

# Palästina

Als Fortsetzung meiner Arbeit: *Zur völkerrechtlich nicht genügenden Begründung des Gemeinsamen Standpunktes des Rates über die Anwendung besonderer Maßnahmen zur Bekämpfung des Terrorismus*<sup>1</sup>

Von Mag. Arthur H. Lambauer (2023)

Die sog. Balfour-Erklärung vom 2. November 1917<sup>2</sup> lautet:

Foreign Office, November 2nd, 1917.  
Dear Lord Rothschild,

I have much pleasure in conveying to you, **on behalf of His Majesty's Government**, the following declaration of sympathy with Jewish Zionist aspirations which has been submitted to, and approved by, the Cabinet.

"His Majesty's Government view with favour the establishment in Palestine of a national home for the Jewish people, and will use their best endeavours to facilitate the achievement of the object, **it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine**, or the rights and political status enjoyed by Jews in any other country".

I should be grateful if you would bring this declaration to the knowledge of the Zionist Federation.

Yours sincerely,

(Signed) Arthur James Balfour

Die syntaktische Stellung des ersten fett hervorgehobenen Nebensatzes, welcher sich nicht auf das *I*, sondern auf das *you* bezieht, weist darauf hin, dass nach der Vorstellung des Vereinigten Königreichs die Zionistischen Juden in Palästina im Namen dessen Regierung tätig werden sollten.

Indem der an zweiter Stelle fett hervorgehobene Passus von *which may*, anstatt von *that might*, spricht, lässt er semantisch die Möglichkeit offen, erst im Nachhinein zu prüfen, ob eine Vorgehensweise jenen Rechten schadet; womit die Basis für die permanente Dauer des Nahost-Konflikts zugunsten billigen Öls betont war.

Es braucht nicht besonders betont zu werden, dass eine Auslegung, wonach die *civil and religious rights* Militärisches nicht inkludierten, völkerrechtswidrig wäre, weil es dem Selbstbestimmungsrecht der Arabischen Palästinenser zuwiderliefe; außer man lege ihr gleichsam im Nachhinein die Grundsätze der Abrüstung und Minimalrüstung der UN-Charta zugrunde.

Nachdem die Britische Mandatsmacht<sup>3</sup> angekündigt hatte, sich als solche aus Palästina zurückzuziehen und bis 1. August 1948 ihre Streitkräfte vollständig abzuziehen, erklärte der Zionismus am 14. Mai 1948 seine Unabhängigkeit als der Staat Israel.

Bereits am 29. November 1947 hatte die UNGA die Resolution 181(II)<sup>4</sup> angenommen, in der es heißt:<sup>5</sup>

The General Assembly

*Recommends* to the United Kingdom, as the mandatory Power for Palestine, and to all other Members of the United Nations the adoption and implementation, with regard to the future government of Palestine, of the Plan of Partition with Economic Union set out below;

*Requests that*

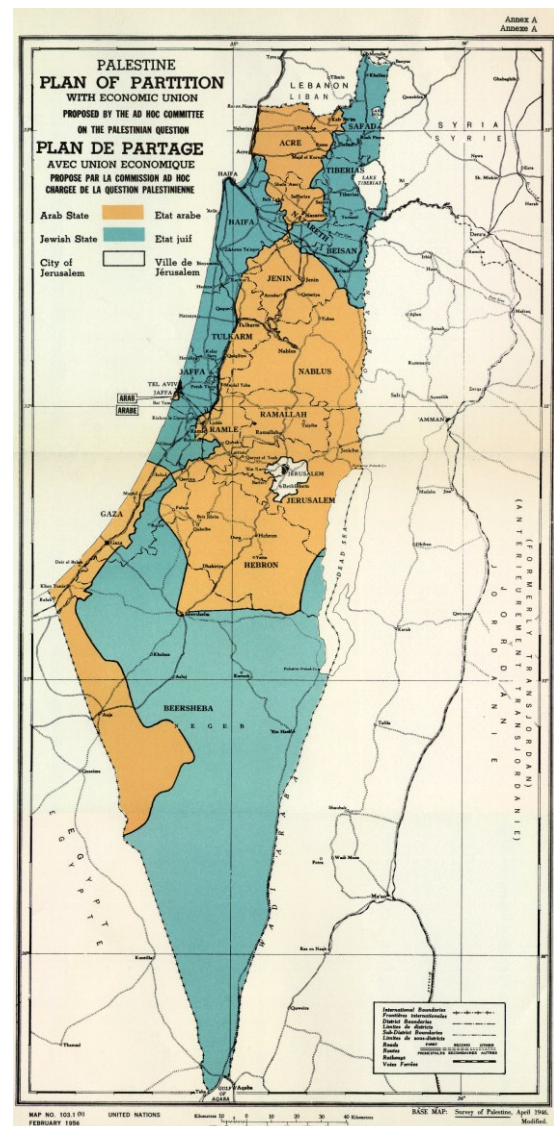
(a) The Security Council take the necessary measures as provided for in the plan for its implementation;

[...]

*Calls upon* the inhabitants of Palestine to take such steps as may be necessary on their part to put this plan into effect;

*Appeals* to all Governments and all peoples to refrain from taking any action which might hamper or delay the carrying out of these recommendations, [...].

Dem mit dieser Resolution verabschiedeten Teilungsplan lag die folgend dargestellte Karte<sup>6</sup> zugrunde:



<sup>1</sup> <https://arthurlambauer.files.wordpress.com/2023/10/2023-zur-voelkerrechtlich-nicht-genuegenden-begrueundung-des-gemein-samen-standpunktes-des-rates-ueber-terrorismus-1.pdf>.

<sup>2</sup> UNISPAL; <https://www.un.org/unispal/document/auto-insert-193242/>.

<sup>3</sup> Siehe das Völkerbundmandat vom 12. August 1922, C.529.M.314.1922.VI; <https://archives.unige.ch/mandat-pour-la-palestine-mandate-for-palestine>.

<sup>4</sup> A/RES/181(II); <https://digitallibrary.un.org/record/210008>.

<sup>5</sup> Vgl. zur Verbindlichkeit von UNGA-Resolutionen: <https://arthurlambauer.files.wordpress.com/2022/03/zur-frage-der-rechtlichen-verbindlichkeit-von-empfehlungen-teile-i-und-ii.pdf>.

<sup>6</sup> <https://digitallibrary.un.org/record/685977?ln=en>.

Im Palästina-Krieg<sup>7</sup>, der am 29. November 1947, mithin noch vor Abzug der Briten, begann und der eine breite Entvölkerung Palästinas von den Arabern mit sich brachte, eroberten die Zionistischen Militärorganisationen beträchtliche Teile der Gebiete, die nach dem UN-Teilungsplan den Palästinensern vorbehalten waren. Nach den diversen Waffenstillstandsabkommen<sup>8</sup> stellte sich die Lage, wie folgt<sup>9</sup> dar:



Noch am 16. November 1948 titulierte der UNSC das strittige Gebiet in seiner Resolution 62(1948)<sup>10</sup> ausdrücklich als Palästina; Israel kommt darin nicht vor.

Mit seiner Resolution 69(1949)<sup>11</sup> schließlich empfahl der UNSC der UNGA die Aufnahme Israels in die UNO, welcher die UNGA in ihrer Resolution 273(III)<sup>12</sup> im Mai 1949 nachkam.

Angesichts der Tatsache, dass im Zusammenhang mit einer Lösung des Nahostkonflikts niemand mehr von etwas anderem spricht<sup>13</sup> als von den zwei Staaten in den Grenzen „von 1967“ – gemeint wohl: von vor 1967 – komme ich hier sogleich zu den Geschehnissen von 1967.

Vom 5. bis 10. Juni 1967 (im Sechstagekrieg<sup>14</sup>) eroberte die Israelische Defense Force (IDF), was Palästina betrifft, den Gazastreifen, die Westbank und Ost-Jerusalem. Nachdem sich die Besatzer 2005 aus dem Gazastreifen zurückgezogen, ist die Westbank bis heute israelisch besetzt.

Am 22. November 1967 nahm der UNSC unter dem Vorsitz von MALI die Resolution 242(1967)<sup>15</sup> an, in der es vollinhaltlich heißt, wie folgt:

#### The Security Council,

Expressing its continuing concern with the grave situation in the Middle East,

Emphasizing the inadmissibility of the acquisition of territory by war and the need to work for a just and lasting peace in which every State in the area can live in security,

Emphasizing further that all Member States in their acceptance of the Charter of the United Nations have undertaken a commitment to act in accordance with Article 2 of the Charter,

1. Affirms that the fulfilment 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 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 provisions and principles 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.

Adopted unanimously at the 1382nd meeting.

Der darin vom UNSC angeordnete Rückzug von den jüngst eroberten Gebieten erfolgte, wie gesagt, zum Großteil bis heute nicht. Interessant ist ferner, dass der UNSC auch angesichts seiner Beschwörungen im operativen Punkt 1(ii) das Selbstbestimmungsrecht der Arabischen Palästinenser nicht nennt. Offenkundig sah er dies nicht als nötig an, zumal dieses Recht ohnehin im Artikel 1/2 der UN-Charta verankert ist.

Diese Übergehung könnte aber auch ein weiterer Hinweis darauf sein, dass Arabische Palästinenser und zionistische Juden in einem Palästina zusammenleben sollen, wie es deren beider Geschichte und die Balfour-Erklärung vorgeben.

Am 14. Februar 1980 nahm hingegen etwa die Commission on Human Rights (CHR) der UNGA die Resolution 2(XXXVI)<sup>16</sup> an, in der es auszugswise und selbstverständlich heißt:

#### The Commission on Human Rights

1. Affirms the inalienable right of the Palestinian people to self-determination without external interference and the establishment of a fully independent and sovereign State in Palestine;

2. Reaffirms the inalienable right of the Palestinians to return to their homes and property from which they have been displaced and uprooted, and calls for their return in the exercise of their right to self-determination; [...].

<sup>7</sup> <https://de.wikipedia.org/wiki/Pal%C3%A4stinakrieg>.

<sup>8</sup> Israel-Ägypten, vom 24. Februar 1949, bzw. Israel-Libanon, vom 23. März 1949, bzw. Israel-Jordanien, vom 3. April 1949, sowie Israel-Syrien, vom 20. Juli 1949; allesamt in 42 UNTS; <https://treaties.un.org/doc/Publication/UNTS/Volume%2042/v42.pdf>

<sup>9</sup> [https://de.wikipedia.org/wiki/Datei:After\\_war-ger.JPG](https://de.wikipedia.org/wiki/Datei:After_war-ger.JPG).

<sup>10</sup> S/RES/62(1948); <https://digitallibrary.un.org/record/112006>.

<sup>11</sup> S/RES/69(1949); <https://digitallibrary.un.org/record/112017>.

<sup>12</sup> A/RES/273(III); <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NRO/04/44/PDF/NRO04444.pdf?OpenElement>.

<sup>13</sup> Ein weiteres Zeichen für die Einmütigkeit über die Notwendigkeit eines gemeinschaftlichen Staatsgebildes.

<sup>14</sup> <https://de.wikipedia.org/wiki/Sechstagekrieg>.

<sup>15</sup> S/RES/242(1967); <https://digitallibrary.un.org/record/90717>.

<sup>16</sup> E/1980/13, S. 155; <https://digitallibrary.un.org/record/36236>.

Anlässlich des Yom-Kippur-Krieges 1973<sup>17</sup> verabschiedete der UNSC die Resolution 338(1973)<sup>18</sup>, die da lautet:

#### *The Security Council*

1. *Calls upon* all parties to the present fighting to cease all firing and terminate all military activity immediately, no later than 12 hours after the moment of the adoption of this decision, in the positions they now occupy;
2. *Calls upon* the parties concerned to start immediately after the cease-fire the implementation of Security Council resolution 242 (1967) in all of its parts;
3. *Decides* that, immediately and concurrently with the cease-fire, negotiations shall start between the parties concerned under appropriate auspices aimed at establishing a just and durable peace in the Middle East.

*Adopted at the 1747th meeting by 14 votes to none<sup>21</sup>*

Auch diese Resolution blieb seitens Israels unbeachtet. In ihrer Resolution 3236(XXIX)<sup>19</sup>, vom 22. November 1974, beschloss die UNGA, u. a. was folgt:

1. **Reaffirms** the inalienable rights of the Palestinian people **in Palestine**, including:
  - (a) **The right to self-determination without external interference;**
  - (b) **The right to national independence and sovereignty;**
2. **Reaffirms also** the inalienable right of the Palestinians to return to their homes and property from which they have been displaced and uprooted, and calls for their return;
3. **Emphasizes** that full respect for and the **realization of these inalienable rights of the Palestinian people are indispensable** for the solution of the question of Palestine;

Auch hier erfolgten keinerlei Eingrenzungen betreffs des Palästinensischen Territoriums, was angesichts der Tatsache, dass der Teilungsplan aus 1947 von keiner Staatenmehrheit angenommen worden war, nur konsequent ist.

Zugleich räumte die UNGA mit ihrer Resolution 3237(XXIX)<sup>20</sup> der PLO einen Beobachterstatus in der UNGA ein.

1978 folgten die zwischen Israel und Ägypten abgeschlossenen *Camp David Accords*<sup>21</sup>, aus denen betreffs *West Bank and Gaza* hervorzuheben ist, was folgt:

Egypt, Israel, Jordan and **the representatives** of the Palestinian people should participate in negotiations on the resolution of the Palestinian problem in all its aspects. To achieve that objective, negotiations relating to the West Bank and Gaza should proceed in **three stages**:

Egypt and Israel agree that, in order to ensure a peaceful and orderly **transfer of authority**, and taking into account the security concerns of all the parties, there should be **transitional arrangements for the West Bank and Gaza for a period not exceeding five years**. In order to provide full autonomy to the inhabitants, under these arrangements the **Israeli military government and its civilian administration will be withdrawn as soon as a self-governing authority has been freely elected by the inhabitants of these areas to replace the existing military government**. To negotiate the details of a transitional arrangement, Jordan will be invited to join the negotiations on the basis of this framework. **These new arrangements should give due consideration both to the principle of self-government by the inhabitants of these territories and to the legitimate security concerns of the parties involved**. Egypt, Israel, and Jordan will agree on the modalities for establishing elected self-governing authority in the West Bank and Gaza. The delegations of Egypt and Jordan may include Palestinians from the West Bank and Gaza or other Palestinians as mutually agreed. **The parties will negotiate an agreement which will define the powers and responsibilities of the self-governing authority to be exercised in the West Bank and Gaza. A withdrawal of Israeli armed forces will take place and there will be a redeployment of the remaining Israeli forces into specified security locations**. The agreement will also include arrangements for assuring internal and external security and public order. A strong local police force will be established, which may include Jordanian citizens. In addition, Israeli and Jordanian forces will

participate in joint patrols and in the manning of control posts to assure the security of the borders.

When the self-governing authority (administrative council) in the West Bank and Gaza is established and inaugurated, the transitional period of five years will begin. As soon as possible, but not later than the third year after the beginning of the transitional period, **negotiations will take place to determine the final status of the West Bank and Gaza** and its relationship with its neighbors and to conclude a peace treaty between Israel and Jordan by the end of the transitional period. These negotiations will be conducted among Egypt, Israel, Jordan and the elected representatives of the inhabitants of the West Bank and Gaza. Two separate but related committees will be convened, one committee, consisting of representatives of the four parties which will negotiate and agree on the final status of the West Bank and Gaza, and its relationship with its neighbors, and the second committee, consisting of representatives of Israel and representatives of Jordan to be joined by the elected representatives of the inhabitants of the West Bank and Gaza, to negotiate the peace treaty between Israel and Jordan, taking into account the agreement reached in the final status of the West Bank and Gaza. The negotiations shall be based on all the provisions and principles of UN Security Council Resolution 242. The negotiations will resolve, among other matters, the location of the boundaries and the nature of the security arrangements. The solution from the negotiations must also recognize the legitimate right of the Palestinian peoples and their just requirements. In this way, the Palestinians will participate in the determination of their own future through:

**The negotiations among Egypt, Israel, Jordan and the representatives of the inhabitants of the West Bank and Gaza to agree on the final status of the West Bank and Gaza and other outstanding issues by the end of the transitional period.**

Submitting their agreements to a vote by the elected representatives of the inhabitants of the West Bank and Gaza. Providing for the elected representatives of the inhabitants of the West Bank and Gaza to decide how they shall govern themselves consistent with the provisions of their agreement.

Participating as stated above in the work of the committee negotiating the peace treaty between Israel and Jordan.

All necessary measures will be taken and provisions made to assure the security of Israel and its neighbors during the transitional period and beyond. To assist in providing such security, a strong local police force will be constituted by the self-governing authority. It will be composed of inhabitants of the West Bank and Gaza. The police will maintain liaison on internal security matters with the designated Israeli, Jordanian, and Egyptian officers.

During the transitional period, representatives of Egypt, Israel, Jordan, and the self-governing authority will constitute a continuing committee to decide by agreement on the modalities of admission of persons displaced from the West Bank and Gaza in 1967, together with necessary measures to prevent disruption and disorder. Other matters of common concern may also be dealt with by this committee. Egypt and Israel will work with each other and with other interested parties to establish agreed procedures for a prompt, just and permanent implementation of the resolution of the refugee problem.

Wie insbesondere die fett und farbig hervorgehobenen Passagen zeigen, wurde das Selbstbestimmungsrecht der Arabischen Palästinenser hier eklatant missachtet bzw. beschränkt, indem die Parteien von Camp David sich Mitbestimmungsrechte anmaßten. Während der gesamten Übergangsperiode sollte das zionistische Heer in den Palästinensergebieten bleiben; ob auch darüber hinaus, blieb offen. Überhaupt waren die inhaltlichen Determinanten für die Zeit nach der Übergangsperiode spärlich. Doch auch der finale Status der Westbank und des Gazastreifens sollte von den Zustimmungen der arabischen Länder abhängen, welche mit der bezeichneten Drangsalierung des Selbstbestimmungsrechts der Arabischen Palästinenser einverstanden waren.

Mit ihrer Resolution 34/65 reagierte die UNGA auf die *Camp David Accords* und hielt dazu in deren Abschnitt B selbsterklärend fest, was folgt.

#### **B**

##### *The General Assembly,*

*Recalling and reaffirming* the declaration, contained in paragraph 4 of its resolution 33/28 A of 7 December 1978, that the validity of agreements purporting to solve the problem of Palestine requires that they be within the framework of the United Nations and its Charter and its resolutions on the basis of the full attainment and exercise of the inalienable rights of the Palestinian people, including the right of return and the right to national independence and sovereignty in Palestine, and with the participation of the Palestine Liberation Organization,

*Taking note* of paragraphs 33 to 35 of the report of the Committee on the Exercise of the Inalienable Rights of the Palestinian People,<sup>20</sup>

1. **Notes with concern** that the Camp David accords have been concluded outside the framework of the United Nations and without the participation of the Palestine Liberation Organization, the representative of the Palestinian people;

<sup>17</sup> <https://de.wikipedia.org/wiki/Yom-Kippur-Krieg>.

<sup>18</sup> S/RES/338(1973); <https://digitallibrary.un.org/record/93466>.

<sup>19</sup> A/RES/3236(XXIX); <https://digitallibrary.un.org/record/189835>.

<sup>20</sup> Ebd. (FN 19).

<sup>21</sup> [https://avalon.law.yale.edu/20th\\_century/campdav.asp](https://avalon.law.yale.edu/20th_century/campdav.asp).

2. **Rejects those provisions of the accords which ignore, infringe, violate or deny the inalienable rights of the Palestinian people, including the right of return, the right of self-determination and the right to national independence and sovereignty in Palestine, in accordance with the Charter of the United Nations, and which envisage and condone continued Israeli occupation of the Palestinian territories occupied by Israel since 1967;**

3. **Strongly condemns all partial agreements and separate treaties which constitute a flagrant violation of the rights of the Palestinian people, the principles of the Charter and the resolutions adopted in the various international forums on the Palestinian issue;**

4. **Declares that the Camp David accords and other agreements have no validity in so far as they purport to determine the future of the Palestinian people and of the Palestinian territories occupied by Israel since 1967.**

83rd plenary meeting  
29 November 1979

Diesen Abmachungen folgte der am 26. März 1979 unterzeichnete Frieden zwischen Israel und Ägypten<sup>22</sup>, dem ein *Letter Agreement, additional to the above-mentioned Treaty, concerning the establishment of full autonomy in the West Bank and the Gaza Strip (with annexed "Framework for Peace in the Middle East agreed at Camp David" and "Framework for the conclusion of a Peace Treaty between Egypt and Israel", signed at Washington on 17 September 1978, and seven related letters dated 17 and 22 September 1978, concerning (1) settlements in the Sinai, (2) Jerusalem, and (3) the position of Egypt with respect to the implementation of the comprehensive settlement)* angeschlossen ist, welchem wiederum die Camp David Accords anhängen.

1988 erklärte der Nationale Rat Palästinas in einer *Declaration of Independence*<sup>23</sup> u. a. wie folgt:

The Palestine National Council hereby declares, in the Name of God and on behalf of the Palestinian Arab people, the establishment of the State of Palestine in the land of Palestine with its capital at Jerusalem.

Auch hier ist weitreichender Raum für den Willen, den Staat unter Umständen auf ganz Palästina wirken zu lassen.

1993 kam es zwischen Israel und der PLO in Anlehnung an die *Camp David Accords* bzw. den Ägyptisch-Israellischen Frieden zum OSLO I-Abkommen<sup>24</sup>, das am 13. September 1993 in Washington unterzeichnet wurde. In dessen Präambel heißt es:

The Government of the State of Israel and the PLO team (in the Jordanian-Palestinian delegation to the Middle East Peace Conference) (the "Palestinian Delegation"), **representing the Palestinian people**, agree that it is time to put an end to decades of confrontation and conflict, **recognize their mutual legitimate and political rights**, and strive to live in peaceful coexistence and mutual dignity and security and achieve a just, lasting and comprehensive peace settlement and historic reconciliation through the agreed political process. Accordingly, the two sides agree to the following principles:

Beachtlich dazu ist zunächst, dass YASSER ARAFAT in einem Briefwechsel mit YITZHAK RABIN vom 9. September 1993<sup>25</sup> wie folgt die Existenzberechtigung Israels anerkannt hat:

The signing of the Declaration of Principles marks a new era in the history of the Middle East. In firm conviction thereof, I would like to confirm the following PLO commitments:

The PLO recognizes the right of the State of Israel to exist in peace and security.

The PLO accepts United Nations Security Council Resolutions 242 and 338.

The PLO commits itself to the Middle East peace process, and to a peaceful resolution of the conflict between the two sides and declares that all outstanding issues relating to permanent status will be resolved through negotiations.

The PLO considers that the signing of the Declaration of Principles constitutes a historic event, inaugurating a new epoch of peaceful coexistence, free from violence and all other acts which endanger peace and stability. Accordingly, the PLO renounces the use of terrorism and other acts of violence and will assume responsibility over all PLO elements and personnel in order to assure their compliance, prevent violations and discipline violators.

In view of the promise of a new era and the signing of the Declaration of Principles and based on Palestinian acceptance of Security Council Resolutions 242 and 338, the PLO affirms that those

articles of the Palestinian Covenant which deny Israel's right to exist, and the provisions of the Covenant which are inconsistent with the commitments of this letter are now inoperative and no longer valid. Consequently, the PLO undertakes to submit to the Palestinian National Council for formal approval the necessary changes in regard to the Palestinian Covenant.

RABIN antwortete, wie folgt:

In response to your letter of September 9, 1993, I wish to confirm to you that, in light of the PLO commitments included in your letter, the Government of Israel has decided to recognize the PLO as the representative of the Palestinian people and commence negotiations with the PLO within the Middle East peace process.

Wenn in der oben zitierten Präambel zu OSLO I die Rede von *mutual rights* ist, dann kommt damit zum Ausdruck, dass (in teleologischer Stringenz) damit nicht die jeweiligen Rechte beider Parteien, sondern die aufeinander Bezug habenden, also *gegenseitigen* Rechte gemeint sind, welche anerkannt werden: ein weiterer Hinweis darauf, unter welchem gemeinschaftlichen Stern dieses Abkommen geschlossen werden sollte.

Artikel I des Abkommens lautet nun:

**The aim of the Israeli-Palestinian negotiations** within the current Middle East peace process **is, among other things, to establish a Palestinian Interim Self-Government Authority**, the elected Council (the "**Council**"), **for the Palestinian people in the West Bank and the Gaza Strip, for a transitional period not exceeding five years**, leading to a permanent settlement based on Security Council resolutions 242 (1967) and 338 (1973). It is understood that the interim arrangements are an integral part of the whole peace process and that the negotiations on the permanent status will lead to the implementation of Security Council resolutions 242 (1967) and 338 (1973).

Wenn eine dauerhafte, über die Übergangsperiode hinausreichende territoriale Separation der beiden Völker in Palästina angedacht gewesen wäre, hätte es des **rot** hervorgehobenen Nebensatzes nicht bedurft.

Im Artikel III des Abkommens werden Wahlen zu diesem Rat vorgesehen, der, wie gesagt, auf die Übergangsperiode begrenzt sein sollte; wobei dessen Absatz 2 vorsah, was folgt:

An agreement **will be concluded** on the exact mode and conditions of the elections in accordance with the protocol attached as Annex I, with the goal of holding the elections not later than nine months after the entry into force of this Declaration of Principles.

Großzügiger lassen sich essenzielle Dinge nicht auf die Lange Bank schieben. Dieses national-kollektive Konzept wird in Artikel IV bestätigt, der da in seinem Satz 1 lautet:

Jurisdiction of the Council will cover West Bank and Gaza Strip territory, **except for issues that will be negotiated in the permanent status negotiations.**

Was die Übergangsperiode und die nachfolgenden Verhandlungen über den Dauernden Status angeht, kehrt Artikel V des Abkommens vor, was folgt:

1. The five-year transitional period will begin upon the withdrawal from the Gaza Strip and Jericho area.

2. Permanent status negotiations will commence as soon as possible, but not later than the beginning of the third year of the interim period, between the Government of Israel and the Palestinian people's representatives.

3. It is understood that these negotiations shall cover remaining issues, including: Jerusalem, refugees, settlements, security arrangements, borders, relations and cooperation with other neighbours, and other issues of common interest.

4. The two parties agree that the outcome of the permanent status negotiations should not be prejudiced or preempted by agreements reached for the interim period.

Die Absätze 1 und 2 zeigen die Bereitschaft beider Seiten auf, die Verhandlungen bis auf das Äußerste zu verzögern. Angesichts der Tatsache, dass der Verlauf der Zeit wegen immer neuer Eskalationen der Gewalt auf beiden Seiten gegen den Frieden steht, kann diese Verzögerung nicht der Beruhigung der Lage, sondern nur einem dienen: der Aufrechterhaltung instabiler Verhältnisse im Nahen Osten, was den Preis für fossile

<sup>22</sup> 1136 UNTS 17813; <https://treaties.un.org/doc/Publication/UNTS/Volume%201136/volume-1136-I-17813-English.pdf>.

<sup>23</sup> S/20278; <https://digitallibrary.un.org/record/50478>.

<sup>24</sup> S/26560; <https://digitallibrary.un.org/record/174951>.

<sup>25</sup> <https://israeled.org/wp-content/uploads/2015/02/1993-9-September-9-Israeili-PLO-Recognition-letters.pdf>.

Energien verhältnismäßig tief und den Zugriff der Exportländer auf die erzielten Einnahmen daraus beschränkt hält.

Auch Artikel VII des Abkommens enthält weiteres Potenzial in diese Richtung, sieht er doch vor, dass eine Einigung über die Struktur des Rates und den Übergang der Regierungsgewalt auf ihn in einem Zwischenabkommen **erst erzielt werden muss**.

Zugleich lautet aber Artikel VIII verhängnisvoll, wie folgt:

In order to guarantee public order and internal security for the Palestinians of the West Bank and the Gaza Strip, the Council will establish a strong police force, while Israel will continue to carry the responsibility for defending against external threats, as well as the responsibility for overall security of Israel for the purpose of safeguarding their internal security and public order.

Dabei sieht Artikel XIII/1 des Abkommens vor, was folgt:

After the entry into force of this Declaration of Principles, and not later than the eve of elections for the Council, a redeployment of Israeli military forces in the West Bank and the Gaza Strip will take place, in addition to withdrawal of Israeli forces carried out in accordance with Article XIV.

Wenngleich Absatz 2 dieser Vorschrift vorkehrt, dass die Umgruppierung der Israelischen Streitkräfte *außerhalb bevölkerter Gebiete* erfolgen soll, birgt diese bis dahin vorgesehene Beibehaltung der Präsenz des Militärs Zündstoff für weitere Spannungen und Ausschreitungen, was eine Wahl des Rates weiter erschwert. Dabei lautet Absatz 1 des den militärischen Rückzug regelnden Annexes II, wie folgt:

1. The two sides will **conclude and sign within two months from the date of entry into force of this Declaration of Principles an agreement on the withdrawal of Israeli military forces from the Gaza Strip and Jericho area**. This agreement will include comprehensive arrangements to apply in the Gaza Strip and the Jericho area subsequent to the Israeli withdrawal.

Angesichts der zu erwartenden Unzufriedenheit der Bevölkerung mit den Fallstricken in diesem Abkommen, welche Unruhen nach seinem Inkrafttreten auslösen konnten, stellt dies eine weitere tickende Zeitbombe dar.

Am 28. September 1995 wurde sodann in Washington das sog. OSLO II-Abkommen<sup>26</sup> geschlossen - laut dessen Präambel - *to put an end to decades of confrontation and to live in peaceful coexistence, mutual dignity and security, while recognizing their mutual legitimate and political rights*.

Dessen Artikel I/1 und 2 lauten:

1. Israel shall transfer powers and responsibilities as specified in this Agreement from the Israeli military government and its Civil Administration to the Council in accordance with this Agreement. Israel shall continue to exercise powers and responsibilities not so transferred.

2. Pending the inauguration of the Council, the powers and responsibilities transferred to the Council shall be exercised by the Palestinian Authority established in accordance with the Gaza-Jericho Agreement<sup>27</sup>, which shall also have all the rights, liabilities and obligations to be assumed by the Council in this regard. Accordingly, the term "Council" throughout this Agreement shall, pending the inauguration of the Council, be construed as meaning the Palestinian Authority.

Artikel II/1 des Abkommens lautet:

In order that the Palestinian people of the West Bank and the Gaza Strip may govern themselves according to democratic principles, direct, free and general political elections will be held for the Council and the Ra'ees of the Executive Authority of the Council in accordance with the provisions set out in the Protocol concerning Elections attached as Annex II to this Agreement (hereinafter "Annex II").

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Fazit all dessen ist unseres Erachtens, dass die Zwei-staatenlösung mit einem eigenen Palästinenserstaat auf dem Gebiet des Westjordanlandes und dem Gazastreifen sowie einem souveränen Israel, je in den Grenzen von vor 1967, weder gewollt noch praktisch lebbar ist.

Eine Lösung, die zugleich mit dem aktuellen, obschon bislang kaum implementierten Völkerrecht der Bestimmungen des ISA-Regimes<sup>28</sup> konform ginge, wäre, einen territorial gemeinschaftlichen, *non continuous* Staat im Sinne des Artikels 8 des Annex III der UNCLOS<sup>29</sup> einzurichten, in dem Juden und Araber nebeneinander auf demselben Territorium, jedoch unterworfen je ihrer eigenen Staatsmacht lebten.

Arthur H. Lambauer

<sup>26</sup> <https://www.gov.il/en/Departments/General/the-israeli-palestinian-interim-agreement-main-points>.

<sup>27</sup> <https://www.gov.il/en/Departments/General/agreement-on-gaza-strip-and-jericho-area>. Dessen Artikel III/1 und 3 bzw. IV/1 lauten:

ARTICLE III  
TRANSFER OF AUTHORITY  
1. Israel shall transfer authority as specified in this Agreement from the Israeli military government and its Civil Administration to the Palestinian Authority, hereby established, in accordance with Article V of this Agreement, except for the authority that Israel shall continue to exercise as specified in this Agreement.  
[...]

3. The PLO shall inform the Government of Israel of the names of the members of the Palestinian Authority and any change of members. Changes in the membership of the Palestinian Authority will take effect upon an exchange of letters between the PLO and the Government of Israel.  
[...]

ARTICLE IV  
STRUCTURE AND COMPOSITION OF THE PALESTINIAN AUTHORITY  
1. The Palestinian Authority will consist of one body of 24 members which shall carry out and be responsible for all the legislative and executive powers and responsibilities transferred to it under this Agreement, in accordance with this Article, and shall be responsible for the exercise of judicial functions in accordance with Article VI, subparagraph 1.b. of this Agreement.

Von einer Legitimation der Palästinensischen Autonomiebehörde, die dem Selbstbestimmungsrecht Genüge tun würde, kann hier nicht die Rede sein. Wahlen fanden im Wesentlichen nicht statt; [https://de.wikipedia.org/wiki/Pal%C3%A4stinensische\\_Autonomiebeh%C3%B6rde#Wahlen](https://de.wikipedia.org/wiki/Pal%C3%A4stinensische_Autonomiebeh%C3%B6rde#Wahlen).

<sup>28</sup> Siehe zu dessen Anwendbarkeit auch auf trocken liegendes Land meine Arbeit, *Das ISA-Regime der UNCLOS*: <https://arthurlambauer.files.wordpress.com/2022/03/2020-das-isa-regime-der-unclos.pdf>.

<sup>29</sup> Dieser lautet auszugsweise:

Each application, other than those submitted by the Enterprise or by any other entities for reserved areas, shall cover a total area, which need not be a single continuous area, sufficiently large and of sufficient estimated commercial value to allow two mining operations.