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INTRODUCTION

The series of violent Palestinian protests and Israeli reprisals that began in the Gaza Strip and the West Bank in December, 1987, once again acutely reminded the world that the Arab-Israeli conflict is not over, and that it desperately needs a peaceful resolution. Furthermore, the events of the past few months, and the past 20 years[1] have demonstrated that a solution will not occur through the use of force, but rather must be brought about through negotiation.

One basis for any negotiations should be the reference to governing principles of international law.[2] Seemingly, one prerequisite for finding a solution to the conflict is to determine the legal rights and obligations of the parties involved in the dispute. Unfortunately, however, many legal aspects of the Arab-Israeli conflict, including the legal status of the occupied territories,[3] have not received

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1. The dispute between Arabs and Jews in the Middle East has existed far longer than twenty years, but it was slightly over 20 years ago, in 1967, that Israel's occupation of the Gaza Strip, the issue with which this Note is most concerned, began.

2. For an outstanding collection of works on the legal aspects of the Arab-Israeli conflict see, THE ARAB-ISRAELI CONFLICT, 3 vols. (J. N. Moore ed. 1974). As this note deals with the situation of the Gaza Strip as an occupied territory, certain other works in addition to those found in the Moore collection are also of particular relevance. *See, e.g.*, OCCUPATION: ISRAEL OVER PALESTINE (A. Druri ed., 1975); S. MALLISON & W. T. MALLISON, SETTLEMENTS AND THE LAW: A JURIDICAL ANALYSIS OF ISRAELI SETTLEMENTS IN THE OCCUPIED TERRITORIES (1986); MILITARY GOVERNMENT IN TERRITORIES ADMINISTERED BY ISRAEL 1967-1980 (M. Shamgar ed. 1982); Arsanjani, *United Nations Competence in the West Bank and Gaza*, 31 INT'L & COMP. L. Q. 426 (1982); Butovsky, *Law of Belligerent Occupation: Israeli Practice and Judicial Decisions Affecting the West Bank* 21 CAN. Y. B. INT'L L., 217 (1983); Gerson, *Trustee Occupant: The Legal Status of Israel's Presence in the West Bank*, 14 HARV. INT'L L. J. 1 (1973); Kuttner, *Israel and the West Bank: Aspects of the Law of Belligerent Occupation*, 7 Is. Y. B. INT'L L., 166 (1977); United Nations Seminar on the Question of Palestine nos. 1-13 (1980-86).

3. The term "occupied territories" in this note refers only to what are commonly known as the West Bank and the Gaza Strip. In 1967 Israel occupied these territories, and it also occupied the Sinai Peninsula and the Golan Heights. Israel has returned the Sinai to Egypt, and its administration in the Golan Heights is quite distinct from its administration in Gaza and the West Bank. Thus, they are not considered occupied territories for the purposes of this note.

adequate objective legal analysis.[4] The lack of scholarship on the Gaza Strip is especially acute. Indeed, this lack of examination prompted one author to refer to the Strip as "the forgotten corner of Palestine."[5]

Israel's presence in the Gaza Strip does, in fact, raise many interesting issues in international law, including questions concerning the law of belligerent occupation,[6] and the law of self-determination. This note examines some of these questions. Part I of the Note discusses pertinent aspects of the law of belligerent occupation. It points out that among the features of the traditional concept of belligerent occupation is the existence of an armed conflict between the occupying state and the state whose territory is occupied.

Part II examines the history of the Gaza Strip, in an attempt to determine whether it can be considered a territory subject to a belligerent occupation. An analysis of the history of the Gaza Strip points out the historical inadequacy of international law, which seemingly only recognizes the status of full title or the status of belligerent occupant within the traditional model, with no "intermediate" status which describes Israel's occupation. Nonetheless, Part II concludes that since 1948 the Strip has been subjected to a series of belligerent occupations, and that Israel must be considered a belligerent occupant of the Gaza Strip, although it does not fit the traditional model.

Part III analyzes the implications of Israel's status as a belligerent occupant. Part III contends that the Israeli government would like to continue its belligerent occupation indefinitely, because it may allow Israel to maintain control over the territory without giving the Palestinian Arabs rights of citizenship. Part III also examines the prolonged Israeli occupation of Gaza in light of the Egypt-Israel Peace Treaty of 1979 and the law of self-determination, concluding that Israel's present position may be contrary to its legal obligations to negotiate in good faith with the indigenous Arab population and to permit the Palestinian Arabs to exercise their sovereign rights in the Gaza Strip.

I. The Law of Belligerent Occupation

The law of belligerent occupation is part of the larger body of the international law of war. It was first codified at the Hague Peace Conferences of 1899 and 1907,

4. This statement is not intended in any way to take away from the outstanding quantity and quality of work that already exists regarding various aspects of the conflict. It merely is intended to inform the reader that this author believes that many of the topics addressed in this note have received inadequate critical attention in the past.

5. Lesch, *Gaza: Forgotten Corner of Palestine* 15 J. Pal. Studies 43 (1985). Neither Lesch nor the scholars who overlook the Gaza Strip have explained why the region has been virtually omitted from the scholarship. Perhaps Gaza has been overlooked because it contains fewer towns and is smaller in size and population than the West Bank. As Lesch points out, however, the geographic and strategic significance of the Gaza Strip is great.

6. Both Gerson, *supra* note 2, and Kuttner, *supra* note 2 at 167, maintain that this is the first case of military occupation since World War II.

culminating in the Regulations appended to the Fourth Hague Convention of the Laws and Customs of War on Land.[7] These Regulations are generally recognized as declarations of customary international law, and are thus binding upon all states.[8]

The law of belligerent occupation was further codified in the 1949 Geneva Conventions, most notably in the Fourth Convention, Relative to the Protection of Civil Persons in Times of War.[9] The Conventions incorporated the Hague Regulations, and while the Geneva Conventions themselves may not be considered declarations of customary international law, both Israel and Egypt are parties to the Conventions, and are therefore obligated to apply them in relevant circumstances.

The law of belligerent occupation should take effect when, during the course of armed conflict, one nation's army has gained physical control of a rival state's territory. Article 42 of the 1907 Hague Regulations provides standards for determining when a territory is occupied:

> Territory is considered occupied when it is actually placed under the authority of the hostile army.
>
> The occupation extends only to the territory where such authority has been established and can be exercised.[10]

The law of belligerent occupation, as expressed in both the Hague and Geneva Conventions, serves three basic purposes: (1) to protect the inhabitants of the occupied territory;[11] (2) to allow the occupying power to protect itself by not requiring withdrawal until a peaceful settlement has been reached,[12] while imposing an obligation on the occupier to negotiate in good faith for a peaceful settlement; and (3) to safeguard the status and reversionary interest of the sovereign ousted by the occupant.[13]

The Hague Convention and Geneva Conventions explicitly protect the reversionary interest of the ousted sovereign.[14] Article 43 of the Hague Convention

7. 32 Stat. 1803, II Malloy 2042, 1 Bevans 247 (1907) [hereinafter *Hague Regulations*].

8. *See, e.g.*, Dinstein, *The International Law of Belligerent Occupation and Human Rights*, 8 Is. Y.B. HUM. RIGHTS 104 (1978); Seventeen Residents of the Village of Rujerib v. the Government of Israel, et al. Judgment of Oct. 22, 1979, HCJ 390/79, reprinted in 19 I.L.M. 148 (1980). [Hereinafter *The Elon Moreh Case*].

9. 6 U.S.T. 3516, T.I.A.S. No. 3365, 75 UNTS 287 (1949). [hereinafter *Geneva Conventions*].

10. Hague Regulations, *supra* note 7, at article XLII.

11. This, perhaps, is the primary concern of both the Hague Conventions and the Geneva Conventions. Note that the Geneva Convention (IV) is addressed to the "Protection of Civil Persons in Times of War." *See, e.g.*, Kuttner, *supra* note 2, at 169.

12. As will be discussed in greater detail, *see* text and note at note 106, *infra*, U.N. Resolution 242 supports this as a goal.

13. Kuttner, *supra* note 2, at 169. *See generally* UHLER & COURSIER, COMMENTARY IV GENEVA CONVENTION (J. Pictet ed. 1958).

14. The Conventions also have numerous provisions relating to the other two main purposes highlighted above, but it is the issue of reversionary interest and the ousted sovereign that will be most important to this paper.

requires the occupant to restore and maintain public order, while respecting the existing laws of the occupied territory.[15] Article 47 of the Geneva Convention makes annexation of the occupied territory illegal unless a peace treaty has been concluded and both parties have agreed to the annexation.[16] To prevent illegal annexation, the Geneva Convention generally prohibits the occupant from settling its citizens in the occupied territory.[17]

The Hague Convention of 1907 envisaged the law of occupation operating only when two or more contracting states were involved in a war and the army of one took direct control of the territory of the other.[18] The Geneva Conventions of 1949 have broadened the scope of the law of occupation so that it applies without the presence of two contracting states engaged in armed conflict. For example, Article 2, common to all four Geneva Conventions, recognizes that the provisions of the Geneva Conventions should apply "to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance." In addition, Article 2 requires parties to the Convention to remain bound by the convention when engaged in conflict with a non-party.[19]

Israel denies the *de jure* applicability of the Geneva Conventions to its presence in the Gaza Strip,[20] (although it does claim to apply the humanitarian rules of the Conventions *de facto*) and some Israeli diplomats and scholars claim that Israel has a right of sovereignty over the territory.[21] One basis for this claim is that despite the explicitness of certain provisions of the Geneva Conventions, the Conventions do not specifically state that they apply when the occupied territory is not a sovereign state or part of a recognized state. Because the Gaza Strip was not part of a sovereign state when it was occupied, so the argument goes, there is no "ousted sovereign" with a reversionary interest, and thus nobody who can show better title than Israel.[22]

15. Hague Regulations, *supra* note 7, at article XLIII.

16. Geneva Convention, *supra* note 9, at article XLVII.

17. *Id.* at article XLIX. The ban on settlements in the occupied territories is not absolute. Israeli settlements in the Gaza Strip are legal when they meet the test of "military necessity" as a justification for their existence. *The Elon Moreh Case*, *supra* note 8.

18. Roberts, *What is A Military Occupation?*, 55 BRIT. Y.B. INT'L L. 249, 251-252 (1985).

19. Geneva Conventions, *supra* note 9, at article II.

20. This is the position that has been most notably put forward by Meir Shamgar, former Attorney General of Israel. Note, however, that Shamgar maintains that it is the policy of the Israeli government to apply the humanitarian provisions of the Geneva Conventions in a *de facto* manner to the occupied territories.

21. Blum, *The Missing Reversioner: Reflections on the Status of Judea and Samaria, reprinted* in II Moore, *supra* note 1, at 287.

22. *Id.*, at 305. Note that while Blum's article most directly addresses the situation in the West Bank, he also extends the argument to the Gaza Strip in a footnote:

> Since in the present view no state can make out a legal claim that is equal to that of Israel, this relative superiority of Israel may be sufficient, under international law to make Israeli posses-

An examination of the history of the legal status of the Gaza Strip which keeps in mind the purposes of the law of belligerent occupation will show, however, that as of 1967, Israel did become a belligerent occupant of the Gaza Strip and that the laws of belligerent occupation, including the Geneva Conventions apply *de jure* to Israel's occupation.[23] Once this has been established, the implications of Israel's continued occupation of the Gaza Strip can be determined.

II. Sovereignty and the History of the Gaza Strip

A. 1947-1949

When the First World War began, Turkey was the recognized sovereign over all of Palestine.[24] As a result of the War, Britain became the power which administered Palestine. Instead of claiming a right of sovereignty in Palestine, Britain purposely limited its power, choosing instead to control the territory according to the terms of the Palestine Mandate.[25] By 1947, Britain sought to terminate its role as Mandatory in Palestine.[26] When Britain made it known that it wished to terminate its Mandate, a United Nations Special Committee on Palestine (UNSCOP) was created by the General Assembly to consider the conflicting demands of the Arab and Jewish inhabitants of Palestine.[27] The Committee's proposals

sion of Judea and Samaria virtually indistinguishable, from an absolute title, to be valid erga omnes. *This same conclusion would hold true also in respect of the "Gaza Strip" (an area of roughly 200 sq. Km, which was under Egyptian military control until June, 1967).(Emphasis added).*

Id.

23. The Protocol I Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of Internation Armed Conflicts, signed at Geneva on 12 December 1977, reprinted in 16 I.L.M. 1391 (1978), ("The Geneva Protocol") seemingly applies the status of belligerent, and thus the law of belligerent occupation to a situation such as Israel's occupation of the Gaza Strip. Indeed, this is the position taken by Roberts, *supra* note 18, and Bothe, Patsch, and Solf, New Rules for Victims of Armed Conflict, 51-52 (1982). Israel was a persistent objector to the terms of the Protocol throughout the drafting sessions, and thus would not be explicitly bound by the terms of the Protocol. There has also been opposition in the United States and elsewhere to many of the terms of the Protocol, but as will become clear later in this note, the attempt to broaden the application of the Geneva Conventions should be looked at as a positive sign.

24. Indeed, while much of the current rhetoric found in the debate over sovereignty in the occupied territories relies on biblical and other historical justifications, from a legal point of view, the status of the territories was not a question immediately prior to World War I, as the Ottoman Empire had undisputed control.

25. *See* U.N. GAOR, Supp. (No. 11), Vol II 18, U.N. Doc. A/364, Add. 1 (1947) for a reprint of the Mandate.

26. L. Sohn, Cases on United Nations Law, 418-19 (1967). For a discussion of the Mandate period, see volume I of Moore, *supra* note 1.

27. G. A. Res. 106 (S-1), 1 GAOR, Special Session, Res. at 6, Doc. A/310 p.6 (1947).

were given to the General Assembly,[28] and on November 29, 1947, the General Assembly passed the Resolution for the Partition of Palestine.[29]

UNSCOP and the General Assembly both apparently believed that the Arab and Jewish populations were ready to assume sovereignty over designated areas of Palestine.[30] The Partition Resolution called for the creation of two independent states, with population concentrations determining the boundaries.[31] The Gaza region, which was part of the Gaza/Beersheba mandate region, was to be incorporated into the Arab State.[32] The two states were to be established after a nine-month transition period, with statehood being achieved no later than October 1, 1948.[33] During the period of transition, administration of the territories was to temporarily pass from Britain to a United Nations Commission on Palestine.[34] The Resolution also called for the rapid creation of provisional governments by the five member Commission, with full authority over the respective territories granted to these governments as soon as possible. Thus, the almost immediate exercise of sovereign rights by the indigenous Jewish and Arab populations was envisioned in the Partition Resolution.

While provisional Arab and Jewish governments were supposed to emerge during the winter of 1947–48, this period actually saw a growing number of battles between Jewish and Arab forces and little development of organized self-rule.[35] In March of 1948, the United States proposed to the U.N. Security Council that partition be suspended and replaced by a U.N. Trusteeship to control

28. 2 U.N. GAOR, Supp. (No. 11), Doc. A/364, Add. 1 (1947).

29. G.A.Res. 181 (II), U.N. Doc. A/519 (1948).[Hereinafter cited as *Partition Resolution*].

30. As with a great many other aspects of the Arab-Israeli conflict, there is much debate over the legal validity of the UNSCOP recommendation and the Partition Resolution. Generally, resolutions of the General Assembly are considered to be mere recommendations, and not legally binding. There is an argument to be made that the United Nations, as successor to the British, had a unique trustee role in Palestine, and that any measures taken would be legally binding. Support for this conclusion can be drawn from the International Court of Justice's advisory opinion concerning the continued presence of South Africa in Namibia. While the competence of the United Nations to partition Palestine has been strongly questioned by some, *see e.g.* F. KHOURI, THE ARAB-ISRAELI DILEMMA 43-67, (1978), this author believes that the Partition Resolution is evidence of an *opinio juris* that the Arab and Jewish inhabitants of Palestine were each entitled to independent statehood, and that the Resolution was the proper modality for bringing this about.

The fact that the Arab Palestinians were seen as having an inchoate sovereign right in 1947 becomes important in the later discussion of the status of the Gaza Strip. The Jewish population's sovereign right was, of course, exercised, and while some dispute the legality of the existence of the State of Israel, the majority believe, as expressed by Quincy Wright, that Israel's acceptance into the United Nations is per se evidence that Israel is an internationally recognized legitimate state. Wright, *The Middle East Problem* 64 AM. J. INT'L L. 270, 271 (1970).

31. *Partition Resolution, supra* note 29.

32. *Id.*

33. *Id.*

34. The commission was to consist of representatives from Bolivia, Czechoslovakia, Denmark, Panama, and the Phillippines.

35. H. SACHAR, A HISTORY OF ISRAEL 303 (1982).

all of Palestine. This proposal was rejected by the Security Council which feared that postponement of the partition would undermine the authority of the U.N. and would be contrary to the aims of the Charter. Despite the hostilities, the Security Council maintained that sovereignty should vest in the inhabitants and that the plan for the creation of two independent states should proceed. Thus, the United Nations reiterated its belief that the inhabitants of Palestine should be allowed to exercise the rights of sovereignty.[36]

On May 14, 1948, Britain completed its withdrawal from Palestine, the independent state of Israel was declared, and war broke out between the newly created state and the Arab nations surrounding it. During the war, the Israeli and the Egyptian armies each occupied parts of the Gaza region, and no independent Palestinian Arab state was created in Gaza.[37]

Throughout the summer and autumn of 1948, the U.N. sought to end the hostilities. This effort led the Security Council to take a variety of actions, including the passage of three important resolutions. The first of these, Resolution 54 of July 15, 1948, determined that the situation in Palestine constituted a "threat to the peace within the meaning of Article 39 of the United Nations Charter," and it ordered the governments of the involved nations, including the provisional Israeli government to observe a cease-fire within three days.[38] This resolution led to a brief decrease in hostilities, with the calling of a truce on July 18, 1948. By October, however, fighting broke out between the Israelis and Egypt in the Negev, and the truce was shattered.

On November 4, 1948, the Security Council passed Resolution 61.[39] The Resolution was in response to decisions taken by the Security Council on October 19, and it was meant to serve as a framework for a permanent truce agreement. It called for the immediate withdrawal of Israeli forces to positions held prior to October 14 as a precondition to peace, and the establsihment of provisional truce boundaries.[40] This resolution failed to end hostilities, and, on November 16, Resolution 62[41] was passed by the Security Council.

Resolution 62 differed from Resolution 61 in two distinct ways. First, unlike Resolution 61, Resolution 62 made explicit reference to Article 40 of the United Nations Charter, and it called upon the parties to seek an armistice, "as a further

36. 3 U.N. SCOR (270th and 271st Meetings), at 140-173 (1948).

37. During the 1948–49 war, Israel occupied two-thirds of the territory that was part of the intended Gaza-Beersheba region in the Partition plan. This included the northern section which was nearly one-third of the land along the Mediterranean Coast, and a major part of the Negev desert. In addition, 180,000 Palestinian refugees entered the territory which did not fall under Israeli control, thus "engulfing" the 80,000 indigenous residents. Lesch, *The Gaza Strip: Heading Towards a Dead End, Part I*, 10 UFSI REPORTS (1984).

38. S.C. Res. 54, 3 U.N. SCOR, Doc. S/902 (1948).

39. S.C. Res. 61, 3 U.N. SCOR, Doc. S/1070 (1949).

40. *Id.* at paras. 1-2.

41. S.C. Res. 62, 3 U.N. SCOR, Doc. S/1080 (1949).

provisional measure under Article 40." This reference to Article 40 gave the call for an armistice added legal force which was not present in the call for a truce in Resolution 61.[42]

Second, unlike Resolution 61, Resolution 62 did not require any troop withdrawals as a precondition to negotiations. It froze the positions of each of the armies and called upon the involved combatants to seek a peaceful settlement prior to any further troop movements.[43] The Resolution determined that the delineation of permanent boundaries would be the result of future negotiations, and that no troop movements need occur as a precondition to an armistice.[44]

Pursuant to Resolution 62, Israel and the Arab nations signed a series of bilateral armistice agreements in the winter months of 1948–49. The agreement relevant to Gaza, the Egyptian-Israeli General Armistice Agreement, came into force on February 24, 1949.[45] When it was signed, Israel controlled two-thirds of the territory that constituted the Gaza region in the Partition Resolution,[46] and Egyptian forces controlled the remaining third, the area now known as the Gaza Strip.[47] In accordance with the Armistice, the armistice lines were used to establish a provisional territorial boundary, which was "not to be construed in any sense as a political or territorial boundary."[48] Indeed, while the Armistice set the legal limit as to how far Israel could extend its boundaries, it in no way intended to create an international boundary, or make the Gaza region a part of Egyptian territory.

Thus, while the Partition Resolution was intended to bring about the creation of two independent states upon the termination of the Mandate, Britain's withdrawal from Palestine resulted in war and the subsequent occupation of territory by Egypt and Israel. The territory now recognized as the Gaza Strip[49] was thus given its shape by the first Arab-Israeli War and the Egyptian-Israeli Armistice

42. Article 25 states that Member nations will carry out Security Council decisions. Chapter VII of the U.N. Charter concerns breaches of the peace or threats of breach of the peace. Article 39 governs the determination of a threat of or an actual breach of the peace, and articles 41 and 42 provide for measures that the United Nations may take to bring about an end to the violation. Article 40 allows the Security Council to demand that provisional measures be taken by states pending a final solution by the United Nations. Article 40 is a compulsory article, requiring states to follow requests made under it.

43. Security Council Resolution 62, *supra* note 41.

44. *Id.*

45. U.N.T.S. (no.654) at 251; 4 U.N. SCOR Spec. Supp. (No.3), U.N. Doc. A/1264, Rev. I (1949) [hereinafter *Armistice Agreement*].

46. *See supra*, note 37.

47. The region's name was officially changed to "the Gaza Strip" by the Egyptian Administration in 1955, and in this section refers to the area under Egypt's control after the signing of the Armistice.

48. *Armistice Agreement, supra* note 45, at article V.

49. It should be pointed out that there is an argument to be made which concludes that the Armistice borders have become international boundaries, or in any event the minimum territory to which Israel is entitled. This argument is based on Resolution 242. *See* note 100, *infra* for a further enunciation of this view.

Agreement. In the aftermath of the Armistice Agreement, Egypt was left in control of the Gaza Strip.

B. The Egyptian Administration 1948–1956

On May 26, 1948, the Egyptian government officially placed the Gaza Strip under its administrative control, as an area "subject to the supervision of the Egyptian forces *in Palestine*."[50](Emphasis added). Initially, Egypt helped the Gazans form an All Palestine Council, but it closed the council's office in late 1948, preferring to control the area directly through an Egyptian military governor.[51] The governor appointed local inhabitants as municipal and village council members, and through them, Egypt controlled the civil and security functions in the Strip.[52]

The Egyptian government acted as a *de facto* administrator in Gaza, not as a sovereign with sovereign rights. First, Egypt did not attempt to annex Gaza or to claim a right of sovereignty in Gaza. Rather, Egypt maintained the 1906 boundary that had existed between itself and Palestine, and recognized the Armistice Agreement's prohibition on unilaterally altering the territorial situation.

Second, the Egyptian administrator was primarily concerned with maintaining security. In June of 1948, to maintain order and preserve the *status quo ante*, an administrative order directed all courts in Gaza to follow the laws and regulations in effect before May 15, 1948.[53] Thus, the basic laws of the Ottoman regime and the British Mandate remained in force. The Egyptian administrator did promulgate a series of laws, but most of the new Egyptian legislation was regulatory, procedural, or administrative in nature. Basic Law 254, issued in 1955, confirmed that the June 1948 order, the Palestine Order-in-Council 1922, all laws previously in force in Palestine, and all laws, orders, and instructions issued by the Egyptian authority after May 15, 1948 should be respected.[54] Thus, the preexisting legal order was essentially retained.

Third, there was no integration of the Palestinian and Egyptian people or economies. The Palestinians were classified as stateless peoples, they had to seek special travel permits from the Egyptians, and, for the most part, they were not allowed to seek jobs in Egypt. Although all of the Gaza Strip's trade before 1967 was with Egypt, the Egyptians did not facilitate the development of a single economy, and "the Gaza Strip was treated as an economic unit separate and distinct to that of Egypt."[55]

50. Kassim, *Legal Systems and Developments in Palestine*, 1 PAL. Y. B. INT'L L. 19 (1984).
51. Lesch, *supra* note 37, at 2-5.
52. *Id.*, at 3.
53. Kassim, *supra* note 50, at 29.
54. *Id.*, at 29.
55. S. ROY, THE GAZA STRIP 19 (1986); Lesch, *The Gaza Strip: Heading Towards a Dead End Part 2*, 11 UFSI REPORTS 1, 4 (1984); *see also*, Farhi, *On the Legal Status of the Gaza Strip*, in SHAMGAR, *supra* note 2.

Some commentators view Egypt's administration of Gaza as a belligerent occupation.[56] The Hague Regulations and the Geneva Conventions address situations when one nation occupies the territory of another during the course of armed conflict between the two states. Egypt and the Palestinians in Gaza were not engaged in hostilities with one another in 1948 and the Gaza Strip was not part of a recognized state. If the application of the law of belligerent occupation is limited to the narrow circumstances where the occupant state is engaged in battle against the occupied nation, then it would not apply to Egypt's administration of the Gaza Strip, and Egypt might not be considered a belligerent occupant.

If, however, a broader application of the status of belligerent occupant is accepted, then Egypt could be regarded as a belligerent occupant of the Gaza Strip after 1948. Such a conclusion seems justified, given that neither the Armistice nor any other legal instrument gave Egypt title over the Gaza Strip, and given the fact that Egypt did not make a claim of sovereignty in the Strip. Rather, it occupied and administered the territory in a fashion consistent with the three above-described principal purposes of the laws of belligerent occupation. Indeed, the actual administration by Egypt during the period 1948–1956, with its general maintenance of the previously existing legal order through the use of a military governor, and the segregation of the occupied territory and its inhabitants from the occupier's territory and people, fits the traditional model of a belligerent occupier who controls the territory only as a temporary trustee. As one prominent scholar has noted:

> The concensus[sic] of the opinions of writers on international law is that the legitimate government of the territory retains its sovereignty but that the latter is suspended during the period of belligerent occupation. In other words, the occupant does not in any way acquire Sovereign rights in the occupied territory, but exercises a temporary right of administration on a trustee basis until such time as the final disposition of the occupied territory is determined.[57]

Thus, an argument can be made to support the claim that Egypt was a belligerent occupant of the Gaza Strip after 1948, even though Egypt was not at war with the Gaza residents and Gaza was not a sovereign state. The fact that international law has not traditionally recognized any intermediate status between belligerent occupant and full sovereign should not alter this conclusion. Given that the Arab population had a right of sovereignty over the Gaza territory recognized by the Partition Resolution, and given that Egypt's status in the region did not rise to the level of a sovereign, the Arabs retained a reversionary interest in the Gaza Strip after 1948. Because the Armistice froze the existing situation, however, the Egyptians had no duty (or right) to grant independence to the inhabitants of the Gaza Strip.

The first period of Egypt's belligerent occupation of the Gaza Strip ended with

56. Roberts, *supra* note 18, at 288; Farhi, *supra* note 55.

57. G. VON GLAHN, LAW AMONG NATIONS 31 (1981).

the outbreak of war in October of 1956.[58] During the war, Israel occupied the Gaza Strip and remained there for four months. Israel's occupation of and withdrawal from Gaza merits closer attention because it reveals the international community's view of the status of the Gaza Strip. Thus, it is the focus of the next subsection.

C. The 1956 War and its Aftermath

On October 29, 1956, Israel invaded the Gaza Strip and the Sinai Peninsula and war once again broke out. The United Nations immediately attempted to put an end to the fighting. On October 30, the United States proposed a resolution in the Security Council that noted Israel's violation of the Armistice and called for immediate Israeli withdrawal to the armistice lines.[59] On November 2, the General Assembly, sitting in an emergency session, passed a resolution calling for an immediate cease-fire and withdrawal by all parties to points behind the armistice lines.[60] On November 4, the General Assembly approved a resolution which called for a cease-fire, and requested the Secretary General to submit a plan for an emergency international force to enforce a cease-fire.[61] A plan was submitted, and a force was created, that being the United Nations Emergency Force (UNEF).[62]

Egypt and Israel agreed to a cease-fire on November 4. Egypt also accepted the decision to station UNEF troops in Egypt and in territories under its control.[63] After Egypt's approval had been given, the main obstacle to placing UNEF forces in Gaza was Israel's concern that its withdrawal from Gaza would return Gaza to

58. For a discussion of the 1956 War, see Wright, *supra* note 30; R. BOWIE, INTERNATIONAL CRISES AND THE ROLE OF LAW: SUEZ 1956 (1974); Halderman, *Legal Bases for U.N. Armed Forces*, 56 AM. J. INT'L L., 971 (1962); and Moore, *supra* note 1.

59. *United Nations Consideration of Developments in the Middle East*, 35 DEP'T ST. BULL. 747, at 750, U.N. Doc. S/3710 (1956).

60. G. A. Res. 997(ES-I), GAOR 1st Em. Spec. Sess., Supp. (No.1), at 2, U.N. Doc. A/3354 (1956).

61. Res. 998(ES-I), GAOR 1st Em. Spec. Sess., Supp. (No. 1), at 2 U.N. Doc. A/3354 (1956).

62. For a description of UNEF, see, Wright, *supra* note 30, and Halderman, *supra* note 58.

63. For the most part, General Assembly Resolutions are considered to be only recommendations and not legally binding. Article 1(1) of the U.N. Charter states that one of the purposes of the United Nations is to take "collective measures for the prevention and removal of threats to the peace." Normally, these collective measures are to be implemented by the Security Council under its Chapter 7 powers. In 1956, however, the Security Council was paralyzed by the French and British vetoes. Thus it was left to the General Assembly to request that the Secretary General create UNEF, in accordance with the "Uniting for Peace" Resolution. G. A. Res. 377(A) Nov. 3, 1950. Because the call for UNEF came from the General Assembly in accordance with the Uniting for Peace Resolution, it was an Article 1(1) measure, but not covered by Chapter 7. As such, it required the consent of the nation within whose territory the troops were to be stationed, or the consent of the nation in actual control of the territory, in this case Egypt. For a more thorough discussion of the legal basis for UNEF, see Halderman, *supra* note 58.

Egyptian control and lead to a resumption of the *fedayeen* raids that had occurred prior to the war.

Because of its concerns, Israel initially intended to remain in the Gaza Strip and exercise its asserted right of belligerent occupation.[64] Israel stated that it would "willingly withdraw its forces from Egypt immediately upon conclusion of satisfactory arrangements with the United Nations in connection with the emergency international force," thereby indicating that it would withdraw from Gaza only if UNEF controlled the Strip upon Israel's departure.[65] Israeli statements and actions, however, made it unclear whether Israel was planning on only remaining in the Gaza Strip temporarily, or whether it wished to maintain a more permanent presence.

Indeed, Israel had indicated to the Security Council that it did "not seek to annex Gaza or maintain its military forces there."[66] Israel did, however, take the position that it should supply administrative services including agriculture, health education, and welfare services, and that law and order would be maintained by the Israeli police force.[67] These Israeli actions and statements led a team of U.N. observers to conclude that while Israel was not annexing the Gaza Strip, it did intend to establish a long-term administration of the region.[68]

Whether or not the impressions of the U.N. observers were correct, it was clear that the international community was unwilling to allow Israel to maintain an extended presence in the Gaza Strip. A primary reason for this was the existence of the 1949 Armistice Agreement, and the views of the United States and the U.N. Secretary General regarding the Armistice Agreement's binding force. The United States and Dag Hammerskjold, the Secretary General of the United Nations, strongly believed that the war could not change the *status juris* of

64. Israel's position, that it wanted to remain as an occupant of the Gaza Strip, was stated in an aide memoire to the Secretary General, reprinted in, 11 U.N. GAOR Annex I (Agenda Item 66) at 16-17, U.N. Doc. A/3384 Annex I, (1956), at 16-17. *See also* 11 GAOR Annexes, (Agenda Item 66) at 45, U.N. Doc. A/3511, (1957).

65. 11 U.N. GAOR, Annex II (Agenda Item 66) at 17, U.N. Doc A/3384 (1957).

66. 11 U.N. GAOR, Annexes, (Agenda Item 66) at 46, Doc. A/3511 (1957).

67. *Id.*, at 46-47.

68. From November 27 to November 30, two members of UNEF's headquarters staff conducted an investigation of Israeli practices in Gaza. In their report made to the Security Council on December 3, 1956, they concluded that Israel had "methodically established a programme to stabilize life in the Gaza area." Israel set up administrative control, but restored local government. In essence, they acted as the governing authority without disrupting local laws. One interesting observation made by the UNEF observers was that

> some measures taken by Israeli authorities as part of the general plan of administration of the Gaza area . . . would seem to indicate a trend towards facilitating the permanency of the existing situation achieved through military action by Israel.

11 U.N. GAOR, Annexes (Agenda Item 66) at 37, U.N. Doc. A/3491, (1957).

territory, and that because the Armistice had left Egypt in control of Gaza, Egypt should be allowed to resume its control.[69]

This view of the role of the Armistice in determining who controlled the Gaza Strip was shaped by the unique nature of the Egypt-Israel Armistice. Generally, an armistice agreement serves as a temporary truce, and the 1949 Armistice stated in its Preamble that it was concluded "to facilitate the transition for the present truce to permanent peace."[70] The actual terms of the armistice, however, gave it greater force than a temporary truce, because the agreement could only be terminated with the consent of both parties, with no unilateral termination or breach allowed.[71] The 1949 Armistice Agreement additionally prohibited the alteration of territorial boundaries through the use of force.[72] Thus, the Armistice had the legal effect of freezing the situation, as it existed in 1949, until a peaceful settlement could be formulated.

Both the Secretary General and the United States firmly believed in the inviolability of the Armistice, and supported the requirement that Gaza be returned to Egyptian control. While Hammerskjold did not recognize any Egyptian claim to *de jure* sovereignty over Gaza, he accepted the *de facto* Egyptian administrative control created by the Armistice.[72] Similarly, the United States believed that:

> With respect to the Gaza Strip . . . the United Nations General Assembly has no authority to require of either Egypt or Israel a substantial modification of the Armistice Agreement, which, as noted, now gives Egypt the right and responsibility of occupation. Accordingly, we believe that Israeli withdrawal from Gaza should be prompt and unconditional.[73]

The U.S. position was further justified by the fact that the U.S., as well as a representative majority of the international community, viewed Israel as the aggressor. The U.S. specifically believed that "the United Nations has properly established an order of events and an order of urgency and that the first requirement is that *the forces of invasion and occupation* should withdraw."[74] Israel's status as an aggressor in 1956 was at issue in the vote of a draft resolution proposed in the Security Council by the United States shortly after the 1956 War.[75] The resolution was supported in the Security Council by a vote of 7 to 2 with 2 abstentions.[76] The vetoes were cast by Britain and France, who supported

69. *Cf.* Report of the Secretary General Concerning the Implementation of Resolution 1123, 11 U.N. GAOR, Annexes, (Agenda Item 66) at 47, U.N. Doc. A/3512 (1957).

70. *Armistice Agreement*, *supra* note 45, preamble.

71. *Id.*, at article XII.

72. 11 U.N. GAOR, Annexes, (Agenda Item 66) at 50, U.N. Doc. A/3511 (1957).

73. This position was stated in an aide memoire from Secretary of State John Foster Dulles to Israeli Ambassador Abba Eban, 36 DEP'T ST. BULL., 392-93 (1957).

74. 36 DEP'T ST. BULL., at 393.

75. 11 U.N. SCOR, (749th mtg.) 8-19, U.N. Doc. S/P.V. 749 (1956).

76. *Id.*; Bowie, *supra* note 58, at 62, 66-68. As in 1967, Israel claimed in 1956 that its attack was an act of self-defense under Article 51 of the U.N. Charter.

Israel's efforts to free the Suez Canal from Egyptian nationalization. Although the vetoes rendered the resolution inoperative, the resolution demonstrates that a representative majority of the Security Council, most importantly the United States, viewed Israel as the aggressor.

Given that Israel would not accept Egyptian occupation of Gaza and that the Secretary General and the United States demanded it, compromise seemed impossible in early 1957. The Secretary General, did put forward the possibility that UNEF "could assist in maintaining quiet" in Gaza after Israeli withdrawal, which gave the impression that resumed Egyptian occupation was not necessarily the inevitable result of an Israeli withdrawal.[77] This suggestion was supported by the language of General Assembly Resolution 1125, which called for Israeli withdrawal to the armistice line and "scrupulous" observance of the Armistice Agreement, but also endorsed the stationing of UNEF troops in Gaza.[78]

On February 22, 1957, Hammerskjold indicated that a takeover of Gaza "would, in the first instance, be exclusively by UNEF," without commenting on Egypt's rights or duties.[79] This statement, the introduction of a draft resolution condemning Israel, and the United States' refusal to comment on the resolution provided the impetus for Israel to withdraw. On March 1, 1957, Israel announced to the United Nations that it was withdrawing from Gaza pursuant to U.N. Resolutions 1124 and 1125, on the assumption that "the takeover of Gaza from the military and civilian control of Israel will be exclusively by the United Nations Emergency Force."[80] Israel thus recognized that it had no territorial claim over the Gaza Strip, but it maintained its position that it was unwilling to let Egypt return to control in the Strip, a situation that would pose a potentially greater military threat to Israel than would a U.N. occupation.

On March 8, Israeli troops withdrew from the Gaza Strip and authority was transferred to UNEF. On March 15, five days after the General Assembly's 11th session was suspended until September, Nasser sent an Egyptian Administrative Governor into Gaza. Although Hammerskjold deplored the timing,[81] he believed that Egypt had retained its legal right to *de facto* administrative control of Gaza.

Although Israel was only in control of the Gaza Strip for a short time in 1956–57, it is important to be aware of this period and its legal implications. The four month period of Israeli administration of the Gaza Strip was a period of belligerent occupation by Israel. The Palestinian Arabs retained their inchoate sovereign rights, recognized by the Partition Resolution, and maintained during the first period of Egyptian administration, and Israel was required to protect these rights.

77. 11 U.N. GAOR, Annexes (Agenda Item 66) at 50, U.N.Doc. A/3511, (1957).
78. Res. 1125(XI), 11 U.N. GAOR, Supp. (No. 17) Doc A/3572 (1957).
79. Bowie, *supra* note 58, at 96.
80. 11 U.N. GAOR, (666th plenary mtg.) at 1275 (1957).
81. Bowie, *supra* note 58, at 97-100.

From the reports of the UNEF staff members[82] Israel fulfilled its obligations through the prescribed norm, the use of a military administrator to maintain order in the territory. Unlike a traditional belligerent occupation, however, Israel was forced to withdraw from the Gaza Strip before a peaceful resolution was reached. As indicated above, this was due to the political pressure placed on Israel, generated in part by the fact that Israel was deemed to be the aggressor.

It is generally accepted that the law of belligerent occupation must govern an occupation by an aggressor nation, even if the aggression violates the United Nations Charter, or customary international law.[83] Von Glahn suggests the possibility that while the law of belligerent occupation should apply to cases of aggressive occupation, "certain benefits accruing to lawful belligerent occupants should be denied to an aggressor occupant."[84] The outcome of the 1956 War demonstrates that the international community believed that the benefit of occupation itself should have been denied to Israel, as an agressor in breach of the Armistice Agreement.[85] This conclusion is logically sensible, for it gives a guarantee that the law of belligerent occupation will not become an aggressor's charter.

Thus, four months after the war of 1956, the situation returned to that which had existed before the war, with Egypt again occupying Gaza without making any territorial claims.

D. 1957-1967: Egypt's Second Administration of Gaza

The second period of Egyptian administration of Gaza differed somewhat from the first. Egypt dealt with the economic needs of the indigenous population, and attempted to facilitate greater, but still limited, political self-determination for the inhabitants of the Gaza Strip. For example, in 1957, Egypt established a local legislative council, chaired by the Egyptian Governor General,[86] and in 1961, Egypt promulgated a "constitution" for the Gaza Strip.

In March 1962, the Egyptian government proclaimed the constitutional order

82. *See, e.g., supra* note 68.

83. Roberts, *supra* note 18, at 293-94; G. VON GLAHN, THE OCCUPATION OF ENEMY TERRITORY 22 (1953).

84. G. VON GLAHN, *supra* note 83, at 23.

85. *See also* Roberts, *supra* note 18, at 291-94. The South African occupation of Namibia raises many questions in international law which are similar to those raised in this work. One similarity between South Africa's occupation of Namibia, and Israel's occupation in 1956 is that the United Nations Security Council has determined that South Africa is occupying Namibia in violation of international law, and should withdraw immediately. This position has been upheld by the International Court of Justice, and further points to the fact that when a belligerent occupant is found to be occupying a territory in violation of international law, it loses its right of occupation. The position of the international community regarding Namibia is also shaped by the current status of the law of self-determination, which is examined *infra* in section IIIc.

86. Lesch, *supra* note 37, at 4.

effective.[87] Unlike the previous Basic Law, the new constitution provided that the Gaza Strip should be an integral part of the Palestine territory and that Palestinians living in the Gaza Strip were part of a national Palestinian entity.[88] Egypt also encouraged residents of the Gaza Strip to express publicly their feelings as Palestinians, and a major conference of the Palestinian Student Organization held in Gaza in 1963 called for armed struggle against Israel and the establishment of an independent Palestinian identity.[89] In 1964, the formation of the Palestinian Liberation Organization (P.L.O.) furthered the feeling of Palestinian identity among the residents of Gaza.[90]

Despite the increasing expression of an independent Palestinian identity in Gaza after 1962, Egypt continued to occupy the territory until June of 1967. Although Egypt controlled the Gaza Strip with the tacit approval of the United Nations, Egypt was still no more than a belligerent occupant. The increased efforts made towards allowing the indigenous population to exercise nationalist aspirations corresponded to the growing acceptance of self-determination that occurred in the 1950s and 1960s.[91] But the existence of the 1949 Armistice, and the inability to effectively present a Palestinian political voice prevented the bringing about of an independent Palestinian state.

E. 1967 War and Occupation Revisited

Although Egypt regained control in 1956, the UNEF troops remained in the Gaza Strip through 1967. In May of 1967, with hostilities increasing in the Middle East, Nasser demanded that the U.N. remove UNEF from Egypt and Gaza, and the Secreatry General complied.[92] The removal of UNEF from Egypt and Gaza, and Israel's refusal to allow the troops to be re-stationed in its territory, were only two of a number of interrelated events that led to the outbreak of the "Six Day" War on June 5, 1967.[93]

On the night of June 9, a cease-fire ended hostilities between Egypt and Israel, with Israel once again in control of Gaza.[94] In the months following the war, the United Nations attempted to resolve the problems that caused the war and the problems created by it.

87. Kassim, *supra* note 50, at 29, quoting the Official Gazette (in Arabic).

88. Lesch, *supra* note 37, at 4.

89. *Id.*; A. FRANJI, THE P.L.O. AND PALESTINE (1983).

90. Lesch, *supra* note 37, at 5.

91. *See* text and notes section IIIc, *infra*.

92. As discussed *supra*, note 63, Nasser had to give his approval for the stationing of UNEF troops in Egypt. So too, did he have a legal right to demand that the troops be withdrawn.

93. *See* Moore, *supra* note 1, and sources listed therein for various accounts of the war.

94. 22 U.N. SCOR (1351st mtg.) at 4, U.N. Doc. S/P.V. 1351 (1967).

On November 22, 1967, the United Nations Security Council passed Resolution 242, which created the framework for a peaceful settlement of the conflict.[95] Resolution 242 was passed after lengthy debate, and the text of the Resolution came from one of four draft proposals submitted to the Security Council. While the first item in the first operative paragraph of the Resolution is the call for Israeli forces to withdraw "from territories occupied in the recent conflict," an argument can be made that this requirement was contingent upon Israel's security needs being met.[96] Regardless of whether or not one accepts the argument that Resolution 242 did not require immediate Israeli withdrawal, the manner in which Israel's occupation of territory was treated in the Security Council in 1967 differed dramatically from 1956–57, and merits further attention.

In 1956, Israel was viewed by a representative majority of the Security Council, most importantly by the United States, as an aggressor. In the 1967 conflict,

95. S.C. Res. 242, 22 U.N. SCOR (1382d mtg.) at 8 (1967). The Resolution stated:

The Security Council, Expressing its continuing concern with the grave situation in the Middle Et, Emphasing the inadmissibility of acquisition of territory by and the need to work for a just and lasting peace in which every state in the area can live n security, Emphasizing further that all Member States in their acceptance of the harter of the United Nations have undertaken a committment to act in accordance with Article 2 of the Charter,

1. Affirms that the fulfillment of Charter principles requires the establishment of a just and lasting peace in the Middle East which should include the application of both the following principles:

(i) Withdrawal of Israel armed forces from territories occupied in the recent armed conflict;

(ii) Termination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force;

2. Affirms further the necessity

(a) For guaranteeing freedom of navigation through international waterways in the area;

(b) For achieving a just settlement of the refugee problem;

(c) For guaranteeing the territorial inviolability and political independence of every State in the area, through measures including the establishment of demilitarized zones;

3. Requests the Secretary General to designate a Special Representative to proceed to the Middle east to establish and maintain contacts with the States concerned in order to promote agreement and assist efforts to achieve a peaceful and accepted settlement in accordance with the principles and provisions in this resolution;

4. Requests the Secretary General to report to the Security Council on the progress of the efforts of the Special representative as soon as possible.

96. Although a number of nations voting for Resolution 242, including the Soviet Union and India, stated that they were voting for the Resolution with the understanding that it required immediate Israeli withdrawal, the course of the debates supports the conclusion that immediate withdrawal was not required. This can be seen primarily in the rejection of the Three Power Resolution as well as the rejection of a Soviet draft proposal. Each of these draft proposals called for Israel's immediate withdrawal and stated that occupation, and not just acquisition of territory by the Israelis, was inadmissible.

however, Israel was not considered an aggressor. On June 14, 1967, the Soviet Union proposed a draft resolution, which condemned Israel's aggressive activities in the first paragraph, and called for its withdrawal to Armistice boundaries in the second.[97] The resolution failed to pass the Security Council; the first paragraph received only four affirmative votes, with eleven abstentions,[98] a result substantially different from the 1956 vote.

If Israel had been deemed to be the aggressor, seemingly it would have been required to withdraw immediately from the occupied territories; Israel would have been in breach of the 1949 Armistice Agreements (and the United Nations Charter), and would not be allowed to benefit from its breach of the Armistice. In fact, this was the position taken by the Arab states in many of their appearances in front of the Security Couincil in the summer and autumn of 1967. They based their demand for immediate Israeli withdrawal on the claim that Israel was the aggressor.[99]

If, however, it was determined that the Arab states were the aggressors in 1967, they would have been estopped from denying their breach of the Armistice Agreements in the event of the successful occupation of territory by the Israelis, and their claim for immediate Israeli withdrawal would be weakened. The conclusion that the determination of whether immediate withdrawal by the occupier is required should be made by determining first if the occupier is an aggressor is supported by the fact that such a rule can be used to provide a disincentive for aggression.

A nation which is the aggressor can not gain from its aggression. But a nation that occupies an aggressor's territory while acting in self-defense may remain in that territory, until it negotiates (in good faith) a peaceful settlement, thus furthering the idea that the law of belligerent occupation should not be used as an aggressor's charter, but rather as a means of bringing about peaceful resolutions to military conflicts. Israel was not deemed to be an aggressor in 1967; it was therefore not pressured into immediately withdrawing, and was allowed by Resolution 242 to remain in Gaza until a peaceful solution could be reached.[100]

97. 22 U.N. SCOR, (1360th mtg.) at 18-19, U.N. Doc. S/P.V. 1369 (1967) 18-19.

98. *Id.*

99. *See also* the records of the various meetings in 22 U.N. SCOR, Meetings 1341-1382.

100. Another interesting outcome of the 1967 War and the debates on Resolution 242 is that it seemed to establish the Armistice boundaries as the minimum territory to which Israel was entitled. This conclusion comes from the fact that Israel's withdrawal requirement in Resolution 242 was to the June 4, 1967, Armistice boundary, and not to the 1948 Partition Resolution boundary, as the operative language in the resolution states that Israel had to withdraw to "territories occupied in the recent conflict." In fact, in the rejected draft proposals, the article "the" appeared before this phrase, but it was ultimately removed after debates. Reading the accepted text, with its omission of the article "the," and its allowance for territorial adjustments for secure borders, it is reasonable to conclude that Israel was not required to give back all of the territory it occupied in 1967. Clearly, however, the resolution requires Israel to withdraw from a substantial portion of the territory it occupied in 1967,

Although Israel was not considered an aggressor in 1967, there still remains the question of whether Israel was a belligerent occupant as a result of the Six Day War, or whether Israel attained a greater right in the Gaza Strip. The traditional view of belligerent occupation requires that one state oust another sovereign during armed conflict.[101] The international community, however, has never recognized Egypt as the sovereign in Gaza, and Egypt has never claimed sovereignty. Thus, Israel's ouster of Egypt, a prior belligerent occupant, does not satisfy the traditional requirement that the occupant oust a "legitimate" sovereign. Scholarly works addressing this issue have attempted to determine Israel's status in the occupied territories after 1967 without recognizing Israel as a belligerent occupant. Some of these works have alternatively argued that Israel has full title,[102] that Israel is a "trustee occupant,"[103] or that the Gaza

including the Gaza Strip. For a summary of the debates on Resolution 242, see 23 U.N. GAOR, Supp. (No. 2) at 13-23, U.N. Doc A/7202 (1968).

101. One reason Israel refuses to acknowledge the *de jure* application of the Geneva Conventions to its occupation of the Gaza Strip and the West Bank is that it feels an unqualified application of the Conventions would enhance Jordan's claim of sovereignty in the West Bank, and Egypt's claim of sovereignty in the Gaza Strip, in that these nations would claim to be the ousted sovereign. This conclusion comes from an overly rigid application of how and when the law of belligerent occupation applies. Furthermore, while Israel may have some reason to be concerned about Jordan's claims in the West Bank, this note has shown that Egypt never desired to make a claim of sovereignty in the Gaza Strip.

102. Blum, *supra* note 4. Blum's article focuses on the West Bank and determines that sovereignty does not disappear when a mandatory regime is terminated, and that Jordan illegally annexed the West Bank after 1948, and therefore did not gain legal title. From there, Blum justifies Israel's entrance in the West Bank as a defensive measure; he then maintains that since no legitimate sovereign was ousted by Israel, the legal standing of Israel became that of a state which is lawfully in control of territory in respect of which no other state can show better title. Blum concludes from this line of reasoning that Israel, in the eyes of international law, has a title that is "virtually indistinguishable" from an absolute title, valid *erga omnes*. In a footnote, Blum assumes that since Egypt never attempted to claim title to Gaza, Israel's title there is equal to its title in the West Bank, and thus is the same as absolute title. *See supra* note 22.

For a criticism of the theoretical soundness of Blum's argument see Weiler, *Israel and the Creation of a Palestinian State: The Art of the Impossible and the Possible*, 17 TEX. INT'L. L. J. 287, 314-318 (1982). In addition to the theoretical flaws in Blum's argument, it is apparent that his view is practically unteneable. *See* section IIId, *infra*.

103. Alan Gerson reaches this conclusion in his article, *Trustee Occupant: The Legal Status of Israel's Presence in the West Bank*, 14 HARV. INT'L L. J. 1 (1973). He does so by focusing on the legal effect of the termination of the mandate, as well as the binding nature of the Partition Resolution. Gerson begins with an analysis of the status of sovereignty during the mandate and upon its termination, for support that sovereignty vested in the Palestinian Arabs as well as the Jews. The reliance upon the mandate seems unnecessary. The fact that Israel was recognized as a sovereign state, and the contemplation in 1947 of the almost immediate creation of a Palestinian state supports the view that sovereignty was perceived to be in the hands of the inhabitants.

Once Gerson establishes that sovereignty vested in the inhabitants, he goes on to argue that Jordan's attempted annexation of the West Bank had no legal affect, and that Jordan never became a legitimate sovereign in the West Bank. He then concludes that because Israel lawfully entered the West Bank in 1967, and Jordan was not the legitimate ousted sovereign, Israel had a right to remain in

Strip is to be administered by the United Nations as a non-self-governing territory.[104]

While scholars have disputed Israel's status as a belligerent occupant, there is support for the view that Israel was, in fact, a belligerent occupant in the Gaza Strip after 1967. The determination that Israel was not an aggressor in 1967 gave it no greater rights to *title* over Gaza. It is an accepted principle of customary and conventional international law that a nation may not gain title to territory through the use of armed force. The United Nations Charter, the Armistice Agreements, and the result of the 1956 War, all demonstrated that the territorial status of Gaza could not be altered through armed conflict. Resolution 242, which Israel has accepted as binding, adhered to that principle and merely allowed Israel to protect its legitimate security needs until a peaceful settlement occurred; it did not allow Israel to annex the territories occupied in the conflict. One of the basic aims of the law of belligerent occupation is to allow an occupant to protect its legitimate security needs until a peaceful settlement is reached. Resolution 242 did no more than recognize this fact; it still recognized the fact that acquisition of territory by war was inadmissible.

In addition, Israel still had a duty to administer the territories as a temporary

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the West Bank. Gerson next argues that because Israel did not oust a legitimate sovereign, it was not a belligerent occupant. Rather, Israel, was and is a trustee-occupant in the West Bank.

This construction of international law allows Gerson to propose that Israel, as a trustee-occupant, may enact new legislation, as long as it is for the benefit of the inhabitants. This is in contrast to the belligerent occupant who must maintain the *status quo ante bellum*.

Although Gerson's article should be applauded as an attempt to break away from rigid application of the doctrine of belligerent occupation or shortsighted partisian approaches, it suffers from a number of defects. First, he too falls into the trap of narrowly defining to whom the Geneva Conventions may apply by failing to recognize the Palestinians as the ousted sovereign. Thus, his model could be manipulated to deny the Palestinians their ultimate right to self-determination. Secondly, he appears to distinguish between "aggressor" occupant and belligerent occupant, distinguishing between Israel and Jordan, even though at one point he rejects differentiating between the two countries. Finally, he fails to recognize that which von Glahn and many others have recognized as being true of belligerent occupations—the occupant "exercises a temporary right of administration on a trustee basis until such time as the final disposition of the occupied territory is established." G. VON GLAHN, *supra* note 57.

Note also the call for reform in the law of belligerent occupation in Note, *The Need for Change in the Fundamental Law of Belligerent Occupation*, 37 STAN. L. REV. 1573 (1985). That note, like Gerson's article, is searching for a way that Israel can bring about autonomy of the Palestinians, without giving up its occupation and control in the occupied territories. Both authors believe that it is impossible to do this under the current law of belligerent occupation, as they understand it. That conclusion is not necessarily contradictory to the conclusions this note reaches, which is that the law of belligerent occupation must be applied to the current situation in the Gaza strip in accord with the purposes of the laws, which includes the protection of the inhabitants of the occupied territory. However, by recognizing the right of self-determination of the Palestinian people, the problem that exists in the Gaza Strip can be solved without having to create new legal constructs. It should also be noted that both Gerson and the note present their arguments as a justification for continued Israeli presence in the occupied territories. They merely wish to see a more humane occupation.

104. Arsanjani, *supra* note 2.

trustee, and Israel recognized this duty.[105] The protection of the fundamental rights of the inhabitants of the occupied territory is another basic goal of the law of belligerent occupation, and it too was to be met through adherence to Resolution 242. Thus, the basic goals of the laws of belligerent occupation were manifested in Resolution 242, the legal document which gives legitimacy to Israel's occupation.[106]

The earlier analysis of the Egyptian administration of Gaza showed that the Palestinians never relinquished their sovereign rights in the Gaza Strip, but were merely unable to exercise these rights. The Six Day War and its aftermath did nothing to alter these rights. Both Egypt and Israel, in their administration of the Gaza Strip, were required to protect the legal order *status quo ante* and thus respect the unexercised sovereign rights of the Palestinians. Israel's legal obligations in Gaza were indistinguishable from those of Egypt, who had acted as a belligerent occupant, and was recognized as such by Israeli jurists,[107] in 1967 Israel became a belligerent occupant of the Gaza Strip, with the right of sovereignty continuing to vest in the indigenous population.

The conclusion that Israel became a belligerent occupant is correct in spite of the fact that the occupation in certain respects does not fit the model of a belligerent occupation as envisioned by the Hague Conventions and the Geneva Conventions. The lack of symmetry with the traditional concept has been accentuated since 1967 by the peace negotiations between Israel and Egypt.[108] Nonetheless, the fact that international law is not familiar with an occupation in the nature of Israel's occupation of the Gaza Strip should not be used to deny the application of the laws of belligerent occupation to Israel's presence in the Gaza Strip. The next section of the Note proposes the most proper course of events for the future of the Gaza Strip, in light of the recognition that Israel must be considered a belligerent occupant, recent developments in the Gaza Strip, and developments in the law of self-determination since 1967.

III. Israel's Belligerent Occupation: Legal Implications

A. The Israeli Position

Although Israel's status as a belligerent occupant in Gaza has been recognized by a vast majority of the international legal community,[109] Israel has not conceded

105. *See*, Shamgar, *supra* note 2, for what is one official Israeli position regarding the territories, namely that Israel will apply the humanitarian provisions of the Geneva Conventions, without accepting their *de jure* application.

106. Resolution 242 is a bit more ambiguous on the question of protecting the reversionary interest of the ousted sovereign, the third aim of belligerent occupation law mentioned *supra*. The Resolution makes reference to "the refugee problem," that being the problem of the Palestinians, but it makes not explicit claim for Palestinian self-determination. The right of self-determination must be found elsewhere, such as in the Partition Resolution.

107. Farhi, *supra* note 55, at 78.

108. *See* text and note at section IIIb, *infra*.

109. This can be seen by looking at the numerous General Assembly Resolutions that have been

sovereignty over Gaza or the West Bank. Israel refuses to admit that the Geneva Conventions apply to its occupation of the Strip and its settlement policy, which clearly violates the Convention,[110] has been dramatically accelerated in Gaza since 1979. Moreover, Israel created a civilian administration in Gaza in 1981. This administration, headed by a military officer, assumed responsibility for all non-security functions in the Gaza Strip.[111] These actions all seemingly demonstrate that Israel wishes to exercise rights in Gaza greater than those afforded to a belligerent occupant.

Although Israel would apparently prefer to have rights greater than a belligerent occupant in the Gaza Strip, the "lesser" status of belligerent occupant better fulfills Israel's apparent aims in Gaza than claiming full title and officially annexing the Gaza Strip. A claim of Israeli title over the occupied territories would result in the annexation of the West Bank and the Gaza Strip, areas which contain 1.2 million Palestinian Arabs.[112] The additional non-Jewish population that would be living in the enlarged single state would present the Israeli government with three alternatives. First, Israel could grant the Arabs full rights as citizens of the state of Greater Israel, thereby destroying the Jewish nature of the State.[113] As a second alternative, it could deny the Palestinians their rights, in complete contradiction of the ideal of Israel as a democratic state. Third, Israel could expel the Arabs, which would destroy Israel's moral character as a state. None of these solutions would appeal to the mainstream political leadership in Israel, and certainly would receive little public support amongst Israeli Jews and strong opposition from Israeli Arabs.[114]

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passed since 1967, declaring Israel a belligerent occupant, and calling for its withdrawal, *e.g.*, General Assembly Resolution 3092, 28 U.N. GAOR Resolutions (1973). For the position of the United States, see, Boyd, *The Applicability of International Law to the Occupied Territories*, 1 Is. Y.B. H. R. 258 (1971).

110. *Geneva Convention*, *supra* note 9, at article XLIX which prohibits the settlement of the occupant's citizens in the occupied territory. For an example of the treatment of settlements by the Israeli Supreme Court, see, *The Elon Moreh Case*, *supra* note 9.

111. S. Roy, *supra* note 55, at 127-28. Roy maintains that "the civil administration was created to alter the status of the Gaza Strip and West Bank as occupied territories." She claims that the establishment of the civil administration produced a clear division between civilian and military functions, and that a number of laws in Gaza became permanent through the change. The idea behind the civil administration, according to Roy, is that in the event that the territories are granted autonomy, all powers not given to the civil administration will remain under Israeli control, and by limiting the powers given to the civil administration Israel could limit the authority given to the Arab inhabitants. Indeed, some of the powers of the military commander have already been transferred to the Israeli government so that a measure of de facto annexation has been attempted. Thus, according to Roy, as the military administration transfers more authority to the internal Israeli government, and the civilian authority is given only limited power to transfer to the indigenous population, a de facto annexation will occur even while Israel appears to be granting autonomy.

112. This is the estimated Arab population as of 1985. S. Roy, *supra* note 55, at 5.

113. The influx of Palestinians, and their higher birth rate, would make the Jewish population a numerical minority within Israel, probably sometime early in the next century.

114. This idea of the paradoxical result of Israeli annexation of the occupied territories, and the

If Israel does not desire to annex the Gaza Strip, regardless of whether or not it is legal, it must consider other alternatives. Israel could grant the inhabitants "personal autonomy" while denying the Palestinians "territorial autonomy."[115] In its autonomy negotiations with Egypt pursuant to the Egypt-Israel Peace Treaty,[116] Israel maintained that the Palestinians should be entitled to limited personal, but not territorial, autonomy.[117] Under this scheme, Israel's military forces and its settlements would remain in Gaza after autonomy was granted.[118] This alternative would avoid the problem of granting Israeli citizenship to the Palestinians, but it fails to resolve the question of the ultimate territorial status of the Gaza Strip, as required by Resolution 242. Israel's desire to grant personal autonomy, while maintaining territorial control, contradicts Resolution 242 and the Peace Treaty, unless Israel can provide a legal justification for remaining in the Gaza Strip.

The legal justification for a continued Israeli presence in the Gaza Strip could possibly come from application of the law of belligerent occupation.[119] Israel could recognize that a regime of belligerent occupation exists and that it has a legal right to continue the occupation until a peaceful settlement is negotiated. Israel could justify, as being militarily necessary, treating the Arab inhabitants of Gaza separately, while at the same time maintaining military and administrative control of the Gaza Strip. By maintaining a regime of belligerent occupation, Israel can continue to exercise military control over the Gaza Strip, and deny the inhabitants the rights of Israeli citizenship.

If the regime of belligerent occupation applies, however, Israel has a duty to negotiate in good faith with the "ousted sovereign" to bring about a peaceful termination of the occupation. But Israel does not recognize a Palestinian Arab government with which to negotiate a peaceful resolution to the territorial problem, and the Palestinians are the ones who have the right of sovereignty in the Gaza Strip, not the Egyptians wtih whom the Israelis have negotiated a peace treaty.

desirability to maintain the status of belligerent occupant comes from Professor Joseph Weiler. For a fuller explanation of this position, see his unpublished lecture given at the European University, 1984 (available from the MICHIGAN JOURNAL OF INTERNATIONAL LAW).

115. For a discussion of autonomy in the occupied territories, see Y. DINSTEIN, MODELS OF AUTONOMY 255-303 (1980).

116. Treaty of Peace Between the Arab Republic of Egypt and the State of Israel, 32 U.S.T. 2148, T.I.A.S. No. 9827 (1979); *reprinted* in 18 I.L.M. 362 (1979)[hereinafter *Peace Treaty*].

117. For an account of the autonomy negotiations see Lapidoth, *The Camp David Process and the New U.S. Plan for the Middle East: A Legal Analysis*, USC CITES, 17 (1982-83).

118. *Id.* at 22-24.

119. The irony is that the status of belligerent occupant is the one that the more moderate scholars and diplomats attribute to Israel, *e.g.*, Dinstein, *supra* note 8, while the hardliners, such as Blum, argue that Israel is more than a belligerent occupant.

B. The Peace Process

In November 1977, Egyptian President Anwar Sadat travelled to Jerusalem to meet Israeli Prime Minister Menachem Begin. This visit initiated a series of events that ultimately led to the Camp David Accords of 1978[120] and the signing of the Treaty of Peace between Egypt and Israel in March 1979. The Camp David Accords included a "Framework for Peace in the Middle East," and the entire Accord was incorporated into the Peace Treaty.[121] The Framework recognized Resolution 242 as the basis for a peaceful settlement to the Middle East conflict. Building upon this basis, Egypt and Israel were to find a solution to the problem of the occupied territories.

The plan that was proposed called for Israel, Egypt, Jordan, and "the representatives of the Palestinian people" to participate in negotiations that would lead to a transition from Israeli military and administrative control to full autonomy for the inhabitants of the occupied territories. The autonomy envisaged in the Framework would be temporary, lasting only five years. By the third year of autonomy, negotiations would be held to determine the final status of Gaza and the West Bank, and to conclude a peace treaty between Israel and Jordan. The Gaza and West Bank negotiations would involve all four above-mentioned parties; the peace treaty negotiations would exclude Egypt.[122]

Autonomy negotiations began shortly after the signing of the Peace Treaty. Disagreements arose, however, which led to the collapse of negotiations and the failure to implement an autonomy plan.[123] During the post-Camp David years, the Palestinians in the Gaza Strip have actually found themselves further from autonomy or statehood.[124]

At this point, it is worth raising the legal implications of the Peace Treaty on the Gaza Strip. This note has argued that a state of belligerent occupation can exist even when the occupying power is not occupying as a result of armed conflict against the occupied state. Nonetheless, since 1948, Egypt and Israel have, to some extent, justified their successive occupations of Gaza by the existence of hostilities between the two countries.[125] The peace treaty terminated the state of belligerence between Israel and Egypt. Thus, if the state of belligerence between Israel and Egypt has ended, one might argue that Israel's legal justification for claiming a right to occupy the Gaza Strip as a belligerent occupant may have disappeared, for it can no longer rely on hostilities with Egypt to justify its occupation of the Gaza Strip.

120. The Camp David Accords are printed in 17 I.L.M. 1463-1474, from *The Camp David Summit*, U.S. Department of State Publication 8954, Near East and South Asian Series 88 (1978).

121. *Peace Treaty, supra* note 116.

122. *Id.*

123. Lapidoth, *supra* note 117, at 20-23.

124. *See* note and text, *supra* note 111.

125. *See* notes and text *supra* sections IIc and IIe.

The above argument loses sight of the fact that hostilities still exist between Israel and the Palestinian people, and it is the Palestinians who have a sovereign right in the Gaza Strip. Because the Palestinian inhabitants of the Gaza Strip are not bound by the terms of the Peace Treaty, as they are not a party to it, Israel may have a right to protect itself from the Palestinians with whom Israel has not yet declared formal peace. This then leads to the issue of the obligation of good faith negotiations for a peaceful settlement, and how they are to occur in the Gaza Strip, when Israel refuses to recognize a Palestinian government with whom to negotiate.

C. The Law of Self-Determination and the Rebuttal of Israeli Occupation.

A claim that Israel can continue to maintain a belligerent occupation of the Gaza Strip not only frustrates the aims of the Peace Treaty, it also conflicts with the right of self-determination of the Palestinian people. Indeed, while the Egypt-Israel Peace Treaty might not provide a sound legal basis for requiring Israeli withdrawal from the Gaza Strip, the law of self-determination may.

Article 1, Section 2 of the United Nations Charter states that one purpose of the United Nations is to "develop friendly relations among nations based on a respect for the principle of equal rights and self-determination of peoples."[126] When the United Nations Declaration of Principles of International Law Concerning Friendly Relations Among States in Accordance with the United Nations Charter was passed by the General Assembly in 1970, the right of self-determination in previously non-self-governing territories was given full recognition in international law.[127]

The crystallization of the right of self-determination into a fundamental principle of international law is evidenced not only by the Resolution, but also by increased state practice, with a dramatic acceleration of grants of independent statehood, and self-determination movements since the 1960s. Even in the Gaza Strip, the growing recognition of the right of self-determination is evidenced by Egypt's increased efforts to make the Gaza Strip part of a Palestinian entity and indentity in the second part of its occupation, and by the rise of Palestinian nationalism and the P.L.O. in the years following the 1956 War.

Thus, the Palestinian right to self-determination that was initially recognized in the 1947 Partition Resolution gained greater legitimacy in the years since 1947, and especially since 1967. Indeed, Egypt and Israel partially acknowledged the right of self-determination of the Palestinian people in the Peace Treaty. Section A(1)(a) of the Camp David Framework for Peace in the Middle East, as incorporated into the Peace Treaty, recognized the goal of "self-government" in the

126. U. N. Charter, art. 1:2.

127. G. A. Res. 2625, 25 U.N. GAOR, Supp. (No. 28) at 121, U.N. Doc. A/8028 (1970).

occupied territories, and provided that the self-governing authority should be "freely elected by the inhabitants of those areas."[128] This language implies a recognition of the the rights of the Palestinians to choose how they will govern themselves. But the right to self-determination enunciated in the Peace Treaty may not be as significant as it appears.

First, while the Camp David Framework speaks of a temporary period of gradually increasing autonomy, leading to a final determination of the territories' status, it does not explicitly mention the creation of a Palestinian state in both territories combined, or either the Gaza Strip or the West Bank individually. Second, and more importantly, the Framework, requires that Jordan, as well as Egypt, Israel, and "representatives of the Palestinian people," be involved in any negotiations concerning Gaza's status, including "the modalities for establishing the self-governing authority."[129] This limits the right of the Palestinian people to independently determine their own future, or to at least engage in direct bilateral negotiations with Israel for an end to the Israeli occupation. Thus, the use of the Peace Treaty as a means of carrying out Palestinian self-determination is limited.

If, as Israel claims and Egypt admits, Egypt and Jordan have no sovereign rights in the Gaza Strip, the requirement that these two nations be involved in determining the future of the Gaza Strip does not appear to correspond with the notion of a people determining its future.[130] This is especially true if the Palestinian people do not choose to have Egypt and Jordan act as their negotiator for statehood.

The role that Israel should play in determining the future of the Gaza Strip is also somewhat unclear. Seemingly, any extended Israeli role in determining the Gaza Strip's future would not be in accordance with the Palestinians' right to determine their own future in accordance with Resolution 2625, which states that "[t]he establishment of a sovereign and independent state, the free association or integretation with an independent State or the emergence into any political status *freely determined by a people* constitute modes of self-determination by that people."[131]

128. *Camp David Accords*, *supra* note 120.

129. Jordan's claim that it be involved in the negotiations over the future of the Gaza Strip is especially tenuous, for Jordan has never exercised any control, or made any claims of sovereignty over the Gaza Strip. Jordan has, however, attempted to annex the West Bank, that occurring in 1950. The legality of Jordan's annexation of the West Bank is highly disputed. That dispute is beyond the scope of this note. Jordan could attempt to base its inclusion in negotiations of the future of the Gaza Strip on an argument that the future of the Strip and the West Bank must be decided together. This claim could be refuted by the fact that during the course of the Camp David negotiations, all the involved parties recognized the possibility of determining the future of the two regions separately, as evidenced by President's "Gaza first" proposal. While this proposal appealed to Egypt and the United States, Prime Minister Begin wanted the issue of autonomy settled generally, but agreed that the results of negotiations could be implemented in Gaza first. The Palestinian inhabitants of the Gaza Strip showed "virtually no support" for Sadat's plan, a fact that should not be overlooked. *See* Lesch, *supra* note 37, at 8, and sources cited therein.

131. G.A. Res. 2625, *supra* note 127 (emphasis added).

Given that the Palestinian inhabitants of the Gaza Strip are not a party to the Peace Treaty, and that they are entitled to determine their own future under the law of self-determination, the Camp David Framework and the Egypt-Israel Peace Treaty do not appear to be the proper mechanism for bringing about Palestinian self-determination in the Gaza Strip. Neither the Treaty itself nor the modalities of choosing self-government which it suggests express the "free determination" of the Palestinian people. Given that neither Egypt nor Jordan has any sovereign rights in the Gaza Strip, there is no reason according to international law why they should be the ones who determine the Palestinians' future.

Because Israel is a belligerent occupant of the Gaza Strip, it has the duty to negotiate in good faith for its withdrawal from the Gaza Strip, but the right to maintain its occupation until its security after withdrawal is guaranteed. Therefore, direct negotiations between Israel and the Palestinian inhabitants of the Gaza Strip, although contrary to the requirements of the Peace Treaty, would seemingly constitute the most proper legal solution to the "Palestinian Problem" in the Middle East. Excluding Jordan and Egypt, and limiting the role of the Israelis to that which is guaranteed under the law of belligerent occupation would not only be in accord with the laws of belligerent occupation and self-determination, it would also carry out the will of the Partition Resolution and the 1949 Armistice Agreement.

While direct negotiations between the Israelis and the Palestinians appears to a legally sound way of bringing about the end of the Israeli occupation of the Gaza Strip, there exist many practical difficulties. One such problem concerns with whom in the Palestinian community Israel should negotiate. While Israel may be under an obligation to help facilitate Palestinian self-determination, Israel also has a right to protect its legitimate security interests according to the law of belligerent occupation. The P.L.O. states in its Charter that it is committed to the destruction of the State of Israel, and it has not recognized Israel's existence with certainty. Therefore, Israel is under no international legal duty to recognize or negotiate with the P.L.O.[132] This presents problems given that the P.L.O. is the recognized leader of the Palestinian people in the international community.

If the Israeli government recognized the P.L.O. as the sole representative of the Palestinian people, Israel could argue that because the P.L.O. is the sole representative of the Palestinians, only the P.L.O. is competent to negotiate the Palestinians' future, and bring about an end to Israel's belligerent occupation.[133] According to the law of belligerent occupation, Israel would be justified in requiring that as a precondition to its withdrawal from the Gaza Strip, the P.L.O.

132. Palestine National Covenant, articles 19, 20, 22, and 23.

133. The claim that the P.L.O. is the recognized leader of the Palestinian people could be justified by pointing to a number of factors: (1) the P.L.O.'s observer status in the United Nations; (2) the desire of the Palestinians in the Gaza Strip to have the P.L.O. recognized as "the representative of the Palestinian people"; and (3) the recognition of the P.L.O.'s status by the United Nations Committee on the Exercise of the Inalienable Rights of the Palestinian People.

must renounce its commitment to destroy Israel, recognize the State of Israel, and make certain assurances regarding Israel's security. Given the current state of affairs in the Middle East, it seems unlikely that the P.L.O. would (or could) meet this demand. If the P.L.O. refused to negotiate a peaceful end to Israel's occupation, then Israel would be justified under the laws of belligerent occupation in maintaining its prolonged occupation.[134]

CONCLUSION

This note has argued that the international legal community, and the Israeli government, should generally recognize that which has been recognized by some, namely that the rules of belligerent occupation should be extended to apply to Israel, even though there is no formal "ousted sovereign" with whom Israel is at war. This could be done either through the recognition in international law of a different category of title for a situation such as that which exists in the Gaza Strip, but a category to which the rules of belligerent occupation would apply, or to do what this Note has generally done, which is to extend the the status of belligerent occupant to Israel even though its occupation does not follow the traditional conception of a belligerent occupation.

In addition, this Note has attempted to point out how the prolonged status of belligerent occupant may be most desirable to the hard-line members of the Israeli government, and is probably a better alternative than annexation of the Gaza Strip. Perhaps most importantly, this Note has endeavored to analyze how best this occupation can be terminated, in light of the governing principles of international law, namely the laws of self-determination and belligerent occupation. The future of the Gaza Strip can best be solved if the Israelis and the Palestinians end their mutual non-recognition, and recognize the rights of each other: Israel must recognize the Palestinian right to self-determination, in accordance with the Partition Resolution, the United Nations Charter, and Resolution 2625, and the Palestinians must recognize Israel's right to exist, and to maintain a belligerent occupation within the legal limits of the Hague and Geneva Conventions until a peaceful settlement occurs.

134. For further analysis of the problem of mutual non-acceptance, see Weiler, *supra* note 102.