, however, the Palestinians' national struggle has focused on ending the occupation, not achieving peace per se.[316]

The formal equality of the two parties assumed by the Oslo Accords is undermined within the documents themselves. The early agreements—the founding documents of the process—are largely devoted to the internal Palestinian governance structure.[317] The 1994 Agreement on the Gaza Strip and the Jericho Area has twenty-three articles, of which six deal mostly or entirely with the design of the Palestinian Authority, its jurisdiction, and its responsibilities.[318] Oslo II, signed the next year, contains articles addressing plans for "direct, free and general political elections" to the new Palestinian Council and for Ra'is[319] (characterized as a "significant interim preparatory step towards the realization of the legitimate rights of the Palestinian people,"[320] a phrase which suggests conditions for Palestinian sover-

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313. *See* Peter Malanczuk, *Some Basic Aspects of Agreements Between Israel and the PLO from the Perspective of International Law*, 7 Eur. J. Int'l L. 485, 492–94 (1996).

314. *See, e.g.*, Bruce D. Jones, The Israeli-Palestinian Conflict: Where Do We Stand? 9–10 (Carter Center, ed., 2002). The U.S. government has repeatedly declared that the U.S. cannot "want peace more than the parties themselves," meaning mediators cannot replace the goodwill and good faith of the negotiating parties. *See, e.g.*, Tony Karon, *Palestinians Hold to Peace-Talk Preconditions*, Time (July 30, 2010), http://content.time.com/time/world/article/0,8599,2007604,00.html.

315. Jones, *supra* note 314, at 910.

316. For a comprehensive examination of the Palestinian national struggle prior to 1993, *see* Yezid Sayigh, Armed Struggle and the Search for State: The Palestinian National Movement, 1949–1993 (1997).

317. *See e.g.*, DOP, *supra* note 6, art. 1; Interim Agreement, *supra* note 100, art. III. .

318. Gaza Strip and Jericho Agreement art. 4–9, Isr.-Palestine, May 4, 1994, 33 I.L.M. 622.

319. The term "ra'is" means both chairman and president in Arabic.

320. Interim Agreement, *supra* note 95, art. II (2).

eigny or self-determination); the size, powers, and "structure of the Palestinian Council" (including legislative and executive responsibilities, the role of the Speaker, the Ra'is, and Council);[321] the committee to be appointed as its executive body;[322] the requirement for Council meetings to be open to the public;[323] and the system of judicial review of the executive and legislative branches.[324] The Oslo documents contain no discussion of the internal policies, politics, or structure of the Israeli state or government. In this sense, the ostensible equivalency created by the process is limited by the agreements' contents: one party to the process, Israel, played a significant role in determining the nature of the other, Palestinian, side. The agreements reinforce Israel's sovereignty (and, by implication, the inability of external actors to dictate its domestic policies) while underlining the nascent and conditional character of Palestinian self-rule (thus a primary subject of bilateral agreements). Israel's sovereignty is given; Palestinian sovereignty must be earned.

The initial, imbalanced structure of the Accords, which premised Palestinian autonomy and eventual sovereignty on international and Israeli conditions, remained largely constant throughout the next two decades. In his 2011 speech to the U.N. General Assembly, Palestinian President Abbas acknowledged that the implementation of Palestinian rights had been conditional: "Despite the unquestionable right of our people to self-determination and to the independence of our State as stipulated in international resolutions, we have accepted in the past few years to engage in what appeared to be a test of our worthiness, entitlement and eligibility."[325] According to the bilateral negotiation structure, the two parties relate as relative equals at the negotiating table. Yet their ostensible parity masks asymmetry. By defining 'peace' as the goal of both parties, Palestinian sovereignty was reduced to a subsidiary issue, a bargaining chip in a different game.

The 2003 Roadmap, a document published by the Quartet as a "performance-based and goal-driven" path to "a final and comprehensive settlement of the Israel-Palestinian conflict,"[326] reinforced the notions of parity in negotiation, inequality in practice, and asymmetry of conditionality. The Roadmap required parallel obligations of Israel and the PLO: in the first phase, the most dramatic were the removal of unauthorized settlements and freezing of settlement activity (Israel) and the dismantling of "terrorist infrastructure" (PLO).[327] The second phase of the Roadmap focused, much like the Interim Accords, on the internal structure and governance of the West Bank and Gaza and on the "*option* of creating an inde-

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321. Interim Agreement, *supra* note 95, art. III–IV, IX.
322. Interim Agreement, *supra* note 95, art. V.
323. Interim Agreement, *supra* note 95, art. VII (1).
324. Interim Agreement, *supra* note 95, art. VIII.
325. Mahmoud Abbas, President, Palestine, Speech at the U.N. General Assembly (Sept. 23, 2011) (transcript available at http://www.haaretz.com/news/diplomacy-defense/full-transcript-of-abbas-speech-at-un-general-assembly-1.386385).
326. Roadmap, *supra* note 6.
327. *Id.*

pendent Palestinian state with *provisional* borders and *attributes* of sovereignty."[328] In addition to the partial nature of the goal itself, Phase II of the Roadmap states that "this goal can be achieved when the Palestinian people have a leadership acting decisively against terror, willing and able to build a practicing democracy based on tolerance and liberty."[329] Phase II requires no specific actions by Israel and entailed no parallel commitment to tolerance and liberty from the Israeli leadership.[330] Beyond the asymmetry of the requirements, former U.N. Envoy to the Quartet Alvaro de Soto, in his end-of-mission report (an internal evaluation that was leaked to the press), pointed out that Israel accepted the Road Map subject to fourteen reservations,[331] "one of which rejected the premise of parallelism . . . .[As a result,] Israel's commitment to the Road Map was never complete, and the international community allowed it a major loop-hole to shirk its obligations."[332] The parity reinforced by internationally endorsed documents laying out a path for negotiating partners to move forward via parallel actions was belied by the reproduction of inequality through Israel's reservations,[333] which the international community implicitly permitted. Framing the two parties as equivalent may enhance Palestinian negotiating capacity, but it can also obscure inequality between the players.[334]

The formation of the Authority as a quasi-government for the arguably state-like territory also reinforced the logic of parity. One influential Palestinian economist suggested in 1994 that the path laid by Oslo focused on "all the trappings of statehood at the expense of political and social and economic development."[335] He queried, "What is the point of a state that is sovereign with all trappings of independence—a central bank, a currency, borders, armies, a police force, and so on—but which is totally destitute, dependent on aid, heavily in debt, and unable to manage its own affairs?"[336] Ironically, the proto-state nature of the Authority encompassed

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328. *Id.* (emphasis added).

329. *Id.*

330. *See id.*

331. Hillel Fendel, *PM Sharon's 14 Road-map 'Red Lines'*, ARUTZ SHEVA (May 26, 2003), http://www.israelnationalnews.com/News/News.aspx/44014#.UgkJ32T71Wt.

332. ALVARO DE SOTO, END OF MISSION REPORT 13–14 (2007). It should be noted that these reservations were not explicitly accepted by the U.S., but they were also not explicitly rejected.

333. *See* INTERNATIONAL CRISIS GROUP, A MIDDLE EAST ROADMAP TO WHERE? 4–5 (2003); *Israel's Roadmap Reservations*, HAARETZ (May 27, 2003), http://www.haaretz.com/print-edition/news/israel-s-road-map-reservations-1.8935.

334. As Avi Shlaim depicts the 1994 negotiation, "[t]he Cairo document was billed by both sides as an agreement to divorce after twenty-seven years of unhappy coexistence in which the stronger partner forced the weaker to live under its yoke. This was true in the sense that Israel secured a separate legal system and separate water, electricity and roads for the Jewish settlements. It was not true in the sense that the document gave the stronger party firm control over the new relationship." Avi Shlaim, *The Rise And Fall Of The Oslo Peace Process*, *in* INTERNATIONAL RELATIONS OF THE MIDDLE EAST 276–77 (Louise Fawcett, ed., 2d edition).

335. *Developing the Palestinian Economy: An Interview with George T. Abed*, 23 J. PALESTINE STUD. 41, 51 (1994).

336. *Id.*

both the "earned sovereignty"[337] offered to the Palestinians and their sta-
tus as partners or equal players to Israel. At times, the limitations of the
Accords and the requirements of negotiations reinforced the conditional
nature of Palestinian statehood. At others, the emphasis on the state-like
Authority made it the center not only of international efforts (as the institu-
tion on which hopes for peace rested, particularly in contrast to the Hamas
government in Gaza) but also of the "common-sense" of Palestinian self-
governance.[338]

Both international reports and Authority rhetoric have affirmed the
state-like nature of the West Bank and Gaza, and since 2007, the West
Bank itself. Numerous commentators have noted the transformation of the
Authority from a proto- or quasi-government to a kind of 'almost-state' in
international rhetoric, despite the reality of shared governance.[339] Interna-
tional reports have contributed heavily to the narrative of successful Pales-
tinian state-building and governance capacity.[340] In 2012, the U.N.
reported to the Ad Hoc Liaison Committee that "governmental functions of
the Palestinian Authority were sufficient for a functioning government of a
state."[341] A 2012 IMF report stated that "the Authority is able to conduct
the sound economic policies expected of a future Palestinian state," thus
muddying the line between the capacity of the current regime and its sta-
tus as a proto-state.[342] Authority rhetoric, following the state-building plan
announced by Prime Minister Fayyad, utilized similar language of prepara-
tion for statehood. The 2011 Palestinian Authority report to the Ad Hoc
Liaison Committee declared, "[W]e have created an environment, recog-
nized by the international community, in which we, Palestinians, are now
prepared for such statehood."[343]

The statehood narrative emphasizes the capacity of the Authority to
serve as its people's government and for its parent organization, the PLO,
to negotiate with Israel from a position of increasing power and interna-
tionally recognized competence. It also, however, underlines the Author-
ity's significance to the international community, Israel, and ostensibly the
Palestinian people. As a result, international actors and Israel, as well as
the PLO leadership, have treated the temporary institution authored by the

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337. *See* James R. Hooper & Paul R. Williams, *Earned Sovereignty: The Political Dimen-
sion*, 31 Denv. J. Int'l L. & Pol'y 355 (2003).

338. Margaret Coker & Peter Spiegel, *Israel Offers Two-State Plan*, Wall St. J. (June
15, 2009), http://online.wsj.com/news/articles/SB124500039331213063#printMode.

339. *See* Le More, International Assistance, *supra* note 140, at 64. *See also* Gordon,
supra note 27, at 171 ("[The Authority] was frequently depicted, and at times even acted,
as Israel's rival and opponent").

340. *See, e.g.*, UNSCO, Palestinian State-Building, *supra* note 108, at para. 2.

341. *Id.* The U.N. specifically cited six areas: "(1) Governance, human rights, and rule
of law; (2) Education and culture; (3) Health; (4) Social protection; (5) Livelihoods, food
security and employment; and (6) Infrastructure/water and sanitation." *Id.*

342. *See* IMF Report, *supra* note 131.

343. Palestinian National Authority, Building the State of Palestine: A Success
Story—to the Ad Hoc Liaison Committee 7 (2011) [hereinafter Building the State].

Oslo Accords as the only possibility for Palestinian progress.[344] One Palestinian lawyer pointed out the narrowing effects of the regime: "[t]he genius of Oslo is that institutions don't self-destruct. There's a certain logic [to] institutional self-perpetuation. So the idea of creating the Authority makes it difficult now to come up with options that might generate a different political configuration."[345] Governance capacity, in this argument, reinforces the Authority's significance and seemingly increases its bargaining power. Yet the ongoing division of authority with Israel, the unequal control of territory, and the conditional nature of negotiations all contribute to limiting the deployment of that bargaining power. As a result, international and national strategies for equality through statebuilding yield impoverished results for Palestinian interests.

2. Limits of Peacemaking

Conceptualizing the two parties as relative equals in terms of demands, rights, and suffering reinforces the hegemony of bilateral negotiations as the definitive mechanism for peace. Backed by powerful international actors and largely supported by both Israel and the Authority, negotiations remain the only legitimate approach to the conflict, despite both ongoing violence and dispossession and the adamant opposition of some groups of Palestinians and Israeli Jews to resolution through compromise.[346] The negotiations narrative suggests that a peace-loving core of each side will prevail, leading to resolution through conversation rather than violence. In turn, the metric of legitimate activity by either party is defined in terms of the contribution to bilateral negotiations (understood as support for peace) or the tendency toward unilateralism (interpreted as opposition to peace)—rather than, for example, their international legality. For example, Israel argued that the PLO's bid for U.N. membership was a unilateral move; similarly, the Authority accused Israel of unilateralism for its continued building of settlements.[347] Each party used the allegation of unilateralism to delegitimize the activities of its opponent. Their shared vocabulary suggests that their two activities are parallel. Evaluating them

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344. OLIVER RICHMOND AND JASON FRANKS, LIBERAL PEACE TRANSITIONS: BETWEEN STATEBUILDING AND PEACEBUILDING 173 (2009)("It is the state-centric nature of the liberal peace model – an autobias toward building the state and existing state entities – that has created the most difficulty . . . The result [in the Israeli-Palestinian case] is a very conservative form of liberal peace at best, representing a virtual peace in the form of an emancipated, virtual state as the endpoint of the peace process, rather than as a transitionary point.")

345. Interview with Palestinian lawyer in East Jerusalem (Mar. 20, 2008).

346. *See, e.g.*, Robert Malley & Hussein Agha, *Israel and Palestine: Can They Start Over?* N.Y. REV. BOOKS (Dec. 3, 2009), http://www.nybooks.com/articles/archives/2009/dec/03/israel-palestine-can-they-start-over/?pagination=false; INTERNATIONAL CRISIS GROUP, THE EMPEROR HAS NO CLOTHES: PALESTINIANS AND THE END OF THE PEACE PROCESS (2012).

347. *See* Richard Roth & Kevin Flower, *Israel Calls for Peace Talks Amid Palestinian Statehood Push*, CNN (Sept. 20, 2011), http://www.cnn.com/2011/US/09/19/un.palestinian.statehood.bid; Press Release, Palestine Liberation Org., Dr. Erakat: Israeli Unilateralism is a Call for Immediate International Recognition of the Palestinian State (Nov. 9, 2010) (available at http://www.nad-plo.org/etemplate.php?id=243).

based on grounds of international legality, however, would yield a different result. While few international lawyers argue that Israeli civilian settlements are legal under the law of occupation, even fewer would make the case that applying for U.N. membership was illegal.[348] Such distinctions are erased, however, according to the logic of parity and the vocabulary of bilateralism.

Any move to withdraw from or contest the negotiations paradigm brings official condemnation by major international actors.[349] Despite the shared vocabulary valorizing coordination, negotiation, partnership, and compromise, power inequities between the parties lead to unequal consequences for each side if it deviates from the paradigm. Palestinian reliance on international aid drastically raises the price for acting against positions taken by the U.S., E.U., and Quartet. By contrast, despite international condemnation of Israeli settlement construction in East Jerusalem in 2010, material effects have been relatively rare, given the structural obstacles.[350]

At the same time, the vocabulary of legitimate bilateral action and illegitimate unilateralism has crept into both Palestinian and Israeli official rhetoric. Debates over Palestinian President Abbas' "U.N. strategy" exemplify the new rhetoric. Frustrated with the Israeli refusal to freeze settlement activity and use the 1967 lines as the basis for negotiations, Abbas submitted Palestine's application for U.N. membership on September 23, 2011.[351] Abbas reasoned that since only states may be members of the U.N., attaining membership would convince the world to treat Palestine as such.[352] Membership would provide tools to pressure Israel, eventually leading back to negotiations, which would in turn be premised on better terms.[353] The application was submitted to the Security Council Membership Committee;[354] after it stalled in committee, a General Assembly reso-

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348. *See* Roberts, *supra* note 43, at 85–86; U.N. Charter art. 4.

349. *See, e.g.*, Neve Gordon & Yinon Cohen, *Western Interests, Israeli Unilateralism and the Two-State Solution*, 41 J. PALESTINE STUD. 6, 10 (2012) (arguing that Western rejection of the Palestinian bid for U.N. membership in the name of bilateralism is "disingenuous" when it ignores power inequalities and long-standing unilateralism in the conflict).

350. Rory McCarthy, *Binyamin Netenyahu Tells US: We Won't Stop East Jerusalem Settlement Building*, GUARDIAN (Apr. 22, 2010), http://www.theguardian.com/world/2010/apr/22/binyamin-netanyahu-jerusalem-settlements-building/print; Daniel Nasaw, *Obama Aide Calls Israeli Settlement Announcement an 'Insult' to the US*, GUARDIAN (Mar. 14, 2010), http://www.theguardian.com/world/2010/mar/14/israel-palestinian-territories/print.

351. Natasha Mozgovaya & Barak Ravid, *Abbas Officially Submits Palestinian Application for Full UN Membership,* HAARETZ (Sept. 23, 2011), http://www.haaretz.com/news/diplomacy-defense/abbas-officially-submits-palestinian-application-for-full-un-membership-1.386351. Palestine was previously classified as an observer at the U.N., a status awarded in 1974 and upgraded in 1998. G.A. Res. 1002, U.N. GAOR, 52d Sess., U.N. Doc. A/52/1002 (Aug. 4, 1998).

352. INTERNATIONAL CRISIS GROUP, CURB YOUR ENTHUSIASM: ISRAEL AND PALESTINE AFTER THE UN (2011).

353. *Id.*, at 3–5 (2011).

354. For a detailed analysis of the requirements and procedures for gaining U.N. membership, *see* SECURITY COUNCIL REPORT, UPDATE REPORT NO. 2: PALESTINE'S APPLICATION FOR ADMISSION TO THE UN (2011), *available at* http://www.securitycouncilreport.

lution on November 29, 2012 granted Palestine status as a non-member observer state.[355]

Both the Palestinian and Israeli leaderships used the concept of unilateralism to condemn the other's actions during the debate over U.N. membership.[356] In a speech at the General Assembly the day he submitted Palestine's application for U.N. membership, Abbas implied that the continuing occupation represented unilateral Israeli action to obstruct the negotiations process.[357] In parallel, Israel argued that the U.N. strategy represented a unilateral effort to disrupt the existing process—which freed them from any obligation to cooperate.[358] After the General Assembly upgraded Palestine's status to that of "non-member observer state," Israel withheld 460 million shekels in Authority tax revenues.[359] The Israeli Finance Minister warned the Authority: "If the Palestinians continue to advance their unilateral move they should not expect bilateral tax cooperation."[360] Both the Palestinian and Israeli leaderships argued that their opponent's actions prejudiced an ongoing process, and both premised their arguments on the advantages of a bilateral negotiations process. International actors echoed and reinforced these themes by condemning particular actions described as unilateral or threatening to negotiations while supporting others labeled as productive of peace.[361]

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org/update-report/lookup-c-glKWLeMTIsG-b-7743619.php. *See also* U.N. Charter art. 4(1).

355. G.A. Res. 19, U.N. GAOR, 67th Sess., Supp. No. 49, U.N. Doc. A/67/19 (Dec. 29, 2012).

356. *See* Roth & Flower, *supra* note 347; Abbas, *supra* note 325.

357. *Id.* Palestinian negotiator Saeb Erekat stated that Israeli settlement construction is a "unilateral Israeli act" that "necessitates dramatic international attention for immediate recognition of the Palestinian State." Press Release, Palestine Liberation Org., *supra* note 354. In 2011, the PLO published a fact sheet on "Israeli Unilateralism" listing a series of violations of Oslo by unilateral Israeli actions, including some in relation to redeployment in the West Bank, settlements, water resources, prisoner release, and economic relations. PLO NEGOTIATIONS OFFICE, FACT SHEET: ISRAELI UNILATERALISM—UNDERMINING PEACE (2011), *available at* http://www.nad-plo.org/userfiles/file/fact%20sheet/Israeli%20Unilateralism%20FINAL.pdf.

358. *See* Herb Keinon, *Israel Dubbing Palestinian Moves 'Diplomatic Terror'*, JERUSALEM POST (Jan. 4, 2012), http://www.jpost.com/Diplomacy-and-Politics/Israel-dubbing-Palestinian-moves-diplomatic-terror.

359. Barak Ravid, *Israel Confiscates NIS 460 Million in Palestinian Authority Tax Funds*, HAARETZ (Dec. 2, 2012), http://www.haaretz.com/news/diplomacy-defense/israel-confiscates-nis-460-million-in-palestinian-authority-tax-funds.premium-1.481888.

360. *Id.* Israeli Foreign Minister Lieberman called Palestinian activities (including those at the U.N.) "diplomatic terrorism." Keinon, *supra* note 362. In addition, Israel announced the expansion of the E-1 settlement bloc east of Jerusalem. The former Israeli ambassador to the U.N. stated on NPR: "Certainly if the Palestinians go forward with their unilateralism, . . . then Israel will have to protect its interests. And that's what the E-1 struggle is all about." Larry Abramson, *Israelis, Palestinians Spar Over Controversial Settlement*, NPR NEWS, Mar. 19, 2013.

361. After the Palestinian application to the Security Council was submitted, the Quartet issued a statement "taking note" of the U.N. application, explicitly supporting Fayyad's "state-building actions" (interpreted as supporting a bilateral process) and calling upon "all parties" to "refrain from provocative actions" (implicitly including the U.N. strategy) in order to make negotiations possible. Statement, Quartet on the Middle East (Sept. 23, 2011) (available at http://www.un.org/News/dh/infocus/middle_east/quar-

The use of a conflict and negotiations paradigm also affects the vocabulary and conceptualization of the situation itself. Rather than understanding the situation in terms of occupation—a framework that seeks to protect a vulnerable people from a militarily strong sovereign—the Oslo regime suggests two warring parties.[362] In the process, Israeli, international, and even Palestinian discourse has gradually reduced or eliminated the use of the term 'occupation' while focusing on the achievement of 'peace.'[363]

The Oslo regime has also affected Palestinian resistance. While the PLO in the past sought to end the occupation, current iterations have focused on the achievement of statehood.[364] In the process, the goal of equality (as two states, in terms of global power, under the law, or with regard to resources such as water) may at times be undermined by a process predicated on parity (participating in negotiations, deploying international law, or utilizing international fora). Relations of parity resulted in part from the Palestinian belief that mutual recognition or formal status would alter the terms of the conflict; in the end, however, the conception—and perception—of equivalence largely overtook the reality of asymmetry, making it harder rather than easier to address the structural inequality between the players. The focus of the international community (and the PLO) on establishing a state has oriented the Palestinian national movement away from earlier approaches rooted in rhetoric of emancipation and liberation.

At an institutional level, parity both produces and is reproduced by emphases on statehood and governance. International aid represents both the central ingredient for Palestinian semi-autonomy through Authority governance and the 'stick' used to limit deviance from the negotiations paradigm. The efficacy of aid may be compromised by the contradiction between the context of ongoing occupation and the dominant narrative of

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tet-23sep2011.htm). In a speech at the General Assembly given as the Abbas submitted the application for U.N. membership, U.S. President Obama both declared that the "Palestinian people deserve a state of their own" and rejected the Palestinian intervention, implying that it was a "short cut" and holding that "[p]eace will not come through statements and resolutions at the United Nations" but only through negotiations. President Barack Obama, Address to the United Nations General Assembly in New York, (Sept. 21, 2011) (available at http://www.whitehouse.gov/the-press-office/2011/09/21/remarks-president-obama-address-united-nations-general-assembly).

362. Sara Roy, *Reconceptualizing the Israeli-Palestinian Conflict: Key Paradigm Shifts*, 41 J. PALESTINE STUD. 71, 77 (2012) (arguing that "occupation has been transformed from a political and legal issue with international legitimacy into a simple border dispute where the rules of war, not of occupation, apply").

363. *See, e.g.*, LE MORE, *supra* note 140, at 29. Roy suggests that "the word 'occupation' has been removed from the political lexicon, as would an insult or obscenity." Sara Roy, *Praying with Their Eyes Closed: Reflections on the Disengagement from Gaza*, 34 J. PALESTINE STUD. 64, 70 (2005).

364. *Compare* Yasser Arafat, Editorial, *The Palestinian Vision of Peace*, N.Y. TIMES (Feb. 3, 2002), http://www.nytimes.com/2002/02/03/opinion/the-palestinian-vision-of-peace.html, *with* BUILDING THE STATE, *supra* note 343.

conflicted parties negotiating for peace under difficult conditions.[365] At the same time, once international organizations conceptualize the Authority as a state-like entity, governance capacity becomes the metric for evaluating Palestinian success or failure. International organizations sometimes compare the West Bank and Gaza to other countries in the process of evaluating Authority progress,[366] or they use the Authority's state-like status to evaluate its responsibilities, duties, and shortcomings.[367] While moves to gain statehood or recognition have met an ambivalent response in international arenas, the World Bank and others use comparisons with "other states." As a result, expectations based on statehood are employed even as statehood itself is denied.

B. Economism

The Oslo process conceptualized Palestinian economic development as a mode of peacebuilding.[368] From the outset, the function of international aid was not only to nurture economic growth or mitigate suffering but also to make peace and negotiations more attractive to Palestinians than the alternatives, principally violence.[369] In this sense, economic progress was explicitly interwoven with political objectives and discussed instrumentally. In the first decade of negotiations, advocates of the Oslo process argued that Palestinians would embrace peace and reject violence if they experienced early tangible rewards. International organizations and donors premised their involvement initially on producing a Palestinian "peace dividend."[370]

Over the course of the Oslo process, however, economic arguments and rhetoric became increasingly technocratic, with economic progress a goal in itself. Later arguments frequently subsumed questions of occupation, inequality, and sovereignty under process-oriented development. In

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365. Jeremy Wildeman, *Why Aid Projects in Palestine Are Doomed to Fail*, ELECTRONIC INTIFADA (Sept. 6, 2012), http://electronicintifada.net/content/why-aid-projects-palestine-are-doomed-fail/11642

366. *See, e.g.*, SECRETARIAT OF THE AD HOC LIAISON COMMITTEE, *supra* note 213.

367. When Israel withheld Authority tax revenues, de Soto questioned whether it is "credible to judge the ability of a government to deliver when it is being deprived of its largest source of income, to which it is indubitably entitled by virtue of an agreement endorsed by the Security Council, by the State which largely controls the capacity of that government and its people to generate income. In fact, the Authority government is being expected to deliver without having make-or-break attributes of sovereignty such as control of its borders, the monopoly over the use of force, or access to natural resources, let alone regular tax receipts." DE SOTO, *supra* note 339, at para. 53. *See also* Yezid Sayigh, *Inducing a Failed State in Palestine*, 49 SURVIVAL 7, 23–24 (2007) (arguing that the international community "underestimated the extent to which presenting the Authority with demands and expectations it could not meet eroded its credibility and standing domestically and internationally . . . . Even at the best of times, in 1994-2000, it was not a government capable of reaching decisions and enforcing them over most of its territory – key criteria for a functioning, viable state").

368. *See* Jonathan Rynhold, *The Failure of the Oslo Process: Inherently Flawed or Flawed Implementation?*, 76 MIDEAST SEC. & POL'Y STUD. 1, 4 (2008).

369. *See id.*

370. Lasensky, *supra* note 140, at 220.

most cases, however, economic language and development practices have
had a depoliticizing effect in the Palestinian case. In one version, develop-
ment would produce peace in the long-term, either by pacifying Palestinian
resistance or by cementing international support for the Authority. In
another, more critical version, particular limitations—chiefly those around
movement and access for people and goods—can be improved, but the
structure of occupation as a whole remains largely unshakeable. Perhaps
most strikingly, some Palestinian rhetoric has reformulated economic
development *as* resistance. Israeli governmental invocations of "economic
peace,"[371] Prime Minister Fayyad's vocabulary of statebuilding,[372] and
international reporting on Palestinian development together reflect the
economistic nature of the Oslo regime.

1.   A Question of Development?

As discussed above, the Oslo Accords envisioned economic develop-
ment as a key aspect of peacebuilding.[373] In this sense, the Accords were
typical of the era of "liberal peace" and democratic peace theory, when
scholarship and practice converged around the idea that encouraging the
development of free markets, the rule of law, and electoral democracies in
post-conflict states would produce sustainable peace.[374] In the case of
Oslo, supporters paid special attention to the "urgent need to deliver tangi-
ble benefits to the Palestinian population to reinforce the momentum
towards peace,"[375] benefits they called a "peace dividend."[376] Shimon
Peres and Yossi Beilin, key Israeli negotiators of the Oslo Accords, consid-
ered economic discussions and Palestinian development necessary to the
success of the peace plan; Peres was one of the main figures seeking finan-
cial support for the Palestinians.[377]

There was broad agreement at the outset—including among the Pales-
tinian leadership—around the notion of economic development: interna-
tional aid would support the Palestinian transition to autonomy by

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371. *See, e.g.*, *infra* notes 383–385 and accompanying text.

372. *See, e.g.*, *infra* notes 389–402 and accompanying text.

373. *See supra* Part II.B.1.

374. A plethora of literature has addressed democratic peace theory and liberal
peacebuilding particularly as practiced in the 1990s. *See, e.g.*, Roland Paris, *Saving Lib-
eral Peacebuilding*, 36 INT'L STUD. 337 (2010); Oliver Richmond, *The Problem of Peace:
Understanding the Liberal Peace*, 6 CONFLICT, SECURITY, & DEV. 291 (2006); ROLAND
PARIS, AT WAR'S END: BUILDING PEACE AFTER CIVIL CONFLICT (2004); Bruce Russett et al.,
Correspondence: The Democratic Peace, 19 INT'L SECURITY 164 (1995); U.N. Secretary-
General, *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peacekeeping: Rep.
of the Secretary-General*, U.N. Doc. a/47/277-S/24111 (June 17, 1992).

375. *Preface* to INVESTMENT PROGRAM, *supra* note 202.

376. *See* Lasensky, *supra* note 140, at 218–19.

377. *Id.* The "peace dividend" was also intended to incentivize Israeli involvement in
the peace talks by promoting trade in the region, greater foreign investment, and other
benefits for the Israeli economy. *See generally* YOSSI BEILIN, TOUCHING PEACE: FROM THE
OSLO ACCORD TO A FINAL AGREEMENT (1999); SHIMON PERES, THE NEW MIDDLE EAST
(1993). Questions of integration or separation between the Israeli and Palestinian econ-
omies far predate the Oslo negotiations. *See generally* Gross, *Mending Walls*, *supra* note
69.

building up infrastructure, supporting new institutions, lending expertise in the financial and other sectors, and altering the distribution of resources such as power and water.[378] Palestinian economic security would underpin Israel's overall security while creating potential for growth, economic and political, on both sides.

Contestation quickly arose, however, first with regard to the details of economic arrangements and later to the effects of Israeli policies on Palestinian development. As they negotiated what became known as the Paris Protocol, the Palestinian negotiating team advocated a free trade agreement between the Authority and Israel, while Israeli negotiators called for continuing the customs union.[379] The ensuing agreement largely followed Israeli preferences, albeit with certain allowances for Palestinian freedom of trade with Arab states.[380] Analyses of the final result oscillated between those suggesting it merely continued a previously unequal system and those arguing that it produced new opportunities for Palestinian economic growth.[381] As described above, while aspects of the Paris Protocol contributed to continuing asymmetry between the parties, other events gradually obstructed possibilities for growth in the West Bank and Gaza.[382]

In the 2008 Israeli elections, prime ministerial candidate Benjamin Netanyahu advocated "economic peace".[383] Netanyahu suggested that negotiations should first address economic issues—one of the few possible areas of agreement—and only later progress to controversial political topics, once the groundwork for cooperation had been laid.[384] After his election, Netanyahu announced the creation of a governmental body to address

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378. *See* Lasensky, *supra* note 140, at 220.

379. Gross, *Mending Walls, supra* note 15, at 1601. A customs union creates a single 'envelope' for the parties, between which there are no duties on goods and services; they share a common external tariff. A free trade agreement, by contrast, lowers barriers to trade between the parties but allows for separate external tariff rates.

380. *See* Paris Protocol, *supra* note 126, art. III.

381. *See* Sharif Elmusa & Mahmud El-Jaafari, *Power and Trade: The Israeli-Palestinian Economic Protocol*, 24 J. PALESTINE STUD. 14, 30 (1995) (arguing that the terms created by the Paris Protocol are unsurprising given the inequality between Israeli and Palestinian negotiators and their economic positions and suggesting that any progress will come from the "breaches it introduces in the wall of the one-sided customs union and the possibilities for immediate financial gain"). *See also* Gross, *Mending Walls, supra* note 15.

382. *See supra* Part I.C.

383. Barack Ravid, *Palestinians Reject Netanyahu's 'Economic Peace' Plan*, HAARETZ (July 9, 2009), http://www.haaretz.com/print-edition/news/palestinians-reject-netanyahu-s-economic-peace-plan-1.279616. I do not assess here the empirical plausibility of claims that economic improvements will bolster peace; rather, I look at the ways in which discourse around economic issues has gradually become a substitute for deeper political debates. For a closer examination of the claim that economic growth reduces potential for war, see Nizan Feldman, *Economic Peace: Theory Versus Reality*, 12 STRATEGIC ASSESSMENT 19 (2009) (arguing that even taking the most sympathetic assessment of the economic peace argument, "it is still difficult to argue persuasively that increased economic cooperation between Israel and the Authority and the creation of conditions conducive to economic growth on the West Bank can pave the road to political peace").

384. Raphael Ahren, *Netanyahu: Economics, Not Politics, Is the Key to Peace*, HAARETZ (Nov. 20, 2008), http://www.haaretz.com/print-edition/news/netanyahu-economics-not-politics-is-the-key-to-peace-1.257617.

"economic peace" with the Palestinians.[385] During his campaign and after his election, Netanyahu portrayed the situation as a struggle between two parties with conflicting considerations who were persistently unable to agree (parity) while advocating economic development, taking place under the auspices of occupation, which would replace, or at least defer, political considerations (economism).

Emphasizing the intractable stalemate between the parties implied that expanding settlements and continuing occupation were at most secondary factors in the conflict. Israel's official submission to the Ad Hoc Liaison Committee (AHLC) in 2011 reflected this paradigm.[386] In summarizing the causes for the downturn of the Palestinian economy, the AHLC report lists aid dependency, inability to receive bank loans, lack of revenue generation, and a large public sector. Israel is mentioned only as a facilitator of the Palestinian economy: "Israel's policy in the West Bank has contributed significantly to growth in the past year."[387] The report calls for "ongoing international support for the Authority budget and development projects that will contribute to the growth of a vibrant private sector," condemns Palestinian terror, and lauds Israeli-Palestinian cooperation on security and economy.[388] As in international reports, the Palestinian economy becomes the primary concern, with the structure of occupation as a whole left increasingly implicit rather than central.

Palestinian Prime Minister Fayyad's statebuilding initiative—which focused on constructing the institutions and economy of a state as a way of establishing that state—in many ways resembled Netanyahu's notion of economic peace and represented to international organizations and donors a direct contrast to the Hamas regime in Gaza. In 2009, in an effort to circumvent the short-term trap of aid and to defy those who suggested no progress could be made while the occupation continued, Prime Minister Fayyad announced a two-year state-building plan to "create an entity that looks and behaves like a state before the occupation ends."[389] By creating the institutions of the state, he reasoned, the state itself would become inevitable.[390] The Palestinian Authority's 2009 Program of the Thirteenth Government, *Palestine: Ending Occupation, Establishing the State*, stated unequivocally the belief that "full commitment to this state-building endeavor will advance our highest national priority of ending the occupa-

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385. Amos Harel & Barak Ravid, *Netanyahu's Opening Gambit: A Special Body on 'Economic Peace'*, Haaretz (Mar. 26, 2009), http://www.haaretz.com/news/netanyahu-s-opening-gambit-a-special-body-on-economic-peace-1.272935.

386. *See generally* GOI, 2011 Report to the AHLC, supra note 107. The Ad Hoc Liaison Committee (AHLC), a multilateral, fifteen-member donors' group (including Israel and the Authority) set up in October 1993, "serves as the principal policy-level coordination mechanism for development assistance to the Palestinian people." *Ad Hoc Liaison Committee*, Local Dev. Forum, http://www.lacs.ps/article.aspx?id=6 (last visited Feb. 9, 2014).

387. GOI, 2011 Report to the AHLC, *supra* note 107, at 3.

388. GOI, 2011 Report to the AHLC, *supra* note 107, at 4.

389. International Crisis Group, Tipping Point? Palestinians and the Search for a New Strategy 24 (2010) [hereinafter, Tipping Point?].

390. *See id.*

tion, thereby enabling us to live in freedom and dignity in a country of our own."[391] Rather than focusing on negotiations, Fayyad planned to build the state from the ground up, creating a set of facts that would influence the political process.

Netenyahu's and Fayyad's plans shared a common vocabulary—statebuilding, development, and institutional formation—and both suggested that economic growth was the only possible area for progress given the political stalemate.[392] There was, of course, a crucial difference: while Netanyahu's plan emphasized economic development as an intermediate tactic to sustain the status quo (and Israeli security) without negotiated agreement, Fayyad's plan suggested that statebuilding should be considered a non-violent method of resistance to Israeli occupation. Yet their shared vocabulary and emphases led some Palestinians to express concern that Fayyad's plan—like Netanyahu's—would end up truncating the sovereignty that was his objective.[393]

Fayyad's plan depended on infusions of international aid (although it also aimed to wean the nascent Palestinian economy from aid dependence), reducing corruption and violence, and constructing efficient and independent Palestinian national institutions on a broad scale.[394] Using language familiar to the international community, *Ending Occupation, Establishing the State* argued that the "establishment and promotion of good governance in the occupied territory is elevated to the status of a national goal in and of itself," given the effects of occupation in "hamper[ing] the efficiency and effectiveness of [Palestinian] national institutions."[395]

Western donors and international organizations largely embraced Fayyad's efforts, praising his achievement of statebuilding benchmarks and contributing funds to his projects.[396] Gaza in turn became a foil for the West Bank, representing the economic consequences of non-participation in the peace process in contrast to the benefits reaped by the Ramallah-based Authority. Fayyad's administration launched upon over one thou-

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391. ESTABLISHING THE STATE, *supra* note 251, at 3.

392. In a 2010 interview, Abbas's economic advisor Mohammad Mustafa rejected wholly any links between Fayyad's plan and Netanyahu's economic peace stating, "We absolutely and categorically reject Netanyahu's project. There can be no economic peace without political peace and without the establishment of an independent and sovereign Palestinian state." Nasr Abdul Karim, Salim Tamari, & Khalid Farraj, *The Palestinian Economy and Future Prospects: Interview with Mohammad Mustafa, Head of the Palestine Investment Fund*, 39 J. PALESTINE STUD. 40, 43 (2010).

393. International Crisis Group found that some Palestinians expressed criticism of Fayyad's plan based on his "becoming a Palestinian partner for Netanyahu's 'economic peace' that would result in something far short of an independent state." TIPPING POINT?, *supra* note 389, at 23. *See also* Raja Khalidi & Sobhi Samour, *Neoliberalism as Liberation: The Statehood Program and the Remaking of the Palestinian National Movement*, 40 J. PALESTINE STUD. 6, 8–12 (2011); Ahmad Salih Khalidi, *The Palestinian Authority's State-First Mistake*, GUARDIAN (Oct. 27, 2009), http://www.theguardian.com/commentisfree/2009/oct/28/palestinian-authority-israel-state-first [hereinafter *State-First Mistake*].

394. *See id.* at 14.

395. *See id.* at 11.

396. *See* TIPPING POINT?, *supra* note 389, at 22.

sand development projects.[397] His plan included efforts to develop Area C, which remained wholly under Israeli control.[398] Donors that previously had avoided "running afoul of Israeli concerns"[399] by supporting projects in Area C assisted his efforts by helping negotiate approvals from the Israeli government, among other actions.[400] Criticism was plentiful; some accused Fayyad of replacing politics with technocracy while others suggested that his plan had no purpose other than self-aggrandizement.[401] Overall, however, international donors and organizations treated the strategy and its execution as successes, praising Fayyad for his focus on economic development and statebuilding.[402]

In September 2011, at the end of the self-imposed two-year deadline for statebuilding, the Authority issued a report to the AHLC, reviewing the Authority's achievements. Fayyad's introduction to the report affirmed that the "strategy of self-reliance and self-empowerment, focused on providing good government, economic opportunity and the rule of law, has removed all pretexts that were exploited to justify our continued occupation. Our effort has been to make statehood inevitable."[403] The body of the report went on to show that the effort had not, and indeed under current political conditions could not, come to fruition.[404] Although the original plan aimed to advance the end of occupation through statebuilding, the report to the AHLC demonstrated the ways in which Palestinian statebuilding had made progress in spite of, and without much effect on, the occupation itself.[405] After fifty pages outlining Palestinian achievements, the report concluded, "Realistically, genuine and sustainable development cannot occur without ending the occupation and establishing an independent, sovereign, and viable State of Palestine."[406] Occupation had stymied the goal of moving "from a welfare-oriented to a development approach."[407] As Fayyad himself admitted two years later, "[While] the Authority is a key building block in the effort to resolve the conflict, ... somebody needs to explain . . . how something viewed as central to building peace is left on the ropes for three years, reeling under bankruptcy, and every action is taken to erode its political viability . . . . We have not delivered. I represent the address for failure."[408]

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397. Nathan Thrall, *Our Man in Palestine*, N.Y. REV. BOOKS (Oct. 14, 2010), http://www.nybooks.com/articles/archives/2010/oct/14/our-man-palestine/?pagination=false.

398. ESTABLISHING THE STATE, *supra* note 251, at 35.

399. TIPPING POINT?, *supra* note 389, at 22.

400. *Id.*

401. *Id.* at 23.

402. *See* NEW YORK UNIVERSITY CENTER FOR INTERNATIONAL COOPERATION, STATE-BUILDING AND POLITICAL CHANGE: OPTIONS FOR PALESTINE 2011, at 5 (2011).

403. BUILDING THE STATE, *supra* note 343, at 7.

404. *See generally id.*

405. *See, e.g., id.* at 7, 38, 51–53.

406. *Id.* at 57.

407. *Id.*

408. Roger Cohen, *The Success That Failed*, N.Y. TIMES (Feb. 14, 2013), http://www.nytimes.com/2013/02/15/opinion/global/roger-cohen-The-Story-of-Palestinian-Prime-Minister-Salam-Fayyad-.html?pagewanted=all.

International reports during and after Fayyad's two-year plan endorsed his approach while downplaying the role of occupation per se.[409] Instead, they addressed specific—albeit pervasive—Israeli constraints on the Palestinian economy.[410] The World Bank's 2009 and 2010 reports to the AHLC announced that the Authority was "well-positioned for the establishment of a Palestinian state at any point in the near future,"[411] while the Office of the Quartet Representative remarked in 2011 that "[t]here is strong international recognition of the Palestinian Authority's readiness for statehood."[412] The reports mention occupation rarely, if at all, focusing instead on Palestinian fiscal and institutional progress since the inception of the statebuilding plan; economic improvement appears as a support to negotiations, which are assumed to be the only pathway to peace.[413] U.S. Secretary of State John Kerry revisited the economic argument for peace in 2013 when he announced a $4 billion development plan for the West Bank.[414] Kerry's rhetoric and strategy reflected the evolution of the economistic agenda: he advocated economic development, claimed explicitly that it would not distract from, but rather advance, political considerations, suggested that negotiations were both the only strategy for peace and conceivably near extinction, and embraced an initiative among Israeli and Palestinian businessmen advocating private sector investment, renewed negotiations, and cooperation between the parties.[415]

Whereas in earlier eras, Israeli officials discussing the economy portrayed development as a strategy for *pacifying* Palestinian resistance, the later Fayyad-led version argued for development *was* resistance.[416] Early international discussions also linked development to politics by arguing

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409. *See, e.g.*, OFFICE OF THE QUARTET REPRESENTATIVE, REPORT FOR THE MEETING OF THE AD HOC LIAISON COMMITTEE ON OQR ACTION IN SUPPORT OF PALESTINIAN AUTHORITY STATE-BUILDING (2011) at 5, 17 [hereinafter QUARTET REP. REPORT]; WORLD BANK, THE UNDER-PINNINGS OF THE FUTURE PALESTINIAN STATE: SUSTAINABLE GROWTH AND INSTITUTIONS—ECO-NOMIC MONITORING REPORT TO THE AD HOC LIAISON COMMITTEE 6 (2010) [hereinafter UNDERPINNINGS].

410. *See Politics and Economics, infra.*

411. *See* UNDERPINNINGS *supra* note 409, at para. 37; WORLD BANK, A PALESTINIAN STATE IN TWO YEARS: INSTITUTIONS FOR ECONOMIC REVIVAL, at para. 3 (2009).

412. QUARTET REP. REPORT, *supra* note 409, at 5. That same year, the IMF confirmed that it "considers that the Authority is now able to conduct the sound economic policies expected of a future well-functioning Palestinian state, given its solid track record in reforms and institution-building in the public finance and financial areas." *See* IMF REPORT, *supra* note 131, at 5.

413. *See, e.g.*, OFFICE OF THE QUARTET REPRESENTATIVE, SUMMARY OF OQR DEVELOPMENT AGENDA TO SUPPORT PALESTINIAN ECONOMIC SUSTAINABILITY AND INSTITUTION-BUILDING—REPORT FOR THE MEETING OF THE AD HOC LIAISON COMMITTEE 3 (2012) ("[T]he goal of this development agenda . . . is to catalyse significant economic change on the ground to give greater oxygen to the political negotiation process").

414. Michael Gordon & Jodi Rudoren, *Trying to Revive Mideast Talks, Kerry Pushes Investment Plan for West Bank*, N.Y. TIMES, May 26, 2013, at A6.

415. *See id.* Kerry's plan also focused entirely on the West Bank, leaving the Hamas-run Gaza Strip as an unspoken foil to the donor-supported Authority. *See id.* In the end, however, neither the $4 billion nor peace materialized.

416. *See* BUILDING THE STATE, *supra* note 343, at 7; ALAA TARTIR, SAM BAHOUR, & SAMER ABDELNOUR, DEFEATING DEPENDENCY, CREATING A RESISTANCE ECONOMY 4 (2012).

that economic growth would reduce Palestinian frustration and promote peace. Later international rhetoric and practice, however, treated development as a process to be conducted regardless of the larger constraints of occupation. As a result, what was in its earlier form a device for explicitly linking economics and politics (development would build peace) became a wedge between them (development should take place regardless of ongoing occupation). Despite Fayyad's rhetoric of resistance through statebuilding, the practice and vocabulary of development came to serve the status quo, rather than challenge it.

2. Politics and Depoliticization

Notwithstanding the different styles of economistic argument—the proximate improvement of individual Palestinian lives, mutual Palestinian and Israeli economic benefits, collective Palestinian resistance to occupation, or peace support—its cumulative effect was to dampen political rhetoric and practice under the weight of economic development and statebuilding. From the end of the Second Intifada, the combination of ongoing occupation, failed negotiations, and fluctuating aid priorities encouraged a depoliticizing agenda that focused on the economy and statebuilding as the only viable arenas for change. Gaza's growing humanitarian crisis after 2007 had a parallel depoliticizing effect, albeit through a different route: rather than deflecting politics through development, Gaza diverted attention from politics to humanitarian catastrophe.[417] The West Bank's economistic regime was reinforced by the contrast of Gaza's humanitarian crisis after 2007. While in the West Bank the focus was primarily on the need for growth and development, in Gaza, the story was one of humanitarian necessity.

Proliferating reports from international organizations, in replacing politics with technocratic economics, suggest that a—if not *the*—central problem of the occupation is its cost to the Palestinian economy.[418] Framing the issue as one of economic cost reconfigures the problem of creating a self-sufficient Palestinian economy as one of improving it. By focusing on current damage to Palestinian fiscal growth or institutional capacity, international reports reinforce a narrative of potential Palestinian progress toward independence persistently slowed by a combination of external and

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417. *See, e.g.*, Ariella Azoulay & Adi Ophir, *Abandoning Gaza*, *in* AGAMBEN AND COLONIALISM (Marcello Svirsky and Simone Bignall, 2012) (arguing that the Israeli High Court in recent cases has ignored Israeli responsibility for Palestinian humanitarian suffering).

418. The February 2012 U.N. Seminar on Assistance to the Palestinian People (convened by the U.N. Committee on the Exercise of the Inalienable Rights of the Palestinian People) focused on the economic cost of the occupation, in particular the "impact of Israeli policies and practices on the socio-economic situation in the West Bank and Gaza[;] . . . . the cost of the Israeli occupation incurred by the Palestinians in various sectors of the economy[;] . . . the ways of sustaining the recent economic achievements following the implementation of the Palestinian State-building programme." *United Nations Seminar on Assistance to Palestinian People Considers Economic Cost of Continued Israeli Occupation of Palestinian Territory, in Cairo, 6-7 February*, UNITED NATIONS (Feb. 2, 2012), http://www.un.org/News/Press/docs/2012/gapal1216.doc.htm.

internal factors. The narrative takes political inequality for granted, which in effect marginalizes it as an area of active concern. As Palestinian critics have noted, the result reinforces the status quo by encouraging the Authority to develop its institutions within the context of occupation rather than in resistance to it.[419]

A focus on the economic cost of occupation obscures the politics that underpin a technocratic analysis of a limited economy.[420] In addition to marginalizing questions of politics, the economic prescriptions encouraged by the international community and embraced by Fayyad and the Authority rely on neoliberal conceptions of a market economy.[421] As such, they are freighted with the limitations and critiques of "post-Washington Consensus" policies throughout the world.[422] In the context of neoliberal planning, those economic tools deemed confrontational or unilateral, or economic plans emphasizing other theories of development, are marginalized, ignored, or condemned in international reports.[423]

Despite—or perhaps because of—the overall depoliticization, international organization reports use economic discussions as a proxy for political criticism. As a result, reports concerned with economic development often demonstrate a type of schizophrenia in relation to the occupation, the Authority, and Palestinian statehood. International reports both smuggle politics in under the auspices of economics *and* obscure politics through technocratic preoccupations. For example, in a 2004 report reviewing Israel's proposed Disengagement Plan (the withdrawal from Gaza), the World Bank chastised the Israeli government for maintaining major closures, for delaying humanitarian aid, and for destroying donor-financed infrastructure—all in the name of the economic cost they impose on Palestinian development.[424] Yet in thirty-six pages, the report never used the term 'occupation,' preferring to refer only to closure (one piece in

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419. *See, e.g.*, *State-First Mistake*, *supra* note 393 (arguing that the Authority approach is "apolitical: improving Palestinian living standards and fomenting state-like behavior but without any of the advantages of a real state . . . . [I]t appears as a pragmatic ambition, to supplement the peace process and path to a viable two-state solution. In reality it is destined to circumvent it altogether or, at best, to ensure that the outcome is determined by Israeli national interests alone").

420. Palestinians must "move beyond the technocratic and apolitical understanding of the development process toward recognizing the asymmetry of power." TARTIR, BAHOUR, & ABDELNOUR, *supra* note 416, at 4. They add, "All international NGOs should agree to work on Palestinian development priorities and timeframes (not three-year donor agendas) and tackle the root causes of Palestinian poverty: the Israeli occupation and resulting restrictions." *Id.* at 5.

421. Khalidi & Samour, *supra* note 393, at 6.

422. *See, e.g.*, Stiglitz, *supra* note 168; David Trubek, *The 'Rule of Law in Development Assistance*, *in* THE NEW LAW AND ECONOMIC DEVELOPMENT: A CRITICAL APPRAISAL 89–91 (David M. Trubek & Alvaro Santos eds., 2006).

423. For example, tactics such as boycotts of Israeli or settler products are often condemned as unilateral and obstructionist. Alternative economic approaches are generally marginalized. *See generally* TARTIR, BAHOUR, & ABDELNOUR, *supra* note 416.

424. *Foreword* to WORLD BANK, DISENGAGEMENT, THE PALESTINIAN ECONOMY AND THE SETTLEMENTS (2004) ("Above all, Israel's restrictions on the movement of people and goods needs a major overhaul. These closures stifle any home of Palestinian economic revival").

the complex apparatus of control) or to Israel's "responsibility" for the population of Gaza prior to Disengagement.[425] This dual voice—criticism in the name of development paired with avoidance of engagement with, or even naming of, the system as a whole—features prominently in many international reports. A 2007 IMF donors report is representative of the Fund's combination of (softer) criticism with a focus on working within the existing system. The report notes in a number of places the negative effects of Israeli restrictions on movement and access on the Palestinian economy.[426] However, it calls for "close cooperation" among the Authority, Israel, and donors—a difficult proposition in the midst of ongoing conflict and occupation.[427]

Political considerations do, however, reappear in unexpected ways. Neoliberal policies in Palestine (such as fiscal austerity measures, shrinking the public sector, opening markets, focusing on the private sector, and improving institutional efficiency and the rule of law) have often been aborted due to the fear that they will provoke instability.[428] Indeed the Authority has implemented policies in direct contradiction to these objectives in order to forestall a complete collapse.[429] The IMF avers that "political uncertainty and the restrictions on movement and access are a key barrier to private investment in the West Bank and Gaza Strip" but suggests that the Authority can nonetheless "still support a business-friendly environment by enhancing macroeconomic stability, ensuring sound fiscal management, and taking measures supportive of the private sector."[430] The institution acknowledges the conditions that may limit economic achievements but ambiguously apportions responsibility between the Authority and Israel. This obscures the reality that many crucial resources for statebuilding—such as "land, water, roads, borders, electromagnetic spectrum, airspace, movement, access, electricity, and . . . human resources"[431]—remain under Israeli control by virtue of the Oslo Accords,

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425. *See generally id.*

426. *See* International Monetary Fund, Medium-Term Macroeconomic and Fiscal Framework for the West Bank and Gaza: Report for the Donors' Conference 2, 5, 7 (2007).

427. *Id.* at 15.

428. *See, e.g.*, Le More, *supra* note 140, at 64–84. *C.f.* Khalidi & Samour, *supra* note 401, at 14 (describing the obstacles to the Authority adopting neoliberal economic policies).

429. *See, e.g.*, Diaa Hadid & Nasser Shiyoukhi, *Palestinian Protests Turn Violent in West Bank*, Wash. Times (Sept. 10, 2012), http://www.washingtontimes.com/news/2012/sep/10/palestinian-protests-turn-violent-west-bank/?page=all. (noting that government salaries are "the backbone of the Palestinian economy in the West Bank" and that "Palestinians have an economy hampered by Israel's control over the West Bank's borders as well as limited movement inside the territory"). *See also* Leila Farsakh, *From Domination to Destruction: The Palestinian Economy under the Israeli Occupation*, *in* The Power of Inclusive Exclusion: Anatomy of Israeli Rule in the Occupied Palestinian Territories 380 (2009).

430. IMF Report, *supra* note 131, at 31.

431. Sam Bahour, *Palestine's Economic Hallucination*, 165 This Week in Palestine (Jan. 2012), http://www.thisweekinpalestine.com/details.php?id=3596&ed=202&edid=202.

their implementation, and the effects of ongoing violence.[432]

Questions of inequality, growth, development, and economic progress are inseparable from those of conflict, although theories differ on their precise linkages.[433] Israelis, Palestinians, and the international community have been discussing and arguing over the economic aspects of the Israeli-Palestinian conflict since 1967. These discussions take particular forms, eliding some issues while obscuring others. For example, contemporary international reporting often uses technocratic language to focus on how Israeli actions damage the Palestinian economy; yet international organizations rarely address the benefits of the Oslo regime (or of occupation) on the Israeli economy.[434] Similarly, focusing aid and assistance in Gaza on humanitarian relief can at times remove consideration of the structural reasons the relief is required.[435] Rather than provoking sharp contestation—whether over economic ideology or the utility (or possibility) of development under occupation—the economy has become the last preserve of those advocating cooperation and negotiation. In the process, economic approaches on the ground and at headquarters have become less political, more technocratic, and more accommodating of the status quo. Background assumptions—whether based on an embrace of neoliberalism or on an inability to imagine an end to occupation—limit policy prescriptions; as Fayyad's plans demonstrated, they may also limit the use of the economic realm as a tool of opposition.

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432. *Id.* ("Palestine's economic hallucination has the power to maintain an image of a reality that is growing at more than 9 percent a year. It used to take us 20 minutes to travel from Ramallah to Bethlehem. Now, we are forced to circumvent Jerusalem, around cement walls and through multiple Israeli checkpoints. Today it takes us over 60 minutes, at best. For GDP growth, this is great news. During those extra 40 or more minutes we burn more gasoline, require more lighting on the longer roads, eat more sandwiches on the way, spend more time driving, hit more potholes, which causes more work for the road engineers in the morning, etc., etc. All of this extra spending is great for a higher GDP but catastrophic for our livelihood and state-building exercise").

433. For representative texts offering conflicting positions on the relationship between economics and war (particularly civil war), *see, e.g.*, Jack A. Goldstone et. al., *A Global Model for Forecasting Political Instability*, 54 Am. J. Pol. Sci. 190 (2010); Paul Collier & Anke Hoeffler, *Greed and Grievance in Civil Wars*, 56 Oxford Econ. Papers 563 (2004); Paul Collier & Anke Hoeffler, *On the Incidence of Civil War in Africa*, 46 J. Conflict Res. 13 (2002). For contextualization of the Palestinian situation within the larger international development discourse, *see* Sahar Taghdisi-Rad, The Political Economy of Aid in Palestine: Relief from Conflict or Development Delayed? (2011).

434. Hever, Political Economy, *supra* note 140. *See* International Monetary Fund, *supra* note 426 (excluding analysis on the impact of the occupation of Israel's economy); Assaf Oron, *What's Behind Israel's Biggest Economic Boom? The Occupation*, +972 Magazine (Oct. 28, 2013), http://972mag.com/whats-behind-israels-biggest-economic-boom-the-occupation/81038 (arguing that the occupation has benefited Israel's economy).

435. Widely quoted in international and national media, one adviser to Israeli Prime Minister Ehud Olmert stated that "The idea is to put the Palestinians on a diet, but not to make them die of hunger." In this sense, humanitarian need in Gaza was created in part due to deliberate actions by Israel to incentivize Gazans to reject their Hamas-led government. Conal Urquhart, *Gaza on Brink of Explosion*, The Guardian (Apr. 15, 2008), http://www.theguardian.com/world/2006/apr/16/israel.

C. Transition

The Oslo Accords, which were supposed to be a temporary arrangement premised on the notion of interim self-government, have endured remarkably. Indeed, one of their most significant legacies has been to structure the situation as one of transience and progress, a characterization which suggests a linear, consequentialist narrative, authorizes international assistance and expertise, and permits exploitation of power imbalances through temporal and process-based flexibility. The contrast between the rhetoric of transience and practices of apparent permanence mirrors the contradiction between the assumption of temporariness built into the legal institution of belligerent occupation and the reality of the continuing Israeli presence in the Palestinian territories.

1. Process and Progress

The Oslo Accords foresaw a five-year transitional period, with the aim of building Palestinian self-governance and negotiating a settlement to what were defined as "permanent status" issues—defining borders, establishing security arrangements, finding a solution for Jerusalem, addressing the question of Palestinian refugees, and resolving the fate of Israeli settlements in the Occupied Territories.[436] It was designed as an incremental, gradual process, in which progress on the ground would build confidence for the parties to negotiate final status issues.[437] Palestinian statehood was never mentioned in any Oslo document, and the parties differed with regard to their expectations of the endgame.[438] Early agreements mentioned the parties' aspiration to "peaceful coexistence and mutual dignity and security," but the Declaration of Principles inaugurated a process-based transition that redefined the conflict in terms of a list of discrete issues (rather than, for example, an end to occupation) and created a specific timeline, but left the final objective unclear. As the process deteriorated, however, and final status negotiations failed, both international players and Palestinian leaders began to focus instead on Palestinian statehood as an immediate, if not final, goal.[439]

Making this transition all the more complicated was that it was layered over a preexisting regime marked as temporary: occupation. Under inter-

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436. *See* DOP, *supra* note 6, art. V.

437. *See id.* art. I.

438. For varied accounts of the expectations for Palestinian statehood in the early years of Oslo, *see* SHLOMO BEN-AMI, SCARS OF WAR, WOUNDS OF PEACE: THE ISRAELI-ARAB TRAGEDY 220 (2006); AHMED QURIE, FROM OSLO TO JERUSALEM: THE PALESTINIAN STORY OF THE SECRET NEGOTIATIONS 286 (2006); DENNIS ROSS, THE MISSING PEACE: THE INSIDE STORY OF THE FIGHT FOR MIDDLE EAST PEACE 104, 123 (2004); URI SAVIR, THE PROCESS: 1,100 DAYS THAT CHANGED THE MIDDLE EAST 46, 94–99 (1998).

439. In December 2000, U.S. President Bill Clinton offered his "parameters" for resolution; these included a sovereign, contiguous, viable Palestinian state. Bill Clinton, Proposal on Israeli-Palestinian Peace at the White House (Dec. 23, 2000), *available at* http://www.usip.org/sites/default/files/Peace%20Puzzle/10_Clinton%20Parameters.pdf. However, the U.S. officially signed onto the two-state solution only with the 2003 "Roadmap" for peace released by the U.S. and endorsed by the Quartet. *See* Roadmap, *supra* note 6.

national law, occupation is by definition a temporary institution, designated as a "transitional period following invasion and preceding the agreement on the cessation of the hostilities."[440] The territory is to be held with minimal modifications until its return to the occupied population.[441] The Israeli occupation has tested the temporal—as well as other—limits of occupation; both its longevity and the 2005 disengagement from Gaza have sparked scholarly debates over the legality and definition of occupation.[442] The Israeli High Court endorses the notion that Israeli rule over the West Bank and Gaza is temporary; its stance constitutes recognition of both the temporal limitations of occupation and the demographic consequences involved in incorporating the territories into Israel, which would mean sacrificing a Jewish majority.[443] Yet the prolonged nature of Israeli control and the continuity of settlement activity seem to contradict the Court's

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440. Prosecutor v. Mladen Naletilic and Vinko Martinovic, Case No. IT-98-34-T, Judgment, ¶ 214 (Int'l Crim. Trib. For the Former Yugoslavia, Mar. 31, 2033).

441. *See supra* notes39–44 and accompanying text; Avinoam Sharon, *Why is Israel's Presence in the Territories Still Called "Occupation"?*, 23 JEWISH POL. STUD. REV. 40, 43 (2011).

442. *See, e.g.*, *id.* at 40–41, 46–48 (arguing that problematic and politically-oriented legal reasoning has led to a situation where, despite withdrawal of troops from areas where the Authority or Hamas exercise effective control, "under the definitions currently advanced for 'occupation,' Israel lacks the power to end its occupation [since the current trend seems to say that] having once attained the status of occupier, that status continues until such time as the occupied territory attains international recognition of sovereignty"); DINSTEIN, *supra* note 31, at 277 (stating unequivocally that despite some minority scholarship support for the position that Israel no longer occupies Gaza, "the present writer cannot possibly accept it" considering the ongoing occupation of the West Bank, Israel's continuing effective control, and consistent military recursions); Shane Darcy & John Reynolds, *An Enduring Occupation: The Status of the Gaza Strip from the Perspective of International Humanitarian Law*, 15 J. CONFLICT & SECURITY L. 211, 241 (2010) (arguing that Gaza remains legally occupied even after Israeli disengagement); SARI BASHI & KENNETH MANN, GISHA: LEGAL CENTER FOR FREEDOM OF MOVEMENT, DISENGAGED OCCUPIERS: THE LEGAL STATUS OF GAZA 19 (2007) (arguing that Gaza remains legally occupied even after Israeli disengagement); Orna Ben-Naftali, Aeyal Gross, & Keren Michaeli, *Illegal Occupation: The Framing of the Occupied Palestinian Territory*, 23 BERK'LY J. INT'L L. 551, 554–56 (2005) (arguing that the legality of occupation should be measured according to sovereignty, management of public life, and temporariness and that, according to this metric, the Israeli occupation is illegal).

443. Israeli case law affirms the ostensibly temporary nature of the occupation. *See, e.g.*, HCJ 390/79 Duweikat v. Government of Israel [1979] (Isr.) (unofficial translation) (finding civilian settlement Elon Moreh, built on seized private Palestinian land, illegal under Israeli and customary international law, partially because "a military administration cannot create facts on the ground for its military needs which are predestined to exist even after the end of military rule in that area, when the fate of the territory following termination of military rule is unknown"), *available at* http://www.hamoked.org/files/2010/1670_eng.pdf. Kretzmer discusses the contrast between the 1979 Beit El case, in which settlements were upheld, and the Elon Moreh case in which they were struck down based on their apparent permanence. He suggests that the presence of Gush Emunim settlers as parties to the action brought the ideological argument for permanent settlement of the West Bank to the fore of the case in Elon Moreh, whereas the Beit El case rested entirely on the statements of the government and military authorities with regard to military necessity. KRETZMER, *supra* note 26, at 87–89. Kretzmer also discusses the High Court's emphasis on the temporary nature of occupation under Hague Regulation Art. 43, noting that in previous cases Justice Kahan "stressed that the main feature of a regime of belligerent occupation is its temporary nature, even when the

position. The vocabulary of temporary governance serves to prolong a sit-
uation that permits exploiting territory while limiting the effects of incor-
porating the Arab population.

The same is arguably true of the Oslo Accords, which presented
another period of apparently temporary change that offered asymmetrical
entitlements to the stronger party despite formal protections or rights
accorded to the weaker. As with occupation, the professed neutrality of a
regime meant to be temporary—and thus preventing major changes to terri-
tory or population—may obscure the politics of particular tactics deployed
within and by the regime. Extending a period of temporary change poten-
tially permits either side in a struggle to adapt the status quo to their
advantage.[444] However, the stronger party retains a greater capacity for
exploiting the instability of indecision.[445] For instance, Israeli negotiators
pressed for—and by and large won—the continuation of a customs union in
the 1995 Paris Protocol as opposed to the free trade agreement advocated
by Palestinian negotiators on the grounds that the latter would "prejudg[e]
the outcome of future status negotiations between the two sides."[446] They
presented the continuation of a customs union, by contrast, as a kind of
neutral perpetuation of the status-quo, but this provision—which largely
reflected Israeli preferences, with some revisions on trade arrangements—
fundamentally affected the subsequent relationship between Israel and the
Palestinian territories.

In other ways, however, the Oslo regime did not precisely parrot the
contradiction of temporary rule inherent in a 50-year occupation. Instead,
it inserted a specific progress narrative into the situation: if the Authority
fulfilled its promise as an institutional guarantor of development and
security, and the PLO negotiated a political resolution in good faith, they
could expect the end of occupation. Both parties would eventually benefit
from 'peace,' although the term itself remained ill-defined. Over time,
international and Palestinian rhetoric increasingly translated the goal of
the progress narrative into an assumption of statehood.

The progress narrative depends on two seemingly contradictory fac-
tors: the assumption of a particular endpoint that is not only elusive but
also under-specified; and a series of conditions primarily aimed at the
weaker party to demonstrate progress toward the unspecified objective.
The former depends on the basic willingness of the parties to compromise,
although by 2013, many thought the parameters of that compromise were

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occupation lasts for an extended period." *Id.* at 66 (discussing HCJ 351/80 Jerusalem
District Electric Company v. Minister of Energy and Infrastructure, 35(2) P.D. 673).

444. For example, some Israeli commentators and politicians argue that Oslo has per-
mitted Palestinians to build up a state and army on the ground that will eventually
attempt to destroy Israel. *See, e.g.*, Efraim Karsh, *Arafat's Grand Strategy*, 11 MIDDLE
EAST Q. 3 (2004).

445. Continued settlement building by Israel—frequently during periods of negotia-
tions—offers the most obvious example. *See, e.g.*, Neve Gordon & Yinon Cohen, *Western
Interests, Israeli Unilateralism and the Two-State Solution*, 41 J. PALESTINE STUD. 6, 10–12
(2012).

446. Gross, *Mending Walls*, *supra* note 15, at 1599.

already more or less known: two states based on the 1967 lines with land swaps, a shared Jerusalem, limited refugee return, and a demilitarized Palestine.[447] This claim endows Oslo's progress narrative with an imagined endpoint, but in practice that endpoint has been more mythical than real.[448] The five-year timeline for the interim self-governing authority to reach its final form elapsed, but its temporary nature remained. The Authority itself became the representative of *both* the transience of the process (in that nobody imagined the Authority as the permanent government of Palestine) *and* its entrenchment as a quasi-permanent proto-government (few can imagine the dismantling of its institutions). The establishment of the Authority not only helped produce a sense of parity with Israel and a focus on economic development but a commitment to a transition that it both embodied and undermined. With the end goal of the process ostensibly obvious (two states living in peace) yet persistently unclear, the process seemed to warrant major sacrifices while simultaneously appearing meaningless.[449]

The second factor of the progress narrative remained relatively consistent: the asymmetrical imposition of conditions. As a result of the existing power imbalance, the Palestinians had to meet a series of changing conditions to demonstrate that their interim progress merited continuing toward the end of the process. These conditions ranged from international requirements based on changing international norms (for example, the requirement for internationally monitored elections to the Authority[450]) to shared international and Israeli requirements (for example, the demand to recognize Israel's "right to exist,"[451] to revise the PLO Charter,[452] or

447. In a 2004 CNN interview, President Clinton commented, "The one good thing is, we all know now. We know more or less what a final deal is." Interview by Christiane Amanpour with Bill Clinton, former U.S. President, (July 10, 2004), *available at* www.cnn.com/2004/ALLPOLITICS/07/09/amanpour.clinton.transcript/.

448. *See, e.g.*, Nathan Thrall, *What Future for Israel?* N.Y. REV. BOOKS (Aug. 15, 2013), http://www.nybooks.com/articles/archives/2013/aug/15/what-future-israel/?pagination=false ("Like Netanyahu and Lapid, most Israeli Jews say they would accept a two-state solution, but the terms on which they are willing to do so are hardly realistic").

449. Two states were, as described above, discussed in the Roadmap. The 2007 Annapolis Conference, which was intended in part to implement the Roadmap, also mentioned two states explicitly. George W. Bush, Joint Understanding Read by President Bush at Annapolis Conference (Nov. 27, 2007) (available at http://unispal.un.org/UNISAuthorityL.NSF/0/586E84217636CF87852573A00065F149). For further background on the Annapolis Conference, see INTERNATIONAL CRISIS GROUP, THE ISRAELI-PALESTINIAN CONFLICT: ANNAPOLIS AND AFTER (2007).

450. *See* Roadmap, *supra* note 6 ("Palestinians [should] undertake comprehensive political reform in preparation for statehood, including drafting a Palestinian constitution, and free, fair and open elections upon the basis of those measures. The first Palestinian Legislative Council elections on January 20, 1996, were internationally monitored. *See* CARTER CENTER & NAT'L DEMOCRATIC INST. FOR INT'L AFFAIRS, THE JANUARY 20, 1996 PALESTINIAN ELECTIONS (1997).

451. This was, famously, part of the Letters of Mutual Recognition, and constituted one of the bases by which Israel agreed to recognize the PLO as the representative of the Palestinian people. *See* Letter from Arafat, *supra* note 315 ("The PLO recognizes the right of the State of Israel to exist in peace and security"). The PLO originally announced its recognition of the state of Israel in 1988, a declaration largely dismissed by both Israel and the U.S. Steve Lohr, *Arafat Says P.L.O. Accepted Israel*, N.Y. TIMES, Dec. 8, 1988, at

replace the Palestinian leadership[453]), and Israeli calls (such as recognizing Israel as the "nation state of the Jewish people" and ensuring its security as a precondition for negotiations). Conditions were set for Israel over time—chiefly the cessation of settlement building or the dismantling of settlement "outposts"[454]—but the inequality of incentives between the parties undermined the formal equality of the requirements. Thus, although technically a negotiated agreement would result in statehood for Palestine and security for Israel, the latter could be at least partially achieved by unilateral means,[455] while the former remained hostage to the process.[456] In addition, while conditions were set for both parties, requirements for Israel were enforced less consistently.[457] As a result of the changing, escalating, and often unfulfillable conditions, the transition—which regularly demanded the fulfillment of new conditions, almost always by the Palestinians—became increasingly and ironically enduring.

A1. The 2002 Roadmap required in Phase I that the Palestinian leadership issue an "unequivocal statement reiterating Israel's right to exist in peace and security." Roadmap, *supra* note 6.

452. The revision of the Palestinian National Charter, which originally called for armed struggle and rejected Jewish nationality, was a longtime position of Israel. In 1998, Israel's Representative to the U.N. addressed a letter to the U.N. Secretary-General insisting on the revision on the basis that "[n]o nation can agree to make itself more vulnerable . . . when its negotiating partner remains ambiguous about whether it still intends to wage a war of destruction." Letter from Dore Gold, Permanent Representative of Israel, to the United Nations, addressed to the Secretary-General, (July 27, 1998) (available at http://unispal.un.org/UNISAuthorityL.NSF/0/42F8BE5C16B35D420525 66550065C32A). The Palestine Central Council voted for the revision in December 1998. Paul Adams, *Revising the PLO's Charter*, BBC NEWS (Dec. 14, 1998), http://news. bbc.co.uk/2/hi/middle_east/232806.stm.

453. "I call on the Palestinian people to elect new leaders, leaders not compromised by terror. I call upon them to build a practicing democracy, based on tolerance and liberty. If the Palestinian people actively pursue these goals, America and the world will actively support their efforts. If the Palestinian people meet these goals, they will be able to reach agreement with Israel and Egypt and Jordan on security and other arrangements for independence. And when the Palestinian people have new leaders, new institutions and new security arrangements with their neighbors, the United States of America will support the creation of a Palestinian state whose borders and certain aspects of its sovereignty will be provisional until resolved as part of a final settlement in the Middle East." Press conference, George Bush, June 24, 2002.

454. The first phase of the roadmap required immediate dismantling of settlement outposts built since March 2001, as well as a freeze on all settlement activity, including natural growth. *See* Roadmap, *supra* note 6.

455. The construction of the Separation Barrier, the reduction of Palestinian labor, the disengagement from Gaza, and the closure system are all considered elements of Israel's strategy to make itself less vulnerable to Palestinian resistance. None required Palestinian consent or cooperation and in fact were largely implemented over Palestinian protest.

456. The Roadmap states that "an independent Palestinian state with provisional borders" may be achieved only "when the Palestinian people have a leadership acting decisively against terror, willing and able to build a practicing democracy based on tolerance and liberty." Roadmap, *supra* note 6, at 6.

457. The most striking example is that of settlement-building, which has continued throughout the process, including after the conditions set by the Roadmap. Most recently, Israel announced the expansion of East Jerusalem settlements shortly after the resumption of peace talks. Isabel Kershner, *New Israeli Housing Bids Raise Tensions Before Peace Talks*, N.Y. TIMES, Aug. 11, 2013, at A4.

Palestinians are not alone in facing obstacles to, or conditions for, statehood and sovereignty.[458] Yet their case differs from many other instances because statehood (and self-determination through statehood) appears to depend not only on internationally imposed conditions but on asymmetrical obligations to an existing state which, having already achieved recognition, is bound by far fewer conditions.

International reports have produced and reinforced the progress narrative by encouraging particular processes (focused on negotiations, coordination with Israel, the quelling of violence, and strengthening Authority institutions), reiterating particular goals (peace or, later, Palestinian statehood), and omitting issues that might contradict the possibility of progress. The 2012 UNSCO report to the AHLC offers a representative statement:

> Progress that benefits Palestinians throughout the occupied Palestinian territory creates conditions in which a final status agreement can—once concluded—take root. Without concerted efforts by the parties and the international community to sustain the Authority, the valuable gains and the Palestinian Authority itself could be at risk.[459]

The statement embodies many aspects of transitional rhetoric. First, the notion that the increasing capacity of the Authority to govern within its limited jurisdiction—as defined by standards of good governance and service delivery set by the U.N., the World Bank, and the IMF—represents "progress." Second, the statement supports the idea that progress within the realm of statebuilding will help establish a final peace agreement. Third, the report asserts that the international community needs to support the Authority in order to maintain the progress the international community has defined (good governance) in order to reach a goal it has determined (two states). As a result, the established causal chain has a clear trajectory: international aid money must continue in order to fund the Authority, which provides the only hope for peace. These unquestioned assumptions are found throughout international documents and discussions.[460] Questions such as whether aid money might create dependency, whether statebuilding within occupation will contribute to its end, or how progress has been defined (and by whom) remain largely unasked.

2. *Permanent Transition*

The permanent transition constructed by the Oslo regime rearranged and entrenched, rather than reformed, the power relations that existed on the eve of the Declaration of Principles. These power relations have

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458. *See, e.g.*, Antony Anghie, Imperialism, Sovereignty, and the Making of International Law 56–59 (2005). *But see Developing the Palestinian Economy: An Interview with George Abed*, 34 J. Palestine Stud. 41, 49 (1994) (noting that "[o]ther nations seeking self-determination are not normally subjected to this series of trials of ascending difficulty in order to achieve their basic freedom").

459. UNSCO, Palestinian State-Building, *supra* note 108, para. 13.

460. *See, e.g.*, James R. Hooper III & Paul R. Williams, *Earned Sovereignty: The Political Dimension*, 31 Denv. J. Int'l L. & Pol'y, 355, 355–372 (2003).

remained remarkably consistent since the pre-Oslo era. Despite the vocabularies of progress, the creation of the Authority, and the enormous amounts of international advice, consultation and management that supported it, the relative positions of Israel and the Palestinians have remained unchanged.

Ironically, while the rhetoric of transition is ubiquitous, some of the standard elements and tools of transitional processes have been largely absent from the Oslo machinery. Tropes of peace, conflict resolution, statehood, rule of law, and good governance—all elements of post-Cold War rhetoric around sovereignty and self-rule—recur repeatedly in international reports and in the negotiations themselves. Yet certain issues have remained off the table, particularly human rights and transitional justice.[461] These practices, which could potentially disrupt existing power relations, were marginalized seemingly because they could have disrupted negotiations, slowing 'progress' as defined by the process.[462] International practices and Israeli actions have instead promoted aspects of transition that preserve the relative power balance on the ground, arguing that an interim accord requires preservation of the status quo.

The Palestinian 'transition' since 1993 has invited an international intervention of a very particular kind. As Severine Autesserre has argued in the context of the Congo:

> [L]abeling the Congo a 'postconflict' situation instead of a 'war' situation made a specific set of policies and procedures (such as the organization of

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461. The failure to reference international law in general, and human rights law in particular, in the Oslo Accords has been the topic of many debates. The only reference to human rights in the early Oslo Accords is in the 1994 Agreement, which states that the parties "shall exercise their powers and responsibilities pursuant to this Agreement with due regard to internationally-accepted norms and principles of human rights and the rule of law." Israeli-Palestinian Agreement on the Gaza Strip and Jericho Area, *supra* note 97, art. XIV. Transitional justice was considered even less relevant. However, in the aftermath of Oslo, a number of scholars have suggested ways to incorporate transitional justice measures into the resolution of the Israeli-Palestinian conflict. *See, e.g.*, Ron Dudai, *A Model for Dealing with the Past in the Israeli–Palestinian Context*, 1 INT'L J. TRANSITIONAL JUST. 249 (2007); Zinaida Miller, *A Hybrid Commission of Inquiry for Israel/Palestine*, HARV. J. HUM. RTS. (2007); Ron Dudai & Hillel Cohen, *Triangle of Betrayal: Collaborators and Transitional Justice in the Israeli-Palestinian Conflict*, 6 J. HUM. RTS., 37 (2007); Ariel Meyerstein, *Transitional Justice and Post-Conflict Israel/Palestine: Assessing the Applicability of the Truth Commission Paradigm*, 38 CASE W. RES. J. INT'L L. 281 (2007); Ariel Matthew Weiner, *Defeating Hatred with Truth: An Argument in Support of a Truth Commission as Part of the Solution to the Israeli-Palestinian Conflict*, 38 CONN. L. REV. 123 (2005); Yoav Peled & Nadim Rouhana, *The Palestinian Refugees and the Right of Return: Theoretical Perspectives: Transitional Justice and the Right of Return of the Palestinian Refugees*, 5 THEORETICAL INQ. L. 317 (2004); Aeyal Gross, *The Constitution, Reconciliation, and Transitional Justice: Lessons from South Africa and Israel*, 40 STAN. J. INT'L L. 47 (2004).

462. *See* AMNESTY INTERNATIONAL, FIVE YEARS AFTER THE OSLO AGREEMENT: HUMAN RIGHTS SACRIFICED FOR "SECURITY" 1 (1998) (noting that the international community has accepted "peace" and security without regard for human rights). *See also The United States, Israel and the Palestinian Authority: Human Rights Neglected in Theory and Practice by all Involved in "Peacemaking"*, AMNESTY INTERNATIONAL (Dec. 23, 1998), http://www.amnesty.org/en/library/asset/MDE02/009/1998/en/21d837ba-e754-11dd-b8d3-c95de5982fed/mde020091998en.html.

elections) seem natural and appropriate while another set of strategies (such as work on local conflicts) seemed inappropriate and illegitimate.[463]

In the Israeli-Palestinian context, the vocabulary of transition encouraged and legitimated policies directed at transforming the West Bank, and for a time Gaza, into a democratic market economy while marginalizing resistance to occupation. Because the end was ostensibly in sight from the beginning, both Israel and Oslo's international sponsors interpreted unsanctioned forms of resistance—including violence and what is labeled as unilateralism—to Israeli occupation as resistance to the peace process itself, and therefore as a rebellion against international auspices and assistance. The use of aid as a political mechanism to punish behavior such as the election of Hamas and the pursuit of U.N. membership, or to reward the appointment of a prime minister committed to good governance became part and parcel of transition.[464] Even after the repetitive lapse of deadlines, the failure of negotiations, and the Authority's longstanding shortcomings, both the rhetoric and practices of transition have persisted.

A transitional regime, by its nature, resists criticism. The fact that it is both ostensibly temporary and has a purportedly defined objective means that it appears to seek its own termination; its imminent end suggests that critique is misplaced and should be postponed until it achieves its objective and the new, permanent regime is put in place. More fundamentally, the label of transition helps limit resistance to the dominant understandings of how governance should proceed. Transitional regimes presume linear progress from a chaotic past to a stable future. Because the transitional progress narrative assumes a specified endpoint—transition will end with a negotiated pact, peace, and internationally midwifed statehood—it tends to obscure the multiple forms of governance operating in the territories today. The assumed teleology of the process combines with the presumed transience of the status quo to suggest that current actions may be understood as events along a linear continuum measured according to their contribution to the inevitable endpoint. As a result, both the potential of today's practices to obstruct tomorrow's objective, as well as the definition of progress itself, remain largely unquestioned.

Conclusion

The persistence of conflict between Israelis and Palestinians and the continuation of Israeli occupation tends to obscure a series of remarkable transformations in governance of the Palestinian territories since the 1993 Oslo Accords. Occupation remains, but defending or denouncing the current dispensation in those terms alone misses the ways that power and authority function today. After 1993, the Palestinian territories became a subject of multilateral governance, managed and organized not only by Israel but also by intergovernmental and non-governmental players from around the world. The relationship between Israelis and Palestinians has

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463. AUTESSERRE, *supra* note 159, at 29.
464. *See supra* notes 237-55 and accompanying text.

been reimagined. No longer simply occupier and occupied, Israel and the Palestinian Authority have been transformed into putative equals engaged in perpetual negotiation. The institutions and objectives of conflict, occupation, and resolution have been reformulated. Governance of the territories is now comprised of a series of multilateral and technical projects focused on statebuilding and economic development. Those projects are touted alternately as interim steps and as the ultimate goal. What was once a contest over ending occupation has become an ostensibly temporary transition aiming for an elusive "final settlement".

These changes came about in no small part because of the unexpectedly enduring presence of international actors. The Accords reassigned responsibility for the Palestinian population to the newly created Palestinian Authority while leaving control over territory largely in the hands of the Israeli government. With the nascent Authority severely lacking capacity, the arrangement was tenable only because of international support in the form of money and expertise. Originally understood as performing a stop-gap role, international actors became instead—even if sometimes reluctantly or ambivalently—integral pieces in the governance puzzle. Over the course of the following two decades, international actors and organizations provided aid and development assistance necessary to preserve Palestinian institutions that otherwise would have collapsed, facilitated peacebuilding, development, and post-conflict reconstruction, and supported negotiations between the parties. International actors, however, brought more than money or institutional blueprints: their ideas about how to make peace and reconstruct territories after conflict reshaped the form and conceptualization of governance and peace in the Occupied Territories.

The Palestinian case offers insights into two relationships common to post-conflict and transitional territories: between ideas and institutions and between local and international actors. Analyzing only the ideational realm—for example, with regard to peacemaking or post-conflict reconstruction—diminishes the ways in which institutional implementation changed those ideas on the ground. By contrast, focusing only on institutional practices obscures how particular concepts shaped a consensus about what sorts of intervention were possible and desirable. International actors made institutional choices about how to intervene in the Israeli-Palestinian conflict based on ideas common after the Cold War. They advocated bilateral negotiations and elections, supported shared governance, and favored specific methods of economic development. Once formed, the institutions created ideational effects. For example, the parties were treated as if equal and the political stakes of occupation were discussed in economic terms. These ideas in turn affected institutional change in an iterative cycle. More broadly, the international presence as a whole relied on the idea that resolution and recovery were international problems requiring external intervention.

Similarly, international and local forces together produce and reproduce governance. International intervention did not obviate local involvement any more than ideas alone dictated institutional arrange-

ments. In fact, as the international role became entrenched after 1993, divisions between the "local" or "national" and the "international" blurred. International conceptions of state-building were implemented by the Palestinian leadership. An occupation comprised of a set of legal and political institutions specific to the West Bank and Gaza (and shaped by international law) was transformed into a series of economic questions by international as well as by Israeli and Palestinian actions. Palestinians did not passively receive international ideas any more than Israelis simply transferred occupation wholesale to the international community. At the same time, international actors and institutions were transformed by their encounters on the ground.

Changing governance also altered the terms of contestation. Parties resisting the regime have increasingly used the vocabulary and practices of the system they oppose. As a result, resistance sometimes reinforces the regime. The ideas, vocabulary and institutions that structure Palestinian governance today—equivalence between the parties, economic development as peace, transient stages leading to resolution—have altered the political logic of both sides. Castigating the failure of Oslo in 2014, Israeli Economy Minister Naftali Bennett proposed the annexation of Area C in the West Bank, arguing that his initiative—which he suggested pairing with "autonomy on steroids" in other areas[465]—as a way to "move forward after 20 years of trying one track".[466] Bennett's proposal—effectively a repudiation of the Oslo Accords—was ironically predicated upon them: he proposed annexation of a zone specifically created by the Accords. On the Palestinian side, calls for Palestinian statehood through U.N. membership similarly built upon the Accords by using the conception of equivalence with Israel.

The statehood debate revealed as well how debates over 'internationalizing' the conflict mask the entrenchment of the regime. When Palestinian President Abbas sought U.N. membership or submitted requests for Palestine to join international conventions,[467] Israeli government officials decried the move toward "internationalization", one that Palestinians defended in the same terms. Their shared vocabulary and mode of argument—whether the Palestinian move was, as Israel claims, a unilateralist rejection of Oslo or, as President Abbas suggested, a genuine attempt to give negotiations a better chance to succeed—obscured the ways in which the conflict was already international. The Israeli-Palestinian conflict cannot be "made international" by an application to the United Nations or the recognition of Palestinian statehood. Rather, the use of statehood as a resistance strategy exemplified the ongoing influence of international law

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465. Tovah Lazaroff, *Bennett: 'We'll Annex Area C and Offer the Palestinians Autonomy on Steroids,'* THE JERUSALEM POST, Apr. 29, 2014.
466. Herb Keinon, *In Wake of Talks' Collapse, Bennett to Present PM with Proposal to Annex Area C,* THE JERUSALEM POST, May 15, 2014.
467. Jodi Rudoren, Michael E. Gordon, and Mark Landler, *Abbas Takes Defiant Step, and Mideast Talks Falter,* N.Y. Times, Apr, 14, 2014. The PLO agreed prior to this round of talks to delay any bids for further recognition for the state of Palestine until the April 29 deadline for the conclusion of negotiations.

and policy on the conflict itself. The Oslo regime is by definition an international one, constructed and supported in part by external actors who came to Jerusalem and Ramallah with agendas, preoccupations, and intellectual commitments of their own.

Even attempts to "unmake" Oslo—a reaction to the seemingly endless transition—themselves reveal the durability of the regime. In 2014, a frustrated Palestinian President Abbas, reflecting a Palestinian sense that the Authority's primary purpose has been to relieve Israel of its responsibilities as an occupying power, threatened to dismantle it, telling Israel, "You don't have to send tanks or use force. . . Just send a junior officer, a second lieutenant, and we'll give him the keys."[468] Yet it is not clear how the current arrangement could be undone and even less so that the pre–1993 status quo could be restored. Advocating the end of the Palestinian Authority or the elimination of international aid appear today both implausible (the machinery of governance and aid is so entrenched as to be largely impervious to challenge) and functionally problematic (even if the tactics could be achieved, it is unclear that their goals would be achieved). As a U.S. official involved in the talks suggested, "new game rules and facts on the ground were created that are deeply entrenched."[469]

Perhaps most fundamentally for Palestinians, Oslo has penetrated one of the most common registers for contesting activities in the West Bank and Gaza: law and legality. The new language of policy, partnership, development and transition has a paucity of vocabulary for contesting occupation or its components as legal or illegal. The creation of an open-ended "transition" under Oslo converted the comprehensive regime of occupation into a series of discrete topics to be managed and negotiated rather than adjudicated. Issues once argued as law became more frequently discussed as questions of policy. Attention shifted to the shape of a future arrangement rather than the resolution of past claims or an evaluation of present reality.

Today's reality is captured neither solely by the label of occupation nor by the ostensible equivalence, economic problem-solving, and transitional processes of the Oslo era. Israelis and Palestinian are not equal, their problems are not technical and amenable to technocratic solutions, and their supposed transition has, at best, stalled indefinitely. Although the Oslo Accords brought Palestinians in the West Bank and Gaza certain gains—chiefly in administering aspects of their own lives—the regime has undermined its own ostensible objective of resolving the conflict. Moreover, in the name of a transition to peace and development, the system has concealed inequality behind parity, masked political stakes with economic technocracy, and hidden permanence under transition. Until the particularity of the regime is understood and confronted, escape from it will remain elusive.

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468. Patrick Martin, *Setting Borders First Priority for Abbas*, THE GLOBE AND MAIL, Apr. 21, 2014.

469. Nahum Barnea, *Inside the Talk's Failure: US Officials Open Up*, YNET NEWS, May 2, 2014.