

## WEST BANK AND GAZA: THE CASE FOR ASSOCIATE STATEHOOD

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### I. Introduction: In Quest of a Solution for the West Bank and Gaza

#### A. *Plus Ça Change, Plus C'est la Meme Chose*<sup>1</sup>

At the end of the nineteenth century the Jewish people, importing from Europe the notion of nationalism, laid the foundations for the realization of a dream of eighty preceding generations: the reconstitution of a separate Jewish entity in Zion. The homecoming immigrants were not welcomed by the local Arab population in Palestine. It was, however, not until more than a whole generation had passed--by the beginning of the 1920s--that the Arab hostility crystallized into a distinct Palestinian national movement.

After another generation of bitter, tense strife over Palestine between the two contending national movements, the rivalry, now at a peak, was brought for determination to the world community. On November 29, 1947, the General Assembly of the United Nations resolved that Palestine be partitioned for the establishment of an Arab state and a Jewish state. The Jews endorsed the resolution with alacrity; the Arabs repudiated it. The local Arab community launched a full-scale attack on the Jewish community in Palestine immediately following the resolution. The State of Israel was proclaimed amidst hostilities; it was at once invaded by neighboring Arab states, which for more than two decades thereafter assumed the leading counter-role in the conflict.

Following the 1948 War, the Jordanian army retained the West Bank while Gaza was retained by the Egyptian army. In 1950, the West Bank was annexed to the Hashemite Kingdom of Jordan, while Gaza remained under the military control of Egypt. During the Six Day War of 1967, after yet another generation of animosity, Israel captured the West Bank and Gaza. In the years since

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1. The more things change, the more they remain the same.

that war, the Palestinian national movement has re-emerged and asserted a position in the vanguard of the struggle against Israel, a process which reached its peak with the conclusion of a Treaty of Peace between Israel and Egypt on March 1979.

Many things in the Middle East have changed in the more than half a century of strife between Arabs and Jews over Palestine: empires have been dissolved; many new states have emerged; global powers have evacuated the region to be superseded by other global powers; old regimes have been taken over by new ones; unions and alignments have risen and fallen; and many people, both Arabs and Jews, have shifted their domicile from one country to another. Yet one thing has remained constant throughout: the contention over the same land between the two peoples living in Palestine, the Palestinian and the Jewish people. There are no eternal conflicts. There are no insoluble conflicts. Yet, the longer the animosity and violence in the relationship between the two peoples is allowed to last, the more entrenched become the barriers of the past. It is incumbent on our generation to bring conciliation between the Palestinian and the Jewish people and to create a new era of peace and co-operation for mutual benefit in the Middle East.

#### B. *The Framework for Peace in the Middle East*

For more than two years now, the effort to establish peace in the Middle East has been governed by the two Camp David Accords: the Framework for Peace in the Middle East and the Framework for the Conclusion of a Peace Treaty between Israel and Egypt.<sup>2</sup> Now that the Treaty of Peace between Israel and Egypt of March 1979<sup>3</sup> has superseded the second of these accords, the Framework for Peace in the Middle East is the main legal document delineating the principles for the establishment of peace between Israel and its neighbors. The essence of this Framework<sup>4</sup> is a plan for

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2. 78 Dep't State Bull. 7 (1978); 17 Int'l Legal Mat. 1466 (1978).

3. Treaty of Peace between the Arab Republic of Egypt and the State of Israel, 18 Int'l Legal Mat. 362 (1979).

4. This accord, being the general framework for peace in the Middle East, also includes a special part relating to the establishment of peace between Egypt and Israel. See pt. B, 17

the future arrangements for the West Bank and Gaza. To give effect to the principles set forth in this Framework, most diplomatic efforts concerning Middle East peace conducted since the establishment of peace between Egypt and Israel have been devoted to these areas.

There is a distinction in the Framework for Peace in the Middle East between a period of some *transitional arrangements* for the West Bank and Gaza and the *final status* of these areas. According to the document, in the transitional period "the Israeli military government and its civilian administration will be withdrawn" in order to provide "full autonomy" to the inhabitants of the West Bank and Gaza. A self-governing authority, freely elected by the inhabitants, will replace the existing military government. In addition, the Israeli armed forces will withdraw and there will be a redeployment of the remaining forces into specified security locations. This transitional period will begin when the self-governing authority is established and will not exceed a period of five years.<sup>5</sup>

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4. (Continued)

Int'l Legal Mat. 1468 (1978). See generally Murphy, *To Bring to an End the State of War: The Egyptian-Israeli Peace Treaty*, 12 Vand. J. Transnat'l L. 897, 908-12, 924-29 (1979) (describing and evaluating treaty in historical and contemporary perspective).

5. Framework for Peace in the Middle East, 17 Int'l Legal Mat. 1466, 1467 (1978).

Under the Framework for Peace in the Middle East, Israel is to negotiate the arrangements for the transitional period with Egypt and Jordan, whose delegations may include "Palestinians from the West Bank and Gaza or other Palestinians as mutually agreed." Pt. A., art. 1.(B), 17 Int'l Legal Mat. 1467 (1978). As is well known, neither Jordan nor the Palestinians have joined the negotiations as of the present time. In a joint letter from President Sadat and Prime Minister Begin to President Carter, sent on the day of the conclusion of the Treaty of Peace between Egypt and Israel (March 26, 1979), Egypt and Israel agreed that "In the event Jordan decides not to take part in the negotiations, the negotiations will be held by Israel and Egypt." The main issues to be agreed on are the "modalities" for establishing the self-governing authority and its "powers and responsibilities."

This part of the accord is typical of the drafting technique used in the Framework for Peace in the Middle East, the essence of which is the use of such formulae as will enable each party to stick to its original position. Thus, Israeli military government will be "*withdrawn*"--as distinct from "*abolished*"--but the self-governing authority will "*replace*" the military government. Pt. A.,

As soon as possible, but not later than the third year after the beginning of the transitional period, negotiations will take place on two related issues: first, the final status of the West Bank and Gaza, and the relationship of this territory with its neighbors; second, a peace treaty between Israel and Jordan, taking into account the agreement reached on the first issue.<sup>6</sup>

The positions taken by the parties in their current negotiations concerning the transitional period are clearly influenced by their preferences as to the final status of the areas. Although the Framework for Peace in the Middle East provides no clues on this point,<sup>7</sup> some have assumed that, in fact, the arrangements of the transitional period will shape the final status.<sup>8</sup>

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5. (Continued)

art. 1.(A). For another example, see the reference of the accord to the self-governing authority. The first time that this institution is mentioned in the accord, pt. A, art. 1.(A), it is referred to as "a self-governing authority." However, in pt. A, art. 1.(C) this same institution is the "self-governing authority (*administrative council*)."<sup>17</sup> Int'l Legal Mat. 1467-68 (1978). An additional example is the letters attached to the Camp David accords relating to the status of Jerusalem and to the meaning of the expressions "Palestinians" and "Palestinian People." Letter from Mohamed Anwar El Sadat to Jimmy Carter (Sept. 17, 1978), letter from Menachem Begin to Jimmy Carter (Sept. 17, 1978), letter from Jimmy Carter to Menachem Begin (Sept. 22, 1978). 17 Int'l Legal Mat. 1473-74 (1978). See Eban, *Camp David--The Unfinished Business*, 57 For. Aff. 343, 350 (1978-79). ("[T]he document relating to the West Bank and Gaza is deliberately equivocal. Both Begin and Sadat portray it as consistent with their previous positions.")

6. The parties involved in the determination of the first issue are supposed to be Egypt, Israel, Jordan, and the elected representatives of the inhabitants. The last three parties are also supposed to be the parties who determine the second issue. Pt. A., art. 1(C), 17 Int'l Legal Mat. 1468 (1978).

7. The Framework is also silent as to the possibility that no agreement will be reached by the end of the transitional period. It is not clear whether the transitional arrangements are meant to continue in such a case until agreement is finally reached or whether today's situation supersedes the transitional arrangement. If it is to be the first alternative, the importance of the transitional arrangements will clearly be magnified.

8. The main criticism within Israel against the Framework for Peace in the Middle East has concerned the allegedly unavoidable connection between the "transitional period" and the "final status" of the West Bank and Gaza. See, e.g., Avishai, *Israeli Nerves After Camp David*, 26 Dissent 23, 23 (1979) ("Camp David's

C. *Associate Statehood As A Feasible Solution to the Problem*

Among the options available for solution of the problem posed by the West Bank and Gaza is one based on the framework of associate statehood. It is the thesis of this Article that this is the most suitable option and that it should be considered thoroughly by all parties involved in the Middle East conflict. There are three arguments to support the plausibility of the associate statehood option.

First, such a framework is capable of responding to the basic interests of all parties concerned. Of course, no feasible solution can lack this quality. The point to stress, however, is that the solution of associate statehood has its own viability whether or not current accords regulating the effort to solve the problem of the West Bank and Gaza are altered or replaced. Second, if the principle of "full autonomy" for the inhabitants is indeed going to be implemented in the West Bank and Gaza in accord with the Framework for Peace in the Middle East, the solution of associate statehood is the logical next step to follow a pattern of power allocation based on the principle of autonomy.

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8. (Continued)

autonomy plan for the Palestinians ...[was] contrived to accommodate the goals of the Brookings report, not Likud's platform, and most Israelis seem to know it. In fact, over 50 percent expect that the plan will lead to an independent Palestinian state in spite of Begin's assurances to the contrary.") Likewise, according to an Israeli daily, the conclusion of comprehensive research by the Center for Strategic Studies, affiliated with the Tel-Aviv University, is that "the autonomy will evolve to a Palestinian state." *Yediot Acharonot*, Sept. 20, 1979, at 8. In an international conference on "Models of Autonomy" held by the Tel-Aviv University Faculty of Law, it was the opinion of two of the participants (Messrs. Dinstein and Yavetz) that although there have been cases where autonomy was eliminated before it led to independence, generally autonomy is a transition to independence. According to Dinstein, "For those who grant autonomy--autonomy is the end of the matter. For those who obtain it, it is only the point of departure." *Tel-Aviv University Faculty of Law Newsletter*, No. 2, May 1980, on file with *Yale Studies in World Public Order*. But cf. Heller, *Begin's False Autonomy*, 37 *For. Pol.* 111, 114, 116-17 (Begin determined to resist any Palestinian autonomy).

Third, the concept of associate statehood is flexible enough to be compatible with a variety of political arrangements when the moment for the final resolution of the problem of the West Bank and Gaza comes.<sup>9</sup>

## II. The Parameters of Associate Statehood

### A. Associate Statehood As A Functional Modality for Competence Allocation

In terms of power, in an interdependent<sup>10</sup> world like ours, the ability of states to effect outcomes within other states increases--*i.e.*, the autonomy of every state decreases.<sup>11</sup> On the bilateral level, however, one of the by-products of a high level of interdependence is that it has become harder to maintain relations of qualitative inequality, in terms of dependence-independence, between two states.<sup>12</sup>

9. See Part VII, *infra*.

10. There is a large body of literature on the concept of interdependence. See, *e.g.*, R. Keohane and J. Nye, *Power and Interdependence* (1977) (distinguishing between sensitivity interdependence and vulnerability interdependence); Young, *Interdependencies in World Politics*, 24 Int'l J. 726 (1969) (rising level of interdependence and its effects on world politics); McDougal, Lasswell & Reisman, *Theories About International Law: Prologue to a Configurative Jurisprudence*, 8 Va. J. Int'l L. 188, 189-92 (1968) (manifestations of increasing interdependence and its impact upon lives of individual human beings); Keohane and Nye, *World Politics and the International Economic System*, in *The Future of the International Economic Order* 115, 121-26 (C. Bergsten ed. 1973) (analysis of situations of interdependence as source of power in international relations); Cooper, *Economic Interdependence and Foreign Policy in the Seventies*, 24 World Pol. 159, 161-64 (1972) (discussing growth of economic interdependence); Caporaso, *Dependence, Dependancy and Power in the Global System: A Structural and Behavioral Analysis*, 32 Int'l Org. 13 (1978) (analyzing dependence component of interdependent relationship).

11. Young, *supra* note 10, at 746-49.

12. *Id.* But *cf.* Keohane and Nye, *World Politics*, *supra* note 10, at 122 (many relationships of interdependence in contemporary world remain highly asymmetric). Traditionally, military strategies were perceived as the main instrument of power of international relations and, in terms of sensitivity interdependence, threats to state autonomy focused on the security area and terri-

At times, the enduring external control exercised over a state by another state or states is defined overtly in an international agreement.<sup>13</sup> In extreme cases this external control may be so great as to transform a sovereign state into a subordinate political unit.<sup>14</sup> Short of such extreme situations, however, international law recognizes the possibility that a unit whose authority is significantly qualified by another state may still remain a state.<sup>15</sup>

12. (Continued)

torial integrity of states. See Keohane and Nye, *World Politics*, *supra* note 10, at 119-20; Nye, *Multinational Corporations in World Politics*, 53 *For. Aff.* 153, 154 (1974). In recent decades, however, with the expansion of intense transnational interaction, strategies are perceived mainly in terms of economic measures, and the focus of threats to state autonomy has shifted to the economic areas. Keohane and Nye, *World Politics*, *supra* note 10, at 119-20; Cable, *Britain, The New Protectionism and Trade with the Newly Industrializing Countries*, 55 *Int'l Aff.* 1, 1 (1979). See also McDougal, Lasswell & Reisman, *The World Constitutive Process of Authoritative Decision* (Pt. 2), 19 *J. Legal Ed.* 403-15 (1967) (discussing four categories of strategy); Lillich, *Economic Coercion and the International Legal Order*, 51 *Int'l Aff.* 358, 358 (1975) (in contemporary era, economic considerations dominate international as well as domestic political scene). This development culminated in the 1970s when governments found it increasingly difficult to implement economic policies because of adverse economic effects imported to the domestic system from abroad. See, e.g., Cooper, *supra* note 10, at 164, 178-79 (growing economic interdependence negates the distinction between internal and external policies underlying the present political organization of the world into nation-states); Warnecke, *The United States and the European Community: The Changing Political and Economic Context of Trade Relations*, 30 *J. Int'l Aff.* 21, 22-23 (1976) (effects of weakening of governments' capacity to pursue domestic policies in economically interdependent world); Strange, *International Economics and International Relations*, 46 *Int'l Aff.* 304, 305 (1970) (effects on states of their common involvement in expanding international economic network).

13. On the distinction between "power" and "authority," see McDougal, Lasswell & Reisman, *supra* note 12, at 256; Reisman, *Law from the Policy Perspective*, in *Law and Policy* 75, 89 (D. Weisstub ed. 1976).

14. See H. Lasswell and A. Kaplan, *Power and Society* 181 (1950).

15. See W. Reisman, *Puerto Rico and the International Process* 17-18, 74-77 (1975) (listing examples). See also I. D. O'Connell, *International Law* 304-05, 313-14 (1965) (discussing attributes of statehood using example of Cyprus).

The types of cases where the authority of a state is qualified by another state for some lasting duration are varied. One useful way to classify these cases is through the distinction between territorial qualifications and functional qualifications.<sup>16</sup>

In cases of territorial qualification, the authority of a state in regard to its territory is restricted either through an authorization to another state to take actions within a defined portion of that territory or through an obligation taken by a state in regard to its own conduct over some portion of its territory. The most common examples for this type of qualification are (1) bases operated by one state within the area of another<sup>17</sup> and (2) international servitudes.<sup>18</sup>

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16. On the problem of treaty classification, *cf.* McNair, *The Law of Treaties* 739-54 (1961) (distinguishing several types of treaties including treaties relating to real rights and treaties having the character of contract).

17. *See* L. Oppenheim, *International Law* 455-58 (8th ed. H. Lauterpacht ed. 1955) (listing examples); O'Connell, *supra* note 15, at 361-63 (listing examples).

18. The servitude of international law is a permanent (durable) legal relationship established by a particular international treaty whereby one State, or a certain number of States, is or are entitled to exercise rights within part or the whole of the territory of another State, for a special purpose or interest relating to the territory in question, or whereby a State is obliged towards another State, or a certain number of States, not to exercise certain of its rights within part or the whole of its territory, for a special purpose or interest relating to this territory.

F. Vali, *Servitudes of International Law* 309 (2d ed. 1958). For a definition of servitudes in international law, see H. Reid, *International Servitudes in Law and Practice* VII, 14, 29, 30 (1932); Esgain, *Military Servitudes and the New Nations*, in *The New Nations in International Law and Diplomacy* 42, 72 (W. O'Brien ed. 1965). The territorial element, *i.e.*, the requirement that the *territory* of one state serve the interest of another state, is the most essential element in the concept of international servitudes. *See* H. Reid, *supra* at 13, 21-25 (right must be territorial, not personal). *See also* F. Vali, *supra* at 305-06 (discussing territorial relevancy of rights); L. Oppenheim, *supra* note 17, at 538-40 (territory as object distinguishing state servitudes from other restrictions). Hence, international servitudes are classified as "real" rights. H. Reid, *supra*, at 13, 21. *See* F. Vali, *supra*, at 49 (concept of servitudes in international law justified when equipped with "real" characteristics).



In cases of functional qualification the function<sup>19</sup> of a state is restricted through an authorization to another state to administer some of its functions. Associate statehood denotes functional qualifications of the latter type. It is a formal and durable connection between two states<sup>20</sup>--*i.e.*, both parties to the connection continue to maintain their international status of statehood<sup>21</sup>--the uniqueness of which lies in the modality through which one party exercises control over the other. According to Professor Reisman, the relationship is characterized by the "subordination of and delegation of competence by one of the parties (the associate) to the other (the principal)... ." <sup>22</sup> The associate is left devoid of the competence it has delegated to the principal. The principal, adding this delegated competence to its own, is expected to apply it for the benefit of the associate as well as for its own. Since both the associate and the principal continue to maintain their international status of statehood, however, there remains an inherent limitation to the degree that competence may be diminished and delegated.

B. *Federal State, Confederation, and Associate Statehood*

To clarify the unique characteristics of associate statehood it is useful to contrast this model with two others available for states seeking mutual benefits through co-operation: the federal state and the confederation.<sup>23</sup>

There are two major variations on the theme of maintenance of the international status of statehood by the

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19. For a discussion of the "functional divisions" of a state, see H. Lasswell and A. Kaplan, *supra* note 14, at 192-97.

20. W. Reisman, *supra* note 15, at 10 (association is formal durable link between states of unequal power). For an analysis of the framework of associate statehood, see *id.* at 9-20.

21. See *id.* at 10 (each component retains international status of statehood).

22. *Id.*

23. In making the contrast, we should bear in mind MacIver's warning: "No specific form of government endures, though there are certain major type-forms that have at least a relative permanence . . . [P]olitical structures . . . are not like . . . genera and species of nature, which to a large extent persist and reproduce themselves even though new forms evolve." R. MacIver, *The Web of Government* 147 (1947).

components of a federal state.<sup>24</sup> Under the "Continental" variation the components of a federal state "can be International Persons in a degree... . [They are] International Persons for some purposes only."<sup>25</sup> Under the "American" model, however, the federal state is a new state, all of whose components have completely ceased to maintain the international status of statehood.<sup>26</sup> In the case of a confederation, on the other hand, the outcome is not a new "super state" but merely an inter-governmental organization.<sup>27</sup> Thus, with both a confederation and an association, and to a limited extent in some forms of federal state, each of the participants continues to maintain its international status of statehood.

In the case of associate statehood, power is divided between the principal and the associate on a functional basis:<sup>28</sup> a preponderant amount of power in some sectors is allocated to the principal in addition to the equivalent power enjoyed by both parties in all other sectors. This method of division of power differs from that of both the federal state and the confederation. In the case of the former there is in principle a clear distinction between the power allocated to the central government and that allocated to the governments of the components, each government having its own exclusive type of power.<sup>29</sup> Thus, there should be no overlap be-

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24. A federal state need not necessarily be established by states; a unitary state may transform itself into a federal state as well.

25. L. Oppenheim, *supra* note 17, at 177. See Sohn and Shafer, *Foreign Affairs*, in *Studies in Federalism* 236, 237 (R. Bowie and C. Friedrich eds. 1954) (component units of federation can exercise foreign affairs powers under certain conditions); D. O'Connell, *supra* note 15, at 317, 318, 349 (citing examples of federal components having some international competence).

26. L. Oppenheim, *supra* note 17, at 178; W. Willoughby, *The Nature of the State* 253, 254 (1896); R. Neumann, *European and Comparative Government* 680 (3d ed. 1960).

27. L. Oppenheim, *supra* note 17, at 173; W. Willoughby, *supra*, note 26, at 254; cf. D. O'Connell, *supra* note 15 at 317 (insufficient modern examples to determine this point).

28. See text accompanying notes 19-22 *supra*. For a discussion of functional decentralization, see D. Lasswell & A. Kaplan, *supra* note 14, at 225.

29. See C. Friedrich, *Trends of Federalism in Theory and Practice* 17 (1968) (distinction between state level and nation level); Reisman & Simson, *Interstate Agreements in the American*

tween the powers allocated to the two types of governments, as there may be with associate statehood. In confederation, on the other hand, the central machinery established by the participants does not possess its power to the exclusion of the powers of the individual participants. Rather, the power of the central machinery is identical and parallel to some of the power of each participant, which has possessed it continuously.<sup>30</sup>

### C. *Variations on the Number of Participants*

Although the paradigmatic case of associate statehood is that of one principal and one associate, there are other conceivable variations: one principal associated with more than one associate upon similar<sup>31</sup> or even different terms, for instance; or, alternatively, the association of one associate with more than one principal, each controlling distinct sectors or even the same sector in a sort of "co-imperium."<sup>32</sup>

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#### 29. (Continued)

*Federal System*, 27 Rutgers L. Rev. 70, 77 (1973) (distinction between powers of States and powers of federal government in U.S. constitution). See also Bowie & Schrenk, *Defense in Studies in Federalism* 173, 173, 175 (R. Bowie & C. Friedrich eds. 1954); 2 D. O'Connell, *International Law* 757-58 (1965) (discussing division of power over aliens); *id.* at 951-52 (discussing immunity of subdivisions). Hence, one usually finds in federal states an accepted process for distinguishing between central power and local power. C. Friedrich, *Constitutional Government and Democracy* 210, 211 (4th ed. 1968) (role of judiciary in federal systems); Freund, *The Federal Judiciary*, in *Studies in Federalism* 106 (R. Bowie & C. Friedrich eds. 1954). Whereas power allocation in associate statehood could be described in terms of functional allocation, see note 28 *supra*, power allocation in federal states is often referred to in terms of allocation on a territorial basis. See, e.g., H. Lasswell & A. Kaplan, *supra* note 14, at 225; C. Friedrich, *supra*, at 195.

30. W. Willoughby, *supra* note 26, at 254; L. Oppenheim, *supra*, note 17, at 173.

31. In fact, such cases exist: for example, the association of the United Kingdom and the West Indies island territories, the association of the Netherlands with Surinam and the Netherlands Antilles, and the association of New Zealand and the Cook Islands and Niue. See part VI *infra*.

32. These indications are of considerable importance in the context of the West Bank and Gaza where we deal with two cases of geographically distinct territories (the West Bank and Gaza; the

It is also possible to imagine a principal associated with an associate in regard only to part of the associate's territory. That can occur where an associate which is a federal state is associated with a principal in regard to only one or to some of its components; or, where some natural configuration creates a clear distinction between two parts of an associate which is a unitary state.<sup>33</sup>

### III. New States: Situations Calling for Associate Statehood

#### A. *Why Associate Statehood?*

Establishment of associate statehood is always conditioned on the existence of a significant disparity between the competence of the principal and of the associate--at least in the functions on which the association is based. This comparative advantage provides no indication on the relative position of the principal in those

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#### 32. (Continued)

West Bank and the East Bank of Jordan) and with more than one state with a possible interest in either the West Bank or Gaza or in both (Jordan, Israel, and even Egypt). The term "*co-imperium*" usually refers to situations where joint rights of administration are exercised by two states. The term "*condominium*" refers to situations of joint exercise of sovereignty by two states. The two most famous cases of *co-imperium* are the *co-imperium* of Great Britain and Egypt over Sudan (1898-1956) and the French-British *co-imperium* over the New Hebrides since 1914. See I M. Whiteman, *Digest of International Law* 280-82 (1963). See generally L. Oppenheim, *supra* note 17, at 453-55 (analysing condominium as case of divided territorial sovereignty); O'Connell, *The Condominium of the New Hebrides*, 43 *Brit. Y.B. Int'l L.* 71 (1968-69) (general discussion of condominium and *co-imperium* and the New Hebrides case).

33. Cases of the latter type will immediately raise the question whether the relationship created by the parties ought to be perceived in terms of international servitude rather than associate statehood. Three indicators will determine this question. First, the existence or non-existence of a territorial element in the delegation of competence to the principal. See note 18 *supra*. Second, the intention of the parties, *i.e.*, did they intend to create an arrangement for the benefit of one party only (servitude) or for the benefit of both (association). See note 145 *infra*. Third, the extent to which the type of competence delegated to the principal is retained by the associate after the establishment of the connection between them. See notes 19-22 *supra* and accompanying text.

areas *vis-à-vis* other members of the world arena; it is not necessarily superior to all--or even to most--of them. The establishment of an association requires no more than that the principal have a substantial advantage in a certain sector over no entity other than the associate.<sup>34</sup>

The post-World War II decolonization period has witnessed the emergence of an unprecedented number of new states as participants in the world arena. Many of these new states have been poor or even barely viable economically; others have also been small both in territory and population.<sup>35</sup> Indeed, the problem of the vast gaps between developing and developed countries is one of the major issues with which the international community has been occupied throughout the 1970s.<sup>36</sup>

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34. See cases reviewed in part VI, *infra*.

35. Broderick, *Associated Statehood--A New Form of Decolonization*, 17 Int'l & Comp. L.Q. 368, 369, 370 (4th ser. 1968); Caporaso, *supra* note 10, at 16. The literature on small states is burgeoning. See, e.g., Keohane, *Small States in International Politics*, 23 Int'l Org. 291 (1969) (review article); Fisher, *The Participation of Microstates in International Affairs*, Am. Soc. Int'l L. Proc. 164 (1968) (discussing special problems of microstates); Rappaport, *The Participation of Ministates in International Affairs*, Am. Soc. Int'l L. Proc. 155 (1968) (United Nations attitudes to small states problems).

36. There is an increasing amount of material being generated on this topic. See, e.g., W. Cline, *Policy Alternatives for a New International Economic Order: An Economic Analysis* (1979); Cooper, *A New International Economic Order for Mutual Gain*, 26 For. Pol'y 66 (1977) (theoretical analysis of claims made by developing countries and economic assessment of proposals advocated in this context); Erb, "North-South" Negotiations, 32 Acad. Pol. Sci. Proc. 106 (No. 4, 1977) (review of North-South negotiations); Ferguson, *The Politics of the New International Economic Order*, 32 Acad. Pol. Sci. Proc. 142 (No. 4, 1977) (discussing political aspects of New International Economic Order); Gosavic & Ruggie, *On the Creation of a New International Economic Order: Issue Linkage and the Seventh Special Session of the UN General Assembly*, 30 Int'l Org. 309 (1976) (discussing background and implications of Seventh Special Session); Amuzegar, *The North-South Dialogue: From Conflict to Compromise*, 54 For. Aff. 547 (1976) (politico-economic analysis of relations between poor developing countries and industrial countries).

One of the options available for an emerging state lacking sufficient economic resources has been to delegate responsibility for management of one or more of its sectors to another state, relatively more competent in these areas, through the establishment of an association. Generally, such a move has three advantages for a state with limited resources. First, since competence in a certain sector has been delegated to another state which is significantly superior in that respect, problems arising in that sector of the delegating state can be handled better than would otherwise be the case. Second, the delegating state can now optimize its limited resources by allocating them to fewer sectors.<sup>37</sup> Third, as all sectors of a state are interdependent, the delegating state might expect to accrue benefits through association in sectors additional to those delegated.<sup>38</sup>

Defense is the sector most likely to be delegated to some other state by a non-developed newly emerging state through the establishment of a framework of associate statehood. There are three reasons to justify this contention.

First, defense is a matter to which almost every state accords high priority. Second, however, defense is relatively speaking a very costly enterprise.<sup>39</sup> Obviously, if a state is released from responsibility for its own defense, considerable resources are freed for other essential purposes.<sup>40</sup> Moreover, there are many

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37. See note 40 *infra* and accompanying text.

38. For example, the military presence of a principal within the territory of the associate may benefit the economy of the associate. Likewise, military interest of a principal in the territory of an associate may lead to economic aid from the principal to the associate as well as to some citizenship concessions for the population of the associate which would not have been granted otherwise. See note 78 *infra* (discussing case of Caribbean associated states); notes 77, 80 *infra* (Niue); note 76 *infra* (Cook Islands); note 79 *infra* (three Micronesian entities).

39. See McDougal, Lasswell & Reisman, *supra* note 12, at 293 (large size of investment required for defense is leading to more inclusive power options). On the security problems of small states, see W. Reisman, *supra* note 15, at 19-20; Keohane, *supra* note 35, at 293, 298, 301; *Emerson Self-Determination*, 65 Am. J. Int'l L. 459, 471 (1971).

40. This "guns vs. butter" argument was summed up as follows: The proponents of this school of thought assume a zero-sum social marketplace: what is spent on one sector is taken away from another. They maintain

reasons why the territory and the location of a militarily inferior state could be valuable for the security needs of a potential principal: for example, assuring denial of access to that territory by hostile forces; operation of strategically important bases; and gaining the ability to block hostile forces outside the principal's territory.<sup>41</sup>

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40. (Continued)

that buying arms utilizes scarce foreign-exchange resources that could be used for more constructive developmental purposes in industrializing countries. Even military grant-aid programs require expenditures on infrastructure, the diversion of skilled manpower from the civilian sector, and operation and maintenance costs not covered by military programs. Whatever positive spinoff effects military expenditures may have, these analysts argue, they cannot be as productive as direct investment in development.

Neuman, *Security, Military Expenditures and Socioeconomic Development: Reflections on Iran*, 22 *Orbis* 569, 583 (1978). See also Letter to the Editor, 23 *Orbis* 471, 474 (1979) (applying considerations of resource costs); Benoit, *Growth and Defense in Developing Countries*, 26 *Econ. Dev. Cult. Change* 271, 276 (1978) (civilian programs for growth make greater contribution than defense programs). For a rejection of the "guns vs. butter" argument, see Neuman, *supra*, at 570, 584-85. Moreover, it is relatively easy to isolate defense from all other sectors for the purpose of its delegation to another state. Thus, the economic sector, for example, is so much more interdependent with all other sectors than is the defense sector that to remove economic decisions from the scope of the associate's competence would involve hardships that depriving it of responsibility for its own defense would not.

41. A comparison of the defense sector to the economic sector in this context reveals the relative suitability of the former as a basis for the establishment of association. It seems reasonable to assume that in cases where a state is furnished with some economic potentiality that could be traded to a more competent state, it would do its utmost to enjoy its benefits independently. A good example is the case of Nauru which, with 6,500 inhabitants and 6.2 miles of territory chose, in 1968, the option of independence because of the rich phosphate content of its soil.

For much the same reasons, foreign affairs considerations can be another important inducement to establishment of a relationship of associate statehood. Control of the defense of a state and control of its foreign affairs are clearly related, but that is a secondary reason. It would be an enormous exaggeration to claim that whenever State A controls the defense of State B it necessarily also controls the foreign affairs of State B. On the contrary, it could be argued that in such a situation, except in regard to a very few core issues, control by State A of the defense sector of State B does not deprive the latter of substantial independence in conducting its foreign affairs.<sup>42</sup> Nonetheless, it is only natural that whenever an associate delegates its defense competence to a principal the two states are likely to have a similar basic perspective in foreign affairs matters.

A major motivation for making foreign affairs a basis for the establishment of an association, however, could derive from the importance of international activity for internal development and from the costs involved in international activity. In an interdependent world, the efficient implementation of internal policies often involves the mobilization of external resources.<sup>43</sup> Moreover, intensive international activity involves costs (maintenance of missions, membership dues, etc.) that might be too onerous for a state with limited resources.<sup>44</sup> Hence, a new state could conclude that delegation of responsibility for its foreign affairs to a state with greater competence in this area might make its representation in international arenas more effective.

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42. See W. Reisman, *supra* note 15, at 41-42, 122 (distinguishing between areas of 'foreign affairs' and 'international relations'). For an association based on the delegation of the defense sector to the principal while preserving the foreign affairs competence for the associate, see the case of the three Micronesian entities, *infra* note 79.

43. W. Reisman, *supra* note 15, at 4, 39. See Cooper, *supra* note 36, at 116 (self-reliance is untenable in today's interdependent world); Morse, *Transnational Economic Processes*, 25 Int'l Org. 373, 399 (1971) (inability to pursue autarkic policies in contemporary era); Caporaso, *supra* note 10, at 17 (for most countries autarky is unattractive strategy).

44. W. Reisman, *supra* note 15, at 52. See also Young, *supra* note 10, at 741 (analyzing costs of dealing with other actors under conditions of interdependence).



B. *Why Not Associate Statehood?*

Even though the option of association can produce considerable advantages for states with limited resources, a survey of the behavior of such states reveals that only in very few cases have they chosen to take part in the establishment of an association. Several reasons have contributed to that reluctance.

First, if defense is indeed the sector most likely to be delegated by a new state to some other state, a precondition for such a delegation is that the new state must perceive its defense situation relative to its neighbors or other potentially threatening countries as so acutely inferior that it must seek an urgent improvement of that sector through the military protection of another, much stronger state.<sup>45</sup> This is hardly the common case.

Second, the role of armies is perceived in many states in terms much broader than defense. As one scholar has put it, although

. . . [t]here is little doubt that the cost of maintaining an army will always far outweigh any kind of economic gains that may be accrued through utilizing it in some sort of productive capacity . . . even in regions where international tension has been relatively low, economic profitability is not the only criterion of whether to maintain an army, and in most cases it is not even the main one . . . . [W]hile it is most probably true that, in economic terms, the best thing for any country is not to have an army at all, other considerations play a far more important role in such a decision.<sup>46</sup>

Thus, armies in emerging states have been perceived as major agents for social and cultural change<sup>47</sup> and for

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45. Likewise, the "stronger" state has to perceive its involvement in the defense of the weaker state as serving its own interests.

46. Shabtai, *Army and Economy in Tropical Africa*, 23 *Econ. Dev. Cult. Change* 687, 695 (1975).

47. The military establishment, which in developed countries often appears as rather archaic and tradition bound, can in the LDC context have

the creation and maintenance of a sense of national integration, independence, and national pride.<sup>48</sup>

Moreover, no matter what the benefits, a state's participation in an association as the associate still entails significant constrictions on its authority. There are often viable alternatives, *e.g.*, participation in international organizations,<sup>49</sup>

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47. (Continued)

quite a different significance, as an important force for modernization.... It ... inculcates in those it trains a great many modern attitudes and aptitudes.... Even more fundamental is its revolutionary effect in destroying unquestioned acceptance of local custom and tradition, in sometimes substituting a national for a local, ethnic, tribal, or caste consciousness and including modern ideas and interests.

Benoite, *supra* note 40, at 277. See Shabtai, *supra* note 46, at 688-89 (on role of armies as agents of modernization in developing countries).

48. Shabtai, *supra* note 46, at 695; Benoite, *supra* note 40, at 277, 278 (army contributes to nation-building by instilling pride). It might be assumed that considerations of modernization and national pride also apply to foreign affairs activities of developing countries.

International organizations also provide opportunities for training and exposure of the mid-elite, through secondment to staff positions, participation in training programs and institutes, encounters at more sporadic conferences and so on. This educational aspect is often a hidden benefit.... [I]t has value for developing countries and it should not be, and indeed has not been, overlooked.

W. Reisman, *supra* note 15, at 51.

49. On the phenomenon of small states' support of international organizations, see Keohane, *supra* note 35, at 294. See also W. Reisman, *supra* note 15, at 19, 20 ("small associate state may seek membership in general international organizations, simultaneously conceding its dependence in one arena, but asserting its independence in another"). On the connection between the growth of interdependence and the increasing number of international organizations, see McDougal, Lasswell & Reisman, *supra* note 12 at 288 ("whereas formerly the maximization of all values was to be found

alliances,<sup>50</sup> and the like,<sup>51</sup> that may serve similar ends, involve less limitation on state authority, and are frequently readily available in a highly interdependent world community.

Finally, it is hard to imagine that once it has tasted independence, a newly independent state will chose to delegate responsibility for the management of even one of its functions to another state. Rather, it seems that the option of association is more likely to be considered by the elite of a subordinate self-determining community, at the point when the future status of that community must be determined.<sup>52</sup> In such situations, however, an option involving constraints on the independence of a state is less likely to be preferred, especially since a metropolitan state and its colonial territory seem to be prime candidates for such an association.<sup>53</sup> Few colonies are willing to accede to the possibility of the continued subordination of even one aspect of their authority to their former masters.

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49. (Continued)

in freedom from encumbrance, it is increasingly appreciated that maximization of values can now develop only through organized and centralized and staffed decision-making structures.")

50. For a discussion of small states and alliances, see Keohane, *supra* note 35, at 300-04; Olso & Zeckhauser, *An Economic Theory of Alliances*, 48 Rev. Econ. Statis 266 (1966).

There is a new gloom-word in Nato: 'Denmarkisation.' It is what happens when a small country decides that it need not spend much on defense because its bigger Atlantic allies will protect it anyway.... [T]he new manifestation in Denmark is disturbing because, to some degree, it has already infected Belgium, Holland and Norway.

*Those Danish Blues*, *The Economist*, Oct. 4, 1980, at 14.

51. In cases of security problems an additional option may be to build an army in the concerned state with the aid of another state.

52. It is unlikely that two states without some prior experience involving a degree of mutual dependence in some functions will be willing to participate in a formal association. The probability that two independent states will agree on the establishment of an association in a market-type "meeting of the minds" is somewhat unrealistic.

53. All currently existing associations were established by such participants. See cases reviewed in part VI, *infra*.

## IV. Associate Statehood as A Compromise Solution

Self-determination is a process<sup>54</sup> always involving two parties as direct participants. Whenever a community within an established entity--whether colonial or non-colonial--asserts its right to self-determination and claims the establishment of a new entity,<sup>55</sup> it is clear that two communities are going to take part in the process and to be affected by its outcome.

Under contemporary international law, self-determining entities are offered three options. The outcome of the process of self-determination must, therefore, be either emergence as an independent state, association with an independent state, or integration with an independent state.<sup>56</sup> It seems, however, that the options

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54. Chen, *Self-Determination as a Human Right*, in *Toward World Order and Human Dignity* 201-08 (M. Reisman & B. Weston, eds. 1976) (self-determination as part of more comprehensive social process); Suzuki, *Self-Determination and World Public Order: Community Response to Territorial Separation*, 16 *Va. J. Int'l L.* 779, 790 (1976) (process of self-determination as manifestation of group's desire for new pattern of value effects).

55. See Chen, *supra* note 54 at 206-07 (discussing different claims of self-determination, involving or not involving "establishment of new entities").

56. G.A. Res. 1541 (Annex), 15 U.N. GAOR, Supp. (No. 16) 29, U.N. Doc. A/4684 (1960). See also G.A. Res. 742, 8 U.N. GAOR, Supp. (No. 17) 21, 22-23, U.N. Doc. A/2630 (1953); W. Reisman, *supra* note 15, at 10 (self-determining entities are offered three options, two of which do not involve full independence); Sohn, *The Concept of Autonomy in International Law and the Practice of the United Nations*, 15 *Israel L. Rev.* 180, 183-185 (1980) (U.N. views on the options for the attainment of self-government). It is noteworthy, however, that the Special Committee on the Situation With Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, created under G.A. Res. 1654, 16 U.N. GAOR Supp. 17, at 65, U.N. Doc. A5100 (1961) ("The Special Committee of Twenty Four"), consistently held that the right of self-determination can be considered as genuinely realized only when independence is attained. For criticism of the Committee's position, see Fisher, *supra* note 35, at 168; Bowett, *Self-Determination and Political Rights in the Developing Countries*, *Am. Soc. Int'l L. Proc.* 129, 134-35; Emerson, *supra* note 39, at 475.

of both independence and integration represent an approach substantially distinct, in terms of the outcome of the process of self-determination, from that of the option of association.

Both independence and integration are "absolute" outcomes: the process of self-determination ends either with two separate states having no institutionalized connection between them, or with the incorporation of one community into the state framework of the other. Association, on the other hand, is a "relative" outcome.<sup>57</sup> It is not so much that both participants involved in the process of self-determination continue to be mutually connected even after the termination of the process that is important, but rather their positions relative to each other. The associate has realized a broad scope of independence, though not "full" independence while the principal, though excluded from a major portion of its former control over the associate, still retains some of it. This relative quality of the outcome reached under the option of associate statehood makes this option a prime candidate for being invoked as a solution of compromise. Each party comes out with some net "gains" following its partial "loss."<sup>58</sup>

Thus, it might be argued that the decolonization era does not necessarily signal the exhaustion of the situations in which the framework of associate statehood could be applied. On the contrary. It is reasonable to suggest that the full realization of the possibilities of this institution lies in the future.

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57. This discussion relates to processes by which entities with a previous superordination-subordination connection establish associations. On the unlikelihood of association being established by entities having no former connection of that type, see note 52 *supra*.

58. The compromise quality of associate statehood is reflected in Reisman's reference to association as "a policy 'trade-off.' It compromises some fundamental international policies in order to increase returns on others." W. Reisman, *supra* note 15, at 114. The quality of relativity of association is reflected in the fact that of the three options for self-determination this is the only one subject to continuous scrutiny by the international community. For a review of the on-going scrutiny of association, see W. Reisman, *supra* note 15, at 114.

The principle of self-determination has been one of the most vigorous forces extensively invoked in our century. As the decolonization era winds to a close, however, the international community still faces situations in which the application of the principle of self-determination involves severe hardships. It is in the context of these difficult cases that the option of associate statehood could be applied as a solution of compromise, accommodating the diverse interests involved.

Cases involving secession are prime examples of situations requiring such delicate compromise. A significant characteristic of many of the states that have arisen in the current era--and of many long extant states for that matter--is that they are heterogeneous and still involved in a struggle for ethnic coherence. It is clear, therefore, that in the future the international community will be concerned with the invocation of the principle of self-determination in the context of secession much more than in the colonial context.<sup>59</sup> It seems reasonable to assume that many cases of secession will involve situations in which the already-existing state and its secessionist region will continue to be mutually dependent. The association relationship may be invoked as the preferred solution for settlement of such cases.<sup>60</sup>

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59. Chen, *supra* note 54, at 239-42; Nanda, *Self-Determination in International Law*, 66 Am. J. Int'l L. 321-22 (1972); Emerson, *supra* note 39, at 465; Note, *The Logic of Secession*, 89 Yale L.J. 802, 802 (1980). For a discussion of heterogeneous long-existing states and secession, see Rostow, "*Palestinian Self-Determination*": *Possible Futures for the Unallocated Territories of the Palestine Mandate*, 5 Yale Stud. World Pub. Ord. 147, 153-54 (1979) (most states include more than one people, and the international community is generally hostile to secession movements).

60. See W. Reisman, *supra* note 15, at 20. In "An Option for Quebec," René Lévesque proposed that Quebec become an independent state associated with Canada through a monetary union and a custom union. R. Lévesque, *An Option for Quebec* 42-47 (1968). Though it is clear that this "association" is different from the one discussed in the present article--at least with regard to the custom union--it is interesting that Lévesque proposes institutionalized connection with Canada in the period following secession and that he--the exponent of secession!--emphasizes time and again the high level of dependence existing between world participants. *Id.* at 39, 43, 44. In a referendum held in Quebec on May 20, 1979, the "sovereignty-association" proposal of Mr. Lévesque was rejected by more than 59% of the voters. See *Reprieved*, *The Economist*, May 24, 1980, at 53.

Besides the general group of secession cases, there currently exist some specific cases where the application of the principle of self-determination involves difficulties which might be alleviated through the application of the notion of association. The West Bank and Gaza clearly represent one of these cases.<sup>61</sup>

#### V. International Policy: Associate Statehood as A Legitimate Means for Self-Determination

Although the potential of the notion of associate statehood extends beyond the colonial context, it is nonetheless clear that any association established in the foreseeable future will be evaluated by the international community in light of the criteria of legitimacy that have been developed in the post-World War II era of decolonization. These criteria derive from the general principle of self-determination. As they apply to associate statehood, they concentrate on the association with the intention to determine whether participation in the association has helped its people fully realize their right of self-determination.<sup>62</sup>

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61. Another possible case is that of the Horn of Africa. On the Ethiopia-Eritrea and Ethiopia-Somalia problems, see Wiiberg, *The Horn of Africa*, 16 J. Peace Research 189 (1979); G. Morrison, *The Southern Sudan and Eritrea* (1971); and S. Longrigg, *A Short History of Eritrea* (1945).

62. The rise of the principle of self-determination to its preeminent position in contemporary international law is closely connected with the formation of the United Nations and with numerous actions pertaining to this issue taken by the organization's organs--primarily, the General Assembly. There are many road-signs for that preoccupation: U.N. Charter arts. 1(2), 55; International Covenant on Economic, Social, and Cultural Rights, G.A. Res. 2200A, Annex, 21 U.N. GAOR Supp. (No. 16) 49, U.N. Doc. A/6316 (1966); International Covenant on Civil and Political Rights, *id.*, at 52-53; Declaration on the Granting of Independence to Colonial Countries and Peoples, G.A. Res. 1514, 15 U.N. GAOR, Supp. (No. 16) 66, 66-67, U.N. Doc. A/4684 (1960); The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, G.A. Res. 2625, (Annex) 25 U.N. GAOR, Supp. (No. 28) 121, 123, U.N. Doc. A/8028 (1970); Principles which should guide members in determining whether or not an obligation exists to transmit the information called for under Article 73e of the Charter, G.A. Res. 1541, 15 U.N. GAOR, Supp. (No. 16) 29, U.N. Doc. A/4684 (1960).

As noted above,<sup>63</sup> associate statehood is fully recognized in contemporary international law as a legitimate means for self-determination. Moreover, in addition to its general recognition in principle, association with another state has been specifically recognized in practice by the General Assembly of the U.N. as a legitimate exercise of the right of self-determination in several cases that involved the establishment of associate statehood.<sup>64</sup>

62. (Continued)

It is well established that the question whether a certain community has fully realized its right of self-determination is part of the legitimate concern of any member of the international community. The principle of non-intervention in matters of domestic jurisdiction is regarded, in this context, as being preempted by the superior considerations that matters of self-determination, bearing the potential for constituting a threat to international peace and a violation of human rights, are of legitimate international concern. For the principle of non-intervention in matters of domestic jurisdiction, see U.N. Charter Art. 2(7); McDougal & Reisman, *Rhodesia and the United Nations: The Lawfulness of International Concern*, 62 Am. J. Int'l L. 1, 14, 15 (1968); Chen & Reisman, *Who Owns Taiwan: A Search for International Title*, 81 Yale L.J. 599, 648, 649 n.185 (1972). On matters of self-determination as a potential threat to international peace, see McDougal & Reisman, *supra*; R. Higgins, *The Development of International Law Through the Political Organs of the United Nations* 93, (1963). On matters of self-determination as potential violation of human rights, see McDougal & Reisman, *supra*, at 15, 16; W. Reisman, *supra* note 15, at 10; R. Higgins, *id.*, at 104; E. Suzuki, *Self-Determination and World Public Order: Community Response to Group Formation* 5, 6 (1974) (unpublished J.S.D. thesis, on file at Yale Law School Library).

63. See text accompanying note 56, *supra*.

64. *E.g.*, Cessation of the Transmission of Information under Article 73e of the Charter in Respect of Puerto Rico, G.A. Res. 748 8 U.N. GAOR, Supp. (No. 17) 25, U.N. Doc. A/2630 (1953) (Puerto Rico); Communication from the Government of the Netherlands concerning the Netherlands Antilles and Surinam, G.A. Res. 945, 10 U.N. GAOR, Supp. (No. 19) 25, U.N. Doc. A/3116 (1955) (Surinam and The Netherlands Antilles); Question of the Cook Islands, G.A. Res. 2064, 20 U.N. GAOR, Supp. (No. 14) 56, U.N. Doc. A/6014 (1965) (The Cook Islands); Question of Niue, G.A. Res. 3285, 29 U.N. GAOR, Supp. (No. 31) 98, U.N. Doc. A/9631 (1974) (Niue).



Of course, the mere establishment of an association is no proof that the right of self-determination has been genuinely exercised by the people of the associate. What is important is not the form of association, but its content.<sup>65</sup> Hence, two basic indicators have been developed for determining the lawfulness of any particular association. The first and most critical one, which in itself is a reflection of the general basic premise of self-determination, is "[t]he extent of the consent, *among the broad population*, of the associate to the association."<sup>66</sup> The second indicator of lawfulness is "[t]he extent to which the association conduces to a better fulfillment of the human (including economic and social) rights deemed under contemporary prescriptions to be minimum international standards."<sup>67</sup>

In addition, for an association to be legitimate, there should be retained "for the peoples of the territory which is associated with an independent State the freedom to modify the status of that territory through the expression of their will by democratic means and through constitutional processes."<sup>68</sup> The associate should also have "the right to determine its internal constitution without outside interference, in accordance with due constitutional processes and the freely expressed wishes of the people."<sup>69</sup>

Several criteria have been developed as guidelines for determining whether an association is in accord with

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65. W. Reisman, *supra* note 15, at 11.

66. *Id.* (emphasis in original). In the period since 1945, the international plebiscite has become the preferred device for ascertaining the genuine desire of the population of self-determining communities. See Chen & Reisman, *supra* note 62, at 660-69 (discussing plebiscites in international law); H. Johnson, Self-Determination Within the Community of Nations 71-79 (history of plebiscite as basis for self-determination); Rappaport, *supra* note 35, at 157, 158 (history of U.N. verification of freedom of choice in self-determination).

67. W. Reisman, *supra* note 15, at 12.

68. Principle VII(a), G.A. Res. 1541 (Annex), 15 U.N. GAOR, Supp. (No. 16) 29, U.N. Doc. A/4684 (1960). For a discussion of this requirement, see text accompanying notes 149-151, *infra*.

69. *Id.*, Principle VII(b).

These demands of lawfulness.<sup>70</sup> Thus, in cases where the associate is separate geographically and distinct ethnically and/or culturally from the principal, elements of an administrative, political, juridical, economic, or historical nature may be taken into consideration. If these elements are found to affect the relationship between the parties in a manner which arbitrarily places the associate in a "position or status of subordination," they are held to support the presumption that the "associate" is a territory governed by the "principal," not a territory which through the exercise of its right of self-determination has joined voluntarily in the establishment of an association.<sup>71</sup>

## VI. International Practice With Regard to Associate Statehood

I desired the Secretary ... to let [the Emperor] know, that I thought it would not become me, who was a foreigner, to interfere with parties; but I was ready, with the hazard of my life, to defend his person and state against all invaders.<sup>72</sup>

### A. Introduction

The model of associate statehood is not a recent innovation.<sup>73</sup> Nonetheless, any new association likely to be established in the near future will be judged in light of the legal concepts developed and the precedents created and recognized as legitimate in the decolonization era of

70. W. Reisman, *supra* note 15, at 13-15.

71. Principles IV, V, G.A. Res. 1541 (Annex), 15 U.N. GAOR, Supp. (No. 16) 29, U.N. Doc. A/4684 (1960). Cf. Factors Indicative of the Attainment of Independence or of Other Separate Systems of Self-Government, G.A. Res. 742 (Annex), 8 U.N. GAOR, Supp. (No. 17) 22, U.N. Doc. A/2630 (1953). As to the relation between these two Resolutions, see Clark, *Self-Determination and Free Association--Should the United Nations Terminate the Pacific Islands Trust?*, 21 Harv. Int'l L.J. 1, 53, 73 n.387 (1980).

72. Jonathan Swift, *Gulliver's Travels* 38 (Case ed. 1938).

73. For a general treatment of historical examples, see L. Oppenheim, *supra* note 17, at 191-96 (Republic of Andorra, Tunisia, Morocco); D. O'Connell, *supra* note 15, at 379-83 (Ionian Islands, Kuwait, Tunisia, Morocco). See also W. Reisman, *supra* note 15, at 10, 12 (traditional forms of association).

the last three and a half decades, rather than according to some venerable cases that cannot easily be reconciled with the contemporary concept of legitimate associate statehood.

Despite the vigor of the principle of self-determination in contemporary international law, examples of subordinate-superordinate relationships of varying scope exist in profusion. The subordinate entity in these relationships often enjoys a certain degree of self-government while management of some functions of its government remains in the hands of the superordinate entity. Nonetheless, a scrupulous study of these cases, in light of contemporary international policy pertaining to the issue of associate statehood, will reveal that the number of cases that might be viewed as legitimate associations is relatively small. Those that do not qualify are, it is true, based on an allocation of power in accord with the traditional model of associate statehood; but they fail to be "legitimate" because they lack the support of the majority of the population of the associate.

The following review will draw on the few current cases that may be regarded as having satisfied the demands of lawfulness dictated by contemporary international policy: the association between the United States and Puerto Rico;<sup>74</sup> the association between The Netherlands

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74. Puerto Rico is 75 miles east of the Dominican Republic. The population as of 1972 was approximately 2,816,000. The association of Puerto Rico and the United States, established in 1952, is governed by Public Law 600, the Puerto Rican Federal Relations Act, the United States Constitution and the Constitution of the Commonwealth of Puerto Rico. Public Law 600 stated that the people of Puerto Rico may organize a government pursuant to a constitution of their own adoption. This Law was approved by a referendum held in Puerto Rico. Following this approval, a constitutional convention drafted a proposed constitution for Puerto Rico. This constitution was approved in a second referendum. According to the Constitution of Puerto Rico, any future changes in the status of Puerto Rico would require U.S. assent. Art. 7(3). However, in a message addressed to the General Assembly of the U.N., the President of the United States stated that "if at any time the Legislative Assembly of Puerto Rico adopts a resolution in favor of more complete or even absolute independence," the President "will immediately thereafter recommend to Congress that such independence be granted." W. Reisman, *supra* note

and The Netherlands Antilles;<sup>75</sup> the association between

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74. (Continued)

15, at 43. According to Reisman,  
[u]nder the precedent of the Eastern Greenland case, the President's statement may be viewed as a binding commitment under international law which would supersede even a constitutionally prescribed procedure. And as a practical matter, it is difficult to imagine the United States refusing to acknowledge and comply with a Puerto Rican majority demand for independence.

*Id.* at 45. For a review of Puerto Rican national identity, political history and economy, see *id.* at 22-31.

75. The Netherlands Antilles consists of five islands and part of a sixth in the Caribbean Sea. The islands are in two groups 500 miles apart. The population as of 1966 was approximately 210,000. In 1816, the Dutch administration was established in the islands. Since 1865, there was a steady process of participation in the local government by the inhabitants. The culmination of this process was the Charter for the Kingdom of the Netherlands of December 1954 which is a compact negotiated and concluded by delegations of the Netherlands, the Netherlands Antilles, and Surinam. For an English translation of the Charter, see 5 *Netherlands Int'l L. Rev.* 107 (1958), and 5 A. Blaustein & E. Blaustein, *Constitutions of Dependencies and Special Sovereignties* (1976). The Charter was approved by the Parliaments of the three countries. Pursuant to art. 42 of the Charter, the Parliament of the Netherlands Antilles adopted, in 1955, the Constitution of the Netherlands Antilles. For an English translation of the text, see 5 A. Blaustein & E. Blaustein, *supra*. The Charter does not include any provision regarding the right of secession. However, during the negotiations preceding the promulgation of the Charter this question engaged the participants considerably. In a Memorandum of Understanding signed by the parties in 1952, the right of secession was vaguely recognized. Moreover, on the occasion of the promulgation of the Charter, Queen Juliana of the Netherlands declared that no political partnership could endure unless supported by voluntary acceptance and fidelity of the overwhelming majority of the citizens and that preventing a partner from leaving the Kingdom if it wished to do so would be contrary to established policy. In addition, bearing in mind that secession would necessarily mean amending the Charter, the draftsmen of the Charter provided for a relatively flexible procedure for its amendment. Art. 55. In any case, in 1975 Surinam seceded from its connection with the Netherlands and the Netherlands Antilles and became independent. The process of its secession has been peaceful and of mutual consent. See generally Van Panhuys, *The International Aspects of the Reconstruction of the Kingdom of the Netherlands in 1954*, 5 *Nederlands Tijdschrift Voor Int'l Recht* 1 (1958); Bos, *Surinam's Road From Self-Government to Sovereignty*, 7 *Netherlands*

New Zealand and the Cook Islands;<sup>76</sup> the association between New Zealand and Niue;<sup>77</sup> and the association between

75. (Continued)

Y. B. Int'l L. 131 (1976); Broderick, *supra* note 35, at 399, 400; Clark, *supra* note 71, at 46-49; D. O'Connell, *supra* note 15, at 417-19; Van Reenen, *Future Independence of the Netherlands Antilles and the Warsaw Convention*, 9 Netherlands Y. B. Int'l L. 27 (1978).

76. The Cook Islands comprise fifteen islands located in the South Pacific Ocean about 1,600 miles northeast of New Zealand. They are scattered over some 850,000 square miles, though their total land area is only 93 square miles. Their population as of 1976 was 18,112. The islands became a British protectorate in 1888. In 1901 they were proclaimed part of New Zealand. Nonetheless, the residents of the islands had no vote in New Zealand elections, paid no New Zealand taxes and did not participate in New Zealand's social security scheme. On the other hand, they were New Zealand citizens with free access to New Zealand. The present legal status of the Cook Islands and their relationship with New Zealand were determined by the Cook Islands Constitution Act, 1964. Statutes of New Zealand, 1964, Vol. 1, No. 69. The Cook Islands Constitution, Cook Islands Constitution Amendment Act, 1965, sched. 2, Statutes of New Zealand, 1965, Vol. 1, No. 2, was approved by the Legislative Assembly of the Cook Islands following negotiations with the New Zealand Government. The form and nature of the future status of the Cook Islands has been a major issue in the election for that Legislative Assembly. The Constitution of the Cook Islands includes a special procedure for the revision of the status of the Cook Islands upon the unilateral will of the people of the Cook Islands. Cook Islands Const. art. 41. On the eve of the association the New Zealand Government undertook to continue its substantial financial aid to the Cook Islands. (In 1978 this aid was about \$U.S. 6 million). The people of the Cook Islands retained their New Zealand citizenship after the establishment of the association. For a general report on the change of status in the Cook Islands, see P. Allen, *Self-Determination in the Western Indian Ocean* 40-49 (1966); Kilbridge, *The Cook Islands Constitution*, 1 New Zealand U.L. Rev. 571 (1965); Stone, *Self-Government in the Cook Islands 1965*, 1 J. Pacific Hist. 168 (1966); Broderick, *supra* note 35, at 390-92; Clark, *supra* note 71, at 54-57, 72 n.382. *See also* Northey, *Self-Determination in the Cook Islands*, 74 J. Polynesian Soc. 112 (1965) (taking a critical view of the change in status).

77. Niue, covering an area of approximately 10 square miles, is 580 miles northeast of Rarotonga, the main island of the Cook Islands. Its population as of 1976 was 3,954. Niue became a British protectorate in 1900. In 1901 it was included within New Zealand boundaries. After being administered as part of the Cook Islands for three years it was placed under separate administration in 1904. In the early 1960s there began a process of delegation of executive authority to the people of Niue. This process culminated in Niue's association with New Zealand, in 1974, under the Niue Constitution Act, 1974, Statutes of

the United Kingdom and the West Indies islands.<sup>78</sup> A sixth instance of associate statehood is expected to

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77.(Continued)

New Zealand, 1974, Vol. 2, No. 42, and the Niue Amendment Act 1974, *id.* at No. 43. The association between Niue and New Zealand came out of discussions held in 1973 by representatives of Niue under the affirmation of the Niue Assembly and the New Zealand Government. The Constitution of Niue provides a special procedure for the revision of the status of Niue upon the unilateral will of the people of Niue. Niue Const. art 35. The people of Niue retained their New Zealand citizenship after the establishment of the association. *See generally* T. Chapman, *The Decolonization of Niue* (1976).

78. The island territories, located in the Caribbean Sea north of Trinidad and southeast of Puerto Rico are: Antigua (108 square miles, population of 58,000); St. Kitts-Nevis (68 square miles, population of 38,000 in St. Kitts, 50 square miles, population of 12,500 in Nevis); and St. Vincent (150 square miles, population of 86,500). The status of the island territories and their relationship with the United Kingdom were determined by the West Indies Act, 1967, 1967 c. 4. Originally, six associated states were established under the Act: Antigua; Dominica; Grenada; St. Christopher (later St. Kitts), Nevis, and Anguilla; St. Lucia; St. Vincent. In 1971 Anguilla came under direct administration of the United Kingdom. In 1973 Grenada terminated its status of association and became independent. Dominica became independent in 1978 and St. Lucia in 1979. Constitutional talks on independence for Antigua began in London on Dec. 4, 1980. The West Indies Act of 1967 is the result of discussions between representatives of the United Kingdom and the island territories, including three Constitutional Conferences, held in London. The Reports of these Constitutional Conferences, as well as the constitution of each island territory, have been approved by the legislature of each of the island territories. The Act contains detailed provisions for unilateral termination of the status of association both by each associated state and by the United Kingdom. (West Indies Act 1967, 1967 c. 4 §§ 10, 11, sched. 2). The British Nationality Acts 1948 to 1965 have remained in force in the associated states, and a citizen of any of these states is known as a citizen of the United Kingdom, Associated States and Colonies. For a general discussion of the recent changes in the status of these Caribbean island territories, see C. O'Loughlin, *Economic and Political Change in the Leeward and Windward Islands* (1968); Laing, *Independence and Islands: The Decolonization of the British Caribbean*, 12 N.Y.U. J. Int'l L. & Pol'y 281 (1979); Broderick, *supra* note 38; Clark, *supra* note 71, at 60-64. *See also*, Fisher, *supra* note 35 (focusing on Anguilla); *Antigua Independence Talks Open With a Dispute*, N.Y. Times, Dec. 5, 1980, Section 1, at 6 col. 2. (commencement of Antigua independence talks).

commence in the near future.<sup>79</sup> It is noteworthy that

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79. The parties to this agreement are the United States and three of the four Micronesian entities currently comprising the Trust territory of the Pacific Islands: Palau, the Federated States of Micronesia (population as of 1977, 69,360), and the Marshall Islands (population as of 1977, 27,096). Geographically, these three entities comprise hundreds of islands and atolls scattered across three million square miles of the Pacific Ocean between Hawaii and Guam. A Compact of Free Association was initialed by the United States as one party and the Marshall Islands and the Federated States of Micronesia as the other party on October 31, 1980, and by the United States and Palau on November 17, 1980. Copy on file with *Yale Studies in World Public Order*. Under the Compact its approval by the Micronesian party is to be expressed in a plebiscite. The connection of association is expected to supersede the existing Pacific Islands Trust in 1981. The Compact provides the peoples of the Micronesian entities with some preferences over other aliens with regard to immigration to the United States. See generally Clark, *supra* note 71; Armstrong, *The Negotiations for the Future Political Status of Micronesia*, 74 Am. J. Int'l L. 689 (1980); 2 *States in Pacific Initial Self-Rule Pacts With U.S.*, N.Y. Times, Nov. 2, 1980, Section 1, at 14 col. 1. For a discussion of the problem of the termination of this association, see note 151 *infra*. For a discussion of expected U.S. financial support of its Micronesian associates, see Clark, *supra* at 72 n. 382.

The fourth component of the Trust Territory of the Pacific Islands consists of the Northern Mariana Islands (population as of 1973, 14,335). In February 1975, a Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America was concluded by the parties. The Covenant was approved by the people of the Northern Marianas in a plebiscite held in 1975. In 1976 it was enacted by Congress into law. Act of March 24, 1976, Pub. L. No. 94-241, 90 Stat. 263 (1976). The Covenant is expected to enter into full force at the termination of the Pacific Islands Trust. The legal status of the Northern Marianas under the Covenant is not clear. Some interpreted it as intending to bring about the integration of the Northern Marianas with the United States. See, e.g., Note, *International Law and Dependent Territories: The Case of Micronesia*, 50 Temple L.Q. 58, 66, 99 (1976) (concluding attempted integration failed); Clark, *supra* note 71, at 76, 77 (concluding attempted integration failed). Others perceived the future status of the Northern Marianas in terms of association with the United States. See, e.g., Note, *Self-Determination and Security in the Pacific*, 9 N.Y.U. J. Int'l L. & Pol'y 277, 296-97 (1977) (discussing ways future status resembles free association); Note, *The Marianas, The United States, and the United Nations: The Uncertain Status of the New American Commonwealth*, 6 Calif. W. Int'l L.J. 382 (1976) (discussing association

the basic division of power between the associate and the principal in all these cases is alike: the associate enjoys self-government, but the principal assumes much of the responsibility for its defense and foreign affairs--and, in some cases, a few additional areas.<sup>80</sup>

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79. (Continued)

status). See also Clark, *supra* note 71, at 75, 76 (discussing problems arising if status is tested in terms of association). Proponents of both approaches deny the validity of the Covenant as a lawful realization of the right of self-determination by the people of the Northern Marianas. One of the main reasons that those invoking the association approach deny the Covenant's validity is the need, under the Covenant, for mutual assent for any future modification of the status of the Northern Marianas. See Note, *Self-Determination and Security in the Pacific*, 9 N.Y.U. J. Int'l L. 277, 297 (1977); Note, *The Marianas, The United States, and the United Nations: The Uncertain Status of the New American Commonwealth*, 6 Calif. W. Int'l L.J. 382, 407 (1976); Clark, *supra* note 76, at 75, 76. For a discussion of the Constitution of the Northern Mariana Islands, see Willens & Siemer, *The Constitution of the Northern Mariana Islands: Constitutional Principles and Innovation in Pacific Setting*, 65 Geo. L.J. 1373 (1977).

80. The status of Puerto Rico as a state associated with the United States was described by the Constitutional Convention of Puerto Rico as "a state which is free of superior authority in the management of its own local affairs but which is linked to the United States of America and hence is part of a political system in a manner which is compatible with its Federal structure..." *Quoted in Broderick, supra* note 35, at 398.

Article 41(1) of the Charter for the Kingdom of The Netherlands provides that "The Netherlands ... and The Netherlands Antilles conduct their internal affairs autonomously." However, "maintenance of the independence and the defence of the Kingdom" and "foreign relations" are the two most important "Kingdom affairs" in regard to which a detailed machinery for co-operation between the parties is set forth. Charter for the Kingdom of the Netherlands, arts. 3, 6-8, 10-13.

"The Cook Islands shall be self-governing." Cook Islands Constitution Act 1964, Art. 3. However, "Her Majesty the Queen in right of New Zealand" will retain responsibility "for the external affairs and defence of the Cook Islands..." *Id.*, art 5.

"Niue shall be self-governing." Niue Constitution Act 1974, Art. 3. However, "Her Majesty the Queen in right of New Zealand" will retain responsibility "for the external affairs and defence of Niue," *id.*, art. 6, and it will be "a continuing responsibility of the Government of New Zealand to provide necessary economic and administrative assistance to Niue." *Id.*, art. 7.



B. *Indicia of the Relationship*

1. *Self-Government*

In all cases of association reviewed in the pages below the structure of the institutions of the government of the associate and their powers are set forth in a constitution approved by the associate,<sup>81</sup> These constitutions may be amended at the will of the associate,<sup>82</sup> subject at times to limitations as to the content of such amendment,<sup>83</sup> or to the requirement that the principal concur if the amendment relates to some specified subjects.<sup>84</sup>

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80. (Continued)

The United Kingdom Government "shall have no responsibility for the government of any associated state" except in regard to "any matter which in the opinion of Her Majesty's Government in the United Kingdom is a matter relating to defence (whether of an associated state or of the United Kingdom or of any other territory for whose government Her Majesty's Government in the United Kingdom are wholly or partly responsible) or to external affairs...." West Indies Act 1967, art. 2(1).

Under the Compact of Free Association of the three Micronesian entities the peoples of these entities will be "self-governing" with "the capacity to conduct foreign affairs ... in their own name and right," subject, however, to a duty to consult the Government of the United States. On the other hand, "full authority and responsibility for security and defense matters," in or relating to the Micronesian entities, is conferred upon the Government of the United States. Compact of Free Association §§ 111, 121(a), 123(a), 311(a). When this association comes into effect it will be the only one in which defense competence and foreign affairs competence are divided between the principal and the associate.

81. In all cases except that of The Netherlands Antilles, the Constitution was also approved by the principal.

82. P.R. Const. art. VII; Charter for the Kingdom of The Netherlands, art. 42(2) and Neth. Antilles Const. art. 149. For English translation, see A. Blaustein & E. Blaustein, *supra* note 75; Cook Islands Const. art. 41; Niue Const. art. 35; West Indies Act 1967, §§ 5(4), 5(5). As to the power of the Micronesian entities to determine their constitutions without outside interference, see Compact of Free Association (Preamble), *supra* note 79, and Clark, *supra* note 71, at 73.

83. P.R. Const. art. VII § 3. See also W. Reisman, *supra* note 15, at 38 (requirement that such amendments be consistent with "applicable provisions of the Constitution of the United States"),

84. Charter for the Kingdom of The Netherlands, art. 44; Neth. Antilles Const. art. 149.

Pursuant to the basic division of power between associates and principals, the executive authorities of the associates in these cases enjoy a full range of self-government in internal matters.<sup>85</sup> In some cases these authorities consist only of local inhabitants elected by the people of the associate.<sup>86</sup> In other cases, although most members of the executive are elected by the people of the associate,<sup>87</sup> the executive also includes a Governor nominated by the Queen or King who is the "head of state" of both the principal and the associate.<sup>88</sup> The function of the Governor is, however, generally merely symbolic or at most advisory.<sup>89</sup>

Legislatures of the associates likewise enjoy a broad scope of authority in internal matters.<sup>90</sup> In most cases they are elected by the people of the associate<sup>91</sup> and their legislation cannot be vetoed by any external intervention.<sup>92</sup> Except for matters reserved for its sole responsibility,<sup>93</sup> the principal is also barred from intervention, by means of its own legislation, in the legislative process of the associate.<sup>94</sup>

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85. P.R. Const. art. IV; Cook Islands Const. art. 13(1); Niue Const. art. 2(2).

86. P.R. Const. art. 4§1; art. 6§4; Niue Const. arts. 4(1), 5, 6.

87. Cook Islands Const. arts. 13,14; Neth. Antilles Const. arts. 11, 37, 39. For the West Indies island territories, *see, e.g.*, Antigua Const. art. 62, *reprinted in* 3 A. Blaustein & E. Blaustein, *Constitutions of Dependencies and Special Sovereignties* (1975).

88. Cook Islands Const. art. 3; Neth. Antilles Const. art. 11; Antigua Const. art. 17. *See also* Van Panhuys, *supra* note 75, at 12 (discussing the connection between the King of The Netherlands and The Netherlands Antilles); O. Phillips & P. Jackson, *Constitutional and Administrative Law* 273, 662-66, 681-82, 697-99 (1978) (discussing connection between British Crown and countries within Commonwealth).

89. Cook Islands Const. arts. 3, 5, 12, 19, 25; Neth. Antilles Const. arts. 11, 12, 32; Antigua Const. arts. 17, 60, 69.

90. Neth. Antilles Const. art. 18; Cook Islands Const. art. 39; Antigua Const. art. 37.

91. P.R. Const. art. III §1; Neth. Antilles Const. arts. 44, 45. (*See also* art. 67 and Charter art. 46); Cook Islands Const. art. 27; Niue Const. art. 16; Antigua Const. art. 30. *But see id.*, art. 23.

92. Cook Islands Const. art. 44; Antigua Const. art. 43. *But see* Neth. Antilles Const. arts. 68-78.

93. *See* text accompanying notes 121-28, *infra*.

94. Cook Islands Const. arts. 46, 88; Niue Const. art. 36; West Indies Act 1967 §§ 3,7.

Associates considered here operate their own judicial systems. Under some circumstances, however, a right of appeal to the highest judicial instance of the principal is provided to the inhabitants of every associate.<sup>95</sup>

2. *Responsibility of the Principal for Defense and Foreign Affairs Sectors of the Associate*

a. *Defense*

As noted above,<sup>96</sup> in all currently existing cases of associate statehood the sectors of defense and foreign affairs of the associate are left within the competence of the principal.<sup>97</sup> The general authorization to the principal to handle these sectors of the associate is, however, often supplemented and limited by detailed provisions for the regulation of specific issues.

Thus, in the case of the island territories in the West Indies referred to above,<sup>98</sup> Heads of Agreement on Defense and External Affairs were reached between the United Kingdom and each of the associated states prior to the establishment of the association.<sup>99</sup> The government of each associated state took it upon itself to provide all facilities that might be required by the Government of the United Kingdom for the fulfillment of its responsibilities in defense matters, and also not to grant access to its territories to alien forces without the consent of the United Kingdom. These Heads of Agreement also provided that the parties would enter into an agreement dealing with the exercise of jurisdiction over United Kingdom visiting forces and other matters normally dealt with in status of forces agreements.

95. Charter for the Kingdom of The Netherlands, art. 23; Cook Islands Const. art. 61 (*but see* art. 63); Niue Const. art. 51; Antigua Const. art. 105. *See also* W. Reisman, *supra* note 15, at 34-35 (discussing appeals from judgments of Supreme Court of Puerto Rico to Supreme Court of United States).

96. *See* text accompanying note 80 *supra*.

97. *But see* note 79 *supra* (discussing exception with regard to foreign affairs competence, case of proposed association of three Micronesian entities and United States).

98. *See* note 78 *supra*.

99. *See* A. Blaustein & E. Blaustein, *supra* note 87 (text of the Heads of Agreement).

Finally, it was stipulated that any United Kingdom forces in the associated states would not be used in aid of the civil power of any state or for any purposes other than defense, except at the request of the government of that state.<sup>100</sup> Similarly, in the case of The Netherlands Antilles special provisions were set forth to regulate the declaration of a state of war in any part of The Netherlands Antilles and the administrative and constitutional measures that would have to be taken in The Netherlands Antilles in such event.<sup>101</sup>

b. *Foreign Affairs*

The interesting feature of the delegation of foreign affairs competence from associates to principals in all these cases is that in none of them is that delegation absolute. Such delegation is often qualified in

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100. In some cases the Heads of Agreement contain the following clause: "Provided that the request of the Government shall not be necessary if at any time that Government is unable, through circumstances beyond its control, to make a request." See, e.g., Heads of Agreement of St. Kitts-Nevis, art. 6, A. Blaustein & E. Blaustein, *supra* note 87.

101. Charter for the Kingdom of The Netherlands, arts. 11, 30-5; Neth. Antilles Const., arts. 137, 135.

Under the Compact of Free Association initialed by the United States and the three Micronesian entities, the United States took upon itself to defend its associates from "attack or threats" as "the United States and its citizens are defended." The United States was granted the power to foreclose access to or use of the territories of the associates by military personnel or for military purposes "of any third country." The United States was also granted the option to establish and use in the territories of its associates military areas and facilities, subject to further agreements between the parties. The Micronesian entities took it upon themselves to refrain from actions which the United States, after consultation with the entities, determines to be incompatible with its authority and responsibility for security and defense with regard to these entities. The status of U.S. armed forces in the territories of its associates is left under the Compact to a separate agreement due to come into effect simultaneously with the Compact. Compact of Free Association, *supra* note 79, §§ 311(b), 313(a), 323. See also Clark, *supra* note 71, at 25-31 (review of Compact's provisions relating to security and defense relations).

two respects. First, only *some* matters of foreign affairs are delegated to the principal, while others are retained by the associate to be discharged by its own authorities.<sup>102</sup> Second, even those matters of foreign affairs which are delegated to the principal are sometimes subject to a certain procedure of co-operation with the associate in discharging them.<sup>103</sup>

i. *Qualified Delegation of Competence*

A good departure point for a discussion of the first qualification is the case of the association between Puerto Rico and the United States. In this case, the question of the allocation of foreign affairs competence between the parties was not decided at the establishment of the Commonwealth of Puerto Rico. As Reisman explains, it is not helpful in this context to analogize Puerto Rico to states of the Union, "for Puerto Rico is not a state."<sup>104</sup> He does, nonetheless, analyze the allocation of foreign affairs competence between the federal government and the states in the United States for comparative purposes.

Reisman concludes that:

[T]wo legal categories emerge with increasing clarity. The first, 'foreign affairs', includes matters which require exclusive federal competence; the second, which might be called 'international relations', includes matters which do not have such egregious impacts as to require exclusive federal competence. In the tradition of American decentralization, these matters are left to the States and local governments.<sup>105</sup>

Therefore, he contends, as a member of the American federal system Puerto Rico must be deemed to have at least as much international competence as a State in the Union. Though "it cannot invade the 'foreign affairs' area, ... it is entitled to appropriate participation in

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102. See text accompanying notes 104-13 *infra*.

103. See text accompanying notes 114-20 *infra*.

104. W. Reisman, *supra* note 15, at 40.

105. *Id.* at 41, 42.

the 'international relations' sector."<sup>106</sup>

Delegation of foreign affairs competence, qualified to a certain extent according to the distinction above between matters of "foreign affairs" and matters of "international relations," may also be discerned in the case of the association of the United Kingdom and the West Indies island territories. Thus, the Heads of Agreement<sup>107</sup> provide that the Government of the United Kingdom will from time to time, by dispatch, define the extent to which the governments of the associated states will have authority to act in the field of external relations.<sup>108</sup>

In February 1967, the United Kingdom did indeed entrust external relations authority to the associated states in accordance with its obligation under this provision of the Heads of Agreement.<sup>109</sup> Associated states were given authority, *inter alia*, to apply for full or associate membership of those U.N. Specialized Agencies or similar international organizations of which the United Kingdom is itself a member; to negotiate and conclude bilateral or multilateral trade agreements relating to certain defined matters; to negotiate and sign agreements of purely local concern with any member of the British Commonwealth or any British Colony in the Caribbean area, and agreements for financial and technical assistance or of a cultural or scientific nature with

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<sup>106.</sup> *Id.* at 42. After analyzing the relevant international prescriptions and international practice, Reisman concludes that there is nothing unusual in the notion that (1) Puerto Rico will be a full member of the United Nations, *id.* at 53-63, or participate in U.N. activities either as a non-member or with the status of observer, *id.* at 64-67; (2) Puerto Rico will become a party to the Statute of the International Court of Justice, *id.* at 78-79; (3) Puerto Rico will participate in many U.N. related organizations, *id.* at 79-95; (4) subject to some conditions, Puerto Rico will become a party to the General Agreement on Tariffs and Trade (GATT), *id.* at 96-98; (5) Puerto Rico will be a member in the Hague Conference on Private International Law, *id.* at 98-99, and in the Inter-American Organizations, *id.* at 99-103; (6) Puerto Rico will have direct association with some multilateral treaties, *id.* at 105-08, and (7) Puerto Rico will have its own quasi-diplomatic representatives in other states, *id.* at 109-11.

<sup>107.</sup> See text accompanying note 99 *supra*.

<sup>108.</sup> See, e.g., Heads of Agreement on Defense and External Affairs with Antigua, art. 10.

<sup>109.</sup> A draft of this entrustment was annexed to the report of the Constitutional Conference held by the parties prior to the establishment of the association. See note 78 *supra*; Broderick, *supra* note 35, at 377.

any member of the British Commonwealth and with the U.S.A.; and to arrange or permit certain kinds of visits by representatives of the associated states to other countries and by representatives of other countries to the associated states. There was, however, an explicit stipulation in this "entrustment" that governments of the associated states must inform the Government of the United Kingdom prior to any exercise of this delegated authority, and that in case of dispute between the respective governments the view of the latter should prevail.<sup>110</sup>

Constraints on the competence of the principal in the foreign affairs sector also appear in the case of the association of The Netherlands and The Netherlands Antilles. Under the Charter for the Kingdom of the Netherlands, The Netherlands Antilles is given the privilege not to be bound by "international economic and financial agreements" concluded by The Netherlands,<sup>111</sup> the power to initiate such agreements with a power binding only on itself,<sup>112</sup> and some power to accede to membership in international organizations.<sup>113</sup>

ii. *The Requirement of Co-operation  
Between the Parties*

In the cases of the association of New Zealand with the Cook Islands and Niue, the general responsibility of New Zealand for the external affairs of its associates is qualified by a duty to consult the associates before discharging this duty. Thus, under the Cook Islands Constitution Act of 1964, the responsibilities of New Zealand for the external affairs of the Cook Islands ought to be "discharged after consultation by the Prime Minister of New Zealand with the Premier of the Cook Islands."<sup>114</sup> Likewise, under the Niue Constitution Act of 1974, the

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110. *See, e.g.*, Draft Dispatch annexed to the Report of Antigua Constitutional Conference 1966, A. Blaustein & E. Blaustein, *supra* note 87.

111. Charter for the Kingdom of the Netherlands, art. 25(1).

112. *Id.*, art. 26.

113. *Id.*, art. 28.

114. Cook Islands Constitution Act 1964, *supra* note 76, art. 5. See also Clark, *supra* note 71, at 55-58 (discussing allocation of foreign affairs competence between parties).

responsibilities of New Zealand for the external affairs of Niue ought to be discharged "after consultation between the Prime Minister of New Zealand and the Premier of Niue, and in accordance with the policies of their respective Governments."<sup>115</sup>

The Heads of Agreement relating to the allocation of defense and foreign affairs competence between the United Kingdom and its associated states provide that the government of the United Kingdom would consult the governments of the associated states before entering into "international obligations" with respect to them.<sup>116</sup>

The Charter for the Kingdom of The Netherlands provides that The Netherlands Antilles will be consulted in the preparation of treaties with other states or with international organizations which affect it<sup>117</sup> and in the performance of treaties which affect it and which are binding on it.<sup>118</sup> The Netherlands Antilles is also given the authority to appoint a special representative to participate in deliberations of the Government of The Netherlands relating to matters of foreign relations which affect The Netherlands Antilles.<sup>119</sup> If this representative has "serious objections" to the preliminary opinion of the Government in any such matter, he may request further deliberations, in which representatives of both governments participate, for the final determination of the issue.<sup>120</sup>

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115. Niue Constitution Act 1974, *supra* note 77, art. 8. The same limitation applies to the responsibility of New Zealand for the defense of Niue and to New Zealand's responsibility to provide necessary economic and administrative assistance to Niue.

116. *See, e.g.*, Heads of Agreement with Antigua, art. 9

117. Charter for the Kingdom of The Netherlands, arts. 27, 24(1). The Charter provides that such treaties should be submitted to the Legislative Council of The Netherlands Antilles and that in some cases The Netherlands Antilles may require a special procedure for approving the treaty.

118. *Id.* art. 27.

119. *Id.* arts. 3(1)(b), 7, 8(1), 10, 11. *See also* Van Panhuys, *supra* note 75, at 12 (participation of representative of Netherlands Antilles in deliberations of Netherlands Government).

120. *Id.* arts. 12(2)-12(5).



3. *The Principal's Power to Legislate for the Associate*

The delegation of responsibility from associates to principals in the sectors of defense and foreign affairs is often accompanied by the grant of authorization to principals to assume some legislative power *for their associates* in matters which are within the scope of their responsibility, subject, in some cases, to a requirement of co-operation with the associate.

In the case of Puerto Rico and the United States, Article 9 of the Puerto Rican Federal Relations Act<sup>121</sup> reserves for the Congress of the United States wide legislative authority for Puerto Rico. It seems, however, that this authority must be used subject to the general framework of power allocation between Puerto Rico and the United States.<sup>122</sup> Hence, it is in matters of "foreign affairs" and defense--which should be regarded in any case as areas of exclusive federal competence--that the United States is furnished with appropriate power to legislate for Puerto Rico.

The Charter for the Kingdom of The Netherlands provides The Netherlands with special authority to intervene in both the legislation and the administration of The Netherlands Antilles in cases where legislative or administrative measures there conflict with an international arrangement or with foreign relations or defense interests of The Netherlands, or in the event that any organ in The Netherlands Antilles does not adequately perform its duties as required in pursuance of an international agreement.<sup>123</sup>

The West Indies Act of 1967 enables the extension of any Act of the Parliament of the United Kingdom to the associated states if that Act provides that it thus extends and that it is required so to extend "in the interests of the responsibilities of Her Majesty's Government in the

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121. 48 U.S.C. §§ 731-916 (1976).

122. W. Reisman, *supra* note 15, at 36.

123. Charter for the Kingdom of The Netherlands, arts. 50, 51. "Such powers . . . are of course supposed to be wielded only in exceptional cases. . ." Van Panhuys, *supra* note 75, at 14.

United Kingdom relating to defence and external affairs."<sup>124</sup> Likewise, where it appears to be in the interests of the responsibilities of the United Kingdom Government relating to defense and external affairs that a change be made in the law of an associated state, the Queen is authorized to make "such provision as appears to Her Majesty be appropriate," including, in case of war or other emergency, a provision derogating from the provisions of the constitution of that state relating to "fundamental rights and freedoms," by Order in Council, as part of the law of an associated state.<sup>125</sup> These provisions should, however, be read in light of the Heads of Agreement,<sup>126</sup> which establish a detailed procedure for consultation between the Government of the United Kingdom and the government of the pertinent associated state prior to the former's exercise of this legislative power. It should be noted, however, that the government of the associated state cannot veto the exercise of this legislative power.<sup>127</sup>

Under the Constitution of the Cook Islands and the Constitution of Niue, the Parliament of New Zealand may extend its Acts to become part of the law of the Cook

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124. West Indies Act 1967 §3(2).

125. *Id.* art. 7(2).

126. *See* text accompanying note 99 *supra*.

127. *See, e.g.*, Heads of Agreement with Antigua, art. 13.

Under the Heads of Agreement with the West Indies island territories, the governments of the associated states undertook to take all steps, including legislative ones, required by the United Kingdom Government to secure the fulfillment of Commonwealth or international obligations or responsibilities of the United Kingdom Government and those steps required in the interest of good relations between the associated state or the United Kingdom and another country. *See, e.g.*, Heads of Agreement with Antigua, art. 11. In addition, the governments of the associated states took it upon themselves not to introduce or support legislation inconsistent with the above terms without the consent of the United Kingdom Government. *See, e.g.*, Heads of Agreement with Antigua, art. 12. Moreover, the West Indies Act of 1967 provides that the legislature of an associated state shall not have power to make any law whereby the government of that state, subject to the consent of the United Kingdom Government, would be authorized or required to conduct any external affairs or whereby the government of that state would be authorized or required to interfere with the conduct by the United Kingdom Government of defense or external affairs. West Indies Act of 1967, sched. 1, arts. 4(3)(a), 4(3)(b).

Islands and Niue. Such extension should, however, be requested and consented to by the Legislative Assembly of the Cook Islands and the Niue Assembly, respectively, and it should be expressly declared in such an Act that the Government of the Cook Islands or the Niue Assembly has requested and consented to the enactment of that Act.<sup>128</sup>

## VII. Associate Statehood for the West Bank and Gaza

### A. *The Basic Interests of the Parties*

Arab nationalism in Palestine as well as in other places in the Middle East began to manifest itself at the end of the nineteenth century. Since the 1920s a separate Palestinian national movement could be distinguished on the Middle East scene. This movement, though strongly correlated with notions of Pan-Arabism for many years,<sup>129</sup> advocated the establishment of an

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128. Cook Islands Const, art. 46; Niue Const. art. 36. In the case of Niue, subordinate legislation of New Zealand may also be extended to Niue as well, *id.* art. 36. The Governor-General of New Zealand may, from time to time, and subject to similar limitations applying to the Parliament of New Zealand, issue regulations for the Cook Islands. Cook Islands Const. art. 88. In the case of the proposed association of the three Micronesian entities and the United States, as in the cases of the Cook Islands and Niue, the associates would not be subject to the legislative power of the principal. Compact of Free Association, *supra* note 79, §171. See Clark, *supra* note 71, at 73.

129. In a discussion of the nationalism of the Arabs of Palestine, the question can properly be raised, is it 'Palestinian-Arab,' or 'Arab-Palestinian'.... Since the emergence of strong nationalist sentiment among Palestine Arabs they have received backing from leaders in the surrounding Arab states; Palestinian goals have been linked with those of other nationalist movements; the more fervently they articulate their own goals the more they seem inextricably linked with the broader aspirations of Arab nationalism. However, since 1967 the Palestinians have developed a nationalist credo that is distinct, that differentiates, but does not separate them from other Arab nationalists. Peretz, *The Historical Background of Arab Nationalism in Palestine*, in *The Palestine State* 3, 3 (R. Ward, D. Peretz & E. Wilson eds. 1977).

independent Arab state in Palestine.<sup>130</sup> In November 1947, following the General Assembly Resolution calling for the partition of Palestine into an Arab state and a Jewish state,<sup>131</sup> the realization of this goal, though only in part of Palestine, seemed closer than ever before. As noted above,<sup>132</sup> however, the Palestinians and Arabs rejected the notion of partition. This rejection led to their massive offensive against the Jewish community in Palestine.

The Palestinian national movement came out of this war shattered, its people dispersed to several Arab states as well as Israel, and Palestine itself divided between Transjordan, Egypt, and Israel. This eclipse and dormancy of the Palestinian national movement continued for some twenty years.<sup>133</sup> It was the Six Day War of 1967--which brought the areas of the West Bank and Gaza under Israeli military administration--that gave the movement the impetus to revive, although the first signs of this revival could be discerned in the middle of the 1960s. The Palestine Liberation Organization (PLO) has emerged at the fore of the leadership of the movement. In the last decade, this organization, voicing the Palestinian claim for self-determination in world arenas, has gained world-wide recognition as the

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129. (Continued)

See generally Y. Porath, *The Emergence of the Palestinian-Arab National Movement 1918-1929* 49-50, 62-63 (1974); text accompanying note 166 *infra*.

130. See Lesch, *The Palestinian-Arab Nationalist Movement under the Mandate*, in W. Quandt, F. Jabber & A. Lesch, *The Politics of Palestinian Nationalism* 5-42 (1973); Porath, *supra* note 129, at 31-122; Peretz, *supra* note 129, at 3-5, 9, 10, 15, 16, 20; E. Said, *The Question of Palestine* 117 (Vintage Books ed. 1980). See generally A. Kayyali, *Palestine, A Modern History* (giving Arab viewpoint); Rouleau, *The Palestinian Quest*, 53 *For. Aff.* 264 (1975).

131. G.A. Res. 181, 2 U.N. GAOR, 131-32, U.N. Doc. A/519 (1947).

132. See Part I *supra*.

133. For Palestinian history in the period 1948-1967, see Peretz, *supra* note 129, at 23-43; Quandt, *Political and Military Dimensions of Contemporary Palestinian Nationalism*, in W. Quandt, F. Jabber & A. Leach, *supra* note 130, at 43, 45-51.

representative of the Palestinian people.<sup>134</sup> In the seven years since the Yom Kippur War of 1973, this claim has focused increasingly on the areas of the West Bank and Gaza--the loci of the greatest Palestinian population in the Middle East<sup>135</sup>--with the demand for establishment of a Palestinian state in these areas.<sup>136</sup>

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134. For a concise review of recognition of PLO, see Kassim, *The Palestine Liberation Organization's Claim to Status: A Juridical Analysis Under International Law*, 9 Den. J. Int'l L. & Pol'y 1, 19-22, 29, 30 (1980). For more general treatment, see Perlmutter, *A Race Against Time*, 57 For. Aff. 987, 997 (1979) (PLO "is now a well-established political structure, legitimized in 1974 by the Arab states in Rabat, and recognized by over a hundred U.N. members"); Stone, *Palestinian Resolution: Zenith or Nadir of the General Assembly*, 8 N.Y.U. J. Int'l L. & Pol'y 1 (1975) (discussing 1974 "Palestinian Resolution" of U.N. General Assembly); *Mentioning the Unmentionable*, The Economist, June 21, 1980, at 13; *Nuances, Nuances*, The Economist, Sept. 15, 1979, at 54; *Europe Plays Now-You-See-It-Now-You-Don't With the PLO*, The Economist, Aug. 25, 1979, at 33, 34. But see Rostow, *supra* note 59, at 151-52. It should be noted, however, that those recognizing the PLO as the representative of the Palestinian people represent a broad and varied spectrum of concepts as to the future status of the West Bank and Gaza.

135. According to Israel's Ministry for Foreign Affairs, as of 1974, 500,000 of a total of 2.3 million Palestinians lived on the West Bank and 400,000 in Gaza. See Mishal, *Jordanian and Israeli Policy on the West Bank*, in The Hashemite Kingdom of Jordan and the West Bank 210, 210 (A. Sinai & A. Pollack eds., 1977). According to PLO estimates, 654,000 Palestinians lived on the West Bank and 500,000 in the Gaza in the same year as part of a total Palestinian population of 3.3 million. *Id.* According to Said there are now between 3.5 million and 4 million Palestinians, of whom 1 million reside in the West Bank and Gaza. Said, *supra* note 130, at 115. On the "numbers game" with regard to the problem of Palestinian refugees, see M. Reisman, *The Art of the Possible* 58-60 (1970). ("The 'numbers game' can be used to minimize one's own responsibility for others or, alternately, to magnify the responsibility of one's adversary. It is thus not surprising that Israelis have tended to shrink the number of refugees and Arabs have tended to bloat it.") *Id.* at 60.

136. "On occasion after occasion the PLO stated its willingness to accept a Palestinian state in the West Bank and Gaza. Two meetings of the [Palestine] National Council, in 1974 and again in 1977, committed the whole national community to this idea, and with the idea, an implicit recognition of Israel as a neighbor." Said, *supra* note 130, at 224. See also *id.* at 124, 125, 161, 169, 175, 176, 178, 227. Said is a member of the Palestine National Council. For an eloquent expression of the Palestinian claim for a state in the West Bank and Gaza, see Khalidi, *Thinking the Unthinkable: A Sovereign Palestinian State*, 56 For. Aff. 695 (1978). See also *Waltzing Round A Formula*, The Economist, July 14, 1979, at 54 ("Mr Arafat repeated to

Ever since its birth, the major problem faced by Israel has been to secure its existence. Surrounded on three sides by hostile Arab states, Israel has experienced war five times in thirty-two years, and thousands of terrorist raids in the interstices. For many years, Israel's main security concern was for its southern flank, where the Egyptian army, considered to be the strongest Arab army, was stationed. Nonetheless, Israel has always been highly sensitive to the peril of war from the east as well.

One look at the topography of the West Bank and Israel explains this sensitivity. The West Bank, a mountainous area,<sup>137</sup> divides Israel into two halves connected by a sort of a "corridor." This corridor extends mainly at sea level between the West Bank and the Mediterranean Sea. Its width at one point does not exceed nine miles. Not only does that "corridor" comprise both the most densely populated and most industrialized area in Israel, but it also contains the most important communication roads in the country.<sup>138</sup> Thus, the areas of the West Bank clearly have the potential to serve as a base for launching a fatal military strike against Israel. In recent years, moreover, armament of the Jordanian and Iraqi armies has increased rapidly and massively. Consequently, the strategic importance for Israel of the Judea and Samaria mountains and the Jordan valley of the West Bank is coming more and more to be conceived of in a somewhat novel context: as a buffer and a barrier against any military attack launched from outside these areas.<sup>139</sup>

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136. (Continued)

Mr Kreisky and to Mr Brandt . . . the formula that the PLO is prepared to establish a state on any liberated territory. This is held to imply, in a rather negative way, that the Palestinians are not still insisting on a single state for the whole of Palestine, and are therefore also accepting the need to coexist with Israel.")

137. 1021m at its highest point.

138. Allon, *Israel: The Case For Defensible Borders*, 55 *For. Aff.* 38, 41, 42, 44, 46 (1976); Note, *Demilitarization as an Instrument for Middle East Peace*, 14 *Va. J. Int'l L.* 267, 289, 290 (1974).

139. The West Bank is, therefore, important to Israel both for the denial of access to it by hostile forces and for blocking hostile forces from Israel. See text accompanying note 41 *supra*. For a survey of the evolution and development of the Israeli political-military doctrine, see M. Handel, *Israel's Political-Military Doctrine* (1973).

Any solution for the West Bank and Gaza will have to take into account and reconcile the two main competing interests that relate to these areas: the Palestinian claim for the realization of their right of self-determination in these areas, and Israel's profound security interest there. Any attempt to solve the problem of these areas that ignores either of these interests is doomed to fail.<sup>140</sup>

B. *The Proposal: Two Options of Association*

Whereas it is relatively easy to divine the basic principles of the Israeli defense interest in the West Bank, it is mere speculation, at the moment, to predict the course of the Palestinian aspirations in regard to these areas. As noted above,<sup>141</sup> the principle of self-

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140. Indeed, these concerns of the two parties directly affected are explicitly expressed in the Framework for Peace in the Middle East and might be regarded, without exaggeration, as the two principal foundations on which this accord is based.

[The transitional arrangements] should give due consideration to both the principle of self-government by the inhabitants ... and to the legitimate security concerns of the parties involved. [The negotiations on the final status of the West Bank and Gaza] 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 rights of the Palestinian people and their just requirements . . . . All necessary measures will be taken and provisions made to assure the security of Israel and its neighbors during the transitional period and beyond.

Framework for Peace in the Middle East, 17 Int'l Legal Mat. at 1467, 1468 (1978).

141. See text accompanying notes 56, 66 *supra*. It is noteworthy that the only association established thus far following a plebiscite on the territory of the associate is that of Puerto Rico and the United States. Under the Compact of Free Association concluded between the United States and the three Micronesian entities, a plebiscite is supposed to be held in each of them for the approval of the association. Compact of Free Association, *supra* note 79, §§ 411, 412.

determination furnishes any self-determining community with three legitimate options for self-determination and dictates that the decision as to the preferred one be made by the "broad population" of that community itself. Before the true will of the population of the West Bank and Gaza is authoritatively verified, any claim as to its nature is therefore somewhat dubious. Moreover, if the schedule of the Framework for Peace in the Middle East is followed, a transitional period of five years has to pass before the moment for Palestinian decision comes.<sup>142</sup>

If we assume, however, that the Palestinian aspirations relate to some separate Palestinian statehood in the West Bank and Gaza, in order to accommodate *both* interests relating to these areas, the authority of any such state will inevitably have to be qualified by the Israeli defense interest in the West Bank. If a Palestinian state is established in the West Bank and Gaza, therefore, this should be done within the framework of associate statehood.<sup>143</sup> The model of association--the

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142. See note 6 *supra*. At the time of writing no date had been fixed for the beginning of this five-year period.

143. For a proposal calling for the establishment of a Palestinian state in the West Bank, containing the possibility that this state would be associated with Israel (or with Jordan or with both), see M. Reisman, *supra* note 135, at 51. See also W. Reisman, *supra* note 15, at 20. Cf. Allon, *supra* note 138, at 44-47, which recommends Israeli control over the zone lying between the Jordan river and the Judea and Samaria mountains, leaving almost all the West Bank under Arab rule, and a corridor from west to east, under Arab sovereignty, connecting the West Bank to the East Bank. This proposal, known as the "Allon Plan," was never officially adopted by the Israeli Governments headed by the Labour Party until 1977. The settlement plan of these governments, however, suited the Allon Plan to a great extent. Another major Israeli approach to the problem of the West Bank until 1977 was identified with Moshe Dayan. Whereas the Allon Plan is based on a territorial division of the West Bank, Dayan's approach centered on the notion of functional division. It envisaged a joint Arab-Israeli rule over the West Bank, leaving some sectors relevant to this area for Israeli management and others for Arab management. It is not coincidental that Dayan served for more than two years as Foreign Minister for the Israeli government headed by the Likud Party, whose plan for the West Bank has been based on the notion of "autonomy." See also Peretz, *Forms and Projections of a Palestine Entity*, in *The Palestine State* 81-82, 93 (R. Ward, D. Peretz & E. Wilson eds. 1977) (discussing Allon Plan and Dayan's approach); Rubinstein, *The Third-State Pitfall*, in *The Hashemite Kingdom of Jordan and West Bank* 278-79 (A. Sinai & A. Pollack eds., 1977) (demili-



"compromise solution" for "difficult cases"<sup>144</sup>--is the one with the greatest potential to satisfy both the Palestinian aspirations for self-determination in the West Bank and Gaza and the security interest of Israel in the same areas and to reconcile them with each other. This association of a Palestinian state established in the West Bank and Gaza with Israel would entail vesting Israel with the sole responsibility for the defense sector of that state. Of course, that means that no army except Israel's would be permitted to stay west of the Jordan River.<sup>145</sup>

143. (Continued)

tarized West Bank comprising part of greater Arab unit); Note, *supra* note 138, at 289-95 (demilitarization of West Bank); Murphy, *supra* note 4, at 932-38 (strategic-area trusteeship over West Bank possibly administered by Israel; neutralization of the West Bank).

144. See text accompanying notes 54-61, *supra*.

145. If this proposed association is implemented, one could argue that in fact a double international servitude has been created by the parties for the benefit of Israel. The main elements of such an argument could be the following: (1) The usual case of international servitude involves only a defined portion of the territory of the grantor state. Nonetheless, servitudes encompassing all the territory of the grantor state are not inconceivable. F. Vali, *supra* note 18, at 309, 331-34. (For a solution of association envisioning the West Bank and Gaza as comprising part of a greater unit, see text accompanying notes 146-48, *infra*.) (2) As it is the general rule that the authority of a state is confined to its territory, every limitation on the function of a state, created when an association is established, means a limitation on the authority of that state with regard to all its territory. When a functional limitation relates to the defense sector and the "territorial element," see note 18 *supra*, relates to the territory of both the associate and the principal, the distinction between the functional limitation (expressed in the concept of association) and the territorial limitation (expressed in the concept of international servitude) is in fact blurred. In that case, the functional limitation is actually a territorial one relating to the whole territory of the associate. (3) If in a particular case all the elements of international servitude exist, an international servitude ought to be recognized even without the express use of that term by the parties. In most treaties creating an international servitude the term "servitude" is avoided. H. Reid, *supra* note 18, at 14.

[Therefore,] in every case where a right of a conspicuously territorial character has been established one has to presume that the intention of the parties was to create an absolute right, unless there is sufficient evidence to prove the contrary. This territorial and absolute character is especially

145. (Continued)

demonstrated in cases where the right has been accorded as the consideration for territorial concessions, where it coincides with the drawing of the boundary line, when it has been established to . . . counterbalance a strategic inferiority, in brief, whenever it is apparent that a right has been created in favour of a State 'on which it could rely.'

F. Vali, *supra* note 18, at 313, 314. (4) Consequently, association based on the delegation of the defense sector of the associate could be analytically perceived, under certain situations--*i.e.*, when the "territorial element" exists--as creating a double international servitude: a positive military servitude under which the grantee state is authorized to take certain actions within the territory of the grantor state, and a negative military servitude under which the grantor state takes it upon itself not to militarize its territory. See H. Reid, *supra* note 18, at 190-203, (positive and negative military servitudes). See also F. Vali, *supra* note 18, at 263-72 and 331 n. 16 (discussing negative military servitudes and negative military servitude relating to whole territory of Luxembourg). (5) Moreover, in the case of Israel and the West Bank and Gaza, the concept of international servitude could be based on mutuality. It is most probable that if the West Bank and Gaza comprise a separate unit they would both be grantees of an international servitude of the type of right of transit to which Israel would be subject. For a treatment of this type of international servitude, see F. Vali, *supra* note 18, at 107-24; D. O'Connell, *supra* note 15, at 606-07.

A major difference, however, between association based on the delegation of the defense sector and a double military servitude of the type described above is that in the case of association the principal is made subject to a duty to take care of the defense of the associate, whereas such a relationship does not exist between the grantee and the grantor in the case of international servitude. This difference seriously undercuts the argument set out above. Indeed, in the context of the West Bank and Gaza the concept of "double servitude" is an imbalanced one. It creates a situation under which Israel has all the security benefits with regard to the West Bank and Gaza, whereas these areas are left without an army of their own and without Israel's obligation to take care of their defense.

Nonetheless, the "double servitude" argument is important from another aspect. The main feature of international servitudes, distinguishing them from conventional arrangements, 2 D. O'Connell, *State Succession in Municipal Law and International Law* 20 (1967); Esgain, *supra* note 18, at 56, 57, 61, is that international servitude, being a "real" (or dispositive) right, withstands any changes in the sovereignty over the territory of the servient territory. D. O'Connell, *supra*, at 1, 3, 14, 20, 23, 231-33, 268; O. Udokang, *Succession of New States to International Treaties* 327-30 (1972); F. Vali, *supra* note 18, at 320-22; *cf.* Esgain, *supra* note 18, at 55-57 (identifying and criticizing tradi-

As noted above,<sup>146</sup> it might well be that the Palestinians choose to realize their right of self-determination through the third legitimate option available under contemporary international law: integration with an independent state. Although at the moment this does not seem too practical a possibility, under certain circumstances the Palestinians might choose integration with the East Bank of Jordan. Since the solution of associate statehood for the West Bank and Gaza is an adequate response to the genuine interests of the concerned parties, however, it seems that, even if the Palestinians would prefer integration for their self-determination, associate statehood is still a feasible solution for the West Bank and Gaza.

If the West Bank and Gaza were to integrate with the Hashemite Kingdom of Jordan, it would most likely be on a federal basis.<sup>147</sup> In that case, application of the

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145. (Continued)

tional views). Though international servitudes constitute the clearest example of rights immune from subsequent changes of sovereignty, these are not the only rights to enjoy this status. Every "real" right is likewise immune from subsequent changes of sovereignty over the territory to which it relates. It is clear, however, that association between Israel and the West Bank and Gaza, as proposed herein, being clearly based on a "territorial element," would create for Israel "real" rights with regard to the West Bank and Gaza. See D. O'Connell, *supra*, at 13, 14, 20, 231-33 (discussing real rights in context of state succession); O. Udokang, *supra*, at 327-30 (discussing real rights in context of "dispositive treaties"). Hence, if, for instance, the West Bank and Gaza, while being associated with Israel, opt for integration with the East Bank, Israel's rights under the association arrangement would remain unaltered. See also Vienna Convention on Succession of States in Respect of Treaties, U.N. Doc. A/Conf. 80/31, arts. 12, 31 (1978), reprinted in 72 Am. J. Int'l L. 971 (1978).

146. See text accompanying note 56 *supra*.

147. In an address delivered in March 1972 before Jordanian and Palestinian dignitaries, King Hussein disclosed his plan to reform the structure of his kingdom. The basic features of the plan were that the Hashemite Kingdom of Jordan would become a United Arab Kingdom consisting of two regions connected on a federal basis: the Region of Palestine and the Region of Jordan. Address by King Hussein to Jordanian and Palestinian Dignitaries on March 15, 1972, Concerning Basic Principles of a Plan to Establish a United Arab Kingdom of Palestine and Jordan, reprinted in 2 J. Moore, *The Arab-Israeli Conflict* 1128 (1974). The plan (later referred to as the "Federation Plan") was devised partly in an effort to curb trends toward separatism which had increased in the West Bank after "Black September" of 1970 and, in addition, to strengthen the Hashemite hold in the West Bank in the municipal elections of 1972. The Arab--especially the Palestinian--response to the plan has generally been negative. Nonetheless,

solution of association would mean that it was the Kingdom that would be associated with Israel, in the sense that the aspects of its defense sector relating to its components west of the Jordan River, namely the West Bank and Gaza, would be Israel's responsibility. Likewise, if the West Bank and Gaza were to form a unitary state with the East Bank, the solution of association could be applied, following a similar division of competence between that state and Israel.<sup>148</sup>

One requirement of contemporary international law relating to the lawfulness of associate statehood, however, might frustrate any attempt to apply the model of association as a solution for the problem of the West Bank and Gaza in line with the above proposals. This requirement is that the arrangement of association would retain "for the peoples of the territory which is associated with an independent state the freedom to modify the status of that territory..."<sup>149</sup> If read literally, it might be argued that this requirement vests in the associate the power to dissolve the framework of association unilaterally and to opt for "full" independence--i.e., free from the former control of the principal--at any time after the establishment of the association. It is clear that Israel would not be ready to enter any arrangement of association the termination of which could be imposed on it at any future time without its consent.

It seems, however, that it would be a sound argument to claim that not all contemporary criteria of lawfulness relating to associate statehood stand on the same level. The paramount requirement is that the association be consented to by the broad population of the

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147. (Continued)

Jordanian officials return to the plan from time to time, talking about some future federal connection between the West Bank and the East Bank. See Z. Elpeleg, King Hussein's Federation Plan--Genesis and Reaction (1977, Hebrew). See also Bailey, *Changing Attitudes Toward Jordan in the West Bank*, 32 *Midd. E.J.* 155, 160-62 (1978); Black, *Jordan Waits in the Wings*, 98 *New Statesman* 408 (Sept. 21, 1979). ("Hussein is dusting off his old confederation [sic] plan.")

148. It is noteworthy that, in early November 1980, the platform committee of Israel's Labor Party adopted a position calling for a Jordanian-Palestinian state in the East Bank as well as in the densely inhabited parts of the West Bank and Gaza, with the possibility that this state be headed by a member of the PLO. *Israeli Party's Jordan Plan Stirs Debate*, *N.Y. Times*, Nov. 10, 1980, at A3.

149. See text accompanying note 68, *supra*.

associate. All other qualifications, including the one relating to the associate's power to modify its status at a later stage, should be applied subject to this main requirement. This argument applies *a fortiori* where associate statehood is utilized as a compromise solution to accommodate conflicting interests in "difficult cases" of self-determination,<sup>150</sup> where world order requires application of the utmost creativity and flexibility in designing a solution. In such exceptional cases, rejection of the solution above means that the international community is going to lose a major instrument for affording self-determination while simultaneously reducing tension and threats of violence.

Moreover, it seems that in the particular case of the West Bank and Gaza the parties to the association could fairly easily devise an arrangement satisfying the status-modification requirement while providing their agreement with endurance. For instance, upon the mutual consent of the parties, the Palestinian party, on the eve of establishment of the association, could make use of its power of status modification and proclaim its decision to opt for independence starting fifty years from that time. Such a device could be acceptable to Israel, as well as wholly satisfactory even to the most severe contemporary requirements of lawfulness relating to associate statehood.<sup>151</sup>

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150. See text accompanying notes 54-61 *supra*.

151. Under the Compact of Free Association initialed by the United States and the three Micronesian entities, all the provisions of the Compact relating to security and defense matters will be binding for a period of at least 15 years, unless terminated earlier by *mutual* agreement. Moreover, if the Compact is terminated unilaterally after that period by any of the associates, the specific arrangements for the establishment and use by the United States of military areas and facilities in the territories of the associate states as well as the military operating rights of the United States therein will survive. Compact of Free Association, *supra* note 79, §§ 441-454, 321(a), 323. The effect of the 15-year limitation was described by one scholar as follows:

The survival of title III [relating to security and defense relations] in the event of Micronesian termination of the Compact protects United States interests by limiting the unilateral right of termination so far as that part of the Compact is concerned. This guarantee . . . will give the United

### C. *Evaluation of the Proposal*

There are two major possibilities for associate statehood as a solution to the problem of the West Bank and Gaza. One, the paradigmatic case for association in this context, is an association between a Palestinian state established in these areas and the State of Israel. The other is an association between a state consisting of the West Bank, Gaza, the East Bank,<sup>152</sup> and the State of Israel.

These two solutions ought to be evaluated within three contexts and in light of two criteria. The first context for evaluation is the bilateral one: the conflict between the Jewish national movement as expressed in the state of Israel on the one hand, and the Palestinian national movement on the other. The second context is the regional one: the effects of the proposed solutions on neighboring countries in the Middle East. Broadest of all is the global context.

The first of the two criteria that ought to apply to any evaluation of these two solutions is their feasibility, *i.e.*, the chances for the realization of these solutions, given the relevant political conditions and the interests of the parties directly involved (Israel, the Palestinians, Jordan). The second criterion, which seems to be the dominant one, is the long-run effects of each solution within each of the three above-mentioned contexts. This criterion ought to be the one to guide

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#### 151. (Continued)

States a substantial negotiating advantage in any future discussions, and will make unilateral termination by the Micronesian entities difficult to conceive of in practice.

Clark, *supra* note 71, at 35, n. 211. Moreover, in spite of the severe limitations imposed on the Micronesian power of status modification, Clark's conclusion is that in this case "the requirements of Principle VII of Resolution 1541 appear to be met." *Id.* at 74.

It is interesting to note, in this context, that according to one view even an international servitude "need not be one which has been established in perpetuity. It is quite conceivable that a right in foreign territory will only be created for a definite number of years, as so often happens. It still may be a territorial and absolute right even if its duration has been limited for a number of years...." F. Vali, *supra* note 18, at 311-12. *Cf.* H. Reid, *supra* note 18, at 19-21 (insistence on element of permanency in international servitudes); Esgain, *supra* note 18, at 47, 82, 83 (permanency is essential element in concept of international servitudes).

152. *I.e.*, that part of the Hashemite Kingdom of Jordan lying east of the Jordan River.

policymakers concerned with Middle East peace in their efforts to shape a solution acceptable to all parties involved.

In the narrow Israeli-Palestinian context, both the above solutions of association mean a compromise between the two historical national movements that have been contending for Palestine throughout this century.<sup>153</sup> For Israel, the obviolation of a major component of the Middle East conflict, achieved through such a compromise, could produce results with far-reaching positive implications for its relationship with all Middle East countries.<sup>154</sup> Moreover, Israel would be able to terminate its military administration in the West Bank and Gaza and thus to avoid inevitable undesirable alterations in the character of its society that are concomitants of having an army of occupation.<sup>155</sup> Although either solution would serve Israel's basic interest in the West Bank (*i.e.*, its security interest<sup>156</sup>) the price--at least in

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153. International law has no remedy for the thorny problems that arise in the case of a conflict between the equally legitimate rights of self-determination of a number of peoples.... The classical example is that of Palestine... [where] there are (and there have been for a very long time) primarily two peoples: Arabs and Jews. Both peoples are entitled to self-determination, but each craves to determine its political fate in the whole of Palestine.... In such circumstances, only partition of the disputed area can resolve the conflicting claims... [T]he only peaceful solution of the Palestine question is partition between the two Palestinian peoples: Jews and Arabs.

Dinstein, *Collective Human Rights of Peoples and Minorities*, 25 Int'l and Comp. L. Q. 102, 109-10 (1976).

154. For a discussion of the question whether such a solution might be reached without the participation of some Arab states in the peace arrangements, see De Palma, *Biting the Bullet in the Middle East*, 58 For. Aff. 184 (1979),

155. To a certain degree, however, this outcome would be reached with the withdrawal of the Israeli military government following the establishment of the local self-governing authority in the West Bank and Gaza. Framework for Peace in the Middle East, 17 Int'l Legal Mat. 1466 (1977), pt. A., art. 1(A).

156. See text accompanying notes 145, 148 *supra*.

the eyes of some significant sectors in Israel's polity and society--is extremely costly. Either solution would entail expiration of the Israeli national aspirations in regard to the West Bank. Thus, for Israel, the model of association means a major step toward the settlement of the Arab-Israeli conflict, with adequate assurances for its security, coupled with the explicit recognition that the areas of the West Bank and Gaza are destined for Palestinian self-determination.<sup>157</sup>

For the Palestinians, either solution would be a realization of what has long been denied them: a separate Palestinian state entity. Moreover, separate statehood implies more for the Palestinians than it does for any other people (except, by the way, the Jews): the first and inescapable step for rehabilitation of their refugee brethren. At the same time, however, not only will the Palestinians have to give up their national aspirations for what they call the Israeli parts of Palestine, but they will be denied a military of their

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157. According to the compromise formula I personally advocate, Israel...would give up the large majority of the areas which fell into its hands in the 1967 War. Israel would do so not because of any lack of historical affinity between the Jewish people and many of these areas.... Nonetheless, in order to attain a no less historically exalted goal, namely that of peace, such a deliberate territorial compromise can be made.

Allon, *supra* note 137, at 44.

It is reasonable to assume that the establishment of a separate Palestinian entity in the West Bank and Gaza will increase the problem Israel faces in regard to its 500,000 Arabs who since the Six Day War have steadily moved toward full identification with Palestinian nationalism. See Tessler, *Israel's Arabs and the Palestinian Problem*, 31 *Midd. E. J.* 313 (1977) (analyzing identification trends of Israeli Arabs); Peretz, *supra* note 129, at 49, 50 (attitudes of Israeli Arabs to State of Israel); W. Quandt, *Decade of Decisions 293-94* (1977) (concern for internal problems if Israel's Arab population identifies with new state). Hence, in order to mitigate this problem, it behooves Israel to consider the possibility of a special connection between its Arab population and the Palestinian entity, established *quid pro quo* with a similar connection between Jewish settlers in the West Bank and Gaza and the State of Israel. It might even be possible to devise a plan by which Arab populated areas within Israel will be transferred to the Palestinian entity in exchange for the annexation to Israel of some areas in the West Bank in which Israeli settlements are located (*e.g.*, Gush Etzion). Cf. Tessler, *supra*, at 334-35 (positive effects on problem of Israeli Arabs as by-product of Palestinian state).



own in the West Bank and Gaza.<sup>158</sup> Thus, for the Palestinians, the model of association means Palestinian statehood while recognizing Israel's security interest in the areas of the West Bank and Gaza.

Were either of the solutions of association adopted, there is a serious question whether the Palestinians, having gained a large portion of their objective, would later upset the new status quo by directing their now more formidable energies against Israel.

Though it is clear that, given the history of the Palestinian-Israeli relationship, this is a real and legitimate concern, such an outcome is not inevitable. It might be assumed that the elite of the West Bank and Gaza would have enough incentive at least for economic cooperation with Israel.<sup>159</sup> Moreover, given Israel's position, under each of the proposed solutions, to retaliate massively against any act within the West Bank and Gaza that threatens its security, it might be also assumed that the elite of these areas, recognizing that such retaliation might be disastrous for their state, would be highly interested in avoiding such an outcome.<sup>160</sup> In addition, given that Israel's presence would be restricted

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158. If the Palestinians opt for association through integration with the East Bank of Jordan, they would, in fact, have their own army: the army of the integrated state, which would, however, be confined to the East Bank. Cf. Rubinstein, *supra* note 143, at 278-79 (advocating a solution in which the West Bank and Gaza comprise part of a greater unit having its own military outside these areas). Even if the Palestinian choice were a separate state in the West Bank and Gaza, Israel might be able to bring itself to allow the Palestinian state gradual acquisition of an independent military. Thus, a schedule of "affirmative reaction" might be adopted by the Palestinians and Israel, according to which the Palestinians would be permitted to keep an army of their own, in both parts of their state or in only one part of it (*e.g.*, only in Gaza) and to increase its size and armament at the end of every few years of friendly neighborly relations with Israel.

159. See Rouleau, *supra* note 130, at 282-83; E. Tuma and H. Darin-Drabkin, *The Economic Case of Palestine*, 15, 33, 103-11 (1978) (economic viability of Palestinian state in West Bank and Gaza).

160. It is clear, however, that the behavior of the Palestinian elite depends to a great extent on its global orientation. See discussion in text accompanying note 170.

to military matters, there is a good chance that an association in which Israel controls only the defense sector of its associate will stimulate a relatively low degree of friction between the army stationed in the West Bank and Gaza and the local population.<sup>161</sup> Finally, if irredentist desires existed in the West Bank and Gaza after the establishment of association, it is likely that they would be directed toward the East Bank rather than against Israel. This last point brings us to the second context in which we must evaluate the notion of association for the West Bank and Gaza: *i.e.*, the regional context.

It is clear that the solution of the Palestinian problem, either through the establishment of a Palestinian state in the West Bank and Gaza or through the integration of these areas with the East Bank, will have a significant impact within the domestic context of every Arab state in the Middle East. Lebanon, Saudi Arabia, and Kuwait immediately come to mind.<sup>162</sup> At the same time, it is equally clear that the effects of such an occurrence on the Hashemite Kingdom of Jordan would be of an immeasurably greater magnitude than on any other Arab state.

In 1948, the army of Transjordan invaded Palestine and gained control over the West Bank. The annexation of the West Bank to the Hashemite Kingdom of Jordan in 1950 immediately made the Palestinians a majority in the Kingdom: 900,000 out of a population of 1,300,000 were Palestinians.<sup>163</sup> Thus, for almost two decades Jordan has actually been a Palestinian state ruled by a non-Palestinian monarch.<sup>164</sup> During this period, the Palestinians in the West Bank have never accepted the Hashemite rule

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161. Admittedly, however, this aspect depends on the intentions of the respective army and the topographical and demographic conditions of the area involved.

162. See Cooley, *Iran, the Palestinians, and the Gulf*, 57 For. Aff. 1017, 1019-21, 1026-27 (1979) (discussing Palestinian influence in oil producing countries); *When Arabs Fight Arabs, None Can Afford to Gloat*, N.Y. Times, Nov. 30, 1980, Section E, at 2, col. 3 (Palestinian communities within Arab countries as potential subversive force).

163. S. Mishal, *West Bank/East Bank 2* (1978).

164. M. Reisman, *supra* note 135, at 48 ("The core of domestic instability in Jordan lies in its foundation as a heterarchy, an artificial Hashemite government divergent from the Palestinian character of the population...." *Id.* at 46.)

over them as fully legitimate or final.<sup>165</sup> On the ideological level, they have made a distinction between the long-run optimum solution for their problem and their short-run practical daily necessities. This pragmatic outlook, together with the popularity among the inhabitants of the West Bank of Pan-Arabic ideologies, has legitimized their temporary co-operation with the Hashemite regime. On the practical level, it is the central government's monopoly over military power and international economic aid, the government's tight political control, and the geopolitical inferiority<sup>166</sup> of the West Bank that has mitigated secessionist tendencies.<sup>167</sup>

If a separate Palestinian state is established in the West Bank and Gaza none of these conditions will exist anymore. Given the military might of Israel, the new state is unlikely to consider Israel as a reasonable target for accomplishment of its irredentist ambitions. With a Palestinian majority in the East Bank of Jordan,<sup>168</sup> such a Palestinian state will have an enormous incentive to gain control over the East Bank in order to establish a great Palestinian state on both banks of the Jordan. If, on the other hand, the West Bank and Gaza are integrated with the East Bank, the outcome will, for all practical purposes, be a Palestinian state on both sides of the Jordan. In that case, it would be only a matter of time until pure Palestinian rule was established in

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165. Mishal, *supra* note 163, at 22, 51-52, 72-73, 111, 115.

166. *See id.* at 15 (inhabitants of West Bank, defeated in 1948 war, have found themselves surrounded by Israel on one side and by suspicious Hashemite regime of East Bank on other side).

167. *See id.* at 14-23 (discussing Jordan's policies toward West Bank during 1949-1967, wane of separatism, and grant of conditional legitimacy to Jordanian authority); Mishal, *supra* note 135, at 211-12 (factors enabling Jordan to maintain status quo during 1949-1967); Baily, *supra* note 147, at 155-58.

168. *See* Peretz, *supra* note 129, at 44 (after 1948 three-fourths of East Bank population was Palestinian); E. Said, *supra* note 130, at 115 (discussing distribution of Palestinian population in Middle East countries); *Subversion or Osmosis?*, *The Economist*, Oct. 22, 1977, at 64 (East Bank is locus of second greatest Palestinian population: over 1 million).

the integrated state.<sup>169</sup> From the regional perspective, then, it is not Israel but Jordan that has most to fear from the establishment of some sort of a Palestinian entity in the West Bank and Gaza.

The implications of these solutions of association for the global context derive, to a great extent, from the implications already noted within the framework of the two narrow contexts. The PLO, which is widely recognized as the authentic representative of the Palestinian people,<sup>170</sup> is in fact a loose coalition of a host of

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169. The writer in *The Economist* described the Jordanian dilemma as follows:

It is a nice calculation to work out which future alternative arrangement would present more danger to the Hashemite regime: an independent Palestine or a unified state on both banks of the Jordan River in which a clear two-thirds of the population would be Palestinian. Which is more to be feared: subversion from across the Jordan or a slow ingestion? The latter may well be the more real threat, but because they fear subversion more, the Jordanian regime seems prepared to accept the danger of political osmosis.

*Subversion or Osmosis?*, *The Economist*, Oct, 22, 1977, at 66. See also Rouleau, *supra* note 130, at 283 ("The leaders of the PLO must wish ... to transform the Jordanian kingdom as it was before the 1967 war into a Palestinian state, but their ambition cannot be realized as long as the Hashemite monarchy exists in Amman.") Indeed, it is an essential element in Palestinian ideology that the East Bank and the West Bank are actually one country inhabited by one people: the Palestinians. Thus, Art. 2 of the Palestinian National Covenant reads as follows: "Palestine with its boundaries that existed at the time of the British Mandate is an integral regional unit." For the text of the Covenant, see 3 J. Moore, *supra* note 147, at 699. Harkabi comments that "[t]he expression 'that existed at the time of the British Mandate' is vague. The article is subject to two interpretations: 1) The Palestinian State includes also Jordan and thus supersedes it; 2) The West Bank is detached from Jordan." Harkabi, *The Palestinian National Covenant*, 3 N.Y.U. J. Int'l L. & Pol'y 209, 229 (1970). In 1971, at the Eighth Palestinian National Congress, it was resolved that Jordan east of the river was part of Palestine and that it must be liberated from its rulers no less than the West Bank. Bailey, *supra* note 147, at 161 n. 20.

170. See text accompanying note 134 *supra*.

rival organizations. Their sources of funds, their ideologies, and their identifications with global (and regional) powers are diverse and often mutually hostile.<sup>171</sup> Thus, while it is clear that the PLO will have a crucial role in the elite of any separate Palestinian entity established in the West Bank and Gaza, it is not clear which faction will be dominant. One can only speculate, therefore, as to the global orientation that entity will have. Indeed, it is within this context, and not within the bilateral Israeli-Palestinian context, that the establishment of a separate Palestinian entity in the West Bank and Gaza might become a severe threat to Israel's security as well as to world order.<sup>172</sup> Moreover, since any Palestinian entity in the West Bank

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171. See Quandt, *Political and Military Dimensions of Contemporary Palestinian Nationalism*, in W. Quandt, F. Jabber & A. Lesch, *supra* note 130, at 52-78, 94-112 (discussion of different political-military groups from 1967-1970); Stanley, *Fragmentation and National Liberation Movements: The PLO*, 22 *Orbis* 1033 (1979) (examination of organizational processes within "struggle group" from viewpoint of disintegration); E. Said, *supra* note 130, at 159-63 (discussion of Palestinian organizations and politics with focus on Fateh).

172. Looked at from the Soviet point of view, a PLO dominated Arab state on the borders of Israel and Jordan would offer the best of prospects for the expansion of Soviet influence in the Middle East, which is, beyond doubt, the overriding Soviet objective. Even the inevitable conflicts between the discordant elements inside the PLO might, in Soviet thinking, become less acute if they could all turn their attention to the aim of conquering Israel. Moreover, the Soviet Union might well hope that if the Soviet presence in the PLO state were sufficiently massive, as it presumably would be, the U.S.A. might be deterred from intervening to save Israel.

Schapiro, *The Soviet Union and the PLO*, 23 *Survey* 193, 194, 200-02 (No. 3, 1877-78).

The campaign for a state which is more and more explicitly a P.L.O. state including the West Bank and the Gaza Strip is irrational from the point of view of Western security interests. The emergence of such a state would weaken Israel, the strongest military power in the Middle East, and the most reliable ally of the West in the area, by necessity and conviction.... Establishing a new Arab state [in the West Bank and Gaza] would injure Western interests, and

and Gaza is a potential menace to the pro-Western Hashemite regime of Jordan,<sup>173</sup> it follows that with the establishment of such an entity the West might face the risk of a hostile element not only in the West Bank and Gaza but on the East Bank of the Jordan River as well.<sup>174</sup>

The optimal solution to these dilemmas is either of the two alternative associations proffered in this Article. Israeli military presence in the West Bank is of indispensable strategic value for world order both with regard to the West Bank and Gaza (if a Palestinian state is established in these areas) and the East Bank of Jordan (especially if a Palestinian state including the East Bank is established).<sup>175</sup> Western support of the

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172. (Continued)

advance those of the Soviet Union, by strengthening the Soviet position in the region, and by increasing Arab dependence on Soviet protection. It would weaken Israel, which, since the fall of Iran, is the most important Western ally in the area.

Rostow, *supra* note 59, at 152, 169. See also Maoz, *The Palestinian Guerrilla Organizations and the Soviet Union* in *Palestinian Arab Politics* 91, 94, 103, 104 (M. Maoz ed, 1975) (discussion of past and probable future relationship between Soviet Union and Palestinian organizations, and Soviet intentions in regard to Palestinian state). On U.S.-PLO relations since the Yom Kippur War of 1973, see E. Lerman, *PLO Attitudes Towards the U.S., 1973-1979* (1980, Hebrew).

173. See text accompanying notes 163-69 *supra*.

174. One look at the map will suffice to convey the geopolitically disastrous implications of that.

175. The value for world order of Israeli military presence along the Jordan river was overwhelmingly proven in the extraordinary circumstances of foreign invasion of Jordan during the crisis of September 1970. See H. Kissinger, *White House Years* 594-631 (1979). A message sent by the U.S. to Israel after the Jordanian crisis had expired read as follows: "According to the latest available information, the forces which invaded Jordan have withdrawn to Syria. We believe that the steps Israel took have contributed measurably to that withdrawal. We appreciate the prompt and positive Israeli response to our approach...." *Id.* at 631. See also Quandt, *supra* note 157, at 105-27 (discussion of U.S. management of crisis, U.S.-Israeli cooperation, and after-crisis effects). It is clear, however, that even short of such unusual conditions Israeli military control over the West Bank and Gaza is a substantial contribution to world order.

notion of Palestinian self-determination in the West Bank and Gaza could assure stability in these areas, and throughout the Middle East, only if accompanied by insistence on continued Israeli military presence in the West Bank and Gaza. There is a way to satisfy all these interests: associate statehood.

### Conclusion

The present status of the West Bank and Gaza is a temporary one. All parties involved in the Middle East conflict are cognizant of that. They are also aware that change in the geopolitics of these areas is inevitable. As is so often the case in situations of conflict, the problem of the West Bank and Gaza is that of uniting the parties directly involved toward a common goal of change. In this Article the framework of associate statehood has been presented as a feasible goal for the parties to pursue in their effort to solve the problem of the West Bank and Gaza. The analysis has been grounded in an effort to identify the main interests of the parties involved in the conflict.

For Israel, the main interest in the West Bank and Gaza is its security interest. Any change diminishing Israel's present military and political control over the West Bank and Gaza has the potential to imperil its defense competence. The Palestinians, on the other hand, have an equally vested interest in change. Their main interest with regard to the West Bank and Gaza is to realize their right of self-determination in these areas. For them, any change--except the unlikely possibility of annexation to Israel--means getting closer to attainment of that goal.

Under the solution of associate statehood, it is incumbent on Israel to recognize that the West Bank and Gaza are destined to be the locus for Palestinian self-determination. By the same token, it is incumbent on the Palestinians to recognize that the Israeli security interest in the West Bank and Gaza is legitimate and that Israel's apprehension at the prospect of future dangers from an independent West Bank and Gaza is well-founded.

Associate statehood is not a perfect solution for any of the parties involved in the conflict. But, short of vanquishing one's opponent, there are no "perfect"

solutions for any conflict. One of the ways to evaluate the potential of the solution of association is to compare it with other possible solutions. Such a comprehensive analysis cannot be accomplished within the confines of this Article. Nonetheless, for Israel many of the risks involved in this option are extant under any other feasible solution, while for the Palestinians the solution of association assures the utmost amount of self-determination and sovereignty possible under current circumstances. What makes associate statehood an eminent compromise solution for some conflicts is its ability to maximize the interests of all parties involved in a conflict. It is time for the parties contending over Palestine to adopt it.