



Canadians for Justice and Peace
in the Middle East



Module 5: Mutual Recognition between the Israelis and Palestinians

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International Law and Conflict Resolution

Approaches to resolving a conflict such as the Israeli-Palestinian conflict

- Allow the stronger party to dictate the terms of the settlement
 - This approach was used in the first half of the 20th century, and proved disastrous
 - Following WWII, international treaties and conventions were negotiated, and int'l law was expanded
 - E.g. International humanitarian law (IV GC)
 - Non-admissibility of acquiring territory through war
- Use international law as a guide to a solution
 - If int'l law is disregarded to accommodate the stronger party, two outcomes are likely:
 - Social upheavals and more violence, especially if parties involved feel the solution is unjust
 - Formal challenges to the solution by individuals or groups, taken to international bodies, putting the agreement in jeopardy



*September 27, 04- Israeli soldiers stop a Palestinian woman on her confiscated land-
Photo by; Nayef Hashlamoun*

Primary texts applying to the Israeli-Palestinian conflict

- International humanitarian law – allowable behaviour under belligerent occupation
 - Seventeen Hague Regulations (1907)
 - Four Geneva Conventions (1949)
 - Additional Protocols to the GC (1977)
- International human rights law – human rights instruments
 - International Covenant on Civil and Political Rights (ICCPR)
 - International Covenant on Economic, Social and Cultural Rights
 - Convention on the Status of Refugees (1951) with its 1967 Protocol
- UN Resolutions – addressing the conditions of a lasting peace
 - UNSC 242 and 338
 - UNGA 181 and 194
 - Note: Both General Assembly (GA) and Security Council (SC) resolutions are legally binding, with the difference that SC resolutions can be enforced
- Signed bilateral agreements between Israelis and Palestinians
 - Declaration of Principles (DOP) of 1993 (the Oslo Accords)
 - Interim Agreement of 1995 (Oslo II)

The Evolution of Peace Initiatives

- In the 1980s, there was growing international consensus that an international peace conference was required to resolve the Israeli-Palestinian conflict. This consensus was based on:
 - Protection of the rights of Palestinians
 - Promotion of Palestinian self-determination
 - The illegality of Israeli colonies in the Palestinian territories
- In 1991, the Madrid conference established negotiation between the two parties, rather than an int'l conference
 - Not based on specification of rights to be protected
 - Put the international community in the background
 - Limited the int'l community's ability to make sure agreement was based on international norms

Issues with the Madrid Conference (1991)

- Madrid
 - The unequal power relationship between Israel and Palestine would decisively determine the outcome.
 - The US, as co-sponsor of the Madrid process, insisted that the UN and the Security Council stay out of the process. The US' insistence went so far as to try to oppose condemnations of Israeli violations of international law
 - US saw resolutions during this period condemning Israel as interference. Most UN members, however, perceived Israeli actions as interfering with the outcome of the process



March 28, 2006- Israeli soldiers arrest a Palestinian boy during an Israeli military operation in the refugee camp of El-Fawwar, near the West Bank city of al-Khalil (Hebron)- Photo by; Nayef Hashlamoun

Issues with the Oslo Accords (1993)

- Oslo
 - Continued to emphasize the unequal balance of power between Israelis and Palestinians in the compromises considered
 - This difference was amplified by fact that the US was the “broker” and also Israel’s staunchest supporter.
 - Set to lead to a permanent peace settlement “based on Security Council Resolutions 242 and 338,” i.e. not international law



October 4, 2005- In the Palestinian city of al-Khalil (Hebron), Israeli soldiers stop and search Palestinians as they walk through the streets.



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Mutual Recognition and Borders

Mutual Recognition: a core issues

- Israel has often complained that lack of recognition of its right to exist is a fundamental cause for insecurity and violence
- Canada has insisted recently that the Hamas-led PA formally recognize Israel's right to exist



Asymmetrical Recognition of Oslo

- In fact, the PLO did formally recognize the right of Israel in the Declaration of Principles of the Oslo Accords. The Israelis simply recognized the right of the PLO to represent Palestinians:
 - PLO Chairman Arafat wrote, “The PLO recognizes the right of the State of Israel to exist in peace and security,”
 - Israel’s Prime Minister Rabin wrote, “...in light of the PLO commitments included in your letter, the Government of Israel has decided to recognize the PLO as the representative of the Palestinian people and commence negotiations with the PLO...”

Details of Oslo's Asymmetrical Recognition

- Israel didn't recognize the Palestinian right to form a state, or even the possibility that it may happen in the future.
- "Palestinian state" or equivalent formulations appears in neither the DOP of 1993 or the Interim Agreement of 1995
- References to a Palestinian state also do not appear in the issues reserved for "final status" negotiations
- Thus, the Oslo Accords were in violation of int'l law, by not acknowledging and planning for the self-determination of the Palestinian people.



September 27, 04- Israeli border policemen scuffle with Palestinian and International demonstrators at the construction site of Israel's controversial separation barrier in the West Bank village of Beit Aawa near al-Khalil (Hebron)-

The Road Map Peace Plan - intro

- The Road Map Peace Plan was released on April 30, 2003:
 - The PA accepted the RMPP without stipulation
 - Israel responded with a set of 14 “reservations”
 - Never officially signed by the two parties (?)
 - The plan laid out by the RMPP was to have resulted in resolution on all issues – even “final status” issues – by 2005

The Road Map Peace Plan – “foundations”

- The RMPP was predicated strong on a two-state solution, resulting in “the emergence of an independent, democratic and viable Palestinian state...” In addition, it was “based on the foundations of”:
 - The Madrid Conference
 - The principle of land for peace
 - UNSCRs 242, 338, 1397 (vision of a two-state solution)
 - Agreements previously reached by the parties
 - The Saudi Peace Plan (with its endorsement by the Beirut Arab League Summit)

Mutual Recognition in the RMPP

- Implementation of Phase I of the RMPP was to begin with parallel statements from Israel and the PA:
 - Palestinians were to issue an unequivocal statement “reiterating Israel’s right to exist in peace and security...”
 - Palestinians... (?)
 - Israel was to issue an unequivocal statement “affirming its commitment to the two-state vision of an independent, viable, sovereign Palestinian state”
 - Israeli cabinet approved a weak statement (describing a “state” that lacked several of the fundamental characteristics of a true state), but the statement was never approved by the Knesset.

Israel's Reservations to the RMPP, and perspectives on Palestinian Statehood

- Israel's reservations to the RMPP made it all but unworkable from the outset. However, from the perspective of “mutual recognition”:
- The RMPP spoke of a “Palestinian state with provisional borders,” while the Israel (reservation #5) speaks of:
 - a “provisional Palestinian state” with “provisional borders” and “certain aspects of sovereignty,”
 - with “Israeli control over the entry and exit of all persons and cargo, as well as of its air space and electromagnetic spectrum.”
- Israel (reservation #6) insisted that with the Palestinian recognition of Israel, that it recognize it as “a Jewish state” and waive any right of return for Palestinian refugees.
- Israel (reservation #10) insisted on the removal of references to UNSC 1397, the Saudi peace plan, and the Arab Initiative adopted in Beirut, and be based only on UNSC 242 and 338
- Israel (reservation #7) stipulates that adherence to the peace process will “lead to the end of all claims and not only the end of the conflict.”



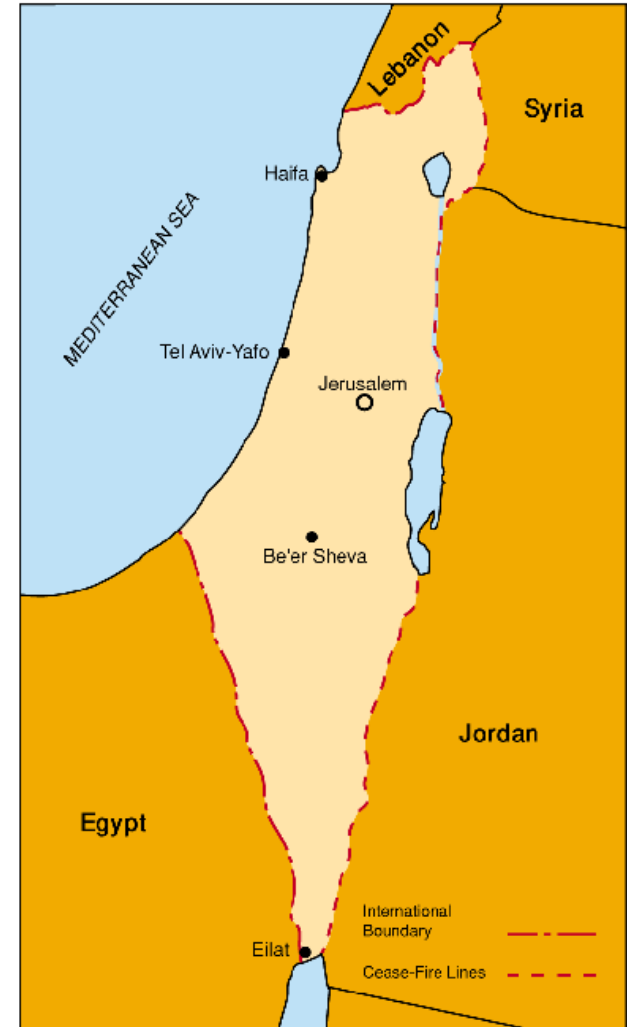
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Borders of the State of Israel

Israel has never formally defined its eastern borders

- In its 1994 peace agreement with Jordan, it specified its border with Jordan, but provides this map (Israeli Ministry of Foreign Affairs) to illustrate
 - Boundaries of an eventual Palestinian state left undefined
 - Makes no distinction between territory occupied in the 1948 war, or in the 1967 war (except the Sinai)
 - Makes no distinction about territory it has already formally (and illegally) annexed: i.e. Jerusalem and the Golan Heights



Israel within Boundaries and Cease-Fire Lines, 1993

Borders and International Law

- Israel (despite its protests otherwise) is considered a belligerent occupier of the Palestinian territories:
 - In December, 2001, the “high contracting parties” to the 4th Geneva Convention agreed unanimously that the Geneva Conventions (governing appropriate behaviour in times of war and occupation) apply
 - The ICJ decision (2004) also considered that the 4th Geneva Conventions apply
 - The RMPP talks about how it will “end the occupation that began in 1967”
- The fundamental norm of international law that applies is the “inadmissibility of the acquisition of territory by war”
 - UN Charter, Article 2
 - UN SC 242 (which defines its application even more clearly)
 - UN SC 338 (1973)

A Rights- Based Approach to Borders

- Must be predicated on the principle of non-acquisition of territory by war, thus:
 - Israel would need to withdraw completely from all territories occupied 1967 (at a minimum)
 - Jerusalem would need to be assigned a special status
 - Minor adjustments to land allocations, provided such adjustments do not deprive either Palestinians or Israelis of strategic portions of their land
 - Negotiations conducted freely and not under duress



October 14, 2005- In the West Bank city of al-Khalil (Hebron), an Israeli soldier searches the bag of a Palestinian woman as she holds a child at a check point near the Ibrahim (Abraham) mosque.



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End of Module