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Hiram E. Chodosh

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**SHAKY PILLARS: AN INTRODUCTION TO COMMENTARIES ON THE
LEGAL FOUNDATIONS FOR PEACE AND PROSPERITY
IN THE MIDDLE EAST**

*Hiram E. Chodosh**

During the 1998-99 academic year, the Case Western Reserve Journal of International Law and the Frederick K. Cox International Law Center of Case Western Reserve University School of Law asked a group of prominent experts to address a fundamental question: What are the legal foundations for peace and prosperity in the Middle East? Several leading scholars published their views on legal reform and the peace process in Volume 31 of the Journal.¹

An authority on Palestinian law, human rights, and criminal justice, Professor George Bisharat stressed the critical role of law reform and human rights in the peace process.² He argued that a more democratic government that respects human and civil rights would be a more “reliable” partner in peace with Israel.³ Professor David Fidler, an expert in public and private international law, presented the legal framework for promoting economic development in the Palestinian Authority.⁴ He critically evaluated a new Foreign Investment Law⁵ as insufficiently attractive to foreign investors.⁶ Professor Adrien Wing, a leading comparative constitutional scholar and adviser, assessed the embryonic process of constitutionalism in the Palestinian Authority.⁷ She evaluated

* Professor of Law; Director, Frederick K. Cox International Law Center, Case Western Reserve University, School of Law; J.D., Yale Law School (1990); B.A., Wesleyan University (1985).

¹ For a retrospective commentary on the symposium, see Hiram E. Chodosh, *Reflections on Reform: Considering the Legal Foundations of Peace and Prosperity in the Middle East*, 31 CASE W. RES. J. INT’L L. 427 (1999) (stressing the need to focus greater attention on the process of legal reform and the reform of legal process).

² George E. Bisharat, *Peace and the Political Imperative of Legal Reform in Palestine*, 31 CASE W. RES. J. INT’L L. 253 (1999).

³ *Id.* at 254.

⁴ David P. Fidler, *Foreign Private Investment in Palestine Revisited: An Analysis of the Revised Palestinian Investment Law*, 31 CASE W. RES. J. INT’L L. 293 (1999).

⁵ See LAW ON THE ENCOURAGEMENT OF INVESTMENT IN PALESTINE, No. 28 (1998) (Palestine), translated by the Palestinian National Authority Ministry of Economy and Trade, reprinted at 31 CASE W. RES. J. INT’L L. 521 (1999).

⁶ *Id.* at 310-42.

⁷ Adrien Katherine Wing, *The Palestinian Basic Law: Embryonic Constitutionalism*, 31 CASE W. RES. J. INT’L L. 383 (1999).

the Basic Law (Third Reading)⁸ and identified seven variables as potential assets *and* impediments to the emergence of a constitutional state.⁹ Professor John Quigley, an authority on international law as it applies to the Middle East, evaluated the international legal norms upon which the Israeli-Palestinian negotiations should be based.¹⁰ He argued that negotiations in which law plays a limited role favored Israeli over Palestinian interests.¹¹

Following publication of the first issue of this multi-year symposium in Volume 31, the Journal and the Center invited a broader group of experts to deepen the debate and broaden the scope of the Symposium. This special issue of Volume 32 records responses from a diverse array of experts on law in the Middle East.

Professor Marshall Breger and Shelby Quast explore the relationship between economic development and the capacity for international commercial arbitration in the Palestinian Authority.¹² In separate comments, Professor Shimon Shetreet¹³ and Professor Perry Dane¹⁴ take fundamental issue with Professor Quigley's view of international law as it applies to Palestinian claims in the peace process. Professor Linda Malone and Abdulaziz H. Al Fahad broaden the scope of the Symposium. Malone focuses on Israeli accountability for alleged human rights offenses,¹⁵ and Fahad draws our attention to the historical and functional role of legal actors in Saudi Arabia.¹⁶

As a complement to Professor Fidler's look at the law on foreign investment, Professor Breger and Shelby Quast take a close look at the commercial arbitration laws applicable to foreign investment in the

⁸ THE PALESTINIAN BASIC LAW (Third Reading) (1998) (Palestine), translated by Saladin Al-Jurf, reprinted at 31 CASE W. RES. J. INT'L L. 495 (1999).

⁹ *Id.* at 395-402.

¹⁰ John Quigley, *The Role of Law in a Palestinian-Israeli Accommodation*, 31 CASE W. RES. J. INT'L L. 351 (1999).

¹¹ *Id.* at 375 ("There is a key difference between the potential demands of disaffected Palestinians and disaffected Israelis, namely, that the demands of the former would be consistent with legal requirements, whereas the demands of the latter would not").

¹² Marshall J. Breger and Shelby R. Quast, *International Commercial Arbitration: A Case Study of the Areas under Control of the Palestinian Authority*, 32 CASE W. RES. J. INT'L L. 185 (2000).

¹³ Shimon Shetreet, *Negotiations and Agreements Are Better than Legal Resolutions: A Response to John Quigley*, 32 CASE W. RES. J. INT'L L. 259 (2000).

¹⁴ Perry Dane, *Pluralities of Justice, Modalities of Peace: The Role of Law(s) in a Palestinian-Israeli Accommodation*, 32 CASE W. RES. J. INT'L L. 273 (2000).

¹⁵ Linda A. Malone, *The Appointment of General Yaron: Continuing Impunity for the Sabra and Shatilla Massacres*, 32 CASE W. RES. J. INT'L L. 287 (2000).

¹⁶ Abdulaziz H. Al Fahad, *The Prince, the Shaykh, and the Lawyer*, 32 CASE W. RES. J. INT'L L. 307 (2000).

West Bank and Gaza.¹⁷ They evaluate the Palestinian legal provisions for international commercial arbitration in light of regional and international norms and suggest alternative ways in which to meet these standards.¹⁸

Professor Shetreet questions the objectivity and contemporary acceptance in both scholarly opinion and diplomatic practice of Professor Quigley's appeal to "settled" international norms.¹⁹ Shetreet also argues that negotiations and agreements have achieved greater success than any proposed formal application of legal rules, including U.N. resolutions that Quigley draws on as an arguable source of his normative claims.²⁰

Like Shetreet, Professor Dane shakes the legal and political pillars of Professor Quigley's position.²¹ He not only offers an alternative normative story of the conflict, but also emphasizes the incompleteness of Quigley's political analysis.²² He takes his two-edged critique a step further to suggest that a "legal pluralist perspective" (one that does not allocate a monopoly of law-creation and articulation to nation-states) might ease the tension Quigley sees between law and politics.²³

Pluralism for Dane means more than a catalogue of mutually inconsistent viewpoints. It signals a foundational search within each of opposing normative worlds for "more generous strands of thought" that might be "available to bridge those contradictions."²⁴ Professor Dane neither anticipates nor advocates an "overarching consensus" but keeps his sights on more modest objectives of "acquiescence and tolerance by the competing factions."²⁵

In contrast to the hopeful appeal of Professor Dane's pluralist aims, Professor Malone's essay provides a sobering jolt of political reality. She expresses outrage at the failure to hold General Amos Yaron, appointed in December 1999 as head of Israel's Defense Ministry, accountable for his role in the 1982 massacre of Palestinians living in the Lebanese refugee camps of Sabra and Shatilla refugee camps in

¹⁷ Breger and Quast, *supra* note 12.

¹⁸ *See id.* Sections IV-VI, Section IX, and Section XIII.

¹⁹ Shetreet, *supra* note 13, at 260 (describing Quigley's view as "one version of interpretation of those norms which he advances") and at 264 (noting controversy on the binding quality of General Assembly resolutions).

²⁰ *See id.*, Section II.

²¹ Dane, *supra* note 14, at 274 ("Each of the two intertwined strands of Quigley's argument could be challenged on its own terms.").

²² *Id.*

²³ *Id.* at 275.

²⁴ *Id.* at 278.

²⁵ *Id.* at 281.

Lebanon.²⁶ After building the case against Yaron, Malone urges that Israel's elevation "to one of its most important posts" of "one of its most notorious human rights violators" undermines public confidence in the Israeli military and the broader accountability that is so critical to the success of a fragile peace process.²⁷

The final essay by Abdulaziz Al Fahad expands and reinforces one thematic strand of the Symposium: the role and limits of law in the Middle East. Fahad provides a fascinating view of the type and power of legal actors in Saudi Arabia. He richly describes their historical and functional roles in the ongoing clash between tradition and modernity in contemporary Saudi society.²⁸

On behalf of the Journal and the Center, I would like to thank and congratulate these experts for their simultaneously sobering and inspiring insights. I would also like to invite others to contribute to the law school's continuing series on the challenges (and opportunities) of law reform and final settlement. We hope you will join in the collective effort to strengthen the legal foundations for the (still shaky) pillars of peace and prosperity in the Middle East.²⁹

²⁶ Malone, *supra* note 15, at 287.

²⁷ *Id.* at 305.

²⁸ Fahad, *supra* note 16.

²⁹ For more information on the Journal and the Cox International Law Center's upcoming activities, please visit our website at www.lawwww.cwru.edu/cwruLaw/jil.