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# AN OASIS OR JUST A MIRAGE: THE JERICHO CASINO AND THE FUTURE OF THE ISRAELI- PALESTINIAN PEACE PROCESS

Edward B. Miller\*

## i. Preface

Since the time I submitted this article for publication, the Israeli-Palestinian Peace Process has changed dramatically. Beginning with the signing of peace accords in September 1993, there was a growing sense of optimism that negotiations could bring a settlement to years of violence. During this time of negotiations, violent confrontations continued but their occurrence seemed only to encourage and intensify peace negotiations as peace participants redoubled their efforts to reach an agreement rather than give in to what they viewed as terrorists trying to sabotage the peace process. However, beginning in September 2000, for the first time in seven years, the violence was sustained and coordinated and could not be marginalized as the work of terrorists.<sup>1</sup> Consequently, the emphasis of the talks shifted from reaching a peace agreement to merely reaching a cease fire and abating the level of violence.<sup>2</sup>

As acts of violence have multiplied since last September, the emphasis has shifted to re-establishing dialogue because peace negotiations have broken off numerous times. As this preface goes to press, negotiations have ceased completely for more than one month as Israel's newly-elected prime minister, Ariel Sharon, has refused to resume negotiations until the Palestinian leadership takes certain measures to end the violence.<sup>3</sup> Finally, as a result of months of daily confrontations and the election of a new Israeli prime minister, even when

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<sup>1</sup> Arieh O'Sullivan, *No End in Sight to Palestinian Terror*, JERUSALEM POST, Mar. 2, 2001, at 1 ("The [Israeli] defense establishment sees a direct link between the terrorism of Hamas and Islamic Jihad and the Palestinian Authority. The Palestinians may continue what they see as their war of independence in parallel with a return to negotiations. In that case, they would hope for a radical retaliation or mistake that would force the international community to impose a solution. Another scenario would be to drag the whole region into an all-out war.").

<sup>2</sup> Dan Izenberg and Lamia Lahoud, *Powell Takes Sharon's Demands to Arafat*, JERUSALEM POST, Feb. 26, 2001, at 1 ("[U.S. Secretary of State Colin] Powell agreed that now is not the time to renew the negotiations. 'Our immediate goal is to alter the current situation. There desperately needs to be a restoration of confidence, coordination, and cooperation between the parties.'").

<sup>3</sup> *Id.* Prime Minister Ariel Sharon has listed three conditions to his renewing negotiations with the Palestinian leadership: "an unequivocal declaration" from Yasser Arafat to his people to stop the violence, Yasser Arafat's taking action to stop the incitement to violence in the Palestinian territories and for Yasser Arafat to renew Israeli-Palestinian security coordination.

negotiations resume it is unclear from where they will begin or how they will proceed.

Although completed before the current level of heightened violence began, this Article concluded there would not be lasting peace between Israelis and Palestinians any time soon. Furthermore, it reached its conclusion even though it focused exclusively on economic development within the Palestinian territories, because the state of the Palestinian economy alone foreshadowed the continuing stalemate. Simply put, after years of expecting the promised benefits of making peace with Israel, namely economic improvement in the Palestinian territories and a rising quality of life for Palestinians, neither has yet occurred. Not surprisingly, when asked to make the concessions necessary to achieving a lasting peace, Palestinians objected, because over seven years they had not realized sufficient benefits to justify making such concessions. Consequently, on the verge of finalizing a lasting peace agreement, Israelis and Palestinians now find themselves in the midst of a renewed conflict which has already raged for five months and may yet lead to a regional war.<sup>4</sup>

This article focuses on the Oasis Casino – the largest private investment project to be undertaken in the Palestinian territories and the centerpiece of the hoped-for economic revitalization of this area – to provide an understanding of why economic development as it occurred during the first seven years of the peace process will not lead to a lasting peace. Now, however, as a result of the recent violence, the casino has closed its doors and is waiting for hostilities to subside before re-opening them.<sup>5</sup> Nonetheless, if there is to be lasting peace between these parties, the economic development of the Palestinian territory will remain a priority and understanding past failures will offer the only hope for future successes. Therefore, even as the Oasis Casino sits temporarily idle, now is the right time to analyze its contributions to economic development and the impact this development has had on the peace process.

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<sup>4</sup> The failure to reach a lasting agreement is even more frustrating considering the scope and significance of Israeli concessions. Israeli Prime Minister Ehud Barak offered to divide Jerusalem, relinquish sovereignty over the Temple Mount, yield more than 94% - 96% of the West Bank (and part of Israel proper to compensate for the remaining 4% - 6%), including the strategically crucial Jordan Valley, turn over nearly 100% of the Gaza Strip, provide recognition of a Palestinian state and give Palestinians control over their border crossings with Egypt and Jordan. Charles Krauthammer, *The New Middle East: The Return of Ariel Sharon*, WEEKLY STANDARD, Feb. 19, 2001, at 23 (“Barak surprised not only the Palestinians but the American mediators, and indeed his own close associates, with astonishing concessions . . . . Not only were these concessions unprecedented, they were in direct contradiction to the campaign promises he had made just a year earlier . . . . Dividing Jerusalem was something that no Israeli government even considered for 35 years. Equally unthinkable was giving up the Jordan Valley, Israel’s buffer against tank attack from the east. Barak’s own Labor Party for 35 years maintained that it should never be given up. Barak’s own army chief of staff said giving it up threatened Israel’s very existence.”)

<sup>5</sup> Jonathan Krashinsky, *Casino in Jericho Closes*, JERUSALEM POST, October 31, 2000, at 10 (the casino suspended operations on October 31, 2000).

## I. Introduction

More than seven years have passed since the signing of the historic peace agreement between Israel and the Palestine Liberation Organization ("P.L.O."). While the final borders and powers of a Palestinian State are still being discussed by the parties to this agreement, the fact of Palestinian autonomy is an irreversible reality. As such, the Israeli military occupation of the West Bank and Gaza Strip has slowly been giving way to a self-governing Palestinian body which now administers most of these territories and nearly all of the Palestinians who reside therein.<sup>6</sup>

The peace agreement has provided Palestinians with their independence from Israel and with the beginnings of self-rule, but it has had difficulty in fulfilling its drafters' more lofty ambitions. These include developing democratic institutions, guaranteeing individual freedom and developing a strong Palestinian economy.<sup>7</sup> But, it is not for lack of trying, at least regarding the need for a healthy economy.

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<sup>6</sup> See Charles Krauthammer, *A Palestinian Peace*, WASHINGTON POST, May 19, 2000, at A131 (99 percent of Palestinians live under the Palestinian self-rule government).

<sup>7</sup> See Richard Engel, *Israel-Palestinian Peace-making in Balance After Violence*, AGENCE FRANCE PRESSE, May 22, 2000, available at 2000 WL 2798605 ("[Yasser Arafat] has not been able to combat corruption, build strong institutions and manage the affairs of state," the Director of the Palestinian Center for Policy and Survey Research, Khalil Shikaki, said.). See also *Independence Without Freedom*, JERUSALEM POST, May 23, 1997, at 4 (The U.S. citizen director of a private Palestinian television station, and recipient of USAID funds, was jailed without charge for broadcasting a session of the Palestinian Legislative Council); see also Robert Mahoney, *Press Watchdog Says Palestinian Media Cowed*, REUTERS WORLD SERVICE, Jan. 24, 1996 (Former U.S. President Jimmy Carter reported that inaugural Palestinian elections were not conducted fairly); see also Mark Matthews, *Arafat, Palestinians Treading a Bumpy Road to Democracy: Furor Follows Arrests of Arab Leaders Who Criticized Government*, BALTIMORE SUN, Dec. 2, 1999, at A1 (Yasser Arafat arrested and detained, without charge, 11 prominent Palestinian legislators and academics who signed a petition advocating government reforms); see also *Amnesty International Country Report* <http://www.oil.ca/amnesty/ailib/aireport/ar96/index.html> (During the election campaign the editor of a respected Palestinian newspaper was jailed for one week for failing to prominently feature Yasser Arafat in a particular day's edition); see also *Birzeit Human Rights Record* <http://www.birzeit.edu/hrap/hrr18.html> (President Arafat forced the Chief Justice of the Palestinian High Court to resign following the Court's order to prison officials (which was ignored) to release several Birzeit University students who had been detained for more than one year without charge). For a detailed analysis of the peace process' commitment to fostering democracy and protecting individual freedom please see Edward B. Miller, *Implementing the Oslo Accords*, 6 CARDOZO J. OF INT'L & COMP. L. 363 (1998) ("The P.L.O. lacked experience in self-government, in the adherence to the rule of law, in the promotion of democracy, and in the preservation of freedom, but the P.L.O. offered an attribute which Israel found to be quite useful. For all its shortcomings, the P.L.O., and most specifically Yasser Arafat, had a reputation for the strict and ruthless control over whatever came under its grip. Israel, faced with near-daily rioting in the Territories since 1986, and the continuous threat of terrorist attacks in Israel proper, craved the simple restoration of normalcy and order which iron-

In fact, as soon as the peace agreement was signed, Israel, the P.L.O., and their partner-in-peace, the United States, recognized the need to economically empower the Palestinian people – by ensuring a rising standard of living – in order to encourage Palestinians to make the sacrifices necessary to secure a lasting peace. These peace partners asked themselves: will Palestinians continue to support a peace process, in which they are asked to make concessions – on the future size of a Palestinian State, on its ultimate borders and on its relationship with Jerusalem, to name just a few points under negotiation – if they do not believe they have a stake in concluding a permanent peace?<sup>8</sup> Answering in the negative, Israel, the P.L.O. and the United States began aggressively soliciting public and private investment for the Palestinian Territory to assist the new Palestinian government in building infrastructure and in fulfilling its administrative duties, as well as in attracting private employers to supply Palestinian consumers and hire Palestinian workers.

Despite a strong start in their efforts to attract foreign investment to the Palestinian Territory, investment results from the first five years after the signing of the Oslo Accords under-performed Palestinian, Israeli and United States expectations.<sup>9</sup> Nonetheless, in the beginning of the sixth year after the signing of the Declaration of Principles, a public-private consortium of investors opened the Oasis Casino – the largest private for-profit investment project yet undertaken in the Palestinian Territory. Does this project offer hope that more investments will be forthcoming and that economic prosperity will finally reach the Palestinian people, and with this a commitment to sacrifice in support of peace? Or, alternatively, is the Oasis Casino simply an investment mirage, either having no effect on future investment decisions or even possibly discouraging them, further souring Palestinian expectations towards the peace process? The almost two years following the Oasis' opening suggest the latter: the failure of Palestinians to realize economic gains from the peace process has disinclined them from supporting concessions necessary to achieving lasting peace.

Following this Introduction, Section II will address the significance of the Oasis Casino and describe other investments also being undertaken in Jericho in connection with this casino. This Article will revisit the signing of the

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fisted control would ensure. In Israel's estimation, Arafat and the P.L.O. represented the best hope of accomplishing this goal." This was also the belief of Israeli Prime Minister Yitzchak Rabin, who signed the Declaration of Principles on behalf of his country, and concluded that the Palestinian self-government's rejection of democratic principles – despite their prominence in the Declaration of Principles (*see e.g.* Article III) – benefited Israel because of the latitude it gave President Arafat to fight terrorism without human rights or due process concerns. The peace process similarly has not coincided with an improvement in the Palestinian economy as indicated by two measurements of economic health: Gross National Product (GNP) and unemployment levels. Real GNP has decreased annually since the peace agreement's signing while unemployment has increased annually throughout this same period. *Political Impasse Hits Economic Hopes*, MEED WKLY. SPEC. REP., July 17, 1998, at 9.

<sup>8</sup> See *infra* Section III.

<sup>9</sup> See *infra* Section III.

Declaration of Principles and catalogue the interest among Israel, the P.L.O. and the United States in improving the Palestinian standard of living. Section III will detail the failures all three parties have experienced in trying to reach this goal.

In doing so this article will expose the fundamental shortcomings of the Palestinian self-government that have contributed to these failures.

Section IV will begin with a brief history of the development of the Palestinian legal system before examining that legal system's treatment of investments, and the deficiencies therein, which have further frustrated investment in the Palestinian Territory. Section V will analyze the decision to build the casino. It will identify the potential pitfalls which could have derailed this, or a similar, emerging market investment, but which have been avoided. Finally, given the legal and institutional shortcomings which confront the Palestinian Authority ("PA"), it will consider the reasons behind the decision by private individuals to undertake this significant investment.

Section VI will examine the Oasis' impact on the peace process. It will argue that the very success of the Oasis has undermined the peace process because it has only served to exacerbate the divisions between Palestinians and their autonomous self-rule government. Section VII will recapitulate the argument in favor of economic empowerment for Palestinians as a precursor to a lasting peace and summarize the reasons why the Oasis has failed in this pursuit. This article attempts to prove that neither the Oasis nor any other financially successful investment can deliver peace to Middle East until the PA makes the changes necessary to facilitate the economic empowerment of its people.

## II. *Jericho Investments: An Overview*

"Glittering gold and white like a pre-millennial mirage above the desert sands," the Oasis Casino opened for business on September 16, 1998.<sup>10</sup> As the first casino on land under the control of the Palestinian Interim Self-Government Authority, or for that matter in Israel or neighboring Jordan,<sup>11</sup> the Oasis' air conditioned, 2,800 square meter gaming floor complete with thirty-five tables and 220 slot machines certainly must have appeared as a mirage to the region's gambling enthusiasts.<sup>12</sup> And, as the largest private investment yet undertaken in the Palestinian Territory, advocates for improving the Palestinian economy in the hopes that it would further the peace process must also have thought the Oasis too good to be true. But if the Palestinian government's wishes come true, the Oasis will be no fleeting image, but rather the beginning of a renewed effort to woo foreign investment to the Palestinian Territory.

The US\$92 million already invested in the Oasis' construction represents slightly more than half the cost of the larger complex which the PA hopes to have

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<sup>10</sup> Matthew Kalman, *Midnight at the Oasis*, EVENING STANDARD (London), Jan. 18, 1999, at 65.

<sup>11</sup> Israel and Jordan prohibit gambling. There are, however, casinos in the Sinai Peninsula and gambling boats which operate out of the Israeli city of Eilat on the Red Sea.

<sup>12</sup> Greer Fay Cashman, *Jericho Casino Ready to Take Bets*, JERUSALEM POST, Sept. 15, 1998.

completed within the first few years of the third millennium.<sup>13</sup> Joining the Oasis Casino<sup>14</sup> on the five square kilometer (three square mile) site outside Jericho will be the deluxe Oasis Hotel, a large tourist village, and convention center complex.<sup>15</sup> The 220-room Oasis Hotel, the area's first five-star hotel, will provide on-site luxury accommodations for gamblers who currently must stay in Jericho's under-apportioned hotels or in more distant locations.<sup>16</sup> The Jericho Resort Village and the soon-to-be-built convention center, on the other hand, will provide nearly 600 additional hotel rooms, a conference center, tennis courts, a swimming pool, a championship golf course, a cultural activities center and a cable car<sup>17</sup> to the Mount of Temptation.<sup>18</sup> Rather than focusing on gambling, this part of the complex focuses on providing additional amenities for gamblers while working to attract families and conventions (both international business and religious).

While the casino, tourist village, and cable car are considered a part of one large investment project due to their proximity and their builders' hopes for cross-marketing opportunities, they are in reality three separate projects organized very differently from one another.<sup>19</sup> Not surprisingly, capital-intensive projects and those requiring technical expertise are more likely to require foreign assistance.

For instance, the Oasis, which required both capital and a detailed understanding of a particular industry, employed a foreign operator and needed a significant amount of foreign capital.<sup>20</sup> On the other hand, the resort village did not need outside management, but did need a capital infusion. The village is being developed and managed by a local venture, the Jericho Motels Company which is a privately held company whose shareholders are Palestinian hotel and motel owners.<sup>21</sup> It has received much-needed capital from foreign sources, principally German, to help finance its building initiative.<sup>22</sup> The third project, the Tan Al-Sultan Cable Car and Tourist Center, has similarly received a mixture of foreign and domestic support, but in reverse proportions. A prominent East Jerusalem family is undertaking this venture by supplying the necessary capital, but contracting out the actual building and the technical requirements. The family

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<sup>13</sup> Telephone Interview with Andrew Davis, General Manager, Oasis Casino (May 6, 1999). Several sources have estimated the casino's total cost will reach \$150 million. See Gil Sedan, *Visitors Soon to Fight Battle of Odds in Jericho Casino*, JEWISH TELEGRAPHIC AGENCY, July 17, 1998. See also Ahmad Rafat, *Palestine's Economy: Only Private Sector Offers Hope*, NOVEDADES EDITORES, Oct. 5, 1998.

<sup>14</sup> The Oasis Casino also houses a restaurant, bar and entertainment lounge.

<sup>15</sup> See MEED WKLY. SPEC. REP., *supra* note 7.

<sup>16</sup> *Id.*

<sup>17</sup> The cable car is actually being developed as a separate project. *Jericho Tourism Project Underway*, INT'L MARKET INSIGHT REPORTS, Business, Dec. 21, 1998.

<sup>18</sup> See MEED WKLY. SPEC. REP., *supra* note 7.

<sup>19</sup> See *Jericho Tourism Project Underway*, *supra* note 17.

<sup>20</sup> See *infra* Section III. C. for a discussion of the casino's financing.

<sup>21</sup> See *Jericho Tourism Project Underway*, *supra* note 17.

<sup>22</sup> *Id.*

hired a Swiss company to build the infrastructure which includes the track for the cars, an observatory and a shopping center, and an Austrian company to manufacture the cable cars.<sup>23</sup>

Before the complex is completed, representing a massive investment in the quasi-autonomous PA, the building of the Oasis Casino alone represents the largest for-profit international investment in the PA since the signing of the Declaration of Principles on Interim Self-Government Arrangements (“Declaration of Principles”).<sup>24</sup> Consider the fact that during all of 1997, the year before the casino project began, less than US\$300 million was invested in Gaza and the West Bank.<sup>25</sup> In fact, the PA’s entire budget for 1997 was only US\$814 million.<sup>26</sup> This project has the potential to single-handedly bolster international investor confidence in undertaking new projects in the Palestinian Territory.

### III. *The Peace Process*

On September 13, 1993, Israel and the P.L.O. signed the Declaration of Principles.<sup>27</sup> This agreement recognized the mutual interests of both signatories, declared the hope of both governments for peaceful coexistence and established the Palestinian Interim Self-Government Authority as the self-governing body of the Palestinian people in the West Bank and Gaza Strip (“Palestinian Territory”).<sup>28</sup>

The Declaration of Principles embodied the hopes of many Israelis and Palestinians that lasting peace could finally be reached between these two peoples, and that issues which had been tabled since Israel’s 1948 independence – namely, Palestinian autonomy and the prospects for an independent Palestinian State – could finally be discussed. The fact that the two sides could come together and negotiate an agreement in which Israel recognized the P.L.O. as the legitimate representative of the Palestinian people and the P.L.O. recognized Israel’s right to exist, and that their respective leaders could shake hands in a public signing ceremony on the White House lawn, signaled that a peaceful coexistence could be possible and serious issues potentially resolved. However, as the Declaration of Principles made clear, the goal of the negotiations between the P.L.O. and Israel was about more than mutual recognition, the establishment of relations and

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<sup>23</sup> *Id.* The Austrian firm was chosen because of its technical proficiency in building cars to endure Jericho’s temperature extremes.

<sup>24</sup> Deborah Sontag, *Arafat’s Gamble: A Casino for an Israeli Clientele*, NEW YORK TIMES, Sept. 15, 1998, at A3.

<sup>25</sup> See Rafat, *supra* note 13. This was a more than 40% decline in investment since the signing of the Declaration of Principles.

<sup>26</sup> *Id.*

<sup>27</sup> Israel-Palestine Liberation Organization: Declaration of Principles on Interim Self-Government Arrangements, 32 I.L.M. 1525, 1527 (1993).

<sup>28</sup> “The Government of the State of Israel and . . . the Palestinian Delegation . . . agree that it is time to put an end to decades of confrontation and conflict, recognize their mutual legitimate and political rights, and strive to live in peaceful coexistence and mutual dignity and security and achieve a just, lasting and comprehensive peace settlement and historic reconciliation through the agreed political process.” *Id.*



the creation of a framework for further negotiations; it was about beginning the process of Palestinian self-rule and reaching a lasting peace.

The West Bank and Gaza Strip had been occupied, but not annexed, by the Israeli army following the June 1967 Six-Day War. The Arab residents of these territories (also referred to as "Palestinians") did not have full political rights and certainly did not have their independence.<sup>29</sup> The Oslo negotiations that produced the Declaration of Principles were premised on providing Palestinians with greater autonomy and independence<sup>30</sup> if not outright sovereignty, and on providing Israel with peaceful borders and an end to terrorist activities against its citizens. Consequently, the Declaration of Principles created autonomous zones within the West Bank and Gaza Strip in which the newly-minted PA would govern without the presence of the Israeli army, and which ultimately would constitute a quasi or completely autonomous Palestinian State.

Almost since the beginning of the interim period (which started with the signing of the Declaration of Principles), the PA's peace partners, Israel and the United States, have been concerned with the commitment of the Palestinian people to fashioning a sustainable peace with Israel. This concern has been expressed by legal commentators who argue that the Palestinian people must realize a tangible benefit from the peace process exceeding independence from Israel and limited autonomy, such as a rising standard of living and an improved business climate, in order to endorse a comprehensive and lasting peace.<sup>31</sup> Consequently, almost as soon as Prime Minister Yitzhak Rabin and Chairman Yasser Arafat had unclasped hands, Israel and the United States were encouraging governments, non-governmental organizations and private parties to invest in the newly-created Palestinian Authority to make the Palestinian population believe it

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<sup>29</sup> This was, however, no different from the situation prior to 1967 when the West Bank was controlled by Jordan and the Gaza Strip by Egypt. Furthermore, this land had been ruled by the British before 1948, and the Turks before 1917. For more on the pre-1967 legal system in the West Bank and Gaza Strip, *see infra* Section IV.

<sup>30</sup> Article I states: "The aim of the Israeli-Palestinian negotiations within the current Middle East peace process is . . . to establish . . . a Palestinian Interim Self-Government Authority, the elected Council . . ., for the Palestinian people in the West Bank and Gaza Strip . . ." Israel-Palestine Liberation Organization: Declaration of Principles on Interim Self-Government Arrangements 32 I.L.M. 1525, 1527 (1993); Article III states: "In order that the Palestinian people in the West Bank and Gaza Strip may govern themselves according to democratic principles, direct, free and general political elections will be held for the Council . . ." *Id.*

<sup>31</sup> *See* David Fidler, *Foreign Private Investment in Palestine: An Analysis of the Law on the Encouragement of Investment in Palestine*, 19 FORDHAM INT'L L. J., 529, 531 (Dec. 1995) ("Palestinians who see no improvement in their standard of living or find no economic opportunities as a result of the peace process will question the wisdom of making deals with Israel and perhaps support forces that oppose the peace process."). *See also* Keith C. Molkner, *Legal and Structural Hurdles to Achieving Political Stability and Economic Development in the Palestinian Territories*, 19 FORDHAM INT'L L. J. 1419, 1420 (Apr. 1996) ("[I]f it is to succeed, the peace process must deliver real and visible improvements in the lives of ordinary people. . . [T]his primarily means that disorder, violence, and wide-scale poverty must cease.").

had an economic stake in the going forward of the peace process.<sup>32</sup> Specifically, Israel and the United States prodded donors to contribute funds to help the PA administer its new territory, build needed infrastructure and help get the Palestinian economy off the ground.

These efforts have not been as successful as had been hoped largely for two reasons: insufficient transparency in government operations and a legal structure which inadequately protects investments.<sup>33</sup> The lack of operational transparency can be traced to the P.L.O.'s long (pre-peace accord) history as a guerilla movement<sup>34</sup> and its current self-interest in limited accountability to donors and their contributed funds. The P.L.O.'s former accounting practices may have been sufficient to attract donor money when the P.L.O. was a reliable Cold War ally of the Soviet Union and could count on uninterrupted Soviet assistance, but current disclosure and reporting norms demand a heightened sense of responsibility toward funds which is sorely lacking among the PA's leadership. The lack of transparency in the P.L.O.'s operations is also the conscious product of its leaders' interest in obfuscating the source and destination of money. It is President Arafat's widespread practice to divert funds from where they were

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<sup>32</sup> "The photogenic handshake in September 1993 [of Prime Minister Rabin and Chairman Arafat] was followed promptly by an International Donor's Conference where representatives of forty-three states hosted by the U.S. State Department, outbid one another in the euphoria of the moment, pledging upwards of US \$2.5 billion toward 'reconstruction of the Palestinian infrastructure.'" Mel Levine, *Palestinian Economic Progress Under the Oslo Agreements*, 19 FORDHAM INT'L L. J. 1393, 1399 (1996).

<sup>33</sup> "Delays in projects have been most often attributed to the continuing inability of the P.L.O. to establish a process of accountability for donor money. Private sector projects are held up in part because of a continuing failure of the P.L.O. to facilitate development through clarification of the rules to do business . . . . Put simply, stable, predictable or transparent policy or process has yet emerged to provide the business community with the minimum degree of certainty needed for business planning." *What's Holding Up Projects?: Uncertainty About the Rules Discourages Would-Be Investors*, MIDDLE EAST EXECUTIVE REP., July 1994, at 9. "One American completed a feasibility study a year ago for a \$40 million crude oil refinery, that would not only be a profitable operation in Gaza, but would also generate up to \$100 million per year in revenues for the Palestinian Authority and provide 1500 jobs. The investor plans widespread Palestinian public ownership with emphasis on service station owners. But so far he has not been able to get the Palestinian Authority's go-ahead to build the plant. U.S. levels at all levels routinely advocate the project in meetings with Palestinian leaders. The answer is always different, but never yes or no." The Palestinian leadership's style of carefully crafted ambiguity in these matters, combined with what is clearly a highly centralized decision-making apparatus, leaves the Palestinian Authority wide open to accusations of exclusion of undesirable foreigners to outright corruption." Mel Levine, *Palestinian Economic Progress Under the Oslo Agreements*, 19 FORDHAM INT'L L.J. 1393, 1410 (1996).

<sup>34</sup> See William Quandt, *The Urge for Democracy*, 73 FOREIGN AFF. 2 (1994) ("The one area where the PLO has never been accountable or democratic has been in its handling of finances. Arafat's control over the movement came in substantial measure from his control of the purse. No one else knew the full story of the PLO's finances, and no one else could sign the checks. As the Palestinians approach statehood, this pattern will have to change.").

donated – typically infrastructure projects, an essential precursor to private investment but not to the day-to-day operations of a government – to other more pressing but less donor-desirable recipients (*i.e.* budget deficits caused by an inflated public payroll).<sup>35</sup> Consequently, only a fraction of the pledges has been redeemed, and only a few additional pledges have been made.<sup>36</sup>

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<sup>35</sup> A majority of the fiscal year 1999 budget went to pay the salaries of government employees. Daoud Kuttab, *The Palestinian Budget*, JERUSALEM POST, Apr. 8, 1999, at 6; “[Most of money actually contributed as a result of the initial International Donors Conference] has gone largely to covering the Palestinian deficit, the recurrent costs of Palestinian administrative overhead, and a Palestinian police force that constitutes 2% of the population.” See also MEED WKLY. SPEC. REP., *supra* note 7, at 9 (“A poll conducted in June by the widely-respected Centre for Palestine Research & Studies found that 65 per cent of Palestinians believe the PNA [Palestinian National Authority] is corrupt.”). The fiscal year 1999 budget was presented in April 1999, six months late, and only after the Palestinian Legislative Council threatened to bring down the government in a confidence vote [something the PA leadership feared from a public relations standpoint but which could not have been effected by the PLC]. For a more detailed understanding of the PA’s legislative process and a general analysis of the functioning of the rule of law in the PA, please see Miller, *supra* note 7, at 376; see also Ilene R. Prusher, *At Five Years, Mideast Peace Fizzles, Except in Jericho*, CHRISTIAN SCIENCE MONITOR, Sept. 28, 1998, at 1 (“To be sure, foreign investment in the Palestinian territories is far from what had been hoped for. Political uncertainty, inability to move goods freely in and out of the territories, and a lack of clear laws governing trade – as well as PA-run monopolies and bureaucratic graft – have all kept many investors away.”); see also Rafat, *supra* note 13. A lack of transparency and accountability also enables the PA to transfer funds out of the government for President Arafat’s personal use. See *e.g.* *Arafat’s Palestine: Closure, Corruption and Poverty*, SWISS REV. OF WORLD AFFAIRS, Sept. 1, 1997 (“The [Palestinian Legislative Council’s Finance] Committee noted that the budget item ‘Revenues’ does not include proceeds from the General Commission for Petroleum, the Palestinian Society for Trade Services (and its cement imports), the General Commission for Tobacco, and other wholesale agencies owned by the national Authority. The Finance Ministry is requested to correct this and to channel all revenues, without exception, into state coffers. . . . Insiders say that Arafat himself maintains five bank accounts with Israel’s Bank Leumi, thus keeping them outside the control of the PA . . .”).

<sup>36</sup> See Thomas L. Friedman, *Who Can Save Arafat? Arafat*, N.Y. TIMES, Nov. 27, 1994, § 4 (The Week in Review), at 3 (“[A]nother reason it has taken so long for the World Bank and other foreign donors to get money into Gaza for long-term projects is that Mr. Arafat is unwilling to provide even the most rudimentary accounting of how the money is spent . . . . [H]e has maximum flexibility and zero accountability. The donors are already talking about some United Nations funds that were supposed to go to Palestinian police salaries and have disappeared.”). See also Michael Kelly, *In Gaza, Peace Meets Pathology*, N.Y. TIMES, Nov. 27, 1994, § 6 (Magazine), at 56 (“Having rejected, as contrary to the spirit of self-rule and his [Arafat’s] own pride, the requests of foreign nations for an accounting system that clearly shows how money donated to the Palestinian National Authority is spent, he has attracted only a tiny piece of the [funds] pledged for Palestinian support this year.”); see also Levine, *supra* note 32, at 1399 (By the spring of 1996 less than one-third of the money pledged by donors at the initial International Donors Conference had been donated). For a prominent example of a failed private investment effort, consider the plight of Builders for Peace, a pro-PA investment group, headed by a prominent Jewish-American, former U.S. Congressman Mel Levine and a prominent Arab-

#### IV. Legal Structure

To understand what investors confront when they consider undertaking projects in the PA and why this legal structure provides ineffective protection for investments, it is necessary to briefly explain the evolution of the legal system now in place in the PA. Palestinian modern legal history begins with the Ottoman Empire. By replacing the Koran-based legal system with the secularly-derived Civil Code of 1876, the Ottoman Turks instituted the first modern legal system in the West Bank and Gaza Strip, the areas that today comprise the PA.<sup>37</sup> The British won the right to administer the West Bank and Gaza Strip, in addition to Israel and neighboring Jordan, with its victory over the Axis Powers in World War I. During the British presence English common law was introduced to then-Palestine, which today consists of Israel and the PA's self-governing territories of the West Bank and Gaza Strip,<sup>38</sup> but not to Jordan. Consequently, when the West Bank came under Jordan's control as a result of the 1948 Israeli war of independence, it joined a legal system which had more in common with Ottoman law than with British common law.<sup>39</sup>

Over the next few years the West Bank's common law tradition, which had been developed during the thirty years of the British Mandate, officially came to an end. In 1950 Jordan annexed the West Bank, then in 1952 she finalized a new constitution for the entire Hashemite Kingdom of Jordan, including the West Bank. The constitution replaced the West Bank's common law "Palestinian legal system" with a mixture of Ottoman rulings and Jordanian statutes.<sup>40</sup> After Israel assumed control of the West Bank following the 1967 Six-Day War, she never annexed the land nor changed its legal system. Israel did, however, occupy the

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American, James Zogby, which was formed immediately after the signing of the Declaration of Principles. As a result of instability in the Territories, uncertainty regarding the investment laws, more profitable investments in neighboring countries and a general lack of accountability with funds, only one of the nine projects it initiated has been completed. The organization dissolved less than three years after its founding. See Fidler, *supra* note 31, at 545. In general, the IMF has estimated that private investment fell from twenty-five percent of GDP in 1992 to just ten percent by 1997. *Palestine: Country Profile*, MIDDLE EAST REVIEW WORLD OF INFORMATION, July 1, 1999 at 130.

<sup>37</sup> GEORGE E. BISHARAT, *PALESTINIAN LAWYER AND ISRAELI RULE: LAW AND DISORDER IN THE WEST BANK* 19 (1989).

<sup>38</sup> The legal system developed much differently in the Gaza Strip, resulting in significant discrepancies between the two systems. For more on the development of Gaza's legal system. See Anis al-Kasim, *Commentary on Draft Basic Law for the Palestinian National Authority for the Transitional Period*, 7 *PALESTINE Y.B. INT'L.* 187, 209 (1992-94). See also Hiram E. Chodosh and Stephen A. Mayo, *The Palestinian Legal Study: Consensus and Assessment of the New Palestinian Legal System*, 38 *HARVARD INT'L L. J.* 375, 431 (1997).

<sup>39</sup> Norman Bentwich, *The Legal System of Palestine Under the Mandate*, 2 *MIDDLE EAST J.* 33, 34.

<sup>40</sup> See John Quigley, *Judicial Autonomy in Palestine: Problems and Prospects*, 21 *U. DAYTON L. REV.* 697, 704 (1996).

land with her army and issue military orders to fill emerging legal needs.<sup>41</sup>

With the signing of the Declaration of Principles in 1993, the process of self-governance began for the Palestinian residents of Gaza and the West Bank. Able to promulgate the laws it saw fit, the PA set out first to erase any remnants from the twenty-six years of Israeli military rule. It did this through one of Chairman Arafat's first legislative acts, issued when he was the interim head of the PA and more than a year before he was elected its president. The act voided all laws enacted in the West Bank since the beginning of Israel's occupation following the Six-Day War.<sup>42</sup> Holding Palestinian judges, lawyers and citizens accountable to statutes which had not been on the books for more than a quarter-century created a predictable amount of confusion, but not as much as was created in the international business community. All of the basic legal needs which Israel had addressed through its military orders over the previous twenty-six years, including laws regulating business, were no longer met and no one was quite sure of the result.<sup>43</sup>

The PA responded slowly to assuage the apprehensions of international investors, but by the end of April 1995 it had finally approved the Law on the Encouragement of Investment ("LEI") which was intended to reassure the overseas business community that it was safe to invest in the Palestinian Territory. The LEI contains numerous provisions designed both to establish a predictable investment climate and to make investing favorable to foreign investors. However, the sum of the law falls quite short of what is considered acceptable by international standards.<sup>44</sup> For example, the LEI created the Palestinian Higher Agency for the Encouragement of Investment which is responsible for granting exemptions to regulations and taxes and with policing investment code violations. Presidential appointees, including nine cabinet ministers, hold fourteen of the governing Board's fifteen positions and, in the absence of any criteria by which to make decisions, have free reign and complete

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<sup>41</sup> See *supra* note 37, at 130.

<sup>42</sup> See al-Kasim, *supra* note 38, at 151.

<sup>43</sup> A United Nations official commented at the time of Arafat's decision, "[N]o matter what action the Palestinian Authority takes, its foundation in law is dubious and open to challenge. . . . Without [the Israeli code] foreign businesses and nations are very reluctant to come in and do business here, because they don't know what law will apply to them. . . . There is no unifying structure of command that directs all the pieces, so everything is haphazard. It is all really just in the mind of Arafat." See Kelly, *supra* note 36.

<sup>44</sup> Law on the Encouragement of Investment, art. XX. See also David Fidler, *supra* note 31, at 560 ("Analyzing the Investment Law against the trends in foreign investment laws and the principles contained in TRIMS, GATS, the Guidelines (World Bank), and the U.S. Investment Treaty demonstrates that the Investment Law has serious problems that preclude it from being in conformity with the latest international practices and standards on foreign investment . . . The problems appear frequently in the analysis: broad discretionary powers; a lack of transparency; restrictions on asset sales; potential problems with the free transferability of investment sale proceeds, asset sale proceeds, capital, and profits; a lack of standards for expropriation; and a flawed dispute settlement procedure . . .").

control to approve or deny exemptions or to enforce or ignore violations.<sup>45</sup> The appeal process for challenging a Board decision denying an exemption, retroactively terminating an exemption or citing an investment code violation, contains similar confidence-eroding structural flaws. Rather than providing for arbitration or even access to the court system, the appeal process only allows an aggrieved investor to bring his or her complaint to the President of the PA, whose decision is final and prohibited from review by any independent body.<sup>46</sup> Not surprisingly, the LEI has not generated investor confidence nor has it led to an increase in foreign investment.<sup>47</sup>

Despite the PA's failure to adopt transparent governmental practices, or to develop a legal system that can effectively protect foreign investment and to realize donor pledges (which were considered essential to constructing an infrastructure on which to undertake private investment projects), the Oasis Casino was still built. As a result, understanding why the Oasis was built and examining its subsequent performance may force a reexamination of the above criteria or reaffirm them, but nonetheless will provide insights into how to attract similar investments to the Palestinian Territory. Grasping the Oasis Casino's development and analyzing its track record therefore offers the possibility of reversing the recent investment track record of the first few years of Palestinian self-government and of generating new foreign investment capable of sparking the Palestinian economy and creating stakeholders in a lasting peace agreement.

## V. *The Casino*

### A. **Why a Casino? Requirements for a Successful Investment in the PA**

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<sup>45</sup> *Id.* art. XIII

<sup>46</sup> *Id.* art. XVIII (iii). See also Fidler, *supra* note 31, at 572 ("This provision completely removes cancellation decisions from review by Palestinian courts under the general dispute settlement provision of the Investment Law. An investor has no recourse against a retroactive cancellation of investment approval made for by political reasons by either Investment Agency of the President of the PNA. As a result, the investor is clearly vulnerable to politicized investment decisions under Article 19.").

<sup>47</sup> The shortcomings found in the LEI – lack of due process, absence of objective criteria on which to base decisions and no safeguards against unilateral presidential action – are present throughout the Palestinian Authority. According to the Declaration of Principles the "PA" was to be dominated by an elected legislative council which would represent the Palestinian people in the West Bank and Gaza Strip until a permanent settlement had been reached between Israeli and Palestinian negotiators. *Supra* note 27, at 1527; In practice, however, the Palestinian Legislative Council ("PLC") cannot represent the Palestinian people nor effectively act as a check on the Executive's limitless power. For example, the PLC has passed nine drafts of a constitution, but none has been signed into law by President Arafat, thereby guaranteeing there will be no restrictions on his political power. Miller, *supra* note 7, at 412; President Arafat has also suspended the power of the Speaker of PLC and assumed the Speakership himself on occasion. Abraham Rabinovich, *Who Comes After Arafat?* JERUSALEM POST (international edition), Oct. 4, 1997, at 7.

Not only does the Oasis Casino represent the largest for-profit investment in the PA, but it also represents the first major cross-border development project involving Israel, the PA and Jordan. As such, the Oasis has the potential to not only improve the economic well-being of the Palestinian people, but also to chart a new course for financial interaction between these three governments and their peoples on an even larger scale.

Although the Oasis' success may lead to greater cooperation between Israeli, Palestinian and Jordanian business ventures, the PA's decision to build the Oasis was a completely independent undertaking. The PA decided to build a casino because it needed a flashy, first-rate, private project which would be a guaranteed success, and that could be used to attract much-needed investment from the international business community. Because of its attention-grabbing quality and expectation of generating millions of dollars in investment proceeds and tax returns for the PA, a casino made more sense to PA planners than an investment in more practical infrastructure projects such as housing, highways, electric generation plants or water treatment facilities.<sup>48</sup>

By all indications, choosing a casino was an easy decision to make. For starters, there were no casinos in Israel (where gambling is illegal) even though Israelis are known to be impassioned gamblers.<sup>49</sup> Prior to the opening of the Oasis, the closest casinos to Israel were operated in the Egyptian Sinai Peninsula and onboard Israeli boats anchored off the coast of Eilat in the Red Sea. Second, gaming industry analysts calculated that worldwide Israeli gambling exceeded US\$500 million annually, making Israelis among the world's most prolific gamblers.<sup>50</sup> Third, surveys conducted at the time showed that European tourists would be more inclined to visit Israel, and by extension the PA's portion of the West Bank, if gambling were available. Finally, the most popular Israeli gambling destinations, the beach resorts of Turkey, were closed in February 1998 by the Turkish government in response to religious opposition to gambling.<sup>51</sup>

The PA recognized this clear imbalance between the supply and demand for gambling and set out to reach an equilibrium between the two by constructing

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<sup>48</sup> For a very cynical view of the PA's decision, see Robert Daniel, *A Dangerous Gamble in Jericho*, JERUSALEM POST, Oct. 9, 1998, at 10 ("The casino . . . gives Chairman Yasser Arafat and his nascent government an opportunity to crow to the global media about the PA's efforts to attract major development projects. In fact what it does is give the PA an excuse not to focus on the portions of Gaza that still don't have functioning sewer lines. It deflects attention from the fact that the PA lets people continue to live in squalid refugee camps . . ."). Mr. Daniel is editor of *Link*, a magazine reporting on business in the Middle East.

<sup>49</sup> Michael S. Arnold, *Sure Bet*, JERUSALEM POST, Aug. 14, 1998, at 12 ("Israelis are among the most eager -- and aggressive -- gamblers" according to an international casino operator who has encountered Israeli gamblers around the world.)

<sup>50</sup> Imad Abu Sunbul, *Casino Turns Life in Jericho Upside Down*, AGENCE FRANCE PRESSE, Sept. 24, 1998, available at 1998 WL 16606138.

<sup>51</sup> Ellis Shuman, *Israeli Culture: A Farewell to Turkish Vacations*, at <http://israeliculture.miningco.com/culture/israeliculture/library/blweek/bl020998.htm> (last visited Feb. 5, 2001). Over 150,000 Israeli tourists visited Turkey in 1997. *Id.*

a world class casino. Despite the attractiveness of a casino to Israel and her citizens, the PA knew that for political reasons one would not be built in Israel in the foreseeable future. The governing coalition in Israel's Knesset, at that time led by Prime Minister Benjamin Netanyahu and his Likud Party, was composed of several smaller parties including a handful of religious parties who were united in their opposition to the building of a casino in Israel.<sup>52</sup> These parties had made clear their opposition to gambling and their refusal to remain part of a government that sanctioned such an avocation. Their focused opposition, which they made clear to Prime Minister Netanyahu and his immediate predecessors, Shimon Peres and Yitzchak Rabin, made legalized gambling a longshot in Israel.<sup>53</sup>

The Islamic religion similarly opposes gambling, but its leaders' opposition carried less political weight with the Palestinian government.<sup>54</sup> The PA chose simply to ignore the overwhelming wishes of her people and the unqualified opinion of Islamic religious leaders.<sup>55</sup> It could get away with this because while the Declaration of Principles envisioned the creation of a Palestinian self-rule entity with a strong legislative body, the reality has been a weak legislature and a

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<sup>52</sup> "The reason [for the opposition] is not just the dim view Jewish tradition takes of gambling; it is also the social ills – addiction, financial ruin, family stress, crime and prostitution – that [religious leaders] fear would flourish in Israel alongside casinos." *Daniel, supra* note 48.

<sup>53</sup> Religious parties, especially *Shas*, which represents Jews of Sephardic, or Middle-Eastern origin, have a powerful voice in the current Labor-led government of Prime Minister Ehud Barak. Additionally, religious and non-religious members of other key Knesset parties oppose building a casino in Israel, as do leaders of Barak's own Labor Party, such as Justice Minister Yossi Beilin and Knesset Speaker Avraham Burg. Barak, however, recently stoked the fire by proposing to build a casino in Israel's Negev region. *Barak's Casino Plan Provokes Outcry Among Israel's Orthodox Jews*, AGENCE FRANCE PRESSE, Oct. 6, 1999.

<sup>54</sup> However, as a result of Islamic opposition to the casino the PA barred all Palestinians except for those with foreign passports from entering the casino. Elise Ackerman, *Gambling on Tourism*, U.S. NEWS & WORLD REPORT, Sept. 21, 1998, (World Report) at 64.

<sup>55</sup> Ackerman, *supra* note 54. ("Many Palestinians simply assume that the casino belongs to Palestinian officials or their cronies."); Khaled Amayreh, *Al-Ahram on the Jericho Casino*, AL-AHRAM WEEKLY, Oct. 6, 1998 ("The PA establishment is trying to destroy our values," says Sheik Harb Jaber, an influential Jericho *iman* (Muslim cleric). "These people are corrupt without limit, and for the sake of money they are willing to cross every red line."); "I am angry that the Palestinian Authority allowed this casino to be built," [said a Palestinian]. "There is no profit for the poor people here. . . ."); Dennis and Rees, *infra* note 90 (A Palestinian resident of Jericho said, "I am angry that the Palestinian Authority allowed this casino to be built . . . . There is no profit for the poor people here, and everyone will come to regard Jericho as a place for corruption and sex."); Prusher, *supra* note 35 ("Many Palestinians say the flashy white compound is another example of a peace primer with no trickle-down."); Sedan, *supra* note 13 ("Casinos in the Holy Land go against our religion. But even in business terms, it is not the kind of tourist attractions we would like to see here," says Sheik Rajai Abdu, a Muslim cleric. . . . "[The casino shows] how corrupt our leaders are."); Eric Silver, *Jericho Opens a Casino of Biblical Proportions*, INDEPENDENT (London), Aug. 19, 1998, at 11 (The majority of Palestinians oppose the presence of a casino in their land). See also *infra* Section VI.



very strong Executive Branch.<sup>56</sup> In the absence of a basic law limiting the Executive's power and enumerating the rights of the Legislature, President Arafat has been able to make unilateral decisions without the need for the legislature's approval or any meaningful review.<sup>57</sup> As a result, the PA could undertake a business venture that was extremely unpopular with her people and their religious leaders, while Israel, for the already mentioned reasons, could not.

In order to guarantee the PA a successful project which could economically empower its people and could be used to draw new foreign investment into the Palestinian Territory, the Palestinian self-government needed a project which could be independent of both the Palestinian and Israeli economies. Since the beginning of the Israeli occupation of the West Bank and Gaza Strip (following the conclusion of the Six-Day War in 1967), the Palestinian economy in these areas has largely revolved around Israel's economy with many Palestinians earning their livelihood working in Israel.<sup>58</sup> However, for the past fourteen years – since the outbreak of the Palestinian Intifada<sup>59</sup> – as a preventive and a retaliatory measure, Israel has for periods of time closed its border to Palestinian people and goods attempting to enter Israel.<sup>60</sup> Included in those kept out are Palestinian workers trying to reach their jobs in Israel and Palestinian-produced goods trying to reach the Israeli market. Palestinian exports such as agricultural products were particularly susceptible to the delays caused by border closures. Furthermore, Palestinians were seeing shrinking employment opportunities caused by frequent border closures and the growing apprehensiveness of Israeli employers, as a result of suicide bombings in Israel, to hire Palestinians. Consequently, the closures were contributing to higher Palestinian unemployment and a lower GNP in the Palestinian Territories.<sup>61</sup> The

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<sup>56</sup> See Miller, *supra* note 7.

<sup>57</sup> For instance, the casino has never complied with basic zoning regulations nor did it obtain the necessary permit. Amayreh, *supra* note 55. However, it was approved at “the highest levels” and this is what mattered. Ackerman, *supra* note 54.

<sup>58</sup> About 70,000 Palestinians are permitted to work in Israel, while another 60,000 are estimated to work illegally in Israel; both figures are much lower than they have been in recent years. *Oslo Reunion Sees Push to Consolidate*, ASSOCIATED PRESS, Oct. 31, 1999, at 11.

<sup>59</sup> *Key Events in Israel's History*, GANNETT NEWS SERVICE, Mar. 31, 1998 (“Intifada” translates as “uprising” in Arabic).

<sup>60</sup> However, even when borders are closed between Israel and the Palestinian Territory, Israelis are free to travel into the West Bank. *But see* Larry Kaplow, *Barak Recalls Negotiators After Riots*, DESERET NEWS, May 22, 2000 (Israeli Prime Minister Ehud Barak closed the West Bank to Israelis and tourists for the first time at least since the signing of the Declaration of Principles).

<sup>61</sup> Real GNP in the Palestinian Territory has decreased every year from 1993 (NIS 1,766) to 1998 (NIS 1,326) while unemployment has risen every year from 1993 (18%) to 1998 (31%). MEED WKLY. SPEC. REP., *supra* note 7. Periodic blockades of Gaza and the West Bank by Israel are partly to blame for unemployment rising even higher and for a further reduction in economic output and agricultural production. *Palestine: Country Profile*, MIDDLE EAST REVIEW WORLD OF INFORMATION, July 1, 1999, at 130.

PA needed a job producer and exporter that would be immune from border closures. It achieved both with the Oasis. The PA finally had a product to sell abroad which did not rely upon Israel for distribution.

#### **B. Navigating Potential Pitfalls in Emerging Markets Investing**

Even without barring Palestinians from gambling, the organizers of the Oasis realized they would only succeed to the extent they attracted Israeli and foreign gamblers.<sup>62</sup> As a result, the location of the casino became a very important consideration. Historically, Jericho had been known as a winter resort town in the desert; first catering to affluent Arabs,<sup>63</sup> and following the Six-Day War in 1967, to Israelis. All that changed after 1986 with the beginning of the Palestinian *Intifada*. Located in the heart of the West Bank, Jericho was near the center of the anti-Israel violence and was therefore off-limits to most Israelis and foreign tourists. However, with the end of the *Intifada* and the signing of the peace accords, Jericho became the ideal location for the Oasis Casino for the following reasons: its historic tourist status, natural beauty, opportunities for development, proximity to the center of Israel and Jordan, and convenient access for foreign tourists.<sup>64</sup>

With undeveloped desert surrounding the city, it was easy for the PA and the casino's operator, Casinos Austria International Limited ("Casinos Austria" or "CAIL")<sup>65</sup> to find an appropriate site for the project. In making their decision the two entities considered the need for an attractive setting,<sup>66</sup> the desire to maximize their patrons' travel convenience in reaching the Oasis and, most importantly, the need for safety. With worldwide experience in operating casinos, Casinos Austria had a well-developed understanding of what it takes to create a successful casino. Overseeing operations in dozens of countries, including such recently troubled areas as South Africa and Hungary when it was still behind the Iron Curtain. Casinos Austria knew well that a successful casino first must establish that basic security – of person and property<sup>67</sup> – would be maintained. This is especially

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<sup>62</sup> As of June 1999 more than 92% of the casino's customers had been Israelis. Daniel, *supra* note 52.

<sup>63</sup> Prior to July of 1967 the King of Jordan maintained a winter palace in Jericho.

<sup>64</sup> Cashman, *supra* note 12, at 4 (Two major cities, Jerusalem and Amman, are only a half-hour away, and Tel-Aviv, Israel's largest city and population center, is about ninety minutes from the casino. The Oasis is only a half-hour from Israel's Dead Sea resort hotels and their sizable number of European tourists. It is even closer to the Mount of Temptation and other West Bank tourist sites.)

<sup>65</sup> Casinos Austria International Limited's subsidiary, Casinos Austria International Holding GmbH, operates the Oasis Casino and the company's other non-European ventures. See [http://www.cai.lgsoft.at/casino/plsql/www.start\\_page](http://www.cai.lgsoft.at/casino/plsql/www.start_page).

<sup>66</sup> Casinos Austria's Chief Executive Paul Hertzfeld, said he chose the location, in part, because of the "magical setting of the desert against the city." Avi Machlis, *New Jericho Casino Lures Israelis Hoping to Hit Jackpot*, JEWISH TELEGRAPHIC AGENCY, Sept. 21, 1998, available at 1998 WL 11404143.

<sup>67</sup> This was no easy task given the high incidence of car theft. *Palestinian Police Recover 30*

important in the explosive West Bank where the *Intifada* may have ended but where rock-throwing and suicide bombings still occur.<sup>68</sup>

However, Casinos Austria realized that success required more than guaranteeing its patrons' safety. It understood that it had to create an environment where people would visit its casino precisely to take their mind off of the realities lurking outside.<sup>69</sup> Following the Las Vegas model, the casino has no windows; its air conditioning gives the building an Arctic-like feel and complimentary drinks abound. But where Las Vegas only has to make its patrons forget they are in the middle of the desert, the Jericho casino has to make its customers forget they are in the Palestinian-controlled West Bank.

To accomplish this, Casinos Austria undertook several initiatives. First, it made sure the casino was built within a Palestinian Authority site as near as possible to an Israeli-controlled area of the West Bank.<sup>70</sup> It decided on a location only a few hundred yards from the last Israeli military checkpoint outside the fully autonomous area which includes Jericho.<sup>71</sup> This way, patrons would not have to travel far into PA territory or leave too much distance between themselves and the security of the Israeli Army.<sup>72</sup>

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*Stolen Israeli Cars*, AGENCE FRANCE PRESSE, Mar. 2, 1999, available at 1999 WL 2556030. (International News) ("[T]he illegal traffic has injected some 200 million dollars into the Palestinian economy yearly since the creation of the autonomous territories in 1994.").

<sup>68</sup> Michael S. Arnold, *The Cards are on the Table*, JERUSALEM POST, Sept. 18, 1998, at 15 ("Given the high profile of the project, which has attracted media attention around the world, a terrorist incident at the Oasis could be devastating to PA efforts to attract investment -- and could well discourage Israelis already nervous about traveling into the West Bank . . . . This is a window to the whole world for the PA."). See also Nathan Thomas, *Because of Violence from Palestinians, Ehud Barak Ends Peace Talks in Sweden*, ABC WORLD NEWS THIS MORNING, May 22, 2000 available at <http://more.abcnews.go.com/sections/world/dailynews/israel000521.html> (reporting on rock-throwing Palestinian protesters).

<sup>69</sup> Ron Grossman, *Casino Lowers Cultural Walls in Jericho; Religious Ban Aside, Jews, Arabs Court Luck on First Night*, CHI TRIB., Sept. 16, 1998, at 3 (where Alexander Tucek, manager of the Oasis stated that, "[o]ur hope is that we have created an atmosphere in the casino that will allow our customers to forget the political tensions outside.").

<sup>70</sup> Israel-Palestine Liberation Organization: Interim Agreement on the West Bank and the Gaza Strip, Sept. 28, 1995, 36 I.L.M. 551. (establishing that Jericho is one of the eight major Arab West Bank cities located in area "A" and that areas "A" and "B" are administered and controlled by the PA).

<sup>71</sup> See Christopher Walker, *British Croupiers Risk Their Lives*, TIMES (London), Sept. 17, 1998, available at 9/17/98 WL 4862876 (stating that the casino is situated three hundred yards from the nearest Israeli Army post).

<sup>72</sup> See Elise Ackerman, *Gambling on Tourism*, U.S. NEWS AND WORLD REPT., Sept. 16, 1998, at 64 (explaining that despite its best intentions, owing to the PA's ultimate site selection decision, the casino was built directly across the road from the Akbat Jabbar refugee camp where over 4,000 Palestinians live in conditions nearing poverty). See also Avi Machlis, *supra* note 66 (noting that casino officials do not appear troubled by the irony because as the camp has no electricity it cannot be seen during the peak evening gambling hours).

Second, the casino assembled a well-qualified security team and employed security devices including metal detectors to reduce the possibility of a casino incident.<sup>73</sup> Ironically, many of the security personnel were chosen because of their command of the Hebrew language, even though it was learned from years spent in Israeli jails.

Third, gaming tables are mostly operated by experienced foreign croupiers. Recognizing that it is appealing to a sophisticated gambling population, not to mention one more comfortable with British than Palestinian card dealers, Casinos Austria sought to employ a staff well-versed in the gambling industry.<sup>74</sup>

All of this appears to have worked as Israelis and foreign tourists have kept streaming to the casino since its September 1998 opening. Initially opened only from 2 p.m. Thursday until 6 a.m. Sunday, within three months the casino was open twenty-four hours a day, seven days a week, and it had increased its number of gaming tables by nearly 15%.<sup>75</sup> By that time, the casino claimed that more than 170,000 visitors had passed through its doors.<sup>76</sup> At the end of an additional six months the number of tables had increased by 93% from their numbers on the opening day; more than 220 slot machines were then housed in the Oasis and more than 700,000 gamblers had visited the casino.<sup>77</sup> Consequently, the casino has been a financial success for its investors and the PA tax collectors. In just the first three months, before the switch to seven-day-a-week operations, the casino was grossing at least US\$350,000 a day<sup>78</sup> and after a year was grossing a reported US\$1 million per day.<sup>79</sup> Profits have been so high

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<sup>73</sup> See Cashman, *supra* note 12. In addition, there has been well-documented cooperation between Palestinian and Israeli police forces in maintaining peace at the casino. *Id.*

<sup>74</sup> Kalman, *supra* note 10.

<sup>75</sup> See Cashman, *supra* note 12.

<sup>76</sup> *Id.* When the casino was first built, the gaming area was considered to “comfortably” accommodate 1,500 people at any given time. Over the twelve weekends, beginning with September 16, 1998 until the casino switched to a seven-day-a-week schedule, the casino averaged nearly 14,200 visitors per weekend.

<sup>77</sup> See *supra* note 52; See also *Chairman’s Address to Shareholders*, AAP NEWSFEED, May 16, 2000, available at 1999 WL 25238394 (by the end of 1999 the Oasis operated 110 gaming tables – a threefold increase since its September 1998 opening).

<sup>78</sup> As is often the case, determining exact amounts of money can be a difficult proposition. In this particular case two sources quoting two people have produced three entirely different answers. Compare *Legislator Wants to Ban Israelis from Jericho*, DEUTSCHE PRESSE-AGENTUR, Oct. 15, 1998, available at 10/15/98 DCHPA 05:07:00 (“Israelis had been gambling away around [NIS] 1.5 million Israeli shekels [about [US]\$357,000] a day at the casino,” said Hanan Porat, a leading Israeli legislator.) with Walker, *supra* note 71 (“[A]ccording to Palestinian cabinet minister Saeb Erekat turnover is running at Pounds 1.5 million [US \$2.7 million] a day.”) with *Palestinian Legislators File Complaint to Close Jericho Casino*, DEUTSCHE PRESSE-AGENTUR, Oct. 6, 1998, available at 10/6/98 DCHPA 12:42:00 (“[C]hief Palestinian negotiator Saeb Erekat [said that USD] \$1.5 million [is spent] daily.”).

<sup>79</sup> Andreas Tzortzis, *All Bets On; Gambling Brings Israelis and Palestinians into Daily Harmony at a Desert Casino Called Oasis*, SUN SENTINEL, Nov. 14, 1999, at A1. Two thousand five hundred gamblers visit the Oasis each day. *Id.*

that the initial investment has already been returned - well ahead of the two to three year target that the investors had initially contemplated.<sup>80</sup> In addition, the Oasis currently employs 1,163 people, making it the largest private employer in the West Bank.<sup>81</sup>

### C. Overcoming Shortcomings: Why Did Investors Invest?

Once the PA finalized its decision to build the West Bank's first casino, it approached Casinos Austria, the world's largest casino developer, to join in the undertaking. CAIL's sheer size and breadth of worldwide operations clearly appealed to the PA, as did its reputation,<sup>82</sup> experience in partnerships with governments,<sup>83</sup> and existing Middle East presence.<sup>84</sup> The PA was also impressed with the sophistication of CAIL's operations and its socially-responsible approach to gambling. For example, patrons must present identification when entering the casino, and agree to have their profile entered into a computer.<sup>85</sup> This process enables CAIL to screen for compulsive gamblers who have recently lost significant amounts of money and then require them to prove financial stability before they are permitted to return to the casino. Furthermore, the company donates a percentage of profits to fund treatment programs for gambling addicts. Anticipating criticism of the casino, the PA was doing all it could to ensure it chose the least controversial partner for the project.

Yasser Arafat convinced the Casinos Austria operator to undertake a joint venture with the PA in the form of the Oasis Casino after a meeting with CAIL's senior management in Austria. President Arafat knew that CAIL's participation in the Oasis Casino could assume many different forms, from running the operations to actually owning the casino.<sup>86</sup> But the PA's most pressing concern

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<sup>80</sup> See *supra* note 52; See also *Chairman's Address to Shareholders*, *supra* note 77 ("The casino has consistently exceeded CAIL's own internal projections").

<sup>81</sup> Brenda Gazzar, *New Trumpets in Jericho*, JERUSALEM POST, Aug. 20, 1999, at 4 (these are among the highest-paying jobs in the area.). See David Sharrock, *No Room at the Holy Land Casino*, GUARDIAN (London), Sept. 15, 1998, at 17 ("[A twenty-nine-year Palestinian worker said] I used to earn \$400 a month as a teacher, now I'm getting \$850."). See also Daniel, *supra* note 48 ("The casino's backers expect the completed project . . . to directly and indirectly provide 5,000 high-income positions . . .").

<sup>82</sup> Cashman, *supra* note 12 (CAIL has established itself as a reliable partner of many different governments because it is known to be "a transparent operator and a respected company."); See also Rafat, *supra* note 13.

<sup>83</sup> Michael S. Arnold, *Sure Bet*, THE JERUSALEM POST, Aug. 14, 1998, at 12 (CAIL is partly owned by the Austrian government and has a monopoly to operate twelve casinos in Austria. Under this arrangement, the Austrian government receives a portion of CAIL's US\$800 million in annual worldwide revenue, approximately US\$150 million a year in tax revenue from the twelve Austrian casinos and each municipality receives an annual fee from CAIL, which in the case of Salzburg is nearly US\$1.5 million.).

<sup>84</sup> *Id.* (CAIL manages casinos in three Egyptian cities: Cairo, Alexandria and Sharm al-Sheikh.).

<sup>85</sup> *Id.*

<sup>86</sup> *Id.* (CAIL also manages the Oasis for which it receives a fee.).

was raising the capital necessary to finance the casino's estimated \$150 million price tag. As a result, it sought out investors with capital, and CAIL was the first one to ante up. With CAIL<sup>87</sup> on board, the PA was able to bring another Austrian investor, the Austrian National Bank, into the Jericho project. At 15% ownership to CAIL and 10% to the Bank, the PA had contracted out one-quarter of the Oasis' ownership to Austrian investors.<sup>88</sup> A thirty-percent stake then went to the PA through a quasi-governmental entity which it controls, the Palestinian Services Corporation ("PLC").<sup>89</sup> It did this in part to hide its involvement in the project because of the casino's unfavorable public opinion rating. In addition, the PA wanted to give President Arafat unlimited flexibility with the venture's operations and income, thereby removing any potential PLC oversight which, however unlikely, could one day spring up.<sup>90</sup> The remaining forty-five percent of the company's investors are anonymous Palestinians, Austrians and Israelis.<sup>91</sup>

In return for sizable capital contributions, the investors received favorable return-of-capital terms. For the first few years of the project, while investors seek to recoup their capital contributions, the PA would only take 10% off the top of the casino's gross revenue which was projected to be between US\$20 million and US\$30 million annually.<sup>92</sup> Under the tax system in place at the time of the agreement, once capital investments had been substantially returned, after year three, the maximum annual tax-rate would rise to 38.5%. However, in March 1999 President Arafat declared the new maximum tax rate to be 20%, providing a significant tax cut and generating an economic windfall for projects similar to the Oasis venture.<sup>93</sup> As a result, rather than contributing nearly forty-percent of their post-capital-recovery profits to the PA, the Oasis investors were only required to contribute one-fifth of such profits. Finally, at the

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<sup>87</sup> Cashman, *supra* note 12 (CAIL has a strong network in Austria with the government as a shareholder and a former deputy prime minister, Dr. Norbert Steger, its holding company's president.).

<sup>88</sup> Ackerman, *supra* note 54.

<sup>89</sup> Khalil Abed Rabo, *With a Roll of the Dice, Palestinians Infuriate Hamas*, AGENCE FRANCE PRESSE, Sept. 15, 1998, available at 1998 WL 16599735.

<sup>90</sup> Friedman, *supra* note 36. However, this disguise did not fool many people because of the influential roles assumed by many of President Arafat's close subordinates in the casino's operations. For instance, Halid A-Salam, an economic advisor to President Arafat, is chairman of the casino's board of directors and Mohammed Rashid, director of several Palestinian public monopolies (Prusher, *supra* note 35), also directs the PA's Oasis investment vehicle, the Palestinian Services Corporation. (Shuman, *supra* note 51); see also *Plan for Gambling Centre Reportedly to Go Ahead Despite Islamic Opposition*, BBC, June 23, 1998, Part 4, The Middle East. Also, the consulting company building the casino is headed by the son of President Arafat's chief deputy. Mark Dennis and Matt Rees, *Jericho's Big Gamble*, NEWSWEEK, Aug. 17, 1998, at 41.

<sup>91</sup> Kalman, *supra* note 10.

<sup>92</sup> Daniel, *supra* note 48.

<sup>93</sup> Khader Abusway, *Palestinians Seek Investment, Cut Taxes*, NAT'L POST, Mar. 6, 1999, at D10.

conclusion of the casino's fifteenth year of operations, complete ownership will revert to the PA. In sum, investors are given an initial head-start in getting back their investments and then about twelve to thirteen years to make all of their profits before their investments end. At the same time, the PA receives the capital essential for building the Oasis, the casino management experience and fine reputation of Casinos Austria, a growing stream of tax revenues, and ultimately complete control over a \$150 million-plus casino, luxury hotel, convention center and championship golf course.

Casinos Austria's and the other private investors' interest in funding the Oasis Casino can be seen as a sound financial undertaking even if lower returns had been generated to date, and even if anticipated tax rates had remained in place. There was much evidence, from survey research to marketing studies, suggesting that a casino could thrive in the vicinity of Israel's tourist and population center. Furthermore, the Casino appears to have successfully exploited the recognized under-supply of gambling opportunities while also navigating the pitfalls which could have derailed a Palestinian provider of services from satisfying the Israeli market.<sup>94</sup>

Nonetheless, given a lack of transparency in how the PA operates and the severe limitations of its legal system, detailed in Sections III and IV, it cannot be taken for granted that a corporation such as Casinos Austria, or that sophisticated private investors, would undertake an investment such as the Oasis Casino. Why, then, would savvy individual and institutional investors, in the face of prominent failures like those suffered by Builders for Peace, go forward with the Oasis project? And, if there are sufficient investors for the Oasis, will there also be those who would undertake future private investment projects in the PA even if the deficiencies in the legal system and government operations remain?

First consider the Oasis' ability to attract investors. There were several reasons, for instance, why CAIL agreed to undertake the Oasis investment.

For starters, CAIL has experience in similar "high-risk" ventures in other parts of the world.<sup>95</sup> Developing countries are recognizing the value of building casinos to attract tourists and to provide financial gains for the host country, and CAIL has been involved in a number of such projects. In addition, CAIL thought the border between Israel and the PA was stable enough to permit investment at that time.<sup>96</sup> If anything, CAIL's management reasoned, regional stability would

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<sup>94</sup> Peter Hirschberg, *Crossing the Great Divide*, THE JERUSALEM REPORT, Apr. 24, 2000, at 16 ("The PA is doing everything it can to make Israelis feel welcomed in its territory.").

<sup>95</sup> *Chairman's Address to Shareholders*, *supra* note 77 (For example, CAIL operates a casino in South Africa.).

<sup>96</sup> Managing Director of the Oasis Casino Alexander Tucek dismissed suggestions that Casinos Austria wait for better times to emerge in the region before opening the Oasis Casino. He said, "People get killed in Johannesburg, in Northern Ireland, but you would never open if you were dependent on nothing happening. We are hoping for a positive outcome to the political situation in this region, but people come to casinos to forget about the world outside." Alan Philips, *Welcome to the 'Las Vegas of Middle East'*, DAILY TELEGRAPH (London), Sept. 17, 1998, at 26.

only increase with the building of the Oasis and the creation of hundreds of jobs expected to be directly generated by the casino.<sup>97</sup> Furthermore, since it already operated several casinos in Egypt, a neighboring country strongly influenced by Islam, CAIL probably concluded that religious opposition would not undermine the casino's profitability.

Second, CAIL believed it could earn a return commensurate to the risk involved. It recognized the imbalance between gambling supply and demand, the relatively high disposable income of its prospective patrons and the opportunity to reap the benefits that come with being first to undertake a particular venture in a particular area.<sup>98</sup> So far, its intuition has been on the mark. Even though the Oasis did not open until the middle of September, and then only for weekends during the first three months, it has been an extremely lucrative investment.<sup>99</sup> In fact, the Oasis' success is credited with generating considerable income for the parent company, CAIL, and helping produce second half revenues for the parent company for 1998 which exceeded company expectations and more than doubled its first-half of the year return.<sup>100</sup> Once its 1999 financial results were known, CAIL similarly credited the Oasis with helping it double its 1998 profits.<sup>101</sup>

Third, after meeting with President Arafat, CAIL was convinced that the PA was serious about attracting large-scale private investments.<sup>102</sup> Consequently, Casinos Austria reasoned that the PA must also be prepared to begin cultivating investor confidence by creating much-needed certainty and transparency in the investment process, even if such did not formally exist in the legal system or government practices at that time. Similarly, if the PA hoped to use the Oasis Casino to attract additional foreign capital, it had to, at the very least, ensure CAIL adequate due process and guarantee its basic legal rights, which were then non-existent. Otherwise, should any dispute arise, the casino's potential to benefit the PA through its publicity would go unrealized. Essentially, Casinos Austria could rationalize investing in the PA without adequate formal legal protection because the very nature of its highly visible and pioneering position informally protected it from overt government abuse.<sup>103</sup>

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<sup>97</sup> Sharrock, *supra* note 81.

<sup>98</sup> "The notion of a Palestinian state is by now accepted as a fact of life by most Israelis, like it or not. There is a problem here because the short run may be awful. [Investors are saying] 'if we invest too early, we may get stamped out. If we wait too long, we might miss the boat.'" Prusher, *supra* note 35 [quoting Hebrew University economist Ephraim Kleiman].

<sup>99</sup> See *Casino Austria International*, AAP NEWSFEED Mar. 9, 1999 available at 1999 WL 13886881; see also *Chairman's Address to Shareholders*, *supra* note 77.

<sup>100</sup> See *Casino Austria International*, AAP NEWSFEED, Feb. 9, 1999 available at 1999 WL 10415522

<sup>101</sup> See *Casinos Austria International*, AAP NEWSFEED, Mar. 13, 2000.

<sup>98</sup> Sharrock, *supra* note 77.

<sup>103</sup> The fact that the PA expected to receive considerable tax revenues and also held an actual piece of the investment cannot be underestimated in reassuring CAIL that its investment and management concession would be honored.



## VI. *The Oasis' Impact on the Peace Process*

Even though Casinos Austria was willing to invest in the Oasis project, there is reason to doubt that its investment, as financially rewarding as it has been, will induce future investors to undertake similar projects in the Palestinian Territory.<sup>104</sup> The exceptions which explain CAIL's investment - an extreme supply-demand imbalance, ability to reach a lucrative non-Palestinian consumer base, independence from Israeli supply routes and extra-legal protection because of its high visibility - are not likely to be uniformly available to sway subsequent investors. By their very nature, these investment inducements are *ad hoc* incentives which would have to be individually negotiated by future investors. Until they are incorporated into a Palestinian legal structure and safeguarded by the Palestinian government, they will most likely fail to provide the assurances necessary to attract large-scale investment to the Palestinian Territory.

While a driving force behind the building of the Oasis was the PA's interest in generating Palestinian economic growth, which it hoped would lead Palestinians to conclude they had a vested interest in the progress of the peace process, the growth and, more importantly, the stake in the peace process have not been realized. In fact, the very concept of economic empowerment has been dealt a serious setback as a result of the Oasis Casino. The PA has alienated its people by disregarding their opposition to a casino<sup>105</sup> and, through its handling of the finances, furthered the belief that the government acts to benefit itself and not

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<sup>104</sup> There are several reasons, however, to suggest that the Oasis' success may not continue for the length of its concession. First, leading Israeli politicians, would-be politicians and civil servants, resentful of the amount of money flowing into the PA's coffers, have started anew to bring legalized gambling to Israel or to prevent Israelis from gambling in Jericho. See Batsheva Tsur, *Porat: Bar Israelis from Jericho Casino*, JERUSALEM POST, Oct. 16, 1998, at 3 ("[T]he state-run lottery has drawn up the blue-prints for opening a casino in [Israel]. . . . Israel could have a casino within a year. . . and the money which Israelis spend abroad on gambling could go instead to worthy causes in this country."). See also Liat Collins, *Israelis Won't be Prosecuted for Gambling in PA*, JERUSALEM POST, Nov. 24, 1998, at 5 (Under the Oslo Accords Israeli citizens are subject to Israeli law even when in the PA, and therefore could one day be prosecuted for gambling in Jericho.) Second, there is nothing preventing the PA from using its Oasis proceeds or from raising additional funds to open a second casino. In fact, Yasser Arafat has announced that a second casino will soon open in the West Bank city of Ramallah, currently the capital of the PA. Greer Fay Cashman, *Grapevine*, JERUSALEM POST, Aug. 20, 1999, at 16B. Third, while Yasser Arafat's support for the Oasis and ability to side-step popular and political opposition, enabled it to be built, such opposition, combined with insufficient legal protections, could still shut-down the Oasis at any moment. Furthermore, the septuagenarian Arafat's falling approval rating, or worsening medical condition (caused by Parkinson's Disease) and advancing age, makes it likely he will not endure until the completion of CAIL's concession. There is no designated successor to President Arafat; see also *Fringe Parties Proliferate Ahead of Israeli Elections*, AGENCE FRANCE PRESSE, Jan. 20, 1999, available at 1999 WL 2532117 (Israel's foremost gambler, Ezra Tisona, even started his own party - the Casino Party - to champion the opening of dozens of casinos in economically-depressed parts of the country).

<sup>105</sup> See generally, *supra* note 55.

the people whom it is supposed to serve. As a result, Palestinians are increasingly losing their sense of political or economic empowerment, and are now even less likely to recognize the value of a peace agreement with Israel and are now even less likely to support the concessions necessary for reaching a lasting peace than at any time since the signing of the Declaration of Principles.

Understandably, many Palestinians oppose the casino on religious grounds or as a result of its potential to bring about over-development and lead to immoral consequences.<sup>106</sup> However, the strongest opposition to the Oasis emanates from a mounting popular discontent with an authoritarian government that seems to respect no bounds to its power.<sup>107</sup> Rank-and-file Palestinians, those for whom economic empowerment is paramount, believe this casino will do little to improve their lives.<sup>108</sup> To most Palestinians the casino offers neither comfort nor relief and thus is an oasis in name only.

Opposition to the casino is so widespread that it even includes a highly unlikely source: Mrs. Arafat. She strongly opposes the casino because the message it sends – that gambling is more important than hospitals, sewage and water treatment plants and schools – undermines the PA's credibility with the people and boosts the standing of Hamas, its chief critic and principal threat to regional peace.<sup>109</sup> Even before the PA became involved in the Oasis, Hamas, the fundamentalist Islamic alternative to the PA, enjoyed widespread support for its promotion of religious values and social welfare spending for schools and hospitals. Now, there is the perception that the differences are even greater, with the PA endorsing and profiting from an unpopular casino while Hamas takes the high road by calling for its ouster. Possibly out of a desire to curb Hamas' rising public opinion ratings, Mrs. Arafat has been joined by several Palestinian legislators and even one foreign government in calling for the PA to dismantle the

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<sup>106</sup> *Id.*

<sup>107</sup> Engel, *supra* note 7 (According to the Director of the Palestinian Center for Policy and Survey Research, Khalil Shikaki, President Arafat's "rock-bottom" public opinion ratings prevent him from influencing public opinion to support the peace process).

<sup>108</sup> See Ackerman, *supra* note 54 ("Many Palestinians simply assume that the casino belongs to Palestinian officials or their cronies," and "[M]any Palestinians say the flashy white compound is another example of a peace primer with no trickle down . . ."). See also Liat Collins & Steve Rodan, *Gambling in Jericho Illegal for Israelis, Rules Rubinstein*, JERUSALEM POST, Oct. 21, 1998 at 1 ("Sakher Habash, a member of the Central Committee of Fatah . . . [said that] Arafat has never raised the casino issue for discussion either in the cabinet or in the PLO executive committee. . . . 'It had never crossed our mind that in the Fatah movement that we start such a project in our country,' Habash said. 'It never came up at any meeting nor had it been proposed to us. We heard about the opening from the preacher of a Friday prayers session.'"); see also Tzortzis, *supra* note 79 (even residents of Jericho and neighboring Aqabat Jabber refugee camp have yet to realize any financial reward from the casino).

<sup>109</sup> Philip Jacobson, *Arafat's Wife Accuses his Government of Corruption*, SUNDAY TELEGRAPH (London), Feb. 7, 1999, at 26; see also Deborah Sontag, *Palestinian's First Lady: Suha Arafat Proves Herself a Worthy Freedom Fighter*, STAR TRIBUNE, Feb. 5, 1999, at 17A.

casino.<sup>110</sup> Despite these efforts, Hamas' standing continues to rise as it profits from a popular backlash against the PA's leadership.<sup>111</sup>

Israeli gamblers, who constitute 90% of the Oasis' patrons,<sup>112</sup> are just about the Casino's only supporters. While some back this undertaking because they see it as a step, however incremental, towards bettering relations between Palestinians and Israelis, most are interested exclusively in gaming and pay little heed to grander themes.<sup>113</sup> However pleased Israeli gamblers may be with their good fortune in finally realizing a conveniently located casino, and however enlightened their outlooks may now be towards Palestinians, this tangential benefit from the peace process cannot mitigate the Oasis' failure to create a sense of economic empowerment among Palestinians. Palestinians have not seen their standard of living improve, have not reaped the benefits of the Oasis investment and do not believe they have much to look forward to in a lasting peace with Israel.

## VII. Conclusion

As it approaches its second birthday, the Oasis Casino has been judged a tremendous financial success for its investors.<sup>114</sup> It has also succeeded in generating considerable hope among supporters of the peace process that similar investments will soon follow and economic prosperity will finally reach the PA and its people, resulting in the economic empowerment of Palestinians which is essential to engendering their support for the peace process. Accordingly, the prospects for lasting peace have risen precipitously since the first signs of the Oasis' success.

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<sup>110</sup> *Palestinian Legislators File Complaint to Close Jericho Casino*, *supra* note 78 ("Three members of the Palestinian Legislative Council filed a complaint with the Jericho district attorney calling for the closure of the Jericho casino. The complaint . . . said the operation of Oasis Casino violates Jordanian law which remains applicable in the West Bank."); *Parliament Member Opposes \$25 Million Aid to PLO*, INFO-PROD RESEARCH (Middle East), Jan. 17, 1999 ("[A Kuwait] Parliament member demanded that the Government suspend a previous \$25 million Kuwaiti aid commitment to the Palestine Liberation Organization . . . [He said] it is unreasonable that while Kuwaiti people are spending less due to a recession, the Kuwaiti budget allocates funds to building a casino in Jericho.").

<sup>111</sup> Hamas' true support will probably not be seen until the fight to succeed Yasser Arafat begins in earnest.

<sup>112</sup> See Tzortzis, *supra* note 79.

<sup>113</sup> Compare Machlis, *supra* note 66, "Inside, the casino provided rare glimpses of what the 'new Middle East' envisioned by former Prime Minister Shimon Peres could look like, even though that vision of regional peace and prosperity has virtually vanished in the peacemaking crisis of the past two years . . . Around the tables, drinks in hand, Israelis rub shoulders with wealthy Palestinians who defied Arafat's orders to stay away." with Tzortzis, *supra* note 79, "Why do I come? Because I want their money," said Israeli Ami Abta . . . "If they built a casino in Israel, I would go there."

<sup>114</sup> Tzortzis, *supra* note 79 ("The Oasis Casino has been an enormous financial success since it opened on the outskirts of Jericho.").

However, after two years of growing financial success the prospects for peace remain as unrealized as when the Oasis first opened. A sizable wealth transfer between private Israelis and foreign tourists and the Palestinian self-rule government has enriched the governing body but not its citizens. While the Oasis has grown to become the West Bank's largest private employer, it has produced only a relatively small number of jobs compared to the size of the population, and remains an unpopular project to the vast majority of the area's residents.<sup>115</sup>

Without a stake in the going forward of the peace process, the Palestinian people continue to demonstrate a reluctance to make the sacrifices necessary to ensure a sustainable peace with Israel. The fact that the recent Palestinian Intifada has seen the worst violence since 1993 suggests that the cause for lasting peace has not been advanced much by the Oasis' financial success.<sup>116</sup> Quite possibly the Oasis' financial success has undermined its ability to promote the peace process. Almost uniformly, Palestinians have failed to realize any of the gains from this financial windfall, even as beneficiaries of public works projects, and have grown to view the Oasis as yet another means by which their leadership enriches itself at their expense. The nature of the PA's investment, as another off-the-books venture, outside the official PA budget and exempt from any legislative or judicial oversight, makes the Oasis the most striking example yet of the gulf between the Palestinian government and its citizens.

Palestinians do not believe the Oasis' financial strength will improve their standard of living nor do investors think it should cause them to undertake new projects in the Palestinian Territory. Despite the PA's success in drawing a sizable private investment to Jericho it has failed in its efforts to market this good fortune to prospective investors. CAIL and the Oasis' individual investors may overlook the PA's underdeveloped legal system and the opaque manner in which its government operates so long as both continue to earn better-than-expected returns. But some investors have not proven to be as forgiving, notwithstanding the financial success of CAIL and the others.

The PA's failure to use the Oasis Casino to make the Palestinian people feel economically empowered, together with its inability to draw new investments

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<sup>115</sup> The Oasis currently employs 1,163 people, many of whom are European, while the West Bank's Palestinian population exceeds 1,000,000. Palestinian National Authority Official Website <http://www.pna.net>; see also Arnold, *supra* note 52 ("[Despite the money made by casino employees, Muhammad] Issawi says he turned down an opportunity to work at the casino . . . because of his religious beliefs."); Tzortzis, *supra* note 79 ("'Nobody comes here to give money to the area,' [said an Israeli gambler] . . . 'All the Israelis come to the casino, not to enjoy Jericho, but to play.'").

<sup>116</sup> Engel, *supra* note 7 ("Israel-Palestinian peacemaking was on hold Monday after the worst violence in years. . . . The past few weeks have been the worst since at least 1993."). The rioting appeared to result from Palestinian frustration with Israel's slow release of Palestinian prisoners which Israel holds in jail as a result of violent attacks on Israelis. *Id.* Were Palestinians to believe they have a stake in a lasting peace with Israel they might very well be less likely to riot when there is an incremental peace delay.

into the Palestinian Territory, has perpetuated a low standard of living for its people and dealt a severe blow to the future of the peace process. Failing to reap promised-for peace dividends, most notably an improving standard of living, further alienates the Palestinian people from their government and the peace process and makes it unlikely they will embrace the sacrifices necessary to securing a lasting regional peace. In the absence of reforms to the PA's investor legal code and the development of a mutual respect among the competing branches of the Palestinian self-government, the Palestinian people will not realize the benefits of existing investments and new investors will not undertake projects in the Palestinian Territory. Until that time, the casino will be an oasis in name only as it continues to frustrate peace advocates with its unrealized potential.