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Implications for a Resolution of the Israel-Palestine Conflict**

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Reconstructing Jihad amid Competing International Norms: Implications for a Resolution of the Israel-Palestine Conflict

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Abstract

This thesis adopts a multi-disciplinary approach in its examination of the Israel-Palestine conflict. Its subject matter essentially falls within the fields of international relations and Islamic studies. There are three central research questions of this thesis: From a constructivist perspective, what is the main obstacle to a just peace in Israel-Palestine? What is the mechanism through which the Israel-Palestine conflict can be resolved? What is required of the Palestinians in order to facilitate this process? Utilising the constructivist perspective of international relations along with the contextualist and objective-oriented (maqasid) approaches of Islamic Studies, the aim of this thesis is to demonstrate why Palestinian nonviolence would be more conducive to their liberation struggle than violent resistance, and how this is a legitimate and authentic form of jihad consistent with the higher objectives of Islam.

Independent of strategic and material concerns, international norms and identity factors are fundamental determinants of the interests and policies of even the most powerful nations. In the context of the Israel-Palestine conflict, a just resolution has been obstructed by the competition that exists between the norms of self-determination (central to Palestinian claims) and self-defence (central to Israeli concerns). With the norm of self-defence predominant in the 'peace process', Palestinian use of violence has increasingly become detrimental to their struggle for self-determination. However, the dominant interpretation and application of jihad equates the concept with armed struggle. A just resolution of the Israel-Palestine conflict requires a reformulation of jihad through a process that broadens the concept to include non-violent resistance but retains Islamic legitimacy and authenticity. This reformulation, based on context and objectives, will make a critical contribution to generating the requisite international support for the norm of self-determination for the Palestinians, without compromising the norm of self-defence for the Israelis, in order to redirect the strategic and material interests of influential states. This has the potential to shift their foreign policies toward a just resolution of the conflict based on the normative framework provided by the relevant resolutions of the United Nations Security Council.

Statement of Originality

This work has not previously been submitted for a degree or diploma in any university. To the best of my knowledge and belief, the thesis contains no material previously published or written by another person except where due reference is made in the thesis itself.

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Halim Rane

15 January 2008

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Acknowledgements

I completed my undergraduate degree (with honours) from the International Islamic University Malaysia. While I recall having developed an interest in the impact of colonialism on Islam and the Muslim world generally, the case of Palestine was not, during those years, a particular concentration. It was not until returning to Australia, and after completing my Master's degree, when I was approached by the Head of International Relations at Bond University to develop and teach a course entitled *Islam and Contemporary Civilisation*, that I began to read on the issue in depth. Prior to embarking on this PhD thesis, I had been following and reading on the Israel-Palestine issue for several years. During the years I have worked on this PhD thesis, my thoughts on a resolution of the conflict have become increasingly focused. My first major contribution to the topic was published in the journal *Global Change, Peace and Security* in an article entitled 'Reformulating jihad in the context of the Israeli-Palestinian conflict: A theoretical framework' (Rane, 2007).

In early 2006, I spent several weeks in Israel and Palestine orienting myself to the physical, geographical, and infrastructural context of the lands and their people. There, I conducted in-depth interviews with Israeli and Palestinian academics, researchers, peace negotiators, political advisors, social workers, human rights and peace activists, and business people, as well as Western diplomats posted in Israel and Palestine. I also spoke at length with everyday Israelis and Palestinians. I give my sincere thanks to all of those people who gave me their time and shared with me their knowledge, experiences, insights, concerns, and aspirations. They have significantly enriched and expanded my own understanding and analysis of the issues.

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List of Abbreviations

AMA: Agreement on Movement and Access
DFLP: Democratic Front for the Liberation of Palestine
EU: European Union
DOP: Declaration of Principles
GI: Geneva Initiative
IAEA: International Atomic Energy Agency
ICJ: International Court of Justice
IDF: Israeli Defence Forces
JA: Jewish Agency
JNF: Jewish National Fund
KN: Knowledge Network
NAM: Non-Aligned Movement
OCHA: Office for the Coordination of Humanitarian Affairs
OIC: Organisation of the Islamic Conference
PA: Palestinian Authority
PFLP: Popular Front for the Liberation of Palestine
PIPA: Program on International Policy Attitudes
PLO: Palestinian Liberation Organisation
UN: United Nations
UNC: United National Command
UNDOF: United Nations Disengagement Observer Force
UNEF: United Nations Emergency Force
UNIFIL: United Nations Interim Force in Lebanon
UNGA: United Nations General Assembly
UNLU: United Leadership of the Uprising
UNRWA: United Nations Relief and Works Agency
UNSC: United Nations Security Council
UNSCOP: United Nations Special Committee on Palestine
WZO: World Zionist Organisation

Glossary

Abbasid: Muslim empire that ruled from 750 to 1258.

asbab an-nuzul: reason for revelation.

Asharism: a dominant philosophy within Sunni Islam.

awa'id: human activity or practices.

awliyyah: friend, protector, or ally.

ayah (plural: *ayat*): a sign; a verse of the Quran.

bida: innovation in religion.

caliph: successor of the Prophet; title given to the leader of the Muslim community following the death of the Prophet.

dar al-harb: abode of war; non-Muslim territory.

dar al-Islam: abode of Islam; Muslim territory.

daruriyyat (singular: *daruriyyah*): essentials or necessities.

dhimmi: protected non-Muslim citizen of an Islamic state.

fard: an obligation – *fard ayn*: an individual obligation – *fard kifayah*: a collective obligation.

fatwa (plural: *fatawa*): legal verdict, opinion, or ruling.

fiqh: understanding; jurisprudence.

fitnah: sedition; tribulation.

hadith (plural: *ahadith*): report or narration; narration of a statement, action, ruling, or characteristic of the Prophet Muhammad.

hajiyyat (singular: *hajiyyah*): complementary.

hajj: pilgrimage to Mecca.

hijra/hijrah: migration; migration of the Prophet Muhammad from Mecca to Madina in 622.

hikma: wisdom.

hudna: cease-fire; settlement; peace-treaty.

hudud: boundaries; prescribed punishments.

hukm (plural: *ahkam*): law or ruling.

ibadah (plural: *ibadat*): act of worship.

ijma: consensus.

ijtihad: intellectual exertion; independent juristic reasoning.

ikhtilaf: juristic disagreement.

illah (plural: *ilal*): cause or rationale.

intifada: to shake off or shake out; uprising.

istidlal: inference; a method of interpretation based on acceptance of prevailing customs, principles, and precedents.

istihsan: to deem good; juristic preference.

istiqra: induction.

istislah: to act in the public interest.

jahiliyyah: era of ignorance; pre-Islamic period.

jihad: to strive, struggle, or exert effort; armed struggle.

jizya: a tax applied to non-Muslim citizens of an Islamic state.

madrassa: traditional Muslim school.

mafasid: harm or corruption.

maqasid (singular: *maqсад*): objectives.

masalih: benefit or interest.

maslaha: public benefit or interest.

maslaha mursala: to act in the public interest.

mu'amalat: social dealings or civil transactions.

mujtahid (plural: *mujtahidun*): one who engages in *ijtihad* or juristic reasoning.

naskh: abrogation.

nass: clear text.

qatl: killing.

qawa'id: maxim

qiyas: analogical reasoning.

qital: fighting.

Quran: holy book of Islam, revealed by God to the Prophet Muhammad between 610 and 632.

Rashidun: literally meaning 'rightly guided'; refers to the four caliphs who succeeded the Prophet Muhammad, namely, Abu Bakr, Umar, Uthman, and Ali.

risalah: prophethood.

ray: the use of personal opinion.

Razism: the philosophy associated with the Muslim theologian Fakr al-Din al-Razi (d.1209).

sabr: patience.

saghir: to vanquish or overpower.

sahaba: companions of the Prophet Muhammad.

shariah: Islamic law; a legal, moral, and ethical code that encompasses the beliefs and practices of Islam.

sira/sirah: biography of the Prophet Muhammad.

siyar: branch of Islamic law dealing with international relations.

sunnah: conduct or manner; the statements, actions, rulings, and characteristic of the Prophet Muhammad.

surah (plural: *surat*): a chapter of the Quran.

tabi'un: successors of the companions of the Prophet Muhammad.

tahsiniyyat (singular: *tahsiniyyah*): embellishments.

ta'ilil: ratiocination; seeking the underlying intent of a ruling.

taqlid: unquestioning following of previous opinions or rulings.

tariqa: way or path; religious circle or group often associated with Sufism.

tawhid: oneness or unity of God; monotheism.

ulema (singular: *alim*): religious scholars.

ulum (singular: *ilm*): knowledge or science.

umma/ummah: people, community, or nation; the Muslim world.

Umayyad: Muslim empire that ruled from 661 to 750.

usul: sources or principles.

usul al-fiqh: principles of Islamic jurisprudence.

usuli (plural: *usuliyyun*): scholars of Islamic jurisprudence.

wasai'il (singular: *wasila*): means.

Zakat: compulsory alms.

zulm: oppression.

Introduction

The Israel-Palestine conflict is arguably still *the* central conflict in the world today, particularly in terms of relations between 'Islam' and the 'West'. It is a conflict that is of deep concern to people and governments across the Arab and Muslim world as well as those in the West. The problem that Israel presents to the Arab-Muslim world is considered unique, having "neither precedent nor parallel in Islamic history" (Faruqi, 1980, p.1). Palestine is for Muslims an Islamic cause (Al-Buti, 2006; Hosein, 2002; Nusse, 1998; Faruqi, 1980) and conflict with Israel has been described as "the crucible of the conflicts affecting the Muslim *ummah*", which for decades has "acted as the epicentre of global *jihad*" (Bonney, 2004, p.269). Polls conducted in the Arab and Muslim world have consistently shown that overwhelming majorities regard Palestine as the single most important issue to them personally (Hirst, 2003).

In a poll conducted between March and May 2006 by the Pew Research Centre nearly all Egyptians and Jordanians (97%) said that they sympathise with the Palestinians. Almost three-quarters of Indonesians (72%) expressed the same sentiment, while 63 percent of Turks and 59 percent of Pakistanis also support the Palestinian cause (Kohut, 2006). Research on the attitudes of Muslim Lebanese, Jordanians, Palestinians, and Syrians toward Israel found two main unifying factors: "the role of Islam in society and perceptions toward Israel" (Khashan, 2000, p.158). Khashan's study found that 43 percent of respondents stated that their political identity was best expressed in terms of Islam, while a further 13 percent referred to religion in general. For 85 percent of respondents, the Palestine question essentially concerns the Arab-Islamic world, while only five percent stated that the issue essentially concerns Palestinians only. Research into the causes and consequences of conflict in the Middle East since 1945 has concluded that a defusion of the conflict between 'Islam' and the 'West' depends on a just resolution of the Israeli-Palestinian conflict (Milton-Edwards & Hinchcliffe, 2005).

The Israel-Palestine conflict is also of significant concern to the Western world. Over 85 percent of Americans consider that a resolution of the conflict should be an important US foreign policy goal. In a January 2005 Pew poll, just over one-

third of Americans stated that a permanent settlement of the Israel-Palestine conflict should be the top US foreign policy priority, while another 42 percent said it should be a high priority. These percentages have remained fairly constant in Pew polls since 1993 (Allen & Tyson, 2006). The majority of Americans also believe that there cannot be peace in the Middle East without a resolution of the Israel-Palestine conflict and that a resolution of this conflict is important for winning the 'war on terror' and would reduce the likelihood of terrorism (WorldPublicOpinion.org, 2006).

The terrorist attacks of 11 September 2001 increased the perceived need to resolve the Israel-Palestinian conflict. In a May 2002 PIPA survey, an overwhelming majority (73%) felt that 9/11 made resolving the conflict between the Israelis and the Palestinians more important for the United States. Moreover, according to an April 2002 Fox News poll, a majority (54%) considered finding a solution to the Israeli-Palestinian conflict as part of winning the overall war on terrorism. When asked which was most important – overthrowing Saddam Hussein, catching Osama bin Laden and Al Qaeda, or finding a peaceful resolution to the Arab-Israeli conflict – a strong plurality (49%) chose resolving the Arab-Israeli conflict. Thirty-one percent stated that catching bin Laden was most important, and only 15% placed priority on ousting Saddam Hussein (WorldPublicOpinion.org, 2006).

Additionally, a resolution of the Israel-Palestine conflict is highly important for the United Nations (UN). Addressing the General Assembly on 19 September 2006, the then UN Secretary-General, Kofi Annan, tied the success of the UN, and even the war on terror, to the ability of the Security Council to resolve the Israel-Palestine conflict on the basis of its resolutions:

As long as the Security Council is unable to end this conflict, and the now nearly 40-year-old occupation, *by bringing both sides to accept and implement its resolutions*, so long will respect for the United Nations continue to decline. So long, too, will our impartiality be questioned. So long will our best efforts to resolve other conflicts be resisted, including those in Iraq and Afghanistan [emphasis added] (Annan, 2006).

The centrality of the Israel-Palestine conflict to broader concerns for peace and security in the Middle East and beyond has also been reaffirmed in two major reports: the final 'Report of the High-Level Group' of the UN Alliance of Civilisations (2006) and the 'Iraq Study Group Report' (Baker & Hamilton, 2006).

Despite this widespread international will to resolve the Israel-Palestine conflict, it remains intractable. As will be discussed in the following chapter, several factors are present in the literature to explain the failure to resolve the conflict, including the religious dimension, asymmetry of the conflicting parties, US military, diplomatic, and financial support for Israel, and the absence of international law as a basis of the peace process. Additionally, scholars have also explained that the failure to resolve the conflict is due to the paradigm or framework through which it is understood and analysed. For instance, Pappé (2007) explains the need to understand the conflict, particularly its origins, through the paradigm of ethnic cleansing rather than war; Veracini (2006) contends that Israel's occupation of Palestine should be analysed utilising a colonial framework and in reference to other colonial-settler movements; Boyle (2003) argues that the conflict cannot be understood or resolved but through an international law perspective; while Rubenberg (2003) highlights the need for a 'just' peace if peace is to be genuine and lasting.

A popular but false notion is that the Israel-Palestine conflict represents an ancient hostility between Jews and Arabs (Harms, 2005). Those with a higher level of awareness recognise that land, resources, and borders are important factors. These issues, however, represent only the additional layers that have been added on to the conflict over the decades. At its core, the Israel-Palestine conflict is a consequence of racism, first perpetrated by Europeans against the Jews and then by the post-World War I Zionist-Jewish settlers of Palestine against its indigenous people (Massad, 2006). Central to the conflict is the product of this racism, the ethnic cleansing of Palestine by the Zionist forces between 1947 and 1949 (Pappé, 2007). The origin of the so-called 'final status' issues, including the return of the refugees, status of Jerusalem, Israeli settlements, borders, and resources, are found in this period of history and will be discussed in the next chapter.

The conflict's religious dimension is considered to be mounting and perpetuating its intractability (Cohen, 2005; Telhami, 2005). Palestine has been at the forefront of the Islamic resurgence in the Arab and Muslim world, which has continued to expand since the 1970s, and has reached the point where Palestine's Islamic party, Hamas, achieved a 'landslide' parliamentary election victory in January 2006.¹ Islam has continued to be valued by Muslims, in general, as the source of solutions for the Muslim world's social, economic, and political problems, including 'the problem of Israel' (Faruqi, 1980). However, increasingly since the events of 9/11 and the subsequent 'war on terror', the notion of an 'Islamic threat' has become more dominant in international relations, manifested in the isolation of the Palestinian people and international sanctions imposed on the democratically elected Hamas government. Such measures have had a crippling impact on the Palestinian economy, society, and prospects for a just resolution of the conflict.

The Israel-Palestine conflict is also characterised by an immense asymmetry in terms of the military, political, diplomatic, and economic power of the conflicting parties as well as a profound disparity in the image of Israelis and Palestinians in the West. The 'peace process' has failed to achieve peace largely on account of an insistence on negotiations between the parties, despite their asymmetry and for its almost complete neglect of international law, specifically the resolutions of the UN (Rubenberg, 2003). From the Palestinian perspective, as addressed in such UN General Assembly resolutions as 3236 (22 November 1974), the conflict is a struggle for the right to 'self-determination without external interference'; the right to 'national independence and sovereignty'; and the right to 'return to homes and property from which they have been displaced and uprooted'. From the Israeli perspective, it is a struggle to ensure such claims are not realised for they are considered detrimental to Zionist ambitions, including the survival and prosperity of the Jewish state.

This thesis uses the terms 'just peace' and 'just resolution' in reference to a settlement of the conflict on the basis of international law – specifically the resolutions of the UN – rather than power, a multilateral approach rather than a

¹ 'Landslide' is the term the 6 February 2006 issue of *Time* magazine used to describe the Hamas victory. Hamas won 76 seats in the 132-seat Palestinian parliament.

unilateral one. Conflict resolution literature increasingly endorses this perspective (Kriesberg, 2005; Rubenberg, 2003; Kegley & Raymond, 2002; Rigby, 2001). Cheryl Rubenberg (2003), for instance, observes that the “most important defect” of the peace process is that it is “not based on any aspect of international law or UN resolutions relating to the Israeli-Palestinian conflict” (p.87). It could not lead to peace, she explains, because it was “not based on law, rights, or precedent but on a political agreement between two parties that are *depicted as symmetrical*” (p.87).

This thesis acknowledges the relevance and importance of these perspectives but contends that, in addition, the failure to resolve the conflict must be understood in terms of international norms and identity factors. This thesis examines the Israel-Palestine conflict from a constructivist perspective. It poses three central research questions: From a constructivist perspective, what is the main obstacle to a just peace in Israel-Palestine? What is the mechanism through which the Israel-Palestine conflict can be resolved? What is required of the Palestinians in order to facilitate this process? Briefly, a resolution of the Israel-Palestine conflict is obstructed by the direct competition that exists between its two most central international norms, namely: ‘self-determination’, the fundamental claim of the Palestinians, and ‘self-defence’, the overriding concern of Israelis. Unlike the case of South Africa, for instance, where the single international norm of ‘racial equality’ was invoked by transnational advocacy groups to support the elimination of apartheid (Klotz, 1995b), the norm of self-determination is offset by the equally well-established norm of self-defence in the case of Israel-Palestine. Transnational advocacy networks play a fundamental role in promoting international norms and pressuring the relevant states to modify the policies and interests for the achievement of conflict resolution. In order to facilitate this process, it is essential for Palestinians to abandon the use of violence and adopt nonviolence as their means of resistance.

The compelling work of Audie Klotz (1995b), *Norms in International Relations*, is particularly instructive. It is widely acknowledged that domestic and international pressure on South Africa was instrumental in ending apartheid in that country. In spite of extensive strategic and material interests, particularly in the case of the United States, Britain, and Zimbabwe, they, along with almost the entire

international community, isolated and imposed sanctions on South Africa in support of the international norm of racial equality. Klotz asserts that state and non-state actors are both motivated and constrained by global norms, which operate at both the domestic and international levels. The fact that the United States and Britain, in spite of economic interests and Cold War concerns, both imposed sanctions on South Africa by the late 1980s, demonstrates the potential of international norms to produce dramatic change in nations' foreign policies. Klotz explains that the "extraordinary success of transnational anti-apartheid activists in generating U.S. sanctions against South Africa offers evidence that norms, independent of strategic and economic considerations, are an important factor in determining great powers' policies" (p.94).

Since the events of 9/11 and the commencement of the 'war on terror', coupled with Western concerns over the increasing resurgence of political Islam, and specifically in the case of Palestine the election of Hamas, the norm of self-defence invoked by Israel has further marginalised the norm of self-determination invoked by the Palestinians. Israel's invocation of the norm of self-defence has been accorded increasing precedence, providing justification for 'security' and 'counter-terrorism' measures that Palestinians, the UN, and numerous human rights groups have described as 'repression' and violations of human rights and international humanitarian law. Moreover, the impact of the 9/11 era has more solidly established Israeli 'security concerns' as an overriding factor in the peace process, as exemplified in the Roadmap, as well as the policies and actions of the Quartet (de Soto, 2007).

Consequently, the image of the conflicting parties is an increasingly salient issue in terms of the potential for resolving the conflict. Within this context, an adherence to the classical doctrine of *jihad* by certain Palestinian groups and parties is a liability for the Palestinian struggle for a restoration of rights, including self-determination. An exclusively non-violent approach is necessary for the Palestinians to generate the international support necessary for international norms and identity factors to compel the international community to pressure Israel in a requisite manner to produce a just resolution of the conflict based on the normative framework provided by the UN Security Council resolutions. Such an approach, however, is widely perceived by Muslims as alien to Islam, in spite

of numerous non-violent values, principles, and examples within the Islamic tradition.

At the core of the classical Islamic doctrines of war and peace, or the '*siyar*', is the doctrine of *jihad*, which is conceptualised and applied in militaristic terms, rendering armed struggle the most authoritative or 'Islamically' legitimate response to conflict and relations with non-Muslim enemies. The case of Palestine exemplifies the necessity to reformulate the classical doctrine of *jihad*. This reformulation must possess Islamic legitimacy, consistency with modern international norms, and the capacity to contribute to a just resolution of the conflict. The reformulation process is obstructed, however, by the doctrine or method of *naskh* (abrogation),² which needs to be replaced with an approach to interpretation based on 'contextualisation' so as to make accessible the broadest possible range of strategies in response to conflict contained in the Quran and the Prophetic Traditions. The specific method on which this contextualisation will be based is a *maqasid* or objective-oriented approach. Combined, these methods establish two fundamental points: *jihad* is not an end in itself but a means of self-defence, overcoming oppression, and establishing a just peace; and *jihad* has no preordained form but is a concept that can refer to multiple strategies. In order to determine the most appropriate strategy, empirical analysis of the issue in question must be conducted.

A central argument of this thesis is that understanding, theory, and knowledge do not emerge in a vacuum; rather, they are the product of human experience (Habermas, 1978). Theory, explains Cox (1986), "is always *for* someone and *for* some purpose" and is derived from a particular position in time and space, "specifically social and political time and space" (p.207). In the case of *jihad*, historical experiences of the Muslims can be traced back at least to the Abbasid era (750-1258) when conflict with both external powers and internal forces were primary motivating factors in their understanding, interpretation, and application of *jihad* in militaristic terms. The context in which the Abbasid empire reigned was marked by war and conflict, which encouraged the jurists of the time to more

² Literally meaning to 'obliterate' or 'abrogate', *naskh* is a doctrine or method developed by classical Islamic scholars that declared certain earlier verses of the Quran to have been abrogated by later ones, effectively excluding them as a source of Islamic law. Specifically in the case of *jihad*, *naskh* restricted its definition to the use of armed force.

closely identify with the later, more militant verses of the Quran concerning issues of war and peace than with earlier, more conciliatory verses. Indeed, the later, more militant conduct of the Prophet in response to the aggression of his enemies resonated with the Abbasid jurists more so than the restraint and non-violent approach he displayed during the earlier years of his prophethood (AbuSulayman, 1993).

Due primarily to such factors as reverence for these classical jurists and the adoption of *taqlid* or the unquestioning adherence to the views of these jurists (Kamali, 2006), a militant understanding, interpretation, and application of *jihad* has remained dominant over the course of Muslim history. Moreover, this approach has been reinforced by numerous historical experiences including the Crusades, Mongol invasion, hostile relations between the Ottoman empire and various European powers, European colonial rule in most Muslim lands, the enduring Israel-Palestine conflict, and the current 'war on terror', which is viewed by many Muslims around the world as a 'war on Islam' (Keen, 2006). This is not to suggest that alternative, more conciliatory, views on *jihad*, war and peace, and relations with non-Muslims have not also been expressed by various Muslim scholars throughout Islamic history.³

The point made by this thesis, however, is that a militant understanding, interpretation, and application of *jihad* have endured as the predominant norm among Muslims (Khadduri, 1940; AbuSulayman, 1993; Kepel, 2003; Bonney, 2004; Al-Buti, 2006). More specifically, non-violent resistance is yet to be recognised in the Islamic tradition as a legitimate and normative form of *jihad*. Essentially, there has been a lack of appreciation for context, a general neglect on the part of Muslims to examine social, political, economic, and other conditions in their understanding, interpretation, and application of Islamic laws (Kamali, 1996), coupled with a general failure to systematically incorporate the issue of context into a contemporary method of interpretation (Saeed, 2006;

³ Shakir (2003), for instance, refutes the notion of *jihad* as perpetual war and documents that even in the classical period there were scholars, including al-Qurtubi (d.1293), Ibn al-Arabi (d.1165), and Imam at-Tabari (d.932), who opposed the dominant understanding, interpretation, and application of offensive *jihad* and interpreted such verses as the 'sword verse' (Quran 9:5) in defensive terms. Neither Shakir nor the classical jurists he quotes, however, have moved beyond the dominant perception of *jihad* as involving the use of armed force and conceived of non-violent resistance as a legitimate form of *jihad* but have confined themselves to the debate over offensive versus defensive *jihad*.

AbuSulayman, 1993). This thesis argues that engagement in armed combat is not divinely ordained *per se* but was endorsed by the Quran in the context of particular historical and political circumstances. It is imperative to examine the circumstances pertinent to differing contexts over time and place in order to maintain the intent, purpose, and objectives of divine guidance (Rahman, 1984; AbuSulayman, 1993). This thesis documents that contemporary realities and conditions of the Israel-Palestine conflict not only render the use of violence detrimental to the Palestinian cause of self-determination and further entrench the occupation and repression endured by the Palestinian people, but are contrary to the higher objectives of *jihad* as enshrined in the Quran itself.

This thesis does not claim that all Palestinians advocate violence or that among those who do advocate violence the exclusive motivation is religion, specifically Islam. However, in the resurgence of Islam since the 1970s, the issue of Palestine has continued to be a central factor, while Palestinian society and Palestinian resistance has become increasingly 'Islamised' over the decades of occupation (Bucaille, 2004; Nusse, 1998; Litvak, 1998; Milton-Edwards, 1996). The classical understanding, interpretation, and application of *jihad* resonate within Palestinian society, particularly among the growing Islamically-oriented. Bucaille (2004), for instance, writes that in the post 9/11-era:

Fatah activists have begun imitating Islamist methods. But these particularly murderous tactics have had the effect of radicalising Israeli society, shoring up the Israeli administration's security policy and steadily stripping away Palestinian legitimacy on the international scene. Meanwhile the brutal repression carried out by the Israeli state has the reverse effect of recruiting ever more Palestinian extremists to the cause (p.xvii-xviii).

The work of Jurgen Habermas (1978) is instructive in this regard. He explains the relationship between knowledge and human interests by examining the structure of the process of enquiry. Habermas contends that human interests generate knowledge, which in turn determines human action. In more specific terms, Cox (1986) contends that theory is always derived from certain standpoints such as social class, domination, subordination, sense of crisis, past experiences, and

also future aspirations. The task ahead of the Palestinians (and the broader Muslim world) is to shift the approach to *jihad*, which is presently defined by the dominant advocates of militancy, from one based on historical experience to one based on future aspirations but grounded in the realities of the current context. Just as a militant understanding, interpretation, and application of *jihad* became dominant in the Muslim world in response to particular historical and political realities and conditions, contemporary realities and conditions are such that the Palestinians do not have a military option in their conflict with Israel and that the attainment of their political aspirations are determined by the extent to which they can generate sufficient moral power with which to confront Israel. In the words of Cox (1986):

The pressures of social reality present themselves to consciousness as problems. A primary task of theory is to become clearly aware of these problems, to enable the mind to come to grips with the reality it confronts. Thus, as reality changes, old concepts have to be adjusted or rejected and new concepts forged in an initial dialogue between the theorist and the particular world he tries to comprehend (p.207).

The case of South Africa is comparable to Israel-Palestine to the extent that a militarily inferior people were able to achieve their political objectives not due to the use of force but as a consequence of international norms. In the case of South Africa, racial equality became the central international norm which even friends and supporters of South Africa, namely the US and UK, could not refute. To do so was to invite charges of racism. Consequently, by the late 1980s, in spite of their economic and strategic interests in South Africa, the US and UK were forced to comply with the will of the international community and apply sanctions, which resulted in the elimination of apartheid and the emergence of majority rule (Klotz, 1995a).

However, a fundamental distinction between South Africa and Israel-Palestine is that in the case of the former, a single international norm could be invoked by the transnational advocacy networks. Concerning the latter, the most pertinent international norm for the Palestinians, 'self-determination', faces direct competition from 'self-defence', an international norm that has become

increasingly salient post 9/11. The reality of competing international norms renders a shift from violence to nonviolence an imperative if the Palestinians are to displace the Israeli claim of self-defence with their claim to self-determination as the predominant international norm that directs a resolution of the conflict. A major challenge in affecting a Palestinian shift from violent to non-violent resistance is convincing the Islamically oriented not only that nonviolence can be a legitimate form of *jihad* but that given the contemporary realities and conditions, nonviolence is a preferable option in terms of the higher objectives of *jihad* enshrined in the Quran and the attainment of Palestinian self-determination.

Literature review

This thesis encompasses an extensive body of literature across a number of fields, including international relations, Islamic studies, as well as the voluminous amount of work specifically concerning the Israel-Palestine conflict. In the field of international relations, the literature dealing with conflict resolution is central to this research as is the literature on 'constructivism', which provides the theoretical basis of this thesis. In this context, the literature addressing how international norms and identity constitute national interests is fundamental. This thesis has emerged out of the growing body of literature concerned with the increasing relevance of religion in international relations, particularly conflict and the resolution of conflict. Given the importance of the Israel-Palestine conflict to the Arab-Muslim world and the significance of Islam to this conflict, certain work in the field of Islamic studies is central to its resolution. Of particular relevance is the literature dealing with Islamic law and methodologies of interpretation of Islamic sources, *siyar* (Islamic international relations) and *jihad*, and the question of nonviolence in Islam.

The Israel-Palestine conflict

The body of literature concerning the Israel-Palestine conflict is extensive, encompassing differing perspectives on such aspects as the conflict's nature and solutions. The issues identified in the literature as central to the conflict and its solution are: Israel's occupation of Palestine, the status of Jerusalem, Israeli

settlements on Palestinian territory, control of water resources, security, and the right of return of Palestinian refugees. Much of the literature addresses these issues either individually or collectively.

A large bulk of the literature is concerned with the history of the conflict. Among the most comprehensive histories of the conflict that have been written are David Hirst's (2003) *The Gun and the Olive Branch*, originally published in 1977; Charles Smith's (2004) *Palestine and the Arab-Israeli Conflict: A History with Documents*, which is currently in its sixth edition; and the late Edward Said's (1992) *The Question of Palestine*. Other work concerning the history of the conflict focus on specialised aspects such as Walid Khalidi's (1997) article in the *Journal of Palestine Studies*, 'Revisiting the UNGA Partition Resolution', which shatters the long-held assumption concerning the justice, fairness, and practicality of Resolution 181. Similarly, Souad Dajani's (2005) report, 'Ruling Palestine: A History of the Legally Sanctioned Jewish-Israeli Seizure of Land and Housing in Palestine', provides a thorough analysis of the Israeli settlements and their negative impact on achieving peace.

Arguably, the most important body of literature addressing the history of the conflict has been written by Israeli scholars, who utilised previously classified Israeli archives to re-tell history. The most prominent of which is Benny Morris' (1987) *The Birth of the Palestinian Refugee Problem, 1947-1949*; Ilan Pappé's (1999) *The Israel/Palestine Question, A History of Modern Palestine* (2003), and his most recent work *The Ethnic Cleansing of Palestine* (2007); along with Avi Shlaim's (1990) *The Politics of Partition: King Abdullah, the Zionists, and Palestine 1921-1951* and *The Iron Wall: Israel and the Arab World* (2000). The importance of these works to the development of an accurate understanding of the conflict is difficult to overstate. These scholars were instrumental in shattering the most fundamental of Zionist 'myths' (to use the term of Finkelstein, Pappé, Shlaim and others), which for decades prevented an objective understanding and analysis of the conflict and what would constitute a just resolution. Of particular importance was their documentation of the ethnic cleansing of Palestinians at the hands of the Israelis from 1947 and throughout the 1948 war, which has major implications for the issues of territorial sovereignty and the right of return of the Palestinian refugees.

It is noteworthy that this authoritative body of literature has not prevented the re-emergence of historical Zionist myths in such popular works as that of Joan Peters' (2001) *From Time Immemorial*. Such work has been seriously discredited, however, by a range of historians and other scholars. Finkelstein (2003a) and Hirst (2003), for instance, specifically address the work of Peters, exposing fundamental errors, omissions, and inconsistencies.

The decades over which this conflict has endured without resolution has given rise to an even larger body of literature concerned with its contemporary nature. Prominent among them is Edward Said's (2001) *The End of the Peace Process: Oslo and After*, Norman Finkelstein's (2003a) *Image and Reality of the Israel-Palestine Conflict*, and Tanya Reinhart's (2005) *Israel/Palestine: How to End the War of 1948*. Taking an external perspective is the work of Greg Philo and Mike Berry (2004), *Bad News from Israel*, which examines the media coverage of the conflict and the impact it has on audiences' understandings of the issues involved. More recently, Howard Friel and Richard Falk (2007), in their book *Israel-Palestine on Record*, have documented the misrepresentation of the conflict by the influential *New York Times*. The authors argue that the newspaper's reporting of the conflict ignores international law and thereby shields its readers from recognising the lawlessness of Israel's actions. They also document that the *Times* focuses on Israeli deaths and largely ignores Palestinian deaths, which they argue masks Israeli transgressions from readers and has allowed the US to continue with a pro-Israel rather than a balanced policy concerning the conflict.

Other works have taken a specialised focus on political or economic factors such as Sara Roy's (1995) *The Gaza Strip: The Political Economy of De-development*, which addresses the economic implications of the Israeli occupation on Palestinian society; Mushtaq Khan's (2004) *State Formation in Palestine: Viability and Governance during Social Transformation*, which is concerned with the politico-economic prospects of a viable Palestinian state; and *Structural Flaws in the Middle East Peace Process* by J.W. Wright Jr. (2002).

Human rights have been the central concern of an extensive body of literature on the conflict. Israeli human rights group, B'Tselem (www.btselem.org), has extensively researched and documented the human rights violations on both sides of the conflict in numerous publications since 1989. Documentation of abuses is also the focus of such works as the Reporters Without Borders' (2003) *Israel/Palestine: The Black Book*, Norman Finkelstein's (2005) *Beyond Chutzpah*, and Mazin Qumsiyeh's (2004) *Sharing the Land of Canaan: Human Rights and the Israeli-Palestinian Struggle*, which advocates respect for human rights as the principal standard for resolving the conflict. Much of this body of literature is highly critical of Israeli policies and practices in the context of human rights and international humanitarian law. Notable exceptions, however, include Alan Dershowitz's (2003) *The Case for Israel*, which defends Israel against numerous accusations made against the state for violations of human rights and international law.

The human rights perspective has led many to compare the Israel-Palestine conflict with apartheid in South Africa. Roane Carey's (2001) *The New Intifada: Resisting Israel's Apartheid*, Uri Davis' (2003) *Apartheid Israel: Possibilities for the Struggle Within*, Marwan Bishara's (2004) *Palestine/Israel: Peace or Apartheid: Occupation, Terrorism and the Future*, and more recently, former US President, Jimmy Carter's (2006) *Palestine: Peace not Apartheid* all make explicit comparisons between the plight of the Palestinians and that of the blacks under apartheid in South Africa. The late Edward Said (1992, 2001, 2004) also discussed the Israel-Palestine conflict in reference to apartheid South Africa. More recently, Lorenzo Veracini (2006) has used the colonial framework to compare Israel-Palestine with apartheid South Africa, particularly the policy of 'Bantustanisation' that he sees being applied to the West Bank. Additionally, a number of conflict resolution scholars, including Hauss (2001), Gidron, Katz, and Hasenfeld (2002), Galtung (2004), and Ramsbotham, Woodhouse, and Miall (2005) have also made the comparison and have advocated the anti-apartheid model for resolving the Israel-Palestine conflict.

A large body of literature offers an international law perspective of the conflict. The work of Julius Stone (1981), *Israel and Palestine: Assault on the Law of Nations*, is among the most important in presenting a 'pro-Israel' perspective,

rejecting Palestinian claims to the territory between the Jordan River and the Mediterranean. The legal arguments contained in his book have, however, been strongly refuted by a range of other international law experts, including William Mallison and Sally Mallison (1986), Emma Playfield (1992), Musa Mazzawi (1997), Francis Boyle (2003), Jean Allain (2004), and John Quigley (2005). In addition to affirming Palestinian territorial and human rights, their work has also become central to the argument for a resolution of the conflict on the basis of international law, specifically the resolutions of the UN.

A significant body of literature has identified that the events of 11 September 2001 and the conduct of the war on terror have negatively impacted on respect for, and the application of, human rights and international law. Prominent examples of such work include that of Helen Duffy (2005), *The War on Terror and the Framework of International Law*, and Richard Wilson (2005), *Human Rights in the War on Terror*, along with that of Michael Ignatieff (2002). Their findings support the argument of this thesis that since the advent of the war on terror, concern for self-defence has taken precedence over human rights and the rule of law in the international realm. Moreover, Camille Mansour (2002) as well as Muhammad, Fadlallah, and Massad (2002), among others, have found the events of 11 September 2001 and the war on terror to have had a negative impact on prospects for a resolution of the Israel-Palestine conflict.

Among the most significant implications of 9/11 and the war on terror is the increasing legitimacy accorded to Israel's security concerns. This body of literature certainly pre-dates 2001 as demonstrated by the work of Mark Heller (1983), *A Palestinian State: Implications for Israel*; Sara Averick (1985), *The Importance of the West Bank and Gaza to Israel's Security*; and Avner Yaniv (1993), *National Security and Democracy in Israel*. From 2001 and beyond, prominent contributions to this body of literature have been made by Christopher Barder's (2001) *Oslo's Gift of "Peace": The Destruction of Israel's Security*, Uri Bar-Joseph's (2001) *Israel's National Security Towards the 21st Century*, and David Rodman's (2005) *Defense and Diplomacy In Israel's National Security Experience: Tactics, Partnerships, and Motives*.

Essentially, this body of literature asserts the self-defence needs of Israel and the threat posed to it by the Palestinians and neighbouring Arab states. They have served to reinforce Israel's arguments regarding its security concerns and justify Israel's attacks on the Palestinians and its Arab neighbours. More recently, however, many of these claims have been discredited in the work of Zeev Moaz (2006), *Defending the Holy Land: A Critical Analysis of Israel's Security and Foreign Policy*, which argues that in the name of security, Israel has initiated attacks and wars that were avoidable and has also neglected to seize opportunities for peace.

The failure of the so-called peace process to resolve the Israel-Palestine conflict has resulted in a large amount of literature that is critical of the process, such as Edward Said's (2001) *The End of the Peace Process*, Cheryl Rubenberg's (2003) *The Palestinians: In Search of a Just Peace*, and Nick Kardahji's (2004) *The Geneva Accord: Plan or Pretence?* Additionally, the final book of the late Tanya Reinhart (2006), *The Roadmap to Nowhere*, provides a compelling critique of the US-designed Roadmap, demonstrating that far from leading to peace, the initiative further entrenches Israel's occupation, making self-determination for the Palestinians even more distant. Moreover, Alvaro de Soto's (2007) 'End of Mission' report to the UN not only highlights the flaws of the Roadmap but also the structure and operations of the Quartet.

A number of works have begun to explore alternatives to that offered by the peace process, including Martin van Creveld's (2004), *Defending Israel: A Controversial Plan toward Peace*, Mahdi Abdul Hadi's (2005) *Palestinian-Israeli Impasse: Exploring Alternative Solutions to the Palestinian-Israeli Conflict*, and Virginia Tilley's (2005) *The One-State Solution: A Breakthrough for Peace in the Israeli-Palestinian Deadlock*. A one-state solution has also been advocated by Ali Abunimah (2006) in his book entitled *One Country: A Bold Proposal to End the Israeli-Palestinian Impasse*. Perhaps surprisingly, little has been written on an Islamic perspective to resolving the conflict. The notable exception is Ismail Raja Al Faruqi's (1980) *Islam and the Problem of Israel*, which advocates a solution to the conflict based on the classical Islamic doctrines of war and peace.

Since the mid 1990s, Palestinian violence, specifically suicide bombings, has come to characterise the Israel-Palestine conflict. Particularly since 11 September 2001, much has been written on this subject, often under the heading of 'Islamic' terrorism. Arguably one of the most important works on the issue is Robert Pape's (2005) *Dying to Win: The Strategic Logic of Suicide Terrorism*, which contains insightful analysis on the impact of suicide bombings in the context of the Israel-Palestine conflict. The detrimental impact of suicide bombings on the Palestinian cause has been recognised in the literature. Such work as that of Jean Allain (2005), *Beyond the Armed Struggle*, asserts the need for Palestinians to abandon violence for non-violent resistance, an argument on which this thesis is based.

While much has been written on political Islam generally, there exists a relatively small body of literature specifically dealing with political Islam in Palestine, which is best represented by Beverley Milton-Edwards' (1996) *Islamic Politics in Palestine*. There is also a growing number of works specifically on Hamas, including Andrea Nusse's (1998) *Muslim Palestine: The Ideology of Hamas*, Mishal and Sela's (2000) *The Palestinian Hamas: Vision, Violence, and Coexistence*, Khaled Hroub's (2002) *Hamas: Political Thought and Practice*, Matthew Levitt's (2006) *Hamas: Politics, Charity, and Terrorism in the Service of Jihad*, Zaki Chehab's (2007) *Inside Hamas: The Untold Story of the Militant Islamic Movement*, and Azzam Tamimi's (2007) *Hamas: A History from within*. Additionally, a number of important journal articles have been written about the group, including those by Litvak (1998) and Roy (2003). This body of literature highlights not only the conservative Islamic orientation of Hamas and its organic relationship with Palestinian society, largely due to its provision of social and welfare services, but also the flexibility and pragmatism of the group to respond to developments in the conflict without compromising its principles or beliefs.

While the conflict's internal factors are of primary focus in the literature, considerable attention has also been made to external factors, particularly the US-Israel relationship as addressed in Noam Chomsky's (1999) *The Fateful Triangle*. More recently, however, the role of the Israel lobby in the US and elsewhere has come into sharp focus. Prominent among this literature is Paul Findley's (2003) *They Dare to Speak Out: People and Institutions Confront*

Israel's Lobby, John Mearsheimer and Stephen Walt's (2006) 'The Israel Lobby and US Foreign Policy', and from an Australian perspective, Antony Lowenstein's (2006) *My Israel Question*. Mearsheimer and Walt's work on the impact of the Israel lobby on US foreign policy has recently been expanded and published as a book, entitled, *The Israel Lobby and US Foreign Policy* (2007).

International relations

In the post-11 September 2001 era, the field of international relations has increasingly focused on the Middle East. Not surprisingly, the main concern of this body of literature is war and conflict. Rashid Khalidi's (2004) *Resurrecting Empire: Western Footprints and America's Perilous Path in the Middle East* and Milton-Edwards and Hinchcliffe's (2005) *Conflicts in the Middle East since 1945*, for instance, take conflict in the Middle East as their central focus. Even Louise Fawcett's (2005) *International Relations of the Middle East* and Fred Halliday's (2005) *The Middle East in International Relations*, which are more comprehensive in their analysis, still revolve around the issues of war and conflict.

Another trend in the literature post-9/11 has been recognition of the role of religion in international relations. This has been thoroughly documented in Fabio Petito and Pavlos Hatzopoulos' (2003) *Religion in International Relations: The Return from Exile*, Douglas Johnston's (2003) *Faith-Based Diplomacy: Trumping Realpolitik*, and Scott Thomas' (2005) *The Global Resurgence of Religion and the Transformation of International Relations*. The increasing relevance of religion has also impacted on perceptions of conflict and its resolution.

Conflict Resolution

Since the late 1980s, the field of conflict resolution has expanded considerably. Seminal works in the field are those of Johan Galtung, Peter Wallensteen, Edward Azar, John Burton and William Zartman. Burton's (1990) *Conflict: Resolution and Provention*, Galtung (2004) *Transcend and Transform*, Wallensteen's (2002) *Understanding Conflict Resolution: War, Peace and the Global System*, and Ramsbotham, Woodhouse, and Miall's (2005) *Contemporary*

Conflict Resolution: The Prevention, Management and Transformation of Deadly Conflicts are only a few of the important contributions to the field. There also have been a number of comprehensive edited works that have made a major contribution to the literature, including Azar and Burton's (1986) *International Conflict Resolution*, and Crocker, Hampson, and Aall's (2005) *Grasping the Nettle: Analysing Cases of Intractable Conflict*.

Among the most important developments in the field of conflict resolution is recognition of the relationship between conflict and human needs. The denial or frustration of human needs has been identified as a primary source of conflict (Azar & Burton, 1986) and has given rise to an appreciation for differing perceptions of conflict across cultures. It has been argued that for Arab-Muslim people the most important element of a conflict is not the socio-economic, or even physical, suffering but the justice of the cause (Salem, 1997). Scholars are also increasingly acknowledging justice as a central component in a durable and lasting peace (Rigby, 2001; Kegley & Raymond, 2002; Kriesberg, 2005).

Within the conflict resolution literature, there has been some focus on the issue of asymmetric conflict. Mack's (1975) article 'Why Big Nations Lose Small Wars: The Politics of Asymmetric Conflict' in *World Politics*, Paul's (1994) *Asymmetric Conflicts: War Initiation by Weaker Powers*, and Arreguin-Toft's (2001) article in *International Security*, 'How the Weak Win Wars: A Theory of Asymmetric Conflict', are among the most prominent in terms of asymmetric warfare. Zartman and Rubin's (2003) *Power and Negotiation* adds an important dimension to the literature by examining the issue of asymmetry in the context of negotiations.

The global resurgence of religion is coupled with a focus on religion in conflict resolution. As exemplified in Marc Gopin's (2002) *Holy War, Holy Peace: How Religion Can Bring Peace to the Middle East*, Harold Coward and Gordon Smith's (2004) *Religion and Peacebuilding*, and Gerrie Haar and James Busuttill's (2005) *Bridge or Barrier: Religion, Violence, and Visions for Peace*, religion is not merely identified as a source of conflict but as a source of conflict resolution.

Within this body of literature there has emerged a number of books that focus on the role of Islam and Arab culture in conflict resolution, such as Paul Salem's (1997) *Conflict Resolution in the Arab World*; Salmi, Majul, and Tanham's (1998) *Islam and Conflict Resolution: Theories and Practices*; Said, Funk, and Kadayifci's (2001) *Peace and Conflict Resolution in Islam: Precept and Practice*; as well as numerous articles and books by Mohammad Abu-Nimer, including *Nonviolence and Peace Building in Islam: Theory and Practice* (2003). This body of literature has made two fundamental contributions: identifying the differences between Western and Arab-Islamic culture in perceptions of conflict and conflict resolution, and establishing a solid foundation for meeting the demand in the field for non-Western approaches to resolving conflict.

Constructivism

In the field of international relations the constructivist perspective has become particularly prominent, not only due to the shortcomings of previously dominant perspectives, namely realism and liberalism, but on account of its explanatory capacity and ability to effectively respond to the challenge posed by the post-9/11 era. Constructivism's focus on norms and identity in shaping interests makes it a particularly useful perspective in the context of conflict resolution.

Beginning in the late 1980s and early 1990s with the work of Nicholas Onuf (1989), and Alexander Wendt (1992), followed by that of Friedrich Kratochwil (1995), Martha Finnemore (1996), and Peter Katzenstein (1996) constructivism has developed an impressive potential to explain change in international relations in terms of norms and identity factors. These ideas were further developed in such work as Finnemore and Sikkink's (1998) article in *International Organisation* on 'International Norm Dynamics and Political Change'; Kubalkova, Onuf, and Kowert's (1998) *International Relations in a Constructed World*; and Wendt's (1999) *Social Theory of International Politics*.

Constructivism has also been enriched by the work of Risse, Ropp, and Sikkink (1999) on the power of human rights norms to produce change in domestic policies, as well as Christian Reus-Smit's (2004) examination of the mutually constitutive relationship between international politics and international law. Moreover, central to this thesis is the work of Audie Klotz (1995b), *Norms in*

International Relations: The Struggle against Apartheid, which explains how the international norm of racial equality overcame the strategic and economic interests of powerful nations, including the US and Britain, to force them to dramatically change their policies toward South Africa and apply sanctions for the purpose of ending apartheid. Klotz's research provides a compelling model for a resolution of the Israel-Palestine conflict based on international norms.

Since their success in South Africa, sanctions have been imposed by the UN Security Council a dozen times. However, with few exceptions, due to their lack of success in producing the desired change in their targets, sanctions came to be regarded as ineffective or even counterproductive (Wallensteen, 2002).

However, research by Crawford and Klotz (1999), *How Sanctions Work: Lessons from South Africa*, attests to the effectiveness of sanctions. Taking a constructivist approach, it provides a comprehensive analysis of the various forms of sanctions and the conditions under which they are likely to be most successful.

Islamic studies

The global resurgence of Islam has been the focus of a number of books and articles by such scholars as John Esposito (1999, 2002, 2005) among numerous others. The focus on Islamic resurgence has spawned a body of literature on the role of Islam in contemporary international relations as exemplified by AbdulHamid AbuSulayman's (1993) *Toward an Islamic Theory of International Relations* and Sohail Hashmi's (2002) *Islamic Political Ethics: Civil Society, Pluralism, and Conflict*.

The field of Islamic studies is vast, covering a range of disciplines including philosophy and theology, sociology, history, law, ethics, economics, and politics. This body of literature extends over one thousand years and is written in various Middle Eastern, Asian, and European languages, principally Arabic, Persian, Turkish, Urdu, Indonesian, Malay, French, and English. In the post-colonial era a number of prominent scholars have emerged in the field and have written highly influential works. Among the most prominent is the late Fazlur Rahman (1984,

1989, 2002) whose most famous books include *Islam and Modernity*, *Major Themes of the Quran*, and *Islam*.

The challenges of the modern era have encouraged contemporary Muslim scholars to produce critical examinations of Islam that have attempted, in the spirit of Rahman's work, to identify the essence of the faith in response to contemporary realities. Among this body of literature is Mohammad Arkoun's (1994) *Rethinking Islam: Common Questions, Uncommon Answers*, Tariq Ramadan's (2001) *Islam, the West and the Challenge of Modernity*, and Farid Esack's (2002) *Quran, Liberation and Pluralism: An Islamic Perspective of Interreligious Solidarity against Oppression*. This thesis fits into this body of literature in so far as it is concerned with confronting classical conceptions in order to respond to contemporary challenges while upholding Islamic principles.

Given the centrality of law to Islam, it should come as no surprise that the body of literature on Islamic law is extensive. Of primary focus in the literature on Islamic law is its origin and development (Hallaq, 2005), objectives, nature and sources (Kamali, 1998, 2006), contents (Doi, 1984), application to society (Osman, 1994) and theories of interpretation (An-Na'im, 1990; El Fadl, 2001; Mumisa, 2002; Saeed, 2006).

Central to this thesis is the body literature concerned with Islamic international relations or *siyar*. A number of classical works on the *siyar* are widely available including those of Muhammad al-Shaybani (d.804) and Muhammad Idris al-Shafi'i (d.820). Between the 1940s and the 1960s a number of important books were written on the *siyar*, which examined the subject both from the classical standpoint and in light of modern realities. These works include Majid Khadduri's (1940) *The Law of War and Peace in Islam: A Study of Muslim International Law*, Muhammad Hamidullah's (1961) *Muslim Conduct of State*, Majid Khadduri's (1966) *The Islamic Law of Nations: Shaybani's Siyar*, and Mohammad Talaat Al Ghunaimi's (1968) *The Muslim Conception of International Law and the Western Approach*. More recently the issues of *siyar* has been addressed by Kelsay's (2003) article 'Al-Shaybani and the Islamic Law of War' in *Journal of Military Ethics* and by Rehman's (2005) *Islamic State Practices, International Law and the Threat from Terrorism: A Critique of the 'Clash of Civilisations' in the New*

World Order. Among other issues, this body of literature confirms the continued centrality of *jihad* to the *siyar*.

Among the earliest modern works on *jihad* is Abul A'la Maududi's (1939) *Jihad in Islam*, which discusses the concept in the context of European colonisation. The other very influential book written during this era is Sayyid Qutb's *Milestones* (first published in 1964), which articulates the role of *jihad* in the process of social reform, particularly in terms of eliminating *jahiliyyah* (ignorance) and corruption, and implementing a social order based on the *shariah*. A comprehensive examination of the role of *jihad* in Muslim resistance to colonial rule is Rudolph Peters' (1979) *Islam and Colonialism: The Doctrine of Jihad in Modern History*. In his later work, *Jihad in Classical and Modern Islam*, Peters (1996) compares a number of highly influential modern and classical texts on *jihad* documenting the evolution of the concept over time.

During the 1990s and particularly post-9/11, *jihad* has become an increasing focus among scholars of Islamic and Middle Eastern studies, as well as those concerned with international politics. In the pre-9/11 era scholars tended to examine *jihad* in its historical context, as exemplified by Al Umari's (1991) *Madinan Society at the Time of the Prophet (Vol. 2): The Jihad against the Mushrikun*, or explained *jihad* in terms of the classical *fiqh* rulings, such as in Muhammad Sa'id Ramadan al-Buti's (2006) *Jihad: How to Understand and Practice it*, which was originally published in 1995. Others, such as Busuttil (1991), examine *jihad* in terms of the conduct of war and explain that while the Muslim conduct of *jihad* historically remained more humane than its European counterpart for a thousand years, modern international norms have rendered classical *jihad* 'barbaric' by comparison. Additionally, a number of works, such as John Esposito's (1999) *The Islamic Threat: Myth or Reality*, began examining *jihad* in the context of the threat posed to the West by the increasing violence associated with political Islam.

In the post-9/11 era the focus on *jihad* has increased considerably. While much has been written from an antagonist perspective to discredit Islam in general, some important contributions have been made, such as Richard Bonney's (2004) *Jihad: From the Quran to bin Laden*, which traces the evolution of *jihad*,

examines its various ideological interpretations, and analyses its application in various conflict zones around the world. Another important contribution is that of Giles Kepel (2003) whose book, *Jihad: The Trail of Political Islam*, renews the discussion on the use of *jihad* by Muslims in pursuit of political ends.

A number of works have also sought to disentangle Islam and *jihad* from terrorism. For instance, John Esposito's (2002) *Unholy War: Terror in the Name of Islam* explains the emergence of various militant Muslims groups and highlights the role of Israel's continued occupation of Arab lands, and US foreign policies in the Middle East in cultivating Muslim frustrations and grievances. Alternative responses to the association of *jihad* with terrorism have come from Louay Fatoohi (2004) who relies on the Quran to offer a comprehensive definition of *jihad*. Moreover, Louay Safi's (2001) *Peace and the Limits of War: Transcending Classical Conceptions* attempts to clarify the misconception of *jihad* with reference to the Quran and Prophet Traditions, explaining that *jihad* is not intended to be a war on 'infidels' but a means of repelling injustice and oppression.

Other writings on the subject, such as Ali and Rehman's (2005) article 'The Concept of *Jihad* in Islamic International Law' in *Journal of Conflict and Security Law*, focus on *jihad* in the context of modern international norms, arguing for its use to be subjugated to the provision of the UN Charter. More recently, Abdullahi Ahmad An-Na'im (2006) has argued that the current disrespect for, and selective application of, human rights and international law, gives Muslims little motivation to abandon *jihad* in the sense of using armed force to achieve their own political aims.

The modern era has presented Islam with considerable challenges, particularly in terms of Islamic legal thought and the application of classical standards and concepts in light of contemporary norms and realities. Among the earliest works to confront such challenges was Fazlur Rahman's (1984) *Islam and Modernity: Transformation of an Intellectual Tradition*, in which he introduces a contextualised approach to the interpretation of Islamic texts. This has been followed by a range of others that have sought to further develop a contemporary methodology for interpreting Islamic sources and applying them to the

contemporary context, particularly issues of human rights, gender equality, and to a lesser extent, conflict and international relations. Prominent among this body of literature, beyond the seminal work of Fazlur Rahman, is Abdullahi Ahmad An-Na'im's (1990) *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law*, AbdulHamid AbuSulayman's (1993) *Towards an Islamic Theory of International Relations: New Directions for Methodology and Thought*, Mohammad Hashim Kamali's (2000) *Issues in the Legal Theory of Usul and Prospects for Reform*, and Abdullah Saeed's (2006) *Interpreting the Quran: Towards a Contemporary Approach*. This body of literature supports a contextualist approach to reformulating classical Islamic doctrines.

For all of this work, however, the principal obstruction to a more conducive transition from the texts of the Quran and Prophetic Traditions to their application to contemporary needs and realities, is the enduring authority of the classical method or theory of abrogation or '*naskh*'. Very little has been written with an exclusive focus on the issue of abrogation and its implications for the contemporary relevance of Islam. One notable exception is Israr Ahmad Khan's (2006) *The Theory of Abrogation: A Critical Evaluation*, which shatters the authority of the abrogation theory based on a comprehensive critique of relevant Quranic verses and Prophetic Traditions historically used in its support.

Though dating as far back as the work of the 8th century scholar Abu Ishaq al-Shatibi (d.790), the concept of *maqasid al-shariah* or objectives of Islamic law has come to receive renewed attention in the literature on the interpretation and application of Islamic law. Recently, a number of specialised books on the *maqasid* have been published, namely Muhammad Khalid Masud's (1995) *Shatibi's Philosophy of Islamic Law*, Ahmad Al-Raysuni's (2006) *Imam al-Shatibi's Theory of the Higher Objectives and Intents of Islamic Law*, and Ibn Ashur's (2006) *Treatise on Maqasid al-Shariah*.

Moreover, in August 2006 the International Islamic University of Malaysia held a major international conference on Islamic jurisprudence and the challenges of the 21st century entitled, *Maqasid al-Shariah and its Realisation in Contemporary Societies*, at which papers were presented by dozens of scholars from around the world. Among the leading scholars on the issue of *maqasid* is Mohammad

Hashim Kamali (2000, 2006), who, through a number of his works, including *Issues in the Legal Theory of Usul and Prospects for Reform* and *An Introduction to Shariah*, has laid the foundation for what he has defined as a ‘*maqasid*-oriented approach’ to understanding, interpreting, and implementing Islamic law. The intent of this thesis is to further develop the *maqasid*-oriented approach in the context of conflict resolution, using the Israel-Palestine conflict as a case study.

Contributions to the literature

This thesis is unique in its incorporation of literature from the fields of Islamic studies, international relations, and the literature on the Israel-Palestine conflict. It is distinctive not only in its utilisation of the constructivist perspective of international relations in an examination of the Israel-Palestine conflict, but also in its incorporation of this perspective in a reformulation of *jihad* based on the contextualist and *maqasid*-oriented approaches of Islamic studies. This literature review shows that the Middle East has become an important focus in the field of international relations. Much of this literature is concerned with war and conflict, at which the Israel-Palestinian conflict is seen to reside at the core. The longevity of the Israel-Palestine conflict has given rise to an extensive body of literature that has over time, in spite of competing perspectives, arrived at certain established knowledge on the subject, including the origins of the conflict, the central issues to be resolved, and a large degree of consensus on legal matters. Particularly, due to the contributions of Israeli revisionist historians, matters that were once highly contentious, specifically the origin of the Palestinian refugee problem, have become widely acknowledged. Arguably, the literature has progressed in a direction that, while sensitive to Israeli security concerns, recognises the centrality of the restoration of Palestinian rights to a peaceful resolution of the conflict.

Research on the Israel-Palestine conflict and its resolution has tended to neglect the religious dimension in spite of acknowledging its importance. Religion has become a focus in the field of international relations and conflict resolution in particular. The conflict resolution literature has established two points that are particularly relevant to this thesis: the need for non-Western approaches to the

resolution of conflict and the importance of a justice component in a durable peace. Both of these points have been noted in the literature on the Israeli-Palestine conflict and have also been addressed in a growing body of work concerning Islam and conflict resolution. Little, however, has been developed toward a resolution of the Israel-Palestine conflict from an Islamic perspective, save that written from the perspective of the classical Islamic *siyar* in addition to some important work on Islam and nonviolence.

In spite of the growing prominence of the constructivist perspective in international relations, the role of norms and identity are yet to be thoroughly examined in the context of the Israel-Palestine conflict nor has the constructivist perspective been utilised systematically in an approach to resolving the conflict. Moreover, the literature is yet to examine the issue of the competing norms of self-determination and self-defence in the context of Israel-Palestine and its implications for achieving a just resolution. Comparisons between apartheid South Africa and Israel-Palestine are present in the literature and provide a foundation for pursuing a resolution of the latter on the basis of the model successfully applied to the former.

Non-violent resistance is acknowledged as being more conducive than violence to supporting this approach. The successful implementation of a non-violent *intifada*, however, requires a reformulation of the classical conception of *jihad*, which, as the literature demonstrates, remains dominant today, particularly from the Islamic-law perspective. This thesis contributes to the field of international relations and conflict resolution, as well as to the growing body of literature concerned with the method of contextualisation in Islamic studies. Moreover, it stands to make an important contribution to the development of an emerging method of interpretation referred to as the *maqasid*-oriented approach, the utility of which is likely to extend beyond conflict resolution to a range of other matters addressed in the field of Islamic studies.

Taking the Israel-Palestine conflict as a case study, this thesis represents another step toward bridging the gulf between Western and Islamic perspectives of international relations. By utilising the theory of constructivism, it offers a new approach to analysing the Israel-Palestine conflict and based on the tenets of

this perspective, adds support to the argument for the use of nonviolence in resolving the conflict. The identification of the competing norms in the conflict makes a significant contribution to the literature. Additionally, this thesis is another step in the process of developing an Islamic theory of international relations. It also adds to the body of literature concerned with the re-emerging methods of contextualisation and *maqasid*, which are fundamental to the effective interpretation and application of Islamic sources and principles in response to contemporary realities and challenges of the Muslim world. Finally, this thesis offers a mutually agreeable platform from which both Western and Islamic advocates can pursue a just resolution of the Israel-Palestine conflict.

Chapter structure

This thesis is comprised of three Parts: I) The Israel-Palestine conflict, II) Theoretical foundation, and III) Reformulation. Part I provides a background to the Israel-Palestine conflict, addressing critical aspects of its origin and progression, and examining issues concerning its resolution, including the position of the UN. Chapter 1 examines the land of Palestine prior to the emergence of the Israel-Palestine conflict in regard to its historical inhabitants and rulers, as well as the origin of the conflict as it unfolded, first under the British and then the UN, with a specific focus on the partition recommendation of 1947. This chapter then discusses the failure of the 'peace process', identifying three key issues in this regard that emerge out of the literature: the religious dimension and the role of violence; the asymmetry of the conflict, including the image of the conflicting parties; and the concept of a 'just peace'.

Chapter 2 provides a comprehensive content analysis of all the UN Security Council resolutions on the question of Palestine. Of specific focus are the basic facts of the conflict as identified by the Council and the principles it has set forth for a peaceful settlement. What emerges from this analysis is a normative framework for a just resolution of the Israel-Palestine conflict that addresses all of the so-called 'final status' issues that are regarded by both sides as the most fundamental.

Part II of this thesis discusses its theoretical foundation, constructivism. Chapter 3 defines and conceptualises constructivism, highlighting the work of its major proponents, and explaining the prominent position it has come to occupy in international relations vis-à-vis earlier theoretical perspectives in the field. It then addresses the issue of norms in international relations, focusing on their diffusion through the process of socialisation, as well as the central role that the identity considerations of states play in international relations and conflict resolution. This chapter outlines the case of South Africa as a model for the role of norms and identity factors in resolving conflict. Finally, it examines the competition between the norms of self-determination and self-defence, and how this competition has contributed to the continuity of the Israel-Palestine conflict.

As a consequence of 9/11 and the war on terror, Palestinians have fewer acceptable options in terms of resisting the Israeli occupation, particularly given the increasing prominence that the norm of self-defence has acquired in the case of Israel over the norm of self-determination in the case of the Palestinians. Beyond the moral issues associated with the use of violence, contemporary realities have rendered it essential for Palestinians to adopt a completely non-violent approach to their struggle against Israel's occupation. Chapter 4 explores the implications of 9/11 and the war on terror for the Israel-Palestine conflict and presents an argument for a non-violent *intifada* if the Palestinians are to effectively pursue a just peace. This chapter explores the potential for, and limitations of, a non-violent *intifada* in the context of an increasingly 'Islamised' Palestinian society.

Part III of this thesis presents a reformulation of the classical Islamic doctrines of war and peace. Chapter 5 provides a brief overview of Islam and Islamic law and discusses the concepts of *siyar* and *jihad*. Classical, legal, and contemporary views of *jihad* are all examined, demonstrating the authoritative position of Islamic law in defining Islam, and pertinent concepts such as *jihad*. This chapter discusses the historical processes, particularly the theory of *naskh* or abrogation, that has resulted in the narrowing of the concept of *jihad* to the use of armed force. Chapter 6 presents an argument for the use of contextualisation in the interpretation and application of Islamic concepts, specifically *jihad*. Using a *maqasid* or objective-oriented approach, this chapter demonstrates the breadth

of meaning applied to *jihad* in both the Quran and traditions of the Prophet Muhammad. It establishes that a non-violent *intifada* is not only more conducive to the Palestinian pursuit of self-determination from a constructivist perspective, but that such an approach is an authentic form of *jihad* and as Islamically legitimate as the classical conception.

PART I
The Israel-Palestine Conflict

Chapter 1: Origin, Nature, and Progression of the Conflict

Any attempt to resolve the Israel-Palestine conflict must proceed from a thorough understanding of its historical context, particularly the state of historical Palestine, the origin of the conflict, and the issues surrounding the United Nations (UN) recommendation to partition Palestine in 1947. Debate on the conflict is punctuated by myths and propaganda, some of which have endured for more than half a century and have shaped understandings of the conflict and perspectives on its resolution. Succinctly addressing some of the major myths associated with the conflict, this chapter examines the land of Palestine prior to the emergence of the Israel-Palestine conflict in regard to its historical inhabitants and rulers, as well as the origin of the conflict as it unfolded first under the British and then the UN, with a specific focus on the partition recommendation of 1947. This chapter then discusses the failure of the 'peace process', identifying three key issues in this regard that emerge out of the literature: the religious dimension and the role of violence; the asymmetry of the conflict, including the image of the conflicting parties; and the concept of a 'just peace'.

Historical Palestine

The land located between the Jordan River and the Mediterranean Sea has historically been known as Palestine. Situated at a crossroads of world trade and civilisations, Palestine has historically been home to many peoples and has been ruled by many others. Its inhabitants, the Canaanites, were Semites, people who spoke Semitic languages, including Assyrian, Aramaic, Arabic, Babylonian, Hebrew, and Phoenician. They included the Philistines, who lived around Gaza; Jebusites in Jerusalem; Hebrews in Hebron and Nablus; Nabateans in southern Palestine; and Phoenicians in Galilee. Throughout history this land has been ruled by the Egyptians for 1150 years; Hyksos for 160 years; Hittites for 60 years; Philistines for 539; as well as the Babylonians, Assyrians, Persians, Greeks, and Arminians for various periods of time. The Kingdoms of David and Solomon lasted for a total of 73 years (1000 to 927 BC), after which the kingdom of Judah lasted 341 years (927 to 586 BC), while the kingdom of Israel lasted

205 years (927 to 722 BC) (Qumsiyeh, 2004). Palestinian Islamic scholar, Ismail Raja Al Faruqi (1980), remarks that although Palestine had known many invaders and regimes, all were “either repulsed or absorbed in time” (p.57).

By the time the Romans conquered Jerusalem in 63 BC, Palestine was mainly inhabited by Aramaic-speaking Canaanites (Qumsiyeh, 2004). The Persians reconquered Jerusalem in 614 but were defeated by the Byzantine Empire in 628. At this time Islam was being established by the Prophet Muhammad (d.632) throughout the Arabian Peninsula. Following the Prophet’s death, his successors, Abu Bakr (d.634) and then Umar (d.644), extended Islamic rule over Greater Syria, which included modern-day Lebanon, Jordan and Palestine, as well as over Iraq and Egypt. In 638, the Islamic empire, under the rule of Umar, captured Jerusalem. Muslim rule over Jerusalem – Arab followed by Turkish – continued until the 20th century and was interrupted only by the Crusades (1099-1187; 1229-1244). Most of the population of Palestine became ‘Arabised’, adopting the Arabic language, culture, and Islam as their religion. In 1893 the estimated population of Palestine was 479,000 – 98 percent Muslim and Christian Arabs and two percent Jews (Qumsiyeh, 2004). Muslim rule ended when the British defeated the Ottomans in the First World War and captured Palestine.

The demographics of Palestine at the dawn of the conflict require some elaboration. At the time of the British Mandate most of the Palestinians were Muslims, approximately one-fifth were Christians, and about 1.5 percent were Jews (Faruqi, 1980). All were Arabic speakers and were part of the Arab culture but were ethnically mixed as they descended from the original Canaanites and Philistines and were the product of intermarriage between Hebrews, Greeks, Persians, Romans, Arabs, European-Crusaders, Egyptians and Turks. When the Arabs conquered Palestine in the 7th century, “they did not empty it of its native population and refill it with manpower imported from Arabia” but, “intermarried with the natives, converted most of them to Islam and all of them to Arabic language and culture” (p.57).

Indeed, the plurality of Palestine’s rulers and ruled is widely acknowledged in the literature. It is discussed by a range of scholars, from historians such as Charles

Smith (2004) to foreign policy researchers such as Gregory Harms (2005), as well as international law specialists such as John Quigley (2005). The issue of historical possession of the land or 'ancient title' is critical in a conflict where land rights are central. On the matter of claims to territory based on ancient title, Quigley (2005) remarks that such claims have generally not been recognised and that the Zionists' claim to Palestine was discredited in the House of Lords and rejected by the King-Crane Commission.⁴ He further asserts that if ancient title were recognised in the case of Palestine, "it would not necessarily support a Zionist claim" but rather "the Palestine Arabs [who] derived from peoples who occupied Palestine before the time of the Hebrew kingdom" (p.69).

Origin of the conflict

The origin of the Israel-Palestine conflict is not found in any ancient struggle between the sons of Abraham, Ishmael and Isaac. Rather, the conflict is a product of 19th century European racism toward Jews or 'anti-Semitism', as it is most commonly referred. Jews had historically resided throughout the Muslim world. Few, however, resided in Palestine, preferring instead Baghdad, Cordova in Muslim Spain, Damascus, and Istanbul. The desire of Jews to migrate to Palestine is the product of push rather than pull factors (Quigley, 2005). European anti-Semitism had reached a point by the end of the 19th century that convinced certain European Jews that their acceptance in Europe, in spite of assimilation, was not possible and that a homeland of their own was the only solution.

In 1893, an Austrian Jew, Nathan Birnbaum, coined the term Zionism, advocating Jewish nationalism. His contemporary, Theodor Herzl, also came to acknowledge the need for an independent Jewish state and in 1896 wrote *Der Judenstaat* (*The Jewish State*). In 1897, Herzl organised the first World Zionist Congress and founded the World Zionist Organisation (WZO). After several years of discussing other options, the WZO embarked on a mission to establish a

⁴ The US Commission, King-Crane, of 1919 confirmed that the aim of Zionism was 'complete dispossession' of the non-Jewish inhabitants of Palestine. The Commission recognised the contradiction between US support of self-determination and the fact that it also supported the Zionist program, which was opposed by 'nine-tenths of the whole' population of Palestine (Quigley, 2005).

Jewish state in Palestine. With Palestine already populated with over half-a-million indigenous inhabitants and under the rule of the Ottoman empire, the WZO realised that the support of a great power would be necessary in order for Zionism to meet its objectives of establishing a Jewish state there.

In 1917, the Balfour Declaration was made, in which the British Foreign Secretary, Arthur Balfour, pledged British support to WZO leader, Chaim Weizmann. Britain agreed to support “the establishment in Palestine of a national home for the Jewish people” (cited in Smith, 2004, p.72). By 1918, Britain had defeated the Ottomans in Palestine. In 1922, the League of Nations approved the British Mandate over the territory. Tens of thousands of Jews began to migrate to Palestine. Within 10 years, the Jews had increased their numbers in Palestine to 175,000, 20 percent of the total population of the country. By 1936, the total population of Palestine was well over one million – 385,400 were Jews (28%), while Muslim and Christian Palestinians numbered 983,200 (Qumsiyeh, 2004).

From 1901, the WZO embarked on an organised strategy of land acquisition in Palestine through such specialised bodies as the Jewish National Fund (JNF), which purchased land through the Jewish Agency (Pappe, 2007). The takeover of, and their eviction from, the land which they worked evoked resistance from the Palestinian peasantry. Prior to the policy of exclusive Jewish labour, the colonisation of Palestine followed a pattern of ‘resentment’ to the forced eviction, followed by some form of ‘retaliation’ for losses incurred, and finally ‘reconciliation’ when Arabs did find jobs with Jewish employers (Hirst, 2003).

The second wave of Jewish settlers, however, infused with Herzl’s Zionist ideology and backed financially by the JNF, insisted upon the exclusion of Arab labour from acquired lands, and consequently, spurred Arab resentment and conflict. The so-called ‘safeguard’ clause of the Balfour Declaration, which states that: “nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine” (cited in Smith, 2004, p.72), was, in spite of assurances from Churchill to the Palestinian leadership, effectively ignored by the British. As concluded by various British inquiries such as Haycraft (1921), Shaw (1930), and Hope-Simpson (1930), the origin of hostilities between

the indigenous Palestinians and the European Jewish settlers is based on the deprivation of land and livelihood of the former at the hands of the latter (Quigley, 2005; Smith, 2004; Hirst, 2003).

The Arab Executive of the time had decided on political rather than violent means in response to the challenge of Zionism (Peters, 1979). Their efforts mainly took the form of petitioning the British on matters concerning the situation in Palestine, particularly the implications of the Balfour Declaration. The Arab leadership rejected participation in successive legislative councils proposed by Herbert Samuel, first High Commissioner of Palestine. To have co-operated would have provided an opportunity to present the concerns of the Palestinians, but it would have also meant their recognition of the Mandate and the Balfour Declaration (Smith, 2004). Such dilemmas continue for the Palestinians until today in regard to such 'peace initiatives' as the Oslo Accords and the Roadmap.

Among the Palestinians, violence became the preferred option of the Islamically oriented, specifically in the case of Haj Amin (d.1974), once he became Mufti and President of the Supreme Muslim Council. Similarly, *jihad* was advocated by Shaykh Izzeddin Qassim (d.1935). While it had been futile from a military perspective, it has since served as an inspiration for the Palestinian masses, particularly Hamas, after whom its military wing is named (Milton-Edwards, 1996). Among the Jews, Vladimir Jabotinsky (d.1940), founder of Revisionist Zionism, had already established the *Haganah* as a Jewish militia for the defence of Jewish settlements but during the violence of the late 1920s could rely on the British for the suppression of the Arab resistance.

Toward the mid 1930s, land sales dramatically increased from 673 in 1933 to 1,178 in 1934; the Palestinian rebellion began in 1936. In July 1937, the recommendations of the Peel Commission, which called for a partition of Palestine into a Jewish state and an Arab state, was for the Palestinians final proof of the valuelessness of the 'safeguard' clause of the Balfour Declaration. In effect, the Peel Commission acknowledged that the Mandate was unworkable and that Jewish aims could not be achieved without disregarding the rights of the Palestinians and by repressive means. In response to Peel's recommendation to partition Palestine, the second phase of the rebellion began. The Woodward

Commission followed Peel, offering an opposing view – that partition would not be workable (Hirst, 2003).

By November 1938, in rejection of Peel's recommendation, the British government declared the partition of Palestine to be 'impracticable' and instead, the following year, recognised the creation of an independent Palestinian state as the most viable option (Quigley, 2005). The MacDonald White Paper of 1939 confirmed that a 'strong' policy on the part of Britain could restore order but not peace. It also asserted that Palestine would not become a Jewish state; Jewish immigration would have to be essentially phased out; and that strict regulations on land sales be imposed. Moreover, the MacDonald White Paper proposed the establishment of self-governing institutions as a precursor to the establishment of an independent Palestine state within ten years. Though the White Paper was rejected by the Mufti, his rivals, the influential Nashashibis, accepted it, as did the majority of the Palestinian people (Hirst, 2003).

The MacDonald White Paper evoked an immediate and violent response from the Jews, however, marking the beginning of a reign of terror that Hirst (2003) refers to as 'gun Zionism'. The Revisionist Zionists led the campaign of bombings in markets and other public places. The terror perpetrated by the Arabs between 1936 and 1939 was surpassed by that of the Jews during the 1940s. By 1939, the Jews already had an official military force of 14,500 men, which was five percent of the Jewish community in Palestine at the time (Hirst, 2003).

With the onset of the Second World War, preventing the immigration of Jews into Palestine became increasingly difficult. However, the migration of Jews to Palestine was encouraged by such world leaders as US President Truman in spite of the finding of the numerous British commissions that Jewish immigration was a central cause of the conflict already raging in the country. Truman was pressured by the Zionist leadership to close US doors to fleeing European Jews to bolster the argument that an independent Jewish state was necessary in order to absorb them (Smith, 2004). Between 1932 and 1943, "the vast continent of United States had received 170,883 Jews, while the minuscule Palestine had received 232,524 during the same period" (Khalidi, 1997, p.9). It is also noteworthy that the preferred destination of the majority of fleeing Jews at the

time was not Palestine but the United States (Pappe, 2007; Quigley, 2005). The relative lack of support of the United States for the Jewish refugees should also be understood in the context of the 1947 UNSCOP declaration of the problem of Jewish refugees as an 'international responsibility' and not a Palestinian one.

Contrary to popular perceptions of Arabs as the initiators of terrorism in the Middle East, it was the Zionist forces that introduced the region to "an innovative array of tactics" including "letter bombs, parcel bombs, vehicular bombs (the ultimate weapon of urban warfare), the whipping and lynching of British soldier hostages, booby-trapping their corpses, and electronically detonated mines against civilian targets" (Khalidi, 1997, p.7). These tactics culminated in the 1946 execution of Operation Malonchik – the bombing of Jerusalem's King David Hotel, Britain's civilian and military headquarters in Palestine, which killed 41 Arabs, 17 Jews, and 28 British. Menachim Begin, leader of the Israeli terrorist group, Irgun, with the approval of the *Haganah* and the official Zionist leadership, was responsible for the attack (Smith, 2004; Hirst, 2003; Khalidi, 1997).

At the end of World War II, the Labour Party won the elections in Britain. The new Foreign Secretary, Ernest Bevin, on the basis of the 1939 White Paper, attempted in vain to create one multi-ethnic, multi-religious state in Palestine. With 100,000 troops on the ground and at a cost of 30 to 40 million per year, the cost of its Mandate over Palestine became too high for the British. In the assessment of Hirst (2003), the diplomacy of Weizmann was 'crucial', but it was the conversion of the Jewish moderates to the position of the extremists, specifically in the use of violence, that carried the Zionist cause to statehood – "Gun Zionism had driven out the British" (p.237). In April 1947, Britain gave up and Palestine became the problem of the UN.

The partition of Palestine

After the Balfour Declaration, no document has had the lasting impact on the Israel-Palestine conflict as UN General Assembly resolution 181 of 1947, which recommended the partition of Palestine into a Jewish state and an Arab state. Israel bases the legitimacy of its state on this resolution, and as stated on the Ministry of Foreign Affairs website, places blame for the ongoing conflict, in

general, and in particular the Palestinian refugee problem, on the “Arab leadership’s rejection” of it (Israel Ministry of Foreign Affairs, 2003, ¶ 68). Such arguments have been central not only to Israeli’s rejection of the Palestinians’ right of return, but also to its claim to Palestinian territory it acquired beyond the six percent it legally possessed when the state of Israel was declared on 14 May 1948 (Pappe, 2007; Qumsiyeh, 2004).

The decision of the Arab leaders and the Palestinian people to not accept the 1947 plan to partition Palestine (General Assembly resolution 181) is due to their perception of the document as unjust. In support of the Arab rejection, Walid Khalidi (1997) states that “the UN 1947 partition was not the legal, moral, fair, balanced, pragmatic, practicable ‘compromise’ formula that it is made out to be” (p.9). He provides a detailed explanation to support his assessment.⁵ Among the

⁵ The total territory of Palestine was 27 million dunums (one dunum equals one square kilometre).

- Its total population in 1946 was almost two million (1,972,000) – 1,364,000 Palestinians (69%) and 608,000 Jews (31%).
- Palestinians owned vast majority of the land; Jews owned only 1,820,000 dunums (7% of the total area of the country).
- Palestinians had inhabited the land for millennia, while over ninety percent of the Jews had migrated within the few preceding decades. However:
 - The Jews were allocated 15,000,000 dunums (55.5%) for their state and the Palestinians were allocated 45.5 percent for theirs.
 - The Palestinian state was to have 818,000 Palestinians and less than 10,000 Jews.
 - The Jewish state was to have 499,000 Jews and 438,000 Palestinians.
 - In the Negev, which was to be part of the Jewish state, Jews numbered only 1,020 (1% of the population of the area), while Palestinians numbered 103,820.
 - In Eastern Galilee, which was to be part of the Jewish state, the Palestinian population was three times that of the Jewish (86,200 against 28,750).
 - The only part of the Jewish state where Jews constituted a majority was in the central sector – coastal plain between Tel Aviv and Haifa and the inner plain (Esdraleon) southeast of Haifa – 469,259 Jews to 235,760 Palestinians. It is noteworthy that in reality Jews were a majority in only the cities of Tel Aviv and Haifa (65% of the population) but were still a minority in the rural areas of this sector (35%).
 - Of the land allocated to the Jewish state only 1,678,000 dunums (11.2% of the land) was Jewish-owned;
 - Of the half considered cultivatable (not desert), only 20 percent was Jewish-owned; 80 percent was Palestinian-owned.
 - Only one percent of the 12,000,000 dunums of the Palestinian state was Jewish-owned (130,000 dunums).
 - Of the 187,000 dunums allocated to the international city of Jerusalem, 12,500 were Jewish-owned (7%); Jews only owned about a quarter of West Jerusalem.
 - The best, most fertile lands were allocated to the Jewish state (coastal plain from Jaffa to Haifa and interior plains from Baysan to Tiberias):
 - Main citrus-growing area, which was 80 percent of countries exports prior to WWII and mostly owned by Palestinians; and
 - Main cereal-growing area.
 - Also within the Jewish state fell:
 - 40 percent of Palestinian industry;

most compelling arguments, which were voiced by the Palestinians at the time were that the Jews were being allotted a state on 55 percent of historical Palestine when they were less than one-third of the population, most of whom had resided in Palestine for less than 30 years, and only legally owned six percent of the territory (and only 11% of the territory that was to become their state). Moreover, the Palestinians were being allotted a state on 45 percent of historical Palestine but were over 70 percent of the population, owned over 90 percent of the land, and were the indigenous people of Palestine who had resided there for millennia.

The question of the legality of the partition and the authority of the UN to do so is critical to this discussion. Khalidi (1997) is one of many scholars who finds questionable the authority and legality of the UN to partition a territory against the will of the majority of its inhabitants. He notes that the decision that the UN *did* have the necessary authority passed by a vote of 21 to 20 in an Ad Hoc Committee with a total membership of 57. When it came to the vote on Resolution 181, it is noteworthy that the US had to apply considerable pressure to a number of nations in order to compel them to change their vote and support the partition resolution, thereby undermining the democratic and moral authority of the resolution. The vote on Resolution 181 only marginally met the required

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- Major sources of the country's electrical supply;
 - The country's main port at Haifa, which was also the terminal for the oil pipeline from Iraq and the country's sole petroleum depot;
 - The upper reaches of the Jordan river and therefore the riverine water supply for the Palestinian state;
 - Lake Tiberias, a water source and traditionally integral to the Palestinian fishing industry;
 - The country's only airport at Lydda; and
 - Over 400 Palestinian villages.
 - The Palestinian state was therefore:
 - Comprised of major Palestinian towns but, due to the drawing of the borders, cut off from their most fertile lands or economic hinterlands; and
 - Mostly comprised of the central highlands, without access to the Red Sea, Mediterranean Sea (except for Jaffa, which was also cut off from the rest of the state) and therefore possessing no port or harbour facilities.
 - 66.5 percent of the Jewish population was confined to three municipal areas: West Jerusalem, Tel Aviv, and Haifa.
 - Of the 16 subdistricts of the country, only in one (Jaffa-Tel Aviv) did the Jews constitute more than 50 percent of the population.
 - The Jewish population of the remaining 15 subdistricts was as follows:
 - Haifa, 47 percent; Jerusalem, 38 percent; Tiberias, 33 percent; Baysan, 30 percent; Ramla, 22 percent; Tulkarm, 17 percent; Nazareth, 16 percent; Safad, 13 percent; Acre, 4 percent; Gaza, 2 percent; Beersheeba, <1 percent; Hebron, <1 percent, and 0 percent in Jenin, Nablus, and Ramallah subdistricts (Khalidi, 1997).

two-thirds majority as only 33 were in favour, 13 against and 10 abstaining. Nations heavily dependant on US financial aid, including Haiti, Liberia, and the Philippines, changed their position on the issue only days prior to the vote and supported partition. A number of countries, including Liberia, even expressed complaints against the 'diplomatic intimidation' of the US (Quigley, 2005). Moreover, only months after the passing of Resolution 181, the US itself concluded partition to be unworkable and on 12 March 1948 the State Department drafted a new UN resolution based on the model of an international trusteeship for Palestine that was to be followed by a negotiated solution (Pappe, 2007).

Theodor Herzl, who founded the Zionist movement in the late 1890s, envisioned that the Arab 'problem' would have to be solved by the removal of the indigenous population from Palestine. Prior to the war of 1948 it was the stated intention of David Ben-Gurion, who became Israel's first Prime Minister, to launch a major offensive against the Palestinians to 'greatly reduce' the proportion of Arabs that would be part of the Jewish state. Ben-Gurion is quoted to have said that 'the whole Zionist movement actually was based on the principle of a purely Jewish community in Palestine' (Quigley, 2005). Indeed, as early as 1936, Ben-Gurion had decided to base the Zionists' relationship with the Palestinians in military terms. According to Ben-Gurion's biographer, Shabatai Teveth, his response to the Peel Commission's recommendation to partition Palestine was to accept a Jewish state in part of Palestine as a stepping stone to expanding it over all of Palestine (Khalidi, 1997). Pappé's (2007) *The Ethnic Cleansing of Palestine* provides extensive detail and documentation of Ben-Gurion's planning, management, and execution of 'Plan Dalet' to eradicate the native Palestinian population from not only the 55 percent the UN allotted for a Jewish state but also from the additional 23 percent on which he sought to establish the state of Israel.

Hirst's (2003) *The Gun and the Olive Branch* (first published in 1977), was among the first to shatter the earliest, and most important, of 'Zionist myths': that half the Palestinian population left their homes and land voluntarily or under orders of Arab leaders rather than on account of being victims of an Israeli campaign of ethnic cleansing. Hirst writes that "the Zionist version of the

Palestinian exodus is a myth manufactured after the cataclysm took place” (p.260). The objective of the Zionists’ claim that the Palestinians had fled ‘without cause’ was designed, according to Hirst, to undermine world sympathy for the Palestinian refugees and, therefore, avoid pressure for them to be returned. The myth survived a full decade without opposition until Walid Khalidi (1959), followed by Erskine Childers (1961), was able to prove through empirical research that there were no orders from Arab leaders to flee but orders to the contrary. When Israeli historians such as Avi Shlaim, Benny Morris, and Ilan Pappé, who from the late 1970s gained access to the Israeli archives, were able to objectively write on the origins of the conflict, their work reinforced that of Hirst and Palestinian scholars like Khalidi.

According to Israeli historian Benny Morris, from 29 November 1947 until 1949 waves of Palestinians became refugees. In his famous work, *The Birth of the Palestinian Refugee Problem, 1947-1949*, Morris (1987) lists 369 Palestinian localities (villages and towns) ethnically cleansed during this period. Morris and other Israeli historians, including Avi Shlaim (2000), reject the claim that the Palestinians fled their homes and land on orders from Arab leaders. Morris’ research records only 6 localities where evidence supports this claim. Rather, he identifies 122 localities from which Palestinians were expelled by Zionist/Jewish forces; 270 localities from which Palestinians fled under military assault by Zionist/Jewish forces; and 12 localities from which Palestinians fled due to fear of Zionist/Jewish attack, being caught in the fighting, or other psychological warfare. Moreover, Abu Sitta’s (2001) research records that 339,272 Palestinians, from 264 locations, were made refugees during the war of 1948 and a further 52,001 from 54 locations after the signing of the Armistice Agreements between Israel and the neighbouring Arab nations. These facts stand in stark contradiction with the claim of Israel’s Ministry of Foreign Affairs that “almost all the Arabs who left did so voluntarily, ignoring Israel’s calls (including in its Declaration of Independence) to stay in Israel” (Israel Ministry of Foreign Affairs, 2003, ¶ 69).

Further detailed documentation of this ‘ethnic cleansing’ has more recently come to light in Ilan Pappé’s (2007) *The Ethnic Cleansing of Palestine*. Pappé differs from his fellow revisionist historians, like Morris, in that he uses the framework of not war but ‘ethnic cleansing’ to explain the origins of the conflict. He asserts that

“when it created its nation-state, the Zionist movement did not wage a war that ‘tragically but inevitably’ led to the expulsion of ‘parts of’ the indigenous population, but the other way round: the main goal was the ethnic cleansing of Palestine, which the movement coveted for its new state” (p.xvi). Pappe documents that the ethnic cleansing of Palestine was planned by Ben-Gurion and his colleagues years prior to the establishment of Israel and began in November 1947 before any Arab forces had entered Palestine. He even documents that in the political and military correspondence used at the time, Hebrew words for ‘cleansing’, namely *tihur* and *nikkuy*, were used to describe the objectives of the military operations against Palestinian towns and villages.

By April 1948, when the Arab armies had decided on sending troops to Palestine, “a quarter of a million Palestinians had already been expelled, two hundred villages destroyed and scores of towns emptied” (Pappe, 2007, p.118). Thus, Pappe writes that the ‘war’ of 1948 was a ‘phoney war’ because:

hundreds of thousands of Palestinians had been expelled by force before the war began, and tens of thousands more would be expelled in the first weeks of the war. For most Palestinians, the date of 15 May 1948 was of no special significance at the time: it was just one more day in the horrific calendar of ethnic cleansing that had started more than five months earlier (p.131).

It is also noteworthy that Pappe (2007), among other historians, including Hirst (2003) and Shlaim (2000), regard as ‘myth’ that the Arab forces were ever superior to the Jews either numerically or in terms of weapons and training. Only the Arab Legion had the potential to rival the Jewish forces, but it had been neutralised by King Abdullah’s ‘secret’ agreement with the Zionists (Pappe, 2007; Shlaim, 1990).

By the end of the ‘war’ almost 800,000 Palestinians had been made refugees, half the population at the time (over 80 percent of the population in the areas that became part of Israel), over 530 villages had been destroyed, 11 towns had been emptied of their inhabitants, and over 30 massacres had taken place in the process. Morris’ (1987) research identifies 33 Palestinian massacres that took

place in 1948 alone, of which half occurred prior to 14 May 1948,⁶ when Israel declared its state and after which the Arab armies entered Palestine. Pappe (2007) documents the persistent campaign of the Zionist movement to deny the ethnic cleansing of Palestine and erase it from the collective global memory and the world's consciousness. He contends, however, that recognition of this central matter is indispensable for a resolution of the conflict.⁷

Israel continued to extend its military domination over not only the Palestinians but all neighbouring Arab states and by military means pursued the expansion of the state of Israel. The Six-Day War of 1967 resulted in Israel taking control of all of historical Palestine. Israel captured the Gaza Strip from Egypt and the West Bank, including Jerusalem, from Jordan. Additionally, Israel captured the Syrian Golan Heights, and the Egyptian Sinai Peninsula (which was returned in 1982 as part of the Egypt-Israel peace treaty). Consequently, the Israel-Palestine conflict took on a new dimension; further layers were added.⁸ In addition to the recovery of land and return of refugees, the status of Jerusalem, Israeli settlements on Palestinian and other Arab territories, and control of such vital resources as water also became central issues of the conflict.

The Palestinian struggle became one of liberation from Israel, and after 20 years under occupation the Palestinian people responded with the first *intifada* (1987-1993), which led to the beginning of the 'peace process'. In 1988, the Palestinian Liberation Organisation (PLO), under the leadership of Yassir Arafat, made an

⁶ Locations and dates of Palestinian massacres that occurred in 1948 prior to 14 May: Mannsurat al Khayt (18 Jan); Qisarya (15 Feb); Wadi 'Ara (27 Feb); Deir Yassin (9 Apr); Khirbet, Nasir ad Din (12 Apr); Hawsha (15 Apr); Al Wa'ra al-Sawda (18 Apr); Haifa (21 Apr); Husayniyya (21 Apr); Balad el-Shaykh (25 Apr); Ayn az Zaytun (2 May); Al Abbasiyya (4 May); Bayt Daras (11 May); Burayr (12 May); and Khubbayza (12 May).

⁷ Salman Abu Sitta of the Palestine Land Society concurs. In addition to stressing the indispensability of the return of the Palestinian refugees, Abu Sitta (2001) has also developed a detailed plan that demonstrates that the return of the Palestinian refugees to their homes and land is practical and feasible for the refugees, Palestine, and even Israel (see <http://www.plands.org/books.htm>).

⁸ Jerusalem: Israel illegally occupies the entire City of Jerusalem. Settlements: There are between 120 and 135 Israeli settlements on the West Bank in which 420,000-460,000 Israeli settlers reside according to various sources including the B'Tselem (www.btselem.org), Palestine Monitor (www.palestinemonitor.org), and BADIL (www.badil.org). According to these and other sources, while the settlements occupy about three percent of the West Bank, their presence, through roads and other restricted areas, prevents Palestinian access to over 40 percent of the West Bank territory. Refugees: There are an estimated seven million Palestinian refugees and displaced persons today according to the latest report of the BADIL Resource Centre (<http://www.badil.org/Publications/Books/Books.htm>).

historical concession by relinquishing claim to historical Palestine beyond the Gaza Strip and West Bank, including East Jerusalem (22% of historical Palestine) on which to establish the state of Palestine. Peace, however, was not brought any closer as a consequence. The failure of the peace process initiated the second *intifada* (2000-2005). Since the Oslo era, further layers have been added to the conflict including the imposition of the checkpoints and closures, as well as the 'separation barrier' or 'wall'. All of which have been defined as part of the 'matrix of control' that Israel exerts over the Palestinians (Halper, 2002a).⁹

In an article published by *Middle East Report Online*, Jeff Halper (2000), an Israeli Professor of Anthropology and Coordinator of the Israeli Committee Against House Demolitions, defines Israel's 'matrix of control' as "an interlocking series of mechanisms, only a few of which require physical occupation of territory, that allow Israel to control every aspect of Palestinian life in the Occupied Territories" (§ 3). These mechanisms include: 1) military control and strikes, involving direct attacks against civilians, the use of willing and unwilling collaborators, and mass arrests and detention without charge or trial; 2) creating 'facts on the ground', such as razing Palestinian homes and villages, constructing settlements, walls, bypass roads, blockades, military posts, and checkpoints; and 3) bureaucracy, planning, and laws that impose closures to control and prevent the movement of Palestinians and the displacement of Palestinians through deportation, exile, and revocation of residency status. Halper (2002a) explains:

The matrix of control not only lays a web of constraint over every aspect of Palestinian life in the daily realm, it also hides the occupation behind a façade of laws, planning procedures and Kafkaesque administration. It casts the occupation as 'proper administration', 'upholding the law', 'keeping public order', and, of course, 'security' (p.22).

Before discussing the peace process, it is pertinent to refer to a statement by Halper (2002b), published on the website *From Occupied Palestine*, that sums

⁹ It should be noted that these additional layers to the conflict made the work of transnational Palestine advocacy networks more difficult as they divert valuable resources toward addressing these more recent developments and away from the original, central issues of the conflict.

up the post-1967 Israel-Palestine conflict with the following exposition of the Israeli occupation:

... the Israeli Occupation is not simply a reaction to terrorism or a means of self-defence, but is an expression of a pro-active policy of de facto annexation that began immediately after the 1967 war. It is a goal in and of itself, which has generated over the years a high degree of suffering, violence and human rights violations. Israel tries to deflect attention from this fact by presenting its military actions and policies of repression as mere reactions to 'Palestinian violence and intransigence'. In this way it has made the Occupation disappear from the discourse. This presentation rests on the fundamental proposition that the Occupation is an outcome of conscious Israeli policy of controlling the entire 'Land of Israel' from the Jordan to the Mediterranean. Nothing illustrates this better than the construction of more than 200 Israeli settlements – 44 in the year and a half of Sharon's premiership alone. It is the Occupation and its role in preventing the Palestinians from realising their right of self-determination that is the source of the conflict, not Palestinian resistance. What flows from all of this is an Israeli attitude of impunity towards Palestinian human rights and a disregard - even a rejection - of international humanitarian law as applying to either Palestinians or to the situation of occupation (¶ 5).

The 'peace process'

As noted above, the UN has had the Israel-Palestine conflict on its agenda since 1947, for almost as long as the UN has existed. The Israel-Palestine conflict and the broader Arab-Israeli conflict have consistently ranked at the top of the agenda of both the UN General Assembly and the Security Council. As will be addressed in the next chapter, the Security Council, as the UN organ responsible for international peace and security, has addressed all of the fundamental issues of the conflict, and its resolutions have established certain basic facts of the conflict, the terms of a just peace, and a normative framework for a just resolution.

It is not without notice, however, that the primary broker in attempts to resolve the Israel-Palestine conflict as well as the broader Arab-Israeli conflict has not been the UN, but the US. While the US-Israel relationship dates back to the 1940s, the US' role in the Israel-Palestine 'peace process' did not begin until 1991 when it chaired the Madrid Peace Conference. Initial negotiations commenced between the parties on the basis of Security Council Resolutions 242 and 338 and the 'land for peace' formula. Since that time, the Declaration of Principles on Interim Self-Government Arrangements was signed on the White House lawn in 1993; final status issues were negotiated at Camp David in 2000; and in 2003, the US-designed Roadmap to a permanent solution of the Israel-Palestine conflict was released. None of these initiatives, however, have brought the conflict any closer to a resolution.

Their failure has been the subject of much analysis and discussion in the literature. The signing of the Declaration of Principles (DOP), popularly referred to as the Oslo Accords, produced a wave of optimism globally and initially received the support of two-thirds of Palestinians and Israelis (Harms, 2005; Reinhart, 2005). The Accords were hailed as a 'breakthrough' for peace by many commentators and even by scholars of conflict resolution such as Miall, Ramsbotham, and Woodhouse (1999). Other scholars with a deeper insight into the causes and nature of the conflict, however, predicted that they could not lead to peace.

The eminent scholar of the conflict, the late Edward Said (d.2003), in his book, *The End of the Peace Process*, explains that the Accords were doomed to fail for they did not ensure the basic rights of the Palestinian people but legitimised Israel's occupation of Palestine. Said (2001) notes that the Accords could have been 'successful' if the US and Israel had been able to wear down Palestinian resistance to the occupation and insistence on their inalienable rights. In the long term, the Accords withheld from the Palestinians "real sovereignty, the right of return for all refugees, economic self-sufficiency and relative independence", offering only a 'redeployment' of Israeli forces rather than their 'withdrawal' (p.xxii).

The work of Norman Finkelstein (2003a), author of *Image and Reality of the Israel-Palestine Conflict*, explains that the PLO, having accepted a two-state solution based on a Palestinian state comprising only 22 percent of historical Palestine, “could no longer be dismissed simply as a terrorist organisation bent on Israel’s destruction” (p.xviii-xix). Coupled with the problems arising from the Palestinian *intifada*, Israel was forced to reconfigure the occupation. Finkelstein documents that the Oslo Accords represented “permanent Israeli domination in disguise” (p.xix), simply freeing Israel from the burden of directly occupying the Palestinians and shifting it, along with security responsibilities, on to the PLO. He identifies the notion of Palestinian ‘self-rule’ with ‘Bantustanisation’. Confirmation for Finkelstein that the Oslo Accords were never intended by Israel to be a genuine peace agreement is found in the rapid expansion of Israeli settlements on the West Bank during the Oslo years, which saw Israeli settlers increase from 250,000 to 380,000, directed by the policies of both Barak and Netanyahu.

Charles Smith (2004) explains that the ‘obscure language’ of the Oslo Accords “permitted two radically opposed visions of what the Accord[s] really meant with respect to the future of both Israel and the Palestinians” (p.441). This ambiguity allowed it to be ‘sold’ to the Palestinian population in the initial instance, but once the real terms of the Accords became apparent on the ground, support could not be sustained. Said (2001) documents the worsening conditions for Palestinians on the ground that occurred during the Oslo process, which included a dramatic rise in unemployment; reduction in GDP and standard of living; restrictions on the movement of people and goods; confiscation of land for the expanding settlement construction; and even the inaccessibility of Jerusalem. That the PLO signed such an agreement was, in Said’s assessment, a consequence of a massive power imbalance that must be addressed if a genuine peace process is to emerge.

In the words of Hirst (2003), the Accords were a “pure Palestinian loss against a pure Israeli gain” (p.21). They resulted in Arafat forfeiting his two most potent weapons: the “physical”, by redirecting his armed struggle in the defence of Israeli security rather than resisting occupation and the “diplomatic”, by ‘effectively abandoning’ international law as had been determined through almost half a century of United Nations resolutions on the question of Palestine (p.22).

Like the subsequent 'Roadmap', the Oslo Accords placed Israeli security as the overriding objective. Hirst sums up the arrangement stating that "for the Israelis, security – theirs, not the Palestinians' – was the be-all-and-end-all of Oslo; his [Arafat's] job was to supply it on their behalf" (p.22).

He also explains that the legacy of Sadat's [US-brokered] separate peace with Israel negatively impacted on the Oslo Accords by facilitating the principle of deferring those issues most central to achieving peace, the 'final status' issues (borders, settlements, water resources, refugees, and Jerusalem), to the end of the process. This, according to Smith (2004), is also a central flaw of the Roadmap. Without any inhibition for Israel to continue to create 'facts on the ground', such as the settlements and the 'wall', the deferral of the final status issues inevitably worked against the Palestinians and therefore seemingly in favour of the Israelis (Hirst, 2003).

Tanya Reinhart (2005), in her book, *Israel/Palestine: How to End the War of 1948*, provides a detailed account of this process through her analysis of the 'myth' of Barak's 'generous offer' at Camp David in 2000. She explains that what Arafat rejected was a plan that fulfilled Israel's interests, but did not meet the basic rights and needs of the Palestinian people, a plan to which even he could not agree. Pappé (2007) explains that what was presented at Camp David in 2000 was an Israeli plan, endorsed by the US, that allowed for Israeli withdrawal from only parts of the West Bank and Gaza Strip and left the Palestinians with only 15 percent of their historical homeland, which would have been "in the form of separate cantons bisected by Israeli highways, settlements, army camps, and walls" (p.242). He also notes that the plan did not allow for a Palestinian capital in any part of Jerusalem, or for a solution to the refugee issue, and completely distorted the internationally understood concepts of statehood and independence.

Regarding the Roadmap, Reinhart (2006) offers a detailed analysis of its implementation, documenting that the initiative has not only failed but has been utilised by Israel to strengthen its control over the occupied territories through settlement construction and the separation barrier, which has effectively annexed Palestinian land to Israel. Moreover, contrary to popular perceptions of the Gaza

pullout as a gesture of peace, Reinhart (2006) regards the move as having transformed the Strip into a large 'prison'.

The flaws of the Roadmap are also discussed at length in Alvaro de Soto's (2007) 'End of Mission' report to the UN.¹⁰ He contends that the disengagement from Gaza did not represent Sharon's support for a Palestinian state, but on the contrary, "basically killed and put into 'formaldehyde' the Roadmap" (p.8). Sharon used the disengagement to gain vital concessions from the US, including assurances from Bush on retaining the settlement blocs and no return of the Palestinian refugees to Israel.

De Soto (2007) asserts that Israel's commitment to the Roadmap was never complete, explaining that Israel only accepted it subject to 14 reservations. Among them was a rejection of both sides carrying out their responsibilities in parallel: Israel to dismantle unauthorised settlements and freeze settlement activity, while the Palestinians dismantle terrorist infrastructure. By the international community allowing Israel to proceed on its own terms, he explains, it has effectively shrunk Israel's responsibilities. He states that when he raised the issue that "the Quartet should register its concern about Israel's creation of facts on the ground, which impinges on the viability – indeed, let's not beat around the bush, the very achievability – of a future Palestinian state" (p.17), the US representative responded with "ominous innuendo" concerning US funding to the UN. De Soto documents how the US operated within Quartet not in the interest of peace, but as the representative of Israel.

It should be noted that contrary to the advancement of the peace process, the major response of the international community to the conflict has been in the form of managing the status quo largely shaped by Israel. In an interview I conducted with a senior Western diplomat during my field research in Israel and Palestine, who shall remain unnamed, it was conveyed to me that "the international community has adopted a position of crisis management and thereby actually supports the occupation by merely placing band-aids over the

¹⁰ Alvaro de Soto was the Under-Secretary General, United Nations Special Coordinator for the Middle East Peace Process and Personal Representative of the Secretary General to the Palestinian Liberation Organisation and the Palestinian Authority, and Envoy to the Quartet (1 June 2005 to 7 May 2007).

wounds made by Israel”. One of the examples he gave in support of his statement was that “when Israel demolished the homes of people in Rafah in 2004, international aid organisations built alternative homes in a different location rather than holding Israel to account for its actions”. He did note, however, that “there was debate at the aid meeting over the legality of such support in the face of international law”.¹¹

The year-end report of the Israeli information centre for human rights in the occupied territories, B’Tselem, shows that Israel’s occupation became further entrenched during 2007. B’Tselem (2007) reports a 38 percent increase in the number of Palestinian homes demolished by Israel in East Jerusalem; a 4.5 percent increase in the Israeli settler population (compared with a 1.5% population growth rate inside Israel); an increase in the number of Israeli roadblocks to 459, in addition to 66 checkpoints within the West Bank; a 13 percent increase in the number of Palestinians held by Israel in administrative detention without trial; and continued discrimination against Palestinians in the allocation of West Bank water supplies.

Additionally, Israeli security forces killed 1030 Palestinians in the past two years alone (657 in 2006 and 373 in 2007), which included 193 minors. Almost half of those killed were not participants in hostilities. By comparison, Palestinians killed a total of 24 Israeli civilians over the same period (17 in 2006 and 7 in 2007). Supporting a central argument of this thesis, one of the major observations of the report is “the use of security justifications for virtually every Israeli action in the Occupied Territories” and that “Israeli authorities often exploit security threats in order to advance prohibited political interests” (B’Tselem, 2007, ¶ 9).

The report is further evidence that the peace process has failed. Within the literature on the failure of the peace process, three key factors can be identified as central to the continuity of the conflict: the religious dimension, including the use of religiously motivated violence; the asymmetry of the conflict, including the image of the conflicting parties; and the neglect of international law or a ‘just peace’. This chapter will now address each of these issues.

¹¹ Interview conducted on 22 March 2006 in the interviewee’s office in Ramallah.

The religious dimension

The global resurgence of religion has presented a significant challenge to the study of international relations and conflict resolution. A number of works have emerged to address this phenomenon, including Petito and Hatzopoulos' (2003) *Religion in International Relations*, Johnston's (2003) *Faith-Based Diplomacy*, and Coward and Smith's (2004) *Religion and Peacebuilding*. This body of literature deals not only with the role of religion in conflict but, more importantly, its role in conflict resolution. Petito and Hatzopoulos (2003) assert that religion has returned from exile to occupy a central position today in international relations. Their work explores contemporary theoretical approaches to understanding the interplay between religion and world politics, which they argue is presently lacking in international relations theory. In the same volume, Hasenclever and Rittberger (2003) assert that "without doubt" religion can "influence the course of a conflict" (p.137). They highlight the escalating and de-escalating potential of religion in this context. The authors argue that while religious factors often play "a subordinate role as sources of conflict", they play a central role in "conflict processes" (p.137).

Haar (2005) identifies two seemingly contradictory positions in the literature on religion and conflict: that, by its nature, religion is an obstacle to peace, and that, when used in conflict, religion is employed in a manner contrary to its intrinsically good nature. He writes that religion is "neither inherently peaceful, nor does it automatically or inevitably lead to conflict" (p.8). Haar poses the central question of whether we are presently dealing with 'religious conflict' or is religion simply being used for the political mobilisation necessary for conflict. He does, however, reject the notion that a religious ideology is any more dangerous than its secular counterparts and contends that all ideologies, divinely inspired or man-made, can be used or misused for human interest, including waging war.

Although believers are motivated to act in the way they do by their respective religions and that moderates and extremists of any faith may share common political objectives, they differ in the methods of achieving them (Haar, 2005). Haar explains that:

Religion provides people with an orientation in their lives and a moral point of reference. It is also a cultural anchor that provides them with a social identity and places them in a social context that can enhance their welfare in both a material and a psychological sense (p.30).

Since the 1970s, Islam re-emerged and has continued to expand as a social and political force in the Arab-Muslim world. Hashmi (2001) observes that today, “every Muslim leader must make concessions to Islamic values” (p.108). He explains that it is not necessarily radical Islam or militant groups, which represent a small minority of Muslim opinion, but at the level of ‘political discourse’ where pressure is exerted on Muslim governments to ‘Islamise’ policy. Coupled with the belief (advocated most strongly by such ‘fundamentalist’ figures as Sayyid Qutb and Abul A’la Maududi) that Islam is the answer for the crises of modern Muslim societies, has been the demand for the implementation of Islamic law across the Muslim world (Esposito, 1999). Indeed, ‘the law’ has always been central to Islamic societies. As Khadduri (1940) points out, even when the Muslim world became politically divided with simultaneous Muslim caliphates in Iraq, Spain, and Egypt, Islamic law remained the unifying factor; as “one legal superstructure” (p.43).

Palestine has been at the forefront of the Islamic resurgence in the Arab and Muslim world, manifested in Hamas’ parliamentary election victory in January 2006. Moreover, in addition to Muslim nations, such as Iran already under Islamic rule, Islamic-oriented political parties provide the major opposition in numerous others, including Egypt, Jordan, and Lebanon. Islam has continued to be valued by Muslims as the source of solutions for the Muslim world’s social, economic, and political problems, including ‘the problem of Israel’ (Faruqi, 1980).

In the context of the Israel-Palestine conflict, the religious dimension has been primarily driven by the Jews through their claims of ‘chosen people’ and ‘promised land’. The Jewish-religious narrative has in turn encouraged a shift among Palestinians away from a secular-nationalist narrative, which remained dominant until the late 1980s, toward their own Islamic-religious narrative (Nusse, 1998). In the course of my field research in Israel and Palestine in March and April 2006, I interviewed Abdessalam Najjar, a director of Neve Shalom – Wahat al-Salam

(Oasis of Peace)¹² who conveyed to me his observation that religion is indeed “playing a more significant role in the conflict” and will have to also become “a significant part of the solution”.¹³

The role of religion in the Israel-Palestine conflict has been a predominantly negative one, however (Grenimann, 2005). Grenimann observes that among ‘young secularist Israeli writers’ there is a growing awareness of the ‘injustice’ committed against the Palestinians but ‘the religious’ have since 1967 “developed a more intensely messianic approach to the land, which leaves no room for consideration of or compromise with Palestinian claims” (p.176). He also highlights that among the Israeli-born generation the trend is toward a religious passion for land and opposition to Palestinian rights.¹⁴

Grenimann (2005) argues that rather than simply a conflict between Jews and Muslims, the Israel-Palestine conflict may be increasingly becoming one between political liberalism and religious fundamentalism and asserts that “religious beliefs and commitments are central in the current conflict” (p.170). He advocates a “reinterpretation” of the respective religious traditions “in such a way that they might become a contributing factor in a positive direction” as a fundamental mean of resolving the conflict (p.170). The author contends that the nature of the conflict dictates that ultimately its solution needs to emerge from the side of the religious fundamentalists rather than the liberals, that the “liberal periphery of Judaism and Islam here are unlikely to be able to lead their respective religious camps toward the necessary change of attitude” (p.170).

¹² Neve Shalom – Wahat al-Salam (Oasis of Peace) is a community inhabited by Jewish and Palestinian Israeli citizens located between Tel Aviv and Jerusalem that promotes dialogue, cooperation, and peace through various programs and initiatives.

¹³ Interview conducted with Abdessalam Najjar on 15 March 2006 at Neve Shalom – Wahat al-Salam (Oasis of Peace).

¹⁴ Grenimann (2005) highlights that “the conquest of the land was predicated on the presumed absolute moral depravity of the seven pagan nations from whom it was conquered” (p.181) and that the rabbis understood the historical limitation of this command. He notes that the ultra-orthodox refuse to serve in the army on the basis of the understanding that the land can only be inherited now by peaceful means and God’s aid. The religious Zionists, however, have therefore been left in the position of having to prove that Israel’s wars have been defensive, or alternatively, to “re-interpret Jewish law to allow for a more active, aggressive position” (p.182). That Zionism harnessed various aspects of Judaism to serve its political agenda is well documented. Kurlansky (2006) notes, for instance, that historically Jews never made a great celebration of military victories. The only such celebration was Chanukah, which was only ever a minor holiday until the 20th century when the Zionist movement promoted the event in the context of linking Judaism with the conquest of Jerusalem.

Consequently, this thesis emphasises a reformulation of *jihad* that possesses Islamic legitimacy and authenticity.

The global resurgence of religion, including Islam, has impacted on the Israel-Palestine conflict, specifically in terms of increasing its intractability. Cohen (2005) and Telhami (2005) have argued that religion has come to dominate the narratives on each side of the conflict. Cohen asserts that a primary cause of the intractable state of the Israel-Palestine conflict is its prolonged duration, which has resulted in an “entire generation” being raised “knowing nothing else but a perpetual state of war with the ‘Other’” (p.343). He emphasises that both sides regard themselves as victims and both use their sense of victimhood to justify violence against the other (p.346).

Cohen (2005) highlights that “most attempts at conflict resolution and even conflict management in the region have tried to avoid completely the religious dimension” (p.348). He explains that the “conflict’s intractability is exacerbated by the subtext of religion-based historical perceptions, theological or quasi-theological judgements, and aspersions and popular myths cast about the relationship among Judaism, Christianity, and Islam” (p.347). Moreover, Telhami (2005) attributes the rise of religious-based violence in the conflict to the breakdown in the year 2000 Camp David negotiations, which, he argues, resulted in a shift in the narrative from representing the conflict as a nationalist struggle to defining it in ethno-religious terms, characterised by an increase in the use of religious terms of reference. Hamas has played a central role in articulating the Islamic-religious dimension of the conflict as found in its Charter (1988).

Khashan (2000) explains that in the Arab world the opinions of highly religious people are very influential and significantly impact on perceptions of the conflict. His survey of the attitudes of Muslim Lebanese, Jordanians, Palestinians, and Syrians toward Israel found that over 82 percent of respondents stated that they either ‘approve’ or ‘strongly approve’ of ‘the use of force against Israel if the Arab military situation permits’. Among those who approve of the ‘use of force’ against Israel, 65 percent advocated the destruction of Israel when asked ‘how far a war with Israel should go’. When cross-tabulated with ‘religiosity’, the author found 92

percent of those 'high', and 32 percent of those 'medium', on the religiosity scale, supported the use of force to destroy Israel. By contrast, less than ten percent of those who were 'low' on the religiosity scale supported Israel's destruction. Moreover, 87 percent of respondents either 'support' or 'strongly support' the 'militant activities of Islamic groups against the state of Israel'.

Cohen (2005) explains that a "belief in retaliation and revenge has become a solemn obligation in both narratives, more important than the strategic logic or rational effectiveness of the approach" (p.352). Mere cease-fires are insufficient in his assessment as they leave "basic demands and national aspirations uncertain of achievement" (p.352). However, he rejects the popular assertion that Palestinians are addicted to violence and asserts that the reasons Palestinians have not abandoned violence for non-violent civil resistance is due, firstly, to an internal lack of trust, which is necessary, he says, in order to pursue such a method; and secondly to a limited appreciation for the method and the support base that could be generated among Israelis (p.353).

Telhami (2005) adds to this assessment by noting that the Palestinians and Israelis maintain the norm of reciprocity of violence, in spite of a realisation of its ineffectiveness, due to domestic politics and the accompanying demands of revenge. Both sides believe that violence is better than inaction and also tend to learn the wrong examples from history, such as, in the case of the Palestinians, the 'victory' of Hezbollah over Israel in southern Lebanon in 2000 and 2006. The author further explains that certain 'psychological predispositions' are central to understanding and resolving the conflict, namely the Palestinians' sense of helplessness and humiliation, and the Israelis' sense of insecurity. The essence of this situation is that the emotions of each party prevent an appreciation of the condition of the other.

Other scholars, such as An-Na'im (2006), argue that the state of international relations post-9/11 has further enhanced the appeal of violence. The question of *jihad* is a principle focus of this thesis and will be thoroughly addressed in Part III. At this point it is appropriate, however, to consider the recent work of Abdullahi Ahmed An-Na'im on the subject. An-Na'im (2006) advocates Muslims abandoning traditional notions of *jihad* but argues that the present state of

weakness of the rule of law in international affairs undermines this process along with a deeper commitment to human rights norms. The lawlessness and insecurity associated with international terrorism cannot be redressed “unless international law is consistently observed by states as its primary subjects”; therefore, “it is futile for state actors to demand observance of international law principles by non-state actors when they are unwilling to abide by those principles themselves” (p.788).

Another critical, but seldom discussed, issue concerns the use and interpretation of the terminology of the conflicting parties. During my field research in Israel and Palestine in 2006, many Israelis expressed concern over the term *'hudna'* (variously translated as 'cease-fire', 'settlement', or 'treaty') as it conveyed to them only a temporary suspension of attacks that would be resumed at a later, more opportune, time.¹⁵ Other Israelis, however, have a deeper understanding and are less concerned. Asher Susser, director of the Dayan Centre at Tel Aviv University, conveyed to me in an interview that “‘ Hamas’ *'hudna'* is not significantly different from Sharon’s ‘long-term interim agreement’”.¹⁶ Similarly, Daniel Levy, a senior Israeli official for the Geneva Initiative (GI), informed me that Hamas officials with whom he had met found the GI acceptable, but due to the concerns of their Islamically-oriented constituency and their own Islamic identity, would “have to express the final result in terms of a *'hudna'* or ‘indefinite cease-fire’, rather than a formal peace agreement”.¹⁷ These statements are consistent with the opinion of a senior Western diplomat that the Palestinians need more organised public relations and media campaigns and that Hamas, in particular, needs to “express itself in terms that are better understood by the West, rather than in Islamic terms that are misunderstood in the West”.¹⁸ The above issues beg the question of relations between powerful and weak actors and their relative abilities to transfer to the world their own message in the form in which they intend it to be received. It is to the issue of the asymmetry of the conflict that this chapter will now turn.

¹⁵ The Israeli government defines the Palestinian *'hudna'* as “a temporary respite from fighting designed to gain time to regroup and rearm”; “a tactical ploy for gaining time to build up their strength for the next round of terrorist attacks”; and “a mere tactical truce in keeping with Islamic history” (Israel Ministry of Foreign Affairs, 2003, ¶ 39-42).

¹⁶ Interview conducted with Asher Susser in his office at Tel Aviv University on 23 March 2006.

¹⁷ Interview conducted with Daniel Levy in his office in Tel Aviv on 16 March 2006.

¹⁸ Interview conducted on 22 March 2006 in the interviewee’s office in Ramallah.

Asymmetry

In terms of population size, Israelis and Palestinians are relatively equal. In all other respects, however, the disparity could not be more apparent. From the earliest days, the conflict has been one between unequals. The pre-1948 Israeli settlers were largely industrialised people from a developed Europe who, under the wing of Britain, colonised a land of relatively underdeveloped agriculturalists. Today, Israel is a developed state, possessing 78 percent, and controlling all, of historical Palestine. It has the largest economy in the region, full membership status in the UN, as well as the diplomatic, financial, and military support of the world's only superpower, the United States.

In contrast, Palestinians are a population of mostly refugees and exiles who collectively do not have a fully recognised or viable state, their land is under Israeli military occupation, their economy is completely dominated by Israel's, and they possess only 'observer' status in the UN. Moreover, Israel is a nuclear power with the most powerful military in the region and one of the most powerful in the world. Palestinians possess lightly armed militia with their most sophisticated weapon being home-made rockets with a range limited to a few kilometres. The Palestinians, even with the support of the Arab world, could not defeat the Israelis militarily. Israel could certainly inflict a military defeat on the Palestinians, but risks international condemnation if attempted.

It may seem an obvious point that in asymmetric conflict the stronger party will prevail. However, Mack (1975), Paul (1994), and Arreguin-Toft (2001) have demonstrated this to not necessarily be the case on the field of battle, while Zartman and Rubin (2003) have questioned the logic in the context of negotiations. Zartman and Rubin (2003) assert that negotiations between equal powers are not more effective than those between unequal powers. They find that stronger parties attempt to dominate negotiations with the weaker, but that this did not necessarily result in a submissive response. Their major conclusion is that the success of a weaker party lies in the extent to which it can adjust its response to the relative power of the stronger side.

The failure of the Palestinians to address the asymmetry of the conflict coupled with a lack of strong external pressure on Israel has propelled its continuity and

intensification. Ramsbotham *et al.* (2005) argue that for the Palestinians to resolve their conflict with Israel, the asymmetric structure must be changed. They find promise in the South African anti-apartheid model, where international sanctions, divestment, and boycotts, increased the pressure on South Africa, producing a 'structural transformation' that rebalanced the asymmetric relationship of blacks and whites, which ultimately resulted in the dismantling of apartheid. Johan Galtung (2004) agrees, explaining that the key to a peaceful resolution of the Israel-Palestine conflict is *equality* – equality in terms of law, justice, reciprocity, and symmetry. He argues that the conflict urgently needs *balance* and also advocates the South African model as a basis for the internal and external change necessary in the resolution process.

Cheryl Rubenberg (2003), with over 25-years experience as an analyst and author on the Israel-Palestine conflict, finds the power imbalance to be most fundamental factor in the failure of the peace process. Echoing Said (2001) and Finkelstein (2003a), she explains that the PLO entered the agreement while in a state of acute weakness and "could not influence even the most basic elements for peace in the DOP framework" (p.86). It was powerless, she states, to either compel Israel's compliance with the terms of the agreement or impose sanctions for non-compliance. In this context, Rubenberg also observes that the Oslo Accords failed to achieve peace due to the absence of an honest broker and the disproportionate emphasis placed on Israeli security.

Research by Khashan (2000) supports the above assessment. He highlights the importance of honour in the Arab psyche and explains that the reason why almost 70 percent of Lebanese, Jordanian, Palestinian, and Syrian respondents to his survey stated that they personally did not want peace with Israel was due to their perception of "unequal relations between the victorious Israelis and defeated Arabs" (p.143). In fact, 78 percent of respondents stated that they believe that the most important reason why a peace agreement would not endure was because of 'imbalance'. The author explains that "the majority of Arabs generally view peace with Israel as taking place under duress, due to their weakness" and they "tend to express...determination to undo their humiliation, no matter how long it might take them to do it" (p.176).

The overwhelming dominance of Israel and weakness of the Palestinians has resulted in the failure of over a decade of negotiations to resolve the conflict. This situation has been aggravated by the fact that Israel's principal ally has been the main, almost exclusive, broker for peace. The Palestinians have not been successful in negotiations with Israel, particularly because the main facilitator of these negotiations, the United States, has been throughout Israel's primary diplomatic, financial, and military supporter (de Soto, 2007; Mearsheimer & Walt, 2007; Chomsky, 1999).

However, Touval (1982) argues that a biased third-party does not necessarily inhibit the effectiveness of its role in mediating an international conflict. Numerous scholars, including Mearsheimer and Walt (2007), Said (1992, 2001, 2004), Chomsky (1999, 2003), Hirst (2003), and Rubenberg (2003) disagree and have documented the impact US diplomatic, financial, and military support for Israel has had on perpetuating the Israel-Palestine conflict. Ramsbotham *et al.* (2005) find US support for Israel to be the "lynchpin of the conflict" and argue that a resolution requires a modification of US economic, political, and military support for Israel (p.183). Moreover, Mearsheimer and Walt (2006) assert that an end to the Israel-Palestine conflict is dependent on US pressure and in this context they consider the Israel lobby to be a central factor in its continuation. They state that "by preventing US leaders from pressuring Israel to make peace, the Lobby has also made it impossible to end the Israeli-Palestinian conflict" (p.41). The authors see the US as "complicit in the crimes perpetuated against the Palestinians" (p.41).

The impact of the US-Israel relationship is perhaps most prominent in the UN. Peter Wallensteen (2002) explains that while the conflict resolution policy in the UN Charter demands a restoration of the *status quo ante bellum* in the case of territory acquired by force, the principle is in reality subject to 'interpretation' and 'evasion'. Other factors, namely "political proximity to the United States", determine a state's ability to "avoid being pressured to comply with the principle" (p.101). Wallensteen finds special arguments for Israel's 'security' central to it being permitted to continue its occupation of Palestine. The *status quo ante bellum* principle should, he asserts, be "the one most easily agreed to by the major powers and UN member states" (p.101), though it is often not so in

instances where powerful states have a particular interest in a conflict.

Wallensteen observes that “for the United States there is a consistent pattern [of using its veto power] in issues involving Israel” (p.101).

In his ‘End of Mission’ report to the UN, Alvaro de Soto (2007) advises the Secretary-General to either take a stand on the status quo or “seriously reconsider membership in the Quartet” (p.24). He states that the Quartet’s ability to resolve the conflict is fundamentally undermined by the US’ “very serious qualms about exerting pressure on Israel” (p.25). He documents that the US requested the Quartet be lenient with Israel and thereby harsh on the Palestinians. De Soto also reports that the US “usually floats proposals with the Israelis before presenting them to the Palestinians” and that “Israelis also take advantage of their unique ability to influence the formulation of US policy” (p.26).

In addition to diplomatic support, Mearsheimer and Walt (2006) highlight that, in terms of military and financial aid, since the Second World War, Israel has been the largest total recipient – total aid amounting to over \$140 billion in 2003; since 1976, Israel has been the largest annual recipient of direct US economic and military assistance. It also receives about \$3 billion in direct foreign assistance each year (one-fifth of the US foreign-aid budget). The authors add that Israel receives its entire aid budget at the beginning of each fiscal year and thus earns interest on the sum. Commenting on the other privileges accorded to Israel, Mearsheimer and Walt state that Israel can use 25 percent of its aid to subsidise its own defence industry and does not have to account for how the aid is spent – and therefore, could be used to build settlements on the West Bank. Moreover, Israel is provided intelligence that is denied to NATO allies and is permitted to continue its nuclear program, explains the authors. In terms of diplomatic support, Mearsheimer and Walt record that since 1982 the US has vetoed 32 UN Security Council resolutions critical of Israel and consistently blocks efforts to have Israel’s nuclear arsenal put on the IAEA agenda.

A fundamental aspect of the asymmetry of the conflicting parties is the disparity in their images, particularly in the West. The “sympathy with the Jewish cause” in America and Western Europe contrasts starkly with the “very little genuine sympathy with the Palestinian cause” due to “Western prejudice against Islam”

(Galtung, 1989, p.49). It is the Palestinian's misfortune to be Arabs and mostly Muslims, people who historically, under the banner of Islam, presented a powerful threat to Christendom, which has resonated until the present (Esposito, 1999), largely driven by the pejorative stereotypes ascribed to Arabs and Muslims in the Western media (Said, 1997; Shaheen, 2003). Moreover, Western perceptions of Islam as a violent religion that promotes terrorism have become particularly pronounced post 9/11 (Esposito, 2002).

Galtung (1989) notes that from childhood, Westerners generally develop positive impressions of Jews and Judaism as the background for Christianity, and of Palestine as the Promised Land for the Israelites, the Chosen People. By contrast, however, nothing comparable was taught about Arabs or Islam, leaving only an impression of Arabs as desert-dwelling Bedouins. Moreover, that Islam was a success in terms of its wide acceptance and territorial expansion made it a threat to Christianity (Galtung, 1989; Esposito, 1999). These are significant factors in the context of Palestinian options for resistance as they still haunt the Western consciousness. As described by Hirst (2003), being the enemies of Hitler and Holocaust victims has been a source of sympathy and fortification against punitive sanctions for violations of human rights and international law. Thus, those who would go to war against the Jews would be seen as particularly villainous.

It is argued, however, that this sympathy and guilt-driven pro-Israel support is largely manufactured. Certain Jewish organisations have sought to ensure that the memory of the Holocaust continues to remain undiminished. Norman Finkelstein (2003b) has documented the exploitation of the Nazi Holocaust by powerful Jewish organisations to form what he terms the 'Holocaust Industry' from which enormous financial and political gains have been derived. Finkelstein writes that "organised American Jewry has exploited the Nazi Holocaust to deflect criticism of Israel's and its own morally indefensible policies" (p.149).

Rather than a case of guilt and admiration, or even morality and strategy, former Congressman, Paul Findley (2003) as well as Mearsheimer and Walt (2006, 2007) argue that it is the power of the Israel lobby in the US that has driven American's pro-Israel foreign policy. These authors, among others, provide

extensive documentation of the strategies and tactics used by the Israel lobby in the US to ensure adherence to Israel's agenda. Mearsheimer and Walt (2006) explain that neither the arguments of 'strategic interests' nor 'compelling moral imperatives' explain "the remarkable level of material and diplomatic support that the United States provides to Israel" (p.1).

Additionally, one of the most revealing points of Alvaro de Soto's (2007) 'End of Mission' report concerns the influence of Israel over not only US officials but also those in the UN. De Soto discusses "the tendency that exists among US policy-makers and even amongst the sturdiest of politicians to cower before any hint of Israeli displeasure, and to pander shamelessly before Israeli-linked audiences" (p.48). He continues:

It has become clear to me these past two years that the same ensuing tendency toward self-censorship – treating Israel with exquisite consideration, almost tenderness – exists at the UN, partly for our own reasons – the legacy of the Zionism = racism resolution and the resulting political and budgetary costs for the UN, and Israel's demonstrated capacity to undermine US-UN relations (p.48-49).

De Soto writes that "the Israeli mission to the UN, in my experience, has unparalleled access to the Secretariat even at the highest levels" and that:

there is a seeming reflex, in any given situation where the UN is to take a position, to ask first how Israel or Washington will react rather than what is the right position to take. I confess that I am not entirely exempt from that reflex, and I regret it (p.49).

As an example, de Soto describes an OCHA¹⁹ presentation containing satellite imagery of the Israeli closure system: fixed and floating checkpoints, roadblocks, earth mounds, trenches, "and other obstacles which strangle the West Bank and stifle the economic life and social fabric of the Palestinians" (p.51). He confesses, "I never got around to proposing that this be presented to the [Security] Council precisely because of the reflex and self-censorship which I warned against in this

¹⁹ OCHA: Office for the Coordination of Humanitarian Affairs.

report” (p.51). This tendency to ‘tread softly’ where Israel is concerned, laments de Soto, “may lower the attack by one decibel in certain press circles, but it doesn’t actually contribute much to pushing Israel to resolve the conflict with the Palestinians or its Arab neighbours” (p.50).

Jean Allain (2005) argues that the Palestinian people and their cause have become increasingly isolated since the events of 11 September 2001. The global, negative perception of Islam that has intensified since 2001 has negatively impacted on the Palestinian, he contends, on account of the fact that over 90 percent of them are Muslims and has manifested itself in the form of isolation and diminishing sympathy for the Palestinian struggle. The asymmetry of the conflict and the image of the conflicting parties underline the need for a multilateral approach if there is to be a just and therefore, lasting peace.

The attacks on 9/11 produced an increase in support for Israel. An NBC/Wall Street Journal poll taken just after the attacks found three in four saying the attacks made them think US relations toward Israel should be either closer (33%) or stay the same (42%) (WorldPublicOpinion.org, 2006). Numerous other polls also found increased support for Israel in the wake of 9/11, including a greater reluctance to criticise Israeli treatment of the Palestinians. Lukewarm attitudes about the Palestinians are consistent with Americans' perceptions of their support for terrorism. When asked in a Time/CNN survey days after the attacks, 41 percent reported feeling less favourable toward Palestinians as a result of 9/11, and just 3 percent felt more favourable. However, a majority of 53 percent said their view of Palestinians was not affected (WorldPublicOpinion.org, 2006). An overwhelming majority rejects the idea that Palestinian attacks on Israeli civilians are a legitimate means of resisting Israeli occupation. In surveys conducted during 2002 and 2003, pluralities to modest majorities saw Israel's military actions as justified in light of Palestinian terrorism, but a majority was critical of how Israel conducted its military actions in the West Bank and supported President Bush's call for Israeli withdrawal (WorldPublicOpinion.org, 2006).

These poll results portray a difficult, but not a completely bleak picture for the Palestinians in terms of American support. However, one of the biggest

challenges facing Arabs and Muslims, in the context of acquiring the support of the US public, is that Americans are bewildered by the conflict and instability of the Middle East, and more importantly, they cannot find a side among the Arab/Muslim groups with whom they can identify (Kull, 2005). In the context of the Israel-Palestine conflict, this translates into about 70 percent of Americans saying that the US should be even-handed and not take sides in the conflict. However, 57 percent state that this is not happening and that the US favours Israel (Kull, 2005). In a poll conducted in July 2004, the Pew Research Centre found that 40 percent of respondents said they sympathise with Israelis, 13 percent with Palestinians, but most interestingly, 47 percent refused to answer the question, suggesting a desire for even-handedness (Kull, 2005). This is also reflected in responses to questions concerning blame. A PIPA/KN poll conducted in May 2003 found that when respondents were asked who they blamed for the conflict, 24 percent blamed the Palestinians, 6 percent blamed the Israelis, and 65 percent said they blamed both sides equally (Kull, 2005). The potential of such findings will be discussed in the next part of this thesis.

Just peace

This thesis uses the terms 'just peace' and 'just resolution' in reference to a settlement of the conflict on the basis of law rather than power. As defined by An-Na'im (2006), this thesis uses the term 'international law' in reference to "the legal system that has evolved since the end of the Second World War, especially through the United Nations and the decolonisation process of the second half of the 20th century" for "it is only during this phase of decolonisation that international law has become the legitimate legal framework for recognition of national sovereignty and territorial jurisdiction throughout the world, including in Islamic countries" (p.787). On this basis, An-Na'im holds the UN Charter of 1945 to be "the most authoritative normative framework of international law" (p.787).

The need to deal justly with people, even in victory, has been long-recognised, extending to the teachings of the ancient Hindu scholar, Kautilya (Kegley & Raymond, 2002). Within the field of conflict resolution, there is an acknowledgement of the need for solutions to be 'just' if peace is to be genuine and lasting (Kriesberg, 2005; Kegley & Raymond, 2002; Rigby, 2001; Salem,

1997). Highlighting the necessity of a just solution, Kriesberg (2005) explains that “simply ending a conflict may not be the correct objective in the eyes of many people” for their concern will be “justice and morality regarding the terms of the accommodation” (p.95). Schoenbaum (2006) also notes the centrality of the Palestinian struggle to Muslim anger with the West and that ‘Islamist’ terrorism “feeds off this anger and what is perceived as a US double-standard” (p.278). He contends that “nothing would help win the war on terrorism more than a ‘just’ settlement of the Palestinian problem” (p.278).

Salem (1997) examines some of the salient philosophical, moral, psychological, and cultural foundations of conflict and conflict resolution within a Western context and how they contrast with the Arab-Islamic context. He asserts that while Western conflict resolution theorists focus on the ‘suffering’ of the people as the most important element in need of resolution, “the justice and morality of the cause” are of particular significance in the Arab-Islamic context (p.15). Salem explains that peace is conditional and circumstantial in the Arab-Islamic context. Suffering then is a culturally relative term; unlike in the West where suffering is associated more with the physical and material, in the Arab world it is more closely associated with a ‘loss of honour, loss of patrimony, and loss of face’.

Edward Said (1992) conveys the sentiments of almost all Palestinians when he writes that “nothing less than Palestinian self-determination will do; and only that will ever diffuse the already far too explosive Middle East” (p.244). The many Palestinians with whom I spoke during my field research in Israel and Palestine in 2006 impressed upon me the importance for them of at least some measure of justice if peace is to be genuine and lasting. For these Palestinians a just peace involves the right of return of the Palestinian refugees, a Palestinian capital in East Jerusalem, either the dismantling of Israeli settlements or an equitable land exchange, and above all, self-determination. Most are willing to accept a Palestinian state on 22 percent of their historical homeland provided there is contiguity between Gaza and the West Bank and that the state of Palestine is genuinely independent of Israeli control. Overwhelmingly, they do not see the current peace process as leading to even this modest view of a just peace, however.

A Palestinian academic and human rights advocate with Israeli citizenship, who shall be known only by his first name, Omar, stated in an interview with me that while international law is important, there is a need in the case of Palestine to go beyond formal resolutions, conventions, and court decisions and

advocate 'universal rights' including equality, freedom, dignity, and justice. There can be no room for 'relative humanity', there must be a just peace or peace will not be lasting. There should be no difference in the equality of different human beings.²⁰

Omar explained to me that the popularity of Hamas even among secular Palestinians like himself is due to Hamas' commitment to a just peace, exemplified by their keeping the rights of Palestinian refugees and exiles on the agenda and not restricting the conflict to events in Gaza and the West Bank. "Hamas", he said, "brings dignity back to the people".

These views were reiterated by the Neve Shalom – Wahat al-Salam (Oasis of Peace) director, Abdessalam Najjar, who stated in his interview with me that "for Palestinians, peace means just peace, 'restorative justice' involving the sharing of power and resources and most importantly equality". However, he contends that "Palestinian demands for justice or equal rights and disagreement with the status quo is seen by Jews as being aggressive, refusing to cooperate, and being obstructionist". Abdessalam Najjar highlighted that "peace and justice are understood differently by Jews and Palestinians". When Jews say peace, he explained,

they are referring to human relations, mutual empathy. They admit injustice has been committed but because they regard it as having been committed by all sides, they believe there should be peace before any restorative justice in terms of equal rights. They basically define peace as Palestinian acceptance of the status quo. Even pro-peace Jews have

²⁰ Interview conducted with Omar in his home on 9 March 2006.

concerns about losing control of the situation or a change in the status quo.²¹

I was certainly left with this impression after meeting with a representative of the left-wing Israeli organisation, Peace Now, whose spokesperson stated in an interview with me that Peace Now supports the dismantling of settlements in Gaza but that the larger settlements of the West Bank would have to remain and be part of a land exchange deal with the Palestinians. Peace Now also opposes the right of return of Palestinian refugees to what is now Israel and accepts the return of refugees to only Gaza and the West Bank. The spokesperson expressed the need to maintain the Jewish identity of Israel and stated that “Peace Now is a Zionist organisation that places the interests of Israel first”.²²

Those on the right of the Israeli political spectrum hold even less conciliatory views of the Palestinian vision of a just peace. In an interview I conducted with the director of the Begin-Sadat (BESA) Centre for Strategic Studies at Bar-Ilan University, Efraim Inbar, he referred to this Palestinian vision as “unrealistic dreams that cannot be realised”. Professor Inbar stated that the election of Hamas “is further proof of this unrealism”. He conveyed to me that the problem for Israel is that the Palestinians have not provided a “strategic address”, a single party with which to deal, and that the “Palestinians need a civil war in order for one authority to emerge”. This should not be Hamas, however, for in his opinion “Hamas is committed to the destruction of Israel”. Professor Inbar is content with the status quo. He stated that “not every problem has a solution” and that “Israel doesn’t need negotiations”, “Israel does not need that two-state solution”. If Israel is to ever accept a Palestinian state it will only be when Palestinians are prepared to be “realistic”, meaning when they are ready to live with “control of 15 to 20 percent of what they call their historical homeland, accept Israeli control over Jerusalem, accept no return to Israel, and accept Israeli control over the Jordan Valley”. For Professor Inbar, the land is not only important for historical reasons, but military. He stated that “land is also important for strategic purposes – Jerusalem is of military importance as a safe corridor to the east, it is the only

²¹ Interview conducted with Abdessalam Najjar on 15 March 2006 at Neve Shalom – Wahat al-Salam (Oasis of Peace).

²² Interview conducted with Erez at the Peace Now office in Jerusalem on 13 March 2006.

place with a Jewish majority in the east through which an Israeli army could safely pass through".²³

For the Israeli right, and even groups on the left such as Peace Now, international law does not figure in a resolution of the conflict. However, the absence of reference to international law, specifically the relevant UN resolutions, has emerged as a dominant theme in the literature on the failure of the peace process. Rubenberg (2003), for instance, finds the fact that the Oslo Accords were "not based on any aspect of international law or UN resolutions relating to the Israeli-Palestinian conflict" to be their "most important defect" (p.87). They could not lead to peace because they were "not based on law, rights, or precedent but on a political agreement between two parties that are *depicted* as symmetrical", she explains (p.87). This assessment finds agreement with numerous scholars and specialists on the conflict, including Johan Galtung. Opposition to the role of international law, particularly the resolutions of the UN, as a basis for resolving the conflict has come from those who envision an outcome based on power rather than justice and the legitimisation of the status quo rather than the restoration of rights. This position is represented by the Israeli government's rejection of relevant UN Security Council resolutions and insistence on negotiations, a position endorsed by the US.

Like Rubenberg (2003), among others, Galtung, Jacobsen, and Brand-Jacobsen (2002) highlight the Oslo Accords' inconsistency with international law as central to their failure. They state that the "Oslo Accords failed in almost every way to lay the foundations for a stable and lasting peace" as they "did not deal with any of the questions most relevant to the conflict or the underlying structures and mindsets" (p.58). Beyond their failure to address the underlying causes of the conflict, Galtung *et al.* write that the Accords "promoted solutions which themselves further enforce the structure of violence, and has sought to ensconce the hegemony and domination of one of the parties to the conflict" (p.59).

In the assessment of Smith (2004) the Roadmap will (if it already has not) meet the same fate as the Oslo Accords as both suffer from the same fundamental flaws. Like the Oslo Accords, the Roadmap is not sufficiently grounded in

²³ Interview conducted with Efraim Inbar in his office at Bar-Ilan University on 16 March 2006.

international law or the relevant UN resolutions; it places a disproportionate emphasis on Israeli security; and treats the conflicting parties as if there exists between them symmetry of power and potential. Smith also points out that the phrasing of certain fundamental points in the document, such as the nature of the envisioned Palestinian state, is done so on the basis of Israeli interests rather than an objective standard consistent with law and the rights of both parties.

These observations are reaffirmed in Alvaro de Soto's (2007) 'End of Mission' report in which he expresses major objections to the fact that the positions taken by the Quartet were not likely to be supported by a majority in UN bodies, and are "at odds with UN Security Council resolutions and/or international law" (p.26-27). De Soto reports that due to US pressure, the Quartet not only failed to hold Israel to its responsibilities under the Fourth Geneva Convention, or enforce the advisory opinion of the International Court of Justice (ICJ) concerning the barrier, but even accepted Israel's non-compliance with its Roadmap obligations,²⁴ and its AMA obligations.²⁵

De Soto (2007) even questions Israel's commitment to peace, noting a "rejectionist stance" in its dealings with the Palestinians, insisting on unachievable preconditions for negotiations to even begin. He also highlights the hypocrisy of Israel in demanding an end to Palestinian violence when it continues to carry out "non-stop" military operations against Palestinians, demanding Palestinians uphold their Roadmap obligations when Israel continues settlement expansion and the building of the barrier, and demanding recognition of Israel when it continues to occupy and colonise Palestine (p.48).

The assertion that the relevant UN resolutions must form the framework of a peace initiative if it is to be successful has been a long-standing one for numerous experts on the conflict. William Thomas Mallison and Sally Mallison (1974), for instance, assert that a resolution based on international law is:

²⁴ Israel's Roadmap obligations include: freezing settlement construction, dismantling unauthorised settlement outposts, opening Palestinian institutions in East Jerusalem, and facilitating the movement of PA representatives.

²⁵ According to the Agreement on Movement and Access (AMA) signed on 15 November 2005, Israel's obligations include: easing West Bank checkpoints, reaching targets for movement through crossing points in and out of Gaza, and facilitating a seaport and airport in Gaza.

the only practical alternative to an indefinite continuation of the present situation. It may be predicted with considerable assurance that if the present Middle East peace conference is to reach toward peace based on justice, it will have to employ the principled criteria of international law. Another so-called “practical” settlement based upon naked power bargaining and calculation will, at best, provide a short interlude between intense hostilities (p.79).

Indeed, over thirty years later, the authors’ predictions have continued to be proven correct. They further explain that the incorporation of international law in a resolution of the conflict is essential in terms of moving it “from a situation of conflict to one of basic order and then to optimum order” (p.87).

Other international law specialists, such as Francis Boyle (2003), John Quigley (2005), and Jean Allain (2005), regard the Fourth Geneva Convention, the Universal Declaration of Human Rights, the resolutions of the UN General Assembly and Security Council, and the Advisory Opinion of the International Court of Justice as fundamental sources for understanding, assessing, and resolving the Israel-Palestine conflict. Boyle, for instance, states that “there is no way anyone can even begin to comprehend the Israeli-Palestinian conflict and how to resolve it without developing a basic working knowledge of the principles of international law and human rights related thereto” (p.23).

Quigley (2005) remarks that “most writers on the Israeli-Palestinian conflict find an emphasis on legal entitlement to be unrealistic, even counterproductive ...and say that if settlement proposals are confined to propositions based on international law, no agreement will be reached”. Encapsulating the sentiments of this thesis, he acknowledges the difficulty, but remains convinced that “a peace not based on justice may turn out to be no peace at all” (p.xii). Presenting a content analysis of all Security Council resolutions concerning the conflict, the next chapter will identify the terms of a just peace as articulated by the Council in a normative framework for its resolution.

Conclusion

Although Israel presently stakes legal claim to 78 percent of historical Palestine and effectively controls the entire territory, it is unable to demonstrate superior entitlement to that of the Palestinians on legal or even historical grounds. The history of the Israel-Palestine conflict is characterised by a persistent denial of the rights of the indigenous people and the maintenance of policies by external forces that not only contradict international norms but reject the findings of numerous inquiries into the causes of the conflict. The UN partition recommendation of 1947 (Resolution 181) represents the epitome of such shortcomings. While the political will to redress the consequences of the partition are still in the making, consensus has at least been reached on the fact that the state of Israel was established amid the ethnic cleansing of over half the Palestinian population at the time. The acceptance of which may still prove to be fundamental to a just resolution of the conflict. In the meantime, the failure of the 'peace process' to appreciate the conflict's religious dimension, account for the asymmetry and image of the conflicting parties, and support a just peace, has resulted in its increasing intractability. Any initiative intent on a lasting resolution of the conflict will need to address each of these factors. The following chapter presents a content analysis of all the UN Security Council resolutions on the question of Palestine, identifying the basic facts of the conflict as determined by the Council, and providing a normative framework for a just resolution of the conflict.

Chapter 2: The United Nations Security Council Resolutions on the Question of Palestine: A Normative Framework for a Just Resolution

The question of Palestine and the broader Arab-Israeli conflict have been before the UN for the past 60 years – almost as long as the UN has been in existence. While the Israel-Palestine conflict dates back to the end of World War I and the disintegration of the Ottoman empire, of which Palestine was a part, it was not until early 1947 when Britain, the mandatory authority over Palestine, brought the case before the UN. The question of Palestine was initially addressed by the UN General Assembly (UNGA), but the Security Council (UNSC) also became involved by 1948 with the onset of the Arab-Israeli conflict. Since that time, the question of Palestine and the broader Arab-Israeli conflict has continued to be a major agenda item for both organs of the UN.

As observed by Jones (2004), “no issue has been on the agenda of the Council as long as that of the Middle East; nor has any issue generated as many resolutions (244) or as many vetoes (forty-five)” (p.400). The UNSC is the international organ with primary responsibility for international peace and security, whose pronouncements both reflect and constitute international law (Ratner, 2004; Scott, 2004). This chapter offers a comprehensive content analysis of all the UNSC resolutions on the question of Palestine. It is specifically concerned with certain basic facts of the conflict as identified by the Council and the decisions it has taken concerning a peaceful settlement. What emerges from this analysis is a normative framework for a just resolution of the Israel-Palestine conflict based on the resolutions of the Council.

That the UN has demonstrated such a level of concern for the question of Palestine is a reflection of its centrality in terms of global peace and security, particularly in the context of the Middle East and broader hostility between ‘Islam’ and the ‘West’. Primary responsibility for the maintenance of international peace and security is vested by the UN Charter in the Security Council. When a complaint concerning a threat to peace is brought before it, the Council’s initial response is generally to facilitate a resolution by way of encouraging the

disputing parties to come to an agreement. To this end, the Council may employ such resources as the good offices of the Secretary-General, utilise various mediation strategies, and also authorise investigations of certain matters. When an agreement cannot be reached by the disputing parties, as in the case of Israel and Palestine, the Council's role is to establish the principles for a peaceful settlement. It may also utilise other resources, such as the deployment of peacekeeping forces, the imposition of economic sanctions, and/or the authorisation of collective military action.

The problems associated with the UNSC are well documented, particularly in terms of the Council's lack of impartial and effective mechanisms for enforcing its decisions and for being 'closer to power than justice' in its organisation and operation (Allain, 2004). However, on the issue of Palestine, Jean Allain (2005) considers that "international law and the United Nations should be considered as instrumental in this struggle". While he acknowledges that they do not in themselves provide a solution, he argues that they do provide "a normative framework and fora within which such a solution can emerge" (p.8). Allain argues that international law and the UN have established the "norms and obligations incumbent on Israel, the Palestinians, and the international community" (p.43).

The UN, particularly the Security Council, has been criticised for being a political body and therefore unable to provide an objective position on an issue where the interests of members are at stake. However, the decisions of the UNSC, and also those of the UNGA, do not merely reflect the political interests of certain member-states. Contained within the body of these resolutions are established facts on the conflict and the norms and obligations of Israel, the Palestinians, and the international community. Additionally, contained within these resolutions are the findings of investigations commissioned by the UN pertaining to the most critical issues of the Israel-Palestine conflict, including territory, resources, settlements, refugees, and Jerusalem.

According to Steven Ratner (2004), the UNSC's status as a political organ "does not" relegate it to a "subsidiary status in the formation and application of international law" (p.602). Rather, he asserts, "it is a central player by virtue of its capacity to make legal declarations, interpret the [UN] Charter's text, promote the

relevance of legal norms in resolving disputes, and require states to follow legal rules, even those outside the Charter” (p.602). He explains that the Council’s role in promoting international law is recognised by the UN Charter in three important ways: Article 1, paragraph 1, in which the purpose of the UN is stated as being an organisation for peacemaking “in conformity with the principles of justice and international law”; the Charter’s requirement for all states to comply with the Council’s decisions, which are considered legally binding in all circumstances; and the Council’s responsibility to observe the basic norms of the Charter in its decision making (p.592).

Moreover, as discussed in the following chapter, international norms, which have the capacity to constitute national interests, become established not necessarily because of ‘great powers’, but the campaigning of transnational advocacy networks on the basis of international law (Risse *et al.*, 1999). The normative framework for a just peace based on the UNSC resolutions is potentially a vital resource for transnational Palestine advocacy networks. The following is the findings of a content analysis of the UNSC resolution on the question of Palestine.

Analysis

To identify the UN resolutions concerned with the Israel-Palestine conflict I have utilised the website of the UN (www.un.org), which has dedicated a section to *The Question of Palestine*.²⁶ Linked to this webpage, among other resources, is a complete list of all UN resolutions, including the UNSC resolutions, concerning the Israel-Palestine conflict and the broader Arab-Israeli conflict.²⁷ As of the end of 2006 there were 276 UNSC resolutions listed, which were passed between 1946 and 2006. Table 1 shows all UNSC resolutions concerning the Arab-Israeli conflict, by the country or region about which the resolution is concerned, and the decade in which the resolution was passed.

²⁶ Online: <http://www.un.org/Depts/dpa/qpal/index.html>

²⁷ Online: <http://domino.un.org/UNISPAL.NSF/vCouncilRes>

Table 1: United Nations Security Council resolutions concerning the Arab-Israeli conflict by country/region and decade

Country/Region	40s	50s	60s	70s	80s	90s	00s	TOTAL
Lebanon	0	1	2	16	37	18	20	94
Syria	0	3	3	12	21	16	13	68
Palestine-Israel	15	5	8	3	13	8	8	60
Egypt	0	6	0	12	0	0	0	18
Middle East (General)	3	0	4	3	0	0	0	10
General	0	0	0	0	0	1	8	9
Jordan	1	1	5	0	0	0	0	7
Israel	3	0	0	0	0	0	0	3
Tunisia	0	0	0	0	2	0	0	2
Iraq	0	0	0	0	1	0	0	1
Other	1	1	0	1	1	0	0	4
TOTAL	23	17	22	47	75	43	49	276

As shown in Table 1, with the exception of a reduction in the 1950s and a peak in the 1980s, the number of resolutions has increased over the decades. Of the 276 resolutions listed on the UN website that pertain to the broader Arab-Israeli conflict, one-third (94) of the resolutions concern the Israeli invasion and occupation of Lebanon (1978, 1982-2000). The vast majority of these resolutions reflect the UNSC's efforts to secure an Israeli withdrawal from Lebanon and peace between the two nations. Most of these resolutions concern the renewal of the mandate for United Nations Interim Force in Lebanon (UNIFL/UNIFIL) for a particular time period, usually six months. The case is similar with the conflict on the Israel-Syria front, which accounts for one-quarter (68) of the resolutions. Again, most of these resolutions concern the UNSC's renewal of the United Nations Disengagement Observer Force (UNDOF) mandate accompanied by a call for the implementation of Resolution 338 (22 October 1973).

Eight of the 276 resolutions are general; they concern such issues of international importance as the protection of civilians, particularly women and children, during armed conflict, the proliferation of nuclear, chemical, and biological weapons, and the pandemic HIV/AIDS. Three resolutions relate solely to Israel. Two of these (Resolutions 57 and 59) concern the assassination of the United Nations Mediator in Palestine, Count Folke Bernadotte, by an Israeli terrorist group, while the third (Resolution 69) is the UNSC's recommendation to

the General Assembly that Israel be granted United Nations membership. A total 224 UNSC resolutions concern war, conflict, or other acts of violence and aggression involving Israel and her Arab neighbours, namely Lebanon, Syria, Egypt, Jordan, Iraq, and Tunisia. Sixty UNSC resolutions relate directly to the conflict between Israel and Palestine and will be the specific focus of this chapter. Appendix A contains a table of these 60 UNSC resolutions.

The Question of Palestine

Disputed issues, competing claims, and opposing assumptions punctuate the Israel-Palestine conflict. The following analysis will, therefore, identify certain basic facts pertaining to the causes, continuation, and nature of the conflict as contained in the Council's resolutions. With peace being the ultimate goal of resolving the conflict, this analysis identifies the obstacles to peace as defined by the Council. As an indicator of the genuineness of the parties' commitment to peace, another highly contentious matter, the degree of co-operation with the UN and adherence to the resolutions of the UNSC is also examined (see Appendix C). Given the level of violence associated with the conflict, this analysis will address the applicability and implementation of the Fourth Geneva Convention, respect for human rights, and the safety and security of Israelis and Palestinians as expressed in the resolutions of the Council. Moreover, given the contention over the 'cycle of violence' this analysis examines the contents of the resolutions with respect to the initiation and escalation of violence and hostilities. Finally, this analysis identifies the position of the UNSC concerning those issues deemed most critical to achieving a peaceful resolution of the conflict: territory, Jerusalem, settlements, water resources, and refugees, and on this basis establishes a normative framework for a just peace.

Obstructions to peace

Western media coverage of the conflict, the Israeli government, and pro-Israel sources tend to emphasise Palestinian violence and suicide bombing as being the major obstructions to peace. As shown in Table 2, 13 UNSC resolutions concerning the Israel-Palestine conflict have identified specific actions, policies or practices as 'threats', 'obstructions', and 'detrimental' to peace or otherwise

'prejudicing', 'endangering', having 'grave consequences' for, or an 'adverse' or 'negative impact' on peace. Israel is identified as the responsible party in 12 of these resolutions. The remaining resolution holds the Arab League responsible for threatening peace (Resolution 54, 15 July 1948). It is noteworthy that Resolution 54 is the only UNSC resolution on the Arab-Israeli or Israel-Palestine conflict to have been passed under Chapter VII of the UN Charter.

Not a single UNSC resolution, however, makes such a determination concerning any Palestinian action, policy, or practice. I do not purport that Palestinian suicide bombings do not present an obstacle to peace. Indeed, this is a central argument of this thesis. The point, however, is that when the UNSC has addressed the issue of Palestinian suicide bombings, namely Resolutions 1402 and 1435, it has done so in the context of the on-going violence and repression in which the attacks occurred. The Council has not explicitly referred to these attacks as constituting an obstruction to peace or the like. It is noteworthy that comparable Israeli acts of violence, such as the bombing of Palestinian civilians or demolition of their homes, have likewise not been expressly regarded as obstructions, threats, or otherwise detrimental to peace. Rather, the UNSC has deemed other issues as more central causes of the conflict and determined these as obstructions, threats, or otherwise detrimental to peace.

Twelve resolutions identify Israeli actions, policies or practices as obstructing peace, including Israel's alterations to, and acts of destruction in, Jerusalem (5); Israeli settlements constructed on Arab and Palestinian land (4); killing and massacre of Palestinian civilians (2); and deportations of Palestinian civilians (1). The details of these resolutions are discussed in Appendix B.

Table 2: Obstructions to peace identified by the Security Council

Party	Policy/Practice/Action	Determination	Resolution
Arab League	Rejection of truce and renewal of hostilities	“a threat to the peace within the meaning of Article 39 of the Charter of the United Nations”	54 (15/07/48)
Israel	Act of desecration and profanation of the Holy Al-Aqsa Mosque	“may seriously endanger international peace and security”	271 (15/09/69)
Israel	Alterations to Jerusalem	“prejudice...a just and lasting peace”	298 (25/09/71)
Israel	Establishing settlements in the Palestinian and other Arab territories	“constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East”	446 (22/03/79)
Israel	Settlements policy	“grave consequences...on any attempt to reach a peaceful solution in the Middle East”	452 (20/07/79)
Israel	Settlement policy	“grave consequences...on any attempt to reach a comprehensive, just and lasting peace in the Middle East”	465 (01/03/80)
Israel	Settling parts of population and new immigrants in Palestinian and other Arab territories	“constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East”	471 (05/06/80)
Israel	Alterations to Jerusalem	“constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East”	476 (30/06/80)
Israel	Enactment of “basic law” on Jerusalem	“constitutes a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East”	478 (20/08/80)
Israel	Policies and practices in the occupied territories, including the killing and wounding of defenceless Palestinian civilians	“grave consequences for the endeavours to achieve comprehensive, just and lasting peace in the Middle East”	605 (22/12/87)
Israel	Deportation of Palestinian civilians	“to the detriment of efforts to achieve a comprehensive, just and lasting peace in the Middle East”	694 (24/05/91)
Israel	Massacre of Palestinian worshippers	“adverse impact...on the peace process”	904 (18/03/94)
Israel	Tunnel in the vicinity of Al Aqsa Mosque and its consequent results; high number of deaths and injuries among the Palestinian civilians	“negative implications for the Middle East peace process”	1073 (28/09/96)

Applicability and implementation of the Fourth Geneva Convention

It is pertinent in the context of Israel's rejection of the applicability of the Fourth Geneva Convention to the Occupied Territories to detail the position of the UNSC on the issue. Of the 60 UNSC resolutions concerned specifically with the question of Palestine, 24 (40%) confirm the applicability of the Fourth Geneva convention to the occupied Palestinian and other Arab territories. These resolutions also call on Israel to abide by this Convention. Specific violations of the Convention have been cited by the Council in relation to Israel's construction and expansion of settlements on Palestinian land; alterations to Jerusalem; and treatment of the Palestinian population under its occupation, including population transfer and forced deportations, home demolition, killing and injuring unarmed civilians, and restrictions on the movement of people and goods.

The UNSC established the applicability of the Fourth Geneva Convention immediately following the Six-Day War when it passed Resolution 237 on 14 June 1967. This resolution establishes that "all the obligations of the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949 ^{1/} should be complied with by the parties involved in the conflict". It also specifically calls upon Israel to "ensure the safety, welfare and security of the inhabitants of the areas where military operations have taken place and to facilitate the return of those inhabitants who have fled the areas since the outbreak of hostilities" (Resolution 237, 14 June 1967).

Thereafter, the UNSC repeatedly reminded Israel of the applicability of, and its obligation to abide by, the Fourth Geneva Convention in unambiguous terms. For instance, Resolution 446 (22 March 1979) "*affirms once more* that the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 ^{1/} is applicable to the Arab territories occupied by Israel since 1967, including Jerusalem". Subsequent resolutions continue to reaffirm the applicability of the Convention. In response to persistent Israeli violation of the Conventions, Resolution 681 (20 December 1990) even "*calls upon* the high contracting parties to the Fourth Geneva Convention of 1949 to ensure respect by Israel, the occupying Power, for its obligations under the Convention in accordance with Article 1 thereof". As recently as 2004, the UNSC has continued to *reiterate* "the obligation of Israel, the occupying Power, to abide scrupulously

by its legal obligations and responsibilities under the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949” (Resolution 1544, 19 May 2004).

As documented in Appendix D, 40 UNSC resolutions concerning the question of Palestine, have been passed since Israel commenced its occupation of Palestinian land in 1967. Of these resolutions, 28 (70%) concern violations of human rights and international humanitarian law, including the Fourth Geneva Convention. Appendix D lists these 28 resolutions, the violation addressed, the responsible violator identified, and the consequence of the violation as expressed by the UNSC. As shown in Appendix D, in all but one resolution (1397, 12 March 2002), which does not identify the violator, Israel is identified by the UNSC for violations of human rights and international humanitarian law, including killings, assassinations, and massacres (10); deportation of civilians (10); and construction of settlements and alterations to Jerusalem (5).

Occupation or administration?

There is no question that the UNSC regards Israel as the ‘occupier’ of the Palestinian and other Arab territories captured in 1967 and that its presence in these territories is an ‘occupation’. Not less than 27 of the 60 UNSC resolutions concerned with the question of Palestine confirm this point by either referring to Israel as “the occupying power” or by directly referring to the Palestinian and other Arab territories as “occupied”. For instance, in “*condemning* the killing of Palestinian civilians that took place in the Rafah area”, UNSC Resolution 1544 (19 May 2004) reiterates “the obligation of Israel, *the occupying Power*, to abide scrupulously by its legal obligations and responsibilities under the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 [emphasis added]. Similarly, in Resolution 592 (8 December 1986) the UNSC states its ‘serious concern’ about “the situation in the Palestinian and other Arab territories *occupied* by Israel since 1967, including Jerusalem” [emphasis added]. While in Resolution 799 (18 December 1992), the UNSC ‘strongly condemns’ the “action taken by Israel, *the occupying Power*, to deport hundreds of Palestinian civilians, and expresses its firm opposition to any such deportation by Israel” [emphasis added].

Not a single UNSC resolution refers to Israel as an ‘administrator’, or any role other than ‘occupier’ with regard to its presence in the Palestinian and other Arab Territories, including Jerusalem. Resolution 242 (22 November 1967) calls for “withdrawal of Israel armed forces from territories *occupied* in the recent conflict” [emphasis added]. This position is made even clearer in Resolution 259 (27 September 1968), in which the UNSC defines the nature of Israel’s presence in the Palestinian and other Arab territories in stating its ‘concern’ for “the safety, welfare and security of the inhabitants of the Arab territories under *military occupation by Israel* following the hostilities of 5 June 1967” [emphasis added].

Moreover, not a single UNSC resolution refers to these territories as ‘Israeli’, or acknowledges an annexation of these territories to Israel, or regards Israel’s presence in them as ‘administrative’ or any other such term. This position even applies to Jerusalem. In 1980, when Israel enacted its ‘basic law’ on Jerusalem, the UNSC passed Resolution 478 (19 August 1980) in which it decided “not to recognise the ‘basic law’ and such other actions by Israel that, as a result of this law, seek to alter the character and status of Jerusalem”. The Council also called upon: “(a) All Member States to accept this decision”; and “(b) Those States that have established diplomatic missions at Jerusalem to withdraw such missions from the Holy City” (Resolution 478, 19 August 1980). Similarly, in the case of the Syrian Golan, occupied by Israeli since 1967, UNSC Resolution 497 (17 December 1981) specifically states that “the Israeli decision to impose its laws, jurisdiction and administration in the *occupied* Syrian Golan Heights is *null and void and without international legal effect*” [emphasis added].

UNSC Resolutions 471 (5 June 1980) and 476 (30 June 1980) both *reaffirm* “the overriding necessity to end the prolonged occupation of Arab territories occupied by Israel since 1967, including Jerusalem”. Additionally, Resolutions 1397 (12 March 2002) and 1515 (19 November 2003) both *affirm* “a vision of a region where two States, Israel and Palestine, live side by side within secure and recognised borders”.

It is also noteworthy that of the 60 UNSC resolutions concerning the question of Palestine, 25 contain references to the safety, security, or suffering of civilians

involved in the conflict. All have been passed since 1967, when Israel commenced its occupation of the Gaza Strip, West Bank, and other Arab territories. All refer to the suffering or safety and security needs of the Palestinians under Israeli occupation.

Four of these resolutions make a general reference to the suffering of Palestinians under the Israeli military occupation. Four specifically refer to safety and security needs of those Palestinian affected by Israeli settlements and armed settlers. Six specifically refer to deaths and injuries suffered by Palestinian civilians fired upon by Israeli military or security forces. Seven refer to deportation of Palestinians by Israel. Another refers specifically to the suffering of Palestinians as a consequence of Israeli imposed restrictions on the movement of people and goods. The remaining one refers to the demolition of Palestinian homes by the Israeli military.

In defence of its policies and practices, Israel consistently invokes arguments about its security concerns and defence needs. In response, the UNSC has required Israel to adhere to international law even in such circumstances. Resolution 1544 (19 May 2004) is a case in point. It was passed in response to the “demolition of homes committed by Israel, the occupying Power, in the Rafah refugee camp and the “killing of Palestinian civilians” there. Israel claimed these acts were ‘security’ measures, part of an operation conducted by the Israeli military to widen the strip of land along the border between Gaza and Egypt, the so-called ‘Philadelphia Route’. Israel was also demolishing homes and killing civilians as a form of collective punishment for the death of seven Israeli soldiers killed in a battle with Palestinian resistance fighters. The UNSC condemned the acts of “violence, terror, and destruction” and called on Israel to “address its security needs *within the boundaries of international law*” (Resolution 1544, 19 May 2004) [emphasis added].

Cycle of violence

The UNSC resolutions are important for an understanding of the ‘cycle of violence’, which is most frequently presented as Palestinians ‘attacking’ and Israel ‘retaliating’ or ‘responding’, thereby portraying Israel as the defensive party

rather than the aggressor (Philo & Berry, 2004). Without counting repeat offences, however, the UNSC has identified Israel or Israeli citizens as initiating violence and hostilities in not less than 9 resolutions. These include attacks on and provocations at the Al-Aqsa Mosque (Resolution 271, 15 September 1969; Resolution 1073, 28 September 1998; and Resolution 1322, 7 October 2000); violence perpetrated by the Israeli settlers, including assassination attempts against Palestinian officials (Resolution 471, 5 June 1980); the massacre of Palestinian worshippers by an Israeli settler (Resolution 904, 18 March 1994); the opening of fire by the Israeli army resulting in the death and the wounding of defenceless Palestinian 'students' (Resolution 592, 8 December 1986), 'civilians' (Resolution 605, 22 December 1987), and 'worshippers' (Resolution 672, 12 October 1990); and the killing of Palestinian civilians and destruction of their homes (Resolution 1544, 19 May 2004).

It is noteworthy that not a single UNSC resolution has identified Palestinians or any Palestinian organisations, including the PLO, Hamas, or Islamic Jihad, for initiating violence or hostilities. This is not to suggest that such organisations are not responsible for acts of violence and terrorism – indeed such acts of violence are extensively documented. The point here is that the UNSC has not cited these organisations for the initiation of violence or hostilities. Two UNSC resolutions mention 'suicide' or 'terrorist' bombings (1402 and 1435). As the texts of these resolutions demonstrate, suicide bombings are not addressed distinctly from Israeli military attacks on Palestinian people and infrastructure and are condemned equally with Israeli attacks on Palestinians and their infrastructure.

Resolution 1402 (30 March 2002) states:

Expressing its grave concern at the further deterioration of the situation, including the recent suicide bombings in Israel and the military attack against the headquarters of the president of the Palestinian Authority,

1. *Calls upon* both parties to move immediately to a meaningful cease-fire; calls for the withdrawal of Israeli troops from Palestinian cities, including Ramallah; and calls upon the parties to cooperate fully with Special Envoy Zinni, and others, to implement the Tenet security work plan as a first step

towards implementation of the Mitchell Committee recommendations, with the aim of resuming negotiations on a political settlement.

Resolution 1435 (24 September 2002) states:

Reiterating its grave concern at the tragic and violent events that have taken place since September 2000 and the continuous deterioration of the situation,

Condemning all terrorist attacks against any civilians, including the terrorist bombings in Israel on 18 and 19 September 2002 and in a Palestinian school in Hebron on 17 September 2002,

Gravely concerned at the reoccupation of the headquarters of the President of the Palestinian Authority in the City of Ramallah that took place on 19 September 2002 and demanding its immediate end.

In reference to the particular series of violence addressed in this resolution, it clearly identifies the initial act of violence as a ‘bombing’ of a ‘Palestinian school in Hebron’ on 17 September 2002. This is followed by ‘terrorist bombings’ in Israel a day later on 18 and 19 September 2002. Israel then proceeded to employ further violence and repression with the “reoccupation of the headquarters of the President of the Palestinian Authority in the City of Ramallah that took place on 19 September 2002” and the “reoccupation of Palestinian cities”. It is noteworthy that no subsequent resolution was passed to provide evidence that the Palestinian Authority had not met its responsibility in this context. Reinhart (2005) documents statements from senior Israeli security officials as evidence that the Palestinian Authority had indeed met its security obligations under the peace process.

The reoccupation of Ramallah marked a serious escalation in the conflict. It was represented in the Western media as a response to the earlier terrorist bombings. However, omitted from popular discussion was that the terrorist bombings were themselves in response to the bombing of a Palestinian school in Hebron, a consequence of the continued occupation of the West Bank and presence of the settlements therein. What the UNSC resolutions show is that the

UNSC has consistently identified Israel, not the Palestinians, as responsible for the initiation, escalation, and continuity of violence, a fundamental point that is consistent with the findings of numerous scholars, including Reinhart (2005), Finkelstein (2003a), and Usher (2003).

Final-status issues:

Acquisition of territory

The unwillingness of states to recognise the acquisition of territory by force, sometimes referred to as the 'Stimson Doctrine', is of central importance to the question of Palestine as the entire territory that the Palestinians are claiming for their state (22 percent of historical Palestine - Gaza Strip and West Bank, including East Jerusalem) is land occupied by Israel since 1967. The UNSC has upheld this principle of international law in its resolutions on the question of Palestine. In fact, not less than eight UNSC resolutions reaffirm this point. The first to be passed was Resolution 242 (22 November 1967), "*emphasising* the inadmissibility of the acquisition of territory by war" and the "need to work for a just and lasting peace in which every State in the area can live in security". A subsequent six resolutions confirming the principle were passed between 1968 and 1980 (252, 267, 271, 298, 476, and 478). All were passed in relation to 'legislative and administrative measures and actions taken by Israel, including expropriation of land and properties thereon, which tend to change the legal status of Jerusalem' which the UNSC adds 'are invalid and cannot change that status'.

The eighth resolution to be passed stating the principle of the inadmissibility of acquisition of territory by force was Resolution 681 (20 December 1990), in which the UNSC was "*Gravely concerned* at the dangerous deterioration of the situation in all the Palestinian territories occupied by Israel since 1967, including Jerusalem, and at the violence and rising tension in Israel". The Council was also "alarmed by the decision of the Government of Israel to deport four Palestinians from the occupied territories in contravention of its obligations under the Fourth Geneva Convention, of 1949" (Resolution 681, 20 December 1990).

The UNSC's support for the principle of the inadmissibility of the acquisition of territory by force is critical to the question of a Palestinian state. Although implicitly confined to the territory Israel acquired by force in 1967 and not the 23 percent of historical Palestine it acquired in the war of 1948 (beyond the 55 percent accorded to it in the 1947 UN partition plan), the principle certainly gives credence to Palestinian claims to territory beyond the 1967 borders. The only question remaining is whether the UNSC has recognised the political rights of the Palestinians.

Resolution 242, the most frequently recalled UNSC resolution on the question of Palestine, did not mention the political rights or aspirations of the Palestinians. However, Resolutions 1397 (12 March 2002) and 1515 (19 November 2003) both affirm "a vision of a region where two States, Israel and Palestine, live side by side within secure and recognised borders". Additionally, Resolution 672 (12 October 1990) reaffirms that "a just and lasting solution to the Arab-Israeli conflict must be based on its resolutions 242 (1967) and 338 (1973) through an active negotiating process which takes into account the right to security for all States in the region, including Israel, as well as the *legitimate political rights of the Palestinian people*" [emphasis added]. Resolution 672 not only affirms the political rights of the Palestinians as legitimate, but by basing this affirmation on Resolution 242, it is invoking the principle of inadmissibility of acquisition of territory by force and the requirement for Israel to withdraw from territories it has occupied since 1967.

It should be recalled that the territory Israel has occupied since 1967 (Gaza Strip and West Bank, including Jerusalem) is only part of the territory that Israel illegally occupies according to the principle of 'the inadmissibility of the acquisition of territory by force'. Numerous historians, including Ilan Pappé (2007), have provided detailed documentation that Israel acquired the 23 percent of historical Palestine it currently controls (beyond the 55 percent it was allotted under UNGA Resolution 181 in 1947) by way of armed force. While this illegal acquisition of territory is not specifically addressed by the UNSC, the principle of 'the inadmissibility of the acquisition of territory by force' has been repeatedly invoked by the UNSC in reference to Israel and could be utilised at some future

point by Palestinian and transnational advocacy groups seeking restitution for the ethnic cleansing of 1947-1949.

Jerusalem

There are ten UNSC resolutions that specifically address the status of Jerusalem. All ten resolutions state that the actions and activities of Israel to change the physical, demographic, and cultural character of Jerusalem have ‘no validity’ or are otherwise ‘null and void’. The UNSC has required Israel to rescind or desist from its activities in Jerusalem in nine resolutions. In seven of its resolutions, the Council has stated that Israel’s policies and practices in Jerusalem constitute an obstruction to peace.

No UNSC resolution has made any provision for Israeli control over Jerusalem or supported its capital to be moved there. In fact, the UNSC has not altered the position taken by the General Assembly in 1947 (Resolution 181), which confirms Jerusalem’s status as *corpus separatum*. UNSC resolution 452 (20 July 1979), which was passed on the basis of the findings of a UN Commission established ‘to examine the situation relating to settlements in the Arab territories occupied since 1967, including Jerusalem’, emphasises “the *specific status of Jerusalem*”, and reconfirms the relevant UNSC resolutions concerning Jerusalem and in particular “the need to protect and preserve the unique spiritual and religious dimension of the Holy Places in that city [emphasis added].

There are six UNSC resolutions that specifically address the status of Jerusalem, which contain the ‘Stimson Doctrine’ or the principle of international law which asserts that the acquisition of territory by force or war is inadmissible. The first UNSC resolution to address the status of Jerusalem (252, 21 May 1968), states “the need to work for a just and lasting peace” and then emphasises that “acquisition of territory by military conquest is inadmissible”. Resolution 252 requires Israel to comply with General Assembly Resolutions 2253 (ES-V) of 4 July 1967 and 2254 (ES-V) of 14 July 1967 and asserts that “all legislative and administrative measures and actions taken by Israel, including expropriation of land and properties thereon, which tend to change the legal status of Jerusalem are invalid and cannot change that status”. It also “*urgently calls* upon Israel to rescind all such measures already taken and to desist forthwith from taking any

further action which tends to change the status of Jerusalem” (Resolution 252, 21 May 1968).

The follow-up resolution on the matter a year later (Resolution 267, 3 July 1969), noted that “since the adoption of the above-mentioned resolutions [252, 2253 (ES-V) and 2254 (ES-V)] Israel has taken further measures tending to change the status of the City of Jerusalem”. Resolution 267 confirms that “all legislative and administrative measures and actions taken by Israel which purport to alter the status of Jerusalem, including expropriation of land and properties thereon, are invalid and cannot change that status” and “*urgently calls* once more upon Israel to rescind forthwith all measures taken by it which may tend to change the status of the City of Jerusalem, and in future to refrain from all actions likely to have such an effect”. It also contains a request to Israel “to inform the Security Council without any further delay of its intentions with regard to the implementation of the provisions of the present resolution”.

An arson attack on the Al-Aqsa Mosque on 21 August 1969 led to the following Resolution, 271 (15 September 1969), which “*condemns* the failure of Israel to comply with the aforementioned resolutions [252 and 267]” and “*reiterates* the determination in paragraph 7 of Resolution 267 (1969) that, in the event of a negative response or no response, the Security Council shall convene without delay to consider what further action should be taken in this matter”. Despite this provision, the fact that the subsequent resolution (298, 25 September 1971) notes ‘with concern’ that “since the adoption of the above-mentioned resolutions Israel has taken further measures designed to change the status and character of the occupied section of Jerusalem”, the UNSC failed to include any statement about ‘further action’ to be taken on the matter. Resolution 298 ‘confirms’, however, “in the clearest possible terms that all legislative and administrative actions taken by Israel to change the status of the City of Jerusalem, including expropriation of land and properties, transfer of populations and *legislation aimed at the incorporation of the occupied section, are totally invalid* and cannot change that status [emphasis added]. The inclusion of the statement about ‘incorporation’ of the ‘occupied section’ being ‘totally invalid’ and not being able to change the ‘status’ of Jerusalem, clearly demonstrates the unwillingness of the UNSC to recognise an Israeli annexation of Jerusalem, a point reinforced by

Resolution 478, discussed above. In sum, the position of the UNSC is that Israel illegally occupies the city of Jerusalem.

Israeli settlements

Four UNSC resolutions specifically address the issue of the Israeli settlements on Occupied Palestinian and other Arab Territories. Each of the four resolutions state that the settlements are an 'obstruction to peace' and have 'no legal validity'. Three resolutions state that the settlements have 'no validity' or are otherwise 'null and void'. Three resolutions also have required Israel to rescind or desist from construction of the settlements.

By way of Resolution 446 (22 March 1979), the first resolution to specifically address the matter, the UNSC determined that "the policy and practices of Israel in establishing settlements in the Palestinian and other Arab territories occupied since 1967 have *no legal validity* and constitute a *serious obstruction to achieving a comprehensive, just and lasting peace* in the Middle East [emphasis added]. This resolution, also identifying that the practice of population transfer involved in the settlement process constitutes a violation of the Fourth Geneva Convention:

Calls once more upon Israel, as the occupying Power, to abide scrupulously by the 1949 Fourth Geneva Convention, to rescind its previous measures and to desist from taking any action which would result in changing the legal status and geographical nature and materially affecting the demographic composition of the Arab territories occupied since 1967, including Jerusalem, and, in particular, not to transfer parts of its own civilian population into the occupied Arab territories (Resolution 446, 22 March 1979).

Moreover, Resolution 446 also established a commission consisting of three members of the UNSC "to examine the situation relating to settlements in the Arab territories occupied since 1967, including Jerusalem". The recommendations of the report prepared by this commission (contained in document S/13450) were accepted by the Council in the following resolution (452, 20 July 1979). Resolution 452 begins by strongly deploring "the lack of co-

operation of Israel with the Commission” and reaffirms the point that “the policy of Israel in establishing settlements in the occupied Arab territories has no legal validity and constitutes a violation of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949”. It also draws attention to the “*grave consequences* which the settlements policy is bound to have *on any attempt to reach a peaceful solution* in the Middle East” [emphasis added] and “*Calls upon* the Government and people of Israel to cease, on an urgent basis, the establishment, construction and planning of settlements in the Arab territories occupied since 1967, including Jerusalem”. It is noteworthy that the UNSC requested the commission, “in view of the *magnitude of the problem of settlements*, to keep under close survey the implementation of the present resolution and to report back to the Security Council” [emphasis added].

The subsequent resolution on the matter (465, 1 March 1980) accepts the conclusions and recommendations of the second report prepared by the Commission (contained in document S/13679). The resolution begins by “*strongly deploring* the refusal by Israel to co-operate with the Commission and regretting its formal rejection of resolutions 446 (1979) and 452 (1979)”. It restates the fundamental determination of the UNSC with respect to the settlements that:

all measures taken by Israel to change the physical character, demographic composition, institutional structure or status of the Palestinian and other Arab territories occupied since 1967, including Jerusalem, or any part thereof, have *no legal validity* and that Israel's policy and practices of settling parts of its population and new immigrants in those territories constitute a flagrant *violation of the Fourth Geneva Convention* relative to the Protection of Civilian Persons in Time of War and also constitute a *serious obstruction to achieving a comprehensive, just and lasting peace* in the Middle East [emphasis added] (Resolution 465, 1 March 1980).

Resolution 465 goes further than its predecessors to call for the ‘dismantling of existing settlements’ and for “all States not to provide Israel with any assistance to be used specifically in connexion with settlements in the occupied territories”.

The matter of the settlements was again specifically addressed by the UNSC in Resolution 471 (5 June 1980) when assassination attempts were made against the Mayors of Nablus, Ramallah, and Al Bireh. The UNSC was “*deeply concerned* that the Jewish settlers in the occupied Arab territories are allowed to carry arms, thus enabling them to perpetrate crimes against the civilian Arab population” and expressed “*deep concern* that Israel, as the occupying Power, has failed to provide adequate protection to the civilian population in the occupied territories in conformity with the provisions of the Geneva Convention relative to the Protection of Civilian Persons in Time of War” (Resolution 471, 5 June 1980). Quite significantly, the UNSC again called upon “all States not to provide Israel with any assistance to be used specifically in connexion with settlements in the occupied territories” and reaffirmed “the *overriding necessity* to end the prolonged occupation of Arab territories occupied by Israel since 1967, including Jerusalem” [emphasis added].

The position of the UNSC on the matter of Israeli settlements is unambiguously clear. The Israeli settlements constructed on Palestinian and other Arab land, including Jerusalem, occupied since 1967 have no legal validity, do not change the status of that territory, and must be dismantled as they constitute a ‘flagrant violation’ of the Fourth Geneva Convention and a ‘serious obstruction’ to achieving peace. In light of the above UNSC resolutions, Israel cannot proclaim a genuine commitment to peace as long as its settlements remain.

The contradiction between the presence of the settlements on Palestinian land and the UNSC’s vision for two states, Israel and Palestine, side-by-side in peace and security, has recently been highlighted by the findings of a report, ‘Ruling Palestine: A history of the Legally Sanctioned Jewish-Israeli Seizure of Land and Housing in Palestine’, conducted by the Geneva-based Centre on Housing Rights and Evictions (COHRE) and BADIL Resource Centre for Palestinian Residency and Refugee Rights (Dajani, 2005). One of the main conclusions of the research is that a two-state solution has been made practically impossible

due to Israel's continued expropriation of Palestinian property and its denial of Palestinian refugees their right to recover their original homes and lands. A combination of confiscated land for settlements and what Israel refers to as its "security barrier" is estimated to result in the reduction of Palestinian land within the occupied West Bank and Gaza to less than eight percent of the territory comprising Mandate Palestine. The report warns that even in the event of a negotiated settlement, a viable Palestinian state would not be feasible due to the shortage of available land and infrastructure and lack of territorial contiguity, all a result of, and compounded by, the extent and positioning of the settlements on the West Bank.

Water resources of the Palestinian territories

Resolution 465 (1980) was passed in response to the report (S/13679) prepared by the commission of the UNSC established under Resolution 446 (1979) to "examine the situation relating to settlements in the Arab territories occupied since 1967, including Jerusalem." The resolution requests the commission to:

continue to examine the situation relating to settlements in the Arab territories occupied since 1967, including Jerusalem, *to investigate the reported serious depletion of natural resources, particularly the water resources, with a view to ensuring the protection of those important natural resources* of the territories under occupation, and to keep under close scrutiny the implementation of the present resolution [emphasis added].

The report prepared by the commission (contained in document S/13679) states that as a result of the use of powerful modern drilling and pumping equipment by the Israelis and the restrictions imposed upon the Arab inhabitants, the traditional groundwater sources of Arab villages are drying up, resulting in considerable losses. The report made the following recommendation to the UNSC:

In view of the vital importance of water resources for the prosperity of the occupied Arab territories, and of the reported serious depletion of those resources as a result of intensive exploitation by the Israeli authorities, mainly for the benefit of the Israeli settlements, the Security Council might

wish to consider measures aiming at investigating the matter further, with a view to ensuring the protection of those important natural resources of the territories under occupation (S/13760).

As discussed above, the position of the UNSC with respect to the Palestinian and other Arab territories occupied since 1967 is to regard Israel's 'acquisition' of this land as 'inadmissible'. Indeed, the UNSC has reaffirmed the principle of the inadmissibility of the acquisition of territory by force in not less than eight resolutions specifically concerned with the question of Palestine. Moreover, as the settlements have been strategically constructed either above the aquifers on Palestinian land or between the Palestinian population and the aquifers – effectively cutting them off from the Palestinians – the resolutions concerning the settlements are of considerable importance. As also discussed above, the UNSC has determined that the settlements have no legal validity, cannot alter the status of the territory, constitute a violation of the Fourth Geneva Convention and serious obstruction to achieving peace, and must be dismantled. The position of the UNSC, thus, becomes clear so far as the water resources on Palestinian land is concerned; such resources are part of the occupied Palestinian and other Arab territories and, therefore, the appropriation of such resources by Israel is illegal.

Antonio Cassese (1992), Professor of International Law and Relations, explains that “the prohibition on using land belonging to the occupied state or to its inhabitants...is strengthened by Article 49(6) of the Fourth Geneva Convention of 1949”, which states that ‘the Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies’ (p.431). Cassese rightly argues that this provision is but the “logical corollary of the requirement of customary international law whereby the occupant is not allowed to use the property of the occupied country, or of its inhabitants, for the furtherance of its own economic or other interests” (p.431). He adds that “the transfer of civilians from the occupying state into the occupied territory cannot but serve economic, social, or ‘strategic’ needs of the occupying state as such” and “to this extent it is strictly prohibited” (p.431). It follows, asserts Cassese, that the occupant is not allowed to use water to promote its own economy or to pump it into the home country (p.432).

In specific reference to the use of water by settlements on the West Bank, he states:

[T]he numerous civilian settlements established by Israel in the West Bank are illegal, for they are not intended to meet the military needs of the occupant but are designed to expand the economic and political penetration of Israel in the occupied territories. Consequently, the use by these settlements of a large quantity of the (limited) water resources available in the West Bank and the Gaza Strip cannot but confirm and accentuate the unlawful character of those settlements (p.432).

Palestinian refugees

To return to one's homeland is a right of refugees established in international law:

Article 13 of the Universal Declaration of Human Rights (1948), states:

- (1) Everyone has the right to freedom of movement and residence within the borders of each state.
- (2) Everyone has the right to leave any country, including his own, and to return to his country.

Articles 12 of the International Covenant on Civil and Political Rights (1996), states:

- (2) Everyone shall be free to leave any country, including his own.
- (3) The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognised in the present Covenant.
- (4) No one shall be arbitrarily deprived of the right to enter his own country.

Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (1966), states that “in compliance with the fundamental obligations laid down in Article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- (d)(ii) The right to leave any country, including one's own, and to return to one's country.

The right of return enshrined in these documents applies to the Palestinians as it does all human beings.

Most frequently cited in the literature on the issue of the right of return specifically of the Palestinian refugees is the General Assembly Resolution 194 (11 December 1948). It provides for ‘the right of return for those wishing to do so and the right to be compensated for those not wishing to exercise this right’.

Resolution 194 (III), paragraph 11, specifically states:

Resolves that the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible;

Instructs the Conciliation Commission to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation, and to maintain close relations with the Director of the United Nations Relief for Palestine Refugees and, through him, with the appropriate organs and agencies of the United Nations.

In terms of status in international law, General Assembly resolutions are not normally considered to have the authority of those passed by the UNSC. However, this particular resolution has been reaffirmed by the United Nations on

over 100 occasions. International law specialist, Musa Mazzawi (1997), asserts that the almost annual reaffirmation of Resolution 194 by the UN (and sometimes more than once annually) strongly demonstrates the international regard for the resolution and gives it a status beyond what may normally be attributed to a General Assembly resolution. He states:

Reference was made to Resolution 194(III) in clear and specific terms, and the right of return for the Palestinians was reaffirmed, in categorical and often very strong language, by nearly unanimous votes. It would be outrageous, and insulting to the General Assembly and to the very substantial majorities who voted for these repeated resolutions, to say that on these occasions the General Assembly was merely engaged in pious and hollow exhortations, and that it did not mean serious business (p.175).

Mazzawi (1997) adds:

There is abundant authority for the view that such consistent repetition of the concept of the right of return serves under Article 38(1) of the Statute of the International Court of Justice to convert it into an international custom, as evidence of a general practice accepted as law or into a general principle of law recognised by civilised nations. Compliance with such principles thus becomes obligatory upon States, and ignoring them becomes a violation of international law and a breach of the primary obligations of Members of the United Nations. And if there be conflict between Israel's municipal legislation and the rules of international law this must be resolved in favour of international law (p.175).

With respect to the UNSC resolutions concerned with the issue of Palestinian refugees we first find Resolution 89 (17 November 1950), which “*requests* the Egyptian-Israel Mixed Armistice Commission to give urgent attention to the Egyptian complaint of expulsion of thousands of Palestine Arabs”. It calls upon both Egypt and Israel “to give effect to any finding of the Egyptian-Israel Mixed Armistice Commission regarding the repatriation of any such Arabs who in the

Commission's opinion are entitled to return.” What is apparent from this resolution is support for the return of those made refugees in the 1948 war.

Similarly, in Resolution 93 (18 May 1951), which was passed the following year in response to the Syrian complaint about the evacuation of Arab residents from the demilitarised zone, the UNSC decided “that Arab civilians who have been removed from the demilitarised zone by the Government of Israel should be permitted to return forthwith to their homes and that the Mixed Armistice Commission should supervise their return and rehabilitation in a manner to be determined by the Commission”.

It is Resolution 242 (22 November 1967), however, that is frequently quoted as representing the UNSC’s position concerning the issue of Palestinian refugees. While this resolution ‘affirms’ the ‘necessity’ for “achieving a just settlement of the refugee problem”, it certainly does not use the clear and unambiguous language of General Assembly Resolution 194 and other UN resolutions.

It would appear though, that the resolution preceding 242 has been overlooked. Resolution 237 (14 June 1967) begins by affirming that “essential and inalienable human rights should be respected even during the vicissitudes of war”. Recall that return to their homelands is an inalienable right of refugees enshrined in the Universal Declaration of Human Rights (Article 13). Resolution 237 clearly supports the right of return of the Palestinian refugees as it calls upon “the Government of Israel to ensure the safety, welfare and security of the inhabitants of the areas where military operations have taken place and to *facilitate the return* of those inhabitants who have fled the areas since the outbreak of hostilities” [emphasis added].

UNSC Resolution 242 affirmed the necessity for “achieving a just settlement of the refugee problem”. It is noteworthy that this affirmation was made in the context of the resolution’s requirement for “establishing a just and lasting peace in the Middle East”; however, the “just settlement of the refugee problem” it required was not met. Seven years later, to the date, by way of UNGA Resolution 3236 (22 November 1974), the UN reaffirmed its position on a “just settlement” of the problem. The resolution clearly established the “return” of the Palestinian

refugees “to their homes and property from which they have been displaced and uprooted” as an “inalienable right”. It also reaffirmed the Palestinians’ right to “self-determination without external interference” and “national independence and sovereignty”, as “indispensable for the solution of the question of Palestine” and “the establishment of a just and lasting peace in the Middle East” (Resolution 3236, 22 November 1974).

Framework for a just resolution

The UNSC defines the resolution of the Israel-Palestine conflict in terms of a ‘just’ peace. The position of the Council is that justice is a fundamental condition of peace, which is intended to be both comprehensive and lasting. The conditions for a just peace determined by the Council are based on the norm of the restoration of rights. This comprehensive content analysis of all UNSC resolutions concerning the Israel-Palestine conflict has identified certain basic facts of the conflict that are pertinent to the achievement of a just and lasting peace as determined by the Council. The norms and obligations incumbent upon Israel, the Palestinians, and the international community have also been identified through this analysis. Furthermore, this analysis has established a normative framework on the basis of which a just solution of the conflict can be pursued.

On the basis of this analysis, a normative framework for a just resolution of the Israel-Palestine conflict can be summarised as follows:

- An end to the occupation involving Israel’s complete withdrawal from all Arab and Palestinian territories it has illegally occupied since 1967, namely the Golan Heights, Gaza Strip, and West Bank, including Jerusalem;
- The dismantling of all Israeli settlements on all Arab and Palestinian territories, namely the Golan Heights and West Bank, including Jerusalem;
- The return of all water and other resources in the West Bank to Palestinian control;
- The return of all Palestinian refugees to their homes and land from which they have been uprooted or displaced since 1947 and the provision of compensation for those not wishing to exercise this right;

- Negotiations could then begin on the final borders of the state of Israel and the state of Palestine, which, in respecting the principle of the 'inadmissibility of the acquisition of territory by force', would establish 22 percent of historical Palestine as the minimum area of the Palestinian state and could also imply negotiations over the 23 percent of historical Palestine that Israel acquired by force between 1947 and 1949.

Contrary to popular representation of the conflict, obstructions to its peaceful resolution are not erected by the Palestinians, but by Israel. The UNSC has repeatedly identified Israel's occupation of the Palestinian and other Arab territories, including Jerusalem, specifically its policies and practices concerning alterations to Jerusalem, construction of settlements, and other violations of international humanitarian law such as killing and injuring civilians and population transfer as constituting serious obstructions to achieving a just and lasting peace in the Middle East. The UNSC has clearly identified Israel's occupation of Palestinian and other Arab territories as the central cause of the conflict; it has expressed an end of the occupation as an overriding necessity and has endorsed the creation of two states, Israel and Palestine.

Overwhelmingly, the UNSC has found Israel responsible for the initiation and escalation of violence and hostility. Contrary to expectations, the Palestinians are markedly absent from the resolutions as initiators or escalators of violence and hostility. The UNSC has expressed overwhelming concern for the safety and security of the Palestinian people. Far from Israel's security needs being the central factor to a peaceful resolution of the conflict, the UNSC's position is that the Palestinian population under Israeli occupation is in continuous need of security and protection. According to the UNSC, Israel's policies and practices in violation of international law and UN resolutions facilitate the conflict's continuation and thwart the attainment of a just and lasting peace.

The UNSC unambiguously asserts that Israel's acquisition of the Palestinian and other Arab territories, including Jerusalem in 1967 is inadmissible. This principle has been repeated in numerous resolutions, particularly those concerned with the status of Jerusalem as well as Resolution 242. Furthermore, the UNSC repeatedly refers to Israel as the 'occupier' or 'occupying power' in respect to its

presence on Palestinian and other Arab territories, including Jerusalem, which it specifically refers to as 'occupied' territory. In not a single resolution does the UNSC recognise the annexation of any of the territory, including Jerusalem, which Israel has occupied since 1967; nor is Israel's presence in these territories ever referred to as administrative. To this end, the UNSC is also unambiguously clear that the Fourth Geneva Convention is applicable to, and must be implemented by Israel in the Palestinian and other Arab territories it occupies, including Jerusalem. In spite of this demand, violations of international humanitarian law by Israel against the Palestinian people are extensively documented in the resolutions analysed and are consistently regarded by the UNSC as constituting serious obstructions to achieving peace.

The UNSC resolutions have addressed all of the so-called 'final status' issues or those commonly regarded as the most complex in terms of resolving the conflict, including the status of Jerusalem, settlements, and the right of return of Palestinian refugees. The continuity of the conflict is not due to indecision on the part of the UN as to what constitutes a just peace, but rather, Israeli non-compliance with these terms. The UNSC has determined, by way of resolutions 446, 452, 465, and 471, that the Israeli settlements on the Palestinian territories occupied since 1967 are 'illegal', 'null and void', and should be 'dismantled' as they constitute a "violation of the Fourth Geneva Convention" and "a serious obstruction to achieving a comprehensive, just and lasting peace". Moreover, the Council has called on the international community not to support Israel in the pursuit of its settlement policy.

It is also noteworthy that survey research has found that a majority of Americans are opposed to the construction of Israeli settlements on Palestinian land. Interestingly, prior to 2002, no data was published regarding American views of Israeli settlements. In May 2002, however, when a PIPA poll asked Americans whether they think it is right or not for Israel to build settlements in the West Bank and Gaza, 52 percent said they should not, while 35 percent said it was all right (12% were unsure). Moreover, research has found that opposition to the settlements increases when the question is framed in the context of international law (WorldPublicOpinion.org, 2006).

Israel's occupation of Jerusalem has been addressed by the UNSC in the same terms in no less than ten resolutions. The UNSC has maintained that the acquisition of territory by force is inadmissible. It has repeatedly called on Israel to rescind the alterations it has made to the cultural, physical, and demographic character of Jerusalem, and it regards these alterations made to the status of Jerusalem as 'null and void'. Again, the Council has requested the international community to not recognise Israel's alterations to the status and character of Jerusalem, specifically the establishment of its capital there.

In the war of 1948, over half the Palestinian population were made refugees. Under the Universal Declaration of Human Rights, the Palestinians have a right to return to their homes and land. This right has been repeatedly reaffirmed by the UN General Assembly since Resolution 194 was passed in 1948. It is also reaffirmed in UNSC resolutions 89, 93, 237 and 242.

The identification of this normative framework provides a necessary, but not sufficient, basis on which the international community and transnational advocacy networks can pursue a just resolution of the Israel-Palestine conflict. A fundamental flaw of the UNSC has been its failure to account for the vast power imbalance of the conflicting parties in advocating a negotiated settlement. The UNSC has the authority to take action to enforce its resolutions, including through sanctions as in the case of South Africa and Iraq and also to authorise military force, as in the case of Iraq in 1991. Such measures provided a counterweight to the power imbalance of the black majority in the case of South Africa and Kuwait in its conflict with Iraq. In both cases, the confidence of the UN to impose such measures was a manifestation of cherished international norms and the support they received from international public opinion.

As will be discussed in the next part of this thesis, transnational advocacy groups play an essential role in the diffusion of international norms and pressuring world leaders to adhere to these norms. This analysis of the UNSC resolutions provides legal arguments in support of a just resolution of the Israel-Palestine conflict. The justification for a settlement of the Israel-Palestine conflict within a framework based on the UNSC resolutions is supported by the authority of the decisions of the Council. Ratner (2004) acknowledges the potential power of

UNSC resolutions and asserts that “they stand a greater chance of influencing state decision-making than do many other pronouncements of international law” (p.602). While he also acknowledges that the Council’s pronouncements have been frequently ignored, he observes:

A Council pronouncement on a legal issue signals that powerful states are endorsing the legal claims embodied in the resolution. When those states choose to take measures to make the resolution really stick, the Council’s legal pronouncements are not merely law on the books but law on the ground (p.602).

Moreover, recent poll data suggests that there exists strong international will to resolve the Israel-Palestine conflict within the framework provided by the UN and its resolutions. Research published by The Chicago Council on Global Affairs and WorldPublicOpinion.org in 2007 found considerable support for the UN, which is seen around the world as the key organisation for conflict resolution according to the report. Across all 12 countries surveyed, majorities in eight (US, Armenia, Poland, France, Palestine, Israel, China, and India) and pluralities in four (Argentina, Russia, Ukraine, and Thailand), support the UNSC authorising the use of military force to protect people from severe human rights violations, such as genocide, even if the government in question is opposed.

It is noteworthy that the highest levels of support were found in China (76%), US (74%), Palestine (69%) and Israel (64%). Additionally, an average of 74 percent of respondents in the countries surveyed said that the UNSC has the right to defend a country that has been attacked, an average of 69 percent support the UN stopping a country from supporting terrorist groups, and an average of 48 percent support the UN restoring by force a democratic government that has been overthrown (The Chicago Council on Global Affairs and WorldPublicOpinion.org, 2007).

Most importantly for the purposes of this thesis, however, is that across the countries surveyed most respondents said they were willing to accept UN decisions even if those decisions went against the preference of their own country. Ten countries (four majorities and six pluralities) out of 16 surveyed

agreed to accept such UN decisions. Those with the highest proportions of respondents willing to accept UN decisions were China (78%), France (68%), US (60%), and Israel (54%). The fact that 54 percent of Israelis agreed (although 38 percent disagreed) that “when dealing with international problems, Israel should be more willing to make decisions within the United Nations even if that means Israel will sometimes have to go along with a policy that is not its first choice” is highly significant given the extent to which pro-Zionist lobby groups have criticised the UN for being anti-Israel (The Chicago Council on Global Affairs and WorldPublicOpinion.org, 2007). In the process of transforming such positive sentiments into positive action from world leaders, international norms, and identity factors are critical. It is these issues and the theoretical foundation of this thesis that will be addressed in Part II of this thesis.

Conclusion

This content analysis of the UNSC resolutions on the question of Palestine passed over the last 60 years shows that a normative framework for a just peace has been established. The UNSC has recognised that peace must be just if it is to be genuine and lasting, and this is reflected in the decisions it has made on all of the final status issues. Based on these resolutions, Israel must end its illegal occupation of Palestinian and other Arab territory, including Jerusalem. The settlements it has constructed on these lands are illegal and must be dismantled. The Palestinian refugees driven from their homes and lands, not only in 1967 but also between 1947 and 1949, have the right to return. Israel has been repeatedly condemned by the UNSC for not cooperating with the UN, failing to implement and abide by the Fourth Geneva Convention, and consistently violating UN resolutions. The contents of the UNSC resolutions have the potential to be a particularly compelling instrument for Palestine advocacy networks given the authoritative status of these resolutions coupled with the global support for the UN, including in Israel itself, as the principal organisation for conflict resolution.

PART II
Theoretical Foundation

Chapter 3: Constructivism and the Role of International Norms and Identity in Conflict Resolution

Global norms and identity factors have a critical, yet under-recognised, role in a resolution of the Israel-Palestine conflict. Independent of strategic and material interests, global norms, and identity factors have the capacity to determine states' policies (Klotz, 1995a). The theoretical perspective from which this position is derived is termed 'constructivism'. To date, constructivism has contributed little to the issue and insufficient attention has been paid to the potential of international norms and identity to contribute to the conflict's resolution. This chapter defines and conceptualises constructivism, highlighting the work of its major proponents, and explaining the prominent position it has come to occupy in international relations vis-à-vis earlier theoretical perspectives in the field. It then addresses the issue of norms in international relations focusing on their diffusion through the process of socialisation as well as the central role that the identity considerations of states play in international relations and conflict resolution.

This chapter examines the case of South Africa as a model for the role of norms and identity factors in resolving conflict and explores parallels between this conflict and that in Israel-Palestine. A fundamental distinction between the two conflicts is that in the case of South Africa, the international advocacy campaign for the elimination of apartheid was based on the promotion of a single international norm, racial equality. However, in the case of Israel-Palestine the norms that support the Palestinian cause, decolonisation and self-determination, compete with, and are increasingly offset by, the Israeli claim to the norm of self-defence. Competing norms is a major contributing factor to the continuity and intractability of the Israel-Palestine conflict, but has not been addressed in the literature.

Definition and conceptualisation

Since the late 1980s and particularly since the mid-1990s, there has been a growing body of literature concerning the impact of norms, ideas, and identities

on international relations. This body of literature, broadly referred to as constructivism, does not dismiss the role of material or strategic interests, which historically has been central to international relations theory. Rather, constructivism asserts that such interests are defined in the context of norms, ideas, and identities. Constructivism is an approach, derived from sociological theory, that has been applied to the realm of international relations. It regards international relations as analogous to social life whereby state and non-state actors are perceived as social actors that shape and are shaped by international 'society'. The structure of the international system is seen to be produced, reproduced, and transformed through the interaction of state agents (Wendt, 1999).

Constructivism provides a systematic approach to studying international relations through an understanding of social relations (Kubalkova *et al.*, 1998). Three core propositions of constructivism are that norms and ideas are as important as material structures; social identities condition the interests and actions of states; and that the same processes that create norms and ideas may also cause their transformation (Reus-Smit, 2004). Constructivism emphasises the importance of normative as well as material structures on the identity of states in shaping their political action (Reus-Smit, 2005). Material factors and conditions impact upon cognitive and communicative processes in a 'battleground of ideas', in which states "try to determine their identities and interests and to develop collective understandings of the situation in which they act and of the moral values and norms guiding their interactions" (Risse *et al.*, 1999, p.7).

Conflict is not seen as endemic to international relations from the constructivist perspective. Rather, constructivism contests the two central assertions of neo-realism: that anarchy characterises international relations due to a lack of central authority and that states compete with one another for survival, ensured only by their power, particularly military power (Wendt, 1992; 1999). Among the strongest critiques that constructivism has levelled against the previously dominant realist perspective is its conception of 'power'. Realism sees power in possessive and materialist terms. The major weakness of this perspective is its inability to view power as a social conception and to recognise the power of

international law on states that possess material power. Power is not something states 'own' but acquire through social relationships (Reus-Smit, 2005).

Constructivism emphasises the 'logic of argumentation' as norms are considered to "provide the communicative framework in which actors debate issues of legitimate agency, purpose, and strategy" (Reus-Smit, 2004, p.23). Alexander Wendt (1992) rejects the notion that anarchy is a causal factor in the state of world politics or the use of self-help by states. He argues that the state of world affairs is best explained in terms of process. 'Anarchy is what states make of it' because "people act toward objects, including other actors, on the basis of the meanings that the objects have for them" (p.396-397). Neither anarchy nor the relative power of states is sufficient for states to distinguish friends from enemies or how to deal with either. Rather, 'identities', conceptions of the 'self' and the 'other', as well as the "collective meanings that constitute the structures which organise our actions" are more fundamental determinants of state interests and behaviour in the international realm (p.397).

In his later work, Wendt (1999) again rejects the neo-realist conception of international relations, advocating an understanding based on a social ontology. He argues that material forces play a minor role in international relations and that a far more robust understanding is possible through the study of ideas, identity, and culture. In short, he contends that social factors impact upon the material, rather than the reverse. Wendt (1999) offers a cultural theory of structure which views structural change as cultural change. This, he argues, enables one to explain change in international politics. In the process of change, Wendt asserts that states have continually made something new of anarchy. He explains that structural changes occur when states redefine their identity and interests. Friedrich Kratochwil (1995) also examines the role played by norms in state decision making. He contends that choices states make are influenced by norms. Kratochwil (1995) asserts that decisions are shaped by norms and rules through a process of deliberation. Two shortcomings of the realist conception, in his assessment, are: a lack of appreciation for how social order is created through the influence of norms and institutions on decision making and a lack of consideration for the possibility of order even in the anarchical states of international relations.

The failure of neo-realists and neo-liberal scholars in the field of international relations to anticipate the end of the Cold War or account for the ensuing developments in the world order marked a loss of faith in the field in these approaches and a commensurate appreciation for constructivism (Klotz, 1995a; Fierke & Jorgensen, 2001; Reus-Smit, 2005). Neo-realist and neo-liberal theories were also at a loss to explain other significant developments that occurred during and following the Cold War. Audie Klotz's (1995b) work demonstrates the shortcomings of the conventional theoretical perspectives of international relations – preoccupied with material and strategic interests – to explain the Western imposition of sanctions on South Africa and the fall of apartheid. More specifically, they failed to explain the emergence of racial discrimination within South Africa as a global issue “in a system based on sovereignty and domestic jurisdiction”, and why most organisations and states adopted sanctions “despite the strategic and economic interests that had previously ensured strong ties with South Africa” (p.8).

Klotz (1995b) asserts that conventional theories of international relations cannot explain US sanctions against South Africa, “particularly during a peak period of concern over Soviet challenge” (p.93). Other than constructivism, international relations theories are incapable of explaining not only that the US imposed sanctions despite its economic and strategic interests, but also the fact that it followed rather than led the movement (Klotz, 1995b). Klotz (1995b) concludes that the “success of transnational anti-apartheid activists in generating US sanctions against South Africa offers evidence that norms, independent of strategic and economic considerations, are an important factor in determining great powers' policies” (p.94). The role of norms and identity in the case of South Africa and its relevance to a resolution of the Israel-Palestine conflict will be further discussed later in this chapter.

Unlike its predecessors, constructivism has emerged from major upheaval in international relations without requiring significant revision of its central propositions. Christian Reus-Smit (2005) observes a pattern of catalytic events influencing the development of international relations theory. Liberalism, he explains, developed in the post-First World War era and realism in the context of

the Second World War, while constructivism developed in a post-Cold War context. One would, therefore, expect the catalytic impact of 11 September 2001 and the subsequent war on terror to have generated further developments in international relations theory. However, 9/11 has “not sparked a tectonic shift in the nature of constructivism, or the general terrain of International Relations theorising” (Reus-Smit, 2005, p.208-209). Although the field has refocused on issues of power, hegemony, and the state, which one might expect to advantage realist thinking, the prevailing expectation is for a more dominant role from constructivism. What is regarded by some as the three most important questions now facing the field – “the nature of power, the relationship between international and world society and the role of culture in world politics” – fall within the strength of constructivist explanatory potential (Reus-Smit, 2005, p.209).

Norms in international relations

The issue of norms had been central to the study of politics for millennia. An emphasis on behaviourism and its emphasis on measurement resulted in a decline in the attention paid to normative issues in the 1970s and 1980s. However, with the rise of constructivism in international relations through the work of Onuf, Wendt, Ruggie, and Kratochwil, norms have made a marked return (Finnemore & Sikkink, 1998). As in the field of sociology, scholars of the constructivist perspective of international relations define norms as “shared expectations about appropriate behaviour held by a community of actors” (Finnemore, 1996, p.22). Norms act as a prism through which states perceive their interests; they shape the goals of a state as well as the means of achieving them (Florini, 1996). Prominent constructivist scholar Martha Finnemore (1996) explains that “state interests are defined in the context of internationally held norms and understandings about what is good and appropriate” (p.2). Domestic and international norms are related in the sense that the latter may evolve out of the former through the activism of entrepreneurs (Finnemore & Sikkink, 1998).

Finnemore (1996) contests the notion that external threats or the demands of domestic opposition pressure states to redefine their interests. Rather, she argues, interests are shaped by “internationally shared norms and values that structure and give meaning to international political life” (p.3). She draws on

sociological theory and research to explain the influence that norms have on the behaviour of states, arguing that international organisations like the World Bank, Red Cross, and UNESCO “socialise states to accept new political goals and new values that have lasting impacts” on the international political economy, conduct of war, and the structure of states (p.3). Through the process of socialisation, the international system provides states with new norms and values and changes their behaviour not by constraint, but by “changing their preferences” (p.6). This finding is supported by the earlier work of Kathryn Sikkink (1993), who explains that the “emergence of human rights policy is not a simple victory of ideas over interests. Rather, it demonstrates the power of ideas to reshape understandings of national interests” (p.140).

In keeping with its sociological origins, the concept of socialisation receives considerable attention from constructivists. Wendt (1999) discusses the process of socialisation in terms of ‘cultural selection’, “an evolutionary mechanism involving the transmission of the determinants of behaviour from individual to individual, and thus from generation to generation by social learning, imitation or some other process” (p.324). From a constructivist perspective, the socialisation process is considered crucial for states to become members of the international society. Through this process they internalise international norms, which then condition their policies. Moreover, through socialisation states define their own identities and interests (Reus-Smit, 2004). As explained by Risse *et al.* (1999), socialisation occurs when “principled ideas held by individuals become norms in the sense of collective understandings about appropriate behaviour which then leads to changes in identities, interests, and behaviour” (p.11).

Finnemore (1996) explores the socialisation processes through which states define their interests and the means by which they choose to pursue them. Her work addresses the international social structure in terms of meaning and values, rather than power, in order to understand state interests. She argues that the networks of transnational and social relations in which states are embedded “shape their perceptions of the world and their role in that world” (p.2).

Finnemore and Sikkink (1998) refer to ‘international socialisation’ as the primary mechanism for promoting the diffusion of norms among nations or what they refer to as ‘norm cascading’. The authors identify matters of ‘identity’, which will

be discussed later in this chapter, as the main reason for state compliance with new norms and explain this as a mutually reinforcing process; the more states are defined by their adherence to or violation of the new norm the more effective their compliance with it.

Socialisation has been found to be particularly effective in the diffusion of human rights norms. In their study of the diffusion of human rights norms across 11 countries (Kenya, Uganda, South Africa, Tunisia, Morocco, Indonesia, Philippines, Chile, Guatemala, Poland, and Czechoslovakia) Risse *et al.* (1999) found that irrespective of region, country, socio-economic system, culture, or type of political regime, socialisation processes were effective in that process. The authors concluded that the socialisation processes captured by their 'spiral model' are "universal and generalisable across regions and domestic structures" (p.238). Their research rejects the notion that certain social, political, or economic systems make states resistant to international pressure of human rights advocacy movements. It also rejects the Huntington assertion that international human rights norms are alien to certain cultures or global regions.

Norms, international law, and international politics

As documented in the previous chapter, the UNSC resolutions on the question of Palestine have an authoritative status in international law and provide a normative framework for a just resolution of the Israel-Palestine conflict. There also exists strong will within the international community for conflict to be resolved within the UN framework and according to its decisions. These findings support a constructivist perspective of conflict resolution.

The constructivist perspective of international law marks a significant departure from the previously dominant realist perspective in which international law is subordinated to politics, determined by dominant states, and subject to their interests. Constructivism, by contrast, places a high degree of importance on international law. Along with international organisations, particularly the UN, international law is regarded as the primary mechanism for the articulation of global norms and for 'collective legitimation' (Risse *et al.*, 1999). Finnemore (1996) regards norms as central in this context, stating that in the international

realm “norms are the law”. She rejects the realist questioning of the existence of international law and also its alternative conception of international law as “an epiphenomenon of power politics” (p.139).

International law is viewed by constructivists as a core component of the normative structures produced by, and constitutive of, international politics. Christian Reus-Smit’s (2004) *The Politics of International Law* examines the relationship between the fields of international relations and international law from a constructivist perspective. It explores how the nature of international politics constitutes international law as well as the impact that law has on international politics. The author contends that in “the modern era politics has given the institution of international law a distinctive form, practice, and content” and that “international law has also ‘fed back’ to condition politics” (p.5). In short, politics structures law and law conditions politics. Reus-Smit offers a compelling critique of the realist position’s dismissal of the capacity of international law to produce international order:

If the scope of international law is determined only by the interests of the powerful, it needs to be explained why there is an increasing number of legal instruments, covering issues as diverse as crimes against humanity, human rights, the environment and trade, that often stand in opposition to the self-conceived interests of the strong. How do these instruments come into being and have at least enough force for it to be clear that violation of them will carry significant political costs? (p.17).

He also notes that strong states do not invariably ignore international law, and when they choose to deliberately violate it “they do so in the knowledge that as well as incurring political costs their actions will have to be justified as ‘legal’” (p.17). Reus-Smit (2004) is equally critical of the rationalist perspective for its failure to take account of the role international law plays in conferring legitimacy on states in terms of agency and action along with its view of international law as merely a ‘set of regulatory rules’. He considers such a view to ignore the ‘obligatory force’ of international law, particularly when centralised enforcement mechanisms are absent.

Supporting the position of this thesis that a just resolution of the Israel-Palestine conflict must be based on the relevant UNSC resolutions, research by Risse *et al.* (1999) concludes that human rights advocacy networks were correct in placing a high level of importance on the upholding of international law. They observe that “a necessary condition for sustained rule-consistent behaviour in the human rights area is attainment of prescriptive status for international norms, which in turn implies the signing and ratification of the relevant international human rights conventions” (p.276-277). They also explain that “the rule of law is a crucial precondition for sustained human rights change and for habitualised practices” (p.277). In this respect, the normative framework based on the resolutions of the UNSC presented in the previous chapter provides an important platform for Palestinian and transnational advocacy networks seeking a just resolution of the conflict. It is also to their advantage that certain international norms central to the Palestinian cause have already been established, namely decolonisation, self-determination, and racial equality.

The establishment of decolonisation, self-determination, and racial equality as global norms is largely due to the activism of the Non-Aligned Movement (NAM). Established in the 1960s, the NAM is arguably the most significant development of the second half of the 20th century in terms of relations between the Third World and the major powers. The primary concerns of the Movement have consistently been equality and peaceful co-existence among nations, decolonisation, and economic development. The Movement’s impact was made on the world through its collective action at the UN and was the driving force behind the UN’s commitment to decolonisation (Willetts, 1978).

By the late 1960s, the NAM experienced a period of decline when it seemed to lack the will or ability to confront the actions of Israel and the US. The Movement’s revival came once the issues of Israel’s occupation of Palestine, the US’ war on Vietnam, and apartheid in South Africa were linked and confronted through a common theme of anti-colonialism. By 1970, the NAM had redefined the context of ‘peace and security’ with its identification of racism, apartheid, colonialism, and imperialism as the main threats to peace. To advance the process of decolonisation, the Movement utilised the UN as a forum as well as the UN Charter, in which the UN’s own commitment to ‘friendly relations among

nations based on respect for the principle of equal rights and self-determination' is explicitly stated in Article 1(2) (Willetts, 1978).

Effectively, the NAM was instrumental in holding the UN to its commitment to decolonisation and self-determination, and contracting the timeline of what was originally intended to be a long-term goal rather than an immediate objective. In 1960, a draft resolution by the Afro-Asian block received 89 votes in favour, 9 abstentions, and none against; it became Resolution 1514, which significantly advanced the decolonisation struggle by declaring self-determination a 'right'. While it was a central agenda item at the 2nd NAM summit in Cairo in 1964, the issue of Palestine's decolonisation was only taken up by the NAM after 1970 (Willetts, 1978). At the 6th NAM summit in Havana, Palestine received strong support and Zionism was identified as a threat to peace alongside racism, apartheid, and colonialism. More recently the question of Palestine has continued to receive strong support from the Movement as exemplified at the 13th NAM summit in Kuala Lumpur and the 14th summit in Havana. Support of the NAM for Palestine is significant given that the Movement is now comprised of 118 member-countries.

Transnational advocacy networks

Transnational advocacy networks are another entity that has been increasingly instrumental in the process of norm diffusion. Constructivists have extended their analysis of socialisation to explain the emergence, spread, and acceptance of norms, along with the types of pressure exerted on states in this process and the conditions under which norms are adopted. The work of Finnemore and Sikkink (1998), for instance, describes the norm life-cycle. It views this as a three-stage process involving norm emergence, then acceptance, followed by cascade, and internalisation. The successful emergence of a norm depends upon the ability of transnational advocacy networks or 'norm entrepreneurs' to raise awareness as well as the organisational platform from which they act (Finnemore & Sikkink, 1998). An awareness-raising process is critical and may even involve 'inappropriate' acts such as civil disobedience in order to disseminate the message and frame the issue as "standards of appropriateness are precisely what is being contested" (Finnemore & Sikkink, 1998, p.897).

It is useful at this point to note that there exists an extensive network of Palestine advocacy groups globally. Among the most well established are the Palestine Solidarity Committee based in South Africa, which draws on the anti-apartheid movement of that country; Stop The Wall, which is active in Palestine and around the world; and the International Solidarity Movement (ISM), which has over 30 branches around the world, including in Australia, France, Germany, Greece, Czech Republic, Spain, Sweden, UK, US, and Canada. Within Western nations there are also numerous other Palestine advocacy groups. In the UK, there are groups such as the Palestine Solidarity Campaign (PSC), which has around 40 branches across the UK, and others such as Friends of Al-Aqsa, which is a more Islamically-oriented organisation. In the US, among the most prominent groups are Al-Awda (The Palestine Right to Return Coalition), American Association for Palestinian Equal Rights, and If Americans Knew, in addition to dozens of active university-based Palestine advocacy groups. In Canada, there is the Canada Palestine Association and Palestine Solidarity Group among numerous others. In Australia there are multiple Palestine advocacy groups in each state, including Women for Palestine, Australians for Palestine, Australian Friends of Palestine Association, Fair Go for Palestine, Australians for Justice and Peace in Palestine, and the Coalition for Justice and Peace in Palestine. Many of these groups have hundreds of members and supporters, while others, such as ISM, Stop the Wall, and the Palestine Solidarity Committee boast many more. In Israel itself there are also Palestine advocacy groups such as Gush Shalom and the Israeli Committee Against House Demolitions.²⁸

There is also the Israeli human rights group, B'Tselem, as well as international human rights organisations such as Amnesty International and Human Rights Watch that advocate on behalf of the Palestinian people. Additionally, there are a range of Arab and Islamic organisations based in Western countries that support the Palestinian cause, including the Council on American-Islamic Relations (CAIR), Muslim Public Affairs Council, and the National Association of Arab Americans in the US; the European Muslim Network, European Council for Fatwa and Research, the Federation of Islamic Organisations in Europe; and the Australian Federation of Islamic Councils to name only a few.

²⁸ An extensive list of Israelis who actively support Palestinian rights can be found in Carey and Shainin's (2002) *The Other Israel: Voices of Refusal and Dissent*.

Transnational advocacy networks play an important role in reminding Western governments of their own values and of their identity as liberal, democratic societies. Sikkink (1993) observes that the diffusion of human rights norms were championed by NGOs and later adopted by state institutions. She also states that continued support for human rights depended on “the active documentation and lobbying of nongovernmental actors” (p.170). Risse *et al.* (1999) argue that the diffusion of human-rights norms internationally depends on the ability of domestic and transnational advocacy networks to inform public opinion and Western governments. The authors identify three necessary conditions for domestic change in terms of human rights: (1) exposing norm-violating states so as to raise moral consciousness and to reinforce the identity of liberal states as human rights advocates; (2) empowering, legitimising, and mobilising domestic opposition, social movements, and NGOs in support of human rights and against violators; and (3) challenging norm-violating governments so as to increase pressure and narrow their options for continued repression.

The framing of norms is of fundamental importance to their promotion. Norms tend to be particularly effective when framed within the context of existing norms, specifically those already within international law (Finnemore & Sikkink, 1998). As an example of the importance of framing new norms with the context of existing ones, Finnemore and Sikkink note that the campaign against female circumcision did not initially make significant headway perhaps because of a pre-existing positive perception of male circumcision. However, once the issue was framed as ‘female genital mutilation’ in the context of ‘violence against women’ the issue “resonated much more strongly, and the campaign gained adherents” (p.908).

Moreover, Tsutsui (2006) explains how recent political and cultural transformations have increased the potential for the global dissemination of issues concerning human rights. Taking the issue of the ‘comfort women’ exploited by the Japanese during the Second World War, the author explains that the global movement demanding their compensation expanded as “global political opportunities, international networks of activists and globally sanctioned vocabularies for framing became increasingly influential and accessible to the

activists” (p.347). For forty years the issue was dormant, and it was not until the movement linked itself to the broader global concerns of ‘violence against women’ and ‘crimes against humanity’ that effective political pressure could be asserted on the government of Japan.

The elimination of apartheid in South Africa, however, is perhaps the most significant example of the extent to which international norms and identity factors are capable of producing the necessary shift in the policies of even ‘great powers’ in support of conflict resolution. As discussed below, the promotion of the norm of racial equality by transnational advocacy networks and the shaming of politicians who continued to support South Africa’s National Party or otherwise did not support sanctions against South Africa resulted in the replacement of apartheid with majority rule.

The case of South Africa: Lessons for the Israel-Palestine conflict

The case of South Africa provides important lessons for resolving the Israel-Palestine conflict. Notwithstanding that such comparisons have been made by various scholars, including Lieberfeld (1999), Hauss (2001), Gidron, Katz, and Hasenfeld (2002), Galtung (2004), Ramsbotham *et al.* (2005), and Veracini (2006), I do not assert that the two conflicts are identical in terms of their origin, nature, or form. However, Veracini (2006) rejects the notion that the Israel-Palestine conflict is unique or that it cannot be compared to other colonial conflicts such as apartheid South Africa. He argues that the Israel-Palestine conflict cannot be interpreted but through a colonial framework and finds extensive parallels between it and the case of South Africa.

Indeed, there are important parallels between the two cases in terms of their treatment by the UN, international community, and world powers, as well as the available options concerning their resolution. Like the struggle for the elimination of apartheid in South Africa, the liberation of Palestine is regarded internationally, including by the UN, as a struggle for decolonisation and self-determination. In both cases the struggle for a just resolution was/is sought on the basis of international law and human rights. Moreover, the two cases are comparable in terms of their support within the UN for a just resolution and the opposition to

which from world powers. As in South Africa, Western support for a just resolution has been obstructed in Palestine due to perceptions of material and strategic interests. Principal among such interests is the perception of a 'threat' providing a potent 'blocking' argument against a just resolution. Like the apartheid regime in South Africa, Israel has also attempted to modify its policies in a manner consistent with certain international norms but without interfering with its strategic interests or goals. Finally, as in the case of the ANC in South Africa, Palestinian resistance groups battle not only against a superior military force, but also the label of 'terrorist' applied by Western powers, which places serious constraints on viable options for resisting the occupation.

Threats and perceived threats to national identity are central to the continuity of the conflict in Israel-Palestine as they were in South Africa (Lieberfeld, 1999). Lieberfeld (1999) observes five political and perceptual shifts that led to direct negotiations and mutual recognition between the conflicting parties: 1) recognition by each side that military coercion would not achieve the desired political goals; 2) perception of the status quo as untenable; 3) perception of each side that negotiations would lead to an acceptable outcome; 4) leadership change that brought pragmatists to power; and 5) recognition that the primary negotiating partners could not be circumvented by alternative negotiating partners.

Since the time of the Oslo Accords, however, the landscape of the Israel-Palestine conflict has seen some significant changes, which have negated most of the above. The second *intifada*, Israel's sustained military campaign since 2000, the election of Hamas in January 2006, and the firing of Qassam rockets by Hamas and Islamic Jihad from the Gaza Strip suggest that for both sides the value of military coercion has been renewed. From my own experiences and observations in Israel and Palestine in 2006, I found that for the majority of both Israelis and Palestinians the status quo is still untenable, but the failure of peace negotiations have for many left a perception that violence is the only option. When conflict management measures are not followed by an expected resolution, as in the case of the Oslo Accords, feelings of 'betrayal and faithlessness' are heightened, calls for a return to violence are raised, and the conflict's intractability widens (Zartman, 2005).

In this climate, very few on either side demonstrate any serious faith in negotiations achieving acceptable outcomes. The election of Hamas is a clear expression of the Palestinian people that the Fatah's negotiation strategy had failed and that alternatives were necessary. The isolation of Hamas by Israel and the US, however, represents a move back to the old negotiating partner, Fatah. The major shortcoming with this strategy is that Fatah does not have the support of the majority of the Palestinian people and will most likely not be able to implement whatever it negotiates, particularly given the support of Hamas among the Palestinian people. SBS (Special Broadcasting Service) Middle East correspondent, Sophie McNeill, reported from Gaza on 20 September 2007 for 'World News Australia' that Israel's strategy of closing off Gaza, preventing the import of food, electricity, and other goods and services is unlikely to turn the population against Hamas. Rather, she reported, people were rallying behind Hamas and Islamic Jihad.

A fundamental difference between the conflicts in South Africa and Israel-Palestine is structural. The former was directed toward 'one-state' with political pluralism, while in the case of the latter, the focus has been on territorial separation into two states. Lieberfeld (1999) explains "the centrality of territorial division gives the Israeli-Palestinian conflict more of a zero-sum character, since sovereignty is less easily shared than political power" (p.133). He also highlights the imbalance of power in the case of Israel-Palestine as a major factor in the failure to resolve the conflict. South Africa's economic and military advantage over the ANC was balanced by the majority-support the ANC enjoyed within the country and also from the international community. In the case of Israel-Palestine, the power imbalance has allowed Israel to create 'facts on the ground' in the form of settlements, the 'Judisation' of Jerusalem, and the separation wall, which in turn have made the conflict more intractable. The use of nonviolence in South Africa was a critical factor toward resolving the conflict for it enabled leaders on each side to promote coexistence and reconciliation without having to defend moves toward peace in a climate of existential fears (Lieberfeld, 1999). The potential of Palestinian nonviolence will be addressed in the next chapter. However, it should be stressed that Palestinian use of violence makes it difficult for Western powers to openly support Palestine and criticise Israel as any such

gestures exposes one to the charge of 'rewarding terrorism', which few leaders can tolerate in a post-9/11 world.

The eventual elimination of apartheid in South Africa represents a triumph of the norms of equality, decolonisation, and self-determination. The norm of human equality became established universally (Finnemore, 1996), and was central to the elimination of apartheid (Klotz, 1995b) and the earlier decolonisation process throughout Africa and Asia (Jackson, 1993). In Klotz's (1995a) analysis, the role of the UN in constructing the normative framework for defining the situation in South Africa and the appropriate global response to it was central to resolving the problem. She documents relevant resolutions passed by the UN General Assembly and Security Council from the 1960s onwards, noting that in spite of the US veto blocking mandatory sanctions, "innumerable General Assembly and Security Council resolutions since 1960 continued to condemn apartheid and reaffirm a norm of racial equality" (p.454). Ironically, the US condemned apartheid while it "resisted concrete multilateral actions against South Africa" (p.454). Similarly, a normative framework for just peace based on UN resolutions also exists in the case of Palestine, as demonstrated in the previous chapter.

With the exception of Palestine, the independence of Namibia in 1990 left South Africa as the last stand of colonialism. In spite of the global acceptance of decolonisation and self-determination as international norms, key world powers, specifically the US and Britain, refused for decades to support the international community's stance against apartheid and apply sanctions against South Africa. As is the case with Israel today, both the US and Britain had considerable material and strategic interests in South Africa. In spite of their economic interests and concerns with the ongoing Cold War, both the US and Britain eventually adhered to the norm of racial equality and imposed sanctions on South Africa, which by 1994 resulted in the elimination of apartheid and minority rule. The work of Audie Klotz (1995a, 1995b) is fundamental in explaining this development.

Klotz (1995a) asserts that there is no material reason to explain the shift in US policy from supporting South Africa's National Party to opposing apartheid and imposing sanctions. In her words, support for South Africa was based on a view

of the country as a “bulwark against communist influence in a resource-rich and capitalist southern Africa” (p.455). Similarly, Israel is regarded by the US as a strategic asset in the war on terror and an important partner in technological research and development, among other fields. Klotz (1995b) contends that with the exception of constructivism, international relations theories were incapable of explaining the imposition of sanctions by world powers, namely the US and Britain, particularly during what was a period of concern with the threat posed by Soviet Union and the strategic value of South Africa in the Cold War. The fact that the US and Britain followed, rather than led the movement provides further weight to the argument that transnational advocacy networks were able to promote the norm of racial equality to such a level that the norm was able to constitute their interests (Klotz, 1995a).

Key to defeating apartheid was that the international anti-apartheid movements refused to compromise on the norm of racial equality. Their rejection of the nominal ‘independence’ of the National government’s ‘tribal homelands’ in place of majority-rule is a case in point (Klotz, 1995b). In a perversion of human rights, even South Africa attempted a synthesis of international norms and apartheid policy when the government developed Bantustans or homelands for blacks to parallel the decolonisation process occurring throughout Africa. Klotz (1999a) contends that “apartheid strategists sought recognition for the Bantustans based on international norms of self-determination and sovereignty” (p.200). The more rapidly decolonisation occurred across Africa, the more vigorously the South African government supported autonomy for the homelands for they had the potential to “defuse pressure for non-white political participation” (p.202). It has been argued that the same motivation was behind Sharon’s support for a two-state solution with Palestine (Reinhart, 2005) as well as the Gaza pullout in 2005 (Reinhart, 2006).

Although the South African scheme involved citizenship and voting rights for the inhabitants of the homelands, all the nominally independent homelands were rejected by the UN and the international community, including Transkei (1976), Bophuthatswana (1977), Venda (1979), and Ciskei (1981). So comprehensive was the world’s rejection that “even South Africa’s most steadfast allies refused to accept a scheme that so blatantly furthered the aims of apartheid” (Klotz,

1999a, p.202). Klotz asserts that “diplomatic sanctions subverted apartheid by rejecting the Bantustan system”. She adds that “international non-recognition thus prevented the dismemberment of the country into separate racially based states and foreclosed the possibility of a political dispensation that excluded external and imprisoned opponents of apartheid” (p.203). In short, the international community’s rejection of the black ‘homelands’ scheme, “subverted the ‘grand’ apartheid plan” (Klotz, 1999b, p.268). By contrast, the Oslo Accords accepted by most Palestinians and the international community further entrenched the occupation, while the two-state solution advocated by the Roadmap offers no viable solution to the conflict and serves to strengthen Israel’s control over the remaining Palestinian territories of the West Bank and Gaza Strip (Reinhart, 2006).

The problems confronting the Palestinian resistance to the occupation, particularly for Hamas, are comparable to those faced by the ANC in South Africa, whose resistance was viewed by the US and Britain as “instigated by communist activists trained abroad rather than as a legitimate response to apartheid” (Klotz, 1995a, p.472). Even until the late-1980s, many member of the US Congress still preferred to promote the Zulus rather than the ANC, which they continued to see as a terrorist organisation rather than as freedom fighters. Only by 1987 was the ANC no longer treated as a terrorist organisation and official relations between it and the US established (Klotz, 1995a). Similarly, up until 1987 Thatcher regarded the ANC as a terrorist organisation and refused to recognise the organisation as a legitimate party in a negotiated settlement (Klotz, 1995b).

In spite of the perceived success terrorism has yielded those who resort to it, the use of such a strategy erodes the moral identity and potential international support, which is critical to achieving a comprehensive victory. A case in point is the ANC, who in 1981 became the first national liberation movement “to commit itself to obey the Geneva Conventions in its armed struggle against the apartheid regime in South Africa. It did so to gain further international support and to assert that its own moral identity was different from the government it was fighting” (Ignatieff, 2002, p.1154). Eventually, moderate Republicans came to recognise the “legitimacy of black South African demands for majority rule” (Klotz, 1995a,

p.472). As further testimony to the strength of international norms and identity factors to constitute the policies of even great powers, it is noteworthy that among the Republicans in the US, the concern over the 'communist threat' in South Africa remained, even when their narrow focus on strategic interests was rejected. This factor offers considerable weight to the argument for Palestinians to abandon the armed struggle and adopt nonviolence, which will be addressed in the following chapter.

Examined from a constructivist perspective, states, including powerful ones like the US, are socially constructed and, therefore, global norms contribute to defining their interests and shaping their policies. Rather than determining behaviour directly, Klotz (1995a) explains that norms "constitute identities and interests" and thereby define 'acceptable' or 'legitimate' policy options (p.461-462). Until the mid-1980s, "US policy-makers dismissed both sanctions and majority rule as antithetical to US strategic and economic interests" (p.455). However, by the mid-1980s politicians had become sensitive to the potential political risk of being seen as racist for supporting the South African government.

The establishment of racial equality as a global norm meant that it could not be ignored in either the domestic or international realms for the former would negatively impact on re-election prospects and the latter would harm US interests overseas. Hence, the norm resulted in a major shift in US policy (Klotz, 1995a). Klotz notes that by 1984, senators and representatives not yet having publicly committed to the norm of racial equality came out for they "recognised the importance of publicly rejecting apartheid and supporting sanctions" (p.467). This inevitably led to the demise of the 'constructive engagement' policy of the Reagan administration, which became a target for domestic and congressional criticism for it "appeared to tolerate white-minority rule" (p.467).

The argument pressed by the anti-apartheid activists and eventually accepted by the US government was that economic and strategic interests could not be achieved in violation of the norm of racial equality. A clear impact of the norm of racial equality was the discrediting of liberal economic reform arguments and the subordination of strategic arguments to a commitment to decolonisation. At this

point the US “adopted sanctions to signal, internationally and domestically, its support for racial equality through majority rule” (Klotz, 1995a, p.475).

The issue of sanctions against Israel is beyond the scope of this thesis. Rather, my principal focus is constructing the conditions under which a willingness within the international community to impose sanctions on Israel would be most likely to develop. It should be noted, however, that sanctions were successful in producing a social transformation in South Africa and if applied strategically are likely to be successful against Israel as well. Crawford and Klotz’s (1999) *How Sanctions Work: Lessons from South Africa* is particularly instructive in this regard. Klotz (1999b) contends that the success of sanctions against South Africa “need not be unique”, but that “the utility of international pressure remains contingent on particular international and domestic military, economic, and social contexts” (p.273). She observes that sanctions on South Africa had a number of effects, including strengthening the anti-apartheid movement, weakening the government’s ability to maintain apartheid, and creating political, economic, and social incentives for the ruling party to end apartheid.

Klotz (1999b) asserts that the decision of the South African government to eliminate apartheid and adopt majority-rule can only be understood when the impact of political, economic, and social sanctions are recognised. In the context of international human rights norms, “sanctions appear to be particularly appropriate for achieving political change through a process of socialisation, rather than coercion” (Klotz, 1999b, p.280). The impact of sanctions was particularly notable in the context of the sport boycott, which Klotz observes “inflicted socio-psychological pain and undermined the ideological foundation of the apartheid system, including South Africa’s deeply mythologised ties to European culture” (p.271), a point particularly relevant in the case of Israel, whose participation in European sporting leagues and other cultural activities is an important aspect of ‘European’ and ‘Western’ identity for Israelis. Like the sport boycott, academic and entertainment boycotts also proved to be particularly effective ‘smart’ sanctions against South Africa.

Klotz (1995b) advocates thinking of sanctions as part of a socialisation process, rather than a coercive one. Particularly in the context of international law, the

identity of a state is inseparable from issues of legitimacy, particularly in terms of policy and action. International human rights norms are an important 'constitutive' element of 'civilised' states and have, thereby, imposed limitations on the national sovereignty of those states that aspire to be identified as such (Risse *et al.*, 1999). In the case of South Africa these factors were central to the elimination of apartheid. The image of a pariah state eventually took its toll on white South Africans. Moreover, the impositions of multilateral and bilateral conditions for international legitimacy forced the South African government to eliminate apartheid (Klotz, 1995b). Klotz explains:

At the domestic level...both social and economic sanctions appear to have convinced the white electorate that the benefits of reform (including the resumption of international sporting contacts in addition to normal trade relations) outweighed the costs to them of majority rule. Neither Afrikaner leaders nor the white electorate, however, needed to be converted to a sincere belief in racial equality to eliminate the apartheid system. White South Africans were induced – rather than coerced – to reform by a combination of material and social incentives (p.168-169).

Although a subject for subsequent research, Klotz's findings make a considerable contribution in support of the viability of sanctions against Israel. Sanctions may be the most appropriate means by which to convince Israelis that the benefits of ending the occupation of Palestine outweigh the costs of becoming a 'true' Western democracy. Moreover, through the same process of 'material and social incentives' Israelis could also be induced to support the establishment of an independent Palestinian state.

The case of South Africa clearly demonstrates the critical role of international norms and identity factors in conflict resolution. A fundamental difference between the case of South Africa and Israel-Palestine is that with the former transnational advocacy networks were able to promote a single international norm, racial equality. However, in the case of Palestine, although the norms of racial equality, decolonisation, and self-determination are all well established and highly salient, they are undermined, offset, and inhibited as they compete directly

with the norm of self-defence invoked by Israel. It is to the issue of competing norms that this chapter will now turn.

Competing norms

The ability of such entities as the NAM as well as transnational advocacy networks to frame the Palestinian struggle within the context of decolonisation, self-determination, and racial equality is critical to achieving a just resolution of the conflict. It must be equally acknowledged, however, that what the UN and numerous human rights groups describe as Israeli 'repression' has been successfully framed by Israel and its supporters as 'counter-terrorism' or 'security measures' in the name of self-defence. Florini (1996) likens norms to genes in terms of their instructional value or capacity to influence behaviour. They are transmitted, she opines, through a process of inheritance and 'compete' for dominance.

For a new international norm to replace an existing one, three conditions must be satisfied: initial prominence due to an activist movement or support from a prominent host state; coherence or consistency with other accepted norms; and advantageous environmental conditions including power distribution, technology, and human resources (Florini, 1996). This analysis is particularly relevant to the competition between norms in the context of the Israel-Palestine conflict. Also critical to the Israel-Palestine conflict is what is referred to as world time-context or world historical events in norms gaining salience (Finnemore & Sikkink, 1998). As will be discussed in the next chapter, 9/11 and the war on terror impacted upon the Israel-Palestine conflict in a number of significant ways, primary among which was the elevation of the norm of self-defence at the expense of self-determination. The Israel-Palestine conflict remains unresolved largely due to the stand-off between the norms of decolonisation and self-determination, on the one hand, and the norm of self-defence, on the other. This section addresses each of these norms and their relation to the conflict.

Decolonisation and Self-determination

Perhaps the most potent aspect of the decolonisation movement was that it was based on Western ideas and norms, namely equality and self-determination. Thus, justification of colonialism or arguments posited in its defence “appeared to be denying the core values of Western civilisation”, leaving the colonialists in a no-win situation (Jackson, 1993, p.138). The decolonisation movement was “rooted in a sense of injustice” (p.131), not only on the part of the victims but also transnational anti-colonial activists. It is noteworthy that while anti-colonial resistance movements played an important role in raising the cost of colonisation, the institution of colonialism was defeated by the power of normative ideas and not armed resistance. Jackson argues that decolonisation was “above all an international change of ideas about legitimate and illegitimate rule and not a change in the balance of power or the economic utilities of imperialism” (p.130). By the 1950s colonialism had “fallen into moral disrepute” and within only a few years thereafter it was “equated with not only illegitimacy but with inhumanity and criminality” (p.130). Comparing the decade of colonialism’s elimination (1950s) with that of its position two decades earlier, Jackson concludes that colonialism “ultimately proved defenceless at the level of ideas in a world that was fundamentally different not materially but normatively” (p.130).

The vulnerability of the colonial system to moral criticism was due to its anchoring in a normative order based on a civilising mission, which came to be perceived as a doctrine of ‘racial supremacy’. Colonialism eventually collapsed under the weight of political and moral ideas that legitimated claims for independence and undermined those of the colonialists, namely equality and self-determination. Jackson (1993) asserts that “demands for independence based on equality and self-determination eventually deprived colonialism of its moral defences and put in its place alternative norms for justifying independent statehood” (p.119).

Among the primary purposes of the UN is the upholding of respect for the principles of equality and self-determination (Bailey, 1994). Self-determination is “the right of a people to become free by their own efforts” (Walzer, 2000, p.88). Bailey notes that until the 1960s, self-determination was referred to as a

'principle' rather than a 'right' so as to balance it with the UN Charter provision of 'non-intervention in domestic affairs' (Article 2.7) or the territorial integrity of states. However, when newly independent Third World nations joined the UN, the prominence of such norms as self-determination was raised. With the passing of General Assembly resolution 1514 in 1960, self-determination became a 'right' of all people, reaffirmed in numerous subsequent resolutions. Moreover, the imposition of mandatory sanctions on South Africa and Southern Rhodesia demonstrates the active role the UNSC also played in furthering the right of self-determination (Bailey, 1994).

Johan Galtung (1989) contends that self-determination, and the denial of this right to the Palestinians, is at the centre of the Israel-Palestine conflict. From the Palestinian perspective, its conflict with Israel is a struggle for the right to self-determination without external interference; the right to national independence and sovereignty; and the right to return to homes and property from which they have been displaced and uprooted. In the case of the Palestinians, the right to self-determination has been specifically established in such resolutions as 3236, which identifies 'self-determination', 'national independence', and 'sovereignty', as "indispensable for the solution of the question of Palestine" and "the establishment of a just and lasting peace in the Middle East" (Resolution 3236, 22 November 1974).

The right of the Palestinian people to self-determination was recognised, however, since the advent of the conflict. In 1917, the Balfour Declaration was made; the British Foreign Secretary, Arthur Balfour, pledged British support to WZO leader, Chaim Weizmann. Britain agreed to support 'the establishment in Palestine of a national home for the Jewish people'. Opposition to the Balfour Declaration was raised in the British cabinet by Lord Curzon on account of the contradiction he saw between supporting the Declaration and the right of self-determination of the people of Palestine. In fact, in Britain's House of Lords a vote of 60 to 29 was passed in favour of rejecting the Mandate over Palestine because of its inclusion of the Balfour Declaration. The House of Lords was ignored by the government, however, and the Mandate over Palestine was accepted (Quigley, 2005).

In September 1947, when the Special Committee on Palestine reported back to the General Assembly, it confirmed its position that the creation of a Jewish national home in Palestine 'ran counter' to the principle of self-determination. Moreover, the chair of the Israel-Jordan Armistice Commission, former US Commander E. H. Hutchison, regarded the passing of Resolution 181 as a case of the major powers disregarding the rights of the Palestinian people. He even went so far as to state that 'every step in the establishment of a Zionist state was a challenge to justice' (Quigley, 2005).

The global support for and recognition of the legitimacy of the Palestinian right to self-determination is perhaps best exemplified by the voting patterns in the UN General Assembly and UN Human Rights Council, which demonstrate overwhelming support for Palestine.²⁹ Generally, the only nations that consistently vote in support of Israel are the United States and Australia, along with a few small Pacific island nations.³⁰ It is noteworthy that other Western nations, namely Canada and those belonging to the EU frequently abstain from voting on resolutions critical of Israel thereby failing to significantly challenge the policies and practices of the Jewish state or support a resolution of the conflict based on international law.³¹

²⁹ However, in September 2007, the president of the UN Human Rights Council, Doru-Romulus Costea, was quoted in Israel's *Jerusalem Post* as stating his dissatisfaction with the Council's excessive focus on Israel's human rights violations and that this needs to change. 'UN: We have criticised Israel unfairly', *Jerusalem Post* (29 September 2007), Online Edition. Retrieved 1 October 2007, from <http://www.jpost.com/servlet/Satellite?cid=1189411508040&pagename=JPost%2FJPArticle%2FPrinter>.

³⁰ A case in point is UN General Assembly resolution ES-10/15 (20 July 2004) which 'Demands that Israel, the occupying Power, comply with its legal obligations as mentioned in the advisory opinion' of the International Court of Justice (9 July 2004). One-hundred and fifty nations voted for the resolution and only six were opposed: Australia, United States, Israel, Marshall Islands, Micronesia, and Palau. Among the 10 nations that abstained was Canada. It is noteworthy that the EU nations, including France, Germany, and the UK voted in support of the resolution.

³¹ A case in point is UN General Assembly resolution ES-10/14 (12 December 2003) which in accordance with Article 96 of the Charter of the United Nations, requests the International Court of Justice "to urgently render an advisory opinion on...the legal consequences arising from the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, as described in the report of the Secretary-General, considering the rules and principles of international law, including the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions". Ninety nations voted in support of the resolution, eight were against (Australia, Israel, United States, Ethiopia, Palau, Marshall Islands, Micronesia, and Nauru), while 74 abstained including Canada, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Hungary, Italy, Netherlands, Norway, Portugal, Spain, Sweden, and the UK.

In spite of the consistent US support for Israel, the UNSC resolutions that have been passed concerning the Israel-Palestine conflict provide a normative framework for a just resolution of the conflict as demonstrated in the previous chapter. A number of factors have undermined the authority of the relevant UN resolutions forming a basis for resolving the conflict, however. Crucial among them is the norm of self-defence invoked by Israel. The security concerns of Israel have been asserted since Israel's establishment in 1948 and strongly reaffirmed since 11 September 2001 in the context of 'counter terrorism'.

Israel's security and the norm of self-defence

Analysis of norm competition has generally focused on inconsistencies between the pursuit of national rights at the expense of human rights. Ignatieff (2001), for instance, notes that international human rights norms, specifically the right to self-determination, have advanced the concept of nationalism but that in the pursuit of statehood, human rights regimes have been violated. He describes the state of Israel as "the classic case of this preference for national rights rather than human rights" (p.15). The legitimacy of Israel's policies and practices is maintained, however, largely to the extent to which they can be defined within the context of existing norms. In the case of Israel, the salient norm is that of self-defence, which is arguably among the most well-established in international relations, also regarded as a 'right' and central to the 'just war' doctrine, which has been a key component of the rhetoric supporting the war on terror.³²

During the 1950s and 60s, under the realist perspective of international relations, the central issue was not justice but interests. Discussions of just war theory were not part of international relations discourse but that of religion and theology.

³² The origin of the just war doctrine was St. Augustine's (d.430) questioning of whether a person was in violation of the commandment 'thou shalt not kill' if they were to take the life of another in defence of the state. Blame for the violation of the commandment, he concluded, rested with the opposing party that compelled the good Christian leader to wage war. For St. Augustine, good intentions and an inner-love for one's enemy were more important to God than actions, even if that involved killing. His theory of just war formed the basis of Pope Urban II's crusade against Palestine in the 11th century and has since been invoked throughout Western history (Kurlansky, 2006). The theory of just war concerns the moral standing of warfare taking the position that under specific circumstances war is justifiable and that the conduct of war must meet certain moral standards to be considered just. Unjust wars are those fought out of aggression or for the purpose of conquest, economic gain, extending spheres of influence, or establishing satellite states (Walzer, 2004).

The Vietnam War was instrumental in opening up a political debate that increasingly defined interests using moral arguments (Walzer, 2004). Moral arguments are central to Israel's justification for its policies and practices toward the Palestinians. Essentially, these arguments are presented in terms of 'security' and invoke the norm of self-defence.³³

Israel has been described as being 'obsessed' with security and of having justified the extensive repression of Palestinians as necessary for its security (Ruether, 2006; Abu-Zayyad, 2004). In response to the Palestinians and its Arab neighbours, Israel developed a defence capability that has been described as 'disproportionate' to the threat posed (Freilich, 2006). Although confident of overcoming such threats, the concern among Israelis for their security is real and has even been described as a 'religion of security' (Arian, 1989).

The deep sense of insecurity among Israelis stems not only from the Holocaust but also the history of Israel, and that its demographics and size make it particularly vulnerable. Arab states are perceived to be able to recover from defeat, indeed they have, but Israelis consider that a single defeat will mean the end of their existence. Israel's military dominance in the region and peace with Egypt and Jordan have not diminished the Israeli sense of insecurity and fear that even these Arab states have not really accepted Israel's presence in the region. The Israeli insecurity factor is central to understanding the continued shift to the right in Israel, which seems to rise in response to perceived threats to the nation's security (Telhami, 2005).

A positive correlation can be observed between the rise of Islamic resistance in Palestine and heightened perceptions of a security threat among Israelis. Since the advent of the second *intifada*, higher numbers of Israeli soldiers believe they are fighting a war for Israel's security. Prior to the second *intifada*, large numbers of Israeli reservists sought exception when called for duty. However, the March 2002 call up during the second *intifada* was met with a 95 percent positive response rate. Polls have generally shown unwillingness among Israelis to fight for the occupation or settlements. Thus, the overwhelming response to the March

³³ It should be noted, however, that these arguments have been strongly refuted by Mearsheimer and Walt (2007), among others.

2002 call up is a strong indication that Israelis believed the second *intifada* represented a fight for their safety and survival (Walzer, 2004).

The high response to the call to duty among Israelis is regarded by Walzer (2004) as “a direct product of the terrorist attacks” (p.118). Palestinian terrorism is frequently assessed as “a political disaster for the Israeli left”, who, in the face of terror, “cannot mobilise opposition to the settlements; finds itself marginalised; its potential supporters are more and more sceptical about its central claim: that withdrawal from the territories would bring a real peace” (p.118). Simultaneously, such scepticism adds to the credibility of the right wing claim for the need to defend settlements deemed ‘no different’ from Israeli cities on the other side of the Green Line, including Tel Aviv and Haifa (Walzer, 2004).

Security considerations are, therefore, paramount in Israel’s conduct of relations with the Palestinians and Arab states and the major determinant of Israeli attitudes toward peace to the extent that most Israelis view all the components of the peace process from a security angle. Preventing the establishment of a Palestinian state (Heller, 1983), continuing the occupation of the West Bank and Gaza Strip (Averick, 1985), maintaining limits on democracy in Israel (Yaniv, 1993), and opposition to the Oslo Accords (Barder, 2001) have all been argued on the basis of Israeli security concerns. A poll conducted by the Jaffee Centre in 1993 found that 85 percent of Israelis ‘feared attack by an Arab in their daily lives’. All Palestinian violence is construed as terrorism by many Israelis and has been integrated into an overriding sense of ‘existential threat’ (Alpher, 1994).

More recently, a November 2001 poll conducted by the Smith Institute and commissioned by Independent Media Review and Analysis (IMRA) and the Zionist Organisation of America found that 81 percent of Israelis oppose a Palestinian state unless they could be certain, *a priori*, that the Palestinians would actually honour a peace agreement. Forty-seven percent oppose the establishment of a Palestinian state even with the guarantee, while one-third of Israeli Jewish respondents expressed support for a Palestinian state. Opposition to the establishment of a Palestinian state is based on security concerns according to the survey. Sixty-eight percent of Israeli Jewish respondents stated that the establishment of a Palestinian state, regardless of its size, would

constitute a threat to Israel. Moreover, 64 percent said that the establishment of a Palestinian state would add to the ability of Arab states to threaten Israel (Smith, 2001).

Furthermore, Palestinian violence is also perceived by non-Israelis as terrorism, threatening Israel's existence. When an April 2002 CNN/USA Today survey asked Americans if they would describe the recent violence committed by the Palestinians against the Israelis as acts of terrorism or as legitimate acts of war against their opponents, 70 percent said they were acts of terrorism (WorldPublicOpinion.org, 2006). Additionally, perceptions of Hamas in Europe and the US as a terrorist organisation have, since its election in January 2006, resulted in increased support for Israel among French and Germans according to a poll conducted between March and May 2006 by the Pew Research Centre (Kohut, 2006) and also among Americans according to a Gallup poll on world affairs conducted in February 2006 (Jones, 2006).

Indeed, since the rise of Hamas in the late 1980s, the Palestinian threat has been increasingly regarded as an Islamic threat (Alpher, 1994). Since the mid-1990s, suicide bombings have been regarded as one of the gravest strategic threats to the state of Israel and a strong relationship has been observed between Islam, *jihad*, and the use of suicide terrorism (Moghadam, 2003). In fact, during the first *intifada*, Israeli Prime Minister, Shamir, described the resistance of the Palestinians as a threat to the existence of the state of Israel. Despite the "absurdity" of the claim, it was "widely accepted" for it resonated with pre-existing notions of Arab aggression and Jewish victimhood (Walzer, 2004, p.108). In spite of their military strength, Israelis still feel vulnerable and recognition, particularly from the Arab world, is critical in the context of security, which, in material terms, for Israel means "defensible borders, demilitarisation, electronic warning stations, and so on" (Walzer, 2004, p.108-109).

The salience of the argument about Israel's security concerns cannot be examined in isolation from the global context. Even prior to 11 September 2001, a preoccupation with 'Islamism' as a security threat was present in the US. Moreover, US security considerations are largely conditioned by Israeli information about Islam (Gerges, 1997). Since 9/11, citizens of Western nations

have been conditioned to exhibit a heightened concern for security issues and have accepted considerable legislative, policy, and procedural changes in the name of security. Martin and Petro's (2006) work discusses the interconnectedness of international politics, terrorism, security, and popular culture in the context of the ubiquitous nature of the mass media. They explain that media technology has shaped popular culture, politics, and social life, and that fictional and factual representations of international threats and security issues have "helped to create and sustain a culture of fear, with far-reaching effects" (p.1).

Israel's security concerns are widely regarded by not only Israeli leaders but also Western leaders as 'exceptional' and on this basis Israeli security concerns have occupied an overriding position in the peace process. The claim of 'exceptionalism' in the case of Israel's security has not gone unchallenged, however. Merom and Jervis (1999), for instance, analyse the argument in terms of geographic, political, cultural, military, and historical factors and reject the notion as a myth, contending that Israel is not exceptionally vulnerable nor is its strategic relations with its neighbours exceptionally difficult. The authors assert that Israel's image of its national security situation is a distortion of reality that undermines rational analysis and has served to elevate military over political considerations. The work of Zeev Moaz (2006), *Defending the Holy Land: A Critical Analysis of Israel's Security and Foreign Policy*, concurs with this assessment and argues that in the name of security, Israel has initiated attacks and wars that were avoidable and has neglected to seize opportunities for peace.

The pro-Israel lobby has been instrumental, however, in promoting the norm of self-defence on behalf of Israel and ensuring that US power is used in the advancement of Israeli strategic interests in the region (Mearsheimer & Walt, 2007). Mearsheimer and Walt document the critical role the Israel lobby played in the aftermath of 9/11 in convincing the Bush Administration of the synonymy of US and Israeli enemies as well as their security interests, and also in ensuring US policy on the Israel-Palestine conflict became consistent with that of Israel. Supporting this claim, Alvaro de Soto's (2007) 'End on Mission' report to the UN provides extensive examples of how the US used its position within the Quartet

to further the interests of Israel, effectively acting as its “representative” (p.20). Moreover, the work of Antony Loewenstein (2006) notes the role of Australia’s pro-Israel lobby in promoting Israeli interests, including its self-defence claims among the Australian public and political leaders.

Mearsheimer and Walt (2007) explain that the tactic of the Israel lobby is to promote the interests of Israel by supporting those who endorse its views, while marginalising and silencing those who disagree. Four key arenas are targeted by the lobby in order to maximise their potential to shape public opinion and policy: government, media, think tanks, and academia. Political representatives and candidates, editors and journalists, and academics are praised and rewarded for expressing pro-Israel views, while those who criticise Israeli policy, practices, or the ‘facts’ of the conflict are labelled anti-Semitic. Think tanks are used to generate pro-Israel analysis, commentary, and ‘expert’ opinions for the news media and government in order to set the agenda on the conflict and influence government policy.

In spite of Israel’s overwhelming military superiority over not only the Palestinians but also all of its Arab neighbours (Marcus, 1989), the Israeli lobby and Israeli leaders, such as former Defence Minister, Itzhak Mordechai, have presented an image of Israel as a state with dire security concerns due primarily to its geographical location and the threat of extremist Muslims in the region (Mordechai, 1998). Others, such as Yaakov Amidror, former commander of Israel’s National Defence College, have also emphasised Israel’s security concerns and argued that the peace process, including the Oslo Accords and Geneva Initiative, exposed Israel to an increased threat of terrorism (Amidror, 2004).

Additionally, scholars, such as Efraim Inbar (1999), director of the Begin-Sadat Centre for Strategic Studies at Bar-Ilan University, Israel, have described Israel’s security ‘predicament’ as a case of survival in a ‘zone of turmoil’. When I interviewed Inbar in Israel in 2006 I was struck by the extent to which his entire perception of and approach to the conflict is shaped by military considerations to the exclusion of all other factors. He is critical of domestic and international restraints on Israel’s need to conduct pre-emptive strikes in order to maintain its

deterrent power in the region (Inbar, 1999). Such arguments in defence of Israel are prominent in the literature on the conflict; they have been accepted by various nations, including the US and Australia, as evident in their Middle East policies (Burchill, 2006).

A 'commitment to Israel's security' has been a long-standing mantra of Western leaders, particularly US presidents (Marcus, 1989). The concern for Israel's security is reinforced not only by pro-Israel lobby groups and Israeli leaders but by other world leaders as well, who, when addressing the issue of Israel, tend to make its security concerns a principal focus. In a speech to the American Israel Public Affairs Committee in May 2004, president Bush informed the crowd that "by defending the freedom and prosperity and security of Israel, you're also serving the cause of America", that "AIPAC is calling attention to the great security challenges of our time" and that "the United States is strongly committed, I am strongly committed, to the security of Israel...Israel is a democracy and a friend and has every right to defend itself from terror" (Bush, 2004).

Similarly, when Australia's former Foreign Affairs Minister, Alexander Downer, addressed the Annual General Meeting of the United Israel Appeal of New South Wales in November 2005, he remarked that "Australia is an unqualified supporter of Israel", that "Israel must continually fight for its existence" and asked "how can anyone expect the Israeli people to stand by as they see their friends, their spouses, their children blown apart in cafes and on buses?" (Downer, 2005). More recently, in interviews featured in the October 2007 issue of the *Australia/Israel Review*, both the then Prime Minister, John Howard, and Labor leader, Kevin Rudd, expressed their support for Israel, acknowledging its security concerns, and pledging their opposition to Hamas so long as it fails to adhere to the conditions set by Israel (recognise Israel, accept agreements, and renounce violence). It is noteworthy that neither leader, nor their American counterparts, have ever, to my knowledge, taken the even-handed approach of also requesting Israel recognise Palestine, accept agreements, and renounce violence against Palestinians.³⁴

³⁴ It is pertinent to note that Alvaro de Soto's (2007) report documents that Israel only accepted the Roadmap subject to 14 reservations. Moreover, he notes that Israel stands in violation of its

However, international norms and identity factors have the capacity to change such perspectives and policies. As seen in the case of South Africa, discussed above, among other cases, transnational networks of human rights activists have been found to be “the single most important group of actors to put a norm-violating government on the international agenda through a process of moral consciousness-raising”, even more important than the pressure exerted by ‘great powers’ (Risse *et al.*, 1999, p.242). The strength of the advocacy networks as well as the vulnerability of the norm violating state to external pressure are assessed by Risse *et al.* as the two most important factors in the movement of states from the phase of denial to making concessions.³⁵ A central factor in this process is the identity of states and their leaders in international relations. The competition between the norms of self-determination and self-defence is reinforced by identity factors, which particularly in the post-9/11 context tend to also favour Israel.

Identity

Identity and legitimacy factors are critical as states adopt international norms because leaders of those states care about what other world leaders and their people think of them (Risse *et al.*, 1999). Like people, states are deeply conscious of how they are perceived by others. Constructivists contend that identity factors are, therefore, critical to understanding international relations. States form a self-perception on the basis of their appraisal of how they are perceived by significant ‘others’ (Wendt, 1999). To take the analogy between social phenomena and international relations even further, some constructivists argue that many states adopt new norms out of ‘peer pressure’ from other states.

responsibilities under the Fourth Geneva Convention; the advisory opinion of the ICJ concerning the barrier; its Road Map obligations (which include freezing construction, dismantling unauthorised settlement outposts, opening Palestinian institutions in East Jerusalem, and facilitating the movement of PA representatives); and its AMA obligations (easing West Bank checkpoints, reaching targets for movement through crossing points in and out of Gaza, facilitating a seaport and airport in Gaza).

³⁵ Statements from Israeli and Western leaders that ‘both sides will need to make concessions in the promotion of peace’ sound fair and even-handed until one recognises that at the time of the establishment of the state of Israel, Jews only legally owned six percent of the land (only 11% in the part that UNGA resolution 181 recommended for a Jewish state), that only 55 percent of historical Palestine was ever allotted to the Israelis by the UN, that 23 percent of what is Israel today was acquired illegally through the use of armed force, and that the Palestinians made a historical concession in 1988 by accepting a state on only 22 percent of their historical homeland (Pappe, 2007).

Finnemore and Sikkink (1998), for instance, identify legitimization, conformity, and esteem as the possible motivations for adhering to such peer pressure. The authors also document the importance among states of a need to 'belong' or be part of a group of nations, generally defined by certain characteristics or labels such as 'liberal', 'democratic', 'socialist', 'Western', 'Asian', 'Islamic', and so forth. In short, states are inclined to follow norms associated with the kind of state with which they identify themselves. This factor is critical in the context of Israel, which, as discussed below, has since its genesis in the late 1890s demonstrated a desire to be perceived as a European or Western nation.

Identity issues often come to the fore at times of conflict in order to distinguish one's own state from one's enemy. Kowert (1998) explains that as a political crisis intensifies between nations, the parties involved will "exaggerate both their opponent's and their own identities" (p.110). A case in point is the 1956 Suez Crisis between Britain and Egypt.³⁶ Other research has confirmed the importance of international law in asserting identity. Finnemore (1996) notes that since the Franco-Prussian War of 1870, the first conflict in which both sides adhered to the Geneva Convention, it has been used as a propaganda tool in terms of compliance and non-compliance of the parties involved, demonstrating the degree of "normative authority it already carried in international public opinion" (p.83). She explains that states did not adopt the Geneva Convention out of self-interest or material advantage, but rather out of concern for 'duty', 'responsibility', and 'identity'.³⁷

Finnemore and Sikkink (1998) discuss the aversion of states to being labelled a rogue or pariah and argue that international legitimization is important to states for

³⁶ Britain's perception of Nasser had shifted from 'forthright and friendly' in 1955 to 'untrustworthy' and a 'communist sympathiser' only one year later. In spite of British rhetoric, nationalisation of the Suez Canal would not adversely impact upon oil supplies to Europe as it was in Egypt's economic interest to keep the canal open and collect maximum tolls. When this was pointed out to Prime Minister Eden, his reply was that the 'Arab capacity to cut off their nose to spite their face was infinite'. Kowert (1998) observes that the British interpretation of Egyptian behaviour "hinged not on the behaviour itself but on the ascribed identity of Egyptian agents. Moreover, Eden and his cabinet not only redefined Egyptian identity but increasingly their own (the Egyptians would not respect the rules; the English were honourable and law-abiding)" (p.118).

³⁷ It is noteworthy that Henry Dunant's advocacy campaign for the Red Cross was framed on the basis of "religious and moral duty borne by civilised nations" (Finnemore, 1996, p.87). The adoption of the Geneva Conventions by states cannot be explained in terms of strategic or material gain. They were not seen as a means to an end but as ends in themselves, as "affirmations of value about the kind of world people wanted and the kind of behaviour that was acceptable" (p.129).

domestic legitimacy to be conferred by their own citizens. In their analysis of regime vulnerability, Risse *et al.* (1999) highlight the importance of 'moral pressure'. They assert that "states do care about their international reputation and image as 'normal' members of the international community" (p.245). In this context they found 'shaming' to be a particularly effective mechanism of 'moral consciousness-raising' as "very few norm violating governments are prepared to live with the image of pariah for a long period of time" (p.245). Moreover, a critical factor in states moving to conform with and eventually internalise international human rights norms was the ability of transnational advocacy networks to use the 'moral power' associated with human rights norms to both persuade Western states to impose political and economic pressure on the states in question and to target their concerns for their own reputation through 'shaming'.

The effectiveness of shaming demonstrates the extent to which identity factors impact upon international relations. Contrary to expectation, research does not show that Western nations pressure violators to comply with human rights norms, but rather, when 'great powers' do apply pressure to enforce compliance, it is "almost always the result of shaming and lobbying activities by transnational advocacy networks" (Risse *et al.*, 1999, p.268). Risse *et al.* also observe that "great powers and their resources are only used to promote international human rights norms to the extent that shaming and lobbying activities of transnational advocacy networks are successful" (p.269). The shaming of states is most successfully used by advocacy movements not by way of logic to change minds, but "changing minds by isolating or embarrassing the target" (p.14). This process may involve labelling a state as a 'pariah', constructing categories of 'us' and 'them', and generally reaffirming state identities. Shaming has the effect of "convincing leaders that their behaviour is inconsistent with an identity to which they aspire" (p.15).

Wendt (1999) argues that interests and identities not only change over time according to prevailing norms but are acquired through a process of imitation, whereby states "adopt the self-understandings of those whom they perceive as successful" (p.325). While in international relations, success is often equated with power, the concept of power and its legitimate use also changes over time.

No longer is the conquest of one state by another considered glorious or virtuous but is now associated with 'pariah' and 'rogue' states (Wendt, 1999).

Consequently, Israel has modified its rhetoric vis-à-vis its conflict with Palestine in order to maintain consistency with the evolution of international norms.

Like South Africa, Israel used the same 'bulwark against the spread of communism' argument during the Cold War and has since then, particularly since 2001, presented itself as a critical partner in the fight against so-called 'Islamic' terrorism (Mearsheimer & Walt, 2007). Israel has been able to resist both internal and external pressure for it to adhere to the norm of self-determination in the case of Palestine through the successful use of 'blocking' arguments or counteracting norms, namely, 'security' and 'counter-terrorism'. Israel justifies the use of repression and avoids engaging in a peaceful settlement of the conflict by invoking the norm of self-defence. To the extent that people are persuaded by such 'blocking' arguments, norm-violating governments are able to deflect international pressure (Risse *et al.*, 1999). It is noteworthy that in the case of South Africa "it took transnational networks decades to convince Western publics and governments that anti-Communism is not a legitimate excuse for severe human rights abuses associated with apartheid" (p.262). Over time, however, such arguments eventually lose credibility, note the authors.

Once colonialism came to be perceived as an unacceptable form of rule, within a decade (mid-1950s to mid-1960s) most former colonies became independent. Notable exceptions were Namibia, which gained independence from South Africa in 1990; South Africa itself, which until the elimination of apartheid and implementation of majority-rule in 1994, was ruled by the white minority; and Palestine. The perception of Israel's occupation of Palestine as a form of colonialism is pervasive in the historical literature on the conflict. That the Zionist mission in Palestine was a 'colonial endeavour' was openly expressed by Zionist leaders such as Vladimir Jabotinsky, whose ideas have remained influential on both sides of Israeli politics (Shlaim, 2000; Hirst, 2003). Recently, Lorenzo Veracini (2006) has also noted that historically Zionism presented itself as a colonial movement. He also argues that the Israel-Palestine conflict is best understood through the paradigm of colonialism and that its resolution needs to be pursued in terms of a de-colonisation process.

Like all states, however, Israel is conscious of its identity and image in the international community. It is out of concern for its identity that Israel has redefined itself in accordance with prevailing international norms. Joseph Massad (2006) explains that “while Zionism in its early history presented itself unashamedly as a colonial-settler movement, it later insisted that it was nothing less than a Jewish national liberation movement which could even be viewed as anti-colonial” (p.143). Moreover, “the end of formal colonialism...left Israel battling alongside Rhodesia and South Africa as the only remaining settler-colonies in Asia and Africa. Being the last settler-colony since 1994 has not been a reassuring status for Israel” (Massad, 2006, p.177).

Research by Deon Geldenhuys is particularly instructive in this context. Geldenhuys' (1990), *Isolated States*, presents a set of indicators to measure the impact of international isolation on states. These indicators are divided into four categories: political-diplomatic, economic, military, and socio-cultural. Based on his analysis Geldenhuys categorises Israel as a pariah state and asserts that Israel's international legitimacy is still not conclusive decades after its establishment. He explains that while numerous countries recognise Israel and have diplomatic ties, numerous others do not. The author considers this image to be due to four main factors: Israel's occupation of the Palestinian territories since 1967, its brutal response to the first *intifada*, association with South Africa during the apartheid era, and the atrocities it committed in Lebanon during its 1982 invasion and occupation. The condemnation Israel has received in the UN for its policies and practices toward the Palestinians and attacks on its Arab neighbours have intensified Israel's pariah image, he contends.

Moreover, Geldenhuys (1990) observes that Israel's pariah image has increased not only for its association with South Africa during the apartheid era, but because of the association between the two states that has been made in the UN, particularly the UN's simultaneous identification and condemnation of 'colonial domination' in southern Africa and Palestine (Resolution 2649, 30 November 1970) as well as the passing of UN Resolution 3379 (10 Nov 1975) which identified Zionism as a form of racism and racial discrimination. He notes, however, that Israel's only 'vital saving grace' in the Western world is “its liberal

democratic political system” and that its ‘shared political values with Western nations’ has created a “particular bond with them” (p.105). Geldenhuys (1990) also argues that the pro-Israel lobby in the US has played a significant role in ensuring the continuation of the ‘special relationship’ between the two nations.

For Israel, the need to ‘belong’ is expressed through its desire to be seen as a Western, democratic nation. Massad (2006) provides a detailed analysis of Israel’s enduring desire to be accepted as a European state. He contends that Israel’s maintenance of its Jewish supremacist character under the guise of retaining ‘democratic’ values has been accepted in the West due to a perception of Jews as “white Europeans defending white European values and civilisation against primitive Arab hordes” (p.151). Deeply conscious of the negative traits ascribed to the Jew by Europe, Zionism “wanted to rid the Jews of such traits and teach them to be European” (Massad, 2006, p.168).

The critical issue is the Zionist understanding of what it means to be European. For a people subjected to racism and discrimination, to be European was to see oneself as superior to the other, to dominate over the other, to colonise the land of the other, and control him. In Theodor Herzl’s analysis, the Jew could not become European in Europe, but could only be perceived as such when he emulated the European from a physical position outside of Europe in a place that contrasted with it. Thus, “the settler colony [in Palestine] was going to be the space of Jewish transformation” (Massad, 2006, p.168). The logic being that Jews were Asians in Europe, but in Asia they would be Europeans.³⁸

Security issues are also fundamental to a thorough analysis of the Israel-Palestine conflict and must be examined in the context of identity. Katzenstein’s (1996) *The Culture of National Security* calls into question taken-for-granted assumptions concerning national security that have emerged out of neo-realist

³⁸ The first part of the transformation process for Jews to become European was to establish a physical existence outside of Europe, in Palestine. The transformation would not be complete, however, without a ‘new Jew’ over which the ‘new Europeans’ could dominate. The Zionist project of transforming the Palestinian into the new Jew involved the displacement of the Palestinians, resigning them to a diaspora state. As for those who remained and became Palestinian citizens of Israel, the project required their subjugation under military rule “reminiscent of the life of European Jews under the worst types of anti-Semitic rule” (Massad, 2006, p.173). As for the Palestinians of the West Bank and Gaza Strip, their lands would have to become “besieged ghettos, walled in and surrounded by mobs of Jewish colonial settlers and the Israeli army” (p.173).

and neo-liberal perspectives of international relations. It takes as the most central issue of analysis not how states defend their national interests but how they define them. The book argues that security interests are not simply understood by states in terms of military capabilities but are defined by cultural factors, particularly norms and identity.

In the same volume, Barnett (1996) argues that the construction of a threat and the choice of alliance partners are best explained in terms of state identity. He states that “it is the politics of identity rather than the logic of anarchy that often provides a better understanding of which states are viewed as a potential or immediate threat to the state’s security” (p.401). In the mid-1980s Israel experienced an identity crisis not in terms of confusion over who or what it was, but in terms of its negative perception in the West. In response to this ‘crisis’ Israeli leaders and lobby groups began to accentuate and promote Israel’s ‘Western’ and ‘democratic’ character and identity in order to maintain the US-Israel alliance and to distinguish Israel from its neighbouring Arab states (Barnett, 1996).

It has been long-argued by its supporters that Israel is a strategic asset for the West. Cold War strategic and containment considerations were central to the development of the US-Israel relationship post 1967. On account of the 1967 war, the Soviet Union and its Eastern European satellite states severed diplomatic ties with Israel. This ‘opposition’ from the communist world enhanced Israel’s image as a bulwark against communism in the Middle East at a time when Arab states were turning to the Soviet Union for assistance (Geldenhuys, 1990). Barnett (1996) asserts that “Israel’s role in the Western community, its very identity as a Western state, derived in part from – or at the very least reinforced by – the Cold War” (p.439). Consequently, the end of the Cold War “potentially usurped not just Israel’s identification with the Western community but a source of Israel’s Western identity as well” (p.439).

Barnett (1996) demonstrates that the bond between the US and Israel is based on ‘shared values’ and ‘common identities’, and that the ‘crisis’ in the US-Israel relationship was an ‘identity crisis’ that challenged the image of Israel as a Western, liberal democracy, and therefore threatened US-Israel relations. He

states that “the case of US-Israel relations suggests how the state’s membership in the community and the basis of the association is dependent on mutual identification, that is, shared identities. Yet because identities are socially constructed they are susceptible to change, and such change can create a ‘crisis’, if not undermine the very basis of the relationship” (p.447).

The US-Israel relationship has been strained when Israeli policy and practices have been at odds with Israel’s perceived Western, liberal-democratic, character. In addition to the end of the Cold War two events challenged the foundations of US-Israel relations by challenging Israel’s identity: the debate over Greater Israel and Israel’s response to the *intifada*. Israel’s control over the Palestinian territories as part of a ‘Greater Israel’ left it in the position of having to choose between maintaining democracy and ceasing to be a Jewish-majority state or abandoning democracy in order to retain a Jewish-majority with the risk of shattering the image of Israel as a Western nation (Barnett, 1996).

Israel’s status as a ‘Western’ nation was brought into question due to its ‘iron fist’ response to the first *intifada*, which not only undermined the portrait of a ‘benign’ occupation, but also led many to question Israel’s ‘Western’ character as the “images of routine beatings, detention...and other violations of human rights caused many to mumble [including those in the US administration] that Israel resembled a ‘Third World’ and not a ‘Western’ state” (Barnett, 1996, p.440). Israel’s response to the *intifada* signalled to the US that “the shared values that joined US and Israel might be eroding” on account of the observation that “a traditional marker used to separate Israel and the Arab states in the American mind was deteriorating because Israeli behaviour more closely resembled that expected from the Arab states” (p.441).

Ever since it captured the West Bank and Gaza in 1967, Israel had suffered from an identity crisis that can only be resolved by relinquishing control of the territories if Israel is to retain its Western, democratic, and Jewish identity. Alternatively, Israel required a common threat to replace that of communism. Five years prior to 11 September 2001, Barnett (1996) made this remarkable observation:

The only way to reinforce Israel's identity as part of the West was to discover a common threat...A common threat can reinforce or shape a common identity; it is through the recognition of a shared threat that actors acknowledge that they share not only interests but also values and beliefs...The end of the Cold War stripped Israel of not only its strategic role but also a reinforcing beam of its identity. Although still very much in the making, and by no means approximating the status of the Cold War, many Israeli and Western leaders argue that Islam represents a common threat. It is unknown whether Israeli leaders cynically or sincerely thrust Islam forward as the new threat: while undoubtedly many Israelis feel threatened by radical Islam, Israeli leaders are probably aware of the potential strategic payoff from a threat also identified by the West (p.444).

A central argument of this thesis is that the notion of an 'Islamic threat' has acquired increased prominence since 9/11, which has diminished the salience of the norm of self-determination in the case of Palestine and elevated the importance of Israel's self-defence concerns in the context of the peace process. This norm competition has contributed to the intractability of the Israel-Palestine conflict. However, from a constructivist perspective, the normative framework for a just resolution based on the resolutions of the UNSC, discussed in the previous chapter, has the potential to be a potent instrument for transnational Palestine advocacy networks.

The prominence of human rights regimes in international relations along with the increasing influence of transnational advocacy networks have resulted in a 'deepening' of human rights norms to the extent that fewer states now deny their validity. Even though many states may violate human rights in practice, there is consensus on their validity at the international level (Risse *et al.*, 1999). Rather than contributing to a resolution of the conflict, however, this factor is central to Israel's resort to the invocation to the norm of self-defence and consequently the continuity of the conflict. In the case of Palestine, international organisations, transnational Palestine advocacy networks, the Israeli left, and world leaders sympathetic to the Palestine cause are seriously undermined by Palestinian use of violence. In order to maximise their potential to raise the profile of self-determination in the case of Palestine and transcend the self-defence argument

asserted by Israel and its supporters, a non-violent *intifada* is essential. It is to this issue that the next chapter of this thesis will turn.

Conclusion

Through its focus on international norms and identity factors, constructivism offers a crucial perspective for analysing the Israel-Palestine conflict and its resolution. It demonstrates that, independent of their strategic and material concerns, the interests and policies of even the world's most powerful nations are determined by international norms and identity factors. The case of South Africa provides important lessons for the Israel-Palestine conflict and demonstrates the potential of norms and identity factors to transcend seemingly insurmountable material and strategic concerns of world powers and reshape their policies in the interest of conflict resolution. The constructivist perspective has not only demonstrated an explanatory capability within the post-Cold War context, but has become increasingly relevant post-9/11, in spite of its catalytic impact on international relations.

This chapter has highlighted that the norms central to the Israel-Palestine conflict, namely, self-determination and self-defence, have failed to produce a resolution of the conflict not because of any deficiency in their salience internationally, but due to the competition between them. The attacks on the US on 11 September 2001 and the war on terror have significant implications for the Israel-Palestine conflict and its resolution, particularly in terms of norms and identity factors in international relations. The norm of self-defence has become a higher priority internationally, while the salience of Palestinian self-determination has weakened. The following chapter examines the implications of 9/11 and the war on terror for the Israel-Palestine conflict. In the context of competing norms, it explores the potential and limitations of Palestinian nonviolence to contribute to a just resolution.

Chapter 4: Contemporary Realities and the Imperative of a Non-Violent Intifada

The events of 11 September 2001 and subsequent 'war on terror' are widely regarded as having a catalytic impact on international relations, specifically in terms of security. As a consequence, Palestinians have fewer acceptable options in terms of resisting the Israeli occupation, particularly given the increasing prominence that the norm of self-defence has acquired over the norm of self-determination. Beyond the moral issues associated with the use of violence, particularly terrorism, contemporary realities have rendered it essential for Palestinians to adopt a completely non-violent approach to their struggle against Israel's occupation. Palestinian use of violence diminishes international support for the Palestinian cause and is used by Israel to justify further repression and a continuation of the occupation. This chapter explores the implications of 9/11 and the war on terror for the Israel-Palestine conflict in terms of shifts in Western public opinion, perceptions of Islam, and the current international political and legal dimension. It also examines the potential for, and limitations of, a non-violent *intifada* in the context of an increasingly 'Islamised' Palestinian society.

Implication of 9/11 and the 'war on terror'

Western public opinion and perceptions

The media plays an important role in determining international public opinion about the Israel-Palestine conflict (Philo & Berry, 2004). Results from a July 2005 Pew survey indicate that the portrayal of the Israel-Palestinian conflict in the media has the largest impact on whether Americans have more sympathy for Israelis or the Palestinians (WorldPublicOpinion.org, 2006). A Pew survey conducted 6-19 July 2006 found that a plurality of those polled say their views on the Israel-Palestine conflict have been shaped more by what they have seen in the media than by any other source (Allen & Tyson, 2006).

Research by Israeli journalist and academic, Daniel Dor (2005) shows the extent to which the Israeli media is preoccupied with reporting Palestinian acts of

violence and threats to Israel's security in order to suppress the guilt associated with Israeli repression of the Palestinians. Moreover, Philo and Berry's (2004) research highlights the correlation between the superficial and often misleading coverage of the conflict in the media and the general lack of understanding of the conflict among audiences. In sum, the lack of context in the reporting of the Israel-Palestine conflict by the Western media in general has allowed for the construction of an image of the conflict that identifies more with the Israeli position (Philo & Berry, 2004), as a struggle against terrorism, rather than a struggle for self-determination. More recently, Friel and Falk (2007) have shown the influential *New York Times* to have consistently misrepresented the conflict. The authors argue that the newspaper's reporting of the conflict ignores international law and thereby shields its readers from recognising the lawlessness of Israel's actions. They also document that the *Times* focuses on Israeli deaths and largely ignores Palestinian deaths, which they contend masks Israeli transgressions from readers and has allowed the US to continue with a pro-Israel, rather than a balanced policy concerning the conflict.

The use of terrorist tactics, particularly suicide bombings, by the Palestinians is central to the construction of this image of the conflict. An overwhelming majority of Americans reject the idea that Palestinian attacks on Israeli civilians are a legitimate means of resisting the Israeli occupation; Palestinian violence is considered by Americans as terrorism (WorldPublicOpinion.org, 2006).³⁹ Decades of survey research on public perceptions of the Israel-Palestine conflict have shown greater support for Israel than Palestine among Westerners in general. Moreover, support for Israel increases and support for Palestine decreases when Israel is perceived as being under threat and when Palestinians are most strongly identified with terrorism.

A Gallup poll on world affairs conducted in February 2006 found that following the election of Hamas Americans became more pessimistic about peace in the

³⁹ An April 2002 CNN/USA Today survey asked Americans if they would describe the recent violence committed by the Palestinians against the Israelis as acts of terrorism or as legitimate acts of war against their opponents. Seventy percent said they were 'acts of terrorism'. Furthermore, an April 2002 Gallup survey found that 53 percent of Americans said they would describe Israeli actions as 'legitimate acts of war' against their opponents. In the same survey, a plurality (49%) said that Israeli actions in the West Bank were 'mostly justified' (WorldPublicOpinion.org, 2006).

Middle East and more sympathetic toward Israel. The survey found that 57 percent of respondents oppose giving financial aid to the Palestinians while Hamas is in power. Fifty-nine percent of Americans were found to sympathise with the Israelis, while only 15 percent sympathise with the Palestinians (Jones, 2006). This was the highest level of sympathy recorded for Israel since 1991, almost reaching the level just prior to the US invasion of Iraq in February 2003. In polls taken after 11 September 2001, but before the April Israeli-armed incursions into the West Bank, the percentage showing greater sympathy to Israel also rose to a majority (55%). Sympathy for the Palestinians declined at this time to 7 percent, its lowest level on record (WorldPublicOpinion.org, 2006). Polls conducted in Europe in the aftermath of the Hamas electoral victory also showed growing support among French and Germans respondents for Israel.⁴⁰

A survey conducted between May and June 2006 by Greenberg Quinlan Rosner Research among European 'opinion elites' (those with a high level of education who closely follow the news) found that 21 percent of French respondents support the Palestinians, while only 4 percent support Israel. It is also noteworthy that support for the Palestinians was more than halved from 47 percent following the election of Hamas (Greenberg, 2006). Commenting on the significant reduction in support for the Palestinians among French opinion elites, Greenberg explains that there has been a fundamental change in the framework through which the conflict is viewed by Europeans. While it had previously been viewed within an anti-colonial framework, in 2006 it came to be seen through the lens of the threat posed by fundamentalist Islam. In the broader conflict between Islam and the West, Islamic fundamentalists are seen as the enemy, and Palestinians are seen as allied with them. Greenberg contends that two factors accelerated the trend: Sharon's disengagement from the Gaza Strip, which was seen as a

⁴⁰ A poll conducted between March and May 2006 by the Pew Research Centre found that the French and Germans have also become more sympathetic toward Israel since the Palestinians elected Hamas. While in 2004 more French sympathised with the Palestinians (28%) than the Israelis (20%), the 2006 poll showed that French sympathies are now evenly divided with 38 percent favouring each side, representing a near doubling of support for Israel and an increase of only 10 points for the Palestinians. The proportion of French not favouring one side or the other has dropped to 25 percent from 52 percent in 2004, which has been interpreted to suggest the French are being pulled to take sides, with more moving toward the Israelis than the Palestinians. In Germany, support for Israel has also risen, while support for the Palestinians has declined. Thirty-seven percent of Germans sympathise with Israel, which is more than double those who favour the Palestinians (18%). This represents an increase of 13 points over the proportion of Germans favouring Israel in 2004 and a drop of six points for those sympathetic to the Palestinians (Kohut, 2006).

huge gesture toward peace, and the election of Hamas, because of which Palestinians were perceived as possessing the negative qualities associated with that organisation.

Lavian (2006) also notes the shift in Western public opinion away from the Palestinians and toward Israel since the beginning of 2006. He identifies seven factors that have resulted in this shift and their implications: 1) Israel's disengagement from Gaza in September 2005, which created a perception that Israel is committed to peace; 2) the London bombings of July 2005, which encouraged Europeans to identify with Israel; 3) the popular translation of the Iranian President's comments in October 2005 as denying the holocaust and for Israel to be 'wiped off the map',⁴¹ which caused Europeans to rally behind Israel; 4) the race riots in France of October and November 2005, which highlighted perceptions of the irrationality of the Muslim rioters; 5) the Palestinian election of Hamas in January 2006, which, because of Hamas' 'terrorist' label, caused sympathy for Palestinians to be further diminished; 6) Muslim rioting over the publication of the cartoons of the Prophet Muhammad in a Danish newspaper in February 2006, which was perceived as irrational violence aimed at Europeans, Americans, and Israelis collectively; and 7) the Israeli election of Olmert and the more 'moderate' Kadima Party further reinforced perceptions that Israelis were genuinely seeking peace. He contends that these seven factors combined have shifted European opinion in favour of Israel, the side in the conflict that is perceived to be Western, secular, and democratic.

Overshadowing US perceptions of Arabs, Palestinians, and the Israel-Palestine conflict are Americans' perceptions of Islam. An ABC News poll conducted September 2003 found that 46 percent of respondents said that Islam does not teach respect for the beliefs of non-Muslims, while a Pew Research Centre poll in July 2004 found that 46 percent of respondents said that Islam is more likely than other religions to encourage violence (Kull, 2005). Similarly, a study by the Pew Research Centre in 2005 found that most Europeans and North Americans judge some religions as more prone to violence than others, and those that do

⁴¹ The actual translation of what President Mahmoud Ahmadinejad said is: *Imam* [Khomeini] *ghoff* (said) *een* (this) *rezhim-e* (regime) *ishghalgar-e* (occupying) *qods* (Jerusalem) *bayad* (must) *az safheh-ye ruzgar* (from page of time) *mahv shavad* (vanish from). His reference was clearly to the Israeli regime and for it to be removed.

mostly have Islam in mind (Kohut, 2005). This survey by the Pew Research Centre also found that outside the Muslim world there are strong concerns about Islamic extremism. Across 9 of the 10 non-Muslim countries surveyed, between 79 to 90 percent of respondents stated that they were either somewhat or very concerned about Islamic extremism in the world: Canada (79%), US (79%), UK (80%), India (82%), Spain (82%), Russia (84%), Germany (87%), France (89%), and Netherlands (90%) (Kohut, 2005).

International political and legal dimensions

There has been a proliferation of literature concerning the impact of the war on terror on human rights and international law such as *The War on Terror and the Framework of International Law* by Helen Duff (2005) and *Human Rights in the War on Terror* edited by Richard Wilson (2005) among numerous journal articles. This body of literature suggests that the impact of 9/11 and the war on terror have significant implications, in both general and specific terms, for the Israel-Palestine conflict and its resolution. Fundamentally, security concerns post 9/11 have been exploited by the US and Israel, among other governments, resulting in the marginalisation of human rights norms.

The nature of the war on terror – conventional states at war with terrorist networks – and the expected lack of reciprocity this implies, has resulted in states complying less with international humanitarian law due to a perception of it as ‘irrelevant’ in the heightened security environment of post 9/11 (Belz, 2005). Statements made by US President Bush have sought to impair the distinction between acceptable peacetime and wartime conduct and descriptions of the war on terror as ‘ongoing’ have been used by the US to justify the continued imposition of the more permissive law-enforcement rules at time of war, which poses a threat to civil liberties and human rights (Roth, 2004).

The war on terror is also considered to have had a detrimental impact on the rule of law in international relations. An-Na'im (2006) states that “the grossly disproportionate and aggressive foreign policy of the USA after 9/11, especially the attempted colonisation of Iraq since March 2003, is particularly damaging for the human rights paradigm” (p.795). Central to the decline in adherence to international law is a perception of the law as inadequate in response to the

threat posed by 'Islamic' terrorism. Those who support the war on terror have asserted that human rights are 'incapable' of dealing with the challenges to security faced since 11 September 2001 (Duffy, 2005).⁴²

The events of 11 September 2001 and the war on terror confirm not the inadequacy of international law but the "fragility of respect for it, and the pressing challenge of enforcement" (Duffy, 2005, p.445); they represent an "erosion of the principle of legality itself" (p.447). Of particular concern is that the counter-terrorist measures demanded by UNSC Resolution 1373, passed in the aftermath of 9/11, establish "broad-reaching obligations in respect to terrorism in general without providing a clear definition of the conduct towards which such measures should be directed, and, by contrast to earlier binding-decisions taken by the Council, without limitation as to the situation or broad time frame in which it should apply" (p.45). Resolution 1373 poses a fundamental threat to human rights, for it, as described by a senior French law enforcement official, "opened the universal hunting season on terrorism without defining it" (cited in Duffy 2005, p.45-46).⁴³

The fundamental concern from a Palestinian perspective is the extent to which human rights and international law have been subordinated by security imperatives. The labelling of such Palestinian resistance movements as Hamas as a terrorist organisation has facilitated the sanctions imposed by the Western world on Palestine since the election of Hamas in 2006, which have been crippling to the Palestinian economy and society. The portrayal of Hamas as a terrorist organisation has diminished international support for the Palestinian cause and decreased pressure on Israel and the US to more vigorously pursue a just resolution of the conflict. The negative image of Hamas has allowed Israel to

⁴² Duffy (2005), however, finds no deficiency in international law due to the absence of an accepted definition of terrorism. She asserts that even without this definition, what would otherwise be defined as terrorism is covered by other international legal norms.

⁴³ Subsequent to UNSC Resolution 1373, the pendulum appears to have since swung back toward human rights norms as exemplified by the passing of UNGA Resolution 57/27 of 2002 as well as UNSC Resolution 1456 in 2003, which both affirm the centrality of the UN Charter and international law in the fight against terrorism. Duffy (2005) notes that human rights bodies have also experienced a swing back from a marginalised position in the immediate aftermath of 11 September 2001 to one of increasing relevance since the disaster in Iraq has unfolded. She cautions, however, that it is "too early to reach even tentative conclusions as to the long-term impact [of 11 September 2001 and the war on terror] on standards of respect for human rights" (p.377). As with the outcome of the Israel-Palestine conflict itself, the issue is ultimately a product of the battle for supremacy between international law and politics, as well as between security concerns and human rights.

argue that it is without a genuine partner for peace, a claim Israel has utilised in pursuit of its unilateralist policies (de Soto, 2007).⁴⁴

While the unilateralist policies of Israel and the US have been sharply criticised by not only human rights advocates, but also by world leaders and international law experts, the invasions and occupations of Afghanistan and Iraq demonstrate a trend in favour of unilateralism in 'self-defence' (Duffy, 2005). It is noteworthy that Israel's unilateral withdrawal from the Gaza Strip in 2005 was praised by the international community, in spite of the fact that "the Strip remains a big prison, completely sealed off from the outside world, nearing starvation and terrorised from land, sea and air by the Israeli army" (Reinhart, 2006, p.3). For these reasons the Gaza Strip remains 'occupied' according to international law (de Soto, 2007).

Additionally, although the International Court of Justice (ICJ) ruled on 9 July 2004 that Israel's 'security' wall inside the Palestinian Territories is a violation of international law and requires dismantling, a ruling that the UNGA endorsed by a vote of 150 to 6 (Resolution ES-10/15, 2 August 2004), the US vetoed a UNSC resolution on 14 October 2004 that condemned the wall and would have forced Israel to comply with the ICJ ruling. Beyond a rejection of resolving the conflict through multilateral mechanisms, the unilateral approach of Israel, like that of the US in Iraq, represents an erosion of *de facto* respect for international law (Duffy, 2005). It is argued that 'flagrant violations' of the law "create a space in which 'lesser' violations are tolerated or even assume relative respectability" and that 'unacceptable practices' will duplicate as states 'find comfort' in their commission by other states (Duffy, 2005, p.378).

The war on terror presents a considerable challenge to human rights for it has given a thin cover of 'legitimacy' to such repressive practices of the past. It has rendered certain political boundaries irrelevant. The most obvious is in the case

⁴⁴ It is noteworthy that in a joint press conference with US Secretary of State, Condoleezza Rice, the Israeli Foreign Minister, Tzipi Livni, announced that Israeli security must precede any deal with the Palestinians and that Palestinian obligations under the Roadmap concerning Israel's security needs would have to be met before a Palestinian state could be established. Livni justified Israel's position by stating that "Nobody wants to see another terror state in the region". BBC News online (04/11/2007). Retrieved 5 November 2007, from http://news.bbc.co.uk/2/hi/middle_east/7077412.stm.

of Iraq but also notable in the Israel-Palestine conflict with the 'erasing' in 2002 of the 'red lines' that demarked Palestinian controlled areas, referred to in the Oslo Accords of 1995 as Area A. Moreover, the Iraq occupation has been regarded as a colonial venture, on account of the illegal seizure of the sovereignty of the Iraqi people by military conquest, which has been justified by the US and its allies on the grounds of security and counter-terrorism (An-Na'im, 2006). Concern has been raised that such violations of international law can lead to their replacement by other international norms. Just as customary international law is created by states adhering to particular norms, a shift in support for these norms can produce change in the law (Duffy, 2005). However, the discomfort of the US with the label of 'occupier' in Iraq and haste with which the US held elections in Iraq to negate the image of occupation bear testament to the fact that occupation and colonisation are still perceived negatively internationally.

With the end of the Cold War the emphasis shifted to the US-Israel relationship being "undergirded by shared values rather than shared threats" (Barnett, 1996, p.437). However, as the Israel-Palestine conflict has progressed and Israel has resorted to increasing levels of repression since the second *intifada* began in 2000, it has become increasingly difficult for Israel to maintain its relationship with the US on the basis of shared values. The attacks on 11 September 2001 and subsequent war on terror provided Israel with the opportunity to shift the basis of its relationship with the US back to one of a shared threat, 'Islamic terrorism'. In doing so, Israel has also managed to reconfigure its identity crisis. If Israel's image in the West would be strained by its repressive policies and practices that violate normative standards of human rights and international law, then the best solution from Israel's perspective, in order to avoid a just peace with the Palestinian based on a restoration of their rights, would be to have the West adopt the policies and practices of Israel. This would require the undermining of the applicability of human rights and the legitimacy of international law, to which the events of 9/11 and the war on terror have significantly contributed. Within this context, Israeli 'security measures' or 'counter-terrorism' attract far less scrutiny or condemnation than Palestinian means of resistance.

Although the legitimate forms of armed struggle that fall within the terms of the Geneva Convention of 1977, include liberation from colonial domination, alien occupation, and racist regimes that deny self-determination are relevant to their cause (Ignatieff, 2002), the events of 11 September have effectively limited the viability of such options in the case of the Palestinians (Allain, 2005). Allain contends that:

The ability to label a freedom fighter a terrorist, in a post-September 11 world, requires Palestinians to channel their struggle within the parameters of accepted law, so as to ensure not only the legitimacy of their struggle, but also to make sure that the very law itself does not disappear (p.20).

Counter-productivity of the second intifada

Among the most critical implications of the post-9/11 era in the Israel-Palestine context is the legitimacy accorded to Israeli repression in 'response' to Palestinian armed resistance. As the US pursued its war on terror in response to the 9/11 attack, constraints were lifted on Israel to do the same. While Arafat ordered his security forces to show full commitment to the cease-fire with Israel, Sharon was able to conduct 18 incursions throughout Palestine, which included the seven-day attack on Jenin, widely regarded as a massacre (Usher, 2003). Moreover, like the Oslo Accords before it, the Roadmap effectively placed Israeli security concerns as the overriding condition of the peace process, rather than any provisions of international law concerning Israel's illegal occupation (Reinhart, 2006; de Soto, 2007).

Within this context, the violence that characterised the second *intifada* resulted in not only the failure of the uprising to achieve any social, economic, or political goals for the Palestinians, but violence has become a liability for their cause. The Palestinian use of violence, particularly terrorism, during the second *intifada* gave Israel the pretext it needed to pursue territorial and military conquests in the West Bank and depleted the crucial diplomatic and popular support for the Palestinian cause in Europe, US, and Israel itself.

Even the US rhetoric of 'even-handedness' was dispensed with. Only two days after 9/11, Sharon extended his incursions into Palestinian towns and effectively erased the 'red lines' established under Oslo II in 1995. Such action represents a shift in the rules of the game, the permissibility of what was once forbidden under the US-defined peace process, and removal from the agenda any notion of resolving the Israel-Palestine conflict on the basis of norms and principles of international law, replacing it with an acceptance for unilateralism (Mansour, 2002). However, in its conduct of the war on terror, the US' need for Arab support had some positive implications for the Palestinians, for it was in this context that the US announced its vision for a viable Palestinian state based on the land for peace concept.

However, this opportunity is relative rather than absolute. Hamas' use of suicide bombings during the second *intifada* cemented its image as a terrorist organisation. The implications of which were most acutely felt by Palestinians in the aftermath of electing Hamas in January 2006. Alvaro de Soto (2007) reports that upon the election of Hamas the Quartet was transformed into a body that was "all-but imposing sanctions on a freely elected government of a people under occupation as well as setting unattainable preconditions for dialogue" (p.19). The consequences noted by de Soto include, decline in the standard of living of Palestinians, disastrous humanitarian conditions, weakening of Palestinian institutions, and reduced service-delivery capacity of the PA, particularly in terms of health care, education, and security. He determines that on account of the Quartets decisions, "the underpinnings for a future Palestinian state have been seriously undermined" and "the steps taken by the international community with the presumed purpose of bringing about a Palestinian entity that will live in peace with its neighbour Israel will have had precisely the opposite effect" (p.19-20).

De Soto (2007) records that in the aftermath of the election, Hamas wanted to form a broad-based government, but the US opposed the move so that Hamas would be left alone and there would, therefore, be 'no blurring of the line between Hamas and other Palestinians committed to a two-state solution'. The consequent Hamas government enabled the effective "quarantine" of the PA. He documents that the loathing of Hamas among some US officials was extreme to

the extent that they look delight in the death of Palestinian civilians that occurred soon after the election in Hamas-Fatah fighting. De Soto states that “the US clearly pushed for a confrontation between Fatah and Hamas – so much so that, a week before Mecca [the Mecca Accord discussions], the US envoy declared in an envoys’ meeting in Washington how much ‘I like this violence’, referring to “the near-civil war that was erupting in Gaza in which civilians were being regularly killed and injured, because, ‘it means that other Palestinians are resisting Hamas” (p.21).

These details are corroborated by others sources. In an interview with the SBS program ‘Dateline’ on 26 September 2007, the former Director of Mossad, Efraim Halevy, confirmed that the US supported Fatah to try to overthrow Hamas. He stated: “After the election was won, the United States decided the results were not to its liking, Israel thought it was not to its liking, the Fatah thought it was not to its liking, and therefore all three, together with the Europeans in the end, decided it was legitimate, it was proper to take steps to undo the results of the election” (McNeill, 2007).

De Soto (2007) regards the US policy of isolating Hamas as a failure and “extremely short-sighted” (p.21). He explains that, as perceived by the Palestinians and the ‘Arab street’, the Quartet has played a role in punishing the Palestinians for their democratic choice. He notes that there is considerable empirical evidence that “the siege has only serve to radicalise Palestinian sentiment, and create the kind of institutional chaos and social suffering that strengthens radical elements” (p.30). De Soto states that Hamas has not been weakened but strengthened as a result. Halevy also opines that Hamas is a reality that cannot be ignored or isolated and that Israel and the US will have to include Hamas in the negotiation process (McNeill, 2007).

As a strategy for creating publicity for their cause and even in advancing recognition from the UN, Palestinian violence has historically achieved some successes.⁴⁵ However, beyond generating publicity, which over time has

⁴⁵ The Palestinian Liberation Organisation (PLO), created in 1964, was successful in raising awareness of the Palestinians cause and having Palestinian rights affirmed at the international level. Arab and international attention to the plight of the Palestinians was initially generated by the armed resistance of various Palestinian groups such as Fatah; the armed struggle provided a

increasingly become a liability, Palestinian use of violence has not been successful to the extent of achieving any of the Palestinian national goals. Miskel (2005) contends that any Palestinian measure of success must be based on the extent to which the strategy has furthered the cause of statehood, satisfied refugee claims, and improved the economic and personal security of Palestinian civilians. That the economic and personal security of Palestinians only worsened over the course of the second *intifada* is clear and well documented. According to a World Bank study conducted in 2004, the collapse of the Palestinian economy was attributable to Israeli 'security' measures, specifically checkpoints and closures (Miskel, 2005).

Furthermore, in terms of loss of life alone Palestinian losses, over the course of the conflict, have been three to four times higher than those of Israelis (Finkelstein, 2005) while the rates of serious injuries inflicted on Palestinian civilians by the Israeli military are recorded in the tens of thousands (Reinhart, 2005). Reinhart has given a detailed account of Israel's 'policy of injuries'; her work documents a pattern of Israeli provocations designed to encourage Palestinian resistance in order to justify massive 'retaliatory' actions, which result in heavy Palestinian casualties and extensive destruction of their homes and civil infrastructure. Other scholars, such as Norman Finkelstein (2003a), have also documented Israel's use of Palestinian resistance as a pretext or justification for further repression. Pappe (2007) documents that provocation in order to justify 'retaliatory' action has been a tactic used by Israeli forces since the ethnic cleansing of Palestine began in 1947. Additionally, de Soto (2007) records that in 'response' to Qassam rocket fire from the Gaza Strip, Israeli forces killed an

platform from which diplomatic initiatives could be launched. In 1969, the UNGA specifically recognised the inalienable rights of the Palestinian people "under the Charter of the United Nations and the Universal Declaration of Human Rights" (Resolution 2535, 10 December 1969). The backing of the 118-member Non-Aligned Movement, particularly since the 1970s, has been an important source of support for the Palestinian cause in the international realm and at the UN. In 1974, the UNGA reaffirmed the inalienable rights of the Palestinian people, including the right to self-determination, national independence, and sovereignty, as "indispensable for the solution of the question of Palestine" and "the establishment of a just and lasting peace in the Middle East" (Resolution 3236, 22 November 1974). In September of the same year, the UNGA decided to officially include 'The Question of Palestine' as an agenda item of the Assembly (United Nations, 2003) and to accord the PLO 'Observer' status within the Assembly (Resolution 3237, 22 November 1974). The year 1974 was also highly significant in terms of the diplomatic advancement of the Palestinian cause for it was on 13 November of that year that Yassir Arafat delivered his famous 'gun and olive branch' speech to the UNGA, receiving a standing ovation, and becoming the first leader of a national liberation movement to receive such an honour. The era marked the highpoint of Palestinian diplomacy (Hirst, 2003).

average of 40 Palestinians per month during 2006. B'Tselem (2007) reports that the killing of 1030 Palestinians by Israeli forces in 2006 and 2007 was justified on security grounds, even though almost 20 percent were minors and almost half were not engaged in hostilities.

The worsening humanitarian and economic conditions of the Palestinians have generated sympathy among the international community and at the UN. For some Palestinians the Israeli-imposed economic hardship and personal suffering is a means not an end, part of a strategy of 'repression-provoking violence', which is working (Miskel, 2005). However, because this strategy has not generated any progress toward statehood or refugee claims, it is widely regarded as a failure. Nonetheless, the use of violence has persisted. John Burton (1997) asserts that delays in negotiations have led to violence among Palestinians. He argues that violence will persist when people "perceive no prospect of change" (p.114).

Andrew Mack (1975) and Ivan Arreguin-Toft (2001) write that the weak can and do defeat the strong militarily. In the past 200 years "weak actors were victorious in nearly 30 percent of all asymmetric wars" and "have won with increasing frequency over time" (Arreguin-Toft, 2001, p.96). Thus, the question could legitimately be raised as to why the Palestinians should not maintain tradition and pursue *jihad* in the form of an armed struggle against Israel in spite of the asymmetry. One supportive response is found in the work of Mack (1975) who identifies 'interest' as a central factor in asymmetric conflict and argues that weaker parties defeat stronger ones because for them, unlike the stronger party, winning is a matter of survival. This explanation corresponds with that offered by Telhami (2005) as to why Hezbollah were able to force Israel to end its two-decade-long occupation and withdraw from southern Lebanon in 2000.

Arreguin-Toft (2001) argues that it is the problem of an inflated expectation of a quick victory on the part of the stronger side that is central to its defeat by a weaker opponent. When the quick victory does not eventuate, domestic pressure usually forces the stronger side to abandon the war. Although Israel is the stronger and more powerful party in its conflict with the Palestinians, neither the 'interest/survival' explanation of Mack nor the 'inflated expectation of a quick

victory' explanation of Arreguin-Toft apply in this case. As addressed in the previous chapter, Israel has insulated itself from both by inverting reality – by perpetuating a domestic and international image of the underdog; the party with overriding security concerns; the party in need of protection. Moreover, in spite of Israel's dominance, the state and its supporters regard the conflict with the Palestinians as 'existential', a matter of survival (Mearsheimer & Walt, 2007).

The strongest argument in favour of the abandonment of violence and adoption of a strictly non-violent *intifada*, however, is that the use of violence, particularly terrorism, has not only failed but has become a liability for the Palestinian cause. The most extreme form of Palestinian violence has been the use of suicide bombings, primarily by Hamas, Islamic Jihad, and Fatah's Al-Aqsa Martyr's Brigade since the mid-1990s. The use of suicide bombings by Hamas and Fatah was based on a commitment to depriving Israelis of 'personal security' (Usher, 2003). Moreover, violence is considered to be particularly entrenched on both sides of the Israel-Palestine conflict for it is credited with forcing concessions from the other side (Kurlansky, 2006).

Robert Pape (2005) asserts that the use of suicide terrorism is increasing due to a perception of its effectiveness. He explains, however, that suicide terrorism is "unlikely to cause targets to abandon goals central to their wealth or security, for example, by allowing a loss of territory that would weaken the economic prospects of the target state or strengthen the target state's rivals" (p.75). While a correlation can be observed between suicide bombings by Hamas and Israeli compliance with its obligations under the Oslo Accords to withdraw from Gaza and Jericho, it should be noted that the Oslo Accords were not inconsistent with Israel's strategic interests (Finkelstein, 2003a).

Pape (2005) observes that "Israel's withdrawals from [parts of] Gaza and the West Bank in 1994 and 1995 occurred at the same time that settlements [in the West Bank, including Jerusalem] increased and did little to hinder the IDF's return, so these concessions were more modest than they appear" (p.75). Therefore, the Palestinian armed struggle, including the use of suicide bombings, has had no observable positive impact on the issues most fundamental to resolving the conflict: sovereignty over territory, the status of Jerusalem,

settlements, water resources, and the return of refugees. Rather, it has made these goals more difficult for Palestinians to attain.

The second *intifada* was the consequence of the Palestinian people's sense that the Oslo process was a new form of colonial dispossession and those who did not challenge Israel's occupation would no longer have a claim to leadership among Palestinians. Dispossession was most acute in the context of settlement expansion, which increased between September 1993 and September 2000 by approximately 60 percent. Moreover, bypass roads and military zones separated the 700 Palestinian towns and villages from each other, destroying any sense of a contiguous Palestine (Usher, 2003). While there is general consensus that the end of the Oslo peace process occurred at Camp David in 2000, responsibility for its demise remains a contentious issue until today. Western media coverage, pro-Israel perspectives, and even Western governments, such as Australia tend to blame Arafat for rejecting Barak's 'generous offer' (Burchill, 2006). However, numerous scholars reject the assertion that the offer was generous.⁴⁶ Although by most accounts significant progress was made in Taba in January 2001, elections in Israel and the US rendered it irrelevant. Newly elected President Bush declared that the new US administration was no longer bound by the parameters of its predecessors (Usher, 2003).

In the context of Palestinian use of violence, Israeli leaders have successfully been able to subject principles of international law, standards of human rights, and explicit decisions of the UNSC to conditions and negotiations. A case in point is the issue of Israeli settlements on Palestinian land, which have been determined as illegal and requiring dismantling by four UNSC resolutions (446, 452, 465, and 471). The maximum demand of the Mitchell Report of 2001, however, was a freeze on settlement construction, saying nothing of the legal requirement for all settlements to be dismantled. Once Sharon had completed the first phase of his assault on the Palestinians at the end of May 2001, he called a unilateral cease-fire and requested Arafat reciprocate. In the wake of a Hamas suicide bombing that killed 21 Israelis in early June 2001, Arafat was left

⁴⁶ Hirst (2003), Smith (2004), Reinhart (2005), and Pappé (2007) expose the 'generous offer' as myth and propaganda, highlighting that Israel never offered the Palestinians 95 percent of the West Bank (but about half as much – no more than 15 percent of historical Palestine), nor a capital in East Jerusalem, among other issues.

with no option. He was compelled to accept a cease-fire that completely marginalised even Mitchell's settlement 'freeze'. Seven days of Israeli-defined 'quiet' in the occupied territories, followed by a six-week 'cooling off' period, would have to occur before 'confidence-building measures' could begin, which would include a settlement freeze (Usher, 2003). It is noteworthy that since the commencement of the war on terror, the issue of Israeli settlements has effectively ceased to be challenged by the US; Israel has not been prevented from violating its Roadmap obligations, continuing settlement construction on Palestinian land (de Soto, 2007).

Under the guise of 'security' and 'counter-terrorism' Israel responded to the second *intifada* by unilaterally separating from the Palestinian population and dismembering Palestine so as to isolate Palestinian towns from each other while securing selected land and water resources for its own. This process has further entrenched the occupation and Israel's control over all borders and the movement of Palestinians. Collectively, these measures have effectively shattered the spatial basis of any two-state solution (Falah, 2005; Tilley, 2005). Indeed, an increasingly dominant perspective in the literature rejects the viability of the two-state solution, prominently represented in the work of Said (2004), Tilley (2006), and Reinhart (2006), among numerous others.

It is well-documented that Sharon relied heavily on Palestinian use of violence to evade peace negotiations and agreements, end cease-fires, and justify the reconquest of Palestinian territories (Usher, 2003; Finkelstein, 2003a; Reinhart, 2005). One such example occurred after the US announced its vision of a viable Palestinian state and decided to send special envoy Anthony Zinni to the region to assist with quelling the violence. Three days before Zinni's arrival, on 23 November 2001, Israel assassinated Mahmud Abu Hanud, leader of Hamas' military wing, in order to induce a Palestinian act of retaliation that would undermine the initiative by destroying the cease-fire that was in place. Predictably, Hamas responded with two suicide bombings that left a total of 24 Israelis dead. Throughout the remainder of 2001, while Palestinians held to the cease-fire, Sharon launched over 16 incursions into the West Bank. In one three-week period that resulted in the death of one Israeli soldier, the Israeli military killed 21 Palestinians, eleven of them children. When on 27 March 2002 a

Hamas suicide bomber killed 28 Israelis in Netanya, Sharon “had the ‘war on terrorism’ he needed to vanquish Arafat” (Usher, 2003, p.32) and responded with the launch of Operation Defensive Shield (28 March to 4 April 2002). The extensive death and destruction caused by the Israeli military in the course of the Operation is well documented (Usher, 2003).

That Sharon was able to ignore Bush’s requests for cease-fire and withdrawal is indicative of the new reality of the post-9/11 era, in which occupation and repression is contextualised as ‘war on terror’. Again the US accepted Israel’s ‘vision’ for the region and on 24 June 2002 Bush made the continuation of the ‘peace process’ conditional on ‘a new and different Palestinian leadership’, ending ‘terrorism, and ‘reform’ of Palestinian security, economic, and political institutions (Usher, 2003). The weakness of the US to restrain Israel post 9/11 becomes apparent when one considers the nature of the US-Israel relationship a decade prior.

As discussed in the previous chapter, since the mid-1980s and during the 1990s, Israel was experiencing the impact of decreased strategic importance with the end of the Cold War along with a negative image due to the debate over Greater Israel and the repressive tactics of the Israeli military during the first *intifada*. These issues unsettled the US-Israel relationship and were manifested in a shift in US policy toward Israel in the early 1990s. Under Bush Senior the US administration made assistance to Israel conditional on Israel’s assurance that certain funds [\$10 billion in loan guarantees] “would not be used for settlement expansion” (Barnett, 1996, p.441). Israel and its supporters protested but, Bush held firm and Shamir paid for his miscalculation with a significant drop in domestic support (Barnett, 1996).

This incident stands in stark contrast, however, to the post-9/11 confrontation between Sharon and Bush Junior. As described by Mearsheimer and Walt (2006) in their paper on the Israel lobby and US foreign policy, in 2002 when Bush attempted to halt Israel’s expansion of settlements, requested restraint against the Palestinians, and advocated a Palestinian state, Sharon accused Bush of trying to appease Arab states. Sharon along with the pro-Israel lobby in the US exclaimed that both the US and Israel faced a common threat from

terrorism, a call that was backed by Congress. Sharon ignored Bush's demand in April 2002 for the IDF to end its Operation Defensive Shield and withdraw from the Palestinian towns it had come to re-occupy. Far from being able to reduce funding to Israel or impose conditions on the use of US financial and military aid, Bush was forced to refer to Sharon as a 'man of peace' on 18 April 2002 and was powerless to prevent an extra \$200 million in aid to Israel for its 'fight against terrorism' approved on 9 May 2002 by a House appropriations subcommittee (Mearsheimer & Walt, 2006).

A great irony of the second *intifada* is that in spite of its detrimental impact on the Palestinian cause, Hamas emerged more dominant and popular due to the armed resistance of its fighters, including its suicide operations inside Israel. Although Fatah attempted to broker a consensus among Palestinian militant groups to restrict the armed struggle to the occupied territories, Hamas insisted on the right of resistance through all of historical Palestine (Usher, 2003). Reminiscent of a similar call by the ANC against whites in South Africa, Palestinian militant groups, including Hamas agreed to an announcement made on 22 July 2002 declaring an end to all attacks on innocent [Israeli] men, women, and children who are non-combatants, particularly civilians inside Israel. On 20 and 21 July 2002, Hamas leaders Shaykh Ahmad Yasin and Abd al-Aziz Rantisi declared its attacks on Israeli civilians would end if Israel withdrew from Palestinian West Bank cities, freed the recently detained Palestinian prisoners, and ended its policy of assassination. In a manner typical of the Israel-Palestinian conflict, the very next day Israel dropped a one-ton bomb on an apartment block in Gaza city killing 15, nine children and six other Palestinians, among them Salah Shihada, leader of Hamas' military in Gaza. Hamas responded with two suicide bombings and Israel in turn assassinated a further nine Hamas and Fatah militants and demolished the homes of 15 alleged suicide bombers (Usher, 2003).

That the Palestinians had no choice but to resort to violence and terrorism in the face of great power disparity with Israel is a highly contested debate. The effective use of nonviolence during the first *intifada*, a matter to which this chapter will now turn, demonstrates that there is a viable alternative to violence in the case of the Palestinians. Given the extensive support for the Palestinian

cause in Western Europe, across the Muslim world, and, albeit to a relatively lesser extent, in the US and Israel, Palestinians have much more effective means at their disposal than violence and terrorism. By contrast to the images of the first *intifada* that generated sympathy for the Palestinians and demands for change, images of the second *intifada*, particularly Israeli victims of Palestinian suicide bombers, “have given the defenders of the status quo the upper hand” (Miskel, 2005, p.54).

Moreover, Israel has succeeded in depicting Palestinian freedom fighters as terrorists and drawing media and public attention away from an assessment of its own policies and practices as repressive or illegal (Miskel, 2005). In short, the second *intifada*, specifically the use of violence, has been a gross miscalculation for not only has it resulted in increased suffering among Palestinians and placed the goals of Palestinian statehood and achieving refugee claims further from reach, it has been detrimental in terms of public opinion, particularly in the key states of the US and Israel.

Nonviolence

In the case of Palestine, Johan Galtung (1989) contends that nonviolence is the most likely approach to achieving liberation. He argues that the non-violent campaign must be fought by the Palestinians as well as Israelis and others who oppose the occupation of someone’s land by another. A fundamental question that this thesis will answer is whether a non-violent solution is possible for Palestine. Galtung identifies two key challenges to this question: Western perceptions of Jews versus Palestinians and sources of nonviolence within the Palestinian culture. The former has been discussed in chapter 1 of this thesis; the latter is addressed below.

The use of violence, particularly terrorism, “mobilises the repressive elements of the Jewish side, and plays on the US-Israel alliance at its strongest points” (Galtung, 1989, p.54). Galtung explains that the key to the struggle is for Palestinians to form alliances with the ‘softer’ parts of the Israeli population, such as Peace Now, anti-war campaigners, and the refusniks. However, “every single terrorist attack will weaken their resolve to do something about the situation”

(p.54). He argues that 'soft Islam' must play up to 'soft Judaism' rather than 'hard Islam' confronting 'hard Judaism' or Zionism. Even among Zionists there are the secular who support a democratic Israel and oppose expansionist Zionism, while among the religious are those who even oppose the state of Israel in the absence of messianic intervention such as the anti-Zionist Orthodox Jewish organisation, Neturei Karta. Both these groups are also potential allies for the Palestinians should they replace violent resistance with nonviolence.

Like violence, nonviolence is "a means of persuasion, a technique for political activism, a recipe for prevailing" (Kurlansky, 2006, p.6). It does not mean pacifism. Gandhi rejected pacifism as cowardly. From the Hindu and Gandhian perspectives, nonviolence must not be based on weakness but on strength, discipline, and spiritual vigour, for without such qualities a movement will be unable to attain its aim when confronted with physical violence and brutality. For Gandhi, the key ingredients of a successful non-violent resistance movement are a just cause, capacity for endless suffering, and an avoidance of violence (Kurlansky, 2006). Nonviolence does not eliminate anyone, but is an invitation to the oppressor to participate in change: a structural transformation of the conflict, based in a change in behaviour and attitude toward the oppressed (Galtung, 1989).

Mohammed Abu-Nimer (2003) defines nonviolence as:

A set of attitudes, perception, and actions intended to persuade people on the other side to change their opinions, perceptions, and actions.

Nonviolence uses peaceful means to achieve peaceful outcomes.

Nonviolence means that actors do not violently retaliate against the actions of their opponents. Instead, they absorb anger and damage while sending a steadfast message of patience and an insistence on overcoming injustice (p.14).

Michael Walzer (2000) explains nonviolence as conceding the overrunning of the country that is being defended, a response used in the case of invasion only after violence has failed. The victor is denied the 'fruits of victory' when confronted with non-violent resistance. Walzer asserts that nonviolence, by way

of disobedience, non-cooperation, boycotts, and strikes, enables an occupied people to transform an aggressive war into a political struggle. He explains that the extent to which the occupied can transform the occupying soldiers into policemen, who impose “curfews, fines, jail sentences, and nothing more”, allows for the prospect of a long-term struggle rather than a more destructive war. Such a situation may be ‘winnable’, he explains, particularly when allied states of the invader would have no justification for intervention against the non-violent resistance and if other states could bring moral and economic pressure to bear against the invader.

Kurlansky (2006) documents successes of non-violent resistance in numerous locations, including India, the Soviet Union, Mexico, Argentina, and the Philippines. Similarly, Galtung (1989) identifies the successes of non-violent resistance in Norway, Germany, and Poland in the face of harsh Nazi control. Additionally, he documents seven non-violent campaigns: the Vietnam War, British colonisation of India, Nazi Germany, apartheid South Africa, Israeli-occupied Palestine, US civil rights movement, and the campaign for democratic rule in the Philippines. Galtung explains that in each case, non-violent intercession from other than the victims themselves, from those closer to the oppressor or centre of power, were most instrumental in reducing the social distance, overcoming the dehumanisation, and ultimately succeeding in their campaigns.⁴⁷ The dehumanisation of the oppressed by the oppressor is a central factor highlighted by both Kurlansky and Galtung. It can be detrimental to the effectiveness of a non-violent campaign and is particularly evident in the Israel-Palestine context.

Nonviolence works best the shorter the social distance between those perpetrating the violence and those engaged in the non-violent movement. The greater the extent that the victims have been dehumanised, the less effective their non-violent resistance, as under such circumstances the oppressor may perceive civil disobedience “only as one more instance of queer, strange behaviour, uncivilised rather than civil in disobedience, something to be expected

⁴⁷ The cases documented by Galtung (1989) include, the US anti-Vietnam-war movement; British opposition from the Labor party, Christian groups, and general public to the colonisation of India; ‘Aryan’ German wives of imprisoned German Jews; white South Africans and the international community against apartheid; white Americans in the civil rights movement; and the Manila bourgeoisie in support of rural Filipinos

from uneducated savages, semihumans and what not” (Galtung, 1989, p.19). Such observations accentuate the importance of transnational Palestine advocacy networks, particularly those in Israel, US, and other Western nations.

Successful non-violent resistance is not necessarily dependent on the perpetrators of violence to be able to identify with the victims. As Galtung (1989) explains, the anti-Vietnam war movement in the US and the Western media mobilised against the war out of a hatred for aggression and objection to Washington’s policies rather than compassion for, or solidarity with, the Vietnamese people. He asserts that “third-party intervention (or better, intercession) from someone closer to the oppressor can stay the hand of the violent oppressor better than can the nonviolence of the oppressed themselves, if the Self-Other gradient is too steep” (p.26). The implication of this finding is that Israelis, but also Americans and Europeans, do not necessarily need to be able to identify with Palestinians *per se*, but with the justice and legitimacy of their cause. Due to the prominence of the self-defence norm, however, the justice and legitimacy of the Palestinian cause is likely to be more widely acknowledged in the context of non-violent, rather than violent, resistance.

Potential for a non-violent intifada

The term ‘*intifada*’, generally translated as ‘uprising’, literally means to ‘shake off’, ‘shake out’, or ‘remove’. The measures employed during the first *intifada* were a true reflection of the term – ‘shaking off’ or ‘shaking out’ – as “they were all symbolic of the shaking off of subservience and dependency and the restoration of communal and national pride” (Rigby, 2002, p.5). The foundations of the first *intifada* were laid in the 1970s and 80s when Palestinians established a range of alternative institutions, including charitable societies, professional associations, and mass organisations. Moreover, the Centre for the Study of Nonviolence in Jerusalem was also instrumental in laying the groundwork for the *intifada* by translating into Arabic and distributing the work of famous non-violent advocates such as Gene Sharp, Mahatma Gandhi, and Martin Luther King Jr. While the scope and success of the Centre was limited, it did familiarise Palestinians with certain non-violent techniques that were used during the *intifada* including demonstrations, obstructions to settlement policy, boycotts, strikes, internal

solidarity and support, building alternative institutions, and civil disobedience (Abu-Nimer, 2003). Andrew Rigby (2002) also documents the various forms of unarmed resistance that characterised the first *intifada*.⁴⁸

Strictly speaking, however, the first *intifada* was not completely non-violent; violence did play a role, increasingly so as the uprising proceeded. This issue will be discussed later. At this point it is important to note that despite the use of violence, nonviolence was used extensively, or perhaps primarily, in the first *intifada*. In fact, of the 168 non-violent categories applicable to the *intifada* listed in Gene Sharp's (1973) *The Politics of Non-Violent Action*, 87 were used during the *intifada*. The most extensively used actions in the *intifada* were strikes, followed by community assistance and support measures, and then demonstrations and marches (Abu-Nimer, 2003). Abu-Nimer also provides a detailed list of other non-violent actions used in the *intifada*.⁴⁹

The first *intifada* imposed certain costs on Israel in terms of maintaining the occupation financially, impact on the Israeli economy, erosion of morale within Israel and the IDF, as well as damage to Israel's international reputation (Rigby, 2002). However, the Palestinians themselves suffered extensively during the first *intifada*, not the least of which in terms of injuries and death due to the use of live

⁴⁸ Rigby (2002) documents that during the first *intifada*, Palestinians used various forms of unarmed resistance, including, symbolic resistance such as boycotting Israeli goods, wearing Palestinian national colours and pendants and jewellery featuring the map of historic Palestine, and following Palestinian time by observing summer and winter a week earlier to the Israeli calendar; defensive resistance, including confrontations with Israeli soldiers; polemic resistance such as strikes, and resigning from jobs with Israeli employers; and offensive resistance, including restricting business hours to mornings in defiance of the demands of the Israeli authorities, which allowed the streets to be clear by afternoon when the 'strike force' of young Palestinian men would confront the bullets and tear gas of Israeli soldiers with sling shots and stones. Other forms of resistance during the first *intifada* were the less obvious 'constructive work', which included the development of household self-reliance through the growing of vegetables and rearing of poultry, and home-based classes to counter the closure of schools and colleges (Rigby, 2002).

⁴⁹ Abu-Nimer's (2003) detailed list of other non-violent actions used in the *intifada* includes:

Replacing Israeli-controlled institutions with indigenous ones; withholding taxes; boycotting Israeli products; displaying the Palestinian flag; refusing to work for Israelis; resigning from offices that supported the occupation; defying Israeli school closures; refusing to cooperate with Israeli officials; holding symbolic funerals; ringing church bells; refusing to pay fines; breaking curfews; ostracising collaborators; blocking roads into settlements; marching in religious processions; mounting graffiti campaigns; engaging in national mourning; organising strikes and sit-ins; arranging delegations to meet with Israelis; exposing conditions of the occupation to international media and delegations; and, most important, creating alternative economic, social, educational, and civic infrastructure to reduce dependence on existing Israeli systems (p.150).

ammunition by Israeli soldiers (Zureik & Graff, 1990). By 1991, over one thousand Palestinians had been killed by Israeli gunfire, one hundred by beatings, tear gas and other means, one hundred thousand Palestinians injured, fifteen thousand held in administrative detention without charge or trial for periods of at least six months, three hundred homes destroyed, two thousand made homeless, and almost every Palestinian educational institution, including kindergartens, closed (Abu-Nimer, 2003).

In spite of the devastation caused by the first *intifada* to the Palestinian economy, it did have a positive impact, particularly in political terms. Palestinian nonviolence mobilised international support and sympathy for their cause, effectively 'internationalising' the question of Palestine. Israel was seen as the aggressor and Israelis themselves became more aware of the occupation and its implications. Israelis also were made to question the use of excessive force by the IDF. Overall, there is a consensus that the use of nonviolence by the Palestinians during the first *intifada* demonstrates the vulnerability of the Israeli occupation to such actions (Abu-Nimer, 2003).

Walzer (2004) contends that the major achievement of the first *intifada* was the restoration of the Green Line in Israeli consciousness and on the ground. Following the Six Day War of 1967, the Green Line or the Armistice line that demarked the end of the 1948 war was erased between Israel and Palestine on the ground and in the minds of Israelis. The absence of the 'Line' in Israeli consciousness facilitated a perception of the occupation as administrative and of the territories as part of Israel. That ended with the first *intifada*. Walzer (2004) asserts that "what the PLO terrorists failed to achieve over 20 years, teenagers with slingshots have achieved in eight months. They have put Palestine on the moral map, alongside Israel" (p.106).

Once the initial shock of the *intifada* had passed and Israelis began to appreciate its largely non-violent nature and objectives, they increasingly became less fearful and more optimistic about the possibility of peace. Survey research conducted during the first *intifada* among Israelis showed that in 1987, 43 percent of Israelis reported that they thought that the Arabs wanted to conquer Israel and annihilate a good part of the Jewish population living there. By 1988,

however, this percentage dropped to 34 percent. Moreover, in 1987, 57 percent of Israelis thought peace was possible, but by 1988, the percentage had risen to 64 percent (Arian, Shamir & Ventura, 1992).

In order to reduce the social distance between the Palestinians and Israelis and therefore maximise the potential of 'shame power', the Palestinian body leading the *intifada*, the United National Command (UNC), developed dialogue with Israeli peace groups, who in turn could better persuade their fellow Israeli citizens, essentially building Galtung's (1989) 'great chain of nonviolence'. Under the banner of 'Time for Peace', over the Christmas/New Year period of 1989/90 Palestinians and Israelis were joined by thousands of international peace activists and demonstrated in Jerusalem, marking the 'high point' of the *intifada* (Rigby, 2002).

The first *intifada* forced Israeli society and leadership to think about the Palestinian territories in a more realistic manner; it brought into focus anomalies of Israeli identity. Much of this introspection was induced by the highly critical media coverage Israel received for its repressive policies (Arian *et al.*, 1992). The first *intifada* caused the international community, including the US and Israel, to "recognise the legitimacy of calls for change and to accept that the advocates of change were neither criminals nor perpetual malcontents" (Miskel, 2005, p.54). Moreover, with media coverage of the *intifada* showing Israel to be overreacting, support for change grew. Arian *et al.* write that during the first *intifada* more hawkish attitudes were prevalent among Israelis in the short-term, but the long-term trend was toward greater moderation and compromise with the Palestinians. Israelis, however, expressed a willingness to forsake democratic norms, such as the rule of law, when such norms jeopardised security concerns. Such findings reinforce the need for Palestinians to resist Israel's occupation and pursue their political goals through exclusively non-violent means.

It is perhaps ironic that the world's first non-violent army was that of an Indian Muslim leader, Abdul Ghaffar Khan (Badshah Khan), who mobilised his forces against the British in the Pathan region (Kurlansky, 2006). Initially resisting the British through the use of ancient rifles, in the 1930s the Pathan shifted their resistance to nonviolence, joining Gandhi. The non-violent resistance against the

British in India is often dismissed on the basis of a misconception that the British were a humane and civilised occupier and that this factor was key to the success of Gandhi's non-violent movement. Both Galtung (1989) and Kurlansky (2006) reject this notion, asserting that the British were no less brutal in their repression of resistance.⁵⁰ The success of nonviolence is in its capacity to resist engaging in violence in spite of the provocations. Kurlansky (2006) explains that once the path of violence is accepted, the outcome of the conflict becomes defined by the side with the greater physical force. Patience, he contends, is fundamental to a successful non-violent movement. While Khan's example demonstrates a capacity for Muslims to successfully wage non-violent resistance, Palestinians, it must be noted, are confronted with different circumstances to those of the Indians against the British.⁵¹ Most importantly, perhaps is that "India was not home or holy for the British in the way the Israel is for many Jews" (Abu-Nimer, 2003, p.144).

An occupier, such as Israel, prepared to engage in assassinating civilian leaders, exiling or arresting and torturing resisters, using concentration camps and so forth, cannot be defeated through non-violent resistance, according to Walzer (2000). He also argues, however, that while "coercion and killing of civilians is likely to break the solidarity of the resistance, spreading terror through the country and eventually producing a dulled acquiescence", such an 'iron fist' policy may also 'demoralise soldiers' called upon to implement such tactics and thereby "may undercut support for the occupation among friends and relatives of

⁵⁰ Kurlansky (2006) documents that the British responded to Khan's non-violent resistance with brutality, sealing off the area and killing, torturing, flogging, and imprisoning the Pathans and burning their fields and homes. Beginning with an army of 500 non-violent resisters, the Khudai Khidmatgars or 'Servants of God', Khan gained the support of entire towns, such as Peshawar, which joined the movement upon his arrest. Peshawar declared a general strike and the British responded by firing on a crowd of demonstrators, who remained steadfast through the 'six-hour British attack'. The result was that 80,000 thousand more people replaced the dead and took an oath of allegiance to join Khan's army. Moreover, the British singled out the leaders of the non-violent resistance and subjected them to public torture and humiliation in order to provoke a return to violent resistance.

⁵¹ Gandhi and his followers had several advantages over the British that the Palestinians do not have in their struggle with Israel. Gandhi had a level of international recognition and moral stature not possessed by any Palestinian leader today. With Britain being far from India, a large and heavily populated country, British forces could hardly occupy sufficient areas to quell a mass uprising. Israel, by contrast, surrounds the relatively small Palestinian territories and has sufficient occupying forces relative to the size of the Palestinian population. The Palestinian resistance has little room for manoeuvre and no place of retreat for safety. Moreover, Israel has no inhibitions about employing harsh measures including, assassination, deportation, imprisoning large numbers of resisters for extensive periods without charge or trial, using lethal force on demonstrators, and disregarding international law (Abu-Nimer, 2003).

those soldiers” (p.334). Walzer contends that in the absence of fear of the occupied among the occupying soldiers, non-violent defence will produce only disgust and shame for their role in maintaining the occupation.

Galtung (1989) also addresses the question of how nonviolence can be effective against an oppressor prepared to resort to brutality and cruelty in order to break the resistance. He writes that the nonviolence must then be led by those “other than the victims themselves; *for them, on behalf of them, partly also of them, but not primarily by them*” (p.20). The case of the Vietnam War highlights the critical role that can be played by those closer to the centre of power. The ending of the Vietnam War was a victory for nonviolence; it was not waged by the Vietnamese people, however, but Americans who directed their campaign at Washington (Galtung, 1989). Strengthening the standing of Palestine advocacy networks in America, Europe, and Israel is critical but their success is largely dependent on the Palestinians themselves abandoning violence for non-violent resistance so that the self-defence arguments of Israel and its supporters can be negated.⁵² One of the major shortcomings of the first *intifada*, from a nonviolence perspective, was that it did “not communicate to the world nonviolence in a positive sense” and, therefore, the Palestinians were unable to reap the full benefits a non-violent struggle would have offered (Galtung, 1989, p.64). Central to this point is the use of stone-throwing among other non-lethal tactics.⁵³

⁵² The extent to which the first *intifada* was a successful non-violent movement is a matter of contention. Walzer (2004) argues that although the first *intifada* was not strictly non-violent, the Palestinians made only very limited use of armed or lethal force and for this reason along with the fact that Israelis on the other side of the Green Line were not threatened it was successful in advancing the peace process. Kurlansky (2006), however, disputes that the first *intifada* was non-violent on account of the fact that stone-throwing is not non-violent, but simply low-technology. He considers Palestinian resistance to have been a failure, adding that over the years Israelis “have not become kinder, more understanding people but more embittered, hard-line, and militaristic” (p.177).

⁵³ Although he contends that it is not strictly non-violent, Galtung (1989) positively regards the use of stone-throwing for it carried great symbolism, including an element of humiliating the heavily armed and technologically advanced Israeli soldiers. He strongly cautions, however, that any form of violence against Jews, even stone-throwing, carries a symbolic value that “evokes memories, and plays on dangerous chords in the collective subconscious” of Jewish persecution during the 20th century (p.69). Abu-Nimer (2003) defends the use of stone-throwing during the *intifada* on the grounds that it forced Israeli soldiers to break the rules and inflict severe casualties and also support the principle of nonviolence of turning the opponent’s superior force to one’s own advantage. He acknowledges, however, that stone-throwing undercut the benefits of nonviolence, leaving Palestinians unable to argue that ‘violence only came from Israel’ and only able to assert that ‘the violence was disproportionate’.

Rigby (2002) documents that by the 1990s the impact of unarmed resistance was weakened and the *intifada* deteriorated due to a number of factors. First, because Israel simply wanted Palestinian land and not its people, it did not need Palestinian cooperation to maintain the occupation and was prepared to bear the costs of the *intifada* while increasing its repression of Palestinians. Second, Palestinians were economically more dependent on Israelis than the reverse for Israelis could find an alternative source of cheap labour in Africa, Asia, and elsewhere, but it was difficult for Palestinians to find alternative employment. Israel was also the Palestinians' only source of certain basic necessities. As the *intifada* continued, its costs were more unbearable for Palestinians than Israelis. Third, the Palestinian use of violence during the *intifada* that resulted in the death or injury of Israelis negated the 'shame power' derived from the repression Palestinians received for their non-violent resistance. Rigby (2002) explains that "the dominant emotion within Israel, then as now, was fear – and any act of violence triggered that fear of a people surrounded by hostile neighbours who believe that their very survival as a nation and a state depends on the maintenance of their physical/military strength and to show signs of weakness would be suicidal" (p.7).

As time went on without any tangible achievements to speak of, Palestinians became frustrated and began increasingly to look to armed resistance as the more productive option. Thus, the potential of 'shame power' was further eroded and Israel was handed the justification for further repression. Fear of Palestinian terrorists replaced sympathy as the dominant emotional disposition toward the Palestinian cause. Kurlansky (2006) notes a parallel experience among South Africans in the struggle against apartheid. In the wake of the Sharpeville massacre, black South Africans came to regard nonviolence as ineffective against the apartheid regime.

Mandela and the ANC regarded the non-violent struggle to be a complete failure and responded with a bombing campaign which led to the banning of the organisation and his imprisonment. The President of Zambia, Kenneth Kaunda, formerly a major advocate for nonviolence, shared Mandela's sentiments. The ANC progressively increased its violent attacks from 13 in 1979 to 281 in 1989. But to what extent did violence contribute to the overthrow of the apartheid

regime? In spite of their sustained use of violence, most ANC members came to regard sanctions and boycotts as having been more effective (Kurlansky, 2006). The circumstances of the ANC allowed for a margin of ambiguity in its use of nonviolence that is not available to the Palestinians. As discussed in the previous chapter, anti-apartheid campaigners were not confronted by a competing international norm in their advocacy of racial equality. In the case of Palestine, however, advocacy for self-determination is confronted by the norm of self-defence.

The case of Palestine clearly demonstrates that the justice of the cause does not necessarily make the use of violence good or effective (Abu-Nimer, 2003). This chapter has established that the use of violence has failed the Palestinians and that it is imperative for them to pursue peace through nonviolence. It is questionable, however, whether nonviolence is a realistic option for the Palestinians. Galtung (1989) notes the Gandhian principle that nonviolence must be derived from the inner convictions of the strong, not the weak who simply do not possess the means of violence. He also advocates 'cultural nonviolence' for the Palestinians, whereby they denounce the aspects of their culture that legitimise violence. It is these potential limitations to Palestinian nonviolence that this chapter will now address.

Limitations of Palestinian nonviolence

The effectiveness of the first *intifada* was undermined when Palestinians became disillusioned with what they perceived as an absence of tangible results of nonviolence, and Hamas and Islamic Jihad seized the opportunity to engage in violent attacks on Israelis. In the context of the role played by Hamas and Islamic Jihad during the *intifada*, "Islam contributed to heightening the violence" (Abu-Nimer, 2003, p.165). Both groups advocated for more violence against Israel, rejected compromise, and effectively undercut the potential of non-violent resistance. As explained above, the use of violence eventually overshadowed the predominantly non-violent nature of the *intifada*, and therefore the Palestinians were unable to maximise the benefits of their non-violent resistance.

Islam, however, is based on peaceful values and principles and contains valuable resources in support of nonviolence (Galtung, 1989; Salem, 1997; Salmi *et al.*, 1998; Said *et al.*, 2001; Abu-Nimer, 2003). Responding to the call from the field for non-Western mechanisms and techniques of conflict resolution and peacebuilding has been a number of articles and books that have presented Arab-Islamic approaches (Salem, 1997; Salmi *et al.*, 1998; Irani, 1999; Irani & Funk, 2000; Abu-Nimer, 2000; Said *et al.*, 2001; Abu-Nimer, 2003; MacQueen, 2004; and Abu-Nimer, 2004). Much of this literature focuses on such rituals as *sulh* (settlement), *musalaha* (reconciliation), and *tahkim* (arbitration) and concentrates on the intra-community level, rather than between different states or in the realm of international relations. Moreover, such rituals or techniques are reconciliatory, implemented once the conflict has ceased; they do not provide a model for conflict resolution *per se*, nor do they address the political conditions under which conflict resolution is most likely to occur.

On the question of war and peace in Islam, Abu-Nimer (2003) identifies three main bodies of literature: studies of *jihad* that emphasise the role of violence in Islam; studies that emphasise the peaceful nature of Islam, while limiting the role of *jihad* to self-defence but without challenging the use of violence and maintaining that pacifism is not endorsed, nor can be justified, by Islam; and studies that emphasise non-violent principles in Islam such as justice (*adl*), benevolence (*ihsan*), compassion (*rahmah*), and wisdom (*hikmah*). This latter group of studies do not, however, address the fundamental issue of the status and definition of *jihad* in Islamic law, which this thesis will examine in the following chapters. The definition of *jihad* in Islamic law is critical for it determines the interpretation and application of Islamic principles used in support of nonviolence. Consequently, the work of these scholars largely lacks Islamic legitimacy and is not widely regarded as an authentic or normative Islamic view. Abu-Nimer (2003) acknowledges this point when he states that “the minority of Muslim scholars who advocate and promote the notion of Islamic pluralism and peace building are under tremendous pressure from their communities to stop their reformist efforts” (p.41).

Abu-Nimer (2003) notes that Muslims who advocate for nonviolence base their position on the Meccan period of the Prophet’s life. Part of their lack of success

in establishing nonviolence as a valued or normative aspect of the Islamic tradition is the absence of a methodology that establishes the Meccan period as a valid precedent and effectively counters the dominant perspective of *jihad* in Islamic law, which is addressed in the next part of this thesis. Moreover, reinforcing a perception of nonviolence as alien to the Islamic tradition is the fact that its main proponents have been marginal or fringe Muslim groups. Abu-Nimer (2003) cites a number of “non-violent Muslim communities” including the Maziariyya, who due to their abandonment of fasting and *jihad*, and the Ahmadiyya, who due to their recognition of Mirza Ghulam Ahmad as a prophet, are both heretics groups according to the orthodox Islamic perspective. Consequently, their views on nonviolence in Islam are incapable of advancing the place of nonviolence as a normative aspect of the Islamic tradition.

Abu-Nimer’s (2000) own research makes a valuable contribution to nonviolence and peacebuilding by articulating such principles and values from an Islamic perspective and in an Islamic context. Basing his analysis on Islamic scriptures, he finds no theological reason why Muslims could not pursue a path of non-violent resistance. Islamic principles and practices that support nonviolence include the Five Pillars, the importance of justice and fairness, equality, sacredness of human life, quest for peace, forgiveness, patience, *ummah* and collaborative action, consultation and consensus, pluralism and diversity. Abu-Nimer (2000) also cites the Prophet’s non-violent struggle against the Quraysh as a source of Islamic nonviolence. Moreover, Galtung (1989) believes that the *hajj* (pilgrimage) and concept of *hijra* (migration) provide Palestinians and Muslims generally with the cultural tools to carry out such non-violent actions as mass demonstrations and marches. He also insists that the concept of *sabr* or patience is an essential tool needed for nonviolence that Palestinians and Muslims already possess.

There are, however, some shortcomings to these perspectives at present. The appropriateness of the Prophet’s non-violent struggle against the Quraysh as an example of nonviolence in Islam is limited to the extent that the Prophet was forced to emigrate and still had to use armed force against the Quraysh from 624 until 630. Although the Prophet was able to take Mecca in 630 by a bloodless conquest, this was due to the military superiority he had established by that time,

which made fighting unnecessary (Al-Mubarakpuri, 2002; Armstrong, 2001; Al Umari, 1991; Haykal, 1993).

Moreover, the fact that in Muslim tradition the nonviolence displayed by the Prophet has been overshadowed by his military conquests sets a precedent for the latter rather than the former in dealing with conflict. Generally, Muslims do not see the value of nonviolence and regard violence as the most effective, or at least 'Islamic', means of resolving conflict. Armed resistance is regarded as the honourable path, the path through which God has promised victory (Quran, 8:65-66; 9:14; 61:13). This is not to suggest that all or even most Muslims would be prepared to take up arms to resolve a conflict – clearly there are not streams of Muslims attempting to enter Palestine to wage *jihad* against the Israelis in spite of the overwhelming support for the Palestine cause throughout the Muslim world – but this does not mean that Muslims do not support armed resistance or endorse nonviolence.⁵⁴ For Muslims to support nonviolence it must be advocated within the 'Islamic' context of resistance; it must be presented as an Islamically legitimate and authentic form of *jihad*. This challenge is the focus of the subsequent chapters of this thesis.

Much of Abu-Nimer's (2003) argument for the potential for nonviolence in Islam is based on such principles as justice (*adl*) and the rejection of oppression (*zulm*), which can, and are, equally used in support of the use of violence. However, like Kurlansky (2006) and Galtung (1989) he also places considerable emphasis on patience (*sabr*), which in Islam connotes being thorough, constant,

⁵⁴ Research by Hilal Khashan (2000) on the attitudes of Muslim Lebanese, Jordanians, Palestinians, and Syrians toward Israel found that over 82 percent of respondents stated that they either 'approve' or 'strongly approve' of 'the use of force against Israel if the Arab military situation permits'. Among those who approve of the 'use of force' against Israel, 65 percent advocated the destruction of Israel when asked 'how far a war with Israel should go'. When cross-tabulated with 'religiosity', the author found 92 percent of those 'high', and 32 percent of those 'medium', on the religiosity scale, supported the use of force to destroy Israel. Moreover, 87 percent of respondents either 'support' or 'strongly support' the 'militant activities of Islamic groups against the state of Israel' (p.203).

Additionally, a 2007 study on trends in the developing and Muslim world conducted by the Pew Research Centre found that while support for Islamic extremism has declined, Hamas and Hezbollah are still viewed favorably across the Muslim world. Majorities in Palestine, Egypt, Jordan, Malaysia, and Nigeria, and pluralities in Morocco, Kuwait, Pakistan, and Indonesia support both Hamas and Hezbollah. Additionally, Hezbollah is supported by a plurality of the population in Lebanon, while Hamas is supported by an overwhelming 81 percent of the population in Bangladesh. Among the predominantly Muslim countries surveyed in the Middle East and Asia, only Turkey was found to have significant majorities that viewed Hamas and Hezbollah unfavorably (Kohut, 2007).

steadfast, systematic, optimistic, and persevering. Abu-Nimer notes that at least 15 verses of the Quran encourage Muslims to exercise *sabr* in the pursuit of justice. Moreover, he quotes the famous Prophetic tradition that “power resides not in being able to strike another, but being able to keep the self under control when anger arises” (Bukhari, vol. 8, bk. 73, no. 135). Abu-Nimer argues that this conception of patience and self-restraint gives Muslims a considerable advantage in non-violent resistance. Additionally, the standard Islamic rituals, such as prayer, charity, fasting, and pilgrimage have provided Muslims with the requisite conditioning to engage in various non-violent activities. Moreover, the Friday prayer provides a weekly opportunity for the dissemination of messages and mobilisation, fasting provides conditioning for hunger strikes, and the congregational prayers provide the conditioning for assembly in parallel lines for marches and demonstrations (Abu-Nimer, 2003).

Indeed, Islamic rituals and practices, such as prayer, charity, fasting, and meditation were used by Palestinians during the *intifada*; “their faith and practice gave them the strength to face the rigors of the uprising” (Abu-Nimer, 2003, p.168). Palestinians spoke of the inner peace they derived from prayer and reciting the Names of God and also of the *intifada* as an extension of the sacrifices required when fasting during the month of Ramadan. Islam was used by the leaders of the *intifada* as “a force for tolerance, pluralism, and reconciliation” but it also served as a force for “division and enmity” (Abu-Nimer, 2003, p.171). Again, however, with the exception of ‘forgiveness’, the Islamic values that guided and supported Palestinian nonviolence – unity, solidarity, justice, empowerment, commitment and discipline, and *sumud* (steadfastness) – all equally relate to, and support, an armed struggle as advocated by Hamas and Islamic Jihad; they do not exclusively support nonviolence to the exclusion of violence. This largely explains Abu-Nimer’s (2003) finding that Islam also “reinforced the element of violence” in the *intifada*, which was aided by the fact that “non-violent political struggle is still a very long way from being a dominant socio-political philosophy and practice in the Middle East” (p.178-179).

The negative experience of the second *intifada* may, however, have laid the foundations for a rejection of violence and support for nonviolence among Palestinians. In December 2004, four years into the second *intifada*, polls

conducted among Palestinians by the Jerusalem Media and Communications Centre (JMCC) found that 52 percent of Palestinians opposed military operations against Israeli targets and considered them detrimental to Palestinian national interests, up from 27 percent in June 2004. Furthermore, 63 percent believed that the *intifada* should continue, down from 70 percent in June 2004, and 77 percent in October 2003, while only 36 percent supported the continuation of both popular and military forms of the *intifada*, down from 53 percent in April 2003 (Khader, 2005). Khader writes that the differences in the poll results over the two-year period represent a maturing of the Palestinian people and their resolve to engage the international community to support the conflict's resolution and an end to the world's last colonial occupation. He adds, however, that so long as the occupation continues and the Israeli government engages in unilateralism, "Palestinian resistance will continue in all its forms" and that the polls demonstrate that Palestinians demand a "just peace" and "they are ready to go to great lengths to achieve this goal" (p.92).

In the course of my field research in Israel and Palestine in 2006, I found that secular Palestinians along with Israelis across the religio-political spectrum acknowledge the potential of Palestinian nonviolence to rally international support to the Palestinian cause and apply pressure on Israel to accept a just peace. Unlike the more religiously-oriented Palestinians who tend to support the use of violence and dismiss the potential of nonviolence, more secular Palestinians and Israelis expressed their view to me that violence has isolated the Palestinians internationally. Palestinians also expressed skepticism about nonviolence due to the perceived power and influence of the Zionist movement globally. This view was even conveyed to me by the director of the Palestinian Academic Society for the Study of International Affairs (PASSIA), Mahdi Abdul Hadi.⁵⁵

However, in an interview I conducted with the late Tanya Reinhart, she insisted that "only international pressure will force Israel to withdraw" and that if the Palestinians abandon violence and adopt non-violent methods, they could expect the support of up to two-thirds of the Israeli population for dismantling the

⁵⁵ Interview conducted with Mahdi Abdul Hadi in his office in Jerusalem on 21 March 2006.

settlements and withdrawal from the occupied territories.⁵⁶ This was also the view of Ilan Pappé. He stated in an interview with me in March 2006 that “only international opinion and pressure will force Israel to end the occupation”. He cautioned, however, that boycotts, divestment, and sanctions against Israel could be undermined by the “guilt complex in Europe over the Holocaust”.⁵⁷ This sentiment was also expressed by two representative of the PLO Negotiations Affairs Department, who discussed with me the importance of the international community in balancing the asymmetry of the conflict, but were concerned that boycotts of, and sanctions against, Israel “could be perceived as anti-Semitic”.⁵⁸

Daniel Levy of the Geneva Initiative also acknowledges the need for international pressure on Israel. In my interview with him in March 2006, he explained that “occupation and settlement has not hurt Israel...Israel has not paid a financial price for occupation – there have been no international sanctions or embargos as in the case of South Africa”. Daniel Levy contends that “the world has been unwilling to provide an effective stick, so it needs to instead show all the carrots – lay out all the benefits Israel can derive from peace to encourage domestic support for peace, which will in turn result in pressure on the government”.⁵⁹ This can only be pursued within the context of Palestinian nonviolence, however. Abdessalam Najjar of Neve Shalom – Wahat al-Salam (Oasis of Peace), stated in an interview with me that “a change in the situation, an end to the conflict, will not occur while the dominant side, the Jews, feels comfortable – they have no motivation for change”. He advocates for Palestinians

to become more concerned about, and take more responsibility for, Israeli security and end violence. Non-violent resistance is more effective. The first step is to build society internally, establish internal solidarity, and then to employ such strategies as BDS [boycotts, divestment, and sanctions] and also engage in constructive dialogue with Jews based on equal relations. Palestinians must be ready to hear Israel's security concerns

⁵⁶ Interview conducted with Tanya Reinhart at her home in Tel Aviv on 12 March 2006.

⁵⁷ Interview conducted with Ilan Pappé in his office at Haifa University on 21 March 2006.

⁵⁸ Interview conducted in the office of the PLO Negotiations Affairs Department on 29 March 2006.

⁵⁹ Interview conducted with Daniel Levy at his office in Tel Aviv on 16 March 2006.

and Jews must be ready to hear Palestinians' concern for equality and human rights.⁶⁰

To examine the potential of a non-violent intifada the Program on International Policy Attitudes (PIPA) at the University of Maryland conducted a study that included focus groups and surveys with randomly selected samples of Palestinians and Israeli Jews. A Palestinian polling organisation, the Jerusalem Media and Communications Center, carried out the poll of 600 Palestinians through face-to-face interviews from 12-19 August 2002. An Israeli polling organisation, the B.L. and Lucille Cohen Institute for Public Opinion Research of Tel Aviv University, carried out the poll of 504 Israeli Jews by telephone interviews from 12-14 August 2002.

Eighty percent of Palestinians would support a large-scale non-violent protest movement and 56 percent would participate in its activities (Kull, 2002). Sixty-two percent of Palestinians stated that a new approach is needed in the *intifada* and overwhelming majorities (73-92%) approve of Palestinians using various methods of non-violent action. However, Palestinians show equal levels of support for violent methods. The non-violent methods that appealed to the highest proportions of Palestinians were boycotting products made in the settlements and Israeli products such as cigarettes and soft drinks (92 and 91% respectively). However, extensive support was also expressed for non-violent methods that would make for compelling visual images, namely large groups blocking the construction of settlements (83%) and large groups blocking the demolition of homes (73%) (Kull, 2002).

Moreover, the proportions of Palestinians who said they would actually participate and also encourage others to participate in large groups blocking the demolition of homes and large groups blocking the construction of settlements is 44 and 36 percent respectively. It is noteworthy that proportions of Palestinians that support these and other non-violent methods are as high or higher than the proportion who support suicide bombings (73%). PIPA director, Steven Kull (2002) notes that were such numbers mobilised, this would mean hundreds of

⁶⁰ Interview conducted with Abdessalam Najjar on 15 March 2006 at Neve Shalom – Wahat al-Salam (Oasis of Peace).

thousands of Palestinians would participate in these non-violent forms of resistance.

The majority of Palestinians, however, are not willing to renounce violence. Eighty-five percent of Palestinians reason that since Palestinian civilians suffer at the hands of Israelis, then Israeli civilians should suffer at the hands of Palestinians and 59 percent disagree that Palestinian use of violence against civilians undermines international support for the Palestinian cause (only 36% agreed). The majority also believe that violence makes Israel willing to compromise (61%), while only 34 percent disagreed (Kull, 2002). A strong plurality of Palestinians regard non-violent resistance as less effective than violence as a means of resisting the occupation. In 2002, Fatah leaders called for nonviolence instead of violent resistance to the occupation and requested Hamas to halt suicide attacks on Israeli civilians (Kull, 2003). Research by Kull (2003) documents that 57 percent of Palestinians surveyed opposed Fatah's call. Asked if they would like to see a future *intifada* put more emphasis on violence or nonviolence, 44 percent said both, while 25 percent wanted more emphasis on violence, and only 19 percent wanted more emphasis on nonviolence (Kull, 2003).

On the Israeli side, an overwhelming 78 percent of Israeli Jews stated that Palestinians have a legitimate right to seek a Palestinian state, provided that they use non-violent means. Additionally, 56 percent expressed the same sentiment in regard to the Palestinians' right to oppose the expansion of the settlements. A majority of Israeli Jews (56%) said they would approve of such non-violent Palestinian resistance. Almost two-thirds (63%) said the Israeli government should not try to stop Palestinians from organising large non-violent demonstrations. If the Palestinians were to move from violent to non-violent forms of protest, 70 percent of Israeli Jews would favor making concessions to the Palestinians, including phasing out the checkpoints between Palestinian towns. Additionally, the majority of Israeli Jews (52%) said that the Israeli government should respond to Palestinian nonviolence by making some concessions in negotiations because they see Palestinian nonviolence in the Israeli national interest. On the condition that this nonviolence could be sustained by the Palestinians, the proportion of Israeli Jews who support flexibility in

negotiations on the borders of a Palestinian state increases to 58 percent (Kull, 2002).

However, the majority of Israeli Jews believe the government should 'harshly crack down' in the event of large groups blocking the construction of settlements (54%) or blocking access to the settlements (65%). More significantly, Israelis are highly concerned about non-violent action that would harm the Israeli economy such as the boycott of Israeli-made products. Sixty percent said the government should stop such activity because of the damage to the economy it would cause (Kull, 2002).

Among both Israelis and Palestinians there is an acknowledgement of the potential for nonviolence to bring a solution. However, this is undermined by a lack of confidence in the other side. Kull (2003) contends that an increase in non-violent methods of resistance by Palestinians could change attitudes among Israelis. The study demonstrates the necessity for Palestinians to publicise their non-violent initiatives among Israelis, echoing the recommendations of Galtung (1989). While 39 percent of Israelis perceived the Fatah announcement for nonviolence as an important development (12% very important, 26% somewhat important), 24 percent considered it not very important and 36 percent not important at all. Lack of trust and confidence was a critical factor, as 84 percent said they thought that the development of a non-violent Palestinian movement was unlikely (Kull, 2003).

The results of the study show that Israelis had little awareness of non-violent Palestinian demonstrations at the time – only 2 percent had heard 'a lot', 7 percent had heard 'some' – but 28 percent had heard 'not very much', and 62 percent had heard 'nothing at all'. The framing of publicity about Palestinian nonviolence is equally critical as the majority of Israelis surveyed tended to interpret the violations of the curfew negatively (45%), as a challenge to Israeli authority rather than the emergence of a non-violent movement (Kull, 2003). This finding is consistent with Galtung's (1989) observations of 'dehumanisation' discussed above.

Additionally, these survey results suggest that Palestinian nonviolence could have a positive impact on Palestinian safety and security, and if repressive measures continued to be used against non-violent Palestinian resisters, this may be detrimental to the public perception of the IDF and Israeli government, both domestically and internationally. The majority of Israeli Jews supported the IDF's crackdown in response to Palestinian terrorism. Indeed, 65 percent considered the IDF to have always acted appropriately in its operations in the West Bank and Gaza and over 50 percent stated unconditionally that the IDF's imposition of curfews on Palestinian towns is a good practice. However, Israeli Jews' confidence that the IDF will achieve its goal appears to be gradually eroding. When asked how likely it is that these military actions will achieve their goal of controlling Palestinian terrorism, the mean score was 5.7, down from 6.2 in August 2002 (0= very unlikely and 10=very likely). Of those surveyed, 64 percent agreed that when Israelis use armed force that harms Palestinian civilians, this leads to an increase in Palestinian violence, while 25 percent said it made no difference, and only 6 percent said it leads to a decrease in Palestinian violence. Furthermore, 44 percent believe that the curfews increase support for suicide bombing, while only 17 percent believe that curfews reduced support for suicide bombing, and 34 percent said curfews had no real effect (Kull, 2003).

This chapter has focused on the detrimental impact of Palestinian violence on a resolution of the conflict, particularly in the context of international public opinion. However, it should be noted that Israeli repression is also perceived negatively internationally and has a negative impact on international support for Israel. In a poll conducted across 27 countries for the BBC World Service by PIPA and GlobeScan in late 2006 and early 2007, respondents were asked to rate 12 countries: Britain, Canada, China, France, India, Iran, Israel, Japan, North Korea, Russia, the USA, Venezuela and the European Union, as having a positive or negative influence. An average of 56 percent across 27 countries stated having a mainly negative view of Israel, with only 17 percent having a positive view, which was the least positive rating for any country evaluated. In 23 countries the most common view was negative, with only two leaning towards a positive view (Nigeria and the US) and two divided (Kenya and India) (Kull & Miller, 2007).

Although the most negative views of Israel were found in the predominantly Muslim countries in the Middle East (Lebanon (85%), Egypt (78%), Turkey (76%), and the UAE (73%)), large majorities in Europe also have negative views of Israel, including Germany (77%), Greece (68%) and France (66%). Indonesia (71%), Australia (68%) and South Korea (62%) have the most negative views of Israel in the Asia/Pacific region, while Brazilians (72%) are the most negative toward Israel in Latin America (Kull & Miller, 2007). PIPA director, Steven Kull, explains that countries that tend to use military power are generally viewed negatively by people around the world, while countries such as Japan, France, as well as the EU, are seen to use more 'soft power' and tend to be viewed more positively. It is also noteworthy that a poll conducted by the European Commission in October 2003 with a sample of 7,500 Europeans (500 from each of the then 14 EU member-nations) found 59 percent consider Israel the greatest threat to world peace (Beaumont, 2003).

The extent to which Israel is seen as part of a conflict affecting the US positively correlates with increased sympathy for Israel among Americans, but drops when Israel is perceived as neglecting its commitment to peace. Sympathy for Israel reached as high as 60 percent during the period immediately following the first Gulf War, during which Arafat and the PLO sided with Iraq. By contrast, it fell to just 38 percent in August 1997, when Prime Minister Netanyahu was perceived as undermining the peace process (WorldPublicOpinion.org, 2006).

Moreover, although most Americans do not have a good understanding of the Roadmap, a majority support it and are willing to support the US President putting pressure on both sides in order for the conflict to be resolved. Research by PIPA/KN conducted in May 2003 shows that if Israel does not take steps called for under the Roadmap, majorities favour the President telling Israel that the United States will withhold military aid (65%), economic aid (63%), and military spare parts (60%), and that the US will no longer veto UNSC resolutions that criticise Israel (53%). Similarly, majorities favour putting pressure on the Palestinian leadership by threatening to withhold economic aid (74%), encouraging other countries to withhold aid (62%), and refusing to deal with the Palestinian leadership (53%) (Kull, 2003). Interestingly, 73 percent said that the US should not take sides in the conflict, with small minorities saying that the US

should take Israel's side (21%) or the Palestinians' side (2%). However, the majority (57%) recognises that the US does take Israel's side (Kull, 2003).

It is also noteworthy that an early April 2002 Gallup survey found that although 53 percent of Americans said they would describe Israeli actions as 'legitimate acts of war' against their opponents, 39 percent said they would be better described as 'acts of terrorism'. In the same survey, a plurality (49%) said that Israeli actions in the West Bank were 'mostly justified' but 41 percent felt they were 'mostly unjustified'. Moreover, asked in an April 2002 CBS News poll whether the Israelis have tried hard enough to reach a diplomatic solution to the conflict with the Palestinians or have been too quick to use military force, only 30 percent felt they had tried hard enough on the diplomatic front, while a majority of 51 percent said they had been too quick to use military force. Polls taken during the Israeli offensive of 2002 show a significant decrease in American sympathy for Israel and a doubling of sympathy for the Palestinians (WorldPublicOpinion.org, 2006).

Furthermore, it is highly significant that most Israelis are supportive of the UN, perceiving it as the world's key organisation for conflict resolution, and are willing to support UN decisions even if they conflict with their own preferences.⁶¹ Chapter 2 of this thesis showed that the UNSC resolutions on the question of Palestine have addressed all of the so-called final status issues and provide a normative framework for a just resolution of the conflict. The 2007 research findings of the Chicago Council on Global Affairs and WorldPublicOpinion.org raise the prospect that a majority of Israelis would be willing to accept peace with the Palestinians on the basis of the UNSC resolutions, particularly under conditions of Palestinian nonviolence and international pressure. Israelis are indeed sensitive to international opinion as over 70 percent of those surveyed by Kull (2003) said that 'if the Palestinians increasingly emphasised non-violent forms of protest and significantly reduced the amount of violence, this would lead

⁶¹ Research published by The Chicago Council on Global Affairs and WorldPublicOpinion.org in 2007 found considerable support for the UN as the world's key organisation for conflict resolution. Fifty-four percent of Israelis said that "when dealing with international problems, Israel should be more willing to make decisions within the United Nations even if that means Israel will sometimes have to go along with a policy that is not its first choice" (The Chicago Council on Global Affairs and WorldPublicOpinion.org, 2007).

the international community to put more pressure on Israel to make compromises’.

Decades of occupation, however, have resulted in the ‘Islamisation’ of Palestinian society, of which the rise of Hamas is a primary manifestation (Nusse, 1998). While Hamas demonstrates flexibility and pragmatism, it is an Islamist organisation committed to traditional ethos (Nusse, 1998; Mishal & Sela, 2000). The increasing resurgence of Islam among Palestinians means Hamas will have to be included in future political arrangements (Nusse, 1998; Roy, 2003), a point confirmed by the election of Hamas in 2006. Moreover, the influence of Hamas has been so extensive and the place of Islam so important to Palestinian society that the conflict itself is described as having been ‘Islamised’, in the sense that the causes, sources, and solution of the conflict are increasingly viewed by Palestinians through a ‘religious-Islamic lens’ (Litvak, 1998).

It was difficult to maintain a non-violent *intifada*; nonviolence easily gave way to violence after a relatively short time due to Palestinian ‘ambivalence’ to the concept and the pride of place armed resistance held among influential Palestinian groups like Hamas, Islamic Jihad, and also Fatah, PFLP and DFLP. Amid the collapse of the first *intifada*, The Centre for the Study of Nonviolence in Palestine concluded that the perception among Palestinians of nonviolence as ‘strange to Islam’ is widespread and difficult to combat. While such non-violent concepts as ‘civil disobedience’ resonate with Palestinians, the notion of nonviolence fails to attain widespread respectability. Moreover, that armed resistance is a right of the Palestinian people cannot be denied, and therefore foregoing of the use of violence for a non-violent *intifada* is seen as a surrender of that right (Abu-Nimer, 2003).

Conclusion

The use of violence, especially terrorism, has been detrimental to the Palestinian struggle for self-determination, particularly since the advent of the war on terror. Palestinian violence has resulted in the extensive death and destruction of Palestinian people and society, giving Israel a justification for further repression

under the guise of security and counter-terrorism and undermined the potential of transnational advocacy networks to pursue a just resolution of the conflict on the basis of human rights and international law. In sum, Palestinian violence has further elevated the norm of self-defence at the expense of self-determination. In spite of numerous non-violent values and principles within the Islamic tradition, the use of armed force in response to conflict remains the normative, most 'Islamically' legitimate and authentic approach in the increasingly 'Islamised' Palestinian society. A just resolution of the Israel-Palestine conflict is most likely to be achieved through Palestinian nonviolence, which first demands a reformulation of *jihad*. The following chapter will discuss the place of the classical doctrines of war and peace in Islam and the dominance of Islamic law in defining such fundamental concepts as *jihad*. This thesis will then proceed to explain the process of reformulating *jihad* on the basis of contextualisation and an objective-oriented approach in order to develop a perspective of nonviolence that possesses Islamic legitimacy and authenticity but is able to positively contribute to a just peace.

PART III

Reformulation

Chapter 5: The Islamic Doctrines of War and Peace

A central argument of this thesis is that understanding, theory, and knowledge are the product of human experience (Habermas, 1978), derived from a particular social and political context (Cox, 1986). A central function of theory is to continue to recognise and respond to changing social and political realities by reforming or rejecting old concepts and developing new ones (Cox, 1986). This chapter explains that just as a militant understanding, interpretation, and application of *jihad* became dominant in the Muslim world in response to particular historical and political realities and conditions, contemporary realities and conditions are such that the Palestinians do not have a military option in their conflict with Israel and that the attainment of their political aspirations are determined by the extent to which they can generate sufficient moral power with which to confront Israel. This chapter discusses the Islamic doctrines of war and peace. It defines and examines three central concepts: *shariah* or Islamic law, *siyar* or the branch of *shariah* that deals with international relations, and *jihad*. It is first necessary, however, to briefly discuss Islam, particularly its origins, teachings, and development.

While the origins of Islam can be traced in an historical sense to 7th century Arabia, the Quran, the holy book and primary text of Islam, does not regard the faith as a new religion but as a 'renewal' or 'reminder' of the previous monotheistic traditions. Born in the year 570 in Mecca, the Prophet Muhammad received the first revelation of the Quran in the year 610. Muslims believe the Quran is the direct word of God revealed to the Prophet Muhammad through the Angel Gabriel. The Prophet continued to receive revelations of the Quran for the next two decades until his death in 632. It should be noted that the Quran was revealed for 13 years while the Prophet resided in Mecca and then for 10 more years after he migrated to Madina. The consensus of scholars is that the Meccan verses contain the more universal message of Islam, while the Madinan verses contain guidance, advice, instructions, and laws and were revealed directly in response to the circumstances encountered by the Prophet and his companions.

Together, the Quran and the Prophetic Traditions⁶² encompass the complete teachings of Islam. From these sources, two aspects of the prophethood of Muhammad can be ascertained: the message and the mission. The message of Muhammad is best encapsulated in the concept of *tawhid*: there is only one God, the Almighty, who is the creator and sustainer of everything, to whom all human beings are accountable, and the only being worthy of worship. Muhammad recognised that to accept this concept was a matter of faith and that in accordance with the Quranic provision ‘let there be no compulsion in religion’ (Quran, 2:256) could not be forced or imposed on people. Rather, a primary function of the Quran is to provide numerous proofs and arguments concerning the existence of God and the virtue of worshipping this one God alone, which are generally presented in the Quran with reference to various aspects of nature and the rise and fall of previous civilisations.

The mission of the Prophet, which was an extension of the essential message of Islam, can basically be characterised as one of social justice. Rahman (2002) explains the relationship between the concept of monotheism and social justice in Islam:

Muhammad’s monotheism was, from the beginning, linked up with a humanism and a sense of social and economic justice whose intensity is no less than the intensity of the monotheistic idea, so that whoever carefully reads the early Revelations of the Prophet cannot escape the conclusion that the two must be regarded as expressions of the same experience (p.12).

A central aim of the Quran, according to Rahman (1989) is “to establish a viable social order on earth that will be just and ethically based” (p.37). He explains that “the Quran’s goal of an ethical, egalitarian social order is announced with a severe denunciation of the economic disequilibrium and social inequalities prevalent in contemporary commercial Meccan society” (p.38). The Quran

⁶² The term ‘Prophetic Traditions’ is used in this thesis in reference to two Arabic terms: *sunnah* and *hadith*. *Sunnah*, literally meaning conduct, way, or manner, refers to the statements, actions, and characteristics of the Prophet Muhammad. The term *hadith* (plural: *ahadith*), literally meaning report, news, or narration, refers to the narrations of the *Sunnah* of the Prophet. Another important term in this context is ‘*sirah*’, which refers to the biographies of the life of the Prophet Muhammad.

criticises polytheism and socioeconomic disparity as both perpetuate the divisiveness of humanity and states (in verses 107:1-7) that even prayers are hypocritical in the absence of other aspects of Islam, such as caring for orphans and feeding the poor (Rahman, 1989).

It is also noteworthy that the Quran itself encourages its reader to look up from the words on each page out to the wider world in order to appreciate and understand the contents of the book. Far from requiring its followers to accept a superficial meaning of the Quranic verses, God encourages the reader of the Quran to contemplate and search for deeper meaning (Ibn Ashur, 2006). Numerous verses throughout the Quran invite its reader to observe the creations of God, to reflect upon such natural phenomenon as the formation of mountains, function of trees, orbit of celestial bodies, and so on. In short, the Quran asserts that knowledge can come from sources other than the words in the book.⁶³ As a number of contemporary scholars are now arguing, the logical extension of this perspective is the utilisation of the methods and knowledge of the physical and social sciences in a contemporary understanding, interpretation, and application of the Quran.

However, in addition to literalism in understanding and interpreting the Quran that is characteristic of the approach to Islam across much of the Muslim world, the dichotomy of knowledge into 'religious' and 'secular' has come to be regarded a major problem in Muslim thought. Rahman (1984) is highly critical of the distinction Muslim scholars made between so-called religious or traditional sciences (*ulum shariah* or *ulum naqliya*) and rational or secular sciences (*ulum aqliya* or *ghayr shariah*). He rightly explains that the latter has been neglected while the former has been deemed a more worthwhile pursuit for the benefits in the hereafter. Compounding the problem has been the approach to education

⁶³ One such example is found in chapter 18 of the Quran with the story of Moses and the sage, Al-Khadir or Al-Khidr as he is often referred. The story demonstrates the insufficiency of relying on the 'Book' alone, independent from context or external realities. Not being a prophet like Moses, the sage represents knowledge and wisdom external to or aside from revealed knowledge, as represented by Moses. Throughout the story, the 'textbook' responses given by Moses to the situations encountered are shown to be inadequate and wanting in terms of achieving higher purposes or objectives of God. By contrast, by virtue of having a comprehensive understanding of the encountered circumstances, the actions of the sage are shown to be wise and correct. This perspective provides a basis for the use of social science in the understanding, interpretation, and application of the Quran and will be addressed later in this thesis.

even within the religious system whereby the Quran was never studied directly but was “buried under the debris of grammar and rhetoric” (Rahman, 1984, p.36).

Moreover, rather than studying the original texts of theology, philosophy, and jurisprudence, from the late medieval period Muslim students studied commentaries and super-commentaries, which Rahman (1984) explains, “resulted in a preoccupation with hair-splitting detail to the exclusion of the basic problems of a subject” (p.37). Furthermore, students would learn texts by rote without any deeper understanding of a subject. Knowledge was not regarded, as it is in the West today, as the active pursuit to know the unknown, but a “passive acquisition of already established knowledge”, which is “not conducive to original inquiry and thought, since it assumes that all that can be known about reality is already known” (p.38).

Among the lasting legacies that the rise of European power in the 16th century has had on the Muslims world is the dichotomy of scholarship among Muslims. Attempts by various Muslim nations to catch up to Europe in terms of skills and technological knowledge resulted in the establishment of a secular educated class that stood in contrast to the *ulema* (Islamic religious scholars), who had been for centuries “deeply involved in *taqlid* [blind adherence to legal precedents] and arid legalism, thereby providing little leadership” and whose education “lacked the concept of systematic empirical observation and left them alienated from those specialising in newly evolving social sciences with their emphasis on application and methods” (AbuSulayman, 1993, p.4).

Attempts at reform by institutions such as Al-Azhar University were ill-directed, particularly in their introduction of the physical sciences rather than social sciences into the curriculum. Rahman (1984) explains that “for a life-oriented and socially geared religion like Islam it is more necessary to teach philosophy and social sciences than the individual physical sciences (except at the elementary level) at the highest possible level” (p.68). He calls for the resurrection of Islam as envisioned by the Quran and the Prophet Muhammad. Rahman asserts that this may be achieved “by studying the Quran’s social pronouncements and legal enactments in the light of its general moral teaching and particularly under the

impact of its stated objectives...on the one hand and against the background of their historical-social milieu on the other” (p.141).

Since the late 20th century some Muslim intellectuals have expressed increasing concern over the ways of Muslim thinking or what AbuSulayman (1993) has referred to as a ‘crisis in the Muslim mind’. Indeed, one of the primary objectives for which the US-based International Institute of Islamic Thought (IIIT) was established was to reform the way Muslims think and for the reorder and reformulation of Muslim priorities. Fundamental to this process is for Muslims to make the “mental transition from a preoccupation with particulars to a concern with universals” (Al-Alwani cited in Raysuni, 2006, p.xii). In short, Muslims need to refocus on the intentions and objectives of their faith as enshrined in the Quran and the Prophet Traditions. Taha Jabir Al-Alwani, in the introduction of Raysuni’s (2006) work explains:

Most of the jurisprudence which we know today has entered a phase in which it is closer to stagnation and impotence than it is to vitality and effectiveness. The reason for this is that it has lost among other things, the spirit of the Law, that is to say, a living awareness of the objectives of Islamic Law and its associated theory (p.xvii).

Among the basic problems identified by AbuSulayman (1993) is the ‘incompatibility of thought methodology’ of the contemporary Muslim. He explains that as a consequence, “the *shariah* is no longer providing man with rules and regulations that can enable him to exert more effective control over his environment and destiny” (p.6). Highlighting the degree of the problem of stagnation in Islamic thought, particularly political thought, Hashmi (2002) notes that it is the work of the 8th century scholar, al-Shaybani (d.804) that remains *until today* ‘arguably Islam’s most central work in the field of international relations’. While colonisation made many Muslim scholars aware of the problem of the stagnation of Islamic law, the general Muslim response to colonial policies was toward conservatism in legal thought, and consequently a view of Islamic law as immutable became entrenched (Masud, 1995).

The contemporary resurgence of Islam has raised the need for the reform of Islamic law in order for the law to be consistent with existing realities and conditions. However, the process of reform has not kept pace with demands for Islamisation. Sohail Hashmi (2001) observes that the phenomenon of Islamic resurgence has reached the point where “every Muslim leader must make concessions to Islamic values” (p.108). He explains that pressure to ‘Islamise’ policy is exerted on Muslim governments from the masses and not only from radical Islam or militant groups. Coupled with the belief, advocated most strongly by such ‘fundamentalist’ figures as Sayyid Qutb, that Islam is the answer for the social, economic, and political crises of modern Muslim societies, has been the demand for the implementation of Islamic law across the Muslim world (Esposito, 1999).

Like other people and civilisations throughout history, success in the form of military victory and expansion confirmed for the Muslims the validity of their faith, which is why “Western domination of the Arab-Islamic world since the 19th century was felt to be such a catastrophe and a matter of shame” (Nusse, 1998, p.51). Nusse asserts that the “inability of the Muslims to prevent the creation of a Jewish state in Palestine and the repeated military defeats against Israel had fundamentally undermined the self-confidence of Muslims and shaken the basis of their beliefs” (p.51). Defeat was interpreted as a withdrawal of God’s favour and therefore “Muslims are fighting [for Palestine] to reconcile history to Islamic beliefs and convictions”; the outcome of the Israeli-Palestine conflict “is decisive for the whole *Umma*” (p.51). Further meaning drawn from this line of thought is that “the fight for Palestine can only be won under the banner of Allah”, meaning, by His will, and by following His law (p.51).

It is pertinent at this point to highlight the central role of Islamic law in how Islam is defined and understood by Muslims. The ‘law’ has always been central to Islamic societies. Majid Khadduri (1940) remarks that even when the Muslim world became politically divided with simultaneous Muslim caliphates in Iraq, Spain, and Egypt, Islamic law remained the unifying factor, as “one legal superstructure” (p.43). The Islamic resurgence the world has been witnessing since the 1970s is characterised by the demand to implement Islamic law, as John Esposito (2005) observes:

Whatever the differences in orientation and agenda, central to the Islamic revivalism throughout the Muslim world has been the demand for more *Shariah* law. The rule of the thumb employed to judge the Islamic commitment and character of Muslim society has been the presence or absence of Islamic law. Moderates and radicals alike see the un-Islamic nature of their societies, as epitomised by Western-inspired legal codes, and clamour for the implementation of Islamic law (p.234).

It is important to note, however, that when most Muslims call for the implementation of *shariah*, they are actually referring to the body of legal rulings developed by Muslim jurists from the 8th century, which are more accurately defined as *fiqh* (Safi, 2001). Mohammad Hashim Kamali (2006) explains that although the two terms have distinct meanings, *shariah* and *fiqh* are used by Muslims interchangeably. Moreover, in spite of this body of law being a human interpretation of what Muslims regard as divine sources – the Quran, supplemented by the Prophetic Traditions – Muslims generally regard Islamic law as a divine law, adherence to which is considered commensurate with obeying the Will of God (Esposito, 2005).

The challenge this conception poses is a central concern of Abdullahi Ahmed An-Na'im's (1990) book, *Toward an Islamic Reformation*. He argues that the first, and perhaps most difficult, step in reforming the public law of Islam is to make the Muslim masses and the *ulema* understand that “the public law of *Shariah*, as developed by the founding Muslim jurists, is not really divine” (p.10) and that the *shariah* is “not the whole of Islam but instead is an interpretation of its fundamental sources as understood in a particular historical context” (p.xiv). From the perspective of conflict resolution in the case of Israel-Palestine, this phenomenon poses a considerable challenge. When Muslims turn to Islamic law for direction in the face of conflict, the response is defined in militaristic terms, most prominently referred to as *jihad*. Before discussing *jihad*, it is first necessary to elaborate on the broader concepts of *shariah* and *siyar*.

Shariah

The word *shariah*, literally meaning ‘a path that leads to water’, comes from the verb *shara’a*, which literally means ‘to chalk out or mark out a clear road to water’. *Shariah* encompasses belief, religious duties, legal and social transactions, and personal behaviour of a Muslim and is considered “the way, ordained by God, wherein man is to conduct his life in order to realise Divine Will” (Al Ghunaimi, 1968, p.101). It is the divine law revealed by God, who alone “knows best its precise meaning and commandments” (p.106).

The term *fiqh* “represents the sum of jurisprudential interpretations, deductions, and opinions of the Muslim scholars, the *ulema*, and especially those of the highest rank, the *mujtahidun*” (AbuSulayman, 1993, p.7). The confusion between *shariah* and *fiqh* extends to a general failure on the part of Muslims to distinguish between the principles of the Quran and those practised by the early Muslim community, and that which was developed by later Muslim jurists, particularly the four classical schools of Islamic legal thought that developed in the eighth and ninth centuries (Safi, 2001).

Rahman (1984) maintains that the work of the classical Islamic jurists, while vast and original, “strictly speaking it cannot be described as law – for since it is basically concerned with morality, much of it is not enforceable in any court except that of human conscience” (p.29). He adds that Islamic law takes the form of ‘endless discussion’ on the duties of a Muslim rather than a legal code or codes. Indeed, numerous scholars have remarked that due to the very small proportion of Quranic verses that could be considered legal material or law, the entire body of Islamic law cannot rightly be referred to as divine or revealed as most of it was developed by Muslim jurists (Saeed, 2006; Safi, 2006; Hashmi, 2002; Masud, 1995). Moreover, in spite of the fact that the legal doctrines and positive rules that have been formulated by Muslims jurists have come to be referred to as *shariah*, Safi maintains that they are not universal but ‘tentative’ as they have been developed “by fallible human beings situated in specific historical moments” (p.33).

As opposed to a legal code, some contemporary Islamic scholars have defined the *shariah* as a moral code (Safi, 2006) and an ethical system (Hashmi, 2002).

The challenge, therefore, is to distinguish the purely moral and ethical precepts from the legal. The Quran makes clear that human beings are ultimately answerable to God for their deeds in this world. However, this concept led scholars of the 14th century to misuse the term 'rights of God' and confuse the moral precepts of the Quran with the legal injunctions, effectively making all Quranic provisions, advice, and commands a matter of law (Safi, 2006).

It is noteworthy that in the Prophet Traditions, as well as those of the Prophet's companions, the words *shariah* and *fiqh* are not used in reference to a legal code or a body of juristic rulings (Kamali, 2006). In spite of this characterisation, the *shariah* has come to be understood by most Muslims, jurists and laypeople, in terms of the legal rules found in the text of the Quranic verses mostly revealed during the Madinan period (Kamali, 2006). Kamali asserts that there is insufficient support in the primary Islamic sources for the notion that *shariah* represents a legal code or was intended to be the defining element of an Islamic state or society.

Kamali (2006) observes an "overtly legalistic tendency" among latter-day Muslim jurists, which he contends has developed at the expense of the spirit of Islam (p.1). Although *shariah* is commonly referred to as 'Islamic law', on the one occasion that it is used in the Quran (Quran, 45:18), it was not used in reference to a legal code but rather its literal meaning of belief in Islam and avoidance of disbelief (Kamali, 2006). Moreover, the two verses that use the root word *shara'a* do so in the literal sense of 'initiating' or 'enacting'. In verse 42:13, for instance, *shara'a* is used in the sense of enacting not a law code but a *din* or 'way of life' based on belief in the Oneness of God, prayer, charity, fasting, and pilgrimage as was common to the religions of all prophets (Kamali, 2006).

The five pillars of Islam constitute the essential concerns of the *shariah*; the primary functions of which are the advancements and protection of life, religion, property, intellect, and family, and the centrality of justice to the *shariah*. Moreover, while justice is central to Islam, injustice is considered abhorrent to both the letter and spirit of the Quran (Kamali, 2006). Thus, Kamali argues, quoting from Ibn Qayyim al-Jawziyyah (d.1356), that as circumstances change, rules that cease to be just are no longer considered to belong to the *shariah* and

should be “revised through *ijtihad* [independent reasoning] in the light of the broad objectives of *shariah* and the prevailing interests of society” (p.29). In emphasising the centrality of justice and mercy to the *shariah* and opposing rulings that are rigid and result in imposing unjustified and unsustainable hardship, Ibn Qayyim stated that “any ruling that abandons justice in favour of tyranny, mercy in favour of its opposite, *maslahah* for corruption (*mafsadah*), and wisdom for futility – would have nothing to do with the *shariah*, even if shown, by some remote interpretation, to be part of it” [emphasis added] (Kamali, 2006, p.49).

A much emphasised position of Islamic legal thought is that Islamic law is based on the Quran and the Sunnah (statements and actions, and rulings of the Prophet). Rahman (1984), however, rightly observes that although Muslims inherited the Quran and the example of the Prophet upon his death, “no detailed, intellectually worked-out system of thought” formed part of this legacy (p.23). Rulings or advice given by the companions of the Prophet, particularly after his death, were based on their own personal experiences rather than their specific interpretation of a relevant Quranic verse or *hadith*. When Islam expanded outside of Arabia and new circumstances were encountered, the responses that were offered to new questions that arose “were primarily based upon the general teaching of the Quran that they [the companions of the Prophet] had actually lived through and by which their being had permeated, rather than, in general, appealing to individual verses of the Quran or texts of the Sunnah, unless such verses had a clear-cut and direct bearing on the issue” (p.23).

The following generations of Muslims, namely the ‘successors’ and ‘successors of the successors’ were not able to rely on an ‘experience of the totality of the Quran’ as were the Companions. Rahman (1984) regards this a crucial period of Islamic legal development as “it was during this period that an appeal to individual verses of the Quran and texts of *hadith* [Prophetic Traditions] began to be made in order to resolve issues legally” (p.25). Two main methods were employed at this stage: *nass*, which resolved matters on the basis of a clear and direct verse; and if such a verse was not available, *qiyas* would be used, whereby matters would be resolved on the basis of the extent to which an analogy could be made between a particular verse and the problem at hand. In

order to resolve the problems of interpretation and application associated with analogical reasoning, reliance on *hadith* was established by Shafi'i (d.820) as a more appropriate method in place of reasoning. With the proliferation of *hadith*, often conflicting and supporting divergent opinions, this too became an inadequate method (Rahman, 1984).

Rahman (2002) explains that with the addition of the concept of *ijma'* (juristic consensus), *fiqh* passed from being a personal activity to mean a structured discipline, a body of knowledge, an *ilm*. As a discipline, *fiqh* became restricted to law and jurisprudence, it became identified as a 'science of law'. By the late 8th and early 9th century Islamic law became 'fixed' by *ijma'*. Although rationalism was established by the Mutazilites, at the same time a distinction was drawn between *aql* (reason) and *shariah*, whereby *shariah* became regarded as established legal authority and outside of the realm of study on the basis of rationalism. In the end the law as constructed by the jurists became the "manifestation of the *shariah par excellence*" (Rahman, 2002, p.109).

Put another way, what the jurists had constructed came to be regarded as consistent with the Will of God and, therefore, to attempt to revise or reform it would be tantamount to changing the Word of God, a crime particularly condemned in the Quran. Consequently, the classical jurists responsible for the development of the *shariah* came to be revered by their students, who could do little more than write commentaries and elaborate on the works of their teachers (Rahman, 1984). This blind following of precedents, known as *taqlid*, is considered responsible for the stagnation of Islamic legal thought and detrimental to its growth and relevance to Muslim societies (Masud, 1995).

As highlighted by Kamali (1995), a major problem among the *ulema* is an 'intellectual hollowness' whereby they tend to blindly accept writings of Islamic jurists, specifically those of the Hanifi, Maliki, Shafi'i, and Hanbali schools, instead of engaging in an intellectual effort based on the Quran. He also explains that what is lacking is an appreciation that the writings of the classical jurists are not mandatory provisions. Among the major problems associated with contemporary Muslim understanding of *shariah* confusion between the explicit rules of *shariah* and those *ad hoc* decisions of the Prophet and his Companions

made in their administrative capacities on the basis of welfare and conditions of their time (Kamali, 2006). Kamali (2006) notes that such scholars as Ibn Qayyim and Ibn Farhum (d.1401) regarded it an obligation for rulers to “act in pursuit of benefit that the *shariah* had not specified nor regulated” and that the ‘normativity’ of *siyasa* or ‘policy’ is “established in the Quran and Sunnah especially those of the Quranic verses and *ahadith* that enjoined justice, removal of hardship and *maslahah* as well as the ones on promotion of good and prevention of evil” (p.224). Specific rules frequently regarded as part of the *shariah* do not constitute general laws and were not meant to be part of a set of universal and unchangeable set of legal provisions. Rather, they were originally based on a statement or action of the Prophet that was said or done as a matter of policy, made in accordance with the circumstances at the time. On this point, Kamali (2006) states that governments may introduce new laws and policies concerning defence, fiscal, foreign policy and so forth “even if they differ with the positions that were adopted in early Islam” (p.231).

There exists an almost universally accepted theory that the intellectual stagnation of Islam was caused by the destruction of the Abbasid caliphate in the mid-13th century. Rahman (1984) challenges this theory asserting that “the spirit of Islam had become essentially static long before then; indeed, this stagnation was inherent in the bases on which Islamic law was founded” (p.26). Hashmi (2002) discusses the dominance that Asharite theology established in Sunni thought and explains that it was responsible for a particularistic or ‘atomistic’ approach to the Quran rather than a universalistic one i.e. a concentration on selected verses rather than the text as a whole.

Similarly, Saeed (2006) identifies two significant events whose impact have continued to be exerted in the context of interpreting the Quran: the dominance of the traditionalism advocated by Shafi’i over the advocates of reason (*ray*) in law and the dominance of traditionalism advocated by Ahmad Ibn Hanbal over the rationalism of the Mutazilites in theology. The result was the enduring dominance of the Textualists and their literal approach to the interpretation of the Quran. It should be noted that the theories and methods adopted by the classical scholars were appropriate for the circumstances of their time, particularly given their relatively close proximity to the conditions experienced by

the Prophet and his companions. A continued adherence to the classical doctrines has become problematic precisely on account of the vastly differing realities and conditions of the classical period and today.

Despite the ubiquity with which Muslims jurists past and present quote a specific Quranic verse or use the method of *qiyas* or analogy as the primary tool for responding to moral and legal issues, this approach to juristic reasoning “represents a serious set back for the development of Islamic jurisprudence” (Safi, 2006, p.29). By the 11th century, with the prevailing legal doctrine becoming idealised, “*shariah* lost its flexibility, and the relationship between law and society was gradually severed” (p.33). Rather than developing the law according to the changing conditions of society so that society could continue to be guided by Islamic ideals, “the efforts of jurists were directed towards resisting any developments that would render social practices incompatible with the existing legal code” (p.33).

The *shariah* at the time of the Prophet was mostly concerned with matters of worship (*ibadat*). Much less attention was given to ‘social transactions’ (*mu’amalat*) or international relations (*siyar*) because unlike the *ibadat* which contain unchanging purposes, “social transactions [and international relations] require explanation according to the changes in circumstances and eras” and, therefore, unchangeable rules would impose unnecessary difficulty, produce circumstances contrary to the objectives of the law, and eventually result in the law having no relevance to social reality (Ibn Ashur, 2006, p.216). In response to the expansion of the Muslim empire beyond the Arabian Peninsula, a branch of the *shariah* known as the *siyar* was developed to address such matters. It is to this issue that this chapter will now turn.

Siyar

The *siyar* developed out of the need for the Islamic state to conduct its relations with non-Islamic states. Majid Khadduri (1966) refers to the *siyar*, which literally means to ‘travel’, ‘move’, or ‘form’, as “the Islamic law of nations” (p.3). *Siyar* did not acquire its technical definition until the early Islamic jurists used the term as a heading for issues dealt with under the law of war, namely military campaigns,

spoils of war, apostasy, and safe-conduct. As explained by Khadduri, the *siyar*, with the concept of *jihad* at its core, came to represent the Islamic doctrines of war and peace.

Muhammad Hamidullah's (1961) treatise on the subject explains that the term *siyar* has been used from the earliest periods of Islamic history to describe "the special branch of law dealing with the laws of peace, war, and neutrality" (p.10). In keeping with its literal meaning, the term was used, even in the pre-Islamic period, in reference to the conduct of the ruler in times of both war and peace. Abu Hanifa (d.767) was the first Muslim jurist to use the term in reference to the 'Muslim law of war and peace' (Hamidullah, 1961).

While the Quran has been maintained by all jurists as the primary source of Islamic law, Khadduri (1966) notes that in practice Islamic law was derived mainly from the Prophetic Traditions, prevailing customary and tribal laws of Arabia, and local customs and practices of the provinces outside Arabia. Khadduri's translation of Muhammad Al-Shaybani's *Siyar*⁶⁴ demonstrates that this particular branch of *shariah* is distinct in that it is based more on customs, reason, and prevailing norms and conditions than the other branches, which tend to rely on the established authoritative sources to a greater extent.

Reinforcing this point Hamidullah (1961) documents a long list of sources beyond the Quran and Prophetic Traditions on which the *siyar* is based, including the actions of the early caliphs and other Muslim rulers, opinions and rulings of Muslim jurists, arbitral awards, treaties, pacts, and other conventions, official instructions to commanders, admirals, ambassadors, and other state officials, internal legislation for conduct regarding foreigners and foreign relations, as well as customs and norms. Clearly, the jurists who developed the Islamic doctrines of war and peace saw fit to include sources other than the exclusively 'divine'. Hence, although regarded as a branch of the *shariah*, the *siyar* is more a product of *fiqh* or the body of Islamic legal thought comprising the

⁶⁴ Muhammad al-Shaybani (d.805) is considered to be "the father of the science of the Islamic law of nations" (Khadduri, 1966, p.57). According to Majid Khadduri, among numerous other scholars, Shaybani is "the most important jurist to write on the *siyar*" (p.22) as "he was the first to consolidate all the legal materials relevant to the subject and to provide perhaps the most detailed study of it" (p.56).

opinions, rulings, and interpretations of Muslim jurists who attempted to approximate the Will of God on the basis of 'divine' sources.

AbdulHamid AbuSulayman (1993) defines the *siyar* as 'Islamic international relations'. He asserts that *fiqh* and *siyar* are sources of law and not law in themselves, emphasising that the opinions of the jurists "are not and never have been law in the modern sense of the term" (p.14). AbuSulayman records examples of widely varying opinions among the classical jurists on issues pertaining to *siyar*. The very existence of such differences of opinion suggests that Muslims were historically unsuccessful in definitively articulating, or at least agreeing on, the Will of God and that consequently there is considerable potential for reformulating the classical Islamic doctrines of war and peace.

With the formation of the United Nations (UN) and its Charter establishing peace as the normal basis of relations between nations, a number of Muslim scholars began to question the relevance of the *siyar*, particularly given that all Muslim nations are member-states of the UN. Al Ghunaimi (1968) refers to *siyar* as 'Muslim international law' and argues that its fate and Islam's relations with the rest of the world lie with their capacity to adopt the principles of "mutual independence" and "equality". He bases this position on the fact that the early Muslim jurists/theologians "refused to recognise peaceful coexistence between Muslim and non-Muslim states and looked upon *jihad* as the instrument to get *dar al-harb* (non-Muslim territory – lit: 'abode of war') into the orbit of *dar al-Islam* (Muslim territory – lit: 'abode of Islam')", thereby making Islam an "exclusive system" (p.1-2).

Central to the problem is a Muslim fixation on the past (Esposito, 2002), coupled with a failure to generate and accept fresh responses to contemporary situations (AbuSulayman, 1993). It is noteworthy that Shaybani's *Siyar*, a book written more than a millennia ago, is still regarded as one of the most important books on Islamic international relations (Hashmi, 2002; Khadduri, 1966). The scope of Shaybani's *Siyar* is almost entirely devoted to the details involved in the conduct of war. War is the normal state of relations with non-Muslims; his work does not contain any debate about alternatives. Even Shaybani's chapter that deals with peace treaties is almost entirely focused on issues of taxation of occupied

people, rights of slaves, and ransom of captives. Based on Shaybani's *Siyar* it seems that pragmatism, self-interest, and the overall benefit of the Muslim community were the primary determinants of the laws of war and peace as constructed by such classical jurists as Abu Hanifa, Abu Yusuf, and Muhammad Shaybani himself. To this extent, there is no evidence in the work of Shaybani of an interest in establishing peace as the basis of international relations as a universal aim.

Contemporary scholars such as An-Na'im (1990), however, have called for the rejection of the *siyar* on the basis of the different historical context. He considers the *siyar* to be "consistent in its conception of international law at the time" in its approach to the use of force (p.143). However, An-Na'im (1990) rejects the notion that such a conception of international law remains justified today, given that "peaceable coexistence has become a vital necessity for the survival of humanity" (p.143). Similarly, Khan (2001) notes that the *siyar*, which he defines as the legal expression of Islam's position on the management of relations with non-Muslim and between Muslim states, was developed at a time when numerous Muslim empires and dynasties ruled in Arabia, Persia, North Africa, Turkey, and Spain. During the reign of the Abbasid caliphate, Islamic law had been developed to include not only the Quran and Sunnah as bases, but *ijma* and various forms of *ijtihad*, including *maslaha mursala* (public interest), which demonstrates that even given that short span of time from the era of the Prophet, law-making "had become a more complex process involving a deference to empirical reality and necessities besides traditionalism" (p.85).

Muslim international law, as inherited from the early Muslim, predominantly Abbasid, scholars is "based fundamentally on the idea of universalism and that a religious war of aggression is one of the tenets of Islam prescribed by the Quran for securing conversions and exacting tribute" (Al Ghunaimi, 1968, p.133). The approach of the scholars of the Abbasid era who largely developed the *siyar* was "dictated by the existing environmental socio-political requirements and conditions of the time". Therefore, writes Al Ghunaimi, "their rulings cannot be considered as unconditionally applicable to the needs of the Islamic state in the 20th [or 21st] century irrespective of contemporary socio-political exigencies" (p.133). However, the challenge they continue to present today is that they

“gained in the public mind a kind of sacrosanct soundness of their own and came to be regarded by the majority of Muslims as an inherent part of the *Shariah* itself” (Al Ghunaimi, 1968, p.133). Given the centrality of *jihad* to the *siyar*, it is *jihad* that must be addressed in any discussion of reformulating the Islamic doctrines of war and peace. It is to this issue that this chapter will now turn.

Jihad

Jihad is most accurately defined as “exerting efforts, in the form of struggle against or resistance to something, for the sake of Allah” and may take two forms: peaceful and armed (Fatoohi, 2004, p.50). Fatoohi regards armed *jihad* as only temporary and in response to armed aggression from an external enemy. Once this aggression has passed, armed *jihad* is also supposed to cease. Contrary to the popular notion in the West, “in its original sense *jihad* does not mean ‘war’, let alone ‘holy war’. It means ‘struggle’ (*jahd*), exertion, striving; in the juridico-religious sense, it signifies the exertion of one’s power to the utmost of one’s capacity in the cause of Allah: it is thus the opposite of being inert, the antonym to the word *qu’ud* (sitting) in the Quran (Q.4:95)” (Bonney, 2004, p.12).

The term *jihad* and its grammatical equivalents occur 35 times in the Quran, but only four verses use the term in a militant or combative context. By contrast, 11 verses use the term in a pacific sense, while the remaining 20 are open to differing interpretations, both as having warlike or pacific intent (Bonney, 2004). Fatoohi (2004) notes that 24 of the 35 verses that contain the term *jihad*, or one of its variants, were revealed in Madina. He also points out that although most verses concerning *jihad* were revealed in Madina, when the Muslims were faced with war from external aggressors, not all of these verses refer to armed *jihad*. Some of these verses, such as 9:20, 22:78, and 5:35, use the term in a general sense and not specifically in reference to armed struggle.

The term the Quran actually uses in specific reference to armed combat or fighting is *qital*, which must also be distinguished from a related word, *qatl*. Al-Buti (2006) explains that the word *qital* means ‘fighting’, while *qatl* means ‘killing’. It is erroneous to equate the terms *jihad* and *qital* for this narrows the broader definition of the former. Much of the misunderstanding of *jihad* stems from the

term being equated with *qital*, which is an aspect of armed *jihad*. Consequently, it is the term *qital* rather than *jihad* that is most frequently used in the Madinite verses and which was ordained for Muslims as a duty in the second year following the migration or *hijra* (Fatoohi, 2004). Moreover, Fatoohi also makes the important observation that unlike *jihad*, which is a permanent duty for Muslims, *qital* must be 'ordained' in order for Muslims to engage in it and is not a default activity in Islam.

The implication of making *jihad* and *qital* synonymous is that fighting by way of arms becomes a timeless duty for Muslims in spite of the Quran determining otherwise. It is essential to note here that although the Prophet waged combative *jihad* for the sake of God, 'in His name, in His way, and in conformity with His message', it "did not constitute a fully-fledged ideology of *jihad* as was later established by the jurists" (Bonney, 2004, p.63). This did not occur for over 150 years after the death of the Prophet when Abdullah ibn al-Mubarak (d.797) compiled a treatise on *jihad* consisting of over 200 Prophetic Traditions concerning the issue. However, though it has not survived, Abu Hanifa's (d.767) monograph on the *siyar* would have been an earlier work dealing with the subject of *jihad* (Bonney, 2004).

Most contemporary scholars consider peace to be a central aim of Islam but view the use of armed force as necessary in certain circumstances. For Fatoohi (2004), *jihad* is a means to peace, but he argues that it is "preposterous to claim that peace can be achieved and maintained by peaceful means only" (p.61). He contends that Islam's endorsement of *jihad* represents a "principled, honest, consistent, and realistic approach to the concepts of peace and war" (p.63). Similarly, Hashmi (2002) asserts that the Quran sanctions Muslims to engage in the use of force as a 'necessary' response to combating 'evil in the world'. Hamidullah (1961) also agrees that war, from the Islamic perspective, is 'unavoidable' but not necessarily desirable. These perspectives, however, do not take into consideration the role of international norms and identity factors in constituting the interests and policies of nations as this thesis has done.

In the classical works of *fiqh*, *jihad* is defined according to its religious, rather than its political, aims. This, explains Peters (1979), is due to the dominance of

religion over all other aspects of society, including politics, in the Islamic tradition. He elaborates that in the Muslim world, “wars and revolts, regardless of their actual causes, acquire a religious dimension in that their aims, their justifications and their appeals for support are expressed in religious terms” (p.6). The classical doctrine of *jihad* has perpetuated this approach throughout Islamic history. Peters also states that according to the classical interpretation “the direct purpose of jihad is the strengthening of Islam, the protection of believers, and voiding the earth of unbelief. The ultimate aim is the complete supremacy of Islam, as one can learn from [the Quran, verses] 2:193 and 8:39” (p.10).

The concept of *jihad* has continued to evolve over the course of Muslim history and continues to evolve today. Khadduri (1940) locates the starting point of the Islamic law of war after the death of the Prophet Muhammad, when the Islamic empire began to experience great expansion. He recognises the presence of universalism in the Islamic worldview but asserts that for the Prophet Muhammad the focus was on establishing a universal religion, rather than a universal state. Moreover, the purpose of *jihad* even in the Madinan period was concerned with religious propagation, rather than empire-building.

From the Abbasid era, when *jihad* became central to both universalism of religion and state, it came to mean “continuous exertion of power until the whole world would be converted to Islam and constituted the Islamic state” (Khadduri, 1940, p.30). Thus, combative *jihad* came to be regarded in Muslim legal thinking to be the ‘normal condition’ of the Islamic state, while peace was seen as “only short intervals of recess” (Khadduri, 1940, p.30). Some jurists even limited these peaceful intervals to ten years in accordance with the treaty of Hdaybiyya,⁶⁵ while others reduced the timeframe to as little as three or four years as *jihad* was constructed in the classical sense to generally be a collective duty for Muslims (but an individual duty if Muslim lands were attacked) and a continuous state of relations with unbelievers (Khadduri, 1940).

Al Ghunaimi (1968) explains that in its quest for universalism, *jihad* became a central concept in Muslim international law. In a legal sense, at least, it became

⁶⁵ The Treaty of Hdaybiyya was a ten-year peace treaty that was signed between the Prophet Muhammad and the Quraysh tribe of Mecca in 628.

the vehicle for “proselytising, exacting tribute or exterminating the isolators” (p.144). In the process of codifying Islamic law, Muslim jurists came to consider *jihad* as synonymous with *qital*, which resulted in a narrowing of the definition of *jihad* to what became the “classical Muslim doctrine of war” (p.136-137), an aggressive and permanent war against non-Muslims states and against *dhimmis* (protected non-Muslim residents) within Muslim lands who refused to pay the poll tax. A major consequence of this definition of *jihad*, particularly the notion of perpetual war, is that it precluded the possibility of the Islamic state entering into genuine peace treaties with non-Muslim states. Rather, all that could be possible was a temporary truce for a limited period of time. In sum, Muslim jurists “advocated a holy war of aggression under the doctrine of *jihad*”, which “influenced the whole institution of Muslim international law and resulted in a theory that is generally irreconcilable with the modern standards of international law” (Al Ghunaimi, 1968, p.163).

For Shaybani, the state of war that existed between Muslim and non-Muslim states was normal. However, this was apparently not on account of the latter’s ‘disbelief’ or *kurf* but their hostility or aggression toward the *dar al-Islam* (Khadduri, 1966). Shaybani and other Hanifi jurists seemed to favour tolerance toward non-Muslims, particularly Christians, Jews, and other religious communities in possession of ‘divine’ scriptures. Khadduri (1966) attributes the first formulation of the doctrine of waging *jihad* against non-Muslims for their disbelief and not necessarily for their hostility toward Islam to Shafi’i (d.820), whose position was based on verse 9:5 of the Quran. Sarakhsi (d.1090), one of the commentators on Shaybani’s *Siyar*, supported Shafi’i’s opinion that fighting against non-Muslims for their disbelief was a duty upon Muslims until the end of time (Khadduri, 1966, p.58). Herein lies one of the most problematic aspects of the *siyar* in need of reformulation.⁶⁶

⁶⁶ As noted in the introduction of this thesis, it should not be assumed that alternative and even oppositional views of jihad as aggressive or perpetual war have not been expressed throughout Muslim history until today. As will be elaborated, however, the dominant understanding, interpretation, and application of jihad continues to be expressed in militaristic terms; any debate on the issue, historical and contemporary, is largely confined to an argument over defensive versus aggressive jihad. Almost completely absent from the discussion, historically and until today, is a view of nonviolence as a legitimate form of *jihad*.

During the 14th century the legal opinions of Ibn Taymiyyah (d.1328) marked another key turning point in the evolution of *jihad*. His writings established the precedent of waging *jihad* against Muslim rulers deemed not to be ruling according to the *shariah*. Commenting on the enduring influence of Ibn Taymiyyah, Esposito (2002) states:

Perhaps no medieval scholar-activist has had more influence on radical Islamic ideology than Ibn Taymiyyah...Later generations, from the Wahhabi movement to modern Egypt's Sayyid Qutb, Islamic Jihad, the assassins of Anwar Sadat, and Osama bin Laden, would use the logic in Ibn Taymiyyah's fatwa on the Mongols to call for a jihad against 'un-Islamic' Muslim rulers and elites and against the West (p.45-46).

The concept of *jihad* evolved further during the colonial era. In response to colonial occupation, calls for *jihad* were made and responded to in the case of Egypt against the British, Libya against the Italians, Algeria against the French, and also in numerous other parts of the Muslim world. Muslim intellectuals of the time, Muhammad Abduh (d.1905) and Rashid Rida (d.1935), regarded *jihad* as defensive, to be waged in response to those who attack Muslims because of their faith. Sayyid Ahmad Khan (d.1898), however, declared *jihad* as unlawful except under circumstances where the exercise of Islam was prevented (Bonney, 2004; Peters, 1979).

Peters (1979) describes the classical doctrine of *jihad* as having "inspired many movements that have waged armed struggle against Western colonial domination" (p.39). In resisting colonialism, the author explains that the doctrine of *jihad* was of "paramount importance" (p.41). He does, however, conclude that due to the prevalence of secular nationalism, the doctrine of *jihad* passed from the political domain to the religious. It should be noted that Peters (1979) was published over a quarter of a century ago, and since that time secularism has experienced decline in the Muslim world, while Islam has gained in prominence. Consequently, one would expect a commensurate re-emergence of the classical doctrine of *jihad*. This is precisely Peters' (1996) observation in his later work, *Jihad in Classical and Modern Islam*, in which he states that:

However, since the beginning the 1970s this has changed, and Islamic symbols and idioms have become more central to political discourse as Islamic movements reappeared on the political scene. As a consequence, the doctrine of jihad has returned to favour (p.149).

A critical point to note in the context of this thesis is that the anti-colonial jihad movements were counterproductive with respect to the goal of achieving freedom from colonial rule. Peters (1979) explains:

...the main reason [for the defeat of the anti-colonial *jihad* movements] must be sought in the military and technical superiority of the colonial adversaries. The very existence of these militant movements, however, may have hastened European expansion in the areas where they operated. Had it not been for these nuclei of armed resistance at the frontiers of territories occupied by European powers, the latter would probably have delayed or even stopped their conquest (p.153).

This analysis is important in the context of the effectiveness of Palestinian use of violence against Israeli occupation. It should be recalled that the work of Jackson (1993) concluded that anti-colonial resistance movements played an important role in raising the cost of colonisation, but the institution of colonialism was actually defeated by the power of normative ideas and not armed resistance. He states that decolonisation was “above all an international change of ideas about legitimate and illegitimate rule and not a change in the balance of power or the economic utilities of imperialism” (p.130). By the 1950s, colonialism had “fallen into moral disrepute” and within only a few years thereafter it was “equated with not only illegitimacy but with inhumanity and criminality” (p.130). Comparing the decade of colonialism’s elimination (1950s) with that of its position two decades earlier, Jackson (1993) concludes that colonialism “ultimately proved defenceless at the level of ideas in a world that was fundamentally different not materially but normatively” (p.130).

A critical question raised by Peters’ (1979) work concerns the impact of colonialism upon the doctrine of *jihad*. He observes that some Muslims came to recognise the need for a reinterpretation in the wake of the military superiority of

the European powers. The result was a temporary suspension of the obligation to wage *jihad*, but none-the-less the rule remained intact. Others, specifically Muslim modernists like Sayyid Ahmad Khan, advocated a restriction to the obligation of *jihad* to the extent that armed resistance was declared as not obligatory against colonial rule. Peters explains that the stimulus for such writing was “the desire to win the favour of the British and to co-operate with them” (p.162).

This desire, however, was not present among Egyptian modernists and explains the difference in the approach to the question of *jihad* in India and Egypt. In fact, the Indian and Egyptian modernists were at opposite ends of the spectrum in respect to the use of *jihad* for the anti-colonial struggle. The former explicitly excluded anti-colonial struggle from their definition of *jihad* and considered it applicable only in response to religious oppression, while for the latter, *jihad* was “a struggle against all kinds of oppression, both religious and political” and, therefore, applicable to the struggle against colonial rule (Peters, 1979, p.162). Peters regards the contemporary ‘fundamentalists’, such as Qutb and Maududi as “heirs of the earlier *jihad* movements” and asserts that their views on *jihad* are “in content identical to the classical doctrine” (p.165).

The classical doctrine of *jihad* has endured throughout the colonial and post-colonial periods, in spite of its overall ineffectiveness (AbuSulayman, 1993). A central characteristic of the Islamic resurgence of the past several decades is the insistence of Muslims on grafting classical doctrines onto contemporary society irrespective of their relevance or suitability or whether they remain consistent with the higher objectives of Islam. Esposito (2002) notes “the extent to which the ideas of medieval and pre-modern theologians and movements directly impact the world of Islam today”, explaining that Muslims “rely heavily on the past for meaning and guidance in the present” (p.43). This certainly continues to be the case in the context of war and conflict. Of the Islamic doctrines that have impacted on the definition and application of *jihad*, the doctrine of *naskh* or abrogation has been the most enduring and had the most substantial impact.

***Naskh* (Abrogation)**

Literally meaning 'to obliterate', the word *naskh* is used in Islamic jurisprudence in reference to the abrogation of earlier verses of the Quran by later verses (Kamali, 1998). While some scholars, both past and present, reject the theory that certain verses of the Quran remain only in text but not in application (*naskh*), the theory is generally accepted and has a profound influence on Islamic law and jurisprudence. Indeed, the argument that every part of the Quran is valid and applicable to one set of conditions or another is not simply unpopular but widely condemned (Khan, 2006).

Von Denffer's (1994) book, *Ulum al-Quran*, used widely as an introductory text to the study of the Quran, asserts that "certain parts of the Quranic revelation...have been abrogated by others" (p.102). The author explains that the Quran was revealed in stages and that the gradual nature of the revelation allowed for the people's adjustment to it. The book unquestioningly contends that some verses of the Quran have been superseded by others and have effectively rendered them inactive, non-operational, or otherwise not applicable in spite of the fact their text remains in the Quran.

The origin of this doctrine is based on a perception that certain verses of the Quran were mutually conflicting and contradictory. Such was the opinion of Ibn al-Jawzi (d.1219), for instance, in spite of the fact that the Quran itself declares in verse 4:82 that it is free of contradiction (Khan, 2006). The authority of the abrogation doctrine is derived from the fact that it was advocated by such eminent Islamic scholar as Muhammad al-Shaybani, Muhammad Idris al-Shafi'i and Shamseddin al-Sarakhsi. Sarakhsi, in his renowned 30-volume work on Islamic law, *Mabsut*, defined *jihad* as a progression toward increasingly aggressive use of fighting. He considered the Quranic policy of warfare against non-Muslims to have evolved according to the following five successive periods: 1. trust, forgiveness, and withdrawal; 2. preaching and inviting to Islam; 3. fighting in self-defence; 4. aggressive fighting at certain times; and 5. aggressive fighting in absolute terms (Al-Ghunaimi, 1968, p.74). Al-Ghunaimi states that this interpretation was a central component of the classical Muslim theory of a global division into *dar al-Islam* and *dar al-harb* and the associated goal of transforming the latter into the former. Additionally, among the most prominent of the Quranic

studies scholars who advocated the theory abrogation were Abu Ubayd al-Qasim ibn Sallam (d.846), Makki ibn Abi Talib (d.1059), Abd al-Rahman ibn al-Jawzi (d.1219), Badr al-Din al-Zarkashi (d.1416), and Jalal al-Din al-Suyuti (d.1533).

The doctrine of abrogation is central to the question of *jihad* in Islam. Khadduri (1966), among others, explains that the broad definition of *jihad* involved 'exertion' by both violent and non-violent means. The Quran contains numerous verses that use the term *jihad* not in a military sense but in reference to 'striving', 'struggling' or 'making effort' in the broadest sense of intellectual, charitable, and spiritual work. However, the use of the method of *naskh* (abrogation) narrowed the definition of *jihad* by according primacy and authority to the later 'specific' Madinan verses over the earlier 'universal' Meccan ones and made *jihad* synonymous with *qital*. The use or application of *naskh* precluded the possibility of peaceful coexistence with unbelievers by making combative *jihad* the basis of Muslim international relations. In the 8th century, the Basra exegete of the Quran, Abu al-Khattab (Qatada) (d.735), opined that Quranic verses advocating peace with unbelievers such as verse 8:61 had been abrogated by the later 'sword verses' (Quran, 9:5), a view endorsed by numerous scholars and militants after him (Bonney, 2004).⁶⁷

Elaborating on this point, AbuSulayman (1993) explains that the primacy given to the 'sword verse' (Quran, 9:5), resulted in the abrogation of "all preceding verses pertaining to patience (*sabr*), persuasion (*husna*), tolerance (*la ikrah*), and the right to self-determination (*lasta 'alayhim bi musaytir*)" (p.44). In fact, estimates of the actual number of verses that were abrogated by the so-called 'sword verse' (Quran, 9:5) alone range from 124 to over 140 (AbuSulayman, 1993). Estimates of the total number of Quranic verses that have been abrogated range from a few dozen to up to 500. Many scholars, however, put the total around 200 verses that have been abrogated (Khan, 2006).

The acceptance of the theory of *naskh*, therefore, has serious implications for the types of rulings in respect to the use of force and relations with non-Muslims. On

⁶⁷ Verse 9:5 of the Quran states: "Slay those who ascribe divinity to aught beside God wherever you may come upon them, and take them captive, and besiege them, and lie in wait for them at every conceivable place. Yet if they repent, and take to prayer, and render the purifying dues, let them go their way for God is much-forgiving, a dispenser of grace".

the implications of applying the theory of *naskh* in the context of international relations, Khan (2006) states:

According to the supporters of *naskh* all those *ayat* [Quranic verses] which exhort believers to be just, fair, kind, and soft in their dealings with non-believers are abrogated by two Quranic rulings 9:5....and 9:29....If a society or a nation is under the influence of scholars believing in the sanctity of *naskh*, its policy of international relationship will have two different provisions, one applicable to Muslim communities and nations, and the other to non-Muslim people and states. This policy concerning non-Muslims will be based on hatred, contempt, intolerance and violence as deemed to have been suggested by *ayat* 9:5 and 29. But the state siding with those who reject *naskh* as invalid will found its foreign policy on the principles of justice, cooperation, kindness and softness as exhorted by those *ayat* which are considered abrogated. It will apply the ruling of *ayah* 9:5 only in a situation of war and to some formidable enemies who avowedly try to harm its national peace, harmony, safety and security (p.29).

Historically, there developed two major opinions regarding the rationale for combative *jihad*. The majority of those belonging to the Hanifi, Maliki, and Hanbali schools of thought consider the reason for waging *jihad* is to defend against an enemy's aggression. The Shafi'i school, which is also supported by Ibn Hazm (d.1063) of the literalist Zahiri school of thought, contends that the unbelief of the enemy is the underlying reason for fighting them (Al-Buti, 2006). The methodology of Shafi'i and Ibn Hazm gave primacy to later verses and *hadith*, particularly in the case where verse or *hadith* appear to contradict each other. Thus, they argue that verse 9:5 abrogates all those preceding it which prevents the possibility of peaceful relations with the unbelievers (Al-Buti, 2006).

AbuSulayman (1993) states that the reason why the verses of the later Madinan period were accorded such primacy is that "in their understanding of early Muslim history, the jurists seemed to be impressed more by conflict and animosity between Muslims and non-Muslims than by other elements of Islam" (p.29). In explaining this point, he notes that the classical jurists placed much

emphasis on the Quranic term *saghir*, meaning to vanquish or overpower, and overlooked the example of the Prophet in diplomatically dealing with the Madinan Jews through the Charter, the agreement made with the Christians of Najran, or even the general amnesty accorded to the Quraysh tribe at the conquest of Mecca (Al-Mubarakpuri, 2002; Armstrong, 2001; Al Umari, 1991; Haykal, 1993).

Social and political contexts have always strongly influenced the meaning and practice of *jihad* (Esposito, 2002). The colonial, post-colonial, and contemporary experiences of the Muslim world, most recently characterised by the war on terror, have served to reinforce the doctrine of abrogation, and therefore the narrow definition of *jihad* as synonymous with *qital* or armed combat has been maintained. Today, if one refers to authoritative texts of Islamic law, one will find *jihad* defined in militaristic terms. For instance, the 'classical manual of Islamic sacred law', *Reliance of the Traveller*, by the famous Islamic scholar Ibn Naqib al-Misri (d.1368) and translated into English by Nuh Ha Mim Keller (1994) is certified by the Islamic world's most prestigious institution of higher learning, Al-Azhar University, as conforming to "the practice and faith of the orthodox Sunni Community (Ahl al-Sunna wa al-Jama'a)" (p.xx). It defines *jihad* as "to war against non-Muslims, and is etymologically derived from the word *mujahada*, signifying warfare to establish the religion" (p.599).

Bonney (2004) rightly contends that "any new interpretation...which enters the contested waters of the various meanings of *jihad*, and which attempts to depict the mainstream Islamic view against fundamentalist variants, is open to immediate objections" (p.9). This statement reflects the dominance of militants, fundamentalists, and extremists in not only defining the meaning and conduct of *jihad* but of Islam as a whole.⁶⁸ The writings of the so-called 'fathers of Islamic fundamentalism', namely Sayyid Qutb and Abul A'la Maududi, defended and reinforced the classical conception of *jihad*. Maududi (d.1979) defined *jihad* in terms of a 'world revolution', describing its objective as the elimination of the un-

⁶⁸ It should be noted that a number of scholars find the use of the terms 'fundamentalist' and 'fundamentalism' inappropriate to describe the contemporary religious revival and activism among Muslims. Esposito (1999), for instance, contends that 'Islamic fundamentalism' is a misleading label as it fails to distinguish between the average 'practicing Muslim' and the fanatics, terrorists, and extremists (p.5). He also notes that the term carries pejorative connotations associated with American Protestantism and is "too laden with Christian presuppositions and Western stereotypes" (p.6). Esposito offers the terms 'Islamic revivalism', 'Islamic activism', 'political Islam' and 'Islamism' as more appropriate alternatives (p.6).

Islamic rule and its replacement with the Islamic system (Maududi, 1939). He contrasts *jihad* with the violence that characterised the *jahiliyyah* (ignorance) or conditions of pre-Islamic Arabia, whereby *jihad* ensured the protection of life and freedom of religion.

Maududi and Qutb applied the concept of *jihad* for revolutionary and liberation purposes. By the 1960s, the 'Islamic fundamentalists' had re-affirmed the applicability of the classical conception of *jihad* to the modern era (Peters, 1979). In his examination of the impact of European colonialism on Islam, Peters (1979) describes the classical doctrine of *jihad* as of "paramount importance" in resisting colonialism and as having "inspired many movements that have waged armed struggle against Western colonial domination" (p.39-40). In practical terms, the Algerian war of liberation against the French 'proved' the enduring value of militant *jihad*, which was more recently reaffirmed by the victory over the Soviets in Afghanistan.⁶⁹ In ideological terms, the classical conception of *jihad* is manifested in the writings of the late Ayatollah Ruhollah Khomeini, the 'Neglected Duty' booklet of the Egyptian Islamic Jihad, and the Hamas Charter (1988) in the sense of defining *jihad* in militaristic terms.

***Jihad* for Palestine**

In both practical and ideological terms, for the entire Muslim world the struggle to liberate Palestine has continued to be the central *jihad*; a *jihad* that has consistently been defined in terms of armed struggle. However, *jihad* was not invoked in Palestine from the beginning. During the resistance of the 1920s, Palestinians were part of a nationalist movement against foreign rule. The first significant employment of *jihad* in Palestine came from the resistance movement of Izzeddin Qassim (d.1935), whose objective was ending the British Mandate as well as Zionist colonisation of Palestine on the grounds that they constituted "an infringement of the integrity of the *dar al-Islam* which made *jihad* an individual duty" (Peters, 1979, p.97).

⁶⁹ Ostensibly, Algerian independence from the French and Afghan liberation from Soviet occupation serve as modern examples of weaker parties in asymmetric wars defeating a more powerful enemy by military means. However, in the popular Muslim conceptions of these events, the strong opposition to colonialism within French society is seldom recognised as a decisive factor in French withdrawal from Algeria (Veracini, 2006), while the role played by the Afghan *mujahidin* is elevated well beyond the more decisive role played by US military support in driving out the Soviet forces from Afghanistan (Kepel, 2003).

From the 1930s onwards, Muslim nations across the globe expressed support for the Palestinians and issued proclamations of *jihad*. The first of which was issued by the Muslim Brotherhood in Egypt, who declared that “*jihad* for the sake of Palestine had become a duty to all Muslims” (Peters, 1979, p.102) and actively participated in the armed struggle for Palestine in the 1947-1948. Then-leader of the Muslim Brotherhood, Hassan al-Banna (d.1949), considered the only possibility of resolving the situation was through the use of combative *jihad*. In May 1948, he chaired a meeting of the Muslim Brotherhood at which the decision was taken to call on the Egyptian and other Arab governments to declare *jihad* against the Zionists for the liberation of Palestine (Bonney, 2004).

Peters (1979) explains that the Muslim Brotherhood of Egypt and the Jamaat Islami of Pakistan represent exceptions to the rule of their era (late 1920s and 1930s) as they “operated within the tradition of the earlier, religiously inspired anti-colonial movements” (p.159). It is noteworthy, therefore, that experts such as Esposito (1999) and Atwan (2006) identify the Muslim Brotherhood, in particular, as having today a pervasive influence on the understanding and practice of Islam across the Muslim world.

Peters (1979) documents that even prior to the war of 1948, eminent Muslim scholars such as the Mufti of Egypt, Hasanayn Muhammad Makhfuf, ruled that *jihad* against Israel in support of Palestine is an individual obligation for Muslims. Such *fatawa* (religious rulings) were written with the aim of destroying the Zionist state and establishing a Palestinian state over all of historical Palestine. However, it is also noteworthy that in 1977, a *fatwa* from the Congress of the Academy of Islamic Research in Cairo ruled that the aim of the *jihad* is to “liberate the territories occupied in 1967” and the “establishment of an independent Palestinian state therein and the return [of] Jerusalem” (Peters, 1979, p.107).

Upon the announcement of the UN partition plan, both the Arab League and the Mufti of Jerusalem, Haj Amin al-Husayni (d.1974), also proclaimed *jihad* for the liberation of Palestine. In 1956, Al-Azhar University issued a *fatwa* declaring that the conclusion of peace with Israel contravened Islamic law for it represented the

acceptance of Israeli aggression and usurpation. Then in 1964 when the Arab League established the Palestinian Liberation Organisation (PLO), not only was Zionism declared to be expansionist, racist, and fascist, but a commitment was made to the PLO's use of *jihad* until victory is attained (Bonney, 2004).

In June 1967, in the aftermath of the Six-Day War, Al-Azhar University published a booklet entitled 'Jihad in Islam' and numerous *fatawa* were also published which ruled that *jihad* is an obligation upon all individual Muslims once an enemy had invaded a Muslim land (Peters, 1979). A strong opinion among Islamic legal schools of thought is that, except in cases of absolute necessity, the Imam should not conclude an armistice for longer than four months in accordance with the Quranic verse 9:2 (Peters, 1979). However, all Islamic legal schools of thought agree that a treaty is null and void should it "stipulate that Muslims will remain as prisoners in the hands of the enemy or that the enemy keeps Islamic territory occupied" (p.34).

Distinguished Islamic scholar Muhammad Sa'id Ramadan Al-Buti (2006) maintains that in the event of war between Muslims and non-Muslims that does not involve the latter occupying the land of the former, a peace treaty may be signed. However, if the enemy occupies the territory of Muslims, the scholars agree that "this land must be defended and the enemy repelled by all means possible" (p.175). Also, under such circumstances, fighting becomes an individual obligation. Moreover, the consensus of Islamic jurisprudence does not permit a peace treaty with an enemy that continues to occupy Muslim land until that land has been returned (Al-Buti, 2006). Such a treaty while occupation continues is not one of peace but submission under Islamic law, explains Al-Buti (2006). Specifically on the issue of the Zionist occupation of Palestine, Al-Buti (2006) states that "there is no [Islamically] legal way to make peace with such aggressive enemies so long as they remain belligerent, because making peace with them in such a context, means adopting a degrading submissiveness and not a fair peace" (p.179).

He further states that:

Palestine, in terms of Islamic law, remains an Islamic domain, no matter what manner the Jews settle themselves on its soil; no matter how much they have squandered and dissipated. On the contrary, this judgement entails that all Muslims should make *jihad* to retrieve Palestine to Islamic rule and control. Despite the Jewish occupation of Palestine, this country remains an Islamic domain; the Muslims' task is to regain it and purify it – this is one of the common legal rules... (p.181-182).

However, he does not have a systematic plan or strategy, military or otherwise, for conducting *jihad* beyond faith in God. For Al-Buti (2006) the liberation of Palestine depends on the ability of Muslims to be true to Islam in order to obtain the requisite support from God.

After the war of 1967, the Al-Azhar Academy of Islamic Research held a conference attended by the religious leaders of most of the world's Muslim countries, Arab and non-Arab. The focus was the need for an international Islamic response to the loss of Jerusalem. Two resolutions were adopted and classified as *fard* (religious obligations). The first was the obligation for all Muslims to seek knowledge and disseminate the truth about Israel's occupation of Palestine. The second was the obligation of *jihad* upon the Muslim communities to combat the injustice of the Israeli occupation (Haddad, 1992). At the sixth such conference at Al-Azhar the necessity of *jihad* was reaffirmed in the wake of the failure of the international community to redress the occupation. As stated by Haddad (1992), it was agreed that:

The *Quranic* principles that justified *jihad* were all applicable in this case because of Israel's actions. These actions included "aggression against the Arab and Islamic land, desecration of the holy places, expulsion of Muslims and Arabs from the land and the use of savage force in killing helpless old men, women and children." *Jihad* under such circumstances was incumbent on all Muslims. The use of force was depicted as inevitable, for what was taken by force could only be reclaimed in the same manner (p.282).

Although such transnational Islamic entities as the Organisation of the Islamic Conference (OIC) have had a minimal impact on the world at large, and even the Muslim world, the OIC has been instrumental as a forum for the Palestine cause (Kepel, 2003). At its summit in Ta'if in 1981, the OIC also resolved to liberate Palestine, including Jerusalem, by means of "*jihad*" (p.139).

Among the most influential Muslim individuals in defining contemporary *jihad* is the late Abdullah Azzam (d.1989), who not only supported the Afghan *jihad* physically on the ground and intellectually through his writings but contributed to defining the Palestine cause from an Islamic perspective. Azzam (1985) wrote a *fatwa* (religious ruling) on *jihad* in Islam, entitled, *Defence of the Muslim Lands*, in which he regards *jihad* as the forgotten obligation of Muslims. *Jihad*, explains Azzam, becomes an individual obligation when non-Muslims enter Muslim lands ('by even a hand span'), on the command of the Imam, and if Muslims are captured or imprisoned by non-Muslims. His *fatwa* advocates the classical notion of *jihad*, arguing that 'the war would be won by *jihad* and the rifle alone, no negotiations, no conferences, and no dialogues'. It focuses specifically on Palestine and Afghanistan, but regards Palestine as the foremost Islamic problem and that Muslims are first obliged to conduct *jihad* there. If they are unable to do so, then they must set out for Afghanistan. On the issue of making peace treaties with the enemy, Azzam is adamant that when *jihad* is *fard ayn* or an individual obligation, as in the cases of Afghanistan and Palestine, it is not permitted under Islamic law to make peace treaties, particularly when the enemy has conquered Muslim lands.

It should, therefore, be easily understood why the Israel-Palestine conflict continues to be described as "the crucible of the conflicts affecting the Muslim *ummah*", which for over two decades has "acted as the epicentre of global *jihad*" (Bonney, 2004, p.269). While the *ulema* and Muslim world at large did not initially support the Taliban or Osama bin Laden, the onset of the 'war on terror' has produced support among Muslims for them and also resulted in increased support for the Palestinian struggle, particularly the resistance of Hamas and Islamic Jihad against what Muslims globally perceive as a legitimate target, Israel, for its continued occupation of Islamic land (Kepel, 2003, p.ix).

A major study conducted by Pew Research Centre, published in July 2007, on trends in the developing and Muslim world, found that while support for Islamic extremism has declined, Hamas and Hezbollah are still viewed favorably across the Muslim world. Majorities in Palestine, Egypt, Jordan, Malaysia, and Nigeria, and pluralities in Morocco, Kuwait, Pakistan, and Indonesia support both Hamas and Hezbollah. Additionally, Hezbollah is supported by a plurality of the population in Lebanon, while Hamas is supported by an overwhelming 81 percent of the population in Bangladesh. Among the predominantly Muslim countries surveyed in the Middle East and Asia, only Turkey was found to have significant majorities that viewed Hamas and Hezbollah unfavourably (Kohut, 2007).

Echoing the proclamations of Azzam, the Hamas Charter (1988) defines *jihad* in combative terms, an individual religious obligation, and the only effective means of liberating Palestine. According to the Charter, the occupation of Palestine by the Zionists is a religious problem that can only be resolved by a religious response. In addition to being the first direction of prayer for Muslims and the place from which the Prophet Muhammad made his ascension to heaven, Palestine is considered an 'Islamic *waqf*' or endowment, which can never be renounced in part or whole. Additionally, the Charter establishes nationalism or '*wataniyya*' as part and parcel of Islam and that any breach of territorial sovereignty by a foreign aggressor renders *jihad* an individual duty. Like almost all Muslims, Hamas sees the struggle for Palestine as a central part of Muslim destiny. The Charter quotes Prophetic Traditions foretelling a great battle at the end of time when the Muslims will fight against the Jews.

Central to this response is *jihad*, which is defined in the Charter as an individual obligation binding on all Muslims everywhere. The Charter does not confine the meaning of *jihad* to armed combat alone; it regards the pen also as an important tool in the struggle. However, articles, books, epistles, religious exhortations, hymns, plays, poems, publications, and songs are regarded not as a primary means of liberation but as support for the ultimate means, combative *jihad*. Moreover, the Charter rejects that conferences and resolutions are capable of restoring the rights of the oppressed and delivering justice. Like the UN, which is considered by the Hamas Charter as an organisation inspired by the Zionists,

international conferences are viewed as simply a means of appointing non-Muslims as arbitrators in the lands of Islam.

Although the Charter asserts that Hamas cares for human rights and is tolerant of other faiths (in accordance with verse 60:8 of the Quran in which Muslims are required to be kind and just toward all people except those who commit oppression) and also declares that under the banner of Islam Muslims, Christians, and Jews can coexist in safety and security, the 'need' for combative *jihad* is consistently reinforced. Part V of the Charter, entitled, 'The Testimony of History', quotes a *hadith* concerning the inevitability of *jihad* in Palestine and also recalls the defeat of the Crusaders by Saladin al-Ayyubi (d.1193) as confirmation that Palestine can only be liberated through the use of armed force. This continues to be a dominant perception among Muslims globally.

At this point it is important to note the prominence of al-Qa'ida in the Muslim world today and the implications of its influence on the issue of *jihad*. The failure to justly resolve the Israel-Palestine conflict has resulted in the formation of a number of militant Muslim organisations including Islamic Jihad and Hamas but also more extremist groups like al-Qa'ida, whose leader, Osama bin Laden, has declared that his opposition to the US is due to its support of corrupt and oppressive Arab regimes and of Israel. Moreover, although yet to take direct action for the liberation of Palestine, al-Qa'ida does make frequent reference to the Palestinian cause and especially the duty to liberate al-Aqsa mosque in Jerusalem as a pre-requisite for establishing the caliphate (Atwan, 2006). According to Abdel Bari Atwan, in presentations delivered at the Brisbane Writers Festival on 16 September 2007 and at the University of Queensland on 19 September 2007, it is only a matter of time before al-Qa'ida targets Israel directly, and it will most likely launch such attacks from Gaza, where the humanitarian crisis has reached intolerable levels, or Lebanon, should it become a failed state as he predicts. Atwan emphasises that failed states such as Afghanistan and Iraq provide the ideal bases for al-Qa'ida. Explaining the conditions under which Islamic extremism emerges and thrives, Atwan (2006) states:

Support for groups like al-Qa'ida is born of political, social and economic circumstances that people find unacceptable. Al-Qa'ida offers them the chance to fight back – something that, for the Muslim world as a whole, has not been possible for a very long time. Muslims might not like what al-Qa'ida has to offer in the long term – how many of them want to live under a Taliban-style regime? – but that is not the issue at present (p.266).

At present, al-Qa'ida and particularly Osama bin Laden has considerable support in many Muslim countries, including those allied with the US (Atwan, 2006).

Under al-Qa'ida the meaning and objective of *jihad* has further evolved to permit the killing of civilians, non-Muslim and Muslim, for the purposes of liberating Muslim lands from non-Muslim occupation; overthrowing 'unIslamic' regimes; and establishing a caliphate according to *shariah* law. A principal tactic of al-Qa'ida in waging *jihad* has been the use of suicide bombings (Atwan, 2006).

Kamali (2006) regards the concept of suicide bombing as an entirely unprecedented phenomenon in Islam, stating that "no one in 14 centuries of Islam has included it in the meaning of martyrdom or *jihad*" (p.214). He argues that such measures are a product of globalised extremism, not simply in the Muslim world but also in the West, manifested in "aggressive policies and unbridled militarism over Palestine and Iraq" (p.214). Hamas first resorted to suicide bombing in response to the Hebron massacre on 25 February 1994, carried out by a Jewish settler (Esposito, 2002; Milton-Edwards, 1996).⁷⁰

⁷⁰ Muslim scholars are divided over the legitimacy of suicide bombings, even in the context of the Israel-Palestine conflict. Esposito (2002) notes that Shaykh Yasin, founder of Hamas, and Shaykh Tantawi, grand mufti of Egypt, both defend its use, while Shaykh al-Sheikh, grand mufti of Saudi Arabia, condemns suicide bombings. Masud (2002) notes that while Muhammad Sayyid al-Tantawi, the Shaykh of al-Azhar, regards the tactic as illegitimate from an Islamic perspective, Shaykh Yusuf Qaradawi holds the opposite view on the grounds that all Israelis are involved in the oppression of Palestinians and the occupation of Palestine. When former mufti of Saudi Arabia, Shaykh bin Baz (d.1999), opined that martyrdom operations constituted suicide, prominent Qatar-based Shaykh Yusuf al-Qaradawi, countered his opinion, arguing that the martyrdom operations were a 'supreme form of *jihad*' permitted by the *shariah*. He further stated that to term the operations as suicide was 'incorrect and misleading' as the mentality and intent of the martyr is fundamentally different from the person who commits suicide (Bonney, 2004). Moreover, as recently as 2004, the leader of the Muslim Brotherhood, Muhammad Mahdi Uthman Akef, declared suicide bombing in Palestine and Iraq to be a 'religious obligation' on account of these lands being occupied and requiring liberation. Additionally, scholars of Al-Azhar University and the University's Centre for Islamic Research also published rulings in support of suicide bombings (Bonney, 2004).

Looking at the matter from a pragmatic perspective, Hirst (2003) is certain that suicide bombings do not work. Though they have a deep psychological impact on Israeli society, they are 'morally repugnant' and 'operationally counter-productive' as they impair the anti-colonial legitimacy of the whole struggle. The misfortune of the Palestinians, he adds, is that their struggle for independence is not from a nation with a history of criminal and brutal imperialism but from a people commonly regarded as history's most hard done by. Moreover, as discussed in Chapter 4, research by Robert Pape (2005) also shows that Palestinian suicide bombings have failed to force any significant concessions from Israel.

Survey research consistently supports this assessment. The majority of Americans consider Palestinian suicide bombings as terrorism. Moreover, if the Palestinians turned to non-violent forms of protest rather than terrorism, research shows that American support for putting greater pressure on Israel increases from a modest majority to an overwhelming majority (WorldPublicOpinion.org, 2006).⁷¹

Irrespective, Hamas founder, the late Shaykh Ahmad Yasin (d.2004) declared *jihad* to be the only course of action for the liberation of Palestine and an individual duty for every Muslim. Additionally, Shaykh Hamid al-Bitawi, head of the Palestinian Islamic Scholars Association, asserts that as in the case of Palestine, when Muslim land comes under the occupation of infidels, *jihad* becomes an individual obligation. He, along with Hamas leaders, such as the late Abd al-Aziz Rantisi (d.2004),⁷² argue that suicide bombings are Islamically permissible (Bonney, 2004). According to a survey published in 2007 by the Pew Research Centre, support for suicide bombing against civilians has actually fallen

⁷¹ In a May 2003 PIPA poll nearly half (49%) favoured the US putting more pressure on Israel. Those who opposed doing so were told, "I'd like you to imagine that the Palestinians stopped engaging in all forms of terrorism, including suicide bombing, and instead used non-violent forms of protest such as demonstrations, strikes, and boycotts. Would you then favour or oppose putting more pressure on Israel to make compromises with the Palestinians?" In that case, an overwhelming 79 percent said they would favour applying more US pressure on Israel. Additionally, support for a Palestinian state is also tied to the issue of terrorism. A poll conducted in June 2002 by CNN/USA Today found that 74 percent of Americans would support the establishment of an independent Palestinian state on the West Bank if the Palestinian government demonstrates that it can end the suicide bombings in Israel (WorldPublicOpinion.org, 2006).

⁷² Both Shaykh Ahmad Yasin and Abd al-Aziz Rantisi were assassinated by Israel through missile strikes.

significantly since 2002 in the Muslim world. In Bangladesh, Indonesia, Jordan, Lebanon, and Pakistan, the number of Muslims who support suicide bombings has halved. The notable exception to this trend, however, is Palestine, where 70 percent of the population support the use of suicide bombing, including against civilians (Kohut, 2007).

Abrogating *naskh*

In spite of the breadth of meaning attached to the term *jihad* in the Quran, Prophetic Traditions, and the writings of Muslim scholars from classical to modern times, *jihad* has become synonymous with terrorism from the perspective of the Western governments, media, and publics, and thus a legitimate target in the war on terror (Kepel, 2003, p.vi). Moreover, Kepel (2003) argues that the dominant meaning of *jihad* at any point in Islamic history is correlated with how it is used and employed by Muslims and that today *jihad* is defined by the militants of the *ummah*. He contends that such figures as Osama bin Laden have utilised the term to legitimise what would otherwise be considered unacceptable violence. The prevalence of the doctrine of *naskh* has ensured that for the Muslim world at large *jihad* is understood and conducted as armed combat and has even evolved to the unprecedented point of endorsing suicide bombing in the targeting of civilians.

The narrowing of the Quranic experience due to the use of abrogation needs to be overcome for Islamic thought and law to again have relevance. As AbuSulayman (1993) explains:

If the meaning of Islam is restricted to the interpretation of events which occurred during a time of hostilities near the very end of the Prophet's era, while the rest of the whole spectrum of Quran and Sunnah texts and the experiences of the earlier Meccan and Madinan periods are ignored, then it will not be possible in the future for mankind to pursue justice or even to survive (p.45).

Similarly, Saeed (2006) attributes the difficult circumstances faced by Muslims of today to the inflexible application of *naskh* by the classical jurists and their lack of

foresight as to the radically different social, political, economic, and technological circumstances that would come after their time (p.86). It is ironic that the doctrine of abrogation is so strong and influential when there is no evidence in either the Quran or Prophetic Traditions to support it (Khan, 2006). Numerous contemporary scholars have rejected the doctrine of abrogation and disputed the evidence on which it is based, including Al Ghunaimi (1968)⁷³, Asad (1980)⁷⁴, and Al-Buti (2006)⁷⁵.

The most comprehensive study to date of the *naskh* doctrine is that of Israr Ahmad Khan (2006). Two general errors that he detected among the arguments supporting abrogation were a “partial reading” of the verses concerned and a reading of such verses in “isolation” from their “context” (p.100). Following a detailed analysis of the so-called proofs of abrogation in the Quran, *hadith* and statements by the Prophets successors, Khan (2006) concludes that,

All those *ayat* of the Quran that have been used by scholars supporting the *naskh* theory, when read in the light of their respective contexts and backgrounds, were found to have clearly spoken of the abrogation of certain previous scriptural laws by the Quran and not that of certain Quranic rulings by certain other rulings of its own. The Prophet...is not reported to have said anything concerning *naskh* in the Quran. The *sahabah* and *tabi'un* are believed to have used the term *naskh* not in the sense of abrogation and annulment as applied by later generations of Muslim scholars (p.30-31).

⁷³ Al Ghunaimi (1968) rejects the doctrine of abrogation on the grounds that the two Quran verses (Quran, 16:101; 2:106) relied upon by its advocates do not refer to verses of Quran being replaced but rather that the Quranic message replaces previous divine revelations. He also points out that not a single reliable *hadith* exists in support of the doctrine.

⁷⁴ Muhammad Asad's (1980) commentary on verse 2:106 explicitly rejects the theory of abrogation and he also explains that the verse refers to the Quran abrogating previous revelations and not abrogation of any Quranic verses. Asad contends that the notion of *jihad* as self-defence is carried through the Quran, including in such later verses as 60:8 and 4:91.

⁷⁵ Al-Buti (2006) rejects the doctrine of *naskh* in the context of *jihad* as indicated by the following:

Jihad did not evolve gradually through stages to be established as a rule at the final one, like the stages of the prohibition of wine; rather, *jihad* is a series of ordinances each of which is to be activated in its appropriate time (p.22).

Al-Buti (2006) likens *jihad* in the form of teaching and preaching to the trunk of a tree 'in all conditions and seasons', while he likens combative *jihad* to the shoots of the tree, "which bloom from time-to-time in accordance with various reasons and climates" (p.17).

Having comprehensively addressed the issue of abrogation and its impact on the definition and application of *jihad*, it is essential to elaborate on an alternative definition and application. This requires a return to the primary objectives of Islam. Rahman (1989) argues that *jihad* is “an absolute necessity” for establishing the religio-social endeavour envisioned by the Quran (p.63). Based largely on the repeated call in the Quran for ‘commanding good and forbidding evil’, establishing prayer, and paying *zakat*, Rahman (1989) asserts that “there is no doubt that the Quran wanted Muslims to establish a political order on the earth *for the sake of creating an egalitarian and just moral-social order*” (p.62). He adds that the expectation of the Quran in this context is the elimination of corruption and institution of reform, for which the Quran created *jihad* as an instrument.

Thus, the Muslim commitment to *jihad* directly corresponds to the centrality of justice in Islam. The essence of *jihad*, Hashmi (2001) explains, is the “personal and collective struggle to realise justice upon earth” (p.110). He observes that “the objective of *jihad* today – whether defined by modernists or fundamentalists – is to realise justice within the Muslim *ummah*” (p.163). He adds that “one cannot hope to understand the Islamic revival, in its many and varied manifestations, unless one appreciates this fundamental fact” (p.163). “Justice”, is the “core value of Islamic ethics, for it runs like a binding thread throughout the Quran and the Prophetic Traditions” (p.110), and in Islam, justice is a universal principle that extends to all human beings, Muslim and non-Muslim.

Numerous Islamic scholars, including Saeed (2006), El-Fadl (2003), Hashmi (2002), Safi (2001) AbuSulayman (1993), Khadduri (1966), and Hamidullah (1961) have all acknowledged that as many of the issues covered under the classical Islamic doctrine of war and peace are based on customs, traditions, and prevailing circumstances of certain historical periods, their application is historically limited. It is also noted that the lack of a comprehensive theory of war and peace in Islam has led to “major errors in perceiving the role of war and the real objectives of the Islamic state vis-à-vis non-Muslim communities” (Safi, 2001, p.44).

El Fadl (2003) advises that Muslim societies should not 'dogmatically' assume that a particular paradigm is necessarily Islamic. He explains that the very idea of a state law that is Islamic is problematic as historically "state or governmental law in Muslim societies was considered regulatory and administrative" and "not considered divine or immutable" (p.198). As for the *shariah*, El Fadl finds flexibility and variation in its application over place and time, and it is this flexibility and variation that he regards as necessary for Islam to positively contribute to conflict resolution.

A contemporary theory of Islamic international relations must, therefore, take into consideration two factors: the objectives of *jihad*, which will be more thoroughly examined in the next chapter; and the contemporary international context, particularly the establishment of the rule of law and the role of norms and identity factors in international relations. As explained above, the *siyar* is largely a product of the historical context in which it was developed. It should be recalled that during the 10th century, the world was divided into empires whose normal basis of relations was war in the absence of a peace treaty. Today the world is divided into nation states, which, primarily due to their membership with the UN and acceptance of its Charter, have established peace as their normal basis of relations. It is noteworthy that all Muslim states are members of the UN. Although numerous sources have historically been used in the development of Islamic law, only two are fundamental: the Quran and the Prophetic Traditions. These sources, if correctly understood and interpreted, provide the necessary and sufficient basis for a reformulation of the *siyar* in response to contemporary realities and conditions.

Hashmi (2002) argues that Muslim states have made a formal commitment to contemporary international norms. He explains that "it is utterly meaningless today to speak of an Islamic 'tradition' or 'civilisation' as a monolithic force operating in international politics" (p.149). Rather, Islam has always displayed a strong 'syncretistic inclination' demonstrated by its capacity to adapt to the cultural conditions of the Middle East, Africa, Asia, and Europe as it expanded beyond the Arabian Peninsula. For Islam to adapt to contemporary international

conditions and norms, be they dominated by Western culture, is not contrary to its nature, but consistent with the dynamism historically displayed by Islam.⁷⁶

An-Na'im (1990) argues that directives from the Quran or Prophetic Traditions advocating the use of force to correct injustices or wrongdoing should now be "interpreted in ways that are consistent with the rule of law, both domestic and international, and that struggle and fighting against injustice and evil should be done by means other than force" (p.154). Central to An-Na'im's argument for the suspension of Quranic verses that advocate the use of force (except in cases of self-defence) is his view that "although the interpretation given to those sources, and the authority they were deemed to provide for direct violent action in the past, may have been justified in a previous historical context, such interpretation is no longer valid, and such authority is not longer acceptable as sufficient" (p.157). An-Na'im bases his argument on the strength of the rule of law currently existent relative to that of the past.

The question that arises is whether, and if so, to what extent does this 'rule of law' actually extend to the context of the Israeli-Palestinian conflict. If we find an absence or insufficiency of the rule of law in this context, does this mean, by An-Na'im's reasoning, that the Palestinians are justified in resorting to 'self-help' and 'direct violent action'? More recently An-Na'im (2006) himself has answered this question in an article entitled 'Why should Muslims abandon *jihad*?', in which he argues that given the lack of Western adherence to the framework of legality and rule of law, particularly in the context of the invasion of Iraq, there is a commensurate lack of motivation for Muslims to abandon *jihad*. Moreover, the question of how Muslims define and apply the concept of *jihad* remains.

⁷⁶ The argument could be made that Muslim states have generally fulfilled this commitment and have established peace as the basis of their relations with other nations in accordance with the UN Charter. However, this standard has not been met on an 'Islamic' basis as such international norms have not yet been integrated into Islamic political thought, much less a reformulated 'Islamic' theory of international relations (Hashmi, 2002). The question could, therefore, be raised that if the current Muslim regimes, most of which are relatively secular in orientation, were replaced by their 'Islamically oriented' opposition, would such regimes be able to maintain peaceful, humanitarian, and democratic policies in the face of what their people would likely perceive as inconsistent with the *shariah*? Hamidullah (1961) asserts that with Muslim states joining the United Nations and accepting the International Court of Justice, they have accorded authority to these entities, and as such, the UN Charter along with international treaties and conventions need to be considered in a discussion of Muslim international law.

This thesis argues that a *jihad* strategy of the Palestinians against the Israeli occupation based on nonviolence, rather than violence, would be more conducive to achieving their goal of self-determination. Islamic legitimacy for the use of nonviolence begins with the Prophet himself. It should be noted that a number of scholars dispute the legitimacy of a non-violent tradition in Islam. Tibi (2002), for instance, contends that “there is no Islamic tradition of nonviolence and no presumption against war” (p.178).

Hashmi (2002), however, rejects the contention that the Prophet’s policy of nonviolence during the Meccan period was due to pragmatic considerations, namely Muslim military weakness and Qurayshi strength, but rather, that the Prophet’s response was “active non-violent resistance and open defiance of pagan persecution” (p.201). He defines the non-violent resistance of this period as *jihad* and considers it to contain important lessons for the Muslim non-violent activist. This issue will be explored in detail in the next chapter.

Conclusion

This chapter has examined the classical Islamic doctrines of war and peace, particularly the central concept of *jihad*. While *jihad* has continued to evolve throughout Muslim history, the classical definition of *jihad* in terms of armed force has endured until today. Particularly in the case of Palestine, the response of the Muslim world has been to advocate combative *jihad* rather than alternative, non-violent, approaches. Although the laws and doctrines developed by the classical Islamic jurists acquired authoritative status among Muslims, this chapter has highlighted that particularly in the case of the *siyar*, customs, norms, and conditions, rather than the divine texts, were most influential in the development of the laws of war and peace. When confronted with the superior military might of Europe, some Muslim scholars responded by redefining *jihad* in terms of defensive rather than offensive warfare. However, Muslim recognition and appreciation of political realities and conditions has not extended much beyond the issue of military power. The Islamic perspective has not given due consideration to the role of norms and identity factors in international relation, and thus non-violent *jihad* has not been conceptualised in terms of conflict resolution. Given that the Quran is the ultimate source of Islam and Islamic law,

in order to resolve the question of *jihad* and nonviolence in Islam, a comprehensive analysis of all Quranic verses pertaining to war and peace is necessary. This will be the focus of the following chapter. It should be noted that all texts, including the Quran and the Prophetic Traditions are polysemic; they are open to multiple interpretations. What is required is a methodology for the interpretation and application of these texts. This thesis will utilise the contextualisation and *maqasid* or objective-oriented approaches, which are explained in the next chapter.

Chapter 6: Putting Jihad into Context: Intent, Purpose, and Objectives

Issues concerning the Muslim world, including conflict resolution, need to be addressed within the Islamic tradition if they are to be viewed by Muslims as legitimate and accepted. This cannot be achieved by a simple return to the *shariah*, however, at least not until what is referred to as *shariah* is realigned with contemporary realities and conditions, or more specifically, to use the words of Kamali (2006): “This would necessitate imaginative reconstruction and *ijtihad* (intellectual reasoning) entailing revision and modification of the rules of *fiqh* so as to translate the broad objectives of the *shariah* into the laws and institutions of contemporary society” (p.33). This thesis is my contribution to this process. In order to reformulate the Islamic doctrines of war and peace in a way that is conducive to contemporary conflict resolution, taking Israel-Palestine as a case study, I have in Part II of this thesis used the tools of international relations and analysed the conflict from the perspective of one of the field’s most dynamic and increasingly prominent theories, constructivism. Based on the tenets of constructivism, its explanatory capacity with respect to other conflicts, and other empirical data specifically concerning the Israel-Palestine conflict, chapters 3 and 4 of this thesis demonstrated the greater potential of nonviolence, rather than armed force, to achieve the Palestinian goal of self-determination.

In spite of its potential, this thesis has documented that the resurgence of Islam has brought with it an interpretation of *jihad* that is consistent with the classical doctrine. This interpretation equates *jihad* with the use of armed force.

Nonviolence is currently underutilised as it is without Islamic legitimacy and a normative status among Muslims at large, including Palestinians. Rahman (1984) emphasises that for an approach to interpretation to be successful, it must “flow from the teaching of the Quran and Sunnah as a whole”; otherwise it “will not solve a given problem or apply to a given situation Islamically” (p.23).

The second step in the reformulation process is, therefore, to return to the primary source of Islam, the Quran. This chapter provides a comprehensive analysis of all the verses of the Quran concerning issues of war and peace in

order to identify the higher objectives, purpose, and intent of *jihad* and assess whether and to what extent non-violent resistance does in fact have Islamic legitimacy from the Quranic perspective. A two-fold method is used for this analysis: contextualisation and the *maqasid* or objective-oriented approach. The following defines and discusses these two methods.

Contextualisation

Contextualisation is an approach to interpreting the Quran that requires consideration of the text as a whole, the position of verses within the text, the circumstances or conditions of the Prophet Muhammad and the early Muslim community at the time of the revelation, and the contemporary situation or issue for which the Quranic guidance is sought. The following will demonstrate that the contextualist approach actually originates with the companions of the Prophet but has been marginalised and even condemned by the more dominant textualist approaches based on literalism and also abrogation. Historically, Islamic law worked best when it was based on an integration of the customs and institutions of conquered lands, and modified, if necessary, with the teachings of the Quran (Rahman, 1984). Moreover, Rahman writes that the more unsatisfactory aspects of the law resulted from attempts to “deduce law from the Quran in abstracto” (p.2). The problem arose due to the impression of the tools that were employed, namely *qiyas*, which themselves were a consequence of “the lack of an adequate method for understanding the Quran” (p.2).⁷⁷

Central to this failure was a lack of understanding of the “underlying unity of the Quran”, explains Rahman (1984), “coupled with a practical insistence upon fixing on words of various verses in isolation”, referred to as the ‘atomistic’ approach

⁷⁷ A dominant misconception among Muslim scholars is that the traditional field of study known as *asbab an-nuzul* or the ‘reasons for revelation’ provides an adequate basis for contextualisation. Contextualists, such as Saeed and Rahman, disagree. Rahman (1984) explains that the literature on *asbab an-nuzul* is “highly contradictory and chaotic” and emerged due to the failure of Quranic commentators to realise the “full import” or real significance of the situational context of the revelations (p.17). Similarly, Saeed (2006) asserts that much of the *asbab al-nuzul* literature is “contradictory and others are historically suspect” (p.117). The more viable and reliable alternative according to Saeed (2006) is anthropological research on the communities of Hijaz and Arabia that deals with the period in question. Rahman (1984) also asserts that the problem posed by the ‘contradictory and chaotic’ nature of the reason-for-revelation literature is easily overcome. He states that “it is not difficult to see the real point of a verse or the basic import of a given injunction” and that “the Quran, for the most part, explicitly states why an order is being given or a statement or comment is being made, even though it rarely refers to a specific case by name” (p.18).

(p.2). The overriding problem with this approach is that “laws were often derived from verses that were not at all legal in intent” (p.3). Rahman explains that the failure to appreciate the unity of the Quranic verses resulted in the emergence of an alternative worldview from that intended by the Quran. On this point, he remarks: “The Quran as a whole does inculcate a definite attitude toward life and does have a concrete weltanschauung; it also claims that its teaching has ‘no inner contradiction’ but coheres as a whole” (p.6).

There has been a realisation among some contemporary Muslim scholars that if the Quran is to remain relevant to Muslim societies and conditions, given the dramatic changes that have occurred since the 17th century, a contextualist approach is necessary. There has also been a realisation that what is referred to as the *shariah* and considered by Muslims to be the articulation of the Will of God, is ultimately an approximation of God’s will, a human interpretation of a divine source according to conditions and realities at a particular historical moment.

Abdullahi Ahmed An-Na’im (1990) proceeds from the assertion that the *shariah* is “not the whole of Islam but instead is an interpretation of its fundamental sources as understood in a particular historical context” (p.xiv). He cautions against using the classical Islamic doctrines in response to contemporary constitutional and political questions, explaining that:

Although this literature was written by scholars who were experts in *shariah* and who were keenly aware of the need to conform to its dictates, it cannot be assumed that what they produced was necessarily identical to or even consistent with *shariah*. For the most part it would seem, those scholars were writing under circumstances that were not particularly conducive to strict application of *shariah*. Muslim scholars working at the time of the decline of the Abbasid dynasty in the eleventh and twelfth centuries were primarily concerned with maintaining the unity and security of the Muslims under extremely unstable political conditions (p.5).

A large number of contemporary scholars including Abdullahi Ahmed An-Na’im, Khaled Abou El Fadl, Louay Safi, and Sohail Hashmi have discussed the need to

read and understand the Quran in light of historical and contemporary contexts. Among those who have developed a method of contextualisation are Fazlur Rahman, AbdulHamid AbuSulayman, and Abdullah Saeed. This section will discuss the contributions to the contextualist approach of each of these three scholars in turn.

Fazlur Rahman

The late Fazlur Rahman (d.1988) has written a number of important books concerning the present topic, including *Islam, Major Themes of the Quran*, and *Islam and Modernity*. The work of Rahman emphasises that the Quran's repeated calls for 'commanding good and forbidding evil', establishing prayer, and giving charity are intended for Muslims "to establish a political order on the earth *for the sake of creating an egalitarian and just moral-social order*" (Rahman, 1989, p.62). He adds that the expectation of the Quran in this context is the elimination of corruption on the earth and reform of the earth. However, he rejects the popular modernist notion that the Quran provides general 'principles' and the Prophetic Traditions embody these fundamentals in 'concrete solutions'. Rather, he explains, the Quran gives "solutions to and rulings upon specific and concrete historical issues" and also "the rationales behind these solutions and rulings from which one *can deduce general principles*" (p.20). Rahman maintains that the only way the truth about Quranic teaching can be obtained is to generalise on the basis of the Quran's treatment of actual cases – "taking into due consideration the sociohistorical situation..." (p.20).

Rahman (1984) advocates a contextualist process of interpreting and applying the Quran that he refers to as a 'double-movement'. The process involves a movement from a contemporary issue to Quranic times (first movement) and then back to the present (second movement). The process must begin, he explains, with a general historical study of the "macrosituation in terms of society, religion, customs, and institutions, indeed of life as a whole in Arabia on the eve of Islam and particularly in and around Mecca – not excluding the Perso-Byzantine Wars" (p.6). The first movement requires one to first "understand the import or meaning of a given statement by studying the historical situation or problem to which it was the answer" (p.6). This step, along with the general,

preliminary, historical study, is necessary for an understanding of the “meaning of the Quran as a whole in terms of the specific tenets that constitute responses to specific situations” (p.6).

The second step is the generalisation of the specific answers and to enunciate them as “statements of general moral-social objectives that can be distilled from specific texts in light of the sociohistorical background and the often-stated *rationes legis*” (p.6). The importance of social science to the ‘double-movement’ process is obvious and indeed underpins the relationship between the two movements. As it involves the general Quranic view to be embodied in the contemporary context or issue, a detailed analysis of the contemporary circumstance or issue is required in order for the most appropriate application of the Quranic values (Rahman, 1984).

Rejecting the traditional reliance on the ‘*asbab an-nuzul*’ or ‘reason for revelation’ literature, Rahman (1984) asserts that “the real solution lay only in understanding the Quranic injunctions strictly in their context and background and trying to extrapolate the principles or values that lay behind the injunctions of the Quran and the Prophetic Sunnah” (p.18). The problem is that this approach has not been systematically developed by Muslim jurists. Even Rahman did not develop a systematic methodology concerning the objectives of the Quran, which would have made the double-movement a more robust approach. The role of an objective-oriented approach will be discussed in detail below in the section on *maqasid*.

AbdulHamid AbuSulayman

AbdulHamid AbuSulayman’s most important book on the present topic is *Towards an Islamic Theory of International Relations*, in which he outlines a new framework for Islamic thought and methodology for interpretation. This book makes a major contribution to the method of contextualisation. He approaches the issue from the perspective that the historical *usul* methodology is no longer adequate to cope with the contemporary realities and conditions of the Muslim world. AbuSulayman explains that this methodology lacks an appreciation for the ‘time-space dimension’ and traps Muslim thought in *taqlid* (imitation) and *talfiq*

(piecing-together). By this he means that contemporary Muslim thought is neither original nor systematic, but based on the rules and doctrines established in a previous historical context and superficially combined and transplanted into contemporary Muslim societies.

AbuSulayman (1993) explains that the pervasive usage and acceptance of *qiyas* (analogical reasoning) during the Abbasid period was due to the fact that the empire was globally dominant and, therefore, content with the status quo. It, therefore, sought a methodology that would maintain the model that developed in the last years of the Prophet's life when conflict with the tribes of Arabia was particularly intense. The weak and dominated position of Muslims today has led to not only a questioning of the classical methodology but a need for a complete reformulation.

AbuSulayman's (1993) reform methodology is based on the adoption of systematic, empirical, social sciences research as a prerequisite for developing a new practical Islamic framework to deal with the challenges posed by contemporary realities. This framework highlights the need to reform Muslim political thought and to "overcome the space-time problem of traditional political thought" as well as "the lack of originality and consistency in the modernist approach" (p.159). The initial steps of his approach involve reinterpretation of the Prophet's policies according to political rather than legalistic terms, removing the legalism from the traditional conception of the God-man relationship, and testing the framework against some major contemporary Muslim foreign policy.

He also advocates five factors on which policies designed to deal with specific situations should be based: basic principles and values of Islam; character of threats to and opportunities for the pursuit of Islamic goals; strengths and limitations of Muslim societies; resources, adversaries and allies; and limitations of the environment. The constructivist approach of this thesis has identified the threats to and opportunities for a just resolution, strengths and limitations of the Palestinians, resources, adversaries and potential allies of the Palestinians, and the limitations of the current political environment post 9/11. This chapter will examine the issue of Islamic goals and values with respect to these factors.

AbuSulayman's Islamic framework is founded on basic principles that are central to Islamic thought, including *tawhid*, justice (*adl*), peace, mutual support, and cooperation, as well as *jihad* (self-exertion). Although *jihad* "does not exclude the possibility of armed conflict, students of international relations should pay attention to the variety of its meanings and applications in any specific situation" and only "then will a better understanding of the motivation and consequences of any specific course of a Muslim foreign policy be possible" (p.137).

AbuSulayman observes that the "ultimate goal" of the Prophet's external policies "was to serve the Muslim people and their cause under the prevailing circumstances" (p.141). Thus, the Islamic framework advocated by AbuSulayman (1993) also has at its foundation certain basic values to "promote moderation and self-restraint", including, "no aggression (*udwan*), no tyranny (*tughyan*), no corruption (*fasad*), no excess (*israf*)" (p.140).

AbuSulayman (1993) writes that the verses of the Quran concerning external relations pertain to medieval war in the context of a medieval social system and that in order to make any meaningful use of these texts, one must understand "the aspects of the underlying value involved in such pronouncements, as distinguished from the concrete physical and cultural aspects" (p.77). Due to their close proximity to the time and space of the Prophet, the classical jurists could, to a greater extent, engage in literalism and be somewhat confident in analogy as a reliable methodology. However, "when contemporary jurists function in the same manner and even repeat the old instructions word for word, there is obviously a lack of appreciation for the changes that have taken place" (p.77).

Beyond literalism and the misuse of analogical reasoning, a major problem identified by AbuSulayman (1993) is the Sunnah, which is considered by the *usul* methodology to be the most important source after the Quran. The Sunnah is inadequate as a source of Islamic international relations, he explains, due to the vast differences in the space-time dimensions between the Prophet's time and the present. AbuSulayman argues that aside from the "noble goals" it encourages, the Sunnah "should not be extended beyond their space-time limitations" (p.79). Similarly, he encourages caution when attempting to generalise Quranic verses that involve space-time elements, especially those "in the field of external relationships" (p.79, 85). A case in point is the Muslim

characterisation of Jews today according to the features ascribed in the Quran and the *hadith* to the Jewish opponents of the Prophet Muhammad in Madina (Nusse, 1998).⁷⁸

AbuSulayman (1993) identifies a lack of empiricism and systematisation as the basic shortcomings of the classical Islamic legal methodology. He notes that when the classical jurists looked at contrasting actions of the Prophet and Abu Bakr in their conduct of war, they tried to explain the differences in the context of abrogation or exception and failed to realise that the actions of each were both within the Islamic framework but in response to situations that warranted different tactics. In this respect he also argues against reading historical events in legal terms. Rather, he advocates an analysis of the political and strategic significance of the events (p.106). AbuSulayman writes that it was the Prophet's realism, "with its wide margin of political manoeuvrability, rather than legalism and formalism, that explains the Prophet's successful conduct of external affairs" (p.106). The Prophet's actions, peaceful and forceful, were guided by what was necessary in any given circumstance and the ultimate goal of ensuring the survival of the Muslims and the prosperity of Islam, all within Islam's moral and ethical framework, which later became legal.

Harshly reproaching contemporary Muslim militants, AbuSulayman states: "If there is any one word to describe the crisis of Muslim thought in the field of external affairs today, that word is 'irrelevance'. The aggressive attitude involved in the classical approach to *jihad* as militancy is clearly irrelevant today to a people who are weak and backward intellectually, politically, and technologically" (p.97). Equally, he finds the 'liberal' approach of "peace, tolerance, and defensiveness" also irrelevant given the social, political, and economic challenges faced by Muslims today (p.97). His advice to the Muslim world is to adjust to strategies and policies "that fit the different parts of Muslim lands and Muslim peoples at different times" (p.98).

⁷⁸ The way in which the Prophet dealt with the Jews of Madina was not meant to establish an historical precedent for dealing with non-Muslims or Jewish treachery and aggression for all time, but merely represented a response to particular circumstances (AbuSulayman, 1993). AbuSulayman's work is rich in examples that demonstrate the diversity in dealing with non-Muslims by the Prophet and the Rashidun Caliphs. He explains that "the whole issue of the difference in punitive action taken against the enemy was political and signifies the flexibility and realism which, in my judgement, the early Islamic framework exhibited" (p.104).

Abdullah Saeed

Interpreting the Quran by Abdullah Saeed (2006) is the most recent contribution to the issue of reinterpretation and further develops the contextualist approach. Saeed presents a comprehensive argument for the replacement of the traditional 'legalistic-literalistic' approach to interpreting the Quran, particularly the ethico-legal verses, with an approach based contextualisation. He has developed a three-fold framework for a contemporary approach to interpreting the Quran involving a new classification of Quranic verses,⁷⁹ a new hierarchy of Quranic values,⁸⁰ and a new model for interpretation. Saeed's four-stage model for interpretation begins with the text of the Quran in its context, followed by a linguistic and literary examination of the words of the text, then an examination of the original meaning of the text for its first recipients in their socio-historic context, and finally the meaning of the text in reference to contemporary circumstances.

He highlights the challenges faced by the contemporary Muslim world in the realms of social order, politics, and economics and argues that both the classical methods of *tafsir* (interpretation) and *fiqh* (jurisprudence) are no longer adequate. Saeed acknowledges the traditional Muslim view of revelation as sacred, but he makes the distinction between the revealed book (the Quran) and the human understanding of that text, emphasising that "the understanding of revelation and

⁷⁹ Saeed (2006) identifies four categories of Quranic verses according to their subject matter:

1. The Unseen (God, Angels, heaven, hell, etc.);
2. Historically oriented (past nations, previous prophets, etc.);
3. Parables (stories or accounts that provide certain lessons); and
4. Practice-oriented (beliefs, values, ethics, morals, law, rulings, instructions, commandments, and prohibitions).

⁸⁰ Saeed's (2006) hierarchy of values are based on the ethico-legal content of the Quran concern what he refers to as 'right action' and includes:

1. Obligatory values: beliefs (*iman*), worship (*ibadat*), and the clearly defined lawful (*halal*) and prohibited (*haram*);
2. Fundamental values: repeatedly emphasised teachings such as the protection of life, property, progeny, intellect, religion, dignity, and caring for the disadvantaged as well as a range of human rights including freedom of speech, equality before the law, freedom from torture and inhumane treatment, freedom from arbitrary arrest, presumption of innocence, and protection of the environment;
3. Protectional values: legislative support for the 'fundamental values' in the form of certain prohibitions;
4. Implementational values: specific measures, penalties, or sanctions used to implement and uphold protectional values; and
5. Instructional values: measures taken in relation to a problem specific to the circumstances at the time of the revelation.

the revelation itself are firmly grounded in the human experience, in the time, place and circumstances of the 7th-century Hijaz in Arabia” (p.27-28).

As defined by Saeed (2006), the ‘contextualists’ are those scholars who “emphasise the socio-historical context of the ethico-legal content of the Quran and of its subsequent interpretations” and support a reading of the Quran based on the “political, social, historical, cultural, and economic contexts in which the content was revealed, interpreted and applied” (p.3). As opposed to ‘textualists’, who base their claim of an ‘objective’ understanding of the meaning of the Quran on “linguistic evidence and historical reports”, contextualists find meaning to be subjective and based on differing time, places, and circumstances (p.103). Consequently, diversity in interpretation is to be expected with differing experiences, beliefs, prejudices, and values of different interpreters.

For the contextualists, the changes of ethico-legal rulings found in the Quran are in response to changing situations and provide the community with “an important tool with which to change rulings in line with changing needs and circumstances” (Saeed, 2006, p.84). Consequently, Saeed rejects the position that “all Quranic rulings must be immutable or unchangeable – in the sense that another ruling cannot be devised or implemented to match with broader Quranic objectives” (p.84).

Saeed (2006) rightly explains the critical point that interpretation, unlike revelation, is not divine, but a “human endeavour”, and therefore there is nothing sacred about a personal interpretation, even that given by “a Companion of the Prophet, or by a Successor or by early imams” and that “their understandings, like ours, are limited by context and culture and may or may not be relevant outside *their* culture, *their* context” (p.4). Although Muslim scholars throughout the ages, following the position of the classical imams or jurists, have considered the interpretations of the Quran given by the Companions of the Prophet as authoritative, Saeed highlights the methodological problem associated with this position by demonstrating not only that significant diversity of interpretations existed among the Companions but also that their interpretations were often ‘personal’, not systematic, and usually devoid of support in the forms of a *hadith* or linguistic analysis. Rather, Saeed finds that their interpretations constituted

ijtihad, relying on “the ‘spirit of the Quran and the Prophet’ as they understood it” (p.48). He also finds a similar approach to interpretation among their Successors.

Like that of Kamali (2006), AbuSulayman (1993), and An-Na'im (1990), the work of Saeed (2006) emphasises the rulings of the second Caliph, Umar bin al-Khattab (d.644), as establishing important precedents in the context of changing rulings according to changing circumstances. In matters pertaining to *zakat*, divorce, crime and punishment, and even the distribution of conquered lands, Umar made rulings that not only differed with the rules established by the Prophet Muhammad but with the letter of the Quran. Umar's rulings were made according to the spirit of the Quran and the Prophet's teachings. However, this is not how his rulings were understood by the classical jurists who established the Islamic law and doctrines. For scholars such as Shafi'i the changes were “incorporated in the developing body of law and legitimised as part of the Sunnah” (p.87) thereby rejecting the incorporation of contextualisation into the theory of jurisprudence.

Numerous contemporary scholars have arrived at the same conclusion. An-Na'im (1990), for instance, views Umar's decisions as representing a “clear and strong precedent” that “policy considerations may justify applying a rule derived through *ijtihad* even if that required overriding clear and definite texts of the Quran and Sunnah”. Such examples or precedents, he adds, “cannot be dismissed as isolated cases which were overruled by the subsequent systematic formulation of *usul al-fiqh*” (p.28). He argues that “Muslims have the competence to reformulate *usul al-fiqh* and exercise *ijtihad* even in matters governed by clear and definite texts of the Quran and Sunnah as long as the outcome of such *ijtihad* is consistent with the essential message of Islam” (p.28-29).

A central focus of Saeed's work concerns the nature of the Quran. He observes that the extensive discussions in the Quran about God, existence, and the God-humankind relationship render the language of the Quran as ‘ethico-theological’, not legal. This, he explains, can be seen in the way the Quran expresses its ideals, commandments, prohibitions, and instructions. However, “this ethical language was later transformed into a legal language as Islamic law was developed in the first three centuries of Islam” (p.122). While Saeed (2006)

acknowledges the need, in the first three centuries of Islam, to develop laws for the empire and a system of jurisprudence, he believes that this process went too far when “manifestly ethical texts came to be considered purely legal”, which resulted in Muslims losing sight of the ‘spirit of the Quran’ (p.123).

Saeed (2006) points out that in the hands of the classical jurists, the importance of the legal verses of the Quran were elevated while those considered non-legal were “relegated by the jurists to secondary importance” (p.16). This approach, of course, seriously narrowed the effective scope of the Quran, given that Saeed identifies the strictly legal verses of the Quran as ranging between only 80 and 100 in number. He argues that the rationale behind the Quran containing such a relatively small proportion of legal verses is that they were meant to apply specifically to the context of the 7th-century Hijaz and not to be applied generally or universally across time and place. Thus, the relevance of such verses is not a given but requires consideration of the context of different environments, and it should, therefore, be expected that the understanding of the legal verses will change with each new generation.

The above examination of the work of Rahman, AbuSulayman, and Saeed shows certain common characteristics in their contributions to contextualisation:

1. Rejection of a literalist and atomistic approach to interpreting and applying the Quran and advocacy of a holistic reading of the Quran;
2. Emphasis on past and present social, cultural, and political contexts;
3. Emphasise the rulings of Umar, the second Caliph, which were made in accordance with the spirit of the law rather than its letter in response to changing social, economic, and political conditions;
4. Emphasis on the inadequacy of the historical *usul al-fiqh* methodology in the context of contemporary realities and conditions;
5. Emphasis on distinguishing the small number of legal verses of the Quran from the majority that are moral and ethical in intent; and
6. Advocacy for the use of social science in the interpretation and application of the Quran and development of Islamic law.

A notable shortcoming of the contextualist approaches is that they do not offer a systematic criterion for determining what should be contextualised and what should retain its original interpretation and application. Contextualists, including those cited above all make reference to the 'higher objectives', the 'spirit of the law' or the *maqasid*, albeit briefly. However, the theory of *maqasid*, which is discussed below, is not systematically integrated into their approaches. This thesis argues that a combination of the contextualisation and *maqasid*-oriented approaches allows for a more thorough and reliable method of understanding, interpreting, and applying the Quran. This thesis aims to further the method of contextualisation and seeks to avoid what has been described by Senay (2007) as 'contextualism' or a fixation on context to the exclusion of the intent, purpose, and objectives of the text.

Maqasid

The Quran makes clear in such verses as 57:25 that God creates not for idle sport but with purpose, which is understood to mean that, among His other creations, God revealed the 'law' with purpose, intent, and objectives, those being establishing a just social order (Ibn Ashur, 2006). While the Quran frequently conveys the cause (*illah*), intent, purpose, or wisdom (*hikmah*) associated with its injunctions and advice, many parts are silent in this regard. Kamali (2006) explains, however, that the conclusion reached by the scholars of Islam is that "the Lawgiver [God] has intended that the meaning, implications and objectives of His laws which are often indicated but not always elaborated in the text should be investigated and comprehensively understood" (p.51).

This process is referred to as *ta'llil* or 'ratiocination' and implies that the *shariah* laws are not imposed for their own sake but for the purpose of realising certain objectives and benefits and avoiding certain harms. Kamali (2006) adds that "when there is change of a kind whereby a particular law no longer secures its underlying purpose and rationale, it must be substituted with a suitable alternative. To do otherwise would mean neglecting the objective of the Lawgiver [God]" (p.51-52). Such is the proper understanding, explains Kamali (2006), of the concept of abrogation as well as the precedents of Umar, about which he

states that “essential harmony with the spirit of the *shariah* may at times even justify a certain departure from its letter” (p.225).

This notion is the basis of the theory of *maqasid*. The word ‘*maqasid*’ is the plural of ‘*maqasid*’, meaning purpose or objective. The scholars of Islamic law have defined the term in reference to the purpose and objectives of the law and its sources, specifically the Quran and the Prophetic Traditions. The theory of *maqasid* holds that human interest or benefit and the objectives of the law are interlinked and that “any independent interpretation of the principles of jurisprudence must be based on what is termed *istislah* [reasoning based on unrestricted interests], and that one’s understanding of the relevant texts and the conclusions one draws from them must be based on the principle that the objectives of such texts are to achieve benefit and prevent harm” (Raysuni, 2006, p.46).

Kamali (2002) defines the *maqasid* as the ‘objectives’ of *shariah*, which are basically concerned with values. These values and objectives include justice, mercy, compassion, upright character, promotion of good, prevention of evil, charity, and so forth. Kamali (2006) explains that while the *maqasid* are “rooted in the textual injunctions of the Quran and the Sunnah”, their main focus is “the general philosophy and objectives of these injunctions often beyond the particularities of the text” (p.130). The focus is on the goals and purpose of the text rather than the specific words and verses. He contends that the *maqasid* make the *shariah* more accessible by avoiding the literalism, atomism, conditions, and requirement associated with the *usul* methodology.

Similarly, Ahmad Raysuni (2006) defines the *maqasid* as “the purposes which the Law was established to fulfil for the benefit of mankind” (p.xxii). He reasons that, on the basis of the qualities and attributes of God that He has conveyed in the Quran, Islamic law cannot be other than “a law of wisdom and mercy, justice and equity, judicious planning and accurate assessment” (p.xxxiv). Another scholar of Islamic law, Wael Hallaq (2006), defines the *maqasid al-shariah* as ‘the universal aims of the law’. He describes the process of interpreting the law on the basis of the *maqasid* as one in which “the jurist does not deal directly with the texts, since the *ratio legis* is not, strictly speaking, textual. Rather, he infers it

through his rational faculty, but it must be in agreement with what may be called the spirit of the law” (p.13)

Being more concerned with the philosophy and purpose of the law, *maqasid* has historically received insufficient attention from Islamic jurists, who were preoccupied with the letter of the law and formulation of the text. Moreover, such has been the general neglect of *maqasid* that it does not even feature in many of the reputable textbooks of Islamic jurisprudence, nor even as part of the theory of *ijtihad* (Kamali, 2006). Indeed, the term ‘*maqasid*’ was not used in the writings of jurists until 300 years after the death of the Prophet Muhammad, when Abu Abd Allah al-Tirmidhi al-Hakim (d.932) became the first scholar to use the term *maqasid* and to write specifically on the topic (Raysuni, 2006).

It was not until more than a century later that Abd Allah al-Juwayni (d.1085), who extensively used the term *maqasid* along with its derivatives in his book, *al-Burhan*, and classified the three categories of *maqasid*: *daruriyyat*, *hajiyyat*, and *tahsiniyyat* (essentials, needs, and enhancements). He is also credited as having first defined the major essentials as the protection of religion, human life, the faculty of reason, progeny, and wealth (Raysuni, 2006). His student, Abu Hamid al-Ghazali (d.1111) expanded and developed the work of his teacher in his famous works, *Shifa al-Ghalil* and *al-Mustasfa*. Al-Ghazali defined the five objectives of *shariah* as the preservation of religion, life, faculty of reason, chastity/progeny, and material wealth in relation to their corresponding prescribed punishments (*hudud*). A sixth objective, preservation of honour was subsequently added by Shihab al-Din al Qarafi (d.1285) (Kamali, 2006). Al-Ghazali, however, outlined the central objectives of Islamic law in terms of intents and interests, both ‘spiritual’ and ‘worldly’. His work is attributed with having set the parameters for the understanding and application of the *maqasid*.

Although these parameters were somewhat reshaped by al-Shatibi (d.1388), they have continued to influence and constrain the thinking of *maqasid* even until today. In the two centuries between al-Ghazali and al-Shatibi, the influence of al-Ghazali can clearly be seen in terms of the direction in which the theory of *maqasid* developed. As Raysuni (2006) documents, the contributions of the scholars during this period basically served to elaborate the model developed by

al-Ghazali. Some scholars, however, did depart from the mould constructed by al-Ghazali. Raysuni (2006) notes that such scholars were not only *usuliyyun* or specialists in Islamic jurisprudence but were also *fuqaha* (jurists) of more broad thinking, namely, Izz al-Din Abd al-Salam (d.1261), al-Qarafi (d.1285), Ibn Taymiyyah (d.1328), Ibn al-Qayyim (d.1350), and al-Shatibi (d.1388). For instance, Abd al-Salam's work on the *qawa'id al-ahkam* or 'legal maxims' broadened the discussion of *maqasid* in terms of all that which promotes benefit and prevents harm. He also considered verse 16:90 of the Quran to contain all legal rulings of jurisprudence. The verse encourages justice, doing good, generosity, and contemplation, and forbids all shameful deeds, all that runs counter to reason, and envy (Raysuni, 2006).

The concept of *maqasid* was expanded in the 14th century by Ibn Taymiyyah (d.1328), who identified a more open-ended list of values that included fulfilment of contracts, preservation of kinship ties, honouring the rights of one's neighbours, sincerity, trustworthiness, and moral purity. He raised objection to the *usuli* position that limited the essential objectives of Islamic law to the five expounded by al-Ghazali, going so far as to state that these five or six do not represent the highest or most significant of objectives (Raysuni, 2006).

All previous work on *maqasid*, however, is overshadowed by that of Shatibi, which is discussed in detail below. In modern era, the most significant contribution to the *maqasid* was made by Ibn Ashur (d.1973). First published in 1946 in Tunis, Ibn Ashur's *Maqasid al-Shariah al-Islamiyyah* is arguably the most important attempt of the 20th century to further develop the theory of *maqasid*. Expressing the need for an objective-based approach to Islamic law in light of modern realities, he introduces to the theory of *maqasid* the preservation of the family system, freedom of belief, orderliness, natural disposition, civility, human rights, freedom, and equality as objectives of Islamic law.

In contemporary times, Yusuf Qaradawi has further extended the *maqasid* list to include social welfare support, freedom, human dignity, and human fraternity, while Mohammad Hashim Kamali has added to this list the protection of fundamental rights and liberties, economic development, along with research and development in science and technology. Like their predecessors, both

scholars based their additions on relevant supporting texts of the Quran and Prophetic Traditions. Kamali (2006) contends that the *maqasid* remains dynamic and open to expansion according to the priorities of every age.

However, even some contemporary scholars who support contextualisation express scepticism with respect to the *maqasid*. Saeed (2006), for instance, regards the *maqasid* as an important theoretical basis for context-based interpretation but contends that its historical formulation has rendered it “too restrictive to be considered as a basis for liberal interpretations of the Quran” (p.127). The major obstacle for the *maqasid* approach in Saeed’s opinion is the authoritative method of *usul al-fiqh*, which does not allow for interpretation on the basis of context, intent, purpose, or circumstances, in the case of clear instructions or statements in the Quran or Prophetic Traditions, known in Arabic as *nass*. Explaining that the demand of the *usul* method for ‘following the text’ negates a *maqasid*-oriented approach, Saeed laments that “*Maqasid* is thus often reduced to a form of empty rhetoric as far as ethico-legal texts are concerned” (p.127).

Saeed (2006) is not alone in expressing such sentiments. His words echo those of Ibn Ashur (2006). A basic premise of Ibn Ashur’s treatise is that the science of *usul al-fiqh* is insufficient to produce rulings that fulfil the objectives of Islamic law. He asserts that the propositions of *usul al-fiqh* are highly contested among scholars, who differ over the basic principles and legal rulings. Ibn Ashur explains that the deductive method employed by *usul al-fiqh* reinforces literalism and atomism, and presents an obstruction to a realisation of the higher objectives of the law and its universal wisdom. Another fundamental shortcoming of the *usul* method is its lack of attention to the theory of *maqasid*. He proposes the replacement of the traditional *usul* method with an approach he calls *ilm maqasid al-shariah* or the ‘science of the higher objectives of the *shariah*’.

The work of Shafi’i had a profound and enduring impact on Islamic jurisprudence. Most significant perhaps has been the confinement of *ijtihad* to ‘the utilisation of words and sentences of the text’ and anything beyond that was restricted through *qiyas* or ‘analogical reasoning’. In short, the dominant *usuli* approach to Islamic jurisprudence has been based on a text-bound literalism

extending to cases outside of the text only in so far as an *illah* or 'effective cause' could be identified for the purpose of analogy (Kamali, 2006). The work of al-Shatibi, however, made a profound contribution to developing the theory of *maqasid* by focusing on the concept of *maslaha* or 'public interest' as an approach to overcoming the rigidity imposed by literalism and *qiyas*.

The *maqasid* theory of Shatibi is based on an inductive reading of the Quran in order to identify the higher objectives, intent, and purpose of the divine laws, which are intended to preserve human interests in both this world and the next. The concept of *maslaha* (benefit or interest) is the core of Shatibi's theory. It asserts that no commandment of the Lawgiver (God) is intended to cause harm for its own sake, although some actions may require struggle and hardship. All legal rulings are intended to achieve 'balance' and 'moderation' by steering Muslims toward a middle course between various types of extremes. Shatibi's theory also emphasises consideration for outcomes or consequences. He explains that part of the objective-oriented approach is considering the outcomes of actions, in accordance with the Sunnah of the Prophet who would consider outcomes and consequences before passing judgement or taking action.

Shatibi's theory of *maqasid* is founded on, and originates in, the Maliki school of law, which unlike the others possesses an inherent concern for the objectives of Islamic law (Raysuni, 2006). Raysuni refers to the Maliki school as "the school of human interest and *istislah*"; the school most concerned about warding off potential evil and harm (p.296). He provides extensive documentation of the development of the Maliki school and explains that its knowledge and methods originate with the second Caliph, Umar. Moreover, the authority of *maqasid*-oriented approach, particularly the fundamental concept of '*maslaha*', is established through the policies and practices of Umar. Raysuni contends that the Maliki school's theory of human interests was not a later development in the history of Islamic legal thought but was a fully developed theory within Islamic law since the time of the Prophet which expanded through the practices and policies of the Companions, particularly leaders such as Umar. Raysuni also notes that even the juristic tools most associated with the Maliki school, namely *al-masalih al-mursalah* and *sadd al-dhara'i* (which directly relate to the dual

objectives of promoting benefit and preventing harm respectively), have their origin with the policies of Umar.

Being a student of the Maliki school, Shatibi held the view that the divine laws were revealed for the purpose of serving human interests in this world and the next. He maintains that through an inductive reading of the Quran, which is discussed in detail further below, one should realise their objective of serving human interests. He explains that Islamic law was designed to preserve human existence by legislating on procreation along with that which perpetuates and nurtures human existence. Additionally, the law is designed to protect humans from annihilation “by preventing that which would lead to their disappearance, destruction or neutralisation, be it a presently existing reality or something which is anticipated” (Raysuni, 2006, p.109). Shatibi argues that although some aspects of the law may involve some degree of hardship, the intention behind the law is not the hardship but a particular benefit that results from the action or requirement. As an example, Raysuni explains that *jihad* is not ordained because of its associated hardship but for the benefit it provides in relation to human existence. Human existence, however, must be understood in the context of change.

Just as social, political, and economic change has been the catalyst for a renewed focus on the *maqasid* today, Shatibi’s theory on the objectives of Islamic law was a response to the challenge presented by social change and the needs of Muslim Spain at the time. The 13th century was a period of turmoil for the Muslim world, particularly for those regions that suffered the invasion of the Mongols. By contrast the 14th century was a period of relative peace and political stability that allowed intellectual activity to resume. Much of this work sought to re-evaluate tradition in light of the social, political, financial, commercial, and religious changes that had occurred (Masud, 1995). Masud discusses these changes in some detail and summarises their impact on legal thought as follows:

The spread of Sufi *tariqas* had contributed to idleness and an exaggerated ideal of Islamic piety that constricted the concept of legal obligation. The influence of Razism increased the influence of Shafi’i and Ash’ari schools of thought. The establishment of the *madrassa* system promoted

education and widened its scope. The economic changes, especially the new developments in the Mediterranean trade, challenged the Andalusian Maliki legal concepts and theories on trade and commerce. In a number of situations, the new trade practices came into apparent conflict with the prevailing doctrines of Islamic law (p.86).

Shatibi considers methodological and philosophical inadequacies central to the weakness of *fiqh*. He attempted to free Islamic legal theory from theology and morality by emphasising the objectives of the law in respect to the *adat* or matters concerning the worldly life of man. Shatibi dedicated his book, *al-Muwafaqat*, to the study of the philosophy of Islamic law, deeming such an approach necessary to counter what he considered a formalism in the understanding of the law that resulted in the neglect of its spirit or higher objectives and kept it out of touch with reality (Masud, 1995).

In Shatibi's view, the *shariah* acknowledges and accepts social change and itself possesses the capacity to change according to time, place, and conditions. He explains that while there are *awa'id* or 'practices of human nature' that are absolute, such as the need to eat, drink, and sleep, other *awa'id* are culturally defined, such as style of dress or types of dwellings, and therefore have no inherent authority to be practiced by subsequent generations and should not be regarded in absolute terms. Through his discussion of the different types of human practices, Shatibi demonstrates that the *shariah* does not consist of only absolutes but contains rules, which due to them being based on providing a certain benefit or avoiding a certain harm, change according to time, place, and conditions.

He explains that change needs to occur when old customs cease to meet human needs, adding that change in the social system demands a response from the legal system (Masud, 1995). In noting that the potential for social change is simply infinite and that as the legal system in its limited capacity is responsible for the stability of the social system, Masud (1995) argues that the legal system must be organised on a rational basis, both in terms of principles and methods. He notes Shatibi's contention that the *shariah* provides general guidelines and

that beyond the *ibadat* (acts of worship), the expectation of God is that the details of the law will be developed on the basis of human reason.

A study of Shatibi's *fatawa* (rulings) reveals that methods used prior to his time, particularly *qiyas*, were found to be ineffective in meeting the challenges posed by the changing social, economic, and political conditions. Consequently, Shatibi as well as other jurists recognised the need to rely on more general principles, namely *maslaha*. With the notable exception of issues concerning worship or the *ibadat*, Shatibi's rulings reflect interpretation based on public interest and common good and departed from a strict adherence to the letter of the law (Masud, 1995).

In respect to the classical conception of the 'four sources of law' (Quran, Sunnah, *ijma* and *qiyas*), Shatibi recognises only two: Quran and Sunnah. All others are considered by Shatibi to be derived from these two. He also argued that what is contrary to these texts must be rejected. Other sources, namely *istihsan*, *istislah*, and *istidlal* are regarded by Shatibi as methods which apply reason to infer rules from texts (Masud, 1995). Moreover, Kamali (2006) explains that as the generally accepted aims of the *shariah* are the realisation of benefit and prevention of harm, the concept of achieving *maslahah* or 'public benefit' becomes an overriding objective. The elaboration of the role of *maslahah* in *shariah* he regards as a most important contribution of Shatibi's *Al-Muwafaqat fi Usul al-Shariah*.

Shatibi contends that *maslaha* is the central principle of all Islamic laws; it permeates all Islamic injunctions and is the central component of his writings on *maqasid*. Shatibi uses the terms *maqasid* and *maslaha* interchangeably and explains that the *shariah* upholds *maslaha* by both protecting interests and preventing harms. He argues that the primary objective of God is the *maslaha* of human beings, asserting that the objective of Islamic law is the protection of the *masalih* of people (Masud, 1995).

Maslaha comes from the root word *s-l-h* and is used as a verb, *saluha*, for instance, to describe something becoming uncorrupted, good, right, just, virtuous, and honest. The term *maslaha* means utmost righteousness and

goodness. There are two main types of *maslaha*: public (*maslaha ammah*) and private (*maslaha khassah*). The former refers to that which is beneficial to the society as a whole, while the latter refers to what is specifically beneficial to the individual. Much of the Quranic legislation pertains to the former rather than the latter. An example of *maslaha ammah* is the defence of Muslim lands and people against aggressors (Ibn Ashur, 2006). Ibn Ashur asserts that the number of universal *maslaha* that pertain to the whole Muslim *ummah* are scarce. It is noteworthy, however, that he includes in this list, “the protection of Muslim sovereignty and land” and “protecting the two sanctuaries of Mecca and Madina from falling into the hands of non-Muslims” (p.126). Though he does not refer specifically to the protection of Jerusalem, the consensus of Muslim scholars and Muslims worldwide is that Jerusalem is Islam’s third holiest city and must also be protected.

While originally a general method of juristic reasoning, *maslaha* became restricted by theological determinism, which defined *maslaha* as whatever God commands, and methodological determinism, which made *maslaha* subordinated to *qiyas* in order to eliminate its independence and confine it to specific texts. Consequently, Islamic law was prevented from developing in response to new conditions and realities. It is important to note, however, that Ghazali did not regard *maslaha*, *istislah* or *istihsan* as reliable methods of juristic reasoning; he certainly did not regard them as methods on par with *qiyas* in terms of validity. While Ghazali rejected *istihsan*, he placed such conditions on *maslaha* that prevented it from operating as an independent principle (Masud, 1995). Due to his influence in Islamic legal thought and theology, Ghazali’s reservations or lack of appreciation for *maslaha* is a significant factor in the general failure of the principle achieving broader recognition and application in the field of Islamic law as there generally remains a preoccupation with the legal framework associated with Ghazali. Moreover, adherence to Asharite theology has also marginalised *maslaha* as a ‘method of expediency’ that attributes causality to God’s commands (Masud, 1995).

Shatibi’s legal philosophy, however, contends that God has provided humankind with the knowledge of good and bad, and right and wrong, through three means: divine revelation, natural instinct, and social experience. Concerning the first

category, Shatibi explains that through inductive analysis of the revealed texts the intent of the Lawgiver (God) can be known and the *maslaha* recognised. Thus, reason and revelation are interdependent in Islamic law. The process of combining these means is referred to by Shatibi as *ijtihad* (Masud, 1995). Shatibi explains that *shariah* is intended by God to conform to His laws of being or creation (*kawn*), which are observable and measurable, and therefore the laws of *shariah* must also be physically possible or in accordance with human capacity. Additionally, the *shariah* accepts as legal that which is deemed good through social experience but rejects it should the benefit cease to be realised. The purpose of this principle is the realisation of human needs. Islamic law is developed through *ijtihad*; effective *ijtihad* requires a proper understanding of the *maqasid* (Masud, 1995).

Even though a specific text may not be quoted in support of *maslaha*, its certainty and precision is acquired through “its conformity with the totality of legal commands and by its correspondence with the general and total meaning of textual sources” (Masud, 1995, p.254). Shatibi argues that the certainty, reliability, and validity of using *maslaha* to this extent resided in the fact that it is derived from universally accepted principles and that by using the method of induction the concept encompasses the totality of the Quran’s guidance. This more comprehensive appreciation of the Quran and Sunnah stands in contrast to the reliance of *qiyas* on isolated and individual verses or *hadith*. Thus, the risk of misinterpretation or specifically, interpretation out of context, is obvious in the case of deductive *qiyas* but most unlikely in the case of inductive *maslaha*.

Shatibi’s work, however, leaves one with the impression that he did not express all that he intended. Shatibi himself acknowledges that he was conservative in the expression of his theory, cautious not to present ideas that would be met with the rejection of his peers and society (Raysuni, 2006).⁸¹ Saeed (2006) contends that he was too constrained by “the rigid paradigm of his time” and failed to

⁸¹ It is noteworthy that Shatibi was deeply concerned about being charged with committing *bida’* or innovations in religion and even wrote a book defending himself against the charge, entitled *Al-I’tisam*. His obvious concern over this label is likely to have prevented him from fully expressing his theory and held him largely within the confines of the dominant Asharite theology and *usul al-fiqh* methodology. In regard to the latter, the great contribution of Shatibi was to increase the discussion of the *maqasid* in Islamic law from a few paragraphs or a chapter to an entire book on the subject (Raysuni, 2006).

sufficiently influence subsequent generations (p.145). Saeed finds in the *maqasid* a theoretical basis for interpreting the Quran; however, he cautions that the clearly stated laws and rulings of the Quran present an obstacle to its full utilisation. To this end, Shatibi's theory fails to sufficiently challenge the established *usul* methodology.

While noting the great contribution made by Shatibi, Ibn Ashur (2006) also feels that he failed to express his theory to its full extent. The Muslim jurists of Spain, like many across the Muslim world today, were strongly conservative and deeply concerned about religious innovations or *bida'*. The dominant school of legal thought in Spain, the Malikis, actively opposed the entry of rationalist and mystical philosophy into Spain. Having been labelled an innovator, Shatibi was cautious in the expression of his theory of *maqasid* (Masud, 1995). What can be inferred from this discussion, however, is that Shatibi's theory stopped short not for fear of transgressing the Will of God, but the will of the men of his time. To take Shatibi's theory further, as this thesis is proposing, does not detract from its Islamic legitimacy in the opinion of such scholars as Ibn Ashur (2006), Masud (1995), Saeed (2006), and Raysuni (2006).

Moreover, Shatibi added a new dimension to *usul al-fiqh* by raising the question of not only the higher objectives of God and human objectives, but how one may come to know the objectives of the Lawgiver (God). He also stipulated that knowledge of the *maqasid* needs to be a prerequisite for one to engage in *ijtihad* (Raysuni, 2006). Perhaps most importantly, Shatibi's work emphasises the danger of conducting *ijtihad* on the basis of particulars in isolation rather than universals in context. He argues that both universals and particulars must be considered together (Raysuni, 2006). Furthermore, Shatibi left a robust methodology for analysing and identifying the *maqasid* of the Quranic text based on induction or *'istiqla'*.

Induction is for Shatibi "one of the most crucial, powerful tools with which to identify the objectives of the Law" (Raysuni, 2006, p.280). In fact, Shatibi regards induction as yielding 'complete certainty' as an inductive reading is not based on a single piece of evidence but upon numerous such pieces, which together "convey a single message which is thereby invested with complete certitude"

(p.281). It is through this method that Shatibi bases his conviction that Islamic law is best explained in terms of the preservation of human interests.

The method of induction developed by Shatibi has been refined by Ibn Ashur (2006). His method, 'thematic inference' or *istiqla*, identifies the objectives of the law through inductive analysis of the text as a whole by focusing on provisions and commands with stated effective causes (*ilal*) or explicit indication or allusion to a specific objective (*maqсад*), and comparing rules and commands with a common *ratio legis*. Ibn Ashur's approach also utilises thematic inference in the case of the Sunnah so as to identify the principles and objectives and to be able to distinguish them from deeds and statements of the Prophet made according to specific circumstances.

Ibn Ashur is highly critical of the literalist approach, particularly its neglect of the *maqasid*. He explains that a focus on words alone is insufficient to know the intent of the sender of the message; the examination of words does not provide a reliable method of establishing their intended meaning. Attention must be given to the context of the speech (Ibn Ashur, 2006). Fundamental to the process is to distinguish between the different intents of the words and deeds of the Prophet, for instance, when referring to the *hadith*. Consideration must be given to the situation, role, and capacity of the Prophet on the occasion of his statement or action; whether he was speaking or acting in a judicial, administrative, military, religious, consultative, or some other capacity.⁸²

Ibn Ashur (2006) states that "the all-purpose principle (*al-maqasid al-amm*) of the *shariah* aims at preserving the order of the world and regulating the conduct of human beings in it by preventing them from inflicting corruption and destruction upon one another" (p.112). He adds that this objective can only be achieved by "acquiring what is good and beneficial (*masalih*) and warding off what is evil and harmful (*mafasid*) as far as the meaning of *maslaha* and *mafsadah* can be

⁸² Ibn Ashur (2006) expresses strong criticism of scholars who have interpreted Quranic verses or *hadith* that relate to human dealings and transactions (*mu'amalat*) as devotional commands as this has resulted in numerous difficulties and hardship for Muslims in certain cases. In particular, he states that financial, economic, and criminal matters should not be covered by devotional commands and that the real underlying reasons, purposes, and objectives of the rulings concerning these issues should be found. In his words, "all the *shariah* commands embody the Lawgiver's [God's] purposes, which consist of underlying reasons, benefits, and interests" (p.64).

understood” (p.112). Fundamental to this process is the practice of magnanimity or *samahah*, which denotes moderation, justice, and temperance. It is an objective of *shariah* that encourages moderation to the extent that Muslims avoid extremism and excessiveness.

Another critical aspect of Ibn Ashur’s *maqasid* theory is the distinction in *shariah* between ends (*maqasid*) and means (*wasai’il*). Ends consist of *masalih* (benefit) and *mafasid* (harm), while means are the ways and methods that lead to them. The ends may relate to the rights of God, which are actually universal rights from which all people benefit, and to the rights of the human being, which promote their personal benefit and prevent harm to themselves without disadvantaging others. Means are not intended for their own sake but for the realisation of a certain end (Ibn Ashur, 2006).

Having defined and discussed the contextualist and *maqasid* perspectives, this chapter will now apply the main principles of these approaches in analysing the Quranic verses concerning the issue of war and peace.

Quran analysis

As Shatibi, Ibn Ashur, and others contend, the most reliable method for understanding the Quran and identifying the intent, objectives, and purpose of its content is to undertake an inductive reading of the text or *‘istiqrā’*. It is noteworthy that the value of a thematic reading of the Quran, in order to acquire a more holistic and comprehensive understanding of the book, is also endorsed by Fazlur Rahman and best represented in his famous work, *Major Themes of the Quran* (1989). The nature and structure of the Quran necessitates that verses in question are analysed collectively to enable the realisation of common themes, overriding objectives, and a more thorough understanding (Fatoohi, 2004). Approximately 150 Quranic verses can be identified that directly relate to the issue of war and peace in Islam. In particular, there are nine chapters of the Quran (2, 3, 4, 8, 9, 22, 47, 48, and 60), in which matters concerning war and peace are specifically addressed. Additionally, there are other verses outside of these chapters that are also relevant.

A thematic, inductive reading of the Quran reveals that issues of war and peace are principally addressed in the context of self-defence and faith in God. The verses specifically commanding or encouraging Muslims to engage in the use of armed force were all revealed when Muslims were already in a state of war with their enemies. Fighting was endorsed as a means of preserving the lives and religion of the Muslims. Moreover, central to the matter is the issue of justice; because of the oppression they had suffered, particularly the dispossession of their homes and land, the Muslims were permitted to fight. While the Quran is unambiguous that killing is a grave sin, even to the extent that killing one person is likened to killing the whole of humanity (Quran, 5:32), oppression is considered by the Quran to be worse than killing. In short, the *maqсад* of the Quran's discussion of war and peace is the upholding of justice, self-defence, and self-determination, including freedom of religion and freedom from oppression.

In addition, many of the Quranic verses dealing with issues of war and peace appear in the context of faith. The act of sacrificing one's possessions and life is considered in Islam as the ultimate testament to one's faith in God. However, making peace with the enemy is also regarded in the Quran as an act of faith in God. Numerous verses use the issue of fighting in the cause of God as a means of identifying and admonishing the 'hypocrites' who refused to fight and distinguishing them from the truly righteous. Moreover, many of these verses have a psychological dimension in that they regard faith in God as a necessary quality of the victorious. They also encourage Muslims to overcome the fear of death, fight with the right intention, and be willing to forego this world for the next where the greatest rewards of God await.

This section provides an analysis of war and peace in the Quran. It discusses the verses on this issue within the context of the main nine chapters in which they are contained as well as the relevant verses found in other parts of the Quran. In addition to the context in which these verses are found in the Quran, this analysis will be conducted according to the context in which they were revealed, specifically the *sira* or events occurring in the life of the Prophet Muhammad and his followers. The issue of war and peace will also be examined with reference to the associated major themes of these verses, namely, the issues of justice, human relations, homes and homelands, life and death. The nine chapters of the

Quran in which the main verses on war and peace are contained are examined below in the order in which they appear in the Quran. However, I begin with chapter 22, *Al-Hajj* (The Pilgrimage), as the verses contained within it concerning war are generally considered by scholars as the first to be revealed that gave the Muslim permission to fight (Fatoohi, 2004).

Chapter 22, *Al-Hajj* (The Pilgrimage)

Chapter 22 of the Quran is considered to be almost entirely revealed in Mecca. The verses referring to the permission to fight are believed to have been revealed, however, during the Prophet's migration (*hijra*) from Mecca to Madina (Asad, 1980) or upon his arrival in Madina (Fatoohi, 2004). The chapter begins with a reminder of the Day of Judgement when all people will be held to account by God for their deeds of this life. It discusses the rewards of paradise for the righteous and the punishment of hell for the wicked. Idolatry is condemned and the rights of the *hajj* pilgrimage are mentioned. The chapter then discusses the virtue of making sacrifice for God in conjunction with the obligation to feed the poor.

With this background, verse 39 states that God gives permission to fight “to those against whom war is wrongfully waged...those who have been driven from their homelands against all right for no other reason than saying, ‘our lord is God’” (Quran, 22:39-40). Verse 40 of this chapter then further explains the reason for the permission as a means of enabling people to defend themselves and practice their religion freely: “if God had not enabled people to defend themselves against one another, monasteries, churches, synagogues, and mosques – all in which the name of God is abundantly extolled – would surely have been destroyed” (Quran, 22:40). To balance this provision of freedom of religion, the subsequent verses mention how the message of previous prophets such as Noah, Abraham, and Moses were also refused by their people and that God ultimately ‘destroyed’ them for their ‘evildoing’. It then reminds the Prophet Muhammad that his role is that of a ‘warner’. The chapter concludes with a reminder to its reader to be constant in prayer, charitable, and to keep faith in God.

Most scholars consider verse 22:39 to be the first revelation of the Quran permitting combative *jihad* as a form of self-defence. It is clear from this and the subsequent verse that *jihad* was sanctioned by God to provide a means of defending freedom of religion and establishing freedom from oppression (Fatoohi, 2004).

After the migration or *hijra*, *jihad* took on a new, militant, dimension because from that point it became a sacred duty for the Muslims to guard, protect, and defend three gifts granted to them by God: land, people, and a system (Al-Buti, 2006). Thus, Al-Buti (2006) explains that combative *jihad* was not ordained in Mecca because these three provisions were not granted to the Muslims until the *hijra*. He also contends that the sacred duty to wage combative *jihad* still continues in order to defend Muslim land, people, and the Islamic system.

Citing the four founding legal jurists of Islam, Al-Buti (2006) asserts that *dar al-Islam* is “any piece of land that enters under the rule and sovereignty of the Muslims; whose people are to be able to practice Islam freely and peacefully. It makes no difference whether this place has been annexed [to the Muslim region] by force and strife or by peace, and reconciliation” (p.77). He further explains in reference to the rulings of the founding jurists that:

Rules of *dar al-Islam* include among other things: the obligation to defend this territory, and the performance of all Islamic *shariah* in it. The Muslims’ duty, therefore, is to maintain this status quo on their Islamic domain and never to allow its transference to *dar al-harb* (territorial [sic] beyond the Muslim’s domain of war), no matter how weak they are; no matter how strong and aggressive the enemy is. This means that it should remain under the rule of Islam; it is a major burden upon Muslims to defend it and resist the sway of the adversaries. The most obvious example here is Palestine, which, being an Islamic state, requires Muslims to liberate it from aggressors and usurpers (p.78).

Chapter 2, *Al-Baqara* (The Cow)

Moving through the Quran in order of its chapters, the first chapter that addresses the issue of war and peace is chapter 2, *Al-Baqara* (The Cow). This chapter is the longest in the Quran, consisting of 286 verses. It was revealed entirely during the second part of Muhammad's prophethood when he lived in Madina. The last of its verses are considered to have been revealed just prior to the Prophet's death. This chapter was, therefore, revealed after the Muslims had been persecuted by the Quraysh tribe, driven from their homes in Mecca and forced to migrate to Madina, and while they were already in a state of war with the Quraysh and other hostile tribes. *Al-Baqara* establishes a number of Islamic 'laws', which are preceded by stories of previous nations, specifically the children of Israel. The focus is on the suffering they endured, subsequent liberation, and blessings they received, and the consequences of their violation of their pledge to God.

The beginning of *Al-Baqara* tells of the creation of Adam. Upon conveying His intention to establish human kind on earth, the angels responded to God with the statement: "Will you place on it such as will spread corruption thereon and shed blood" (Quran, 2:30). In reply to the Angels' early warning God did not refute the concern but informed the angels that He knew what they did not, suggesting a higher potential for human kind.

The chapter then proceeds to discuss the children of Israel, recalling how God saved them from the cruelty and suffering inflicted upon them by the Pharaoh and blessed them with residence in Palestine. It also recalls their warning not to "act wickedly on earth by spreading corruption" (Quran, 2:60) and that they broke the pledge they made to God to "not shed one another's blood and not drive one another from your homelands" (Quran, 2:84-85). Herein the Quran establishes the magnitude of taking another's life and dispossessing them of their homeland. Further on in the chapter we then read the verses on 'just retribution' for killing (Quran, 2:178) and condemnation for 'wrongfully taking another's possessions' (Quran, 2:188).

Subsequent to these are the verses permitting fighting. Verse 190 reads:

Fight in God's cause those who wage war against you, but do not commit aggression for God does not love aggressors...slay them wherever you may come upon them and drive them away from where they drove you away for oppression is worse than killing...(2:190-191).

The next verses state that the fighting should continue until the oppression has been overcome and if the enemy desists then hostilities should cease except against those who continue to oppress. The point is reinforced that aggression should be responded to in kind but that consciousness of God must be consistently maintained. The *maqсад* of these verses is that the use of armed force is for self-defence, including the preservation of life, religious freedom, and homeland for the socio-economic security it provides. Hence, according to these verses, the offensive use of armed force is forbidden for it would violate the very *maqсад* of the permission, defence against aggression.

Following some discussion of the Islamic requirement to care for the less fortunate, including orphans, the needy, and wayfarers, *Al-Baqara* then presents a second series of verses concerning war and peace. Verses 216 to 218 address the psychology of Muslims with respect to fighting by stating that while fighting may be hateful to them it is nevertheless ordained and that it is among those things that, though disliked, are necessary, just as there are those things that are harmful but pleasurable. These verses also explain that fighting is not to be taken lightly but is permitted even in the 'sacred months' when confronted with religious persecution, again because "oppression is worse than killing" (Quran 2:217). It is further stated that the reason Muslims are under attack is because of their religion, a notion that resonates with Muslims today, particularly since the advent of the 'war on terror'. However, as AbuSulayman (1993) contends, Muslims should not necessarily interpret such verses beyond their time-space dimension.

Later in *Al-Baqara* the focus is again on the children of Israel who are described as having been forced to fight due to being driven from their homelands. Verse 249 mentions that the few who were prepared to stand up against Goliath were reminded by God: "how often has a small host overcome a great host by God's leave! For God is with those who are patient in adversity" (Quran, 2:249). The

ability of the faithful to achieve victory against a numerically superior enemy and the importance of having 'patience in adversity' are consistently repeated throughout the Quran in the context of war and peace. The final verse of this chapter that addresses the issue of war and peace states that "if God had not enabled people to defend themselves against one another, corruption would surely overwhelm the earth" (Quran, 2:251). One may be reminded here of the concern of the angels mentioned at the beginning of the chapter that man would simply shed blood on earth and neglect the worship of God. Verse 2:251, therefore, acknowledges the merit of the angels' concern but reveals that God's plan was for submission to Him to be a means of nurturing people who would defend themselves and stand up against oppression.

Chapter 3, *Al-Imran*

Chapter 3 of the Quran, entitled *Al-Imran*, is believed to have been revealed in the second or third year following the *hijra* (Asad, 1980). The chapter begins by stressing the importance of faith in God. In this context, verse 13 reinforces the notion that faith in God is the most important quality a person can possess, including those engaged in conflict. It tells of two forces that met in battle: one that believed in God and the other that did not. The latter perceived the former as twice as many as their own number. The following verse cautions people not to be distracted in their intentions and from their faith in God by the treasures of this world, including family life, material wealth, and land.

Continuing on the theme of the importance of faith, verse 110 praises the followers of the Prophet Muhammad as being "the best community that has ever been brought forth" because they "enjoin what is right and forbid what is wrong, and believe in God" (Quran, 3:110). The following verse states that because of this level of faith, other religious communities are able to inflict only "passing hurt" on the Prophet's followers and if armed conflict should occur, they will turn their backs in retreat (Quran, 3:111). Verses 113 to 115 then cautions the Muslims to be discerning in their regard for non-Muslims as:

They are not all alike: among the followers of the earlier revelation there are upright people who recite God's message throughout the night, and

prostrate themselves before Him. They believe in God and the Last Day, and enjoin what is right and forbid the doing of what is wrong, and vie with one another in the doing of good works: and these are among the righteous. Whatever good they do, they shall never be denied the reward thereof for God has full knowledge of those who are conscious of Him (Quran, 3:113-115).

Returning to the importance of faith in God even during times of conflict, verse 121 begins a discussion of the battle of Uhud (625) in which some of the Muslims disobeyed the Prophet, leaving their posts to pursue booty, which resulted in heavy losses for the Muslim forces. Verse 152 recalls this moment of disobedience and states “there were among you such as cared for this world alone, just as there were among you such that cared for the life to come; whereupon in order that He might put you to a test, He prevented you from defeating your foes” (Quran, 3:152). Just prior to this verse, the Muslims are reminded in verse 142 that striving in God’s cause and being patient in adversity are the qualities of those who will be admitted to paradise; then in verse 146 they are reminded that many of the previous prophet’s and their followers were forced to fight but triumphed through patience.

Chapter 4, *Al-Nisa’* (Women)

Chapter 4 of the Quran, entitled *Al-Nisa* or ‘Women’, was revealed in the fourth year of the Prophet’s residence in Madina after the revelation of the third chapter (Asad, 1980). About a third of the way through *Al-Nisa’*, the Quran returns to the discussion of the importance of justice, specifically distributive justice. It speaks of the need for people to sacrifice their lives and property on occasion and be fully prepared against attack. Verse 74 then states that those who are prepared to sacrifice their life of this world for God’s cause will be rewarded by God in the next. The subsequent verse links fighting in God’s cause with defending the “helpless men, women, and children whose cry is, O Lord, liberate us from this land whose people are oppressors...” (Quran, 4:75). The next verses explain that those with faith fight in the cause of God and those without fight in the cause of Satan and that one should not be in awe of men but of God.

Following this discussion of motivation and intention for combat, the subsequent verses then address the administration of war and peace. Verse 83 stipulates that matters of war and peace must be decided by those in authority based on the comprehensive intelligence they possess and not by mere members of a community acting on portions of information. This verse is followed by a further call for Muslims to overcome their fear of death and reminds them that those who fight for a righteous cause will receive God's blessing but those who fight for an evil cause will be held to account.

This encouragement to fight in the cause of God and of the oppressed is balanced with another reminder that when peace is offered, it should be met with an even better response (Quran, 4:86) and that only those who resort to open enmity should be fought against (Quran, 4:89). Moreover, people who engage in evil practices are not to be taken as allies but peaceful relations are to be maintained should such people have ties with a Muslim ally. The Quran forbids harming such people so long as they do not make war and are willing to have peaceful relations (Quran, 4:90). However, verse 91 makes clear that permission is given to fight against aggressors who reject peace.

Al-Nisa' also clarifies that the battle lines for Muslims are not drawn between Muslim and non-Muslims but those who commit aggression and oppression. Verse 94 states that "when you go forth to war in God's cause, use your discernment, and do not, out of a desire for fleeting gains of this worldly life, say to anyone who offers you the greeting of peace, 'you are not a believer'" (Quran, 4:94). This verse does not support the view that Muslims cannot make peaceful relations with non-Muslims. On the contrary, it requires Muslims to differentiate non-Muslims with peaceful intentions from those with hostile intent.

Following another reminder for the Muslims not to be faint of heart when on the battle field and that, while the enemy feels pain as they do, they cannot hope for God's reward, *Al-Nisa'*'s discussion of war and peace concludes with another command to uphold justice:

O you who have attained faith, be steadfast in upholding equity, bearing witness to the truth for the sake of God, even though it be against your

own selves or your parents and kinsfolk. Whether the person concerned be rich or poor, God's claim takes precedence over either of them. Do not follow your desires lest you swerve from justice, for if you distort the truth, God is indeed aware of all that you do (Quran, 4:135).

Chapter 8, *Al-Anfal* (Spoils of War)

The eighth chapter of the Quran, entitled *Al-Anfal* or 'Spoils of War' is among those that deal most extensively with the issues of war and peace. It is said to have been revealed almost entirely during and immediately following the battle of Badr in 624 (Asad, 1980). Consistent with its title, *Al-Anfal* begins with instructions concerning the distribution of the spoils of war and recalls the assistance granted by God to the Muslims during the battle of Badr. Also, in verse 15 the issue of commitment to war is addressed where it is stated that when the Muslims meet the opposing forces in battle they should not engage in retreat except as part of a tactical manoeuvre. This instruction is further reinforced later in the chapter where the Muslims are encouraged to be 'firm' when they meet their enemy in battle (Quran, 8:45), united in their cause for the purpose of 'moral strength', with 'patience in adversity' (Quran, 8:46), and with the right intention (Quran, 8:47).

Around midway through *Al-Anfal*, the Quran again provides a reminder concerning the context in which the Prophet was engaged in armed combat. Verses 33 and 34 state that the Prophet's response to the Quraysh was a form of chastisement for their religious persecution of the Muslims. These verses are another example of God specifically addressing the Prophet according to his circumstances, rather than a universal proclamation concerning Muslim relations with non-Muslims. God did not permit fighting prior to the *hijra*, while the Prophet still lived among the Quraysh, nor while there was the possibility for the Quraysh to seek forgiveness. More explicitly, verse 39 commands the Muslims to "fight against them until there is no more oppression and all worship is devoted to God alone" (Quran, 8:39). Commenting on this particular verse Asad (1980) explains that the statement 'until all worship is devoted to God alone' means "until man is free to worship God", and that like verse 2:193 of the Quran, the stress of the verse is 'self-defence' "as the only justification of war" (p.244).

Like the other chapters of the Quran that address the issue of war and peace, *Al-Anfal* also addresses the matter of peace treaties. Verses 55 to 62 explain that those who consistently break their peace treaties and declare war should be made an example for others. Their treaty should be cast back to them in an equitable manner if treachery is feared from them and preparations should be made for battle with them as an act of deterrence. Verse 61 then states that by this point “if they incline toward peace, you should incline toward peace also and trust in God. Verily He also is all-seeing, all-knowing. Should they seek to deceive you with their show of peace, God is sufficient for you” (Quran, 8:61). It is noteworthy that only after repeated violations of the treaty by the enemy was the Prophet permitted to disregard the treaty and engage them in battle, but was also instructed to attempt to make peace. Moreover, the endorsement to fight and ‘make an example that would disperse the gathered armies of other disbelievers’ (Quran, 8:57) is another example that armed *jihad* is a means of averting more war and aggression and not an end in itself.

Consistent with its view of the inevitability of war, the Quran, however, returns to its concern with war. Verse 65 again encourages the Muslims to overcome their fear of death and states that if they display patience in adversity they could overcome unfaithful enemy forces 10 times their own number. The subsequent verse acknowledges the numerical weakness and inadequate equipment possessed by the Muslims at that time and states that under such circumstances Muslims who are patient in adversity should be able to overcome enemy forces twice their own number. These verses highlight that motivation and unity of purpose are key factors in battle.

Al-Anfal ends by encouraging unity among those who are fighting against oppression and corruption, reminding the Muslims that those who, like them, have attained faith, are opposed to evil, and are striving in God’s cause with their possessions and lives are the real friends and protectors of one another. Interestingly, verse 72 informs the Prophet Muhammad that he is not responsible for the protection of those Muslims who had not made the migration to Madina, but that if they ask for help against religious persecution, he is duty-bound to provide such protection. However, it is noteworthy that the one exception given is

in the case of “a people between whom and yourselves there is a covenant...” (Quran, 8:72). Thus, this verse further highlights the importance of upholding peace treaties and the extent to which Muslims are expected to go in order to fulfil this requirement. It supports the argument that honouring peace treaties is the priority in Islam and that Islam does not permit involvement in war if it can be averted (Fatoohi, 2004).

Chapter 9, *At-Tawbah* (Repentance)

The ninth chapter of the Quran, entitled *At-Tawbah* or ‘Repentance’ is considered by some scholars as a continuation of the previous chapter (Asad, 1980). It, too, is one that deals extensively with the subject of war and peace. However, there is some lapse of time between chapters eight and nine as *At-Tawbah* is believed to have been revealed just prior, during, and following the expedition to Tabuk in 631 (Asad, 1980).

Following a reminder to the Muslims to fulfil their treaties, verse 5, commonly referred to as the ‘sword verse’, instructs the Muslims to:

Slay those who ascribe divinity to aught beside God wherever you may come upon them, and take them captive, and besiege them, and lie in wait for them at every conceivable place. Yet if they repent, and take to prayer, and render the purifying dues, let them go their way for God is much-forgiving, a dispenser of grace (Quran, 9:5).

As discussed in the previous chapter, this verse (along with Quran, 9:29) has been quoted throughout Muslim history to justify aggression and aggressive wars against non-Muslims because of their ‘unbelief’. Asad (1980), however, explains that this verse should be read in conjunction with those that precede it and also verses 2:190-194. Of central importance is that these verses were revealed in the context of “warfare already in progress with people who [had] become guilty of a breach of treaty obligations and of aggression” (Asad, 1980, p.256). That non-Muslims are to be fought because of their unbelief rather than their acts of aggression and oppression is doubtful given that verse 9:6 commands the Muslims to give protection and security to those among the enemy who seek it. If

their unbelief was the basis of fighting against them, this provision would be nonsensical (Al-Buti, 2006).

Taking a realist perspective of the situation at the time, the subsequent verses state that the hostility of the Arab tribes was such that they would not respect their treaties and the Muslims would be left exposed to attack (Quran, 9:8). The only way for the Muslims to be sure about such people is if a marked change in their culture could be observed. Thus, verse 9:11 states that if they repent and take to prayer and the giving of charity, they would become “brethren in faith” with the Muslims. However, as for those who break their treaties and revile Islam, they are to be fought against as a way of deterring them from further aggression (Quran, 9:12). The following verse cautions Muslims not to put themselves in a position where they will be attacked first and so fighting is ordained in the face of aggression and hostility.

At-Tawbah also contains the other ‘sword’ verse (Quran, 9:29), which implements the *jizya* or ‘exemption tax’.⁸³ It reads:

Fight against those who despite having been vouchsafed revelation [previously] do not believe in God and the Last Day and do not consider forbidden that which God and His apostle have forbidden and do not follow the religion of truth, till they agree to pay the exemption tax with a willing hand, after having been humbled (Quran, 9:29).

The reference in this verse is to people of the previously revealed religions who have abandoned the principles of their faith having become only nominal members of their respective faith group, and who have displayed unprovoked aggression and hostility toward those who continue to believe in God and the Day of Judgement (Asad, 1980).

⁸³ The word *jizya* comes from the word *jazaa’*, *ajza’a*, or *jaza’a* meaning compensation or money collected from non-Muslims as compensation for protection provided by Muslims and does not mean humiliation, subjugation, or contempt (Al-Buti, 2006). AbuSulayman (1993) explains that *jizya* was used to bring an end to fighting and the payment of which represented a “serious desire on the part of the enemy to cease hostilities” (p.30). The *jizya* amounted to less than what Muslims generally paid in *zakaat* (compulsory alms) and was only imposed on able-bodied, non-Muslim men as an exemption for military service; women, children, the elderly, the infirmed and disabled, monks and priests, as well as non-Muslim citizens who volunteered for military service were exempt from payment (Asad, 1980).

Verses 38 and 39 of *At-Tawbah* admonish those Muslims who were reluctant to fight, preferring this world to the next and threatening punishment from God for such cowardice and lack of faith. As noted by al-Qa'ida expert, Abdel Bari Atwan, these verses are among those most commonly quoted by al-Qa'ida leaders and published on the internet for recruitment purposes. Atwan (2006) contends that the combination of emphasis on honour, religious duty, the desirability of death, and the rewards of the afterlife as encapsulated in such verses have a particularly potent effect on many Muslims.

Following further verses encouraging the Muslims to go forth to war in God's cause against those who initiate war as an act of faith in God and to receive His rewards (Quran, 9:36-44), *At-Tawbah* then addresses the Prophet's internal struggle against the 'hypocrites'. The Prophet is commanded to 'strive hard' or '*jahid*' (which comes from the same root as *jihad*) against the unbelievers and hypocrites. The fact that the Prophet is never reported to have engaged in armed combat or otherwise killed any of the hypocrites adds considerable weight to the argument that the verses of the Quran that use the word *jihad* or its grammatical equivalents are not necessarily referring to the use of armed force, but use the term in accordance with its broader, literal meaning of striving, struggling, and making an effort for a good purpose. This is further emphasised by a number of other Quranic verses such as 29:69 and 25:52, which were revealed in Mecca. As explained in the previous chapter, when the Quran refers specifically to fighting or the use of armed force, it uses the term '*qital*' or its grammatical equivalents, which are most frequently used in the Quranic verses on war and peace.

Al Ghunaimi (1968) explains that the only groups that were addressed in the divine text as targets for war were the pagan Arabs and the Jews of Madina who breached their covenant with the Prophet. He raises the critical question of "whether or not these texts are intended as positive injunctions for future observance, that is to say whether or not they are binding on other peoples who are not under similar conditions, as were the Muslims during the life-time of the Prophet" (p.179). Based on his analysis of the relevant Quranic verses and *hadith*, Al Ghunaimi (1968) states that the "precedents during the life-time of the

Prophet do not back the theory of aggressive *jihad* as maintained by Muslim classical writers” (p.183).

Chapter 47, *Muhammad*

Entitled *Muhammad*, chapter 47 of the Quran is regarded as one of the earliest of the Madinan period. As it deals extensively with the issue of warfare, it is also referred to as *Surat al-Qital* or the ‘chapter of fighting’. Coming after chapter 22 in which Muslims were first given the permission to fight, *Muhammad* reiterates the call to fight against those who prevent the practice of Islam. The fourth verse of this chapter states that God could punish those who commit religious persecution Himself, but His will is to test people by means of others. The notion of testing the faith of the Muslims through the commandment to fight is repeated throughout this chapter, but it should be recalled that faith is also tested through the commandment to make peace as in verse 8:61. Toward the end of this chapter the Muslims are instructed not to lose heart when fighting, nor to “beg for peace” but retain faith in God (Quran, 47:35). Fighting is described in this chapter as part of the conditioning of Muslims not to be consumed by the delights of this world, but to be focused on the hereafter.

Chapter 48, *Al-Fath* (Victory)

Chapter 48 of the Quran, entitled *Al-Fath* or ‘Victory’ was revealed in 628 upon the Prophet’s return to Madina after the signing of the treaty of Hdaybiyya. While many of the most prominent companions of the Prophet, particularly Umar, were deeply disappointed with the terms of the treaty, the opening verse of *Al-Fath* referred to it as having laid open a “manifest victory” (Quran, 48:1). The verse is one of the clearest in the Quran that victory need not necessarily be achieved through war. Although it only remained in effect for two years, the treaty of Hdaybiyya was arguably the most significant turning point in the Prophethood of Muhammad as it resulted in the whole of Arabia becoming either politically aligned with him or otherwise embracing Islam. It can be confidently claimed that the signing of the treaty of Hdaybiyya enabled Muhammad to successfully fulfil his prophethood both in terms of his message of conveying the concept of *tawhid*

and mission of replacing *jahiliyyah* with a just and equitably-based social order beyond the city of Madina.

Al-Fath also reminds Muslims to fight with the correct intention and not for the prospect of acquiring booty. The Muslims are informed that this discipline is necessary for in the future they will have to fight against people of “great prowess in war” and will have to fight “until death or their surrender” (Quran, 48:16). Verse 18 then states that for their pledge of allegiance to the Prophet at Hdaybiyya, the Muslims would be rewarded with a victory soon to come and many war-gains.

According to Asad (1980), most commentators of the Quran believe this victory to be that of the conquest of Khaybar, for it occurred a few months after Hdaybiyya, but Asad (1980) himself suggests that it actually refers to the bloodless conquest of Mecca, which had more far-reaching and significant religious and political implications. Taking into consideration the subject matter of the verses that follow, one could be confident that Asad was correct. Verse 24 and 25 refer to the people of Mecca and states that God would have permitted the Muslims to fight their way into Mecca “had it not been for the believing men and women whom you might have unwittingly trampled underfoot, and on whose account you might have become guilty, without knowing it, of a grievous wrong” (Quran, 48:25). This verse also provides a lesson in regard to the concept of ‘collateral damage’. Contrary to the rulings of certain classical jurists that accepted collateral damage (Hashmi, 2002; Hamidullah, 1961), according to the Quran, even the unwitting or accidental harm of the innocent is a ‘grievous wrong’ for which those responsible are ‘guilty’.

Chapter 60, *Al-Mumtahanah* (The Examined One)

The sixtieth chapter of the Quran, entitled *Al-Mumtahanah* or ‘The Examined One’, is significant in the context of war and peace for it is devoted to the issue of relations between Muslims and non-Muslims. It was revealed some month after the signing of the treaty of Hdaybiyya. The chapter begins with instructions to the Muslims not to take the enemies of God, who are therefore their enemies too,

as *awliyyah* (friends)⁸⁴ and to strive in God's cause. In order to balance this instruction, verse 7 informs the Muslims of the possibility that God will bring about affection between the Muslims and some of those who they regard as enemies.

Moreover, verse 8 states that "as for those who do not fight against you on account of your faith and neither drive you from your homelands, God does not forbid you to show them kindness and to behave towards them with full equity. For verily God loves those who are equitable" (Quran, 60:8). Further clarifying the point, the next verse states that "God only forbids you to turn in friendship towards such as fight against you because of your faith, and drive you from your homelands, or aid others in driving you forth. And as for those who turn towards them in friendship, it is they who are truly wrongdoers" (Quran, 60:9).

Major themes

Central to the issue of warfare in Islam is the practice of oppression (*fitnah* or *zulm*)⁸⁵ for it not only makes *jihad* permissible or even obligatory, but is the criterion by which Muslim relations with non-Muslims are defined. Oppression is most frequently exemplified in the Quran by the forcing of people from their homelands and is considered by the Quran to be 'worse than killing'. The magnitude of this reoccurring pronouncement can only be fully appreciated when the issue of killing is examined in the Quranic context.

Killing

Killing is regarded as a great sin and crime in Islam. The Jews are frequently condemned in the Quran for 'slaying the prophets' sent to them (Quran, 2:61; 2:87; 2:91; 3:21; 3:112; 3:181; 3:183; 4:155; 4:157; 5:170). Similarly, the Pharaoh is condemned in the Quran for 'spreading corruption on earth', which involved 'killing the sons of the children of Israel (Quran, 7:127; 7:141; 40:25).

⁸⁴ Both Muhammad Asad and Abdullah Yusuf Ali translate the word *awliyyah* as 'friends'. However, given the context in which it is used, a more accurate translation may be 'protectors', 'guardians', or 'allies'.

⁸⁵ Asad (1980) explains that even such verses as 'slay them where you find them...' (Quran, 2:191) was revealed in the context of ongoing hostility and should, therefore, be read in the sense of conducting a war of self-defence or liberation. He translates the term '*fitnah*' ('*fitnah* is worse than killing') used in the second part of this verse as 'oppression', and thus reinforces the argument that *jihad* is to be waged as a form of self-defence and not to initiate hostilities.

Numerous verses condemn killing and outline the penalties for this act (Quran, 2:178; 4:92-93; 5:32; 6:137; 6:140; 17:31; 17:33). The basis of this position is that all life is sacred and the ultimate giver and taker of life is God. Verse 17:33, for instance, states: “do not take any human being’s life, which God has made sacred, except in the pursuit of justice” (Quran, 17:33). Moreover, in verse 5:32 of the Quran it is stated that “if anyone slays a human being – unless it be punishment for murder or for spreading corruption on earth – it shall be as though he had slain all mankind; where as if anyone saves a life, it shall be as though he had saved the lives of all mankind” (Quran, 5:32).

In spite of the sanctity of life and prohibition of killing as described in the Quran, oppression is considered in Islam to be a greater crime. Verse 2:191, for instance, grants permission to the Muslims to slay the aggressors and drive them out from where they were driven out, stating that “oppression is worse than killing” (Quran, 2:191). Moreover, verse 2:217 records that when people asked the Prophet about fighting in the sacred months, God instructed him to reply that while ‘fighting therein is a great (offence), but religious persecution and expelling people from their homes is an ‘even greater (offence)’ because ‘oppression is worse than killing’ (Quran, 2:217).

Homes and homelands

Homes and homelands are particularly significant in the Islamic context; fighting is justified for their defence and protection, while oppression is defined in terms of the violation of their sanctity. As described in the Quran, homes and homelands are a fundamental right, a blessing, and source of prosperity. Moreover, homes and homelands are used in the Quran both to exemplify and as a metaphor for safety and security. Such descriptions of homes and homelands as a blessing, source of dignity, and base of security are repeated throughout the Quran (Quran, 2:58; 2:126; 3:14; 5:21; 5:26; 7:137; 7:161; 12:56; 13:4; 14:35; 17:70; 21:71; 21:81; 22:35; 33:27; 34:15; 90:2; 95:3; 106:1-3). For instance, verse 21:71 states that when God saved Abraham and Lot, He guided them to a blessed land in which they could be safe and secure. When the children of Israel were rescued from slavery in Egypt, the Quran states that God blessed them with entry into the holy land where they were permitted to reside and enjoy of its fruits (Quran, 2:58; 5:21; 7:137; 7:161). Given this context, one

can appreciate why leaving one's home for the sake of God is considered a great sacrifice, held in such high regard in the Quran (Quran, 2:218; 4:66; 4:100; 59:8), and why leaving home and going forth into battle – leaving security for the prospect of death – is considered the highest act of faith in and commitment to God (Quran, 60:1; 61:4; 73:20).

Conversely, deprivation of land is a form of punishment imposed by God. For their cowardice and lack of faith, the Quran states that the children of Israel were forbidden to enter the holy land for “40 years” and made to “wander the earth” (Quran, 5:26). Expulsion from one's homeland was also practised against the prophets by their people as a form of punishment (Quran, 14:13; 17:76). Lot's people punished him for condemning sodomy by expelling him from the land (Quran, 7:80-82). Shu'ayb's people did the same to him and his followers for preaching the worship of God and honesty in business practices (Quran, 7:85-88). As a way of eliminating Joseph, his brothers are said in the Quran to have contemplated whether to kill him or “drive him away to some far away land” (Quran, 12:9). Additionally, just as possession of land is a mark of dignity, blessing, and security, the Quran describes expulsion and dispossession as a form of humiliation (Quran, 27:37).

In the context of war, however, when expulsion and dispossession is suffered by whole communities, its malevolence is elevated to the rank of ‘oppression’, which as noted above is considered in the Quran to be worse than killing. The Quran describes that among the most longstanding laws of God alongside ‘not killing’ is ‘not driving people from their homelands’, which was part of the pledge made to God by the children of Israel (Quran, 2:83-85). Specifically because they had been driven from their homelands, both the children of Israel and the Muslims were granted permission to fight (Quran, 2:246; 22:40). The Quran repeatedly states that the reason for fighting is for self-defence, in response to aggression and oppression. In fact, the most central criterion in Muslim international relations is whether aggression and oppression have been committed. Muslims are forbidden from taking people that commit such acts as ‘driving people from their homelands’ as allies and are permitted to fight them. If they have not committed such acts, then peace should be made.

Moreover, as stated in the Quran, for no reason other than the commission of religious persecution and 'driving people from their homelands' are Muslims prohibited from maintaining relations with others on the basis of kindness, equity, and friendship (Quran, 60:8-9). We can conclude from this comprehensive analysis of the Quran that security in and possession of one's home and land is a fundamental right in Islam and that a *maqsad* or purpose of *jihad* is the protection of homes and land.

Just peace

Another major theme based on this analysis of the Quran is that the establishment and maintenance of a just peace is an overriding objective in Islam. In fact, the word 'Islam' is from a root word '*s/m*' meaning peace. Numerous verses of the Quran describe 'peace' as the greeting of paradise (Quran, 13:24; 14:23; 15:46; 16:32; 25:75; 33:44; 39:73; 59:91). Moreover, the standard greeting between Muslims is the conveying of peace to one another.

In the context of conflict, the pursuit of peace is also paramount even to the extent that the Quran instructs Muslims: "do not allow your oaths in the name of God to become an obstacle to virtue and God-consciousness and the promotion of peace between people..." (Quran, 2:224). The Quran further instructs Muslims to make peace between conflicting parties (Quran, 49:9-10); that the one who pardons a foe and makes peace should expect God's reward (Quran, 42:40); and that peace should not be rejected even from a non-Muslim encountered in war (Quran, 4:94).

Moreover, while the Quran does not permit Muslims to harm those who do not make war and offer peace (Quran, 4:90), it demands of Muslims to respond to an offer of peace with a better one (Quran, 4:86), and is emphatic that if the enemy inclines toward peace, the Muslims must also incline towards peace (Quran, 8:61). In fact, peace must be given a chance even if deception is anticipated from the enemy for the Quran instructs Muslims in such a case to trust in God (Quran, 8:62). While certain classical jurists and contemporary scholars have emphasised fighting in the path of God as the demonstration of faith, *par excellence*, the Quran also declares that making peace as testimony to one's faith in God.

In Islam, the concept of peace is intrinsically linked with justice. The Islamic conception of 'justice' (*adl* or *adala*) literally refers to the act of straightening, correcting, making equal, balancing, or establishing equilibrium (Khadduri, 1984). It is in these senses that the Quran uses the term justice. Also, Islamic sources portray the Prophet Muhammad as possessing a deep sense of justice, which Khadduri (1984) explains was manifested in his mission to replace inequity and oppression with order and harmony. He also explains that justice is considered necessary to have peace and that the absence of justice results in tension and conflict.

Kamali (2002) explains that the conception of justice in Islam refers to things being in their rightful place. He also finds the concept to be closely related in Islam to equality, particularly equal treatment of people in terms of rights and duties, advantages and disadvantages. Kamali considers justice to be a "supreme virtue" in Islam. It is an overriding objective of Islam to the extent that "it stands next in order of priority to belief in the Oneness of God (*tawhid*) and the truth of the Prophethood (*risalah*) of Muhammad" (Kamali, 2002, p.107).

Further reinforcing the view of justice as fundamental to the Islamic worldview, Hashmi (2002) states:

Justice may be seen without oversimplification to be the core value of Islamic ethics, for it runs like a binding thread throughout the Quran and the Prophetic Traditions. The Quran's conception of justice is one of universally applicable principles, valid for all human beings, regardless of their status as Muslims (p.162).

Safi (2001) states that "peace in Islam does not mean the absence of war, but the absence of oppression and tyranny. Islam considers that real peace can only be attained when justice prevails" (p.37-38). Consequently, the Prophet is instructed in the Quran to never beg for peace when engaged in a fight for a just cause (Quran, 47:35). Moreover, in the case of two conflict parties, Muslims are instructed to make peace between them with justice, and if necessary, by intervening in opposition to the one perpetrating the aggression/oppression

(Quran, 49:9). From the Quranic perspective, justice is *the* factor that regulates or conditions peace, and indeed, all the Islamic laws. Even though 'life has been made sacred' and murder is considered a major sin and crime, the Quran permits the taking of life in the cause of justice (Quran, 6:151; 17:33).⁸⁶

From the outset, the central messages of the Quran were monotheism and social justice. The Quran tells of "grievous suffering" for those who "behave outrageously on Earth, offending against all right" (Quran, 42:42) and demands that judgements are made with justice (Quran, 4:58; 4:135; 57:25; 40:20). Among the oft-repeated commands of the Quran is for the less fortunate members of society, namely orphans, widows, the poor and needy, to be dealt with in a just and equitable manner (Quran, 4:127; 6:52) and for dealings to be done on the basis of fairness, justice, equity, and generosity (Quran, 7:29; 7:181; 11:85; 16:90; 55:8-9). Moreover, neither hatred for others (Quran, 5:8) nor love and affection for them should prevent one from upholding justice (Quran, 4:135).

Jihad: A strategy in context

When the Quranic verses on war and peace are analysed as a whole using the method of 'thematic induction' for the purpose of identifying the objectives, the '*maqasid*-oriented approach', the purposes of *jihad* becomes clear: self-defence, opposing aggression, and overcoming oppression and injustice. However, strong support for nonviolence cannot be found in any particular verse. In fact, the opposite is true; specific verses of the Quran appear to endorse the use of armed force, albeit with conditions. Fighting in the path of God is highly praised and is regarded by the Quran as a mark of faith worthy of the highest rewards from God.

Fighting was the prescribed means at the time as it was the most effective, and arguably the only means of defence, security, and liberation given the socio-

⁸⁶ Majid Khadduri's (1984) *The Islamic Conception of Justice* makes the point that justice is a relative concept; there are varying definitions of justice not only across different civilisations but also between different schools of thought within Islam. However, the most commonly used word in the Islamic tradition for justice is '*adl*', an abstract noun derived from the verb '*adala*', meaning to straighten, amend, set right, make equal or equalise, or to balance or counter-balance. The antonym of '*adl*' is *jawr* (injustice), which is synonymous with *zulm* (oppression), *tughyan* (tyranny), and *inhiraf* (deviation). In short, matters that are upright, in order, and fair are considered to be *adl*, while those that are deemed wrong, corrupt, and unfair are *jawr*.

historical context of 7th century Arabia. In fact, this has remained the case throughout human history and only since the mid-20th century, with the establishment of international law, the United Nations, peace as the normal basis of relations between nations, and the prominence of such international norms as human rights, racial equality, human dignity, and self-determination, is there even the possibility of an alternative to the use of armed force.

Shatibi explains that while a *maqsad* may not be identifiable from a single verse of the Quran, the reading of multiple verses on a certain issue will reveal an associated purpose, intent, or objective. Kamali (2006) elaborates:

There may be various textual references to a subject, none of which may be in the nature of a decisive injunction. Yet their collective weight is such that it leaves little doubt as to the meaning that is obtained from them. A decisive conclusion may, in other words, be arrived at from a plurality of speculative expressions (p.124).

Raysuni (2006) concurs with this view, contending that “every principle which is in keeping with the actions of the Lawgiver [God] and whose meaning is derived from sufficiently numerous and varied pieces of evidence that it may be affirmed with definitive certainty may be built upon and treated as authoritative even if it is not attested to by any specific text” (p.323).

Furthermore, the Quran encourages looking outside of the book and studying the creations of God as a means of developing the knowledge and skills necessary for the betterment of society (Quran, 2:269; 3:190-191; 6:97; 13:3; 21:30-33; 29:20; 30:9; 30:22). This approach encourages the use of physical and social sciences in order to understand and effectively respond to conditions, problems, and crises, including conflict. Empirical evidence confirms that the armed struggle of the Palestinians has become a liability for the cause of self-determination, while analysis of the conflict from a constructivist perspective demonstrates that nonviolence has the potential to achieve this objective. Muslim scholars, present and past, have regarded the *shariah* as a just law and considered any interpretation that supports injustice to be a misinterpretation. Ibn Qayyim is quoted to have said: “The *shariah* is all justice, kindness, common

good, and wisdom. Any rule that departs from justice to injustice...or departs from common good (*maslaha*) to harm (*mafsada*)...is not a part of *shariah*, even if it is arrived at by literal interpretation” (cited in Masud, 1995, p.xv). As stated above, the establishment of international law, the United Nations, peace as the normal basis of relations between nations, and the prominence of such international norms as human rights, racial equality, human dignity, and self-determination mark an historical shift so profound that a non-violent response to conflict now has the potential to fulfil the objectives of *jihad* as defined in the Quran namely, preservation of fundamental human rights, freedom from oppression, and self-determination.

Ibn Ashur’s (2006) explanation that ‘means are not intended for their own sake, but for the realisation of certain ends’ is particularly important in the context of *jihad*. The actual act of combat or the use of armed force is a means, a method of performing *jihad* and not an end in itself; combative *jihad* is not necessarily a legal requirement in all circumstances of conflict. In fact, the legal verses or ‘*ayat al-ahkam*’ contained in the Quran number only about 350 out of a total of 6,235 (Kamali, 2006). According to Kamali (2006) 140 of these verses refer to devotional matters (prayer, fasting, charity, pilgrimage), 70 concern family matters (marriage, divorce, custody, maintenance, inheritance), 70 relate to commercial transactions (sale, loans, leases, mortgage), 30 are about crimes and penalties (murder, theft, robbery, adultery, slander), 30 address issues of socio-political order (justice, equality, evidence, consultation, rights and duties of citizens), and 10 are on economic matters (relations between rich and poor, workers’ rights and conditions). Notably absent from inclusion in the *ayat al-ahkam* are verses pertaining to war and peace, including those concerning *jihad* and *qital*. It should, therefore, be clear that the strategy or method of *jihad* is not a matter of divine law.⁸⁷

Safi (2001) draws a distinction between *jihad* as a “permanent obligation incumbent upon Muslims” and the most appropriate “method” of *jihad* to be used in prevailing circumstances. He states that “while the Muslim *Ummah* is obliged

⁸⁷ It should be noted that in Shiite Islam *jihad* is the sixth pillar of religion and therefore *jihad* is even more central to Islam for Shiites than it is for Sunnis. However, as the Palestinians are almost exclusively Sunni Muslims, this thesis concentrates on the place of *jihad* within the Sunni context.

to uphold the principle of *jihad* and satisfy its requirements, the method of honouring this principle is a question of strategy” (p.41). For Safi (2001) the question of strategy remains open even in circumstances where the task demands eliminating oppression, protecting human life, defending Muslim sovereignty, or upholding Islamic law (p.41).

AbuSulayman (1993) agrees, arguing that the maximum number of options should be available to Muslims: “Muslims should always be able to resort to persuasion, *sabr* (patience), as well as *qital* (fighting), psychological as well as physical etc., according to their immediate needs” (p.118). The strategy or the method of *jihad* “is not an arbitrary decision, but one that takes into account the general conditions of both the Muslim community and its adversaries, including the military balance between the Muslims and their enemies and the morale of the Muslim army” (Safi, 2001, p.43).

Ibn al-Arabi explains that “everything which the Prophet did, he did for a wise purpose, in response to a need, and for a reason. It, therefore, follows that if the reason or need for a given practice ceases to exist, the ruling calling for such a practice likewise ceases to apply; however, if the need recurs, the ruling comes to apply once again” (cited in Raysuni, 2006, p.344). As interests change with time and circumstances, they necessitate a change in the legal rulings on which the original interest was based (Raysuni, 2006). The imperative, explains Raysuni is to identify the changing conditions and develop the law accordingly. The failure to do this has resulted in Islamic law being impaired and incapable of dealing effectively with arising issues in Islamic society; Islamic law has become disconnected from many private and public aspects of Muslim life and society.

As a response to the Israeli occupation, a number of scholars including Allain (2005) and Galtung (1989) advocate large-scale and largely symbolic civil disobedience. The suffering endured by the Palestinians needs to be re-packaged or re-defined in terms of empowerment. Palestinians must adopt the mindset that the suffering they endure is purposeful: “part of an overall attempt to reveal the brutality of the occupation and to shame your oppressor both in his eyes and those of the world” (Allain, 2005, p.36). Indeed, the ability of the dominated in an asymmetric conflict to convey to the dominant party the reality of

their situation is an essential aspect of the resolution process (Wallenstein, 2002). As shown in chapter 4 of this thesis, Palestinian nonviolence in the first *intifada* forced Israel to the negotiating table, while the violence that characterised by the second *intifada* depleted the remaining moral power of the Palestinians.

Palestinians must begin to respond to the situation in such a manner so as to receive benefits for the costs in life and property that they pay, employing tactics that will “require the Israelis to use force against peaceful marchers, against demonstrators, and against women and children”, that “could not be discounted internationally and could not go unanswered by politicians in states that support Israel” (Allain, 2005, p.38). A lack of strong external pressure on Israel has been highlighted as central to the continuity of the conflict (Miall *et al.*, 1999) and must be generated if there is to be a just resolution of the conflict. Nonviolence is the only means by which the Palestinians can reclaim the “moral high ground” from Israel (Allain, 2005, p.33).

In advocating non-violent resistance, Allain (2005) is not naïve enough to expect the international media to be there to cover such awareness-raising attempts, and therefore advocates the use of such technology as hand-held video recorders, the distribution of which should be managed at a political level. The footage should be sent to media sources and also published on the internet. Moreover, he supports the growing strategy of placing a financial burden on Israel by creating complications for doing business with a ‘pariah’ state (Allain, 2005).

These observations were reinforced during my field research in Palestine and Israel in early 2006. A senior Western diplomat, who shall remain unnamed, conveyed to me in an extensive interview that Western governments, including Australia, those of the European Union, and even the US would be encouraged to support Palestinian self-determination if Palestinians adopted “mass non-violent demonstrations and protest marches with women and young children marching up to checkpoints in front of the international media”. He also stated that the “Palestinians do not help themselves enough through more organised PR [public relations] and media campaigns” and that Hamas needs to “express

itself in terms that are better understood by the West, rather than in Islamic terms that are misunderstood in the West".⁸⁸

All advocacy groups and campaigns are limited in the dissemination of their message if they are reliant on the mass media. Historically this has been a major problem for Palestinian non-violent resistance movements; they never have a guarantee that the international media will attend and document their non-violent demonstrations or protests and even if they do, they have no guarantee that it will make the news. Moreover, even if the event is reported, the Palestinians like anyone else, have no control over the content: what image and message is reported, when, or how. The internet has the potential to be a very effective tool for Palestinian non-violent resistance.

In his detailed and insightful work on al-Qa'ida, Atwan (2006) discusses the emergence of what he calls '*cyber-jihad*'. He documents the skills in information technology possessed by its members and how the group has so effectively utilised the internet for its cause. He explains that once reliant on mass media to disseminate its message, particularly newspapers and satellite television networks, through the use of the internet al-Qa'ida is now in complete control of the content and presentation of its messages. Attacks by al-Qa'ida, particularly in Iraq, are filmed by the group, often using multiple cameras to capture the event from different angles, framed according to the message they want projected, and then posted on the internet for propaganda and recruitment purposes (Atwan, 2006).

Like the al-Qa'ida cameramen, Palestinians could film their own non-violent actions, demonstrations and protests, and perhaps most importantly, the Israeli response to them. These images can then be uploaded to the internet where there is the potential for them to promote awareness, spark outrage, force violators to be held accountable, and instigate reform and change. At a minimum, Israel would be forced to respond more humanely toward non-violent protesters, which may lead to the removal of checkpoints, barriers, and even settlements. Survey research affirms the potential of this approach (Kull, 2003). Moreover, with the expansion of the internet and the advent of such websites as

⁸⁸ Interview conducted on 22 March 2006 at the interviewee's office in Ramallah.

YouTube, Palestinians no longer need to be dependent on the commercial media; they can frame and present their cause as they choose.⁸⁹ The footage of their non-violent resistance and Israeli repression can be uploaded to such websites as YouTube where it could be viewed by potentially tens of millions of people across the globe. Moreover, the internet would serve as a data bank of footage and images that could also be picked up and utilised by mainstream media outlets, particularly television and newspapers, further promoting awareness of the issue.

Kull (2003) contends that an increase in non-violent methods of resistance by Palestinians could change attitudes even among Israelis. Survey research conducted among 508 Israeli Jews in November 2002 shows that a slight majority of Israelis said they would support the establishment of a Palestinian state outside the 1967 borders 'if the Palestinians committed to stop using violence against Israel and stopped all violence for an extended period'. When probed on the matter, however, 71 percent of the total sample would agree to the establishment of a Palestinian state based on the 1967 borders if they were 'confident' the Palestinians would forgo the use of violence. The survey demonstrates the necessity for Palestinians to publicise their non-violent initiatives among Israelis, echoing the recommendations of Galtung (1989). The results showed that Israelis had little awareness of non-violent Palestinian demonstrations at the time – only 2 percent had heard 'a lot', 7 percent had heard 'some' – but 28 percent had heard 'not very much', and 62 percent had heard 'nothing at all'. The framing of publicity about Palestinian nonviolence is equally essential as 45 percent of Israelis surveyed tended to interpret the violations of the curfew negatively, as a challenge to Israeli authority rather than the emergence of a non-violent movement (Kull, 2003).

Critically, the majority of Israelis support the idea of Israel showing restraint towards non-violent demonstrations as a way of encouraging such a trend. These survey results suggest that Palestinian nonviolence could have a positive impact on Palestinian safety and security, and if repressive measures continued to be used against non-violent Palestinian resisters this may be detrimental to

⁸⁹ Currently, one can find dozens of Palestinian videos on YouTube. Overwhelmingly, however, they tend to feature graphic images of Palestinian victims of Israeli attacks rather than footage of Palestinian non-violent resistance and the response of Israeli forces.

the public perception of the IDF and Israeli government, both domestically and internationally. The 2002 survey showed that 65 percent of Israelis said they think the IDF should show restraint in dealing with non-violent demonstrations 'to encourage a shift towards non-violent forms of protest'. Israelis are also sensitive to international opinion as over 70 percent of those surveyed said that 'if the Palestinians increasingly emphasised non-violent forms of protest and significantly reduced the amount of violence, this would lead the international community to put more pressure on Israel to make compromises (Kull, 2003).

Conclusion

Global conditions have changed immensely since pre-modern times. In the case of Muslims, classical interpretations of the Quran, doctrines, and methodologies have been found inadequate in response to the social, economic, and political challenges of today. This chapter has examined two approaches that have been developed to meet the changing needs and realities of the Muslim world: contextualisation and the *maqasid*-oriented approach. Combined, these approaches ensure an understanding, interpretation, and application of the Quran that is relevant to the contemporary context and consistent with its objectives, principles, and spirit.

Using the tenets of these approaches to analyse the issue of war and peace in the Quran demonstrates that establishing a just peace is the principal objective or *maqсад* of *jihad*. The use of armed force is permitted for the purposes of self-defence, overcoming oppression, and ultimately restoring peace and order. Both fighting for a just cause and making peace are highly regarded acts of faith in Islam. In the context of the verses analysed, there is insufficient support for non-violent resistance as opposed to the use of force. This, however, is highly contextual. The use of armed force is a means and not an end in itself. The tenets of contextualisation and the *maqasid*-oriented approach support the argument that empirical research must be used to determine the most appropriate means within the framework of the Quran in order to fulfil its objectives.

Analysis of the Israel-Palestine conflict confirms that Palestinian use of violence has become detrimental to not only achieving their national goals but also contrary to the higher objectives for which *jihad* was intended, namely, protection and preservation of fundamental human rights, freedom from oppression, and self-determination. Combined with the realities of the contemporary context, particularly the establishment of international law, the United Nations, peace as the normal basis of relations between nations, and the prominence of such international norms as human rights, racial equality, human dignity, and self-determination, Palestinian nonviolence has a higher potential than the use of armed force to achieve these objectives.

Conclusion

The Israel-Palestine conflict has continued for almost a century. Over time, the conflict has not become more manageable but rather, more intractable. During the years of the British mandate over Palestine, numerous commissions identified the central causes of the conflict but whether due to a lack of will or ability, the British failed to meaningfully respond. Since the establishment of the United Nations (UN), Israel-Palestine has consistently been a high priority for the organisation. While the UN has not been able to bring about a resolution, it has ensured that the conflict has remained on the international agenda, and it has passed decisions on all of the most fundamental aspects of the conflict. So central a conflict in international relations is Israel-Palestine that the former UN Secretary-General, Kofi Annan, determined that the credibility of the UN and the ability to win the war on terror both depend on a just resolution, on the basis of the UN Security Council (UNSC) resolutions. Within the international community, the Israel-Palestine conflict is a critical issue. Arguably, it is *the* central factor in relations between 'Islam' and the 'West'. Europeans, Americans, and other Westerners acknowledge the importance of the Israel-Palestine conflict in international relations. The conflict is of profound importance to people across the Arab and Muslim world and has become embedded in the modern Islamic tradition. In spite of the comprehensive demand for a resolution, attempts at a peaceful settlement have been inadequate and have so far failed.

The fundamental flaw of the peace process has been an erroneous assumption that a resolution need not be just to be implemented and accepted. Extensive research in the field of conflict resolution has highlighted that at least some measure of justice is an indispensable ingredient if a resolution is to be genuine and lasting. Scholars such as Kegley and Raymond (2002) and Kriesberg (2005) make this point in general terms, while others, including Salem (1997) and Khashan (2000), explain this issue specifically in the Arab-Islamic and Palestinian contexts. For a number of scholars, the peace process has failed due to the treatment of highly asymmetrical parties as symmetrical, and on account of an almost complete neglect of reference to international law. The United States (US) is widely regarded as the 'linchpin' of the conflict. It has played a pivotal role since the 1940s, particularly through the UN, and has been the main catalyst of

the peace process. However, the role of the US has been paradoxical; it is the party most capable of delivering peace due to its superpower status and close alliance with Israel, but it is also the party most responsible for the perpetuation of the conflict through its financial, military, and diplomatic support of Israel. This issue has focused debate and discussion on the role of the Israel lobby in the US in terms of preventing peace. The work of Mearsheimer and Walt (2007) is the most recent and comprehensive in this body of literature. The authors refute both the moral and strategic arguments used by the lobby to justify US support for Israel. However, Israel and its supporters continue to be highly effective in promoting the self-defence argument in response to demands for Palestinian self-determination.

This thesis sought to answer three central research questions: From a constructivist perspective, what is the main obstacle to a just peace in Israel-Palestine? What is the mechanism through which the Israel-Palestine conflict can be resolved? What is required of the Palestinians in order to facilitate this process? Providing the background to and dimensions of the conflict, Part I established the case of Israel-Palestine both within its historical context and in terms of international law by analysing all of the UNSC resolutions on the question of Palestine. They provide a normative framework for a just resolution of the conflict and support the restoration of Palestinian rights. The argument that violence has been detrimental to the Palestinian cause for self-determination and that nonviolence is more conducive to achieving a just peace is built in Part II of this thesis. It centres on the role of international norms and identity factors to constitute the policies and interests of states. The work of transnational advocacy networks in awareness-raising, disseminating international human rights norms, and utilising identity concerns to pressure states to modify their policies and interests was shown to be instrumental in this process. Nonviolence, although more conducive to the Palestinian cause for self-determination, is under-utilised due to the pride of place of armed resistance and the corresponding lack of authority and legitimacy of nonviolence in the Palestinian and Islamic traditions. Much of the Palestinian violence is religiously motivated and framed within the context of *jihad*, which is defined in terms of armed force, rather than in broader terms of appropriate strategy vis-à-vis context, needs, and conditions. Part III of this thesis effectively responded to the limitations of Palestinian nonviolence

exposed in Chapter 4 by utilising the contextualist and *maqasid*-oriented approaches to reformulate *jihad* in accordance with the higher objectives of the Quran and the realities and conditions of the Israel-Palestine conflict.

This thesis has examined the Israel-Palestine conflict from a constructivist perspective. Constructivism explains international relations in terms of the central role played by international norm and identity factors in determining the policies and interests of states. It highlights the importance of international norms and identity factors in conflict resolution. A major contribution of this thesis is its focus on the issue of competing norms: self-determination, central to Palestinian aspirations, versus self-defence, central to Israeli concerns. The constructivist body of literature demonstrates that the adoption of human rights norms is seldom the initiative of world powers, but rather, due to transnational human rights advocacy networks that use a range of strategies to frame issues in terms of already accepted norms and use shame and moral power to pressure governments to change their policies. Human rights norms, rather than armed resistance, played a primary role in the decolonisation process across Asia and Africa. Critically, groups close to the relevant seats of power who advocated on the basis of racial equality and self-determination had a more significant impact on changing the policies of colonial powers than did the armed resistance movements in the colonies. Particularly instructive in this context is the work of Audie Klotz. She documents that in spite of economic and strategic interests, including Cold War concerns, transnational networks advocating under the banner of racial equality were able to pressure even Britain and the US to impose sanctions on South Africa, which resulted in the elimination of apartheid and the implementation of majority rule. This thesis has shown, however, that unlike the case of South Africa where a single international norm of racial equality was salient, a significant obstacle in the case of Israel-Palestine is the presence of competing norms. Self-determination is a well-established norm in international relations that resonates among people globally. However, it directly competes with the norm of self-defence, which has been consistently invoked by Israel and has become increasingly salient since 11 September 2001.

While international law permits armed resistance in the case of foreign occupation, in terms of international politics this is not a viable option for the

Palestinians against Israel. This thesis has highlighted the asymmetry of the conflict not only in terms of the political, economic, and military disparities between the parties but also in terms of their image internationally, particularly in the West. While Palestinians receive massive moral support across the Arab and Islamic world, Israel receives considerable sympathy from Western nations, particularly the US. Moreover, since 9/11 and particularly the election of Hamas in Palestine, the Islamic identity of the majority of Palestinians has contributed to a further loss of support in the West. Negative perceptions of Islam in the West are largely based on an association of Islam with violence and terrorism. The issue of violence is central to the negative perceptions of Palestinians in the West, where Palestinian violence is commonly viewed as terrorism. It has also been found, however, that Israel is not immune from criticism and negative perceptions in the West. Use of unjustifiable violence and repression by Israeli forces is viewed unfavourably in the West and negatively impacts on support for Israel. This thesis has shown that there is potentially a considerable amount of support for the Palestine cause in the West, particularly in Europe, but also in the US and even Israel. However, Palestinian use of violence, particularly terrorism, diminishes this support. Particularly in Israel, Palestinian use of violence is detrimental for the left as it undermines its credibility and increases that of the right. Globally, the work of transnational Palestine advocacy networks are also undermined, while the credibility of Israel lobby groups in the West is further advanced. Palestinian use of violence has also been detrimental to the Palestinian cause in terms of providing Israel with a pretext or justification for further repression. It is well documented that Israeli policies and practices, under the guise of security or counter-terrorism, have resulted in extensive death, injury, and imprisonment of Palestinian people and large-scale destruction of their homes and civil infrastructure. The 'security barrier' or 'wall' that Israel has constructed within the West Bank is perhaps the most observable manifestation.

Arguments for the Palestinians to reject violence and adopt nonviolence as their exclusive means of resisting Israel's occupation are not new. Palestinians applied non-violent methods of resistance during the first *intifada* and achieved some successes. However, Palestinian nonviolence was not sustained or was not sustainable. In large part, nonviolence gave way to violent means of resistance due to a perception among many Palestinians of the ineffectiveness

of nonviolence, but more importantly, due to its lack of normative status within the Islamic tradition (Abu-Nimer, 2003). This thesis does not contend that all Palestinians who advocate violence do so due to religious motivations. However, religiously motivated use of violence has become an increasingly significant factor on both sides of the conflict. Moreover, that Palestine has been central to the Islamic resurgence since the 1970s and that the Palestinian people themselves have become increasingly 'Islamised' over the decades of occupation is well-documented. This thesis is largely a response to the increasing recognition of the role of religion in conflict and conflict resolution within the field of international relations. Regarding the Israel-Palestine conflict, the religious dimension has attracted increasing attention over the past several years, particularly since the collapse of the negotiations at Camp David in 2000, which was followed by the second *intifada*. The second *intifada* was framed by Palestinians in religious terms and was characterised by the use of violence and terrorism. It has been convincingly argued that given the increasing prominence of religion, liberals and seculars are unlikely to lead the growing religious groups on their side of the conflict to change their attitudes and actions in a direction conducive to a resolution. Rather, a solution will need to emerge from within a religious framework (Grenimann, 2005).

Since the beginning of the conflict, the primary response of the Islamic world has been to call for the liberation of Palestine by way of *jihad* in the form of an armed struggle. Within Palestine, this was the call of Izzeddin Qassim in the 1930s and has been the call of Hamas and Islamic Jihad until today. The understanding, interpretation, and application of *jihad* in terms of the use of armed force have been dominant throughout Islamic history, though alternative perspectives have also been expressed. Indeed, theories are always derived in relation to particular social, political, economic, and historical contexts, and by those with the requisite authority (Cox, 1986). For the jurists who developed Islamic law during the Abbasid era, the conflict and hostility that confronted the Prophet Muhammad from his enemies, and the Quranic verses revealed in this context, resonated with them more than the nonviolence that characterised the earlier years of his prophethood. In order to reconcile the defensive with the seemingly offensive, as well as the violent with the non-violent, approaches to *jihad* present in both the Quran and conduct of the Prophet, the method or doctrine of *naskh* (abrogation)

was utilised. *Naskh* effectively abrogated nonviolence, and in the opinion of some prominent scholars, even defensive approaches to *jihad* were abrogated in favour of offensive warfare. Consequently, armed struggle was left as the dominant expression of *jihad* in Islamic law. However, numerous contemporary Islamic scholars, including AbdulHamid AbuSulayman and Louay Safi, stress that the political actions of the Prophet Muhammad, both peaceful and militant, were conducted within a general ethical framework according to the needs and interests of the Muslim community. Only later did such actions come to be considered legal precedents. Even if such precedents continue to be accepted as 'law', according to Islamic law, when any legal pronouncement ceases to achieve its underlying purpose or objective, it should either be modified or replaced (Kamali, 2006). In emphasising the concept of *maslaha* (interest or benefit), Shatibi highlights a central feature of the Sunnah of the Prophet Muhammad: consistent consideration of the consequences of any action. He also explains that Islamic laws are not meant to cause hardship or suffering but should be objective-oriented (Raysuni, 2006).

In order to move beyond the confines of the classical interpretation of *jihad*, this thesis undertook a return to the primary source of Islam, the Quran, and analysed all verses concerning war and peace according to the context in which they were revealed and the higher objectives for which they were intended. The specific methods used were based on contextualisation and a *maqasid* or objective-oriented approach. Using an inductive reading of the Quran, this thesis showed that the verses concerning the use of force were revealed in a context in which the Prophet was already engaged in conflict. The objectives of armed struggle are for self-defence, overcoming oppression, and ultimately establishing a just peace. That the Quran prescribed fighting as a means of achieving these objectives is relative to the era and context in which the Quran was revealed. The fact that the earlier Meccan verses of the Quran never permitted armed struggle reinforces this point. While the Quran attaches great virtue to fighting in the cause of God, it also praises peace-making for the sake of God. Fighting was not prescribed for its own sake but for the objectives it alone was capable of achieving. This thesis has shown that the meaning of *jihad* in the Quran is not confined to the use of armed force. *Jihad* is not a matter of fighting *per se* but a question of appropriate strategy. Certainly, for most of Muslim history, until the

mid-20th century, a theory of *jihad* based on the use of armed force was the most appropriate and most capable of achieving the higher objectives of Islam in the context of war and peace. This thesis does not, however, propose a comprehensive abandonment of the use of force or that *jihad* should be redefined to mean only non-violent resistance.

For theories to continue to be relevant, they must remain consistent with existing realities and changing conditions; concepts must be modified or rejected and replaced in response to changing conditions (Cox, 1986). Unlike the Muslims of the past – Ottomans, Abbasids, Umayyads, and the Prophet and his companions – or even contemporary Muslim states and groups, such as Iran and Hezbollah – the Palestinians do not have a military option, even in self-defence. They live in a context where their use of force not only undermines their political goals but also is contrary to the higher objectives of Islam, namely the promotion of benefit and prevention of harm. Furthermore, the world is no longer divided into empires where the normal basis of relations is war but into nation-states, almost all of which belong to an international organisation whose charter declares peace as the normal basis of relations. This is an era in which international norms and identity factors have the capacity to constitute the policies of even the most militarily powerful states. In this context, the Palestinians' most potent weapon with which to confront Israel is not Qassam rockets, but moral power. The Palestinians have a number of tools with which to generate this moral power. Due largely to the work of Israeli historians, long-held beliefs concerning the establishment of the state of Israel are being rejected as false and inaccurate. The work of Ilan Pappé (2007) in particular has shifted the paradigm through which the creation of the state of Israel is understood from one of war to ethnic cleansing. Details of the executions and rapes, massacres, destruction of homes, villages, and towns, and displacement of over half the Palestinian population at the time by Israeli forces provide a new narrative that undermines Israeli territorial claims and supports the right of return of Palestinian refugees. Such details of what actually occurred between 1947 and 1949 carry significant moral power and could be a potent weapon in the hands of transnational Palestine advocacy networks, given the indignation that cases of ethnic cleansing and crimes against humanity generally evoke among people around the world.

Another significant source of moral power can be found in the body of resolutions passed by the UNSC on the question of Palestine. The UN is seen around the world as the central organisation for conflict resolution; its decisions are considered authoritative and worthy of adherence. Moreover, extensive research has found that in most countries surveyed, including Israel, the majority of people are willing to accept the decisions of the UN even if they are contrary to the preference of their own country (Chicago Council on Global Affairs and WorldPublicOpinion.org, 2007). Furthermore, the decisions of the UNSC carry a particular significance in international law, as they have the capacity to influence state decision-making to an extent often greater than other legal pronouncements (Ratner, 2004). Having analysed all of the UNSC resolutions on the question of Palestine, this thesis has shown that the Council has established a normative framework for a just resolution. It has made decisions on all of the final status issues, including Jerusalem, the acquisition of territory, the settlements, and the right of return of the Palestinian refugees. This body of resolutions provides transnational Palestine advocacy networks with powerful arguments with which to demand a just resolution of the conflict. The resolutions repeatedly identify Israeli policies and practices as the major obstacles to peace. The UNSC resolutions also refute Israel's claim to Jerusalem, declare the acquisition of territory by force as inadmissible, declare the settlements illegal and demand their dismantling, and endorse the Palestinian refugees' right of return.

Modernity has forced Muslims to recognise that concepts and interpretations that remained valid for a millennium may no longer be relevant or appropriate today. The classical interpretation of *jihad* in terms of the use of armed force is one such concept. This thesis has shown its futility in the case of the Palestinians. If the Quran is to remain relevant to all aspects of Muslim life, new methods of interpretation and approaches are necessary. In order to most precisely apply the text of the Quran to contemporary circumstances, a process of contextualisation is required. In order to retain the essential spirit of the text, however, and not engage in contextualism, a *maqasid* or objective-oriented approach is vital. This approach was first developed in the context of the 14th century when the Muslim world faced significant challenges from changing social, political, and economic circumstances. With the significant changes faced

by Muslims today, the theory is again critical for ensuring the relevance of the Quran and Prophetic Traditions to the realities, needs, and circumstances of the Muslim world.

As described by the late Fazlur Rahman (1989), the central aim of the Quran is to establish a just and ethically-based social order. *Jihad*, in the broadest sense of the term, has been the instrument by which such an order is implemented and protected. A *maqasid*-oriented approach highlights, however, that *jihad* need not necessarily be conducted through the use of armed force, but in accordance with the most appropriate strategy for self-defence, protection of lives and property, elimination of oppression, and establishment of a just peace. Palestinian violence and terrorism can achieve none of these objectives, but rather, places them in further jeopardy. On the other hand, nonviolence has the potential to fulfil these objectives. By way of the *maqasid*-oriented approach, the use of nonviolence gains Islamic legitimacy and authenticity. However, it will be the responsibility of Islamic militant groups, such as Hamas, to adopt such an approach in order for it to gain a normative status in Islamic practice. As this thesis has documented, eminent Islamic scholars have argued for Islamic law to be responsive to changing conditions and contexts. Verily, the approach to Islamic law based on the promotion of benefits and prevention of harm is not an innovation but has its origins with the Prophet Muhammad and his companions; it became central to the Maliki School of jurisprudence; and was well articulated in the *maqasid* theory developed by Shatibi in the 14th century. This thesis has argued, from a constructivist perspective, that should the Palestinians shift their resistance from violence to nonviolence they can transcend the impasse of conflicting norms. Nonviolence has the potential to undermine and discredit Israeli claims of self-defence and expose them as repressive policies and practices unbecoming of a Western liberal democracy. Moreover, it allows transnational Palestine advocacy networks the unimpeded opportunity to utilise available historical, moral, and legal resources; promote the norm of self-determination; and pressure global powers to support a just resolution of the conflict.

Appendix A: United Nations Security Council Resolutions on the Question of Palestine*

Resolution	Date	Issue
42	5/03/1948	Problem of security in Palestine - SecCo appeals to all to prevent, reduce disorders - SecCo resolution
43	1/04/1948	Violence and disorder in Palestine/ Truce - SecCo calls on armed groups to cease acts of violence - SecCo resolution
44	1/04/1948	SecCo consultations on A/RES/181 (II) - SecCo requests GA special session - SecCo resolution
46	17/04/1948	United Kingdom Mandatory Power/ SecCo President's truce efforts/Arms embargo - SecCo resolution
48	23/04/1948	Situation in Palestine - Establishment of Truce Commission - SecCo resolution
49	22/05/1948	Military operations in Palestine/Cease-fire order/Truce Commission/Jerusalem - SecCo resolution
50	29/05/1948	Hostilities in Palestine/Military observers/Chapter VII - SecCo calls for cease-fire orders for a period of four weeks, gives instructions to supervise observance - SecCo resolution
53	7/07/1948	Situation in Palestine/Prolongation of the truce - SecCo resolution
54	15/07/1948	Situation in Palestine/Chapter VII - SecCo determines that the situation is a threat to the peace - SecCo resolution
56	19/08/1948	Situation in Jerusalem/Truce violations - SecCo resolution
61	4/11/1948	Situation in Palestine - Calls for withdrawal of forces, permanent truce lines/Appoints Committee of the Council - SecCo resolution
62	16/11/1948	Situation in Palestine/Chapter VII - Armistice to be established for permanent peace in Palestine - SecCo resolution
66	29/12/1948	Situation in Palestine/Cease-fire/UNCCP to nominate representatives - SecCo resolution
1226	26/01/1949	Progress report of the UN Mediator
73	11/08/1949	Armistice Agreements/SecCo truce superseded/ Acting Mediator relieved of resp./UNTSO - SecCo resolution
89	17/11/1950	Mideast situation/Expulsion of Palestine Arabs/ Return of permanent peace in Palestine - SecCo resolution
100	27/10/1953	Water works in demilitarized zone to be suspended - SecCo resolution
113	4/04/1956	Mideast situation/Tensions along armistice lines –

		SecCo resolution
114	4/06/1956	Mideast situation/SecGen mission on behalf of SecCo – SecCo resolution
127	22/01/1958	Mideast situation/Jerusalem/Government House zone – SecCo resolution
237	14/06/1967	Mideast situation/Displaced persons/ Return of inhabitants/ Respect for inalienable human rights/Humanitarian questions - SecCo resolution
242	22/11/1967	Mideast situation - Acquisition of territory by war/ Withdrawal of Israel/ Refugee problem/ Special Representative - SecCo resolution
250	27/04/1968	Jerusalem/Military parade - SecCo resolution
251	2/05/1968	Jerusalem/Military parade - SecCo resolution
252	21/05/1968	Jerusalem - Israel's legislative and administrative measures invalid/Israel to rescind all such measures – SecCo resolution
259	27/09/1968	Situation in the OATs/Safety, welfare and security of the inhabitants/ Requests to dispatch a Special Representative - SecCo resolution
267	3/07/1969	Jerusalem - Israel to rescind all measures taken which may tend to change the status of the City/Security Council to reconvene - SecCo resolution
271	15/09/1969	Holy places/AI-Aqsa arson damage - Condemns Israel's failure to comply/Israel scrupulously to observe the Geneva Conventions, military occupation law – SecCo resolution
298	25/09/1971	Jerusalem/Israel to rescind measures which may change the status of the City - SecCo resolution
446	22/03/1979	Israeli settlements - Establishment of settlements to cease, no legal validity/ Israel not to transfer own population/ Commission to be appointed - SecCo resolution
452	20/07/1979	Israeli settlements/Fourth Geneva Convention - SecCo resolution
465	1/03/1980	Israeli settlements/Fourth Geneva Convention applicable - Establishment of settlements to cease, no legal validity - SecCo resolution
468	8/05/1980	Expulsions of Palestinian officials - Israel to rescind these illegal measures - SecCo resolution
469	20/05/1980	Expulsions of Palestinian officials - Israel to rescind these illegal measures - SecCo resolution
471	5/06/1980	Situation in the OPT/Settlements/ Protection/ Prolonged occupation to end - SecCo resolution
476	30/06/1980	Jerusalem/Concern over Knesset steps/Necessity to end occupation/Israel to abide by SecCo resns - SecCo resolution
478	20/08/1980	Jerusalem - Israel's "basic law", refusal censured/

		Measures null and void/ Obstruction to peace/ Diplomatic missions to be withdrawn - SecCo resolution
484	19/12/1980	Situation in the OPT/Expulsions - Mayors to return - SecCo resolution
592	8/12/1986	Situation in the OPT - Israel to abide by Fourth Geneva Convention - SecCo resolution
605	22/12/1987	Intifadah/Human rights violations strongly deplored/ SecGen's recommendations on protection requested - SecCo resolution
607	5/01/1988	Deportations - Israel to refrain from deporting Palestinian civilians - SecCo resolution
608	14/01/1988	Deportations - Israel to rescind order to deport Palestinian civilians - SecCo resolution
636	6/07/1989	Deportations - Israel to desist from deporting other Palestinian civilians - SecCo resolution
641	30/08/1989	Deportations - Continuing deportation by the occupying Power of Palestinian civilians deplored - SecCo resolution
672	12/10/1990	Jerusalem/Al-Haram al-Shareef incidents - SecGen to send mission - SecCo resolution
673	24/10/1990	Situation in the OPT - Israel to comply fully with S/RES/672 (1990) - SecCo resolution
681	20/12/1990	Situation in the OPT/Deportations/Protection efforts/ Fourth Geneva Convention meeting, measures/UN monitoring - SecCo resolution
694	24/05/1991	Deportations of Palestinians - Israel in violation of the Fourth Geneva Convention - SecCo resolution
726	6/01/1992	Deportations of Palestinians - Occupying Power's decision strongly condemned - SecCo resolution
799	18/12/1992	Deportations - Occupying Power's deportation of hundreds of Palestinian civilians condemned - SecCo resolution
904	18/03/1994	Hebron - Measures to guarantee protection/Efforts to invigorate peace process - SecCo resolution
1073	28/09/1996	Situation in the OPT/Jerusalem tunnel - Calls for the protection of Palestinian civilians, resumption of peace negotiations - SecCo resolution
1322	7/10/2000	Mideast situation, incl. Palestinian question - Excessive use of force against Palestinians condemned/ Israel to abide by Fourth Geneva Convention/ Inquiry efforts welcomed - SecCo resolution
1397	12/03/2002	Mideast situation/Palestine question - Two States vision affirmed - SecCo resolution
1402	30/03/2002	Mideast situation/Palestine question - Calls for cease- fire, withdrawal of Israeli troops from Palestinian cities - SecCo resolution
1403	4/04/2002	Mideast situation/Palestine question/Quartet efforts –

		SecCo resolution
1405	19/04/2002	Humanitarian situation in the OPT - Urgency of access of humanitarian organizations emphasized/SecGen's fact-finding team on Jenin - SecCo resolution
1435	24/09/2002	Mideast situation/Palestine question - Demand for cessation of violence reiterated/Israel to withdraw from Palestinian cities/PA to meet its expressed commitment - SecCo resolution
1515	19/11/2003	Endorsement of Quartet Road Map - SecCo resolution
1544	19/05/2004	Demolition of homes in Rafah - SecCo resolution

*Source: United Nations Security Council Resolutions on the Question of Palestine, 1946-2006, <http://domino.un.org/UNISPAL.NSF/vCouncilRes>.

Appendix B: Israeli Obstructions to Peace

Twelve resolutions identify Israeli actions, policies or practices as obstructing peace, including Israel's alterations to, and acts of destruction in, Jerusalem (5); Israeli settlements constructed on Arab and Palestinian land (4); killing and massacre of Palestinian civilians (2); and deportations of Palestinian civilians (1).

Jerusalem

As shown in Table 2, five UNSC resolutions identify alterations to the demographic, physical, and/or cultural character of Jerusalem by Israel as prejudicing, endangering or seriously obstructing peace. On 15 September 1969, the UNSC passed Resolution 271 in response to "the extensive damage caused by arson to the Holy Al-Aqsa Mosque in Jerusalem on 21 August 1969 under the military occupation of Israel". The Council *recognised* that "any act of destruction or profanation of the Holy Places, religious buildings and sites in Jerusalem or any encouragement of, or connivance at, any such act may *seriously endanger international peace and security*" [emphasis added]. The resolution emphasises "the immediate necessity of Israel's desisting from acting in violation of the aforesaid resolutions [252 (1968) of 21 May 1968 and 267 (1969) of 3 July 1969 and the earlier General Assembly resolutions 2253 (ES-V) and 2254 (ES-V) of 4 and 14 July 1967, respectively, concerning measures and action by Israel affecting the status of the City of Jerusalem] and rescinding forthwith all measures and actions taken by it designed to alter the status of Jerusalem".

Thirty years later, the Council passed Resolution 1073 (28 September 1996) when "the action by the Government of Israel to open an entrance to a tunnel in the vicinity of Al Aqsa Mosque" again endangered the holy shrine and resulted in "a high number of deaths and injuries among the Palestinian civilians", the UNSC called for the "immediate cessation and reversal of all acts which have resulted in the aggravation of the situation, and which have *negative implications for the Middle East peace process*" [emphasis added] (Resolution 1073, 28 September 1996).

In the three other resolutions concerning the broader alterations to the city of Jerusalem, the UNSC has adopted stronger language in response. On 25 September 1971, the UNSC passed Resolution 298, which recalled two previous resolutions on the matter of Jerusalem (252 and 267). The resolution "*deplores* the failure of Israel to respect the previous resolutions adopted by the United Nations concerning measures and actions by Israel purporting to affect the status of the City of Jerusalem" and clearly identifies

Israeli measures and actions to change the status of Jerusalem as prejudicing the prospects for a just and lasting peace:

Urgently calls upon Israel to rescind all previous measures and actions and to take no further steps in the occupied section of Jerusalem which may purport to change the status of the City or which would prejudice the rights of the inhabitants and the interests of the international community, or a just and lasting peace (Resolution 298, 25 September 1971).

Resolution 298 uses more assertive wording than previous resolutions concerning Jerusalem, confirming “*in the clearest possible terms* that all legislative and administrative actions taken by Israel to change the status of the City of Jerusalem, including expropriation of land and properties, transfer of populations and legislation aimed at the incorporation of the occupied section, are *totally invalid and cannot change that status*” [emphasis added]. Demonstrating the UNSC’s commitment to the matter of Jerusalem’s status, Resolution 298 “*requests* the Secretary-General, in consultation with the President of the Security Council and using such instrumentalities as he may choose, including a representative or a mission, to report to the Council as appropriate and in any event within sixty days on the implementation of the present resolution”.

In the subsequent resolution on the matter, Resolution 476 (30 June 1980), the UNSC expresses its concerns in still stronger terms. Having considered a letter from the Pakistani representative, who at that time was the Chairman of the Organisation of the Islamic Conference, the UNSC reaffirmed that “acquisition of territory by force is inadmissible and referred to the “specific status of Jerusalem and, in particular, the need for protection and preservation of the unique spiritual and religious dimension of the Holy Places in the city”.

Resolution 476 deplores “the persistence of Israel, in changing the physical character, demographic composition, institutional structure and the status of the Holy City of Jerusalem”, expresses ‘grave concern’ over “the legislative steps initiated in the Israeli Knesset with the aim of changing the character and status of the Holy City of Jerusalem”, and “*strongly deplores* the continued refusal of Israel, the occupying Power, to comply with the relevant resolutions of the Security Council and the General Assembly”.

As with the previous resolutions on the matter, Resolution 476:

Reconfirms that all legislative and administrative measures and actions taken by Israel, the occupying Power, which purport to alter the character and status of the Holy City of Jerusalem have no legal validity and constitute a flagrant violation of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War and also *constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East* [emphasis added].

However, an even more significant statement within this resolution is its reaffirmation of an “end the prolonged occupation of Arab territories occupied by Israel since 1967, including Jerusalem” as “the overriding necessity”. Also of significance is that the UNSC “*reaffirms* its determination in the event of non-compliance by Israel with this resolution, to examine practical ways and means in accordance with relevant provisions of the Charter of the United Nations to secure the full implementation of this resolution” (Resolution 476, 30 June 1980).

The final occasion that the UNSC addressed the issue of Israel's alterations to the status of Jerusalem as having negative implications for peace occurred over one-quarter of a century ago with Resolution 478 (20 August 1980). This resolution specifically addresses the enactment by Israel of its “basic law” on Jerusalem, which according to the UNSC “constitutes a violation of international law and does not affect the continued application of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, in the Palestinian and other Arab territories occupied since June 1967, including Jerusalem”.

Resolution 478 repeats the determination of previous resolutions that all legislative and administrative measures and actions taken by Israel, which have “altered or purport to alter” the character and status of Jerusalem and “in particular the recent “basic law” on Jerusalem” are “null and void and must be rescinded forthwith”. The resolution repeats the UNSC affirmation that the action of Israel “constitutes a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East”. In deciding not to recognise the “basis law”, the UNSC also called on member-states to accept this decision and requested that states “that have established diplomatic missions at Jerusalem to withdraw such missions from the Holy City”.

Israeli settlements

In connection to the issue of Jerusalem, the UNSC has identified Israel's policy and practice of transferring its own population on to Palestinian lands occupied since 1967 and constructing settlements on that land as a serious obstruction to peace. The first

UNSC resolution to specifically address the settlements in such terms was Resolution 446 (22 March 1979), which “*determines* that the policy and practices of Israel in establishing settlements in the Palestinian and other Arab territories occupied since 1967 have no legal validity and constitute a *serious obstruction* to achieving a comprehensive, just and lasting peace in the Middle East” [emphasis added]. Resolution 446 also established a commission to “examine the situation relating to settlements” and provide a report to the UNSC.

The follow-up resolution (452, 20 July 1979) begins by “*strongly deploring* the lack of co-operation of Israel with the Commission”. It restates the position of the UNSC that the settlements have “no legal validity”, constitute a “violation of the Fourth Geneva Convention”, and emphasises the “need for confronting the issue of the existing settlements and the need to consider measures to safeguard the impartial protection of property seized”. Of specific interest here is the acknowledgement of the UNSC that the settlements would have a detrimental impact on achieving peace. Resolution 452 states: “*Drawing attention* to the *grave consequences* which the settlements policy is bound to have on any attempt to reach a peaceful solution in the Middle East” [emphasis added].

Letters from the representatives of Jordan and Morocco, Chairman of the Islamic Group, along with the reports of the UNSC Commission for examining the settlements led to the drafting of the subsequent resolution on the issue, Resolution 465 (1 March 1980). The resolution ‘strongly deplores’ the “refusal by Israel to co-operate with the Commission and regretting its formal rejection of resolutions 446 (1979) and 452 (1979)”. It restates the assessment of the UNSC concerning “the *grave consequences* which the settlement policy is bound to have on any attempt to reach a comprehensive, just and lasting peace in the Middle East” [emphasis added] and in an attempt to achieve global support for its efforts to overcome the obstacle to peace posed by the settlements, “*calls upon* all States not to provide Israel with any assistance to be used specifically in connexion with settlements in the occupied territories”.

The following resolution on the matter, Resolution 471 (5 June 1980), stands as the final occasion on which the UNSC addressed the matter of Israeli settlements in the context of their obstruction to achieving peace. It restates this call to the international community and reaffirms the UNSC’s position that the settlements “constitute a *serious obstruction* to achieving a comprehensive, just and lasting peace in the Middle East” [emphasis added] and strongly deplores the “continuation and persistence of Israel in pursuing those policies and practices”.

It is noteworthy, however, that fourteen years later the UNSC was “*shocked* by the appalling massacre committed against Palestinian worshippers in the Mosque of Ibrahim in Hebron on 25 February 1994, during the holy month of Ramadan” (Resolution 904, 18 March 1994). The UNSC passed Resolution 904, which “strongly condemns” the “massacre in Hebron and its aftermath which took the lives of more than fifty Palestinian civilians and injured several hundred others” and called upon “Israel, the occupying Power, to continue to take and implement measures, including, *inter alia*, confiscation of arms, with the aim of preventing illegal acts of violence by Israeli settlers”. The resolution recognised the “adverse impact of the massacre on the peace process”.

Rather than the Hebron massacre leading to a reversal of the settlement policy and increased safety for the Palestinian population, quite the opposite occurred. In the aftermath of the massacre, the entire Palestinian population of Hebron suffered severe repression in the form of curfews and other restrictions of movement. In spite of Resolution 904 and previous resolutions, namely 446, 452, 465, and 471, having called for an end to the settlements, they have continued to expand. It is also noteworthy that the employment of suicide bombings by Palestinians began after this massacre and the inadequate response to it from Israel and the international community (Milton-Edwards, 1996).

Killing civilians

At the dawn of the first Palestinian *intifada*, the UNSC determined that “the current policies and practices of Israel, the occupying Power, in the occupied territories are bound to have grave consequences for the endeavours to achieve comprehensive, just and lasting peace in the Middle East” (Resolution 605, 22 December 1987). Resolution 605 specifically refers to Israeli policies and practices that “violate the human rights of the Palestinian people in the occupied territories, and in particular the opening of fire by the Israeli army, resulting in the killing and wounding of defenceless Palestinian civilians”.

The resolution *reaffirms* that the Fourth Geneva Convention is applicable to the Palestinian and other Arab territories occupied by Israel since 1967, including Jerusalem; and “*calls once again upon* Israel, the occupying Power, to abide immediately and scrupulously by the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and to desist forthwith from its policies and practices that are in violation of the provisions of the Convention”. The resolution also calls for “the exercise of the maximum restraint to contribute towards the establishment of peace” (Resolution 605, 22 December 1987).

Deportations

Resolution 694 (24 May 1991) also addresses Israel's failure to implement the Fourth Geneva Convention. It specifically refers to the deportation of Palestinian civilians, as a detriment to peace, stating:

with deep concern and consternation that Israel has, in violation of its obligations under the Fourth Geneva Convention of 1949, and acting in opposition to relevant Security Council resolutions, and to the detriment of efforts to achieve a comprehensive, just and lasting peace in the Middle East, deported four Palestinian civilians on 18 May 1991.

In sum, the UNSC has not found the Palestinians responsible for the obstructing peace with Israel. With the exception of a decision by the Arab League to reject a truce with Israel in 1948, all of the obstacles to peace have been imposed by Israel through its occupation of the Gaza Strip and West Bank, including Jerusalem, its alterations to Jerusalem, the construction of settlements on Palestinian land, and failure to abide by the Fourth Geneva Convention, particularly in respect to population transfer, destruction of holy sites, and the killing and injuring of civilians.

Appendix C: Cooperation with the UN and Israeli Violations of UN Security Council Resolutions

Cooperation with the United Nations

Arguably, the extent to which the parties to the conflict have co-operated, or not, with the UNSC is indicative of the genuineness of each party's commitment to achieving peace. Five UNSC resolutions were passed specifically in response to acts of non-cooperation with UN commissions, missions, or other representatives. On each occasion Israel has been cited for non-cooperation.

At the conclusion of the Six-Day War, the UNSC passed Resolution 237, out of concern for the "safety, welfare and security of the inhabitants of the Arab territories under military occupation by Israel following the hostilities of 5 June 1967" (Resolution 237, 14 June 1967). This resolution required Israel to "ensure the safety, welfare and security of the inhabitants of the areas where military operations have taken place and to facilitate the return of those inhabitants who have fled the areas since the outbreak of hostilities" and to respect "the humanitarian principles governing the treatment of prisoners of war and the protection of civilian persons in time of war contained in the Geneva Conventions of 12 August 1949". Israel's refusal to abide by this resolution prompted the UN to send a special representative of the Secretary-General to the area. Israel's lack of co-operation led to the passing of Resolution 259 (27 September 1968), in which the UNSC 'deplores' the "delay in the implementation of Resolution 237 (1967) because of the conditions still being set by Israel for receiving a Special Representative of the Secretary-General".

Upon commencing its occupation of the Gaza Strip, West Bank, and Golan Heights in 1967, Israel began implementing a policy of population transfer and settlement construction in these territories. Over a decade later the UNSC, through Resolution 446 (22 March 1979), decided to establish a commission "to examine the situation relating to settlements in the Arab territories occupied since 1967, including Jerusalem". The UNSC commended the work done by the commission and accepted the recommendations contained in its report. It passed Resolution 452 (20 July 1979), which, 'strongly deplores' the "lack of co-operation of Israel with the Commission". Israel's insistence on continuing its settlement policy and practice was brought to the attention of the UNSC. In response, it passed Resolution 465 (1 March 1980), which

'strongly deplores' "the refusal by Israel to co-operate with the Commission and regretting its formal rejection of resolutions 446 (1979) and 452 (1979)".

When violence took place on 8 October at the Al Haram al Shareef and other holy places of Jerusalem "resulting in over twenty Palestinian deaths and to the injury of more than one hundred and fifty people, including Palestinian civilians and innocent worshippers", the UNSC supported the decision of the Secretary-General to send a mission to the region and submit a report on the situation (Resolution 672, 12 October 1990). The UNSC deplored the refusal of Israel to receive the mission of the Secretary-General. In response Resolution 673 (24 October 1990) 'urged' the Government of Israel "to reconsider its decision and insists that it comply fully with Resolution 672 (1990) and to permit the mission of the Secretary-General to proceed in keeping with its purpose".

The year 1990 was the last time that Israel stood accused of non-cooperation with the UN, although its non-cooperation has continued. A case point is the disbanded fact-finding team that the UNSC established under Resolution 1405 (19 April 2002). The Council determined that the fact-finding team would be sent to investigate the events that took place in the Jenin refugee camp, which was razed as part of Israel's 'Operation Defensive Shield', carried out in the first half of 2002. Responding to objections to the mission by Israel, who accused the former president of the International Red Cross, Cornelio Sommaruga, of being an 'anti-Semite', the US threatened to use its veto power should the Council insist on sending the team. Consequently, Israel was able to avoid the condemnation of the UN and the international community that would have resulted from confirmation of a massacre in Jenin (Reinhart, 2005).

Violations of Security Council resolutions

Also indicative of a genuine commitment to achieving peace is the extent to which the parties have abided by the resolutions of the UNSC. It is noteworthy that the Palestinians have not been cited by the UNSC for violation of any of its resolutions. However, of the 60 UNSC resolutions specifically concerning the question of Palestine, over one-third (21) cite Israel for non-compliance, failure to implement, or violation.

This extensive list of resolutions begins with Resolution 250 (27 April 1968), which calls on Israel to "refrain from holding the military parade in Jerusalem which is contemplated for 2 May 1968". When Israel defied the Council and held the parade, Resolution 251 (2 May 1968) was passed in which the UNSC 'strongly deplored' the "holding by Israel of

the military parade in Jerusalem on 2 May 1968 in disregard of the unanimous decision adopted by the Council on 27 April 1968”.

The remaining 20 resolutions all refer to Israeli violations in the context of its failure to implement and abide by the Fourth Geneva Convention, including alterations made to Jerusalem, establishment and expansion of settlements, and the deportation of Palestinians from the Occupied Territories. In response, the Council has ‘deplored’ and ‘condemned’ Israel’s rejection of its resolutions or failure to abide by them.

On the issue of “measures and actions by Israel affecting the status of the City of Jerusalem” the UNSC has not only deplored or condemned Israel for persistent violations but has determined, as in the case of Resolution 267 (3 July 1969), that “in the event of a negative response or no response from Israel, the Security Council shall reconvene without delay to consider what further action should be taken in this matter”. Resolution 271 (15 September 1969) “*condemns* the failure of Israel to comply with the aforementioned resolutions [252 and 267] and calls upon it to implement forthwith the provisions of these resolutions”. This resolution then reiterates the Council’s determination that “in the event of a negative response or no response, the Security Council shall convene without delay to consider what further action should be taken in this matter”.

However, Israel’s violations continued as noted in the following resolution, 298 (25 September 1971), in which the UNSC expresses concern that “since the adoption of the above-mentioned resolutions [252 (1968) of 21 May 1968 and 267 (1969) of 3 July 1969 and the earlier General Assembly resolutions 2253 (ES-V) and 2254 (ES-V) of 4 and 14 July 1967] Israel has taken further measures designed to change the status and character of the occupied section of Jerusalem”.

In spite of the unambiguous terms in which this and previous resolutions address the issue, Israel continued to alter Jerusalem. A subsequent four resolutions (446, 452, 465, and 471) all cite Israel for violations of UNSC resolutions in connection with Israel’s failure to implement and abide by the Fourth Geneva Convention, specifically in regard to settlement construction and alterations to physical, cultural, and demographic aspects of Jerusalem.

On two more occasions the UNSC expressed its determination to examine practical ways and means in accordance with relevant provisions of the UN Charter to secure the full implementation of its resolutions concerning the applicability of the Fourth Geneva

Convention to the Occupied Territories and the status of Jerusalem. Resolution 476 (30 June 1980) was passed in response to “legislative steps initiated in the Israeli Knesset with the aim of changing the character and status of the Holy City of Jerusalem”. It deplores “the persistence of Israel, in changing the physical character, demographic composition, institutional structure and the status of the Holy City of Jerusalem” and strongly deplores “the continued refusal of Israel, the occupying Power, to comply with the relevant resolutions of the Security Council and the General Assembly”. Resolutions 476 reiterates “that all such measures which have altered the geographic, demographic and historical character and status of the Holy City of Jerusalem are null and void and must be rescinded in compliance with the relevant resolutions of the Security Council” and “*reaffirms* its determination in the event of non-compliance by Israel with this resolution, to examine practical ways and means in accordance with relevant provisions of the Charter of the United Nations to secure the full implementation of this resolution”.

However, Israel violated Resolution 467 and its relevant predecessors (252, 267, 271, 298, and 465) when it enacted the ‘basic law’ on Jerusalem in 1980. In response, the UNSC passed Resolution 478 (20 August 1980), which “*censures* in the strongest terms the enactment by Israel of the “basic law” on Jerusalem and the refusal to comply with relevant Security Council resolutions”. It also “*affirms* that the enactment of the ‘basic law’ by Israel constitutes a violation of international law and does not affect the continued application of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, in the Palestinian and other Arab territories occupied since June 1967, including Jerusalem”. The UNSC reaffirms herein its determination “to examine practical ways and means, in accordance with the relevant provisions of the Charter of the United Nations, to secure the full implementation of its resolution 476 (1980), in the event of non-compliance by Israel (Resolution 478, 20 August 1980).

Until the present, the “prolonged occupation of Arab territories occupied by Israel since 1967, including Jerusalem” has not ended. Additionally, subsequent to the passing of Resolution 478 (20 August 1980), Israel was cited in nine more resolutions passed by the UNSC (484, 607, 608, 636, 641, 673, 681, 694, and 726) for violations of its resolutions involving Israel’s failure to implement and abide by the Fourth Geneva Convention.

Israeli Violations of UN Security Council Resolutions

Directive	Violation	Response
“refrain from holding the military parade in Jerusalem” (250, 27/04/68)	“military parade in Jerusalem on 2 May 1968 in disregard of the unanimous decision adopted by the Council” (251, 02/05/68)	“ <i>Deeply deplores</i> ” (251, 02/05/68)
“ensure the safety, welfare and security of the inhabitants of the areas where military operations have taken place and to facilitate the return of those inhabitants who have fled the areas since the outbreak of hostilities; scrupulous respect of the humanitarian principles governing the treatment of prisoners of war and the protection of civilian persons in time of war contained in the Geneva Conventions” (237, 14/06/67)	Failure to “receive the Special Representative of the Secretary-General” (259, 27/09/68)	“ <i>Deplores</i> the delay in the implementation of resolution 237” (259, 27/09/68)
“to rescind all such measures already taken and to desist forthwith from taking any further action which tends to change the status of Jerusalem” (252, 21/05/68)	“measures and actions by Israel affecting the status of the City of Jerusalem” (267, 03/07/69)	“ <i>Deplores</i> the failure of Israel to show any regard for the resolutions of the General Assembly and the Security Council mentioned above”; “ <i>Determines</i> that, in the event of a negative response or no response from Israel, the Security Council shall reconvene without delay to consider what further action should be taken in this matter” (267, 03/07/69)
“measures and action by Israel affecting the status of the City of Jerusalem” (252, 21/05/67; 267, 03/07/69)	“extensive damage caused by arson to the Holy Al-Aqsa Mosque in Jerusalem on 21 August 1969 under the military occupation of Israel” (271, 15/09/69)	“ <i>Condemns</i> the failure of Israel to comply”; “in the event of a negative response or no response, the Security Council shall convene without delay to consider what further action should be taken in this matter” (271, 15/09/69)
“measures and action by Israel affecting the status of the City of Jerusalem” (252, 21/05/67; 267, 03/07/69)	“further measures designed to change the status and character of the occupied section of Jerusalem” (298, 25/09/71)	“ <i>Deplores</i> the failure of Israel to respect the previous resolutions”; “ <i>Requests</i> the Secretary-General...to report to the Council as appropriate and in any event within sixty days on the implementation of the present resolution (298, 25/09/71)

<p>“to abide scrupulously by the 1949 Fourth Geneva Convention, to rescind its previous measures and to desist from taking any action which would result in changing the legal status and geographical nature and materially affecting the demographic composition of the Arab territories occupied since 1967, including Jerusalem, and, in particular, not to transfer parts of its own civilian population into the occupied Arab territories” (237, 14/06/67; 252, 21/05/68; 298, 25/09/71)</p>	<p>“policy and practices of Israel in establishing settlements in the Palestinian and other Arab territories occupied since 1967” (446, 22/03/79)</p>	<p>“<i>Strongly deplores</i> the failure of Israel to abide”; “<i>Establishes a Commission...to examine the situation relating to settlements in the Arab territories occupied since 1967, including Jerusalem</i>” (446, 22/03/79)</p>
<p>“Commission...to examine the situation relating to settlements in the Arab territories occupied since 1967, including Jerusalem” (446, 22/03/79)</p>	<p>“lack of co-operation of Israel with the Commission” (452, 20/07/79)</p>	<p>“<i>Calls upon</i> the Government and people of Israel to cease, on an urgent basis, the establishment, construction and planning of settlements in the Arab territories occupied since 1967, including Jerusalem” (452, 20/07/79)</p>
<p>“to abide scrupulously by the 1949 Fourth Geneva Convention, to rescind its previous measures and to desist from taking any action which would result in changing the legal status and geographical nature and materially affecting the demographic composition of the Arab territories occupied since 1967, including Jerusalem, and, in particular, not to transfer parts of its own civilian population into the occupied Arab territories” (237, 14/06/67; 252, 21/05/68; 267, 03/07/69; 271, 15/09/69; 298, 25/09/71; 446, 22/03/79)</p>	<p>“Israeli settlement in the Palestinian and other Arab territories occupied since 1967” (465, 01/03/80)</p>	<p>“<i>Strongly deplores</i> the continuation and persistence of Israel in pursuing those policies and practices”; “<i>Calls upon</i> all States not to provide Israel with any assistance to be used specifically in connexion with settlements in the occupied territories” (465, 01/03/80)</p>
<p>“to facilitate the immediate return of the expelled Palestinian leaders so that they can resume the functions for which they were elected and appointed” (468, 08/05/80)</p>	<p>“failure of the Government of Israel to implement Security Council resolution 468 (1980) of 8 May 1980” and “facilitate the immediate return of the expelled Palestinian leaders” (469, 20/05/80)</p>	<p>“<i>Strongly deplores</i> the failure of the Government of Israel” (469, 20/05/80)</p>
<p>“measures taken by Israel to change the physical character, demographic composition,</p>	<p>“assassination attempts against the Mayors of Nablus, Ramallah and Al Bireh” (471,</p>	<p>“<i>Condemns</i> the assassination attempts”; “<i>Calls again upon</i> the government of Israel to</p>

<p>institutional structure or status of the Palestinian and other Arab territories occupied since 1967, including Jerusalem” (468, 08/05/80; 469, 20/05/80; 465, 01/03/80)</p>	<p>05/06/80)</p>	<p>respect and to comply with the provisions of the Geneva Convention relative to the Protection of Civilian Persons in Time of War as well as with the relevant resolutions of the Security Council”; “Calls once again upon all States not to provide Israel with any assistance to be used specifically in connexion with settlements”; “Reaffirms the overriding necessity to end the prolonged occupation of Arab territories occupied by Israel since 1967, including Jerusalem” (471, 05/06/80)</p>
<p>“to rescind all such measures already taken and to desist forthwith from taking any further action which tends to change the status of Jerusalem” (252, 21/05/68; 267, 03/07/69; 271, 15/09/69; 298, 25/09/71; 465, 01/03/80)</p>	<p>“changing the physical character, demographic composition, institutional structure and the status of the Holy City of Jerusalem” (476, 30/06/80)</p>	<p>“Reaffirms its determination in the event of non-compliance by Israel with this resolution, to examine practical ways and means in accordance with relevant provisions of the Charter of the United Nations to secure the full implementation of this resolution” (476, 30/06/80)</p>
<p>“changing the physical character, demographic composition, institutional structure and the status of the Holy City of Jerusalem” (476, 30/06/80)</p>	<p>“enactment of a "basic law" in the Israeli Knesset proclaiming a change in the character and status of the Holy City of Jerusalem” (478, 20/08/80)</p>	<p>“Censures in the strongest terms the enactment by Israel of the "basic law" on Jerusalem”; “Decides not to recognize the "basic law" and such other actions by Israel” (478, 20/08/80)</p>
<p>“applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to all the Arab territories occupied by Israel in 1967” (468, 08/05/80; 469, 20/05/80)</p>	<p>“the expulsion by Israel of the Mayor of Hebron and the Mayor of Halhoul” (484, 19/12/80)</p>	<p>“Calls upon Israel, the occupying Power, to adhere to the provisions of the Convention” (484, 19/12/80)</p>
<p>“Calls once again upon Israel, the occupying Power, to abide immediately and scrupulously by the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and to desist forthwith from its policies and practices that are in violation of the provisions of the Convention” (605, 22/12/87)</p>	<p>“the decision of Israel, the occupying Power, to "continue the deportation" of Palestinian civilians in the occupied territories” (607, 05/01/88)</p>	<p>“Calls upon Israel to refrain from deporting any Palestinian civilians from the occupied territories”; “Strongly requests Israel, the occupying Power, to abide by its obligation arising from the Convention” (607, 05/01/88)</p>
<p>“to refrain from deporting any</p>	<p>“deported Palestinian civilians”</p>	<p>“Calls upon Israel to rescind</p>

<p>Palestinian civilians from the occupied territories”; “to abide by its obligation arising from the Convention” (607, 05/01/88)</p>	<p>(608, 14/01/88)</p>	<p>the order to deport Palestinian civilians and to ensure the safe and immediate return to the occupied Palestinian territories of those already deported”; “Requests that Israel desist forthwith from deporting any other Palestinian civilians from the occupied territories” (608, 14/01/88)</p>
<p>“to rescind the order to deport Palestinian civilians and to ensure the safe and immediate return to the occupied Palestinian territories of those already deported”; “desist forthwith from deporting any other Palestinian civilians from the occupied territories” (607, 05/01/88; 608, 14/01/88)</p>	<p>“deported eight Palestinian civilians on 29 June 1989” (636, 06/07/89)</p>	<p>“Calls upon Israel to ensure the safe and immediate return to the occupied Palestinian territories of those deported and to desist forthwith from deporting any other Palestinian civilians” (636, 06/07/89)</p>
<p>“to desist forthwith from deporting any other Palestinian civilians” (607, 05/01/88; 608, 14/01/88; 636, 06/07/89)</p>	<p>“deported five Palestinian civilians on 27 August 1989” (641, 30/08/89)</p>	<p>“Deplores the continuing deportation by Israel, the occupying Power, of Palestinian civilians”; “Calls upon Israel to ensure the safe and immediate return to the occupied Palestinian territories of those deported and to desist forthwith from deporting any other Palestinian civilians” (641, 30/08/89)</p>
<p>“to abide scrupulously by its legal obligations and responsibilities under the Fourth Geneva Convention, which is applicable to all the territories occupied by Israel since 1967”; “Secretary-General to send a mission to the region” (672, 12/10/90)</p>	<p>“refusal of the Israeli Government to receive the mission of the Secretary-General to the region” (673, 24/10/90)</p>	<p>“Deplores the refusal”; “Urges the Israeli Government to reconsider its decision and insists that it comply fully with resolution 672 (1990) and to permit the mission of the Secretary-General to proceed in keeping with its purpose” (673, 24/10/90)</p>
<p>“to abide scrupulously by its legal obligations and responsibilities under the Fourth Geneva Convention, which is applicable to all the territories occupied by Israel since 1967”; “Secretary-General to send a mission to the region” (672, 12/10/90)</p>	<p>“the decision of the Government of Israel to deport four Palestinians from the occupied territories in contravention of its obligations under the Fourth Geneva Convention, of 1949” (681, 20/12/90)</p>	<p>“Deplores the decision by the Government of Israel, the occupying Power, to resume deportations of Palestinian civilians in the occupied territories”; “Urges the Government of Israel to accept <i>de jure</i> applicability of the Fourth Geneva Convention of 1949, to all the territories occupied by Israel since 1967, and to abide scrupulously by the provisions</p>

		of the said Convention” (681, 20/12/90)
“to accept <i>de jure</i> applicability of the Fourth Geneva Convention of 1949, to all the territories occupied by Israel since 1967, and to abide scrupulously by the provisions of the said Convention” (681, 20/12/90)	the action of the Israeli authorities of deporting four Palestinians on 18 May (694, 24/05/91)	“ <i>Deplores</i> this action and reiterates that Israel, the occupying Power, refrain from deporting any Palestinian civilian from the occupied territories and ensure the safe and immediate return of all those deported” (694, 24/05/91)
refrain from deporting any Palestinian civilian from the occupied territories and ensure the safe and immediate return of all those deported” (607, 05/01/88; 608, 14/01/88; 636, 06/07/89; 641, 30/08/89; 694, 24/05/91)	the decision of Israel, the occupying Power, to deport twelve Palestinian civilians from the occupied Palestinian territories (726, 06/01/92)	<i>Strongly condemns</i> the decision of Israel, the occupying Power, to resume deportations of Palestinian civilians”; “ <i>Reaffirms</i> the applicability of the Fourth Geneva Convention...to all the Palestinian territories occupied by Israel since 1967, including Jerusalem”; “ <i>Requests</i> Israel, the occupying Power, to refrain from deporting any Palestinian civilian from the occupied territories”; “ <i>Also requests</i> Israel...ensure the safe and immediate return to the occupied territories of all those deported” (726, 06/01/92)

**Appendix D:
Human Rights and International Humanitarian Law in
the UN Security Council Resolutions on the Question of
Palestine: Violations, Violators, and Consequences**

Resolution (Date)	Violation	Violator	Consequence
237 (14/06/67)	preventing “the return of those inhabitants who have fled the areas since the outbreak of hostilities”	Israel	
271 (15/09/69)	“causing [...] hindrance to the discharge of the established functions of the Supreme Moslem Council of Jerusalem” in aftermath of arson attack on Al-Aqsa Mosque	Israel	“may seriously endanger international peace and security”
446 (22/03/79)	“policy and practices of Israel in establishing settlements in the Palestinian and other Arab territories occupied since 1967”	Israel	“serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East”
452 (20/07/79)	“practices of the Israeli authorities in implementing that settlements policy in the occupied Arab territories, including Jerusalem”	Israel	“grave consequences [...] on any attempt to reach a peaceful solution in the Middle East”
465 (01/03/80)	“measures taken by Israel to change the physical character, demographic composition, institutional structure or status of the Palestinian and other Arab territories occupied since 1967, including Jerusalem ... Israel's policy and practices of settling parts of its population and new immigrants in those territories”	Israel	“grave consequences [...] on any attempt to reach a comprehensive, just and lasting peace in the Middle East”
468 (01/05/80)	“expulsion by the Israeli military occupation authorities of the Mayors of Hebron and Halhoul and of the Sharia Judge of Hebron”	Israel	
471 (05/06/80)	“assassination attempts against the Mayors of Nablus, Ramallah and Al Bireh”	Israel	“serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East”
476 (30/06/80)	“legislative and administrative measures and actions taken by Israel, the occupying Power, which purport to alter the character and status of the Holy City of Jerusalem”	Israel	“serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East”
478 (20/08/80)	“enactment of the "basic law" by Israel”	Israel	“serious obstruction to achieving a comprehensive, just

			and lasting peace in the Middle East”
484 (19/12/80)	“expulsion by Israel of the Mayor of Hebron and the Mayor of Halhoul”	Israel	
592 (08/12/86)	“opening of fire by the Israeli army resulting in the death and the wounding of defenceless students”	Israel	
605 (22/12/87)	“opening of fire by the Israeli army, resulting in the killing and wounding of defenceless Palestinian civilians”	Israel	“bound to have grave consequences for the endeavours to achieve comprehensive, just and lasting peace in the Middle East”
607 (05/01/88)	“deporting [...] Palestinian civilians from the occupied territories”	Israel	
608 (14/01/88)	“deporting [...] Palestinian civilians from the occupied territories”	Israel	
636 (06/07/89)	“continuing deportation by Israel, the occupying Power, of Palestinian civilians”	Israel	
641 (30/08/89)	“continuing deportation by Israel, the occupying Power, of Palestinian civilians”	Israel	
672 (12/10/90)	“violence committed by the Israeli security forces resulting in injuries and loss of human life”	Israel	
681 (20/12/90)	“decision of the Government of Israel to deport four Palestinians from the occupied territories”	Israel	
694 (24/05/91)	“deporting four Palestinians”	Israel	“to the detriment of efforts to achieve a comprehensive, just and lasting peace in the Middle East”
726 (06/01/92)	“deportations of Palestinian civilians”	Israel	
799 (18/12/92)	“deported to Lebanon on 17 December 1992, hundreds of Palestinian civilians from the territories occupied by Israel since 1967, including Jerusalem”	Israel	
904 (18/03/94)	“massacre in Hebron and its aftermath which took the lives of more than fifty Palestinian civilians and injured several hundred others”	Israel	“underlines the need to provide protection and security for the Palestinian people”
1322 (7/10/00)	“excessive use of force against Palestinians, resulting in injury and loss of human life”	Israel	
1397 (12/3/02)	“violence, including all acts of terror, provocation, incitement and destruction”	<i>Not identified</i>	
1402 (30/3/02)	“suicide bombings in Israel”	<i>*Palestine</i>	
	“military attack against the headquarters of	Israel	“grave concern at the

	the president of the Palestinian Authority”		further deterioration of the situation”
1405 (19/4/02)	“reports from the Jenin refugee camp of an unknown number of deaths and destruction [...] restrictions imposed, in particular in Jenin, on the operations of humanitarian organizations, including the International Committee of the Red Cross and United Nations Relief and Works Agency for Palestine Refugees in the Near East”	Israel	“Concerned by the dire humanitarian situation of the Palestinian civilian population”
1435 (14/9/02)	“terrorist bombings in Israel”	Palestine	“continuous deterioration of the situation”
	“terrorist bombings [...] in a Palestinian school in Hebron [...] reoccupation of Palestinian cities as well as the severe restrictions imposed on the freedom of movement of persons and goods”	Israel	“humanitarian crisis being faced by the Palestinian people”
1544 (19/5/04)	“killing of Palestinian civilians that took place in the Rafah area [...]demolition of homes committed by Israel, the occupying Power, in the Rafah refugee camp”	Israel	“humanitarian situation of Palestinians made homeless in the Rafah”

*Palestine = Violator assumed to be Palestinian but resolution does not identify.

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