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UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG, SOUTH AFRICA

Master of Arts Dissertation

Dreamers for A Better World:
The Con-Federal "One-State" for Israel-Palestine

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The blood of Abraham, God's father of the chosen, still flows in the veins of Arab, Jew, and Christian, and too much of it has been spilled in grasping for the inheritance of the revered patriarch in the Middle East. The spilled blood in the Holy Land still cries out to God – an anguished cry for peace.

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"…Today, my body was a TV'd massacre.

Today, my body was a TV'd massacre that had to fit into sound-bites and word limits.

Today, my body was a TV'd massacre that had to fit into sound-bites and word limits filled enough with statistics to counter measured response.

And I perfected my English and I learned my UN resolutions.

Today, my body was a TV'd massacre

And let me just tell you, there's nothing your UN resolutions have ever done about this.

And no sound-bite, no sound-bite I come up with, no matter how good my English gets, no sound-bite, no sound-bite, no sound-bite, no sound-bite will bring them back to life.

No sound-bite will fix this."

Rafeef Ziadah
Palestinian Trade Union Coalition for Boycott, Divestment and Sanctions

1 Introduction:

Dreamers for a Better World: The South African "One-State" Solution for Israel-Palestine

> *If I forget you, O Jerusalem, let my right hand wither! Let my tongue cling to the roof of my mouth, if I do not remember you, if I do not set Jerusalem above my highest joy. Remember, O Lord, against the Edomites the day of Jerusalem's fall, how they said, "Tear it down! Tear it down! Down to its foundations!" O daughter Babylon, you devastator! Happy shall they be who pay you back what you have done to us! Happy shall they be who take your little ones and dash them against the rock.*[1]

Psalm 137 is one of the most beautiful passages in the Bible, and is the virtual anthem for the Zionist cause, in the service of which its words expressing the longing for a return to the biblical homeland have been recited on numerous occasions.[2] It is this Psalm that calls for the fidelity to Zion that has been valorised in the powerful State of Israel in the current day, and it is such fidelity that has led to the clash that has become universally known as the Arab-Israeli conflict. It is narratives such as these that dominate the mind-set of Israelis today, and that have provided justification for inflicting serious damage on and exacting revenge against those who oppose them.

This mind-set can be seen over the long history of the conflict, and even more so in the present climate. In May of 2010 Israel boarded and subsequently carried out an assault on Turkish humanitarian flotillas carrying aid packages and workers that were heading for Gaza, resulting in the killing of nine peace activists.[3] These flotillas had attempted to run the naval blockade that Israel had imposed on Gaza in the wake of the Hamas takeover in 2007, and, in addition to the European Leftists and humanitarians on board, were suspected of harbouring radical Palestinians and Turkish Islamists who were "terrorists and thugs paid to assault authorities to provide an incident that would discredit the Jewish state"[4]. However, not only were these flotillas in fact sent by a friendly ally to Israel, but they were also unarmed, and were diverted and boarded in international waters.

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[1] Kovel, J., Overcoming Zionism: Creating a Single Democratic State in Israel/Palestine. Pluto Press: London. 2007. Page 13.
[2] Loc Cit.
[3] White, J., Policy 1665: An Ambush at Sea: Understanding the Gaza Flotilla Operation. 07 June 2010. http://www.washingtoninstitute.org/templateC05.php?CID=3211. Accessed on 10 June 2010.
[4] Siegman, H., Israel's Bloody Interdiction of the Gaza Flotilla. Embassy of the State of Palestine. 11 June 2010. Page 1.

This is but one of the incidents that have allowed the history that is epitomized by Psalm 137 to bubble to the surface and allow Israel to embark upon violence in order to ensure that its Zionist ideology is maintained. This sense of justification is illustrated by the results of a Pechter poll, in which Israeli Jews were asked to consider how they think the Israel Defense Forces (IDF) soldiers should have acted once confronted with violent activists aboard the ship. A plurality (46 percent) thought Israel had used the right amount of force aboard the *Mavi Marmara*, and nearly 39 percent said that Israel had not used enough force.[5] It is under this present climate that negotiators are trying, and failing, to consolidate peace. However, on the ground the people of Israel are beginning to realise that time is running out and a peace agreement is needed.

The reason I use the example of the *Mavi Marmara* flotilla is to shed light on the larger questions raised about the common human conditions that are affected by Israel's occupation policies and its devastation of Palestinian civilian populations, and how if a new solution is not found for the Israeli-Palestinian conflict, such violence will continue unabated. Actions such as the killings aboard the Gaza aid ship do nothing to ameliorate this situation and only create more resistance. One is forced to ask how long the "modern-day Sparta can live by its sword, when the sword creates new difficulties?"[6] What is the reason for the continuing failure of initiatives to achieve peace and blatant disregard for international and humanitarian law? I believe that the reason for this is not because of any lack of a desire or need for peace, as this desire emanates from both sides of the conflict, but is rather due to the nature of the blueprint of what such a peace should entail and how it should be brought about.

The internationally recognized solution for bringing an end to the conflict in the region is what has become known as the two-state solution, and this blueprint for peace has held dominance for nearly two decades, since the adoption of the Oslo Accords in 1993. Such a settlement would ideally result in the emergence of an independent, democratic and viable Palestinian state that would co-exist in a peaceful and secure manner with Israel and its other neighbours. This settlement has sought to end the occupation that began in 1967 through the adoption of numerous United Nations Security Council Resolutions such as Resolution 242, 338, and 1397, and through calls for a cessation of violence and for the acceptance of Israel as a state.[7] However, a growing chorus of dissenters have begun to challenge the blueprint of the two-state solution that was designed to bring about an end to the Israeli-Palestinian conflict, and are instead calling for a single polity that would encompass both Israel and the Occupied Territories.

[5] Pollock, D., Israelis Agree With Bibi. 11 June 2010. http://www.washingtoninstitute.org/templateC06.php?CID=1478. Accessed on 20 June 2010.
[6] Eiran, E., "Lost Tribe: Are Israel's Battles Costing the Country Its Soul?" in Newsweek. 14 June 2010. Page 26.
[7] Carter, J., A Plan That Will Work: We Can Have Peace in the Holy Land. Simon & Schuster: Great Britain. 2009. Page 198.

Following from this, the two-state solution, which has enjoyed such uncontested hegemony as a formula for peace since the Oslo Accords of 1993, can now only be seen as an idea, and one whose time has passed. However, many claim that such facts have been laid bare for all to see. For example, Tilley points out how, as happened during the U.S.-Vietnam conflict, the mainstream news media constantly contests official policy positions and pronouncements on the resolution of the Arab-Israeli conflict.

> *In the 1960's, U.S. intellectual Izzy Stone used to point out that simply reading the New York Times would lay bare the facts behind Nixon's obfuscating murk about Vietnam. He would tear the broadsheet pages in half for easier reading, pull them out at restaurants and talks, and stun listeners with the political picture revealed to have been before their eyes all along. Today, facts are again sitting right there in the mainstream news which signal that, while all the theatre of Middle East conflict has been roiling by, the very terms for peace in the Middle East have been inexorably transformed.*[8]

Therefore, despite the fact that many analysts consider the two-state solution put forward by the Oslo Accords to be the cornerstone for any peace process of historical agreement between the Israelis and the Palestinians, it is clear that in recent years the political situation has transformed itself and morphed into a state of affairs that is entirely different to the climate that prevailed at the time of signing these agreements. The most important reasons for the challenge to this two-state solution relate to developments on the ground, especially the continued settlement expansion and the construction of the Separation Barrier.

The former are the result of the settlements undertaken by Jews and the government of Israel since 1967, which are spread over large areas and control many parts of the West Bank. The Jewish settlements, always recognised by the international community as an obstacle to peace, have accomplished their purpose of preventing any viable two-state solution to occur. The Israeli Government's continued policy of settlement expansion, which allows for settlement construction to take place on land that would make up the future Palestinian state in a two-state agreement, as well as the continued illegal construction of the Separation Barrier which has been chastised for setting out the new borders of Palestine but deviates from the agreed upon Green Line, has destroyed any basis for a viable Palestinian state. Therefore, the premise for all present diplomacy, the two-state solution, has ultimately been said to have been rendered obsolete and impossible in the current climate.

[8] Tilley, V., The One-State Solution: A Breakthrough for Peace in the Israeli-Palestinian Deadlock. University of Michigan: United States of America. 2005. Page 1.

Following from this, in reality there is only one option for all parties involved in the conflict. It is clear that only one state can viably exist in the land of historic Palestine between the Mediterranean and the Jordan River, and that, based on this, all the parties involved in the conflict need to consider seriously what happens next. I argue that it is time that the hegemonic idea of the two-state solution as a formula for peace be abandoned and recognised as simply "an idea, and a possibility, whose time has passed, its death obscured, as was perhaps intended, by daily spectacle"[9], and that instead other solutions should be put forward and formulated. This essay will focus on the possibility of one other such solution, the one-state solution, under which the Palestinians, the Israelis and the international community attempt to create a single democratic state in Israel-Palestine.

Although present diplomacy and negotiations continue to frame their blueprints for peace around the two-state solution, many scholars and academics are beginning to test the conventional wisdom that the two-state solution is the only option worth considering.[10] The biggest obstacle to implementing such a solution, which Israel constantly states is the only viable option for all parties involved, in fact comes from Israeli policies of continued settlement expansion and the construction of the Separation Barrier. It is because of these two practical and physical facts on the ground that such an option has been eliminated as a practical solution. First and foremost, the Jewish settlements have carved Palestinian territory into bantustans too small to be able to sustain a viable national society. Too often, outside analysts fail to grasp the political character of Jewish settlement in the West Bank, and the most common misperception is that the settlements have been planned and built by the settlers themselves. These settlers are often depicted as right-wing religious and nationalist zealots who believe that it is their duty to take back all the land of their forefathers, regardless of the Israeli government's agenda.[11] However, the true architect of the settlement project is the state itself.

A mere ten years ago the settlements were much smaller and more scattered, with a much smaller settler population moving into the West Bank (see Figure 1, Appendix A). At this stage the Israeli withdrawal from these settlements and the creation of a viable Palestinian state were still conceivable. However, by the end of the 1990's, a few short years after the Oslo negotiations, which were meant to cement this withdrawal, the major urban complexes of settlements had burrowed deep into the Palestinian territory. Soon, the major connecting highways from Israel to the settlement blocs had sliced the West Bank into

[9] Sussman, G., "Is the Two-State Solution Dead?" In Current History. Vol 103, No, 669. January 2004. Pp. 37-42. Page 37.
[10] Such scholars and academics who have proclaimed their support for the one-state solution, or at least the need the impending failure of any two-state solution, include but are not limited to Ghada Karmi, Edward Said, Rashid Khalidi, Virginia Tilley, Ali Abunimah, Tony Judt, Omar Barghouti and Gary Sussman.
[11] Tilley, V., "A Two-State Solution, or Smoke and Mirrors? Looking awry at Israel's State-Building Agenda." In Farouk-Alli, A., (Ed). The Future of Palestine and Israel: From Colonial Roots to Postcolonial Realities. The Institute for Global Dialogue: South Africa. 2007. Page 225.

portions, and some 230 000 settlers were embedded in the region with jobs, children, social networks and full cultural lives.[12] The settlements' economic, political and demographic weight then multiplied to such an extent that they soon became politically immovable objects, a situation that was further exacerbated by George W. Bush's affirmation of these realities on the ground.

These settlements are by no means temporary trailers on hilltops, but are mostly planned, extensive urban neighbourhoods that are composed of apartment complexes and semi-detached homes, configured around upscale shopping malls and office districts, with modern entertainment and recreation centres, schools, synagogues and industrial zones.[13] They are then strung together in blocs, allowing them to command strategic positions on the landscape of the West Bank. They are served by major highways, tunnels, bridges and closed adjacent zones, which allows for a quick commute to Israel for the residents; however, these are reserved exclusively for Jewish use. Most of those who reside within the settlements are secular Jews who have received government subsidies or other incentives to live in what are, for many, pleasant bedroom communities for Jerusalem and other Israeli cities.[14] This government project has never been the brainchild or political tool of any single Israeli prime minister or political party, nor is it the product of religious and nationalist zealots as some like to believe; however, it is a policy that is allowing for the complete dismemberment of the West Bank and the destruction of any future viable Palestinian state.

This erosion of the prospects for a viable Palestinian state was intensified by Ehud Olmert, who in mid-March 2006 declared his intention to make the Separation Barrier a permanent borderline for Israel. Since the beginning of the construction of the Wall, Israel has alleged a security rationale for the building of this structure and used a spate of attacks that were carried out inside Israel in 2002 by Palestinians to authorise its construction as a security fence. Although Israel reserves the legitimate right to defend itself from such attacks, their security rationale is suspect due to the fact that upon completion it is estimated that approximately eighty-six percent of the Wall will run inside the West Bank, including East Jerusalem, rather than along the 1949 Green Line.[15] The Wall deviates extensively from the path of the Green Line, at some points veering up to twenty-two kilometres into the West Bank. If the current plans for the construction of the Wall are completed, over 351 000 Palestinians will be living between the Green Line and the Wall, in what has been termed the 'Seam Zone', including approximately 250 000 residents of East Jerusalem, while 385 000 Israeli citizens living in some 80 illegal settlements will find themselves on the Western side of the Wall, fully integrated into the State of Israel.[16]

[12] Tilley, V., The One-State Solution: A Breakthrough for Peace in the Israeli-Palestinian Deadlock. Op Cit. Page 3.
[13] Tilley, V., "A Two-State Solution, or Smoke and Mirrors? Looking awry at Israel's State-Building Agenda." Op Cit. Page 225.
[14] Loc Cit,
[15] Al-Haq., The Annexation Wall and Its Associated Regime. Al-Haq: Ramallah. 2009. Page 5.
[16] Loc Cit,

The policy of building within the Occupied Territory rather than on the Green Line effectively contradicts the security rationale and also serves to increase the length of the Wall, which would create a longer border that would require policing. This is antithetical to security needs and proves that annexation is the ultimate goal. The result will therefore be that the Wall achieves the exact opposite of what was intended. Israel claims that the building of this Separation Barrier will create a de facto two-state solution, leading to the inevitable evacuation of settlements lying to the east of its route, and that the route will correct itself over time. However, instead of facilitating the two-state solution, the creation of such settlements and the Separation Barrier has in fact hijacked the prospect of a viable Palestinian state, and has merely created Palestinian bantustans on some forty-two percent of the West Bank. Instead of the Wall creating a clear geographical separation and maintaining a window of opportunity for two states for two peoples, this window of opportunity has disappeared due to these facts on the ground and has led to Apartheid-style social divisions.

Any Palestinian state created in the twisted scrap of land remaining amidst the settlement grid and the Separation Barrier will most certainly fail Palestinian hopes and needs in any future state they wish to inhabit, and as no power, internal or external, has the capability to effect any meaningful withdrawal from the settlements or the destruction of the Separation Barrier, it seems as if the two-state solution has been destroyed by the very actor whose livelihood depended on it. No viable Palestinian state can be constituted from the land that is left; there is only confounding rhetoric about it.[17]

In the present climate the single-state solution does not yet pose a critical threat to the two-state solution as powerful arguments remain in favour of separation. The reason for this is because the separate state solution entails what each side strongly wants: to achieve territory, resources and recognition.[18] Despite the dominance of such a solution, there is an ever-growing chorus of dissenters from political, social and academic backgrounds who are united in their call for a one-state solution under either a bi-national or secular polity framework which would encompass Israel and all of the Occupied Territories. Although the proponents of such a solution still form a minority, the proposal is gaining more support. The fact that a fairly recent survey found that 67 percent of Israelis strongly or moderately fear scenarios in which they find themselves in a one-state reality, suggests that the fear itself underscores the possibility of such a reality.[19]

[17] Tilley, V., The One-State Solution: A Breakthrough for Peace in the Israeli-Palestinian Deadlock. Op Cit. Page 4.
[18] Sussman, G., Op Cit. Page 40.
[19] Ibid. Page 37.

It is clear that the two-state solution as it stands currently only promises lasting dangers for Israel and unacceptable risks for the international community, and it is therefore time to look for alternatives. The only viable alternative is the one-state solution, which could resolve the entire conflict in one dramatic gesture and is already a possible reality. It would absorb all the entrenched populations that exist between the Mediterranean and the Jordan River into one unified state. Although this one-state model is opposed and contested by many of the parties involved in the conflict, as will be further explored in the chapters that follow, it is not as bizarre or as alien to the conflict as some people believe or argue.[20] The idea of a shared state is not a new one, and was one that was frequently discussed in the early, utopian phase of Zionism, and was revived shortly before the founding of the State of Israel by Ihud, an organization led by Judah Magnes and Martin Buber.[21] Speaking in 1947, both scholars claimed that they did not favour Palestine as a Jewish country or Palestine as an Arab country, but rather as a single bi-national state which would be the common country for two peoples. Although the one-state model was eclipsed, rather than eliminated, by the consequences of the Holocaust as well as the continual flux of war and terrorism, in the present climate it is being revived in a range of forums of both Palestinians and Jewish liberals, and is continuing to grow in force. This expanding influence has mostly been created as a consequence of the reality generated by the settlement grid and the Separation Barrier: no other solution, at this point, can work.[22] This position will be analysed and discussed in Chapter Two.

Following from this, if the two-state solution is dead and the one-state solution is the only possibility in the present climate, what kind of one-state model should be adopted? The first point that would have to be addressed is that the possibility of a single state would force an immediate decision about the fate of Israel as "the Jewish state". Should the single state remain a Jewish state that would sustain Jewish national dominion or politics? Or has Jewish nationalism seen its day and is it now ripe for abandonment? In the middle of this spectrum lies the compromise through which the Jewish national home can somehow be preserved in a genuinely civil-democratic system similar to that which is practised within Western states with no discrimination amongst citizens based on ethnicity or religion.[23] This dissertation will argue that the third option of the one-state solution is the only model that should be brought to the table and seriously discussed as a blueprint for peace, whereby some way must be found to consolidate the land of Israel-Palestine into one democratic state, which will serve all of its citizens equally and in which the Jewish national home can find a new and more secure configuration that does not require Jewish ethnic

[20] Tilley, V., The One-State Solution: A Breakthrough for Peace in the Israeli-Palestinian Deadlock. Op Cit. Page 9.
[21] Kovel, J., Op Cit. Page 219.
[22] Tilley, V., The One-State Solution: A Breakthrough for Peace in the Israeli-Palestinian Deadlock. Op Cit. Page 10.
[23] Loc Cit.

domination. This is the only option and cannot be dismissed, and although overwhelming obstacles exist, no other choice remains.

The option of preserving a viable future for all parties to the conflict can only be understood through the discussion of a civil-democratic one-state solution to the Israeli-Palestinian conflict, and for this reason it is important to draw on past practices and case studies that can help inform us of how such a state could look as well as some of the obstacles that will need to be overcome. South Africa offers a lesson in this regard. Chapter Three opens this argument by presenting numerous comparisons and differences that currently exist between Israel-Palestine and Apartheid South Africa. This comparison between Israeli policies and South African Apartheid is not a new endeavour, and it is for this reason that South Africa is often looked to as the peace-model-in-waiting for Israel-Palestine. This comparison revolves around the notion of Apartheid as defined through Article 2 of the Apartheid Convention, which will be presented in full in Chapter Three. The list used for the sake of this dissertation is neither exclusive nor exhaustive, and a determination that Apartheid exists does not require that all the listed acts are practised; however, the policies that become the focus of the third chapter are used for clarity and understanding.[24] Chapter Three aims to assess whether the State of Israel is practising Apartheid in the Occupied Palestinian Territories, and attempts to do this by proving that the following three core elements exist: that two distinct racial groups can be identified; that inhumane acts are committed against the subordinate group; and that such acts are committed systematically in the context of an institutionalised regime of domination by one group over another.[25]

Chapter Three discusses how Israel subjects the Palestinian people to an institutionalised regime of domination amounting to Apartheid as defined under international law. This regime is found to vary in intensity against different categories of Palestinians depending on whether they reside in the Occupied Territories or within the borders of Israel itself. The Palestinians who are located within the Occupied Territories are seen to be subjected to a particularly aggravated form of Apartheid, while Palestinian citizens of Israel, while entitled to vote, are not part of the Jewish nation as defined by Israeli law and are therefore excluded from the benefits of Jewish nationality and are subjected to systematic discrimination across a spectrum of recognised human rights.[26] Following on from this, and due to the fact that Israel is legally obliged to respect the prohibition of Apartheid as contained in international law, Chapter Three concludes that Israel has introduced a system of Apartheid against the Palestinians as a racial group, and

[24] Russell Tribunal On Palestine.,Third International Session – Cape Town. South Africa Session: Findings. 07 November 2011. http://www.russelltribunalonpalestine.com/en/sessions/south-africa/south-africa-session-%e2%80%94-full-findings. Accessed on 11 November 2011.
[25] Loc Cit.
[26] Loc Cit.

because of this, can be compared to South Africa prior to 1994. The comparative analyses of South African Apartheid practices, alongside the internationally recognised definition of Apartheid, illuminates that although there are certainly differences between Apartheid as it was applied in South Africa and Israel's policies and practices, the two systems can be identified by similar dominant features.

Essentially, a troika of legislation underpinned the South African Apartheid regime and established its three principal features. The first of these was the formal demarcation of the population of South Africa into racial groups, while the second feature of South African Apartheid was the segregation of the population into different geographic areas, which were allocated to different racial groups to restrict the passage by members of any group into the areas that were allocated to a different group. Having divided the population along these racial lines, these policies were held up by the final pillar of South African Apartheid, a matrix of draconian security laws and policies that were put in place in order to suppress any opposition to the regime and reinforce the system of racial discrimination.[27] As Chapter Three proves, Israel's practices and policies, especially in the Occupied Territories, can be defined by the same three pillars of South African Apartheid.

Chapter Four then lays out some of the features that allowed Apartheid South Africa to move into a civil-democratic state post-1994, and does this by analysing the Truth and Reconciliation Commission as well as the debates that surround the federal versus union model for post-conflict state reconstruction. The huge chasms that served to divide the different groups within South Africa are strikingly similar to the chasms that exist within Israel-Palestine, and due to this it can be speculated that those features that were present in the South African climate could also aid Israel-Palestine in their endeavour to move into a post-conflict society.

In South Africa there was a need to attempt to unify the whole of South Africa across the racial divisions that had created such large chasms for decades prior, and this could not be done without reflection on the crimes and atrocities that has occurred during and because of Apartheid. In order to come to terms with and understand what had happened during those decades of discrimination and oppression, there needed to be a reconciliation process that involved individual South Africans. In order to facilitate this, the Truth and Reconciliation Commission (TRC) was introduced and in fact became one of the symbols of South Africa's transition to democracy. It has been said that by devoting attention to Apartheid victims and perpetrators, the TRC was able to embody the transitional process, and due to this the South African TRC has become widely regarded as a model of how societies can deal with traumatic pasts. The similarities

[27] Russell Tribunal On Palestine., Op Cit.

that exist between South Africa pre-1994 and Israel-Palestine as analysed in Chapter Three prove that those features adopted within South Africa to deal with such deep societal chasms across racial and ethnic lines should be seriously considered when attempting to deal with the similar chasms that exist in Israel-Palestine.

Alongside the use of the TRC as a source of post-conflict reconciliation is the theory of state models that could possibly be implemented. In post-conflict societies, the designers of the new state are usually confronted with a choice between two poles that exist on a continuum, with representative government lying at one end and effective government at the other. This ultimately epitomises the choice between the level of centralisation or decentralisation of power that occurs within the government and therefore has a direct effect on the amount of power enjoyed by the centre. Following from this it can be seen that the notion of government has direct implications for the union/federation debate.[28] This was an important feature for the creation of the new South African state and will remain an equally important one for Israel-Palestine due to the demographic threat felt by Israeli Jews as well as the notion of Jewish nationalism which could be usurped in a civil-democratic state. Chapter Four therefore aims to analyse how post-1994 South African society was formed, in order to relate the salient features and issues of this formation to the Israeli-Palestinian conflict. This is done not only by looking at the theoretical frameworks and debates that surrounded the creation of a new constitution and a new South Africa, but how individuals across the colour line got to know one another, listen to each other, understand one another, and think beyond the Apartheid past, a process that aided national unity and reconciliation. A similar process will be needed within the society of a post-conflict Israel-Palestine. These above three chapters hope to portray the social and political realities that any new discussion on a future one-state solution will need to consider.

In order to portray this empirical reality on the ground, this paper draws heavily on scholarly sources, and hopes to offer an extended argument for the single democratic state for Israel-Palestine. In order to do this, however, a brief literature review is required of some of the prominent authors and academics that have commanded this field of interest. This will not be done by alluding to what each author has specifically said on the subject, but rather by compiling a brief but overarching literature review in order to allow the reader to understand how such arguments and debates have evolved. All the literature has agreed that the vortex of violence and counter-violence, the perpetual round of war and aggression, the use of state terrorism and the response from the disempowered, the reprisals and collective punishment, the bombings and house demolitions, the awful grief and misery experienced from both sides, and the

[28] Kotze, D.J., "The New South African State: Why It Should Not Be a Federation." In Kriek, D.J, Kotze, D.J, Labuschagne, P.A.H, Mtimkulu, P.F.G, & O'Malley, P.K.R. (Eds). Federalism: The Solution? Principles and Proposals. HSRC Publishers: South Africa. 1992. Page 269.

mutual animosity, hatred and fear are all that have erupted from the creation of the two-state solution under the much-revered Oslo Accords. The Syrian President, Bashar al-Asad, has even gone as far as to state that every new Arab generation hates Israel more than the previous one as a result of Israeli state terrorism in the form of bombs and missiles fired into densely populated Palestinian ghettoes and Lebanese cities and villages, of the annexation of land, of what can only be described as ethnic cleansing on a relentless scale since 1947, and ultimately of all the brutal manifestations of a colonial settler project going back to the 1880's.[29] But what is the alternative to this? Is the two-state solution the only option the Middle East and the international community can rely on to bring peace to the region and its people? Is the one-state thesis a mere theory, with no chance of being adopted and therefore merely an academic exercise? Many do not believe that this is true.

Even for dogged optimists, hopes that were once held for the implementation of a successful two-state solution for the Israeli-Palestinian conflict are fading due to continuing violence on the land. This is exacerbated by the advanced realities on the ground, such as the ever-expanding Jewish settlements in the West Bank and the construction of the destructive Separation Barrier which are raising such impediments to the creation of a viable and sustainable Palestinian state.[30] The Israeli Government's continued policy of settlement expansion, which allows for settlement construction to take place on land that would make up the future Palestinian state in such an agreement, as well as the continued illegal construction of the Separation Barrier, which has been chastised for setting out the new borders of Palestine but deviates from the agreed upon Green Line, has allowed the two-state solution to have been rendered obsolete in the current climate.[31] This is further emphasized through the continuing violence that the region has experienced since the Oslo Accords in 1993 under which the two-state solution was adopted.[32] This has allowed the already grave Israel-Palestinian conflict to worsen immeasurably, with any hope for a peaceful resolution as predicted and outlined within Oslo and the Roadmap being dashed. As a result, most observers have started to write obituaries for the two-state option.[33] I argue that it is time that the hegemonic idea of the two-state solution as a formula for peace be abandoned and recognised as simply "an idea, and a possibility, whose time has passed, its death obscured, as was perhaps intended, by daily spectacle"[34], and that instead other solutions should be put forward and formulated.

[29] Kotze, D.J., Op Cit. Page 254.
[30] Tilley, V., "A Two-State Solution, or Smoke and Mirrors? Looking awry at Israel's State-Building Agenda." Op Cit. Page 225.
[31] Rouhana, N.N, & Sultany, N., "Redrawing the Boundaries of Citizenship: Israel's New Hegemony." In Journal of Palestine Studies. Vol, 3, No. 1. Fall, 2003. Pp. 5-22. Page 16.
[32] Sussman, G., "Is the Two-State Solution Dead?" In Current History. Vol 103, No, 669. January 2004. Pp. 37-42. Page 37.
[33] Loc Cit.
[34] Loc Cit,

In line with this, dwindling optimism and hope cling to the notion that some unforeseen transformation of the political or security landscape will alter Israel's incentives sufficiently to affect its meaningful and permanent withdrawal from the West Bank.[35] In order to justify their continued presence in what was to be the future Palestinian state, the Israeli government has blamed the Palestinians for failing to fulfil their obligations under the Oslo Accords or the Roadmap for Peace, especially, to end all violent resistance to Israel's occupation, which Israel has presented as a precondition for Israel's withdrawal.[36] The international community has largely endorsed Israel's position, which can be seen by the fact that they have endorsed Israeli insistence that Hamas 'abandon terror' and recognise Israel's 'right to exist', and failing Palestine's compliance with these conditions, the entire diplomatic process remains stalled.

Due to this, the two-state solution has no present and prospective reality in Israeli state planning or the constraints of Israel-Palestine's geography and needs to be consigned to the dustbin of history, as who could conceive that the dismembered West Bank, currently reduced to four enclaves, ghettoised behind the monstrosity called a Security Barrier and surrounded by a settlement grid, could pass as an acceptable and viable state by any self-respecting Palestinian leadership?[37] The existing reality is that the only viable solution is that of a secular and democratic one-state solution. It could be argued that one state already exists, given the hopeless dismemberment of the West Bank. The single-state model is the only blueprint for peace upon which analysis must proceed. Under such a state, sectarian and religious diversity would be freely expressed, but clearly divorced from political power as such, therefore providing all groups in the society with equal rights in a common democracy, much like what occurred in South Africa in 1994.[38] However, currently, there are only a handful of scholars who have adequately analysed the similarities between South Africa and Israel-Palestine, and even fewer who have attempted to break the mould and consider how such a secular and democratic state could be implemented within Israel-Palestine.

The situation that is currently in place within the Israeli-Palestinian context is often compared to that of the South African Apartheid and bantustan systems.[39] The creation of South Africa's ten bantustans or homelands deprived their inhabitants of South African citizenship, and were aimed at the exploitation and management of the black labour pool. However, these bantustans were not enclosed by a fence, there were no permanent checkpoints or curfews, and they were never subjected to land or air bombardment. In fact, Pretoria lavished funds and investment on these schemes in order to build infrastructure,

[35] Usher, G., "Unmaking Palestine: On Israel, the Palestinians, and the Wall." In Journal of Palestine Studies. Vol XXXV, No, 1. Autumn 2005. Pp. 25-43. Page 39.
[36] Tilley, V., "A Two-State Solution, or Smoke and Mirrors? Looking awry at Israel's State-Building Agenda." Op Cit. Page 225.
[37] Ibid. Page 251.
[38] Ibid. Page 225.
[39] Tamarkin, M., South Africa and Israel/Palestine: Asymmetrical Conflicts and Asymmetric Balance of Power. Tel Aviv University Press: Tel Aviv. 2008. Page 4

administration buildings, 'presidential' palaces and airports. The bantustans were allowed their own flags and emblems and were even encouraged to open diplomatic missions abroad with any country that was willing to engage with them, even if these were few and far between.[40] One thing that can be said of the Apartheid government is that when the regime decided that they had to rid themselves of their 'native' problem through the forcible eviction of blacks from cities, they did so by setting up the trappings of independence, which was more than can be said for the treatment of Palestinians in Israel. It is for these reasons that many academics feel that the Israeli-Palestinian conflict can be compared against South Africa's transition to democracy, with similar fault lines of contestation. Therefore, many have speculated that due to the many contextual similarities between the two countries, with a similar one-state model, and similar conflict-resolution mechanisms and state-building activities, Israel-Palestine can mirror South Africa in the resolution of its conflict.

History shows that ideas that break the mould start small, with few adherents. If conditions allow and if the situation ripens, theory can seize the minds of many and inspire action. The idea becomes a concrete force when it is seized by the masses. Then the old systems, outmoded and anachronistic, get swept aside and the stalemate is broken. South Africa's transformation from the Apartheid anachronism occurred when the white ruling elite divided, and the populace united in opposition.[41] In South Africa this came about through the protracted mass struggle of its people, reinforced by the supply of arms and a powerful international solidarity movement using the weapons of boycotts and sanctions. It culminated in the liberation of blacks and whites, but this would not have been possible without the firm unity of the people and their organisations, based on a common dream.[42] In line with this, and extending the comparison between South Africa and Israel/Palestine, it is clear that for the secular and democratic one-state solution to have any hope of being a success in Israel-Palestine, it would require a monumental shift in the mind-sets of both Israelis and Palestinians. However, many believe that this is possible and that the situation is ripe for such change, and yet this has not been sufficiently researched or analysed by scholars, and more research is required into this field in order for such comparisons to be drawn. It must be noted that while there are numerous similarities between Israel-Palestine and South Africa, there exist a number of important differences that could derail the secular and democratic model within the former.

Many have argued that the Arab-Israeli conflict is not analogous with South African Apartheid. They argue that the South African and the Israeli-Palestinian conflicts share some similarities, but at the same time there are also striking differences that are equally instructive with regard to the respective conflicts,

[40] Tamarkin, M., Op Cit. Page 253.
[41] Tilley, V., "A Two-State Solution, or Smoke and Mirrors? Looking awry at Israel's State-Building Agenda." Op Cit. Page 253.
[42] Loc Cit.

their resolution and their conflicts.[43] Ultimately one cannot assume that the success that South Africa saw will automatically be realised in Israel-Palestine. One reason is because the similarities are mainly structural. Both the conflicts are asymmetrical, in that they are conflicts between states and non-state actors, with the fault lines across which such conflicts unfold being cultural, religious and ethnic/national.[44] Apart from this mere structural resemblance, many have argued that it can be seen that the South African and the Arab-Israeli conflict cannot be equated absolutely, that Israelis and Palestinians perhaps have little to learn from the process of conflict resolution in South Africa, and that they therefore have to clear their own path to salvation.[45]

In South Africa there was an intermingled and multi-racial population that existed within a single geographic territory, with the ruling white population constituting a small minority that was not self-sustaining, making the separation of the races impossible. It was soon realised that within the context of South Africa, the people would have to learn to swim together, or they would sink together. However, Israel on the other hand has a substantial Jewish majority within its official borders and they have no intention of sacrificing this by amalgamating with a territory that contains mainly non-Jews. It has also been stated that another crucial difference that exists between the South African and the Arab-Israeli conflict is the differing nature of the political visions of the black South Africans and the Palestinians. The black majority in South Africa were seen to be committed to a non-racial society that would belong to all those who live in it; however, if one analyses the Hamas Charter or the Palestinian National Covenant, it can be seen that it is rejectionist and victory orientated, with the ultimate aim being to establish a dominant Arab-Islamic entity in place of Jewish Israel.[46] However, it is argued that this can be overcome as it is becoming more and more evident that no power or party has the ability to effect any meaningful withdrawal of the Israeli settlement grid from Palestinian land. There can be no hope for a one-state solution without the agreement and aid of Israel and all of those who reside within it. All parties to this conflict are beginning to realise that partnership is not optional, but is rather a cornerstone of any future agreement. Following from this, it is believed by many that the South African model of a democratic federal state is the only viable model, albeit with certain minor alterations.

States and regimes change throughout history. Rhodesia became Zimbabwe, Apartheid South Africa became a democracy, and the Soviet Union, Yugoslavia and the German Democratic Republic all dissolved as political entities without the destruction of their people. The Zionist project displays clear

[43] Tamarkin, M., Op Cit. Page 4.
[44] Ibid. Page 1.
[45] Ibid. Page 12.
[46] Loc Cit.

signs of corruption and decay, with a confused ruling political-military elite that has hopelessly lost its way, striking blindly at its perpetual victims, and a state that manifestly fails to handles it inner contradictions.[47] The first Intifada manifested remarkable popular creativity and developed as a mass movement, helping to generate a courageous peace movement, and worked to unite Israelis and Palestinians.[48] It can be seen that a mind-set shift has already begun, and all that is needed now are advocates who are strong enough to stand by their convictions and follow through on their beliefs that a one-state solution can work. It is not a dream, nor an improbability. South Africa has been through the processes of change and has emerged successfully, so why can Israel-Palestine not do the same?

The Israeli-Palestinian conflict remains one of the longest and most intractable conflicts, and I believe that this research will allow for knowledge gain for the discipline. This dissertation will therefore ultimately aim to provide an explanation and model that could possibly contribute to the development of a successful and comprehensive peace agreement to resolve the Israeli-Palestinian conflict that follows in the footsteps of the similar South African model. Such a model would differ vastly from the majority of earlier scholarly blueprints for peace, which have primarily focused on the two-state solution around the pre-1967 borders. This dissertation will aim to demonstrate adequately the strengths and advantages of the one-state solution, which would most likely be created as a democratic and federal entity. This will be done through the use of a focused and in-depth case study of South Africa's recent experience with resolving a similar conflict by employing a model similar to the one-state solution that is being suggested for Israel-Palestine. This will be aided by an analysis and ultimate rejection of the two-state solution. This dissertation therefore aims to find a suitable model that could be transposed, if slightly altered, onto the Middle East peace process.

As it stands currently, the two-state solution is the only internationally recognised solution to bring an end to this conflict that has endured for seven decades, and it is endorsed by the most powerful states within the international arena, in particular by the Quartet (the United States, Britain, France and Russia) and those Arab countries such as Saudi Arabia and Egypt that have played a major role in attempting to bring about peace. Despite the obvious failure of the two-state solution, these states still fully endorse and continue to support it. However, since similar conflicts with similar fault lines, such as South Africa and Northern Ireland, have been resolved through a solution that proposes that all inhabitants live within one state, whether under a federal or unitary state structure, I believe that it is time for a new solution to be brought to the negotiation table.

[47] Kasrils, R., "Alternatives to a two-state solution: binational single state or one state?" In Farouk-Alli, A., (Ed). The Future of Palestine and Israel: From Colonial Roots to Postcolonial Realities. The Institute for Global Dialogue: South Africa. 2007. Page 254.
[48] Carter, J., Op Cit, Page 107.

By the end of this dissertation it is hoped that it will be proved that although culture, ideology and a century of conflict have served to divide the people that exist on the land of Israel-Palestine, the two groups are embedded in each other and remain inextricably linked, conjoined twins in a narrow and delicate landscape.[49] As it stands currently, the two-state solution is null and void, and the option for this solution has evaporated. The possibility for partition between the two warring factions has been lost, and today, no ideology, no planning, no new "peace process", and certainly not the snaking Apartheid Wall or settlement construction can justify carving this small land into two states.[50] At this present juncture, the time has come to think the unthinkable, and we are left with only one alternative: Israeli-Palestinian coexistence on one piece of land in one nation. And who better to learn from than the very state that we inhabit and that went through a similar ordeal just eighteen years ago: South Africa.

[49] Tilley, V., The One-State Solution: A Breakthrough for Peace in the Israeli-Palestinian Deadlock. Op Cit. Page 183.
[50] Loc Cit.

1. *Appendix A*

Comprehensive Settlement Population 1972-2008					
Year	***West Bank***	***Gaza Strip***	***East Jerusalem***	***Golan Heights***	***Total***
1972	1182	700	8649	77	10608
1983	**22800**	**900**	**76095**	**6800**	**106595**
1985	44100	1900	103900	8700	158700
1989	69800	3000	117100	10000	199900
1990	78600	3300	135000	10600	227500
1991	90300	3800	137300	11600	243000
1992	101100	4300	141000	12000	258400
1993	**111600**	**4800**	**152800**	**12600**	**281800**
1995	133200	5300	157300	13400	309200
1996	142700	5600	160400	13800	322500
1997	154400	5700	161416	14300	335816
1998	163300	6100	165967	14900	350267
1999	177411	6337	170123	15313	369184
2000	192976	6678	172250	15955	387859
2002	214722	7277	175617	16503	414119
2003	224669	7556	178601	16791	427617
2004	234487	7826	181587	17265	441828
2005	258988	0	184057	17793	460838
2006	268400	0	186857	18105	473362
2007	276462	0	189708	18692	484862
2008	**295380**	**0**	**193091**	**19083**	**507554**

Figure 1:
A table showing the comprehensive settlement population from 1972 to 2008.

Foundation for Middle East Peace., Comprehensive Settlement Population 1972-2009. Date Unknown. http://www.fmep.org/settlement_info/settlement-info-and-tables/stats-data/comprehensive-settlement-population. Accessed on 23 September 2011.

2 The Two State Solution in Israel-Palestine: *Relinquished to the Deathbed of History?*

1. Introduction

> *I should much rather see Jews living together with the Arabs on the basis of living together in peace than the creation of a Jewish state… My awareness of the essential nature of Judaism resists the idea of a Jewish state, with borders, an army, and a measure of temporal power, no matter how modest. A return to a nation in the political sense of the word would be equivalent to turning away from the spiritualization of our community which we owe to the genius of our prophets.*[51]

Presently, the two-state solution enjoys a certain amount of hegemony with regards to being the foremost and most feasible peace blueprint that is currently on the table. This solution has most recently been stipulated and analysed under the International Quartet's Roadmap for Peace on 30 April 2003. Such a solution is mostly seen as being the only alternative to the current state of affairs, setting aside the extreme scenarios of one side annihilating the other, whereby the Arabs throw the Jews into the sea or Jews forcibly transfer the Palestinians either to Jordan or to their collective grave.[52] Such a two-state solution would result in what has been termed an independent, democratic and viable Palestinian state living side by side with Israel and its other neighbours. This solution is aimed at resolving the Israel-Palestinian conflict, and ending the occupation that began in 1967. It has developed from the foundations of the Madrid Conference; the principle of land for peace; United Nations Security Council Resolutions 242, 338, and 1397; agreements previously reached by the parties; and the initiative of Saudi Crown Prince Abdullah, which calls for the acceptance of Israel as a neighbour living in peace and security, in the context of a comprehensive settlement.[53] Such a solution would occur in three phases.

In the first phase, the Palestinians would immediately undertake an unconditional cessation of violence, with such an action being accompanied by supportive measures undertaken by Israel, and both parties therefore resuming security cooperation. Alongside this, the Palestinians would also need to undertake comprehensive political reform in preparation for statehood, including drafting a Palestinian constitution, and free, fair and open elections upon the basis of such measures. In response, Israel would take all the necessary steps to help normalise Palestinian life and would withdraw from the Palestinian areas occupied

[51] Kovel, J., Op Cit. Page 197.
[52] Ibid. Page 209.
[53] Carter, J., Op Cit. Page 198.

since September 28, 2000, which would result in the two sides restoring the status quo that existed at the time, as security performance and cooperation progresses. Israel is also obligated to freeze all settlement activity. In the second phase, efforts would be focused on creating an independent Palestinian state with provisional borders and attributes of sovereignty, based on the new constitution, as a significant step towards permanent status settlements. This can be achieved with the Palestinians acting decisively against terror, and being willing and able to build a functioning democracy based on tolerance and liberty. The final phase would see continued comprehensive and effective progress, and continued and sustained security performance and cooperation. In 2003, it was speculated that the parties would reach the final and comprehensive permanent status agreement that would end the Israeli-Palestinian conflict in 2005, through a settlement that was negotiated between the parties based on the United Nations Security Council Resolutions which would effectively end the occupation that began in 1967. Such a settlement was intended to include an agreed, just, fair and realistic solution to the refugee issue, and a negotiated resolution on the status of Jerusalem that took into account the political and religious concerns of both sides while protecting the religious interests of Jews, Christians and Muslims worldwide. The settlement was intended to fulfil the vision of two states living side by side in peace and security: Israel and a sovereign, independent, democratic and viable Palestine.[54] Despite this optimism, 2005 came and went with no permanent final status arrangements.

I argue that the two-state solution is no longer a viable solution and that a horizon of change is occurring. This is because when one looks at the two-state solution, it is evident that there are two developments that are making such a solution impossible: the Israeli Government's continued settlement expansion policies, and the creation of the Separation Barrier, both of which cut into what would be the future Palestinian state. Such policies have ultimately rendered the two-state solution both impractical and unviable.

2. Israeli Settlement Policies and Construction

Geographically, the area between Lebanon, the Jordan River, Egypt and the Mediterranean Sea is roughly 10 600 square miles. The International Court of Justice and all of the countries that recognise Israel accept the legal boundaries of Israel to be those existing prior to June 1967, at which point the West Bank, Gaza, the Golan Heights and Sinai were occupied by Israeli forces.[55] Although Israel has removed its settlers from Gaza, the official status of both Gaza and the West Bank as Israel's occupied territories continues, with independent sovereignty, under which Israeli settlements are illegally being constructed. On 25

[54] Carter, J., Op Cit. Page 206.
[55] Ibid, Page 146.

November 2009, the Israeli Government, under the Likud Party's Benjamin Netanyahu, adopted a temporary settlement freeze for a period of ten months in Decision No.B/22 of the Cabinet of Ministers for National Security Matters.[56] This moratorium came to an end on 26 September 2010, and although it was described as such, it was not the first of its kind in the contemporary history of the Israeli-Palestinian conflict. This moratorium came into play as a result of bilateral negotiations following a demand for a total cessation of settlement expansion, including in East Jerusalem, initially demanded by the Obama Administration; however, the terms were so narrow that they effectively allowed many types of building to continue.[57] The U.S. has been associated with the notion of a settlement freeze since 2003 when the Bush Administration signed on to the idea in order to promulgate the "Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict," where the initial phase of the Roadmap required the Israeli Government to freeze all settlement activity, including natural growth of the settlements.[58] The Obama Administration reaffirmed its commitment to the Roadmap through Secretary of State Hilary Clinton's confirmation hearing.

The settlement freeze that was agreed to by the State of Israel was not merely a policy, but a law imposed by the Government of Israel through the issuing of a military order imposing the moratorium. This made the implementation of this moratorium a legal obligation, and the violating of the freeze a breach of the law. In this way Netanyahu's actions regarding settlements were more far-reaching and concrete than any other announcement or obligation undertaken by any other previous governments.[59] Despite this, the construction of settlements and outposts continued, placing Israel in blatant violation of not only international law, which deems the settlements to be illegal, but also of domestic law. This moratorium as agreed on by Obama and Netanyahu promised the cessation of building new settlements and of the expropriation of land for settlements, which included a suspension of new permits and new construction in Judea and Samaria, along with the promise to enable normal life to continue for the three hundred thousand Israeli citizens who lived in these occupied territories.[60] This was supported by the fact that in the 29 settlements where there was construction taking place that would have violated the moratorium, demolition orders were issued, and according to Israeli media, at the end of February 2010 the Israeli authorities destroyed foundations that had been laid in the settlement of Revava in violation of the

[56] Al-Haq., Unmasking the "Freeze": Israel's Alleged Moratorium on Settlement Construction Whitewashes Egregious Violations of International Law. International Commissions of Jurists: Geneva. 2011. Page 6.
[57] Foundation for Middle East Peace., Report on Israeli Settlement in the Occupied Territory: A Bimonthly Publication of the Foundation for Middle East Peace. November-December 2009. http://www.fmep.org/reports/archive/vol.-19/no.-6. Accessed on 10 March 2010.Page 2
[58] Rosen, S.J., Obama and a Settlements Freeze. 28 January 2009. http://www.meforum.org/article/2057. Accessed on 19 March 2010. Page 1
[59] Friedman, L., Settlements in Focus (March, 1, 2010): The Settlements Moratorium: A Three-Month Accounting. 1 March 2010. http://peacenow.org/entries/settlements_moratorium_three-month_accounting. Accessed on 19 March 2010. Page 1
[60] Foundation for Middle East Peace., Report on Israeli Settlement in the Occupied Territory: A Bimonthly Publication of the Foundation for Middle East Peace. November-December 2009. Op Cit. Page 1

freeze.[61] However, as over 40 percent of the land in the West Bank is currently within the municipal jurisdiction of the settlements, even though only 2 percent is presently built up, the notion of no new expropriation of land has been seen as an irrelevant gesture.[62] In addition, the 3 000 housing units that Israel continued to build allowed it to reach its annual settlement expansion, and the main operational effect of the moratorium has clearly been to increase the pace of authorized new settlement housing construction above historical averages, including east of the Separation Barrier.[63] Alongside this, it was noted that any permits that were granted before the order would not be suspended if the very initial stage of the foundations had been completed.

In the months leading up to the settlement freeze, ground was broken on close to 1 000 new West Bank settlements and as a result almost 4 000 dwellings were under construction in 2010.[64] This was exacerbated by the fact that the freeze did not prohibit building within existing settlements, the suspension of construction for security needs, or the building of public facilities such as school classrooms, synagogues and sports or cultural facilities. It equally did not include East Jerusalem as a part of this settlement freeze, resulting in the embarrassment the U.S. faced when Israel announced the construction of 1 600 new housing units in East Jerusalem during U.S. Vice President Joseph Biden's visit in March of 2010.[65] The settlement freeze also did not include those settlements that fall under the special category of settlement blocs that were categorised as such under the Oslo Accords.[66] Following from this it becomes blatantly obvious that while the above settlement freeze sounded like an impressive concession, it had very little impact on the ground. These factors, in conjunction with a lack of enforcement by the Israeli authorities of even the limited terms of the moratorium, meant that settlement construction continued with almost no change of pace throughout the period of the alleged freeze.

Israel was also only constrained to a limited settlement freeze despite the illegality of such settlements, as Netanyahu believed that a complete freeze would not aid the peace process, as it would neither promote Palestinian efforts to enhance security measures, nor promote an improved economy or the infrastructural development that is so essential for the development of a Palestinian state. It would also fail to promote

[61] Friedman, L., Op Cit. Page 3
[62] Levy, D., Unsettling Questions. 3 November 2009. http://www.fmep.org/analysis/analysis/unsettling-questions-1. Accessed on 01 March 2010. Page 3
[63] Ibid. Page 2
[64] Foundation for Middle East Peace., Report on Israeli Settlement in the Occupied Territory: A Bimonthly Publication of the Foundation for Middle East Peace. January-February 2010. http://www.fmep.org/reports/archive/vol.-20/no.-1. Accessed on 07 March 2010. Page 4
[65] Makovsky, D., Settlement Snafu. 15 March 2010. http://www.foreignpolicy.com/articles/2010/03/15/how_netanyahu_can_fix_the_settlement_snafu. Accessed on 19 March 2010.
[66] Settlement Blocs are mostly suburbs of Tel Aviv and Jerusalem that were given an unique status during the Oslo negotiations that are considered as being separate from the outlying settlements that are located deeper in the interior of the West Bank. During the Camp David Peace talks in the July of 2000, it was agreed upon that these settlement blocs would come under Israeli sovereignty, provided that there would also be a swap of land given by Israel from its own pre-1967 territory in order to compensate for the perceived Palestinian sacrifice.

better movement and access to the Palestinians across borders and would likewise fail in weakening Hamas and increasing the security that Israel desires.[67] Netanyahu went on to assure Israel that when the ten-month period was terminated, his government would revert back to the policies of previous governments in relation to construction, an assurance that was maintained. This was indicated further by Netanyahu through the tree-planting ceremony that took place in January 2010 in which he planted two trees at the settlement of Ariel, during which he asserted that Ariel — which is located between the Green Line and the Jordan Border — and its surroundings will forever be a part of Israel.[68]

The 26th of September 2010 brought a formal end to the ten-month Israeli moratorium on settlement construction in the West Bank, and in light of its terms and its application in practice, the moratorium itself amounted to nothing more than a hollow political gesture in the form an alleged "freeze", while Israel's settlement activity continued unabated.[69] During 2010 the international community saw an escalation of illegal practices by Israel, especially in Occupied East Jerusalem, where Israel issued additional orders to demolish the homes and revoke the residency rights of Palestinian Jerusalemites, including elected Palestinian Legislative Council (PLC) representatives.[70] Israeli authorities stated their intention to carry out 200 demolition orders against approximately 1 000 Palestinian homes in Occupied East Jerusalem, a campaign of massive destruction that would affect thousands of Palestinians and render them homeless. Despite its obvious illegality, Israeli occupation authorities also pressed ahead with revoking the residency rights of hundreds of Palestinian Jerusalemites, which displaced and separated families as well as contributed directly and enormously to the occupying power's blatant campaign to empty the Occupied City of its original Palestinian inhabitants.[71]

Notwithstanding Israel's complete and blatant disregard for peace negotiations with regard to the settlements, the Road Map is the remaining framework for a two-state solution, and within this document there is a call on Israel to freeze all settlement activity in the Occupied Territories, consistent with the Mitchell Report, including the natural growth of settlements and the dismantling of outposts that have been erected since 2001.[72] Therefore, there is no better lens for examining Israel's commitment to the two-state solution, or rather its lack thereof, than to look at the settlement and state activity on the ground. It is clear that Israel's aggressive expansionist policies and its continued construction of settlements and

[67] Makovsky, D., PolicyWatch 1564: No Expansion vs. Freeze: Obama's Dilemma Over Israeli Settlements. 7 August 2009. http://www.washingtoninstitute.org/templateC05.php?CID=3102. Accessed on 20 February 2010.
[68] Friedman, L., Op Cit. Page 4
[69] Al-Haq., Unmasking the "Freeze": Israel's Alleged Moratorium on Settlement Construction Whitewashes Egregious Violations of International Law. Op Cit.Page 6.
[70] Embassy of the State of Palestine., 06 July 2010. Israel Has Intensified its Illegal Campaign Against East Jerusalem. Op Cit. Page 1.
[71] Loc Cit.
[72] Falah, G.W., "The Geopolitics of 'Enclavisation' and the Demise of a Two-State Solution to the Israeli-Palestinian Conflict." In Third World Quarterly. Vol, 26, No, 8. 2005. Pp. 1341-1372. Page 1347.

outposts despite the current settlement moratorium show no signs of abating.[73] As a result, this exposes Israeli actions as inconsistent with the Road Map and as not maintaining their prior commitments to the U.S. Administration.

Not only has the continued construction of the settlements rendered the two-state solution useless, but such settlements are also deemed illegal in the eyes of international law, the United Nations, the Palestinians and most of the world's international community. This can be seen if one looks at Article 49, paragraph 6, of the Fourth Geneva Convention, which states that the Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies. This clearly places Israel in flagrant violation of the Fourth Geneva Convention and situates their settlement activity as being in breach of international law. In a two-state solution, such settlements would no doubt remain, being dictated by the Separation Barrier, and Israel would remain in breach of such laws.

It is not only the fact that Israel would remain in breach of international law that gives support to the one-state over the two-state solution with regards to settlements, but also the fact that it seems evident that no viable Palestinian state will be possible in the West Bank and the Gaza Strip without the removal of such Jewish settlements that have crossed over the Green Line and into what would be the future state for the Palestinian people. It can be seen that the settlement expansion has created a single geographical unit on the ground; however, it has been argued that this admixture has only taken place in a fairly limited geographical area and therefore does necessitate the whole of Israel and the whole of the West Bank to amalgamate. Despite this, many have claimed that the settlements have in fact created an irreversible situation that has caused people to live in a one-state situation, and based on recent actions by the Israeli government, such as the fact that in 2009 Israel nearly doubled its settlement construction in the occupied West Bank, in violation of its promises at Annapolis and obligations under the American-backed peace plan, it is clear that no such withdrawal seems to be on the cards.[74] Such failures of the negotiations following Annapolis have led to

> *an end to the two-state solution for Israel and Palestine. Without progress on the peace talks, a profound change in opinion is taking place. Palestinians, both in the country and in the Diaspora, are beginning to look at those Palestinians who are Israeli citizens – albeit with restricted rights – and compare their condition to living under occupation. The conclusion seems to be that even second-class Israeli citizenship is preferable to unending occupation, or in other terms, the future may lie in one state. If Palestinians were given the choice between having a non-*

[73] Halper, J., "Paralysis Over Palestine: Questions of Strategy." In Journal of Palestine Studies. Vol, 34, No. 2. Winter 2005. Pp. 55-69. Page 56.
[74] Carter, J. Op Cit. Page 151.

sovereign state without Jerusalem and being part of a one-state solution, they will choose the latter.[75]

This may be an unwarranted conclusion, but it is certainly a growing point of view. Without a dismantling of the existing Israeli settlements and a freeze on the construction of new settlements, there can be no territorial contiguity to any future Palestinian polity. Without Palestinians controlling their own borders and air space, there can be no genuine Palestinian sovereignty.[76] Therefore, the one-state solution is the most natural alternative that has arisen out of the Israeli refusal to countenance a viable Palestinian state, and the implication is that Israel itself has made Palestine-Israel into one country through its settlement enterprise.[77]

3. The Separation Barrier

The construction of the Separation Barrier began ostensibly as a response to the al-Aqsa Intifada in order to increase Israeli security.[78] Since the beginning of the construction of the Wall, Israel has alleged a security rationale for the superstructure, with the Knesset using the pretext of a spate of attacks carried out inside Israel in the spring of 2002 by Palestinians to authorise this "temporary" structure as an "anti-terrorist" or "security" fence.[79] Israel claims that this Wall is designed to prevent any potential attacks against Israel by creating physical separation between Israel and the West Bank, and that it is seen as a "warning space in which is vital to strike against terrorists who succeed in crossing the barrier before they carry out their attack."[80] The concrete wall that Israel erected on its eastern side during the second Intifada has not only sealed out suicide bombers but almost all Palestinians, and it has been said that an Israeli Jew can easily pass an entire lifetime without meeting one. Such a fence has increasingly laid bare the Oslo reality of two separate worlds on one land; however, the line of construction has already played an increasingly negative role with regards to the eventual success of such a two-state solution.

Since construction began in June 2002, the Separation Barrier has emerged as Israel's most definitive effort at reshaping the West Bank. It has rendered international mediations in the conflict irrelevant and terminally threatens the idea of the two-state solution. Public opinion with regards to the Barrier is as divided as the land, with a strong majority of Israelis believing that it enhances security and marks the eventual West Bank boundary. The Palestinians maintain that other factors have reduced violence, that

[75] Carter, J. Op Cit. Page 160.
[76] Falah, G.W. Op Cit. Page 1367.
[77] Halper, J. Op Cit. Page 61.
[78] Usher, G., Op Cit. Page 25.
[79] Al-Haq., The Annexation Wall and Its Associated Regime. Op Cit. Page 4.
[80] Ibid. Page 5.

the same results could have been achieved with the Wall on the international border, that the Barrier cannot stop hand grenades, rockets, or mortar attacks, that its main purpose is to take their land and that it is therefore a major impediment to peace and the two-state solution.[81] This is because the Barrier has effectively transformed the political geography of the West Bank's north-western face in a 150 km dress rehearsal for the most far-reaching reordering of the Palestinian landscape undertaken since 1967.[82] According to the blueprints that have been laid out, the Barrier is to demarcate any future Palestinian state into cantons that would comprise of roughly half the West Bank, while allowing Israel to consolidate control over the remainder. To this end, the Barrier will be more than twice the length of the Green Line, measuring 723 kilometres, and will deviate from the agreed upon Green Line in the attempt to incorporate a large majority of the Israeli settlements that have been constructed within the West Bank and acquire large amounts of land, while effectively severing Palestinian access to water, roads and livelihoods.[83]

The construction of the Barrier was split into four distinct phases, and while phase A and B hovered within 6 km of the Green Line, phase C cut halfway into the West Bank to include on the Israeli side the Keddumim and Ariel settlements, while the final phase D cut off large parts of the Hebron and Bethlehem governorates.[84] The Wall also serves to physically reinforce Israel's claim over Jerusalem while exacerbating East Jerusalem's administrative and social detachment from the rest of the West Bank. As a result of the construction of the Wall, the West Bank and East Jerusalem are now two divided parts of a Palestinian triumvirate, along with the Gaza Strip.[85] While this Barrier was being constructed it was also revealed that the eastern portion would run parallel to the Jordan River and therefore would sever the fertile Jordan valley from the West Bank. It is this fence that is seen by many to inscribe its own final map by indicating that Israel's map, and not that of the United States or the Quartet, would rule the reality in the West Bank, and therefore is seen to be demarcating the final borders of a peace settlement in a way that favours Israel. This is further exacerbated by the fact that Israel has never declared where its final permanent state boundary with the Palestinians will be even as it continues to construct the Barrier and therefore one is faced with an intentional indeterminacy of boundaries.[86] When one looks at the plans set out by the Quartet and the borders of the Barrier as they stand presently, the two maps are vastly different. Israel's Security Fence has effectively moved the Green Line, and what remains on the other side of the fence can never be a state in any real sense of the word.[87] Alongside this, the Barrier also carries stark economic, political and social implications. After the second Intifada, agriculture became an important

[81] Carter, J. Op Cit. Page 69.
[82] Lagerquist, P., "Fencing the Last Sky." In Journal of Palestine Studies. Vol. 33. No 2. 2004. Pp 5-35. Page 1.
[83] Loc Cit.
[84] Ibid. Page 3.
[85] Al-Haq., The Annexation Wall and Its Associated Regime. Op Cit. Page 7.
[86] Falah, G.W. Op Cit. Page 1349.
[87] Lagerquist, P. Op Cit. Page 4.

means of local subsistence; however, local irrigation networks and water storage facilities have been destroyed during the construction of the Barrier, which has resulted in farmers being cut off from a large proportion of their irrigation wells and has resulted in one of the last remaining legs being kicked out from under the Palestinian economy.[88]

This Israeli policy of strangulation and separation, which has allowed for the destruction and planned "enclavisation" of Gaza, and covert and overt settlement expansion in the West Bank, as well as its dismemberment, has effectively shattered the spatial basis of the two-state solution and has merely allowed the Palestinians a mock sovereignty over an archipelago of truncated spaces, behind borders which are in some sense provisional.[89] It has not only achieved this by completely disregarding the border lines on which the two states were to be separated, and by building settlements within what would be the future Palestinian state, but has also led to the complete demise of international law and order within the country. This can be seen as the Israeli state has not yet formally confiscated the land for the Separation Barrier or its adjoining areas, but has only temporarily requisitioned it through a process that does not require payment of compensation and that can be renewed and extended every five years.[90] The enclosure of the Palestinian cantons only offers a thinly veiled bantustan rhetoric and has resulted in the complete erosion of Palestinian livelihoods that goes against even the most basic of human rights. This has resulted in the international community, including the International Court of Justice, the United Nations, the International Red Cross, all European Nations, the World Council of Churches, Amnesty International, Human Rights Watch, B'Tselem and other human rights organisations to be almost unanimous in condemning the placement of the barrier as illegal.[91]

If a two-state solution were to be embarked upon, there is no doubt that the Separation Barrier would remain, as Israel sees it as demarcating their future borders and boundaries. The verdict given by the International Court of Justice in 2004 was that the two-state solution is in blatant violation of international law. Although the construction of the Barrier is consistent with Article 51 of the United Nations Charter through Israel's inherent right to self-defence, in the current climate it is this Barrier that is in breach of international law in the Occupied Palestinian Territory in multiple instances and renders Israel a state that is neither democratic nor law abiding. The Separation Barrier stands in contravention of international norms in two main instances. Firstly, the Barrier stands against international law with regard to the United

[88] Lagerquist, P. Op Cit. Page 6.
[89] Falah, G.W. Op Cit. Page 1351.
[90] Lagerquist, P. Op Cit. Page 7.
[91] Carter, J. Op Cit. Page 70.

Nations Charter under General Assembly Resolution 2625 (XXV) and ES-10/13, by which it demanded that

> *Israel stop and reverse the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem, which is in departure of the Armistice Line of 1949 and is in contradiction to relevant provisions of international law.*[92]

Alongside the violation of the United Nations Charter, Israel has also violated elements of international law that stipulate the illegality of any territorial acquisition resulting from the threat or use of force, as well as the right of peoples to self-determination.[93] This breach of international law has occurred due to the fact that the construction of the Wall and its associated regime create a *fait accompli* on the ground that could well become permanent, it creates a risk situation that is tantamount to a de facto annexation, and the construction of the Wall severely impedes the exercise by the Palestinian people of its right to self-determination and is therefore a breach of Israel's obligation to that right.[94]

Alongside this violation of the United Nations Charter to which the State of Israel is a member, the Separation Barrier is also in contravention of international humanitarian law under the Fourth Geneva Convention of 1949, the applicability of the Fourth Geneva Convention in the Occupied Palestinian Territory, human rights law, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the relationship between international humanitarian law and human rights law, the applicability of human rights instruments outside national territory, as well as the applicability of those instruments in the Occupied Palestinian Territory.[95] Under such international humanitarian law, the Separation Barrier has resulted in the destruction and requisition of properties; restrictions on freedom of movement of inhabitants of the Occupied Palestinian Territories; impediments to the exercise by those concerned of the right to work, to health, to education and to an adequate standard of living; demographic changes in the Occupied Territories; and in the breach by Israel of its various obligations under the applicable provisions of international humanitarian law and human rights instruments.[96]

Following these breaches of international law, the ruling of the International Court of Justice in 2004 stated that the Wall severs the territorial sphere over which the Palestinian people are entitled to exercise

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[92] International Court of Justice. Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory. International Court of Justice. http://www.icj-cij.org/docket/index.php?pr=71&code=mwp&p1=3&p2=4&p3=6&case=131&k=5a. 09 July 2004. Page 147.
[93] Ibid. Page 137.
[94] Loc Cit.
[95] Loc Cit.
[96] Ibid. Page 138.

their right to self-determination and constitutes a violation of the legal principle prohibiting the acquisition of territory by the use of force.[97] Following from this, it stated that Israel had an international responsibility and obligation to comply with the international obligations that it has breached through the construction of the Wall. This would involve putting an end to the violation of its international obligations. In order to bring an end to such violations, the International Court of Justice called on Israel to halt construction of the Wall, to dismantle what had already been constructed, to render the legislative and regulatory acts relating to its constructions as ineffective, and to make reparations for the damage caused to all natural or legal persons affected by the construction of the Wall.[98] In its failure to adhere to the ruling put in place by the International Court of Justice with the backing of the international community, and in allowing for the continuation of construction, Israel is consenting to a departure from the Green Line of 1949 that has involved the confiscation and destruction of Palestinian land and resources, the disruption of the lives of thousands of protected civilians and the de facto annexation of large areas of territory. This has ultimately diminished the prospects for solving the Arab-Israeli conflict and establishing peace in the region under a two-state solution, resulting in the death of the said solution.

4. The Lack of Two States for Israel-Palestine

The two-state solution that is being put forward by the international community at large, as well as the numerous partners within any future peace process, is a notion that stems from the fact that in the period up until 1948, both sides were deemed stateless. The Jewish people were stateless as they were considered a roaming Diaspora, while the Palestinians lacked statehood through necessity as they had been living under Ottoman Rule for centuries.[99] When the Ottoman Empire collapsed at the end of the First World War, there was an opportunity for both the Palestinians and the Israelis to achieve autonomy from the Ottoman colonialism, and this resulted in two competing state claims. This basic form has been kept since the demise of the Ottoman Empire all the way up to the present and forms the basis of the two-state solution. However, the most basic condition that would allow for a two-state solution, the practicality of two functional states existing on the ground, has been annihilated. This has been brought about through Israel's aggressive expansionist policies that have continued to seize Palestinian land and simply eliminated the possibility of a feasible two-state solution. Such a solution remains only a false hope with the two-state solution being reduced to the mere filling of airtime on the networks and column-inches in the press, and the diverting of the mind from coming to grips with what needs to be done in Israel-

[97] International Court of Justice. Op Cit. Page 181.
[98] Ibid. Page 138.
[99] Kovel, J. Op Cit. Page 209.

Palestine.[100] This solution has been rendered obsolete by the continued policies of Israel as within the two-state solution, the Palestinian land was to be made up by the West Bank and Gaza; however, many academics and local leaders are now claiming that this is no longer feasible. This is maintained on the basis that Palestine is already down to approximately eight percent of the original land that was held prior to 1948 and such territory is either surrounded by the Israeli Defence Force, is laced with Jewish-only roads, is peppered with hundreds of settlements that arrogate the water and the most arable land, is a dumping ground for Israeli waste, its fields and olive trees destroyed, and is a land that has been effectively carved up by the Separation Barrier.[101]

From this it can be deduced that what remains of the Palestinian state can more aptly be called a concentration camp than a state-in-waiting, and is no more than a bad joke and is the equivalent of a less-than-bantustan of the South African Apartheid era.[102] This completely nullifies any possibility of a two-state solution succeeding in the region, now or in the future. This two-state solution will never come to pass or have any hope of being revived so long as Israel remains Zionist. A new state, one that will call for the establishment of a decent home on the ground for the Palestinian people through the altering of the grip of Israel on Palestine, and that will end the settlement drive and the Apartheid Separation Barrier while allowing the Palestinians to restore their territory to pre-1967 borders along the internationally recognised Green Line, will be the only option for the future. I believe that these demands will never be acceded to by Israel, and therefore all that is left for those who wish to see an end to the conflict and the establishment of peace in the region is a one-state solution. This is the only viable option that remains.

i. The Proponents of the One-State Solution

The idea of a single state to end the Arab-Israeli conflict and to create one land for all the people that inhabit it was frequently discussed in the early, utopian phase of Zionism, and was revived shortly before the founding of the State of Israel by Ihud, an organisation led by Judah Magnes and Martin Buber.[103] Speaking in 1947, both scholars claimed that they did not favour Palestine as a Jewish country or Palestine as an Arab country, but rather as a single bi-national state which would be the common country for two people. Although the one-state solution lost a substantial amount of support in the aftermath of the creation of the State of Israel, the genuine lack of progress of the much-revered Oslo Accords of 1993

[100] Kovel, J. Op Cit. Page 217.
[101] Ibid. Page 216.
[102] Loc Cit.
[103] Ibid. Page 219.

has led to such ideals being enthusiastically re-embraced, and they are fast gaining ground once more within specific sectors of both the Palestinian and Israeli populations.

When one looks at the current proponents of the one-state solution, it can be seen that there are three groups that promote such a proposal alongside the rejection of the two-state solution. Within the international community there are the leftist intellectuals, especially Israeli Leftists, who are ardently pushing for the adoption of the single state. Such leftists oppose states that are based on nationalism and ethnicity, and they tend to view Israel as an inequitable pariah state and Zionism as a discriminatory and racist ideology.[104]

The second group that promotes the single state consists of local Palestinians, especially those of the Palestinian Diaspora and numerous local leaders, who harbour the same sentiments towards Israel and Zionism as the Leftists.[105] Advocacy for a secular Palestine was the Palestinian Liberation Organisation's (PLO) traditional position, and such local Palestinians have traditionally dominated Palestinian opposition to the Oslo process and the much-revered two-state solution. Although the Palestinian Authority (PA) leadership still supports the two-state solution, there is a growing dissonance between the viewpoints of the PA elite and those locals on the ground, and increasingly the internal leadership of the various PLO factions are also finding a two-state solution less attractive. It has been stated that the PA must abide by the two-state solution as it underlies not only their negotiating strategy, but also their political legitimacy. If they acknowledge that a Palestinian state is dead, they also imply their own irrelevance.[106] However, many Palestinians state that due to the facts on the ground as mentioned above, if the occupation does not end unilaterally or through negotiations then there is only one solution: one state for two people.[107] Numerous local Palestinian leaders have even gone so far as to argue that Palestinians should deliver an ultimatum to Israel with demands that it agree to a Palestinian state within six months, after which Palestinians will insist that their territories be annexed. The rationale for this argument is that the Palestinian cause would be better served by a demand for civil rights rather than for a separate state, and Palestinian proponents of the one-state formula also hold that it will be easier for Palestinians to mobilise support for a civil rights movement rather than an anti-colonial struggle.

Alongside these two groups, there is also a growing number of local Israelis who are joining the fray, and such support for a bi-national state has a longstanding tradition among Israeli Jews such as Magnes and

[104] Sussman, G., Op Cit. Page 37.
[105] Loc Cit.
[106] Ibid. Page 38.
[107] Loc Cit.

Buber as stated above. Although none of these groups have been represented in the mainstream arguments for a viable and peaceful negotiated settlement for the end the conflict, their voices and viewpoints are spreading due to the perceived failure of Oslo and the immanent death of the two-state solution that has been the bedrock of all peace-making efforts for well over a decade.[108]

ii. How A One-State Solution Could Look

Through the above analysis of the two-state solution it can be clearly seen that a new type of resolution is needed. Some may look at the Middle East now and draw only one conclusion: peace is not possible, conflict is the norm, the decade of peace-making efforts was noble, but futile.[109] I do not accept that. I believe that the only way that a just and lasting peace can be brought about within Israel-Palestine is through a protracted settlement that would ultimately bring about a one-state solution; however, it has been argued that if the territories cannot even be incorporated within other Arab-Muslim societies, then amalgamating with Hebrew speaking, Jewish Israel, especially in light of the bitterly hostile relationship of the past seventy years, is a non-starter. Many proponents of an independent Jewish state have argued that if it has not proved possible up until now to achieve the peaceful co-existence of Israelis and Palestinians living alongside one another in their own separate states, then it would be impossible to merge them together within a single state. They have even gone as far as to state that given the one-state solution's evident illogicality, it is surprising and odd to see the theory even being discussed within left-leaning academic circles. No one proposed the reunification of Yugoslavia as a solution to the ethnic violence that was experienced there, nor is a single state being proposed as a solution to the India-Pakistan conflict, so many have asked why the Palestinian-Israeli conflict should be any different.

Despite such sentiments, such solutions are being proposed as options to resolve the Israeli-Palestinian conflict, as the support for the two-state solution is dwindling, a three-state solution is not remotely possible given the desire for Palestinian unity, and there is a lack of support for the idea of calling on the former occupying powers to reincorporate the Palestinian entities into their countries. Therefore, there is only one viable option left, that of the one-state solution. Further investigation into what a one-state solution could look like reveals that there are three different theoretical frameworks that have been put forward, all with differing mechanics as to how such a state would come about.

[108] Sussman, G., Op Cit. Page 37.
[109] Ross, D., The Missing Peace: The Inside Story of the Fight for Middle East Peace. Farrar, Straus and Giroux, New York. 2004. Page 759.

Single Undemocratic Entity: Winner Takes All

The first proposal is one of a single undemocratic entity in which Israel would rule over the Palestinian majority in a single polity in a scenario in which winner takes all. Alongside this, many Palestinians fear that the current Israeli Prime Minister Benjamin Netanyahu is planning a truncated Palestinian state which would comprise of cantons alongside Israel, a situation that is in fact becoming a reality through Israel's current settlement policy and Separation Barrier.[110] This model of a single and undemocratic polity entity would ensure that Israel maintained maximal territorial control over the land while minimizing the number of Palestinians living in the expanded Israeli state. This is the solution that is being put forward by the members of Israel's ideological right and the settler movement who are actively pursuing a single state; however, instead of advocating for democracy and civil rights, they are prepared to support a forced transfer of the Palestinians in order to maintain a Jewish hegemony.[111] This represents one potential one-state solution, but is one that is not desirable in ensuring that the future state is one in which the risk of confrontation is low and the threat of an outbreak of violence is high.

Single Democratic and Secular Polity: One Man One Vote

The second proposal is that of a single democratic and secular polity based on the principle of one man, one vote, with no ethnic, racial or religious distinctions between citizens. This model was the one on which South Africa based the peaceful resolution to its political conflict. Ironically, the South African government has rejected this model as an option for resolving the Israeli-Palestinian conflict, and claims that the two-state solution is the only viable answer to the conflict in Israel-Palestine. A single secular and universal state could allow Israelis and Palestinians to retain a limited sense of group identity in terms of religion, culture and historical experiences, but overcome this through inclusion into a larger whole. In such a state, desire no longer attaches to national or tribal identity, but is displaced to the universal. The sense of particularity is retained by connection to tradition and memory, and is simultaneously transcended through fidelity to a better future.[112] Through such a state there would be a realisation that there is an inherent dignity that is shared by every person.

[110] Sussman, G., Op Cit. Page 37.
[111] Ibid. Page 39.
[112] Kovel, J., Op Cit. Page 229.

Bi-National State: Power-Sharing

The final proposal is that of a bi-national state based on the recognition of two groups within one political entity. This notion of a bi-national state is not new, and early in Zionism's history, Jewish intellectuals such as Hannah Arendt, Martin Buber and Judah Magnes supported a power-sharing arrangement with the Arab population upon the mass immigration of Jews to Mandatory Palestine. This notion of sharing state power was an idea that was considered and debated, but disappeared after the 1948 Arab-Israeli War.[113] Such a state would have an entrenched Bill of Rights, complete judicial independence and would uphold all basic democratic freedoms, including academic, media and NGO independence, and complete non-discrimination with regard to religion. These would be basic requirements for the two polities to coexist, because although they are extremely intertwined, they are also radically opposed to each other given their tumultuous history. If one were to imagine what a bi-national state would look like, one would imagine it as two states that have been folded into one, and because of the fact that it preserves the essentials of the national aspirations that appeal to both sides, it would be a much more readily acceptable solution. However, it is very rare that such states are able to work towards unity and reconciliation, both of which are necessary for a successful state to develop.

Regardless of which variant of the one-state solution is chosen, it is clear that the broad concept of such a solution is gaining ground. In 2006, among Israeli Jews, some 22 percent told pollsters that they would certainly support a state with democratic egalitarian principles, while almost 24 percent expressed cautious support, and on the Palestinian side, polls found almost 28 percent support.[114] These numbers are slowly on the rise. Although such a process would inevitably be difficult and time-consuming, there are multiple case studies that prove that such an endeavour can be successfully embarked on. This can be seen by looking at the varying successes of such a design in countries such as Belgium, the Netherlands, India, Austria, Switzerland, Cyprus, Lebanon and Northern Ireland. Ultimately it can be seen that

> *there is no other alternative to ending the conflict. Everyone with eyes to see and ears to hear has to understand that only a bi-national partnership can save us. This is the only way to transform ourselves from being strangers in our land into native sons.*[115]

[113] Ron, J., "Review: Bringing the (Bi-National) State Back In." In Contemporary Sociology. Vol, 35, No, 5. September 2006. Pp. 453-456. Page 453.
[114] Ibid. Page 456.
[115] Shavit, A., "Cry, the Beloved Two State Solution." In Journal of Palestine Studies. Vol, 33, No, 1. Autumn 2003. Pp. 92-96. Page 93.

iii. Critique of the One-State Solution

In opposition to the idea of a single state, many proponents of an independent Jewish state have argued that Palestinian society is not yet ready for what would be required of them within a Western and secular-type democracy. They claim that Palestinian society is religiously very conservative and authoritarian, and that political dissidents are persecuted and suspected traitors executed. Israel, on the other hand, is presented by these proponents of an independent Jewish state as a mirror image of what a single state would call for and as having much more in common with secular Western democracies.[116] However, this argument is flimsy on two accounts. First, the assumption that Palestinian cultural and religious traditions are ill-disposed to democracy is both questionable and racist, as cultures are neither set in stone nor incapable of accommodating democracy. The active participation of Palestinian Israelis in Israeli democracy is a case in point. It could also be argued that a Palestinian struggle against occupation or exclusive Jewish hegemony, in the name of democracy, would encourage Palestinians to internalise democratic values.[117] No less important is the fact that a single-state reality may leave no other choice but to adopt constitutional designs that allow for democracy.

Therefore, although the single state is seen to be the most readily acceptable version of the one-state solution, to all sides involved in the conflict, it cannot be said to have no negative implications, some of which would be rather difficult to overcome. How are the ethno/theocracies supposed to balance each other out? Are there to be distinct legislatures on that basis? How is the executive going to be made up? Are the Arab and Jewish prime ministers going to alternate? With regard to the legal system, are there to be two parallel systems of courts with no super-ordinate notion of law? Finally, how would a slide toward disintegration and even civil war once tensions inevitably arise be stopped?[118] These are questions that no one yet has an answer for and are situations that need to be researched in detail in order to provide feasible solutions. The conflict between Israel and Palestine can also be likened to a Middle Eastern version of Huntington's Clash of Civilisations, prompting many to state that a one-state solution, whether secular and democratic or bi-national, cannot work. The conflicting collective identities of the Jews and the Arabs are deeply anchored and are further reinforced by different national languages and cultural traditions, as well as deep religious beliefs, perceptions and loyalties.[119]

[116] Shavit, A., Op Cit. Page 93.
[117] Sussman, G., Op Cit. Page 42.
[118] Kovel, J., Op Cit. Page 229.
[119] Tamarkin, M., Op Cit. Page 14.

In addition to these inherent practical difficulties that would face such a solution, there is also the ideological difficulty of the history of Zionism that has been the light that has guided the State of Israel and its actions since its very inception. Israel's self-identification has always been as the State of the Jewish people, a belief that has reached unprecedented heights since the October 2000 protests and the earlier rise in Arab national consciousness, and therefore it is not surprising that Jewish ethnocentrism should be one of the most important ideological barriers to a single state for both the Jewish and Arab population.[120] For a one-state solution to work, the ideology of Zionism needs to be disintegrated in a non-violent way in order to allow for peaceful co-existence and to ensure that racial tensions are diminished. This will prove to be an incredibly hard task but is one that can be achieved if executed correctly. Although Zionism cannot be reasoned away, it can be confronted to ensure that its history does not lead to the disintegration of the possible one-state solution that is being proposed. This cannot be done through violence, as can be seen by previous attempts to demolish the State of Israel and its inherent ideology, as such violence only mirrors Israeli violence, gives Zionism its required daily dose of Jewish suffering, and feeds the Jewish state.[121] Rather, a one-state solution would need to employ a type of politics that allows for the dissolution of the legitimacy of Zionism, the destabilisation of the regime, and building opportunities for peaceful coexistence. Primarily, such an anti-Zionist political approach would need to foster mutual recognition and the restitution of humanity to all, and it must aim to undo the racist core that is the Zionist state of Israel.[122]

[120] Rouhana, N.N, & Sultany, N., Op Cit. Page 6.
[121] Kovel, J., Op Cit. Page 231.
[122] Ibid. Page 232.

3 The Unnatural History of a Few Bad Ideas: *The Comparative Analysis of Apartheid South Africa and (Apartheid?) Israel-Palestine*

Israelis do not like having their conflict with the Palestinians compared with the policy of Apartheid that plagued South Africa for forty years, and indeed in Israel proper there are no "Jews only" signs or other manifestations of what has been termed "petty Apartheid". There is no sense of Apartheid in any shape or form on the streets of Tel Aviv.[123] However, if one crosses the checkpoints and the Separation Barrier into the West Bank, one finds oneself in a bantustan, one that looks and feels like something reminiscent of the South African "separate development" era, with rutted roads and shabby buildings and little in the way of infrastructure. Numerous studies have been conducted in order to ascertain whether the policies practised by Israel amount to the internationally defined notion of Apartheid, and the majority of these studies persuasively argue and clearly demonstrate that since 1967 Israel has been the belligerent occupying power in the Occupied Territories, and that its occupation of these territories has become an enterprise that implements a system of Apartheid similar to that which was experienced in South Africa.[124]

1. The Legal Framework: Israel's Belligerent Occupation

It needs to be noted that belligerent occupation in itself is not an unlawful situation, as it is indeed accepted as a possible consequence of armed conflict; however, occupation is meant to be only a temporary state of affairs under international humanitarian law.[125] Such law prohibits the unilateral annexation or permanent acquisition of territory as a result of the threat or use of force, and should this occur, no state may recognise or support the resulting unlawful situation. Israel remains the belligerent occupant of such territories as they are territories over which Israel does not possess sovereignty but only a temporary right of administration. Consequently, Israel is meant to abide by the relevant rules of international humanitarian law, principally the provisions of The Hague Regulations of 1907 and the Fourth Geneva Convention of 1949, in its administration of the territories.[126]

[123] Sparks, A., "Then To Compare With SA." In Sparks, A., First Drafts: South African History in the Making. Jonathan Ball Publishers: Johannesburg. 2009. Page 175.
[124] Human Sciences Research Council., Occupation, Colonialism, Apartheid? A Re-Assessment of Israel's Practices in the Occupied Palestinian Territories Under International Law. Human Sciences Research Council: Cape Town. 2009. Page 6.
[125] Loc Cit.
[126] Loc Cit.

In order to come to a final conclusion on whether Israel-Palestine and South Africa can be adequately compared for the purposes of this work, it is necessary to examine Israeli practices and policies for evidence of the characteristics of Apartheid; however, before conclusions can be reached, it is necessary first to consider briefly the wider framework of law in the Occupied Territories, including applicable international law and Israeli law.

Firstly, the Palestinian people have the right to self-determination, with all the attendant consequences entailed under the relevant principles and instruments of international law. Secondly, the West Bank, including East Jerusalem and the Gaza Strip, remain under belligerent occupation according to international humanitarian law, and Israel's arguments that the Palestinian territories are not 'occupied' in the sense of international law have been rejected by the international community. Israel does not possess sovereignty over these territories but only a temporary right of administration. In all of the Occupied Territories, Palestinians are therefore classified as 'protected persons' under the terms of the Fourth Geneva Convention, whereby they are persons who find themselves, in the case of a conflict or occupation, in the hands of a party to the conflict or an occupying power of which they are not nationals.[127] Finally, although Israel's occupation has been a lengthy one, it has not altered its obligations as an occupying power as set forth in the Fourth Geneva Convention and the Hague Regulations, and therefore Israel must abide by the relevant rules of the law of armed conflict in its administration of the territories. Following from this legal framework it is clear to see that Israel's administration of the Occupied Territories systematically breaches the law of armed conflict by disregarding the prohibition imposed on an occupying power not to alter the laws in force in occupied territory and by enforcing a dual and discriminatory legal regime on Jewish and Palestinian residents of the Occupied Territories.

In direct contrast to this form of occupation through armed conflict, the international laws of which Israel is seen to be in violation of, Apartheid is always unlawful and is considered to be a particularly serious breach of international law as it places itself fundamentally against the core values of the international legal order. Of course, the regime of Apartheid and occupation are extremely different in definition; however, in practice there is seen to be little difference.[128] Both regimes are characterised by discrimination, repression and territorial fragmentation. But before we can go on to analyse whether what the Israeli state is practising is in fact Apartheid, we need to ascertain what exactly is meant by the term Apartheid, in the legal context.

[127] Russell Tribunal On Palestine.., Op Cit.
[128] Dugard, J., Lawyers for Human Rights, Russell Tribunal on Palestine, The Law and Practice of Apartheid In South Africa and Palestine. District Six Museum: Cape Town. 5 November 2011.

2. The Legal Framework: Apartheid Defined and Understood

To assess whether the State of Israel is practising Apartheid in the Occupied Territories, it is necessary to draw principally on the definition of Apartheid that is contained in the International Convention for the Suppression and Punishment of the Crime of Apartheid (1973), otherwise known as the Apartheid Convention. The definition of Apartheid in the Apartheid Convention is contained in Article 2 and reads in full as follows:

> *For the purpose of the present Convention, the term 'the crime of Apartheid', which shall include similar policies and practices of racial segregation and discrimination as practised in southern Africa, shall apply to the following inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them:*
>
> *(a) Denial to a member or members of a racial group or groups of the right to life and liberty of person:*
>
> *(i) By murder of members of a racial group or groups;*
>
> *(ii) By the infliction upon the members of a racial group or groups of serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman or degrading treatment or punishment;*
>
> *(iii) By arbitrary arrest and illegal imprisonment of the members of a racial group or groups;*
>
> *(b) Deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part;*
>
> *(c) Any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including the right to work, the right to form recognized trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association;*
>
> *d) Any measures, including legislative measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups, the prohibition of mixed marriages among members of various racial groups, the expropriation of landed property belonging to a racial group or groups or to members thereof;*
>
> *(e) Exploitation of the labour of the members of a racial group or groups, in particular by submitting them to forced labour;*
>
> *(f) Persecution of organizations and persons, by depriving them of fundamental rights and freedoms, because they oppose Apartheid.*[129]

[129] International Convention on the Elimination of All Forms of Racial Discrimination (1965). Entered into force 4 January 1969, 660 UNTS195.

The Apartheid Convention was built on the first international instrument that expressly prohibited Apartheid, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which was adopted in 1965. ICERD is a multilateral human rights treaty that seeks to eliminate all forms and manifestations of racial segregation and racial discrimination. Its preamble affirms that parties to the Convention are alarmed by manifestations of racial discrimination still in evidence in some areas of the world and by governmental policies based on racial superiority or hatred, such as policies of Apartheid, segregation or separation.[130] The Apartheid Convention was then adopted shortly after ICERD in order to provide a universal instrument that would make it possible to take more effective measures at international and national level, with a view to suppressing and punishing the crime of Apartheid, and was therefore created to complement the requirements of ICERD. The Apartheid Convention goes further in that it declares that Apartheid is a crime against humanity and goes on to provide the definition of Apartheid which has been given above. It consequently goes on to impose obligations on State parties to adopt legislative measures to suppress, discourage and punish the crime of Apartheid and makes the offence an international crime that is subject to universal jurisdiction.[131]

This is further aided by the Rome Statute of the International Criminal Court of 1998 that identifies Apartheid as a crime falling within the Court's jurisdiction.[132] The Convention ultimately defines the crime of Apartheid as "inhumane acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them", while the Rome Statute codifies Apartheid crimes as certain inhumane acts that are "committed in the context of an institutionalised regime of systematic oppression and domination by one racial group over any other racial group and committed with the intention of maintaining that regime."[133] It can be seen that both instruments emphasise the systematic, institutionalised and oppressive character of the discrimination involved in Apartheid, reflecting the original reasoning for including it in ICERD as a distinct form of racial discrimination. The practice of Apartheid has been condemned in numerous United Nations resolutions and other international treaties such as in Article 55 of the United Nations Charter and Article 2 of the Universal Declaration of Human Rights in 1948, and is contrary to fundamental guiding principles of international law, including the protection of human rights and the self-determination of all peoples.

[130] Du Plessis, M., Institute for Security Studies, Russell Tribunal on Palestine, The Prohibition of Apartheid in International Law and It's Relevance to Israel. District Six Museum: Cape Town. 5 November 2011.
[131] Loc Cit.
[132] Human Sciences Research Council., Op Cit.
[133] Du Plessis, M., Op Cit.

3. Apartheid South Africa and (Apartheid?) Israel-Palestine: The Comparison

The comparison between Israeli policies and South African Apartheid is not a new endeavour, and it is for this reason that South Africa is often looked to as the peace model in waiting for Israel-Palestine. In order to analyse the degree of comparison between South African Apartheid and the policies practised in Israel-Palestine, it is necessary to develop a methodology to determine whether an instance of Apartheid has developed outside of South Africa. The Apartheid Convention takes it inspiration from Apartheid South Africa not only in adopting the term 'Apartheid' but also in defining the crime of Apartheid as "similar policies and practices of racial segregation and discrimination as practised in southern Africa."[134] This phrasing clearly indicates that the Apartheid Convention can be applied outside South Africa, but it could also be interpreted to indicate that the Apartheid that was experienced in South Africa provides the concise and unique template or model by which all other potential regimes should be measured. However, I believe that this is incorrect. The occurrence of Apartheid in different countries and different situations will undoubtedly come with its own unique features, reflecting the social particularities and local histories of the case in question. It is important, therefore, when trying to ascertain whether Apartheid is occurring, to limit one's application of the Apartheid Convention's close adherence in its definition of Apartheid to the specific practices of South Africa, as this could effectively exclude any other case from qualifying as a crime of Apartheid. However, although the reference to Apartheid in the articles of the Convention may have been directed exclusively at South Africa, the Convention as adopted prohibits all forms of racial segregation in all countries. The prevailing view of the international community is that while the Convention was drafted specifically with South Africa as the sole example, it is clearly universal in character and not confined to the practice of Apartheid as seen as in South Africa.

Therefore, the notion of Apartheid for the sake of this chapter will be characterised according to the definition of Apartheid given above through Article 2 of the Convention. However, it must be mentioned that this list is not exclusive or exhaustive, and that a determination that Apartheid exists does not require that all the listed acts are practised.[135] It is assumed that a positive finding of Apartheid does not need to establish that all practices cited in Article 2 are present, or that those precise practices are present, but rather that policies and practices of racial segregation and discrimination combine to form an institutionalised system of racial discrimination that not only has the effect but the purpose of maintaining racial domination by one racial group over the other. Therefore, in order to assess whether the State of Israel is practising Apartheid in the Occupied Palestinian Territories, one needs to prove that the

[134] Du Plessis, M., Op Cit.
[135] Russell Tribunal On Palestine., Op Cit.

following three core elements exist: that two distinct racial groups can be identified; that inhumane acts are committed against the subordinate group; and that such acts are committed systematically in the context of an institutionalised regime of domination by one group over another.[136] Although it is evident that such elements did indeed exist in South Africa prior to 1994, it must be established whether they exist in Israel-Palestine.

The most recent study to test this hypothesis was conducted at the Russell Tribunal on Palestine which was held in Cape Town, South Africa, in November 2011. This tribunal is an international citizen-based tribunal of conscience created in response to the demands of civil society to inform and mobilise public opinion and put pressure on decision makers.[137] This third session of the tribunal was tasked with ascertaining whether Israeli practices against the Palestinian people are in breach of the prohibition on Apartheid under international law. This was done by comparing the situation in Israel-Palestine with that of South Africa prior to democracy in 1994. After a two-day conference, the tribunal found that Israel subjects the Palestinian people to an institutionalised regime of domination amounting to Apartheid as defined under international law. This regime was found to vary in intensity against different categories of Palestinians depending on their location — whether they reside in the Occupied Territories or within the borders of Israel itself. The Palestinians who are located within the Occupied Territories are seen to be subjected to a particularly aggravated form of Apartheid, while Palestinian citizens of Israel, while entitled to vote, are not part of the Jewish nation as defined by Israeli law and are therefore excluded from the benefits of Jewish nationality and are subjected to systematic discrimination across a spectrum of recognised human rights.[138] Following on from this, and due to the fact that Israel is legally obliged to respect the prohibition of Apartheid as contained in international law, the tribunal considered Israel's rule over the Palestinian people under its jurisdiction, in the light of the legal definition of Apartheid, to qualify as a system of Apartheid. It is the purpose of the remainder of this chapter to ascertain whether this is correct.

4. Distinguishing Racial Groups: Core Apartheid Element One

The first element calls for the distinguishing of two racial groups and is the most fundamental aspect within the notion of Apartheid. The notion of race has always been hard to define, and the international approach to this has not always been clearly defined. In 1942, anthropologist Ashley Montagu proclaimed that the "idea of race represents one of the most dangerous myths of our time, and one of the most

[136] Russell Tribunal On Palestine., Op Cit.
[137] Loc Cit.
[138] Loc Cit.

tragic."[139] Following on from this, the United Nations Educational, Scientific and Cultural Organization (UNESCO) sought to sponsor a series of studies on the meaning of race. UNESCO's *Four Statements on the Race Question*, the first documents released by the UN which dealt with the concept of race, presented views from all perspectives, which resulted in a series of contradictory and confusing documents, initially stating that there was no such concept as race in a biological sense, and then reversing this position. Based on this, ICERD calls for the elimination of racial discrimination without making any pronouncement on the meaning of race itself.[140] In general, the meaning of a racial group for the purposes of ICERD is a broad and practical one, and if a group identifies itself as such, and is identified by others, then it comes under the protection of the Convention. In line with this, it was concluded in both the jurisprudence of the International Criminal Tribunals for Rwanda and the former Yugoslavia that there is no scientific or impartial method that exists for determining whether any group is a racial group and that the question rests on local perceptions.

Despite this, on the basis of first-hand evidence from witnesses who were present at the tribunal, as well as additional research conducted, it was seen that international law gives broad meaning to the term 'racial' as including elements of ethnic and national origin, and therefore that the definition of 'racial group' is a sociological rather than a biological question. Many scholars claim that the conflict within Israel-Palestine cannot be equated with South Africa due to the fact that the former is based on different fault lines than the latter, being religious rather than racial. However, to rebut this it must be noted that the movement towards international legislation against racial discrimination began as a response to a growing number of anti-Semitic incidents, known as the "Swastika Epidemic", that took place in the winter of 1959-1960 and resulted in a spontaneous outbreak of graffiti and desecration of Jewish cemeteries that erupted in states as diverse as Costa Rica, Sweden and New Zealand. This led to the adoption of a series of UN Resolutions that culminated in the creation of ICERD. Therefore, it can be seen that the very notion of racial groups found in the Convention reflects the fact that its origins are as much expressions of religious intolerance as racial discrimination.[141]

In the Occupied Territories, Jewish and Palestinian identities are socially constructed as groups that are distinguished by ancestry or descent as well as by nationality, ethnicity and religion. On this basis, Israeli Jews and Palestinian Arabs can be considered as racial groups for the purposes of definition of Apartheid in international law.[142] Perceptions, including both internal and external perceptions, of Israeli Jewish

[139] Montagu, A., Man's Most Dangerous Myth: The Fallacy of Race. AltaMira Press: United Kingdom. 1997. Page 41.
[140] Keane, D., Mafiwasta, Russell Tribunal on Palestine, Elements of the Definition of Apartheid: Racial Groups under International Law. District Six Museum: Cape Town. 5 November 2011.
[141] Loc Cit.
[142] Russell Tribunal On Palestine., Op Cit.

identity and Palestinian identity illustrate the fact that Israeli Jews and Palestinian Arabs can readily be defined as distinct racial groups for the purposes of international law. Despite this, Palestinians do not usually identify themselves as a race or racial group or ethnic group, as they are understood to be the 'tools of the oppressor', which has resulted in the division of Palestinians into numerous ethnic or religious sub-groups for the purpose of oppression and domination.[143] Despite this, there are core elements of Palestinian identity that justify the characterisation of Palestinian people as a racial group for the purpose of the definition of Apartheid. Firstly, all Palestinians, whether they are refugees in exile, are living in the Occupied Territories or are living within Israel itself, identify themselves as the indigenous people of Palestine, where they lived and held citizenship until the end of the British Mandate in 1948. Secondly, Palestinians define themselves as victims of racism and racial discrimination by Zionist Israel, which has destroyed and colonised their country by forcibly dispossessing and displacing the indigenous people for the purpose of establishing and maintaining an exclusive Jewish state. Finally, all Palestinians identify themselves as part of one Palestinian people entitled to return to their land and to self-determination, regardless of their social class, religion or location. This is supported by the UN which, since 1974, has recognised that all Palestinians have the rights to self-determination, national independence and sovereignty.[144]

In light of the above, Palestinians meet the broad definition of race or racial group, and the first element has been provided for determining Apartheid within the context of Israel-Palestine, insofar that two distinct, identifiable groups exist in a very practical sense and that the legal definition of a 'racial group' applies to all circumstances in which the Israeli authorities have jurisdiction over Palestinians.[145] The entire Palestinian population, whose members share a common origin, history and culture, as well as social and political structures and networks that have ensured solidarity, have become a racial grouping. In line with the definition of Apartheid, there is a need for two racial groups. In opposition to the Palestinian racial group lies the group defined as the Zionist Jewish Israelis. This group is composed of people who identify themselves as Jewish nationals, who are citizens of Israel by virtue of its Law of Return and who endorse Zionism. Although Israel's laws treat Jews around the world as Jewish nationals who are entitled to the privileged status of Jewish citizens in Israel, not all persons of the Jewish faith, and not all Jewish Israelis, can be considered part of one racial or ethnic group for the purpose of the Apartheid definition. Rather, those who have voluntarily immigrated to Israel, who hold the privileged legal status and who adhere to Israel's political ideology of Zionism, constitute the relevant racial group

[143] Jaradat-Gassner, I., Palestinian Boycott, Divestment and Sanctions National Committee, Russell Tribunal on Palestine, Do Israeli Practices Against the Palestinian People Amount to Apartheid? District Six Museum: Cape Town. 5 November 2011.
[144] Loc Cit.
[145] Russell Tribunal On Palestine., Op Cit.

in this context.[146] Therefore, the relevant groups in Israel-Palestine are Zionist Jewish Israelis and Palestinian Arabs. These groups are not racial in nature but are based on ethnicity, national identity and religion, and the crucial point is that the state uses group membership in order to allocate civil, social and political rights in a differentiated manner.

5. *Inhumane Acts Committed Against the Subordinate Group: Core Apartheid Element Two*

The second element is one that identifies inhumane acts that are committed against the subordinate group, with individual inhumane acts committed within the context of such a system being defined by international law as crimes of Apartheid. While attending the tribunal, I heard abundant evidence of practices that constitute 'inhumane acts' that were being perpetrated against the Palestinian people by the Israeli authorities. These include but are not limited to the widespread deprivation of Palestinian life through military operations and incursions, a formal policy of 'targeted killings', and the use of lethal force against demonstrations; torture and ill-treatment of Palestinians in the context of widespread deprivation of liberty through policies of arbitrary arrest and administrative detention without charge, which often go beyond what is reasonably justified by security concerns and amount to a form of domination over the Palestinians as a group; systematic human rights violations that preclude Palestinian development and prevent the Palestinians as a group from participating in political, economic, social and cultural life; and finally, the fact that the civil and political rights of Palestinians, including the rights to movement, residence, free opinion and association, are severely curtailed, while socio-economic rights are also adversely affected by discriminatory Israeli policies in the spheres of education, health and housing.

The violence used by the Israeli army and the exercise of mass arrests are but some of the ways in which there is a deliberate imposition on the Palestinians that is calculated to cause their physical destruction in whole or in part. Daily mass arrests serve to destabilise the society and there are currently some 6 000 detainees in Israeli prisons, including children. More than 700 000 Palestinians have been detained in Israel since 1967, which represents over twenty percent of the total population living under Israeli occupation.[147] Alongside this, violence is practised by the Israeli army on a daily basis. Testimonies from soldiers who have served at the Eretz checkpoint emphasise the extent to which violence is deeply rooted in the daily routine. Female soldiers stated that

[146] Jaradat-Gassner, I., Op Cit.
[147] Blume, M., Belgo-Palestine Association, Russell Tribunal on Palestine, Acts of Apartheid. District Six Museum: Cape Town. 5 November 2011.

> *there is a procedure to be followed before you release a Palestinian in the Gaza Strip – you take him into a tent and beat him up. It is clearly defined: it is to demonstrate the constant presence of the army, to produce the feeling of being tracked and controlled – in short, it is to impose fear on everyone in the Palestinian society. The procedure is irrational, unpredictable, creating a feeling of insecurity that fractures routine.*[148]

Force and terror, humiliation and arbitrary arrests are just some of the inhumane acts that are routinely committed against the subordinate group, and are designed as a method of controlling and dominating the Palestinian people.

The exploitation of the labour of members of a racial group is yet another way in which Israel aims to dominate and weaken the Palestinians. Since the beginning of the second Intifada in 2000, Israel has transformed the already harsh conditions under occupation into a full system of discrimination and segregation of the Palestinian workforce. Since September 2000, over 430 factories and 9 700 small shops and street sellers stalls have been destroyed, while Gaza's industry has suffered a complete breakdown due to the destruction wreaked upon the Strip by Operation Cast Lead.[149] Upon construction of the Wall, which will be discussed in further detail below, farmers and agricultural workers were increasingly blocked from reaching their fields, and many found themselves unemployed as they were unable to reach their place of work. The Israeli pass or permit system, the territorial fragmentation of the West Bank and Gaza Strip, and the closure policies have intensified and contributed to the creation of disconnected Palestinian labour reserves, and have ultimately led to economic degradation.

The worst of these, and a feature that serves to exacerbate all of the above, is the fact that Israel has, through its laws and practices, divided the Israeli Jewish and Palestinian population and allocated them different physical spaces, which has resulted in varying levels and quality of infrastructure, services and access to resources. Consequently, this can be linked to Article 2(b) of the Apartheid Convention regarding the deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part. This article is satisfied if one considers Israeli policies of collective punishment that entail grave consequences for life and health, such as closures imposed on the Gaza Strip that limit or eliminate Palestinian access to essential health care and medicine, fuel and adequate nutrition. The end result has been territorial fragmentation and a series of separate reserves and enclaves, with the two groups largely segregated.[150] At the tribunal, evidence was heard from Jeff Halper, an Israeli Professor of Anthropology and the Coordinator of the Israeli Committee Against House

[148] Blume, M., Op Cit.
[149] Ziadah, R., Palestinian Trade Union Coalition for Boycott, Divestment and Sanctions, Russell Tribunal on Palestine, Fragmentation of Palestinian Labour and Al-Nakba. District Six Museum: Cape Town. 5 November 2011.
[150] Russell Tribunal On Palestine., Op Cit.

Demolitions (ACAHD), that such a policy is formally described in Israel as *Hafrada*, Hebrew for 'separation'.

i. Independence, Cantons or Bantustans: South African Bantustans Versus the Palestinian Occupied Territories

A comparison between the South African Apartheid experience in terms of the creation of bantustans and the Israeli-Palestinian conflict sheds light on the way in which the Palestinian territories are becoming analogous to bantustans. While this historical comparison is in no way exact or prescriptive, it does raise interesting parallels whose implications need to be considered. Ariel Sharon, Israel's Prime Minister from 2001 until 2006, had long contended that the bantustan model, so central to the South African Apartheid system, was the most appropriate to the present Israeli-Palestinian conflict. Others, by contrast, have maintained that the Palestinian territories have been transformed into cantons whose final status is still to be determined.[151]

There is a significant difference in terminology between "cantons" and "bantustans". It must be noted that "cantons" suggests a neutral territorial concept whose political implications and contours are left to be determined, whereas "bantustans" indicates a structural development with economic and political implications that put in jeopardy the prospect for forming any meaningfully viable and sovereign state.[152] By analysing and comparing South African Apartheid and bantustans with the structural developments that are taking place within the Palestinian territories, it can be seen that the West Bank and Gaza Strip have moved towards a process of "bantustanisation" rather than of sovereign independence, by which the Palestinian territories have been transformed into *de facto* population reserves that Palestinians cannot leave without possessing a permit issued by the Israeli military authorities. These reserves or enclaves continue to remain dependent on the Israeli economy, while at the same being denied access to it, and are not capable of evolving into a sovereign independent entity because of this.[153]

i.i The South African Bantustans

The concept of bantustans is one of the most essential concepts to understand in order to make comparisons between South Africa and Israel-Palestine. Fundamental to the policy of Apartheid was the

[151] Hamammi, R, & Tamari, S., "The Second Intifada: an End or a Beginning?" In *Journal of Palestine Studies.* Vol. 30. No. 2. Winter 2003. Page 5.
[152] Farsakh, L., "Independence, Cantons, or Bantustans: Whither the Palestinian State?" In Middle East Journal. Vol. 59. No. 2. Spring 2005. Pages 230-245. Page 231.
[153] Ibid. Page 232.

idea of separating the native black people from the white areas territorially and residentially, while ensuring that economically they were still incorporated. Reserves were demarcated by the colonial government that allowed the black population to reside on thirteen percent of the land, and after Apartheid was formally inscribed onto the South African political landscape post-1948, four major Acts were passed between 1951 and 1970 that transformed these previous reserves into ten bantustans.[154] Through the creation of these bantustans, black people were excluded from the national democratic process, which was now dominated by whites, while they were granted political representation and self-determination within these homelands. The Promotion of Bantu Self-Government Act (No 46 of 1959) stated that the primary goal of these bantustans was to give the black people of South Africa a categorical assurance that the South African government had irrevocably set a course on a road that would lead the homelands to a meaningful form of self-governance through rights and responsibilities.[155] Within these bantustans black people were allowed to develop separately, as they were able to run their own civilian and functional affairs, and were set on a path that was to promote and encourage local investment and employment creation, which was an attempt to prevent the spilling over of black poverty into the neighbouring white areas.

Despite the fact that the bantustans received subsidies from the white government and were allowed to levy taxes and attract numerous investment corporations, as well as being encouraged to develop industrial projects into the border areas with white areas, they failed to develop economically or reduce their dependence on the white economy.[156] The white government attempted to assert the independence of the bantustans once more through the creation of bantustan citizenship in 1974, as well as the proclamation that such homelands were independent in 1976, when four out of the ten bantustans declared independence from the white government. Despite these moves towards independence, the international community never recognised these bantustans as sovereign entities.

i.ii. Bantustanisation of the West Bank and Gaza Strip

As explained above, in South Africa there was an attempt to deprive approximately seventy-five percent of its population of their South African citizenship, which was made a reality under the Bantu Homeland Citizenship Act, amended as the Bantu Laws Amendment Act in 1974, in which every black person became a citizen of one of the ten ethnic homelands.[157] However, in contrast, the Israeli procedure of

[154] Farsakh, L., Op Cit. Page 233.
[155] Ibid. Page 234.
[156] Loc Cit. Page 234.
[157] Davis, U., Israel: An Apartheid State. Zed Books: London. 1987. Page 25.

denationalisation has been far more radical and far-reaching than its South African counterpart. The essence of the bantustans in South Africa was to create territorially demarcated and politically autonomous areas for the indigenous population, while controlling their mobility through a complex system of pass permits and security control.[158] This is what has occurred and continues to occur in Israel-Palestine.

The "bantustanisation" of both the West Bank and the Gaza Strip began with the Oslo Accords, which paved the way for the transfer of authority from Israel to the Palestinians by institutionalising the contradictory processes of societal separation and territorial integration that Israel had created between 1967 and 1993. There were three main ways in which the Oslo Accords allowed for this process of "bantustanisation" in Palestine: through legal action, through fragmentation of territory and through international dimensions.[159] Initially, the Oslo Accords allowed for a transfer of authority from Israel to the Palestinians, which gave them a certain degree of political autonomy that in the past had been unknown. It was expected that the granting of such political autonomy alongside the creation of a Palestinian security force and the devolution of Israeli rule over Palestinian civilian affairs would allow for the creation of an independent state. However, it instead placed the Palestinian entity in a similar position to the South African bantustans.[160] This is because Oslo failed to guarantee the end of Israel's occupation and its withdrawal from such entities, which ultimately allowed for a dominant Israeli rule of law over these enclaves or pockets of land. This was exacerbated by the fact that Oslo did not affirm the superiority of international law over Israeli law that had been governing the Occupied Territories since 1967, thus allowing Israel to impose its own interpretation of such law, especially as there was no role for the international community to supervise or monitor the process. Alongside this, the establishment of infrastructure that allowed for close cooperation between Israel and the Occupied Territories with regards to the transfer of civilian and security responsibilities was strikingly similar to the transfer of authority from the white South African government to the bantustans.[161]

Following on from this, Oslo also served to create an opening for the process of the creation of Palestinian bantustans in terms of territoriality. One way in which the Oslo Accords facilitated the "bantustanisation" of the West Bank and the Gaza Strip was through the institutionalisation of the fragmentation of territory and the consolidation of Israel's claim to this same land, and although Oslo promised to maintain the territorial integrity of these areas, it did not specify how this integrity would be

[158] Farsakh, L., Op Cit. Page 238.
[159] Ibid. Page 239.
[160] Loc Cit.
[161] Loc Cit.

maintained.[162] This has resulted in large areas being occupied by settlement construction: at the time of Oslo, the area totalled approximately 69 km^2, compared with 189 km^2 in 2009, and today settlement jurisdictions cover more than 40% of the West Bank.[163] This has resulted in the fragmentation of Palestinian jurisdiction over the land of the West Bank and Gaza Strip, which was divided into three zones, A, B and C. Area C is under full Israeli control and in itself constitutes sixty percent of the West Bank (see Figure 1, Appendix B). In this area are the water resources, the agricultural and pasture lands, and the space required for the development of towns and villages. This is where the settlements, with their exclusive roads and buffer zones, military zones and nature reserves, are located and developed without hindrance, at the expense of Palestinian land.[164] The presence of Israeli settlements has been a fundamental aspect of the creation of Palestinian bantustans. This occurred due to the fact that Oslo did not reverse the fragmentation but rather institutionalised it, while recognising sole Israeli jurisdiction over Israeli settlements and settlers.

The fact that Oslo did not set up an interim agreement that these settlements would not expand, an issue which is still relevant today, has exacerbated the situation. Since the start of the peace process in 1993, Israeli settlement in the West Bank has intensified in an unprecedented manner. Between 1993 and 2008, the comprehensive settlement population increased by one hundred and eighty percent, growing from 281 800 to 507 554[165] (see Figure 2, Appendix B). The most recent reports show that, as it stands currently, the number of settlements and settlers has multiplied to 199 settlements and more than 580 000 Israeli settlers.[166] This includes 236 000 settlers in 34 Israeli settlements in East Jerusalem, in addition to the creation of upward of 122 settlements in the West Bank alone[167] (see Figure 3, Appendix B). This has occurred despite the fact that the most recent peace process, the Road Map, calls on Israel to freeze all settlement activity in the Occupied Territories, including the natural growth of settlements and dismantling of outposts erected since 2001.[168] Even recently, as can be seen from an analysis of the West Bank settlement construction between 2008 and 2011, despite a moratorium being placed on Israel until September 2010, construction continued with 1 666 houses completed in the West Bank in 2010, with another 2 215 still under construction.[169] In addition to these settlements, some 100 "outposts" and settler enclaves in the city of East Jerusalem have continued at the expense of Palestinian villages that do not

[162] Farsakh, L., Op Cit. Page 240.
[163] Saleh, M.M., The Palestinian Strategic Report: 2009/2010. Pluto Press: London. 2011. Page 349.
[164] Blume, M., Op Cit.
[165] International Court of Justice. Op Cit.
[166] Saleh, M.M., Op Cit. Page 349.
[167] Foundation for Middle East Peace., Settler Population Growth East and West of the Barrie: 2000-2009. Date Unknown. http://www.fmep.org/settlement_info/settlement-info-and-tables/stats-data/population-growth-east-and-west-of-the-barrier. Accessed on 23 September 2011.
[168] Falah, G.W., Op Cit. Page 1347.
[169] Foundation for Middle East Peace., Report on Israeli Settlement in the Occupied Territory: A Bimonthly Publication of the Foundation for Middle East Peace. July-August. 2011. http://www.fmep.org/reports/archive/vol.-21/no.-4/PDF. Accessed on 23 September 2011.

benefit from development plans and cannot obtain permits that would allow for building and constructing homes, digging wells, or establishing workshops and factories[170] (see Figure 4, Appendix B). Most recently, Benjamin Netanyahu announced the establishment of a legal committee that will retrospectively legitimise the illegal outposts that have been established on private Palestinian land. Although the notion of settlements was not central to the South African bantustans, it is essential when analysing the creation of Palestinian bantustans and has ultimately shattered the Palestinian territorial contiguity in the West Bank and Gaza Strip.

This was further exacerbated by the fact that the Palestinian Council accepted Israel's claim over what would be the future Palestinian state legitimised through Oslo, and the fact that Oslo set the stage for the separation between the West Bank and the Gaza Strip. The former can be seen if one analyses Article XI.c of Oslo II, which states that only Israel territorially controls Area C; however, Article 16.3 of Protocol III states that the Palestinian Council shall respect the legal rights of Israelis relating to government and absentee lands located in areas under the territorial jurisdiction of the Council.[171] With regards to the latter, by treating the territorial claims to the West Bank and Gaza Strip differently, the separation of the two was set in motion. With regards to the Gaza Strip and Jericho, Oslo spoke about an Israeli withdrawal from the land, but only a redeployment in the rest of the West Bank. This choice of wording is essential, as while a withdrawal implies an end to occupation, redeployment entitles Israel to merely resettle in places it deems appropriate and necessary. The demarcated borders put in place by Israel in the Gaza Strip through controlling all border crossings and establishing the Eretz Checkpoint, have allowed for the transformation of the Gaza Strip into a *de facto* demarcated bantustan.[172] Ultimately, what has occurred is a dynamic enclavisation, whereby there is no exit or entry into the cage of bantustans without proper Israeli permission.[173]

If this was the case in 1993 immediately post-Oslo, then since then the situation has developed into a more severe form of bantustanisation of Palestinian land than has ever been seen before. In 2000, during the Camp David Summit, Israel's offer to establish a sovereign Palestinian state that would encompass the Gaza Strip, 91% of the West Bank and some parts of Jerusalem, only served to confirm the fragmentation of Palestinian land, as the nine percent retained by Israel would have cut the West Bank into three non-contiguous areas.[174] This was made worse by the fact that Israel failed to guarantee free and clear passage between the West Bank and Gaza Strip, while keeping the Jordan Valley under its

[170] Blume, M., Op Cit.
[171] Farsakh, L., Op Cit. Page 240.
[172] Ibid. Page 241.
[173] Falah, G.W., Op Cit. Page 1350.
[174] Farsakh, L., Op Cit. Page 242.

military control. The Al-Aqsa Intifada has allowed Israel to develop its permit system and fragmentation of the Palestinian territories, and in 2002 Israel declared that these territories would be cut into eight main areas from which Palestinians could not exit without holding a permit. This occurred alongside continued settlement expansion and the creation of the Separation Wall, the construction of which began in 2004 and served to separate Israel from the West Bank[175] (see figures 5 and 6, Appendix B).

"The Wall," marvelled a former Israeli negotiator, "put the Palestinians on the moon"[176], and serves to complete the dispossession of Palestinian land by appropriating approximately one-fifth of the most fertile farmland in the West Bank, cutting off many villages from their land, and, as is the case in Bil'in, separating villages and neighbourhoods from their schools and hospitals.[177] It has been said that the Separation Barrier draws on concepts that have long floated around Israeli military circles since the eruption of the first Intifada in 1987. After the second Intifada broke out in September 2000, senior Labour Party figures persuaded the then Prime Minister Ehud Olmert to promote the idea of a barrier or fence through aphorisms such as "good fences make good neighbours."[178] Such a barrier was readily agreed to by the public due to the recent spate of Palestinian suicide bombings in the region. However, the fence did not receive support from all sectors of the Israeli public, with the most notable opposition emanating fiercely from the settlement groups who feared that the barrier, through creating for the first time a physical boundary between Israel and the occupied territories, would isolate them spatially, symbolically and eventually politically. It is this Wall that has allowed for the further "enclavisation" and "bantustanisation" of the Palestinian territories.

The Barrier can be seen as a tightening of the previous internal closure of the West Bank, which was based on a system of checkpoints and roadblocks and served to curtail Palestinian movement from the time of Oslo. Upon the outbreak of the Al-Aqsa Intifada, these checkpoints were supplemented by hundreds of barbed-wire fences, earth mounds, trenches and concrete barriers that were constructed around Palestinian towns and villages.[179] Although these are on the decline due to a certain degree of re-established communication and transparency between the two conflicting parties, currently, the fairly typical areas of the Barrier are 50 to 100 metres wide and comprise two parallel electrified fences with electronic sensors flanked on the outside by four-metre trenches and enclosing between them a two-lane asphalt patrol road for army jeeps, a trace path made up of a strip of sand smoothed to detect signs of

[175] Usher, G., Op Cit. Page 25.
[176] Vick, K., Why Israel Doesn't Care About Peace. TIME Magazine. http://www.time.com/time/world/article/0,8599,2015602,00.html. 13 September 2011.
[177] Blume, M., Op Cit.
[178] Lagerquist, P., Op Cit. Page 2.
[179] Loc Cit.

attempted infiltration and a stack of six coils of barbed wire marking the perimeter of the complex.[180] Along the Wall lie hidden surveillance cameras and in some places remote-controlled machine guns and multi-storey sniper towers.[181]

Despite the fact that the Israeli government claims that the Separation Barrier is only a temporary security measure, the candid asides to the domestic press, the cleaved hillsides and a $1.5 million per km price tag tell otherwise.[182] If the Israeli government continues its current policy of massive land grabs, there will be nothing left with which the Palestinians can negotiate once the post-Arafat peace process reaches stage three of the so-called Road Map initiative, which is supposed to lead to a permanent status agreement over the West Bank and the Gaza Strip territories and the supposed end to the conflict, with an independent Palestinian state enjoying sovereignty over its national space.[183] However, what has resulted is a default territory of four bantustans plus Gaza, which are to be left for a mock-sovereign Palestinian statelet.[184] Therefore, it can be argued that the Barrier was not created in order to separate, but to enclose and create Palestinian bantustans, and within this maze of enclosures and exclusions, their access to land, water, family networks, markets, health and education providers has been severely curtailed. Although the International Court of Justice and the Israeli Supreme Court ruled against the route of the Wall, its construction has continued unabated.[185]

Therefore, it can be seen that it is possible to make comparisons between the South African bantustan and the "bantustanisation" of the West Bank and the Gaza Strip. The legal, territorial and economic developments that have emanated from Oslo and have been maintained through the Roadmap up until the present day have in fact made the Occupied Territories even more comparable to the bantustans of South Africa. This has been achieved through the Israeli permit or pass system, the fragmentation of Palestinian land, the expansion of settlements and the construction of the Separation Wall, which has led to Palestinian reserves that have the characteristics of bantustans rather than cantons.[186]

6. Institutionalised and Systematic Acts: Core Apartheid Element Three

The final element of Apartheid as defined as a concept is that acts defined as such are committed in a way that is both systematic and institutionalised. Such inhumane acts do not occur in a vacuum or in random

[180] International Court of Justice., Op Cit.
[181] Lagerquist, P., Op Cit. Page 5.
[182] Loc Cit.
[183] Falah, G.W., Op Cit. Page 1341.
[184] Ibid. Page 1343.
[185] Farsakh, L., Op Cit. Page 243.
[186] Ibid. Page 245.

and isolated instances; instead they are sufficiently widespread, integrated and complementary to be described as systematic.[187] Such acts are also sufficiently rooted in law, public policy and formal institutions to be described as institutionalised. For example, in the Israeli legal system, preferential status is afforded to Jews over non-Jews through its laws on citizenship and Jewish nationality, creating a group privileged in most spheres of public life, including residency rights, land ownership, urban planning, access to services and social, economic and cultural rights.[188] Overall there are forty-three laws that legally discriminate against Palestinians, one of the most personal being the education law, which prevents Palestinians from studying their own history.[189] These laws on citizenship and nationality have allowed questions to surface since the establishment of the state of Israel as a Jewish state. Is the state of Israel a sovereign, independent and democratic state, or is Israel a Jewish state? Is the state of Israel governed by and for all of its citizens, or is Israel governed by and for all Jews throughout the world? Is the Israeli government accountable to all its nationals, Arabs and Jews, or is the Israeli government accountable only to Jews both inside and outside the land of Palestine, whether they are Israeli nationals or not?[190] These are questions that have accompanied the process of the establishment of Israel since its earliest days, and are ones that still have no answer. However, there can be only one conclusion: Israel is a Jewish state, as seen by the unilateral declaration on May 15th, 1948, in the Declaration of the Establishment of the State of Israel, in which it states

> *We, the members of the National Council representing the Jewish people in Palestine and the Zionist movement, are met together in solemn assembly today, the day of termination of the British Mandate for Palestine, and by virtue of the natural and historic right of the Jewish people and of the Resolution of the General Assembly of the United Nations, we hereby proclaim the establishment of the Jewish State in Palestine to be called Medinat Yisrael (the State of Israel).*[191]

This institutionalised and systemic differentiation is even more blatant when one analyses the existence of two entirely separate legal systems in the Occupied Territories of the West Bank, indicating an institutionalised regime of systematic domination. During the first days of Israel's occupation of the West Bank and Gaza in June 1967, Israeli military commanders established military courts in both territories with the jurisdiction to try any person in the territories accused of an offence against Israeli Security Legislation.[192] Presently, these military courts are in operation in the West Bank only. Under international humanitarian law, and most notably article 66 of the Fourth Geneva Convention, an occupying power has

[187] Russell Tribunal On Palestine., Op Cit.
[188] Loc Cit.
[189] Zoabi, H., The National Democratic Assembly, Russell Tribunal on Palestine, Arabs and Jews in Palestine: Different Reality, Different Law, Different Set of Rights in the Same Territory and in the Same State. District Six Museum: Cape Town. 6 November 2011.
[190] Davis, U., Op Cit. Page 13.
[191] Loc Cit.
[192] Schaeffer, E., Michael Sfard Law Office, Russell Tribunal on Palestine, Separation Legal Systems for Jewish-Israeli Settlers and Palestinians in the Occupied Territories. District Six Museum: Cape Town. 6 November 2011.

the authority to establish a properly constituted, non-political military court to try residents of the occupied territory for offences harming security and public order. However, Israel has deviated from its authority under international law, by both expanding and restricting the jurisdiction of its military courts.[193] These military courts have extra-territorial jurisdiction over any person, resident or non-resident of the occupied territories, and for any offence committed outside the occupied territories. Crimes that are completely unrelated to security issues, such as traffic violations, theft and robbery, have made up a significant proportion of the indictments filed against Palestinians and prosecuted in military courts over the years, and suspects of such crimes are treated the same as suspects of security offences.

Palestinians are subject to this military law enforced by military courts that continue to fall far short of international fair trial standards, while Israeli settlers living in the same territory within the illegal settlements are subject to Israeli civil law and a civil court system within the borders of the State of Israel.[194] Following on from this, Israeli citizens and residents that are arrested for crimes committed in the same territory are arrested, processed and tried by Israel's civilian legal system, which has significantly different facilities, procedures, laws and penalties, and fares far better against the set of due process rights required under international law than the military courts system in which Palestinians are arrested and tried. The result is a vastly different procedure and sentence for the same crime, committed in the same jurisdiction, by members of a different group. This can be seen by a case study presented by Emily Schaeffer, an American-Israeli human rights lawyer and activist who is based in Tel Aviv, Israel, who testified at the Tribunal.

> *Let us take a Palestinian man, and an Israeli settler man, who have committed, for argument's sake, the crime of manslaughter in the same territory. The Israeli settler will be arrested by the Israeli police and will be interrogated by them. If he chooses to see a lawyer he will be allowed to see and speak to his lawyer without delay. There are some exceptions, for example the meeting can be postponed by twenty-four to forty-eight hours, and in security cases — which are generally not applicable to Israeli settlers — that meeting could be delayed by up to six days. The Palestinian in the military court system can be denied access to his lawyer for thirty days and additionally, because in many cases the lawyers are Palestinians, they may have difficulties in accessing their clients which could delay this meeting for even longer than thirty days.*[195]

This is but one of the many differences in procedure that are experienced by the two separate racial groups, despite being located in the same territory, and the system under which Palestinians are tried cannot be considered equal to the system under which Israelis are tried. Furthermore, this situation

[193] Schaeffer, E., Op Cit.
[194] Russell Tribunal On Palestine., Op Cit.
[195] Schaeffer, E., Op Cit.

violates the due process requirements of international law in far more severe ways. The Israeli military courts fail to meet the standards of basic rights such as the presumption of innocence, the right to counsel and the right to effective assistance of counsel, the right to be notified of and understand the charges, the right to prepare an effective defence, the right to be tried promptly and without undue delay, and the right to a public trial.[196] Additionally, unlike the civilian courts within which the Israeli settlers are tried, the military courts operate without significant internal supervision and are almost completely sheltered from public scrutiny. Ultimately, this arrangement allows for a dual legal system, under which those who commit the same crime in the same territory may be arrested, investigated and tried under drastically different systems, producing dramatically different results, based solely on the national identity of the accused. This provides evidence for the observation that such domination is in fact institutionalised and systematic.

An apparatus of administrative control implemented through pervasive permit systems and bureaucratic restrictions, similar to the pass laws seen in South Africa under Apartheid, also adversely affects Palestinians throughout the territories under Israeli control. However, one can say that the Israeli discrimination is in certain ways worse than that practised under South African Apartheid, due to the obscurity and inaccessibility of many laws, military orders and regulations that underpin Israel's institutionalised regime of domination, whereas South African legislation was explicit and readily available.[197] This is aided by the fact that the official and hegemonic ideological value system of South African Apartheid allowed for the key legal distinction between 'white' versus 'coloured', 'Indian', and 'black'. However, the official hegemonic ideological value system in the state of Israel is Zionism, and the key legal distinction in Zionist legislation in Israel is between 'Jew' versus 'Non-Jew'. The introduction of this key distinction into the foundation of Israeli law is accomplished as part of a two-tier structure, the first tier being the distinction in the Constitutions and Articles of Association of all the institutions of the Zionist movement, while the second is the level at which this key distinction is incorporated into the body of laws of the state of Israel.[198] It is this structure that has preserved the veil over Israeli Apartheid legislation for almost seven decades.

[196] Schaeffer, E., Op Cit.
[197] Russell Tribunal On Palestine., Op Cit.
[198] Davis, U., Op Cit. Page 56.

7. Further Analogies: The Quest for Minority Survival and International Condemnation on Apartheid Policies

One of the other striking similarities between the conflicts in South Africa and Israel-Palestine, which is linked to the practice of racial discrimination, is their classification as a pariah state within the international arena. During the time of Grand Apartheid, a pariah state was an entirely new type of international actor and numerous states in the past have been deemed deserving of such due to their diplomatic isolation, as well as the absence of security and/or political alliances with more powerful nations. Due to this, they have become the targets of censure within international forums such as the United Nations. This occurred with both South Africa and Israel, who received international condemnation, but due to their similar status continued to maintain links and alliances together.[199] As it stands in International Relations today, there exists no single forthcoming definition of pariah status; however with regard to South Africa and Israel-Palestine, a pariah can be understood as

> *a nation whose origins and legitimacy — or present constitutional status — is widely questioned, variously on grounds of borders, the splitting of a "nation", or a conflict over self-determination, racism, ethnic minorities, etc.; that is, its present national status, within its own defined borders, is at issue.*[200]

Following from this, a pariah state can be understood to be a "small power with only marginal and tenuous control over its own fate, whose security dilemma cannot easily be solved by neutrality, nonalignment, or appeasement, and who lacks dependable big-power support."[201] Through these definitions it can be seen that Israel as it currently stands, and South Africa pre-1994, constitute what has become known as pariahtude.[202] The nature of the isolation and pariah-status facing both Israel and pre-1994 South Africa varies to a certain degree. However, there are substantial similarities that allow for an adequate comparison between the two on these grounds. The similarities that exist pertain to their relationships with the big powers, their vulnerabilities regarding conventional arms sources, the intensity with which they are ostracised by the international community, and the degree of legitimacy accorded to them by other nations. The most prominent similarity between Israel and South Africa is the simple fact that they were sites of a very widespread hatred that reflected deeper bases of ethnic, religious, and racial conflicts as contrasted with merely ideological or territorial ones.[203] Although white South Africa's nearly

[199] Harkavy, R.E., "Pariah States and Nuclear Proliferation." In International Organization. Vol 35. No. 1. Winter 1981. Pages 135-163. Page 136.
[200] Loc Cit.
[201] Loc Cit.
[202] Loc Cit.
[203] Polakow-Suransky, S., The Unspoken Alliance: Israel's Secret Friendship with Apartheid South Africa. Pantheon Books: United States of America. 2010. Page 115.

300-year history gave it, in many eyes, some legitimate basis for its continuation, there was a near total-concurrence of world opinion on the necessity for and the justice of majority rule. The symbolic equivalent to Israel's presence within Israel-Palestine is clear.[204]

In order to measure the degree to which these two cases are similar, one can look at the objective measures of such international isolation under which both South Africa and Israel existed, such as the number and identity of nations with which they maintained formal diplomatic relations, the outcomes of critical UN votes, membership in intergovernmental organisations, and overall trade relations with other countries.[205] Looking at these objective measures, it can be seen that South Africa was placed under a greater degree of isolation than Israel, exchanging ambassadors with only fifteen states at the peak of international isolation, maintaining ties only with some states in Latin America and Western Europe.[206] If one analyses Israel's network of diplomatic ties it can be seen that it is much wider, with Israel fostering relations with 156 members of the UN as well as with the Vatican City and the European Union.[207] Most of the countries that Israel does not have diplomatic relations with are members of the Arab League, while the majority of the remaining states are in countries that contain a Muslim majority. This denotes a much higher level of international legitimacy than was the case for South Africa, despite the practical consequences.

A striking similarity between Israel and South Africa as pariah states is the fact that they were, to one degree or another, disconnected from the web of regional IGO's, as well as from the various organisations and periodic conferences of the developing and non-aligned nations. Israel and South Africa, however, despite their endless problems within the various organisations of the UN and the threat of being removed from the UN, remained members of the UN and nearly all of its subcommittees, including the International Atomic Energy Agency (IAEA).[208] Despite the fact that they remained members of the UN, numerous resolutions and sanctions were placed on both South Africa and Israel. This can be seen if one uses the example of Resolution 3379 which was entitled the "Elimination of all Forms of Racial Discrimination". This resolution determined that Zionism is a form of racism and racial discrimination, and received 72 yes votes, 35 against, and 32 abstentions.[209] This is not the only vote that has a wide disparity between for and against, as can be seen if one analyses the votes against Israel with regards to the Occupied Territories and the plethora of other resolutions that have been passed that directly address

[204] Harkavy, R.E., Op Cit. Page 139.
[205] Ibid. Page 140.
[206] Polakow-Suransky, S., Op Cit. Page 115.
[207] Harkavy, R.E., Op Cit. Page 140.
[208] Loc Cit.
[209] United Nations., Resolutions Adopted on the Reports of the Third Committee. Date Unknown. http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/000/92/IMG/NR000092.pdf?OpenElement. Accessed on 04 October 2011.

the Arab-Israeli conflict, which between 1967 and 1989 alone numbered 131. Israel is not the only pariah state to have come under a cascade of negative votes within the UN Security Council, as South Africa too suffered under many decisions and votes related to Apartheid and majority rule, arms embargos, trade relations and investments, as well as bantustans.

8. Israel-Palestine and South Africa: A Dissimilar Case?

Although there are striking similarities that exist between Israel-Palestine and South Africa when one attempts to analyse the concept of Apartheid, it also needs to be noted that Apartheid in Israel is different from historical Apartheid in South Africa in three major respects. First and most important is that the Israeli-Palestinian conflict is founded on consolidated and relatively impermeable ethno-religious identities, with few cross-cutting affiliations across the principal ethnic divide. Secondly, Israel is not dependent on the exploitation of indigenous labour and therefore is free of economic imperatives that would run counter to its exclusionary policies. Finally, the basis of its legal, military and political domination is the quest for a demographic majority.[210] These aspects create a system that is less prone to an integrative solution along the lines of South Africa post-1994.

i. The Fault-Lines of Conflict

The foundation of Apartheid in South Africa was a racial distinction between whites and blacks, who were further divided into coloureds, Indians and Africans, with Africans being divided further into different ethnic groups. However, in Israel-Palestine we see an ethno-religious distinction.[211] Racial groups were internally divided on the basis of language, religion and ethnic origins, and externally linked in various ways across the colour line. In this respect, it can be seen that the Israeli-Palestinian conflict is essentially a fierce nationalistic conflict in which both sides to the conflict claim the same territory, while simultaneously harbouring different collective identities, deeply anchored in the overlapping national homelands, which are characterised by different national languages and cultural traditions. These narratives are intensified by deep religious beliefs, perceptions and loyalties.

Following on from this it can be seen that the South African conflict was far less entrenched than the one that can be found in Israel-Palestine. Although divisions along racial lines can appear to be embedded, this can create the wrong impression regarding the depth of the conflict. This can be seen as the racial

[210] Greenstein, R., University of the Witwatersrand, Russell Tribunal on Palestine, Israel Jews, Palestinian Arabs and the Apartheid Question. District Six Museum: Cape Town. 5 November 2011.
[211] Tamarkin, M., Op Cit. Page 10.

divide was not an integral pathological part of the national and religious psyche inherent in many Afrikaners. Alongside this, Grand Apartheid policies never gained universal support from even within the Afrikaner National Party, as there were always dissidents and critics amongst them. This resulted mostly from the fact that South Africa was essentially a colonial conflict, which normally does not run very deep.[212] However, in South Africa, the conflict ran deeper than in other African conflicts. This was primarily because the colonialism in South Africa became a domestic one that had no remote metropolitan centre that would enable colonialism to cut its losses more easily. This form of domestic colonialism also had a very large socio-political base in the large white population, while being reinforced by nationalistic tendencies found within the white population.[213] Many believe that this is the reason why there was a persistence of conflict within South Africa when compared to other countries, which also then accounted for the predominantly domestic nature of the conflict as well as its severity. In line with this, the black opposition were not fighting for an exclusive ideology, apart from Black Consciousness, but were rather calling for universal political rights, and it was South Africanism (rather than South African nationalism) that included all races and nationalities that was the core of their ideology.[214] It is this point where South Africa differs vastly from the conflict in Israel-Palestine. In South Africa deep ethno-cultural or religious cleavages did not exist, and the struggle was mostly motivated by grievances rather than actual conflicting cosmologies and historical narratives. Once this demand for equality under the law was granted, the conflict was well on its way to being resolved.[215]

It is these supposed structural differences that exist between the South African and Israeli-Palestinian conflicts that allow many scholars and policy makers to extrapolate that there is little similarity between the two conflicts, except at a very superficial level, and that therefore the latter have very little to learn from the process of conflict resolution in South Africa, with Israel-Palestine neither being a colonial nor ostensibly entrenched conflict. This has resulted in many South African politicians stating that the model of the two-state solution would be best suited for this conflict and that

> *The attempts of South African politicians to teach 'stupid' Israelis how to resolve their conflict are both patronising and misinformed. Israelis and Palestinians have to carve their own path to salvation because the nature of the Israeli-Palestinian conflict is very different.*[216]

[212] Tamarkin, M., Op Cit. Page 11.
[213] Loc Cit.
[214] Loc Cit.
[215] Ibid. Page 12.
[216] Loc Cit.

ii. The Economic Situation Within Israel-Palestine

The South African and the Israeli-Palestinian conflict share some striking similarities, while simultaneously harbouring numerous differences that are equally instructive with regard to the respective conflicts, their resolution and their outcome. In both cases, the conflict has been between powerful states in control of considerable financial and bureaucratic resources and powerful conventional military capabilities, against which there existed the demilitarised civilian populations. The latter gave rise to anti-state movements that then in turn struggled for radical changes; however, these were mostly unsuccessful due to the gross imbalance of power that is a hallmark feature of both conflicts. In South Africa, there was also a serious attempt to implement what is known as the Apartheid Grand Design with its cocktail of political alienation with economic inclusion, which can be compared to Israel-Palestine after the occupation of the West Bank and Gaza Strip under the fanciful political solutions like the Alon Plan, Begin's autonomy plan, or the idea of Greater Israel, which allowed for massive settlement projects in the heart of the occupied territories as discussed above.[217]. Both conflicts called for the inclusion and integration of the politically excluded majority into the powerful South African and Israeli economy respectively.

In relation to economic integration and inclusion is where we find a striking difference between these two conflicts. Under Apartheid in South Africa, a key goal of the state was to ensure that black people performed their role as providers of labour, without making difficult social and political demands.[218] Therefore, while they were physically present in white homes, factories, farms and service industries, they were legally and politically absent and were expected to exercise their rights elsewhere. Those who were not functional for the white-dominated economy were prevented from moving to the urban areas or were forcibly removed to the bantustans. Yet this system of migrant labour was inherently contradictory, as while the Apartheid government obsessively separated citizens socially and politically on the basis of race, economic forces undermined their efforts as tremendous economic forces incorporated all South Africans, regardless of the legislated social and political borders. This resulted in a stark contradiction between the efforts to separate people politically and socially on the basis of race, while integrating them economically. This economic integration across the racial barrier contributed to anti-Apartheid politicisation and mobilisation, as the black majority that performed critical economic and service functions for white South Africa, was now able to bring both the economy and the state to a halt through

[217] Tamarkin, M., Op Cit. Page 6.
[218] Greenstein, R., Op Cit.

withholding their labour.[219] This capacity was crucial in bringing about the asymmetric balance of power; however, this interdependence worked both ways, with black people themselves being absolutely dependent on the South African state and the white-controlled economy for their own economic survival.

The South African government was therefore constrained by such economic interdependence, as they could no longer allude to the black population as masses of enemy forces that needed to be annihilated, due to the economic interdependence that existed between all groups in an increasingly integrated country.[220] Such economic integration was reliant on the black masses that were part and parcel of the functioning of the state, of the economy, as well as the very privileges that white South Africa depended upon. The unlimited use of the conventional white South African military forces could have therefore destabilised life in South Africa by bringing the economy to a halt while also threatening the personal economic security of the very white population they were meant to protect.[221] It could also bring stronger international condemnation and pressure upon South Africa, and therefore while the security forces could have quelled the violence and resistance, these realisations definitely placed a limitation on the realistic use of force within South Africa. It was the economic interdependence that escalated the conflict and brought about the need for political accommodation. Therefore, both sides of the conflict felt this interdependence on the other, and thus when F.W. de Klerk spelled out his vision of a new South Africa in his epoch-making speech in 1990, both sides to the conflict were ripe for a deal. However, the situation in Israel-Palestine is markedly different in this regard.

The economic imperative of the Israeli system, in contrast, has been to create employment for Jewish immigrants, and while Palestinian labour power was used by certain groups at certain times because it was available and convenient, it was never central to Jewish prosperity in Israel.[222] Therefore, with regard to the economic reality in Israel-Palestine, the Zionist labour movement sought to prevent structural dependence on the Palestinian economy, particularly with regard to labour. After the outbreak of the first Intifada in the late 1980's and under conditions of globalisation, Palestinians could easily be replaced by politically unproblematic Chinese, Turkish, Thai or Romanian workers. This was aided by the massive wave of Russian Jewish immigration in the 1990's. This externalisation of Palestinians can be seen as far back as before 1948, where Palestinian labour did not represent more than a third of total workers employed in the Jewish sector, mainly in agriculture and transportation.[223] Between 1948 and 1967, the remaining Palestinian Arabs did not represent more than twenty percent of the total population living in

[219] Greenstein, R., Op Cit.
[220] Tamarkin, M., Op Cit. Page 9.
[221] Ibid. Page 10.
[222] Greenstein, R., Op Cit.
[223] Farsakh, L., Op Cit. Page 232.

Israel, and less than fifteen percent of its labour force.[224] In contrast to this, black people in South Africa represented between sixty-five and seventy-five percent of the total South African labour force between 1913 and 1994.[225] As the situation stands currently in Israel-Palestine, there remains very little economic interdependence between the two societies, unlike the situation in South Africa, despite the fact that after the occupation of the West Bank and Gaza in 1967 the whole area from the Mediterranean to the Jordan River became one integrated market, with goods moving freely across the previous Green Line. Therefore, there is little evidence of the contradiction between economic and political imperatives that undermined the South African Apartheid system.

However, during this time, the Palestinian workforce became an important source of labour for the Israeli construction and service sectors. However, the difference lies in the interdependence between the two, as while the Israeli economy served to benefit from the cheap Palestinian labour, the Israeli markets were never critically dependent on them. Post-1967, the Israeli economy developed as a high-technology economy with its major trading partners lying in the West rather than the East. Despite this integrated system, in the wake of the first Intifada in 1987 and more so after the second Intifada broke out in 2000, the two economies went through a process of disengagement, with foreign workers replacing the Palestinian labour force with no serious dislocation.[226] Alongside this disengagement, trade between Israel and the Occupied Territories plummeted, which has resulted in two separate economies being developed. However, while this fact remains true, the Palestinian population and the Occupied Territories remain dependent on the supply of vital goods and services from Israel, while Israel relies very marginally on the Palestinian markets. Regardless, it must be noted that the level of economic interdependence that was seen in South Africa prior to political and peace negotiations is not evident in the case of Israel-Palestine.

Currently, the Israeli occupation is allowing for the Palestinian economy to become dependent on its Israeli counterpart, while making both the West Bank and Gaza Strip a market for Israeli products. This can be seen when one compares the gross domestic products of Israel and the Occupied Territories, since GDP is considered one of the main indicators that reflect overall economic growth. Tracking the GDP of the West Bank and Gaza Strip together shows an increase from $4 820.9 million in 2008 to $5 147.2 million in 2009, a 6.8% growth rate.[227] On the other hand, when observing the Israeli GDP, which totalled $194 812 million in 2009, it can be seen that this product is 4 000% more than the Palestinian counterpart.

[224] Farsakh, L., Op Cit. Page 232.
[225] Loc Cit.
[226] Tamarkin, M., Op Cit. Page 10.
[227] Saleh, M.M., Op Cit. Page 425.

It is clear that Israel wishes for the Occupied Territory to remain economically dependent on it in order to control and manipulate peace processes, as well as the economic and political make-up of the region, but this has numerous consequences for the Palestinian territories. Maintaining this dependence keeps both the West Bank and Gaza Strip in a state of self-autonomy without sovereignty, and Israel is adamant about keeping the Palestinian economy under its control so that it continues to enjoy the privileges and benefits that come along with such control. It does this simultaneously through isolating Palestinians from the international arena and limiting their dealings with other countries, while at the same time making the direct subordination of the Palestinian economy to the Israeli economy the only available choice.[228]

This economic subordination began with the Israeli occupation in 1967, was reiterated under Oslo in 1993, and then was later bolstered in the Protocol on Economic Relations between the Government of the State of Israel and the PLO — the Paris Protocol — which was signed in 1994.[229] This can also be seen when one analyses Palestinian imports and exports. The West Bank and Gaza Strip depend on Israel for 68.5 percent of their imports and 90 percent of their exports. This reliance is further exacerbated by the competitive Israeli goods, products and settlement products that flow into the Palestinian territories and that are sold widely and without restrictions.[230] Accordingly, the Palestinian economy is heavily reliant and dependent on the Israeli economy, in much the same way that the South African bantustans were dependent on the white government, but without the reciprocal reliance. However, this may be changing.

A new innovation presented to deal with Palestinian labour is the creation of industrial zones, much like those that were created in the bantustans of Apartheid South Africa. These industrial zones are being built in areas that surround the Separation Barrier and require a cheap, mobile labour force that will draw from the de-development of the Palestinian economy. These jobs will be dependent on the Israeli market and political situations. These zones will ensure that the cheap Palestinian labour force manufactures Israeli products, which are then either sold back to the Palestinians or exported by Israeli firms to the U.S., the European Union and Gulf markets.[231] International investment in the area will be controlled by the Israeli military administration, thus lending legitimacy to the land confiscations and overall occupation. This will eventually consolidate the bantustan system in the West Bank and Gaza Strip and ensure that the Palestinians remain nothing more than a pool of cheap labour, much like the black population in Apartheid South Africa. For the moment, the Palestinians have been deprived of the most important weapon of struggle used by black South Africans: their strategic location in the economy and their ability

[228] Saleh, M.M., Op Cit. Page 455.
[229] Loc Cit.
[230] Ibid. Page 460.
[231] Ziadah, R., Op Cit.

to use the threat of withdrawing their labour power to disrupt the lives of white citizens, as a crucial political lever.

iii. The Demographic Issue

Both South Africa and Israel have faced certain demographic realities; however, the ways in which they have dealt with the demographic threat have differed vastly. Apartheid was the last in a long list of regimes with which white settlers dominated indigenous black people in South Africa, and within this colonial period the people of European origin were always in the minority. Demography was never an overriding concern, for as long as security of person, property and investment could be ensured, there was no need for numerical dominance.[232] In direct contrast, for Israeli Jews a demographic majority is the key to domination and the guarantee of political survival. The idea of a transfer was and continues to be a fundamental notion within the Zionist movement, which wanted a land without the people and sought to negate the very notion of a native non-Jewish population living in Palestine.[233] This form of Zionism sought the establishment of a sovereign and exclusively Jewish state, which was created through the transformation of Arab Palestine, through the dispossession and the mass transfer of the Palestinian Arab population, into Jewish Israel, an Israel that would be "as Jewish as America is American or England English."[234] This dispossession and mass transfer is clearly evident in the 450 Arab villages that were destroyed between 1947 and 1948 (see Figure 7, Appendix B). The most severe of this was the massacre in the Palestinian Arab village of Deir Yasin. Prior to its destruction in 1948, the village of Deir Yasin, on the western outskirts of Jerusalem, had a population of some 400 people. On the 9th of April 1948, the Revisionist Zionist National Military Organisation and the Fighters for the Freedom of Israel attacked Deir Yasin, murdering approximately 130 men and 250 women and children. Some of the survivors were then marched through the streets of Jerusalem in blood-drenched clothes.[235] All in all, approximately two thirds of the native Palestinians were expelled from their land, while the remaining 200 000 were placed under military rule. This was justified in light of the demographic threat, and it was made clear that

> *there is no place in the country for both peoples together. With the Arabs we shall not achieve our [Jewish Israeli] aim of being independent people in this country. The only solution is Eretz Israel, at least the west part of Eretz Israel, without Arabs and there is no other way but to transfer the Arabs from here to the neighbouring countries, transfer all of them, not one village or tribe should remain.*[236]

[232] Greenstein, R., Op Cit.
[233] Ibid. Page 233.
[234] Davis, U., Op Cit. Page 5.
[235] Ibid. Page 6.
[236] Ibid. Page 5.

Although those Palestinians who were allowed to reside within Israel were granted citizenship and freedom of movement after 1966, they were continually discriminated against both politically and economically. These examples show clearly that Israel was established as a Jewish state. It was not intended as a state for all of its citizens, Jews and non-Jews alike. Rather, it was primarily envisaged as a state for Jews, and is a state of which every Jewish individual throughout the world would be a potential citizen. Therefore, when Israel was established in 1948, it was imperative for the legislative body, the Knesset, to define in law those persons who would qualify as actual or potential citizens, and those who would not. This was done through two laws, namely the Law of Return, which defined the boundaries of inclusion, and the Absentee Property Law, which defined the boundaries of exclusion.[237] Under these two laws that were passed in 1950, every Jew throughout the world is legally entitled to become a citizen of the State of Israel, while some two million people, the Palestinian Arabs and their descendents who were exiled as a consequence of the 1948 and the 1967 wars, are denied the rights of citizenship. As it stands currently, revised estimates emanating from the Palestinian Central Bureau of Statistics show that the number of Palestinians in the world, at the end of 2009, was around 10.87 million. More than half this number, approximately 51.8%, live in the Diaspora, which is concentrated in the neighbouring Arab countries, especially in Jordan, Lebanon, Syria, Egypt and the Gulf countries. The remaining Palestinians live in historical Palestine, which includes the territories that were occupied in 1948 and 1967[238] (see Figure 8, Appendix B).

In contrast, within South Africa the indigenous black population always remained the majority and although they were economically and politically placed under exclusive white control, they were in no way forced or expelled from the country. When the Apartheid policy was implemented in South Africa in 1948, discrimination against black people was institutionalised, which allowed for legal, economic, political, residential and social discrimination against them. However, this policy did not intend to negate or expel the indigenous population but rather to facilitate their transformation into a supplier of cheap labour for the white areas.[239]

9. Conclusion: A Common Lot? Apartheid South Africa and Apartheid Israel-Palestine

When one compares South African Apartheid against the Israeli agenda of domination in Israel-Palestine, it is possible to understand how much the project of Palestinian statehood has been trivialised over the

[237] Davis, U., Op Cit. Page 5.
[238] Saleh, M.M., Op Cit. Page 385.
[239] Farsakh, L., Op Cit. Page 233.

past twenty years and how much their situation is becoming very similar to what the world protested against in South Africa all those years ago. The legal, territorial and economic developments launched by the Oslo Accords in 1993 have not brought the Palestinians closer to independent statehood, but have instead facilitated the transformation of the Occupied Territories into something analogous to the Bantustans of South African Apartheid. Like Boputhatswana, the Palestinian territory has been fragmented into five separate pieces, but its total area of 1649 km² is less than one-twentieth the size of Boputhatswana, and contains more than double the population.[240] This is exacerbated by the Israeli pass or permit system, the territorial fragmentation of the West Bank and Gaza Strip, and the expansion of settlements, which have all led to the creation of disconnected Palestinian reserves that have characteristics that are very similar to those of the bantustans under South Africa's Apartheid.[241]

It is important to stress that although the South African Apartheid experience and the Israeli-Palestinian conflict do not have the same historical origins, it can be seen that the overriding and inherent similarities that are seen through points of convergence of their respective histories are moving them towards the same outcome. The prospect of a two-state solution for Israel-Palestine is therefore buried by default, as a viable two-state solution cannot hope to be successful while the Israeli government are creating bantustans by enclosing Palestinian territories inside a massive security wall, effectively imprisoning 3.8 million people in a truncated and fragmented mini-state with no control over its borders, no territorial contiguity, no seaport, no economic potential, and no control over its water supplies, its airspace or its foreign policy, and while practising institutionalised and systematic inhumane acts against the Palestinian population.[242] Creating two states is in no way a formula for peace, and the only prospect that remains is one that was adopted and followed by South Africa, that of creating a single state.

[240] Farsakh, L., Op Cit. Page 176.
[241] Ibid. Page 245.
[242] Sparks, A., Op Cit. Page 175.

10. Appendix B

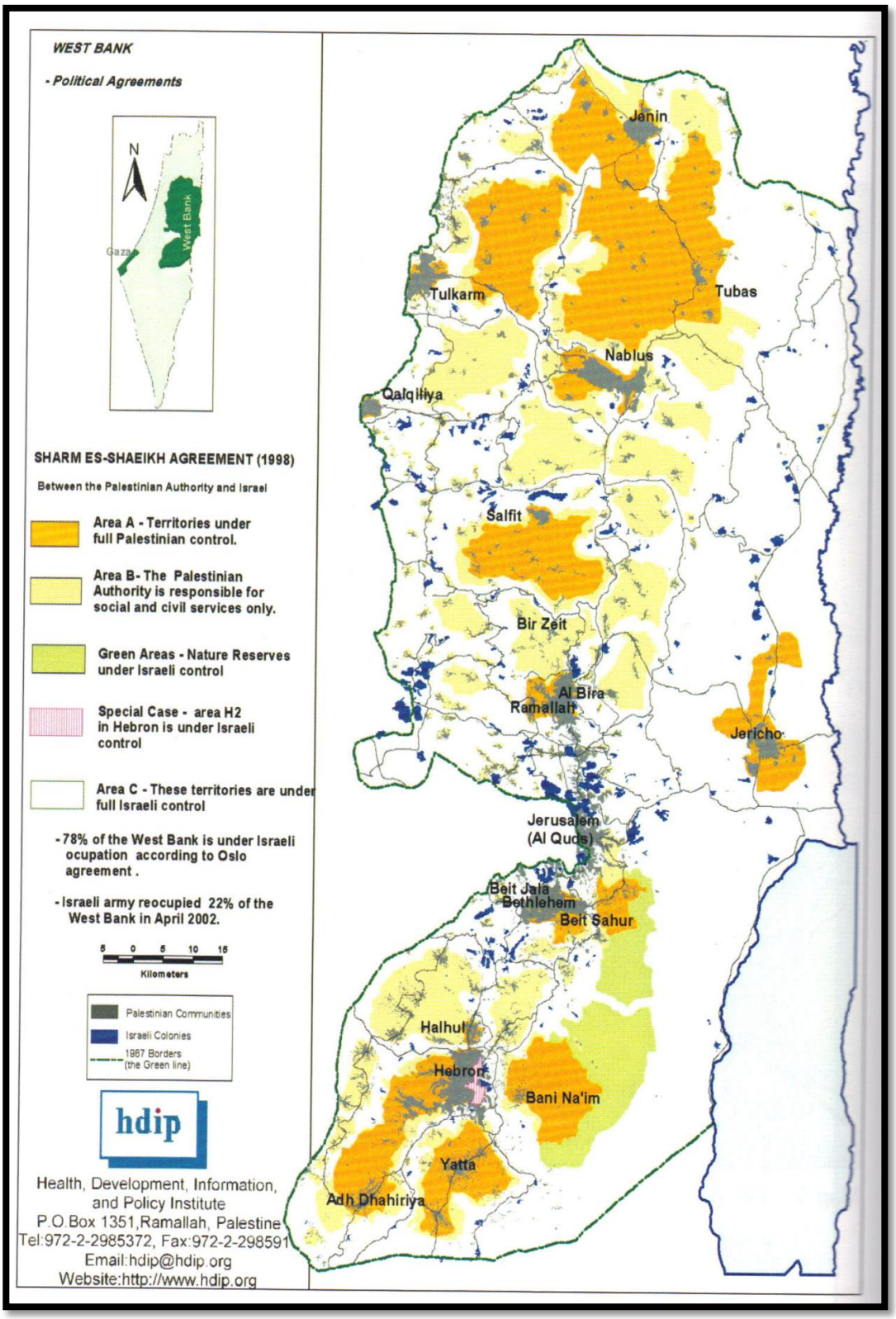


Figure 1:

A map showing Palestinian lands delineated by the Oslo Accords.

Tilley, V., "A Two-State Solution, or Smoke and Mirrors? Looking awry at Israel's State-Building Agenda." In Farouk-Alli, A., (Ed). The Future of Palestine and Israel: From Colonial Roots to Postcolonial Realities. The Institute for Global Dialogue: South Africa. 2007. Page 244.

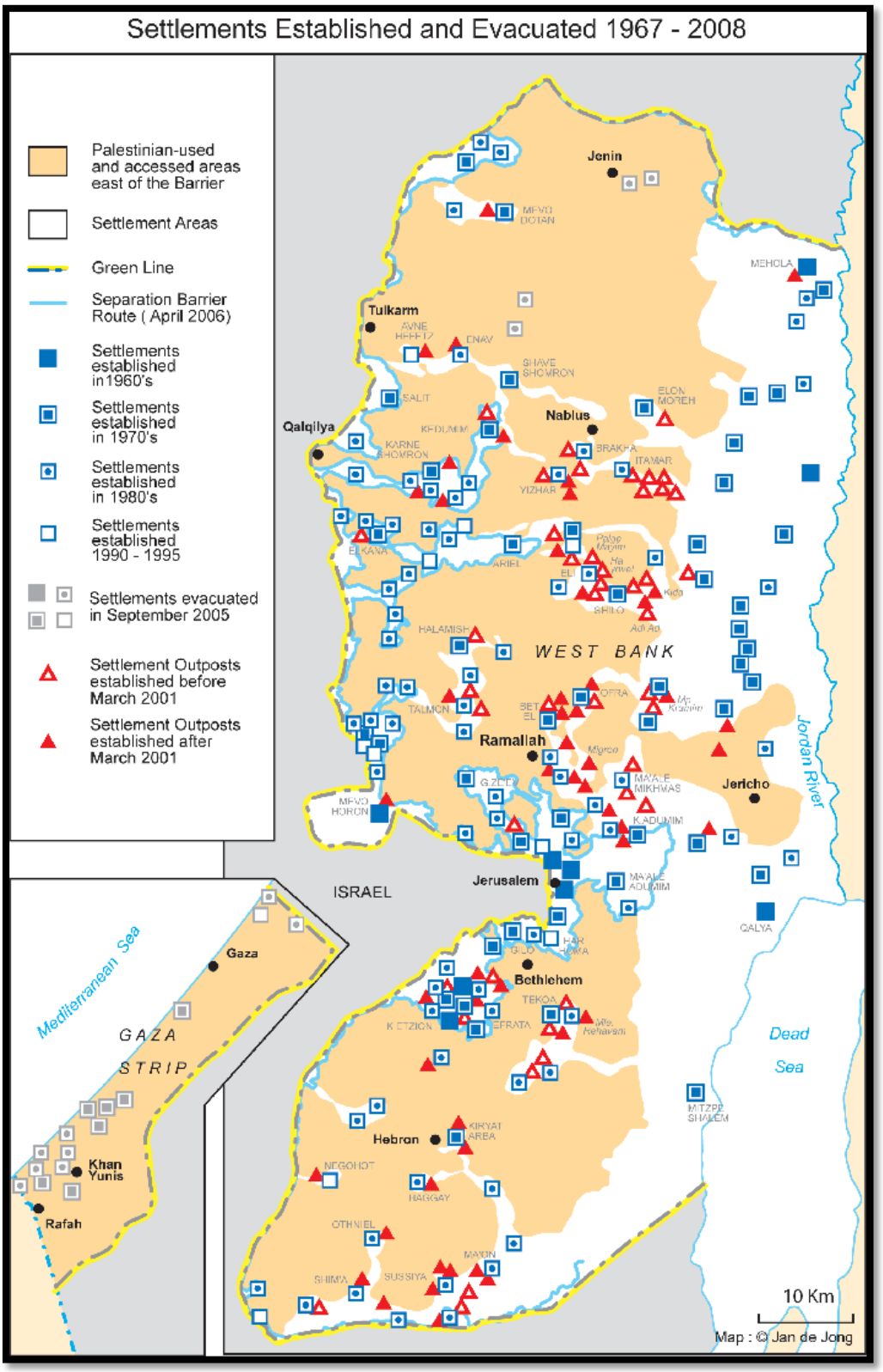


Figure 2:

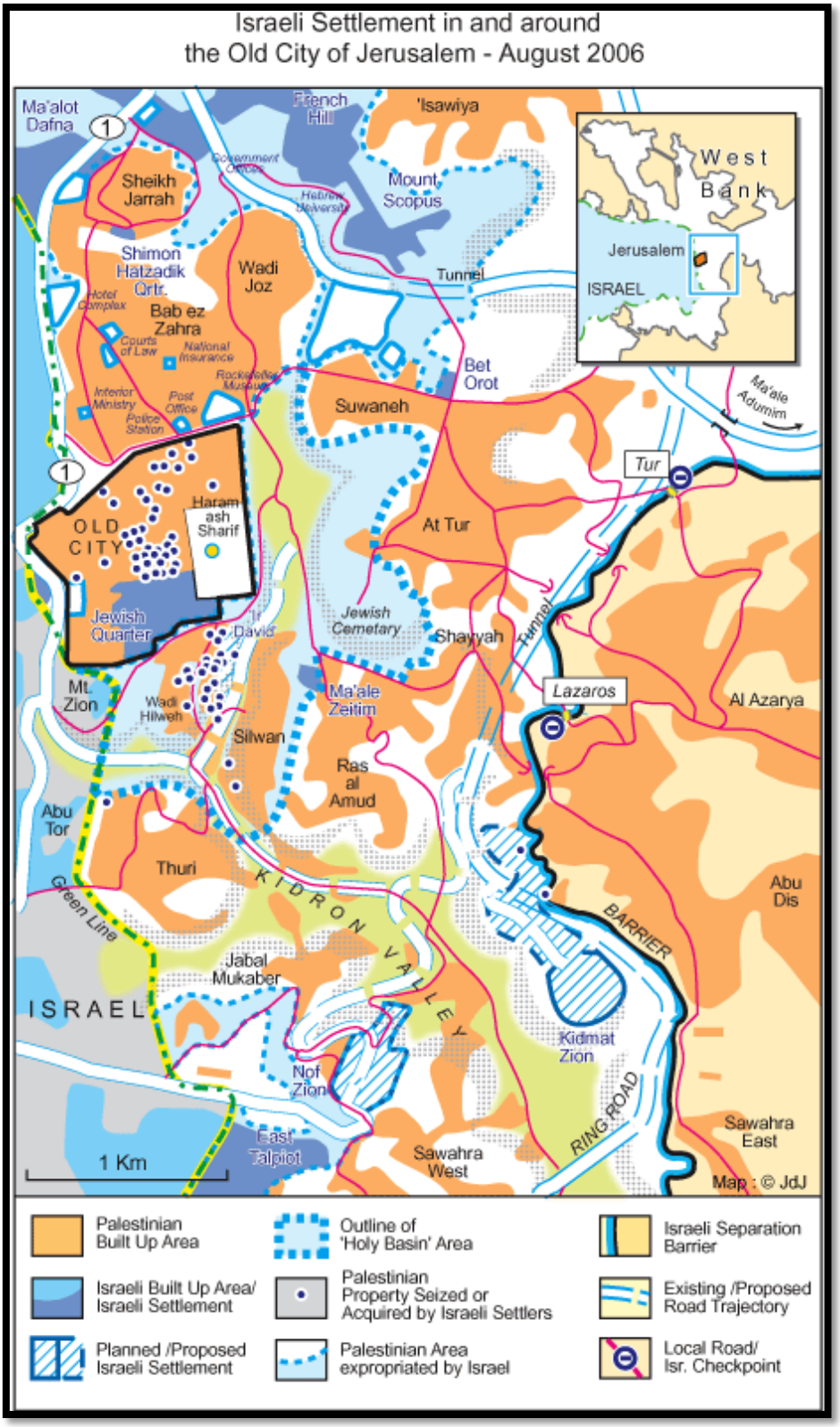
A map showing settlements established and evacuated 1967-2008

Foundation for Middle East Peace., Settlements Established and Evacuated 1967-2008. http://www.fmep.org/maps/settlements-population/settlements-established-evacuated-1967-2008-feb-2008/fmep_v18_map_settlements.gif/view. Accessed on 29 November 2011.

Figure 3:

A map showing Israeli settlement in and around the Old City of Jerusalem – August 2006

Foundation for Middle East Peace., Israeli Settlement In and Around the Old City of Jerusalem – August 2006. http://www.fmep.org/maps/jerusalem/israeli-settlement-in-and-around-the-old-city-of-jerusalem-august-2006/israeli_settlement_in_and_around_the_old_city_of_jerusalem_august_2006.gif/view. Accessed on 29 November 2011.



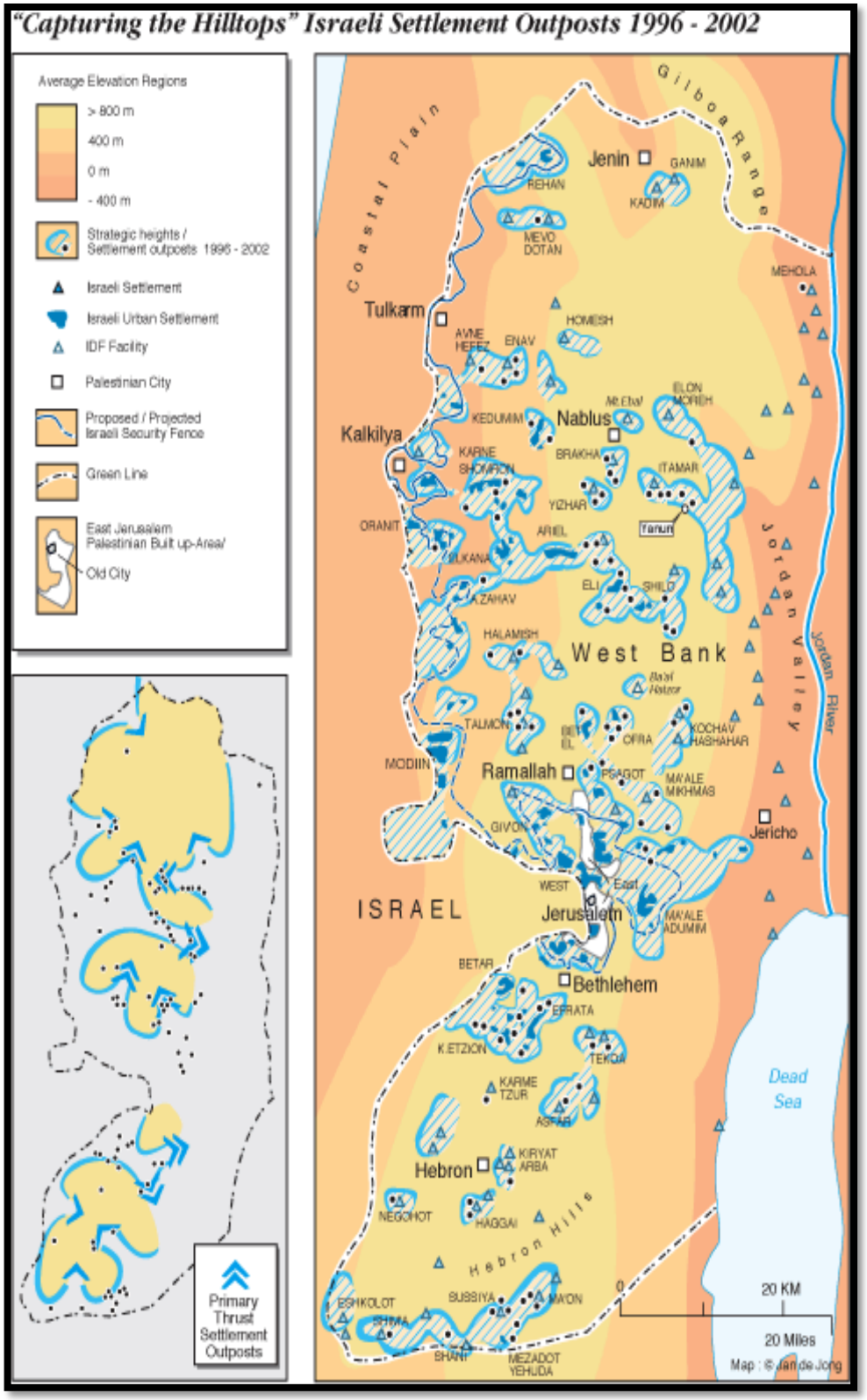


Figure 4:

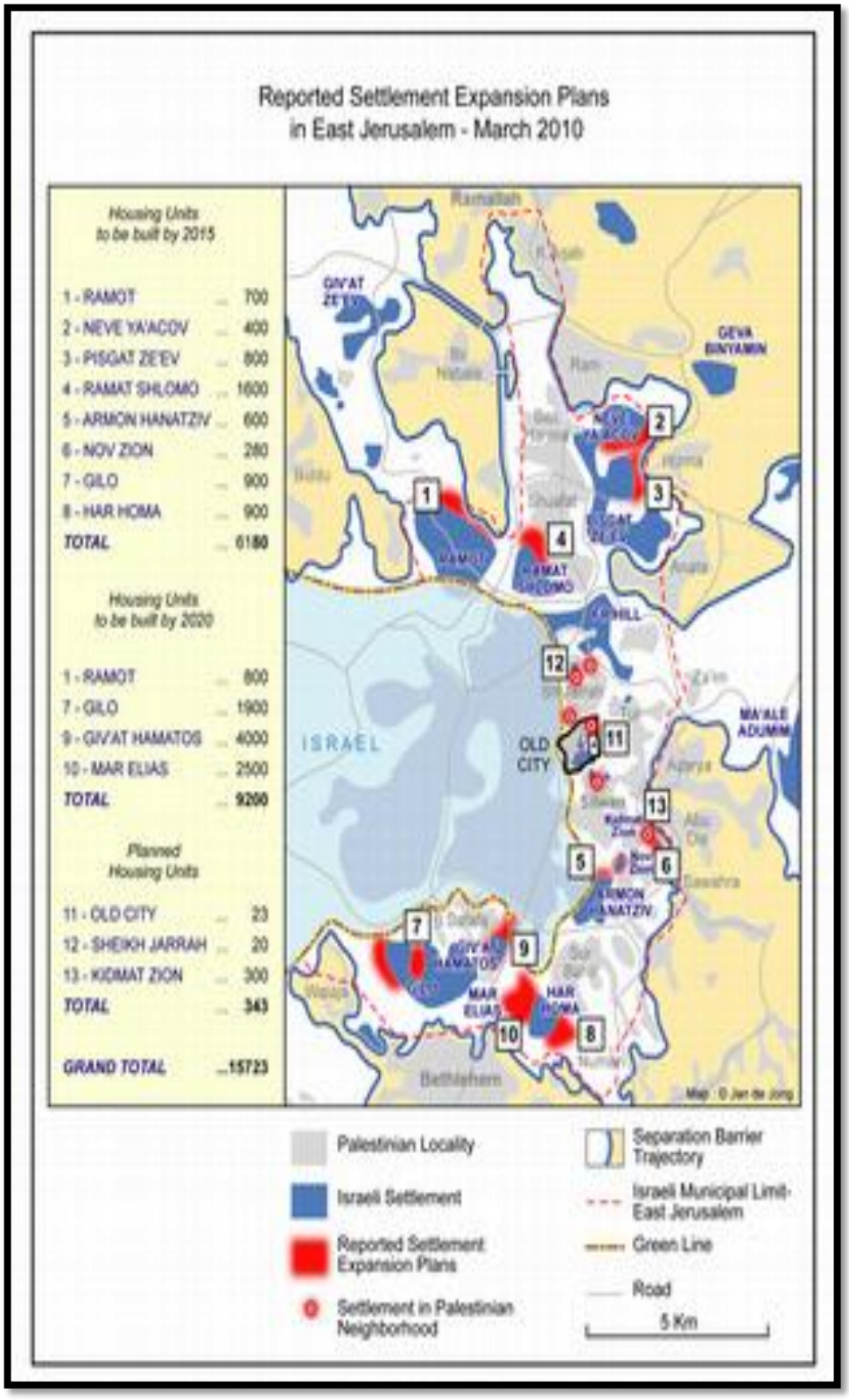
A map showing the capturing of the hilltops - Israeli settlement outposts 1996-2002.

Foundation for Middle East Peace., "Capturing the Hilltops" Israeli Settlement Outposts 1996-2002. http://www.fmep.org/maps/settlements-population/capturing-the-hilltops-israeli-settlement-outposts-1996-2002-nov-2002/settlements_1996-2002.gif/image_view_fullscreen. Accessed on 29 November 2011.

Figure 5:

A map showing reported settlement expansion plans in East Jerusalem – March 2010.

Foundation for Middle East Peace., Reported Settlement Expansion Plans in East Jerusalem – March 2010. http://www.fmep.org/reports/archive/vol.-20/no.-2/reported-settlement-expansion-plans-in-east-jerusalem-march-2010. Accessed on 29 November 2011.



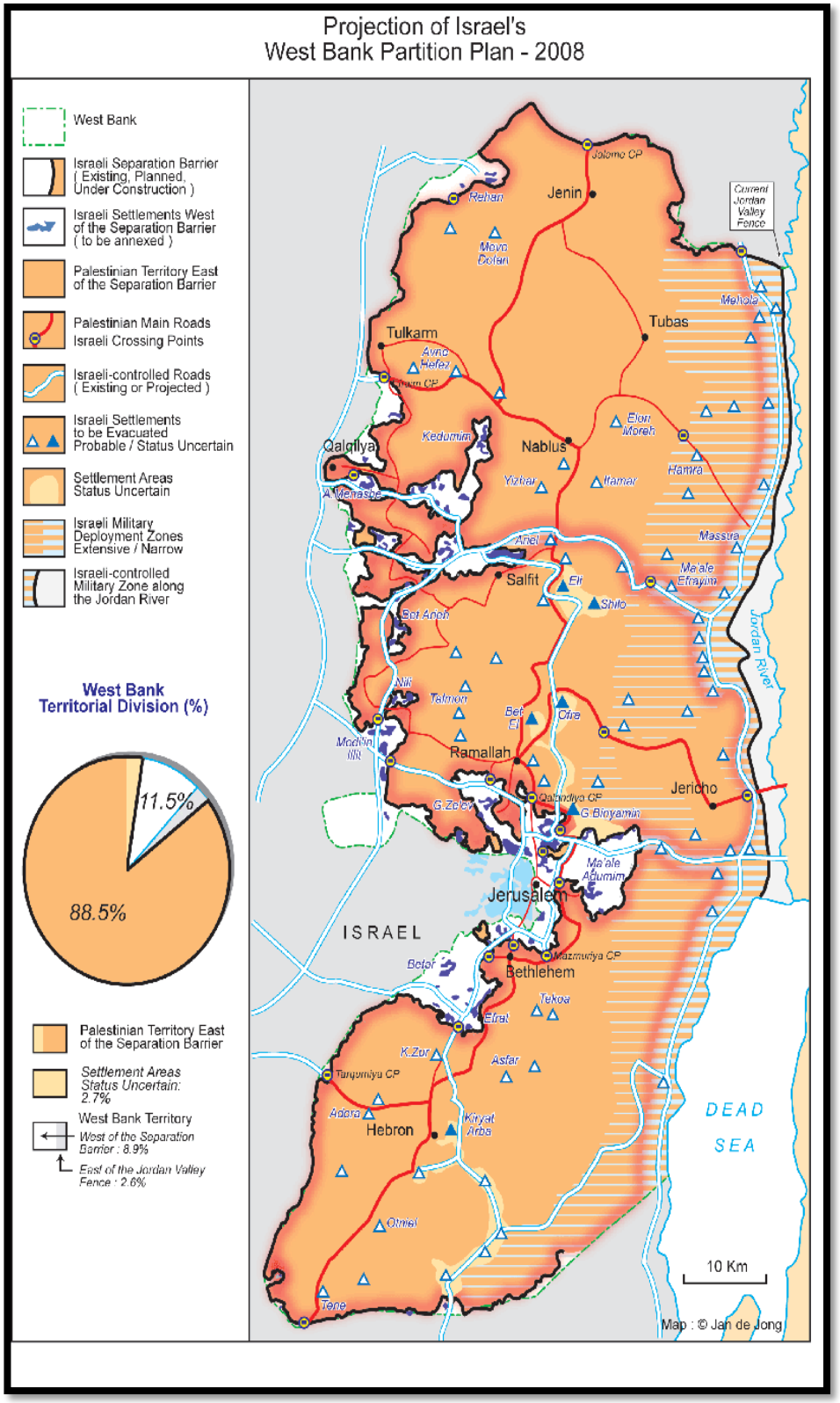


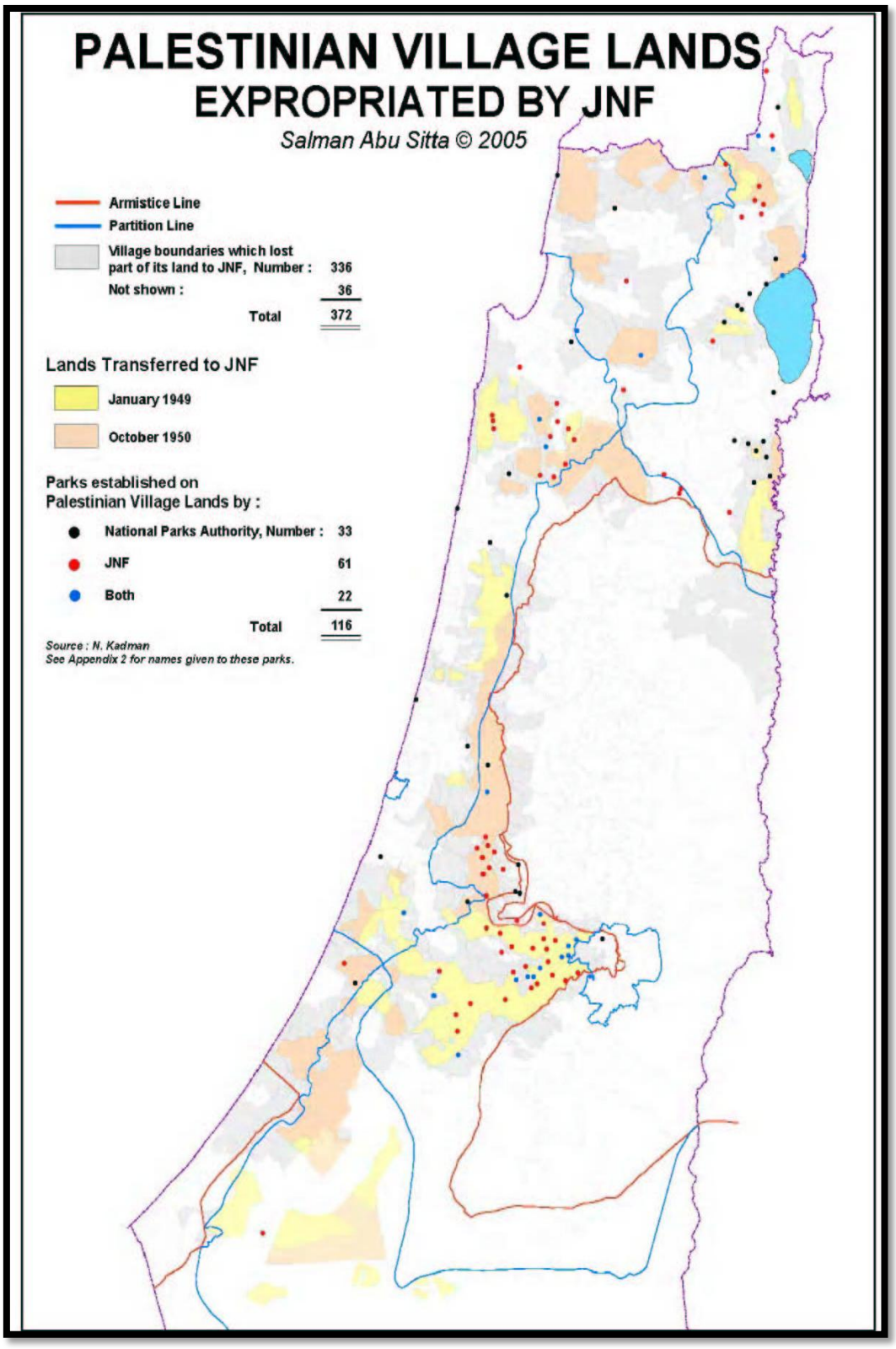
Figure 6:

A map showing the projection of Israel's West Bank Partition Plan – 2008.

Foundation for Middle East Peace., Projection of Israel's West Bank Partition Plan – 2008. http://www.fmep.org/maps/west-bank/projection-of-israels-west-bank-partition-plan-may-2008. *Accessed on 29 November 2011.*

Figure 7:

A map showing how the Jewish National Fund illegally acquired most of the lands of 372 Palestinian villages which were ethnically cleansed by Zionist forces in 1947-1948, demolishing many.



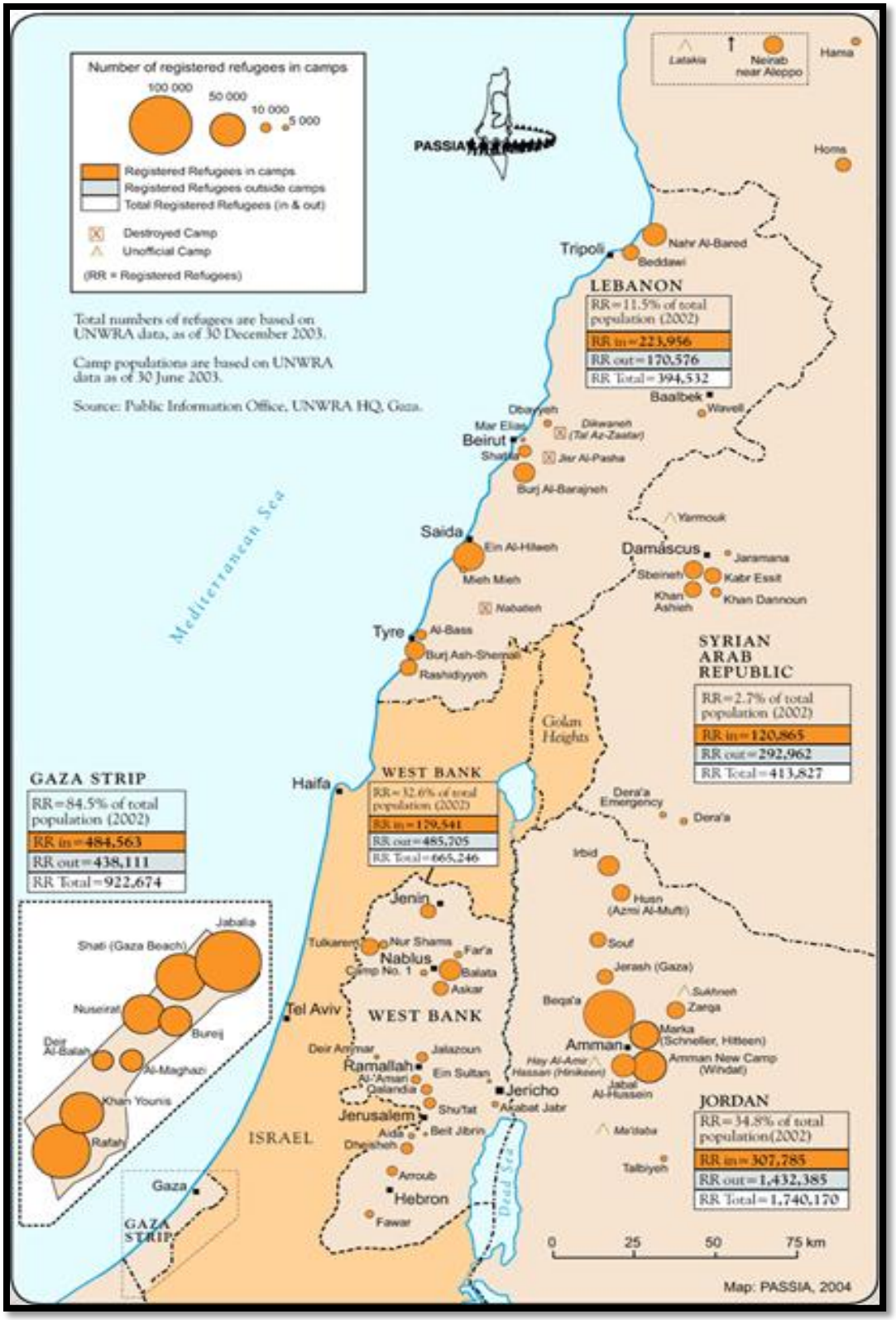


Figure 8:

A map showing the amount of registered Palestinian refugees both outside and inside camps as of 2003.

4 South Africa As A Post-Conflict Society: *Isn't it here that you take a half-step wrong and wake up 1 000 miles away?*

The South African Apartheid regime unofficially came to an end with the release of Nelson Mandela in February 1990. However, it was not until the first democratic elections on 27 April 1994 that democracy was officially introduced. In the four intervening years there was much speculation with regard to how the peaceful coexistence of the different South African population groups could be brought about, as not only had Apartheid dehumanised millions of people, but these same people had had their lives destroyed as a "result of state security violence or because of activities carried out by the liberation forces."[243] Due to this, huge chasms divided the different groups within South Africa.

Despite many different theoretical frameworks being put forward as to how best to achieve this unity, trying to construct a new society based on any of these frameworks could not occur without reflecting on the atrocities of Apartheid. Therefore, in an attempt to unify the whole of South Africa across the colour line, and starting the reconciliation process of individual South Africans, the Truth and Reconciliation Commission (TRC) was introduced. The TRC became one of the symbols of South Africa's change to liberty, and any basis for peace that was built during this highly volatile time has to be attributed, in part, to it. By devoting attention to Apartheid victims and perpetrators and by formulating visions for the future, the TRC was able to embody the transitional process.[244] Due to this, the South African TRC, and South Africa itself, has become widely regarded as a model of how societies can deal with traumatic pasts, and has already been used as an instructive example in post-conflict countries such as Sierra Leone, Liberia and Indonesia.[245]

Alongside the use of the TRC as a source of post-conflict reconciliation, other features of newly created states needed to be debated and analysed. The most important of these was the decision on which state model could possibly be implemented in South Africa post-1994. In post-conflict societies, the designers of the new state are usually confronted with a choice between two poles that exist on a continuum. At one end of the spectrum lies representative government, while at the other is effective government. Although

[243] Verdoolaege, A., Reconciliation Discourse: The Case of the Truth and Reconciliation Commission. John Benjamins Publishing Company: Amsterdam. 2008. Page 1.
[244] Loc Cit.
[245] Loc Cit.

both have their positive and negative aspects it is very rare that both exist within the same system, as they call for different emphases on different aspects of society. Ultimately the choice between the two options determines the level of centralisation or decentralisation of power that occurs within the government and therefore has a direct effect on the level of sovereignty enjoyed by the centre. Following from this, it can be seen that, based on the notion of government, there are direct implications for the union/federation debate.[246] This was an important feature of the creation of the new South African state, and is one that needs to be analysed in further detail.

I believe that examining the formation of post-1994 South African society in order for this process to be replicated in the context of the Israeli-Palestinian conflict, requires that one not only look at the theoretical frameworks and debates that surrounded the creation of a new constitution and a new South Africa, but at how individuals across the colour line got to know one another, listen to each other, understand one another, and think beyond the Apartheid past, in order to aid national unity and reconciliation.

1. ***The Truth and Reconciliation Commission***

There are no universal rules determining how the crimes of previous regimes, especially those pertaining to gross human rights violations, should be dealt with. In the last century six different forms could be distinguished and compared in their historical context, all of which offer different models of how the victims are recognised and compensated, how the new order attempts reconciliation between warring factions, and how repetition of the past can be avoided. These forms include amnesia, trials and justice, lustration, negotiated restitution and compensation, political re-education and truth commissions.[247] When deciding which response is the most appropriate for the case in question, namely South Africa, collective memory of human rights violations, which constitutes the informal, widely accepted perceptions of past events in which the collective identity of people is mirrored, can be separated into historical injustice and contemporary abuses.[248] Where sizeable historical antagonists share the same state, such as in South Africa and in Israel-Palestine, truth commissions can affirm victims, contribute towards common norms and even create constitutional patriotism. It is for this reason that the model of the South African TRC will be analysed and evaluated for its suitability for Israel-Palestine.

[246] Kotze, D.J., Op Cit. Page 269.
[247] Adam, H, & Adam, K., "The Politics of Memory in Divided Societies." In James, W, & Can De Vijver, L., (Eds). After The TRC: Reflections on Truth and Reconciliation in South Africa. David Philip Publishers: South Africa. 2000. Page 33.
[248] Ibid. Page 32.

People say why recall the past? What is the good of remembering what has been swept away? What is the good of irritating a nation? How can one ask such questions? If I suffered from a serious and dangerous disease and recovered or was cured from it, I would recollect the fact with joy. I would be disturbed by it only if I was still ill or if I'd taken a turn for the worse and wanted to deceive myself.[249]

South Africa, like a great many other countries, has had to confront a past that was plagued by human rights abuses, and much like these other countries South Africa also debated how to deal with this past in a way that would allow the people and the nation to move forwards together. One way to do this, and path that was chosen for the South African nation, was one of remembrance. There is an old Jewish tradition that states that to remember is the secret of redemption. This is further argued by George Santayana, who has often been quoted in relation to Nazism and the Holocaust, when he states that "Those who forget the past are condemned to repeat it." Although there were a number of South Africans who argued for 'amnesia' with regard to Apartheid and the decades of repression, the overwhelming majority were anxious to come to terms with the past and then to move on, and although everyone accepted that it was necessary to turn the page of history, there was a recognition that first that page needed to be read.[250] This was the eventual path that South Africa chose to embark upon, and it is hoped that a thorough examination and analysis will bring certain common features to light that can be used in order for Israel-Palestine to do the same.

In the field of studies surrounding the TRC there is an abundance of both negative and positive evaluations of this commission, and these need to be taken into account when analysing the TRC in order to ascertain whether there is merit in this approach being suggested as a form of conflict resolution within Israel-Palestine. During the time of its existence in the 1990's, the TRC came under intense scrutiny, and this did not fade into the background in its aftermath. In the years since, the TRC has either been met with elaborate praise or condemnation, with no clear-cut majority for either. Stemming from this, two conclusions can be tentatively drawn. The first of these is that the TRC cannot be classified as either positive or negative in its entirety, and that the results of such a process can only be revealed in due time, and because of this, analysis into both the negative, positive, unique and common aspects of the TRC need to be recognised and evaluated before it can ascertained whether a similar commission could be instituted in the case of Israel-Palestine. However, prior to this, one needs to look at what is meant by the term 'truth commission' and how it all began in South Africa. The term 'truth commission' refers to institutions that serve to focus on the past; that investigate a pattern of abuses over a period of time rather

[249] Smith, K.E., Remembering Stalin's Victims: Popular Memory and the End of the USSR. Cornell University: United States of America. 1996. Page 1.
[250] Boraine, A., A Country Unmasked: Inside South Africa's Truth and Reconciliation Commission. Oxford University Press: Oxford. 2000. Page 5.

than a specific event; that are a temporary body, typically in operation for six months to two years, completing its work with the submission of a report; and are officially sanctioned, authorised and empowered by the state.[251]

The idea of such a TRC came first from the African National Congress (ANC). This was proposed because as soon as the ANC was unbanned in February of 1990, accusations were levelled against the party that gross human rights violations had been occurring within some of its training camps in Tanzania and in other southern African countries.[252] The ANC responded to this by setting up their own internal commissions, which included the Stuart, the Skweyiya and the Motsuenyane Commissions, all of which confirmed that such violations had taken place during the time of exile. These were accepted by the National Executive Committee (NEC) of the ANC. However, in response to this, the NEC called upon the government to set up, without delay, a Commission of Inquiry or Truth Commission into all violations of human rights since 1948.[253] This was taken forward mostly by Professor Kader Asmal, who gave both form and content to the ANC's proposal to establish a truth commission once a political settlement had been reached. By November 1994 the Promotion of National Unity and Reconciliation Bill had been published by the newly appointed government, and was signed into law in July 1995, coming into effect on the 15th of December 1995. It was this Act that allowed for the establishment of the TRC.

This TRC was comprised of three sub-committees, namely the Human Rights Violations Committee (HRVC), the Amnesty Committee, and the Reparation and Rehabilitation Committee. One of the most important components of the TRC that requires further mention for the purpose of this dissertation was the HRVC, which was the public face of the TRC. The HRVC was tasked with enquiring into "systematic patterns of abuse, to try to identify motives and perspectives, to establish the identity of individual and institutional perpetrators, and to determine accountability for gross human rights violations."[254] In order to do this the HRVC initiated the processes of taking statements and organising public hearings. This offered a platform to the victims of Apartheid, who were then able to talk about the atrocities that had occurred to them in the past. It was because of this that the HRVC was one of the most important aspects of the TRC.

The South African TRC was ultimately given the ambitious task of promoting national unity and reconciliation in a spirit of understanding that transcended the conflicts and divisions of the past by

[251] Hayner, P.B., Unspeakable Truths. Confronting State Terror and Atrocity. Routledge: London. 2001. Page 14.
[252] Boraine, A., Op Cit. Page 11.
[253] Verdoolaege, A., Op Cit. Page 7.
[254] Ibid. Page 11.

1. *Establishing as complete a picture as possible of the causes, nature and extent of gross violations of human rights which were committed during the period from the 1st of March 1960 to the 5th of December 1993;*
2. *Facilitating the granting of amnesty to persons who make full disclosure of all the relevant facts relating to acts associated with a political objective and comply with the requirements of this Act;*
3. *Establishing and making known the fate or whereabouts of victims and restoring the human and civil dignity of such victims by granting them an opportunity to relate their own accounts of the violations of which they are the victims, and by recommending reparation measures in respect of them;*
4. *Compiling a report providing as comprehensive an account as possible of the activities and findings of the Commission contemplated in paragraphs 1, 2 and 3 and which contains recommendations of measures to prevent the future violations of human rights.*[255]

It can be seen that the TRC was not intended to perpetuate the myth of the so-called rainbow nation where everyone claimed to love one another, but to reveal the serious divisions that did exist.[256] The acknowledgement of these divisions was meant as the first step towards a bridge-building process between an unjust and intolerant past and a future that would be founded on the recognition of human rights, democracy and equality. It was believed that uncovering the truth of the gross human rights violations that had occurred under Apartheid would be necessary to allow for the promotion of reconciliation and national unity. Based on this it is clear that the TRC was a unique phenomenon. However, it needs to be determined whether it was ultimately positive or negative, whether there are common features that can be drawn from it, and whether it played a substantial role in bringing about a stable democratic South Africa.

i. Positive Aspects of the TRC

Since 1994, many scholars have been convinced that the TRC played a crucial role in shaping post-Apartheid South Africa through a number of positive features that could not have been mirrored through other institutions or approaches. According to a number of articles, books and dissertations, one of the main positive achievements of the TRC was that it was concerned with the airing of victims' personal experiences, which allowed said victims' to realise that their stories and experiences were not "a private matter, but had rather been part of a social experience with which millions of people had been involved."[257] It has been stated that this allowed those victims to deal with their past trauma as well as with the sense of powerlessness and humiliation that they had felt for numerous decades. These personal

[255] Verdoolaege, A., Op Cit. Page 54.
[256] Boraine, A., Op Cit. Page 343.
[257] Verdoolaege, A., Op Cit. Page 17.

experiences were met with the ability to hear the truth from the perpetrators. This disclosure of truth was one of the aspects of the TRC that the victims valued highly. Simultaneously, it forced the hidden and dark Apartheid past into the light. No one in South Africa could deny that Apartheid had happened anymore. This was psychologically significant for many people, as the suffering people had endured under this regime was acknowledged and recognised, and they felt respected and valued by society.[258]

Alongside this, the second component of the TRC, that of reconciliation, was also seen by many as a success in its own right. Although the TRC has been criticised for not bringing about complete reconciliation, it has been argued that this was not the aim of the TRC, which was merely to start the process. This aim has been achieved through the culture of open debate and discussion that has undoubtedly been created through the TRC.[259] In this way, people are more willing to listen to and understand each other, and this might be the beginning of a more reconciled society. In addition to this, the TRC facilitated the notion of personal and individual reconciliation that was offered through encounters between the victims and perpetrators that were a precondition for the granting of amnesty. Based on this, many have argued that the TRC provided the platform for national reconciliation. This occurred as the TRC allowed for the construction of a collective identity and memory through obliging all South Africans to work together in order to build a new nation. Prior to 1994, black and white South Africans regarded each other as two distinct groups; however, the revelations at the TRC proved that each and every South African had a "history in common, a history that could no longer be neglected and that brought about solidarity and feelings of togetherness."[260]

The third way in which the TRC is considered to be both a unique and favourable phenomenon is that it is often considered as a model for what has been termed restorative justice, whereby the aim is "not to achieve individual satisfaction or compensation, but to establish equality, humanity and respect among members of society."[261] South Africa's TRC caught the attention of the world for reasons that go far beyond the often horrific stories that came to light during its hearings. Instead, people found it fascinating that the idea of a full enquiry into the recent past could facilitate reconciliation, rather than deepen the already bitter divisions.[262] Even more fascinating is the thought that justice and reconciliation could occur by granting amnesty to those who made full disclosure of their role in committing the gross human rights violations that the commission was meant to evaluate and inspect. However, the notion of individual

[258] Verdoolaege, A., Op Cit. Page 17.
[259] Ibid. Page 18.
[260] Loc Cit.
[261] Loc Cit.
[262] Dyzenhaus, D., "Debating South Africa's Truth and Reconciliation Commission." In The University of Toronto Law Journal. Vol. 49, No. 3. Summer, 1999. Pp. 311-314. Page 1.

versus blanket amnesty was one that was fiercely contested and debated during this time. Ultimately, this form of restorative justice seeks to restore the social relationship of equality between victim and perpetrator that has been disturbed by the perpetrator's crimes. This is done with the ultimate goal of seeing to it that both the victim and the perpetrator can live as equal citizens of the society in question.[263] Within the case of South Africa, this form of justice was used as opposed to retributive justice, which attempts to achieve the same goal but does so through the use of punishment. The notion of restorative justice was used as there was no compelling reason why the social relationship of equality should be reached through the use of punishment, as it has the disadvantage of alienating or removing the perpetrator from society.[264]

Therefore, the TRC embodied restorative justice, and it is because of this that a number of scholars are convinced that the TRC delivered justice to the victims as it allowed the perpetrators and victims to participate in building a new society together, fully aware of who each other was and what each other did. It gave the victims the opportunity to tell their stories and to participate as citizens in the education of the new society, and as the nature of the crimes was mostly political, and the work of the system rather than particular individuals, the crimes were best served by a process of public debate in which whole communities could participate.[265] Nonetheless, it must be noted that the traditional role of the state in criminal justice was pivotal to the initial success of TRC, as the threat of criminal justice had to be in place before most perpetrators would be persuaded to come to the TRC or make full disclosure. Despite this, the notion of restorative justice allowed the TRC to try to pay tribute to the victims, and that justice was also served through the perpetrators' shame of public exposure and through the reparation policy. Therefore, according to Archbishop Desmond Tutu, the chairman of the TRC, the South African model could be adapted and then implemented in conflict situations all over the world, such as in the Congo, Angola, Sudan or the Middle East.[266]

ii. Negative Aspects of the TRC

Despite the fact that the notion of restorative justice was praised by many who were involved in the process of the TRC, it is important to note that this was also the basis for one of the major critiques. A number of Apartheid victims felt that the process itself was unjust and that it failed to restore justice, as perpetrators who appeared before the TRC and who met the criteria in order to be granted amnesty were

[263] Dyzenhaus, D., Op Cit. Page 4.
[264] Loc Cit.
[265] Loc Cit.
[266] Verdoolaege, A., Op Cit. Page 19.

acquitted from any civil or criminal liability.[267] Although retributive justice was still used if perpetrators did not come forward, and although the granting of amnesty was not guaranteed, many saw the TRC process as perpetrator-friendly and felt that real justice could only be served through the punishment of perpetrators. These people claimed that the amnesty process was unconstitutional, since the South African constitution states that every citizen has the right to seek recourse in the court of law when he or she feels wronged. Based on this, many victims felt as if they had been robbed of their sense of personal justice, as perpetrators went free without any moral or material compensation for the victims. This was made worse by the fact that those who did not come forward were seldom prosecuted, as a result of the inefficiency of the South African legal system and a lack of evidence.[268] However, it must be noted that one of the most strikingly successful aspects of the amnesty system was that it encouraged people to testify and resulted in the hearing of evidence that would not have seen the light of day otherwise.[269]

With regards to truth, many people argued that the TRC did not reveal an objective truth about the Apartheid past as each witness spoke from his or her own subjective point of view, which could neither be confirmed or denied as the old Apartheid government had destroyed a huge amount of incriminating evidence, especially within the period between 1990 and 1994. This version of the truth was also established through narrow lenses, with many saying that it was crafted to reflect the experience of a tiny minority of perpetrators being state agents and victims being political activists.[270] This was exacerbated by the fact that many of the high-ranking officials failed to respond and did not come forward, while the testimonies of the lower ranked and minor officials who came forward for fear of prosecution were not believable and/or were disappointing. Individuals such as President Botha and President de Klerk refused to take responsibility, which was a huge disappointment for many South Africans. These aspects have prompted critics to state that the commission only revealed a partial truth and definitely not an objective truth about the Apartheid past, and that all the TRC did was "reduce the number of lies that can be circulated unchallenged in public discourse."[271]

> *The TRC has been good at revealing the truth. The reconciliation side of things appears to be almost an afterthought that was tagged on.*[272]

[267] Verdoolaege, A., Op Cit. Page 19.
[268] Loc Cit.
[269] Boraine, A., Op Cit. Page 344.
[270] Mamdani, M., "A Diminished Truth." In James, W, & Can De Vijver, L., (Eds). After The TRC: Reflections on Truth and Reconciliation in South Africa. David Philip Publishers: South Africa. 2000. Page 58.
[271] Verdoolaege, A., Op Cit. Page 20.
[272] Boraine, A., Op Cit. Page 340.

Many commentators who have commended the TRC have, in the same breath, criticised one particular aspect of it: reconciliation. These commentators state that although the TRC has told some home truths and uncovered significant knowledge about the past, it offers very little in the way of reconciliation.[273] Following from this, critics have continued to question whether individual reconciliation was brought about by the TRC or whether it was the individual's personal choice, as although during the TRC process there were instances of individual reconciliation during the hearings or as a result of the hearings, reconciliation is a personal feeling that cannot be imposed by an official process or institution.[274] This is aided by the fact that reconciliation could only be enhanced through signals of repentance, by apologies from Apartheid leaders, or by white acknowledgement of past wrongdoings, all of which were often lacking during the TRC process. This also resulted in the failure to realise material changes in the lives of Apartheid victims, which is seen as one of the greatest shortcomings of the TRC.

Within the Promotion of National Unity and Reconciliation Act (No. 34 of 1995) that laid the basis for the TRC, it was stated that in order to compensate for amnesty being given to the perpetrators, reparations would be given and this was seen as being crucial for the reconciliation process. While many victims expected monetary reparations from the TRC in exchange for their participation in hearings, the TRC could only recommend reparations to the government and these were not brought into effect immediately. This was exacerbated by the government's lack of enthusiasm for establishing a reparations policy and it was only in April of 2003 that President Mbeki ruled that the government would provide a once-off grant of R30 000 to those individuals designated by the TRC, an offer that undoubtedly left many victims disappointed. However, it must be argued that the commission in its establishment was never expected to reconcile the nation, that the process of reconciliation had begun before its creation, and that its mandate was to encourage the continuation, development and promotion of that reconciliation within society.[275] Alongside this, the process of reconciliation is a long one, and cannot happen within such a short time frame.

iii. Evaluation of the TRC and its Role in Bringing about Post-Conflict South Africa

History, despite its wrenching pain,
Cannot be unlived, and if faced
With courage, need not be lived again.[276]

[273] Boraine, A., Op Cit. Page 340.
[274] Verdoolaege, A., Op Cit. Page 20.
[275] Ntsebeza, D., "A Lot More To Live For." In James, W, & Can De Vijver, L., (Eds). After The TRC: Reflections on Truth and Reconciliation in South Africa. David Philip Publishers: South Africa. 2000. Page 105.
[276] Angelou, M., The Complete Collected Poems of Maya Angelou. Inaugural Poem. Random House: New York. 1994.

In light of the above evaluation of both the positive and negative aspects of the TRC, I see the TRC as first and foremost a positive initiative. Not only was the commission the only possible and indispensable option in post-Apartheid South Africa but it also successfully fulfilled the mandate that was set forth for it. It is because of this that I believe that the TRC reaches far beyond the local context of South Africa and can in fact be used as a conflict-resolving mechanism in other countries. In the context of Israel-Palestine, a similar, if slightly altered, TRC could facilitate a national discussion not only on gross human rights violations, but also on the issues of justice, reconciliation, truth and democracy. Ultimately, although the negative aspects of the TRC have been taken into consideration, they pale into insignificance when compared to the long-term positive implications that this initiative has and will continue to have on South African society.[277]

It has been argued by numerous scholars that the TRC has probably contributed to the continuation of an atmosphere of reconciliation amongst South Africans. Those South Africans who are most accepting of the TRC's version of the truth are more likely to be reconciled and that the most important legacy left by the TRC was to promise reconciliation that applied to the national, community and individual needs.[278] In the end, we as South Africans are still living through the consequences and outcomes of the TRC, and thus objective conclusions cannot yet be drawn as to whether it has been a complete success or failure; however, the TRC has produced an underlying current, a tendency towards reconciliation that many South Africans may not be openly aware of, but one which our culture and society allows for and abides by. Following from this, I believe that the TRC was one of the mechanisms that led to a reconciled South Africa.

iv. Unique and Common Features That Can Be Drawn from the TRC

It is clear that the TRC within the South African context was indeed a unique process, but provides a blueprint for conflict resolution in other contexts, such as in Israel-Palestine. Based on the previous chapter's conclusions, significant similarities can be identified between South Africa prior to 1994 and Israel-Palestine as it currently stands, which could allow for this exceptional conflict-resolving mechanism to move beyond its local context. In South Africa, the TRC was created through the transition to democracy. This transition did not occur as a result of civil war, but rather through a negotiated settlement. This is the only viable and possible option for the Israelis and the Palestinians. As in South Africa, all parties will have to sit together to work out the democratic dispensation. In line with this, any

[277] Verdoolaege, A., Op Cit. Page 187.
[278] Ibid. Page 188.

Commission that is to be held in Israel-Palestine will have to follow the same guidelines as those that made the TRC successful where fifteen other commissions had failed before.[279]

Despite this, the South African model cannot be used as a one-size-fits-all approach due to its unique nature and the many distinctive features that allowed for the creation and ultimate success of the commission. Such features range from the powers granted by the Promotion of National Unity and Reconciliation Act, such as subpoena powers, to the TRC's approach to amnesty. In the case of the former, the powers of subpoena, and search and seizure were impressive, and although these powers were not always used, the TRC did have the power to subpoena high-level politicians, or it could issue search orders against key individuals or institutions. This was important as long before the election of 1994, instructions had been given for the destruction of documents, which would have denied the commission access to a great deal of material.[280] Alongside this, the power of subpoena was rarely invoked, but in the case of P.W Botha, it was of vital importance. This was the case as not only did Botha ridicule the commission and dismiss it with contempt, but he also made it clear that he would not appear at any of the hearings. This led to Botha being subpoenaed, and when the subpoena was ignored, he was cited for contempt. This resulted in the former president being tried in a small magistrate's court in the town of George. Although his appeal was upheld, the sight of a former state president and former head of the armed forces appearing in court was a strong reminder that no one was above the law.[281] This can be seen as a unique but substantial feature, as in comparison, the National Commission on Truth and Reconciliation in Chile had no power of subpoena and received very little cooperation from the armed forces.

The latter feature of amnesty is the main distinctive feature of the TRC as it allowed for the commission to facilitate not only victims' hearings, but perpetrators' hearings as well. Based on the notion of individual amnesty rather than blanket amnesty, it was speculated that very few perpetrators would come forward in light of the conditions that were imposed; however, nearly 8000 applications were received.[282] This amnesty was made possible in exchange for truth; however, the South African model was very different to commissions that had been attempted in the past. Not only was amnesty given on an individual basis, but applicants for amnesty had to complete a prescribed form, published in the Government Gazette, that called for very detailed information relating to the specific human rights violations, and required applicants to make a full disclosure of their human rights violations in order to

[279] Verdoolaege, A., Op Cit. Page 190.
[280] Boraine, A., Op Cit. Page 273.
[281] Loc Cit.
[282] Ibid. Page 269.

qualify for amnesty.[283] However, the act, omission or offence had to be an act that was associated with a political objective committed between 1 March 1960 and 10 May 1994.[284] The use of amnesty for the perpetrators of human rights violations has not gone without fierce debate and controversy. The following quotes sum up the contradiction in the use of amnesty, the first stated by an Argentinean tortured ex-political prisoner and the second by a widow testifying at the TRC in 1997:

> *How can I ever have peace when every day I risk meeting my unpunished torturer in the neighbourhood?*
>
> *No government can forgive, no commission can forgive. They don't know my pain. Only I can forgive and I must know before I can forgive.*[285]

Despite these contradictions, ultimately individual amnesty was one of the main features that added to the uniqueness of the TRC while allowing it to see eventual success, with the South African amnesty model being described as the most sophisticated amnesty undertaken in modern times for acts that constitute violations of fundamental human rights. In support of the Amnesty Committee, Archbishop Desmond Tutu stated that amnesty does have a price to pay. It is, however, the price the negotiators believed our country would have to pay to avoid an alternative too ghastly to contemplate.'[286] Despite the fact that attempts need to be made to customise it to the particular context, and that certain unique features exist that would be more difficult to replicate in different countries, there are three fundamental elements to the TRC that could be taken over by other countries as an exact model and that would provide the basis for a good start.

The first of these is the use of the HRVC, which provided a forum for thousands of victims to talk about the atrocities they witnessed under the regime of Apartheid. These victims can be considered to be ordinary citizens of South Africa, instead of those with political motives and agendas, and therefore one of the great merits of the TRC was that it gave a voice to these ordinary citizens.[287] Many have said that this has allowed for a new form of nation-building as these people may have been perceived to be more committed to the new South African nation and more willing to work together in the construction of a peaceful future. It also allowed for greater transparency that had not been seen in previous commissions, such as those in Argentina, Chile or El Salvador. The fact that the proceedings of the TRC were open to the public resulted in maximum transparency as well as remarkable participation by many in South Africa

[283] Boraine, A., Op Cit. Page 276.
[284] Van de Vijver, L., "The Amnesty Process." In James, W, & Can De Vijver, L., (Eds). After The TRC: Reflections on Truth and Reconciliation in South Africa. David Philip Publishers: South Africa. 2000. Page 129.
[285] Boraine, A., Op Cit. Page 278.
[286] Van de Vijver, L., Op Cit. Page 130.
[287] Verdoolaege, A., Op Cit. Page 191.

as well as those internationally.[288] This feature was one that was highly contested leading up to the TRC, when the main concern was that within the open hearings cameras could serve to intimidate victims. However, the general view that emanated from NGO's was that the stories that were being told by both the victims and the perpetrators were ones that needed to be heard. This was also aided by the fact that radio penetrates even the most remote areas, which meant that people who could not attend the public hearings could listen to and could participate in hearings.[289] This is one of the main features of the TRC that could be mirrored in other commissions. Linking to the first feature, the testimonies given by both the victims and perpetrators allowed for the composition of a collective memory as well as an official archive of the Apartheid past.[290] This can be seen as full media access to the public hearings allowed for the generation of film and photographs far in excess of what appeared in the media. This feature of the TRC, which can easily be transferred, is equally as important as it would create an officially authorised and concrete archive that will exist forever.

Secondly, although the feature of individual amnesty and restorative justice as mentioned above is seen as a unique one that was only put in place within the South African context, I believe it is a feature that could readily be transferred to a possible commission in Israel-Palestine, where amnesty could be made possible in exchange for truth. For the same reasons that those who worked under the government of Apartheid South Africa came forward, exchanging their truth for amnesty from the new state, I believe that individuals within groups such as Hamas as well as the Israeli authorities would come forward, the chance of coming clean and having the truth made public being far preferable to being persecuted and refused amnesty. Although the granting of amnesty to perpetrators of gross human rights violations is still open to much contestation and debate, the South African amnesty model has been described as the most sophisticated amnesty of its time. There is no doubt that there are a number of advantages of not providing amnesty and of using prosecutions for gross human rights violations, such as the fact that prosecution allows for retributive justice, it reduces the possibility of private revenge, it can educate the populace about the extent and definition of the violations committed and it has the potential to grant closure to both perpetrator and victim.[291]

However, the use of trials and prosecutions has its own downfalls, and in the case of widespread human rights violations over a long period of time, as was the case in South Africa and still is the case in Israel-Palestine, a critical question is, whom does one prosecute? Using the example of the Nuremberg Trials, it

[288] Boraine, A., Op Cit. Page 270.
[289] Ibid. Page 272.
[290] Verdoolaege, A., Op Cit. Page 191.
[291] Boraine, A., Op Cit. Page 281.

was only possible to deal with some from the very top echelon of Nazi leaders, allowing many to escape the net of prosecution. This can be seen as in the trials that were held a mere 85 882 cases were brought forward out of the hundreds of thousands of people who had been directly involved in the Holocaust and only 7 000 of these secured convictions.[292] A further example is the Rwandan genocide, in which millions were murdered, mostly by one-on-one and individual violence. How is it possible to hold a fair and meaningful trial for all those who were involved in this violence? These issues were relevant to South Africa and are also relevant to Israel-Palestine. The very nature of the repression that has taken place and is taking place is all-pervasive; therefore, it would be difficult to know whom to prosecute and whom not to. Furthermore, such repression has been existence for decades, and due to time limits, decisions have to be made about what time span the prosecutions would cover. Therefore, although many still harbour reservations about whether or not prosecutions would have been a better course of action in South Africa, and some individuals expressed their unhappiness and anger at amnesty being granted, rather than using the duty to prosecute, the commission chose to use the duty to safeguard human rights and to prevent future violations, and was successful. In a deeply divided society, punishment cannot be the final word if healing and reconciliation are to be achieved. Therefore, the notion of restorative justice and individual amnesty should be emulated and used in the Israeli-Palestinian conflict.

Lastly, the Human Rights Violations hearings form a template for talking about a traumatic past and how to express emotions such as grief and anger.[293] This reconciliation discourse can be viewed as an example of initiatives to be undertaken in future commissions, as it allowed people to listen to and understand each other better. It is possible for a commission to be constructed in Israel-Palestine based on the above-mentioned dominant and successful features of the TRC, and such a commission could aid the reconciliation of a fractured and conflict-ridden country.

2. South Africa and the New Constitution: Federalism and Unitarianism

> *It is useful to remember the remark of the Confucian Hsun-tzu: "Yang Chi, weeping at the crossroad, said, 'Isn't it here that you take a half-step wrong and wake up 1 000 miles away?'"*[294]

A sense of apprehension is frequently experienced in trying to decide the constitutional models to be established for post-conflict societies. The careless borrowing of institutions, citing the wrong examples and drawing the wrong lessons, choosing one mode of decision making rather than another, and choosing

[292] Rosenberg, T., The Haunted Land: Facing Europe's Ghosts After Communism. Vintage: New York. 1995. Page 15.
[293] Verdoolaege, A., Op Cit. Page 192.
[294] Horowitz, D.L., A Democratic South Africa? Constitutional Engineering in a Divided Society. University of California Press: United States of America. 1991. Page 124.

one set of institutions over another posed problems for South Africa and will be problems for any future Israeli-Palestinian state.

i. Unitarianism

Within a unitary state, all government power is centralised in the hands of the central government. Although regional and local authorities or governments may exist, their power is given to them through delegation from the central authority. They are therefore relegated to being mere agents of the central government and are therefore controlled from the top, and not always by the residents of their areas of jurisdiction.[295] Alongside this, one of the overriding characteristics of a unitary state is the uniformity of legislation. In countries that have divided societies or populations that are not homogenous, such as South Africa and Israel-Palestine, this is often seen as major dilemma. This is due to the fact that uniform legislation has no hope of being able to satisfy the preferences of all the diverse communities and groups of which the society consists, and because of this the political external costs most individuals will bear will be much higher than when diverse sets of legislation are allowed.[296]

Despite this, unitary states are seen as being more successful than federal states in areas such as jurisdictional issues and administrative costs. The former can be resolved far more quickly in a unitary than in a federal state, which in turn lowers political negotiation costs. However, the political external costs as perceived by most non-members of the ruling party, which are most likely to include the individuals that make up the different minority communities, will be much higher.[297] With regard to the latter, it has been stated that administrative costs are lower in unitary states; however, this has been rebutted by the fact that larger bureaucracies with many layers of command are not only less flexible than smaller units, but are often more costly than a number of a smaller units, as would be seen within a federal structure. This is further exacerbated by the political external costs felt by non-members, which could be much higher. A final feature of a unitary state is the fact that national policies are able to be coordinated more easily. However, in societies that are not homogenous, and which harbour units that are diverse in their needs and interests, these uniform policies may be a disadvantage, increasing the political external costs that are felt by members of the communities who are not in power.[298] Despite this, issues such as nation-building and the redistribution of scarce resources are more easily dealt with within the unitary system.

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[295] Van Vuuren, D.J., & du Pisanie, J.A., "Restructuring the State: Constitutional Considerations." In Cloete, F., Schlemmer, L., & van Vuuren, D., (Eds). Policy Options for a New South Africa. Human Sciences Research Council: South Africa. 1991. Page 128.
[296] Loc Cit.
[297] Loc Cit.
[298] Ibid. Page 129.

ii. Federalism

The idea of federalism can be traced far back in history, in Israeli, Greek, feudal, Dutch, Swiss and American history, and has been the subject of the work of scholars and philosophers such as Althusius, Montesquieu, Proudhon, Rousseau, Kant and De Tocqueville. More recently, the most prominent academics on the subject of state federalism, from which all basic characteristics that are common to the notion of federalism can be derived from, are Wheare, Riker and Livingstone. The first definition of federalism can be found as far back as 1685, in which it was stated that the real meaning of federalism was derived from a Latin word and refers to an alliance, a treaty or an oath of allegiance and, by implication, emphasises the right of those who share in the covenant to make their own decisions.[299] Although the Latin origin of the term indicates how far back forms of federalism can be traced, the same notion is not still in use today. In more modern times federalism has taken permanent shape in Switzerland, which originally became a confederation and later became a federation. The same path that was taken by the United States of America, where in the eighteenth century it was instituted as a confederation and later became the USA in its present federal form. Examples can be drawn from over one third of the world's population, in countries such as Canada, Mexico, Argentina, Brazil, Venezuela, Spain, Germany, Yugoslavia, Austria, India, Malaysia, Pakistan, Nigeria and Australia.[300] The more modern notion of federalism has been increasingly difficult to define, but for the purpose of this chapter, federalism will be defined as

> *a union of group selves that are united by one or more common objectives while retaining their distinctive group being for other purposes. This allows for a capacity to permit national unification without losing the separate identities of the sub-national units or groups which form the larger entity. Therefore federalism is an order which is based on the autonomy of the smaller communities in which the smaller circles and communities are given the greatest possible powers to undertake their own affairs. This enables different groups to live together in freedom while the decentralised authority serves as a guarantee for justice and constitutional government. This allows the central authority to be sovereign in regard to the matters entrusted to it, while the states, communities or cultural groups are supreme in their own terrains.*[301]

Following from this definition of federalism it can be seen that this allows for authorities on two different levels to enjoy equal status, while being in no way subordinate to each other. However, in order for a federation to come about, the two separate states or communities need to both have a strong need and

[299] Kriek, D.J., "The Theory and Practice of Federalism." In Kriek, D.J, Kotze, D.J, Labuschagne, P.A.H, Mtimkulu, P.F.G, & O'Malley, P.K.R. (Eds). Federalism: The Solution? Principles and Proposals. HSRC Publishers: South Africa. 1992. Page 12.
[300] Loc Cit.
[301] Ibid. Page 15.

desire to shoulder common interests jointly while having an equally strong need and desire to shoulder domestic interest separately. This ensures a pursuit of unity while not being supplanted by a pursuit of uniformity, which in conflict areas such as South Africa and Israel-Palestine, with different ethnic groups and communities, is highly important. However, this has been known to cause co-ordination problems as the functions of the two governmental levels can never act in complete isolation from each other, and, based on necessity, certain points of administrative and political contact must be maintained.[302] However, this can easily be overcome through the use of a network of institutions that can regulate and reconcile the activities of the various authorities.

The legal sovereign in any federal state is the constitution, which divides the power between the central and group authorities, and all units within the federation undertake to subject themselves to it, while symbolising the supreme authority of the unified state. The constitution serves to uphold the internal and external sovereignty of the state and harbours the supreme authority in a federation. Ultimately, the constitution means that the national and regional governments are by law equal, autonomous and coordinated institutions that receive their powers from the constitution. Alongside this, their status and functions are also protected through the constitution.[303] Therefore, the constitution can be understood as a contract that is entered into by the federating units and can only be altered through prescribed procedure.[304] In cases where the constitution is broken, an impartial arbiter, usually the courts, intervenes to settle the difference. This is vital for successful federalism as it acts as the interpreter of the constitution while protecting and respecting the power and autonomy of each of the different bodies.

This principle of federalism can be seen to have a centuries-long history and states that conform to this governing method have distinctive structural, institutional and contractual characteristics, but ultimately this form of cooperative arrangement has been used almost without exception to attain freedom and equality. The liberty principle that is promoted within democracy has become the typical form of government within the parameters of federalism, which has resulted in the two developing in tandem and bringing about the decentralisation of power into the hands of free and equal individuals.[305] This is one of the main reasons why I believe the notion of federalism would work well within Israel-Palestine. Federalism as a theory and a principle has seen numerous successes when applied to conflict-stricken states that are multi-ethnic, and is therefore applicable to ethno-national conflicts such as Israel-Palestine.

[302] Kriek, D.J., "The Theory and Practice of Federalism." Op Cit. Page 15.
[303] Wessels, D.P., "The Division of Powers in a Federation." In Kriek, D.J, Kotze, D.J, Labuschagne, P.A.H, Mtimkulu, P.F.G, & O'Malley, P.K.R. (Eds). Federalism: The Solution? Principles and Proposals. HSRC Publishers: South Africa. 1992. Page 42.
[304] Kriek, D.J., "The Theory and Practice of Federalism." Op Cit. Page 16.
[305] Kriek, D.J., "Historical Development of Federalism." In Kriek, D.J, Kotze, D.J, Labuschagne, P.A.H, Mtimkulu, P.F.G, & O'Malley, P.K.R. (Eds). Federalism: The Solution? Principles and Proposals. HSRC Publishers: South Africa. 1992. Page 5.

In every instance of federalism the practical dispensations have provided a contractual, institutional framework that permanently established relations between different tribes, communities, cities, provinces, cantons, colonies and states, and in each instance co-operation between these different entities was achieved in a way that preserved the individual autonomy of each of the entities concerned, and this is exactly what is needed in the context of Israel-Palestine, as it calls for a theory of non-domination rather than non-interference.[306]

iii. Federalism Versus Unitarianism

When societies come to choose between the notion of a federalist and unitary state, a consideration that needs to be acknowledged is how this reflects on the state in question. By implementing a federalist state one could argue that the perception is that the society is the sum total of different entities, each with its own distinctive interests for which provisions need be made within the constitution. This stands in stark contrast to a unitary state. Within a union, society is perceived as a single entity and integration into a single entity is envisaged.[307] With regards to South Africa, the ANC's opposition to special political provisions for group rights or accommodation through power-sharing, or the federal debate, was insistent and continuous. Minority protection, which would result from the implementation of federalism, was seen as an unwelcome distraction from establishing democracy and redressing the injustices of the past, as it allows the interests of those who find themselves in the minority to be maintained. While this occurs, it also has the ability to keep the majority divided and will prevent any economic restructuring of the country in question, while freeing the economically prosperous areas of the country of any responsibility for helping develop the poverty-stricken areas.[308] Federalism and/or accommodation is also rejected on the grounds that nation-building can only truly take place on terms that can embrace the whole of a culturally diverse people, and that the political measure of federalism, although allowing for temporary confidence building in the transition period, is not intended to ensure democracy but rather to limit it though legitimising special privileges and protecting the material interests that were established through discrimination and exploitation. This would undoubtedly fuel future conflict. Ultimately, an insistence on unitary states rests on the theory of the nation and nationalism. Therefore, if the ideal is to create an image of a united country, one would expect the society to find expression in the unitary notion, whereas if it is to create the notion of a plural nation, the idea of a federal state would be preferred.

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[306] Levy, J.T., "Self-Determination, Non-Domination and Federalism." In Hepatia. Volume Unknown. Issue Unknown. 2007. Pp. 1-19. Page 1.
[307] Kotze, D.J., Op Cit. Page 269.
[308] Johnston, A., "Partition, Accomodation and Assimilation: Minorities and National Constitutions." In Johnstone, A, Shezi, S, & Bradshaw, G., (Eds). Constitution-Making In the New South Africa. Leicester University Press: London. 1993. Page 223.

State forms are predicated on the relationship that prevails between the different parts of a state. Within the unitary state the central authority is all powerful while other authorities are subordinate to it, with many stating that as a rule, law and order can only be maintained if power is centralised. In direct contrast to this lies federalism, where the authorities are on an equal footing in relation to each other, as authorities at the first and second levels have equal status and one is not subordinate to the other.[309] A union can be defined as a state in which all legislative power resides in a central parliament that normally delegates authority to make ordinances to regional authorities, and therefore is seen as a single, indivisible sovereign with almost unlimited jurisdiction, while a federation has power that is vested in several authorities.[310] Herein lies the first difference between a federal and a unitary state: the division of power. Alongside this, another difference that exists between the two is the mechanism for the settling of disputes. A unitary state may have a written or unwritten constitution, but parliament is sovereign and the Supreme Court cannot question an act of parliament. In a federation, the Supreme Court has the special function of interpreting the constitution and therefore is the deciding body on issues of conflict.[311] Finally, the third most important difference is the machinery for constitutional amendment. In a unitary state the constitution can be altered by the central authority, as sovereign powers are vested in the centre. However, in a federation, as there are a number of sovereign parliaments that result from the division of power, no one parliament can alter the constitution under which it entered the federation. Accordingly it can be seen that three main areas distinguish a federal from a unitary state: the division of powers, the special function of the Supreme Court, and the machinery for constitutional amendment.

The federal theory of governance has prevailed in the past as the various authorities in a federation perform different functions, are vested with different powers and remain subordinate to the same regulating institution, namely the constitution, which simultaneously provides legitimacy to law and order.[312] Therefore it can be seen from the outset that there exist only two kinds of state: a unitary or federal one. Both old and new states are either unitary or federal, they cannot be both. At the time of negotiations in South Africa, one of the major debates was whether the state was to be unitary or federal. Federalism spearheaded almost all of these debates, and in order to analyse which theory is better equipped in explaining the South African debate and therefore which should be suggested as a possible model for Israel-Palestine, the historical development, structure, institution and mechanisms of federalism will be analysed, and the development of such a concept in South Africa will be traced.

[309] Kriek, D.J., "Introduction." In Kriek, D.J, Kotze, D.J, Labuschagne, P.A.H, Mtimkulu, P.F.G, & O'Malley, P.K.R. (Eds). Federalism: The Solution? Principles and Proposals. HSRC Publishers: South Africa. 1992. Page ix.
[310] Marquard, L., A Federation of Southern Africa. Oxford University Press: London. 1971. Page 14.
[311] Ibid. Page 15.
[312] Kriek, D.J., "Introduction." Op Cit. Page ix.

iv. Structure of Federalism

There are a number of different ways in which federalisms can differ from each other, and in order to ascertain whether South Africa can in fact be classified as a federal state and whether this is the best approach for a future state for Israel-Palestine, all of these aspects need be identified and understood. These differences include, but are not limited to, federal units, the division of functions between levels of authority, the settling of difference between levels of authority and institutions, the execution of central decisions, and the composition of the upper house, which normally represents the particular interests or distinctive identities.[313]

There exist certain differences in the structure of federalisms, and for the case of Israel-Palestine, the most important of these is the notion of federal units, which can either be territorial, corporate, person or associated. Although all types have seen their successes, I believe that a mixed notion of person-orientated unit and territorial units would be the most successful. Corporate units are not territorially bound and each nationality requires its own participating state within the association. Associated units only apply to members that according to international law are independent of the federation, but according to constitutional law are members of the federal state. With regard to territorial units the population of the country can be heterogeneous, but each (or most) territorial areas accommodate a separate ethnic or linguistic group, which results in the variety of ethnicities being involved in the central authority.[314] This takes a realistic stand in regard to ethnic realities and takes steps to protect these realities. This was used and was highly successful in the case of India. Person-orientated units within federalism have also been used before in the case of Belgium, where Flemings and Walloons live together in Brussels. Despite this, each group wishes to remain part of its own cultural group in certain respects and for this reason all governmental functions are divided between those which can be personalised and those which cannot, whereby those matters that are seen as personalised are those that involve a person's individuality so that they should belong to the sphere of the authority of their own cultural community. Therefore, different subjects of legislation need to be allocated to the central authority and to the regions. In some cases this is straightforward, as it is accepted that the central authority should have control over matters such as peace and war, defence and communications. However, disagreement often arises over issues such as trade and agricultural marketing. In most examples the regional authorities include facets of life such as cultural affairs, educational affairs, cultural co-operation, housing policy, entertainment

[313] Kotze, D.J., Op Cit. Page 268.
[314] Kriek, D.J., "The Theory and Practice of Federalism." Op Cit. Page 20.

policy, scientific policy and social welfare policy.[315] The idea is that group bodies should exercise authority over matters that can be personalised, while matters that cannot be should be handled jointly or on a regional basis. Such cultural groups would not have mutually exclusive territorial regions but would have cultural councils that control certain functions and activities on their behalf. Therefore, in the case of Israel-Palestine, territorial as well as person-orientated principles would be used to enable cultural groups to achieve complete national expression, while allowing all groups to share the land they have a cultural and historical affinity with.

One of the major issues of contestation is the division of functions between levels of authority, and this can be further divided according to the principle on the basis of which the division takes place and the technique according to which the division takes place.[316] On the principle of division, specific functions can be classified according to the general domains of authority activities, such as foreign affairs, defence, economic affairs, transport, communications, natural resources, administration of justice and law enforcement, the status and rights of citizens, culture, health and welfare, habitat and environment.[317] Described in this way, authority functions can be bestowed either exclusively on one, or jointly on several levels of authority depending on which level is best equipped for the particular function. However, how are these functions divided between the different levels of authority? There are three possibilities. The first is to define the functions of the central authority and to leave the rest to the middle-tier authorities, which serves to limit the powers of the central authority and gives individual communities more freedom to bring about a localised federal state. The second calls for the opposite, whereby the powers of the communities are limited while the central authority is strengthened, which allows the creation of a federal state. This is done by defining the functions of the middle-tier authorities while leaving the rest to the central authority. Finally, the third method is to define the functions of both the central and the middle-tier authorities and then to compile still another list of functions that both authorities make decisions on. This places communities in either category and could eventually lead to an end to the federal character of the state.[318]

From this it can be seen that the division of powers within a federation is a key point of concern, and the forms and systems of the government need to be designed so as to ensure that the needs and demands of a population are most effectively met. This method of dividing powers so that the national and regional authorities of a state can act in a co-ordinated manner and yet remain independent of each other, within

[315] Marquard, L., Op Cit. Page 14.
[316] Kriek, D.J., "The Theory and Practice of Federalism." Op Cit. Page 25.
[317] Ibid. Page 26.
[318] Marquard, L., Op Cit. Page 145.

their own specific sphere, has been linked to the notion of a two-tiered system of authority that rules the same country and the same people, where each tier or level of authority has at least one functional area of competence in which it is autonomous. A federal state, therefore, is seen to depend on a delicate balancing of centralised power and localised autonomy, but in order to allow for national reconciliation there needs to be a feeling of nationalism in the potentially federating units. In the case of South Africa, this was done through the TRC mentioned above, and a similar process would have to take place in Israel-Palestine if any form of reconciliation is to take place. Within this two-tiered system, there exists equality in the status of the two government institutions and neither is subordinate to the other. Affairs that are of common interest to all federating parties are assigned to the central authority, while affairs that are of a personal nature and involve the maintenance of their own identities are dealt with by the authorities of the different units. Despite this, it is very rare that neat labels can be placed on the exact federal state and local functions, and the situation almost always results in functions becoming intertwined, which can in fact be complementary and supportive.

> *The rainbow or marble cake is characterised by an inseparable mingling of different coloured ingredients, the colours appearing in vertical and diagonal strands and unexpected whirls. As colours are mixed in the marble cake, so functions are mixed in the federal system.*[319]

With regard to the execution of central decisions and the legislation of the central authority, there exist three methods which can be adopted. The first of these is that all federal decisions and laws can be entrusted to the administrative organs of the participating units, which eradicates duplication of efforts and allows for a more sympathetic application of laws by local or group officials.[320] The second of these methods states that the execution of federal decisions and laws be conferred on federal institutions and departments, which allows for uniformity insofar as the execution of such matters is concerned. However, duplication still remains a major issue. Finally, the last method is one that calls for a combination of the previous two, whereby the execution of decisions is split between the federal departments and participating units.[321] With a population as diverse as that of Israel-Palestine, it can be seen that there will be a vast array of needs and wants from the various groups, and in order to allow the government to respond quickly and effectively to the needs of different groups, it would need to be as decentralised and localised as possible.[322] The only way that this can be achieved is through a division of power that allows the national and regional authorities of a state to act in a co-ordinated manner and yet independently of one another within their own specific spheres. Ultimately this has to result in a two-tiered system of

[319] Wessels, D.P., Op Cit. Page 39.
[320] Kriek, D.J., "The Theory and Practice of Federalism." Op Cit. Page 28.
[321] Loc Cit.
[322] Wessels, D.P., Op Cit. Page 35.

authority which will rule over the same territory and the same people. This requires an extremely intricate balance of power between the centralised power and the local authority in order to reconcile the demands of national sovereignty with state sovereignty.[323]

The final difference that can be seen to exist within federalism is the composition of the upper level or house, which represents the federal states. Regarding such composition, differences lie in the appointment of senators and the number of representatives from the various federal units. Senators can either be nominated or elected, and within a federation, different units often receive equal representation in the upper house, which allows them to enter into the federal state as equal partners whose rights are equally respected and protected. One of the arguments against this is that representation of population groups should occur in proportion to their numbers, and although this was a success in case studies such as Austria, in the case of Israel-Palestine this would not be conducive to the post-conflict state. This is due to the fact that one of the major issues of contestation within Israel itself is the threat of the Arab demographic, as mentioned in Chapter Two. This would act as a serious impediment to any form of proportional representation due to the large majority of Muslims and Arabic-speaking people who would reside within this new state of Israel-Palestine, and would undoubtedly overwhelm the Jewish and Christian minorities within the same territory.

Following from this explanation of the theory and structures of federalism, it can be seen that there are various advantages that federalism bestows in cases where there are ethnic conflicts and minority groups, as it allows these groups to see to their own domestic affairs, make their voices heard in matters of national importance and take part in the political process and in political life.[324] With regard to Israel-Palestine, within which there would exist a large majority of Muslim Arab-speaking individuals, one of the dangers that must be taken into account is the fact that the more centralised a federation is, the more power that resides in the hands of the majority and the more favourably the said majority can exercise this power for its own benefit. Therefore, the minority groups need to ensure that they remain strong as a regional or group party. However, despite numerous dangers that exist, it needs to be noted that federalism is most likely the only possible way forward for Israel-Palestine as it is conducive to the promotion of respect for the multiplicity of structures in society and of tolerance towards those with differing viewpoints. In any post-conflict society, usually the whole society is required to endorse the same belief in rules rather than power as a means to resolve conflict, and this is where many societies fall short. Federalism is the most exacting of all constitutionalisms to be put forward in such societies as it

[323] Wessels, D.P., Op Cit. Page 37.
[324] Kriek, D.J., "The Theory and Practice of Federalism." Op Cit. Page 30.

presupposes an additional measure of political tolerance and sense of responsibility, and allows for a free union of diversities.[325]

v. Federalism As An Option for Post-1994 South Africa: Debates of the Constitution Makers

Political conflicts such as those in South Africa and those that continue to rage in Israel-Palestine display common outward symptoms of what have often been called "divided societies." As mentioned in the previous chapter, central to these claims are competing senses of nationhood and conflicting claims to self-determination, with the essential element being the disputed status of settler-descended populations. This has resulted in conflicts being shaped by majorities and minorities, and these have spelled out consequences in the contested legitimacy of state forms and constitutional orders.[326] In both pre-1994 South Africa and current Israel-Palestine, it is essential to consider the disputed issues in terms of democratic values, as neither of these conflict situations could or can claim to have become a democracy as long as there are antagonists who claim that the right to self-determination should be denied to the majorities. This means that the constitutional repertoires by which scholars and academics understand and tackle the conflicts are quite limited, but at the same time strikingly similar, with groupings coming under partition, accommodation and assimilation. As has been described in previous chapters, partition in the form of a two-state solution is no longer an option for Israel-Palestine, which leaves only accommodation and assimilation; however it is not easy to draw a clear line between the two. Accommodation refers to constitutional measures that explicitly recognise the existence of majority and minority groups for the purposes of political association, participation and government, and can boiled down to the simple term of "power-sharing."[327] Assimilation, on the other hand, refers to situations where no special provisions are made to accommodate the political aspirations of minorities, although such minorities might have their existence recognised in protective measures for cultural and linguistic rights.[328]

Following on from this, upon negotiations to draft the new democratic South African constitution, one of the most crucial issues that needed to be tackled was whether the state should be a union or a federation and would follow the paths of assimilation or accommodation. At this time, accommodation or federalism was almost an entirely one-sided process, with its initiatives and actions taking place overwhelmingly within the white minority community as polity, while a union or assimilation was preferred by the ANC

[325] Wessels, D.P., Op Cit. Page 37.
[326] Johnston, A., Op Cit. Page 201.
[327] Ibid. Page 203.
[328] Loc Cit.

and its constituency, which represented the majority of the population. Despite this, during this stage, many people noted that

> *it seemed that history would repeat itself to a large degree because many of the issues discussed by the National Convention in 1908-1909, such as federal or unitary options, national symbols, the official language and the identification of the capital of the country, will again be on the agenda in 1992 and thereafter.*[329]

As far as central government was concerned, the negotiations began from the agreed position that all South Africans were to be enfranchised and directly represented at the centre. However, during this same period, there was much dissatisfaction with the debates, or lack thereof, surrounding the regional government. Many organisations and individuals remained ardently opposed to the creation of South Africa as a federation, which would undoubtedly follow if powers were divided between the regional and central government. Although the fact that there existed diverse oppositions to the imposition of any form of federalism within South Africa, this cannot act as a critique of federalist theory in general, but due to the enormous similarities that can be found between South Africa pre-1994 and Israel-Palestine as it stands currently, it would make sense to assume that the same criticisms that arose within the South African context as to why federalism should be opposed would likely apply in Israel-Palestine. The most major criticism that seemed to emanate from these arguments in the South African context was that while creating a federal state within South Africa would allow for the establishment of a structural milieu that could facilitate formation and reconciliation within an integrated South African nation, at the same time it would accommodate and politically articulate existing differences. A case in point of this contradiction could be seen in the former USSR after 1989, where Gorbachev sought to create a new federation under the Union Treaty; however, this resulted in a disintegration of the multinational state structure and the dissolution of an empire.[330]

Prior to 1994, the anti-federal arguments emanated from two divergent political groupings, namely the ultraconservative white political groupings on the one hand, and liberation movements such as the African National Congress (ANC), the Pan Africanist Congress (PAC), the South African Communist Party (SACP) and the Congress of South African Trade Unions (COSATU) on the other.[331] The National Party was inclined towards a federal plan based on the fact that South African was seen as a plural entity. There were three primary reasons put forward to support federalism, and these can be transferred and considered in the Israeli-Palestinian context. The first of these is that federalism is viewed as a

[329] Kotze, D.J., Op Cit. Page 269.
[330] Loc Cit.
[331] Loc Cit.

mechanism to avoid domination and to protect different groups, thus allowing for mutual interests to be treated jointly. This forms a direct link with the second reason, which is that there should be an equally sincere need and desire to treat domestic affairs separately. The third justification is that the government can come closer to the people through the decentralisation of power, which can also allow for the guaranteed protection of minorities. All of these would be a necessity in the case of Israel-Palestine as there would be a need to reduce the intense competition for control of the centre of politics.[332]

However, during the negotiation stages federalism as a notion for the new South Africa was met with huge opposition from the ANC and similar movements, based primarily on the historical legacy of Apartheid. For them, federalism would only further cement the divergent elements in society and therefore would impair the unity that should be striven for in an Apartheid-free society. Alongside this, the ANC felt that the centre of gravity of both political and economic activities would be felt within the centres of the different federal units rather than within the central government, which would result in leaders from the most important political parties cultivating their power within the local authorities rather than in the centre.[333] This would serve to limit the sovereignty of the central government and place it in a subordinate position. Such a division of powers would allow for power to be dispersed, which in turn would have made it more difficult for the ANC, who was expected to form the majority of the new central government, to establish authority. It was therefore decided that they could not allow this competition for power to occur.

Another one of the major reasons for the ANC's opposition to the notion of federalism was based on the role that the bantustans might have played in such a system. As mentioned in the previous chapter, the bantustans were the most concrete manifestations of the Grand Apartheid system, and it is for this very reason that the ANC opposed them. At the end of the 1970's, an idea of a constellation of states was put forward by the NP, with the bantustans being seen as an integral part of the proposed confederation that would result. Once this progressed to a federal structure, these bantustans would occupy a special position as they would transform into provinces within the constellation idea. Due to the atrocities that occurred within and as a result of the creation of these homelands, the ANC remained opposed in principle to the maintenance of them. Therefore, the problem within South Africa at the time was that there existed no state entities or provinces that could have been transformed into federal units if one did not include the bantustans, which were also far too fragmented to be considered seriously as any form of meaningful

[332] Kotze, D.J., Op Cit. Page 270.
[333] Ibid. Page 276.

territorial autonomy.[334] This was further exacerbated by the poverty of the bantustans, their lack of resources and the fact that they were products of Grand Apartheid. Therefore, maintaining and including the bantustans as composite parts of the future South African federation would have served to perpetuate one of the fundamental features of Apartheid.

The main reason for the proposal of a federal state in post-Apartheid South Africa was that it was necessary to accommodate racial differences and avoid racial friction, and this necessity is equally relevant in current day Israel-Palestine. The imposition of checks and balances on each of the different population groups also allows for the equal distribution of power between the groups. Within both South Africa and Israel-Palestine, the notion of person-orientated units would be best served as it uses group rights as its starting point rather than geographical spacing and proximity; however, this could result in the perpetuation of the socio-economic imbalances that aid the privileged groups, namely the white population under Apartheid and the Israeli Jewish Zionists. Sovereignty granted to the specific groups through their local governments could be seen as an entrenchment of such group interests and therefore privileges would be constitutionally guaranteed through alternative means.[335] In line with this, each group would have its own chamber in a multi-cameral parliament, and legislation would be passed by concurrent majorities. During the constitutional design for South Africa, a two-chamber parliament was outlined by Constitutional Development minister Gerrit Viljoen, who proposed that there would be one lower chamber whose representatives would be elected on the basis of one person, one vote, while the second would be composed of representatives of racial groups based on equal representation for the different person-orientated units.[336]

At the time of negotiations, although the form of the state could not be decided upon, both the ANC and the National Party were in agreement on the desirability of larger and more effective local authorities, as well as the presence of stronger regional government that would be based on units smaller than the present provinces.[337] One of the major points of contestation at this time was the question of what would constitute a natural division, as drawing the boundaries for a new federal state would be a highly artificial exercise, far from corresponding to the natural history, cultural and economic divisions that had previously existed. However, during this time a lively debate emerged within the ANC on the need for decentralisation whereby it was stated that

[334] Kotze, D.J., Op Cit. Page 277.
[335] Ibid. Page 279.
[336] Johnston, A., Op Cit. Page 221.
[337] Irvine, D., "Federalism and the New Constitution." In Johnstone, A, Shezi, S, & Bradshaw, G., (Eds). Constitution-Making In the New South Africa. Leicester University Press: London. 1993. Page 21.

> *While we [the ANC] reject federalism and decentralisation as a strategy to retain privilege, we see the need to create new forms of regional government which recognise and address the problems of Apartheid settlement patterns and the current uneven development across the country.*[338]

This proposal called for the delegation of power to regional levels for the purpose of more efficient administration and democratic participation, and although the central government was to maintain control over the issues that are vital to the conduct of national policy while ensuring the uniformity of standards, the local and regional governments were to be used and seen as potential development agencies.

Ultimately, any country emerging from decades of conflict will have many issues that warrant investigation when creating the new state order. Any policy that is put forward needs to be able to create a basis for the country's reunification which can only be done through promoting national reconciliation and establishing the basis for a more just and equitable allocation of resources and for rectifying past legacies that have led to the inequality of the current order.[339] At the same time, these policies need to work at fostering economic growth, at developing democratic governance and at empowering the different communities. From the above analysis of the theory of federalism it can be seen that such federal arrangements could enhance democratisation and the opportunities for participation, and could also serve as an effective mechanism for the redistribution of resources. At the beginning of the 1990's, the constitutional model that was to be adopted in South Africa needed to be one that would satisfy democracy by giving everyone a vote of equal value and by resolving conflict or the potential for conflict. In order to do this, representation, responsiveness, the diffusion of power and the dispersion of conflict were key requirements, which were most easily met through a federal system due to the fact that regional and local levels of governance gain in importance because they address the needs of particular regions. It needs to be noted that although democracy is important, it does not only need to be equated with the sort of majoritarian rule that one finds in unitary models, an idea that the ANC has fervently stuck to.[340]

In post-Apartheid South Africa the choice between a union and a federation was therefore of primary importance as it ultimately determined the location of power in society. In the case of South Africa, this was vitally important as it would play a part in determining whether Apartheid was genuinely eradicated and how the development of the country would take place in the future.[341] Given the multitude of groups within South Africa, decisions on the mechanisms that would concentrate power formed one of the focal

[338] Irvine, D., Op Cit. Page 22.
[339] Ibid. Page 23.
[340] Loc Cit.
[341] Kotze, D.J., Op Cit. Page 290.

points of contestation. The ANC felt that they would have easier access to power in a centralised unitary state and felt as if federalism would serve to decentralise power as far away from the political core as possible. If this occurred, even if the ANC gained central government power it would not entail a radical change in the existing power relationships. At the same time, the NP and the other supporters of federalism had a vested interest in the status quo and emphasised that a form of federalism need not result in a complete devolution of ruling power. Despite these arguments in opposition to it, federalism is one of the only state structures that bring government closer to the people, as a considerable degree of power is vested in the regional and local authorities, and therefore the assumption of central government power through elections would be considerably less attractive than it would be in a unitary state. Control of central government would not mean control of the country as a whole. At the time of transformation it was speculated that South Africa would be drawn into a process in which there are, on the one hand, people and political groupings with vested interests and established instruments of power and, on the other hand, political configurations that were engaged in liberation struggles to effect the transformation of society.[342] During this time, a federation in South Africa was treated with extreme suspicion by the ANC.

As it stands today, whether the post-1994 South African constitution and state model was created on the basis of federalism or unitarianism has been a question that is much discussed by students of constitutional law and politics.[343] Despite the fact that the government has inherently unitary qualities, it often displays features commonly associated with federalism. However, to what extent does the new constitution concentrate power at the centre or disperse it to the provinces?

South Africa is classified as a constitutional democracy with a three-tier system of government as well as an independent judiciary. This three-tier system is made up of the national, provincial and local levels of government, all of which exercise legislative and executive authority in their own spheres, and are defined in the constitution as "distinctive, interdependent and interrelated." This allows South Africa to be run on a system of co-operative governance, which is stated in the constitution. This is aided by the fact the South African Bill of Rights is essentially directed to the protection of individuals and provides limited forms of group rights, particularly in relationship to religion, language and culture, and to some extent education. Despite this, the combined effect of co-operative governance and of other provisions that set out the powers of the provinces is to make it clear that power in the 1996 constitution is

[342] Kotze, D.J., Op Cit. Page 290.
[343] Livingston, W.S., Federalism and Constitutional Change. Oxford University Press: London. 1956. Page 257.

concentrated at national level.[344] This effect of co-operative governance can be seen in how all spheres of government are enjoined to co-ordinate their legislation with one another, which reduces the scope for provincial variations on nationally determined policy, and in how all spheres of government are also enjoined to avoid legal proceedings against one another. This implies that the jurisdiction of the courts in intergovernmental disputes has effectively been limited.[345]

The legislative authority of the country is vested in Parliament and consists of the National Assembly and the National Council of Provinces. The National Assembly awards seats to each political party proportionally, based on the outcome of the national election, which is held every five years. The National Assembly includes members who are elected from provincial lists, and a Senate that is elected on the basis of equal representation from each province, members of which are elected by provincial legislatures. However, the Senate is limited in its powers to control taxation and appropriate funds. The National Council of Provinces (NCOP) is a body that was created to achieve co-operative governance and participatory democracy, and whose powers serve to replace the Senate.[346] It is through the latter that national and provincial interests are aligned in national legislation that affects the provinces, but ultimately it is the will of the central government that prevails.[347] However, the structure of the National Council of Provinces is a feature that has led scholars to claim that federal characteristics are inherent in the South African system of governance. Each of South Africa's nine provinces sends ten representatives to the NCOP, six permanent members and four special delegates headed by the provincial premier or a member of the provincial legislature designated by the premier. In most of the decisions taken by the NCOP, each province has a single vote and all that is needed is the support of five out of nine provinces.[348]

A formula is used to ensure that each province's delegation includes representation by minority parties, with each province having some protection with regard to their boundaries, powers and functions, in that both the National Assembly and the Senate must enact any changes and in the Senate a majority of a province's senators must accept the change before the Senate can enact it. Although this is not entirely a federal characteristic, as it takes place in the national legislature, it does include some protections. These protections cannot be changed without a two-thirds majority of all the members of the Senate and then again by at least sixty percent of all members of the Senate. This equal representation is a federal

[344] Jeffrey, A., "The New Constitutionalism: A Triumph for Liberalism? Some Doubts." In Johnson, R.W., & Welsh, D., (Eds). Ironic Victory: Liberalism in Post-Liberation South Africa. Oxford University Press: London. 1998. Page 38.
[345] Loc Cit.
[346] Loc Cit.
[347] Ibid. Page 39.
[348] Ibid. Page 40.

characteristic. Within South Africa, even the court systems are designed to provide for a certain degree of federal, provincial and local organisation. This is because they are designed not as separate courts but as divisions of the key national courts. Alongside this, concurrent spheres of competence exist in which both the central and the provincial governments have the power to legislate, including key areas such as education, health, transport, development, welfare and trade.[349] However, this does not do much to limit the power of the central government.

All legislation within the above-mentioned spheres can be introduced in either the National Assembly or the NCOP. If it is introduced in the former, a bill requires only a simple majority of votes cast for its adoption. It then goes to the latter, where it only requires five votes out of nine. It can be argued that this secures the central domination of governance, which is reinforced by the fact that any legislation that falls outside these spheres and that does not affect the provinces can be enacted into law irrespective of any opposition from the NCOP by a second vote in the National Assembly, taken by a simple majority of votes cast.[350] In line with this, if conflict breaks out between the national and provincial legislation, national legislation prevails in broadly defined circumstances and also wherever doubt as to the correct interpretation makes it difficult for the court to decide the issue. To further ensure the dominance of the central government, other provisions of the constitution enable the cabinet to assume responsibility for implemented legislation in any province, in circumstances that are broadly defined, which prevents provincial administrations from assuming responsibility for implementing national legislation at all, even where the law falls within their competence.[351]

Therefore it can be seen that the unitary characteristics of the post-Apartheid South African system of governance are more prevalent than the federal ones. This can be seen in the central government's ultimate power over all matters, which enables it to control provincial matters, thus subordinating the provinces to the central government. Although the South African state as it appears now can be classified as primarily a unitary state with certain federal features, the federal versus unitary debate was one of extreme importance during the transition period, and therefore should be an important debate within other conflict-ridden societies such as Israel-Palestine with inter-community cleavages and differences.

[349] Jeffrey, A., Op Cit. Page 40.
[350] Loc Cit.
[351] Ibid. Page 41.

vi. The Federal Alternative in Israel-Palestine?

In thinking about what would be the most suitable constitution for Israel-Palestine, it would be wise to throw off the tyranny of abstract slogans and models.[352] No model, whether it be federal or unitary, can fully offer a solution in itself, but is rather one feature in a myriad of others that all play a role in bringing about reconciliation and resolving conflict. Although there are examples of both models being successfully implemented, there is no ready-made solution waiting to be applied. Both South Africa and Israel-Palestine have problems that are unique and are specific in their form as well as the circumstances which they find themselves in. However, based on the numerous similarities we have been able to identify between the two countries, it is possible that the model used within South Africa could be transferred, albeit with some minor differences, to Israel-Palestine. In the negotiation of a new constitution, priorities and objectives need to be thought out and established. These then need to be ranked carefully to consider the various constitutional devices that could be implemented to achieve these ends. Ultimately, I believe that federalism is the only model that can facilitate participation, create a variety of points of access to government, enhance the chances for a more effective distribution of resources, and also allay fears by providing checks on power.[353] Therefore, the model of federalism that was carefully analysed during the process of the South African constitution making, should command the attention of the future constitution makers of Israel-Palestine.

Although the question of whether the South African state as it stands currently is primarily a federal or unitary state can still be debated, it can be seen that regardless of the outcome, the federal debate was intrinsically important to the drafting of the new South African constitution, and was one that was strongly debated by the parties that would ultimately make up the transitional government. For the same reasons as in South Africa, it should be equally as important in Israel-Palestine, and due to the even greater cleavages that exist within the latter, federalism should be a constitutional alternative that is seriously considered. Professor K.C. Wheare, mentioned above as one of the most prominent academics on federalism, states that there are many reasons for people preferring a federation to a union, the most important of these being that the federating regions have all had a previous separate existence and that there exist differences in race, language and nationality. Such features are relevant to the situation in Israel-Palestine, and therefore provide a case for federalism in this region.

[352] Irvine, D., Op Cit. Page 24.
[353] Ibid. Page 25.

A criticism of the notion of federalism in post-conflict societies, as mentioned above, is that stable democracy is not attainable in the sorts of divided plural societies that are promoted within federalism as they undoubtedly would lack the cross-cutting cleavages and multiple group affiliations that ensure democratic cohesion and stability.[354] The federal school of thought takes issue with this assumption, as well as with the fact that the democracy is usually equated with majority rule, which is the principle applied in both the Westminster and presidential systems of government.

Within a divided plural society such as Israel-Palestine, the function of a federal political system could be seen to be the promoting of close co-operation between the leadership elites of all the significant groups within the state, who make a conscious effort to transcend the cultural and social fragmentation within society.[355] This elite accommodation, within which there would be affiliates from all the different person-orientated units, would substitute for the cross-cutting cleavages and multiple group affiliations. A sense of relative self-containment and mutual isolation for the different units, whereby provisions would be made for their cultural and political autonomy, would exist in conjunction with this elite accommodation. In this way the model of federalism works well in plural societies by rejecting the majoritarian basis, by avoiding majoritarianism in the representative, decision-making and distributive areas of government, and by replacing majoritarianism with joint-consensual rule and permanent power-sharing between all significant groups. Because the demographic issue is of vital importance to the more powerful Israeli-Jewish minority, this would be an important point to focus on. In overall terms, the process followed by a federal state would give rise to a system of power-sharing at the national level of government and group autonomy at the sub-national level.[356]

For such a process to be successful in Israel-Palestine, a grand coalition in which the leaders of all significant groups in the society are represented would be necessary. Only through such an elite accommodation would the differences that separate the units be transcended, in turn lending stability to the political system at the mass level. Such a notion has been characterised as a "cartel of pragmatic elites" which takes the form of summit diplomacy, whereby bargains are struck by group leaders without requiring direct popular ratification.[357] The leadership within such a coalition would need to accept some basic national symbols while being willing and able to transcend the divisive cleavages in society through co-operation and compromise. One of the major reasons why this would be a more pragmatic solution than the model of a unitary government or state, is that unions are based on a competitive majoritarian

[354] Boulle, L.J., South Africa and the Consociational Option: A Constitutional Analysis. Juta and Co: Johannesburg. 1984. Page 45.
[355] Loc Cit.
[356] Ibid. Page 47.
[357] Lijphart, A., "Consociational Democracy." In World Politics. Vol. 4, No. 2. 1969. Pp. 207-225. Page 207.

model that denies minorities access to power. Within plural societies such as Israel-Palestine, the minority of Israeli-Jewish individuals is most likely to remain the minority for an indefinite period of time, which would result in exclusion in relation to the upper levels of government such as the cabinet and from decision making processes. In direct contrast to this lies the notion of a grand coalition within federalism, which practises the principle of inclusion through proportional participation for all groups in the coalition. Ultimately the principles of consensus and a coalescent style of leadership in the grand coalition are used within the federal model. The prototype that is suggested in this instance is the coalition cabinet, where the body is represented by members chosen by the main political parties in proportion to their electoral strength, with a rotating presidency among the members on an annual basis.[358] Alongside this would be the economic and cultural councils which, although they would most likely only have informal or advisory powers, could nevertheless play a significant role in the political process. This grand coalition or elite accommodation is one of the main features of any federal government.

The second feature that would be essential within Israel-Palestine is the mutual veto, which would ensure that participating groups, including minorities, would be able to influence the decision-making process. The use of the veto has two significant purposes. The first of these is to ensure that there is unanimity amongst those present on all decisions as well as a device to enable minorities to prevent the making of decisions that could adversely affect their national interests.[359] This is an essential step in providing a voice for all units within the grand coalition, as well as in other branches of government such as the judiciary and legislature. The veto power could be used in numerous different instances. For example, the veto could operate in respect of all decisions, or only those which would affect certain vital interests; it could operate in the national or the sub-national level of government, or in different branches of government; its constitutional status could be formally agreed upon by the respective parties but lack constitutional force, or it could be informally practised based on usage and convention; and finally its effect could be suspensive or absolute.[360] In such a system, constitutional rigidity provides a legislative veto in respect of constitutional amendments. This again epitomises the difference between this model and the model of a unitary state, as the veto allows for joint consensual rule and power-sharing. Critics of this often argue that the use of veto could lead to the immobilisation of the government, and if such decisions cannot be agreed upon this inaction or delay inevitably favours the status quo and vested interests. However, in response to this, proponents of federalism respond that it affords security to groups who might otherwise favour violent alternatives, and creates an institutional necessity for compromise

[358] Horowitz, D.L., Op Cit. Page 168.
[359] Boulle, L.J., Op Cit. Page 48.
[360] Ibid. Page 49.

where government action is essential.[361] Although the use of the veto may result in frequent stalemates and logjams within any new state and government, in the case of Israel-Palestine it would be worthwhile to limit the use of the veto to decisions that have a bearing on joint vital interests at the national level to ensure that this is not a frequent occurrence.

Proportional representation would be another essential feature of any successful form of federalism in Israel-Palestine as it ensures that all groups influence decisions and actions in proportion to their numerical strength. This contrasts with the majoritarian strength found within a unitary state, which follows the principle of "winner takes all". Proportional representation, together with the veto power, would be a vital complement to the idea of the grand coalition. Proportionality ensures representation for all parties in direct proportion to their electoral support, which implies proportional influence in decision making if the mutual veto is also available in these authorities.[362] This stands in stark contrast to plurality systems, which typically exaggerate the number of seats won by the largest contenders, thus diminishing the influence of the minority representation further.[363] Proportionality can be used at electoral level, and also at the appointment level, ensuring that all non-elective government positions are proportionately allocated among the various groups, as well as at the allocation level, within which it would ensure that there was an equitable distribution of public funds and other 'spoils' from government. Therefore, the notion of proportionality serves to minimise conflict and competition between groups for government power, administrative positions and scarce resources.[364] This would allow for equal unit representation, and also allows the segments to define themselves. However, there are logistical and practical issues that result from the use of proportionality, such as the difficulty of reaching agreement on policy decisions that require a clear-cut resolution. These can be solved through the practice of reciprocal concessions and package deals, so that a group that is disadvantaged on one occasion will be given preference on another. There could also be difficulties in the filling of a single prominent position, which could easily be solved through frequent rotation of office.[365]

The three aforementioned features allow for a power-sharing arrangement to exist within the grand coalition to ensure that no group interests are foregone for the sake of the others, and to ensure that majoritarianism is not allowed to surface. This is vitally important within Israel-Palestine, where the demographic threat remains very real for what would be the Israeli-Jewish minority if a single-state solution was adopted. Therefore it is speculated that a system of joint decision making and power sharing

[361] Boulle, L.J., Op Cit. Page 49.
[362] Loc Cit.
[363] Horowitz, D.L., Op Cit. Page 168.
[364] Boulle, L.J., Op Cit. Page 50.
[365] Ibid. Page 51.

on matters of national concern would be preferred. The final feature of how such a model would look completes the overall picture by requiring the devolution and delegation of as much authority as possible to the different person-orientated units. These units must be represented by their own political party with distinct lines of cleavage between the subcultures, and internal political cohesion within them. This would allow for autonomous rule making and rule application by each unit without interference from the others, or by the joint authority.[366] Israel-Palestine is a small country with a relatively small population, which would aid the sort of co-operation that could become difficult on a large scale. This is a major deviation from the unitary state model as the areas of decision making are removed from the influence of national majorities, and each unit is able to make decisions on matters of exclusive concern to it.

> *When one ponders disasters, it becomes all the more urgent to negotiate before rather than after. It becomes all the more imperative to ask whether federation does not offer hope – not of a quick solution of problems, but of dissolving the prejudices and fears that create the problems. Constitutions and laws cannot abolish prejudice in the human mind, but they can help to create the climate in which the fears that feed on prejudice are more easily dissolved.*[367]

This is what a federation in Israel-Palestine, built on strong realistic foundations and constructed on practical lines, could do.

[366] Boulle, L.J., Op Cit. Page 50.
[367] Marquard, L., Op Cit. Page 139.

5 Conclusion:

One State for Isratine-Palesrael á la Post-Apartheid South Africa

> *Among some observers...a realisation has been growing for years that this outcome [that is, a two-state solution] is increasingly unlikely. This realisation has taken shape irrespective of the merits or demerits in principle of the two-state solution, in spite of the long-standing desire of majorities of Palestinians and Israelis for their own state, and notwithstanding the (often grudging and hedged) acceptance by each people of a state for the others... In this view, the inexorable cementing of Israel's hold over the occupied West Bank and East Jerusalem has rendered moot the possibility of establishing what could legitimately be called a Palestinian state [alongside Israel]...*[368]

The current approach to resolving the decades-long Israeli-Palestinian conflict has ultimately reached an impasse, and as a result the conflict looks set to continue. If durable peace is ever to materialise, fresh possibilities and ideas need to come to the table, and roads not taken need to be explored. Such ideas must be grounded in the principles of equality and reciprocity rather than on the dictates of power.[369] I believe that these can be found in the notion of the one-state solution, where a single state inhabited by both Jews and Arabs would be established between the Jordan River and the Mediterranean. This is becoming an increasingly likely reality for Israel-Palestine. As previously mentioned, this would mark a break from the dominance of the two-state solution that has been at the forefront of all peace processes since the Oslo Accords of 1993.

The rising popularity of the idea of a one-state solution is based on the notion that the idea of Israel, and moreover ethnic nationalism in general, has lost traction and is no longer adequate to justify the continued existence of, and support for, a Jewish state. Many have commented that the world we inhabit today is not the same as the one a few decades ago, and that at present there is a rejection of the idea of a state in which one community, such as the Jewish inhabitants of Israel, are set above others. Many have even gone so far as to claim that the Jewish state was established too late, and that it is a characteristically late-nineteenth-century separatist project that has been imposed on a world that has moved on to embrace individual rights, open frontiers and international law.[370] It is not only this overarching principle that has

[368] Morris, B., One State, Two States: Resolving the Israel/Palestine Conflict. Yale University Press: United States of America. 2009. Page 3.
[369] Loc Cit.
[370] Ibid. Page 6.

relegated the two-state solution to the deathbed of history, but as this paper has shown, there is also a more practical reason.

The numerous peace processes that have been put forward since the 1967 Six-Day War, the most prominent of these being the Oslo Accords, have mostly been based on an assumed ultimate outcome of two states. These peace processes have failed, not because of a lack of desire for peace from either side of the conflict, but because of what has been termed Israeli obstructionism, and because of this the peace processes cannot be resurrected. If one looks at the story of peace making between the Arabs and the Israelis, history shows that there are no short-cuts to peace, no quick fixes and no imposed settlements. But it also shows us something else: it is important to recognise what is possible and what is not possible, and to shape our objectives accordingly.[371] The measures that are being taken by Israel, and which continue unabated despite international condemnation, constitute a stark reflection of the true intentions and agenda of the current Israeli government, which continues to adopt intransigent positions in the ongoing talks.[372] The two-state solution, which is the common international goal and was recently the undisputed requisite to peace in the Middle East, has never been more threatened. The actions of Israel, the occupying power, have emptied the idea of the two-state solution of its meaning and viability. Such a solution to the conflict will be buried if it is left up to a voluntary agreement between a Palestinian leadership that is bereft of leverage and an Israeli leadership drawn from the traditional rejectionist camp, and although a majority on both sides tell pollsters that they support the idea of a two-state solution, few on either side believe that they will ever see one.[373]

The lack of decisive actions to ensure that the path of walls, settlements, war crimes and belligerence is promptly and swiftly replaced by concerted actions for peace, suggests that the one-state solution is now the only reality that dreamers for a better world can hold on to. The deeply entrenched balance of power has resulted in a deadlock from which neither side can hope to emerge victorious. Consequently, if the conflict is to be resolved the terms of settlement cannot be dictated by one side, as a peaceful settlement would have to take into consideration the vital interests and symbolic sensitivities of both sides.[374] Therefore, although it is a slim chance, and would be a long haul, the one-state solution is the best practical solution that both sides can hope for as it does not require painful concessions for the sake of peace. The two-state solution has enjoyed undisputed hegemony for well over a decade. However, its time has now passed, and new blueprints with new advocates need to emerge and assert their influence. A one-

[371] Ross, D., Op Cit. Page 777.
[372] Embassy of the State of Palestine., Op Cit.
[373] Karon, T., Direct Talks Will Fail – Is That What the US is Planning On? 30 August 2010. http://www.fmep.org/analysis/analysis/direct-talks-will-fail-2013-is-that-what-the-us-is-planning-on. Accessed on 01 September 2010.
[374] Tamarkin, M., Op Cit. Page 17.

state solution would allow for the realisation of the idea that all humans are brothers and sisters. This has particular resonance for the actors involved in the Arab-Israeli conflict, many of whom are literally related across the historical divide. How many Palestinians are descended from Hebrews who stayed behind after the expulsions that took place in the second century, and later converted to Islam?[375]

> *What I am struggling for now is to see this universe without borders, so that people can move without anyone stopping you to ask where are you from, where are you going, who are you, Christian, Muslim or Jew? ... This is what I believe – that all these conflicts are monstrous and cannot be justified at all. We are fighting each other as human beings. We are all human beings. If we believe in God, then God created us all. I do not believe God is racist... Nature is all his creation; we are all a product of nature, and this is not our choice but fact.*[376]

Therefore, although it is nowhere on the official agenda, an increasing number of Palestinians, as well as a small proportion of Israelis, are abandoning the concept of the two-state solution. They believe that there exists an alternative to the history, and future, of violence and unrest, and are coming to the realisation that the age of the two-state solution is drawing to a close. History has shown that it is futile for one people to try to achieve security at the expense of another, short of actual genocide, and as long as the Jewish people of Israel insist on maintaining their situation at the expense of the Palestinian people, it is unlikely that they will ever feel secure.[377] These same people are far more likely to find the security they have been searching for in the context of a democratic and multicultural state that would protect their rights and would allow individuals to express their identities culturally, socially, aesthetically and religiously, rather than in terms of the discourse of exclusivist political sovereignty that Israelis and Palestinians inherited from Europe, a discourse whose time has passed.[378] This dissertation has aimed to prove that the two-state solution has had its time, that this time has now passed, and that it is now time to put forward a new blueprint for peace, that of the single state. However, the particular one-state model that should be adopted in the context of Israel-Palestine needs to be carefully considered.

The central argument of this dissertation is that the Israeli-Palestinian conflict can be solved using similar approaches to those adopted by South Africa in 1994. Many important veterans of the Apartheid struggle such as Ronnie Kasrils and Desmond Tutu have often compared the situation in Israel-Palestine with that of South Africa under Apartheid, as can be seen by the following extract from an article that Tutu co-authored with Ian Urbina:

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[375] Kovel, J., Op Cit. Page 247.
[376] Loc Cit.
[377] Makdisi, S., Palestine Inside Out: An Everyday Occupation. W.W Norton and Company: London. 2010. Page 290.
[378] Ibid. Page 291.

> *Yesterday's South African township dwellers can tell you about today's life in the occupied territories […]To travel only blocks in his own homeland, a grandfather waits on the whim of a teenage soldier. More than an emergency is needed to get to a hospital; less than a crime earns a trip to jail. The lucky ones have a permit to leave their squalor to work in Israel's cities, but their luck runs out when security closes all checkpoints, paralysing an entire people. The indignities, dependence, and anger are all too familiar.*[379]

However, why is Israel-Palestine so often compared with South Africa? This dissertation has argued that the policies towards the Palestinians currently practised by Israel within the Occupied Territories and within Israel itself, are tantamount to Apartheid. Having examined Israel's practices in light of Article 2 of the Apartheid Convention mentioned above, and having compared them with those policies practised in South Africa prior to 1994, it can be concluded that Israel has introduced a system of Apartheid against the Palestinians as a racial group, and because of this, can be compared with South Africa prior to 1994. A comparative analysis of South African and Israeli Apartheid practices, alongside the internationally recognised definition of Apartheid, reveals that although there are certainly differences between Apartheid as it was applied in South Africa and Israel's policies and practices, the two systems exhibit similar dominant features.

Essentially, a troika of legislation underpinned the South African Apartheid regime and established its three principal features. The first of these was the formal demarcation of the population of South Africa into racial groups through the Population Registration Act of 1950, and the according of superior rights, privileges and services to the white racial group through Acts such as the Bantu Building Workers Act of 1951, the Bantu Education Act of 1953 and the Separate Amenities Act of 1953. These Acts consolidated earlier discriminatory laws into a pervasive system of institutionalised racial discrimination, which prevented the enjoyment of basic human rights by non-white South Africans based on their racial identity as established by the Population Registration Act.[380]

The second feature of South African Apartheid was the segregation of the population into different geographic areas, which were allocated to different racial groups to restrict the passage by members of any group into the areas that were allocated to other groups. This strategy was defined under the Group Areas Act of 1950 and the numerous pass laws, such as the Native Laws Amendment Act of 1952 and the Abolition of Passes and Co-ordination of Documents Act of 1952, as well as the Urban Areas Amendment Act of 1955, the Urban Areas Consolidation Act of 1945 and the Coloured Persons

[379] Makdisi, S., Op Cit. Page 291.
[380] Du Plessis, M., Op Cit.

Communal Reserves Act of 1961.[381] This separation constituted the basis for the policy labelled as Grand Apartheid under Hendrik Verwoerd, and provided for the establishment of homelands and bantustans. As mentioned above, this involved the resettlement of black South Africans into what were intended to be independent, external territories, and the denial of their political rights in the territory of South Africa.

Having divided the population along these racially determined geographical lines, these policies were held up by the final pillar of South African Apartheid, a matrix of draconian security laws and policies that were put in place in order to suppress any opposition to the regime and to reinforce the system of racial discrimination, by providing for administrative detention, torture, censorship, banning and assassination.[382]

Israel's practices and policies, especially in the Occupied Territories, can be defined by the same three pillars of the South African version of Apartheid. Israeli laws and policies establish a Jewish identity that affords preferential legal status and material benefits to Jews over non-Jews, resulting in privileges being given to Jewish people and Jewish settlers, and discriminatory practices being institutionalised against Palestinians. This is achieved through Israel's citizenship laws, in terms of which a person's group identity is the primary factor in determining their eligibility for Israeli citizenship. This can be seen in the Law of Return of 1950, which allows any Jew to immigrate to Israel or the Occupied Territories, and the Citizenship Law of 1952, which grants automatic citizenship to people who immigrate under the Law of Return, while at the same time erecting insurmountable obstacles to citizenship for Palestinian refugees. These citizenship laws provide a framework and justification for the entrenched forms of discrimination that Israel practises against Palestinians as a result of this inferior status, for example in relation to the right to leave and return to one's country, the right to freedom of movement and residence, and the right to access to land.[383] These practices align with the definition of Apartheid as set out in Article 2 of the Apartheid Convention. These discriminatory practices are further exacerbated by the Citizenship and Entry into Israel Law of 2003, which effectively bans Palestinian family unification, serving to disrupt and destabilise what is already a precarious and difficult existence for Palestinian Arabs.

The second pillar of the definition of Apartheid, population segregation, can be seen in Israel's policies that promote the fragmentation of the Occupied Territories and Israel's extensive appropriation of Palestinian land. This has been exacerbated by the closure and isolation of the Gaza Strip from the rest of the Occupied Territories, by the deliberate severing of East Jerusalem from the rest of the West Bank, and

[381] Du Plessis., M., Op Cit.
[382] Russell Tribunal On Palestine.., Op Cit.
[383] Loc Cit.

by the construction of a network of connected settlements for Jewish-Israelis that have left behind less-than-bantustans for the Palestinians. These measures are intended to segregate the population along racial lines in a similar manner to that of Apartheid South Africa, and are in violation of Article 2 of the Apartheid Convention. This is made even clearer by the creation of the Separation Barrier, the separate roads and checkpoints, and the invisible web of permit and ID systems, which when combined ensure that Palestinians are confined to the reserves designated to them.[384] These restrictions function in much the same way as they did in South Africa, and this policy of geographic fragmentation has had the effect of crushing Palestinian socio-economic life, securing Palestinian vulnerability to Israeli economic dominance and enforcing rigid segregation.

Finally, the third pillar in the definition of Apartheid, against which Israel's system of Apartheid in the Occupied Territories can be analysed, is in its security policies. This can be seen through the extrajudicial killing, the torture, the cruel, inhumane or degrading treatment, and the arbitrary arrest and imprisonment of Palestinians, and is in contravention of Article 2 of the Apartheid Convention. Israel practises all of this under the pretext of security. These policies are state-sanctioned, are often approved by the Israeli judicial system and are supported through military laws and military courts. This notion of maintaining security serves to validate the restrictions that are placed on Palestinians' freedom of expression, opinion, assembly, association and movement, and that allow for the maintenance of control of Palestinians as a group.[385]

Therefore, the three pillars that define Apartheid have been satisfied: Jewish and Palestinian identities function as racial identities in the sense provided by ICERD and the Apartheid Convention; Israel's status as a Jewish state accords a privileged status to Jewish settlers in the Occupied Territories, and discriminates against Palestinians; and this occurs in order to maintain a complex system of domination by Jews over Palestinians. This is a system that constitutes a breach of the prohibition against Apartheid, and it could be argued that the overriding and inherent similarities that are evident in the points of historical convergence between South Africa and Israel-Palestine are moving them towards the same outcome.

Scholars of international relations and similar disciples know all too well that just because the old order dies, this does not mean that the future dispensation will necessarily be more secure or superior than the one that preceded it. The situation that was present in South Africa and is currently present in Israel-

[384] Russell Tribunal On Palestine., Op Cit.
[385] Loc Cit.

Palestine is no different. There are numerous features that were present in Apartheid South Africa and are currently present in Israel-Palestine that put a democratic future in doubt. Of prime importance amongst these is the need for carefully designed institutions to provide mechanisms to resolve the complex conflicts of any severely divided society, and that both countries have experienced. The South African model of democratic transition reveals that even with the use of a similar TRC, and the adoption of federalism as a possible constitutional model for any future Israeli-Palestinian state, the very first obstacle that needs to be overcome is the common tendency to think that the new order will be easy to attain, and that the hard part is the mere elimination of discriminatory policies. At the time of South Africa's transition it was stated that the country was overshadowed by a pernicious myth that all struggles are over when the struggle is over, and that although there is a sense that what is needed is a transfer of title, in fact the house has not yet been built.[386] This type of naïve thinking must not be copied onto the future blueprint of Israel-Palestine.

South Africa is not Israel-Palestine. This is an important point to emphasise and recognise, and because of this it is neither possible nor desirable to simply impose the South African model for peace on any other country without some alterations and insight into that particular country's culture and society. However, the South African experience, and the significant similarities that can be identified between South Africa and Israel-Palestine, can aid, inform and influence Israel-Palestine in what will hopefully be its future transition to a stable democracy for all of its inhabitants. Ignorance of the past is not conducive to peace in the future, and when one analyses countries such as South Africa and Israel-Palestine, it is clear that even if one tries to ignore the past, it can never be ignored. For the Israelis, the Palestinians, and for South Africans, dealing with the past is inescapable if there is to be any hope of working towards a peaceful future. The South African TRC was not the least unsatisfactory solution, nor was it a second-best choice. It provided the only justice available in the context of traumatic transition, and is a form of justice particularly suited to the uniqueness of the transitional context in South Africa, as well as in Israel-Palestine.

With regards to the constitutional model, divided societies such as South Africa and Israel-Palestine are likely to get the worst of both worlds. Majorities ultimately get majority rule without the genuine inducements to accommodate minorities, and these minorities may demand and receive guarantees of protection that, in the end, will protect nothing worth protecting.[387] This situation can be prevented through a good measure of cultural autonomy, group self-policing through local police forces, or group

[386] Horowitz., D.L., Op Cit. Page 88.
[387] Ibid. Page 137.

proportional representation in the armed forces. These are just some of the suggestions. Ultimately, this notion of self-determination as non-domination rivals many of the other models being put forward for Israel-Palestine. One is the unified, bi-national, officially secular state. I believe that this would fail to give due acknowledgement to either group's legitimate aspirations for self-determination, and would introduce short-term vulnerability among Palestinians and long-term vulnerability among Jews to unjust domination. The other model is one of non-interference, or the two-state model, which, as previously mentioned, is impossible based on the interpenetration and intermixture of the Jewish and Arab populations, as well as the power imbalance between them.[388]

Federalism is more favourable than unitarianism, mostly due to the fact that its division of power is anti-majoritarian and the multiple levels of power reduce the distinction between government and opposition, and the competitiveness between the two. Proceeding from the definitions provided above, in the case of Israel-Palestine the federal system's primary feature would be clearly differentiated person-orientated units. In line with this, the most optimal arrangement would be for the boundaries between the federal units to coincide with those between the different segments of the population. This would allow for the transformation from national heterogeneity to unit homogeneity.[389] In this way conflict can be managed and reduced, as inherent in a federalist approach is the decentralisation and dispersal of authority, which prevents any one ethnic or racial group from dominating the political system through centralised control. Federalism within Israel-Palestine, as mentioned above, would not be understood in terms of a territorial division of power, but would rather include a non-territorial arrangement where autonomy is extended to person-orientated groups, instead of geographically defined regions. In all divided, post-conflict societies where conflict has been successfully regulated, mechanisms such as those mentioned above have been employed. Therefore, federalism can be seen as a normative model for societies such as South Africa and Israel-Palestine.

In conclusion, I argue for a federated arrangement within which Israel and Palestine, fragmented into many polities but not necessarily geographically fragmented, would exist in a federal system that would combine cultural self-government and political autonomy with negotiation and shared responsibility over resources. The creation of such horizontal ties among the different federated units could allow for effective co-operation, even on those issues where politics at the centre might reach a stalemate. The Palestinian majority deserve the right to self-determination; however, this should not be the type of self-

[388] Levy, J.T., Op Cit. Page 7.
[389] Boulle, L.J., Op Cit. Page 52.

determination that would come about through the creation of two separate states, but the type of self-determination brought about through the creation of one single state.

To quote Edward Said: "the notion of ... a Jewish state for the Jews, simply flies in the face of reality. What we require is a rethinking of the present in terms of coexistence and porous borders."[390] It was my hope that this dissertation would follow the same logic put forward by Said. I have argued throughout that even though the two-state solution has dominated discussions of the Israeli-Palestinian conflict for the greater part of the past century, it is an idea whose time has now passed. This is particularly so because of Israel's unrelenting settlement drive as well as the construction of the Separation Barrier. Both of these have made the viable separation of Israel-Palestine into two states completely impractical, and some might even say impossible. Accordingly, it is only the one-state solution, with Jews and Arabs coexisting, that remains. This will call for

> *... real democracy, through a bridging of peoples and their histories. It has been done elsewhere against staggering odds [i.e. South Africa], and it can be done here. A one-state solution is both possible and necessary.*[391]

[390] Morris, B., Op Cit. Page 17.
[391] Loc Cit.

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