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COULD COMMERCIAL ARBITRATION HELP SETTLE A HISTORIC CONFLICT BETWEEN THE
ISRAELITES AND PALESTINIANS?

By
Evan Goldsmith*

I. INTRODUCTION

Although over 50 years have passed since the creation of the State of Israel,¹ Israelites and Palestinians have been in consistent conflict. While much of the conflict between Israelites and Palestinians does not center around the economic and commercial interactions between the two, a recent development between ICC Israel and ICC Palestine promises to facilitate peace and cooperation between Israel and Palestine for commercial matters. Although there has been conflict in Israel for thousands of years, evidence suggests that conflict between individuals of Jewish and Palestinian decent began in the early 20th century.² In the early 1900's, Theodor Herzl, who is now considered the father of political Zionism, started a movement in response to a rise in anti-Semitism across Europe.³

Believing that Jewish persecution in Europe was imminent, Herzl sought to adopt Palestine as the Jewish homeland.^{4 5} Although no sovereign was officially established, European Jews fearing religious persecution began immigrating to Palestine.⁶ As the number of immigrants rose, Palestinians began petitioning Ottoman rulers to regulate Jewish immigration.⁷ The impetus for the Palestinian response was a concern that the prevalence of Zionism would dissolve the Arab territorial unity of the Middle East, and would harm the 'Arab Cause.'⁸ Tension over these matters underscore much of the conflict between modern-day Israelis and Palestinians. Cultural and political conflicts have since risen in number and in magnitude.

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¹ The State of Israel was established by a special committee of the United Nations on May 14th 1948.

² Mike Berry & Greg Philo, *Israel and Palestine Competing Histories* 3-5, (Pluto Press, expanded ed. 2006).

³ *Id.* at 3.

⁴ It should be noted that Palestine is currently not a country. The reference to current Palestine is simply to regions of Israel, that have high populations of Palestinians.

⁵ Berry & Philo, *supra* note 2, at 3; Ian J. Bickerton & Carla L. Klausner, *A History of the Arab-Israeli Conflict* 24 (Charles Cavaliere ed., 5th ed. 2007).

⁶ Berry & Philo, *supra* note 2, at 5; Bickerton & Klausner, *supra* note 5, at 25

⁷ Berry & Philo, *supra* note 2, at 5-6

⁸ Berry & Philo, *supra* note 2, at 5-6

This article will discuss a recent development between ICC Israel and ICC Palestine known as the Jerusalem Arbitration Center (“JAC”). The JAC is a joint effort to develop an opportunity for Israeli and Palestinian businesses to seek an “apolitical, effective, impartial, professional, enforceable and cost effective alternative for the resolution of Palestinian-Israeli business related disputes.”⁹ Current commercial relations between Israeli and Palestinian businesses are wrought with distrust, as both parties find it hard to enforce their laws in ‘foreign courts.’¹⁰ The JAC is focused on replacing economic agreements as part of the Oslo II Accords,¹¹ which have been unsuccessfully implemented resulting in an atmosphere of distrust in international commerce.¹² Ultimately, both sides are looking for a neutral forum to bring their claims for resolution, as well as a means of promoting Israeli and Palestinian business for international investment.¹³

This article will also discuss the joint efforts of ICC Israel and ICC Palestine to construct a dispute resolution mechanism intended to foster commercial relationships between merchants in both nations. Although currently limited to commercial matters, the advent of JAC gives reason to be optimistic that both nations are actively pursuing ways to alleviate the myriad of political, religious, and cultural conflicts which have rendered Israel and Palestine historically uncooperative.

II. BEGINNING OF THE CURRENT CONFLICT AMONGST ISRAELIS AND PALESTINIANS

The current political, religious, and national conflicts in Israel could be a hindrance to cooperation with JAC. The success of JAC depends on whether workable commercial relationships between Israelis and Palestinians can help overcome the post WWII conflict between Israelis and Palestinians.¹⁴

⁹ International Chamber of Commerce Israel, *The JAC Concept*, (last visited Feb. 12, 2014) available at <http://www.iccisrael.co.il/en/content/jac-concept-0>.

¹⁰ International Chamber of Commerce Israel, *The JAC Challenge*, (last visited Feb. 12, 2014) available at <http://www.iccisrael.co.il/en/content/jac-challenge>. (Palestinian businesses fear entering a contract that will bring them before an Israeli court, where they feel there is little chance of receiving a favorable outcome. Alternatively, Israeli businesses are afraid that the favorable ruling they may receive in an Israeli court will be unenforceable in Palestine.)

¹¹ The Oslo II Accords was a joint agreement by the Israeli government and The Palestine Liberation Organization (“PLO”) which at the time was meant to be an interim agreement to help establish a sovereign Palestinian presence in the West Bank region of Israel. These terms were meant to help facilitate the beginning of a separation of Israel of a Palestinian state, to promote the two state resolution. *See infra* notes 60-66 and accompanying text.

¹² International Chamber of Commerce JAC Challenge, *supra* note 10.

¹³ International Chamber of Commerce JAC Concept, *supra* note 9.

¹⁴ This article will not go any further into the historical conflicts prior to World War II (“WWII”), besides the brief description above.

The current conflict escalated post-WWII, as Jews, displaced by the Holocaust began looking for a new home state, free of persecution.¹⁵ While some believed the European Jews could have selected anywhere in the world, there were multiple propositions as to why only Palestine could be a suitable homeland for the Jews. David Ben-Gurion, the first and third Prime Minister of Israel who served for a total of fourteen years, stated:

[Holocaust survivors] want to regain their human dignity, their homeland, they want a reunion with their kin in Palestine after having lost their dearest relations. To them the countries of their birth are a graveyard of their people. They do not wish to return and they cannot. They want to go back to their national home...¹⁶

While David Ben-Gurion showed one view that the Jews, after WWII, simply wanted to escape to Palestine, a more detailed approach may have shown why Jews did not want to settle anywhere in Europe, and had a religious reason for wanting to settle in Palestine:

Even if there had not been a single foreign Zionist or a trace of Zionist propaganda in the (concentration) camps these people would have opted for Palestine... For nine months, huddled together, these Jews had had nothing to do but discuss the future. They knew that they were not wanted by the Western democracies, and they had heard Mr. Atlee's plan that they should stay and rebuild their countries. This sounded to them pure hypocrisy. They were not Poles anymore; but, as Hitler had taught them, members of the Jewish nation, despised and rejected by 'civilized Europe'. They knew that far away in Palestine there was a National Home willing and eager to receive them and to give them a chance of rebuilding their lives, not as aliens in a foreign state but as Hebrews in their own country.¹⁷

There was an immense amount of support for Palestine by Jews that survived the Holocaust, as seen in a Hebrew investigative commission that reported 96.8 percent of Jewish refugees in displacement camps wanted to reach Palestine at the end of WWII.¹⁸ Persecuted Europeans of Jewish descent who survived the war responded in large

¹⁵ Berry & Philo, *supra* note 2, at 19; Bickerton & Klausner, *supra* note 5, at 70.

¹⁶ Berry & Philo, *supra* note 2, at 20.

¹⁷ *Id.* at 21.

¹⁸ Berry & Philo, *supra* note 2, at 21.

numbers to the Zionist movement, relocating to Palestine in pursuit of a homeland.¹⁹ Jewish immigration was initially met with hostility by England, which had been enjoying the Mandate for Palestine approved by the League of Nations in 1922.²⁰ The Mandate for Palestine, however, began to subside in response to growing violence against members of the British military located in Palestine.²¹ England eventually handed the Mandate for Palestine to the United Nations to resolve conflicts arising from competing interests for a Jewish and Palestinian State.²² On November 29, 1947, the United Nations promulgated a plan to split the Palestinian territory into two states: the Jewish State of Israel and the Arab State of Palestine. This plan took effect on May 14, 1948.²³

Unhappy with the split, Palestinians and supporting Arab nations invaded Israel and began the first of two separate wars.²⁴ The first war occurred between the recently immigrated Jews and Palestinian Arabs within the original boundaries of Palestine, and the second war occurred between the newly created state of Israel and the surrounding countries that supported the Palestinians.²⁵ None of the Arab countries involved in the war had ever seen war before, and ultimately, none were successful against the more sophisticated Israeli military.²⁶ As the losses began to accumulate, the hostile Arab nations surrendered. Upon surrender, the hostile nations agreed to both recognize the state of Israel, and divide Palestine between Egypt and Transjordan through armistices.²⁷

These events all took place at the inception of Israel as a Jewish state, effectively displacing the Palestinians from their own sovereign nation to new countries controlled by different political sovereigns. Since these events, Palestinians living in Israel and the Israelis have been in constant, bitter conflict.

¹⁹ BBC, *A History of Conflict: Arab Disconnect*, BBC.COM, http://news.bbc.co.uk/2/shared/spl/hi/middle_east/03/v3_ip_timeline/html/1929_36.stm (last visited Apr. 11, 2014)

²⁰ The Yale Law School, *The Palestinian Mandate*, THE YALE LAW SCHOOL AVALON PROJECT, http://avalon.law.yale.edu/20th_century/palmanda.asp (last visited Apr. 11, 2014); Berry & Philo, *supra* note 2, at 18.

²¹ Berry & Philo, *supra* note 2, at 23-24.

²² *Id.*; Harms & Ferry, *The Palestine-Israeli Conflict A Basic Introduction* 89-90, (Pluto Press, 3rd ed. 2012); Bickerton & Klausner, *supra* note 5, at 80-81.

²³ *Id.*

²⁴ Berry & Philo, *supra* note 2, at 31; Harms & Ferry, *supra* note 22, at 93.

²⁵ *Id.*

²⁶ Harms & Ferry, *supra* note 22, at 98.

²⁷ *Id.* at 93,98 (Following the war, the original fifty seven percent given to the Zionists for the creation of Israel had expanded to seventy eight percent, and the remaining twenty two percent for Palestinians was gone through the armistices with Egypt and Transjordan, leaving no land for Palestine).

III. JERUSALEM ARBITRATION CENTER: THE WHO, WHAT, WHERE, WHY?

A. Who is Involved in JAC?

1. What Countries will be Involved?

The Jerusalem Arbitration Center was created on November 18, 2013 by ICC Israel and ICC Palestine.²⁸ Israel became a member of the ICC fifty years ago, while Palestine became an official member of the ICC in early 2011.²⁹ The recent creation of ICC Palestine was a necessary step in creating JAC, because Palestinian business leaders needed a comparable institutional structure before it could enter a commercial dispute mechanism like JAC.³⁰ In fact, creating JAC was among the primary justifications for establishing ICC Palestine.³¹

2. Who Are The Individuals?

The initial push for a neutral means of settling business and commercial disputes between Israeli and Palestinian businesses started with two men:³² 1) Oren Shachor, a retired military general turned business man and current head of ICC Israel;³³ and 2) Samir Hulileh, current CEO of one of Palestine's largest financial holding companies.³⁴ The two of them recognized the need for a reliable means of resolving business transactional disputes. Together, they crafted initial plans for JAC.³⁵ Before JAC could be

²⁸ *PIBF Nurtures Joint Centre for Peaceful Dispute Resolution*, PALESTINE INTERNATIONAL BUSINESS FORUM (last visited Feb. 12, 2014) available at <http://www.pibf.net/stories/jac/>

²⁹ International Chamber of Commerce Israel, *ICC Israel*, (last visited Feb. 12, 2014) available at <http://www.iccisrael.co.il/en/content/icc-israel>; International Chamber of Commerce Palestine, *JAC*, (last visited Feb. 12, 2014) available at <http://www.iccpalestine.com/index.php?lang=en&page=132309160121>.

³⁰ International Chamber of Commerce JAC Challenge, *supra* note 10.

³¹ International Chamber of Commerce Palestine, *JAC*, (last visited Feb. 12, 2014) available at <http://www.iccpalestine.com/index.php?lang=en&page=132309160121>.

³² Catherine A. Rogers, *Peace, One Dispute at a Time: The Jerusalem Arbitration Center*, NY Dispute Resolution Lawyer, Spring 2012, available at http://law.psu.edu/_file/news/ABA_Article_Rogers.pdf.

³³ *Id.*; International Chamber of Commerce ICC Israel, *supra* note 29.

³⁴ Rogers, *supra* note 32; Padico Holding, *Corporate Governance*, (last visited Feb. 12, 2014) available at http://www.padico.com/public/English.aspx?Lang=2&Page_Id=2400&PMID=29&Menu_ID=45&Site_ID=1; Nadia Darwazeh, *The Jerusalem Arbitration Center A breakthrough for Israelis and Palestinians*, THE JERUSALEM POST (Dec. 18, 2013 12:03AM) available at <http://www.jpost.com/Opinion/Op-Ed-Contributors/The-Jerusalem-Arbitration-Center-335318>

³⁵ Rogers, *supra* note 32.

created, Palestine needed a reliable international business presence. So Shachor and Hulileh looked to the ICC to create a Palestinian membership.³⁶ While the ICC was initially reluctant to invest money in the historically volatile region, ICC Palestine was created in an unprecedented amount of time.³⁷ The newly created ICC Palestine was chaired by one of its founders, Munib Masri, and administratively lead by a young Palestinian, Yara Asad.³⁸

B. What is JAC?

JAC is an alternative dispute resolution mechanism for Israeli and Palestinian businesses seeking an “apolitical, effective, impartial, professional, enforceable, and cost effective alternative for the resolution of Palestinian-Israeli business related disputes.”³⁹ The joint efforts of ICC Israel and ICC Palestine allowed for the creation of JAC with legitimacy provided by both the International Chamber of Commerce and the International Court of Arbitration.⁴⁰ In addition to providing arbitral services in a neutral manner for all commercial or business disputes that may arise between Israeli and Palestinian businesses, JAC may also be utilized by only Israeli businesses or only Palestinian businesses.⁴¹ The JAC has received the support of both Israeli and Palestinian officials, rendering JAC decisions binding and enforceable in both states.⁴² The trust required to make JAC a fully functioning option for Israeli and Palestinian businesses

³⁶ Rogers, *supra* note 28.

³⁷ *Id.*

³⁸ *Id.*

³⁹ International Chamber of Commerce Israel JAC Concept, *supra* note 9; INTERNATIONAL CHAMBER OF COMMERCE (Nov. 18, 2013) available at <http://www.iccwbo.org/News/Articles/2013/Historic-opening-of-arbitration-centre-set-to-advance-Palestine/Israel-commercial-dispute-resolution/> (The JAC is a neutral arbitral committee that will consist of nine arbitrators and will be an option for Israeli and Palestinian businesses to resolve issues that may arise in business transactions. The President at the time of this article is Yves Derains. Additionally, both the ICC Israel and the ICC Palestine can elect 2 arbitrators each, and the remaining 4 arbitrators will be recommended by the President. All future appointments will be appointed by the ICC Israel and the ICC Palestine jointly, with approval of the International Court of Arbitration.)

⁴⁰ Darwazeh, *supra* note 34; David Shamah, *Business Arbitration: A milestone for Palestinian statehood?*, THE TIMES OF ISRAEL (Nov. 22, 2013 12:10AM) available at <http://www.timesofisrael.com/business-arbitration-a-milestone-for-palestinian-statehood/>; Dawn Chardonnal, *Historic Opening of arbitration centre set to advance Palestine/Israel commercial dispute resolution*, INTERNATIONAL CHAMBER OF COMMERCE (Nov. 18, 2013) available at <http://www.iccwbo.org/News/Articles/2013/Historic-opening-of-arbitration-centre-set-to-advance-Palestine/Israel-commercial-dispute-resolution/>.

⁴¹ International Chamber of Commerce JAC Challenge, *supra* note 10; International Chamber of Commerce Palestine, *JAC*, *supra* note 31.

⁴² Dawn Chardonnal, *supra* note 40.

presents a concern, as the two states have been in political conflict with one another since Israel was established in 1948.⁴³ Nonetheless, the concerted effort to implement a mutually respected institution for civil adjudication is worth celebrating as a milestone in both nations' pursuit of commercial cooperation.

C. Where Will the JAC's Jurisdiction extend?

The jurisdiction of JAC extends to any commercial dispute involving Israeli or Palestinian businesses that would otherwise be adjudicated in an Israeli or Palestinian court.⁴⁴ Both nations have agreed that all hearings will occur in East Jerusalem, a city with much historical, religious, and cultural significance for both Israel and Palestine.⁴⁵ But while the proceedings will be held in Jerusalem, the seat of the arbitration is in France, meaning French law of arbitration will govern the procedure. Moreover, should an arbitration proceeding give rise to the need for judicial intervention, judicial review, or judicial supervision, French courts have the authority to conduct these procedures.

JAC's decisional jurisdiction is also limited by an amount in controversy ceiling imposed by the ICC. All JAC claims involving more than USD \$7 million must be submitted to the ICC headquarters for arbitral adjudication in Paris, France.⁴⁶ One justification for the amount in controversy restriction is that the ICC may be better suited to adjudicate sizeable claims due to its experience.⁴⁷ Those endorsing this justification remain hopeful that the ICC will entrust JAC with larger disputes as JAC arbitrators become more literate in international arbitration.⁴⁸ The amount in controversy restriction might also be criticized, however, as the ICC's way of capitalizing on the largest transactional disputes between Israel and Palestine. This is particularly compelling when one considers that ICC arbitration fees are calculated based on the amount in controversy.⁴⁹ Accordingly, it seems that the amount in controversy ceiling, while

⁴³ See *supra* notes 20-23 and accompanying text.

⁴⁴ William Kirtley, *Israeli-Palestinian ICC Arbitration Center Nears Completion*, INTERNATIONAL ARBITRATION ATTORNEY NETWORK (last visited Feb. 12, 2014) available at <http://www.international-arbitration-attorney.com/israeli-palestinian-icc-arbitration-center-nears-completion/>.

⁴⁵ Mazen Quity, *Jerusalem Arbitration Center Promotional Event*, INTERNATIONAL CHAMBER OF COMMERCE (July 30, 2013) available at http://www.leadr.com.au/sb_cache/associationnews/id/183/f/JAC%20PDF%201024%20x%20768.pdf.

⁴⁶ Kirtley, *supra* note 44.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ International Chamber of Commerce, *Cost of arbitration in detail (articles 36 and 37)*, (last visited Apr. 12, 2014) available at [http://www.iccwbo.org/products-and-services/arbitration-and-adr/arbitration/cost-and-payment/cost-of-arbitration-in-detail-\(articles-36-and-37\)/](http://www.iccwbo.org/products-and-services/arbitration-and-adr/arbitration/cost-and-payment/cost-of-arbitration-in-detail-(articles-36-and-37)/).

currently a protective measure against inexperienced arbitrators rendering faulty awards with large economic consequences, might actually prove difficult to amend as JAC arbitrators become more sophisticated.⁵⁰

D. Why Has JAC been Developed?

As discussed, Israelis and Palestinians have experienced political conflict since the inception of Israel in 1948.⁵¹ Since there has been constant battle between the two, very little trust has been established between Israeli and Palestinian businesses, yet trade continues.⁵² Conservative reports claim that the amount of trade between Israeli and Palestinian parties equals three to four billion U.S. dollars per year, but more accurate estimates suggest trade reaches between four and five billion U.S. dollars per year.⁵³ Moreover, Palestine's main trade partner is Israel and some analysts believe Palestine is Israel's second largest trade partner behind only the United States.⁵⁴ Yet while these two states are such large parts of each other's economy, until now there have not been remedies when business transactions break down.⁵⁵ It is hoped that JAC will provide for legal remedies to business disputes, thereby allowing commercial relationships between Israel and Palestine to grow.

1. Something Needed to Be Done to Remove the Inherent Distrust Between Israeli and Palestinian Businesses

Due to historical distrust between the Israel and Palestine, business transactions between merchants of each nation have been wrought with avoidable investment risks.⁵⁶ For example, a business might demand cash before delivery, exposing the buyer to risks associated with seller non-performance. Absent upfront payment, sellers may demand letters of credit from guaranteeing banks, which are accompanied by large transaction

⁵⁰ International Chamber of Commerce, Cost of arbitration in detail (articles 36 and 37), *supra* note 49.

⁵¹ *See supra* notes 20-23 and accompanying text.

⁵² International Chamber of Commerce JAC Challenge, *supra* note 10; Rogers, *supra* note 32.

⁵³ Kate Fairweather, *Nadia Darwazeh of Curtis Names 1st Secretary General of Jerusalem Arbitration Centre*, CURTIS (Nov. 4, 2013) available at <http://www.curtis.com/sitecontent.cfm?pageid=15&itemid=958>; International Chamber of Commerce JAC Challenge, *supra* note 10; Rogers, *supra* note 32; Darwazeh, *supra* note 34; Dawn Chardonnal, *supra* note 40; Shamah, *supra* note 40; Kirtley, *supra* note 44.

⁵⁴ Rogers, *supra* note 32.

⁵⁵ International Chamber of Commerce JAC Challenge, *supra* note 10.

⁵⁶ *Id.*

costs where parties to the transaction are members of conflicting states.⁵⁷ At the most extreme, Israeli or Palestinian businesses will refuse to work with one another altogether to avoid the risk of a bad investment.⁵⁸ JAC is a significant step towards ameliorating the risks of trading between Israel and Palestine.⁵⁹

Security in business transactions has been low even though the Oslo Accords outlined certain levels of economic cooperation between the two parties.⁶⁰ Even though the two sides were meant to mutually respect and recognize a judicial decisions and judgments through the Oslo Accords, a general lack of compliance has developed, as both sides seriously doubted the likelihood of recovering a judgment in ‘enemy territory.’⁶¹ The Oslo II Accords included provisions to the original Oslo Accords, adding a mutual cooperation agreement requiring Israel and Palestine to commit to promoting cooperative economic programs.⁶²

Even with these changes in the Oslo II Accords, the cooperation between Israeli businesses and Palestinian businesses continued to flounder, as they have up to today.⁶³ One of the main points of contention Palestinians have with the failing Oslo Accords, is the fact that the Palestinians are not allowed set their own tariff and levies to a level below that of Israel’s.⁶⁴ The fact that Palestine is not allowed to set the level of their own tariffs has hampered their individual economy and is detrimental to Palestine.⁶⁵ In addition to Palestine not being allowed to lower their tariff/levies level below that of

⁵⁷ International Chamber of Commerce JAC Challenge, *supra* note 10; Reuters, *New Panel Aims to Settle Israeli-Palestinian Business Disputes*, HAARETZ (Nov. 18, 2013) available at <http://www.haaretz.com/business/1.558807>; Hadar Kane, *Israeli-Palestinian business arbitration center established*, ynetnews.com (Mar. 28, 2013 2:14 PM) available at <http://www.ynetnews.com/articles/0,7340,L-4361410,00.html>.

⁵⁸ International Chamber of Commerce JAC Challenge, *supra* note 10.

⁵⁹ *Id.*

⁶⁰ Kirtley, *supra* note 44. (The Oslo Accords adopted an already existing document that was signed into existence by Israel and Palestine to promote economic cooperation. On April 29th 1994, Israel and the Palestinian Liberation Organization (“PLO”) signed a trade policy defined in the Protocol on Economic Relations, but has been referenced as the Paris Protocol.)

⁶¹ International Chamber of Commerce JAC Challenge, *supra* note 10 (Israeli businesses do not believe they will be able to recover a favorable judgment in Palestinian territory and Palestinian businesses do not believe they could recover a favorable judgment in Israeli territory.)

⁶² *Id.*

⁶³ *See generally* PIBF, *supra* note 28.

⁶⁴ Palestine Liberation Organization, *Paris Protocol*, NEGOTIATIONS AFFAIRS DEPARTMENT (last visited Feb. 12, 2014) available at <http://www.nad-plo.org/etemplate.php?id=48>.

⁶⁵ Neve Gordon, *Oslo Accords strangling Palestinian economy*, REDRESS INFORMATION & ANALYSIS (Sept. 28, 2012) available at <http://www.redressonline.com/2012/09/oslo-accords-strangulation-of-the-palestinian-economy/>

Israel, the Oslo II Accords allows Israel to control labor flows and prohibit the establishment of a Palestinian currency, both of which affect interest rates and inflation within Palestine.⁶⁶ Based on the large amount of disadvantages to the Palestinian economy, a new neutral and reliable means of enforcing fair business between the two parties was needed. Even though at the time of this article, JAC had not heard a dispute, JAC is a significant step in the right direction of the first serious mechanism towards remedying business disputes between Israel and Palestine.

2. JAC Could Even Increase the Levels of Economic Transactions for Both Parties.

Beyond cooperation between Israel and Palestine, JAC could encourage investors from other countries to take advantage of what looks like a lucrative emerging market.⁶⁷ When a highly volatile area becomes politically more stable, the potential for rapid commercial growth begins to attract savvy emerging market investors. If JAC proves to be a workable form of civil adjudication, it may shift the region's reputation from economically unpredictable to economically promising.⁶⁸ Ideally, with the success of JAC, stability will arrive to the businesses of Israel and Palestine, and increase the overall level of investment and economic developments for both local and global investors.⁶⁹

In addition to remedying business disputes, ICC Chairman Harold McGrawn articulated an additional benefit of JAC when interviewed, saying "We are hopeful the US \$4 billion in annual trade between Palestinians and Israelis will expand significantly now that there is a mechanism in place to bring swift and fair resolution to commercial disputes and create greater certainty for the business community."⁷⁰ Hopes that JAC will be successful and allow for reliable dispute resolution mechanism between Israeli and Palestinian businesses will attract more business transactions between Israel and Palestine, as well as attracting more international investments.

⁶⁶ Gordon, *supra* note 65.

⁶⁷ Darwazeh, *supra* note 34; PIBF, *supra* note 28.

⁶⁸ See generally PIBF, *supra* note 28.

⁶⁹ *Id.*

⁷⁰ *Id.*

IV. WHAT MAJOR CHALLENGES DOES JAC FACE?

A. Lack of Trust

In establishing legitimacy as a dispute resolution mechanism, JAC must overcome the inherent distrust that permeates through Palestinian and Israeli relationships.⁷¹ Fortunately, JAC will not require immense amounts of cooperation between the two nations in order to allow JAC to function as a mode of commercial arbitration. While the past has shown that Israelis and Palestinians have been in an almost constant state of political conflict, there is something unique in JAC that could force trust between the parties. Since JAC is supported by ICC Israel, ICC Palestine, and ICC Paris, there is significant external pressure on both nations to facilitate JAC's emergence as an arbitration institution, which may prove more powerful than the political differences which have for decades inspired conflict and distrust between the nations.⁷² Considering the now present external pressure placed on ICC Israel and the newly formed ICC Palestine, the increased economic interest in the region could provide enough of a catalyst to overcome the historic dispute and promote cooperation amongst Israel and Palestine.

B. Inequality of Experience

JAC's arbitral panel will consist of two members elected by ICC Israel ("Israeli elects") and two members elected by ICC Palestine ("Palestinian elects").⁷³ At the time of this publication, ICC Palestine assigned their two representatives to JAC Court, Gary Born and Catherine Rogers. Israel is still waiting to appoint their two members.⁷⁴ Because the members of the panel will likely be selected with a slight bias towards the country electing them, there could be a difference in experience the members of the panel bring to JAC.⁷⁵ Unlike ICC Palestine, ICC Israel has been in existence for over 50 years. Accordingly, Israeli arbitrators may enjoy more experience with both international commercial disputes in the area, and managing relationships with the ICC.⁷⁶ Based on the prior experience of ICC Israel, it could be better equipped to have the infrastructure to rapidly expedite submitted issues in a proficient manner. Based on the 'newness' of ICC

⁷¹ See generally Darwazeh, *supra* note 34; Rogers, *supra* note 32.

⁷² Rogers, *supra* note 32.

⁷³ Dawn Chardonnal, *supra* note 40.

⁷⁴ International Chamber of Commerce Palestine *New Representatives in the JAC Court*, (last visited Apr. 12, 2014) available at <http://www.iccpalestine.com/index.php?lang=en&page=news&item=13928925438>.

⁷⁵ Rogers, *supra* note 32.

⁷⁶ International Chamber of Commerce Israel ICC Israel, *supra* note 29.

Palestine, it could take some time for the infrastructure to be properly in place to allow for expedient and efficient resolution of submitted issues.⁷⁷ Moreover, the general scope of the legal profession varies within the countries.⁷⁸ While Israel's legal landscape has developed into a sophisticated regime over the last sixty years, Palestinian displacement after the Jewish migration has resulted in disjointed evolution of Palestinian law, which could hinder their progress and success in international arbitral proceedings.⁷⁹

V. WILL THE JERUSALEM ARBITRATION CENTER ACTUALLY SURVIVE?

Although JAC remains untested, it presents a newly developed opportunity for Israeli and Palestinian businesses. JAC is a major step forward for both Israel and Palestine, not only for economic and business development, but also for the development of political peace. JAC may be one of the first examples of both sides recognizing the other as a viable partner for a joint venture. If JAC does succeed, there will be an increase in security, trust, and overall commerce that could serve to alleviate some of the historical conflict between the two nations.

The main factor that will determine the success of JAC is whether the parties will follow through with their commitment to resolve their businesses disputes through JAC. While commitment to improving economic relationships is the driving force behind JAC, one looming question remains: How long will Palestinian and Israeli leaders continue to cooperate? Recent efforts certainly warrant optimism, but it is noteworthy that only a smaller minority of the Israeli/Palestinian citizens have reacted positively to JAC. JAC is an encouraging step towards a possible solution to the business and political strife in the area, though more will be needed before the long history of political unrest can be overcome.

VI. CONCLUSION

JAC is a historic first step towards economic and potential political cooperation between Israel and Palestine. Since the very beginning of Israel's existence, there has been constant unrest between Israel, and those that inhabited Palestine before Israel was established, yet many proponents for JAC believe this is a real chance for peace between the two. This opportunity gives a neutral, reliable opportunity for Israeli and Palestinian businesses to seek remedies for issues during the course of business. While a lot of recognition must be given to both Oren Shachor and Samir Hulileh, for their initial work in creating JAC, a lot of responsibility is now bestowed to Israeli and Palestinian businesses, and if they can trust JAC's processes, JAC could be a success.

JAC faces a lot of challenges, but is a great first effort into overcoming nearly 50 years of failed efforts between Israel and Palestine. JAC hopefully can remove the

⁷⁷ International Chamber of Commerce Israel ICC Israel, *supra* note 29.

⁷⁸ *Id.*

⁷⁹ *Id.*

inherent distrust between Israeli and Palestinian businesses that has been developing since the beginning of Israel. If successful, JAC has the ability to increase the security of economic activity between Israeli and Palestinian businesses, as well as the amount of economic activity as a whole. While JAC does face a lot of challenges, the amount of enthusiasm, effort, and planning that has been placed into the creation of JAC has set up the arbitration center for success, the only thing that still is needed is the continued trust and participation of Israelis and Palestinians.