

A photograph of a desert landscape. In the foreground, a paved road with yellow lines curves through a rocky, arid terrain. In the middle ground, there are some small, simple stone buildings. The background features rolling hills and mountains under a hazy, light-colored sky. The overall tone is somber and contemplative.

Richard

Falk

Palestine's

Horizon

Toward

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Just

Peace



# Palestine's Horizon

## Toward a Just Peace

Richard Falk



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# I

## Parameters of Struggle

Writing from the standpoint of 2017, it seems worth noting that in this year a converging series of anniversaries are calling renewed attention to some long past milestones in the Israel–Palestine conflict. These remembrances cast an explanatory light on the historical narrative that continues to unfold, and helps to avoid overlooking the relevance of past occurrences. Of these, the Balfour Declaration of 1917 underlines the long Zionist quest for a Jewish Homeland in Palestine, and it also calls our attention to the fact that this initial encouragement of the World Zionist Movement arose from a willingness of the British Foreign Secretary, Lord Alfred Balfour, to express an official show of support on behalf of his government. The Balfour Declaration was without doubt a colonial initiative that collided with competing nationalist ideas associated with every people’s right of self-determination to be exercised in their place of geographic habitat. In this regard, and arguably ever since, the West has given support to the Zionist project without ever either taking into account these colonialist origins or making any effort to assess the preferences and views of the indigenous population as it existed in 1917. True, the Balfour Declaration contained language that reassured the non-Jewish inhabitants of Palestine that their rights should not be jeopardized as a result of the pro-Zionist pledge, although the clause received almost no subsequent notice. It should also be noted that the Balfour Declaration looked toward the establishment of a Jewish “homeland” in Palestine, making no reference one way or the other to the establishment of a state, let alone a Jewish state. In this regard, the establishment of the state of Israel in 1948 went beyond the explicit endorsement of Zionist goals in the Balfour Declaration, disclosing an expansionist pattern that persists up to the present. In other words, the Zionist project is dynamic, expanding its goals to take advantage of increased capabilities and opportunities.



A second anniversary is associated with the backing of the United Nations in 1947 for a partition of Palestine into two political communities, one for Jews and the other for Arabs. This UN initiative, taking the form of General Assembly Resolution 181, took place 60 years ago, abandoning the idea of a unified country of the sort administered by the United Kingdom in the mandates system after the collapse of the Ottoman Empire in the aftermath of World War I. The partition approach was adopted after Britain voluntarily terminated its governing role in Palestine due to the growing unmanageability of the situation, dramatized by violent and escalating efforts of Zionist militias to make the British presence untenable. This idea of partition became the internationally agreed basis for a solution to the conflict ever since 1947, giving rise in recent decades to the two-state consensus that was at the core of the failed effort of Oslo diplomacy to end the conflict. As of 2017, questions arise as to whether Israel continues to endorse partition if it means the emergence of an independent Palestinian state. Regardless of Israel's outlook, the two-state approach no longer seems a practical possibility in view of the scale and geographic breadth of the settler movement that continues to expand within the confines of Occupied Palestine. Among Palestinians there persists uncertainty, with the formal international representation of the Palestinian people by way of the Palestinian Authority and the Palestinian Liberation Organization (PLO), adhering to its central demands to end the occupation by withdrawing its forces, and allowing the present "ghost state" of Palestine to assume real governing authority. Palestinian civil society voices are more agnostic about their hopes and demands, often opting for the restoration of a unified secular Palestine with equality for all ethnicities and religions as the preferred solution.

A third milestone is associated with the 50th anniversary of the 1967 War, that converted a situation of de facto partition into one of Israel's control over the whole of Palestine, due to its belligerent occupation and effective control over the West Bank, East Jerusalem, and Gaza. The international community insisted in 1967 that these new circumstances arising from the war should be temporary. Israel was expected to withdraw as a matter of obligation under international law, although the process was to be facilitated by way of minor adjustments in the pre-1967 borders. These expectations were embedded in UN Security Resolution 242, unanimously adopted, and the beginning of the

view that peace depended on restoring prospects for a legally agreed upon partition in a manner that would give Palestine an independent sovereign state. As the years have passed, it has become less and less likely that the path to peace foreshadowed by Resolution 242 will ever be taken. Israel has demonstrated the will and capabilities to retain control over the whole of Palestine, a position made tenable by the unconditional geopolitical backing that Israel has received from the United States.

One major result of the 1967 War, which has never changed during the ensuing decades, was to shift Israel from its earlier status as a strategic burden of the United States into its new role as valued strategic partner. This shift, reinforced by the 9/11 attacks on the United States, undoubtedly strengthened the special relationship between Israel and the United States with the effect of rendering Washington too partisan to serve as a diplomatic intermediary credible to the Palestinian side. Israel's influence and the USA's global leadership were translated into an unbalanced negotiating framework. All subsequent diplomatic initiatives gave the United States, despite its partisan connection with Israel, this important third-party role as a supposed honest broker. Palestinian frustrations with such a diplomatic process were to be expected, as progress toward a peaceful solution seemed permanently stalled while Israel continued full speed ahead in pursuit of its territorial ambitions in Occupied Palestine. The discussion of the diplomacy that was generated by the outcome of the 1967 War gave the false impression that the conflict could be reduced to a territorial dispute, overlooking the plight of Palestinian refugees seeking an end to their ordeal consistent with international law.

Interpreting these anniversaries provides a helpful perspective on the present, and on how it has come to pass in response to a series of developments over the course of an entire century. Additionally, there is something new and unpredictable upon the political horizon in 2017—the advent of the presidency of Donald J. Trump. During the presidential campaign, Trump spoke in generalities about his unbounded enthusiasm for Israel, and by his silence, indicated a lack of empathy for Palestinian rights and aspirations. In a typically contradictory spirit, Trump also suggested that his prowess as a deal-maker could be brought into play through a renewed attempt to find a solution acceptable to both Israelis and Palestinians. The most likely

possibility is that the opportunistic side of Trump's political profile will incline him toward an acceptance of Israel's unilateral approach, which seeks to exert unified control over most of the West Bank, if not its totality, as well as to maintain governing authority over the entire city of Jerusalem, and a willingness to let go of Gaza, preferably to be governed in the future by Egypt or possibly Jordan. Trump seemed inclined toward satisfying Israeli political ambitions when he indicated that he favored moving the American Embassy from Tel Aviv to Jerusalem, which would be a major political gift to Israel, a strong irritant to Palestine, and indeed, the entire Muslim world, and an act done in defiance of world public opinion. What seems likely is that the Trump impact will shake the settled pattern of relations between Israelis and Palestinians, as well as impacting upon the various centers of regional turmoil throughout the Middle East. Trump's unpredictability makes it premature to anticipate the effects of his presidency beyond these generalities.

Against this background, there are four features of the Palestinian struggle that are currently salient: (1) the breakdown of any credible effort to reach a diplomatic outcome by negotiations between Israel and the Palestinian Authority, and hence widespread disillusionment about the prospects of making progress toward realizing the still internationally endorsed "two-state solution"; (2) the persisting dual reality of Palestinian suffering extending into the future without any discernible endpoint and continuing Israeli encroachment on Palestinian rights, including the progressive incorporation of land on territories occupied since the end of the 1967 War; (3) the growing global solidarity movement centered upon the BDS Campaign coupled with Israeli pushback by way of conflating mounting pressures on Israel with anti-Semitism; and (4) a regional political setting that has temporarily marginalized the Palestinian struggle due to a preoccupation with the ongoing carnage in Syria and Yemen, as well as the resultant refugee crisis and the rise of ISIS.

The wider context of Palestine-Israel relations reinforces these dominant features. The intensifying turmoil in the Middle East seems to strengthen Israel's evident satisfaction with a status quo that does not impede its expansionist policies and practices. As suggested, this shift of regional and world attention to the challenges posed by the rise and spread of ISIS, the continuing strife in Syria as abetted by

outside interventions by Russia, Iran, the United States, and others, the Saudi intervention in Yemen, as well as chaos in Iraq and Libya, the various Kurdish involvements, all of this further complicated by the sectarian encounter between Saudi Arabia and Iran in several national and regional theaters of conflict. These developments have shifted priorities for all political actors in the region in such a way as to weaken significantly concern and identification with the Palestinian struggle. In the case of Saudi Arabia, this shift has been so drastic as to create a tacit alliance with Israel, or at minimum a convergence of interests, as was evident during the 2014 Israeli attack on Gaza during which Saudi Arabia gave at least support through its diplomatic silence.

Israel has also been a beneficiary of several other developments leaving them a free hand to deal with Palestine and Palestinians without any need to exhibit accountability to international law or respect for the authority of the United Nations. Egypt's resurgent authoritarianism since the military coup of 2013 has restored a collaborative relationship with Israel that is even stronger than what existed during the period of Mubarak rule. Beyond this, Turkey's pre-occupations with renewed armed confrontations with its large Kurdish minority, as well as the various spillovers from the Syrian civil war has given Ankara's leaders more than they can handle, which explains the weakening of their support for the Palestinian struggle as well as a willingness to normalize relations with Israel. And even Iran, while not abandoning its rhetorical hostility to Israel, has made it evident that its present priority is to improve relations with the West, ending its isolation, and gaining relief from international sanctions that have had such a crippling effect on the Iranian economy and caused the Iranian people many hardships.

Despite the personality and policy clashes between Netanyahu and Obama, the "special relationship" between Israel and the United States has held firm. In effect, this posture of unconditional support gives Israel the political space to pursue its ambitions to colonize what is left of historic Palestine. The harshest words that Washington utters in response to continuing Israeli settlement expansion is to call such blatantly unlawful behavior "unhelpful," which in diplomatic parlance amounts to nothing more than "a slap on the wrist." Looking to the future, there is no daylight whatsoever separating the presidential candidates when it comes to future relations with Israel, which promise

to be at best, more of the same, and likely will try to restore harmony at the leadership levels regardless of who is the president after Obama, although the primary campaign of Bernie Sanders to become the candidate of the Democratic Party disclosed a split among Jews, and briefly suggested a potential future repositioning of the American relationship with Israel on the basis of “tough love.” To be realistic, this kind of desirable future in American relations with Israel will not occur without a minor political miracle, which seems even more improbable given the early signs of what a Trump presidency is likely to do.

This top down view of the Palestinian situation is far from the whole story. Despite the persistence of an oppressive occupation Palestinian resistance continues, adopting a variety of forms that deprive Israel of living in “a comfort zone.” The recent flurry of stabbings, hyperbolically described in some circles as “the Third Intifada,” can be interpreted from different angles. It seems best explained as pathological and spontaneous expressions of existential despair among ordinary Palestinians, paralleled by an upsurge of suicides in Gaza that also are interpreted as representing a loss of hope among Palestinians. This unorganized renewal of Palestinian violent resistance can also be understood as a warning that a full-fledged resumption of armed struggle could occur if the Palestinian prospects for peace and self-determination do not markedly improve in the months and years ahead, which will take some doing considering the collapse of the Oslo diplomacy as aggravated by accelerated Israeli expansionism and the disinclination of Israel to lend any further credence to the two-state solution.

Longer term trends in the region are highly unpredictable, and with support for the Palestinians still intense among the Arab masses, the political mood of Arab leaders could quickly reverse course, confronting Israel with renewed military threats in an environment in which several governments now have the weapons and delivery systems capable of causing serious damage in Israel, although not without exposing themselves to annihilating retaliation.

Perhaps, more telling in the near future than the maneuvers of governments, is the steady growth of the global Palestinian solidarity movement, as stimulated by Palestinian civil society initiatives and led by diaspora Palestinians, and mobilizing increasing support

throughout the world, especially in Europe and North America. In this respect, there is a growing recognition that the Boycott, Divestment, and Sanctions (BDS) Campaign is gaining momentum, and may have reached a tipping point in imposing tangible costs on the Israeli economy. Israeli think-tanks and leaders have voiced their concern about what has been described as “the delegitimation project,” which has come to be regarded as a greater security threat to Israel than Palestinian armed resistance.

What is notable about this latest phase of the Palestinian struggle is its focus on gaining the high ground with respect to law and morality, and thereby prevailing in the “Legitimacy War” being waged on a variety of symbolic battlefields, including within various UN venues. Such a strategic orientation places great emphasis on international law, on UN assessments of rights and grievances, on world public opinion, on activism by prominent cultural and moral authority figures, on boycott initiatives of academic institutions and professional associations, and on disengagement in various ways by governments, corporate actors, and private and international financial institutions.

A stunning aspect of these various symbolic struggles is the realization that the political fate of national movements of self-determination has been overwhelming controlled by the winners of legitimacy wars ever since the end of World War II (although not before), rather than by the side that possesses military superiority.

If we look ahead in an effort to situate the Palestinian struggle, I believe we are now experiencing both a post-diplomatic mood of frustration and an emerging pre-diplomatic mood of expectation, although the latter seems conditional on a change of approach by both the United States/Europe and Israel, that is, on repositioning moves that would amount to a political miracle. This change would involve establishing a more balanced and neutral diplomatic framework than the decades of pro-Israeli one-sidedness that doomed the “Oslo peace process” to failure. It would also depend on a firm agreement among the main Palestinian political forces (PLO, Hamas, and possibly Islamic Jihad) on unified representation including participation by refugee communities, and likely the release of most Palestinian political prisoners being detained without charges and likely of Marwan Barghouti, a high-profile political leader long imprisoned, who alone among Palestinian leaders enjoys respect across factional lines.

## 2

# Oslo Diplomacy: A Legal Historical Perspective

### *Points of Departure*

When the Oslo Accords were signed on September 13, 1993 and confirmed for the world with the famous handshake on the White House lawn between Yasir Arafat and Yitzhak Rabin with a smiling Bill Clinton looking on, many thought that finally the Israel–Palestine conflict was winding down, or at worst, entering its final phase. It seemed like there was a shared commitment between the parties, with strong backing by the United States, to strike a compromise more or less along the borders established by the 1948 armistice agreement that enlarged the Israeli territory from the 57 percent of the British mandate allocated for a Jewish homeland by the UN in General Assembly Resolution 181 to the 78 percent of Palestine held by Israel at the start of the 1967 War. The other issues in dispute, although deferred until the so-called final status negotiations including the arrangements governing Jerusalem, Palestinian refugees, Israeli settlements, permanent borders, water rights, and security guarantees were all widely assumed at the time to be capable of compromise and mutual acceptance. The Accords proposed resolution of these issues within five years, which then seemed reasonable, as was the commitment to begin final status negotiations no later than 1996.

From the perspective of the present, the prospect of peaceful resolution seems more elusive than ever, and indeed conditions have so adversely altered as to make any assertion of an attainable and sustainable peace seem to be at best an exercise in wishful thinking, and at worst, an expression of bad faith. How can we explain, then, the Oslo Accords, widely celebrated in 1993 as an historic breakthrough, now appearing to have been a roadblock that insidiously diverted the

Palestinian struggle for self-determination while granting time to Israel to expand its territorial claims and virtually extinguish any realistic prospect of realizing Palestinian rights in the near future. What can we learn from this experience? Were the Palestinians blind sided, or did the Palestinians themselves contribute to this overall weakening of their position by engaging in violent forms of resistance that gave Israel time, space, and world sympathies enabling the pursuit of expansionist ambitions? Or were the Palestinians insufficiently united behind the Oslo Accords to provide the needed political support for the necessary compromise implicit in the idea of legitimating Israel as a Jewish state?

And there were other issues that seem appropriate to raise after the passage of time. Did Israel overreach in such a way as to undermine their long-term security due to regional power shifts that make their situation more precarious than ever? It is important to appreciate that the technological progress in weaponry and doctrinal shifts in tactics makes all political actors, including those with apparent military dominance, vulnerable to devastating attacks. This is part of the lesson of the 9/11 attacks carried out with minimal capabilities and almost no material resources. What Israel has done is to create a seemingly irreversible situation in the occupied territories of the West Bank and East Jerusalem that has the collateral effect of depriving Tel Aviv of a peace option. The PLO in 1988, five years before Oslo, committed the Palestinians to such an option by accepting the existence of Israel within the 1948 armistice borders with the territorial remnant providing the basis for a Palestinian state that was significantly smaller than what the UN proposed in its partition plan, a plan had been disastrously rejected by Palestinians when put forward because it then seemed grossly unfair to the majority Arab Palestinian resident population. In a sense, the overarching question at present, after the collapse of Oslo diplomacy, is to assess whether this dismal conclusion that the peace option is now foreclosed for both sides is persuasive or not. And if so, what now?

### *Recovering the 1993 Outlook*

It seemed to many of us that the secret discussions in Oslo that had produced this agreed framework for negotiations would steer the parties in the direction of a sustainable peace, but even at the outset there were skeptics and many good reasons for skepticism existed. To begin with,



there was no reference made in the framework to Palestinian sovereign statehood as a stipulated goal of the process, and there was not even a reference to the Palestinian right of self-determination.

An even more serious omen of trouble ahead was the absence of a clear-cut political consensus on either side in support of the approach and assumptions embodied in the Oslo Accords. In retrospect, the Oslo Accords were more pleasing to Washington than to either of the parties as it seemed to dispose of the conflict in a manner that allowed the United States to realize its Grand Strategy of oil energy geopolitics in the region. In the Israeli Knesset, despite the Labor Government being in power, the vote on the Oslo Accords was too close for comfort, with 61 in favor, 50 opposed, and nine abstentions. The depth of Israeli opposition was disclosed by the assassination of Yitzhak Rabin in 1995 by Yigal Amir, a religious Jew associated with hard-core settler outlooks emboldened by biblical claims, thereby eliminating the most respected Israeli leader identified with the Oslo approach to Israel's future well-being. It is significant that Benjamin Netanyahu and his Likud Party were openly opposed to the Oslo Accords from the outset, and its implications of withdrawal and the ensuing establishment of a Palestinian state. Before Rabin's death, Netanyahu had attacked Rabin for his accommodationist views, accusing him of "being removed from Jewish traditions ... and Jewish values" at anti-Oslo rallies.<sup>1</sup> Such attitudes exhibited so provocatively within Israel were not expressed internationally as the pretense was maintained that all political tendencies in Israel were seeking a negotiated peace.

In addition, the Israeli electorate was drifting in a rightwards direction, which signaled political trouble ahead for the Oslo timetable and the overall negotiating process, and a reluctance to travel very far down the Oslo road. The Israeli ambivalence toward the Oslo Accords reflected the tension between those who sought a peace based on a two-state consensus and those who believed that Israel's destiny and security depended on the prevention of Palestinian statehood, and coupled this with the belief that all of Jerusalem and as much as possible of the West Bank should be incorporated into an expanded Israel that was biblically ordained. Netanyahu became prime minister of Israel between 1996 and 2002, followed by Ariel Sharon who lasted until his stroke in 2006, with Netanyahu's second period as Israel's leader commencing in 2009.<sup>2</sup>