

PALESTINE: PEACE NOT APARTHEID¹

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*Peace will come to Israel and the Middle East only when the Israeli government is willing to comply with international law, with the Roadmap for Peace, with official American policy, with the wishes of a majority of its own citizens—and honor its own previous commitments—by accepting its legal borders.*³

Former U.S. President Jimmy Carter describes his newest book as “provocative” and “designed to restimulate the prospect for peace.”⁴ This bold work by the former President and Nobel Peace Prize recipient⁵ recounts his efforts over the past thirty years to end Arab–Israeli violence and establish a permanent Palestinian state.

Carter’s approach is unique. He often weaves his personal experiences and conversations with others into the saga—from his personal friendship with former Egyptian President Anwar Sadat⁶ to his playing with the baby daughter of Yassar Arafat.⁷ This allows him to educate readers and keep them interested in a complex historical topic, while portraying the personal sacrifice that he has devoted to the process. In doing so he lends an air of credibility that might otherwise be absent in such a one-sided and contentious work.⁸

Carter’s premise to achieve a permanent and substantive two-state agreement in the Middle East is threefold. First, Israel must withdraw all armed forces from occupied territories and its borders must coincide with the armistice line of 1967.⁹ Second, Arab nations must openly acknowledge Israel’s right to exist in peace and pledge to terminate any further acts of violence against the legally constituted nation of Israel.¹⁰ Third, Israel must cease colonizing occupied territories in Gaza and the West Bank with settlements, remove the Segregation Wall, and rescind martial law in these territories in order to end violence initiated by Palestinian extremists.¹¹

Personal experiences aside, Carter’s analysis is extremely one-sided. He often makes bold assertions without revealing his source or placing his assertions in an understandable context. For example, consider his description of living conditions following Israel’s unilateral withdrawal from Gaza settlements in August 2005:

[Palestinians] are being strangled since the Israeli “withdrawal,” surrounded by a separation barrier that is penetrated only by Israeli-controlled checkpoints . . . There have been no moves by Israel to permit transportation by sea or by air. Fishermen are not permitted to leave the harbor, workers are prevented from going to outside jobs, . . . and the police, teachers, nurses, and social workers are deprived of salaries.¹²

¹ JIMMY CARTER, *PALESTINE: PEACE NOT APARTHEID* (2006).

² U.S. Army. Written while assigned as a Student, 56th Judge Advocate Graduate Course, The Judge Advocate General’s Legal Ctr. & Sch. U.S. Army, Charlottesville, Va.

³ CARTER, *supra* note 1, at 216.

⁴ See *Democracy Now: Palestine: Peace Not Apartheid . . . Jimmy Carter in His Own Words* (television broadcast Nov. 30, 2006) (quoting President Carter at a book event in Virginia, Nov. 28, 2006) (transcript available at http://www.democracynow.org/2006/11/30/palestine_peace_not_apartheid_jimmy_carter) [hereinafter *Democracy Now Review*].

⁵ CARTER, *supra* note 1, at 164.

⁶ *Id.* at 89.

⁷ *Id.* at 143.

⁸ Shortly following publication, Democrats and Republicans alike voiced public outrage at his analogy to apartheid. See *Democracy Now Review*, *supra* note 4 (quoting House Speaker Nancy Pelosi as stating that “Democrats reject that allegation vigorously”).

⁹ CARTER, *supra* note 1, at 207.

¹⁰ *Id.*

¹¹ *Id.* at 208.

¹² *Id.* at 175–76.

Instead, Carter characterizes the fence as an imprisonment wall,¹³ and he carefully avoids any substantive discussion of the attacks committed by Hamas militants from Gaza against other Israelis. Carter leads his reader to believe the wall's sole intended purpose is to imprison and oppress the innocent populace for the deplorable acts of a few.

Other times, he identifies the source, but fails to test its credibility against other evidence. This is the case as he recounts a conversation with a prominent trade family in Gaza. According to the patriarch, the Israelis stopped five truckloads of oranges at the Allenby Bridge crossing into Jordan for several days and caused the fruit to rot in retaliation for statements made by one of his sons against Israeli occupation.¹⁴

In both instances, Carter deprives himself of the opportunity to validate the information in support of his point. The result is a one-sided story full of misleading and controversial assertions. Moreover, because Carter is highly critical of only Israel in this multi-party Middle East conflict, readers unfamiliar with the historical background are tempted to accept Carter's thesis at face value. This is troublesome as many of Carter's points are fundamentally flawed.

A. Withdrawal to Pre-1967 Borders

Former President Carter asserts that U.N. Security Council Resolution 242,¹⁵ the Camp David Accords,¹⁶ the Oslo Agreement,¹⁷ and U.S. policy all require Israel's "withdrawal to the 1967 borders."¹⁸ Resolution 242 requires the "[w]ithdrawal of Israeli armed forces from territories occupied in the recent conflict."¹⁹ Though on its face, the Resolution seems to support this proposition, the legislative history surrounding the document contradicts it. Interestingly, the primary drafter of the Resolution, Lord Caradon, the British delegate to the United Nations, denies that the language "occupied territories" was ever meant to require a retreat from "all occupied territories."²⁰ Further, Arthur Goldberg, the former U.S. Ambassador to the United Nations, explained in a 12 March 1980 letter to the *New York Times*, "[i]n a number of speeches at the U.N. in 1967, I repeatedly stated that the armistice lines fixed after 1948 were intended to be temporary."²¹ "We all knew—that the boundaries of '67 were not drawn as permanent frontiers, they were a cease-fire line of a couple of decades earlier We did not say that the '67 boundaries must be forever."²² Carter never addresses these inconsistencies and leaves the reader to believe that his interpretation, as construed by many Arab leaders, including Anwar Sadat²³ and Yassar Arafat,²⁴ is a settled matter—Israel must return to its pre-1967 borders.

Further, the Camp David Accords themselves do not cleanly resolve the issue. Though the Accords state that "[t]he agreed basis for a peaceful settlement . . . is . . . Resolution 242, in all its parts,"²⁵ they further state that "negotiations will resolve, among other matters, the location of the boundaries and the nature of the security arrangements."²⁶ Again, Carter never reconciles this apparent inconsistency.

¹³ *Id.* at 174.

¹⁴ *Id.* at 116.

¹⁵ S.C. Res. 242, U.N. Doc. S/RES/242 (Nov. 22, 1967).

¹⁶ Camp David Accords, Isr.–Egypt, Sept. 17, 1978, available at <http://www.jimmycarterlibrary.org/documents/campdavid/accords.phtml>.

¹⁷ Declaration of Principles on Interim Self-Government Arrangements, Isr.–Palestine Liberation Organization, Sept. 13, 1993, available at http://www.usip.org/library/pa/israel_plo/oslo_09131993.html [hereinafter Oslo Agreement].

¹⁸ CARTER, *supra* note 1, at 215 (emphasis added).

¹⁹ *Id.* at 218.

²⁰ *The Shape of Peace in the Middle East: Interview with Lord Caradon*, 5 J. PALESTINE STUD. 19-20, 144 (Spring/Summer 1976) (partial transcript available at http://www.camera.org/index.asp?x_context=2&x_outlet=118&x_article=1267).

²¹ *A Comprehensive Collection of Jimmy Carter's Errors*, CAMERA, Jan. 22, 2007, http://camera.org/index.asp?x_context=2&x_outlet=118&x_article=1273.

²² *Security Council Resolution 242 According to its Drafters*, CAMERA, Jan. 15, 2007, http://www.camera.org/index.asp?x_context=&x_outlet=118&x_article=1267 (quoting Interview with Lord Caradon from *MacNeil/Lehrer Report* (PBS television broadcast Mar. 30, 1978)).

²³ CARTER, *supra* note 1, at 48.

²⁴ *Id.* at 134.

²⁵ *Id.* at 222.

²⁶ *Id.* at 226.

Carter's reliance upon the Oslo Agreement is also problematic. The Oslo Agreement does not definitively resolve the issue of borders. Specifically, Article XVII(1a) reserves the issue as one "that will be negotiated in the permanent status negotiations."²⁷

It is unclear why Carter opted not to address these contradictions. Regardless, among the text of Resolution 242, its legislative history, and all subsequent agreements, sufficient ambiguity exists to cast serious doubt on the validity of his assertion that international law mandates that Israel recognize its pre-1967 borders. By not addressing these inconsistencies, Carter undermines his argument.

B. Arab Nations Must Openly Acknowledge Israel's Right to Peacefully Exist

From its inception, Israel has faced persistent challenges to its sovereignty. Since declaring independence in May 1948, Israel has victoriously fought three wars against combined Arab forces from Egypt, Syria, Jordan, Lebanon, Palestine, and Iraq.²⁸ The united Arab front against Israel continued until Egypt shocked the Arab nations and signed a bilateral peace agreement with Israel.²⁹ Arab reaction to Egypt's "betrayal" was swift, resulting in Egypt's economic isolation and the subsequent assassination of Anwar Sadat.³⁰ Consequently, it was not until after the Oslo Agreements that a second nation, Jordan, signed a separate bilateral peace agreement with Israel.³¹

Carter states that despite recent public statements by some individuals³² to the contrary, the results of bilateral negotiations³³ and private discussions with Arab leaders³⁴ have been promising. As a result, he spends little time substantively analyzing this issue. Almost simplistically, he reasons that full Arab recognition will occur only after Israel honors its international commitments, thus ending the "cycle of distrust and violence."³⁵ He does not discuss Israel's insistence on Arab recognition and cessation of violence as a precursor to any Israeli negotiations.³⁶

Though recognizing the interrelationship of the two issues, Carter downplays the impact of other key influences—the refusal by some Arabs to accept Israel as a neighbor, the absence of a clear and authoritative Palestinian voice acceptable to Israel, and the rise of Islamic fundamentalism.³⁷ Of particular concern to Israel is the future role of Hamas following its majority victory in the 2006 Palestinian elections³⁸ and its refusal to recognize Israel.³⁹ Carter reasons that because Palestinian President Mahmoud Abbas retains "substantial authority under Palestinian law [and] is the undisputed leader of the PLO, the only Palestinian entity recognized by Israel or the international community,"⁴⁰ negotiation should only occur through him. Though perhaps technically accurate, even Carter admits that President Abbas has been largely marginalized by Hamas.⁴¹

²⁷ Interestingly, former President Carter does not include the Oslo Agreement as an appendix even though he relies upon it as a primary legal authority. *See* Oslo Agreement, *supra* note 17.

²⁸ These were the Arab-Israeli War from May 1948 to March 1949, the 1967 Six Day War, and the 1973 Yom Kippur War. HOWARD M. SACHAR, A HISTORY OF ISRAEL FROM THE RISE OF ZIONISM TO OUR TIME *passim* (1976).

²⁹ CARTER, *supra* note 1, at 52.

³⁰ *Id.* at 79.

³¹ *Id.* at 205.

³² Carter is referring to 2005 and 2006 statements by Iranian President Mahmoud Ahmadinejad calling for the annihilation of Israel and describing the Holocaust as a "myth." *Id.* at 18.

³³ *Id.* at 207.

³⁴ *Id.* at 13.

³⁵ *Id.* at 206.

³⁶ *Id.* at 160.

³⁷ *Id.* at 13.

³⁸ *Id.* at 186.

³⁹ *Id.* at 184.

⁴⁰ *Id.* at 187.

⁴¹ *Id.* at 210.

C. Cessation of West Bank Colonization through Settlements, Removal of the Segregation Wall and Termination of Martial Law

Carter's most vehement objections to Israeli policy are also the most controversial, or using his term, provocative.⁴² Citing violations of both Israeli⁴³ and international law,⁴⁴ Carter outlines how the systematic settlement of the West Bank, the building of the Segregation Wall, and the state of martial law have contributed to the denial of basic human rights in Gaza and the West Bank.⁴⁵

Carter attributes the nefarious purpose behind all three incidents to be means of achieving a common goal—the acquisition of land in violation of U.N. Security Council Resolution 242 and the “voluntary” relocation of the Palestinian people outside of Israel.⁴⁶ In short, Carter accuses the Israeli government of “imposing a system of partial withdrawal, encapsulation, and apartheid on the Muslim and Christian citizens of the occupied territories.”⁴⁷

In a novel argument, Carter even attributes Israel's participation in the Oslo Agreements as evidence of Israel's land-grabbing motives.⁴⁸ According to Carter, Israel was now able to “shed[] formal responsibility for the living conditions and welfare of [Gaza and the West Bank's] rapidly increasing population, [while] still completely dominated by Israeli forces.”⁴⁹ Ironically, Palestinian Liberation Organization (PLO) Chairman Yassar Arafat, Israeli Prime Minister Yitzhak Rabin, and Foreign Minister Shimon Peres, all received the Nobel Peace Prize for their work on the Oslo Agreements.⁵⁰

Though Carter's premise is novel, his logic is seriously flawed and disregards the historical significance that resulted from the Oslo Agreement. First, in a letter from Yassar Arafat to the Israeli Prime Minister following the Oslo Agreement, the PLO “unequivocally . . . recognized the right of Israel to exist in peace and security, accepted U.N. Security Resolution[] 242 . . . [and] renounced . . . terrorism.”⁵¹ This was the first time the PLO publicly recognized Israel. Second, he failed to acknowledge that both Gaza and the West Bank were now one step closer to the “full autonomy” promised them by Israel in the Camp David Accords.⁵² Third, a politically oppressed and economically isolated and impoverished populace in Gaza under semi-autonomous rule represented an even greater threat to Israeli peace and security. Finally, Israel's own Supreme Court advocated restraint and held that “‘the law of belligerent occupation . . . imposes conditions’ on the authority of the military.”⁵³

In addition to the biased interpretation of events, Carter's second serious flaw in this section of the book is that he makes overreaching generalizations that detract from his more powerful arguments. Rather than focusing on the International Court of Justice opinion and Israel's subsequent refusal to follow it, Carter incorrectly alleges that the wall is “mainly within Palestinian territory.”⁵⁴ Ironically, his own maps do not even support such a generalization and show that large sections of the wall appear to be parallel to the original 1949 Armistice line.⁵⁵ Those sections not following the Armistice will only be in Palestinian territory when the official boundaries are determined.

⁴² See *Democracy Now Review*, *supra* note 4.

⁴³ CARTER, *supra* note 1, at 194 (citing the Israeli Supreme Court's opinion that the West Bank is “in belligerent occupation”).

⁴⁴ *Id.* at 193 (referring to the July 2004 International Court of Justice opinion holding that the Israeli government's construction of the segregation wall in occupied areas of the West Bank violated the Fourth Geneva Convention).

⁴⁵ *Id.* at 208.

⁴⁶ *Id.* at 190.

⁴⁷ *Id.* at 189.

⁴⁸ *Id.* at 134.

⁴⁹ *Id.* at 137.

⁵⁰ *Id.* at 134.

⁵¹ *Id.* at 134–35.

⁵² *Id.* at 46.

⁵³ *Id.* at 194 (quoting the Israeli Supreme Court).

⁵⁴ *Id.* at 190.

⁵⁵ *Id.* at 191.

Finally, his most egregious error is to equate the situation in the West Bank and Gaza in Israel with the South African apartheid regime. In its most fundamental state, at its height, apartheid represented the institutionalized oppression of the members of a particular race by the Republic of South Africa. The conflict between Israel and Palestine—or even Jew and Arab, generally—is not predicated on racial superiority, a fact even noted by Carter.⁵⁶ To invoke such an analogy can only have one intended purpose—to arouse the reader’s passions so that emotion will cloud reason, perhaps disguising flaws in logic. While such a pop culture approach to literature may result in attractive book sales, it also degrades any scholarly value of the work.

In *Palestine Peace Not Apartheid*, former President Jimmy Carter states that “there is a formula for peace with justice . . . It is compatible with international law and sustained American government policy, has the approval of most Israelis and Palestinians, and conforms to agreements previously consummated—but later renounced.”⁵⁷ Contrary to Carter’s assertions, the return of Israel to its pre-1967 Six-Day’s War armistice borders is neither a settled matter of international law nor a consensus position of the international community. While Israel certainly bears its share of responsibility for the failure to achieve sustained peace in the past sixty years, it is a responsibility shared by all Middle East nations. One can appreciate Carter’s efforts to reinvigorate the stalled peace process. However, one can only hope that former President Carter’s overly biased, logically flawed critique, with its “offensive and wrong”⁵⁸ accusation that Israel is deliberately creating an apartheid system in Gaza and the West Bank, has not irreparably harmed the already fragile peace process.

⁵⁶ *Id.* at 189.

⁵⁷ *Id.* at 19.

⁵⁸ See *Democracy Now Review*, *supra* note 4 (quoting John Conyers, Chairman of the House Judiciary Committee, who had urged President Carter to change the title).