

**RECOMMENDATIONS RESPECTFULLY SUBMITTED TO
THE TRUMP ADMINISTRATION REGARDING
THE ISRAELI-PALESTINIAN CONFLICT**

The Trump Administration will face both historic and recent challenges in developing a set of policies to have a transformative impact on the Israeli-Palestinian conflict. The disabling lack of trust between the parties remains a formidable barrier to progress in any direct or even multi-lateral negotiations. Therefore, we recommend the Trump Administration's first step might be to focus on achievable goals that can create an environment of trust and working together from which to build toward more plenary solutions.

In addition, as lawyers, we are particularly concerned on situations in which there is a break-down in the rule of law. Many such situations exist in the Middle East and North Africa region. We focus herein on two situations, one in the West Bank and one in Jerusalem, both of which might appear to be tame in comparison to other situations in the region, but both of which can be remedied by what we believe to be relatively achievable steps.

To that end, we propose consideration of the following:

1. ALTERING THE BOUNDARIES OF THE A, B, C ZONES

With the signing of the Oslo Accords (1993), the West Bank has been divided into three zones, classified in the following way (see Map 1 appended):

- AREA A – Territory that is under full Palestinian administrative and security control. Area A currently comprises about 18% of the West Bank.
- AREA B – Territory that is under Palestinian administrative control but Israeli security control. Area B currently comprises about 22% of the West Bank.
- AREA C – Territory that is under full Israeli administrative and security control. Area C currently comprises about 60% of the West Bank.

In recent years, the organic growth of Palestinian villages in Area B, caused by demographic pressures, has caused them to begin to extend into Area C. However, it is virtually impossible for Palestinians to receive a building permit from Israeli authorities to build in Area C -- only one such building permit was approved in all of 2014 and 2015.¹ Because permits are

¹ US Secretary of State John Kerry Remarks at Brookings Institution Saban Forum, December 4, 2016, *available*

impossible to receive, Palestinians have built structures without authorization. As a result, as many as 11,000 demolition orders threaten the homes of as many as 200,000 Palestinians living in Area C.²

The Economic Cooperation Foundation (“ECF”), a private NGO that has been credited with helping to launch the secret talks that led to the Oslo peace process, has suggested a number of policy proposals to address the concerns about unauthorized Palestinian building within Area C. Most notably is the “1%” plan – which would re-designate 1% of Area C to be Area B – and thus removing the Palestinian structures slated for demolition from their current state of limbo.³ (It should be noted that the Israeli Defense Force (“IDF”) is not proceeding with these demolition orders, understanding the resulting security threat that could follow such wide scale demolitions of Palestinian property). Based on both Israeli law and the Oslo Accords, recognizing these segments of Area C as Area B, or even just transferring housing and zoning authority over them to the Palestinian Authority (“PA”), requires no Israeli legislation and can be accomplished by the unilateral action of the Israeli Prime Minister.⁴ And, notably, since Area B is still under Israeli security control, it should not diminish Israeli security control over the affected areas.

ECF further recommends that new Palestinian zones of civilian police responsibility be established in Area B. According to ECF, for 80% of the Palestinians living in Area B there is no civilian police presence – Israeli or Palestinian – whatsoever. Israel maintains a military presence and control (through the IDF and other security forces), but not police forces in Area B; and Palestinian police and security forces do not enter areas where Israel has security control. Hence another ECF recommendation is to classify portions of Area B for expanded Palestinian policing, which should be feasible given the close cooperation Israel and the PA have demonstrated with regard to security issues elsewhere.

Both these ECF recommendations appear to be small adjustments to the Oslo Accords that can significantly ease the lives of many Palestinians living in the affected areas. Moreover, by clarifying and institutionalizing the legal status of the unapproved buildings in Area C and regularizing the police powers in Area B, the rule of law is fostered even in a geographic area where there is political discord.

2. JERUSALEM – “NO MAN’S LAND”

Another challenge exacerbating current Israeli-Palestinian tensions is the so-called “no man’s land” within East Jerusalem. This primarily refers to the areas within the Qalandiya and Shuafat refugee camps that are technically within the Jerusalem municipal boundaries (part of the Israeli city of Jerusalem with East Jerusalem annexed in 1967). However, while these camps are technically within the Jerusalem municipality, they are, as reflected in Map 2 (appended),

at: <https://www.state.gov/secretary/remarks/2016/12/264824.htm>.

² *Id.*

³ Map 1 actually reflects the transfer of 4% of Area C to Area B. A transfer of 4% is the option preferred by ECF as maximizing the benefit of its plan.

⁴ There is some lack of clarity as to whether this action can be taken without negotiation with the PA.

situated on the Palestinian side of the security barrier erected by Israel to separate the Jewish and Palestinian populations. In practice, this means that Palestinian police and security forces do not enter this area (as the area is under control of Israel); nor do Israeli police or security forces enter these areas, as they are situated on the “wrong” side of the barrier. As a result, gangs, drug use and extremist ideology is on the rise in these areas.⁵

Among the recommendations to alleviate this problem is one put forward by Commanders for Israel’s Security (CIS) – a network of over 235 former heads of the IDF, ShinBet, Mossad and police forces.⁶ The proposal includes the creation of a special civilian administration to address the economic and security challenges in East Jerusalem, including the aforementioned “no man’s lands.” In short, this administrative body would take over 25 Palestinian villages located within the Jerusalem municipal borders, but outside of the security barrier, and would be responsible for a budget independent from the Jerusalem municipality, focused especially on the current economic and security shortcomings in these villages.

This recommendation also touches directly on fostering the rule of law in conflict areas, while allowing the parties to take an incremental step toward building working processes of bilateral problem-solving negotiations.

The New York City Bar Association encourages the Administration to incentivize the Israelis and Palestinians to cooperate on these practical solutions and not to view them (at least publicly) from a political or symbolic perspective. Promoting them as cooperative efforts intended to eliminate lawlessness, reduce unnecessary stressors and improve people’s lives may allow positive developments in a region desperately in need of them.

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⁵ Kushner, Rachel, “We Are Orphans Here,” New York Times Magazine, December 1, 2016, *available at* <https://www.nytimes.com/2016/12/01/magazine/we-are-orphans-here.html? r=0>.

⁶ Commanders for Israel’s Security, *at* <http://en.cis.org.il/>.

MAP 1



