

**The Oslo Accords – A Case of Selective
Compliance under the Chayeses' Model**

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I. Introduction

“I have recounted it as an unfinished document of Palestinian history and the Palestinian national struggle. I leave to history itself, and to our future Palestinian generations, the duty of judging what we did at Oslo. Future generations will look back, pronounce their verdicts, and reach their conclusions, as more facts about the events emerge, and as distance makes possible objective analysis.” – Ahmed Qurie (Abu Ala), Palestinian negotiator in the secret negotiations in Oslo.¹

30 years into the signing of the Oslo Accord I in 1993, it is apt time to deliver a final verdict on the series of agreements once perceived, if not hailed, by politicians, journalists, scholars alike as the greatest hope for peace in Palestine and in the Middle East. Those who did not share such view turned out to be pioneers in a sea of literature arguing, increasingly compellingly over time, to the contrary. As realities on the ground continue to manifest and unfold to this day, there has been no shortage of critique on Oslo, probing into its occurrence, content, status, reception, flaws and legacies from various perspectives. Though not intended as a comprehensive account of the Oslo Accords, this article sets out to summarily evaluate the agreements by applying the theories of international legal compliance. Just as international legal scholars evaluate the state of international law through compliance studies, the following makes a case for the powerlessness of the Oslo Accords by diving into the extent, areas, timing, causes, effects of compliance and non-compliance.

Despite the Oslo Accords lasting only 5 years by original design, after which a further 25 years have lapsed, their significance has not diminished. Virtually all contemporary developments on the ground in Palestine find their roots in Oslo. Nearly all recent literature about Palestine refer to Oslo in one way or another. Yet, the “*disconnect between text and de facto circumstances*”, as observed by Professor Richard Falk,² suggests that the relationship between Oslo and Palestine as it is today, is not straightforward, calling for a scrutiny of the web of linkages and discrepancies between text and reality – the key to which is found in compliance. Meanwhile, should an agreement capable of bringing just peace come into being one day, it would be in all stakeholders’ interest for it to be properly implemented and to last its due course. Hence the importance of studying the causes and consequences of a failed case of compliance. Finally, this analysis of compliance is a reminder of the very real legacies of these ailing agreements, the ramifications of which people on the ground are still suffering from to this day. Unlike works that conclude by noting lessons and insights for potential future agreements, this article goes a step further to urge for proper scrutiny of the situation in Palestine and to take serious steps, at a time described as “deadliest” for Palestinians in decades.^{3 4}

¹ Qurie, A. (2006). *From Oslo to Jerusalem: the Palestinian Story of the Secret Negotiations*.

² Falk, R. (2013). Oslo +20: A Legal Historical Perspective. In P. Bauck & M. Omer (Eds.), *The Oslo Accords 1993–2013: A Critical Assessment* (pp. 63–74). American University in Cairo Press.
<http://www.jstor.org/stable/j.ctt15nmhrq.12>

³ Office of the United Nations High Commissioner for Human Rights. (2022, December 15). *Israel: UN experts condemn record year of Israeli violence in the occupied West Bank*. <https://www.ohchr.org/en/press-releases/2022/12/israel-un-experts-condemn-record-year-israeli-violence-occupied-west-bank>

⁴ Medical Aid for Palestinians. (2023, July 3). *2023 becomes deadliest year for Palestinians in the West Bank as Israeli military launches fresh attack on Jenin*. <https://www.map.org.uk/news/archive/post/1483-2023-becomes->

II. Literature Review

Despite the growing literature surrounding the Oslo Accords, legal scholarship on the topic is concentrated in the early years after Oslo. In 1997, Professor Louis René Beres and Professor John Quigley first wrote on the legal character of the agreements. The former argues that they are not legally binding treaties and violates peremptory norms under international law,⁵ while the latter defends that they are binding treaties between subjects of international law.⁶ In 2000, Professor Geoffrey Watson provided an extensive legal analysis in the book “The Oslo Accords: International law and the Israeli-Palestinian peace agreements”.⁷ The book explored various possible legal characterizations of the agreements, concluding them as binding treaties between subjects of international law, followed by a thorough examination of parties’ compliance, arguing that both parties had reached substantial compliance with the agreements at the time of writing. In 2003, Professor Orde Kittrie authored an insightful review on the legitimacy and compliance of the Oslo Accords, which incorporates analysis from international law and international relations – a novel attempt at scrutinizing the agreements from the lenses of international legal compliance.⁸ Importantly, it argues that the agreements brought more process than peace due to their lack of legitimacy and compliance, and that “open-ended gradualism” and “constructive ambiguity” had contributed to their eventual failure.

The above works are highly sophisticated and authoritative when it comes to the legal status of the Oslo Accords. From an academic perspective, the scholarship on the legal characterization of the agreements seems to remain on good foot, given that there has not been significant legal development in international courts on the status of the Oslo Accords over the past three decades. However, it has taken a much longer time for the matter of compliance to be played out in the system and on the ground. Without reflecting how the situation has evolved as a result of compliance and non-compliance to the Oslo Accords, particularly after the 2000s, existing legal scholarship have not been able to make a complete representation of the topic. Supplementing them with an analysis of developments over the past three decades, the following aims to portray an overview as up-to-date as possible on the situation of compliance with the Oslo Accords.

Moreover, these works were written at the time when compliance studies began to sprout as a sub-field in international law. While Professor Watson empirically analyzed the parties’ non-compliance and Professor Kittrie illustrated how the lack of compliance-pull factors led to failure, there has thus far been no attempt to apply the various theoretical models of compliance to analyze the Oslo Accords. This article aims to fill this gap and continues the unfinished analysis of the Oslo Accords from a legal compliance perspective. With the benefit of hindsight on developments on the ground and the support of now extensively developed compliance theories, it is hoped that this article will offer a refined understanding of the Oslo Accords.

[deadliest-year-for-palestinians-in-the-west-bank-as-israeli-military-launches-fresh-attack-on-jenin-refugee-camp#:~:text=The%20death%20toll%20of%20Palestinians,UN%20began%20recording%20in%202005.](#)

⁵ Beres, L. (1997). *Why the Oslo Accords Should Be Abrogated by Israel*.

⁶ Quigley. (1997). *The Israel-PLO Interim Agreements: Are They Treaties?*

⁷ Watson, G. (2000). *The Oslo Accords: International Law and the Israeli-Palestinian Peace Agreements*.

⁸ Kittrie, O. (2003). *More Process Than Peace: Legitimacy, Compliance, and the Oslo Accords*.

III. Theoretical Framework

This article considers the Oslo Accords under the theoretical framework of international legal compliance, an interplay of international law and international relations. Compliance studies stem from the fundamental question of when and why states observe or violate international law.⁹ Scholars have looked at this question by analyzing compliance-pull factors in legal instruments, such as norms, reputation, conditionality and sanctions.¹⁰ Gradually, compliance-pull factors have been developed into theoretical models under the umbrella of compliance studies. Amongst them are Henkin's consent theory,¹¹ Franck's fairness theory,¹² Koh's transnational legal process,¹³ Chayes' managerial model,¹⁴ and Guzman's reputational theory.¹⁵ The field has then gradually branched out to include subjects of international law other than state actors, and to analyze different instruments involving compliance, not necessarily confined to multilateral conventions or binding treaties. Professor Kittrie's work is amongst such projects to expand compliance scholarship "from the multilateral into the bilateral realm, and from global issues into the regional-conflict arena".¹⁶

The Oslo Accords are uniquely suited for inspection under the framework of international legal compliance. While treaty law considers performance in the light of reciprocal obligation, international legal compliance – otherwise referred to as the study of rule conformity¹⁷ – appears to place major emphasis on the legal instrument itself and considers performance as adherence to a particular regime of rules. As far as a political settlement (or, for a more popular choice of words, peace settlement) may go, the Oslo Accords set out an institutional framework for the West Bank and Gaza in the foreseeable future, arguably comparable to and even functioning as a *de facto* interim constitution. This observation suggests that the Oslo Accords warrant consideration at a macro level, as a legal-political regime in itself, not only a list of contractual obligations owed to the other party under treaty law, which Professor Watson meticulously applied as the metric for compliance analysis in his book.¹⁸ As such, international legal compliance is likely the most suitable lenses through which the Oslo Accords can be systematically assessed and realistically scrutinized.

⁹ Bothe, M. (2020). Compliance in International Law. *Oxford Bibliographies on International Law*. DOI: 0.1093/obo/9780199796953-0213

¹⁰ Bothe, M. (2020). Compliance in International Law. *Oxford Bibliographies on International Law*. DOI: 0.1093/obo/9780199796953-0213

¹¹ Henkin, L. (1989). International Law: Politics, Values and Functions. *General Course on Public International Law*, 216.

¹² Franck, T. (1998). *Fairness in International Law and Institutions*.

¹³ Koh, H. (1996). Transnational Legal Process. *Nebraska Law Review*, 75(1).

¹⁴ Chayes, A. & Chayes, A. (1998). *The New Sovereignty: Compliance with International Regulatory Agreements*.

¹⁵ Guzman, A. (2001). *International Law: A Compliance Based Theory*.

¹⁶ Kittrie, O. (2003). *More Process Than Peace: Legitimacy, Compliance, and the Oslo Accords*.

¹⁷ Mushkat, R. (2010). *Dissecting International Legal Compliance: An Unfinished Odyssey*.

¹⁸ Watson, G. (2000). *The Oslo Accords: International Law and the Israeli-Palestinian Peace Agreements*.

IV. Research Framework

The first section of this article begins with historical introduction to the series of agreements known as the Oslo Accords, followed by an outline of major obligations under the agreements. By reference to primary and secondary sources, the section then analyzes whether such obligations have been complied with and compares the situation of compliance across different areas of agreement and periods of time. The second section studies the causes of compliance and non-compliance with the Accords by discussing major theories of compliance – the consent theory, fairness theory, transnational legal process, managerial model, and reputational theory – and questions which theory best explains the situation of compliance the Oslo Accords. The final section turns to the consequences of compliance and non-compliance with the Oslo Accords. In particular, it illustrates how such decisions and actions lead to the creation of unjust systematic realities, how they exacerbate imbalance and instability, and how they derail further peacemaking efforts.

V. Positionality

Originally from Hong Kong, but having resided in an Area A city in the West Bank for a number of months in recent years, I do not pose myself as an impartial umpire over a fair game. As I begin questioning, take an easy example, why travelling to a nearby city involves passing through crossings and checkpoints, or a heavier example, why gunshots and funeral marches have become a normality in daily life, I find myself pondering on the “rules of the game”. Oftentimes, this means revisiting and finding answers from Oslo. The work of writing an article on this topic is driven by personal experiences and motivations. Nevertheless, I strive to do justice to the role as a researcher to critically consider a range of sources, and most importantly, to make nuanced arguments which relies on logical reasoning and stands up to rigorous academic scrutiny. With the belief that the quality and weight of these arguments will speak for themselves, I remain hopeful that the points made in this writing will reach not only the minds but also the souls of readers.

VI. Provisions of the Oslo Accords

To assess compliance, one must first define the meaning of compliance in the context of the Oslo Accords, a series of agreements signed between the Government of Israel and the Palestinian Liberation Organization (“PLO”) from 1993 to 1999. The first amongst the seven agreements, having derived its name from secret negotiations between Israel and the PLO hosted in Norway’s capital, Oslo I set the tone for the subsequent agreements, outlining the basic objectives, principles, and framework to be established by the agreements. It is to be read together with the exchange of letters between Chairman of the PLO Yasser Arafat and Prime Minister of the Government of Israel Yitzhak Rabin, where commitments to recognize Israel as a sovereign state and the PLO as the legitimate representative of the Palestinian people were respectively exchanged.

The Gaza-Jericho Agreement came into being following Oslo I, supplementing it with arrangements for the transfer of power in Gaza and Jericho – the first phase of the transfer of power from Israel to Palestine. It was nonetheless superseded by Oslo II soon afterwards. The Paris Protocol, contained in the Annex of the Gaza-Jericho Agreement, set out important economic, financial and taxation arrangements between Israel and Palestine. The most elaborate document of all agreements, Oslo II set out the major obligations of both parties in all spheres of relations during the interim period pursuant to the general principles set out in Oslo I. It is supplemented by the subsequent Hebron Protocol, Wye River Memorandum, and Sharm El Sheikh Memorandum, which contained more specific arrangements for the withdrawal of Israeli forces.

Year	Agreement
1993	Declaration of Principles on Interim Self-Government Arrangements (“Oslo I Accord”)
1993	Exchange of Letters between Yasser Arafat and Yitzhak Rabin on Mutual Recognition
1994	Agreement on the Gaza Strip and the Jericho Area (“Gaza-Jericho Agreement”)
1994	Protocol on Economic Relations (“Paris Protocol”)
1995	Interim Agreement on the West Bank and the Gaza Strip (“Oslo II Accord”)
1997	Protocol Concerning the Redeployment in Hebron (“Hebron Protocol”)
1998	Wye River Memorandum
1999	Sharm El Sheikh Memorandum

* Table 1: List of agreements collectively known as the Oslo Accords.

For the purposes of this article, compliance is defined generally as adherence to rules established under the Oslo Accords, which includes performance of prescribed obligations. Nonetheless, compliance here is not intended to mean absolute or perfect performance. Peace agreements or political settlements do not function as switches that can be flicked on or off at users’ pleasure and immediately bring about the intended effect. More often than not, compliance entails painstaking bilateral or multilateral efforts in implementation and maintenance, as well as constant struggles to deal with minor fallouts in order to stay on the right track at the end of the day. Especially considering the breadth and complexity of the Oslo Accords, it is of limited value to plunge into endless rounds of quarrelling over characteristically and deliberately ambiguous terms that cannot be reconciled by one interpretation. The more important task at hand is to look at the system created under the agreements and to ask critical questions such as whether it was implemented, sustained and effectuated as intended. To make a meaningful and realistic argument, this article does not attempt to exhaustively breakdown every provision and interpret them word-by-word.

The following analysis approaches the Oslo Accords by categorizing major provisions in accordance with their purpose as to the institutional design of the West Bank and Gaza: (i) provisions that seek to establish a Palestinian jurisdiction and transfer power from Israel to a Palestinian regime; (ii) provisions that seek to delineate the boundaries between Palestinian and Israeli jurisdiction in the territories; (iii) provisions that seek to establish a relationship of cooperation between Israel and the Palestinian regime in the form of both active coordination and maintenance of status quo; and (iv) provisions that seek to safeguard basic human rights. In doing so, a framework is set out for comparing the provisions to their actual implementation.

A. Transfer of Power

The establishment of Palestinian self-government is at the core of the agreements. Both Article I of Oslo I and the Preamble of Oslo II expressed that the aim of Israeli-Palestinian negotiations in the peace process is, “*among other things, to establish a Palestinian Interim Self-Government Authority, the elected Council, for the Palestinian people in the West Bank and the Gaza Strip...*” To establish Palestinian governance the very territories annexed and occupied by Israel since the 1967 war, the logical pre-condition is that Israeli control over these territories must also come to an end. Thus, the objectives of this category of provisions are twofold: the formation of a Palestinian governing entity and the withdrawal of Israeli powers. These provisions would include, most importantly, Chapters I and II of Oslo II. On one hand, they provide for the formation, structure, powers of the Palestinian Interim Self-Government Authority,¹⁹ transfer of powers in civilian affairs from the Israeli civil administration to the Palestinian Interim Self-Government Authority,²⁰ and dissolution of the Israeli civil administration.²¹ On the other hand, they also provide for the formation, structure, duties of the Palestinian Police,²² transfer of security powers from the Israeli military government to the Palestinian police,²³ and phased redeployment of the Israeli military²⁴. These provisions also include those in the Gaza-Jericho Agreement, providing for the transfer of power in Gaza and Jericho to take place at a stage earlier than most provisions in Oslo II, as well as those pertaining to subsequent stages of Israeli redeployment in the Hebron Protocol, Wye River Memorandum, and Sharm El Sheikh Memorandum.

B. Demarcation of Jurisdiction

Of equal significance to the provisions that seek to establish Palestinian jurisdiction are provisions that seek to limit Palestinian jurisdiction. The crucial implication is that the transfer of power under the Oslo Accords was not a wholesale transfer of control over the entirety of West Bank and Gaza. Rather, a set of provisions limits the scope of Palestinian territorial, functional and personal jurisdiction. This reflects the nature of the Oslo Accords as a design not for conferring power over the territories to the self-governing authority, but the division of such powers between Israel and Palestine, albeit a prejudicial and imbalanced one. In essence, jurisdiction of the Palestinian Authority shall cover the West Bank and Gaza, with the exception of Area C and the Military Installation Area – Israeli settlements in the West Bank and Gaza respectively.²⁵ The Palestinian Authority is to govern all persons in such territories except for Israelis.²⁶ Otherwise put, Israeli settlement areas and Israeli persons are to be carved out from Palestinian jurisdiction for Israeli governance.

¹⁹ *Interim Agreement on the West Bank and the Gaza Strip*, Art. II-IX. (1995).

²⁰ *Interim Agreement on the West Bank and the Gaza Strip*, Art. I (4) and Annex III. (1995).

²¹ *Interim Agreement on the West Bank and the Gaza Strip*, Art. I (5). (1995).

²² *Interim Agreement on the West Bank and the Gaza Strip*, Art. XIV. (1995).

²³ *Interim Agreement on the West Bank and the Gaza Strip*, Art. I (3) and Annex I. (1995).

²⁴ *Interim Agreement on the West Bank and the Gaza Strip*, Art. X. (1995).

²⁵ *Interim Agreement on the West Bank and the Gaza Strip*, Art. XVII (2)(a). (1995).

²⁶ *Interim Agreement on the West Bank and the Gaza Strip*, Art. XVII (2)(c). (1995).

Further, Palestinian jurisdiction is confined to an exhaustive list of powers and responsibilities transferred to the Palestinian Authority. Conversely, the spheres of foreign relations²⁷ and external defense²⁸ have been explicitly carved out. Any other powers and responsibilities not expressly transferred in Oslo II would be retained for Israel.²⁹ Altogether, whilst the major carveouts of Palestinian jurisdiction rightly raise questions on the fairness of such institutional design and likely implications on the question of Palestinian statehood, the Accords arguably intended to delineate how power is to be divided between the two sides. This means, at the minimum, that such lines were meant to be kept on proper understanding of the Accords.

C. Relationship of Cooperation

On top of matters that have been delineated to fall within Palestinian or Israeli jurisdiction, there are aspects of the Accords which require cooperation between the two sides. Notably, security arrangements are to be administered by the Joint Security Coordination and Cooperation Committee.³⁰ Fiscal arrangements such as the clearance revenue system shall be maintained by the Palestinian-Israeli Joint Economic Committee.³¹ Several matters are set aside for future agreement, including the potential introduction of a seaport, airport,³² and Palestinian currency.³³ Most importantly, the status quo of final status issues, are to be respected and maintained by both sides in the spirit of enabling future negotiations for a final solution within 5 years.

D. Protection of Rights

Finally, provisions relating to rights ought to be noted, for they shall in principle be important safeguards above and beyond politics. Article XIX commits both Israel and the Palestinian Authority to exercise power and responsibilities “*with due regard to internationally-accepted norms and principles of human rights and the rule of law*”.³⁴ There are also provisions to safeguard Palestinian rights in relatively specific spheres, including freedom of movement³⁵ and safe passage between the West Bank and Gaza.³⁶ Although there has been no shortage of academic criticism of the striking vagueness of these provisions, their existence in the Accords point towards a design which, if properly implemented, entails protection for human rights.

²⁷ *Interim Agreement on the West Bank and the Gaza Strip*, Art. IX (5). (1995).

²⁸ *Interim Agreement on the West Bank and the Gaza Strip*, Art. X (4). (1995).

²⁹ *Interim Agreement on the West Bank and the Gaza Strip*, Art. XVII (3). (1995).

³⁰ *Interim Agreement on the West Bank and the Gaza Strip*, Annex I, Art. III. (1995).

³¹ *Protocol on Economic Relations*, Art. II. (1994).

³² *Interim Agreement on the West Bank and the Gaza Strip*, Annex I, Art. VIII. (1995).

³³ *Protocol on Economic Relations*, Art. IV. (1994).

³⁴ *Interim Agreement on the West Bank and the Gaza Strip*, Art. XIX. (1995).

³⁵ *Interim Agreement on the West Bank and the Gaza Strip*, Annex I, Art. I (2). (1995).

³⁶ *Interim Agreement on the West Bank and the Gaza Strip*, Annex I, Art. X (1). (1995).

VII. Analysis of Compliance

This section addresses one main question, the answers to which serve as the basis for analyzing the causes and impact of compliance in later sections: To what extent were the Oslo Accords complied with? Despite the Oslo Accords being widely dismissed as a failure and the peace process long been pronounced dead, it would be inaccurate to categorically state that the agreements had entirely not been complied with, given that some provisions were indeed complied with. Nor would it be appropriate nowadays, to echo Professor Watson's analysis 25 years ago that "each [party] is now in substantial compliance [with the Oslo Accords]", given that a considerable portion of the agreements have broken down over time.³⁷ As the following argues, compliance have varied across different aspects of the agreements. These observations underlie the system which pervades the West Bank and Gaza today – a product of both compliance and non-compliance with the Oslo Accords. On one hand, damaging institutional designs have become reality. On the other, basic safeguards have failed to serve their purposes. Palestine thus absorbed the worst of all possible outcomes.

This analysis of compliance does not wrap up upon the end of the 5-year interim period prescribed by the agreements, for parties' compliance with the agreements have also varied across different periods of time. The following extends the assessment of compliance and non-compliance with the Oslo Accords beyond the 5-year interim period. On one hand, factoring in the dimension of time is necessitated by the observation that certain aspects of the Oslo Accords have been complied with long past the 5-year timeframe, despite considerable haggling, delays and hiccups over time. These include, most notably, limited and fragmented Palestinian jurisdiction, arrangements on security cooperation and power sharing, as well as the fiscal and taxation arrangements, all of which remain in force to this day. Importantly, these observations beg the question of why such provisions are still complied with, and on what grounds these arrangements remained in place long after the end of the interim period and sheds light on why Palestine is in its current condition.

To begin with, as a matter of political reality, the Palestinian Authority has since 1994 been in existence as a governing entity of a kind. Under the Basic Law, it functions as a central administration with a President, Prime Minister, and Executive Cabinet. The executive branch also includes hundreds of thousands of civil servants, which in part comprise the internal security apparatus.³⁸ It also oversees the legal system through the appointments of the Minister of Justice and the Attorney General by the President.³⁹ Its legislative arm, the Palestinian Legislative Council, passes laws and confirms cabinet appointments.⁴⁰ In general terms, it can be said that an institution for governance has been created in compliance with the Accords. For analysis purposes, the 2006 Hamas-Fatah split and eventual failure of democratic elections could be said as flaws in the implementation of the Accords, but do not dispel the formal establishment of a Palestinian jurisdiction. Second, cooperation between the Palestinian Authority and Israel in accordance with the Oslo Accords have remained largely intact. It is most notable in the sphere of security cooperation, notwithstanding occasional

³⁷ Watson, G. (2000). *The Oslo Accords: International Law and the Israeli-Palestinian Peace Agreements*.

³⁸ Farraj, L. and Dana, T. (2021). The Politicization of Public Sector Employment and Salaries in the West Bank and Gaza. Al-Shabaka. <https://al-shabaka.org/briefs/the-politicization-of-public-sector-employment-and-salaries-in-palestine/>

³⁹ Quigley, J. (2010). *The Statehood of Palestine: International Law in the Middle East Conflict*.

⁴⁰ Quigley, J. (2010). *The Statehood of Palestine: International Law in the Middle East Conflict*.

declarations or threats to terminate from the Palestinian side. Instances of the Palestinian Authority cracking down on student resistance or Hamas members through arbitrary arrests or detention, and even carrying out extra-judicial assassinations under pressure from Israel, have been extensively documented.⁴¹ Meanwhile, the clearance revenue system as prescribed under the Paris Protocol have been maintained by the Palestinian Authority and Israel. Custom duties on imports into the Palestinian territories are first collected by Israel then transferred to the Palestinian Authority. This arrangement has allowed Israel to use tax revenues as a means of exerting control over the Palestinian Authority and continuously enabled Israel to gain from fiscal leakages by retaining tax revenues on indirect imports that are first imported to Israel then re-exported to the Palestinian territories.⁴² Such collaborative elements of the Oslo framework have long remained in place.

However, parties failed to comply with the Oslo Accords in multiple ways. First, despite the establishment of a Palestinian jurisdiction, transfer of power had not taken place in full. Provisions on the redeployment of Israeli forces, muddled as they already were, were never properly implemented nor completed. This was mainly due to the parties' inability to come to agreement on the areas from which Israel must withdraw and Israeli allegations of Palestinian breaches which would justify refusal to withdraw as countermeasures.⁴³ Nevertheless, major developments after the Professor Watson's analysis in 2000 further complicates these dynamics. As regards Gaza, Israeli disengagement in 2005 had effected a withdrawal of powers. However, Gaza remains subject to extensive Israeli control. In the West Bank, before a transfer of power as intended by the Accords have occurred Israel had already begun preying on existing Palestinian jurisdiction, bringing the situation further from an actual transfer of power. Both observations then lead to questions of breaches of jurisdictional boundaries set out in the Accords – the second area of non-compliance. This often occurs in tandem with the third aspect of non-compliance – breaches of commitments to human rights protection. The Israeli blockade of Gaza since 2005 as well as the stringent control of the movement of people and goods in and out of Gaza has arguably interfered with Palestinian jurisdiction on civil affairs, such as in the sphere of medical care. The consequences of the blockade sound in violations of internationally-recognized norms of human rights which Israel had committed to in the Accords, which includes the right to health, and freedom of movement, which was specifically provided for in the Accords. Israeli raids and arrests in Palestinian cities in the West Bank have occurred frequently and on striking scales in times of war.⁴⁴ House demolitions and forcible transfers have been extensively documented. These intrude upon with Palestinian territorial jurisdiction over Area A and Area B, as well as Palestinian personal jurisdiction over Palestinian persons, all the while violating basic human rights to be free from arbitrary arrests, detention, or killing.

In sum, the Palestinian territories today is a product of selective compliance with the Oslo Accords, with a Palestinian jurisdiction established and a cooperative relationship with Israel maintained under the Accords, whilst Israeli presence have not been fully withdrawn, jurisdictional boundaries in turn already breached, human rights obligations violated, future negotiations broken down, and a final solution nowhere in sight.

⁴¹ Purkiss, J. and Nafi, A. (2015). *Palestinian Security Cooperation with Israel*. Middle East Monitor. <https://www.middleeastmonitor.com/20151028-palestinian-security-cooperation-with-israel/>

⁴² Arafteh, N. (2018). *Long Overdue: Alternatives to the Paris Protocol*. Al-Shabaka. <https://al-shabaka.org/briefs/long-overdue-alternatives-paris-protocol/>

⁴³ Watson, G. (2000). *The Oslo Accords: International Law and the Israeli-Palestinian Peace Agreements*.

⁴⁴ B'Tselem. (2020). *The Annexation That Was and Still Is*. <https://www.btselem.org/node/213140>

VIII. Causes of Selective Compliance

The Chayeses' theory posits that efficiency, interest, and norms are the general factors that explain states' propensity to comply with treaties. Decisions of states to enter into treaties are assumed to be rational, thus compliance is the normal presumption. This is because it would be most cost-efficient to follow the initial decision and not constantly recalculate whether to comply, the initial decision would normally have been made in alignment with the interests of the state, and compliance with legal obligations is a behavioral norm. As compliance is presumed, non-compliance comes not as willful flouting of express legal obligations, but a result of ambiguity and indeterminacy of treaty language, limitations on capacity to carry out undertakings, and the temporal dimension of avoidable or unavoidable time lags.⁴⁵ What does this mean when applied to consider compliance with the Oslo Accords? Why does this explain the political reality of the Oslo Accords?

The Chayeses presumption of compliance reflects the cost benefit analysis underlying compliance with the Oslo Accords on the matter of establishing a Palestinian jurisdiction and its cooperation with Israel. These are decisions both Israel and the PLO had initially made signing the Accords. The primary reason why these aspects of the Accords have been complied with is that the design of the provisions had the interests of the parties in mind at the time of signing and remain continuously aligned with the interests of the parties. For Israel, a proxy jurisdiction serves as a cost-efficient method to exercise and legitimize *de facto* control over the territories annexed in 1967, without having to maintain full military presence and civil administration with governing responsibility. In the words of Ghazi Hamad, "*The Oslo Accords were a mistake ... It was a big illusion ... It was not there to create a state but it is there to decrease the cost of the occupation.*"⁴⁶ The partnership forged under the Accords confers nominal responsibility over native Palestinians upon the Palestinian Authority as a governing entity.⁴⁷ Meanwhile, security cooperation and the clearance revenue system allow Israel to continue to control and benefit from the relationship. For the Palestinian Authority, the Oslo framework created substantial vested interest in continuing to see itself in place. The Palestinian Authority has long been characterized by neopatrimonialism, with boundaries of public affairs and private interest blurred by patronage, and public office operating as an engine for private profit.⁴⁸ It fostered a class of elite made up of capitalist groups earning "peace dividends" from economic pacification strategies by Israel and donor policies of international aid to Palestine.⁴⁹ Its civil service and security apparatus makes up a considerable proportion of public expenditure and employment.⁵⁰ Thus, compliance in this respect has been underlined by cost benefit analysis whereby interests of the parties continue to align with the Accords.

⁴⁵ Chayes, A. & Chayes, A. (1998). *The New Sovereignty: Compliance with International Regulatory Agreements*.

⁴⁶ Somdeep, S. (2015). "It's Nakba, Not a Party": Re-Stating the (Continued) Legacy of the Oslo Accords. *Arab Studies Quarterly*, 37(2), 161–176.

⁴⁷ Hassan, S. (2011). Oslo Accords: The Genesis and Consequences for Palestine. *Social Scientist*, 39(7/8), 65–72.

⁴⁸ Brynen, R. (1995). The Neopatrimonial Dimension of Palestinian Politics. *Journal of Palestine Studies*, 25, 23-36. DOI: 10.1525/jps.1995.25.1.00p0052r

⁴⁹ Dana, T. (2020). Crony Capitalism in the Palestinian Authority: A Deal Among Friends. *Third World Quarterly*, 41(2), 247-263. DOI: 10.1080/01436597.2019.1618705

⁵⁰ Farraj, L. and Dana, T. (2021). *The Politicization of Public Sector Employment and Salaries in the West Bank and Gaza*. Al-Shabaka. <https://al-shabaka.org/briefs/the-politicization-of-public-sector-employment-and-salaries-in-palestine/>

Furthermore, notwithstanding non-compliance by both parties in other respects and the expiry of the 5-year timeframe, compliance with the Oslo Accords on the general level has been treated as a behavioral norm by both parties to this day, as evidenced by the discourse. Notable examples include threats to dissolve the Palestinian Authority or declarations to terminate the Oslo Accords made by President Mahmoud Abbas in 2010,⁵¹ 2015,⁵² and 2020⁵³ respectively, all of which were heavily criticized but none of which eventually materialized. In particular, relations and security cooperation returned to normal following the declaration in 2020 for the reason that Abbas received confirmation that Israel remained committed to past agreements (the Oslo Accords) with the Palestinians.⁵⁴ It could thus be said that parts of the Accords are complied with for reasons of compliance remains an expectation on both ends and effectively a norm in Chayeses' theory. It is as such that Chayeses' theory explains the dynamics of compliance with the Oslo Accords.

On the flip side, Chayeses' theory also provides compelling explanations as to why parties deviated from provisions of the Accords. The three factors – ambiguity and indeterminacy, limitations on capacity to carry out undertakings, and avoidable or unavoidable time lags – together reflect the reality of the Oslo Accords. Constructive ambiguity has been widely recognized as a fatal defect of the Accords. This has been identified in the works of both Professor Watson⁵⁵ and Professor Kittrie.⁵⁶ Nonetheless, the Chayeses' model grounds the argument in further theoretical basis. Ambiguity would give rise to questions of interpretation and easily creates gaps between the letter and the spirit of the obligation. This is most aptly reflected in the ambiguity hovering over the scope Israeli redeployment, especially the undefined term “specified military locations”, referring to areas from which Israeli forces are to withdraw. Second, non-compliance is attributable to the limited capacity of states to carry out undertakings. In Chayeses' model, this commonly refers to deficits in domestic legal regulatory capacity. This helps understand the parties' non-compliance with commitment to rights protection under the Accords, as it can be traced to the lack of legal regulatory capacity. On the part of Israel, the Supreme Court is said to have permitted nearly every kind of human rights violation that Israel has committed in the Occupied Territories over the years.⁵⁷ This is more realistic an explanation for Israeli breaches of its commitment to human rights protection than the common critique that Article XIX is too vague. After all, what would have been decisive is not a well-tailored definition in the Oslo Accords, but whether the party itself has the capacity to act in accordance with the Accords. Third, it is self-evident that the temporal dimension of the Accords was fatal to proper compliance, not only in the failure to produce a final solution within 5 years, but also in its continuation past the 5-year timeframe. Thus, Chayeses' theory offers a comprehensive overview of the main factors for non-compliance with the Accords.

⁵¹ Al-Jazeera. (2010). *Abbas threatens to dissolve PA*. <https://www.aljazeera.com/news/2010/12/4/abbas-threatens-to-dissolve-pa>

⁵² Diker, D. and Abu Toameh, K. (2020). *Mahmoud Abbas' Strategy of Selective Compliance*. Jerusalem Center for Public Affairs. https://jcpa.org/article/mahmoud-abbas-strategy-of-selective-compliance/#_edn8

⁵³ Diker, D. and Abu Toameh, K. (2020). *Mahmoud Abbas' Strategy of Selective Compliance*. Jerusalem Center for Public Affairs. https://jcpa.org/article/mahmoud-abbas-strategy-of-selective-compliance/#_edn8

⁵⁴ Sawafta, A. (2020). *Palestinian Authority resuming cooperation with Israel, Palestinian official says*. Reuters. <https://www.reuters.com/article/idUSKBN27X2D0/>

⁵⁵ Watson, G. (2000). *The Oslo Accords: International Law and the Israeli-Palestinian Peace Agreements*.

⁵⁶ Kittrie, O. (2003). *More Process Than Peace: Legitimacy, Compliance, and the Oslo Accords*.

⁵⁷ B'Tselem. (2020). *The Supreme Court of the Occupation*. https://www.btselem.org/supreme_court_of_occupation

IX. Consequences of Selective Compliance

As Professor Asem Khalil rightly observed, “*It was supposed to operate for a maximum of five years, with final negotiations ostensibly succeeding by then. The Oslo Accords’ framework of governance has remained largely intact as peace negotiations have failed time and again.*”⁵⁸ This statement succinctly summarizes two major consequences of the parties’ selective compliance with the Oslo Accords. First, the most tangible manifestation of selective compliance is in its role as the framework of governance over the West Bank and Gaza today. The net effect of such institutional framework is that the situation is worse than it would have been had there been compliance. The West Bank and Gaza is now characterized by an entrenched system of indirect rule through the Palestinian Authority, the non-sovereign government entity institutionalized and legitimized by the façade of a peace agreement. On one hand, the PA functions as a proxy regime for Israeli control over the West Bank, maintaining a huge body of security forces which heavily relies on Western funding and frequently cracks down on domestic opposition. On the other hand, mismanagement by the PA over time contributed to the rise of Hamas and the split between the rule by PA in the West Bank and the rule by Hamas in Gaza. Further, there is a lack of basic human rights safeguards as Palestinians continue to remain susceptible to human rights violations on both sides to this day. On the contrary, had the Accords been complied with, it would have paved way for a major transfer of power, clear delineation of jurisdiction, effective protection of Palestinian rights, as well as maintenance of status quo on final status issues such that further negotiations may meaningfully take place and a final solution come into being. This is not to say that the Accords were a fair and sustainable framework to begin with. It has been widely recognized that the Accords were deeply flawed from the outset due to constructive ambiguity and gradualist approach, and deeply prejudicial towards Palestinians by design, in no small part due to the PLO which in effect signing away core demands such as the right of return. Nevertheless, the institutional framework resulting from selective compliance has proved far more detrimental than the original design.

Second, as a result of selective compliance, the framework under the Oslo Accords has notably outlasted its original 5-year timeframe, thus rendering time inconceivably illusive a concept to Palestine. By 2000, the parties have failed to come up with a final status solution as the negotiations at Camp David broke down irrevocably, with the Second Intifada following soon after. In subsequent years the Quartet Roadmap saw a renewed attempt to address the situation. Nonetheless, the framework of Oslo remained largely in place, as the Quartet Roadmap largely maintained continuity with Oslo. Certain aspects of the Oslo Accords have remained in force long past the 5-year timeframe, including limited and fragmented Palestinian jurisdiction, security cooperation, fiscal and taxation arrangements, to name but a few. To this day, no substitute for the Oslo framework emerged. The infinite delay of a meaningful solution only serves to exacerbate the power imbalance in the long term, especially as Israel continues its strategy of creating realities on the ground. As Professor Falk noted, “*Time is not neutral. Delay was beneficial for Israeli expansionism and continuously diminished Palestinian hopes and prospects.*”⁵⁹

⁵⁸ Khalil, A. (2016). *The Palestinian Authority: Unsettling Status Quo Scenarios*. Al-Shabaka. <https://al-shabaka.org/briefs/palestinian-authority-unsettling-status-quo-scenarios/>

⁵⁹ Falk, R. (2013). Oslo +20: A Legal Historical Perspective. In P. Bauck & M. Omer (Eds.), *The Oslo Accords 1993–2013: A Critical Assessment* (pp. 63–74). American University in Cairo Press. <http://www.jstor.org/stable/j.ctt15nmhrq.12>

X. Conclusion

This article argues that the Oslo Accords have been selectively complied with. Compliance is manifested in the establishment of a Palestinian jurisdiction and the maintenance of a cooperative relationship between the Palestinian Authority and Israel, as prescribed under the Accords. This is explained by the presumption of compliance in Chayeses' theory, underlined by cost benefit analysis and compliance as a norm. Instances of non-compliance includes the incomplete transfer of power due to the incomplete withdrawal of Israeli forces, breaches of demarcated jurisdictional boundaries, violations of human rights obligations, breakdown of future negotiations, and the lack of a final solution. They are explained by ambiguities, limited capacity, and time lags under the framework of Chayeses' theory. Altogether, these observations are underlined by realist power dynamics and rationalist decision-making on the part of both parties Israel and the Palestinian Authority. The result of selective compliance is that it forms the framework of governance over the West Bank and Gaza nowadays, which is more detrimental than had the Accords been complied with. Further, the state of selective compliance of the Accords beyond its stipulated timeframe also highlights the negative relationship between the continuation of the status quo and the likelihood of a final solution. In conclusion, the common and widespread arguments that the Accords have not simply been complied with, have failed, have ended, or are terminated, are largely inaccurate. A better understanding of the Oslo Accords, from the perspective of compliance analysis, is that certain provisions of the agreements have been complied with to varying extents while other provisions have not. An analysis of compliance best explains the institutional framework in the West Bank and Gaza nowadays – a product of selective compliance with the Oslo Accords, which outlived the timeframe of the 5-year interim agreement itself.